

1           **THE WITNESS:** I do.

2           **THE CLERK:** Thank you.

3           Please have a seat. State your full name  
4 spelling your first and last name for the record.

5           **THE WITNESS:** Martin Sanchez-Jankowski,  
6 M-A-R-T-I-N, capital J-A-N-K-O-W-S-K-I.

7

8                   **MARTIN SANCHEZ JANKOWSKI,**

9           being called as a witness on behalf of the  
10 Defendant, was first duly sworn and testified as  
11 follows:

12

13                   **DIRECT EXAMINATION**

14 **BY MR. WHIPPLE:**

15           Q     Mr. Jankowski, thanks for being here this  
16 afternoon.

17                   Where do you live?

18           A     I live in Berkeley, California.

19           Q     What do you do in Berkeley, California?

20           A     I'm a professor of sociology at the  
21 University of California at Berkeley.

22           Q     So, you're a professor at Berkeley  
23 University?

24           A     Yes.

25           Q     And what is it that you teach?

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

193

1           A       I teach sociology.

2           Q       And how long have you been teaching at

3 Berkeley?

4           A       Twenty years.

5           Q       And what type of things do you teach at

6 Berkeley?

7           A       I teach courses in quantitative methods,

8 sociology of poverty, race and ethnicity.

9           Q       And just give the folks a heads up why did

10 I ask you to testify here today?

11          A       I'm an expert in gangs.

12          Q       Now, if you would, please, give these

13 folks a little bit of background with regards to

14 your education and training.

15          A       I have a BA in political science and

16 history from Western Michigan University. I have an

17 MA in political science from Dalhousie in Halifax,

18 Nova Scotia, and I have a Ph.D. from Massachusetts

19 Institute of Technology in political science and

20 economics.

21          Q       You're not here for free?

22          A       No, I am not.

23          Q       How much are you charging by the hour?

24          A       I charge \$175 an hour.

25          Q       Now, if you would, where did you grow up?

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194

1           A     I was born in Mexico. I grew up there for  
2 some, then we moved to Texas, and I grew up in South  
3 Texas, in the rural area of South Texas. My  
4 families were migrant workers, and I moved to  
5 Michigan and grew up in inner city Detroit.

6           Q     You left off explaining you were educated  
7 at MIT, I believe?

8           A     Yes.

9           Q     What was your level of education up to  
10 MIT?

11          A     Well, I did a Ph.D. at MIT, doctorate in  
12 political science and economics.

13          Q     How was it that you identified -- when did  
14 you decide you wanted to be an expert in gangs?

15          A     Well, I was first and foremost an expert  
16 in poverty because I studied poverty as an  
17 economist, and I was a macro theorist, which means  
18 that I did quantitative studies, mostly in numbers,  
19 not with any humans involved, and then I did some --  
20 we did a very large project -- a team of researchers  
21 did a very large project, and in the third world, as  
22 we often do, and a lot of our numbers weren't  
23 corresponding to each other. So, the people who  
24 were, in fact -- in Mexico was where this project  
25 was -- were sending back data that didn't correspond

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

195

1 to the kinds of formulas that we were producing, so  
2 we needed somebody to go down and see how things  
3 were working in every day life, and I volunteered to  
4 do that. Once I did that, I found that I could be  
5 an asset to most studies having to do with poverty,  
6 so I essentially was a direct observer of how things  
7 were working out in every day life.

8 As part of the general area of poverty, I  
9 got interested in gangs, because gangs had been an  
10 institution in poverty neighborhoods not only in the  
11 United States but in most parts of the world, so as  
12 institutions, they needed to be studied, and that's  
13 why I decided to study them.

14 Q How old were you when you made the  
15 determination to start studying gangs?

16 A How old was I? It's easier for me to tell  
17 you the year that I decided. It was 1977 that I did  
18 this.

19 Q And when you say you did research, what  
20 did you do?

21 A Well, that research project was to --  
22 essentially was a very large, long-term project that  
23 was originally funded by the Weatherhead Foundation  
24 and subsequently by a number of other agencies for  
25 the foundation as well, and it was to address really

1 two questions. Why have gangs been with us for more  
2 than 150 years despite all our efforts both material  
3 and human resources to eradicate them; and secondly,  
4 why do some gangs rise and thrive and others decline  
5 and die?

