

1 Q Dr. Henry, in the middle column beyond the
2 identifiers that reference this cigarette butt,
3 there are several numbers that are in excess or
4 addition to the known reference sample of Donte
5 Johnson.

6 Could you explain what those numbers mean
7 to you?

8 A Certainly. That happens relatively often
9 in forensics -- sexual assaults, some types of
10 evidence. In other words, if two people or more
11 people are in contact with a particular item, we can
12 have what's termed a mixed stain. That's two people
13 deposit their DNA. The case of cigarettes -- as I
14 mentioned, if one person took a puff and the other
15 person finished the cigarette off, you could expect
16 the person that did most of the puffing to leave
17 most of the DNA, which is normally what you get.
18 What you see in this case is what we term "major
19 contributor" and some "minor contributor." In this
20 case, for instance, the 11, 12 for Mr. Johnson are
21 the major components of the DNA. We also picked up,
22 based on our criteria, how to interpret this a 13.
23 I don't know where the 13 came from; it simply means
24 there's a mixture of DNAs on this cigarette butt;
25 the major contributor that person that left most of

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1 the DNA would be Mr. Johnson.

2 Q In the major minor component of the DNA
3 genetic material on that cigarette butt, there's no
4 way of telling from your testing when that genetic
5 material was deposited on that cigarette butt?

6 A No; we can't do that.

7 Q There's no way of telling whether or not
8 that was on there before Donte Johnson's DNA was
9 deposited on there or if it was after?

10 A That's correct.

11 Q And the testing that you do, Dr. Henry,
12 there's criteria lab protocol that you use as a
13 standard to determine what is a major donor or what
14 is a minor donor in a mixed stain?

15 A That's correct.

16 Q Thank you, Dr. Henry.

17 If you could go to the final exhibit.

18 A I'm sure I can get this one right.

19 Q Exhibit 205.

20 Are you familiar with the contents of this
21 exhibit?

22 A Yes, I am.

23 Q And I'm assuming the column to the far
24 left identified as "locus" is the same and
25 consistent with your previous testimony regarding

1 that portion of DNA testing?

2 A Right. These are the ones that we use,
3 and eventually, every other laboratory in the
4 country uses exactly the same markers.

5 Q In the second column that's labeled
6 "Gorringer," that is one of the reference samples
7 that is previously noted on the reference chart of
8 one of the victims in this case?

9 A That's correct.

10 Q Now, in the third and fourth column, these
11 are several different blood stains that were
12 obtained from the defendant's black jeans.

13 Could you tell the jury what the results
14 of all the different blood stains on those jeans as
15 far as the genetic results?

16 A Sure.

17 Again, we simply take, in this case, blood
18 from autopsy, isolate the DNA, do our usual
19 procedure of all the markers and we generate a
20 pattern. Again, DNA is taken in this case from
21 blood stains. There were eight of these, I believe,
22 on a pair of black Calvin Klein jeans. These were
23 all typed. All of these originated from the same
24 individual.

25 The reason you see two columns is a very

1 simple reason. If you see right here (indicating),
2 it says "INC" for "inconclusive." That means one of
3 two things. That means either that particular locus
4 or DNA did not come up or it was below level of our
5 interpretation. We have to have a certain amount of
6 DNA before we can feel confident in making a call.
7 In that particular instance, it was called
8 "inconclusive." All of these matches through all of
9 these loci except this one, that's why it's in its
10 own individual column.

11 Q Relative to your statistical analysis in
12 this case, Dr. Henry, do you have an opinion whether
13 or not there is a genetic match of the blood stains
14 being that from Tracey Gorringer?

15 A Yes, they were, to identity.

16 Q Even to the stain that's referenced as
17 "Bloodstain H" in the far right column?

18 A Yes, that's correct.

19 Q Thank you, Dr. Henry. I'm done with that
20 reference sample.

21 Dr. Henry, my final set of questions
22 relate to a portion of the testing in this case
23 dealing with Item No. 21, a cigarette butt that was
24 found at the Terra Linda home and additional or
25 third-party genetic testing.

1 Are you familiar with that aspect of this
2 case?

3 A I am familiar, but I thought it was
4 cigarette butt 22. Might I check my notes?

5 Q Yes, 22, I believe.

6 A Yes, it should be Marlboro cigarette item
7 22.

8 Q Okay.

9 Are you familiar with the process and the
10 procedure about why this material was sent to an
11 independent genetic testing facility?

12 A As I understand it from the notes and
13 discussions with Mr. Wahl, it's our policy, wherever
14 possible, to leave at least half the material. The
15 reason we do this is for a couple of reasons. One
16 is the defense have a right to have things retested.
17 Secondly is that new methods might come along simply
18 that would be more informative or we can do
19 additional tests. At this point, half of the filter
20 paper around the filter was used up in the first
21 test. As I understand it in this case, since it was
22 only half this material left, a separate reference
23 lab was chosen to do additional testing, the actual
24 STR method. Those first 13 I showed you with
25 numbers, that was sent out to a laboratory called

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1 "Cellmark Diagnostics," and that same procedure we
2 used, same loci was performed.

3 Q And Cellmark Diagnostics is in Germantown,
4 Maryland?

5 A That's correct.

6 Q Are you familiar with that lab?

7 A Very familiar.

8 Q Are they a certified and accredited lab to
9 form genetic DNA testing?

10 A Yes. They're one of the oldest in the
11 business.

12 Q Based on the results of Cellmark's DNA,
13 did they concur with the assessment that your lab
14 did regarding the genetic material deposited on that
15 cigarette butt, right?

16 A What we received from them were the STR
17 patterns, those 13 loci that we talked about. That
18 was sent back to us. We reviewed those results, and
19 it was compared with the STRs that was done on a
20 sample from Mr. Johnson in our laboratory.

21 Q And Dr. Henry, finally, the amount of
22 material that we're talking about that is deposited,
23 it's a very minute genetic material that can
24 possibly be tested; is that correct?

25 A Yes, definitely.

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1 Q Depending on what cell structure of the
2 material it is, it can be as little as the saliva --

3 MS. JACKSON: Your Honor, I'm going to
4 object to the form. He's testifying. I think that
5 that would be overly leading even for this type of
6 proceeding.

7 MR. STANTON: Your Honor, I just want to
8 get to the essential issue here, and instead of what
9 I can do in ten questions, I can do it with one.

10 THE COURT: She's objecting, Counsel.

11 MS. JACKSON: I let him testify, like, for
12 ten minutes.

13 THE COURT: You already made your
14 objection. All right.

15 Sustained.

16 BY MR. STANTON:

17 Q Dr. Henry, would you be able to obtain
18 genetic material from licking the back of a stamp?

19 A Potentially, except, of course, no one
20 licks stamps anymore. We used to be able to do that
21 when people did.

22 Q But it could be as little as that?

23 A It could be, but here again, it's
24 variable. Some people have more cells. If you're
25 one of those people that salivates a lot, you're

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1 going to be putting out more cells; so, I'd say in
2 stamps, you would have a relatively high percentage
3 of samples that would yield to DNA results, but not
4 all.

5 Q How about if someone were to hold a
6 cigarette relative to the sweat or the secretions
7 from their hand, would that possibly leave genetic
8 material as well?

9 A Possible. Sweat is not a particularly
10 good source simply because your skin -- the cells on
11 your fingertips -- we all have calluses on those and
12 those cells are dead. They don't have DNA that's
13 usable for us in our particular methodology, so
14 sweat, if somebody was in contact with something for
15 a long time, like a baseball cap, you can get a
16 pattern. Sweat is an iffy thing.

17 MR. STANTON: Pass the witness.

18 MS. JACKSON: Thank you, your Honor.

19 We have no questions of Dr. Henry.

20 THE COURT: You're excused. We'll take a
21 five-minute recess.

22 The jury is admonished not to discuss this
23 case among themselves or with anyone else, read any
24 newspaper or television reports or listen to any
25 radio reports or express any opinion.

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1 **THE BAILIFF:** All rise.
2 (Recess taken.)
3 **THE BAILIFF:** All rise. Court is again in
4 session. Please be seated and come to order.
5 (Jury present.)
6 **THE BAILIFF:** Be seated and come to order.
7 **THE COURT:** Call your next witness.
8 **MR. DASKAS:** Judge, the State calls
9 Dr. Gary Telgenhoff, please.
10 **THE CLERK:** Please raise your right hand.
11 (Oath administered.)
12 **THE WITNESS:** I do.
13 **THE CLERK:** Please be seated. When you're
14 seated, state your name and spell your name for the
15 record.
16 **THE WITNESS:** My name is Dr. Gary
17 Telgenhoff. Last name is spelled
18 T-E-L-G-E-N-H-O-F-F.
19
20 **GARY TELGENHOFF, M.D.,**
21 being called as a witness on behalf of the
22 State, was first duly sworn and testified as
23 follows:
24 /////

25 /////

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1 /////

2 DIRECT EXAMINATION

3 BY MR. DASKAS:

4 Q Dr. Telgenhoff, by whom are you employed?

5 A The Clark County Coroner's Office.

6 Q What is your job title?

7 A I'm a forensic pathologist, medical
8 examiner.

9 Q You're actually a medical doctor?

10 A Yes.

11 Q You mentioned you're a forensic
12 pathologist.

13 What is "pathology," and then tell us what
14 is "forensic pathology"?

15 A "Pathology" is a subspecialty of medicine
16 in which a person studies all manners of disease,
17 like cancer, flu -- anything known to man pretty
18 much. Most pathologists work in a hospital and
19 diagnose tumors, read pap smears, that kind of
20 thing. "Forensic pathology" is another step beyond
21 that. You have to be able to first do those things,
22 and you take another year and study abnormal deaths.

23 Q As a forensic pathologist with the Clark
24 County Medical Examiner's Office, one of your duties
25 primarily is to perform autopsies?

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1 A Yes.

2 Q What is an autopsy?

3 A An autopsy consists of primarily looking
4 at the outside of the body for any evidence of
5 injury or disease process. Also, we take the organs
6 out of the body, including the brain, and we study
7 each and every organ involved, and we're also
8 looking for any evidence of injury or disease
9 process.

10 Q And is that the primary purpose of an
11 autopsy, to determine cause and manner of death?

12 A Yes.

13 Q Give us some examples. I mentioned cause
14 and manner of death. What does that mean to you as
15 a forensic pathologist, both cause of death and
16 manner of death.

17 A Cause of death is the proximate cause. If
18 a person dies of a heart attack, coronary artery
19 disease would be the cause. If a person dies from a
20 gunshot wound, the gunshot wound would be the cause.
21 Manner is a whole different area, and we have five
22 options from which to pick. Those would include
23 natural, accident, homicide, suicide or
24 undetermined.

25 Q Am I correct that there are an infinite

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1 number of causes of death but a finite number of
2 manners of death?

3 A Yes.

4 Q Tell us just a little bit about your
5 training and education that enables you to form your
6 duties as a forensic pathologist.

7 A I have a four-year college degree in
8 biology and chemistry. I have a master's degree in
9 biology and physiology. I have four years of
10 medical school. I have another five years of
11 pathology residency training and an additional one
12 year of forensic pathology training.

13 Q You have testified as an expert in the
14 field of forensic pathology?

15 A Yes, many times.

16 Q Does that include the Eighth Judicial
17 District Courts here in Clark County, Nevada?

18 A Yes.

19 Q You did not perform the autopsies in this
20 case; am I correct?

21 A That's correct.

22 Q When I say "this case," I mean the four
23 victims that brings us all here today.

24 A That's correct.

25 Q Who did perform the autopsies?

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1 A Robert Bucklin.

2 Q Were you familiar with Dr. Bucklin's work?

3 A Yes. I knew about Dr. Bucklin the first
4 year that I was at the Clark County Coroner's
5 Office. He was in the process of retiring, and I
6 actually replaced him. He's no longer living. He
7 died a couple of years ago.

8 Q If I were to represent to you that he has
9 previously testified that he, being Dr. Bucklin,
10 performed in excess of 25,000 autopsies, would you
11 agree with that?

12 A I read that, and over a 60-year period, I
13 would say that's about right.

14 Q At my request, did you review the autopsy
15 reports and photographs associated with the four
16 victims in this case?

17 A Yes.

18 Q I should ask you, are reports typically
19 generated or after an autopsy?

20 A They're done during an autopsy, and I know
21 that because when I first got to the Clark County
22 Coroner's Office, I adopted the way that Dr. Bucklin
23 did it, and he dictated directly into a recorder
24 while he was looking at the body. That was done at
25 the time of the examination.

1 Q You reviewed the autopsy reports
2 associated with the four victims in this case?

3 A I'm sorry?

4 Q You reviewed the autopsy reports
5 associated with each victim in this case?

6 A Yes, I did.

7 Q As well as photographs?

8 A Yes.

9 Q Let me ask you, just generally, do you
10 agree with Dr. Bucklin's findings regarding the
11 cause and manner of death regarding the four victims
12 in this case?

13 A Yes.

14 Q You have copies of the autopsy reports
15 there?

16 A Yes, I do.

17 Q Can you tell me who attended the autopsies
18 of each of the victims in this case?

19 A Well, I assume the same officers were on
20 each --

21 Q Yes.

22 A -- of the cases.

23 I'm just reading from the report on
24 Mr. Biddle. Those detectives present were Hefner,
25 Thowsen and Buczek as well as Crime Scene Analyst

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1 Morton and Norman.

2 Q What is the purpose of having a crime
3 scene analyst attend an autopsy?

4 A A crime scene analyst is a very
5 hard-working individual that does a lot of the work
6 involved in the crime scene in respect to getting
7 fingerprints, photographs, getting trace evidence
8 from a body, collecting blood samples at the scene,
9 and we use them at our facility. We let them go
10 over the body first to make sure that no trace
11 evidence or anything is lost, and then after their
12 expertise, then I do my part.

13 Q In this case, did Crime Scene Analyst
14 Sheree Norman impound certain evidence associated
15 with each victim?

16 A I read that she did, but I don't recall
17 exactly what all she impounded.

18 Q I want to talk to you now first about the
19 autopsy of an individual identified as Jeffrey
20 Biddle.

21 You reviewed the reports and photographs
22 regarding his autopsy?

23 A Yes.

24 Q Would it assist you in explaining your
25 opinions to show photographs to you and then the

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1 members of the jury?

2 A Yes.

3 MR. DASKAS: Judge, if I might just let
4 the members of the court know we're going to display
5 some autopsy photos for those members who don't want
6 to be present.

7 THE COURT: All right.

8 BY MR. DASKAS:

9 Q Dr. Telgenhoff, let me ask you, first of
10 all, did Dr. Bucklin provide a general description
11 of Jeff Biddle in his autopsy report?

12 A Yes.

13 Q What is that description, please?

14 A In general, Mr. Biddle, at the time of the
15 autopsy, weighed 173 pounds and was 5 feet 8 inches
16 tall.

17 Q Did he provide an apparent age of Jeff
18 Biddle?

19 A I believe he did -- approximately 20 years
20 of age.

21 Q Did Dr. Bucklin perform an external
22 examination of Jeff Biddle?

23 A Yes.

24 THE COURT: Hold on a minute.

25 Let me see those photos.

1 (Counsel approached the bench.)
2 MS. JACKSON: Judge, may we approach and
3 take a look at the particular ones he plans to use?
4 THE COURT: Yes.
5 (Sidebar conference outside the presence
6 of the court reporter.)
7 BY MR. DASKAS:
8 Q Dr. Telgenhoff, let me display for the
9 members of the jury what's been admitted as State's
10 Exhibit 137.
11 If you would, Doctor, please just describe
12 generally what is depicted in this photograph and
13 the significant findings from an external
14 examination.
15 A Well, since I didn't do the case, I can't
16 identify which particular person this was, but I
17 assume it's Mr. Biddle.
18 Q Correct.
19 A Obviously, there's a person lying on the
20 gurney here face down, and it's quite obvious, and
21 it's also present in Dr. Bucklin's report that
22 there's an abundant amount of duct tape around the
23 wrists and hands, as well as the ankles.
24 Q That is documented in Dr. Bucklin's
25 report?

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1 A Yes.

2 Q Is there a mention in the report of a
3 gunshot wound?

4 A Yes.

5 Q What is the location of that gunshot
6 wound?

7 A The gunshot wound noted on this
8 individual -- there's only one -- it was on the
9 right occipital aspect of the scalp which means that
10 it was in the back of the head just right of center.
11 If you feel the back of your head where that bump
12 is, that's right about where we're talking about.

13 Q Let me display for the members of the
14 jury, first of all, No. 145.

15 Can you see the gunshot injury in that
16 photograph?

17 A Yes. It's difficult to see because of the
18 hair and, we typically shave the area where the hair
19 is. Right here (indicating) you can see there's a
20 defect, and this area down here (indicating) is
21 blood that is dried and smeared, and of course on
22 the clothing, but this is the gunshot wound injury
23 right here (indicating).

24 Q Let me display for the members of the jury
25 Exhibit 146; that's the same portion of the injury

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1 with the hair now shaved.

2 A After we shaved the hair, for obvious
3 reasons, then you can see the details of the wound.
4 You can see if there's any indication of range of
5 fire, how far away the gun might have been and that
6 kind of thing? Also, you can see if it's actually
7 an entrance or an exit. This particular wound is
8 definitely an entrance. It has what we call a
9 "surrounding abrasion collar." In addition, there's
10 singeing on the edge of the wound where fire comes
11 out -- a flame comes out of the end of the barrel.
12 It's very short, so to get the singeing, you have to
13 be very close.

14 Q Let me ask you a couple of questions about
15 your last comment.

16 That is an entrance wound you said?

17 A Yes.

18 Q Was there a corresponding exit wound?

19 A No.

20 Q And you mentioned something about the
21 ability to determine how close the barrel of the gun
22 was when this injury was sustained; is that correct?

23 A Repeat the first part of your question.

24 Q You mentioned something about your ability
25 to determine how close the barrel of the gun was at

1 the time this gunshot injury was sustained?

2 A Yes.

3 Q What types of things do you look for?

4 A This requires knowledge of how guns
5 discharge, what comes out of the barrel, what kind
6 of gun we're talking about, and rifles are different
7 than handguns, and handguns are different than
8 shotguns, but assuming we're talking about a
9 handgun, most handguns, if they're right against the
10 skin and it's on the scalp, you typically get a big
11 tear in the skin because the gases get shoved
12 underneath the skin and push the skin out and tear
13 it. That's not present here. Another thing that
14 happens is the flame that I mentioned. Another
15 thing that happens is that gunpowder is burnt and
16 it's turned to soot, so, within a few inches or so,
17 soot usually is apparent either on the skin or in
18 the wound. After that, after about an inch or so,
19 unburned gunpowder particles come out of the barrel
20 and scrape the skin, and this is what we call
21 "stippling" -- those little orange-red dots on the
22 skin around the wound. We don't have that here.
23 That usually occurs out to about two feet. After
24 that, we call it a "distant gunshot," and you don't
25 have any of those features; all you have is a round

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1 hole, but with the singeing present but no stippling
2 present, this gunshot wound, to me, is obviously
3 about an inch or so away from the skin.

4 Q In other words, the barrel of the gun
5 would have been about an inch or so away from the
6 skin at the time the gun was discharged?

7 A That's my opinion, yes.

8 Q And if Dr. Bucklin testified similarly and
9 if that was contained in his report, you would agree
10 with that opinion?

11 A Yes, I would.

12 Q Was an internal examination performed on
13 Jeff Biddle as well?

14 A Yes.

15 Q Describe, if you would, what is an
16 "internal examination"?

17 A One moment as I --

18 Q Absolutely.

19 A -- thumb through the report.

20 Well, the bullet fragmented, as they often
21 do when they hit bone, and the fragments went
22 through various portions of the brain, one course
23 downward and just beyond the base of the skull; so,
24 Dr. Bucklin retrieved these various fragments and
25 gave them to the crime scene analyst.

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1 Q Let me ask what may be an obvious
2 question, but what causes a bullet to fragment?

3 A Well, it's lead core. Sometimes bullets
4 are jacketed. They have like a copper or a lumen
5 coating on the outside. Usually, it's copper, but
6 once that -- if it's jacketed at all, that usually
7 breaks away as a free piece and the inside lead is
8 heavy but it's soft, so if it hits anything hard, it
9 tends to bust up into pieces.

10 Q During the internal examination of Jeff
11 Biddle, were the bullet fragments recovered?

12 A Yes.

13 Q Let me display what's been admitted as
14 State's Exhibit 135.

15 Tell me, if you would, what is depicted in
16 Exhibit 135?

17 A I haven't seen those photos before, of
18 course -- I take that back. I did see them in some
19 photographs. Of course, I wasn't there, but this is
20 very consistent with what Dr. Bucklin described in
21 his report. These are fragments of a lead
22 projectile.

23 Q And also depicted on that exhibit is the
24 general location, at least from which those
25 fragments were recovered?

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1 A Yes. In this particular photograph on the
2 left side there's a group of three fragments which
3 he retrieved from the base of the skull or the head.
4 Let me take that back -- he retrieved from the
5 inside of the head. The one on the right he
6 retrieved from the neck area, the base of the skull
7 that I described.

8 Q Does Dr. Bucklin describe in his report,
9 at least generally, the trajectory of that bullet?

10 A Yes.

11 Q What is, generally speaking, the
12 trajectory the this bullet traveled?

13 A Of course it's back to front. It went in
14 the back, slightly left to right and downward.

15 Q Would the trajectory be consistent with
16 the victim having been face down on the ground with
17 someone standing over the victim an inch away and
18 firing that gun?

19 A Yes.

20 Q Did Dr. Bucklin reach an opinion regarding
21 the cause of Jeff Biddle's death?

22 A Yes.

23 Q What was that opinion?

24 A Gunshot wound to the head.

25 Q And did Dr. Bucklin reach an opinion

1 regarding the manner of Jeff Biddle's death?

2 A Yes.

3 Q How was that?

4 A Homicide.

5 Q How do we define "homicide"?

6 A The way we use it is a very general way,
7 the death of one at the hands of another. This is
8 probably the -- we don't address murder, per se; we
9 address homicide which is one taking the life of
10 another.

11 Q Do you agree with Dr. Bucklin's findings
12 regarding both the cause and manner of death of Jeff
13 Biddle?

14 A Yes.

15 Q Based on your experience, your expertise,
16 how long would you expect someone to survive after
17 having sustained this type of gunshot wound?

18 A Not very long -- a couple seconds to
19 minutes, and it depends on how we're describing
20 death. Unconsciousness would probably be instant.

21 Q Let me move on now to the next victim,
22 Tracey Gorringer.

23 Did you review the autopsy reports and
24 photographs associated with the autopsy of Tracey
25 Gorringer?

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1 A Yes.

2 Q Is there a general description of height,
3 weight and age of Tracey Gorringer?

4 A Yes.

5 Q What is it?

6 A The height was described as being
7 68 inches, and at the time of the autopsy, the
8 weight of the body was 158 pounds.

9 Q Let me display for the members of the jury
10 Exhibit 148.

11 Can you please describe what's depicted in
12 that photograph?

13 A It looks very similar to the last photo we
14 looked at, and having not done the case myself, I
15 can't identify this particular body, but I assume
16 it's Tracey Gorringer.

17 Q Correct.

18 A Very similar findings. We have hands and
19 wrists bound pretty secure with duct tape. I can't
20 really see that well down at the ankles, but I
21 remember the description is it being there.

22 Q At page 2 of the doctor's report --
23 Dr. Bucklin's report, he states that the tape has
24 produced pallor, P-A-L-L-O-R.

25 What is "pallor"?

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1 A Can you tell me which line that's on?
2 Q Absolutely.
3 **MR. DASKAS:** May I approach the witness,
4 Judge?
5 **THE COURT:** Yes.
6 **MR. DASKAS:** Thank you.
7 **THE WITNESS:** Okay. The ankles show
8 restriction marks due to duct tape described that
9 duct tape restrictions have reduced pallor in the
10 areas of the wrist. "Pallor" is simply blanching.
11 When you push on your skin, you can see the blood
12 retreats from the area. In a dead person, it tends
13 to stay.
14 **BY MR. DASKAS:**
15 Q Does that suggest anything to you about
16 how tightly that duct tape was wrapped around the
17 victim's wrists and ankles?
18 A It indicates that it's tight.
19 Q Now, I assume that Dr. Bucklin performed
20 an external examination on Tracey Gorringer?
21 A Yes.
22 Q And what were the significant external
23 findings?
24 A Well, there was -- in addition to the duct
25 tape findings, there was a gunshot wound also in the

1 back of the head in the same region; however, this
2 one was more centered, central rather than on the
3 right.

4 Q Let me display for the members of the jury
5 Exhibit 151.

6 Can you please describe what is depicted
7 in that photograph?

8 A Yes. In this picture, we see another
9 entrance wound in the back of the head. You'll
10 notice it's very similar to the last one, although
11 we don't gauge caliber by the size of the wound.
12 You can see that they're very similar in shape and
13 size. Also, we have abrasion collar around the
14 wound which indicates it's an entrance. There's
15 some black singeing on the edges which indicates
16 that it's close. There are some areas around here
17 (indicating) where the hair isn't quite shaved well,
18 so it looks like there's other marks here, but there
19 is no stippling here. So, once again, we have a
20 range that's very close, within an inch or so.

21 Q You say about an inch or so?

22 A Yes.

23 Q And again, you're referring to how close
24 the barrel of the gun was placed to the victim's
25 head at the time the gun was discharged?

1 A Yes.

2 Q This was an entrance wound?

3 A Yes.

4 Q Was there a corresponding exit wound?

5 A No.

6 Q Was an internal examination performed and
7 were bullet fragments recovered from Tracey
8 Gorringer?

9 A Yes, as I recall. I need to look at the
10 report once again to refresh memory here.

11 Q I think if you turn to page 4 under
12 "Description of Injuries."

13 A Yes; I found it.

14 It went into the brain after going through
15 the skull but just below the area known as the
16 cerebellum, which is the very back bottom part of
17 the brain. It went somewhat rightward, and three
18 metal fragments were recovered from the right front
19 of the brain up in this area (indicating).

20 Q Was the direction of the bullet from back
21 to front just like with the first victim?

22 A Yes.

23 Q And did the crime scene analyst, at least
24 as far as you can tell, recover and impound those
25 bullet fragments?

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1 A Yes.

