

THE STATE OF NEVADA v. JOHNSON

DISTRICT COURT  
CLARK COUNTY, NEVADA

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2005 APR 29 P 1:49

*[Signature]*  
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THE STATE OF NEVADA,

Plaintiff,

-VS-

DONTE JOHNSON,

Defendant.

Case No. C153154

Dept No. VIII

Docket H

VOLUME VIII-C

PENALTY PHASE

BEFORE THE HONORABLE LEE A. GATES

THURSDAY, APRIL 28, 2005, 2:23 P.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

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## THE STATE OF NEVADA v. JOHNSON

## I N D E X

## WITNESS

## VOIR

FOR THE DEFENSE: DIRECT CROSS REDIRECT RECROSS DIRE

JIMMY GRAYSON	39	51	55	58	56
(LAPD)			57	59	
			58		

SANDRA GATLIN	59	/	/	/	/
(ROBBERY VICTIM)					

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1 LAS VEGAS, NEVADA, THURSDAY, APRIL 28, 2005, 2:23 P.M.

2 \* \* \* \* \*

3 THE COURT: State of Nevada versus Donte  
4 Johnson. Record reflect presence of the Defendant,  
5 parties, and attorneys. Court has been informed that the  
6 jury has a verdict. Let me tell you before we get  
7 started, I don't want no demonstrations. Otherwise,  
8 somebody is going to jail. Take it out outside. Come on  
9 in.

10 All right. Let the record reflect  
11 the members of the jury. Including the alternates who  
12 did not deliberate.

13 (TRANSCRIPTION OF VERDICTS IN  
14 SEPARATE VOLUME, VOLUME VIII-B)

15 THE COURT: All right. We will enter the  
16 Verdict. Ready to proceed?

17 THE COURT: Approach the bench.

18 (DISCUSSION AT BENCH.)

19 MR. DASKAS: May I proceed, your Honor?

20 THE COURT: Yes.

21 MR. DASKAS: Thank you. August 14, 1998,  
22 was not just one bad night for Donte Johnson. In fact,  
23 August 14, was not the first time that Donte Johnson held  
24 a gun to somebody's head, squeezed the trigger and  
25 committed homicide. We will talk more about that later.

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1 To understand Donte Johnson, you have  
2 to go back to 1992, when he was 14 years old. That's  
3 when his criminal conduct began. At the age of 14, he  
4 committed his first armed robbery. He was placed in a  
5 camp in hopes of rehabilitating Donte Johnson. He was in  
6 the camp for seven months. He performed fairly well in  
7 the camp.

8 He was released back into the  
9 community. Fourteen years old. He defied his  
10 grandparents, violated his conditions of probation.

11 In fact, you will learn in January  
12 1993, he was found in possession of a handgun on school  
13 property.

14 In April 1993, he was arrested. This  
15 time he was charged with stealing a vehicle. Taking a  
16 vehicle without the owner's consent is the actual name of  
17 the charge he faced.

18 Eventually, in June of 1993, some 12  
19 years ago, a 16 year old Donte Johnson committed a rather  
20 sophisticated crime. You will hear about it. Donte  
21 Johnson and three of his partners, armed themselves with  
22 guns, rented a Ryder van and they all had their  
23 assignments, as they drove to a bank in Marina Del Ray in  
24 Southern California.

25 Two of the four armed themselves with

1 shotguns. Two of the others were to be the money men.  
2 Donte Johnson was one of the money men. In broad  
3 daylight, about 1:30 in the afternoon, Donte Johnson and  
4 his partners -- it was not Sikia Smith and Terrell  
5 Young -- entered the Sinfed Bank, in broad daylight.

6 Innocent people doing banking  
7 business. Number of employees working. They do a  
8 take-over armed bank robbery. They strategically place  
9 themselves in the lobby of the bank, announce, this is a  
10 take-over; this is a robbery; get down on the ground.

11 The innocent civilians were forced at  
12 gunpoint down on the ground, as Donte Johnson and his  
13 partners do an armed take-over robbery. We will  
14 introduce evidence of the robbery and offer witnesses.

15 You will see photographs of  
16 surveillance of Donte Johnson at 16 years old, jumping  
17 over a bank teller, to stuff his pockets with money.  
18 About 1200 bucks ends up in the Defendant's pocket.

19 One of his partners took a shotgun, a  
20 double barreled shotgun, and pointed it at the face of  
21 one of the innocent tellers.

22 All four of the criminals flee the  
23 bank and jump into the van, the rented Ryder van, and it  
24 is the Defendant, Donte Johnson, who drives that rental  
25 car, as he drives that rented Ryder van onto the Santa

1 Monica Freeway in an effort to evade police. There are  
2 patrol cars in pursuit. Helicopters are in pursuit.

3 Eventually, that Ryder van takes an  
4 off-ramp. Donte Johnson stops the van, and two of his  
5 partners are able to flee and get away. Donte Johnson  
6 was not so lucky. He was apprehended that day, in his  
7 pocket, the proceeds from the take-over armed bank  
8 robbery in broad daylight. He was the driver, as well,  
9 as I mentioned.

10 At 16 years of age, he is  
11 incarcerated in the California Youth Authority. He was  
12 actually given a 4 year confinement period, if you will.  
13 He served about 26 months from June '93 to August '95.

14 You will learn in the California  
15 Youth Authority confinement camps, offenders are offered  
16 programs, because the goal for juvenile offenders is  
17 rehabilitation. They had a goal, again, to rehabilitate,  
18 once again, Donte Johnson.

19 He is offered group therapy classes,  
20 anger management classes, courses to complete high  
21 school, vocational training, anything they can do to  
22 modify his behavior, which is clearly escalating.

23 Eventually, after 26 months he is  
24 released on parole, with special conditions: No weapons,  
25 attend school, get a job, or attend some vocational

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1 training.

2 As you might imagine, Donte Johnson  
3 doesn't comply with the conditions. By April '96 he had  
4 stopped checking in with his probation officer, and he  
5 was considered what you will, a parole at large, a  
6 fugitive at large, if you will, in California.

7 Donte Johnson, formally, John Lee  
8 White, fled from California to Las Vegas. Now he was our  
9 problem. That's when and why he changed his name to  
10 Donte Johnson. Because there was an arrest warrant for  
11 John Lee White, but he didn't come here to modify his  
12 behavior. In fact, his criminal conduct continued and,  
13 in fact, it escalated.

14 May 4th, 1998, now 21 year old Donte  
15 Johnson, no longer a juvenile, now a man, 21 years of  
16 age, is in Downtown Las Vegas, selling crack cocaine.

17 In May '98 one, of his customers  
18 approaches him. His street name is Profit. Profit  
19 approaches the Defendant about 3:00 in the morning. He  
20 wants to buy a piece of crack cocaine from the Defendant.  
21 A confrontation ensues.

22 For whatever reason, Donte Johnson  
23 doesn't want to sell Profit any crack cocaine. He tells  
24 him, I am not selling you any crack cocaine. As a matter  
25 of fact, I am going to kill you before the night is over,

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1 and the Defendant begins to produce a gun.

2 Profit is somewhat savvy, punches  
3 Defendant in the face, sees his opportunity to escape,  
4 and off he goes, walking down Fremont Street. As Derrick  
5 Johnson walks down Fremont Street. He sees a Cadillac  
6 approaching, early morning hours.

7 The Cadillac pulls up to the sidewalk  
8 and stops, and out steps Donte Johnson. Defendant steps  
9 out of the car, and Derrick Simpson notices the Defendant  
10 is dragging his right arm at his side and raises his arm  
11 and produces a semi-automatic handgun, a .380 or perhaps  
12 .45, according to Derrick Simpson.

13 Donte Johnson aims the gun three  
14 inches or so from Derrick Simpson's face. It is probably  
15 no surprise to you by now, Donte Johnson pulled the  
16 trigger. It shattered his jaw, mutilated his tongue, and  
17 Derrick Simpson falls face first onto the sidewalk, his  
18 face, literally half gone.

19 Twenty-one year old Donte Johnson  
20 steps over Derrick Simpson, who is face down. He re-aims  
21 the gun at his back, and squeezes the trigger a second  
22 time and lodges the bullet in Derrick Simpson's spine,  
23 steps back in his Cadillac, and off he drives.

24 Derrick Simpson was still conscious  
25 after he took the shot to the face. As he was laying



1 face down, he turned to the side and saw Donte Johnson  
2 step over him and fire the second shot.

3 Eventually, the Defendant was charged  
4 with that crime, Attempted Murder with a Deadly Weapon.  
5 He plead guilty to Battery with a Deadly Weapon. In  
6 2001. He sustained that conviction. Derrick Simpson  
7 spent three months in a coma. He was in the hospital for  
8 10 months of his life.

9 By the time he was released, he was a  
10 paraplegic, confined to a wheelchair. As I mentioned,  
11 his jaw was half destroyed. He required constant  
12 supervision and care of an in-home nurse.

13 July 31st, 2002, Derrick Simpson  
14 died. You will see a copy of his death certificate and  
15 autopsy report. From the doctor, the pathologist who  
16 performed the autopsy, you will see that the manner of  
17 death was, homicide.

18 Because, although Derrick Simpson  
19 clung to life for four years, there is no question he  
20 died as a result of the gunshot wound injuries from the  
21 Defendant, Donte Johnson.

22 In fact, the death certificate and  
23 the autopsy report indicate he died from complications  
24 due to penetrating gunshot wound of the back. I don't  
25 think it takes a doctor to recognize that's why Derrick

1 Simpson died.

2 Now, you know on August 14, 1998, he  
3 is a career as a criminal, if you will, culminated with  
4 the quadruple homicide. Just three months after the  
5 shooting of Derrick Simpson, he commits the crime of the  
6 quadruple homicide in June 2000, and was placed at the  
7 detention center.

8 Eventually, in prison, while  
9 incarcerated, his criminal conduct still didn't stop.  
10 You will hear about his behavior since his incarceration,  
11 how he can't comply with the rules and how rules are  
12 terribly important when you are a corrections officer at  
13 the detention center or at Ely State Prison. It's  
14 imperative that the inmates comply with the rules.

15 You will hear about a phone call he  
16 made, threatening to kill a young woman, a civilian.

17 You will hear about a letter he wrote  
18 where he put a hit out on Scale. You heard that name in  
19 the trial, Mr. Anderson, named Scale.

20 You will hear about An incident where  
21 he punched another inmate in the face.

22 MS. JACKSON: Your Honor, excuse me. Your  
23 Honor, we need to approach.

24 (DISCUSSION AT BENCH.)

25 MR. DASKAS: Thank you, judge.

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1                   You will learn about an incident from  
2 February 24th, 2001, actually, in which Donte Johnson and  
3 another inmate, named Reginald Johnson, no relation to  
4 the Defendant, didn't like a certain inmate at the  
5 detention center.

6                   Oscar Arias (phonetic) was an inmate  
7 charged with a sex offense, and you will learn that Donte  
8 Johnson and Reginald Johnson, literally, took the law in  
9 their own hands. That is, as Oscar was on the second  
10 tier, one grabbed him from the left side, one from the  
11 right side, and they launched him over the balcony of the  
12 second tier of the detention center and threw him on the  
13 ground.

14                  We will call a corrections officer,  
15 another who witnessed that incident firsthand. He will  
16 testify. Nobody is safe from Donte Johnson, if he is out  
17 of custody.

18                  Regardless of race, regardless of  
19 gender, regardless of socio-economic status, and  
20 regardless of whether someone is an inmate at the  
21 detention center or an innocent by-stander at the bank,  
22 if Donte Johnson is alive, others are in danger.

23                  We will ask you to consider all these  
24 things, in addition to the quadruple homicide.

25                  Thank you.

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1 THE COURT: Ladies and gentlemen I want to  
2 caution you that opening statements, as well as closing  
3 arguments of the attorneys, are intended to help you in  
4 understanding the evidence and applying the law. I want  
5 to emphasize to you that the statements that the  
6 attorneys make in their opening statements is not  
7 evidence and should not be given evidentiary value.

8 Proceed.

9 MS. JACKSON: Good afternoon, ladies and  
10 gentlemen, we appreciate you continuing with the rest of  
11 the task on behalf of my client and Mr. Whipple and  
12 myself, and I will be less than candid with you if I tell  
13 you, we were surprised by your verdict. We were not. We  
14 were not. It was reasonable and quite frankly expected.

15 We have spent an awful lot of time  
16 talking to you about Donte Johnson's life, the way he  
17 grew up, in our closing arguments. I am going to have a  
18 chance to address you at the end of the proceedings. So  
19 I won't belabor the point.

20 You have met the man, Donte Johnson.  
21 You may be asking at this juncture, what could they  
22 possibly tell me. You agreed with me and Mr. Whipple, we  
23 told you our client was a cold blooded killer. That was  
24 the word we used, so you would not be shocked by that.

25 We even attempted to paint for you a

1 picture of the evidence, horrific, no justification, no  
2 excuse, scenes that literally shock a conscience, shock  
3 the sensibilities.

4 Nobody should have to be exposed to  
5 this. It never should have happened. However, the law  
6 says, even with all that carnage, even with all that  
7 killing, and if the law suggests, there are still reasons  
8 to give life, I would suggest that is very, very, very  
9 valid.

10 We are in a room of death now, that  
11 reeks of death. This whole case reeks of death. We are  
12 going to present to you some factors that, in addition to  
13 the things you already heard, that greatly impacted and  
14 traumatized my client, John Lee White.

15 He is a member of Six Deuce Crips.  
16 That's a South Central L.A. gang. Unlike the gangs in  
17 Vegas, these gangs are for real. They are the birthplace  
18 of the Cryps and the Bloods.

19 You will hear from a gang expert  
20 about what gang mentality does. More importantly, you  
21 will hear from Donte Johnson's cousin, Keonna Atkins, and  
22 his sister, about how Donte came to be in a gang.

23 You will learn about when this gang  
24 member, Baby Sonny threatened to rape Keonna, and it was  
25 very real. The children were constantly harassed by the

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1 gangs. They walk out the front door, and they are right  
2 there.

3 Walking home from school one day,  
4 Deco thought, if I just can run errands for them, it will  
5 keep them away from my family. He was a very small built  
6 young man. He is small now. Still in his heart, the  
7 love he had for his family and cousins, he was trying to  
8 do something to protect them, trying to stop them from  
9 being picked on or raped.

10 He was only about eight or nine years  
11 old, thinking, then if I make friends with the people,  
12 try to hang out, it will keep them from harming my  
13 family. It was okay at first. He was allowed to just  
14 run errands, and do nonviolent type things.

15 One day they are coming from home  
16 from school or the store, the gang members started  
17 punching him, hitting him, beating him down. It's called  
18 being jumped into a gang. There are two ways you enter a  
19 gang. You are either born in because a member of your  
20 family is an original gangster, or you are jumped in.

21 And you will hear that, you know,  
22 some of the stuff, seems like TV stuff, it seems that way  
23 to those of us who have not lived it. We see movies,  
24 Boys in the Hood and Colors. We are going to try to get  
25 you to see what it's like to live that life.

1                   Some may say, why should I care.  
2           When you became a juror, we talked to you about that.  
3           Children learn what they live. State will hear -- they  
4           have already used the word choices a lot.

5                   You will find Mr. Johnson did not  
6           choose who he was born to. He wouldn't choose to have  
7           the kind of nightmare beginning he had. He did not  
8           choose to be in a gang. You will hear from the evidence,  
9           if you live in South Central, you join with that  
10          particular group, or you are dead, and before you die  
11          you are beaten.

12                   As a matter of fact, you will hear,  
13          coming into the gang at age 14, he thought, well, coming  
14          in now, at least I am in, and my family is safe. He  
15          didn't know how it worked. He discovered quickly as a  
16          juvenile, you don't have a choice.

17                   He was given the moniker Baby Deco,  
18          because there was already a Big Deco, and Big Deco owned  
19          my client, lock, stock and barrel. Its a form of white  
20          slavery. He thought he could stay at home. He was  
21          trying to be a good boy.

22                   When they jumped him into the gang,  
23          he was so badly beaten, he stayed away from home for two  
24          days. That's the first time he had done that. That's  
25          important for you to know, to see the progression. He

1 wasn't out looking in the streets to be in a gang, wasn't  
2 looking to be out there, and to be part of the culture  
3 that they feared.

4 Remember that CPS report I read to  
5 you at seven and a half? That worker described my client  
6 as a survivor. Probably about this tall, (indicating),  
7 probably 35, 45 pounds, soaking wet. Think about those  
8 things when you judge my client.

9 That's what you will continue to have  
10 to do. That's my job, if I can. Donte stayed away from  
11 home for a couple days. He disappeared. He didn't want  
12 his grandmother, Big Mama, to see what he would look like  
13 now. He is in. I will do anything to keep my family  
14 safe.

15 They would sit down to dinner. There  
16 is a knock on the door. Big Deco I said, "Let's go."  
17 That was okay. He came back that night. The next day,  
18 "Let's go."

19 He found out he wasn't allowed to  
20 stay at home. You have to do -- they call it, put in  
21 some work. If you are a member of the Six Deuce Crips,  
22 you have to put in some work. It's nothing nice. It's  
23 nothing pretty.

24 If one of the members were to leave  
25 town, and if their family by chance had a chance to go



1     someplace, they are not allowed to leave. They are  
2     brutally beaten. The notion is, if you missed out here,  
3     we were taking care, being locked up, selling drugs, our  
4     gangs were getting shot.

5                     You will find you are in as much  
6     danger from your own gang. Being a juvenile, he had a  
7     special value. You have a special value because, the  
8     idea is the judicial juvenile system fails horribly. If  
9     you are juvenile, you are put into a situation where you  
10    are put up front, made to take the risk, treated with a  
11    lighter sentence, if you are caught.

12                    That's why and how the bank robbery  
13    came to be. Baby Deco and two other minors, 15 and  
14    16 years old -- you think at 15, 16 years old, anybody is  
15    going to rent those boys a van. Who is going to rent  
16    them a van at 16 years old.

17                    This was orchestrated by Big Deco and  
18    the other gang members. They went in there. The people  
19    were terrified. It was real. It was awful. It was  
20    inexcusable, and it happened. We simply want you to  
21    listen and understand, not everybody has the choices we  
22    have.

23                    It was going out and doing that in  
24    the bank, or possibly be killed, or at the very best,  
25    they are going to get every member of your family. You

1 are talking about a beat down so bad, you can barely get  
2 home.

3 Also, you have to remember, because  
4 of his size, this is a notation at camp. Even people at  
5 the camp were concerned about his well being at 14, being  
6 4 foot 7, 100 something pounds. He was at risk of being  
7 preyed upon by the other children of the same age. That  
8 was a concern of theirs.

9 Imagine what you will, what it must  
10 have been like to be Baby Deco, a 14 year old, trying to  
11 be hard, trying to be a survivor. My client sits in  
12 court, looking very hard, making you think he is very  
13 tough.

14 You said you could be fair. You said  
15 you were willing to did the things the law requires.  
16 Criminals are not born. They are made. There are many,  
17 many reasons to stop the killing. Those are only a few.

18 At some point a person's choices,  
19 become nonchoices. It's almost nonsensical to say,  
20 someone who is a 14 year old can fight off this thing.  
21 My client became addicted to crack like his mother. He  
22 followed in her addiction, like his mother.

23 Just so you know, do you think his  
24 mother, when she wasn't loaded, wanted to go smoke crack,  
25 and PCP, and leave her kids? There comes a time when a

1 human being, their behavior and lifestyle is cyclical,  
2 and unless there is intervention by someone or be  
3 somebody, there is a continuous cycle.

4 That's what my client found himself  
5 out in. Think about this. If you don't have kids, I am  
6 sure you know somebody who does, think about the lengths  
7 we go to, to make sure they are not being exposed to  
8 certain movies. Why do you think they have mandatory  
9 kindergarten now? They didn't have that when I was a  
10 child.

11 Now we have a huge body of law that  
12 makes it illegal to leave your child, even in a park.  
13 Now, we have a body of law you can't even spank your  
14 child. Now, why do we go to the expense of programming  
15 the big screen TV so that when you are not home, your  
16 child can't watch porn? How come your computer allows  
17 you to control what your children can view? Think of  
18 what you do to protect your children. You would cut off  
19 my own hand. Your teenagers, think how little they know,  
20 and how much they think they know.

21 This one, now the gangs owned him.  
22 Think about Jane and what's on her. Now the game's on,  
23 and Big Mama, God bless her heart, did a good job.

24 You will see at some point because  
25 she is a God fearing woman and she loves the Lord. She

1 told the authorities, "I can't control Donte. I don't  
2 know if he is using drugs, but I know this. He won't  
3 listen to me. He's not going to school. I don't know  
4 what to do with Donte. I will tell you this, if he is  
5 going to act like an adult, you should treat him like an  
6 adult." He was 16.

7 This lady stands for what's good.  
8 She's got these long arms fully embracing a bunch of kids  
9 because their parents are all on drugs.

10 I am sure you can understand she  
11 could not give all her resources to this one. She could  
12 not get her arms around all these children. This one was  
13 acting like an adult. She said, "Put him in jail. I am  
14 done."

15 Did she stop loving her grandson? Of  
16 course not. She has told you that. She is a very, very,  
17 smart, wise, God fearing woman. She knew what she had to  
18 do. Donte has not lived at home since he was about 14 or  
19 15, when the gangs owned him.

20 I wish there was a video of Baby  
21 Deco trying to prove to this gang that he was hard, that  
22 he was tough and not a coward. I wish you could see  
23 that. I wish we had a tape of the little boy so innocent  
24 trying to survive.

25 I wish you knew that when he moved to

1 Normandy, because his grandmother lost her place on 43rd,  
2 they went to a rival gang neighborhood. He would try to  
3 sneak over to see his family, and the other guy, one  
4 recognized him from CYA, that's the juvenile prison, and  
5 said, I saw you over here before, and I gave you a pass,  
6 but if you come back here, I am going kill you.

7 That is the way it is. He has not  
8 kidding. Where his family moved to, he could not even go  
9 to the vicinity. Once you are a Six Deuce Crips, you are  
10 in for life. You are in for life. So now he can't go  
11 visit his family. There is a lot of love. This  
12 foolishness about the family not knowing Donte Johnson,  
13 that's why they are here. No matter what, they are like  
14 anybody else, they love him.

15 They knew what he has seen. They  
16 will tell you about that. They know how much he suffered  
17 to try to keep them safe, and they appreciate that.  
18 Basically, because Donte became a Six Deuce Crip, all the  
19 other boys, Cornelius, Crazy Don, that's part of the call  
20 they have in the neighborhood. Once they are part of the  
21 gang, they leave the other ones alone.

22 He knew when he got back home, he  
23 will not be beaten. They have a lot of issues, but it  
24 wasn't because of him, though. These gangs in South  
25 Central are very sophisticated. They are not like here.

1 If you had two sons, they would take response not it's  
2 not the way it is here.

3 My client and his home boys here were  
4 jumped into a gang that was the real thing, based upon  
5 military codes and conduct. You will hear my client  
6 because of putting in some time and work to survive, He  
7 became somebody in the gang. This is the way it works.

8 You know, it may seem like some type  
9 of concocted, or lawyer legalese or something that we  
10 concocted or put together. Look at the CPS report.  
11 Remember, at the bottom, all the things were confirmed by  
12 maternal relatives. Well, Donte was seven and half years  
13 old, and he had no chance then, and now he is sitting in  
14 the chair, asking you not to kill him.

15 I wish I had some kind of fancy trick  
16 up my sleeve to show you. I don't. The evidence will  
17 show you this is all very real. It is such a nightmarish  
18 life, even with those of us who do this on a regular  
19 basis, it boggles the mind.

20 We will do our best to give you a  
21 picture. We will have a doctor come in to talk to you  
22 about what happens to a child's brain when they are  
23 bombarded with images of violence, and violence, and  
24 violence, and more violence. How will you learn  
25 tolerance? If you want to survive, if you want to live,

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1 you fight back. That's the way God made us. We adapt.  
2 It's survival of the fittest.

3 We are a very sophisticated piece of  
4 equipment, and we will adapt, like it or not. Because of  
5 the images being forced into this child's brain, that  
6 there are certain things that become no big deal.

7 As horrible, repulsive as it sounds,  
8 it's the truth. And it makes sense, if you can go back  
9 and think, why do they restrict so much violence from a  
10 child, in general?

11 It's because medicine and science has  
12 proved, that if you do that, if you constantly bombard a  
13 child's still unformed brain with violence, you will  
14 breed a very violent person. It's just like you breed  
15 animals to be violent.

16 This doctor will tell you that is not  
17 some legal mumbo jumbo. It is what happens. Again, you  
18 have an instruction on common sense. It makes perfect  
19 sense. Why is it we protect our young and deny ourselves  
20 things, so they can have better things?

21 We are not talking absent parents or  
22 someone who is selfish with their children. That's not  
23 how we got to be here today. I am not talking about that  
24 kind of situation. We are talking about a child who is  
25 basically left to fend for his own in a situation that is

1 so violent, it's amazing there is enough humanity left  
2 there.

3 I call Donte Johnson my friend. I am  
4 proud of it. I am proud to represent him. Yes, when he  
5 got in custody, there was an incident, which he denies.  
6 He has been in custody since 1998, as you will surmise.  
7 He hasn't been out walking around.

8 Out of all that time in custody, they  
9 can bring in one episode he denies. He not participate.  
10 There is a child molester that went over the banister.

11 You will hear that in CCDC, as in any  
12 place like that, there is a pecking order. At the bottom  
13 of the pecking order are child molesters. That part is  
14 true. Everybody hates a child molester.

15 Again, criminals have some idea if  
16 you do that to a child, you are less than scum. Think  
17 about it, if you will do that to a child, you are less  
18 than scum. But Reginald Johnson, no relation, tossed  
19 Oscar Arias off a banister.

20 Oscar isn't with us. No, he went  
21 back to Honduras. The State gave him a deal. He didn't  
22 want to proceed against my client. My client had the  
23 charges dismissed. The young officer, who is a very nice  
24 man, I have had him on the stand before. That unit is  
25 where they put people like my client, people who have



1 high risk or high profile cases, people who have murder  
2 cases pending.

3 In almost all instances and you will  
4 hear from people, from his old cell mate, Jose Bigoa, one  
5 of the most dangerous convicts in Nevada. They were all  
6 in this unit, and they will tell you Officer Gonzalez is  
7 a very nice young man. That was his first day in the  
8 unit.

9 He was probably really afraid. He  
10 wasn't where he was supposed to be on the unit. Because  
11 he was afraid of being disciplined, he came in and said  
12 he saw what happened.

13 Well, what we will bring out,  
14 thankfully, Attorney Gloria Navvaro, on behalf of Donte  
15 did extensive investigation at the time. She got a court  
16 order to go into the module. She took pictures; she took  
17 measurements to show that the officer could not  
18 possibly -- they call this a bubble, where the officers  
19 are.