6 We had a number of -- we had a lot of data  
7 from police reports, FBI reports, criminal justice  
8 reports about gangs, but what we did not have is an  
9 in-depth study of gangs, how they behaved every day;  
10 so, I decided to design a project in which I would  
11 live with gangs for a hundred percent of the time,  
12 but within New York and Los Angeles and Boston was  
13 where the project was designed and tried to answer  
14 this question.

15 Q How many years did you live with gangs?

16 A The project itself was -- the project  
17 itself was ten years. Five years with -- full-time  
18 with gangs. I had no teaching responsibilities, and  
19 the other five years half time.

20 Q So, it sounds like it could have been a  
21 little hazardous.

22 First of all, did you have family with  
23 you; and second of all, was it a hazard for those  
24 five years?

25 A For the first five years I was not

1 married, and for the second five years I was, and  
2 yes, it is hazardous and it was hazardous.

3 Q If you would explain to the folks what  
4 things happened to yourself and things that you saw?

5 A Well, you see a lot of violence, and once  
6 you're in those kinds of areas, you know, you put  
7 yourself in a position to experience violence  
8 yourself both observing it but as well as being the  
9 recipient of it, so as a result, I -- and I did  
10 incur some injuries. I had -- over the ten years, I  
11 was shot twice and stabbed three times and beaten  
12 badly in the face with this chain.

13 Q Do you think it was a little unusual type  
14 of research, the type of research that you did?

15 A It's unusual. It would be in the general  
16 area of police work. It would be undercover work.

17 Q Now, following this research, did you  
18 write a book?

19 A Yes, I did.

20 Q How many books did you write?

21 A I've written a number of books, but one  
22 book on gangs has come out, and that one is entitled  
23 Islands in the Street. There's a subsequent book  
24 that's about ready to come out that will have  
25 sections of gangs in it also.

1 Q The book Islands in the Street, how is it  
2 received and did you receive any awards?

3 A Yes. It was received well, but there is  
4 also some criticisms of it, but it also won some  
5 awards. It won three awards, essentially, from  
6 various professional agencies as being the best book  
7 in various areas.

8 Q What were those awards?

9 A One award was in the area of the best book  
10 in urban sociology. The second one was in the area  
11 of the best book on juvenile crime, and the third  
12 one was the best book on the crime, general area of  
13 crime.

14 Q When you say "best book," would it be best  
15 book for the year?

16 A Yes, best book for the year.

17 Q On a national basis?

18 A Yes.

19 Q And these -- after this research and this  
20 publication, did it lead you into a professional  
21 type of work?

22 A Well, I split my time really in -- really  
23 three areas now. One area is, of course, teaching,  
24 and the second area is research, and the third area  
25 is in the area of being an advisor to various kinds

1 of agencies both at the State and local level in  
2 terms of anti-gang programs.

3 Q Have you worked with the FBI?

4 A Yes, I have.

5 Q And have you worked with the Center for  
6 Disease Control?

7 A I have.

8 Q And you consulted police officers or  
9 police agencies?

10 A Yes, I have.

11 Q If you would, please, kind of summarize  
12 for these folks your involvement with the FBI and  
13 police and other agencies.

14 A Well, the first is the Federal Bureau of  
15 Investigation which asked me to come to give a  
16 series of talks to their -- a number of their agents  
17 who they were switching from counter-subversive  
18 element within the bureau which was primarily  
19 involved in anti-communist movement; that is, as the  
20 anticommunist movement became -- the communist  
21 movement itself became less and less a factor  
22 towards national security, they decided to switch  
23 those agents out of that bureau and switch them over  
24 to anti-gang unit. As a result of making that  
25 switch, they asked me to come in to give these new

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200



1 agents backgrounds on gangs, what to expect in gangs  
2 and a whole variety of tasks, so I went to the  
3 academy which is in Quantico, Virginia, to actually  
4 teach them about gangs during this period.