2 Q Let me display for the members of the jury
3 Exhibit 147.

4 Are those the three fragments you
5 referenced in Dr. Bucklin's report?

6 A Yes. He mentioned recovering a base of a
7 bullet, and you can see that here (indicating). You
8 can see how flattened out the bullet gets when it
9 hits bone. This (indicating) -- he didn't
10 particularly describe this, but it looks to me like
11 it's a piece of jacketing. That might be aluminum
12 jacketing. It's Silver color; it's not a typical
13 copper jacket.

14 Q The distance from which the gun was placed
15 to the victim's head was very similar to Jeff
16 Biddle; is that correct?

17 A Yes, nearly identical.

18 Q Did Dr. Bucklin reach an opinion regarding
19 the cause of Tracey Gorringer's death?

20 A Yes.

21 Q What was that opinion?

22 A Gunshot wound to the head.

23 Q Did he reach an opinion regarding the
24 manner of death?

25 A Yes.

1 Q What was that opinion?

2 A Homicide.

3 Q Do you agree with those findings?

4 A Yes.

5 Q Let me ask you the same question.

6 Are the injuries and the trajectory of the
7 bullet or the fragments consistent with Tracey
8 Gorringer having been face down on the ground with
9 someone standing over him holding a gun about an
10 inch from his head and then firing the gun?

11 A Yes.

12 Q Let me move on now to the third victim,
13 Matt Mowen.

14 You reviewed his autopsy report and
15 photographs from that autopsy?

16 A Yes.

17 Q Did Dr. Bucklin provide a general
18 description of height, weight and apparent age?

19 A Yes.

20 Q What was that?

21 A The height was 69 inches, and at the time
22 of the autopsy, the weight was 189 pounds. I need
23 to check the age. About 20 years of age is what he
24 states.

25 Q I take it an external examination was

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1 performed by Dr. Bucklin on Matthew Mowen?

2 A Yes.

3 Q What were the significant external
4 findings?

5 A Again, the decedent was bound with duct
6 tape. All three photos look pretty much the same.

7 **MR. DASKAS:** For the record, I've
8 displayed for the members of the jury Exhibit 130,
9 your Honor.

10 **THE WITNESS:** Here again, I can see the
11 same almost exact tying of the duct tape around the
12 hands and the wrists, also around the ankles. This
13 is the way the decedents were received, the way I
14 understand it, is face down like this.

15 **BY MR. DASKAS:**

16 Q Does Dr. Bucklin describe a gunshot injury
17 on Matthew Mowen?

18 A Yes.

19 Q What was that description, generally
20 speaking?

21 A This particular shot was in the neck just
22 below the area we've been talking about right about
23 the nape of the neck or right where the head meets
24 the neck -- right in the midline.

25 Q Let me display for the members of the jury

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1 Exhibit 134.

2 Is the gunshot wounds visible in that
3 photograph?

4 A Yes. This is hard to get orientation on,
5 I know, but this is the right shoulder
6 (indicating) -- the back of the right shoulder.
7 This would be the left shoulder over here
8 (indicating), and looking at the back of the
9 person's head and the back of their neck. Right up
10 here right in the middle (indicating), the midline
11 and right about the base of the head there, there's
12 an obvious round gunshot wound of entry.

13 Q You say that's an entrance wound as
14 well -- an entrance wound?

15 A Yes, absolutely.

16 Q Was there a corresponding exit wound?

17 A No.

18 Q And again, same question, did Dr. Bucklin
19 determine how close the barrel of the gun was when
20 Matthew Mowen sustained this injury?

21 A I think he described it as being somewhat
22 farther away but not more than a fraction of an inch
23 or so, the way I recall. This is an entrance
24 (indicating), there is a larger area of singeing,
25 and it appears to be soot disposition there

1 (indicating).

2 Q Would you agree with Dr. Bucklin's opinion
3 regarding how close the barrel of the gun was to
4 Matthew Mowen's head when that injury was sustained?

5 A General, yes.

6 Q It was about the same distance as was Jeff
7 Biddle and Tracey Gorringer's injuries?

8 A This might have been a little farther
9 away.

10 Q Was an internal examination performed
11 which revealed the trajectory of the bullet on
12 Matthew Mowen?

13 A Yes.

14 Q What was the trajectory of that bullet?

15 A The trajectory was basically back to
16 front, and it went through the cervical spine or the
17 top of the neck area and involved the upper aspect
18 of the spinal cord. When this happens in such a
19 traumatic way, it tends to put concussion on the
20 brain stem which is just above it, and I would
21 imagine the person was instantly unconscious and
22 basically instantly dead.

23 Q Were bullet fragments recovered?

24 A I recall that they were.

25 Q Let me display for the members of the jury

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1 Exhibit 127.

2 What is depicted in that photograph?

3 A On this photo, I see what I would describe
4 as "jacketing" from the bullet, and this most likely
5 is jacketing plus some of the core (indicating), but
6 that's just on my view here today. He describes a
7 couple of fragments that he recovered.

8 Q Did Dr. Bucklin reach an opinion regarding
9 the cause of death of Matthew Mowen?

10 A Yes.

11 Q What was that opinion?

12 A The opinion is gunshot wound to the neck.

13 Q Did he reach an opinion regarding the
14 manner of death of Matthew Mowen?

15 A Yes.

16 Q What is that opinion?

17 A Homicide.

18 Q Do you agree with those two opinions?

19 A Yes.

20 Q Same question -- are the injuries and the
21 trajectory of the bullet on Matthew Mowen consistent
22 with someone having fired a gunshot at close range
23 while Matthew Mowen was face down on the ground?

24 A Yes.

25 Q Let me move now to the fourth autopsy,

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1 Peter Talamentez.

2 Did you review the autopsy report and
3 photographs associated with his autopsy?

4 A Yes.

5 Q Is there a general description of height,
6 weight and age?

7 A General description was 105 pounds,
8 69 inches and 17 years of age.

9 Q An external examination was done by
10 Dr. Bucklin, correct?

11 A Yes.

12 Q What were the significant findings?

13 A Once again, there was a gunshot wound, and
14 I'd like to review the report, once again, to get
15 the exact details.

16 Q If that would refresh your recollection.

17 **MR. DASKAS:** For the record, I'm
18 displaying for the members of the jury Exhibit
19 No. 116.

20 **THE WITNESS:** Okay. This entrance wound
21 was on the back of the head again, but it was
22 somewhat leftward. Try to imagine this is the
23 decedent's left, not our left, so over here behind
24 the left ear in that area but in the back of the
25 head. Also, you can see from this photograph that

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1 we have a very similar situation as the other three
2 cases, the same binding with duct tape in the same
3 type and also around the ankles.

4 **BY MR. DASKAS:**

5 Q You just described the gunshot wound.

6 Let me display Exhibit No. 125.

7 Can you tell me what is depicted in that
8 photograph?

9 A It's hard to say what's depicted in that
10 photograph. There's a bunch of drying blood down
11 here. This is the back of the decedent's head
12 (indicating). I don't really -- I don't readily see
13 a gunshot wound on this particular photograph.

14 Q Let me point here to an area behind the
15 victim's left ear (indicating).

16 Do you see something that appears to be a
17 gunshot wound in that location (indicating)?

18 A Possibly, but again, the lighting on the
19 photograph isn't that good, but that's where he
20 describes it as being.

21 Q My next question is, is that consistent
22 with the description given by Dr. Bucklin in his
23 report?

24 A Yes.

25 Q Does he describe that as an entrance or an

1 exit wound?

2 A He describes it as an entrance.

3 Q Would you agree with that description?

4 A From the way he described it in the
5 report, yes.

6 Q There was no corresponding exit wound,
7 correct?

8 A Correct.

9 Q And does Dr. Bucklin render an opinion
10 regarding how close the barrel of the gun was at the
11 time the victim sustained this injury?

12 A He mentioned that there's charring at the
13 borders but no stippling, and again, that's a very
14 similar description to all the others that we've
15 talked about, and I don't doubt that it's probably
16 within the same range.

17 Q About an inch or so?

18 A Yes.

19 Q Does Dr. Bucklin describe any other
20 injuries to Peter Talamentez in the autopsy report?

21 A Yes. He mentioned something about a
22 laceration behind the left ear, and also, I believe
23 there's an abrasion on the nose.

24 Q Let me ask you, first of all, about the
25 laceration behind the left ear. I'm going to point

1 to another area on Exhibit 125, what I would
2 describe as closer to the center of the head versus
3 the injury behind the left ear.

4 Do you understand that?

5 A Yes.

6 Q Does Dr. Bucklin describe both of those as
7 separate injuries in his autopsy report?

8 A Yes, he did, and I can see why, because
9 they're widely separated.

10 Q Does Dr. Bucklin give a description
11 regarding the cause of the laceration on Peter
12 Talamentez's head?

13 A He describes it as a "laceration" which
14 means it's not a cut; it's a tearing or a ripping of
15 the skin due to blunt force. If a person were to be
16 struck with something or if they fall down and hit
17 their head on the cement, say, for example; their
18 scalp may be bleeding but that doesn't mean they
19 have a cut they have a laceration. It's a smashed
20 area of the skin that's torn apart and bleeding.

21 Q You mentioned a laceration would be caused
22 by blunt force trauma.

23 What do you mean by "blunt force trauma"?

24 A It means anything blunt, anything other
25 than a sharp edge like a knife.

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1 Q Anything other than something like a
2 knife?

3 A Yes, or broken glass or something like
4 that.

5 Q What about the handle of a gun, for
6 example? If someone were pistol whipped, could that
7 result in a laceration like this?

8 A Absolutely.

9 Q Is this, in fact, being consistent with
10 being pistol whipped?

11 A That was Dr. Bucklin's impression, and I
12 don't disagree with it.

13 Q You mentioned an injury to Peter
14 Talamentez's nose.

15 A He mentions it.

16 Q Let me display for the members of the jury
17 Exhibit 120.

18 Is that injury depicted in this
19 photograph?

20 A Yes. If you look at the face and here is
21 the nose (indicating), you can see there's what we
22 call "abrasion" here between the eyebrows
23 (indicating) and also goes down the center of the
24 nose. It's a scrape. An abrasion is a scrape.

25 Q If Dr. Bucklin rendered an opinion that

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1 the laceration to the head and the scrape to the
2 nose occurred around the time of the victim's death,
3 would you agree with that opinion?

4 A Yes.

5 Q Can either of those injuries, the
6 laceration or scrape to the nose, have signs of
7 healing?

8 A Signs of -- I'm sorry.

9 Q Signs of healing?

10 A No, not according to Dr. Bucklin.

11 Q Were the bullet fragments recovered from
12 Peter Talamentez during an internal examination?

13 A Yes. There is -- I believe he describes
14 it as a "large caliber." Again, I need to see the
15 report here.

16 Q While you're doing that, let me display
17 for the members of the jury Exhibit 113.

18 A He describes bullet fragments recovered
19 from -- recovered close to the skull at the entrance
20 wound and in the right frontal lobe tip, in other
21 words, the very front of the brain. And again, we
22 see similar fragments. Some of this, to me, is
23 obviously aluminum or at least a light metallic
24 jacketing, and this is the lead core.

25 Q I don't recall if I asked you this. If I

1 did, I apologize, but I'm going to ask it again.

2 Is there a description of the trajectory
3 of the bullet or bullet fragments recovered from
4 Peter Talamentez?

5 A He described it as left to right, upward
6 and does not describe any other deviation, as I
7 recall.

8 Q Whereas the other three victims were
9 described, that is, the trajectory was back to
10 front; Peter Talamentez was described from left to
11 right; is that correct?

12 A I'm not sure I understand the question.

13 Q I apologize.

14 The other three victims that you described
15 so far, the trajectory was from back to front?

16 A Yes. That was the primary angle, yes.

17 Q I think you just described the trajectory
18 of the bullet from Peter Talamentez from left to
19 right?

20 A That's how he lift it, yes.

21 Q Would the injuries and the trajectory of
22 the bullet recovered from Peter Talamentez be
23 consistent with Peter Talamentez having been face
24 down on his right side and someone having fired a
25 gun about an inch away into his skull?

1 A Yes, it's consistent with that.

2 Q Did Dr. Bucklin reach an opinion regarding

3 the cause of death of Peter Talamentez?

4 A Yes.

5 Q What was that?

6 A Gunshot wound to the head.

7 Q And did he reach an opinion regarding the

8 manner of death of Peter Talamentez?

9 A Yes.

10 Q What was that opinion?

11 A Homicide.

12 Q Do you agree with those two opinions?

13 A Yes.

14 Q How long would you expect Peter Talamentez

15 would have survived after having sustained this

16 injury?

17 A Again, survival is an interesting question

18 in itself. A person can be unconscious immediately

19 but yet, not legally dead for some minutes; so, it's

20 hard to say. It depends on what you're putting your

21 emphasis on. He would be dead within minutes, I

22 would think.

23 Q Let me jump back just for a moment to the

24 autopsy of Tracey Gorringer.

25 Do you still have that autopsy report

1 available?

2 A Yes.

3 Q At page 2, I believe, of Dr. Bucklin's
4 report, he mentions what he describes as very marked
5 hemorrhage in the right upper eyelid?

6 A Yes.

7 Q He described it at trial as blackening
8 around the eyelid.

9 What does that represent to you or suggest
10 to you?

11 A I see it in many gunshot wounds, I see it
12 in traffic accidents and all kinds of accidents
13 where -- or homicide where the very fragile bones
14 right above the eyes, above the eyeball, get
15 fractured, and the blood from that area seeps down
16 through the skin into the eyelids and gives the
17 person the "raccoon eyes" some people call it.
18 Dr. Bucklin suggests that that indicates a time
19 frame. I'm not sure I agree with that, but that,
20 just to me, indicates that that area of the skull
21 was fractured.

22 Q And that's consistent with the gunshot
23 injury that Tracey Gorringer sustained?

24 A Yes.

25 Q What are "defensive wounds"?

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1 A Defensive wounds can look different
2 depending on what a person is being attacked with or
3 the person being attacked. If a person is being
4 confronted by a person with a knife, the thing you
5 would assume a person would do is put their arms up
6 in this fashion (indicating), and they tend to get
7 slashes and cuts on these areas of the body that
8 indicates the person is trying to defend themselves,
9 at least for a period of time. If it's blunt force
10 where a person is punching you or hitting you or
11 with a bat, maybe you would expect bruises, and
12 that's blunt force based on these areas of the body.

13 Q Based on your review of the autopsy
14 reports and all four victims in this case, did any
15 of them have any defensive wounds whatsoever?

16 A No.

17 Q Finally, are toxicology reports commonly
18 generated around the time autopsy are done?

19 A We take fluids at the time of autopsy,
20 they're sent to a lab in town, and it takes a number
21 of weeks to get those back.

22 Q What types of things is the lab looking
23 for when you submit the blood work, for example, to
24 the lab?

25 A There's a list of drugs that they screen

1 for. Most of them are common drugs of abuse --
2 marijuana, cocaine, methamphetamine, Ecstasy, a lot
3 of the abused prescribed drugs like Valium or
4 Oxycontin, those kind of things.

5 Q You don't have all of the toxicology
6 reports for each victim in this case?

7 A That's correct. I notice I have a couple,
8 but I don't have all of them.

9 Q If I were to represent to you that all
10 four of the victims had methamphetamine, amphetamine
11 and cocaine in their systems, you wouldn't disagree
12 with me, would you?

13 A No. I would say that two of them
14 definitely do; there's no reason the others didn't
15 if that's what the report says.

16 Q If I were to represent to you that Matthew
17 Mowen had some alcohol in his system but the others
18 did not, you wouldn't disagree with that
19 representation?

20 A I wouldn't disagree with it.

21 Q If Dr. Bucklin opined that the levels of
22 drugs in the victim's system were recreational
23 amounts, would you agree with that?

24 A Yes, and a couple of these somewhat
25 higher.

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1 Q Were any of the levels of drugs, however,
2 life threatening?

3 A That's a very difficult question to
4 answer, because I have signed out cases with these
5 levels having died from drug abuse. However, there
6 are many people also that do just fine on these
7 levels; so, it totally depends on the individual,
8 the state of their heart. Given that these people
9 are very young, I would not expect much at this
10 level to necessarily kill them.

11 Q With regard to all four of these victims,
12 what were their causes of death?

13 A The cause of death is gunshot wounds.

14 MR. DASKAS: Thank you, Doctor.

15 We'll pass the witness, Judge.

16 MS. JACKSON: Court's indulgence.

17 We have no questions of Dr. Telgenhoff
18 this afternoon, your Honor. Thank you so much.

19 Thank you, doctor.

20 THE COURT: All right.

21 You're excused.

22 THE WITNESS: I'm dismissed, sir?

23 THE COURT: Yes.

24 THE WITNESS: Okay. Thank you.

25 THE COURT: State, your next witness.

1 **MR. STANTON:** Your Honor, the State has no
2 additional witnesses.

3 The final item from the State at this
4 portion of the proceeding was to move to admit
5 Exhibit 247 which has previously been shown to
6 defense counsel. This is a certified copy of the
7 verdict forms in State of Nevada vs. Donte Johnson
8 by the original jury.

9 **MR. WHIPPLE:** It is correct, your Honor,
10 they have provided it to me.

11 **THE COURT:** Any objections?

12 **MR. WHIPPLE:** None, your Honor.

13 **THE COURT:** All right. It will be
14 admitted.

15 (State's Exhibit 247 was admitted into
16 evidence.)

17 **MR. DASKAS:** Judge, with the exception of
18 those witnesses that we would call in the second
19 phase of this hearing, we will rest.

20 **THE COURT:** All right.
21 Defense Counsel.

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

23 Your Honor, on behalf of Mr. Johnson we
24 would add nothing to the State's presentation of the
25 first part of what happened and transpired. We

1 would request permission to proceed with the
2 mitigation portion of the penalty phase.

3 **THE COURT:** Proceed.

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

5

6 DEFENSE'S CASE-IN-MITIGATION

7 **MS. JACKSON:** The first witness on behalf
8 of Mr. Johnson would be Moises Zamora.

9 **THE BAILIFF:** Remain standing and face the
10 clerk.

11 **THE CLERK:** Raise your hand.

12 (Oath administered.)

13 **THE WITNESS:** I do.

14 **THE CLERK:** Please be seated. When you're
15 seated, state your name and spell your name.

16 **THE WITNESS:** My name is Moises Zamora,
17 last name is Z-A-M-O-R-A, first name is M-O-I-S-E-S.

18

19 MOISES ZAMORA,

20 being called as a witness on behalf of the
21 Defendant, was first duly sworn and testified as
22 follows:

23

24 DIRECT EXAMINATION

25 / / / / /

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1 BY MR. WHIPPLE:

2 Q Hi, Mr. Zamora.

3 Is it okay if I call you Moises?

4 A That would be fine.

5 Q Moises, where do you live?

6 A Los Angeles, California.

7 Q How long have you lived there?

8 A Twenty-seven years -- all my life.

9 Q Where do you currently work?

10 A I work for a company by the name of Beach
11 Financial, which is a payday loan.

12 Q And how long have you worked there?

13 A Five years now in June.

14 Q Now, I want to talk a few minutes about
15 your family, if I can.

16 Who are you married to?

17 A Johnnisha Zamora now, which is Donte's
18 sister.

19 Q Okay.

20 Do you recognize Donte here in the
21 courtroom today?

22 A Yes, I do.

23 Q And what name do you know him by?

24 A John.

25 Q Is it John White?

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1 A Yes, John White.

2 Q That's the name that he's used with you

3 growing up when he spent time with you in

4 California?

5 A It's the only name that I knew him by at

6 that time.

7 Q Now, how many children do you have?

8 A Umm, now three -- three of my own.

9 Q And you have those -- you share those with

10 your wife, Johnnisha?

11 A Correct.

12 Q When did you meet Johnnisha?

13 A I met her in the earlier parts of February

14 of 1997.

15 Q And may I ask, where did you meet her?

16 A It was in the neighborhood where we grew

17 up.

18 Q Tell me about -- how long did you date

19 before you became married?

20 A We dated for close to five years before we

21 got married.

22 Q And tell me -- what were some of your

23 thoughts that you had before you started a life with

24 Johnnisha?

25 A As far as in general with her?

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1 Q Yes.

2 A Nothing much. I thought she was a great
3 person, you know. Her personality was great. I
4 kind of thought a little bit about our future and
5 where our future would be with the issues of our
6 difference in race.

7 Q When did you first learn of Donte Johnson
8 or John White?

9 A I learned of him -- it was right around
10 May of '97.

11 Q It was right after you met Johnnisha?

12 A Yes, a few months after.

13 Q Did you have any concerns about the older
14 brother?

15 A Ah, yeah, that was one of the concerns.

16 Q And what was that concern?

17 A Umm, just the fact that that was her only
18 brother, and I know me over my sisters, I'm, like,
19 very protective. I wanted to make sure they end up
20 with the right person and are not involved with any
21 type of, you know, bad people and stuff like that.

22 Q Would it be fair to say that that was a
23 concern of John White's as well?

24 A I could see that being possible, yes.

25 Q Now, you mentioned your heritage.

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1 Tell me a little bit of your heritage, if
2 you would, please.

3 A My mother is white and my father is
4 Mexican.

5 Q So, it's fair to say you're half Hispanic?

6 A Yes.

7 Q Now, with your difference in heritage from
8 Mr. John White, was that a concern for you?

9 A Very much.

10 Q And why is that?

11 A Umm, you know, in South Central, in LA,
12 sometimes it's -- the mix between Hispanics and
13 blacks is not all great. So, me being involved with
14 him, what would be his little sister, would be a
15 concern to me being the fact that, you know, growing
16 up, I was Hispanic in the community. So, it became
17 a little concern. I was worried at first.

18 Q Tell me how it is that Donte Johnson or
19 John White -- how did he treat you?

20 A When I first met John at the time, he was
21 visiting, and the first time I met him --

22 **MR. DASKAS:** Objection. I apologize
23 Mr. Zamora.

24 Can we get some foundation regarding when
25 he met the defendant, please? I apologize.

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1 BY MR. WHIPPLE:

2 Q You already gave us 1997 when you first
3 met Johnnisha.

4 When was it you first met John White or
5 Donte Johnson?

6 A It was around May of '97 when he was
7 visiting.

8 Q How did he treat you?

9 A For the most part, not any different than
10 any other person would have treated me.

11 Q Did he make any comments about your
12 heritage or your background being different from his
13 own?

14 A No.

15 Q Did he ever treat you any differently
16 because your heritage or background was different
17 than his own?

18 A No.

19 Q Do you feel accepted as a brother of Donte
20 Johnson, John White today?

21 A Yeah, very much.

22 Q When did you feel that acceptance occur?

23 A It was pretty rapidly. I mean, I
24 actually -- I was surprised by the fact that, like
25 you said, it never became an issue, it was -- he

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1 just talked to me like he knew me for years past.

2 Q And did you -- did you live together at
3 some point?

4 A Yes. I believe it was in '98, which was
5 almost a year later. He was in town and was
6 visiting us and stayed with us for approximately
7 three to four weeks.

8 Q Describe to us, if you would, your
9 relationship with Donte Johnson, John White.

10 A Living together was almost -- two men in
11 the house talking, watching TV or kind of talking
12 about life.

13 Q Did you have -- did you find that you had
14 similar interests?

15 A Yes.

16 Q Did you enjoy talking to John White?

17 A Very much.

18 Q And why is that?

19 A He's got a great personality. We're about
20 the same age, so he could relate to my life growing
21 up and his life growing up and, you know, it wasn't
22 that big -- it wasn't that odd to talk to him --
23 very open.

24 Q Today, how do you feel about Donte
25 Johnson, John White?

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1 A I love him like a family member.

2 Q Now, you mentioned earlier that you have
3 children of your own?

4 A Correct.

5 Q And again, how many children of your own
6 do you have?

7 A I have three.

8 Q And you share those with Johnnisha, his
9 sister?

10 A Correct.

11 Q You've also taken in some children, a
12 child?

13 A Yes, one.

14 **MR. WHIPPLE:** May I approach at this time?

15 **BY MR. WHIPPLE:**

16 Q I'm showing you what's been marked as
17 Defense Proposed Exhibit KK, double-K.

18 Who is in this picture?

19 A In this picture, this is Anijah
20 (indicating), and this is Allen (indicating).

21 **MR. WHIPPLE:** I move to admit Defense
22 Proposed Exhibit KK.

23 **MR. DASKAS:** Judge, may we approach,
24 please?

25 **THE COURT:** Yes.

1 (Sidebar conference outside the presence
2 of the court reporter.)

3 **BY MR. WHIPPLE:**

4 Q Moises, while I'm up here, let me show you
5 a few more photographs. This is Defense Proposed
6 Exhibits Q, R and S.

7 Can you look at those photographs, and do
8 you recognize the folks in those photographs?

9 A Yes.

10 **MR. WHIPPLE:** I move to admit Defense
11 Exhibits Q, R and S.

12 **THE COURT:** Objections?

13 **MR. DASKAS:** We have no objection, Judge.

14 **THE COURT:** All right. Admitted.

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

16 (Defense Exhibits Q, R and S were admitted
17 into evidence.)

18 **BY MR. WHIPPLE:**

19 Q Moises, if you would, please, just explain
20 to these folks who are in these photographs.

21 A From bottom?

22 Q Sure.

23 A The little girl, that's our daughter
24 Milan, and on the left is myself. In the middle
25 behind my daughter is our son Mateo, and to the

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1 right of him or to the right of me is my wife
2 Johnnisha, and behind us is her mother and
3 stepfather, Eunice and Ricky.
4 Q This is your wife Johnnisha (indicating)?
5 A Correct.
6 Q Those are your children (indicating)?
7 A Yes, two of our three.
8 Q This is Donte's sister as well
9 (indicating)?
10 A Yes.
11 Q And his mother (indicating)?
12 A Yes.
13 Q I'm showing you Defense Exhibit R.
14 Who is that?
15 A That's me and my son (indicating).
16 Q What's your son's name?
17 A That's Mateo, the middle child.
18 Q And Defense Exhibit S?
19 A That's me and my wife's stepfather and
20 mother.
21 Q So, that would be the mother of Donte
22 Johnson, John White?
23 A Yes.
24 Q Now, I have another photograph for you
25 here.