20 Evidence will show he could not  
21 possibly have seen what he claims to have seen. We  
22 understand he has to protect his job. If you are  
23 supposed to be somewhere, and you are not there, it could  
24 be a problem. He probably told the story so much now, he  
25 probably believes it. Reginald Johnson is doing life in

1 Ely. They are all doing life.

2                   Unfortunately, when something happens  
3 in the hole, we don't have any witnesses except people in  
4 the hole. They will tell you what they saw, and so will  
5 the officer, and then Ms. Navarro who represented  
6 Reginald on this, will come in and tell you, her client  
7 plead guilty to this.

8                   From the beginning he was saying,  
9 Donte was not involved. Donte was not involved.  
10 Reginald Johnson admitted to it. The State dismissed  
11 Donte Johnson out. A plea agreement was reached. There  
12 was an understanding, a meeting of the minds this would  
13 not come up in these proceedings, and here it is.

14                   Ms. Navarro will tell you -- and she  
15 now works for the DA's Office, I have subpoenaed her.  
16 She has information you need to hear -- it was her  
17 understanding that this was not to be brought up against  
18 my client, because he was not involved, and that based  
19 upon her investigation, Mr. Gonzalez, the officer, unless  
20 he can see around corners and through metal poles or  
21 concrete poles in there, he could not possibly have seen  
22 what he claims he saw.

23                   As far as I know, that is the only  
24 evidence they have against Donte from being locked up  
25 since 1998. He didn't do that. They want you to believe

1 based, upon that, that he can't be safely housed. They  
2 want you to believe that.

3 But at CYA Donte Johnson did fine.  
4 They write very good things about him, which I will read  
5 to you throughout the course of the proceedings. You  
6 will find before they stuck my client in the hole -- he  
7 doesn't get out ever, because of what he has done. He  
8 gets one hour a day, maybe, and if an officer is  
9 offended, he doesn't get out for months at a time.

10 Before that, he was involved in  
11 lifestyle skills, going in, try to learn to make correct  
12 choices. It's group therapy. He loved it. He did well.  
13 She came to court last time. We are trying to find her.  
14 We hope to have her come in, again.

15 This time, since that time, he is  
16 locked down. He doesn't get to do anything else. There  
17 is nothing he can do since '98. That's the kind of life  
18 Donte Johnson will lead for the rest of his life.

19 We want you to just keep an open  
20 mind. There are no excuses or justification for First  
21 Degree Murder, but if a person can be safely housed, and  
22 we will bring an expert in here to tell you he can be --  
23 his name is Jim Eston. He has studied maximum security  
24 facilities around the country.

25 Nobody has ever broken out of Ely,

1 Nevada, which is where Donte Johnson will go. He will  
2 talk to you about that in great detail.

3 The rest of the proceedings will show  
4 you there is nothing to be gained by killing my client.  
5 Nothing to be gained.

6 The evidence will further show Donte  
7 Johnson's life has value, that there are so many young  
8 boys being bred in South Central, that he can speak to  
9 their heart. The evidence will show you, he speaks a  
10 language we don't.

11 You don't know what it's like, and  
12 even with the evidence coming in, it's still very  
13 difficult to fathom.

14 We will provide you with more than  
15 sufficient evidence to stop the killing. Thank you.

16 THE COURT: We will have the jury wait  
17 outside for a minute. I have something to put on the  
18 record. Jury is admonished not to converse among  
19 yourselves or with anyone else on any subject connected  
20 with this trial or to read, watch or listen to any report  
21 of or commentary on the trial by any person connected  
22 with the case or by any medium of information including  
23 without limitation newspapers, television, internet or  
24 radio.

25 You are directed you are not to form

1 or express an opinion on this case until it is finally  
2 submitted to you by the Court.

3 THE BAILIFF: All rise.

4 THE COURT: Ms. Jackson you have an  
5 objection?

6 MS. JACKSON: Yes, your Honor. Mr. Daskas  
7 in opening comments referenced an incident when Mr. Donte  
8 Johnson was in the detention center and it involved a  
9 phone call to have a contract out on someone named Scale,  
10 to have him killed, and I don't know the facts. I have  
11 never seen it before.

12 There is another one, regarding a  
13 female that was threatened. I have no idea what he is  
14 talking about.

15 I was provided an Amended Notice of  
16 Evidence in Sport of Aggravation, as required by Rule  
17 250. We had extensive hearings about it. I have  
18 investigated everything on there, as the Court is aware.

19 I am not prepared to meet the  
20 evidence. I don't know who the people are. I believe it  
21 was not noticed. I had an understanding with Mr. Guyman  
22 we were only using what was in the Amended Notice.

23 MR. DASKAS: May I be heard, your Honor?

24 THE COURT: Yes.

25 MR. DASKAS: Judge, one needs to keep in

1 mind, this is an Amended Notice, not superseding.  
2 Amended means, in addition to any other evidence we  
3 intended to introduce.

4 THE COURT: I don't agree. When you file  
5 an Amended Information, you use the old one or the new  
6 one? As far as I am concerned, that's not true. You  
7 filed the Amended. That's not true.

8 MR. DASKAS: May I make a record at least,  
9 Judge?

10 THE COURT: Make a record.

11 MR. DASKAS: In the original Notice of  
12 Evidence to Seek the Death Penalty, we clearly referenced  
13 we would use Donte Johnson's infractions at the detention  
14 center.

15 We provided copies to the original  
16 Defense lawyers and new Defense lawyers. One was in '98,  
17 when they were first incarcerated. I don't know what  
18 they have or have not read. I can't answer that  
19 question, Judge.

20 They have been provided previous  
21 penalties we called Ian Ritchie, the detention center  
22 officer, who described these incidents, among others. To  
23 suggest it is a surprise, clearly belies the record.

24 THE COURT: I want to see the Amended.  
25 Where is it?

1 MS. JACKSON: We can get it. We don't have  
2 the pleadings file.

3 THE COURT: I will need it to make a  
4 decision.

5 MR. DASKAS: Other point I make for the  
6 record is this: Defense find notions to exclude specific  
7 items of evidence, filed motions to exclude the Oscar  
8 Arais incident. The snoop murder, there was never a  
9 motion to exclude infractions at the Clark County  
10 Detention Center.

11 Your rulings were based on their  
12 motion to exclude items of evidence. We intend to  
13 introduce these infractions at the jail. That's all it  
14 is. It is nothing more.

15 MS. JACKSON: That boosts my argument. If  
16 I file a motion to keep that all out, it would have been  
17 some very good reason, if the Court has me in here,  
18 litigating for days. What are you using? It's all in  
19 the Amended.

20 Certainly, as an attorney who is  
21 reasonably competent, I attack that stuff. I would have  
22 talked to the people. This is the first time I have  
23 heard about this.

24 MR. DASKAS: If I might, for the record --

25 MS. JACKSON: I am not done. One of the

1 things I talked to Mr. Guyman about, is the letter  
2 attached to one of my pleadings. I can find it. I  
3 outlined for the D.A.'s office, if you are not telling me  
4 what you are doing, I will budget my case different.

5 They have been doing this case for  
6 ten years. I have not said, if you follow what you did  
7 last time. I was told, no, we are doing new pleadings.  
8 You can delineate what will happen. So you can be  
9 prepared to meet that evidence.

10 THE COURT: All right. Go get me the  
11 Amended. All right. Recess for ten minutes.

12 MR. STANTON: Your Honor, I make a standing  
13 objection for the record about Ms. Jackson's arguments on  
14 two grounds. One, it's clearly improper for Counsel of  
15 both sides to interject facts outside the record about  
16 what the jury will hear, personal statements about her  
17 practice, clients who she represents, what they are, her  
18 representation she would cut off her own hand to protect  
19 her children and constant interjections of religious  
20 aspects.

21 MS. JACKSON: By referring to her as a God  
22 fearing woman?

23 MR. STANTON: It's clearly improper. You  
24 can't interject those items in argument. It's not  
25 evidence and improper to consider in any hearing stage,



1 certainly not capital.

2 THE COURT: It's overruled.

3 (BREAK IN PROCEEDINGS

4 3:28 TO 3:46 P.M.)

5 MR. DASKAS: We pulled copies of the  
6 original notice of evidence filed June 11, 1999, as well  
7 as the specific amended notice filed April 7, 2004. I  
8 will reference the first original notice of evidence from  
9 1999, specifically, item 15, page 6. I will quote, I  
10 should mention at the beginning we are telling what  
11 we will introduce.

12 "Testimony, records of corrections  
13 officers jail personnel from the Clark County detention  
14 center pertaining to Donte Johnson's conduct while  
15 incarcerated at the Clark County Detention Center." All  
16 copies have been provided to Defense Counsel, names of  
17 the witnesses are provided in the records.

18 That's 1-2, the notice, amended  
19 notice you wanted, specifically item 15 states, as  
20 follows:

21 "Testimony, records of corrections  
22 officers slash jail personnel slash prison  
23 personnel from the Clark County Detention  
24 Center and Nevada Department of Prisons  
25 while Donte Johnson was incarcerated at the

1 Clark County Detention Center and within  
2 the Nevada Department of Corrections. This  
3 evidence will include but is not limited to  
4 a incident that occurred February 24, 2001,  
5 wherein Defendant, along with another  
6 inmate, threw Oscar Arias over a railing at  
7 the Clark County Detention Center."

8 It goes on to explain those are the  
9 names. Six years ago we provided notice to the Defense.  
10 A year ago we provided notice we would introduce  
11 infractions from the Clark County Detention Center.

12 During the ten minute recess,  
13 Ms. Jackson and I and Mr. Whipple reviewed the copies of  
14 the disciplinary records. I will note, one such incident  
15 is from June 3rd, 2003, that pertains to the incident I  
16 mentioned in which Defendant Johnson punched another  
17 inmate in the face.

18 There is a second one dated November  
19 2nd, 1999, nearly six years ago, Judge, in which there  
20 was a detailed explanations from a corrections officer  
21 that the Defendant Johnson and another inmate were  
22 involved in putting a hit out on another inmate. That's  
23 Scale, I referred to. There is evidence about Scale in  
24 this trial.

25 I can represent to the Court the

1 other incident I mentioned, threatening a female  
2 civilian. Certainly, I had a good faith basis as bore  
3 out by two notices of evidence we provided to Defense  
4 that it was admissible. I still think it's admissible.

5 Ms. Jackson says she was not aware of  
6 the incident. If she had them, doesn't recall seeing  
7 them, out of an abundance of caution, I will agree not to  
8 introduce evidence of a hit on Scale.

9 Ms. Jackson said she did see the  
10 incident which he punched another inmate in the face.

11 MS. JACKSON: You said something about a  
12 female.

13 MR. DASKAS: I will find that, as well,  
14 Judge.

15 MS. JACKSON: If you are done -- are you  
16 done?

17 MR. DASKAS: Not quite. My point is to  
18 suggest that we are somehow being underhanded, not  
19 playing by the rules, is belied by the records. Clearly,  
20 we provided notice of this to Defense six years ago.  
21 Last year we made it clear. It was not limited to the  
22 Oscar Arias's incident, but it would include others.

23 MS. JACKSON: For the record, I worked  
24 extensively with Mr. Guyman. Mr. Daskas was not on the  
25 case. I don't mean to suggest it's wrong, because we did

1 not want to set a trial date in 2008 or something.

2 I sent a letter to Mr. Guyman July  
3 2003. We need to set guidelines about what you are using  
4 in the new penalty hearing. I read the records from the  
5 old penalty hearing. There is nothing in there about any  
6 of this Mr. Daskas is talking about.

7 We talked about the fact, if you are  
8 requiring me to go through 40 boxes -- they said, no.  
9 What we will use is in the amended notice of aggravation.  
10 I have the one where he popped somebody in the face. I  
11 knew about that type of incident. I read in the CCDC  
12 records him calling an officer motherfucker, stuff like  
13 that.

14 I was concerned for obvious reasons,  
15 this is a capital case, about anything involving serious  
16 injury, death threats, people on the outside. This is  
17 the first time I heard about that.

18 This is my understanding. I wouldn't  
19 have to go through 15 boxes of records. I don't think  
20 that makes me ineffective, given what we talked about. I  
21 didn't mean to accuse him of anything wrong.

22 THE COURT: I will tell you my position. I  
23 read the Notice. First of all, once you filed the  
24 Amended Notice, the Amended covers the same thing in the  
25 original. I think the Amended, replaced the original.

1 In the Amended you state you will get  
2 the records. It speaks to Oscar raise. Looking at that,  
3 one would not be aware by looking at the Notice that you  
4 are going to put on there someone put a hit out on  
5 someone.

6 It's so serious and a bomb shell. If  
7 you weren't more specific, that could easily slide by  
8 someone. They might think it's when he got put in the  
9 hole for pushing matches, fighting, calling the guards a  
10 name, but a contract on somebody's life or calling and  
11 threatening somebody, that should be specific.

12 They should be on notice and given a  
13 chance to defend it. If it's the first time she has  
14 heard it, can't defend it. We jeopardize the whole  
15 proceedings here.

16 Court agrees. You are not doing  
17 anything underhanded. It should be more specific so they  
18 are on notice. Court agrees with you.

19 I think the agreement you came to,  
20 you will not use it, she will not allege you were doing  
21 anything underhanded is a good one.

22 MS. JACKSON: That's correct. I won't  
23 mention that he said he would do that, that wouldn't be  
24 fair.

25 MR. DASKAS: Infraction report from October

1 20, 1998, nearly seven years ago, in which an officer  
2 explains in detail that he overheard a phone call in  
3 which Defendant Johnson promised a woman by the last name  
4 of Anderson, Arita, A-R-I-T-A, there would be someone  
5 there tonight to kill her, again, Judge it's in the  
6 records from 1998.

7 It's our position these were provided  
8 to the Defense but to err on the side of caution, I will  
9 agree to not introduce evidence of that.

10 MS. JACKSON: For the record they didn't  
11 come out in their hearing in 2000. I was reasonable in  
12 thinking I didn't have to meet anything that serious.

13 THE COURT: You were working on the  
14 representations of Mr. Guyman, not Mr. Daskas. We have  
15 it settled. Bring in the jury.

16 Let the record reflect the presence  
17 of the parties, attorneys, all the members of the jury.

18 Call your first witness.

19 MR. STANTON: Your Honor, we will take a  
20 witness out of order to accommodate their schedule.

21 State first calls Lieutenant Jim  
22 Grayson.

23 JIMMY GRAYSON,  
24 having been called as a witness by and on behalf of the  
25 State, and having been first duly sworn by the Clerk of

1 the Court, was examined and testified as follows:

2

3

DIRECT EXAMINATION

4

BY MR. STANTON:

5

Q How are you employed?

6

A Employed with the Los Angeles Police

7

Department.

8

Q In what capacity are you employed?

9

A Currently, I am a lieutenant, the officer

10

in charge of robbery homicide, for the Los Angeles Police

11

Department.

12

Q How long have you been in that form of

13

employment?

14

A Thirty-seven years.

15

Q I want to direct your attention, Lieutenant

16

Grayson, to the date of June '93. What was your duty

17

assignment during that month and year?

18

A At that time I was a detective at robbery

19

homicide, working the bank robbery section.

20

Q And when you say, bank robbery section, is

21

LAPD robbery homicide divided into districts or

22

geographical zones in '93?

23

A Yes, it is.

24

Q In '93, what geographical area was your

25

duty assignment?

1           A       Robbery homicide is city wide. We work the  
2       entire City of Los Angeles, and we are responsible for  
3       handling all bank robberies, including all major crimes.

4           Q       Including homicides?

5           A       Homicides, caption, et cetera.

6           Q       I want to direct your attention  
7       specifically to June 8, 1993, did your investigation deal  
8       with a bank called Sen Fed (phonetic)?

9           A       Yes, it did.

10          Q       What was your role and professional duties  
11       regarding the investigation of that bank on that day?

12          A       That particular day, take-over bank robbery  
13       occurred at Sen Fed Bank in the Marina Del Ray area.

14          Q       Could you describe generally what the  
15       Marina Del Ray area is like?

16          A       The Marina is a community down near the  
17       beach, a lot of stores, hotels, shopping centers, et  
18       cetera.

19          Q       What kind of economic area is it?

20          A       It's an up scale area.

21          Q       The bank you described as Sen Fed, that's  
22       located in Marina Del Ray?

23          A       Yes, it is.

24          Q       Can you describe the general size of the  
25       bank?



1           A       It was a medium size bank.

2           Q       Is it in a busy commercial business  
3 section?

4           A       Yes. It's in the shopping area, yes.

5           Q       That particular bank, back in that time  
6 period, June, was it a busy bank during normal business  
7 hours?

8           A       Yes.

9           Q       Can you describe what you did and how your  
10 unit handled it when you first received information of a  
11 bank robbery at that location?

12          A       I received information a bank robbery had  
13 occurred, and the information was there were four  
14 suspects in a Ryder van. The suspects had went into the  
15 bank with handguns, robbed the bank, and fled in the van.

16                   Some of the LAPD units spotted that  
17 van on the freeway, and they pursued it, also several  
18 helicopters at the time.

19                   They pursued it to an area called  
20 Lower Baldwin Hills area. The suspects of the van,  
21 several of them was arrested in the van, and two of them  
22 managed to get out and ran through the apartment  
23 buildings to a different location in that area.

24          Q       If I understand you correctly, your  
25 investigation revealed there were four adults in the van

1 or four individuals?

2 A Four individuals, yes.

3 Q And when two of them escaped, was that in  
4 the presence of uniformed, armed officers?

5 A Yes.

6 Q What were the names of the individuals  
7 taken into custody?

8 A I think then, as I can recall, one that was  
9 taken into custody, the driver in the van was taken into  
10 custody. His name was John Lee White. There was  
11 another, I think his name was -- maybe Lavender -- was  
12 taken into custody, and two other suspects managed to  
13 elude the police and get out of the immediate area.

14 Q The description of how the bank robbery  
15 occurred, were you advised of that because of your  
16 supervisory position?

17 A Yes.

18 Q Is it important to you to assess how the  
19 mechanics of a robbery occur?

20 A Yes, it is.

21 Q Why is that?

22 A While investigating I need to know what  
23 happened, who was involved, and the circumstances  
24 involved in the robbery in order to evaluate it and  
25 determine what happened and also to find out who is

1 responsible for it.

2 Q In this case, what was your assessment  
3 about how the robbery occurred? Could you describe how  
4 the robbery took place in Sen Fed in June?

5 A To briefly summarize, the four individuals  
6 had gone into the bank. They had two individuals assume  
7 guard-like position. Once in the bank, one stood at the  
8 door with a sawed-off shotgun. Other one stayed in the  
9 lobby.

10 Two other individuals when over the  
11 teller's counter and selectively removed currency from  
12 the teller's cash drawers.

13 (MR. CHECKERS).

14 Q How much money was taken from the robbery  
15 from Sen Fed Bank?

16 A About \$1200.

17 Q Now, you indicated that one of the  
18 individuals that was taken into custody was John Lee  
19 White; is that correct?

20 A Yes.

21 Q He was the driver of the van?

22 A Yes.

23 Q During the course of your investigation,  
24 were there any weapons recovered?

25 A Yes, we did recover two weapons.

1 Q What weapons were recovered?

2 A One was a blue steel revolver and one was a  
3 shotgun.

4 Q Did you speak with John Lee White,  
5 involving this incident?

6 A Yes, I did.

7 Q Is that after what is commonly referred to  
8 as a Miranda admonition?

9 A That's correct.

10 Q Where did that interview take place?

11 A Parker Center, 150 North Los Angeles  
12 Street, commonly referred to by a lot of people as glass  
13 house, downtown, that's where robbery homicide is located  
14 in the building.

15 Q Did John Lee White give you information  
16 about his involvement in the offense?

17 A Yes, he did.

18 Q What did he say?

19 A After I advised him, he said we committed a  
20 bank robbery. There was four of us. We went in and took  
21 the money, and I didn't have a gun. I was a driver.

22 Q I want to show you over your left shoulder  
23 there, Lieutenant Grayson, and ask you if you recognize  
24 it, first one is Exhibit 207. Do you recognize what 207  
25 is?

1 A Yes.

2 Q What is it?

3 A That's a picture from the video that was  
4 taken from the bank that was robbed, the Sen Fed bank.

5 Q This is a true and accurate copy of the  
6 still photo from the video surveillance?

7 A Yes, it is.

8 Q The information depicted on the picture,  
9 photograph on the lower photographs, are those all  
10 accurate as to date, time, location?

11 A The Marina Del Ray, yes, and I can't make  
12 out what's at the bottom.

13 Q That's clearer in another photograph in the  
14 lower portion. What I am pointing out here, this is the  
15 time stamp and date stamp. In these type of surveillance  
16 is that generally accurate?

17 A Generally, yes.

18 Q Showing you State's Exhibit 209, what are  
19 we look at there, lieutenant?

20 A That is another photograph from the same  
21 bank with a suspect behind the counter.

22 Q The Defendant in this action, John Lee  
23 White, is jumping over the counter?

24 A That individual is jumping over the  
25 counter. I don't recall right now from memory. I don't

1 recall which one it was.

2 Q Going back to Exhibit 207. There is a  
3 write in note down there, John White on the bottom of the  
4 photograph. You have no reason to dispute it's John Lee  
5 White in the foreground?

6 MR. WHIPPLE: Judge, we need to find out  
7 who wrote that in first. Foundation.

8 THE COURT: Sustained.

9 BY MR. STANTON:

10 Q Did you write the name, John Lee White, on  
11 here?

12 A I don't recall if I did or not.

13 MR. WHIPPLE: Objection.

14 THE COURT: How do you know it was John Lee  
15 White?

16 THE WITNESS: As I said, it was one of the  
17 suspects. I didn't say I knew exactly it was John Lee  
18 White.

19 THE COURT: Sustained.

20 BY MR. STANTON:

21 Q Directing your attention to 208 is that an  
22 accurate picture, once again from the surveillance  
23 cameras?

24 A Yes, it is.

25 Q Same individual we have seen in the

1 previous ones?

2 A Yes, it is.

3 Q Relative to Mr. White's statements to you  
4 about what he did in the bank, these photographs were  
5 consistent with what his involvement was?

6 A Yes.

7 Q There were other people in the bank?

8 A Yes, there was.

9 Q Showing you State's Exhibit 210, do you  
10 recognize this photograph?

11 A Yes. That's another photograph from the  
12 same bank.

13 Q This shows one of the other suspects in the  
14 bank?

15 A Yes.

16 Q You see the name, Michael Waldon, down  
17 here?

18 A Yes.

19 Q Who is he?

20 A One of the suspects in the bank.

21 Q Is that who we see in the photograph; do  
22 you know?

23 A Well, I know it from him seeing that, that  
24 was him. I can't tell.

25 Q You can't tell from the photograph?

1 A No.

2 Q You interviewed Mr. Waldon?

3 A Yes.

4 Q Based upon your interview and that  
5 photograph, is it consistent with what he did in the bank  
6 robbery?

7 A Yes, it is.

8 Q What is he holding in his hands?

9 A A shotgun, sawed off.

10 THE COURT: How old was Mr. Waldon?

11 THE WITNESS: As I recall, all four were  
12 anywhere from 15 to 17 years of age.

13 BY MR. STANTON:

14 Q State's Exhibit 211, is that an accurate  
15 copy of one of the suspects inside the San Fed Bank?

16 A Yes, it is.

17 Q That's a little clearer in the left and  
18 right hand of the date, starting at the left-hand, would  
19 that reflect June 8 '93?

20 A Yes.

21 Q Reflecting 1:40 in the afternoon?

22 A That's correct.

23 Q Next is State's Exhibit 212. In that  
24 photograph we see by clothing, what he is carrying to be  
25 a different individual. Do you recognize this



1 photograph?

2 A Yes.

3 Q Is that another that was involved in this  
4 bank robbery?

5 A Yes.

6 Q What is he carrying in his hand?

7 A It's really hard for me to distinguish here  
8 from the picture.

9 Q It appears to be a firearm?

10 A It appears to be a firearm.

11 Q Pursuant to previous testimony, two of the  
12 individuals carried firearms into the bank?

13 A Yes.

14 Q Exhibit 213, is an accurate photo, date,  
15 time, location inside the bank?

16 A Yes.

17 Q And finally 214?

18 A Yes, another photograph from the bank.

19 Q Accurately depicts one of the suspects?

20 A Yes.

21 Q All right. Lieutenant Grayson, during the  
22 course of your investigation of the matter, was it  
23 important to you to ascertain and recover any of the  
24 money, the currency stolen from the bank?

25 A Yes, it was.

1 Q Was it recovered?

2 A Yes.

3 Q Who out of the four individuals had the  
4 money on his person?

5 A I don't recall, exactly. I think it was  
6 Waldon. I don't recall exactly who had the money in the  
7 pocket, but I do recall interviewing the person with the  
8 money, and he said, "I had the money in my pocket. I  
9 picked it up off the floor of the van."

10 Q Your recollection is, as you sit here  
11 today, you don't recall who had the money?

12 A Right offhand, independent recollection,  
13 no.

14 Q Would your memory have been better back at  
15 the time you originally testified in the proceeding?

16 A Yes.

17 Q Would referring to the transcript of your  
18 testimony refresh your recollection?

19 A Yes.

20 Q Volume One, page 72, refers to the  
21 document, does that appear to be a transcript of your  
22 previous testimony in this matter?

23 A Yes.

24 Q Direct your attention in the top half of  
25 the Exhibit to line 8. Read to yourself and tell me when

1 you are done reading it.

2 A Yes.

3 Q Who had the money?

4 A John Lee White.

5 Q Now, your investigation would be the more  
6 precise recording of who had the money, amount of money,  
7 than other documents, agencies, or probation or any other  
8 agency in summarizing these reports?

9 A Yes.

10 MR. STANTON: Pass the witness.

11 THE COURT: Cross.

12

13 CROSS-EXAMINATION

14 BY MR. WHIPPLE:

15 Q Did you bring a copy of your report from  
16 the incident you are discussing?

17 A No.

18 Q When is the last time you looked at it?

19 A Last -- I think the actual police report, I  
20 have not seen it since maybe 2000.

21 Q Now, Mr. Stanton asked you, if you recall  
22 who had the money?

23 A Yes.

24 Q Your response was, you couldn't remember?

25 A Independent recollection, I could not.

1 Q Of course, he referred to a statement you  
2 had given at an earlier tim?

3 A Yes.

4 Q Then he made a comment about if another  
5 person had documents, other than John Lee White. What  
6 would you say to that? We have a probation report saying  
7 that money was found with another one of the individuals.

8 Any way you can explain why the  
9 parole probation report would say that another person had  
10 the money, and you would say John Lee White had it?