5 Q What about the police, different police  
6 forces that you advised and consulted?

7 A I advised different police forces  
8 essentially on situations in gangs. The kinds of --  
9 two things I've advised on. The first was the real  
10 need for intelligence. I'm a big believer in having  
11 police departments get as much intelligence as they  
12 can. I'm also a believer in police agents trying to  
13 do undercover work in gangs as much as they can,  
14 because with more intelligence, there's easier ways  
15 to, in fact, disrupt their behavior, and actually, I  
16 think cause them to have less effect on -- negative  
17 effects on society. And then the other area is once  
18 we receive that information having a -- basically, a  
19 way in which processing it in which we can place  
20 units in areas where we think that they would be  
21 more likely to intervene with the agency; so, that's  
22 what I have done basically with the police.

23 And the Center for Disease Control -- I've  
24 been a consultant there in their development of  
25 their program to fund intervention strategies within

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

201

1 areas that have high numbers of gangs, because as I  
2 said, most people understand the Center for Disease  
3 Control to be something that monitors illnesses,  
4 particularly infectious diseases like Ebola viruses  
5 or Hanta viruses are many of the ones that have been  
6 quite -- that have been in the papers and are all  
7 fearful that people have them. But the Center for  
8 Disease Control is involved in the broad spectrum of  
9 health, and they have defined violence, particularly  
10 in areas as a health issue, because when they look  
11 at the data, there is more people killed and injured  
12 in certain areas from violence than there is of all  
13 the other diseases combined, so the largest part of  
14 their budget is actually in the area of violence,  
15 and I've helped them consult in that.

16 Q Now, is it fair to say you've also  
17 testified a time or two?

18 A Yes, I have.

19 Q If you would, first of all, have you been  
20 qualified as an expert in the Eighth Judicial  
21 District here in Nevada?

22 A I have.

23 Q Just briefly, where else have you  
24 testified?

25 A California, New Jersey. I'm trying to

1 think -- New Mexico.

2 Q Federal and state courts?

3 A Yes.

4 Q Now, I do want to turn your attention to  
5 more specifics.

6 If you could, please, what is a gang?

7 A Well, gangs are organizations; they're not  
8 just loose collectives of people. We have lots of  
9 names for them -- "loose collectives," we can call  
10 some "bands"; we can call some, you know, "crews";  
11 we can call some "crowds," but gangs are  
12 organizations, and they may not have the exact  
13 numbers or all of the elements that we would think  
14 of in terms of a bureaucracy of an organization like  
15 you would see in corporate America, but they are  
16 organizations.

17 Q The next question is kind of a double  
18 question here.

19 Who joins a gang, and why does somebody  
20 join a gang?

21 A Well, one of the interesting things about  
22 gangs, which is why -- what you started with in my  
23 question -- they don't come from all areas. You  
24 rarely see them in middle-class areas. They come  
25 from low income areas. They are a particular kind

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

203

1 of organization that's associated with low income  
2 areas; they're a particular kind of association that  
3 is associated with the type of economy that you find  
4 in low income areas; so, the people who join them  
5 are people who are from these areas.

6 Q Now, you mentioned earlier your  
7 concentration in poverty, and then you say gangs.  
8 Is it fair to say they kind of go hand in hand?

9 A Yes. They're from low income to poverty  
10 areas. I use low income, because poverty is an area  
11 that -- "poverty" is a term that has -- is  
12 subjective. We -- different societies have  
13 different values on it, so some people have an  
14 income that is high in one society but it would be a  
15 poverty level in another society.

16 Q Fair to say.

17 Why is it that you see gangs associated  
18 with low income areas?

19 A Well, it's because it's one of the kind of  
20 organizational types that can secure money and  
21 material benefits.

22 Q Now, why do individuals stay in the gang?  
23 I asked you why they join it. Why would they stay  
24 in the gang?

25 A There are two basic reasons that you stay

1 in a gang. One is that you're getting a lot from  
2 the gang, and from there, you have money or material  
3 benefits or entertainment; and the second is that  
4 you are fearful of leaving.

5 Q Now, is violence part of a gang  
6 environment?

7 A Violence is an integral part of the gang  
8 environment.

9 Q When you say "integral," what do you mean  
10 by integral, and to follow up on that, why do you  
11 see it as being an integral part of gang society?