1 You mentioned you had another child in
2 your home at this point?

3 A Yes.

4 Q And who is that?

5 A Allen, the little boy to the right.

6 Q Who is his father?

7 A John White.

8 Q And how long has he lived in your
9 household?

10 A Two-and-a-half years.

11 Q And if you would, describe your
12 relationship with Allen.

13 A I'm his legal guardian.

14 Q And who is his father?

15 A John White is his father.

16 Q And does he retain a relationship with his
17 father to this day?

18 A Yeah, they write.

19 Q How does Allen act when he gets
20 communications from his father?

21 A He's confused sometimes.

22 Q How important is it to Allen to get these
23 communications or to be able to communicate with his
24 father?

25 A I think it's very important.

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1 Q Why is that?

2 A Every kid needs a dad.

3 MR. WHIPPLE: Court's indulgence.

4 Nothing further.

5 Thank you, Moises.

6 THE COURT: State?

7

8 CROSS-EXAMINATION

9 BY MR. DASKAS:

10 Q Good afternoon, Mr. Zamora, is it?

11 A Yes. Thank you. Good afternoon.

12 Q You grew up your entire life in

13 Los Angeles?

14 A Yes.

15 Q South Central Los Angeles?

16 A Yes.

17 Q And is that the same area where the
18 defendant was raised?

19 A Blocks -- blocks -- a couple blocks
20 different.

21 Q Incidentally, you weren't asked to
22 identify John White in court, but it's the gentleman
23 seated to my right here?

24 A Yes.

25 Q That's the person you know as John White?

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1 A Yes.

2 Q You never knew Mr. Donte Johnson?

3 A Not before all this.

4 Q How about Deko?

5 A No.

6 Q You work for Beach Financial, you said?

7 A Yes.

8 Q What do you do for that company?

9 A I'm assistant manager.

10 Q How long have you held that position?

11 A Almost five years in June.

12 Q You mentioned that you are part Hispanic?

13 A Yes.

14 Q There's been testimony about the person

15 you knew as John White making a reference to killing

16 someone because that person was Hispanic and he

17 didn't like Hispanics.

18 I take it that would be a surprise to you?

19 A Very much.

20 Q That's not the John White that you know?

21 A No.

22 Q But you didn't know Donte Johnson, did

23 you?

24 A Not the character name, no.

25 **MR. DASKAS:** Thank you, sir, for your

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1 time.

2 Nothing else.

3 **THE COURT:** Redirect?

4 **MR. WHIPPLE:** Nothing further, your Honor.

5 Thank you.

6 Nothing further.

7 **THE COURT:** You're excused, sir. Thank
8 you.

9 **THE WITNESS:** Thank you, sir.

10 **MS. JACKSON:** Our next witness would be
11 Mr. Arthur Cain.

12 The record will reflect I'm going to show
13 defense (sic) counsel what's been marked for
14 identification Defendant's Proposed double-L.

15 **THE CLERK:** Raise your right hand.

16 **MR. STANTON:** For the record, your Honor,
17 we're not defense counsel, we're the prosecution.

18 **THE COURT:** Hold on a minute. First
19 things first.

20 Let's get the witness sworn in first.

21 (Oath administered.)

22 **THE WITNESS:** I do.

23 **THE CLERK:** Please be seated, and then
24 state your name and spell your name.

25 **THE WITNESS:** My name Arthur Cain,

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1 C-A-I-N.

2 **THE COURT:** What is that you're looking at
3 over there?

4 **MS. JACKSON:** This is --

5 **MR. DASKAS:** I think it's a family tree.

6 **MS. JACKSON:** It's a family tree, your
7 Honor.

8 **THE COURT:** What's the number on it? Has
9 it been marked?

10 **MS. JACKSON:** It's double-L. We move for
11 its admission.

12 **MR. STANTON:** No objection, your Honor.

13 **THE COURT:** All right.

14 Admitted.

15 (Defense Exhibit LL was admitted into
16 evidence.)

17
18 **ARTHUR CAIN,**

19 being called as a witness on behalf of the
20 Defendant, was first duly sworn and testified as
21 follows:

22
23 **DIRECT EXAMINATION**

24 **BY MS. JACKSON:**

25 Q Good afternoon, sir.

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1 A Good afternoon.

2 Q Do you see anyone here in the courtroom

3 that's related to you -- in the front part of the

4 courtroom that's related to you?

5 A Yes, I do.

6 Q Who do you see?

7 A Johnny White.

8 Q Johnny White.

9 What's his relationship to you, sir?

10 A I'm his uncle.

11 Q You're his uncle?

12 A Yes.

13 Q Are you his father's brother or his

14 mother's brother?

15 A I'm his mother's brother.

16 Q What's his mother's name?

17 A Eunice.

18 Q Eunice?

19 A Yes.

20 Q What is your mother's name?

21 A Jane.

22 Q I'm going to show you --

23 **MS. JACKSON:** Your Honor, I'm going to

24 move for --

25 / / / / /

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1 **BY MS. JACKSON:**

2 Q I'm going to show you a series of
3 photographs that's been marked for identification
4 and have been shown to the prosecution -- V, W, Y,
5 X, T and U.

6 Take a moment, familiarize yourself with
7 those photographs starting from top to the bottom.
8 Keep them in order, sir, if we could, please.

9 (Witness reviewing photographs.)

10 **BY MS. JACKSON:**

11 Q Do you recognize the person depicted in
12 these exhibits, or persons?

13 A Yes.

14 **MS. JACKSON:** Your Honor I move for the
15 admission of the previously listed exhibits.

16 **MR. STANTON:** No objection, your Honor.

17 **THE COURT:** Admitted.

18 (Defense Exhibits T, U, V, W, X and Y were
19 admitted into evidence.)

20 **BY MS. JACKSON:**

21 Q I'm going to show you what's been admitted
22 as U.

23 Who is that?

24 A That's my mother, Jane.

25 Q Jane.

1 Is there a name that the younger children
2 call her?

3 A Yes.

4 Q What is that?

5 A Big Mama.

6 Q Big Mama. Okay.

7 I want you to come over here with me,
8 Mr. Cain; if you would just walk with me this way.
9 Take a moment, if you would, please.

10 **MS. JACKSON:** This is kind of close. Just
11 pull it back a little bit.

12 **BY MS. JACKSON:**

13 Q We have prepared a family tree, and I also
14 have some strips of tape.

15 The grandchildren call your mother, Jane,
16 "Big Mama"?

17 A Yeah.

18 Q Take a strip of tape and place this up
19 where we have her name right up here at the top.

20 (Witness complies.)

21 **BY MS. JACKSON:**

22 Q Now, your mother had how many children,
23 sir?

24 A Seven.

25 Q She had seven children.

1 I'm handing you X.

2 Do you recognize X?

3 A Yes.

4 Q Who is in X?

5 A That's me.

6 Q Okay.

7 Take a strip of tape and place that right
8 above your name.

9 (Witness complies.)

10 **BY MS. JACKSON:**

11 Q Handing you what's been admitted into
12 evidence as Defendant's T, who is that?

13 A That's Faye.

14 Q That's Faye?

15 A Yes.

16 Q Handing you Y -- who is depicted in Y --
17 the sibling? For the moment, we're just going to
18 talk about the children, the sibling of yours that's
19 in there.

20 A That's my young sister Lolita and my
21 nephew Cornelius.

22 Q Who else is in there, Mr. Cain?

23 A Leticia and --

24 Q Jessica?

25 A That's Jessica.

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1 Q That's Jessica.
2 Put it right here (indicating), sir.
3 (Witness complies.)
4 **BY MS. JACKSON:**
5 Q Put it up high so we don't cover up any
6 other names.
7 W -- who is in W, sir?
8 A That's Schaumetta.
9 Q That's Schaumetta?
10 A Schaumetta.
11 Q She's the first born?
12 A She's the first born.
13 Q Let's give her the first born spot over
14 there, please.
15 And V -- who is that?
16 A That's Deborah.
17 Q That's Deborah?
18 A Yeah.
19 Q She's next to the youngest sibling?
20 A Yeah. The Lee baby.
21 Q The Lee baby you say?
22 A Yeah.
23 Q Okay.
24 So, we don't have a picture -- actually,
25 we do have a picture of Pam. Hang on a minute,

1 Mr. Cain.

2 Do you recognize the person in double-B as
3 in boy? We need to turn this way until it's
4 admitted so the jury can't see it.

5 A That's Pam.

6 Q That's Pam?

7 A Yeah.

8 Q Who is Pam?

9 A That's my sister underneath me.

10 Q Okay.

11 Let's put her in her spot there.

12 **MS. JACKSON:** I move to admit BB.

13 **MR. STANTON:** No objection, your Honor.

14 **THE COURT:** Admitted.

15 **MS. JACKSON:** Thank you.

16 (Defense Exhibit BB was admitted into
17 evidence.)

18 **BY MS. JACKSON:**

19 Q Now, we have here Big Mama at the top,
20 this is your mother and your oldest sister
21 (indicating)?

22 A Yes.

23 Q This is you (indicating)?

24 A Yes.

25 Q This is Pam (indicating)?

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1 A Pam.
2 Q This is Eunice (indicating)?
3 A Eunice.
4 Q We'll fill her in later.
5 Faye, Deborah and Lolita (indicating)?
6 A Yeah.
7 Q So, all together, your mother had, what,
8 seven children?
9 A Yes.
10 Q Okay.
11 You may take your chair for just a moment.
12 Looking at this exhibit here, your family
13 tree, it appears that you are older than Eunice.
14 A Yes.
15 Q How much older are you than Eunice, sir?
16 A Four years.
17 Q About four years?
18 A Yeah.
19 Q Okay.
20 You grew up, obviously, with Eunice?
21 A Yeah.
22 Q Did your mother raise all seven of these
23 children?
24 A Yes.
25 Q Was there a father present in the home,

1 sir?

2 A No, not at the time.

3 Q Not at the time. All right.

4 Now, Eunice -- did Eunice have some

5 difficulty that made her different that stood out

6 right away?

7 A Yes.

8 Q What were they?

9 A Well, you know, like, she's kind of, you

10 know, slow.

11 Q By "slow," do you mean to say -- in

12 school, was she in special ed classes?

13 A Yeah, she was in special classes and

14 stuff.

15 Q Does she look different?

16 A Yeah. People used to talk about her, the

17 way she looked.

18 Q Did people call her names?

19 A Called her all kind of names.

20 Q Names that were not nice?

21 A That's right.

22 Q Dumb?

23 A Yeah -- retarded, stupid.

24 Q Also, when she expressed herself, was it

25 easy for people to understand what she was saying?

1 A Yeah, in a way, in a way.
2 Q Did she have any difficulty speaking?
3 A Yeah, she do.
4 Q As a result of her disability, if I can
5 call it that, of her being slow?
6 A Uh-huh.
7 Q Did that cause her any difficulty as she
8 entered adolescence and being a young woman in terms
9 of attracting males?
10 A Yeah.
11 Q What type of difficulties did it cause
12 her, Arthur?
13 A Repeat that again.
14 Q Did the boys try to take advantage of her?
15 A Because they knew she was slow.
16 Q Did there come a time when your sister
17 Eunice had children?
18 A Yeah, when she got married.
19 Q Who did she marry?
20 A Johnny White.
21 Q Now, when you say "John White," you
22 referred to this man (indicating) as Johnny White?
23 A Yeah.
24 Q This is your nephew?
25 A Yes.

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1 Q The Johnny White you're talking about now?
2 A Senior.
3 Q Johnny White, Sr. Let's refer to him as
4 "Senior."
5 A Yeah.
6 Q You knew him?
7 A Yes.
8 Q Do you have any idea how old your sister
9 was when she met Mr. White?
10 A Ooh, wee. No, I don't have no idea.
11 Q Okay.
12 Were you around them during the time that
13 they got together, sir?
14 A Yeah.
15 Q Did they have a good relationship?
16 A So-so, up and down.
17 Q Up and down?
18 A Yeah.
19 Q Let's talk about the downs.
20 You were speaking with me yesterday about
21 the occasion where you were present and Mr. White
22 was threatening your sister.
23 A Yeah, disrespecting her.
24 Q What do you mean "disrespecting her"?
25 A Well, he would be calling her all kind of

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1 names and talking about what he gon' do, you know.

2 Q What he would do -- in terms of physical
3 violence?

4 A Yeah. He was talking about physical
5 violence, but he can't do that around me.

6 Q As a matter of fact, did you, in fact,
7 intervene and stop him on occasion from doing that
8 in front of you?

9 A That's right.

10 Q Did there come a time that you became
11 aware, when you were not around, that he, in fact,
12 beat her?

13 A He might have.

14 Q Did there come a time, Arthur, when your
15 sister began to use alcohol?

16 A Yeah.

17 Q Okay.

18 Now, she had another condition besides
19 being slow related to her lungs?

20 A Yeah.

21 Q What was that about, do you know?

22 A Drugs.

23 Q Before the drugs, though.

24 A Uh-huh.

25 Q Isn't it true that she had a problem with

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1 her lungs from birth?

2 A Oh, yeah, from birth.

3 Q As a result of that condition, was she

4 supposed to smoke, even just cigarettes?

5 A No, she wasn't supposed to smoke nothing,

6 period.

7 Q She began to smoke?

8 A Yeah, she began to smoke.

9 Q Did she begin to drink?

10 A Drink.

11 Q How did that affect her health?

12 A It affected her real bad. She had to have

13 asthma. She had to be on the asthma thing too.

14 Q So, she was already having problems?

15 A Yeah, she was already having problems.

16 Q With her health and being slow?

17 A Yeah.

18 Q How did the alcohol affect her?

19 A More problems.

20 Q More problems.

21 Did there come a time when she began to

22 use drugs?

23 A Yes.

24 Q About -- was John born yet?

25 A No, I don't think so. No, he wasn't born

1 yet.

2 Q Alrighty.

3 Did her drug use continue -- John is her

4 first child?

5 A Yeah, the first one.

6 Q Did her drug use continue after John's

7 birth?

8 A After John's birth.

9 Q Did you ever see her when -- what was the

10 drug that she would use at first, if you know?

11 A Cocaine.

12 Q Okay.

13 And do you know how that was ingested into

14 her body -- toot it, snort it, shoot it?

15 A Smoke it.

16 Q Smoke it.

17 So, again, it affected her?

18 A Her lung.

19 Q Her already undeveloped lungs?

20 A Yes.

21 Q Based upon what you observed, did there

22 come a time when Eunice was having trouble taking

23 care of her babies?

24 A No, she did not have too much trouble

25 taking care of them.

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1 Q She had to have some trouble; they wound
2 up at your mom's house.

3 A She got them took because they were
4 staying in the wrong place.

5 Q You said she got them taken away?

6 A Taken away.

7 Q Okay.

8 After they were taken away, where did they
9 come to live?

10 A With my grandmother.

11 Q With their grandmother?

12 A Yeah.

13 Q They came to live with Big Mama?

14 A Um-hmm.

15 Q This is your mother?

16 A Yeah.

17 Q "Big Mama," that's what the kids call her?

18 A That's what they call her, "Big Mama."

19 Q The children went to stay there after they
20 were taken away from your sister?

21 A Yeah. They went with my mother.

22 Q Were you living in that house when the
23 children went to stay with Big Mama?

24 A No. It was too many in there. I was
25 ever' now and then coming through.

1 Q When you would come --

2 MR. STANTON: Excuse me, your Honor.

3 Sorry, Miss Jackson.

4 Could I have the Court's indulgence for a
5 second, please?

6 MS. JACKSON: Can the jurors to my right
7 see if I have this here? Can you see this
8 (indicating).

9 MR. STANTON: I don't know if the jurors
10 here (indicating) --

11 MS. JACKSON: On this side -- you can't
12 see?

13 Let's take this down for the time being.

14 Thank you so much.

15 How about now? Is this interfering at all
16 (indicating)?

17 Thank you, Counsel.

18 BY MS. JACKSON:

19 Q When you would go over -- you said you
20 would come through every now and then?

21 A Yeah, every now and then.

22 Q How many children did she have when you
23 would come through?

24 A Ooh, wee.

25 Q You said "ooh, wee"?

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1 A Yeah. They had a lot of 'em.
2 Q Does that mean a lot?
3 A She had a lot of 'em, a whole lot of 'em.
4 Q Now, when you would leave -- this is when
5 she stayed -- when Big Mama stayed over on East 43rd
6 Street?
7 A Forty-third Street.
8 Q When the times you -- when you were not
9 there, were you still in the general neighborhood of
10 East 43rd?
11 A Yeah, I would be in the neighborhood.
12 Q You were still pretty much able to keep --
13 A Yeah.
14 Q Who was helping her take care of all of
15 those children?
16 A Well, we had a stepfather. He was helping
17 her.
18 Q What was his name?
19 A Samuel Edwards.
20 Q Okay.
21 Did you ever observe him interact with the
22 children?
23 A He's pretty good.
24 Q He did what he could?
25 A Yes, he did.

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1 Q She did what she could?
2 A Uh-huh.
3 Q All right.
4 Did you ever see a particular, the
5 stepfather -- which would actually be the
6 stepgrandfather of these children -- did you ever
7 see him in particular interact with John?
8 A No.
9 Q Do you remember anything in particular
10 about John during that time that stood out, or he
11 was just one --
12 A One of the kids.
13 Q -- of the ooh wee numbers that were
14 running around?
15 A That was it.
16 Q Putting on the overhead Defendant's in
17 evidence double-B, who are the people in that
18 photograph?
19 A That's Pamela and --
20 Q KeKe -- Keonna?
21 A That is Keonna (indicating).
22 Q Yes, it is.
23 Now, Pam is this one (indicating)?
24 A My second sister.
25 Q Pam is your second sister?

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1 A Yes.

2 Q Where is she now?

3 A She's deceased.

4 Q She's deceased?

5 A Um-hmm.

6 Q What killed her?

7 A I think drugs.

8 Q She's a drug addict?

9 A Yeah. She did drugs.

10 Q As a matter of fact, at one time during

11 the time when Miss Eunice Cain was using drugs, out

12 of the seven children, how many were on drugs?

13 A Four.

14 Q And that's why Miss Edwards had that ooh

15 wee number of children?

16 A Yeah.

17 Q She was trying to take care of all of

18 these mothers that were on drugs?

19 A Yeah.

20 Q Come down here, Mr. Cain, and tell the

21 jury who all was on drugs.

22 This sister (indicating) is deceased. You

23 said that it was four.

24 A That's right.

25 Q You had a tiny little alcohol problem

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1 there for yourself?

2 A Number one was me.

3 Q Okay.

4 A Number two was Pam.

5 Q Okay.

6 A Number three, Eunice.

7 Q Okay.

8 A And Faye.

9 Q And Faye.

10 So, here you have Big Mama trying to

11 embrace all of these children down here (indicating)

12 because this generation, four out of seven --

13 A Yeah.

14 Q -- having some serious alcohol and drug

15 problems?

16 A That's right.

17 Q Thank you, sir.

18 **MS. JACKSON:** That's all I have.

19 **THE COURT:** Have a seat up here

20 (indicating).

21 **MS. JACKSON:** Go take the stand.

22 **THE COURT:** State?

23 **MR. STANTON:** No questions of this

24 witness.

25 **THE COURT:** Now you can go.

1 **THE WITNESS:** I can go now?
2 **MS. JACKSON:** Yes. Come on, Arthur.
3 Thank you so much, sir.
4 **THE COURT:** Who's next?
5 **MS. JACKSON:** Miss Eunice White or Eunice
6 Cain.
7 **THE BAILIFF:** Eunice Cain or White?
8 **THE COURT:** Just Eunice. She's probably
9 the only Eunice out there.
10 **THE CLERK:** Please raise your right hand.
11 (Oath administered.)
12 **THE WITNESS:** Yes, I do.
13 **THE CLERK:** Please be seated, then state
14 your name and spell your name.
15 **THE WITNESS:** My name is Eunice. My name
16 is spelled E-U-N-I-C-E, C-A-I-N.
17
18 **EUNICE CAIN,**
19 being called as a witness on behalf of the
20 Defendant, was first duly sworn and testified as
21 follows:
22 **DIRECT EXAMINATION**
23 **BY MS. JACKSON:**
24 Q Good afternoon, Eunice.
25 A Good afternoon.

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1 Q How do you feel?
2 A I'm a little nervous.
3 Q You're a little nervous.
4 Like I told you yesterday, that's natural.
5 Do you have children?
6 A Yes.
7 Q Do you see one of your children in the
8 front part of this courtroom?
9 A Yes, I do.
10 Q Who is that?
11 A John.
12 Q John?
13 A Um-hmm.
14 Q That's your baby?
15 A Yes.
16 Q How many children do you have?
17 A Three.
18 Q What number is John?
19 A The oldest, the first.
20 Q He's the first?
21 A Um-hmm.
22 Q Now, when you were pregnant with John, did
23 you drink alcohol?
24 A Yes.
25 Q Now, when you were born, Eunice, your mom

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1 told me that you kind of had some problems.
2 Did you have some problems when you were
3 born?
4 A Yes, I did.
5 Q And you get a check because of those
6 problems?
7 A Yes, I do.
8 Q What are the type of problems that you
9 have, ma'am?
10 A Um, I believe I am -- well, I am a little
11 slow.
12 Q You're a little slow?
13 A Yeah.
14 Q Okay.
15 A I have trouble with speaking at times.
16 Q Trouble speaking. Okay.
17 I can understand you fine. You're doing
18 great.
19 A Thank you. I have illness, sickness
20 sometimes.
21 **THE COURT:** You have what?
22 **THE WITNESS:** Sickness, different kinds,
23 like asthma and different breathing problems at
24 times.
25 / / / / /

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1 **BY MS. JACKSON:**
2 Q As a matter of fact, you were diagnosed
3 with a problem with your lungs?
4 A Yes.
5 Q And they told you not to smoke and stuff
6 like that?
7 A Yeah, but I still do.
8 Q And you still do?
9 A Yeah.
10 Q As a matter of fact, when you were in
11 school, were you in special classes?
12 A Yes, I was.
13 Q The classes you were in, were they called
14 "special ed" classes?
15 A Yes.
16 Q Because you were in those classes
17 sometimes, did you have some problems with kids
18 making fun of you?
19 A Yes, I did. Um-hmm.
20 Q Kids can be kind of cruel sometimes?
21 A Yes, um-hmm.
22 Q What's John's father's name?
23 A Johnny Lee White. He's a Jr.
24 Q So, this John is a Jr., and his dad is
25 John Sr.?

1 A Um-hmm.

2 Q How did you meet John Sr.?

3 A I met him through the neighborhood that I

4 was living in.

5 Q How old were you when you met John Sr.?

6 A I think about 17, 16 or 17.

7 Q How old was John Sr.?

8 A He had to be in his 20s. He was always

9 ten years older than me.

10 Q He was ten years older than you were?

11 A Uh-huh.

12 Q Did you have a good relationship with John

13 Sr.?

14 A No.

15 Q No?

16 A Not really.

17 Q What was --

18 A At the beginning, yeah.

19 Q The beginning it was okay?

20 A Yeah. I'm talking about afterwards.

21 Q As a matter of fact, he wanted to marry

22 you when you were still a minor, didn't he?

23 A Yeah.

24 Q And he had to wait until you got grown?

25 A Yeah. Yes.

1 Q Did there come a time when you married
2 John Sr.?

3 A Yes, I did.

4 Q After you married John Sr, what was it
5 like?

6 A That's when it got -- he changed to
7 another person afterwards.

8 Q What did he do?

9 A Shoot, he used to fight me. He used to
10 jump on me, and my kids would see, you know. They
11 just watch and see him do it, and my son, he used to
12 try to defend me, but he was too little, you know.

13 Q And John is the only son that you have?

14 A Yeah.

15 Q You have two other children?

16 A Yeah.

17 Q And they're girls?

18 A Yeah, and they were younger than him.

19 Q All right.

20 Now, did he do anything to you as far as
21 your teeth? Has he ever disfigured --

22 A Yes. He knocked my teeth out. I had left
23 him, and then I went back to my mom's, and then I
24 moved back with him, and we moved downtown in the
25 Frontier --

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1 Q Um-hmm.

2 A -- Hotel, and he tried to throw me out of
3 the window of the Frontier. And my son ran for help
4 for me, but he was too little, and I ran out behind
5 him, you know; so, that's what saved me. I got away
6 from him.

7 Q And your son -- as a matter of fact, all
8 your children, they're kind of somewhat small and
9 short in stature, huh?

10 A Um-hmm.

11 Q We'll see. As a matter of fact, let me
12 just show you something.

13 Showing you Defendant's B, who is that?

14 A That's my baby.

15 Q That's your baby?

16 A Yeah.

17 Q John?

18 A That's John.

19 Q I don't think we need to put this on the
20 overhead.

21 **MS. JACKSON:** Your Honor, I move for the
22 admission of B.

23 **MR. DASKAS:** No objection, your Honor.

24 **THE COURT:** Admitted.

25 (Defense Exhibit B was admitted into

1 evidence.)

2 **MS. JACKSON:** Can you see this, ladies and
3 gentlemen?

4 /////

5 **BY MS. JACKSON:**

6 Q That's the only son you have?

7 A Yes, it is.

8 Q When these beatings were taking place,
9 like any son, he would try to help his mother?

10 A Yeah, but he was too small, but he still
11 would try.

12 Q He would try?

13 A Yeah.

14 Q All right.

15 Was there one time when you had left John
16 Sr. and he came through a window after you?

17 A Yes.

18 Q Tell the jury about that.

19 A I had left him, and he came back. He
20 came -- no -- that was when he knocked my teeth out.
21 Okay. He had -- the police had told him to leave,
22 and he wasn't supposed to come back, but he had made
23 him a cocktail, and came through -- I had a little
24 bit, and he came through there --

25 Q Let me stop you for a second.

1 You said a "cocktail"?
2 A Um-hmm.
3 Q Some type of Molotov cocktail?
4 A Um-hmm.
5 Q Homemade bomb?
6 A Um-hmm. He came through the window and
7 came down threw on me. And the kids were sleep, and
8 I was afraid, and I didn't know what to do. So,
9 after the next day, I just got away, moved away from
10 that place, you know, and moved with my mom.
11 Q Do you recall testifying in another
12 hearing about this same situation?
13 A Yeah.
14 Q And do you recall telling them then that
15 he wanted something from you?
16 A Yeah. He wanted to have sex with me for
17 the last time. This is when -- yeah, he said after
18 I --
19 Q And did you have --
20 A Yes, I did it. Yeah.
21 Q Was John awake?
22 A No. No.
23 Q John was not awake?
24 A No.
25 Q You don't think that all of that -- you

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1 were testifying before and you said that John was
2 awake and the girls were sleeping?