11 A No, I couldn't explain it to you.

12 Q Is it fair to say today you don't recall  
13 who had it?

14 A That's correct.

15 Q You do recall there was an incident, and  
16 these four individuals were involved?

17 A Yes.

18 Q You did, in fact, speak with all four  
19 individuals about the incident?

20 A Yes.

21 Q One of them was a person named John Lee  
22 White?

23 A Yes.

24 Q He cooperated with you?

25 A Yes.

- 1 Q He cooperated?
- 2 A Yes.
- 3 Q He gave you information?
- 4 A Yes.
- 5 Q It was your determination he had no handgun
- 6 during the incident?
- 7 A From my interview with the four guys and
- 8 him, I came to the conclusion he did not.
- 9 Q He did not have a handgun; he did not have
- 10 a shotgun?
- 11 A Right.
- 12 Q Again, as you speak here, you are not sure
- 13 who had the money, correct?
- 14 A That's correct.
- 15 Q Now, did Mr. White give you information, as
- 16 to why he was involved with the robbery?
- 17 A Repeat that.
- 18 Q Did Mr. White give you information, as to
- 19 why he was involved with the robbery?
- 20 A If he did, I would have to review the
- 21 reports to see. That was 12 years ago.
- 22 Q Do you remember him telling you the robbery
- 23 was arranged by older gang members?
- 24 A I remember something to that effect, yes.
- 25 Q Do you remember him telling you the older

1 gang members had supplied him with guns and a get away  
2 vehicle?

3 A I remember it, yes. I don't remember if he  
4 is the one that told me. I remember hearing that.

5 Q Do you remember him telling you he  
6 committed the robbery, even though he knew it was wrong,  
7 because he did not want to be labeled a coward?

8 A I don't remember that.

9 Q Do you remember him telling you, if he  
10 declined to go along with the robbery, he would have been  
11 punished by fellow gang members?

12 A No. I recall writing his statement on the  
13 report, and I don't recall him telling me that.

14 Q Now, you recall you testified previously  
15 with regard to this matter?

16 A Yes.

17 Q In fact, you had been asked if you had been  
18 down to South Central Los Angeles in a while?

19 A Yes.

20 Q Question was asked of you; is that a place  
21 you would like to live?

22 A Yes. I remember that.

23 Q What was your response?

24 A I remember saying, if I had my choice, I  
25 wouldn't want to be there.

1 MR. WHIPPLE: Nothing further, your Honor.

2 MR. DASKAS: Yes, your Honor.

3

4 REDIRECT EXAMINATION

5 BY MR. STANTON:

6 Q Turn to Volume One, page 71. Look at the  
7 document. Do you recognize that?

8 A Yes, I do.

9 Q What is that?

10 A This is a form, statement form from John  
11 Lee White.

12 Q Is that the form you used as part of  
13 preparation of your investigation and ultimately  
14 concluded in a written report in the matter?

15 A Yes.

16 Q Is that an accurate statement of the  
17 content and nature of the questions and answers given you  
18 by John Lee White, regarding his involvement in the case?

19 A This reflects exactly what John Lee White  
20 told me.

21 Q It's reflected in the transcript 87?

22 A Yes.

23 MR. STANTON: Your Honor, it's marked as  
24 State's 251. Move admission.

25 MR. WHIPPLE: I have foundational

1 questions, if I can.

2

3

VOIR DIRE EXAMINATION

4

BY MR. WHIPPLE:

5

Q How long has it been since you saw that

6

particular document?

7

A I reviewed a document similar to that one

8

last week, I think last Thursday or Friday.

9

Q What exactly is that document?

10

A Document is a copy of the statement that

11

was made, John White's statement.

12

Q Was it tape recorded, or something you had

13

written out by hand?

14

A It was something written out by hand.

15

Q You wrote that out?

16

A Yes.

17

Q Okay. Now, it would be fair to say that

18

would be attached to a police report?

19

A It could be.

20

Q Police report would be more than one page?

21

A Yes, but police reports -- sometimes they

22

are statement form, for statements don't necessarily

23

reflect the statement form and the arrest report itself,

24

arrest report could very well have a brief summary and

25

refer to a statement form.

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1 Q Would it be fair to say, this was not a  
2 complete statement form?

3 A Yes.

4 THE COURT: May I see the Exhibit? Both  
5 Exhibits.

6 MR. WHIPPLE: We will submit.

7 THE COURT: All right. Admitted.

8 MR. STANTON: Can I have that document,  
9 your Honor.

10

11 REDIRECT EXAMINATION (Resumed)

12 BY MR. STANTON:

13 Q Lieutenant Grayson, look at that and read  
14 after the portion that says for your question, Detective  
15 Grayson, Subject White read out both your questions and  
16 Mr. White's responses, as far as what his involvement in  
17 this case was?

18 A My question was: Do you want to tell me  
19 what happened today.

20 Mr. White replied; Yes. We robbed a  
21 bank. I ran into the bank, jumped the counter, and took  
22 the money. I didn't have a gun. I was the driver of the  
23 van. I don't remember who had the gun, but it was four  
24 of us.

25 MR. STANTON: Thank you, lieutenant. No

1 further questions.

2 THE COURT: Anything else?

3 MR. WHIPPLE: Briefly, your Honor.

4

5 RECROSS-EXAMINATION

6 BY MR. WHIPPLE:

7 Q I asked you earlier if you recall a  
8 conversation with Mr. White telling you he committed the  
9 robbery or as to his involvement, being supplied weapons  
10 and the van by older gang members. Do you remember me  
11 asking you that?

12 A Yes.

13 Q Do you remember saying you remember it,  
14 vaguely?

15 A I remember having a conversation about  
16 that, but who said it, I don't recall that.

17 MR. WHIPPLE: Nothing further, your Honor.

18 MR. STANTON: One follow-up.

19

20 REDIRECT EXAMINATION

21 BY MR. STANTON:

22 Q It wasn't John Lee White that told that  
23 you?

24 A No. John White's statement is reflected  
25 there.

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## RE-CROSS-EXAMINATION

BY MR. WHIPPLE:

Q That statement is not complete, correct?

That's not a complete statement?

A That's the complete statement he gave me.

Q You would admit to me, that's not the complete police report?

A No, it's not.

THE COURT: You are excused. Be excused.

MR. DASKAS: Sandra Gatlin.

## SANDRA GATLIN

having been called as a witness by and on behalf of the State, and having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. DASKAS:

Q You are here from out of state. Am I correct?

A Yes.

Q I want to direct your attention to June 8 1993. Tell us where you were working then most?

A Working at Sen Fed Bank, Marina Del Ray.

- 1 Q In Southern California?
- 2 A Yes, it is.
- 3 Q What was your job at the bank in '93?
- 4 A Assistant branch manager.
- 5 Q Did you have a work station or desk?
- 6 A He had a desk in the platform area.
- 7 Q I mentioned the date of June 8 1993. Did
- 8 something unusual happen that day you were working?
- 9 A Branch was robbed that day.
- 10 Q At the time the robbery occurred, can you
- 11 estimate how many customers were in the branch?
- 12 A I would say four or five.
- 13 Q How about employees? How many were
- 14 working?
- 15 A Seven, yes.
- 16 Q What time of day, approximately, did the
- 17 robbery occur?
- 18 A In the afternoon, between 12:00 and 1:00.
- 19 Q Middle of the day?
- 20 A Middle of the day.
- 21 Q How many people entered the bank who
- 22 ultimately robbed the employees of the bank?
- 23 A Four.
- 24 Q Do you recall generally a description of
- 25 the four individuals?

1           A       They were four African-American kids. I  
2 would say, what I remember they were wearing at that time  
3 Raider jackets, big NFL jackets. They all had those  
4 black NFL jackets on, I remember.

5           Q       Did you notice whether some of them were  
6 armed with guns?

7           A       Not at the time of entry.

8           Q       Eventually, you saw guns?

9           A       I sign one gun.  
10               (MR. CHECKERS).

11          Q       That's the one pointed at you?

12          A       That's correct.

13          Q       What did it look like?

14          A       Small handgun with silver barrel. That's  
15 all I can remember.

16          Q       When these four individuals entered the  
17 bank you described, did any of them say anything?

18          A       Not initially that I can recall.

19          Q       What do you recall being said?

20          A       That it was a robbery and because I was  
21 sitting on a platform -- I happened to be on a platform  
22 talking to another employee -- I recall saying, we are  
23 getting robbed, and went under my desk. That's when one  
24 of the robbers came to my desk area with a gun, and told  
25 me to get from underneath the desk.

## THE STATE OF NEVADA v. JOHNSON

1 Q I assume you did as he said?

2 A Yes, I got out from underneath the desk.

3 Q Did he ask for something else?

4 A They wanted the keys to the vault.

5 Q Did you have those keys?

6 A Not singly. Everything was in dual

7 control.

8 Q Did some of the four individuals take money

9 from the bank?

10 A That I can't recall.

11 Q Did you see them jump the counters where

12 the tellers were working?

13 A Yes.

14 Q How many did that?

15 A Three.

16 Q Did you see any of the other employees down

17 on the ground?

18 A Once I got up, yes. They were in the

19 platform area, as well, or under the desks.

20 Q Were customers ordered down on the ground,

21 as well?

22 A There were customers opening new accounts.

23 They were on the ground, as well.

24 Q How long would you estimate the robbery

25 took place? How long were these guys inside the bank?

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1           A       I would say under between five and seven  
2 minutes.

3           Q       Eventually, after they left, were you asked  
4 to identify something?

5           A       Yes.

6           Q       Tell me how that happened?

7           A       They used a get away vehicle, yellow Ryder  
8 rental truck. They were seen on the freeway. We went  
9 over to the Jungle, Baldwin Hills area. They said they  
10 were captured.

11                   They asked myself and another  
12 employee to see if we can go over there and identify the  
13 suspects.

14           Q       Once the Ryder truck was located, did you  
15 see individuals you recognized as having just robbed you?

16           A       Yes.

17           Q       Do you recall that person's name?

18           A       No.

19           Q       Was this the first and only time you were  
20 robbed, as a bank employee?

21                   MS. JACKSON: Objection. Relevance.

22                   THE COURT: Sustained.

23 BY MR. DASKAS:

24           Q       Were you in fear when the gun was pointed  
25 at you?

1           A       Yes.

2           Q       Was it a traumatic event?

3               MS. JACKSON: Objection. Relevance.

4               THE COURT: Counsel?

5               MR. DASKAS: I have no further questions.

6               MS. JACKSON: We have no questions, your

7 Honor. Thank you.

8               THE COURT: Why do you call the area the

9 Jungle?

10              THE WITNESS: I don't know. That's what

11 it's always called. You watch your step.

12              THE COURT: Who is next?

13              MR. DASKAS: With the Court's permission,

14 we want to play the videotape of Derrick Simpson.

15              THE COURT: Do you have objection to the

16 videotape?

17              MS. JACKSON: The objection we had lodged,

18 previously, the Court overruled.

19              MR. DASKAS: This is proposed 248. I move

20 at this time admission at this point.

21              MS. JACKSON: We have a continuing

22 objection, but we submit it.

23              THE COURT: Go ahead.

24              THE COURT: Approach the bench.

25                       (VIDEOTAPE PLAYED)



1 4:34 P.M. 5:04 P.M.)

2 THE COURT: We will take our evening  
3 recess.

4 MR. DASKAS: One housekeeping matter, if we  
5 might. We move to admit proposed 249, Certificate of  
6 Death of Derrick Simpson; 250, Autopsy Report of Derrick  
7 Simpson.

8 MS. JACKSON: That's correct, your Honor

9 THE COURT: Be admitted. All right. Ladies  
10 and gentlemen, we will take our evening recess.

11 Jury is admonished not to converse among  
12 yourselves or with anyone else on any subject connected  
13 with this trial or to read, watch or listen to any report  
14 of or commentary on the trial by any person connected  
15 with the case or by any medium of information including  
16 without limitation newspapers, television, internet or  
17 radio.

18 You are directed you are not to form

19 /////

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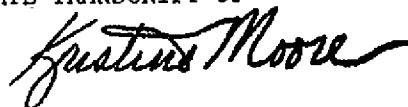
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1 or express an opinion on this case until it is finally  
2 submitted to you by the Court.

3 \* \* \* \* \*

4 (END OF PROCEEDINGS 5:10 P.M.)

5  
6 ATTEST: FULL, TRUE, AND ACCURATE TRANSCRIPT OF  
7 PROCEEDINGS.



8  
9 KRIS MOORE, CCR 273

1 ORD

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2005 APR 29 1P 1:38

DISTRICT COURT

CLARK COUNTY, NEVADA

CLERK

6 STATE OF NEVADA )

7 Plaintiff, )

8 vs. )

9 DONTÉ JOHNSON, )

10 Defendant. )

CASE NO. C153154  
DEPT. NO VIII12 ORDER TO PREPARE TRANSCRIPT

14 IT IS HEREBY ORDERED that Kris Moore of  
 15 Laurie Webb & Assoc., CCR \_\_\_\_\_, prepare a transcript in  
 16 the above-captioned matter heard  
 17 on 4/28/05 p.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 29 DAY OF April, 2005.

24 [Signature]  
 25 DISTRICT COURT JUDGE

S12

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3 DISTRICT COURT

2005 APR 29 P 1:37

4 CLARK COUNTY, NEVADA

Clerk  
CLERK5  
6 STATE OF NEVADA )

7 Plaintiff, )

8 vs. )

CASE NO. C153154  
DEPT. NO VII

9 DONTÉ JOHNSON, )

10 Defendant. )

11  
12 ORDER TO PREPARE TRANSCRIPT13  
14 IT IS HEREBY ORDERED that SONIA L. RILEY, CCR  
15 727, prepare a transcript in the above-captioned  
16 matter heard on April 29, 2005, 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 29 DAY OF April, 2005.22  
23 [Signature]  
24 DISTRICT COURT JUDGE

25 S12

SONIA L. RILEY, CCR 727  
455-3610

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CLARK COUNTY

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2005 MAY -2 A 8:12

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*Shelly A. Hansen*  
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THE STATE OF NEVADA,

PLAINTIFF,

VS.

CASE NO.: C153154

DONTÉ JOHNSON,

DEFENDANT.

## REPORTER'S TRANSCRIPT

OF

TRIAL BY JURY

(VOLUME IX)

BEFORE THE HONORABLE JUDGE LEE A. GATES  
DISTRICT COURT JUDGE  
DEPARTMENT VIII

DATED FRIDAY, APRIL 29, 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

312

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

1

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21 \* \* \* \* \*

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

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\* \* \* \* \*

1                                    P R O C E E D I N G S

2                                    \* \* \* \* \*

3  
4                                    (Outside the presence of the jury.)

5                                    **THE COURT:** Okay. What is it? I heard  
6 you guys had a matter outside the presence of the  
7 jury.

8                                    **MS. JACKSON:** Yes, your Honor. There is  
9 an exhibit that pertains to victim impact, the  
10 photograph.

11                                   **THE COURT:** What now? I didn't understand  
12 nothing you said.

13                                   **MS. JACKSON:** I apologize. There is a  
14 victim impact photograph that we object to under  
15 Paine vs. Tennessee.

16                                   Is it over here, guys?

17                                   **MR. STANTON:** I believe it's right up  
18 there, Miss Jackson, on top.

19                                   Judge, I reviewed the photograph.

20                                   **MS. JACKSON:** May I make my motion first,  
21 please?

22                                   **MR. STANTON:** Yes, but I'm just going to  
23 establish that on the markings on the back, Judge,  
24 there's no indication as an exhibit number as it  
25 relates to this case. It looks like it was used in

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1 others, so for purposes of Miss Jackson's record,  
2 when you state the exhibit number, there is no  
3 exhibit number referencing the Donte Johnson case  
4 number.

5 **MS. JACKSON:** Is it your intention,  
6 Counsel?

7 **THE COURT:** There are about two exhibit  
8 numbers on here.

9 **MR. STANTON:** Correct. I just don't see  
10 the C number. I just want to indicate to the Court  
11 so that the record is clear that when we reference  
12 the exhibit numbers, this case number I think is  
13 153154 or 154153 I don't see that referenced on  
14 there, so the record is clear.

15 **THE COURT:** What's your objection now?

16 **MS. JACKSON:** That under Payne v.  
17 Tennessee which delineates victim impact, that the  
18 picture -- Payne v. Tennessee, allows the State to  
19 present a brief picture of what the decedent was  
20 like in life and his uniqueness as a human being and  
21 the impact on the person who is testifying. This  
22 photograph depicts two young, innocent babies, very  
23 prejudicial. It doesn't depict the decedent as he  
24 was in life except for about 18, 19 -- I don't know  
25 which one it is -- years ago, and Counsel's argument

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1 that we have pictures of Donte Johnson here -- well,  
2 it's Donte Johnson's penalty hearing; it's not the  
3 person's penalty hearing in that photograph. We  
4 don't think it's the same thing, and Payne v.  
5 Tennessee recognizes that. That photograph gives  
6 the impression to the jury that a child was shot in  
7 the back of the head, a two-year-old child, and that  
8 certainly is not the case, and we think that it  
9 is -- it would arouse passion, prejudice -- the type  
10 of things that Payne v. Tennessee is designed to  
11 prevent, your Honor, and for that reason, we would  
12 object.

13 **THE COURT:** That's the only picture you  
14 have of him?

15 **MR. DASKAS:** No, it's not the only one,  
16 Judge.

17 **THE COURT:** Which of these other pictures  
18 is he in?

19 Who is this (indicating)?

20 **MR. DASKAS:** Judge, that photograph, it's  
21 marked for these purposes as 245 on the back with  
22 another case number, but that is Matthew Mowen and  
23 his sister Jennifer. Judge, hear is my position.  
24 NRS 176.015 states that victims' relatives can  
25 testify in a penalty hearing, that they can express

1 any views concerning the crime, the person  
2 responsible and the impact of the crime on the  
3 victim and the need for restitution.

4 "Relative" is defined in the statute, and  
5 that includes parents and sisters and brothers.

6 **THE COURT:** Nothing is trying to keep them  
7 out. They can testify. I already ruled that.

8 **MR. DASKAS:** I understand, and this goes  
9 directly to this issue, Judge. We intend to call  
10 Jennifer Mowen, Matt Mowen's sister, and she's  
11 entitled to discuss the impact this crime has had on  
12 her, the murder of her brother, and that goes to the  
13 relationship she's had with Matt Mowen her entire  
14 life, and now he's gone, and this photograph shows  
15 two of the Mowens' kids in life, and this goes to  
16 that issue. Let me remind the Court, Judge, this is  
17 Defense Exhibit I, a photograph of the defendant as  
18 probably a five-year-old child with relatives and  
19 cousins on their way to church. Defendant's  
20 exhibit, I guess it's B, is Donte Johnson. He's  
21 probably --

22 **THE COURT:** Let me stop you right there.  
23 Okay.

24 **MR. DASKAS:** -- six months old in this  
25 picture.



1           **THE COURT:** Let me tell you, what the  
2 State can do is totally different than what the  
3 defense can do. Now, you know all the case law.  
4 You guys are restricted, because these are special  
5 kind of cases. You cannot do the same things that  
6 these guys can do.

7           **MR. DASKAS:** What I'm saying, Judge, is  
8 you are pursuant to 176.015, the U.S. Supreme Court  
9 cases that allows victim impact, this is entirely  
10 permissible. Judge, we understand our limitations  
11 on the number of relatives per victim. We  
12 understand there's some potential time limitations  
13 on what these -- the duration of their testimony.  
14 What I'm suggesting, Judge, is this goes to this  
15 girl's relationship with her brother, and it's  
16 depicting them in their life as kids, and that  
17 relationship is now gone.

18           **THE COURT:** How old are they, though?

19           **MR. DASKAS:** Pardon me?

20           **THE COURT:** How old are they?

21           **MR. DASKAS:** They're toddlers. I don't  
22 know their age, Judge.

23           **THE COURT:** I know, but they look like --  
24 I mean -- gee.

25           Anyway, I'm going to sustain the

1 objection.

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

3 **MR. DASKAS:** Judge, the other issue, since  
4 we're on the issue of victim impact, is I would --  
5 we only have a few witnesses left before victim  
6 impact. It would be my request before we call those  
7 witnesses to take a break so we can meet with the  
8 relatives who testify to discuss, once again, the  
9 parameters, because I don't want anybody to exceed  
10 the boundary.

11 **THE COURT:** That's a good idea.

12 **MR. DASKAS:** Also, Judge, as you know,  
13 you're well aware one of the victim's brothers  
14 fainted in court the other day, and you asked that  
15 he be excluded yesterday during my opening. I would  
16 ask, since we're not showing any more photographs,  
17 your Honor, that he be permitted to be back in the  
18 courtroom with the understanding that if he's going  
19 to react, if he's emotional, we'll ask him to leave.  
20 I've discussed it with him. He's assured me he will  
21 be fine, Judge. I think he's entitled to be in  
22 here.

23 **THE COURT:** He's not entitled to be in  
24 here if he's going to prejudice this jury --

25 **MR. DASKAS:** I just --

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1           **THE COURT:** -- and do all kinds of stuff  
2 that will make this Court cannot complete this case;  
3 so, he's not entitled to be here. I can exclude  
4 anybody who is going to jeopardize the proceedings  
5 or are going to be -- cause a disturbance.

6           **UNIDENTIFIED SPEAKER:** I'm sorry, Judge.  
7 It's his brother.

8           **THE COURT:** Ma'am, do you want to stay in  
9 here --

10          **UNIDENTIFIED SPEAKER:** Yes, I do.

11          **THE COURT:** -- because I will exclude you  
12 too. All right?

13          **MR. DASKAS:** Judge, the reason I made that  
14 point is that I'm representing --

15          **THE COURT:** In fact, ma'am, I think you  
16 need to go out and compose yourself, because I'm not  
17 having it. What you're going to do is you guys are  
18 going to destroy this trial here and ruin it.

19          **UNIDENTIFIED SPEAKER:** I will not, your  
20 Honor. I have sat here for how long --

21          **THE COURT:** I'm not going to argue for  
22 you. Outside, ma'am.

23          **THE BAILIFF:** Ma'am, out.

24          **THE COURT:** That's what I'm talking about.  
25 You see?

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1           **MR. DASKAS:** Judge, may I finish my  
2 record, please?

3           **THE COURT:** Yes. Go on.

4           I just want the record to reflect that  
5 this witness is up here crying. I don't know who  
6 this lady is, but she's crying and becoming  
7 emotional sitting in the front seat and start  
8 talking. I don't know what she - what relationship  
9 she is to the kid who fell out and passed out in  
10 front of the jury there and caused a big commotion  
11 and disturbance while we had to recess court. And I  
12 don't know who she is, but we can't have this here  
13 which is going to be biased or prejudiced. You  
14 know, I'm not saying you had anything to do with it.  
15 It's an emotional case and these folks lost  
16 relatives and whatever --

17           **MR. DASKAS:** I understand that.

18           **THE COURT:** -- and I understand that, but  
19 the Court still has the duty to protect the  
20 integrity of the trial and make sure we don't get a  
21 mistrial or something to that effect. All right?

22           **MR. DASKAS:** Judge, I understand that of  
23 all people having to live with this case for seven  
24 years and tried it about eight times now, I agree  
25 with you, and I appreciate that, and that's why I'm

1 telling you I spoke with the relative, Nick  
2 Gorringer, and I explained to him if there's a  
3 possibility you're going to have an outburst, I  
4 don't want you in the courtroom, because we don't  
5 want to redo this. So, I'm just bringing it to your  
6 attention, Judge --

7           **THE COURT:** As long as he can keep his  
8 composure, it's on you, but if they come in here and  
9 cause some kind of disturbance or make some kind of  
10 demonstration or whatever in front of this jury  
11 that's going to prejudice this case here --

12           **MR. DASKAS:** I understand.

13           **THE COURT:** -- you're doing it at your  
14 peril.

15           **MR. DASKAS:** I understand.

16           **THE COURT:** But I'll tell you what, if it  
17 gets bad, I won't hesitate to declare a mistrial if  
18 I think their conduct is being prejudicial to the  
19 administration of justice. Just so we're clear on  
20 that.

21           If the baby is crying, the baby has to  
22 stay outside.

23           **MR. DASKAS:** Judge, may I go actually have  
24 a word with those relatives before we start court?

25           **THE COURT:** Right, right. Go on.

1           **MR. DASKAS:** Judge, Nick Gorringer is not  
2 here right now. He might be here later.

3           **THE COURT:** As long as he knows, that's  
4 fine.

5           **MR. DASKAS:** As I said, Judge, I don't  
6 want to do it again as much as you don't want to do  
7 it again, trust me.

8           **MS. JACKSON:** You got to be getting tired.

9           **THE COURT:** Are we ready?

10          **MS. JACKSON:** Yes, your Honor.

11          (Jury present.)

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

14          **THE COURT:** Let the record reflect the  
15 presence of all the parties, all the attorneys, all  
16 members of the jury.

17          State, call your next witness.

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

19  
20          STATE'S EVIDENCE IN AGGRAVATION (RESUMED)

21          **MR. STANTON:** The State would call Officer  
22 Charles Burgess.

23          **THE BAILIFF:** Step up there. Watch your  
24 step. Remain standing and face the clerk.

25          (Oath administered.)

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1           **THE WITNESS:** I do.

2           **THE CLERK:** Thank you. Please have a  
3 seat. State your full name spelling your last name  
4 for the record.

5           **THE WITNESS:** My name is Charles Burgess,  
6 B-U-R-G-E-S-S.

7           **THE CLERK:** Thank you.

8  
9                   CHARLES BURGESS,  
10           being called as a witness on behalf of the  
11 State, was first duly sworn and testified as  
12 follows:

13  
14                   DIRECT EXAMINATION

15 **BY MR. STANTON:**

16           Q     Sir, how are you employed?

17           A     I work for the Las Vegas Metropolitan  
18 Police Department.

19           Q     I know you're here dressed today for your  
20 testimony in the uniform of Las Vegas Metro?

21           A     That is correct, sir.

22           Q     And how long have you been in that form of  
23 employment?

24           A     Twenty-seven August 1996 I believe was my  
25 hire date.

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( )

1 Q I want to direct your attention to  
2 May 4th, 1998.

3 Sir, did you have, on that day, occasion  
4 to be on duty?

5 A Yes, I was.

6 Q What shift were you working, sir?

7 A Graveyard shift in the Downtown Area  
8 Command.

9 Q And when would your shift begin and end?

10 A I believe it's like 11:00 p.m. to 9:00  
11 a.m.

12 Q When you say "Downtown Area Command,"  
13 would that area include the area commonly referred  
14 to as the "Fremont Street" or "Fremont area"?

15 A Yes, sir, it would.

16 Q And directing your attention to  
17 approximately 4:00 a.m. on that day, do you recall  
18 something unusual occurring and you being dispatched  
19 to that area?

20 A Yes. There was a call of a possible  
21 shooting in the area of -- I believe it was like the  
22 2100 block of East Fremont.