12 A It's the currency, really by -- in which  
13 gangs really exchange -- have an exchange  
14 relationship with each other, exchange goods with  
15 each other. It's really an extension of power and  
16 power to be able to control both physical movements  
17 as well as material movements like, speaking as an  
18 economist now, in terms of goods and services. It's  
19 the power to be able -- to be able to secure that  
20 market requires power, and the way in which power is  
21 administered is violence.

22 Q I just want to clarify something.

23 You had mentioned that the reason people  
24 join gangs is for financial reasons?

25 A Yes.

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

205

1 Q Or because they have to?

2 A Well, I would say there are three reasons.

3 Q Okay.

4 A I would say they do it for financial  
5 reasons; they do it because of entertainment issues,  
6 or they do it because they're coerced into doing it.

7 Q Okay.

8 A Conscripted, I would say.

9 Q I'm sorry?

10 A Conscripted, I would say.

11 Q We'll touch base on that in just a minute.

12 I just want to clarify we're talking about  
13 people joining the gang for these reasons, but then  
14 you say violence is the currency of the environment.

15 What do you mean, if you could clarify  
16 that?

17 A Well, people join, but like all  
18 organizations, organizations have to pay bills.  
19 They have to have enough money to secure -- to pay  
20 off people, to give them money. They have to pay  
21 for entertainment, whatever that entertainment might  
22 be -- drugs, alcohol, parties, so -- and they also  
23 have to invest, although most people don't see this  
24 part of it. Because they are a business, they  
25 actually have to invest if -- as it were in guns or

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

206

1 in different kinds of tools to rob things; so, there  
2 are some -- there are some investments here. So,  
3 when money -- when you need money, the area in which  
4 you're going to gain this money is what we generally  
5 call -- although, I don't want to be too  
6 elementary -- we call it a "market area," and the  
7 market that gangs deal in is very competitive, and  
8 it is not based simply on ideas but is based on the  
9 ability to control the market. This market is not  
10 like most economists would say is governed by supply  
11 and demand, but supply and demand is there, but it's  
12 governed by your ability to control supply and  
13 demand, complete power. Everybody knows that. It's  
14 a very physical world, and everybody who has engaged  
15 in this is prepared to know that that's the hazards  
16 of this world.

17 Q So, violence is what allows a person to  
18 obtain this power and these marketable items?

19 A Yes, it is.

20 Q Now, we've heard comments about Bloods and  
21 Crips.

22 If you would kind of give some history  
23 with regard to gangs specifically with regard to  
24 Bloods and Crips, if you would?

25 A Bloods and Crips were the largest of the

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207

1 African-American gangs in Los Angeles. They really  
2 do start out of Los Angeles. They've always had a  
3 very antagonistic relationship to each other. I  
4 think it's fair to say that in almost all the  
5 historical reports on Bloods and Crips, that it's  
6 very difficult. No one seems to have the exact  
7 reason why they don't like each other -- one  
8 incident or anything that can be pointed to, but  
9 they have formed as organizations, and whether they  
10 did not like each other before, they have become  
11 very antagonistic once they operate their own  
12 businesses because they're in competition with each  
13 other, and by the nature of this competition, it's  
14 about power, and the nature of that power is it's  
15 going to be violence. It's going to be violence in  
16 terms of, I'd say, willing yourself into a  
17 particular kind of market. There's no one in this  
18 market, there's no one in this economy to mediate  
19 conflict. There's no outside source. There is no  
20 government to mediate it. There's no UN to mediate  
21 it. The only thing that exists in this economy is  
22 pure, raw power, who has it and who has the most of  
23 it.

24 Q Is it fair to say that power also follows  
25 numbers; larger gangs have more power than other

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208



1 gangs?

2 A Yes.

3 Q And part of that process is called  
4 "recruiting"?

5 A Exactly. You want to have as large  
6 numbers as you can, as much as you can afford,  
7 though. In other words, one of the things that is  
8 not well known about gangs is that you know they're  
9 not going to just take everybody, because you can't  
10 really maybe afford everybody, because you do have  
11 to give them something in return, but you are  
12 measuring what you can afford, and you're trying to  
13 grow, and in that way, they're no different than any  
14 other kind of business which would -- which would  
15 also try to garner and garner more and more of the  
16 market, and as you garner more of the market, you  
17 garner more need for personnel. So, yes, you want  
18 to recruit.