3 A Yeah, he probably was. Like I say, I
4 forgets too.

5 Q Okay. We understand. We understand.

6 A He probably was during that time.

7 Q Now, you have three children.

8 Do they all have the same father?

9 A Yes, he they do.

10 Q Did John Sr. sometimes think that one of
11 the children --

12 A Was not his, yeah, my baby.

13 Q The baby?

14 A Yeah. He used to mistreat her because he
15 was saying she wasn't his.

16 Q Okay.

17 Would he sometimes do something to you to
18 make you agree with him that she wasn't his?

19 A Be mean to them and stuff and saying that
20 she wasn't, and I just start saying, but I knew all
21 the time that she was his.

22 Q But you said he would beat you to get you
23 to say this?

24 A Yeah, saying that she was his baby --
25 wasn't his baby.

1 Q There came a time, Eunice, when you
2 started to have problems taking care of your
3 children?
4 A Yeah.
5 Q Okay.
6 Why did you have problems taking care of
7 your kids?
8 A Because I was smoking during that time.
9 Q What were you smoking?
10 A I was smoking sherm.
11 Q Sherm?
12 A Um-hmm -- during that time.
13 Q For the jury, that's PCP?
14 A Yeah.
15 Q Is that cigarettes dipped in embalming
16 fluid?
17 A Yes.
18 Q Is that a form of illegal substance?
19 A Yeah.
20 Q How did it affect you?
21 A It made me even slower than I was, you
22 know.
23 Q Now, you smoked the PCP when you were
24 pregnant with the girls, didn't you?
25 A Um-hmm.

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1 Q But not with John?
2 A No.
3 Q Now, there came a time when you started to
4 be involved with using drugs with some of your
5 sisters or one of your sisters?
6 A Yeah.
7 Q You tell me. Who was that?
8 A Pam, which she's deceased, and Wanda.
9 Q Pam?
10 A Yeah, which she's deceased now.
11 Q This is the sister you would get high
12 with?
13 A Yeah.
14 Q What type of drug would you use with her?
15 A Same thing, PCP.
16 Q Did Pam have children?
17 A Yeah.
18 Q Would you guys sometimes get high with
19 your kids and her kids around?
20 A Yeah, sometimes.
21 Q What did you guys do with the children
22 while you were getting loaded, sweetheart?
23 A We would, like, be in another room or
24 something like that, and then we was in another
25 place where we shouldn't have been. We were living

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1 in a little place where we shouldn't have been
2 living.

3 Q What happened because of being in that
4 little --

5 A They took the kids away from us.

6 Q Where did they take the children?

7 A To my mom.

8 Q First, they took them to foster care?

9 A Foster care, right.

10 Q There came a time when your mother went
11 and got them?

12 A My mother went and got them.

13 Q Isn't it true that those children wound up
14 being raised by your mom?

15 A Yes.

16 Q You never did get them back?

17 A No. No.

18 Q Did you try to stop using drugs to get
19 your kids back?

20 A I tried for a minute, and it didn't work,
21 no. I seen that I was not going to get them, so --

22 Q And all of this that was going on in your
23 life, John saw this?

24 A Yeah. Yeah.

25 MS. JACKSON: Thank you, Eunice.

1 Court's indulgence.
2 That's all I have, your Honor.
3 **THE COURT:** Wait, ma'am.
4 Do you have any questions?
5 Ma'am, ma'am, hold on a minute.
6 Do you have any questions, State?
7 **MR. STANTON:** Briefly, your Honor.
8 **THE COURT:** Have a seat. They want to ask
9 you some questions.

10

11 CROSS-EXAMINATION

12 **BY MR. STANTON:**

13 Q It's Miss Cain?

14 A Yes.

15 Q Miss Cain, my understanding is you had how
16 many children in total?

17 A Three.

18 Q You used alcohol and drugs while you were
19 pregnant with each one of those children?

20 A No. One I didn't.

21 Q Which one did you not?

22 A My son.

23 Q The defendant?

24 A Yes.

25 Q Do you know the defendant as John White?

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1 A Yes, I do.
2 Q Do you know him as Donte Johnson?
3 A No.
4 Q And do you him as Deko?
5 A No.
6 **MR. STANTON:** No questions, your Honor.
7 **MS. JACKSON:** Nothing further, your Honor.
8 Thank you.
9 **THE COURT:** You can go now.
10 **MS. JACKSON:** Come on down, Eunice. Thank
11 you.
12 Defense calls Johnnisha Zamora.
13 (Oath administered.)
14 **THE WITNESS:** Yes.
15 **THE CLERK:** Please be seated, then state
16 your name and spell your name.
17 **THE WITNESS:** Johnnisha Zamora,
18 Z-A-M-O-R-A.
19 **THE COURT:** Spell the first name too.
20 **THE WITNESS:** J-O-H-N-N-I-S-H-A.
21
22 JOHNNISHA ZAMORA,
23 being called as a witness on behalf of the
24 Defendant, was first duly sworn and testified as
25 follows:

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DIRECT EXAMINATION

BY MR. WHIPPLE:

Q Johnnisha, how are you today?

A Fine.

Q Thank you for being here.

You had an opportunity to see a couple
people testify here this afternoon in your family?

A Yes.

Q The first one was your husband?

A Yes.

Q And then you also had a chance to see your
mother testify?

A Yes.

Q Now, if you would, why don't you come down
here real quick and just show the folks where you
are on that family tree with regard to yourself and
your family.

A (Indicating).

Q Okay.

You have an older brother?

A Yes.

Q Is that this gentleman right here
(indicating)?

A Yes.

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1 Q Mr. John White?

2 A Yes.

3 Q You also have a younger sister?

4 A Yes.

5 Q Is she here in the courtroom here with us?

6 A Yes.

7 Q Why don't you go ahead and take your seat
8 again. Okay?

9 Johnnisha, we're in no hurry. Okay?

10 A Okay.

11 Q We're going to take our time.

12 I want to ask you some questions about
13 your family and about your brother, John. Okay?

14 A Yes.

15 Q Can you tell these folks some of your
16 earliest memories growing up with your mother?

17 A It was hard.

18 Q What do you mean by "it was hard"?

19 A She would leave us sometime, and she was
20 on drugs, and then my dad, he wasn't no better.

21 Q Hang on one second there.

22 Speak up in that (indicating). Okay? Go
23 ahead.

24 You were talking about the drugs involved
25 with your parents. What did you remember?

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1 A My mother smoking in front of us, my dad
2 hitting my mom in front of us.
3 Q Do you remember those memories?
4 A Yes.
5 Q Now, how much involvement did you have
6 with your father?
7 A None.
8 Q I'm sorry?
9 A None.
10 Q How many times can you recall seeing your
11 father?
12 A Now or then?
13 Q Well, then.
14 A Then, only when he stayed with us.
15 Q How often did he stay with you?
16 A I can count on my hands how many times.
17 Q How about -- did you see how he treated
18 his son John?
19 A Yes.
20 Q What did you see him do to John?
21 A He would leave him too.
22 Q You know, we spoke earlier today, and you
23 told me this story about your mother seeing ghosts.
24 Do you remember that?
25 A Yes.

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1 Q Why don't you tell the folks about what
2 would happen when your mother would see a ghost?
3 A She would lock us in the closet.
4 Q What type of closet was that that she
5 would lock you in?
6 A A closet where you hang your clothes at.
7 Q What kind of ghost did she think she had
8 seen?
9 A A ghost rattling chains.
10 Q What would you hear when you were locked
11 in that closet?
12 A Her screaming.
13 Q Were there lights inside that closet?
14 A No.
15 Q Who were you in that closet with?
16 A My sister and my brother.
17 Q Was your dad ever around when your mother
18 was seeing ghosts?
19 A No.
20 Q Did your mother act different when she was
21 seeing ghosts?
22 A Yes.
23 Q Now, your mother testified about her using
24 drugs and sometimes not being around.
25 What do you recall about your mother

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1 coming and going?

2 A She would just come and go.

3 Q At one point, did you live in a shed?

4 A Yes.

5 **MR. WHIPPLE:** With the Court's permission,
6 I'll approach, your Honor.

7 **BY MR. WHIPPLE:**

8 Q Johnnisha, I'm showing you Defense Exhibit
9 C, as in cat.

10 Do you recognize that?

11 A Yes.

12 Q I'm also going to show you Defense Exhibit
13 double-I.

14 Do you recognize that?

15 A Yes.

16 Q I'm going to put double-I -- move to admit
17 C and double-I.

18 **MR. DASKAS:** Your Honor, I don't
19 necessarily have an objection to the photos, but I
20 would like some foundation regarding when those
21 photographs were taken, if that's possible.

22 **THE COURT:** All right. I think that's
23 reasonable.

24 **BY MR. WHIPPLE:**

25 Q Johnnisha, how old were you when you were

1 living in the shed?

2 A Five or six.

3 Q Okay.

4 Is that the way the shed looked back then,
5 approximately (indicating)?

6 A Yes.

7 Q Now, how about the shed, the picture of
8 the shed here (indicating), is that how the shed
9 looked back when you were five or six?

10 A Yes, just a different color.

11 **THE COURT:** How old are you now?

12 **THE WITNESS:** I'm 26.

13 **BY MR. WHIPPLE:**

14 Q It was different colors, but it was taken
15 at a different time, so it's still a fair and
16 accurate representation of the shed?

17 A Yes.

18 **MR. DASKAS:** That's fine, your Honor.

19 **THE COURT:** Okay.

20 You move to admit it?

21 **MR. WHIPPLE:** Yes, your Honor.

22 **THE COURT:** What's the number?

23 **MR. WHIPPLE:** It's double-I and C, your
24 Honor.

25 **THE COURT:** All right. It's admitted.

1 (Defense Exhibits C and II were admitted
2 into evidence.)

3 **BY MR. WHIPPLE:**

4 Q Johnnisha, why don't you show these folks
5 the picture that you have there, and if you would,
6 just hold it up.

7 I can do that.

8 Was this (indicating) your home for a
9 while?

10 A Yes.

11 Q And how many people lived in that shed?

12 A It was six of us.

13 Q When you say six of you, was it all
14 children?

15 A Yes.

16 Q And is this the same picture here,
17 Johnnisha (indicating)?

18 A Yes.

19 Q Would your parents leave you for extended
20 periods of time in the shed?

21 A Yes.

22 Q And who was in the shed with you?

23 A Keonna, Kannita, Floyd, Eunisha, John and
24 myself.

25 Q Tell me about the running water in that

1 shed, Johnnisha.
2 A There wasn't no running water.
3 Q Tell me about the toilet facilities in
4 that shed.
5 A There wasn't no toilet.
6 Q Was there any rooms in that shed?
7 A No.
8 Q Was there a carpet in that shed?
9 A No.
10 Q Was there any furniture in that shed?
11 A No.
12 Q How long did you live in that shed with
13 those five other children?
14 A I think it was about -- it probably -- it
15 was about a day, but it felt like it was about a
16 year, a month.
17 MR. WHIPPLE: Now -- if I may approach
18 again.
19 BY MR. WHIPPLE:
20 Q I'm showing you Defense Exhibit M.
21 Do you recognize Defense Exhibit M?
22 A As of today, yes.
23 MR. WHIPPLE: Move to admit Defense
24 Exhibit M.
25 MR. DASKAS: I'm sorry. May I see that?

1 **MS. JACKSON:** Your Honor, for the record,
2 we're moving to admit M. It was admitted at the
3 previous hearing, and the State had no objection.
4 We made a copy. Your clerk has the original, your
5 Honor.

6 **MR. DASKAS:** That's fine, your Honor.

7 **THE COURT:** All right.

8 (Defense Exhibit M was admitted into
9 evidence.)

10 **BY MR. WHIPPLE:**

11 Q Johnnisha, you saw that for the first time
12 today?

13 A Yes.

14 Q That was when you were removed from that
15 shed, isn't it?

16 A Yes.

17 Q If you would, why don't you read that to
18 the jurors.

19 A "Eunisha Cain, age 25."

20 Q Let me stop you for a second.

21 Is that an official report?

22 A Yes.

23 Q It was created by the Department of Social
24 Services, California Department of Social Services?

25 A Yes.

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1 Q This is the first time that you've seen
2 this today?

3 A Yes.

4 **THE COURT:** You don't expect us to read
5 this, do you?

6 **MR. WHIPPLE:** I was going to have
7 Johnnisha read it, your Honor.

8 **MR. DASKAS:** Judge, whatever the Court's
9 pleasure. It's admitted as an exhibit. We didn't
10 object to it. The members of the jury will have it
11 in the deliberation room.

12 **THE COURT:** She can read it if it's in
13 evidence.

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

15 **THE COURT:** If that's the way he wants.

16 **BY MR. WHIPPLE:**

17 Q Go ahead, Johnnisha.

18 A Eunice Cain, age 25, has dropped out of
19 sight. Since the time that her children were
20 detained, her whereabouts and those of Mr. White
21 have been unknown. A week ago it was shown she has
22 been briefly hospitalized at California hospital for
23 respiratory problems and worker contacted her. She
24 has been -- workers contacted her on Friday
25 afternoon, December 21st, to make arrangements to

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1 interview her there on or at her mother's house --
2 home on Monday morning, December 24th. DPS feels
3 certrain (phonetic) that mother is fully aware of
4 the needs to have contact with investigations and
5 acknowledging with Mr. White is deliberate --

6 Q Johnnisha, why don't we just talk about
7 it. Okay?

8 A Yeah.

9 Q I'm just going to ask you a few questions
10 about it.

11 It talks about you and your brother John.
12 You were five-and-a-half, and he was
13 seven-and-a-half?

14 A Yes.

15 Q It says you want to remain with your
16 grandmother.

17 Do you remember that?

18 A Yes.

19 Q You didn't want to go live with your
20 mother.

21 Do you remember saying that?

22 A Yes.

23 Q Why was that?

24 A Because she was on drugs, and she wasn't
25 able to take care of us.

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1 Q You talk about your father beating the
2 children.

3 Do you see that? Do you remember?

4 A Yes.

5 Q And it makes reference to John White
6 saying he does not know what he's done wrong most of
7 the time.

8 A Yes.

9 Q Do you recall him being beat by his father
10 and not knowing why he was being beaten?

11 A Yes.

12 Q How did he act, Johnnisha, when that
13 happened?

14 A My father or my brother?

15 Q Your brother?

16 A He just have to take what's coming.

17 Q It also makes fact -- John is embarrassed
18 by the fact that he's missed entirely the first year
19 and a half of his school -- of his education.

20 Do you remember that?

21 A Yes.

22 Q Where were you during the first year and a
23 half of your school of education?

24 A With my mom.

25 Q You did not go to school?

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1 A No.

2 Q On the second page, it says, "By the time
3 that minors are detained, the family was living in a
4 garage without utilities."

5 Is that the same garage you were talking
6 about?

7 A Yes.

8 Q "Both parents appear unable to assume
9 responsibility of parenthood"?

10 A Yes.

11 Q Do you remember -- where did you go from
12 there?

13 A McClaren Hall.

14 Q What was McClaren Hall?

15 A It was a foster -- a place where kids go
16 when their parents -- when they take them from their
17 parents.

18 Q This was operated by the State of
19 California?

20 A Yes.

21 Q Who did you go with?

22 A With the police.

23 Q And how long were you in the foster care
24 system?

25 A About a month.

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1 Q And was John in there with you?
2 A Yes.
3 Q Was he separate?
4 A Different. We were all separated, split
5 up.
6 Q Where did you go when you got out of
7 there?
8 A To my grandmother house.
9 Q And where was that located?
10 A On 43rd and Ascot.
11 Q How many children were in 43rd and Ascot,
12 Johnnisha?
13 A There was ten.
14 Q I'm sorry?
15 A Ten.
16 Q Ten children?
17 A Yes.
18 Q And one grandmother taking care of all of
19 them?
20 A Yes.
21 Q And did John start to go to school at that
22 time?
23 A Yes.
24 Q Did you see your mother? Did she come
25 back to visit you from time to time?

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1 A From time to time she would.

2 Q And how was -- how did she treat you all
3 when she came back?

4 A She mostly come -- she used to come and
5 try to sell cheese -- cheese, and get money from my
6 grandmother.

7 Q She would sell food to your grandmother?

8 A That the government give.

9 Q For cash?

10 A Yes.

11 Q Did you have any men in the household at
12 that time?

13 A No. Well, my grandfather.

14 Q Your grandfather?

15 A Yes.

16 Q Did you have a relationship at all with
17 your grandfather?

18 A Yeah.

19 Q How did he treat the kids?

20 A He was -- he did the best he could. He
21 was there.

22 Q Did you see him ever spend any time with
23 John?

24 A No.

25 Q Who did John spend most of his time with?

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1 A Himself.

2 **MR. WHIPPLE:** We have a video. With the
3 Court's permission, your Honor, a video is utilized
4 at the first trial, the first evidentiary hearing,
5 and I would like to be able to utilize it again
6 today with the Court's permission. I'm not sure if
7 the State has seen it since then.

8 **MR. DASKAS:** We have no objection, your
9 Honor.

10 **THE COURT:** All right.

11 **MS. JACKSON:** Johnnisha, I hope this
12 plays.

13 (Playing videotape.)

14 **BY MR. WHIPPLE:**

15 Q What is that area (indicating), Johnnisha?

16 A That's where we stayed at.

17 Q Was that when you came back to live with
18 your grandmother?

19 A Yes.

20 Q Now, we had a chance to look at this
21 earlier in my office.

22 Do you recall that?

23 A Yes.

24 Q You made a comment about something that
25 occurred that you found right where that video

1 began.

2 Do you recall that?

3 A Yes.

4 Q What was that?

5 A Across the street from the apartment it

6 was a white lady found.

7 Q I'm sorry?

8 A Across the street from the apartment there

9 was a white lady found with a pole shoved up her

10 private, and she was dead.

11 Q Was that -- is that something you children

12 saw?

13 A Yes.

14 Q How many children saw this deceased

15 person?

16 A Me and my brother.

17 Q And how old were you when this occurred?

18 A About seven.

19 Q That's where you -- what is that a picture

20 of (indicating)?

21 A Where we used to live.

22 Q Is that the one on 43rd Street?

23 A Yes.

24 Q And there were ten children?

25 A Yes.

1 Q And that's when you lived there with John
2 White?
3 A Yes.
4 Q Now, I spoke with you earlier again, and
5 you mentioned something about a violent incident
6 that occurred right while you were living there.
7 A Yes, across the street.
8 Q What was that?
9 A The police had a shoot-out with a guy, and
10 they killed him upstairs and had to cut one side of
11 the wall out to get him down from the attic.
12 Q And how old were you when this occurred?
13 A Around the same.
14 Q And did your brother see this?
15 A Yes.
16 Q What was it like living there, Johnnisha?
17 A It was hard, didn't like it.
18 Q Were you restricted from going outside the
19 front gate?
20 A Yes.
21 Q Why was that?
22 A Because too much was going on on the
23 outside of the gate.
24 Q Like what types of things did you see
25 going on outside the front gate?

1 A People hanging out, base heads roaming the
2 street and a lot of violence.
3 Q I'm going to turn this back on.
4 (Playing videotape.)
5 **BY MR. WHIPPLE:**
6 Q What are we looking at here (indicating),
7 Johnnisha?
8 A Ascot Elementary.
9 Q Is that where you went to school?
10 A Yes.
11 Q What was it like going to school there?
12 A Didn't like that either.
13 Q Why is that?
14 A Because we used to get chased by these two
15 little people.
16 Q When you say "we" --
17 A Me and John.
18 Q I'm sorry?
19 A Me and John.
20 Q Your brother?
21 A Yes.
22 Q And was that -- how often did that occur?
23 A Every day after school.
24 Q And were they the same people?
25 A Yes.

SONIA L. RILEY, CCR NO. 727 (702) 455-3610

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1 Q Was there a father or anybody you could
2 talk to about the problems that you had?

3 A No.

4 Q So, what happened when they caught you?

5 A They beat us up, throw rocks at us.

6 Q How many years did this occur?

7 A Until we moved from over there.

8 Q Now, we were speaking, and you said people
9 also made fun of your mother and teased John about
10 that and would taunt him about his mother.

11 Do you recall that discussion?

12 A Yes.

13 Q What type of things did they call your
14 mother?

15 A They would call her "leprechaun" and talk
16 about her lip, her nose.

17 Q How did John react to these things?

18 A He didn't like it.

19 Q Did he ever have any man or anybody that
20 stood up for him or helped him?

21 A No.

22 Q What are we looking at here, Johnnisha
23 (indicating)?

24 A Our old neighborhood.

25 Q I'm sorry?

1 A Our old neighborhood where base heads used
2 to hang out at.

3 Q Now, at lunchtime when we went through
4 this, you had me stop with some of these vacant
5 cars. Why did you have me stop with regard to the
6 vacant cars?

7 A Because people used to sleep in them.

8 Q Did you have a name for them?

9 A For the cars or the people?

10 Q For the people who slept in the cars?

11 A We called them "base heads."

12 Q "Base heads."

13 What does that mean?

14 A Somebody who use drugs and don't have
15 nowhere to stay.

16 Q How big an issue is that for you there,
17 Johnnisha?

18 A It was a big issue.

19 Q When you say "it was a big issue," how did
20 it affect you?

21 A A lot.

22 Q Why?

23 A Because that's all you seen in the
24 neighborhood.

25 Q Now, you've been subject to violence

1 yourself?

2 A Yes.

3 Q Can you tell the folks some of the things
4 that have happened to you while you've been on the
5 different streets there?

6 A I've been stabbed and shot in my leg
7 before.

8 Q When were you stabbed?

9 A When I was 17, 16.

10 Q What happened?

11 A Drive-by shooting.

12 Q When you were stabbed?

13 A No; when I was stabbed, I was walking to
14 my friend house, and someone ran on the side of me
15 and stabbed me in my head.

16 Q Did you know them?

17 A No.

18 Q And how bad a stabbing was it?

19 A It was -- it bled. It scared me.

20 Q And you said you'd been shot at?

21 A Yes.

22 Q Were you actually hit?

23 A Yes.

24 Q Where were you hit?

25 A In my leg.

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1 Q When did that happen?
2 A When I was 17.
3 Q Why don't you tell the folks what happened
4 in that situation.
5 A I was walking to the store, and someone
6 drove by and just started shooting, and I happened
7 to get hit in my leg.
8 Q What happens when you hear shooting in
9 that neighborhood?
10 A You get down, run.
11 Q How many years -- what age were you when
12 you were taught to get down?
13 A Can you repeat that?
14 Q How old were you when you were taught to
15 get down as soon as you heard shooting?
16 A Seven.
17 Q I'm sorry?
18 A Seven, when my grandmother when we moved
19 on 43rd.
20 Q How many times did you have to get down
21 because of shooting?
22 A Often.
23 **MR. WHIPPLE:** Your Honor, I'm going to
24 switch back to the overhead at this point.
25 / / / / /

1 **BY MR. WHIPPLE:**

2 Q Johnnisha --

3 **MR. WHIPPLE:** If I may approach again,
4 your Honor.

5 **THE COURT:** Yes.

6 **BY MR. WHIPPLE:**

7 Q I propose Defense Exhibits E, F and G.
8 Do you recognize these photos?

9 A Yes.

10 Q Is that a fair and accurate photo of
11 what's being shown?

12 A Yes. It actually look a little better
13 because it has the trees.

14 **MR. WHIPPLE:** Okay. I move to admit
15 Defense Exhibits E, F and G, your Honor.

16 **MR. DASKAS:** No objection, your Honor.

17 **THE COURT:** Admitted.

18 (Defense Exhibits E, F and G were admitted
19 into evidence.)

20 **BY MR. WHIPPLE:**

21 Q Is it fair to say these are some of the
22 same photos that were in that videotape?

23 A Yes.

24 Q What significance -- what do they show?

25 A The yard.

1 Q Where was that, what yard?
2 A Forty-third.
3 Q This is where you were living with ten
4 other grandchildren?
5 A Yes.
6 Q And your grandmother was keeping track of
7 you?
8 A Yes.
9 Q What is this a picture of?
10 A The front yard.
11 Q This is the fence that you weren't
12 supposed to go beyond?
13 A Yes.
14 Q And what is this a photograph of
15 (indicating)?
16 A The corner.
17 Q The corner of what?
18 A Of 43rd where we stayed.
19 Q And is there any significance to this
20 photograph (indicating)?
21 A Yes; the garage the lady was found in.
22 Q I'm sorry?
23 A That's the garage the lady was found in.
24 Q That's where the person was found
25 deceased?

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1 A Yes.

2 Q Johnnisha, I'm showing you Defense
3 Exhibits Proposed Exhibit double-J, JJ that is, GG,
4 HH, EE and FF.

5 Do you recognize those photographs?

6 A Yes.

7 Q And do you recognize this letter?

8 A Yes.

9 **MR. WHIPPLE:** Move to admit.

10 **MR. DASKAS:** Is that --

11 **MR. WHIPPLE:** Same ones I just showed you.

12 **MR. DASKAS:** I'm sorry, Judge.

13 No objection, your Honor.

14 **THE COURT:** All right.

15 Admitted.

16 (Defense Exhibits EE, FF, GG, HH and JJ
17 were admitted into evidence.)

18 **BY MR. WHIPPLE:**

19 Q Johnnisha, we've already heard from
20 Moises, and we know that you got married several
21 years ago, correct?

22 A Yes.

23 Q And you have a family today?

24 A Yes.

25 Q Describe your relationship to me with your

1 brother, John, growing up through those
2 circumstances.