23 Q Okay.

24 And did you go to that location?

25 A Yes, I did.

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1 Q And when you went to that location,  
2 Officer Burgess, were you in a uniformed or marked  
3 patrol unit?

4 A Yes, I was.

5 Q And were you in uniform?

6 A Yes, I was.

7 Q Can you describe what you observed when  
8 you first came and arrived at that scene?

9 A After the initial call came out, I  
10 arrived, I believe it was less than a minute,  
11 because I was just down the street, and I observed a  
12 black male laying in front of the U-Haul property  
13 down in that area, and he was lying motionless on  
14 the road.

15 Q And did you ultimately come to know that  
16 individual as Derrick Simpson?

17 A I later determined his real name to be  
18 Derrick Simpson, yes, sir.

19 Q Prior to your testimony today, you were  
20 shown a series of photographs.

21 A Yes, sir, that is correct.

22 Q For the record, previously shown Defense  
23 Counsel State's Exhibit 219 through 227 -- do they  
24 accurately depict various aspects of this case and  
25 your involvement in it?

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1           A       The photos that you showed me, yes, sir.

2                   **MR. STANTON:** Move for their admission,  
3 your Honor.

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

5                   **THE COURT:** Admitted.

6                   (State's Exhibits 219 through 227 were  
7 admitted into evidence.)

8 **BY MR. STANTON:**

9           Q       Two nineteen -- Officer Burgess, do you  
10 recognize --

11           A       I do.

12           Q       And is that Derrick Simpson?

13           A       Yes, that's Derrick Simpson, and he also  
14 went by the street name of "Proffit.

15           Q       Can you describe what you observed about  
16 Mr. Simpson and what occurred after your initial  
17 arrival at the scene?

18           A       When I initially arrived, I advised  
19 dispatch that I had a man down in the roadway. I  
20 walked up to him. He was totally motionless, and I  
21 noticed that he had what appeared to be possibly a  
22 shotgun wound or a gunshot wound to the face area,  
23 and to be quite honest with you, I thought he was  
24 deceased.

25           Q       Why did you think that?

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1           A       Because of -- just the condition of his  
2 face from the gunshot as well as the fact that he  
3 was completely motionless.

4           Q       Okay.

5                   Did you notice anything about his  
6 injuries, about his person at that time?

7           A       Like I said, he had one gunshot to the  
8 face, and I later learned after they did a closer  
9 inspection that he also had another possible shot to  
10 the back.

11          Q       And when you went up to Mr. Simpson, I  
12 believe you testified you thought he was deceased?

13          A       I did, but out of instinct, I just said,  
14 "Can you hear me?" and he actually spoke to me.

15          Q       And did that surprise you?

16          A       Slightly.

17          Q       Okay.

18                   And then what occurred next, Officer?

19          A       I immediately asked him if he know who  
20 shot him.

21          Q       And what did he say?

22          A       He said yes, he did.

23          Q       And what did he tell you?

24          A       He told me it was a black male by the  
25 name -- street name of "Deko," and then he went on

1 to explain that he was a light black male, probably  
2 about 5-6, 120 pounds. As I said, he said he had  
3 either a black or dark colored jacket on and braided  
4 hair.

5 Q I want to show you a series of  
6 photographs.

7 Exhibit 220 -- what are we looking at in  
8 that photograph?

9 A That looks like the south side of the  
10 roadway about the 2000, 2100 block of East Fremont.

11 Q This is the location where you saw  
12 Mr. Simpson?

13 A Yes.

14 Q State's Exhibit 221 -- what's in that  
15 photograph, Officer?

16 A It looks to be Derrick Simpson as I recall  
17 him looking when he was either -- right after UMC  
18 trauma -- arriving at UMC trauma when they were  
19 working on him, as I recall.

20 Q And you went with emergency medical  
21 personnel?

22 A I did.

23 Q And this is 222 (indicating).  
24 What's contained in that photograph?

25 A That appears to be some of the clothing

1 that Mr. Simpson was wearing at the time that he was  
2 shot that was cut off by AMR personnel.

3 Q When you say EMR (sic), is that  
4 paramedics?

5 A Yes, sir, it is.

6 Q And this is a distant shot, Exhibit 223  
7 (indicating).

8 Is that the same coat that we see in 222?

9 A I believe it is.

10 Q And the close-up where you see the ruler  
11 on that in 224, do you see that portion of  
12 Mr. Simpson's jacket?

13 A I do.

14 Q And what does that appear to you, based  
15 upon your knowledge of the scene and your training  
16 and experience?

17 A It would appear to me to be a possible  
18 gunshot entrance into the jacket.

19 Q And 225 -- I know that's rather dark, but  
20 do you recognize that item of clothing as being  
21 Mr. Simpson's, and once again, the bullet hole in  
22 that clothing?

23 A Actually, I can't see it. It's just a  
24 black blot.

25 Q Let me bring it up -- 225 -- and hand it

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25

1 to you without the projector.

2 A Yes, this appears to be his clothing.

3 Q And once again, the ruler is depicting  
4 what?

5 A Depicting what appears to be like a bullet  
6 hole.

7 Q Okay.

8 During the course of your interaction with  
9 Mr. Simpson both at the scene, Officer Burgess, and  
10 then transporting in at the hospital, did you ask  
11 him more than once to describe his assailant and  
12 circumstances involving his shooting?

13 A I did.

14 Q And did he tell you -- on how many  
15 different occasions did he tell you the  
16 circumstances of what took place?

17 A There was two different occasions. The  
18 first was at the scene when I arrived, and then the  
19 second time -- because I wasn't able to talk to him  
20 in the emergency ambulance because they were working  
21 on him but prior to him being sedated by the UMC  
22 trauma personnel, I asked if I could speak to him  
23 one more time, and they told me to make it quick. I  
24 asked him the exact same questions, and he gave me  
25 the exact same answers the second time in the

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1 description of the suspect and his street name.

2 Q As part of his description of the  
3 incidents, did he describe to you at any point after  
4 he was shot by Deko what Deko did?

5 A I don't believe that he told me exactly  
6 what happened.

7 Q Okay.

8 Did he describe a vehicle?

9 A The vehicle that I learned about was  
10 identified by some of the witnesses around the area  
11 including, I believe, a security officer that had  
12 been directly involved with the two of them just  
13 prior to this incident.

14 Q And 226 -- since it's a dark photograph,  
15 let me hand it to you.

16 Is that a little better?

17 A Um-hmm. Yes, sir.

18 Q Is 226 the vehicle that was ultimately  
19 impounded by police officers in this investigation?

20 A Yes, it is.

21 Q And the same thing about 227?

22 A Yes, sir.

23 MR. STANTON: Pass the witness, your  
24 Honor.

25 THE COURT: Cross-examination.

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

3           Nothing further, your Honor. Thank you.

4           **THE COURT:** Thank you, Officer. You're  
5 excused.

6           Call your next witness, State.

7           **MR. DASKAS:** Judge, a housekeeping matter  
8 before we do that. I've shown exhibits -- Proposed  
9 Exhibits 252 and 253 to Defense Counsel. I'll  
10 represent that 252 is the original charging  
11 Information against Donte Johnson with the crimes of  
12 Attempt Murder and Battery With Use of a Deadly  
13 Weapon involving this incident with the victim  
14 Derrick Simpson. Two fifty-three is the Judgment of  
15 Conviction in which he was adjudicated guilty of  
16 Battery with Use of a Deadly Weapon. I'd move for  
17 the admission of those two documents at this time,  
18 Judge.

19           **THE COURT:** Approach the bench.

20           (Sidebar conference outside the presence  
21 of the court reporter.)

22           **THE COURT:** State's Exhibit No. 253 will  
23 be admitted.

24           **MR. DASKAS:** Thank you, Judge.

25           Judge, for the record, there was a



1 stipulation that Exhibit 253, the Judgment of  
2 Conviction symbolizes, if you will, the defendant  
3 pled guilty to that charge and that the victim in  
4 that case was Derrick Simpson who was depicted in  
5 the videotape we watched yesterday, Judge.

6 **MS. JACKSON:** That is a correct statement,  
7 your Honor.

8 **THE COURT:** All right. Stipulation  
9 accepted.

10 (State's Exhibit 253 was admitted into  
11 evidence.)

12 **MR. DASKAS:** Judge, I will lodge State's  
13 Proposed 252 with the Court, understanding it would  
14 not be admitted.

15 **THE COURT:** Right.

16 **MR. STANTON:** Your Honor, the State's next  
17 witness is Robert Hoffman.

18 **THE CLERK:** Sir, please remain standing  
19 and raise your right hand.

20 (Oath administered.)

21 **THE WITNESS:** I do.

22 **THE CLERK:** Thank you. Please have a  
23 seat. State your full name spelling your last name  
24 for the record.

25 **THE WITNESS:** Robert Hoffman,

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1 H-O-F-F-M-A-N.

2 **THE CLERK:** Thank you.

3

4 **ROBERT HOFFMAN,**

5 being called as a witness on behalf of the  
6 State, was first duly sworn and testified as  
7 follows:

8

9 **DIRECT EXAMINATION**

10 **BY MR. STANTON:**

11 Q Mr. Hoffman, how are you employed?

12 A I work for the State of California,  
13 Department of Corrections Parole Division.

14 Q And how long have you been in that or  
15 similar employment?

16 A On May 1st, it will be 33 years.

17 Q And directing your attention to your  
18 current duty assignment, what is that?

19 A Currently, I'm assigned to the Long Beach  
20 office. I'm assigned to a program called "PACT,"  
21 Police and Corrections Team, and in that regard, I  
22 organize sweeps, compliance searches of adult  
23 parolees and organize meetings where we have  
24 resources to come in to help parolees get jobs and  
25 clothing and housing and drug rehab, et cetera.

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1 Q You've previously testified in this case  
2 some years back, correct?

3 A About five years ago, yes.

4 Q You kind of understand the parameters of  
5 the questions that are being opposed to you here  
6 today?

7 A Yes, sir.

8 Q Before you is a series of documents that I  
9 want to get to in just a minute that I believe  
10 you've reviewed prior to your testimony; is that  
11 correct?

12 A That's correct.

13 Q Are you familiar with an individual by the  
14 name of John Lee White?

15 A Yes.

16 Q And how are you familiar with that  
17 individual?

18 A I received his case in transfer from  
19 California Youth Authority in 1999.

20 Q And "California Youth Authority" is  
21 commonly referred to by an acronym, is it not?

22 A Well, CYA.

23 Q CYA?

24 A They're part of our super agency, the  
25 Youth and Corrections Agency which is referred to as

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1 "YACA"; so, the Youth and Corrections Agency houses  
2 both the youth authority and adult parole and the  
3 adult prison system.

4 Q And what does -- in a general fashion,  
5 what is "California Youth Authority" or "CYA"?

6 A They have juvenile prisons and camps for  
7 juveniles who violate the Penal Code who have been  
8 judged unfit to be remanded to the county system, to  
9 county camps, and they have youth authority parole.

10 Q Would it be an accurate statement that  
11 before someone is housed in a juvenile prison  
12 commonly referred to as "CYA," that that person has  
13 been assessed either by their interview or by their  
14 conduct not to be treated in the normal juvenile  
15 system?

16 A Generally, they've already been treated in  
17 the juvenile system and continue to offend or had  
18 failed in the juvenile system.

19 Q And the transfer of John Lee White to you  
20 was a case in the adult system, correct?

21 A Correct. It was an administrative mass  
22 transfer -- was one of many cases that came.

23 Q Before you to your left is Exhibit 216. I  
24 believe it would be the top document there,  
25 Mr. Hoffman, and ask you to look at that for a

1 moment and tell me if you recognize what that  
2 document represents.

3 A Yes.

4 Q What is that document?

5 A It's what we refer to in Los Angeles as a  
6 "POR," which is short for "Probation Officer's  
7 Report," and this is the Probation Officer's Report  
8 that resulted in his commitment probably -- no.  
9 This one didn't send him to CYA; this one is prior  
10 to that.

11 Q And that's for John Lee White, correct?

12 A Correct.

13 Q And what is a POR used for in the juvenile  
14 setting?

15 A Well, a POR is used by the Courts by a  
16 Judge in order to determine disposition at  
17 sentencing.

18 Q And it aids the Court?

19 A Absolutely.

20 Q And is that an accurate copy of the POR as  
21 it relates to Johnny Lee White in the juvenile  
22 system in the State of California?

23 A I believe so.

24 MR. STANTON: Move for State's 216 into  
25 evidence.

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

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

3           (State's Exhibit 216 was admitted into  
4 evidence.)

5           **THE COURT:** Excuse me. I have a question  
6 for you.

7           What is the age -- is there an age  
8 requirement for the California Youth Authority?

9           **THE WITNESS:** I think the low is about 14  
10 and the high is 25.

11           **THE COURT:** All right.

12 **BY MR. STANTON:**

13           Q     Before you is the next exhibit,  
14 Exhibit 217.

15           Could you look at that, Mr. Hoffman, and  
16 tell me if you are familiar with the contents of  
17 that report?

18           A     Yes.

19           Q     And what is that?

20           A     This is also a POR or Probation Officer's  
21 Report regarding an armed robbery.

22           Q     And is it involving Johnny Lee White?

23           A     Yes.

24           Q     And that was prepared pursuant to his  
25 conviction for that offense?

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1 A Yes.

2 Q And Exhibit 218 before you, if you could  
3 take a look at that -- and are you familiar with  
4 what's depicted in 218?

5 A Yes.

6 Q And what is in 218?

7 A This is an accurate judgment from  
8 Los Angeles County for armed robbery --

9 Q And is that --

10 A -- relative to the defendant, John Lee  
11 White.

12 Q For an armed robbery occurring on  
13 June 8th, 1993?

14 A Yes.

15 MR. STANTON: Move for Exhibit 217 and 218  
16 into evidence.

17 MR. WHIPPLE: No objection, your Honor.

18 THE COURT: Admitted.

19 (State's Exhibits 217 and 218 were  
20 admitted into evidence.)

21 BY MR. STANTON:

22 Q Are you familiar with what sentence  
23 Mr. White received in the juvenile system for the  
24 armed robbery of the Sunfed Bank?

25 A I believe he was committed to California

1 Youth Authority, and I don't know about the length  
2 of the commitment. It might have been  
3 indeterminate. I think I've seen a document from  
4 your office that might show that.

5 Q If I represent to you, Mr. Hoffman, it was  
6 three years for the armed robbery with a one-year  
7 enhancement for the weapon, would that be consistent  
8 with your memory?

9 A Yes.

10 Q So, he received a total of a four-year  
11 commitment to CYA?

12 A Correct.

13 Q Now, relative as -- my next question is  
14 specifically as it applied to John Lee White when he  
15 was committed to CYA for the armed robbery, can you  
16 describe the process in which a juvenile or  
17 Mr. White was evaluated and what goes into the  
18 evaluation and what programs are available pursuant  
19 to that evaluation?

20 A Juveniles are sent either to Whittier or  
21 to Chino to a reception center where they're  
22 evaluated by a psychiatrist for a psychiatric  
23 evaluation. They're given a battery of tests to  
24 determine their educational level -- math, verbal,  
25 et cetera, and then based on those tests, then they

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1 determine what kind of programs to set up, either  
2 educational programs to get them a GED or high  
3 school diploma or, perhaps, psychiatric program to  
4 help them with anger management or parenting class  
5 if they have issues over violence within the family  
6 or a class -- they might have a class trying to  
7 teach them how to behave in an employment situation.

8 Q And you've described in this intake  
9 procedure, that is, information that's gleaned about  
10 that comes from what sources -- certainly the  
11 defendant himself, the juvenile?

12 A Generally, interviews with the defendant  
13 and tests of the defendant, and the people who do  
14 the documentation are youth counselors within CYA's  
15 prison system and their psychiatric staff.

16 Q As far as Mr. White's stay in the  
17 California Youth Authority as an incarcerated  
18 juvenile, he was released prior to the expiration of  
19 a four-year term, correct?

20 A I believe so.

21 Q When someone is released, is there a term  
22 that you use or the system uses when someone is  
23 released prior to the expiration of the term but  
24 they still have time, if you will, hanging over  
25 their head?

1           A     Well, in youth authority, that would be  
2 parole. In adult parole in California, parole is in  
3 addition to your sentence rather than part of your  
4 sentence, so there's a distinction there.

5           Q     And at the time that the parole exists  
6 with John White in this case, he would have been  
7 released physically from custody and then would have  
8 been on a parolee status, correct?

9           A     Correct, and ordered to report to a parole  
10 office.

11          Q     And are the programs that you previously  
12 mentioned that -- once you go through the intake  
13 process, are those programs for the inmate mandatory  
14 or voluntary?

15          A     I think they can be either.

16          Q     What makes that assessment? How is that  
17 process an assessment between what are mandatory  
18 programs or what are voluntary?

19          A     I couldn't say. I never worked in CYA.

20          Q     At the time that the case was transferred  
21 to you, what was John Lee White's status within the  
22 judicial system in the State of California?

23          A     He was an absconder from California Youth  
24 Authority parole. His parole had been suspended and  
25 a warrant had been placed, and he was already in

1 custody in Las Vegas on the murder case. And when I  
2 received the file, I had the parole agent from CYA's  
3 report on the case here and a copy of the warrant  
4 and all that material. I received it in 1999 --  
5 summer of '99.

6 Q And just -- this may be an obvious  
7 question but could you just describe maybe in  
8 laymen's term, what is an "absconder," technically  
9 as you address it?

10 A An "absconder" is someone who doesn't  
11 report or who gives us a phony address we can't  
12 find, and if we can't find them, then we are  
13 required to write a report to the -- either -- in a  
14 juvenile, to the California Youth Authority Board,  
15 or as an adult, to the Board of Prison Terms to  
16 request that their parole be suspended and a warrant  
17 be placed for their arrest.

18 Q And is that what happened in the case of  
19 John Lee White?

20 A Yes.

21 MR. STANTON: Pass the witness.

22 THE COURT: Cross?

23 MR. WHIPPLE: Thank you, your Honor.

24 /////

25 /////

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CROSS-EXAMINATION

**BY MR. WHIPPLE:**

Q Good morning, Mr. Hoffman. How are you?

A Pretty good.

Q Good.

Now, you've never met Mr. John Lee White,  
correct?

A No.

Q And, in fact, you mentioned you don't even  
work for the California Youth Authority.

A Correct. Never have.

Q You never worked for the CYA; you just  
have records from them, correct?

A I have records from them, and I have  
knowledge of their operation from -- a lot of their  
staff comes and works for us, so I've had a lot of  
interaction with their ex-staff and their current  
staff.

Q Now, we met outside briefly?

A Yes.

Q The first time we've had an opportunity to  
meet?

A Right.

Q We went through some of your records?

A Um-hmm.

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1 Q In fact, I showed you some records, and  
2 those were some of the records that were delivered  
3 to your office?

4 A Um-hmm.

5 Q Will that be a "yes"?

6 A That's correct.

7 Q There's three pages there.

8 A Yes. I had previously seen all three.

9 MR. WHIPPLE: Okay. This is Defense  
10 Proposed Exhibit NN. I move to admit.

11 MR. STANTON: I don't necessarily have an  
12 objection, but if there could just briefly be a  
13 foundation as to where those documents come from,  
14 Counsel --

15 MR. WHIPPLE: Sure.

16 BY MR. WHIPPLE:

17 Q Why don't you tell us where you got them?

18 MR. STANTON: -- and what they represent.

19 THE WITNESS: When I originally got the  
20 case transferred to me, there was no file. I  
21 requested a file, and once I received the file,  
22 those documents were part of that file, and they  
23 were actually the CYA -- the California Youth  
24 Authority file. One of the documents is a report  
25 that the California Youth Authority parole agent

1 wrote to request a warrant. Another is the -- what  
2 we call "611." It's the report indicating the  
3 program that someone is going to be on when they are  
4 released from prison, or in this case, the juvenile  
5 prison; and the third is the back side of that.  
6 It's a flip -- two-page back and front showing what  
7 kind of programs he's involved in.

8 **BY MR. WHIPPLE:**

9 Q Okay. Great.

10 Those are the same kinds of records that  
11 were included in the records that you admitted with  
12 the State?

13 A It was in the same file.

14 **MR. WHIPPLE:** Move to admit Defense  
15 Exhibit NN.

16 **MR. STANTON:** With that foundation, the  
17 State has no objection.

18 **THE COURT:** All right.

19 (Defense Exhibit NN was admitted into  
20 evidence.)

21 **BY MR. WHIPPLE:**

22 Q Now, Mr. Stanton asked you some questions  
23 regarding some of the programs at the CYA.

24 Do you remember that?

25 A Correct.

1 Q How did you learn or how were you aware  
2 about the different programs that were available at  
3 the CYA?

4 A Well, my ex-boss was a lieutenant with the  
5 California Youth Authority, and we've discussed  
6 their programs, and I've had numerous co-workers who  
7 were employed by CYA and worked inside, and I  
8 discussed the programs with them. The file that I  
9 received on Mr. White contains information, a little  
10 bit of information on their programs.

11 Q And of course, you mention some of the  
12 programs are programs for self-benefit?

13 A Correct.

14 Q Programs to continue education?

15 A Yes.

16 Q Some of the programs are voluntary?

17 A My guess -- and I don't really know  
18 this -- would be that most of the programs are  
19 involuntary or required.

20 Q Some are mandatory?

21 A I would think that most are mandatory.

22 Q Some are voluntary; would you accept that?

23 A I would accept that.

24 Q And obviously, a person's level of  
25 participation is up to themselves?

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1           A       I couldn't tell you. I believe that  
2 there's some amount of voluntary incident involved.

3           Q       Sure.

4                   Is it fair to say that people are -- some  
5 of those kids are given a chance to try to better  
6 themselves?

7           A       Certainly the goal of CYA is to  
8 rehabilitate and to help these people change their  
9 lives so they don't become recidivists.

10          Q       Now, you recall that you testified about  
11 five years ago in the same manner?

12          A       Yes.

13          Q       And there was some questions asked to you.  
14 The question was, there's a lot of real tough people  
15 in CYA.

16          A       Absolutely.

17          Q       In other words, it's not a playground,  
18 correct?

19          A       Correct.

20          Q       And, in fact, the question was asked of  
21 you, "If you had any children, would you want them  
22 to be in the CYA?"

23                   Do you recall what your answer was?

24          A       "Absolutely not."

25                   **MR. WHIPPLE:** Court's indulgence.

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1           Nothing further, your Honor.

2           **MR. STANTON:** Brief redirect, your Honor.

3

4                           REDIRECT EXAMINATION

5 **BY MR. STANTON:**

6           Q     Not to belabor the point, but you  
7 mentioned some programs. You mentioned "anger  
8 management."

9                   Are there also programs about education to  
10 complete high school?

11           A     Yes.

12           Q     How about vocational training, job  
13 training?

14           A     Yes. There had been -- at one point they  
15 had a contract between CYA and, I think, the  
16 airlines to have CYA wards answer the phone and do  
17 your ticketing so that you could -- so they could be  
18 reservation clerks.

19           Q     And they also assist in job -- getting job  
20 skills, interviewing skills?

21           A     Right. They have employability classes,  
22 which in the file -- in his file it indicates that  
23 he was required to go to an employability class at  
24 the parole office after he was released, and a  
25 parenting class also.

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1           **MR. STANTON:** Nothing further.

2

3                           RECROSS-EXAMINATION

4 **BY MR. WHIPPLE:**

5           Q       Does that same file show that Mr. White  
6 was making an effort to become a cook? Did you see  
7 that?

8           A       I don't recall seeing that, but I wouldn't  
9 dispute that.

10           **MR. WHIPPLE:** Okay.

11                       Nothing further, your Honor.

12           **THE COURT:** All right.

13           **MR. STANTON:** Nothing further, your Honor.

14           **THE COURT:** You're excused.

15                       Call your next witness.

16           **MR. STANTON:** The State would call Officer  
17 Alex Gonzalez.

18           **THE BAILIFF:** Remain standing and face the  
19 clerk.

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

21                       (Oath administered.)

22           **THE WITNESS:** Yes.

23           **THE CLERK:** Thank you. Please have a  
24 seat. State your full name spelling your last name  
25 for the record.

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1           **THE WITNESS:** My name is Alexander  
2 Gonzalez, A-L-E-X-A-N-D-E-R, G-O-N-Z-A-L-E-Z.

3           **THE CLERK:** Thank you.  
4

5                   ALEXANDER GONZALEZ,  
6           being called as a witness on behalf of the  
7 State, was first duly sworn and testified as  
8 follows:

9                   DIRECT EXAMINATION

10 **BY MR. STANTON:**

11           Q     Sir, how are you employed?

12           A     Excuse me?

13           Q     How are you employed?

14           A     I'm an officer at Las Vegas Metro inside  
15 the Detention Center.

16           Q     How long have you been in that form of  
17 employment?

18           A     Approximately five-and-a-half years.

19           Q     And what are your current duty  
20 assignments?

21           A     I work inside the intelligence office  
22 investigating gangs, investigating disruptions and  
23 investigating escape attempts. It varies.

24           Q     But you work strictly inside -- well, at  
25 least primarily inside Clark County Detention

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1 Center?

2 A Correct.

3 Q Commonly referred to here as the jail here  
4 in Clark County?

5 A Correct.

6 Q Officer Gonzalez, I'd like to direct your  
7 attention to February 24th, 2001.

8 On that day, sir, were you working?

9 A Yes, I was.

10 Q In that capacity were you working on that  
11 day?

12 A I was a module officer in 5-Charlie,  
13 5-David. I was just relieving for a few hours while  
14 the officers assigned to that module trained.

15 Q I'd like you to describe, if you would --  
16 you said 5-Charlie, 5-David.

17 Is that 5C and -D?

18 A That's correct.

19 Q And could you describe what kind of module  
20 that is, what does it look like and how many inmates  
21 are housed in that portion of the facility?

22 A It's disciplinary housing. It's  
23 disciplinary housing. It's isolated. You can say  
24 it's isolation. They're locked down 23 hours a day.  
25 They're allowed one hour a day for free time.

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1 They're housed in these rooms where they're fed.  
2 They're allowed to take a shower, shave and stuff  
3 like that during that hour of free time -- make  
4 telephone calls.

5 Q And what type of inmate or inmates are  
6 housed in Module 5-Charlie and -David back in  
7 February of 2001?

8 A Same type of inmates, inmates that cause  
9 disruptions in the jail, fights, couldn't be housed  
10 in the general population, inmates that cause  
11 problems in general -- in general modules with the  
12 exception of maybe if maybe psych might have run out  
13 of room, they might send somebody up.

14 Q So, someone that has potentially mental  
15 problems would also be housed in there?

16 A It could be if, under, you know -- they  
17 make -- if the psych unit is full, then they will  
18 send somebody up temporarily, but usually, it's just  
19 disciplinary inmates.