19 Q Now, Mr. Jankowski, you had an opportunity  
20 to hear the last three witnesses that spoke?

21 A I did.

22 Q And they spoke of the issue of recruitment  
23 or the way that people are put into a gang.

24 With your studies, are your studies  
25 consistent with the things that you heard?

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

209

1           A       Mostly, yes.

2           Q       When you think of recruitment, how does  
3 recruitment exist in the gang environment with  
4 Bloods and Crips?

5           A       It can go two ways. Everyone heard the  
6 last person who testified. There can be  
7 enticements. I mean, the enticements -- younger  
8 kids tend to -- very young kids tend to be less  
9 interested in just the finances when they're really,  
10 really young than they are being enamored with just  
11 the ability to have power, and I think when you put  
12 it in context, you can see why that is because most  
13 of these children -- just children in general but  
14 most of the children come from poor areas feel very  
15 impotent, feel very lack of control of their lives.  
16 Most things are acted on them but they don't have  
17 really control of their lives and you could see  
18 where they would want to have actually more power  
19 and they can be enamored with that. That's the  
20 little children. As you get a little older, you  
21 would want to join because you can get the benefits  
22 that you would see in the more affluent societies.

23                   The motion isn't that somebody -- the one  
24 thing that I think has been one of the powerful  
25 things about America is that we have a very large

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210

1 pie, and that pie has been -- tasted good to all of  
2 us, and not everybody gets to taste it but everybody  
3 gets sometimes to see it, and that's, again, I  
4 think, a very important dynamic ability to be a  
5 great society, but one of the negative ramifications  
6 of it is it lets all the people who haven't had a  
7 taste of the pie know that it exists, know that it  
8 tastes good, and of course you want them -- people  
9 want to get it. The question is, what economy are  
10 they going to use to get it? Are they going to go  
11 through this economy that we all think of, or are  
12 they going through this -- of course, this  
13 alternative economy to get it?

14           One of the problems that we've always had  
15 in poor areas that the federal government has always  
16 seen as a problem and, therefore, is why I was part  
17 of a group of people who invoked the Weed and Seed  
18 program, is that this idea was that in poor areas,  
19 we've always had to compete with gangs or other  
20 sorts of organizations that offer this money and  
21 this alternative market, and we wanted to say we  
22 want to compete with this alternative and offer some  
23 incentives so people can see successes in the normal  
24 market. So, that's what you end up seeing with  
25 somebody, they also want to actually -- they

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

211

1 actually want to have this money and they see  
2 successes in this local market, and this local  
3 market for them they see more successes than they do  
4 in the outside market, so that's a lure; so, that's  
5 another one.

6           The other one is you actually get  
7 recruited. This is no different than what we all  
8 have, when I was younger, which is the draft. You  
9 get drafted, and it's a form of coercion to be sure,  
10 and the incentives there are you either do it or  
11 you're punished. In the draft when I was young, you  
12 either went or you went to jail. In this case,  
13 there is no jail; you either come or we're going to  
14 beat on you or we're going to beat on one of your  
15 family members.

16           Q     Is it unusual to draft people as young as  
17 13 and 14 years of age in what you disguised as the  
18 Crip or Blood gang environment?

19           A     That's -- that's a good question, and the  
20 answer is that it depends on the situation of the  
21 gang doing the recruiting. If the gang was not  
22 under stress, the answer would be no. That is, it  
23 would be unusual to try to recruit that young. You  
24 don't need to. If a gang is more under stress and  
25 it needs people, it goes younger, and that would be

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212

1 no different than any other organization that we saw  
2 as sort of -- they had a military aspect to it.

3 Q Now, I want to ask you about gangs under  
4 stress.

5 You're aware that the gang that Mr. White  
6 or Mr. Johnson was involved with was the 62 Brim.

7 You've done work down in Los Angeles, and  
8 you've heard of this particular gang?

9 A Yes.

10 Q Tell us, if you would, please, what you  
11 mean about a gang being under stress and then apply,  
12 if you would, please, your knowledge with regard to  
13 the 62 Brim.