3 A He was the only person I could talk to.

4 Q Why was that?

5 A Because it wasn't nobody else I would
6 rather talk to but him.

7 Q Would you describe yourself as close to
8 your brother?

9 A Yes.

10 Q And how often -- when you were growing up,
11 what type of things would you discuss with each
12 other?

13 A Anything we feel like discussing with each
14 other.

15 Q You consider you have a close relationship
16 with your brother?

17 A Yes.

18 Q And why?

19 A Why? Because I love him.

20 Q Now, who is in this photograph
21 (indicating)?

22 A That's me and me first baby.

23 Q What's your first baby's name?

24 A Milan.

25 Q And what's this a photograph of

1 (indicating)?

2 A Me and my -- both of my babies.

3 Q Let me read that. That is EE?

4 A That was me, my mother, my son and my
5 daughter and my cousin Keonna.

6 Q Who lives in your home now?

7 A Me and my kids.

8 Q And you also have another person who lives
9 with you?

10 A Yes, my nephew.

11 Q Who is that?

12 A That's Allen, my brother's son.

13 Q We've already heard about him.

14 Who is this a picture of (indicating)?

15 A Me and my brother.

16 Q And this picture -- photograph here
17 (indicating)?

18 A My brother and my mother and my little
19 cousins.

20 Q I see a lot of kids right around John
21 White.

22 Why is that?

23 A Because they love him.

24 Q How popular is he with your family?

25 A Popular.

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1 Q Why?
2 A Because he funny.
3 Q How important is your relationship with
4 John White to you?
5 A Very important.
6 Q Now, you sent a letter to us --
7 A Yes.
8 Q -- dated several years ago.
9 A Yes.
10 Q It talks about you were placed in a foster
11 home?
12 A Yes.
13 Q That you had been taken out of that shed
14 that we showed earlier?
15 A Yes.
16 Q And that was the time that you found out
17 that your mother and dad were drug addicts and were
18 not fit to keep you but they said they would stop
19 and it never happened?
20 A No.
21 Q Johnnisha, you testified once prior to
22 this occasion in front of a jury.
23 Do you remember that?
24 A Yes.
25 Q Do you recall saying you were very scared

1 at that time?

2 A Yes.

3 Q Why were you scared and afraid when you
4 testified the first time in front of the jury?

5 A Because I did not know how the family felt
6 and how they would look at me.

7 Q What were you concerned would happen to
8 you?

9 A That they would retaliate on me.

10 **MR. DASKAS:** Judge, I'm going to object.
11 Is there some basis for this, and this is completely
12 improper based on the scope of what you said was
13 admissible in the first phase of this proceeding.

14 **THE COURT:** Sustained.

15 **MR. WHIPPLE:** May we approach?

16 **THE COURT:** Yes.

17 (Sidebar conference outside the presence
18 of the court reporter.)

19 **BY MR. WHIPPLE:**

20 Q Johnnisha, you mentioned you were afraid
21 and scared last time, correct?

22 A Yes.

23 Q You're not afraid or scared today, are
24 you?

25 A No.

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1 **MR. WHIPPLE:** Court's indulgence, your
2 Honor.

3 Nothing further.

4 /////

5 /////

6 CROSS-EXAMINATION

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

8 **BY MR. DASKAS:**

9 Q Good afternoon. Mrs. Zamora, is it?

10 A Yes.

11 Q Thank you for being here. I just have a
12 few questions for you.

13 A Um-hmm.

14 Q It sounds like you and your brother were
15 exposed to a lot of the same things growing up.
16 Would you agree with that?

17 A Yes.

18 Q For example, you mentioned that you saw
19 the woman who had been murdered, I guess, across the
20 street from your home?

21 A Yes.

22 Q You and your brother saw that together?

23 A Yes.

24 Q And you mentioned there was a shoot-out
25 across the street; you and your brother both saw

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1 that, I take it?

2 A Yes.

3 Q You mentioned having to go to foster care,
4 McClaren Hall, was it?

5 A Yes.

6 Q That was you and your brother who went
7 there together, correct?

8 A Yes, and others.

9 Q From there -- I apologize.

10 A I said "and others."

11 Q From there you and your brother went to
12 your grandmother's house where you stayed for quite
13 a while?

14 A Yes.

15 Q You attended -- that is, you and your
16 brother, John White, attended the same schools?

17 A Yes.

18 Q Elementary and junior high school?

19 A Yes.

20 Q You talked about being picked on by some
21 bullies, and that was both you and your brother who
22 was picked on by these kids, correct?

23 A Yes.

24 Q Would you agree that your grandmother, who
25 essentially raised you, she did the best she could,

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1 correct?

2 A Yes, she did.

3 Q She gave you love?

4 A Yes, she did.

5 Q She gave your brother love?

6 A Yes.

7 Q She provided a roof over your head?

8 A She did the best she could.

9 Q You're now married, correct?

10 A Yes.

11 Q And you said you have two kids?

12 A I have three kids plus my nephew.

13 Q Three kids. I apologize.

14 Your husband told us he works for a
15 financial company, correct?

16 A Yes.

17 Q And he grew up in South Central LA also?

18 A Yes.

19 Q Do you have a job, if you don't mind me
20 asking?

21 A Yes, I do.

22 Q It sounds like you're doing fairly well
23 for yourself.

24 A Doing the best I could.

25 Q It sounds like you made it out of the

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1 neighborhood, for lack of a better phrase.

2 Would you agree with that?

3 A Yes.

4 **MR. DASKAS:** Thank you so much for being
5 here. I appreciate it.

6 I have nothing else, Judge.

7 **MR. WHIPPLE:** Nothing further, your Honor.

8 **THE COURT:** All right. You're excused,
9 ma'am. Thank you.

10 Ladies and gentlemen, we're going to call
11 our evening recess. We'll reconvene tomorrow
12 morning at approximately -- let's make it 10:30.

13 You're admonished not to discuss this case
14 among yourselves or with anyone else, read any
15 newspaper articles, watch any television reports or
16 newscasts about the case, listen to any radio
17 commentary or news about the case. You are not to
18 do any investigation about the case or express any
19 opinions about the case to anyone.

20 All right. See you tomorrow.

21 **THE BAILIFF:** Ladies and gentlemen, leave
22 your books in your seat.

23 (Outside the presence of the jury.)

24 **THE COURT:** Guys -- jury instructions --
25 have you prepared them?

SONIA L. RILEY, CCR NO. 727 (702) 455-3610

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1 **MR. DASKAS:** Judge, I actually pulled the
2 instructions from penalty hearings we normally give,
3 and Miss Jackson and I agreed we would get together
4 and try to decide, and we also have the transcript
5 from the Pattison case, and we'll use that as a
6 guideline.

7 **THE COURT:** We can use the jury
8 instructions out of those.

9 **MR. DASKAS:** They would be very similar.

10 **THE COURT:** Same kind of deal, and then we
11 can tweak them, but I want them ready, because this
12 looks like it's going to be ready to go to the jury
13 pretty soon.

14 **MS. JACKSON:** That's what I was going to
15 ask the Court. We have four more, and they will
16 probably be shorter. We have one lengthy one
17 tomorrow. We'll probably be finished tomorrow in
18 less than 30 or 40 minutes.

19 Does the Court anticipate we'll close
20 before lunch?

21 **THE COURT:** If we finish before lunch --
22 it depends on when we get the instructions. I want
23 to get this done, and we can finish up tomorrow on
24 this part.

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

1 because we don't have very much at all.
2 Thank you, your Honor.
3 (Evening recess taken at 5:00 p.m.)
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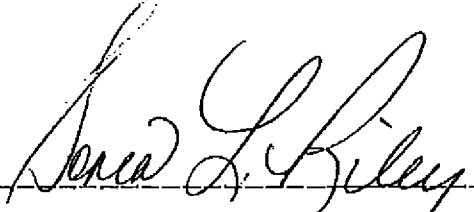
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REPORTER'S CERTIFICATE

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.


SONIA L. RILEY, CCR 727

SONIA L. RILEY, CCR NO. 727 (702) 455-3610

202

1 ORD

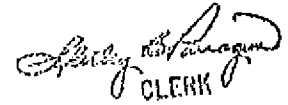
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FILED

2005 APR 27 P 1:01

DISTRICT COURT

CLARK COUNTY, NEVADA


 CLERK

6 STATE OF NEVADA)

7 Plaintiff,)

8 vs.)

9 DONTÉ JOHNSON,)

10 Defendant.)

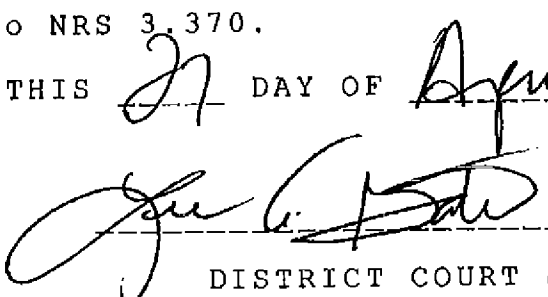
 CASE NO. C153154
 DEPT. NO VIII

ORDER TO PREPARE TRANSCRIPT

14 IT IS HEREBY ORDERED that Kris Moore of
 15 Laure Webb & Assoc., CCR _____, prepare a transcript in
 16 the above-captioned matter heard
 17 on 4/27/05 A.M., 2005.

18 FURTHER ORDERED, that said transcript shall
 19 be prepared pursuant to Supreme Court Rule 250 and
 20 at State's expense with cost and fees assessed
 21 according to NRS 3.370.

 22 DATED THIS 27 DAY OF April, 2005.


 DISTRICT COURT JUDGE

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APR 27 2005

COUNTY CLERK

ORD

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2005 APR 27 P 1:02

DISTRICT COURT
CLARK COUNTY, NEVADA

Sonia L. Riley
CLERK

STATE OF NEVADA)

Plaintiff,)

vs.)

DONTÉ 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 4/25/05 p.m. 4/26/05 p.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 27 DAY OF April, 2005.

Sonia L. Riley
DISTRICT COURT JUDGE

59

SONIA L. RILEY, CCR 727
455-3610

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COUNTY CLERK

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2005 APR 27 P 1:01

3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

Shirley S. Rasmussen
CLERK

6 STATE OF NEVADA)

7 Plaintiff,)

8 vs.)

9 DONTÉ JOHNSON,)

10 Defendant.)

CASE NO. C153154
DEPT. NO VIII

11
12 ORDER TO PREPARE TRANSCRIPT

13
14 IT IS HEREBY ORDERED that SONIA L. RILEY, CCR
15 727, prepare a transcript in the above-captioned
16 matter heard on 4/27/05 p.m., 2005.

17 FURTHER ORDERED, that said transcript shall
18 be prepared pursuant to Supreme Court Rule 250 and
19 at State's expense with cost and fees assessed
20 according to NRS 3.370.

21 DATED THIS 27 DAY OF April, 2005.

22
23 *[Signature]*
24 DISTRICT COURT JUDGE
25

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APR 27 2005

COUNTY CLERK

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SONIA L. RILEY, CCR 727
455-3610

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THE STATE OF NEVADA v. JOHNSON

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Case No. C153154
Dept No. VIII
Docket H

VOLUME V-A

PENALTY PHASE

BEFORE THE HONORABLE LEE A. GATES

MONDAY, APRIL 25, 2005, 11:15 A.M.

APPEARANCES:

For the State: ROBERT J. DASKAS, ESQ.
DAVID STANTON, ESQ.
Deputies District Attorney
For the Defendant: ALZORA JACKSON, ESQ.
Deputy Public Defender

BRETT WHIPPLE, ESQ.

REPORTER: KRISTINE MOORE, CCR 273

COUNTY CLERK

APR 25 2005

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4-26-2005

www.lauriewebb.com

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THE STATE OF NEVADA v. JOHNSON

1 LAS VEGAS, NEVADA, MONDAY, APRIL 25, 2005, 11:15 A.M.

2 * * * * *

3 THE COURT: Call the Jury.

4 THE CLERK: Shelita Oliver, Rachel Ritchie,
5 Michael Krispli, Jamie Carpenter, Theresa Thurston, Linda
6 Suckow, David Larson, Kenneth Clark, Twila Morgan, Karen
7 Batts, Matthew Taylor, Jeremy Summers, Theresa Knight,
8 Wilfredo Mercado.

9 Thank you. All are present, your
10 Honor.

11 THE COURT: All right. Let the record
12 reflect presence of all the members of the Jury Panel.
13 This is the case entitled, State of Nevada versus Donte
14 Johnson.

15 Let the record reflect presence of
16 all the Parties, all the Attorneys.

17 At this time, Miss Clerk, swear in
18 the jury.

19 THE CLERK: Everybody, except Ms. Knight
20 and Mr. Mercado, please stand, raise your right hands.

21 (WHEREUPON, THE JURY WAS SWORN

22 BY THE CLERK OF THE COURT.)

23 THE CLERK: Ms. Knight, Mr. Mercado, please
24 stand.

25 (WHEREUPON THE ALTERNATE JURORS WERE

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1 SWORN BY THE CLERK OF THE COURT.)

2 THE COURT: Couple things I want to go over
3 with you, the first part of the trial will entail the
4 parties making opening statements. Opening statements
5 are not evidence. They are what the parties anticipate
6 the evidence will be.

7 After the parties present their
8 opening statements, then they will present their
9 evidence. At the conclusion of the evidence, they will
10 make their closing arguments, and you will go and decide
11 upon your verdict.

12 The evidence which you are to
13 consider are the testimony of the witnesses and any
14 Exhibits admitted into evidence. The term witness means,
15 anyone who testifies in person or by deposition,
16 including the parties.

17 From time to time it may be my duty,
18 as Judge, to rule upon objections made by a lawyer. You
19 must not concern yourself with the objections or the
20 Court's reasons for the rulings. You must not consider
21 testimony or exhibits to which an objection was sustained
22 or which has been ordered stricken.

23 Furthermore, you must not consider
24 anything which you may have seen or heard when the court
25 is not in session, even if what you see or hear is said

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1 or done about one of the parties or one of the witnesses.

2 Now, the way the courthouse is
3 configured, we don't have separate facilities for the
4 jurors, witnesses, and parties. Sometimes during the
5 breaks, you will see witnesses or parties outside. If
6 you do, get yourselves away from them.

7 The lawyers will not talk to you or
8 be solicitous about your comfort. Don't try to talk to
9 them try, to chitchat with them. By law they can't have
10 contact with you or be solicitous of your comfort or try
11 to help you out in any way. They are not being rude.

12 Also, sometimes the witnesses are
13 talking, if you are in the bathroom or someplace and they
14 start talking about the case, try to leave the area,
15 immediately. Also, if someone should try and discuss the
16 case with you, report it immediately to me by contacting
17 the Bailiff.

18 If you have any questions, anything
19 you need done, ask the Bailiff, he will get the
20 information for you and have the answer for you.

21 I want you to remember that until
22 this case is submitted to you, do not talk to each other
23 about it or anyone about it until the end of the case and
24 you have been discharged as jurors. You may tell family
25 members you are a juror. Don't go into any details or

THE STATE OF NEVADA v. JOHNSON

1 discuss the case with them until after you are
2 discharged.

3 Do not let anyone talk to you about
4 the case or about anyone who has anything to do with
5 anything with the case. If someone should try to talk to
6 you, please report it immediately to the Bailiff. Do not
7 read news stories, television reports, news, radio
8 commentaries, or talk to anyone about anything to do with
9 the case.

10 Do not do any research on your own
11 about the case. Make no investigations or inquiries
12 about the case.

13 With that, the State may proceed.

14 MR. DASKAS: Thank you, Judge. Back in the
15 summer of 1998, Justin Perkins, a young man living in Las
16 Vegas, would often visit his buddies at their home on
17 Terra Linda Avenue. That's a little street off Tropicana
18 Avenue in East Las Vegas. Three of Justin's friends
19 lived in the home. They were Matthew Mowen, Jeff Biddle,
20 and Tracey Gorringer.

21 Three of the young men were about the
22 same age as Justin. He was 20 years old in the summer of
23 '98. There was another young man, spending lots of time
24 at the Terra Linda home. He was Peter Talamentez. He
25 was a little younger. He was 17 years old.

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1 Peter, like Justin, was a friend of
2 the occupants of the Terra Linda home, who would stop by
3 and visit, just like Justin Perkins would. The Terra
4 Linda home was just like other homes occupied by three
5 teenage men. Friends stop by often, play video games,
6 watch videos. They had visitors at all hours, as you can
7 imagine, and they would have parties. They would come
8 by, drink beer, and yes, on occasion they did drugs.

9 August 14, 1998, started off like any
10 other day for Justin Perkins. He woke up late, ran
11 errands. At six o'clock in the evening he stopped by his
12 friends house on Terra Linda.

13 He had been at the house one day
14 earlier on the 13th of August, to show off the tattoo he
15 had gotten to his friends. They had drank some beer. He
16 was coming back on the 14th, because he owed Matthew
17 Mowen beer money, 20 bucks.

18 Justin pulled up to the front of the
19 house, the Terra Linda home, at about six o'clock on the
20 14th. He noticed something unusual. There was a gate
21 that surrounded the perimeter of the Terra Linda home,
22 and that gate was partially open.

23 It was unusual because the young men
24 that lived in that home had a couple of pit bull puppies.
25 It was unusual for them to leave that gate open because

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1 the puppies would run out in the street.

2 Justin didn't think twice about it.
3 He walked up to the front door of his buddies's home. He
4 noticed something else unusual. The front door was
5 cracked open just a little bit. This was unusual
6 because, as I said, they had puppies. They certainly
7 wouldn't leave the front door open and the gate.

8 Justin peered inside the front door
9 of his friend's home. Justin Perkins will be here to
10 testify. He will try to remember what he has tried to
11 forget for the past seven years. Undoubtedly, what he
12 saw will be etched into his memory for the remainder of
13 his life.

14 As he looked in the front door, he
15 saw his three best friends, Matt, Tracey, and Jeff, face
16 down, faces in the carpet, hands behind their backs,
17 fingers interlaced and thoroughly restrained with duct
18 tape. Their ankles were restrained with duct tape, as
19 well. Justin saw blood everywhere.

20 In fact, he will explain, the puppies
21 he was concerned with were pawing at them, and they had
22 blood on their paws. You can see the bloody paw prints
23 on the carpet of the home.

24 Eventually, Justin's instincts took
25 over, and he ran for help. He went to one neighbor and

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1 another neighbor and pleaded with someone to call 911,
2 pleaded with someone to call paramedics.

3 Justin didn't realize that paramedics
4 couldn't do anything for his friends. They had each been
5 shot in the back of the head at close range with a .380
6 caliber semi-automatic handgun. There was nothing
7 anybody could do for Justin's friends.

8 Eventually, he returned to the home
9 and waited for paramedics to arrive. They did eventually
10 arrive. Justin watched as they entered the house and
11 quickly exited. Justin was confused. Why aren't you
12 helping my friends. It was the paramedics, complete
13 strangers, who told Justin his three friends were dead.

14 If things weren't bad enough, he was
15 also told that a fourth body was inside the house. What
16 Justin didn't realize, because he never stepped foot in
17 the home, was that Peter Talamentez was dead in the
18 dining room.

19 He too had been duct taped at the
20 wrists, ankles, laid face down and shot at close range in
21 the back of the head with the same semi-automatic handgun
22 that killed his three friends.

23 Donte Johnson, the Defendant in this
24 courtroom, has been convicted of the First Degree Murders
25 of all four of these young men. Back in 2000, 12 members

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1 of the community, not unlike yourselves, listened to the
2 evidence against the Defendant, deliberated and agreed,
3 unanimously, that he was responsible for the First Degree
4 Murders of each of these four young men.

5 On June 9, 2000, the jury convicted
6 the Defendant of the murder of Peter Talamentez, a 18
7 year old by holding the .380 semi-automatic handgun just
8 inches from his head and squeezing the trigger.

9 The jury convicted Donte Johnson of
10 the First Degree Murder of 19 year old Jeffrey Biddle,
11 holding the same gun inches away from Jeff's skull and
12 squeezing the trigger.

13 The Jury convicted Donte Johnson of
14 the First Degree Murder of 19 year old Matthew Mowen,
15 again, of holding a gun inches from his skull and
16 squeezing the trigger.

17 They convicted Defendant of the First
18 Degree Murder of Tracey Gorringer. Tracey was the eldest
19 of the victims in the case. He was 20 years old. The
20 jury convicted Donte Johnson of aiming a semi-automatic
21 handgun, inches from his skull, and squeezing the trigger
22 and killing him.

23 What you will see are the Verdict
24 Forms, actually signed by the foreperson, back in that
25 trial. I show you those because they become very

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1 important in this initial phase of the penalty hearing

2 It is our burden to prove to you that
3 an aggravator is present in this case. What you will
4 learn when Judge Gates instructs you at the end of the
5 case is not every murderer is eligible for the death
6 penalty, not even First Degree Murderers. There has to
7 be aggravating circumstances present.

8 You will learn one such aggravator in
9 Nevada is, if you kill more than one person, if you are
10 convicted of more than one offense of First or Second
11 Degree Murder, you are eligible for the death penalty.
12 It doesn't mean you automatically get it.

13 You know now in this case based on
14 these Verdict Forms that this Defendant was convicted of
15 four murders, and they are all First Degree Murder
16 convictions. Before he is eligible for the death
17 penalty, you have to agree we have established the
18 aggravator beyond a reasonable doubt. I submit to you,
19 it is established, by the forms I have shown you.

20 Our only burden at this stage of the
21 proceeding is to present to you this aggravator exists.
22 We will present more evidence to you, because it wouldn't
23 be fair to you when you are about to make a decision of
24 this magnitude to just rely on that evidence.

25 In fact, you told us during voir

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1 dire, you wanted to know more about the homicides
2 themselves. We will present evidence of the homicides to
3 you. Instead of calling every witness from the trial --
4 as I said, he has been convicted -- we will call
5 Detective Tom Thowsen to summarize the testimony of the
6 trial witnesses in the case.

7 He will explain to you that the
8 witness testimony he summarizes; the witnesses took the
9 stand, took an oath to tell the truth; they testified and
10 were subject to cross-examination; and a jury convicted
11 the Defendant based on their testimony and the evidence
12 presented.

13 What Detective Thowsen will summarize
14 for you is the following: Evidence he learned based on
15 his investigation. I mentioned that the victims lived at
16 a house on Terra Linda Avenue. What you will learn is
17 that there was another group of men who lived across
18 Tropicana Avenue on a street called Everman.

19 The Everman house was just across
20 Tropicana Avenue from the Terra Linda home, where the
21 victims lived. There were three young men who lived in
22 the Everman house, Tod Armstrong, Brian Armstrong, and
23 Ace Hart.

24 The three young men on the Everman
25 home were involved rather heavily in using cocaine.

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1 Cocaine was their drug of choice. In early August '98,
2 Defendant Donte Johnson was staying in the Everman home
3 off Tropicana Avenue, just across from where the victims
4 lived on Terra Linda. In fact, Donte Johnson was paying
5 cocaine to Tod Armstrong in lieu of rent.

6 Donte Johnson's girlfriend, Charla
7 Severs, also stayed in the home. You will hear about her
8 testimony in the case. Donte Johnson's friend, Terrell
9 Young, Red is his nickname, also stayed in the home with
10 Donte Johnson, and Donte Johnson's girlfriend, Charla
11 Severs.

12 There was a connection between the
13 Everman home, where the Defendants stayed, and the Terra
14 Linda home, where the victims lived. The connection was
15 that, Matt Mowen, one of the victims in this case, knew
16 Tod Armstrong, who lived at Everman. Just a few days
17 before the murders happened, Matt Mowen paid a visit to
18 Tod Armstrong at the home on Everman. Donte Johnson was
19 there, when Matthew Mowen showed up.

20 There was a suggestion during the
21 trial that Matthew Mowen was there to purchase cocaine
22 from Donte Johnson. What we know for certain is that no
23 drug transaction took place. But as I said, there was
24 that suggestion.

25 What we also know for certain is

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1 there was a conversation between Matthew Mowen and Tod
2 Armstrong that cost Matthew Mowen and his friends their
3 lives.

4 Mat mentioned to Tod Armstrong in the
5 presence of Donte Johnson that he had been on tour with a
6 rock band, like the Grateful Dead band has dead-heads,
7 there is a rock band named Fish that has a similar
8 following. In the summer of '98, Matt and his buddies
9 had followed the band Fish to their concerts and sold
10 pizzas and probably drugs to make money. Matt mentioned
11 this to Tod and the Defendant overheard it.

12 At the conclusion of the
13 conversation, it was Defendant's belief that Matthew
14 Mowen and his friends in the Terra Linda home had
15 thousands of dollars and a large stash of drugs. After
16 Matthew Mowen left, the Defendant insisted on knowing
17 where Matt and his friends lived. The seed had been
18 planted in Donte Johnson's mind, this was an easy score.

19 Donte Johnson formulated a plan to
20 rob the young men and murder the young men living in the
21 Terra Linda home. This plan was executed on the night of
22 August 13th, and into the early morning hours of August
23 14, 1998.

24 Donte recruited two of his partners,
25 Terrell Young, and another young man, Sikia Smith, or

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1 Tiny Bug, as he was called. Late at night on the 13th,
2 they were at the Everman house. They loaded up a tote
3 bag, duffel bag, and loaded it up with guns, duct tape,
4 and gloves, and set out to execute their plan.

5 I shall mention the guns you see in
6 evidence that were in this tote bag were Donte Johnson's
7 guns. They were brought to the Everman home in that bag
8 by the Defendant, Donte Johnson. They were his guns.

9 Charla Severs, Defendant's
10 girlfriend, was at the home on Everman when Donte Johnson
11 and his partners left to commit the robbery. You will
12 hear about the testimony, how they left with the guns,
13 gloves and duct tape. None of them were wearing
14 disguises.

15 What's significant is Donte Johnson
16 was wearing a pair of black jeans when he left that night
17 to commit the robberies and the murders. The evidence,
18 the testimony established, that when Donte and his
19 partners showed up at the Terra Linda home, Matthew Mowen
20 and Terrell Young were outside, watering the lawn, late
21 at night. Defendant ordered them into the house at gun
22 point.