20 Q And would you say that -- would you have  
21 an opinion based upon your knowledge of the jail  
22 whether or not Module 5C and -D would house higher  
23 risk inmates than other portions of the jail?

24 A Yeah, that's correct. That's where we  
25 house our high risk inmates.

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1           Q     Did you know in February 2001 an inmate  
2 housed at the Clark County Detention Center by the  
3 name of Donte Johnson?

4           A     Yes, I did.

5           Q     Do you see that individual in court?

6           A     Yes, I do.

7           Q     Could you please describe where in the  
8 courtroom he is and what he's wearing?

9           A     He's sitting right there between the two  
10 attorneys. He's wearing a gray shirt, looks like  
11 gray pants and black shoes and has the braids.

12                **MR. STANTON:** May the record reflect the  
13 identification of the defendant?

14                **THE COURT:** It shall.

15                (Witness identified the defendant.)

16 **BY MR. STANTON:**

17           Q     Can you describe the layout, how,  
18 physically, module 5C and D looks?

19           A     It's like any other module with the  
20 exception that all inmates are locked in their  
21 rooms, so only certain inmates are let out at a  
22 time -- one, two or three depending if they get  
23 along. It's very open from the module office. They  
24 call it "The Bubble." You can visualize -- you can  
25 see both units, so -- I don't know how to better

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1 describe it, but it's just a regular module.

2 Q Okay.

3 And how many floors are in these modules?

4 A There's two tiers; there's a bottom one  
5 and there's an upper one. They have rooms on the  
6 upper tier and the bottom tier.

7 Q Do you know approximately how many cells  
8 per level there are?

9 A I want to say there's 24 rooms per module.

10 Q Okay.

11 And a module is two floors and two  
12 separate parts?

13 A 5-Charlie, there's 24 rooms, and 24 rooms  
14 in 5-David.

15 Q So, 5C and 5D both have two levels to  
16 them?

17 A Correct.

18 Q On the date of February 24th, 2001,  
19 approximately how many correctional officers were on  
20 duty in the area of Module 5?

21 A Approximately -- I'm going to say three  
22 assigned to 5-Charlie, 5-David. That would be Post  
23 50, and that's the person operating the doors and  
24 two officers assigned to the unit.

25 Q Now, when you say "operating the doors,"

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1 how are the doors operated in Module 5?

2       A       Well, we can't key the doors to get in and  
3 out of the doors for the rooms, the person operating  
4 what's called -- in "The Bubble," Post 50, he lets  
5 us in and out of the day room to go inside the  
6 module and the rooms. We got to tell him --  
7 either he sees us visually or on the radio -- "Hey,  
8 can you let us in the room 5-Charlie-1,  
9 5-Charlie-3," et cetera.

10       Q       That's done by electronics to unlock  
11 doors?

12       A       Correct.

13       Q       Did you see something unusual occur while  
14 you were on duty February 24th while you were on  
15 duty in Module 5C and -D?

16       A       Yes, I did.

17       Q       What did you see?

18       A       Well, I was called to relieve these couple  
19 of guys that are assigned to CERT. I went there,  
20 and they provided me a schedule of inmates to  
21 exercise. What I mean by "exercise" -- it was  
22 already documented who is going to come out at what  
23 time, so I just let them out so they can shower,  
24 shave, and do what they need to do -- phone calls.  
25 So, in the first hour of that, Donte Johnson,

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1 Reginald Johnson and Oscar Irias were out for free  
2 time and while into free time, I witnessed a fight,  
3 and shortly after the fight, Oscar was thrown over  
4 by Reginald Johnson and Donte Johnson.

5 Q Thrown over what?

6 A The top tier in 5-Charlie, which is -- I  
7 would say about Room 22 and 23 -- 22 -- I believe  
8 they threw him over.

9 Q So, they were on the second tier, and  
10 there's the one tier below?

11 A Correct.

12 Q Now, you said three individuals that were  
13 involved in this incident. Let's take them one at a  
14 time.

15 The inmate that was thrown over, what was  
16 his name?

17 A Oscar Irias.

18 Q And did you know Mr. Irias prior to you  
19 coming to work on February 24th, 2001?

20 A Yes, I did.

21 Q And how did you know Inmate Irias that  
22 day?

23 A He was housed in prior modules that I've  
24 worked there and been assigned to.

25 Q And how can you describe Inmate Irias to

1 us about how he looked, his height, weight,  
2 appearance?

3 A I would approximately say he was  
4 approximately 5'8, maybe a buck -- 185, Hispanic,  
5 broken English, not a problem child, I would say,  
6 and not a person that provides problems for other  
7 inmates or officers working in that unit, at least  
8 never causing any problems for me.

9 Q And you described previously that he was a  
10 little slow?

11 A Yes.

12 Q What do you mean by that?

13 A Just, umm -- I'm not a psych or anything,  
14 but just from conversations that some of the things  
15 that he would bring up quite weren't -- you know,  
16 didn't appear to make sense.

17 Q Okay.

18 And you mentioned Donte Johnson and  
19 someone by the name of Reginald Johnson.

20 Who was Reginald Johnson?

21 A Reginald Johnson was another inmate that  
22 was housed in 5-Charlie.

23 Q And when you said there was an initial  
24 fight, where did you see the fight occurring and who  
25 was involved in that fight or altercation?

1           A       I saw the fight occur in the upper tier.  
2 I was monitoring their movement through a door  
3 through a window. I was watching them, and I saw  
4 the inmates go up, but sometimes they go up to pick  
5 up supplies, cleaning supplies, or grab a book or  
6 whatever. So, I was watching them. As Oscar went  
7 up, two other inmates, Reginald and Donte, went up  
8 after him, and I was just kind of watching him, and  
9 that's when I believe Reginald grabbed him and Donte  
10 started striking him, and that's when I called the  
11 Code Red 416 which is a code that we use for fight.

12           Q       Okay.

13                   And when you say you called a 4- -- a Code  
14 Red 416, could you describe what that means when you  
15 broadcast it on the radio?

16           A       That means that -- usually when we push a  
17 button and we say "Code Red 416," control knows that  
18 that's me, because it appears -- they got a scanner  
19 that appears, Post 50 has a Code Red, and it's  
20 pretty much stating that I need backup, and other  
21 officers arrive because there's a 416 between  
22 inmates.

23           Q       And would it be fair to characterize it  
24 that that is to translate into laymen's term that  
25 you're declaring an emergency?

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1 A Yes.

2 Q And that you need assistance?

3 A That I need assistance.

4 Q Now, as you're calling out that code, what  
5 are you physically doing, Officer?

6 A Well, I'm calling -- I'm calling the Code  
7 Red watching them, you know, going back and forth,  
8 and Oscar was pretty much helpless at this time. I  
9 tell my partner Q. Hardy, "We got a code," so I ran  
10 out first. As I'm running out and I get halfway to  
11 the door, I witness them grabbing him, both of them  
12 grabbing him.

13 Q Okay.

14 Let me just describe (sic) you there. You  
15 said who grabbed him, and where did they grab the  
16 inmate?

17 A Reginald Johnson and Donte Johnson grabbed  
18 Oscar Irias. I can't remember exactly how they  
19 grabbed him, if someone grabbed specifically the  
20 legs or the arms, but they both, I remember, grabbed  
21 him, and kind of -- Oscar tried to hold on to the  
22 rails, because there's rails on the top, and they  
23 just kind of pushed him over, and he landed. And  
24 that's when I called the Code Red 444.

25 Q Were you concerned about Inmate Irias's

1 condition after he was thrown over the railing?

2 A Of course. I thought he was dead.

3 MS. JACKSON: Your Honor, objection.  
4 Relevance.

5 MR. STANTON: Relevance? Relevance is  
6 because of this officer's duty to --

7 THE COURT: It's not what he thinks, it's  
8 what happened.

9 Sustained.

10 BY MR. STANTON:

11 Q When you went in and saw the inmate being  
12 thrown over the rail, approximately how far away  
13 from the railing or where he was before he was  
14 thrown over the railing would you have been when you  
15 saw them begin to throw him over the top?

16 A How far away I was?

17 Q How far away were you from those three  
18 individuals?

19 A It's kind of hard to say. I was in the  
20 outer day room, and they were on the upper tier, but  
21 there's a bunch of glass, so I could see them. I  
22 mean, there's a door and some glass that separated  
23 me and them; so, I would say 25 feet, 20 feet --  
24 maybe 20 feet.

25 Q After you had called out Code Red, were

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1 you watching this entire incident and altercation  
2 while you're calling code and as you're walking  
3 towards the unit?

4 A Yeah. I was running towards the unit.

5 Q Okay.

6 Pass the witness, your Honor.

7 **THE COURT:** Cross-examination?

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

9

10 CROSS-EXAMINATION

11 **BY MS. JACKSON:**

12 Q Good morning, Officer Gonzalez.

13 A Good morning.

14 Q How are you today, sir?

15 A Good.

16 Q Isn't it true that you were only filling  
17 in in 5C?

18 A That's correct.

19 Q Okay.

20 Now, how long -- and this occurred in  
21 2001?

22 A That's correct.

23 Q And how long, at that time, had you been a  
24 correctional officer?

25 A Two thousand one -- I was hired July 14th,

1 1999, so a year -- two years maybe.

2 Q I'm sorry. I didn't hear you, sir.

3 A Approximately two years.

4 Q Two years.

5 Now, you described 5C and 5D was a problem  
6 where -- place where the jail houses inmates who  
7 have problems that couldn't be controlled. That's  
8 not true, because they would take inmates that come  
9 in who have high profile cases and take them  
10 straight to that unit on some occasions; isn't that  
11 true?

12 A I've never saw that. Usually, if they're  
13 high profile, they take them to 3-Adam, which is a  
14 protective custody unit.

15 Q If I represent to you that I represent  
16 people who were taken straight to 5C because of  
17 their cases, would you disagree with me?

18 A You could be right. I don't know. I  
19 haven't worked on the floors probably since 2001  
20 shortly after, so it could be true. You could be  
21 right.

22 Q Okay.

23 So, that was your first time there?

24 A No, not my first time there. I've worked  
25 there before.

1 Q In '01?

2 When did you work there before this  
3 incident?

4 A I don't know the date, specific dates, but  
5 I worked there before.

6 Q You were there for a few hours on this  
7 day -- yes?

8 A I don't know about a few hours. I got  
9 there -- I wouldn't say I got there right at 6:00,  
10 because that's when CERT trains; so, I was probably  
11 there one hour.

12 Q And the other times you were there more  
13 than once?

14 A Yes.

15 Q More than twice?

16 A Yes.

17 Q More than three times?

18 A Yes.

19 Q And each time in the one, two and three  
20 times, was it for an hour or so on those occasions?

21 A No. I was assigned a unit.

22 Q You worked that unit before?

23 A That's correct.

24 Q Now, you indicated -- so, you would then  
25 know that there are people who are brought there,

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1 not because of disciplinary problems, but just  
2 because of the nature of their charges or cases?

3 A During my times there, I can't recall ever  
4 them --

5 Q When were you there, Officer Gonzalez?

6 A I can't really say exactly the dates.  
7 It's been a long time, but I've been assigned the  
8 unit for a period of three months.

9 Q When was that?

10 A Probably around 2000.

11 Q Okay.

12 And you were there for three months?

13 A Yes. I worked under Sergeant G. Becker.

14 Q And was Donte Johnson housed there during  
15 that time?

16 A I can't -- I can't specifically remember  
17 if he was housed there then. I mean, it's been a  
18 long time.

19 Q You said "I can't remember" -- what else  
20 did you say, sir?

21 A I can't remember specifically if he was  
22 there in 2000.

23 Q Okay.

24 Why was Oscar Irias on that floor?

25 A I have no idea. I believe because

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1 classification must have housed him there.

2 Q You said that Irias was -- he was not  
3 violent, and that he had no disciplinary problem.

4 Isn't that what you said?

5 A Towards myself. He had never acted  
6 violent towards me, never disrespected me. I've  
7 never witnessed Oscar Irias behave in a disciplinary  
8 way.

9 MS. JACKSON: Court's indulgence.

10 Your Honor, we're going to need a break,  
11 please.

12 THE COURT: Approach the bench.

13 MS. JACKSON: Never mind, your Honor.  
14 Here they are.

15 My next series of documents the State  
16 indicated they had some problem with.

17 MR. DASKAS: Actually, I just wanted to  
18 approach on that, Judge.

19 THE COURT: All right.

20 (Sidebar conference outside the presence  
21 of the court reporter.)

22 BY MS. JACKSON:

23 Q Officer Gonzalez, I'm going to hand you  
24 what's been marked for identification as Defendant's  
25 double-T, double-U, double-W and double-X.

1 Do you recognize what those documents are?

2 A Three of them are info reports and one of  
3 them is a CAB.

4 Q Okay.

5 Do these appear to be records that are  
6 kept in the normal course of business for the Clark  
7 County Detention Center?

8 A Yeah. They're kept in the lotus notes.

9 Q And do they appear to have been altered in  
10 any form?

11 A No, no, I don't think so.

12 Q And they're kept in the regular course of  
13 business?

14 A Yeah. They're kept under lotus notes  
15 under the person's name.

16 Q Do you recognize the inmate whose name is  
17 referenced in these documents?

18 A Yes.

19 Q And who is that?

20 A That's Oscar Irias.

21 **MS. JACKSON:** Your Honor, I'd move for  
22 their admission.

23 **MR. STANTON:** Other than my generalized  
24 objection of relevance --

25 **THE COURT:** All right.

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1           **MR. STANTON:** -- the State has no further  
2 objection.

3           **MS. JACKSON:** May they be admitted, your  
4 Honor?

5           **THE COURT:** Well, he's objecting to  
6 relevance, so what's relevant, for the record?

7           **MS. JACKSON:** For the record, your Honor,  
8 this officer has testified that Oscar Irias was  
9 never violent; that he never presented any problem  
10 to officers or inmates, and that basically, we  
11 believe that they go to the officer's credibility in  
12 terms of what they show.

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

14           **THE CLERK:** Miss Jackson, can you read  
15 those back again?

16           **MS. JACKSON:** Read them. Okay. Double --  
17 VV, UU, double-T, double-W and double-X.

18           **THE CLERK:** Thank you.

19           **MS. JACKSON:** You're welcome.

20           (Defense Exhibits TT, UU, VV, WW, XX was  
21 admitted into evidence.)

22 **BY MS. JACKSON:**

23           Q     Would you take a look at VV?

24                     What is that?

25           A     That's an info report.

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1 Q Okay.

2 And what does it indicate? Who is the  
3 subject of the report?

4 A Oscar Irias.

5 Q And who generated that report?

6 A Officer Whipple.

7 MS. JACKSON: No relation to my  
8 co-counsel, for the record.

9 BY MS. JACKSON:

10 Q And what does it indicate? There's a  
11 disturbance?

12 A It says "psych review."

13 Q And what does it indicate?

14 A You want to know what it states?

15 Q Um-hmm, generally.

16 A That Oscar Irias was masturbating on the  
17 toilet.

18 Q Okay.

19 Does it also indicate that he attacked his  
20 roommate -- says that "Irias attacked him in his  
21 room for no reason"?

22 A Yes, it does.

23 Q UU -- who is the subject of that report?

24 A Oscar Irias.

25 Q And the officer generating that report?

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1           A     Officer J. Braido.  
2           Q     And what is the substance of that report,  
3 sir?  
4           A     Disrespect.  
5           Q     And what is the basis of the disrespect?  
6           A     That he did not have any fucking water,  
7 and then he said -- he referred -- he told the  
8 officer "fuck you."  
9           Q     So, he appears to be speaking English  
10 pretty good, especially the "fuck you" part, huh?  
11          A     I guess so. I mean --  
12          Q     TT -- the officer again -- who is the  
13 subject of this report?  
14          A     The subject is Oscar Irias.  
15          Q     And the officer generating the report?  
16          A     A. Hirjak.  
17          Q     And this indicates that Inmate Irias was  
18 asked to be locked down?  
19          A     It says, "Refused to go to room."  
20          Q     When the officer told Irias to go to his  
21 room, what was his response?  
22          A     "What for?"  
23          Q     And then further on, the officer indicates  
24 that he told him to go again, and what was Irias'  
25 response?

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1           A     He said, "I didn't do anything. Why are  
2 you giving me a hard time?"

3           Q     Okay.

4                     And the officer reports in that last  
5 paragraph what, sir?

6           A     "I had problems with Irias before, and it  
7 seems as if he is trying to test officers to get  
8 them upset or pretending that he does not understand  
9 what officers are saying."

10          Q     "Obviously" --

11          A     Oh -- "Obviously, Irias has problems with  
12 cooperation, and at times becomes very deviant  
13 (sic)."

14          Q     "Defiant."

15          A     "Defiant." I'm sorry.

16          Q     And what is this? That's WW.

17          A     That's his inmate locator card.

18          Q     That's on, again, Oscar Irias?

19          A     That's correct.

20          Q     Commonly called the "blue card" in the  
21 Detention Center -- yes?

22          A     Yes.

23          Q     This card would also have any notations of  
24 any inmates that could not be housed with Irias; is  
25 that correct?

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1           A       That's correct.

2           Q       Do you see any notations on this blue card  
3 that indicate "do not house with"?

4           A       Yes.

5           Q       And who, it indicated, that Mr. Irias  
6 cannot be housed with?

7           A       It appears three inmates.

8           Q       Who are they?

9           A       It says ID No. 826289, ID No. 1528200, and  
10 then at the bottom it says, "Do not house with  
11 Reginald Johnson, ID 1685445."

12          Q       And Reginald Johnson is the person who  
13 actually pled guilty to tossing Oscar off the  
14 railing, correct?

15               **MR. STANTON:** Object. We laid no  
16 foundation the witness has any knowledge of that.

17               **MS. JACKSON:** I can lay a foundation.

18               **THE COURT:** I need you to ask him if he  
19 knows.

20               **THE WITNESS:** I don't know. I don't know  
21 if he pled guilty or not.

22               **THE COURT:** And that's sustained then.

23               **MS. JACKSON:** Okay.

24       **BY MS. JACKSON:**

25          Q       Do you recall going to preliminary hearing



1 and testifying regarding this matter?

2 A Yes.

3 Q And one of the defendants was -- the  
4 defendants were who, sir?

5 A Reginald Johnson and Donte Johnson.

6 Q Okay.

7 And anywhere on here, does it indicate  
8 that he's not to be housed with my client, Donte  
9 Johnson?

10 A No, it doesn't.

11 Q Now, as a security matter, the reason why  
12 you have these "do not house with" is because if you  
13 are aware that an inmate has a problem with an  
14 inmate and you put those inmates together, that  
15 exposes the jail to liability -- yes?

16 A Yes, but, however, it doesn't --

17 Q You've answered the question. Yes?

18 A Yes.

19 **MR. STANTON:** Objection, your Honor.

20 Counsel is answering the question, and he --

21 **THE COURT:** Too late now. It's already  
22 answered.

23 **MS. JACKSON:** He's answered my question.

24 **MR. STANTON:** I know, your Honor, but he  
25 also has additional items.

1           **THE COURT:** Be quiet back there.

2           **MR. STANTON:** I believe the witness is  
3 entitled to answer completely Counsel's question.

4           **THE COURT:** Overruled. If you want to  
5 bring it out, you will get him on cross -- recross.

6 **BY MS. JACKSON:**

7           Q     And finally, on XX, what is that,  
8 Officer Gonzalez?

9           A     The officer's name?

10          Q     What is this document?

11          A     Oh, that's a CAB.

12          Q     And the subject of that CAB?

13          A     Fighting or wrestling with another person  
14 interrupting the safe orderly operation of the  
15 facility.

16          Q     And the inmate who is the subject of that  
17 document?

18          A     Oscar Irias.

19          Q     Generated by reporting officer?

20          A     E. Johnson.

21          Q     What happened on that date, that date  
22 again, 11/7/2000?

23          A     He began kicking the door violently  
24 because he was placed on lock down.

25          Q     How does the officer describe Mr. Irias?

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1           A        "He's a psych patient with a violent  
2 temper. I gave him verbal commands to kneel on the  
3 ground. I placed his hands behind his back. This  
4 was repeated three times, and Irias was not  
5 responding to my orders. The door was keyed open,  
6 and the officers placed Inmate Irias in the prone  
7 position to be handcuffed. He resisted the entire  
8 time and would not comply with verbal commands."

9           **MS. JACKSON:** Thank you.

10          **MR. STANTON:** Your Honor, can Counsel  
11 approach on one matter regarding these exhibits?

12          **THE COURT:** Yes.

13               (Sidebar conference outside the presence  
14 of the court reporter.)

15 **BY MS. JACKSON:**

16           Q        I'm going to show you what's been marked  
17 for identification only, Officer Gonzalez, as  
18 Defense Proposed QQ. The record will reflect these  
19 have been shown to the prosecution -- double-R and  
20 double-S.

21           A        Okay.

22           Q        Do you recognize the area depicted in  
23 those exhibits, sir?

24           A        Yes, I do.

25           Q        What is it?

1           A       5-Charlie day room.  
2           Q       Okay.  
3                    The Detention Center?  
4           A       Yes.  
5           Q       Do those pictures accurately depict the  
6 Detention Center as it was February 24th of 2001?  
7           A       From that specific angle.  
8           Q       Okay.  
9                    Now, are you able to look at these  
10 exhibits, sir, and tell us where you allege this  
11 incident took place where Mr. Johnson, Reginald  
12 Johnson through Oscar over the banister?  
13          A       He threw him over there (indicating), but  
14 where I was standing at was not around here  
15 (indicating), it's back this way more (indicating).  
16          Q       Your position is not depicted in any of  
17 these photographs?  
18                    **MR. STANTON:** Your Honor, the State would  
19 have no objection to the admission of QQ, RR and SS.  
20                    **MS. JACKSON:** I would move for their  
21 admission.  
22                    **THE COURT:** Is that those pictures?  
23                    **MS. JACKSON:** Yes. But first of all, it's  
24 premature. I want to indicate if they don't depict  
25 what I need him to, there's no need. We'll just see

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1 if the witness' can identify his location.

2 May I continue, your Honor?

3 **MR. STANTON:** I believe he's laid the  
4 foundation. The State will stipulate to admission.  
5 If they don't move to admit them, I'd make the  
6 motion now.

7 **MS. JACKSON:** Mr. Stanton, may I please  
8 finish my cross?

9 **THE COURT:** First of all, don't you talk  
10 to him, and don't you talk to her. You direct your  
11 comments to me.

12 **MS. JACKSON:** Very well, your Honor. If I  
13 may be allowed to complete my cross.

14 **THE COURT:** If she doesn't introduce them  
15 when you recross or cross, you can introduce them.  
16 All right?

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

18 **BY MS. JACKSON:**

19 Q Officer Gonzalez --

20 A Yes.

21 Q -- do either of these exhibits, sir,  
22 depict the area -- the area where you are working  
23 in? Is it called "The Bubble"? Is that a fair  
24 characterization?

25 A Module office.

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4-27-2005

**FILED**DISTRICT COURT .  
CLARK COUNTY, NEVADA2005 APR 28 A 9:05  
**ORIGINAL**  
*Shirley L. Morgan*  
CLERK

THE STATE OF NEVADA, )

)

Plaintiff, )

)

-vs- )

)

DANTE JOHNSON, )

)

Defendant. )

)

Case No. C153154

Dept No. VIII

Docket H

VOLUME VII-A

PENALTY PHASE

BEFORE THE HONORABLE LEE A. GATES

WEDNESDAY, APRIL 27, 2005, 11:17 A.M.

**RECEIVED**

APR 28 2005

**COUNTY CLERK**

## APPEARANCES:

For the State:

ROBERT J. DASKAS, ESQ.

DAVID STANTON, ESQ.

Deputies District Attorney

For the Defendant:

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Deputy Public Defender

BRETT WHIPPLE, ESQ.

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Page: 6846

4-28-2005

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4-27-2005

## I N D E X

## WITNESS

## VOIR

FOR THE DEFENSE: DIRECT CROSS REDIRECT RECROSS DIRE

EUNISHA WHITE 3 16 / / /

(Sister of Defendant)

KEONNA ATKINS 18 56 60 / /

(Cousin of Defendant)

JANE EDWARDS 62 / / / /

(Maternal Grandmother of Defendant)

JOHNNISHA WHITE 70 / / / /

(Sister of Defendant)

ALLEN WHITE 72 / / / /

(Son of Defendant)

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4-27-2005

1 LAS VEGAS, NEVADA, WEDNESDAY, APRIL 27, 2005, 11:17 A.M.

2 \* \* \* \* \*

3 THE COURT: Let record reflect, parties,  
4 members of the jury, attorneys.

5 Call your next witness.

6 MS. JACKSON: Thank you, your Honor.

7 Defense calls Eunisha White:

8 EUNISHA WHITE,

9 having been called as a witness by and on behalf of the  
10 Defense, and having been first duly sworn by the Clerk of  
11 the Court, was examined and testified as follows:

12

13 DIRECT EXAMINATION

14 BY MS. JACKSON:

15 Q You have a soft voice. I want you to keep  
16 your voice up. If you need to, you can use the mike.  
17 Okay?

18 Where do you live?

19 A With my sister.

20 Q And what City and State?

21 A Los Angeles, California.

22 Q You see someone here in the courtroom, this  
23 side of the courtroom, that's related to you?

24 A Yeah.

25 Q Who is that?

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4-27-2005

1 A My brother.

2 Q What's his name?

3 A John.

4 Q John. Now, yesterday -- how long have you  
5 been in town in connection with the case?

6 A Three days.

7 Q And when you came in through the courtroom  
8 the other day, you were smiling, and you and John were  
9 laughing back and forth.

10 How come you were doing that.

11 A Because I haven't seen my brother.

12 Q You were just glad to see him?

13 A I haven't seen my brother in seven years,  
14 since I was 17.

15 Q That's why you were smiling and laughing  
16 with him?

17 A Yes.

18 Q Nothing about the proceedings themselves  
19 are funny.

20 A No.

21 Q You haven't seen John since you were 17?

22 A Yes. I am 24.

23 Q That's seven years ago. You are glad to  
24 see him?

25 A Yeah.

4-27-2005

1 Q We know your mother and father had three  
2 children. We have heard from Johnnisha You are Eunisha?

3 A Yes.

4 Q What number are you?

5 A I am the baby.

6 Q You are the baby girl. What's your  
7 mother's name?

8 A Eunice, Eunice Cain.

9 Q Your father, what is his name?

10 A John White.

11 Q Let me take you back to your earliest  
12 memories. Go back as far as you can when you were a  
13 child. What are your first memories of your parents?

14 A My dad used to hit my mom.

15 Q Where would he hit her?

16 A In the face.

17 Q What did he use to strike her?

18 A His fists.

19 Q Would he draw blood?

20 A Yes.

21 Q He hit her hard?

22 A Yes.

23 Q Would she fall down?

24 A Yes.

25 Q What else can you remember about your dad?

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1 What would make him hit your mom?