14 A In general, I would say it's a Blood --  
15 it's a Blood -- it's a Blood sect, and between the  
16 two groups, between Bloods and Crips -- Crips always  
17 had more numbers. They always had a numeric  
18 advantage. In the particular area that he's from,  
19 you know, Crips really -- not in the beginning, but  
20 Crips outnumbered them. In that way I think they  
21 were in a much more stressed situation. Bloods  
22 always were in a much more stressed situation  
23 because there was less of them. There would be  
24 the -- requirement for membership would be more  
25 imminent for them. They would need this. So, their

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213

1 tactics would be more likely, if you were in a Blood  
2 neighborhood particularly, and you -- whereby  
3 circumstance you were in a Blood neighborhood, they  
4 would be more likely to use more coercive tactics,  
5 because the need there was greater; so, that's what  
6 I mean by a more stressed situation.

7 Q And in the 62 Brim, what is your knowledge  
8 of them and were they a gang that was under stress?

9 A I think they were a gang under stress for  
10 sure because they were more or less surrounded, and  
11 they were in an area that was near Rollin 60s which  
12 was a very, very powerful Crip group.

13 Q Now, we heard the terms "enemy turf," I  
14 believe.

15 A Yes.

16 Q We had an opportunity to discuss this last  
17 night. When you came in, you spoke of combatants  
18 versus noncombatants.

19 Do you remember that?

20 A Yes.

21 Q What does all that mean?

22 A Well, combatants is like I want to use a  
23 military analogy. It's the best way to make this  
24 point.

25 You're in a conflict situation, you see

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

214

1 other soldiers in this conflict situation, everyone  
2 knows these rules and everyone knows what the  
3 situation is about. They know it's about power,  
4 they know it's about your will of power, they know  
5 that violence is involved; so, in that kind of  
6 situation, everyone sees the use of violence as  
7 fair, because that is the denominator by which  
8 everybody is operating.

9           The noncombatant, the person who is simply  
10 not involved in the gang is what we see in both Iraq  
11 today or any kind of conflict you would see today or  
12 in our own streets. And sadly, you get people  
13 killed in conflict which we have a name for, which  
14 is, I think, often overlooked. What it means is we  
15 call it "collateral damage," but unfortunately, it  
16 means somebody's life or limbs were at stake, but  
17 these were people who were not involved in the  
18 conflict, and we also feel that part and the people  
19 who were in the participation is actually the unfair  
20 part, but the participants themselves, the  
21 combatants themselves are likely to say this is what  
22 we're engaged in and these are -- killing and  
23 maiming are part of it; both us killing and us  
24 getting killed are a part of the entire situation.

25           Q       And when you say this is part of the

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

215

1 entire situation, does it mean it's part of the  
2 environment? It's hard for us to understand in a  
3 law abiding society that we live in that people  
4 actually acknowledge and accept violence, but is  
5 that what you're telling me in that environment?

6       A       Yes, and we have plenty of data. When  
7 we're dealing with children at a very young age,  
8 we've seen it. If I actually showed you data on  
9 people being interviewed -- this is not my data, but  
10 data I've read on other studies, children being  
11 interviewed in South Central or South Bronx or E  
12 Lower Eastside or Charlestown -- those areas in  
13 America that are very low income with large amounts  
14 of violence, large amounts of gangs and compared it  
15 to what you would see in Bosnia and Kosovo, the  
16 children respond the same way. I think most people  
17 here would never probably understand states that  
18 every night, every single night there are  
19 helicopters flying over, and every single night --  
20 and these helicopters are police helicopters  
21 searching out somebody who is shooting, but even if  
22 you're not involved, you have to put up with the  
23 helicopters. This is not the same situation.

24       Now, is it a battle zone exactly like you  
25 find in Bosnia? The answer to that is no. But is

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

216



1 it something that's quite different and quite  
2 stressful? The answer to that is yes.

3 Q Now, the 62 Brims was a gang living under  
4 stress?

5 A When I say "under stress," I'm talking  
6 about an organization and keeping the organization  
7 together and keeping the organization as a  
8 functional organization able to do what it's doing,  
9 which is one, providing money; two, providing some  
10 kinds of benefits to people both in terms of loans  
11 or actually giving them some kinds of material  
12 benefits and protecting their own. I would say they  
13 were under stress.