23 The victims cooperated. They walked
24 into the home. They were laid down, as you saw in the
25 photograph, and duct taped thoroughly, fingers

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1 interlaced, wrists and ankles both bound together. The
2 two laid helplessly on the ground for hours, while Donte
3 Johnson and his partners thoroughly searched the Terra
4 Linda home, looking for drugs and money Donte Johnson
5 expected to find. They found nothing.

6 Eventually, a third victim, Jeffrey
7 Biddle, arrives at the home. He too is ordered into the
8 house at gun point. He too is laid face down and duct
9 taped, as you saw in the photograph.

10 The search continues. The sofa
11 cushions are over turned, drawers emptied, the victims's
12 pockets rifled through, wallets emptied, Donte and his
13 partners searching desperately for drugs and money, and
14 they found neither.

15 Finally, the fourth young man
16 arrives, Peter Talamentez, 17 years old. He too was
17 ordered into the house at gun point. He too is duct
18 taped and laid face down, his pockets searched like the
19 other three. But Peter Talamentez made the grave mistake
20 of disrespecting Donte Johnson, of mouthing off, to use
21 Defendant's words, to Donte Johnson.

22 Defendant would later tell his
23 girlfriend, Charla Severs, Peter Talamentez was, "Talking
24 mess." So Donte Johnson and his partners carried Peter
25 Talamentez to the dining room you saw in the photograph.

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1 Donte Johnson pistol whipped him on the head, kicked him.
2 You will see the injuries to his face. Then Donte
3 Johnson calmly turned up the music on the radio so
4 passers-by wouldn't hear what he was about to do.

5 Then Donte Johnson did the
6 unspeakable. He took a semi-automatic .380 caliber
7 handgun, held it inches from Peter's head, as he lay face
8 down and fired a shot into his skull.

9 He killed him for two reasons, the
10 evidence showed, and you will hear, number one, because
11 Peter Talamentez disrespected him; number two, using
12 Donte Johnson words, he didn't like Mexicans, anyway.

13 Keep in mind, Jeffrey Biddle, Tracey
14 Gorringer, and Matthew Mowen were face down, defenseless,
15 when they heard their friend get shot in the head in the
16 next room. They knew what was about to come to them.

17 Sure enough, as Donte Johnson left
18 the house, he systematically, methodically, fired a shot
19 into the back of each of the young men's heads, one at a
20 time.

21 Somebody once said, it's a blessing
22 to die for a cause, because you can so easily die for
23 nothing. The question is: Why did Donte Johnson do
24 this? Was this for the thousands of dollars he expected
25 to find, or the big stash of drugs he hoped to get?

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1 MR. WHIPPLE: This is argument, not an
2 opening.

3 MR. DASKAS: That's what the testimony will
4 elicit.

5 THE COURT: Sustained.

6 MR. DASKAS: The answer is that he got
7 neither. What you will learn is that Donte Johnson
8 killed these four young men for a VCR, a video game, and
9 a couple hundred dollars. Those were the proceeds from
10 the robbery.

11 You will see the entertainment center
12 in the living room where the Play Station video game, I
13 mentioned was, and the VCR sat. That's why these four
14 young men were executed.

15 I should mention, Peter Talamentez
16 had a pager on his waistband. That too was taken during
17 this robbery and the murders, as well.

18 Donte Johnson returned to the Everman
19 home with his partners, about 3:00 a.m., early morning
20 hours, August 14, 1998. Charla Severs, Defendant's
21 girlfriend was asleep in the master bedroom. Tod
22 Armstrong was asleep on the couch.

23 Charla Severs testified, you will
24 hear, that Donte Johnson came in the master bedroom,
25 kissed her on the cheek, and woke her up. He told her at

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1 some point, "You have to go to sleep after you kill
2 somebody."

3 Ultimately, Donte Johnson described
4 the entire crime spree for Charla Severs. You will hear
5 about the description. She in turn relayed the
6 conversation to the members of the first jury that heard
7 the evidence.

8 Police officers, detectives, crime
9 scene analysts showed up to the Terra Linda home shortly
10 after Justin Perkins called 911. You will hear the
11 analysts spent countless hours processing the murder
12 scene for evidence. You will learn that their
13 investigation produced evidence.

14 Donte and his partners wore gloves to
15 the crime scene, but Donte Johnson made a crucial
16 mistake. He brought with him a pack of Black & Mild
17 cigars, something he was fond of smoking. During the
18 commission of this crime, that pack of cigars fell out at
19 Donte Johnson's pocket at the feet of Tracey Gorringer.

20 Crime scene analysts processed the
21 little box for fingerprints, and sure enough, they
22 developed a fingerprint on that cigar box, and it was
23 compared to known prints of Donte Johnson's, and it was
24 Donte Johnson's fingerprints on the cigar box. As I am
25 sure you know, no two persons have the same fingerprints.

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1 Donte Johnson was in that house.

2 Crime scene analysts impounded
3 cigarette butts that were found at the house. There were
4 a total of 12 cigarette butts, and the analysts submitted
5 every single one and submitted them to the DNA lab for
6 testing. They were painstakingly analyzed for the
7 presence of biological fluids.

8 The scientists found saliva on one of
9 the cigarette butts. A DNA profile was established on
10 the saliva, and as you can imagine, it was the saliva of
11 the Defendant, Donte Johnson. No two persons have the
12 same DNA profile. It was Donte Johnson's saliva on the
13 cigarette butts in the victims's home.

14 There were cartridge cases that were
15 found and impounded from the crime scene. Some of you
16 know better than I, when a semi-automatic gun is fired, a
17 bullet is expelled through the barrel, and the cartridge
18 case that once housed the bullet, is ejected out the side
19 of the gun.

20 A firearm's expert took each one of
21 the four cartridge cases, one for each victim, and
22 microscopically compared those cartridge cases, and he
23 testified all four cartridge cases were ejected from the
24 same gun, a single gun, a .380 semi-automatic. In other
25 words, there was one shooter in this case; one gun was

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1 used; and it was Donte Johnson.

2 Donte Johnson was arrested a few days
3 later, on August 18, at the home on Everman, just across
4 the street from the victims's home. That house was
5 processed by crime scene analysts, just like the Terry
6 Linda home.

7 I mentioned a few minutes ago, his
8 girlfriend testified Donte Johnson wore black jeans when
9 he left to commit these crimes on August 14th. Those
10 pants were found in the master bedroom of the Everman
11 home, where Donte Johnson stayed.

12 What crime scene analysts noticed on
13 the pant leg, at the very bottom portion of the pant leg
14 was there were blood droppings or spatter on the very
15 bottom pant leg of Donte Johnson's pants.

16 Those blood samples were submitted to
17 the DNA lab, and a profile was established. It was
18 determined the blood on the Defendant's pants was the
19 blood of Tracey Gorringer, one of the victims in this
20 case.

21 As I told you, Defendant's girlfriend
22 testified those were his pants. The detectives wanted to
23 be as thorough as possible in this case. They wanted to
24 confirm they were his pants. Sometimes the truth is
25 stranger than fiction.

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1 The scientists found a white crusty
2 substance on the zipper area of the jeans. Yes, it was
3 semen found on the pants, and a DNA profile was
4 established on the semen. It was Donte Johnson's semen
5 on the jeans that had Tracey Gorringer's blood on them.
6 Those were Donte Johnson's jeans, and they were on him at
7 the house when Tracey Gorringer was murdered.

8 I talked about the proceeds from the
9 robbery: Video game, VCR, and pager. Crime scene
10 analysts unearthed a portion of the back yard at the
11 house where Donte Johnson stayed. They found a pager.
12 The pager was sent to Motorola and the subscriber
13 information was received, and it was Peter Talamantez's
14 pager in this Defendant's backyard.

15 In the family room or living room
16 area where Donte Johnson stayed, there was a VCR and Sony
17 Play Station. Matthew Moen's father, David Mowen told
18 detectives he had given his son a VCR to use in his home,
19 and David explained he kept the remote control to the
20 VCR.

21 The detective got the remote control,
22 and they pushed the power button, and it worked. They
23 impounded it, and David Moen's remote control operated
24 the VCR found in Donte Johnson's home. No doubt it was
25 the VCR taken from the house.

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1 In the master bedroom where Donte
2 Johnson stayed, police found the tote bag and green and
3 brown duffel bag, containing the gun and duct tape used
4 to commit the crimes. Some of the guns were recovered.

5 In the master bedroom where Donte
6 Johnson stayed, you see a photograph of a rifle with a
7 folding stock, a very unique gun you will see in evidence
8 in this case.

9 As you can see, the evidence
10 presented to the first jury was overwhelming. It
11 stripped the Defendant --

12 MR. WHIPPLE: Judge -- I withdraw.

13 THE COURT: All right.

14 MR. DASKAS: It stripped Donte Johnson of
15 the presumption of innocence and lead 12 members of this
16 community to find he is guilty beyond a reasonable doubt:

17 In addition to the forensic evidence,
18 I just described, witnesses testified about Donte Johnson
19 bragging he was the trigger man in this case.

20 You will hear that testimony through
21 Detective Thowsen, how Defendant told his girlfriend,
22 Charla Severs, he killed all four of the young men. He
23 killed Peter Talamentez because he was talking mess, and
24 he didn't like Mexicans, anyway.

25 He told his girlfriend he had to kill

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1 the other three because they were witnesses, they knew
2 who he was. Keep in mind that he met Matt Mowen days
3 earlier and when he left to commit these crimes, he was
4 wearing no disguise.

5 In fact, you will learn that Donte
6 Johnson laughed about the murders. He described for his
7 friends the grunting noises these victims made when he
8 executed all four of them, and he described how the blood
9 squirted out of their heads like Niagra Falls, and he
10 thought it was funny.

11 You will learn there was an article
12 about the quadruple homicide in the newspaper one day
13 later. There were no suspects mentioned in the article.
14 They didn't know who did the crime. Donte Johnson saw
15 the article and announced to his friends, "Look, we made
16 the front page."

17 He was proud of the fact. He was
18 excited to see that he and his friends made the front
19 page for the crimes they committed. As I told you
20 earlier, our only burden in this phase is to prove to you
21 that an aggravator has been established beyond a
22 reasonable doubt.

23 The Verdict Forms you will see
24 clearly establish the presence of the aggravator.
25 Defense will present what they believe are mitigating

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1 circumstances and your only goal, your only task at this
2 phase of the hearing is to weigh the aggravators against
3 the mitigators to see what outweighs what.

4 If you believe quadruple homicide
5 outweighs his upbringing, whatever, you will have four
6 potential sentencing options to consider, one of which
7 includes the death penalty.

8 If you believe, however, that his
9 upbringing is more tragic than a quadruple homicide,
10 death will not be an option for your consideration.

11 I submit to you that no matter how
12 tragic or how poverty stricken his upbringing, nothing
13 can outweigh the devastation, destruction he caused on
14 August 13th, 1998.

15 During the second phase of this
16 hearing, we will have the opportunity to present
17 additional evidence about Donte Johnson's upbringing.
18 That will be in the second phase of the proceeding.

19 We simply ask you at the conclusion
20 of the first phase to conclude the aggravator of the
21 quadruple homicide outweighs his upbringing, and to keep
22 your options open.

23 Thank you.

24 MR. WHIPPLE: Your Honor, with the Court's,
25 permission we will take a few minutes and set up our

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1 presentation.

2 First of all, thank you for your
3 patience, and thank you for your patience over the last
4 few days. I know you have other places to be. You have
5 had to wait out in the hall for a number of hours. I
6 want to thank you for your time. Without your presence
7 here, the whole judicial system would dry up. It's
8 important you do take the time, and I thank you.

9 Let's get something straight here.
10 First thing, right off the bat, there is no excuse; there
11 is no justification; I will never ask for any excuse; I
12 will never ask for any justification for what occurred on
13 August 14, 1998.

14 Why we are here is to determine the
15 future of Mr. Johnson. It was a terrible tragic
16 incident. It should never have happened. We will never
17 try to suggest there is some reason it happened, or it is
18 anything other than a terrible wrong.

19 You find yourself in a unique
20 situation. That is because most of the work, much of the
21 work has already been done, as Mr. Daskas explained to
22 you, you have had a jury sit and find Donte Johnson
23 guilty of First Degree Murder.

24 He has been held accountable.
25 Society has been protected. Society is safe. There is

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1 no lenient sentencing options available at this time.

2 You have heard this Court ask you several times, if you
3 can consider the four possible punishments.

4 That's why you are here, to evaluate
5 the punishments, not why it happened, not to explain some
6 justification or excuse, but to determine what the future
7 of Mr. Johnson entails.

8 There is not a lenient option up
9 there. Each First Degree Murder, at a minimum would be
10 40 years in prison, each of them at a minimum. Of
11 course, they could go all the way to life without the
12 possibility of parole, but each individual murder, he
13 gets 40 years in custody.

14 We are not here to say that he should
15 be back on the street or that he did was right. It was
16 terrible, tragic. All the punishments reflect that.
17 There is not a lenient option available. He has been
18 held accountable.

19 Now, Mr. Daskas spent his opening
20 discussing the cases. He gave you multiple slides. I
21 gave you one. The rest of my presentation is about
22 punishment. I have one slide about the facts of this
23 case. The reason I did that is because so many of you I
24 talked to said you want to know what the facts and
25 circumstances of the case are.

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1 Mr. Daskas is right. My client
2 committed First Degree Murder. We may differ with regard
3 to his involvement. You will have an opportunity
4 over the rest of today and tomorrow to see what happened
5 out there at Terra Linda.

6 We are not disagreeing with them. We
7 are not somehow saying our client didn't commit First
8 Degree Murder.

9 We are saying you will have an
10 opportunity to evaluate the facts and circumstances, what
11 lead up to the occasion, over today and probably
12 tomorrow.

13 You will learn there are similarities
14 that run between the house on Terra Linda and at Everman.
15 In fact, they are very close together. If we drive
16 towards Boulder City, get off at the Tropicana exit, go
17 back to the left under the freeway, you will find the
18 house, where these homicides occurred, on the right hand
19 side.

20 If you continue walking distance on
21 the left-hand side, you will see where Mr. Johnson was
22 living. They were right together in the same proximity.
23 They were right together.

24 You will see they knew each other, as
25 Mr. Daskas explained to you, the two individuals living

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1 in the homes. Some knew each other, some didn't. There
2 are similarities.

3 They were involved in a drug culture,
4 not just Mr. Johnson, but clearly the people who lived
5 where the homicides occurred, they were involved in a
6 drug culture, as well. There was another common theme,
7 the distance between the two houses, Mr. Johnson and the
8 victims, they are all very, very young.

9 Now, why are you here? It's already
10 been proven. It's already been accepted. Mr. Johnson
11 has been held accountable. Society is already safe. Why
12 are you here? You are here during this first phase to
13 simply do a weighing process. That's all your job is for
14 the next few days, that is, to weigh.

15 As Mr. Daskas explained to you, they
16 have one aggravator. I will tell you right now, folks,
17 it exists. I will not waste your time. That aggravation
18 of four First Degree Murders exists. Now, my job is to
19 provide you mitigation. Because, as Mr. Daskas explained
20 to you, you will be asked to weigh the mitigation and
21 aggravation.

22 If you find that the mitigation
23 outweighs the aggravation, the only options available to
24 you in the second phase are the life sentences: Life
25 without the possibility of the parole; life with the

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1 possibility of parole after 40 years, and 100 years with
2 the possibility of parole after 40 years. That's why
3 you are here. It's a weighing process. It's a two-step
4 process. This is the first step.

5 Now, the easiest way for me to
6 explain it to you is to capsulize what your requirement
7 is. There are three different areas. I don't want it to
8 get blurred in, mixed together. I will show you one step
9 at a time what your job is over the next few days.

10 Room one is a place where you
11 determine whether an aggravating circumstance has been
12 proven. That's room one. That's what you have the
13 option of doing over the next day and a half, however
14 long it takes the State to present the facts and
15 circumstances as to the homicides.

16 Again, I will not waste your time.
17 They will prove them. They have proven them. Another
18 jury found Mr. Johnson guilty of First Degree Murder.
19 They have already proven that aggravation exists.

20 Step two is a list of the mitigating
21 circumstances. I think I spoke with many of you during
22 voir dire about mitigating circumstances. Another way of
23 explaining it is, what would happen if you were in a room
24 with a loved one, you did something you wouldn't expect
25 you normally would do, yell at a loved one, be violent,

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1 maybe physical. Stranger walked into the room at the
2 exact same time. That person you didn't know saw you do
3 the act you are not proud of.

4 Before they formed an opinion about
5 you, before they made a decision, isn't there other
6 things you would want the person to know about you?
7 That's a little bit what mitigation is, knowing a little
8 more about Mr. Johnson other than what happened on August
9 14, 1998.

10 Because you are not here to find
11 guilt or innocence. You are not here to hold him
12 accountable. You are not here to protect society. Those
13 things have been done.

14 Why you are here is to determine the
15 future of Mr. Johnson, his future, the rest of his life.
16 When you have something so important, so serious, so
17 heavily weighted, it's important you evaluate all the
18 facts and circumstances.

19 That's what you told me, when I asked
20 you what information you want, you said you not only want
21 the facts and circumstances of what happened out there,
22 but about Mr. Johnson, as well.

23 You will get these mitigators, these
24 facts and circumstances about Mr. Johnson. That's what
25 we will do when we have the opportunity to offer you the

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1 information.

2 I want to take a minute and talk
3 about what a mitigating circumstance is. What I can do
4 is I can contrast it with an aggravator. Their
5 aggravator is more than one homicide. They have to have
6 all of you agree upon what an aggravator is. Twelve of
7 you must agree together that, yes, the State proved it
8 beyond a reasonable doubt that it exists.

9 It's 180 degrees different when it
10 comes to a mitigator. A mitigator, when you determine
11 the future of a person, what the rest of their life will
12 entail, the Court says it's so important, we allow each
13 person individualized treatment, individualized
14 understanding and individualized plans, as to what the
15 person will do the rest of their life.

16 What is mitigation, it's a reason to
17 choose a life sentence. What may be appropriate for one
18 person, is not a mitigator for another person. That's
19 the way the system is set up. One person's reason to
20 choose life is okay. Nobody else has to agree with it.
21 It's individualized and personalized, each of you can or
22 cannot agree with it, because Mr. Johnson is an
23 individual, as well.

24 You will have an opportunity to
25 evaluate all the facts and circumstances, as individuals,

THE STATE OF NEVADA v. JOHNSON

1 and what is appropriate for you to choose, life.

2 What I have outlined here is a
3 majority is not required. You don't even have to have
4 two people to agree on mitigation. One person is enough
5 to determine what is a reason for mitigation. That is
6 mitigation.

7 If one person holds it and believes
8 it, it's enough. That is what you will do in the second
9 room. Now, our legislature has suggested some mitigating
10 circumstances. I have two up here, two suggestions for
11 mitigating circumstances from our legislature is a person
12 acted under extreme mental or emotional distress or their
13 youth.

14 Those are things you can weigh and
15 evaluate as you hear information over the next few days.
16 I will suggest there is other mitigating circumstances,
17 reasons to choose life, other reasons near and dear to
18 our heart.

19 First thing is family. You will
20 learn that Mr. Johnson has value to other people, that he
21 does have a family that love and care about him, that he
22 is important to other people, that he is loved and has
23 value to them. You will learn about his upbringing.

24 This is his sister Jonisha. You will
25 hear from her, when it's important. You will hear about

THE STATE OF NEVADA v. JOHNSON

1 the relationship he has with the sister, some of the
2 trying times they went through together.

3 You will learn how much value Mr.
4 Johnson has for other people, that he is loved and
5 accepted for who he is. You will hear about the tough
6 times these two siblings went through together.

7 This is a letter Jonisha sent to our
8 office.

9 Growing up for me and John was very
10 hard. At the age of four, John was five, mom and dad
11 left us in a garage for an hour. Within that hour,
12 someone called the police. While the police was placing
13 us in the patrol car, my parents arrived.

14 The police did not return us to our
15 parents. So they placed us in a foster home. One day my
16 grandmother finally came and got us. We found out my mom
17 and dad were drug addicts and were not fit to keep us.
18 They said they would stop for our sake. It never
19 happened.

20 You will hear, also, he has kids,
21 children of his own. Alan was here in the courtroom a
22 minute ago. He is loved and has value to his own
23 children. They communicate with him. There is a reason
24 for them to choose life.

25 They love him. They value him, and

THE STATE OF NEVADA v. JOHNSON

1 they want the relationship they have with him to
2 continue, though, it is only through the mail, though it
3 is through hope and desire and an occasional opportunity
4 to speak face to face.

5 You will hear these people, members
6 of our society love, value, cherish Donte Johnson. You
7 will hear about the letter, the correspondence taking
8 place between my client and his son, that he is loved,
9 that he is loved.

10 There is emotion and love between the
11 two of them. You will have the opportunity to hear lots
12 of mitigating circumstances. Some may ring a bell for
13 you; some may not. That's the way it's supposed to be.

14 It's when you get to the third room
15 you do a weighing process. That's in room three.

16 Room one, again, is just choose an
17 aggravator. To save your time, I will tell you it
18 exists.

19 Room two, you list the mitigators
20 after you hear the information.

21 Then room three, you talk and weigh
22 between the aggravator, and the mitigators, all the
23 circumstances, you really shouldn't be talking about the
24 death penalty at this portion, because all this first
25 phase is, is a narrowing, to determine if that's an

THE STATE OF NEVADA v. JOHNSON

1 option to take place. Later, during this phase you will
2 be focusing on mitigation, a determination of weight,
3 comparable value of the issues presented to you.

4 Now, we will step back for a second
5 and talk a little bit about some of the family
6 information you will hear, as well. Not only is Mr.
7 Johnson loved by other family members of his family, not
8 only does he have value to them, you will hear about the
9 upbringing of Donte Johnson.

10 There is no way I will tell you now
11 or suggest that, I will suggest there was an excuse or
12 justification or somehow lessened culpability, somehow
13 takes away accountability, somehow takes away from
14 protection of the society.

15 I just want to show you a little bit
16 about where Donte Johnson came from. He was product of a
17 broken home, never had a father, there was tremendous
18 abuse. What's devastating is the drug addiction.

19 There were 12 of them taken in by the
20 grandmother, because the whole generation of parents were
21 unfit to raise the kids. Some aunts died from drug
22 overdose. I am not justifying it. I am giving you an
23 opportunity to visit the footsteps of Donte Johnson when
24 he was growing up.

25 He had a grandmother, who tried to

THE STATE OF NEVADA v. JOHNSON

1 take care of him. If she had longer arms, maybe she
2 could have done more, but she had so many children, 12,
3 13, 14 at times, taking care of them.

4 As long as her arms were, her arms
5 were not long enough. She was not able to get hold of
6 Donte Johnson. He slipped through the cracks of the
7 family. You will hear from his sisters, cousins, other
8 family members.

9 It's not for excuse or justification.
10 It's an opportunity for you to visit the footsteps of Mr.
11 Johnson and determine if there is something there
12 important to you.

13 Let's talk about room three. It's
14 more than just family upbringing. Mr. Daskas said you
15 will have the opportunity to look at the four killings
16 and compare those four people's death to his bad
17 childhood and decide right then whether you are going to
18 the second phase or not.

19 It's so much more than that. It's so
20 much more than that. This phase is individualized for
21 each, as an individual, not as a group, as individuals,
22 what is important to you.

23 What expectations do we have in
24 society? You know what, just as his family upbringing is
25 important, so is mercy. I say it is just as important as

THE STATE OF NEVADA v. JOHNSON

1 his family upbringing, is the capacity my client has to
2 affect other people in society, children, siblings.

3 That's information you deserve to have.

4 It is not black and white. It is not
5 simply comparing four dead people, as terrible, as
6 horrible this is alleged abuse. Excuse me. That's not
7 what I am asking of you. I am asking you to look at the
8 full picture in your heart and decide what's important to
9 you, as an individual, not as a jury.

10 Each and every one of you, as an
11 individual, have a right to choose life. That is your
12 right, you as an individual, not as a jury, as an
13 individual, you have a right to choose life verdicts in
14 prison. That is your right. As an individual you have a
15 right --

16 MR. DASKAS: I apologize. Whether he is
17 eligible for life, this is improper argument. They are
18 not selecting punishment at this point.

19 THE COURT: Approach the bench, both of
20 you.

21 (DISCUSSION AT BENCH.)

22 MR. WHIPPLE: Mr. Daskas is right.
23 Punishment is phase two, options that are available in
24 the second phase. It's still the same issue in the first
25 phase. You have a right to accept your individualized

THE STATE OF NEVADA v. JOHNSON

1 opinion and mitigation.

2 You have a right to have it accepted
3 when you compare it against aggravation. Each one will
4 differ from one another. You have the right to have your
5 own individualized reasons for leniency or mitigation, to
6 put whatever weight you want to mitigation.

7 You will hear reasons to choose life
8 sentence. You have a right to choose your own reason,
9 individualized. You have a right to give mercy and not
10 to have to explain your personal feelings to other
11 members of the jury.

12 Individualized decision, each one of
13 you will have to make and most importantly you have a
14 right to have your opinion respected by the other members
15 of the jury.

16 Now, the best way to explain this, as
17 you go forward, as we go forward, make that determination
18 what options we have in the second phase, each one of you
19 individually, as a person, can make the determination
20 that death will never be an option.

21 Each one of you, individually, has
22 the right and will be required to weigh aggravation and
23 mitigation. You will determine what the punishment will
24 be, but that definitely doesn't mean you have to make it
25 to the second phase, if just one of you, individually,

THE STATE OF NEVADA v. JOHNSON

1 makes the determination that the mitigation outweighs the
2 aggravation. Each of you has your own individual reasons
3 and weight for that mitigation.

4 The best way I can explain is, it is,
5 before you I go into the second phase, you each carry a
6 key. What happens in the second phase determines what
7 your key is. If your key is you believe mitigation
8 outweighs aggravation, the death penalty will never, ever
9 be an option discussed.

10 If you have a key and believe
11 aggravation outweighs the mitigation, then the death
12 penalty will be an issue, again. It's not unanimous.
13 Each of you, individually, has a right to make the
14 determination that the second step of the process
15 involves only life.