2 A She couldn't stop me from crying.

3 Q You would be crying?

4 A Yes.

5 Q Your mother would try to stop you?

6 A Yeah.

7 Q How would she try to stop you, by holding

8 you, rocking you?

9 A Yes.

10 Q What if anything would your father do?

11 A If she couldn't stop me, he would either

12 strangle her, or hit her in the face.

13 Q He would strangle her with what?

14 A His hands.

15 Q He would hit her in the face with what?

16 A His fists.

17 Q Was there one occasion in particular you

18 remember when you couldn't stop crying, and your father

19 did something to your mom that really sticks out in your

20 mind?

21 A Yes.

22 Q What was that?

23 A He grabbed her by her neck and holded (sic)

24 her over the balcony.

25 Q At the time where were you all living?

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1 A Out in an apartment. I don't know where it  
2 was.

3 Q You said he held her over a balcony. This  
4 was the second, third --

5 A Second floor.

6 Q \* So it was quite a distance for her?

7 A Yes.

8 Q What did you think while he was holding her  
9 over the bannister?

10 A I was just crying.

11 Q Your father, how did he feel about John,  
12 that you can remember?

13 A He loved John.

14 Q How did he feel about Johnnisha?

15 A He loved Johnnisha.

16 Q How did he feel about you?

17 A He used to say I wasn't his kid.

18 Q What did he do when you would try -- would  
19 you ever try to have him show you affection?

20 A He always push me away.

21 Q He would push you away?

22 A Yeah.

23 Q How would that make you feel?

24 A Sad.

25 Q Was this done in front of John?

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1           A       Sometimes.

2           Q       Would he do something to get your mother to

3 agree with him that you were not his kid?

4           A       Yes.

5           Q       What would he do to her?

6           A       Hit her.

7           Q       I am going to show you what's marked for

8 identification as Defense proposed number 2.

9                       Do you recognize the people in the

10 photograph?

11          A       Yes.

12          Q       Okay. Who is that?

13          A       My grandmother and me.

14          Q       Did there come a time, Eunisha, when you

15 remember you were taken away from your mom and your dad?

16          A       Yes.

17          Q       Where were you living that you were taken

18 from them?

19          A       In a shack.

20          Q       In a shack. You were pretty young when

21 this was happening?

22          A       Yes.

23          Q       Are you telling me what you remember or

24 what somebody told you?

25          A       I am telling you what I remember.

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1 Q Tell the jury, please, what you can  
2 remember about living in that shack.

3 A The things I remember is we used to have to  
4 use the restroom in a bucket. And --

5 Q Where was the bucket located?

6 A In the shack with us.

7 Q And did you go number one in there or  
8 number two?

9 A Both.

10 Q Okay. How many people were in that shack?

11 A About 10 of us.

12 Q Children, adults?

13 A Children.

14 Q Where were the adults?

15 A Not around.

16 Q What else can you remember about the  
17 conditions of the shack?

18 A It was a lot of junk around us, and it was  
19 already small, and that made it even more crowder  
20 (sic).

21 Q You say, "a lot of junk," can you give us  
22 some idea what you mean by, junk?

23 A Boxes, newspapers, stuff like that.

24 Q Was there a bathtub or shower for you to  
25 wash?

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1 A No.

2 Q How did you wash?

3 A Well, we either go up in the front or just  
4 don't wash at all.

5 Q You say, go up to the front, front of  
6 where?

7 A To my great grandmother's house.

8 Q This shack was behind your great  
9 grandmother's house?

10 A Yes.

11 Q I will show you what's in evidence as  
12 Defense Exhibit C. The jury has previously seen this.  
13 Can you point out where the shack is?

14 \* Point out at the time it was your  
15 great grandmother's house?

16 A Yes.

17 Q Big Mama's mama?

18 A Yes.

19 Q \* Point out the shack and where your great  
20 grandmother lived.

21 She was in the house. Why didn't you  
22 guys live in the house with her.

23 A I don't know.

24 Q You don't know?

25 A No.

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1 Q All you know is she was up in the house,  
2 and you were back in that shack?  
3 A Yes.  
4 Q How long were you back there?  
5 A I think it was, like, a month.  
6 Q You are not real sure?  
7 A No.  
8 Q You were fairly young?  
9 A Yes.  
10 Q What else can you remember about the shack?  
11 Was there electricity?  
12 A No.  
13 Q Did you have a bed to sleep in?  
14 A No.  
15 Q Where did you sleep?  
16 A On the floor.  
17 Q Did you have covers?  
18 A No.  
19 Q What did you eat?  
20 A Sometimes we didn't.  
21 Q Did you do simple things, like, brush your  
22 teeth?  
23 A No.  
24 Q Comb your hair?  
25 A No.



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1 Q Were you scared?

2 A Yeah.

3 Q What happened that caused you to leave the

4 shack?

5 A Some people came and took us.

6 Q Where did you go then?

7 A To a foster care.

8 Q Okay. Do you know how old you were during

9 this time frame?

10 A I was about two or three.

11 Q You remember going to foster care?

12 A Yes.

13 Q Tell us, if anything, what you remember

14 about foster care?

15 A I don't remember nothing in that place.

16 Q Do you remember where you went after you

17 left foster chair?

18 A I went to stay with my grandmother.

19 Q Who is that?

20 A Big Mama.

21 Q Big Mana.

22 MS. JACKSON: I move admission of 2.

23 THE CLERK: That's actually Z.

24 MS. JACKSON: I beg your pardon, Miss

25 Clerk. It's a Z.

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I move admission, your Honor.

THE COURT: Any objection?

MR. DASKAS: No, your Honor.

THE COURT: Admitted.

BY MS. JACKSON:

Q Who is that in Z?

A Me and my grandmother.

Q Where was that taken?

A At my great grandmother's house.

Q Does Big Mama live there now?

A Yes.

Q Where is your great grandmother?

A She is deceased.

Q So Big Mama lives in that house now.

That's not the home you grew up in?

A No.

Q When was this taken?

A Like, two years ago. Two to three years ago.

Q About February of 2004, when we came down to meet with your family, as a matter of fact, my supervisor took that picture, right?

A Yes.

Q What was it like, living at Big Mama's house?

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1           A       It wasn't good.

2           Q       What wasn't good about it? What was bad

3 about it?

4           A       Sometimes we didn't eat.

5           Q       You didn't eat sometimes?

6           A       Yeah.

7           Q       Why?

8           A       Because my grandmother, she just -- I don't

9 know.

10          Q       She did the best she could?

11          A       Yeah.

12          Q       How many people were there. How many

13 children were there?

14          A       Fifteen.

15          Q       About fifteen kids. Who were the other

16 children, your first cousins?

17          A       Yes.

18          Q       Do you know why Big Mama was taking care of

19 you, your sister, and your brother?

20          A       My mom and my aunties was on drugs.

21          Q       Other kids were there because their parents

22 were on drugs, as well?

23          A       Yes.

24          Q       Big Mama was trying to take care of all you

25 guys?

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1 A Yes.

2 Q But Big Mama took you guys to church,  
3 didn't she?

4 A Yes.

5 Q As a matter of fact, you were involved in  
6 church activities?

7 A Yes.

8 Q Tell me about that.

9 A We were on the usher board, on the choir,  
10 and sometimes at communion. When we would have  
11 communion, we would go in the back and eat the crackers,  
12 finish the crackers, and finish the juice.

13 Q Why did you go eat communion wafers after  
14 church was over?

15 A Because we was hungry.

16 Q You were hungry?

17 A Yes.

18 Q How many of you guys were doing that?

19 A About six of us.

20 Q Now, in addition to pushing you away, did  
21 your father put you somewhere else out of his sight when  
22 you were little you told me about?

23 A Sometimes he put me in the closet.

24 Q Would he put you in the closet alone or  
25 with someone else?

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1 A Alone.

2 Q You were a baby?

3 A Yes.

4 Q You know, Eunisha, you were awfully young

5 when these things were happening to you. How is it you

6 can remember these things? You were a small child; how

7 come you remember these things?

8 A Because it was so hard.

9 MS. JACKSON: That's all I have.

10 THE COURT: Cross.

11

12 CROSS-EXAMINATION

13 BY MR. STANTON:

14 Q Eunisha, how old are you today?

15 A Twenty-four.

16 Q You say the last time you saw your brother,

17 John Lee White, was 7 years ago?

18 A Yes.

19 Q What are you doing now, Eunisha?

20 A Working.

21 Q Where do you work?

22 A At a pet store.

23 Q Pardon me?

24 A A pet store.

25 Q What city?

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1           A       Hermosa Beach.

2           Q       And do you have any other family?

3           A       Yes.

4           Q       Pardon me?

5           A       Yes.

6           Q       You live with --

7           A       Yes.

8           Q       Who do you live with?

9           A       My sister.

10          Q       Your sister. What's her first name?

11          A       Johnnisha White Zamura.

12          Q       Are you married?

13          A       No.

14          Q       No children?

15          A       No.

16          Q       How long have you been working at the pet

17       store?

18          A       For about a year now.

19          Q       Did you go to high school in Los Angeles?

20          A       Yes.

21          Q       What high school did you go to?

22          A       Fremont.

23               MR. STANTON: Thank you. Nothing further.

24               THE COURT: Anything else?

25               MS. JACKSON: Nothing, your Honor.

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1 THE COURT: You are excused, ma'am.

2 MS. JACKSON: Next witness on behalf of

3 Mr. Johnson would be Keonna Atkins.

4 KEONNA ATKINS,

5 having been called as a witness by and on behalf of the

6 Defense, and having been first duly sworn by the Clerk of

7 the Court, was examined and testified as follows:

8

9 DIRECT EXAMINATION

10 BY MS. JACKSON:

11 Q Good morning, Ms. Atkins.

12 A Good morning.

13 Q How are you feeling, little nervous?

14 A Yes.

15 Q That's okay. Do you see somebody you

16 recognize in the courtroom, here up front?

17 A Yes, I do.

18 Q Who is that?

19 A That's my cousin, John.

20 Q That's your cousin. How are you related,

21 through you are fathers, your mothers?

22 A His mother and my mother are sisters.

23 Q Now, the young lady that just stepped down,

24 Eunisha, do you know her?

25 A Yes. She is John's sister.

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1 Q Young lady testified yesterday, Johnnisha  
2 Zamura, do you know her?

3 A Yes.

4 Q Do you have siblings, Ms. Atkins?

5 A Yes, I do.

6 Q How many?

7 A I have four sisters and one brother.

8 Q Name them, please?

9 A Sister under me -- they are all under me --

10 \* Kannitta.

11 Q How old is she?

12 A She is 28. Then we have Lanette; she is  
13 18. We also have Kiera, who is 13; and Kisha May, who is  
14 10, and my brother Floyd.

15 Q Who is the oldest?

16 A I am.

17 Q Do you have custody of a couple, or one or  
18 more of your siblings?

19 A I have custody of one, but two live with  
20 me.

21 Q Tell us the one you have legal custody of.  
22 How did you come to have custody of your siblings?

23 A When she was born, she was born with drugs  
24 in her system and syphilis. So at the hospital she was  
25 taken from my mom. They had to call me in to come take



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1 care of her.

2 Q How old were you when you had to take  
3 responsibility for the child?

4 A Twenty, twenty-one.

5 Q You have another sibling living with you?

6 A Yes, Kiera.

7 Q How old is she?

8 A Thirteen.

9 Q Why do you take care of her?

10 A \* Right now my grandmother has custody of  
11 her. She goes to high school. My grandmother has had  
12 custody of her since she was a baby, as well.

13 Q This is the lady, Big Mam?

14 A Yes.

15 Q She has custody of the 13 year old?

16 A Yes.

17 Q She is probably a little tired of raising  
18 kids now?

19 A She has been doing it a long time.

20 Q She is getting old?

21 A Right.

22 Q \* You stepped in?

23 A Tried to do my best, the way she did for  
24 us.

25 Q Try to fill Big Mama's shoes?

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1 A Yes.

2 Q Big shoes to fill?

3 A Really.

4 Q Who else lives with you?

5 A My sister Kennita, her son Joel.

6 Q How old is Kennita?

7 A Twenty-eight.

8 Q Your mother is Pam?

9 A Right.

10 Q And Big Mama, Ms. Jane Edwards is

11 your grandmother?

12 A Right.

13 Q \* Come down, if you would please. Take a

14 look at Defense LL, and ask if you can -- who is this?

15 A That's my grandmother, Jane.

16 Q And how many children did she have?

17 A She had seven.

18 Q Why don't you go through, tell the jury who

19 the seven offspring of Ms. Jane Edwards are. Indicate

20 who your mother is.

21 A This is my Aunt Shammata, the oldest; my

22 Uncle Arthur -- we call him, Jaimie. This is my mom.

23 Her name is Pam. Eunice, we don't have a photo. She is

24 next in line. We have Wanda Fay, and Deborah Jeanne and

25 Lolita.

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1           Q       Now, at one time we have heard testimony,  
2 as a matter of fact, from Jainie, that a number of the  
3 siblings had alcohol and drug issues. Are you aware of  
4 that?

5           A       Yes, I am.

6           Q       Point out the ones that did.

7           A       My uncle, my mom, Eunice, and Wanda Fay.

8           Q       Are all these people living?

9           A       All except my mom.

10          Q       Where is your mom? This is your mother?

11          A       Yes.

12          Q       Who is in the photograph with your mother?

13          A       Me and my mom.

14          Q       You are holding onto her?

15          A       Yes.

16          Q       When was this photograph taken, sweetheart?

17          A       This is when we lived on 43rd and Ascott.

18 It was during Christmas time.

19          Q       Was your mother living with you?

20          A       No. She would come in and visit us from  
21 time to time.

22          Q       She showed up for Christmas. On the  
23 photograph, I am going to put it up here. You can have a  
24 seat for a moment. I want to talk about the photograph.

25                   Is your mom on drugs during this

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1 time?

2 A Yes.

3 Q She swung by on Christmas to say, hi?

4 A Yes.

5 Q You got a chance to hug her?

6 A Right.

7 Q Who took the picture?

8 A I believe it was my grandmother.

9 Q Were you happy to see your mother? Look at  
10 your face in the picture?

11 A Yes.

12 Q Are you holding her with one or two arms?

13 A Both arms.

14 Q Are you holding onto her for dear life?

15 A Right.

16 Q You couldn't stop her from ODing on drugs,  
17 letting the drugs kill her, could you?

18 A No.

19 Q How did you feel about that?

20 A It hurted (sic) a lot.

21 Q How was your mom when you were growing up?

22 Was she using drugs?

23 A She was.

24 Q She couldn't always take care of you?

25 A She wasn't taking care of us after she lost

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1 her job.

2 Q How did you feel about her? Did you still  
3 care, or did you still love her?

4 A I did.

5 Q Could you stop loving your mother?

6 A No, I couldn't.

7 Q Come down here, please. I want you to go  
8 through, Shammata, does she have children?

9 A Yes, she does. She has three.

10 Q What are their names?

11 A Leticia, who is the oldest, and Nikia, who  
12 is not with us anymore, and Donna.

13 Q She never had a drug problem?

14 A No.

15 Q Did any of her children get into any legal  
16 trouble growing up, anything similar to what John finds  
17 himself in this courtroom for this morning?

18 A Her oldest Leticia has been in jail a few  
19 times for theft and drugs.

20 Q Okay. She has a drug problem?

21 A Yes.

22 Q Tends to -- just a moment.

23 Your Honor, may I get some tissue for  
24 the witness.

25 Who is the next child of Ms. Edwards?

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1           A       Uncle Arthur, Jaimie.

2           Q       Did he have children?

3           A       He has one that I am certain of. Her name

4 is Telinda.

5           Q       You said, he has one you are certain of?

6           A       Yes.

7           Q       Are there others you are uncertain of? Are

8 there others?

9           A       I am not sure what his name is. We lost

10 contact with them years ago.

11          Q       Was your unole married to any of the

12 certain or uncertain children's mother?

13          A       He was married to -- her name was Brenda.

14          Q       Is Brenda the mother of this child?

15          A       No. Her mom's name is Linda, Talinda's mom

16 is Linda.

17          Q       It sounds like Uncle Arthur is something of

18 a rolling stone. Is that a fair statement?

19          A       Yes, that's fair.

20          Q       Of a certainty you know he has Talinda?

21          A       Yes.

22          Q       Has that child had legal complications,

23 shall we say?

24          A       No, she has not.

25          Q       Moving on to Pam, that's your mother?

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1           A       Right.

2           Q       How many children of Pam's do we have?

3           A       We have six children total. Keonna,

4 Kennita, Floyd, \* Can I own ambiguous go back.

5           Q       Have you or your siblings had legal

6 complications?

7           A       My brother.

8           Q       Which brother?

9           A       Floyd.

10          Q       What type of issues has Floyd had?

11          A       Theft.

12          Q       Has he been to jail?

13          A       Yeah.

14          Q       How many times?

15          A       Two, that I can remember.

16          Q       Moving on to Eunice.

17          A       Just one.

18          Q       Johnnisha and Eunisha have avoided any

19 legal complications?

20          A       Right.

21          Q       What about your Aunt Fay?

22          A       Her three oldest boys have all been

23 arrested or in jail for theft, and Cornelius, the oldest,

24 was up for murder.

25          Q       Cornelius is Fay's oldest?

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1 A Yes.

2 Q Is Fay one of the ones with an addiction?

3 A Yes.

4 Q Her oldest son is in on a murder beef?

5 A Yes.

6 Q Is he still incarcerated at this time?

7 A Yes.

8 Q What about Willy?

9 A He was in jail for theft.

10 Q What about Sam?

11 A He was also in jail for theft.

12 Q What about Trevon?

13 A No. He is a good kid, very good kid.

14 Q What about Donisha over here?

15 A She is living with her mom now.

16 Q Next sibling we have?

17 A Debra, she has no kids.

18 Q She has never had any addiction issues to

19 your knowledge?

20 A No.

21 Q What about Lolita, the baby girl?

22 A She has three two boys, one girl.

23 Q How have they all faired?

24 A They are all in school. They have issues,

25 but they manage.



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1 Q Their mother, looking at her size, she has  
2 no problem with drugs. She is a healthy girl there?

3 A Yes.

4 Q Her children have issues, like anybody  
5 else. They are doing okay?

6 A Yes.

7 Q It would seem the boys seem to have more  
8 issues than the girls down here at the second generation  
9 that were somehow lost to drugs and alcohol.

10 How do you explain that.

11 A We only had my uncle. He is the only male  
12 figure we know of in our family. For the most part we  
13 only have Big Momma. She is the backbone of the family.

14 Q You girls look up to her?

15 A Right.

16 Q What does she provide to you girls that  
17 these boys don't have?

18 A She teaches us how to respect each other  
19 and love each other, and basically, she wants us to do  
20 the best we can and stay out of trouble.

21 Q She provided a positive role model?

22 A Yes, she did.

23 Q Something that's missing from these boys?

24 A Right.

25 Q You may take your seat.

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1                   Okay. I am going to take you back  
2 to your earliest memories. When you were growing up, was  
3 there a time when you were a little kid, growing up,  
4 before your mom got on drugs, that things were okay.

5                   Can you remember a time, such as,  
6 that?

7           A        I can't remember any time, like that.

8           Q        What are the first memories you have of  
9 growing up, your childhood?

10          A        Well, before, you know, everybody was aware  
11 my mom was on drugs, she was with my dad. They fought a  
12 lot.

13          Q        What was your father's name?

14          A        Kenneth Brandt.

15          Q        Were they married?

16          A        Yeah, they were married.

17          Q        Would he hit your mother?

18          A        He beat her a lot.

19          Q        A lot?

20          A        Yeah.

21          Q        What's a lot?

22          A        There was a time when she had to climb out  
23 of a window to get away from him, because he was trying  
24 to beat her.

25          Q        Where were you?

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1           A       I don't know. I think I was downstairs  
2 somewhere.

3           Q       Did there come a time when you began to  
4 have association and be raised up with John and Johnnisha  
5 and Eunisha?

6           A       Right.

7           Q       Tell us about that. How did you come to be  
8 with them, living with them, pretty much being raised  
9 with them?

10          A       Well, we were living in the back of my  
11 great grandmother's house.

12          Q       Before you go there. Before you got to the  
13 shack. Was there a time when your mother and Pam would  
14 get together and get high?

15          A       Yes.

16          Q       Tell us about that. Before we get to the  
17 shack, what was that like?

18          A       There was just times they had parties,  
19 sometimes at my mom's house, when she lived on 53rd.  
20 They would get together.

21          Q       Let me stop you. When Eunice would come  
22 over, would she bring her children?

23          A       Yes.

24          Q       John, and the two girls?

25          A       Right.

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1 Q What would happen at the parties?  
2 A They would make us all go in a room. They  
3 would be in the living room, partying.  
4 Q What would that partying consist of,  
5 primarily?  
6 A Drinking and drugs.  
7 Q Have you ever seen your mother and your  
8 aunt and uncle get high?  
9 A Not that they are aware of.  
10 Q You are aware of it?  
11 A Yes.  
12 Q What did you see, as a child?  
13 A We saw them sitting at the table, lighting  
14 a pipe.  
15 Q Was John there?  
16 A Yes.  
17 Q And how did that make them act, once they  
18 consumed the narcotics?  
19 A They would just, basically, start arguing  
20 sometimes, amongst each other and get into fights for no  
21 reason. Appears to us there was no reason. To them it  
22 was a big deal. So they would spend a lot of time  
23 arguing.  
24 Q Was it loud?  
25 A Yeah. A lot of cussing and arguing, all

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1 the time.

2 Q Was it scary?

3 A Yeah.

4 Q Did you kids try to intervene and do  
5 something?

6 A Only thing we could to is sit back and  
7 watch and cry. That's all we were able to do, we were so  
8 young.

9 Q What would John do?

10 A Basically, what everybody else would do is  
11 just sit and watch, it's hard to tell your parent to  
12 stop. You can't control your parent at all. No matter  
13 how much you love them, how much you want them to do the  
14 right thing, you can't control what another person does.

15 Q Do you remember your mother taking you on  
16 what you called, a drug run?

17 A Yes.

18 Q What was a drug run?

19 A Basically, whenever they needed to get a  
20 hit or wanted to get high --

21 Q Stop. What's a hit?

22 A Hit means they are going to smoke the pipe.

23 Q Ingest crack cocaine?

24 A And sometimes Sherm.

25 Q What?

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1           A       Sherm.

2           Q       What is SHERM?

3           A       Sherm is some type of chemical that they

4       use and dip in a stick and smoke it.

5           Q       Embalming fluid, what the people use on

6       dead people?

7           A       I am not sure.

8           Q       How did that make them behave? Did it

9       affect their behavior?

10          A       Just as crazy, just as crazy.

11          Q       You kids would be in the back seat while

12       they are going on the drug runs?

13          A       Yes.

14          Q       Was John there?

15          A       Yes, sometimes.

16          Q       My client is a small man. He probably was

17       a small child. He was kind of short?

18          A       Yes, he was.

19          Q       In your neighborhood, did he have to get

20       tough real quick?

21          A       You could say we all had to get tough real

22       quick. We were picked on a lot by different people for

23       no reason.

24          Q       You had to get tough to survive; is that a

25       fair statement?

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1 A Yes, it is.

2 Q Do you recall a time you resided in a  
3 shack?

4 A Yes, I do.

5 Q How did you come to reside in such a place?

6 A My mom was working for the County of  
7 Los Angeles, and she lost her job, and she had to move.  
8 We had to move out of our apartment.

9 Q There was a time when your mom worked for  
10 the County of Los Angeles?

11 A Yes.

12 Q That was before she became a drug addict?

13 A She was using at the time.

14 Q Just kind of a downward spiral?

15 A Yes.

16 Q Is this the shack I am showing you,  
17 Defendant's C; is this a picture of the shack?

18 A Yes.

19 Q I am going to sit this here a second. I  
20 hand you what's marked for identification as Defendant's  
21 DD and CC.

22 Do you recognize what's depicted in  
23 these two photographs?

24 A This is the picture where we were living in  
25 the back of my great grandmother's house. This is the

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1 shack.

2 Q In those pictures and in C, it appears to  
3 be somewhat different. What's the difference in the  
4 small pictures and the large poster?

5 A The difference is, it's been painted. This  
6 one looks like it has boarded windows, and this one  
7 doesn't have any boards in the windows.

8 Q They both depict the place you lived?

9 A Right.

10 MS. JACKSON: I move CC and DD into  
11 evidence.

12 MR. DASKAS: No objection, your Honor.

13 THE COURT: Admitted.

14 BY MS. JACKSON:

15 Q Bring back any memories, Kiki?

16 A Yes, it does.

17 Q Tell us about it. What was it like living  
18 there?

19 A The way it was built, it was sectioned off  
20 into two parts. The first part, it had all our  
21 furniture, stove, refrigerator, couches, and clothing,  
22 you know, stored in the front.

23 Then in the back portion of it there  
24 was -- that was where we slept. It had our bed and  
25 closet space.



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1 Q A bed?

2 A Yes.

3 Q How many people slept in a bed? One bed?

4 A One bed.

5 Q How many people?

6 A Sometimes six, maybe seven.

7 Q Now, you said there was a refrigerator?

8 A Uh-huh.

9 Q Was there any where to plug it in?

10 A No.

11 Q Was there food in it?

12 A No.

13 Q Was it just storage?

14 A It was, basically, we were supposed to

15 store our stuff there until our mom found a place for us

16 to stay. That never came.

17 Q It was supposed to be a pit stop?

18 A Right.

19 Q How long did you wind up staying there?

20 A Months, maybe a year or more.

21 Q You were the oldest child?

22 A Yes, I was.

23 Q Average typical day in the shack, who would

24 feed you? What would you eat?

25 A Sometimes she would prepare us some food on

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1 a hot plate.

2 Q Who is she?

3 A My Mama. She would prepare food on a hot  
4 plate. That's if we had any. If not, we would sneak up  
5 to my great grandmother's to get food. Even though she  
6 didn't want us to, but we did, because we were hungry.

7 Q You mean to tell me your great grandmother  
8 didn't want to give you food, even though she knew you  
9 were hungry?

10 A Basically, she would give it to us. She  
11 didn't want to because she wanted my mom to do what was  
12 right for us.

13 Q Just sounds like she had had about enough?

14 A Yeah, she had enough.

15 Q What about a bathroom, toilet, shower,  
16 bathtub?

17 A We didn't have that at all.

18 Q How did you clean or wash yourself?

19 A Sometimes we didn't. We went to school  
20 with body odor. Sometimes we had to use the bucket in  
21 the back.

22 Q The same bucket you went to the bathroom in  
23 you used to wash yourself?

24 A She would make us wash with the water hose.  
25 She would make us go out in front and wash ourselves with

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1 the water hose.