14 Q Is it fair to say people living in that  
15 environment with helicopters coming every night  
16 would be a stressful environment?

17 A It's a stressful environmental.

18 Q Have you seen it where individuals join an  
19 organization or gang in order to provide protection  
20 to their family members?

21 A Yes.

22 Q And why is that?

23 A Well, because it's -- well, it's the  
24 obvious part which is that if they don't do this,  
25 then many of the most vulnerable people of their

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

217

1 family will be subjected to not simply harassment  
2 but being physically accosted.

3 Q You heard this description of Big Deko. I  
4 think -- in fact, my witness, Johnnisha Zamora, had  
5 explained to you about this individual who had  
6 basically taken my client in and taken him into the  
7 gang.

8 Is that something that you see in a gang  
9 environment?

10 A Yes.

11 Q And again, why is that?

12 A Well, he became the patron, and you know,  
13 there's two things about this. You don't want to  
14 see it as simply Big Deko setting himself up as  
15 being this benevolent patron, because you have to  
16 see it just simply as a patron as he takes these  
17 people in and he will protect them, but it's a  
18 reciprocal. It's a reciprocal in the sense that  
19 these people he takes in owe him, so they have both  
20 aspects to it. Yes, it is true that as, like we,  
21 anything in the academic field, call "patient-client  
22 relationship," yes it is true he will protect them,  
23 take care of them, but in return, they have to do  
24 things for him; so, he has a built-in support system  
25 right there.

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

218

1           Q     Is it unusual to find an individual maybe  
2 as young as 14 years of age being controlled or  
3 mentored, "patron" as you say, by someone who is  
4 almost twice their age?

5           A     No.

6           Q     And why is that?

7           A     Well, because the gangs are not just  
8 organizations that deal with adolescence anymore,  
9 that there's so much money involved that there are  
10 people who are older -- 30s, 40s who are in gangs.  
11 Some in New York are in their 50s and who call the  
12 shots and who have been able to avoid prison or  
13 death and have risen up into very powerful  
14 positions, and in those kind of situations, those  
15 people are in a position to have a number of people  
16 under them.

17          Q     In your experience, if you have a  
18 14-year-old who is being -- what's the word you  
19 use -- a "benefactor" who owes something to the  
20 benefactor who's --

21          A     Well, it's the patron-client relationship  
22 in which you know the benefactor is really a person  
23 who is the patron but there's a person who is under  
24 them.

25          Q     So, this person who owes this patron

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

219

1 favors and obligations, what happens if that person  
2 tries to get out of that relationship?

3       A       Well, it's resisted by the benefactor or  
4 the patron himself mainly because you can see -- one  
5 is, there is one less person to do your work or to  
6 do what you would want to have or protect you. Two,  
7 when someone starts to -- when organizations start  
8 to have people who leave them, that makes  
9 organizations vulnerable. No organization likes  
10 that. So, desertion -- whether it's the Army or  
11 this gang -- are seen as general threats to the  
12 whole system, and they will be resisted even if the  
13 person couldn't care less about that individual who  
14 wanted to leave. They will be resisted because it  
15 has a significance to the entire structure which  
16 needs to be resisted.

17       Q       And when you say "resistance" -- we know  
18 the currency involved in the gang is violence.

19               What realm of violence can happen with  
20 regard to an individual who may try to get out?

21       A       Well, certainly, physical beatings, if not  
22 death, depending on how much they know. I think it  
23 varies. Of course, that varies with gangs.

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

25               At this time, Mr. Jankowski, I have no

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

220

1 further questions, and I thank you for your time.

2 **THE COURT:** Cross?

3 **MR. DASKAS:** This will be brief, Judge.

4  
5 CROSS-EXAMINATION

6 **BY MR. DASKAS:**

7 Q Mr. Jankowski, you consider yourself  
8 somewhat of an academic at this point in your  
9 career?

10 A Yes.

11 Q That's fascinating.

12 You actually lived with a gang for five  
13 years?

14 A Yes. Not one gang.

15 Q Did you have a street name?

16 A I had a number of street names actually,  
17 because my study is both New York and Boston and LA.

18 Q These gangs that you infiltrated, I guess,  
19 did they know that you were an academic there and to  
20 do research?