16 I thank you for your time. You will
17 hear lots of information over the next few days. Thank
18 you, very much.

19 THE COURT: We will call a lunch recess.
20 Come back in an hour. Jury is admonished not to converse
21 among yourselves or with anyone else on any subject
22 connected with this trial or to read, watch or listen to
23 any report of or commentary on the trial by any person
24 connected with the case or by any medium of information
25 including without limitation newspapers, television,

THE STATE OF NEVADA v. JOHNSON

1 internet or radio.

2 You are directed you are not to form
3 or express an opinion on this case until it is finally
4 submitted to you by the Court.

5 * * * * *

6 (END OF MORNING PROCEEDINGS 12:20 P.M.)

7
8 ATTEST: FULL, TRUE, AND ACCURATE TRANSCRIPT OF
9 PROCEEDINGS.

10



11

KRIS MOORE, CCR 273

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DISTRICT COURT

4

CLARK COUNTY, NEVADA

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6 STATE OF NEVADA)

7 Plaintiff,)

8 vs.)

9 DONTE JOHNSON,)

10 Defendant.)

11

12

ORDER TO PREPARE TRANSCRIPT

13

14

IT IS HEREBY ORDERED that Kristine Moore

15

_____, CCR 273, prepare a transcript in

16

the above-captioned matter heard

17

on 4-21 A.M., 4-22 P.M., 2005.

18

19

20

21

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.

22

DATED THIS 25 DAY OF April, 2005.

23

24

25

[Signature]
DISTRICT COURT JUDGE

CLARK COUNTY

APR 26 2005

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2 2005 APR 27 P 1:02

3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

Shirley M. Parnagun
CLERK

5
6 STATE OF NEVADA)

7 Plaintiff,)

8 vs.)

9 DONTÉ JOHNSON,)

10 Defendant.)
11 -----)

CASE NO. C153154
DEPT. NO VIII

12 ORDER TO PREPARE TRANSCRIPT

13
14 IT IS HEREBY ORDERED that Kris Moore

15 -----, CCR -----, prepare a transcript in
16 the above-captioned matter heard
17 on 4/25/05 A.M. 4/26/05 AM 2005.

18 FURTHER ORDERED, that said transcript shall
19 be prepared pursuant to Supreme Court Rule 250 and
20 at State's expense with cost and fees assessed
21 according to NRS 3.370.

22 DATED THIS 27 DAY OF April, 2005.

23
24 *Lee G. Stiles*
25 _____
DISTRICT COURT JUDGE

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DISTRICT COURT

CLARK COUNTY, NEVADA 2005 APR 27 A 9:04

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Sonia L. Riley
CLERK

THE STATE OF NEVADA,

PLAINTIFF,

VS.

DONTE JOHNSON,

DEFENDANT.

CASE NO.: C153154

REPORTER'S TRANSCRIPT

OF

TRIAL BY JURY

(VOLUME VI - P.M.)

BEFORE THE HONORABLE JUDGE LEE A. GATES
DISTRICT COURT JUDGE
DEPARTMENT VIII

DATED TUESDAY, APRIL 26, 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

99

SONIA L. RILEY, CCR NO. 727 (702) 455-3610

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COUNTY CLERK

APR 27 2005

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SONIA L. RILEY, CCR NO. 727 (702) 455-3610

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6

1 P R O C E E D I N G S

2 * * * * *

3
4 **THE BAILIFF:** Be seated, come to order.
5 Court is again in session.

6 Counsel, I'm bringing the jury in.
7 (Jury present.)

8 **THE BAILIFF:** Be seated, come to order.

9 **THE COURT:** Proceed.

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

11
12 STATE'S CASE RECAPITULATION (RESUMED)

13
14 CHARLA SEVERS (RESUMED)

15 CROSS-EXAMINATION

16 **BY MS. JACKSON:**

17 "Q Morning, Miss Severs. How
18 are you?

19 "A Fine.

20 "Q The last time you were here,
21 about four months ago, five months
22 ago --

23 "A Yes.

24 "Q -- you were testifying right
25 over there.

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7

1 "A Yes.

2 "Q Sitting in that chair?

3 "A Yes.

4 "Q And the day before you were

5 testifying you were in custody in the

6 Clark County Detention Center,

7 correct?

8 "A Yes.

9 "Q And that custody was there

10 because the district attorneys put you

11 in jail?

12 "A Yes.

13 "Q Okay. And then they wanted

14 to you testify in this case?

15 "A Yes.

16 "Q You gave testimony?

17 "A Yes.

18 "Q In hopes that you'd be

19 released after had you gave that

20 testimony, right.

21 "A Yes.

22 "Q And, as a matter of fact,

23 later that day, less than an hour

24 later, you were out front in the --

25 outside in the -- out by the street,

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8

1 isn't that correct?

2 "A Yes.

3 "Q You were sitting there --
4 one minute you were in prison and the
5 next you were out, right?

6 "A I wasn't out of jail, but I
7 was, yeah, I was --

8 "Q You weren't in handcuffs
9 that day.

10 "A No.

11 "Q After you gave testimony.

12 "A No.

13 "Q You weren't in prison garb
14 that day after you gave testimony.

15 "A No.

16 "Q And it's shortly thereafter
17 you were released?

18 "A Yes.

19 "Q Okay. Who is Jacquinisha
20 (phonetic)?

21 "A It was my daughter, but I
22 lost her.

23 "Q I'm sorry?

24 "A It was my daughter, but I
25 had lost her.

1 "Q Do you have a child now?
2 "A In my stomach.
3 "Q When you say you lost her,
4 what do you mean?
5 "A Like she died. I had a
6 miscarriage.
7 "Q There was a miscarriage?
8 "A Yes.
9 "Q Then there is no
10 Jacquinisha?
11 "A No.
12 "Q Litiva White living in
13 New York with another person?
14 "A No.
15 "Q There's no child that you
16 had?
17 "A No.
18 "Q You wrote a letter saying
19 that you had a child.
20 "A Yeah.
21 "You sent a picture to John
22 White --
23 "A Yeah.
24 "Q .Showing this?
25 "A Yeah.

1 "Q You told him it was his
2 child?
3 "A It was.
4 "Q You showed a picture of a
5 fully-developed baby.
6 "A That lives in New York.
7 "Q That was living in New York?
8 "A Yeah.
9 "Q But, in fact, that was not?
10 "A I take care of the baby, but
11 it's not my baby, no.
12 "Q It was just somebody else's
13 baby that you propped up and took a?
14 "A That I a take care of, yeah.
15 "Q And you took a picture of
16 and you told John White that it was
17 your -- that it was his child?
18 "A Yeah.
19 "Q And you said it was
20 Jacquinisha?
21 "A Yeah.
22 "Q Is the name you gave it?
23 "A Yeah.
24 "Q And, in fact, that was a
25 lie?

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11

1 "A That's her name.
2 "Q But it's not your child?
3 "A No.
4 "Q And that's what you told
5 John White?
6 "A Yeah.
7 "Q See anything wrong with
8 that?
9 "A No.
10 "Q All right. Let's talk about
11 the night that this -- the murders
12 happen. You said that you were at the
13 Everman house?
14 "A Yes.
15 "Q Who was there?
16 "A Todd, Deko, Red, myself and
17 Tiny Bug.
18 "Q Okay. Tiny Bug's Sikia
19 Smith?
20 "A Yeah.
21 "Q You said you saw them leave,
22 that being Todd -- I'm sorry, that
23 being Deko, red and Tiny Bug?
24 "A Yes.
25 "Q The three of 'em?

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12

1 "A Yes.
2 "Q Okay. Todd was there that
3 night?
4 "A Yes.
5 "Q He was in the house?
6 "A Yes.
7 "Q He saw them leave?
8 "A Yes.
9 "Q Okay, so if Todd says only
10 two of them were there and only two of
11 them left, he's mistaken?
12 "A I guess so, yeah, because I
13 seen three of 'em leave.
14 "Q 'Cause you saw three leave?
15 "A Yeah.
16 "Q But he didn't say -- so if
17 he says Sikia Smith or Tiny Bug wasn't
18 there, that was a mistake or maybe he
19 missed it?
20 "A Yes.
21 "Q Okay. When they came back
22 that night later on, who came back?
23 "A Red, Deko and Todd -- I mean
24 Red and Deko and Tiny Bug, all three?
25 "Q And Tiny Bug is Sikia Smith.

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13

1 "A Yes.

2 "Q Do you know Sikia Smith's

3 girlfriend?

4 "A Yeah.

5 "Q What's her name?

6 "A Shawn.

7 "Q LaShawnya?

8 "A Yeah.

9 "Q Okay, LaShawnya Wright?

10 "A I guess that's her last

11 name.

12 "Q Okay, so Sikia Smith came

13 back with them that night?

14 "A Yes, I think so, yeah.

15 "Q And if Todd stated -- was

16 Todd home that night when they came

17 back?

18 "A Yes.

19 "Q Was he awake?

20 "A Yes, when I came in the

21 room.

22 "Q Did he see these people come

23 back in?

24 "A Yeah.

25 "Q Let me ask you this. You

1 saw three people come in that night?"
2 **THE WITNESS:** Am I on line 21?
3 **MR. DASKAS:** Line 21, I believe -- yeah.
4 "A "I didn't see who came in.
5 I didn't see who came in," but when I
6 came in the living room, that's who I
7 leave was in the living room.
8 "Q Who do you believe was in
9 the living room?
10 "A Deko, Red and Tiny Bug.
11 "Q Okay. Sikia Smith?
12 "A Yes.
13 "Q Okay. Was Todd there at
14 that time?
15 "A Yes.
16 "Q Was Todd awake at that time?
17 "A Yes.
18 "Q Was Todd engaging in some
19 kind of conversation or was he
20 standing near them where he could see
21 all three of 'em?
22 "A He was sitting on the couch.
23 "Q And he had a perfect vision
24 of all three of 'em?
25 "A Yes.

1 "Q Now let's talk about this
2 duffel bag.
3 "Did you see inside of that
4 duffel bag on that night prior to
5 Deko, Red and Sikia Smith leaving?
6 "A No.
7 "Q You didn't see what was
8 inside that duffel bag?
9 "A No.
10 "Q And when he came back you
11 didn't see what was inside that duffel
12 bag?
13 "A No.
14 "Q No?
15 "You don't -- you didn't
16 even look the next day, did you?
17 "A No.
18 "Q And you didn't -- so you
19 don't know what was inside there?
20 "A Yeah, I do.
21 "Q You can tell me ever item
22 that was in there as he was walking
23 out the door that night?
24 "A No.
25 "Q 'Cause you didn't see inside

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16

1 of it, am I right?
2 "A Yeah.
3 "Q Okay. When you first moved
4 into the Everman house, when was that?
5 "A August 4th.
6 "Q August 4th.
7 "And who was living there
8 already?
9 "A Todd and Ace.
10 "Q Todd and Ace.
11 "Did You notice -- did you
12 look around the house at all when you
13 first moved in?
14 "A No.
15 "Q The duct tape that you were
16 talking about when you first moved in
17 there, it was there on the coffee
18 table, wasn't it, under the coffee
19 table?
20 "A Not that I remember, no.
21 "Q When do you first remember
22 seeing that?
23 "A When I was sitting in the
24 living room one day and I just looked
25 under the coffee table and the duct

SONIA L. RILEY, CCR NO. 727 (702) 455-3610

17

1 tape was in there.

2 "Q And when was that?

3 "A I don't remember.

4 "Q Prior to August 14th

5 or after August 14th, the murders?

6 "A Before August 14th.

7 "Q So before you saw the duct

8 tape sitting there in the open, in the

9 living room, under the coffee table?

10 "A Yes.

11 "Q Okay. And it wasn't in this

12 duffel bag that we're talking about?

13 "A No.

14 "Q And it was Todd's house?

15 "A Yes.

16 "Q And Todd had lived there

17 for -- before you got there?

18 "A Yes.

19 "Q Was Todd Armstrong smoking

20 crack cocaine during the time that you

21 were there?

22 "A Yes.

23 "Q How many times a week would

24 he smoke cocaine?

25 "A Like four.

1 "Q Four?
2 "A Four Or five times a week.
3 "Q Four or five times?
4 "A Yeah.
5 "Q Almost every day?
6 "A Yeah.
7 "Q How many times per day was
8 he smoking it?
9 "A All day.
10 "Q All day?
11 "A Uh-huh.
12 "Q You're gonna have to help me
13 out. When you say all day, I mean --
14 "A Like --
15 "Q He'd start up in the
16 morning?
17 "A Yes.
18 "Q And keep going at night?
19 "A Yes.
20 "Q Would he stay up all night?
21 "A Yes.
22 "Q All right. Who else was
23 over there smoking crack cocaine?
24 "A B.J. and Ace.
25 "Q B.J. and Ace.

1 "A Yes.
2 "Q Who smoked the most?
3 "A B.J.
4 "Q B.J did it more than anybody
5 else?
6 "A Yeah.
7 "Q And Ace did it quite a bit
8 too?
9 "A Yes.
10 "Q Okay. Where did they get
11 the crack?
12 "A Most of the time they'd get
13 it from Deko.
14 "Q You'd mentioned before that
15 Deko had sold some crack cocaine to
16 other people.
17 "A Yes.
18 "Q And you had mentioned that
19 sometimes when he sold it he put it
20 into a Black and Mild box, is that
21 correct?
22 "A Yes.
23 "Q They showed you Exhibit 103,
24 which has a box, which you said was
25 Deko's?

1 "A Yes.
2 "Q And a Garcia Vega?
3 "A Yes.
4 "Q And a Black and Mild box?
5 "A Yes.
6 "Q Is that the kind of box that
7 he would deposit the crack cocaine in
8 and sell it to -- or hand it to
9 somebody?
10 "A Yes.
11 "Q Okay, so he used that
12 sometime in his transactions?
13 "A Yes.
14 "Q Because it was a way to
15 carry the drugs away?
16 "A Yes.
17 "Q And that was common for him
18 to do that sometimes?
19 "A I only seen him do it once.
20 "Q Okay, how many times did you
21 see him sell cocaine?
22 "A Like two or three times.
23 "Q Two or three times, so,
24 30 percent of the time he'd sell it in
25 the Black and Mild boxes?

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1 "A Yeah.

2 "Q And there's nothing odd

3 about that?

4 "A No.

5 "Q Did you ever speak to

6 LaShawnya Wright regarding this case?

7 "A No.

8 "Q You talked about the -- the

9 District Attorney asked you about a

10 VCR. Did you ever hear that Deko

11 bought the VCR for twenty dollars from

12 Sikia Smith?

13 "A No.

14 "Q You never heard that?

15 "A No.

16 "Q Okay. You mentioned that

17 Deko never talked to Todd or Ace --

18 "A I didn't say --

19 "Q -- about this?

20 "A About this what?

21 "Q About this murder.

22 "A No, I didn't say that.

23 "Q He, in fact, did?

24 "A Yes.

25 "Q When did he talk to them

1 about it?

2 "A I'm not sure. I wasn't
3 around, but they knew about it when --

4 "Q Okay.

5 "A -- they was around me.

6 "Q All right, were you present,
7 personally, physically present, when
8 you heard Deko talking to Todd about
9 these murders?

10 "A No.

11 "Q Okay, were you physically
12 present when you heard -- when Deko --
13 if Deko spoke to Ace about these
14 murders?

15 "A No.

16 "Q So, do you have -- what
17 about for B.J., do you have
18 independent knowledge that Deko spoke
19 to B.J.? Were you there present when
20 Deko spoke to B.J. about these
21 murders?

22 "A No.

23 "Q Okay. So, in fact, you have
24 no knowledge that Deko ever spoke to
25 Ace, Todd or B.J. about these murders,

1 isn't that correct?

2 "A No. I mean yeah, that's

3 correct.

4 "Q So, you weren't -- you never

5 heard this conversation and you never

6 saw it?

7 "A No?

8 "Q Okay. When is the last time

9 you talked to Todd, Armstrong, that

10 is?

11 "A I said hi to him yesterday.

12 "Q Okay, how long did you talk

13 with him?

14 "A Like Five seconds.

15 "Q Okay, before that when's the

16 last time you talked to him?

17 "A Like a couple of days before

18 the -- like a couple of days before

19 the murder.

20 "Q Okay. Then after that did

21 you speak to him at all?

22 "A No.

23 "Q You haven't talked to him

24 since the days after the murders?

25 "A No, no.

1 "Q No. Now in this case under
2 these facts, you've given five
3 separate statements; is that right?
4 "A I believe so.
5 "Q Okay, you wrote two letters,
6 one dated December 2nd and one dated
7 September 27th?
8 "A Yes.
9 "Q All right. And you gave one
10 to Channel 8 News saying I did it,
11 that being you?
12 "A Yeah.
13 "Q And the other one you said
14 Deko didn't do it, somebody else did
15 it?
16 "A Yes.
17 "Q You said Todd was there and
18 Todd wasn't there?
19 "A Yes.
20 "Q You got up in front of the
21 Grand Jury, you promised to tell the
22 truth and you lied?
23 "A Yeah.
24 "Q You got up there and you
25 said, 'Okay, well, Deko did it, but he

1 wasn't wearing black pants.'

2 "A Yes.

3 "Q Okay, now, explain to this

4 me. You said you wanted to help and

5 Mr. Guymon asked you, 'Well, why would

6 you still lie about the pants?' You

7 got up there with the Grand Jury and

8 you gave them a statement implicating

9 Deko as the killer.

10 "A Yes.

11 "Q You knew that was gonna hurt

12 him, am I right?

13 "A Yes.

14 "Q You knew your statement was

15 gonna hurt what -- was gonna hurt him?

16 "A Yes.

17 "Q But you figured now, if I

18 tell a lie about the pants and say he

19 was wearing shorts, that that could

20 save him?

21 "A Yeah.

22 "Q If you said that he

23 committed the murders and said all

24 these things about him, what was your

25 thinking then about, well I'll just

1 tell them that he wasn't wearing the
2 black pants?

3 "A 'Cause I thought maybe if I
4 said that he was there okay that's one
5 thing, but if they don't have no
6 evidence that he was there then he
7 could still get off on it.

8 "Q And you're the one that said
9 he did the shooting, though, in the
10 Grand Jury transcripts?

11 "A I wasn't the only one that
12 said it though.

13 "Q My question is, you said
14 earlier, 'Well, maybe if they think he
15 was there, but didn't do the shooting,
16 he could get off,' but at the Grand
17 Jury testimony you said he was the
18 shooter.

19 "A I said if they didn't have
20 any evidence, if they didn't have any
21 evidence, that he -- then they
22 would -- he would get off.

23 "Q At the Grand Jury testimony
24 you said that he was the shooter, am I
25 correct?

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"A Yes.

"Q Okay. Further, at the Grand Jury testimony, you stated -- you were asked what they were wearing and you said that Deko was wearing shorts; is that correct?

"A Yeah.

"Q You said again -- you were asked, 'Did Deko have any -- did Deko own any black pants,' and your answer to that was at the Grand Jury here --

"A That he didn't own any black pants.

"Q Okay. You committed what we call perjury in front of the Grand Jury? Would you agree with that?

"A Yeah.

"Q You lied under oath. You promised to tell the truth not once, not twice, three times?

"A If that's how many times I went, yeah.

"Q You gave statements you promised to tell the truth, but in the Grand Jury you lied, am I right?

1 "A Yeah.

2 "Q Have you been charged with

3 perjury yet?

4 "A No.

5 "Q Okay. Your motivation to be

6 here today is why?

7 "A Because I want to get this

8 over with.

9 "Q And you don't want to go to

10 prison, isn't that right?

11 "A No. That is what you think

12 my motivation is, but no.

13 "Q Well, when I asked you last

14 time, 'Why is it today your statement

15 is consistent with the facts and

16 you're saying Mr. Johnson did this,

17 but you're changing the facts as to

18 whether or not he's wearing black,'

19 did you ever state to me, 'because I

20 had to tell the truth because I'm

21 going to go to jail'?

22 "A Yeah.

23 "Q You ever say that before?

24 "A Yeah.

25 "Q And that was your motivation

1. to tell the truth; isn't that right?
2. "A At the time I was in jail,
3. yes.
4. "Q And that was your motivation
5. to testify?
6. "A Yes.
7. "Q All right. It was the
8. District Attorney that told you about
9. the black pants, isn't that correct?
10. "A Yes.
11. "Q It was the District
12. Attorneys or the investigators in this
13. case that told you about the blood on
14. the back of the pants, isn't that
15. correct?
16. "A Yes.
17. "Q You had no knowledge of
18. this?
19. "A No.
20. "Q You knew that was an
21. important piece of information.
22. "A Yes.
23. "Q Suddenly, when you're in
24. handcuffs, you're brought back here on
25. a Material Witness Warrant, you're

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1 placed in custody, you're told if you
2 testify you'll be released, you then
3 bring up the fact that yes, in fact,
4 there are black pants isn't that
5 correct?

6 "A I think I brought it up
7 before then.

8 "Q When?

9 "A Like maybe the last -- I
10 don't know.

11 "Q What statement? What of
12 these five statements did you -- did
13 you bring that up in?

14 "A Or maybe I didn't.

15 "Q Maybe it was the last one
16 after you were in handcuffs --

17 "A Okay.

18 "Q Let's talk a little bit
19 about Todd. How long have you known
20 Todd?

21 "A I met him on August 4th.

22 "Q On August 4th?

23 "A Yeah.

24 "Q And how long have you known
25 Ace, did you know Ace?

1 "A I met him in like the end of
2 July.

3 "Q Okay. What's a lick?
4 What's that called -- what's that
5 considered, a lick?

6 "A Like when somebody go rob
7 somebody to get some money.

8 "Q Okay. Did Todd ever want to
9 do a lick?

10 "A Yes.

11 "Q Who did he want to do a lick
12 with?

13 "A Ace.

14 "Q And he was upset -- Todd was
15 upset that Ace hadn't done a lick with
16 him?

17 "A Yeah.

18 "Q Okay. Todd was home the
19 night that Deko, Red and Sikia Smith
20 came back from the Everman house --
21 from the Terra Linda house, right?

22 "A Yes.

23 "Q Todd was upset that there
24 was no cocaine, isn't that right?

25 "A Yeah.

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1 "Q Todd expected money -- or
2 expected cocaine to be brought back?
3 "A Yes.
4 "Q Did he tell you that?
5 "A No, but he was mad because
6 there wasn't.
7 "Q Did you -- you heard him say
8 that though, right?
9 "A Yes.
10 "Q You heard him say, 'Where is
11 my cocaine?'
12 "A Yes.
13 "Q Or something to that effect?
14 "A Yes.
15 "Q So Todd was expecting
16 something to come back on this?
17 "A Yes.
18 "Q Do you know -- do you have
19 any personal knowledge of whether or
20 not Todd took somebody by the Terra
21 Linda house to show 'em where Matt
22 Mowen lived?
23 "A No, I'm not sure about that.
24 "Q Do you know if Todd ever
25 drove that white Ford Tempo that you

1 talked about?

2 "A No.

3 "Q You don't know?

4 "A No, I don't. I don't know.

5 "Q Todd is the one that brought

6 up the fact that there was \$10,000

7 that Matt Mowen had?

8 "A Yes.

9 "Q He's the one that mentions

10 it to everybody?

11 "A Yeah.

12 "Q He's the one that tells it

13 to Ace; am I right?

14 "A I don't know if he told it

15 to Ace.

16 "Q Ace was present when Todd

17 talked about the \$10,000, am I

18 correct?

19 "A Not that I know of. I don't

20 remember seeing Ace.

21 "Q You don't remember seeing it

22 or --

23 "A I don't remember seeing Ace

24 there.

25 "Q What time on the 14th do you

1 say that now Sikia Smith, Red and Deko
2 leave?
3 "A Like around 8:00 o'clock.
4 "Q 8:00 o'clock at night?
5 "A Yeah.
6 "Q What time do they get back?
7 "A Like around 3:00.
8 "Q 3:00 o'clock in the morning?
9 "A Yeah.
10 "Q So if somebody says that
11 they leave later, that's wrong? How
12 do you know it was 8:00 o'clock?
13 "A That's what time I believe
14 it was because I was watching
15 something on TV.
16 "Q What were you watching on
17 TV?
18 "A Martin.
19 "Q I'm sorry?
20 "A Martin, Martin.
21 "Q Martin. Okay.
22 "Did you and Todd ever have
23 any kind of relationship?
24 "A No.
25 "Q Let me ask you, your name is

1 Carla Severs?
2 "A Charla.
3 "Q Charla Severs?
4 "A Yes.
5 "Q Do you also go by the name
6 of Carla Dyess?
7 "A No.
8 "Q You've never used that
9 before?
10 "A No.
11 "Q Carla Sedvers?
12 "A No.
13 "Q Kerline Esmaga?
14 "A Yeah, I used that before.
15 "Q Carmen Hernandez?
16 "A I used that before.
17 "Q You've used that before?
18 Leijai Davis?
19 "A I don't remember.
20 "Q Or Davis Leijai?
21 "A I don't know.
22 "Q How about Kashawna Hives?
23 "A Yes.
24 "Q You've Used that before.
25 Kim Davis?

1 "A I don't remember.
2 "Q How many aliases do you use?
3 "A I might have used like five
4 of 'em. I don't know.
5 "Q Five?
6 "A Yeah.
7 "Q As many as you need?
8 "A In different states --
9 "Q Whatever?
10 "A -- I might use a different
11 name.
12 "Q Whatever you need to need to
13 do to get by?
14 "A Is That a question?
15 "Q Yes. Whatever name you need
16 at the time you use?
17 "A Whatever name I gave them,
18 yes.
19 "Q Okay. You have a possession
20 of a stolen vehicle charge?
21 "A Yes.
22 "Q Do you know how long you
23 could? That's a felony, right?
24 "A I believe so, yes.
25 "Q How long could you serve in

1 prison on that felony, do you know?
2 "A Not as long as murder -- no,
3 I don't.
4 "Q How many years?
5 "A I don't know.
6 "Q Did you ever speak to
7 your -- any attorney regarding that?
8 "A No.
9 "Q Did you ever look up in the
10 law library on how long you could
11 spend in there?
12 "A No.
13 "Q And you know it's a felony?
14 "A Yeah.
15 "Q Okay. And if you testify
16 today and you stay out of trouble,
17 what happens to that felony?
18 "A It wasn't if I testified,
19 it's if I grant my subpoenas and stay
20 out of trouble then it would be
21 dismissed.
22 "Q The subpoena is to come here
23 and testify, right?
24 "A Yes?
25 "Q So in order to follow and

1 grant your subpoena, you got to come
2 to court?