2 Q Was my client there?

3 A Sometimes, yeah, he was.

4 Q Pam -- Eunice would bring them over and  
5 leave them?

6 A Yes.

7 Q Was Eunice with John during this time?

8 A Yeah, she was, off and on. They were going  
9 through some things, but yeah, they were together.

10 Q Were some of the things they were going  
11 through, getting loaded all the time?

12 A Yes. Yes.

13 Q How did you -- was it hot in there?

14 A It was hot during hot days, and it was  
15 freezing cold during the cold days.

16 Q What did you guys do for heat?

17 A We had a heater. We couldn't keep it  
18 plugged up, because it would overheat.

19 Q How would you plug it up, if there was no  
20 electricity?

21 A There was an extension cord we had come  
22 from the front of the house to the back of the house in  
23 order to get the heater working or the hot plate.

24 Q You would run a series of extension cords  
25 from great grandmother's house all the way back to the

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1 shack?

2 A Yes.

3 Q That was your electricity?

4 A Right.

5 Q These wires would be on the ground, running  
6 from the main house -- this is actually a garage is what  
7 it was meant to be; isn't that right?

8 A Right.

9 Q Was it ever renovated or worked on to your  
10 knowledge to be fit for human habitation?

11 A When Michael great grandfather was living,  
12 he was working on it the best he could. He passed away.  
13 He couldn't -- he didn't finish it.

14 Q Was a bathroom ever put in there?

15 A No.

16 Q Was a sink ever put in there?

17 A No.

18 Q Did you have any privacy in there?

19 A No. We had to change in front of each  
20 other.

21 Q How old were you, sweetheart?

22 A I was 10.

23 Q Were you frightened at night?

24 A Yeah, we were scared. Any noise we heard,  
25 we were scared. We would huddle together.

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1 Q And this part of town, where is this  
2 located?  
3 A On 52nd and Compton.  
4 Q That's what we, here in Nevada, know as  
5 South Central LA?  
6 A Yes.  
7 Q It's a very dangerous area, isn't it?  
8 A Yes, it is.  
9 Q Was John there?  
10 A Yes.  
11 Q Was John living there?  
12 A Yes.  
13 Q They were living there for more than one  
14 day?  
15 A Yes.  
16 Q Yesterday his sister said they lived there  
17 one day?  
18 A No. It was not one day. It was more like  
19 a month or so. It was times when she was getting into it  
20 with their dad. So they would come over and stay with  
21 us, and we would all be in there together.  
22 Q So seems to me that John and his siblings  
23 had a good healthy dose of the shack, but they weren't in  
24 there as long as you guys?  
25 A Right.

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1 Q I got you. Okay. How did you eventually  
2 wind up getting out of the place?

3 A I believe my great grandmother called the  
4 police, and we were there alone. My mom and Eunice and  
5 John had left. They said they were going to get  
6 something to eat.

7 They were gone for a long time. By  
8 the time they got back, the police was there, and they  
9 took us to the police station.

10 Q When the grown-ups said they were going to  
11 get something to eat, was that something you had heard  
12 before, and it didn't happen?

13 A Yeah.

14 Q Probably something you heard a lot?

15 A Right.

16 Q It didn't surprise you they didn't come  
17 back with food?

18 A No.

19 Q When they came back did they usually have  
20 food, if they came back?

21 A No, not all the time.

22 Q When they left saying, I am going to go get  
23 food, it was a crap shoot; you never knew?

24 A Right.

25 Q What was it like when you went to foster

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1     **care?**

2             A       It was a little scary.

3             Q       Why was it scary? What was scary about it?

4             A       We are in this dorm with strangers, no  
5 family, nobody to turn to and talk to. We just had each  
6 other.

7             Q       Were you separated?

8             A       I was with Johnnisha and Kannitta. John  
9 was by his self with the boys, and then we had Floyd and  
10 Eunisha; they were sectioned off with the infants.

11            Q       But you had running water?

12            A       Right.

13            Q       You had a bathroom?

14            A       Right.

15            Q       Clothing, did you have clothing?

16            A       We had to share clothing with all the girls  
17 in the dorm.

18            Q       Tell the jury how that operated; how did it  
19 work?

20            A       Basically, every day you get up, and you go  
21 to this big room. They have, like, a big closet, and you  
22 have nothing but clothes in there. Everybody goes in and  
23 picks out their clothes for the day, and then you get  
24 dressed and off for the rest of the day.

25            Q       But surely you had your own personal

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1 underwear?

2 A No.

3 Q No? How did that work?

4 A We shared everything: Socks; underwear;  
5 clothing; everything.

6 Q Did anybody in your family get sick while  
7 you were in there?

8 A Johnnisha was sick a lot.

9 Q What happened to her?

10 A She had ringworms and just like a whole  
11 bunch of little things. I think it was from being scared  
12 and away from mommy and sharing the clothes of everybody,  
13 all that together.

14 Q She was somewhat fragile compared to you;  
15 is that a fair statement?

16 A Right.

17 Q Did you feel, as the oldest, any  
18 responsibility to take care of the younger ones?

19 A I looked out for them.

20 Q Best you could?

21 A Right.

22 Q Did you ever see John when you were at  
23 McClaren hall?

24 A Maybe once. They rarely let us see each  
25 other.



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1 Q Did there come a time when your grandmother  
2 Ms. Edwards came to get the lot of you?

3 A Yes.

4 Q How long were you there before that  
5 occurred?

6 A It seemed like forever. Maybe it was like  
7 a month or so.

8 Q She was given custody of you kids?

9 A Not custody at that moment. She was in and  
10 out of court. We were in court all the time.

11 Q She probably was your guardian, does that  
12 sound right?

13 A Yes.

14 Q Where did she take you?

15 A We moved from 52nd to 43rd and Ascott, and  
16 that's when we moved in with her.

17 Q That's 43rd and Ascott?

18 A Yes, sir.

19 Q I show you what's been marked and entered  
20 as Defense Exhibit H and D. Do you recognize D?

21 A Yes. This is my sister Kennita, and John  
22 my cousin.

23 Q Same John that sits over there?

24 A Yes.

25 Q How much older is Kennita than John?

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1           A       Maybe about two years.

2           Q       She is much taller?

3           A       Right.

4           Q       He was a small kid?

5           A       Right.

6                   MS. JACKSON: Your Honor, I move

7       re-admission of D.

8                   MR. DASKAS: No objection, your Honor.

9                   THE COURT: Admitted.

10                  MS. JACKSON: Thank you.

11           Q       I don't know if this will work on the

12       projector?

13                   What is John doing?

14           A       He is smiling at my sister.

15           Q       He has to look way up at her?

16           A       Yes.

17           Q       He is only a few years --

18           A       I think they are just a year apart.

19           Q       She is a couple of heads at least taller

20       than he is?

21           A       Right.

22           Q       He seems pretty happy on there. Where was

23       that taken?

24           A       43rd and Ascott. We had just began to live

25       with my grandmother at the time.

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1 Q He seemed pretty happy about that?

2 A Right.

3 Q After all, there were some good times. She

4 took you to church?

5 A We were in choir rehearsal all the time,

6 and usher board.

7 Q You had a roof over your head?

8 A Yes, right. Right.

9 Q When it's all said and done, she did a good

10 job?

11 A She did, and I thank her for it.

12 Q You recognize what's depicted in this

13 Exhibit?

14 A This is 60th and Normandy.

15 Q We have not gotten there yet. What was it

16 like over on 43rd and Ascott, was it?

17 A Yes.

18 Q What was it like, living with Big Mama over

19 at 43rd and Ascott?

20 A We had good times together, except when it

21 was time to go out.

22 Q Who lived there in Big Mama's house?

23 A There was a lot of us.

24 Q Name as many as you can, and try to start

25 with your mother's kids there and go sibling by sibling

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1 of Jane's children on. Tell the jury who all lived  
2 there?

3 A There was me; my sister, Kennita; my  
4 brother, Floyd; Johnnisha, John, Eunisha. Then we had  
5 Cornelius, Willy, Sam, Trevon, and then at times, my  
6 uncle and Aunt Lolita. Her son, Jessie, my Aunt Debra  
7 and her boyfriend, and my grandfather, Sam.

8 Q How many is that?

9 A I have lost count.

10 Q Your Uncle Jaimie lived there too,  
11 sometimes, didn't he?

12 A Off and on.

13 Q In between girlfriends?

14 A Right.

15 Q Court's indulgence, your Honor. I will  
16 show you what's marked and previously entered in the  
17 other hearing as Defense Exhibit I. What is that?

18 A This is us before our usher board meeting,  
19 before we went to go on a program.

20 Q You recognize the people in the photograph?

21 A Yes.

22 MS. JACKSON: Move admission of I.

23 MR. DASKAS: No objection, your Honor.

24 THE COURT: Admitted.

25 BY MS. JACKSON:

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1 Q Who is in the photograph come?

2 A Up here with me, if you will, come with me.

3 Can we have a pointer.

4 MR. WHIPPLE: I have a pen.

5 MS. JACKSON: Tell the folks who is  
6 depicted in the photograph, please.

7 THE WITNESS: This is Eunisha, John's  
8 sister. This is Johnnisha, John's sister. This is John.  
9 This is my sister, Kennita. This is Donna, my cousin;  
10 Nikia, my cousin; Tish, my cousin; Kisha, my uncle's  
11 stepdaughter; me; my aunt Lolita.

12 BY MS. JACKSON:

13 Q You guys are all dressed up there. Looks  
14 like a lot of you are dressed alike. What's the  
15 occasion?

16 A Our usher board program, where we all just  
17 honored the ushers on that day.

18 Q You are all headed to church?

19 A Right.

20 Q You may take your seat. Folks in that  
21 picture look pretty happy?

22 A Yeah.

23 Q Is that one of the good times you remember?

24 A Yes.

25 Q Eunisha talked about eating communion

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1       wafers because she was hungry. Do you know anything  
2       about that?

3               A       Sometimes we didn't have any time to get  
4       breakfast or anything to eat. After church we would be  
5       starving. What we would do is go in the back and eat up  
6       the crackers and the juice.

7               Q       Were you going to school when you were with  
8       your grandmother on 43rd and Ascott?

9               A       Yes.

10              Q       What school did you attend?

11              A       Hooper Avenue and Hawthorn Christian.

12              Q       Was John there?

13              A       Yes.

14              Q       What school did he attend?

15              A       Ascott Elementary.

16              Q       What kind of place was that?

17              A       For me it was scary. I was glad I didn't  
18       have to go there. There was a lot of kids that picked on  
19       you from the neighborhood. I was happy I didn't have to  
20       go there.

21              Q       You didn't have to go there?

22              A       No.

23              Q       Because you were past Ascott Elementary  
24       school age, or why didn't you have to go there?

25              A       I was old enough to walk to my old school,

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1 which was Hooper Avenue. Once I graduated from Hooper,  
2 that's when I went to Hawthorne Christian.

3 Q You would prefer to walk, and I presume  
4 Ascott was closer to where you lived?

5 A Yes.

6 Q You preferred to walk to your old school?

7 A Right.

8 Q Reason was --

9 A It was familiar. I had friends there, and  
10 people didn't pick on me.

11 Q Ascott was scarier you said earlier?

12 A Right.

13 Q Ascott is where John went?

14 A Yes.

15 Q Eunisha was probably too young?

16 A She wasn't in school at that time.

17 Q What about Johnnisha? Did she go to Ascott  
18 with John?

19 A Yes.

20 Q Were you aware of them being chased home by  
21 bullies, and rocks being thrown at them; people calling  
22 there names?

23 A Yes.

24 Q How did that affect John?

25 A We would see them running, wondering why

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1 they were running, couldn't figure out who the people  
2 were that were chasing them. When we found out, it was  
3 the same family of people that would pick on me, too.

4 Q This was a regular thing?

5 A Pretty much.

6 Q When John ran into the house, would he be  
7 laughing or scared? What was his demeanor like?

8 A They were scared, breathing hard. They had  
9 to run at least two blocks away from the school, away  
10 from them.

11 Q Just to try to get home?

12 A Just to get home.

13 Q Did there come a time when you were at 43rd  
14 and Ascott living with your grandmother -- were there  
15 times you guys would have to jump on the floor?

16 A Yeah.

17 Q Why?

18 A A lot of shooting.

19 Q Drive-bys?

20 A Yes.

21 Q Were you burglarized at 43rd Ascott?

22 A We were burglarized. Also a guy came into  
23 John, Johnnisha's, Eunisha's bedroom window, into my  
24 room.

25 Q What happened?



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1           A       I fell asleep on the floor. He came in  
2 through their window. I had on my nightgown. When I  
3 woke up, he was touching me on my legs.

4           Q       Did he run?

5           A       Yeah. I started screaming. He flew out  
6 the window.

7           Q       Did you guys ever find out had who that  
8 was?

9           A       Couple days later maybe, he saw my cousin  
10 John and Cornelius walking from the store.

11          Q       This John?

12          A       He told them, he said, "Y'all, almost had  
13 me," but he just laughed and rolled by on a bike.

14          Q       Was it a man?

15          A       Yes.

16          Q       And how old was John?

17          A       He was probably about seven or eight.

18          Q       Did that upset John?

19          A       Yeah.

20          Q       Did there come a time when you moved away  
21 from 43rd and Ascott?

22          A       Yes. We moved to 6th and Normandy.

23          Q       Why did you move? Did you move to a  
24 bigger, better place?

25          A       We actually had to move because the owner

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1 was selling the property.

2 Q Was the place you moved to larger or  
3 smaller?

4 A It was an apartment.

5 Q You moved to a smaller place?

6 A Yes.

7 Q Is this it?

8 A Yes.

9 MS. JACKSON: I move admission of H.

10 MR. DASKAS: No objection, your Honor.

11 THE COURT: Be admitted.

12 BY MS. JACKSON:

13 Q Now, you still had the same number of  
14 people living there?

15 A Yes.

16 Q Does this place -- does it look the same as  
17 it did when you lived there?

18 A They added bars.

19 Q There were no bars there?

20 A No.

21 Q Was there any place for you to play, you  
22 children to play?

23 A We actually played in the back. There was  
24 a lot going on in the neighborhood, a lot like --

25 Q You may take your seat.

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1                                   A lot like what, ma'am?

2           A       Sometimes I would get chased from the

3 store.

4           Q       Was there a particular bully that kind of

5 had his eye on you?

6           A       His name was Sonny.

7           Q       Tell us about that.

8           A       Basically, there were times I would be in

9 the store. He would come in behind me, grabbing me,

10 touching me, stuff. I would have to run home.

11          Q       Was he older than John?

12          A       Yes.

13          Q       Was he bigger than John?

14          A       Yes.

15          Q       And because of that, in part, did there

16 come a time when you went to, got a chance to go to a

17 private school?

18          A       Yes.

19          Q       How many kids were in the house at the

20 time?

21          A       There were still about 10, maybe more.

22          Q       How many got to go to the school?

23          A       Just me.

24          Q       Did you have to have a certain grade level

25 to get in there?

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1 A No, not really.

2 Q Did it cost money?

3 A Yes, it did.

4 Q Who paid for that?

5 A My grandmother.

6 Q You didn't have enough food to eat, but she

7 spent money on a private school?

8 A Yes.

9 Q Why did she do that?

10 A I was afraid to go to any other school.

11 She didn't want me to go to the other schools. They were

12 rough.

13 Q It was a sacrifice?

14 A Yes.

15 Q One she made on behalf of you?

16 A Yes.

17 Q Are you glad she made it?

18 A I am very glad.

19 Q Hang on, Ms. Atkins. We are almost there.

20 I will show you AA, Defendant's for identification. Do

21 you recognize that?

22 A Me and my children.

23 Q And when was that taken?

24 A This was taken about a year or two ago.

25 Q Is that some of the pictures me and my team

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1 took when we came to visit you folks?

2 A Yes.

3 MS. JACKSON: I move admission of AA.

4 MR. DASKAS: No objection, your Honor.

5 THE COURT: Admitted.

6 BY MS. JACKSON:

7 Q Describe for the jury, please, who is  
8 depicted in AA. You can indicate an item of clothing  
9 they are wearing so they can follow with you.

10 A From left to right we have Kiante, and she  
11 is nine.

12 Q That's your daughter, your sibling?

13 A Daughter Kierra, wearing a red shirt.

14 Q How old is she?

15 A Eight.

16 Q Okay.

17 A Then my son, Kian.

18 Q How old is he?

19 A He just made 5. My oldest is Kianna. She  
20 is 12.

21 Q Who is the beautiful lady in the middle  
22 with the beautiful smile?

23 A That would be me.

24 Q Thank you. That's all I have.

25 THE COURT: Cross.

4-27-2005

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## CROSS-EXAMINATION

BY MR. DASKAS:

Q Good morning. It's Mrs. Atkins now?

A Yes.

Q I take it you are married?

A Yes.

Q I want to ask you a couple of questions  
about the living arrangements when you were a kid.Understand, I don't mean to make light of any of this. I  
don't mean to. I am sure it was very difficult.

A Right.

Q The shack you described for us, your memory  
is your stayed in that place for about a year?

A Yes.

Q Johnnisha, Defendant's sister, testified  
yesterday she recalled staying there one day. You heard  
that testimony?

A I wasn't in here.

MS. JACKSON: Your Honor, I object. What  
Johnnisha said was, it might have been a day, but it felt  
like a year. We have the transcript right here.

MR. DASKAS: That's what I am saying.

THE COURT: A day is a day. Jury heard it,  
as well.

4-27-2005

1 MS. JACKSON: Very well, your Honor.

2 MR. DASKAS: Again --

3 Q Your recollection is about a year, and if  
4 she said something different, you would obviously go with  
5 your recollection?

6 A Right.

7 Q Did all of you and the Defendant and his  
8 sisters go to McClaren Hall at the same time?

9 A Yes.

10 Q You stayed there about two months?

11 A Right.

12 Q From there you moved to the house on 43rd  
13 and Ascott?

14 A Yes.

15 Q That was with your grandmother?

16 A Right.

17 Q That was a five-bedroom house, correct?

18 A It was actually four, and we had to convert  
19 the back room into two rooms.

20 Q I see. So originally four and converted to  
21 serve as a five-bedroom home?

22 A Right.

23 Q How long did you stay in the home with five  
24 bedrooms?

25 A The five bedrooms, it was maybe about six

4-27-2005

1 years.

2 Q From there you moved into the apartment  
3 depicted in the photograph we saw?

4 A Right.

5 Q Where were you living at the time your  
6 grandmother was able to send you, fortunately, to private  
7 school?

8 A 43rd and Ascott.

9 Q The bigger house, that was the biggest  
10 place you lived?

11 A Right.

12 Q Even at that time, she was having trouble  
13 putting food on the table?

14 A Right.

15 Q Johnnisha, Defendant's sister, she was not  
16 able to attend private school?

17 A No.

18 Q And neither was Defendant's other sister?

19 A No.

20 Q You agree they are doing fairly well today,  
21 correct?

22 A They are doing the best they can.

23 Q You mentioned a number of your cousins or  
24 relatives in and out of jail. Do you recall saying that?

25 A Right.



4-27-2005

1 Q I think most of the relatives were in jail,  
2 out of jail, for theft related type crimes?

3 A Right.

4 Q Is it fair to say they are stealing to  
5 support a drug habit?

6 A No, it's not fair to say.

7 Q How would you characterize it?

8 A I would basically say, when you are growing  
9 up in our neighborhood, you are looking at what everybody  
10 else has, and you are looking at what you want. So if  
11 they wanted a new pair of shoes or clothing, you know  
12 they would go out and steal to get it.

13 Q I appreciate that clarification.

14 MR. DASKAS: Thank you for your testimony  
15 so much. I appreciate it.

16

17 REDIRECT EXAMINATION

18 BY MS. JACKSON:

19 Q Did you see the lady that was murdered with  
20 the broom stuck in her privates? Did you see that, too,  
21 or was that just my client and Johnnisha that saw?

22 A I knew about it. I was afraid to go  
23 inside. I stood across the street. I watched them wheel  
24 out the body.

25 Q What about the shoot out, when they shot

4-27-2005

1 and killed a man?

2 A That was across the street. We were all  
3 witness to see that.

4 Q That was another day in South Central?

5 A There were always guys running around with  
6 guns, driving around with guns, whether it was for drugs,  
7 or stealing cars, rims, or whatever.

8 Q You talked about your cousins, you said,  
9 they were in jail for theft. Isn't it true one of your  
10 cousins is charged with armed robbery, perhaps more than  
11 one?

12 A Yes.

13 Q How many?

14 A There was about two of them.

15 Q Who are the cousins they charged with armed  
16 robbery?

17 A Cornelius, I know for sure.

18 Q Cornelius is the same one charged with  
19 murder?

20 A Right.

21 Q Who is the other one?

22 A I believe it was Willy.

23 Q That's an armed robbery charge?

24 A Uh-huh.

25 Q You call it theft. It sounds a little

4-27-2005

1 nicer?

2 A Yes.

3 MS. JACKSON: Thank you. That's all I  
4 have.

5 THE COURT: State.

6 MR. DASKAS: Nothing else, your Honor.

7 THE COURT: Thank you, ma'am. You are  
8 excused.

9 MS. JACKSON: Jade Edwards.

10 JANE EDWARDS,  
11 having been called as a witness by and on behalf of the  
12 Defense, and having been first duly sworn by the Clerk of  
13 the Court, was examined and testified as follows:

14  
15 DIRECT EXAMINATION

16 BY MS. JACKSON:

17 Q Good morning, Ms. Edwards.

18 A Good morning.

19 Q How are you feeling today?

20 A I am okay.

21 Q You have a real soft voice. I am going to  
22 move back here a little bit. Hopefully, you will keep  
23 your voice up. All these people need to hear you.

24 A Okay.

25 Q Where do you live, ma'am?

4-27-2005

1 A 1452 East 52nd Street in Los Angeles.

2 Q You have some children?

3 A Yes.

4 Q How many children?

5 A I have seven. They are all grown. Them

6 not children no more.

7 Q They are still your children?

8 A Yes.

9 Q You have lost one child, Pam?

10 A Yes.

11 Q And I understand that Pam's death was kind

12 of -- at the bottom of it, was it a drug addiction; is

13 that true?

14 A Yes.

15 Q Do you have any other children that wound

16 up having a problem with drugs and alcohol, Ms. Edwards?

17 A Yes, Eunice, Arthur, Pamela.

18 Q Okay. Those are the three?

19 A And Wanda Fay.

20 Q Four of the seven at some time or another

21 had an addiction problem?

22 A Yes.

23 Q As a result of that, did you wind up taking

24 care of their children?

25 A Yes.

4-27-2005

1 Q As a matter of fact, at one time how many  
2 children did you have in the house?  
3 A I had 10.  
4 Q You had 10?  
5 A Yes.  
6 Q Is one of the 10, is he one of them?  
7 A Yes.  
8 Q Who is this?  
9 A That's John, my grandson.  
10 Q Who is John's mother?  
11 A Eunice.  
12 Q Who is John's father?  
13 A Johnny White.  
14 Q Did you know Johnny White?  
15 A Yes.  
16 Q Did you have a chance to see how he treated  
17 John's mother?  
18 A Yes.  
19 Q How did he treat her?  
20 A He always in front of me would mistreat  
21 her.  
22 Q You say, in front of you?  
23 A Yes, most of the time.  
24 Q What happened when you weren't around?  
25 A He would beat her.

1 Q Would you see the result sometimes on her  
2 face or her body of the beatings he would inflict on her?

3 A One time he knocked her teeth out.

4 Q Knocked her teeth out?

5 A In the front.

6 Q You have seven children. Was Eunice born  
7 with some problems?

8 A Yes.

9 Q What kind of problems did Eunice have when  
10 she was born, Mrs. Edwards?

11 A She had -- she had -- her lungs didn't  
12 develop.

13 Q She had severe asthma?

14 A Yeah.

15 Q Was she a little bit slow?

16 A Yes.

17 Q As a matter of fact, when she was in  
18 school, was she in regular classes or different kinds of  
19 classes?

20 A She was in a special class, special  
21 training.

22 Q Special-ed.

23 A Yes.

24 Q But she made it through okay?

25 A Yes.

1 Q Did she get any type of disability income  
2 because of her disability?

3 A Not at that time.

4 Q There came a time, though, when she did?

5 A Yes.

6 Q Did she have to be certified disabled to  
7 receive that income?

8 A Yes.

9 Q When you had John, you say, to your memory  
10 you had 10 children?

11 A Yes.

12 Q I am going to show you what's in evidence  
13 as, I, as in ice cream, do you recognize that photograph,  
14 Mrs. Edwards?

15 A Yes.

16 Q Who is in the photograph, ma'am?

17 A All these are my grandchildren. That's  
18 John, Donna Gail, Kionna, Leticia, Johnnisha, Eunisha.

19 Q She's the baby?

20 A Yes, and Kierra, my son's.

21 Q Who is the lady in the back?

22 A That's Lolita.

23 Q Was she living with you at the time?

24 A Yes.

25 Q Looks like you folks were on your way

4-27-2005

1 somewhere. Girls were in uniforms. What kind of  
2 uniforms were they?

3 A Those were usher board uniforms.

4 Q You were on your way to church?

5 A Yes.

6 Q You would take the children to church?

7 A Yes.

8 Q You did the best you could for the  
9 children?

10 A Yes.

11 Q For the record, I am going to show the  
12 second part of a video. This is a duplicate of L, which  
13 is already in evidence and previously admitted.

14 For the record, we formally move  
15 re-admission of the video in the custody of your Clerk,  
16 so the jury might have it in the jury room, your Honor,  
17 and we ask permission to show it.

18 MR. DASKAS: No objection, your Honor.

19 MR. WHIPPLE: Just hit, play.

20 (VIDEO PLAYED.)

21 BY MS. JACKSON:

22 Q Who has the microphone now?

23 A That's John.

24 Q What did we just watch?

25 A Watched the choir singing and John singing.



4-27-2005

1 Q John had a lead there?

2 A Yeah.

3 Q "Anybody here love my Jesus?"

4 A Yes.

5 Q Did he a good job in your opinion?

6 A Yes.

7 Q I show you what's marked for identification

8 as J?

9 A Yes.

10 Q Do you recognize that person?

11 A Yes.

12 Q Who is that?

13 A That's John.

14 Q About how old was John on here, Mrs.

15 Edwards?

16 A Little, I don't know.

17 Q I know he was little, about 9 or 10?

18 A Yeah.

19 Q His dad was pretty short?

20 A Yeah.

21 Q He got height after his father?

22 A Yes.

23 Q Kind of a short man?

24 A Yes.

25 Q Was he a small child?

4-27-2005

1           A       All of them small.

2           Q       Is that John?

3           A       Yes.

4           Q       Is that picture taken when John was living

5 with you?

6           A       Yes.

7           Q       When you went and got your grandchildren

8 from McClaren Hall, Ms. Edwards, how long did you think

9 you would have them?

10          A       Well, I didn't think I would have them

11 long, but I had them a long time, I don't know how long,

12 until they all got big.

13          Q       You had them until they all got grown and

14 left?

15          A       Yes.

16          Q       Their parents never did get themselves

17 together and come get them?

18          A       One did, Wanda Fay did.

19          Q       One did. Good for her.

20          A       Uh-huh.

21                MS. JACKSON: That's all I have. Thank

22 you, Ms. Edwards.

23                THE COURT: Cross.

24                MR. DASKAS: No, sir.

25                THE DEFENDANT: I love you.

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1 MS. JACKSON: Johnnisha White. Just a  
2 couple of questions.

3 THE COURT: You are still under oath.

4 JOHNNISHA WHITE,  
5 having been recalled as a witness by and on behalf of the  
6 Defense, and having been previously sworn by the Clerk of  
7 the Court, was examined and testified as follows:

8  
9 DIRECT EXAMINATION (Resumed)

10 BY MR. WHIPPLE:

11 Q Do you remember you testified yesterday?

12 A Yes.

13 Q You have had an opportunity to hear some of  
14 the people testify today?

15 A Yes.

16 Q Do you remember yesterday, I asked you how  
17 long you had lived in the shed?

18 A Yes.

19 Q Do you remember what you said?

20 A Not really.

21 Q I am going to tell you. You said, "one  
22 day." You don't recall saying, one day?

23 A Not at that. Time so much was going on in  
24 my head.

25 Q I want to take you back to that shed. You

4-27-2005

1 hear the testimony of the shed today?

2 A No.

3 Q Johnnisha, I am showing you Defendant's

4 Exhibit C. Do you recall living in the shed here?

5 A Yes.

6 Q Why don't you point to it and show the

7 folks where you lived?

8 A Here.

9 Q It's connected to the building over here?

10 A No.

11 Q It's the building here?

12 A Yes.

13 Q This is the shed here, correct?

14 A Yes.

15 Q How long do you recall living in the shed,

16 for periods of time? Speak up.

17 A Over months.

18 Q Do you recall exactly how long it was?

19 A No.

20 Q You do recall it was longer than one day?

21 A Yes.

22 MR. WHIPPLE: Nothing further.

23 MR. DASKAS: We have no questions, Judge.

24 THE COURT: You are excused.

25 MS. JACKSON: Our final witness will be

4-27-2005

1 very short, Allen White.

2 ALLEN WHITE,

3 having been called as a witness by and on behalf of the  
4 Defense, and having been first duly sworn by the Clerk of  
5 the Court, was examined and testified as follows:

6

7

DIRECT EXAMINATION

8

BY MR. WHIPPLE:

9

Q Do you remember talking with me yesterday.

10

We talked a few minutes in the hall today?

11

A Yes.

12

Q Where do you live?

13

A Los Angeles California.

14

Q Where?

15

A Los Angeles California.

16

Q Who do you live with in Los Angeles

17

California?

18

A Johnnisha, Moo-Moo, my granny, Ricky, and

19

Mikhail. That's it.

20

Q How old are you?

21

A Eight.

22

Q Do you go to school?

23

A Yes.

24

Q What grade do you attend?

25

A Third grade.

1 Q What's your teacher's name?

2 A Ms. Jesus.

3 Q Allen, is there somebody you recognize in  
4 the court today, I am touching here?

5 A Yes.

6 Q Who is that?

7 A My dad, John.

8 Q I asked you to write a letter. Do you  
9 remember that?

10 A Yes.

11 Q You gave me a letter?

12 A Yes.

13 Q Would you read that today?

14 MR. DASKAS: I apologize. May we see it,  
15 please.

16 THE WITNESS: Yes.

17 MS. JACKSON: Allen, when you are answering  
18 Mr. Whipple, she is taking everything down. Don't nod  
19 your head. Answer out loud. Okay? Can you do that?

20 THE WITNESS: Yeah.

21 MR. DASKAS: Thank you.

22 BY MR. WHIPPLE:

23 Q Ready for this?

24 A Not yet.

25 Q You will have to do it. I'll be right here

4-27-2005

1 with you.

2 A Okay.

3 Q Who is that written to?

4 A My dad.

5 Q Who did you write it to?

6 A My dad.

7 Q Who is it from?

8 A From me.

9 Q Why don't you read it. Okay?

10 A Okay.

11 Q Take your time. Speak out loud.

12 "Dear Dad, I've been fine since the  
13 last time we talked. I've been thinking  
14 about you a lot. I got your letter. I  
15 hope you write me again. I crashed my  
16 motorbike on Christmas because Charles was  
17 trying to back up, and I tried to go around  
18 the car, and I crashed into the sidewalk,  
19 but I didn't get hurt because I had my  
20 safety equipment on. Everybody loves you  
21 so much. I want you to call me so I can  
22 talk to you. I will love you in my heart,  
23 and you will love me in mine. And I  
24 promise that I will be good in school and I  
25 promise -- and I promise.

4-27-2005

1 Q Who is that from?

2 A From Allen Lee White to John Lee White.

3 Q Okay. Thank you.

4 MR. WHIPPLE: Stay right here. He might

5 have questions for you.

6 MR. DASKAS: We have no questions. Thank

7 you.

8 THE COURT: Are you submitting the record

9 or reading it into the record?

10 MR. WHIPPLE: I will submit it. My

11 original intentions were to read it into the record.

12 We will submit it.

13 MS. JACKSON: Come on, little man.

14 MR. WHIPPLE: Your Honor, Defense moves to

15 admit Defense proposed MM. I submit it. I think it's

16 cumulative. We will submit it.

17 THE COURT: We will admit it.

18 MR. WHIPPLE: Thank you, your Honor.

19 MS. JACKSON: That is the extent of the

20 mitigation we present on behalf of Mr. Johnson at this

21 time:

22 THE COURT: All right. Ladies and

23 gentlemen, we will take our lunch recess. I will get the

24 instructions for you, and it will be a little longer

25 lunch break, rather than have you come back and wait



4-27-2005

1 around here be in recess until 2:15.

2 Jury is admonished not to converse  
3 among yourselves or with anyone else on any subject  
4 connected with this trial or to read, watch or listen to  
5 any report of or commentary on the trial by any person  
6 connected with the case or by any medium of information  
7 including without limitation newspapers, television,  
8 internet or radio.

9 You are directed you are not to form  
10 or express an opinion on this case until it is finally  
11 submitted to you by the Court.

12 MS. JACKSON: I was handed instructions  
13 before Court. I want to read them, but I was preparing  
14 for direct. I believe we can supplement in just a few  
15 minutes.

16 MR. DASKAS: Give us a few minutes to  
17 settle, finalize them. I can go back, get the changes.

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1 made, and then take a lunch break. I suppose we need ten  
2 minutes.

3 THE COURT: Go on.

4 \* \* \* \* \*

5 (END OF MORNING PROCEEDINGS 12:20 P.M.)

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7 ATTEST: FULL, TRUE, AND ACCURATE TRANSCRIPT OF  
8 PROCEEDINGS.



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10 KRIS MOORE, CCR 273  
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1 VER

2 FILED IN OPEN COURT

3 APR 28 2005 2:30pm

4 SHIRLEY B. PARRAGUIRRE, CLERK

5 DISTRICT COURT BY Sharon Coffman  
6 CLARK COUNTY, NEVADA7 DEPUTY  
8 SHARON COFFMAN

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 DONTE JOHNSON,

13 Defendant.

14 Case No. C153154

15 Dept No. VIII

## 16 SPECIAL VERDICT

17 The Defendant, DONTE JOHNSON, having been found Guilty of COUNT XI -  
18 MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY WEAPON, we, the Jury  
19 in the above entitled case, find20 ☒ The aggravating circumstance outweighs any mitigating circumstance or  
21 circumstances.22 ☐ The mitigating circumstance or circumstances outweigh the aggravating  
23 circumstance.

24 DATED at Las Vegas, Nevada, this 20 day of April, 2005.

25 Ami Casper  
26 FOREPERSON  
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APR 28 2005 2:30 pm

SHIRLEY B. PARRAGUIRRE, CLERK

DISTRICT COURT BY *Sharon Coffman*  
CLARK COUNTY, NEVADA

DEPUTY  
SHARON COFFMAN

THE STATE OF NEVADA,

Plaintiff,

-vs-

DONTE JOHNSON,

Defendant.

Case No. C153154

Dept No. VIII

SPECIAL VERDICT

The Defendant, DONTE JOHNSON, having been found Guilty of COUNT XI - MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY WEAPON, one or more of the jurors designate that the mitigating circumstance or circumstances which have been checked below have been established.

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

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

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1 ☒ Any other mitigating circumstance. (Please List)

2 ~~Instruction #10~~

3 Mitigator #3 (Line 8+9)

4 Mitigator #5 (Line 12+13)

5 Mitigator #6 (Line 14)

6 Mitigator #7 (Line 15+16)

7 Mitigator #8 (Line 17)

8 Mitigator #10 (Line 20+21)

23  
24 DATED at Las Vegas, Nevada, this 28 day of April, 2005.

25   
26 FOREPERSON  
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1 VER

FILED IN OPEN COURT

APR 28 2005

2:30 p.m.

SHIRLEY B. PARRAGUIRRE, CLERK

BY Sharon Coffman

SHARON COFFMAN DEPUTY

DISTRICT COURT  
CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,

8 Plaintiff,

9 -vs-

10 DONTE JOHNSON,

11 Defendant.

Case No. C153154

Dept No. VIII

## 14 SPECIAL VERDICT

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

21 ☒ The defendant has, in the immediate proceeding, been convicted of  
 22 more than one offense of murder in the first or second degree.

24 DATED at Las Vegas, Nevada, this 28 day of April, 2005.

25 Sharon Coffman  
 26 FOREPERSON

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FILED IN OPEN COURT

APR 28 2005

DISTRICT COURT  
CLARK COUNTY, NEVADA  
SHIRLEY B. PARRAGUIRRE, CLERK  
BY *Sharon Coffman*  
SHARON COFFMAN, DEPUTY

THE STATE OF NEVADA,

Plaintiff,

-vs-

DONTE JOHNSON,

Defendant.

Case No. C153154

Dept No. VIII

INSTRUCTIONS TO THE JURY  
(INSTRUCTION NO. 1)

MEMBERS OF THE JURY:

It is now my duty as judge to instruct you in the law that applies to this penalty hearing. It is your duty as jurors to follow these instructions and to apply the rules of law to the facts as you find them from the evidence.

You must not be concerned with the wisdom of any rule of law stated in these instructions. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your oath to base a verdict upon any other view of the law than that given in the instructions of the Court.

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1  
2 If, in these instructions, any rule, direction or idea is repeated or stated in different  
3 ways, no emphasis thereon is intended by me and none may be inferred by you. For that  
4 reason, you are not to single out any certain sentence or any individual point or instruction  
5 and ignore the others, but you are to consider all the instructions as a whole and regard each  
6 in the light of all the others.  
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INSTRUCTION NO. 3

The jury must find the existence of each aggravating circumstance, if any, unanimously and beyond a reasonable doubt.

The jurors need not find mitigating circumstances unanimously.

1  
2 A reasonable doubt is one based on reason. It is not mere possible doubt, but is such  
3 a doubt as would govern or control a person in the more weighty affairs of life. If the minds  
4 of the jurors, after the entire comparison and consideration of all the evidence, are in such a  
5 condition that they can say they feel an abiding conviction of the truth of the charge, there is  
6 not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or  
7 speculation.  
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2 In the penalty hearing, evidence may be presented concerning aggravating and  
3 mitigating circumstances relative to the offense.

4 Hearsay is admissible in a penalty hearing.  
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During the first portion of the penalty hearing, you will consider evidence relevant to the existence of aggravating circumstances and evidence relevant to the existence of mitigating circumstances. You must consider each type of evidence for its appropriate purposes.

In determining unanimously whether any aggravating circumstance has been proven beyond a reasonable doubt, you are to consider only evidence relevant to that aggravating circumstance.

In determining individually whether any mitigating circumstance exists, you are to consider only evidence relevant to that mitigating circumstance.

In determining individually whether any mitigating circumstances outweigh any aggravating circumstances, you are to consider only evidence relevant to any mitigating and aggravating circumstances.

If you find unanimously and beyond a reasonable doubt that at least one aggravating circumstance exists and each of you determines that any mitigating circumstances do not outweigh the aggravating, note this on the special verdict form.

If you do not decide unanimously that at least one aggravating circumstance has been proven beyond a reasonable doubt or if at least one of you determines that the mitigating circumstances outweigh the aggravating, note this on the special verdict form.

INSTRUCTION NO. 7

You are instructed that the following factors are circumstances by which Murder of the First Degree may be aggravated:

The defendant has, in the immediate proceeding, been convicted of more than one offense of murder in the first or second degree.

1  
2 Mitigating circumstances are those factors which, while they do not constitute a legal  
3 justification or excuse for the commission of the offense in question, may be considered, in  
4 the estimation of the jury, in fairness and mercy, as extenuating or reducing the degree of the  
5 Defendant's moral culpability.

6 In balancing aggravating and mitigating circumstances, it is not the mere number of  
7 aggravating circumstances or mitigating circumstances that controls.  
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2 In determining whether mitigating circumstances exist, jurors have an obligation to  
3 make an independent and objective analysis of all the relevant evidence. Arguments of  
4 counsel or a party do not relieve jurors of this responsibility. Jurors must consider the totality  
5 of the circumstances of the crime and the defendant, as established by the evidence presented  
6 in the guilt and penalty phases of the trial. Neither the prosecution's nor the defendant's  
7 insistence on the existence or nonexistence of mitigating circumstances is binding upon the  
8 jurors.

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

1. The youth of the defendant at the time of the crime.
2. The murder was committed while the defendant was under the influence of extreme mental or emotional disturbance.
3. At age 7-1/2 the Defendant was removed from his mother's custody due to neglect and sent into foster care.
4. At age 7-1/2 the Defendant moved into his grandmother's home, where up to ten children and four adults stayed.
5. After age 7-1/2 the Defendant had no positive or meaningful contact with either parent.
6. The Defendant never had a positive male role model.
7. For all his childhood the Defendant resided in neighborhoods where violence was frequent.
8. The Defendant witnessed many violent acts as a child.
9. When the Defendant was age 9, his grandmother had custody of as many as 12 children under the age of 10.
10. Beginning when he was 13 years old, the Defendant attended schools where violence was common.
11. Any other mitigating circumstance.



INSTRUCTION NO. 11

The jury is instructed that in determining the existence of aggravating circumstances as well as mitigating circumstances that it may consider all evidence introduced at both the penalty hearing phase of these proceedings and at the trial of this matter.

INSTRUCTION NO. 12

In your deliberation you may not discuss or consider the subject of guilt or innocence of a Defendant, as that issue has already been decided.

INSTRUCTION NO. 13

The credibility or believability of a witness should be determined by his manner upon the stand, his relationship to the parties, his fears, motives, interests or feelings, his opportunity to have observed the matter to which he testified, the reasonableness of his statements and the strength or weakness of his recollections.

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

1  
2 Although you are to consider only the evidence in the case in reaching a verdict, you  
3 must bring to the consideration of the evidence your everyday common sense and judgment  
4 as reasonable men and women. Thus, you are not limited solely to what you see and hear as  
5 the witnesses testify. You may draw reasonable inferences from the evidence which you feel  
6 are justified in the light of common experience, keeping in mind that such inferences should  
7 not be based on speculation or guess.

8 A verdict may never be influenced by prejudice or public opinion. Your decision  
9 should be the product of sincere judgment and sound discretion in accordance with these  
10 rules of law.  
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INSTRUCTION NO. 15

During your deliberation, you will have all the exhibits which were admitted into evidence, these written instructions and forms of verdict which have been prepared for your convenience.

INSTRUCTION NO. 16

The Court has submitted three sets of verdicts to you. One set is for a determination of the existence of an aggravating circumstance. The second set is for a determination of the existence of mitigating circumstances. The third set is for a determination of weight to be given the aggravating and/or mitigating circumstances.

INSTRUCTION NO. 17

Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence as you understand it and remember it to be and by the law as given to you in these instructions, with the sole, fixed and steadfast purpose of doing equal and exact justice between the Defendant and the State of Nevada.

GIVEN:

  
DISTRICT JUDGE

4-27-05

582  
1 VER

FILED IN OPEN COURT

APR 28 2005 2:39pm

SHIRLEY B. PARRAGUIRRE, CLERK

BY Sharon Coffman

DISTRICT COURT  
CLARK COUNTY, NEVADA

DEPUTY  
SHARON COFFMAN

7 THE STATE OF NEVADA,

8 Plaintiff,

9 -vs-

10 DONTE JOHNSON,

11 Defendant.

Case No. C153154

Dept No. VIII

14 SPECIAL VERDICT

15 The Defendant, DONTE JOHNSON, having been found Guilty of COUNT XIV -  
16 MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY WEAPON, one or more  
17 of the jurors designate that the mitigating circumstance or circumstances which have been  
18 checked below have been established.

19 ☒ The youth of the defendant at the time of the crime.

20 ☐ The murder was committed while the defendant was under the influence of  
21 extreme mental or emotional disturbance.

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S12



☒ Any other mitigating circumstance. (Please List)

Instruction #10

Mitigator #3 (Lines 8+9)

Mitigator #5 (Lines 12+13)

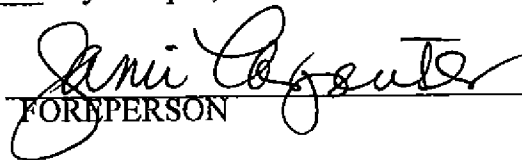
Mitigator #6 (Line 14)

Mitigator #7 (Lines 15+16)

Mitigator #8 (Line 17)

Mitigator #10~~8~~ (Lines 20+21)

DATED at Las Vegas, Nevada, this 20 day of April, 2005.

  
FOR PERSON

VER

FILED IN OPEN COURT

APR 28 2005

2:30 pm

SHIRLEY B. PARRAGUIRRE, CLERK

DISTRICT COURT  
CLARK COUNTY, NEVADASHARON COFFMAN  
DEPUTY

THE STATE OF NEVADA,

Plaintiff,

-vs-

DONTE JOHNSON,

Defendant.

Case No. C153154

Dept No. VIII

## SPECIAL VERDICT

The Defendant, DONTE JOHNSON, having been found Guilty of COUNT XIV -  
MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY WEAPON, we, the Jury  
in the above entitled case, find

☒ The aggravating circumstance outweighs any mitigating circumstance or  
circumstances.

☐ The mitigating circumstance or circumstances outweigh the aggravating  
circumstance.

DATED at Las Vegas, Nevada, this 28 day of April, 2005.

*Ami Cagente*  
FOREPERSON

S12

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1 VER

FILED IN OPEN COURT

APR 28 2005

2:30 p.m.

SHIRLEY B. PARRAGUIRRE, CLERK

BY Sharon Coffey

SHARON COFFEY

DISTRICT COURT  
CLARK COUNTY, NEVADA

2 THE STATE OF NEVADA,

3 Plaintiff,

4 -vs-

5 DONTE JOHNSON,

6 Defendant.

Case No. C153154

Dept No. VIII

7 SPECIAL VERDICT

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

13 ☒ The defendant has, in the immediate proceeding, been convicted of  
14 more than one offense of murder in the first or second degree.

15 DATED at Las Vegas, Nevada, this 28 day of April, 2005.

16 Jamie Coffey  
17 FOREPERSON

18 S12

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FILED IN OPEN COURT

APR 28 2005

2:30 pm

SHIRLEY B. PARRAGUIRRE, CLERK

BY *Sharon Coffman*

SHARON COFFMAN  
DEPUTY

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DONTE JOHNSON,

Defendant.

Case No. C153154

Dept No. VIII

SPECIAL VERDICT

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

☒ The defendant has, in the immediate proceeding, been convicted of more than one offense of murder in the first or second degree.

DATED at Las Vegas, Nevada, this 28 day of April, 2005.

*Jani Carpenter*  
FOREPERSON

S12

587

VER

FILED IN OPEN COURT  
APR 28 2005 2:30 PM

SHIRLEY B. PARRAGUIRRE, CLERK

DISTRICT COURT BY  
CLARK COUNTY, NEVADA

SHARON COFFMAN

THE STATE OF NEVADA,

Plaintiff,

-vs-

DONTE JOHNSON,

Defendant.

Case No. C153154

Dept No. VIII

SPECIAL VERDICT

The Defendant, DONTE JOHNSON, having been found Guilty of COUNT XII - MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY WEAPON, we, the Jury in the above entitled case, find

- ☒ The aggravating circumstance outweighs any mitigating circumstance or circumstances.
- ☐ The mitigating circumstance or circumstances outweigh the aggravating circumstance.

DATED at Las Vegas, Nevada, this 28 day of April, 2005.

*Jamie Cozart*  
FOREPERSON

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FILED IN OPEN COURT

APR 28 2005 2:30 pm

SHIRLEY B. PARRAGUIRRE, CLERK

BY *Sharon Coffman*

DISTRICT COURT  
CLARK COUNTY, NEVADA

DEPUTY  
SHARON COFFMAN

THE STATE OF NEVADA,

Plaintiff,

-vs-

DONTE JOHNSON,

Defendant.

Case No. C153154

Dept No. VIII

SPECIAL VERDICT

The Defendant, DONTE JOHNSON, having been found Guilty of COUNT XIII - MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY WEAPON, one or more of the jurors designate that the mitigating circumstance or circumstances which have been checked below have been established.

- ☒ The youth of the defendant at the time of the crime.
- ☐ The murder was committed while the defendant was under the influence of extreme mental or emotional disturbance.

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S12

☒ Any other mitigating circumstance. (Please List)

Instruction #10

Mitigator #3 (Lines 8+9)

Mitigator #5 (Lines 12+13)

Mitigator #6 (Line 14)

Mitigator #7 (Lines 15+16)

Mitigator #8 (Line 17)

Mitigator #108 (Lines 20+21)

DATED at Las Vegas, Nevada, this 28 day of April, 2005.

  
FOREPERSON

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FILED IN OPEN COURT

APR 28 2005 2:31 p.m.

SHIRLEY B. PARRAGUIRDE, CLERK

BY *Sharon Coffman*

DISTRICT COURT  
CLARK COUNTY, NEVADA

SHARON COFFMAN  
DEPUTY

THE STATE OF NEVADA,

Plaintiff,

-VS-

DONTE JOHNSON,

Defendant.

Case No. C153154

Dept No. VIII

SPECIAL VERDICT

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

☒ The defendant has, in the immediate proceeding, been convicted of more than one offense of murder in the first or second degree.

DATED at Las Vegas, Nevada, this 28 day of April, 2005.

*Jamie Cogswater*  
FOREPERSON

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VER

FILED IN OPEN COURT

APR 28 2005 2:30 p.m.

SHIRLEY D. PARRAGUIRRE, CLERK

BY *Sharon Coffman*

DISTRICT COURT  
CLARK COUNTY, NEVADA

SHARON COFFMAN  
DEPUTY

THE STATE OF NEVADA,

Plaintiff,

-vs-

DONTE JOHNSON,

Defendant.

Case No. C153154

Dept No. VIII

SPECIAL VERDICT

The Defendant, DONTE JOHNSON, having been found Guilty of COUNT XII - MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY WEAPON, one or more of the jurors designate that the mitigating circumstance or circumstances which have been checked below have been established.



The youth of the defendant at the time of the crime.



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

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512

1 ☒ Any other mitigating circumstance. (Please List)

2 Instruction #10

3 Mitigator #3 (Lines 8+9)

4 Mitigator #5 (Lines 12+13)

5 Mitigator #6 (Line 14)

6 Mitigator #7 (Lines 15+16)

7 Mitigator #8 (Line 17)

8 Mitigator #10~~8~~ (Lines 20+21)

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24 DATED at Las Vegas, Nevada, this 28 day of April, 2005.

25 Ami Cagente  
26 FOREPERSON  
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594

VER

FILED IN OPEN COURT

APR 28 2005

SHIRLEY B. PARRAGUIRE, CLERK

DISTRICT COURT  
CLARK COUNTY, NEVADA

BY Sharon Coffman  
DEPUTY

SHARON COFFMAN

THE STATE OF NEVADA,

Plaintiff,

-vs-

DONTE JOHNSON,

Defendant.

Case No. C153154

Dept No. VIII

SPECIAL VERDICT

The Defendant, DONTE JOHNSON, having been found Guilty of COUNT XIII -  
MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY WEAPON, we, the Jury  
in the above entitled case, find

☒ The aggravating circumstance outweighs any mitigating circumstance or  
circumstances.

☐ The mitigating circumstance or circumstances outweigh the aggravating  
circumstance.

DATED at Las Vegas, Nevada, this 28 day of April, 2005.

Joni Lagente  
FOREPERSON

S12

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LAS VEGAS, NEVADA 89101  
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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 02:36 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 XXVI  
~~~~~

**ATTORNEY FOR APPELLANT**

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Carson City, Nevada 89701-4717

IN THE SUPREME COURT OF NEVADA

DONTE JOHNSON,

CASE NO. 65168

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

OPENING BRIEF APPENDIX

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19	21	REPORTER'S TRANSCRIPT OF APRIL 20, 2005 TRIAL BY JURY- VOLUME II- P.M. (FILED 04/21/2005)	4864-4943
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6	33	SECOND SUPPLEMENTAL BRIEF IN SUPPORT OF DEFENDANT'S WRIT OF HABEAS CORPUS (FILED 07/14/2010)	7373-7429
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26	17	STATE'S OPPOSITION FOR IMPOSITION OF LIFE WITHOUT AND OPPOSITION TO EMPANEL JURY AND/OR DISCLOSURE OF EVIDENCE MATERIAL TO CONSTITUTIONALITY OF THE THREE JUDGE PANEL PROCEDURE (FILED 07/17/2000)	4132-4148
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28	6	STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR CHANGE OF VENUE (FILED 12/07/1999)	1421-1424
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1	4	STATE'S OPPOSITION TO DEFENDANT'S MOTION TO COMPEL THE PRODUCTION OF ANY AND ALL STATEMENTS OF THE DEFENDANT (FILED 11/04/1999)	787-790
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3	4	STATE'S OPPOSITION TO DEFENDANT'S MOTION TO REVEAL THE IDENTITY OF THE INFORMANTS AND REVEAL ANY DEALS PROMISES OR INDUCEMENTS (FILED 11/04/1999)	816-820
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6	2	STATE'S OPPOSITION TO DEFENDANT'S MOTION TO SET BAIL (FILED 10/07/1998)	302-308
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21	3	STATE'S RESPONSE TO DEFENDANT'S OPPOSITION TO STATE'S MOTION TO VIDEOTAPE THE DEPOSITION OF CHARLA SEVERS	762-768
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**CERTIFICATE OF SERVICE**

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on the 9<sup>th</sup> day of January, 2015. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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