3 "A Yeah, but you're trying to
4 make it sound different.

5 "Q Did you think you were just
6 going to come to court and sit in the
7 back?

8 "A Well, you was trying to make
9 it sound different than what it really
10 is.

11 "Q I'm just trying to find the
12 truth.

13 "A Okay.

14 "Q You're here today because of
15 a subpoena?

16 "A Yeah.

17 "Q You're here testifying
18 because you were subpoenaed to testify
19 in court?

20 "A Yeah.

21 "Q All right. So in order to
22 grant your subpoena or follow your
23 subpoena, once you do that and you
24 stay out of trouble, your felony is
25 dismissed?

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"A Yeah.

"Q And you also were let out of
prison or out of jail on a Material
Witness Warrant, am I right?

"A Yeah.

"Q You were let out because you
testified on behalf of the State, am I
right?

"A I don't know. I was let out
'cause the Judge didn't feel I was an
accomplice, so he let me out.

"Q I'm sorry, I didn't
understand that?

"A I was let out 'cause the
Judge didn't feel I was an accomplice
and that's how I was let out.

"Q He did not think you were an
accomplice?

"A Yes, the Judge didn't think
that.

"Q Isn't it true that he let
you out that because once you
testified the bond can be lifted?

"A No, because when I was
reading my statement, he said -- he

1 said if I do the deposition that
2 doesn't mean I get out. If he thinks,
3 after my deposition, that I'm not an
4 accomplice, then my release will be
5 looked at. He said it at the
6 beginning of the deposition.

7 "Q In the beginning of the
8 deposition?

9 "A Yeah.

10 "Q In the beginning of the
11 deposition, I'm the one that raised
12 the fact that you may have been an
13 accomplice, isn't that correct?

14 "A Yes.

15 "Q But when the District
16 Attorney said that they have no reason
17 to believe that you're an accomplice,
18 the argument's gone, am I right, the
19 argument was gone at that time?

20 "A No, not that I believe. I
21 just know what the Judge said on the
22 paper.

23 "Q Let me ask you this,
24 Miss Severs. If you were to testify
25 today that Donte had nothing to do

1 with it, do you think that that felony
2 would be dismissed?

3 "A No.

4 "Q Okay. You had written a
5 letter previously regarding this case,
6 do you remember that, so you had a
7 couple of letters. In one of those
8 letters you said -- well, strike that.
9 No further questions, your Honor."

10 **MR. DASKAS:** And then there was further
11 redirect by the State, Judge.

12 **THE COURT:** All right.

13
14 REDIRECT EXAMINATION

15 **BY MR. DASKAS:**

16 "Q Let me ask you, what was the
17 deal that was struck on the possession
18 of a stolen vehicle case? What were
19 you to do?

20 "A To stay out of trouble and
21 grant my subpoenas.

22 "Q Okay. If you didn't grant
23 your subpoena, in other words, if you
24 didn't come, what would happen in that
25 case?

1 "A I would be -- have to go
2 to -- come down to District Court and
3 be sentenced for it or whatever.
4 "Q Okay. Face a trial for the
5 possession of a stolen vehicle case,
6 right?
7 "A Yes.
8 "Q Or if you got in trouble
9 what would happen?
10 "A I would have to face a trial
11 for it.
12 "Q Did you get in any trouble
13 since you made that deal?
14 "A No.
15 "Q Did you have a lawyer on
16 that deal?
17 "A No.
18 "Q And how long ago did you
19 make that deal?
20 "A Like maybe four or five
21 months ago.
22 "Q Okay. And did you -- and
23 you honored your subpoena?
24 "A Yeah.
25 "Q So what do you believe is

1 going to happen to that case?
2 "A It's Going to get dismissed.
3 "Q Now if those were the
4 conditions -- was there any other
5 conditions?
6 "A No."
7 **MR. DASKAS:** The next page at line seven.
8 "Q How many conditions were
9 there on the deal that you made?
10 "A Two.
11 "Q Okay. Now you didn't get
12 into any trouble, right, so that
13 condition's met?
14 "A Yes.
15 "Q And you showed up today?
16 "A Yes."
17 **MR. DASKAS:** Page 121 at line six.
18 "Q What did you believe, if you
19 came here today, would happen --
20 "A That I would.
21 "Q -- to your possession of a
22 stolen vehicle case?
23 "A That it would get dismissed.
24 "Q Okay. And did I threaten
25 you in any way about how you were to

1 testify in this case today?

2 "A No.

3 "Q Did I tell you what answers
4 to give?

5 "A No.

6 "Q If you came to court and you
7 said that the Martians did the
8 murder -- what did you believe would
9 happen to your possession of a stolen
10 vehicle case?

11 "A I would have to go to trial
12 on it.

13 "Q Okay. Now let me ask you,
14 has anyone tried to alter or change
15 your testimony in any way?

16 "A No.

17 "Q When is the first time you
18 learned about blood being on those
19 pants?

20 "A On September 1st at the
21 Grand Jury.

22 "Q Was there anything secretive
23 about you learning about that?

24 "A No.

25 "Q Did I pull you aside and

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1 whisper to you, 'By the way, you
2 should know these things'?

3 "A No.

4 "Q Did I tell you any facts
5 about the case?

6 "A No.

7 "Q Who was present when you
8 learned it and how did you learn it?

9 "A About the pants?

10 "Q Yes."

11 **THE WITNESS:** I'm sorry. What line do you
12 want me to start on?

13 **MR. DASKAS:** Page 123 at the very top,
14 line one, answer.

15 "A The Grand Jury and District
16 Attorney.

17 "Q Now moving to the next area,
18 you indicated that if there was no --
19 you used the words if there was no
20 hard evidence maybe he would get off.

21 "A Yes.

22 "Q That was your term?

23 "A Yes.

24 "Q In your mind, what's hard
25 evidence?

1 "A Like blood on some pants
2 that belong to him.

3 "Q What else would be -- I mean
4 is there other things that are hard
5 evidence?

6 "A Like some DNA test or
7 something.

8 "Q Okay. Is there a
9 distinction in -- is there a
10 difference in your mind between hard
11 evidence and what someone says?

12 "A Yeah.

13 "Q And what's the difference in
14 your mind?

15 "A I mean, if they got evidence
16 that will show that you was there,
17 they got blood or something on it,
18 that's like you know you can't -- just
19 because of what somebody says don't
20 mean it, 'cause it would be like my
21 word against his word or whatever.

22 "Q Okay? Now did you ever
23 discuss that belief with Deko?

24 "A About the blood on the
25 pants?

1 "Q Yes.
2 "A Yeah.
3 "Q What did Deko tell you?
4 We'll leave that alone.
5 "Did you ever discuss hard
6 evidence with Deko or the subject of
7 hard evidence with Deko?
8 "A I just told him that they
9 have blood on -- why he didn't tell me
10 about blood on his pants, because they
11 showed me at the Grand Jury.
12 "Q Do you remember what he said
13 about the blood on the pants?
14 "A He said he forgot -- he
15 forgot that it was on the pants.
16 "Q Now they asked you if Todd
17 expected some cocaine out of this deal
18 and you said yes?
19 "A Yeah.
20 "Q One last area, this idea
21 about a child. Jacquinisha was it?
22 "A Uh-huh.
23 "Q All right. When this case
24 first -- when Donte was first
25 arrested, did you think you were

1 pregnant?
2 "A Yeah.
3 "Q Did Donte know that?
4 "A Yeah.
5 "Q And Whose child do you think
6 it was?
7 "A Donte.
8 "Q And who did Donte believe
9 the child was?
10 "A Donte's.
11 "Q And why did Donte believe
12 that?
13 "A Because I was having sex
14 with him.
15 "Q Okay. And do you know --
16 did Donte talk to you about how that
17 made him feel, that you were pregnant?
18 "A No.
19 "Q Okay. Did you and Donte
20 talk about the fact that you were
21 pregnant?
22 "A Not really.
23 "Q Did you want to have Donte's
24 child?
25 "A Yeah.

1 "Q And did you lose that child?
2 "A Yeah.
3 "Q That pregnancy?
4 "A Yeah.
5 "Q From a miscarriage?
6 "A Yeah.
7 "Q Now, if you lost that child,
8 why is it you would have told Donte
9 that Jacquinisha was the baby?
10 "A 'Cause I thought it would
11 make him happy at least.
12 "Q And why did you think it
13 would make him happy?
14 "A Because I just thought it
15 would.
16 "Q Did you want to still make
17 him happy?
18 "A Yeah.
19 "Q Did you want to help him
20 then?
21 "A Help Him how?
22 "Q Well, help him with his case
23 or make him happy?
24 "A No.
25 "Q Miss Severs, you used the

1 word -- or the words that you think
2 Bug was at the house that night when
3 they came back.
4 "A Yeah.
5 "Q Are you sure that Bug was at
6 the house when Deko and Terrell came
7 back?
8 "A I said it's what I remember.
9 Yeah, I think he was there.
10 "Q You said --
11 "A I said from what I remember,
12 I believe he was there.
13 "Q Okay."
14 **MR. DASKAS:** That concluded redirect
15 examination, Judge.
16 **MS. JACKSON:** Recross.
17
18 RECROSS-EXAMINATION
19 **BY MS. JACKSON:**
20 "Q This Jacquinisha, you had a
21 letter that said that she was born
22 May 8th of '99, am I right?
23 "A Yeah.
24 "Q You gave testimony here in
25 December of '99, am I right?

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1 "A I don't know.

2 "Q It was closer to New Years,
3 right?

4 "A Oh, yeah.

5 "Q Okay, it was after
6 May 9th -- May 8th 1999, right?

7 "A Yeah.

8 "Q So really you didn't think
9 that you were pregnant with John
10 White's baby. In the letter you said
11 that the baby was already born.

12 "A And if it was born in May
13 '99 it would -- by December it would
14 have already been born, 'cause May
15 comes before December.

16 "Q Exactly, but then you just
17 told the District Attorney when you
18 were testifying you thought you were
19 pregnant with John's baby.

20 "A When he got locked up and he
21 got locked up in August of '98.

22 "Q This is May 9th of '99?

23 "A And you carry babies for
24 nine months.

25 "Q That's news.

1 "So, in fact, I just want to
2 make sure I understand this, there's
3 no Jacquinisha that was your child
4 that was born on May 8th of '99 and
5 that's just a lie?

6 "A Yeah.

7 "Q All right, you talked about
8 hard evidence, that evidence being,
9 surprisingly, DNA and blood, right?

10 "A Yes.

11 "Q Okay. You didn't bring up
12 any other kind of evidence which you
13 could consider hard evidence?

14 "A No.

15 "Q 'Cause there's no
16 photographs in here.

17 "You had said earlier that
18 other people had testified at the
19 Grand Jury that John White had
20 committed the murders.

21 "A Yeah.

22 "Q Well, you done consider
23 numerous other people saying that hard
24 evidence?

25 "A No.

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"Q No.

"So then if you just threw the District Attorney's office and the police awful little by talking -- saying yes, he committed the murders, but he's wearing shorts and that way you can't find the blood, it's all gonna work out in the end?

"A I don't understand what you're trying to say.

"Q Well, I'm trying to figure out -- I still don't understand why is it that you could say that Deko did the killing but if I tell 'em they don't have the blood -- or the pants it's gonna to help him out. I'm having trouble following that.

"A I mean, I don't see how, because if I said he did it, okay, that's one thing, but if have blood on the pants and I say they're not his pants, then how would they figure out it was his pants and he was there? That's what I'm trying to say.

"Q But you also said that other

1 people testified that Deko did it that
2 day at the Grand Jury?

3 "A Yeah, crackheads.

4 "Q Crackheads.

5 "And you can't trust
6 crackheads?

7 "A No.

8 "Q Ace is a crackhead?

9 "A Yeah.

10 "Q As a matter of fact, he
11 stole some crack cocaine from your
12 purse at one time, isn't that right?

13 "A Yeah.

14 "Q Now you mentioned -- the
15 District Attorney asked you on
16 redirect about washing the pants.
17 When were the pants, if you know,
18 first discovered by the police, what
19 date? Do you know?

20 "A The 17th -- the 18th.

21 "Q The 18th of August?

22 "A Yeah.

23 "Q And that was about four,
24 five days after the murders?

25 "A Yeah.

1 "Q If Deko would have told you,
2 'There's blood on there, you need to
3 wash the pants,' the pants would have
4 been washed?

5 "A Yeah.

6 "Q But he forgot?

7 "A Yeah, that's what he said.

8 "Q How hard would it have been
9 for you to wash those pants?

10 "A It would have been real
11 simple.

12 "Q If Deko wear those pants
13 after the 14th of August?

14 "A No.

15 "Q No?

16 "Did you ever have sexual
17 relationships with him while he was
18 wearing those pants?

19 "A I only remember -- while he
20 was wearing those pants, I don't
21 remember.

22 "Q I don't know if it was
23 objected to or not, the District
24 Attorney asked you that if Martians --
25 you'd have said the Martians did it

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1 there would have been a problem. If
2 you would have testified any other way
3 than you testified back in December of
4 '99, do you think your deal of having
5 the case dismissed and being released
6 from prison would have been honored?

7 "A No.

8 "Q No further questions, your
9 Honor."

10
11 FURTHER REDIRECT EXAMINATION

12 **BY MR. DASKAS:**

13 "Q Why is it that you're
14 testifying the way that you are today.

15 "A Because I want to get it
16 over with. I don't know why the heck
17 he's putting everybody through this.
18 We should just get it over with.

19 "Q Is the truth important to
20 you today?

21 "A Yeah.

22 "Q Why?

23 "A Because it needs to be over
24 with and done."

25 **MR. DASKAS:** Judge, that concluded the

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1 examination of Charla Severs.

2 **THE COURT:** All right. Thank you.

3 Call your next witness, State.

4 **MR. STANTON:** Dr. Berch Henry.

5 **THE BAILIFF:** Remain standing and face the
6 clerk.

7 (Oath administered.)

8 **THE WITNESS:** I do.

9 **THE CLERK:** Please be seated. When you're
10 seated, state your name and spell your name for the
11 record.

12 **THE WITNESS:** My first name is Berch,
13 B-E-R-C-H, last name Henry, H-E-N-R-Y.

14
15 DIRECT EXAMINATION

16 **BY MR. STANTON:**

17 Q Dr. Henry, how are you employed?

18 A I'm currently the DNA laboratory manager
19 for the Las Vegas Metropolitan Police Department
20 forensic lab.

21 Q Do you have any specialized training and
22 experience to hold that position?

23 A Yes. I have a Ph.D. in what's termed
24 molecular biology. In other words, I spent quite a
25 few years in academic studying DNA and some 15 years

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1 in forensic DNA experience after that.

2 Q Approximately how many cases have you been
3 involved in either as the primary analyst or
4 biologist or in an assisting capacity dealing with
5 DNA analysis and comparison?

6 A Certainly hundreds.

7 Q And relative to this case, State vs. Donte
8 Johnson, are you familiar with an individual by the
9 name of Thomas Wahl?

10 A Yes, I am.

11 Q Who is Thomas Wahl?

12 A Thomas Wahl is my most experienced DNA
13 analyst. I've known him for the last six-and-a-half
14 years in my capacity as DNA lab manager at Metro.

15 Q Have you reviewed his testing of DNA in
16 this case?

17 A Yes, I have.

18 Q Are you familiar, pursuant to your
19 testimony today, with what Tom Wahl did in this case
20 in the underlying DNA results in this case?

21 A I believe so, yes.

22 Q Could you, Dr. Henry, explain in an
23 overall view what DNA is, and how does it come to
24 you in a forensic capacity? What do you do with it
25 and what do you look for as far as DNA types?

1 A Certainly.

2 DNA really does one thing; it contains
3 information. It's what makes us what we are. There
4 are about 25- to 30,000 packets of information that
5 make us humans, same thing for cats, but they don't
6 have as many -- dogs, trees -- pretty much all the
7 way down to viruses. You get your DNA, as we all
8 know, when an egg and a sperm are fertilized or
9 fertilized egg. Half comes from mother through the
10 egg, half comes through sperm through the father, so
11 DNA can be used to track evidence. It can also be
12 used in those cases where we need to find out
13 parentage of a particular person or item of
14 evidence.

15 What normally happens to us, we receive
16 evidence -- it could be sexual, assault, it could be
17 a homicide or any one of a number of things, and the
18 evidence that we look for is biological material.
19 This could be blood, this could be semen, it could
20 be tissue -- any number of things -- even bones.
21 What we then do is take that, isolate the DNA, and
22 then we compare that to a known standard. By a
23 "known standard," I mean a DNA sample that we know
24 comes from a particular person. That's the control
25 sample, and DNA is like most forensics, we compare

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1 the DNA pattern from the evidence from the DNA from
2 a known person, they will either match or not match.
3 If they don't match, then that person couldn't have
4 left that material. If they do match, we'll put a
5 statistic on that which allows us to make a
6 statement. What was the likelihood of that DNA
7 coming from a particular person?

8 The parts of DNA you look at are DNA that
9 we all have, but those DNAs differ among the human
10 population. What you look at are series of DNA
11 markers. These are either going to be given number
12 names or letter names, so you simply go through and
13 compare these. If all these match, that DNA
14 originated from a particular person. If they did
15 not match, that person did not leave that DNA
16 behind.

17 Q Dr. Henry, I want to go to the general
18 description of the types of DNA testing that were
19 done or known to be available in Clark County
20 through the crime lab back in August of 1998.

21 At that time, were there two general types
22 of DNA testing that was available in Clark County,
23 and then, secondarily, throughout the United States?

24 A That's correct.

25 Q And could you explain the two types of DNA

1 testing?

2 A Sure. The original part, original test
3 which was actually the second type of DNA test that
4 was available to forensics was what's called a "dot
5 line." Really what it was is a strip of paper that,
6 under certain conditions, laboratory conditions --
7 we went through the entire process, you would get a
8 series of blue dots. These blue dots in this case
9 were letters. You simply compare the pattern or the
10 letters from DNA from evidence to the letters of
11 pattern from a person, and again, they would either
12 match or not match.

13 The second type is what is termed "STRs"
14 which is the current method we've been using for a
15 number of years now. This is the primary method
16 that's used throughout the United States, in fact,
17 throughout the world. Again, it's a series of DNA
18 markers which differ in the population. The only,
19 pretty much, difference in this case is these are
20 numbers as opposed to letters, and again, you go
21 through and compare these. If the numbers match,
22 you could have left the DNA. If they don't match,
23 the person didn't leave the DNA.

24 Q Relative to the match, what you've
25 described is this series of numbers. Is there also

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1 a statistical database that you, as biologists --
2 molecular biologists use to determine whether or not
3 there's a genetic match?

4 A That's correct. The database is simply
5 bean counting. It's -- you take a number of people
6 and run exactly the techniques we use on evidence,
7 and we put people in baskets. We look at how rare
8 and how common each particular number is. What you
9 can do -- all of these markers happen to be in
10 different locations on the DNA which allows you to
11 multiply the numbers, so if you say one of these
12 markers is found in about ten percent of the
13 population, a second marker is found in 10 percent
14 of the population, you can multiply those together;
15 so, ten percent times ten percent is actually
16 one percent; so, of those two markers, you've
17 actually thrown out 99 percent of the population.
18 What we're doing is starting with everybody, and our
19 ultimate goal is to get down to one person which
20 would match the evidence.

21 Q And that statistical database genetically
22 now is across ethnic lines and genetic lines as
23 well, correct?

24 A That's correct.

25 Q And to be able to make a match?

1 A Yes, that's correct.

2 Q Over your right shoulder, Dr. Henry, is a
3 series of blow-ups there, and I would ask you to go
4 to the first one that's facing you, and that should
5 be Exhibit 203.

6 A Do I have to stand or should I just hold
7 this?

8 Q Are you familiar with what's contained on
9 Exhibit 203?

10 A Can everybody see this that needs to see
11 this? I'm sorry, your Honor.

12 THE COURT: Can you guys see it?

13 MR. WHIPPLE: Yes, your Honor.

14 MS. JACKSON: Yes.

15 BY MR. STANTON:

16 Q Are you familiar with the information
17 contained in Exhibit 203?

18 A Yes, I am.

19 Q Dr. Henry, beginning with the column
20 furthest to your left that referenced as "locus,"
21 could you please explain to this jury what is
22 depicted in this column?

23 A Certainly. "Locus" certainly means
24 "location." What you're going to see is a series of
25 these which are the STRs. They're going to be

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1 followed by a series of numbers except for one,
2 which I'll explain. These are the older methods
3 which I talked about, the Blue Dot. One of these
4 actually was an STR method that was done by a
5 different method, so it always has numbers, but what
6 I want to point out is you're going to see letters
7 or numbers. What you simply have to do is look
8 through here (indicating) and see if they match or
9 don't match. In this case, however, these are
10 controlled stains. In other words, these were taken
11 on autopsy, blood or buccal swabs from known
12 individuals, and as I understand it, these are the
13 seven people primarily involved in this particular
14 case. You see the names up here.

15 Q In the first -- when you said "known" or
16 "reference samples," there's been previous testimony
17 that, in this case, the police obtained the known
18 DNA samples for the first four or the second, third,
19 fourth and fifth columns of being the victims in
20 this case -- from them at autopsy; is that your
21 understanding as well?

22 A That's my understanding, yes.

23 Q And that blood taken from the victims at
24 autopsy would be a fluid that reference samples of
25 genetic material could be obtained?

1 A That's correct. These are chain of
2 custody. We know exactly where they came from and
3 whom they came from.

4 Q Relative to the final three columns on the
5 far right of Exhibit 203, that is known reference
6 samples from the three defendants in this case; is
7 that correct?

8 A That's correct.

9 Q And you said -- once again, you used the
10 term for what type of swab they --

11 A Eventually, I think they were using
12 actually blood stains. There's another type that
13 you can use, which certainly is valid, which are
14 called "buccal swab." That's a swab with basically
15 a Q-Tip which is taken on the big, fat inside part
16 of the cheek. There are a lot of healthy cells, and
17 they have a lot of DNA, and that's what we use now,
18 primarily.

19 Q This is the reference chart of all the
20 significant individuals in this case?

21 A Correct.

22 Q Thank you, Dr. Henry.

23 If you could take the next exhibit closest
24 to you which should be 204.

25 A Is this the correct one?

1 Q Actually, that's 205.

2 A There we are.

3 Q Dr. Henry, once again, as far as the locus
4 portion of the left-hand column, that is the same
5 criteria or items that you're looking for as far as
6 the location of genetic markers; is that correct?

7 A That's correct. They're in the same order
8 as on the other chart.

9 Q On the next column to your right on the
10 right of that exhibit is something labeled "Donte
11 Johnson."

12 Once again, that's the reference sample of
13 the defendant in this case?

14 A That's correct.

15 Q And the next is a cigarette butt that was
16 retrieved pursuant to earlier testimony at the Terra
17 Linda home.

18 Could you explain what the results in
19 Column No. 3 mean as it relates to identifying who
20 the donor of that genetic material was?

21 A Okay. What we normally do again is
22 compare, so DNA is isolated from a reference
23 standard, in this case, Mr. Johnson. We run the
24 test that we do, either the old type Blue Dot test
25 or STR test. We generate a series of numbers, as

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1 you can see. Then what happens is at a separate
2 time, we would isolate DNA from the evidence, in
3 this case, a cigarette butt. Cigarette butts --
4 when people smoke, as I mentioned the buccal swab
5 region, there's a lot of nice, healthy cells in
6 there. The same thing is true when someone smokes a
7 cigarette. Your saliva contains cells sloughed off
8 on the inside of the mouth, so those cells are
9 deposited on the cigarette filter. They can be
10 isolated in the cells, and the DNA is isolated from
11 those, and we can compare. That gives us an
12 indication that there's a DNA pattern on who had the
13 cigarette butt in their mouth which may be more than
14 one person. Some people share cigarettes.

15 What you see in this case is this
16 particular locus or location which we all have is a
17 16, 17. If you go to the cigarette butts, you see
18 the same location, 16, 17. What this means is this
19 particular individual can have that pattern at that
20 particular locus or that particular location. If
21 you simply follow through here in all of these
22 locations, you can see that these numbers or letters
23 match. Each situation we have, we put a number on
24 that. I gave you an example of ten percent times
25 ten percent. We simply continue to multiply

1 numbers, if they match, until you get a statistic.
2 In this case, the statistic we use is high enough
3 for us to make an identity statement, that is, that
4 this DNA originated from this individual with a
5 reasonable degree of scientific certainty. The
6 single exception to that is what is called a
7 "monozygotic single egg" -- in other words, when the
8 egg is fertilized, for some reason in certain cases,
9 we can separate them in two or more individuals.
10 These are identical siblings. As far as we know,
11 they have the same DNA. Regular twins, brothers, et
12 cetera only have about 50 percent of their DNA, so
13 in this case, we go all the way down, we put it on
14 the list, and the number we reach is an identical
15 number.

16 Q When you're talking about the numbers
17 multiplying, there's, you say, from a reasonable
18 degree of scientific certainty, that is a genetic
19 match to the exclusion of all others known in the
20 population save and except for the one example that
21 you gave?

22 A That's correct.

23 Q And the final column, "sperm on black
24 jeans," is the results the same in that case?

25 A That's correct.

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IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

DONTE JOHNSON,

S.C. CASE NO. 65168

Appellant,

Electronically Filed
Jan 09 2015 02:27 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

vs.

THE STATE OF NEVADA,

Respondent.

APPEAL FROM DENIAL OF PETITION FOR WRIT OF HABEAS CORPUS
(POST-CONVICTION)
EIGHTH JUDICIAL DISTRICT COURT
THE HONORABLE JUDGE ELISSA CADISH, PRESIDING

~~~~~  
APPELLANT'S APPENDIX TO THE OPENING BRIEF  
VOLUME XXIV  
~~~~~

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IN THE SUPREME COURT OF NEVADA

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vs.

THE STATE OF NEVADA

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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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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on the 9th day of January, 2015. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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