21 A Yes, they did, actually.

22 Q They didn't consider you part of the gang?

23 A No; they did. I think we have to go back  
24 to the history. What I did then couldn't really be  
25 done now. This was in 1977, and the relationship

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

221

1 between LA gangs and New York gangs were not  
2 existent. So, I used a hook that was just lucky in  
3 the sense that I said -- in New York, I started off  
4 by saying, "I'm doing this study. I am an academic.  
5 I want to write a book about gangs, and I want to  
6 compare gangs in New York and LA." And New York  
7 said -- well, I went to a number of them, but they  
8 all said the same thing. "If you tell us what's  
9 going on in LA, we'll let you hang with us." And I  
10 said okay. And then when I went to LA, I said the  
11 same thing, although I introduced it in LA. I said,  
12 "Well, I'll tell you about the New York gangs if you  
13 let me hang with you," and they said yes. That same  
14 thing wouldn't work today probably because we have  
15 too much fluidity between both places between gangs,  
16 so they wouldn't really care. They already know  
17 what I know, but I was also jumped in, if that's  
18 what you mean.

19 Q Did you prepare a report in regards to  
20 Donte Johnson in this case?

21 A No, I did not.

22 Q How much time have you spent interviewing  
23 Donte Johnson about his gang activity?

24 A Zero.

25 Q When is the first time you met Donte

1 Johnson?

2 A Today.

3 Q When we took a break a couple hours ago?

4 A I think Miss Jackson introduced me to him.

5 Q Do you have any personal knowledge of the

6 Six -- it's not the 62 Brims is it? Is that what

7 it's called or is it the Six Deuce Brims?

8 A Same thing.

9 Q What do those gang members call the gang?

10 A The Six Deuce Brims.

11 Q When Mr. Whipple said "62 Brims," a member

12 of that gang wouldn't say that; he would say "Six

13 Deuce Brims"?

14 A Probably.

15 Q Or do you know?

16 A I thinks if it was a member of the gang,

17 they would say "Six Deuce Brims."

18 Q Have you spent any time with that gang,

19 the Six Deuce Brims?

20 A No, I have not.

21 Q Your knowledge of the Six Deuce Brims

22 probably consists of what you heard when you sat in

23 the court earlier today?

24 A No, that's incorrect.

25 Q You do have some research on the Six Deuce

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

223

1 Brims?

2 A Well, when I was doing research on gangs  
3 in LA, they did exist. It was not one of those that  
4 I hung around with, but a number of the ones I did  
5 hang around with were knowledgeable of them and at  
6 least had some relationship with them and a couple  
7 of them exist.

8 Q This would have been back in the late  
9 '70s?

10 A The study starts in 1977 and ends in '88.

11 Q You certainly never met anyone with the  
12 moniker "Big Deko"?

13 A No, I certainly have not.

14 Q Did you review the police reports  
15 regarding the quadruple homicide this man committed?

16 A No, I did not. I got a number of  
17 documents, but that, I did not get that.

18 Q How about photos of the victims bound with  
19 duct tape; did you see those photos?

20 A No, I did not.

21 **MS. JACKSON:** Your Honor, objection as to  
22 relevance and it's also beyond the scope.

23 **THE COURT:** Excuse me.

24 Approach the bench.

25 (Sidebar conference outside the presence

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

224



1 of the court reporter.)

2 **THE COURT:** Overruled.

3 **BY MR. DASKAS:**

4 Q So, you haven't reviewed a single police  
5 report about this crime?

6 A Correct.

7 Q You haven't seen a single photo about this  
8 crime?

9 A Correct.

10 Q In fact, you have no information to  
11 suggest that the defendant was acting on behalf of a  
12 gang on August 14th, 1998?

13 A Could you repeat that?

14 Q Absolutely.

15 Do you have any information to suggest  
16 that Donte Johnson who committed this quadruple  
17 homicide was acting on behalf of a gang?

18 A No, I do not.

19 Q Are you familiar with a shooting that the  
20 defendant committed on May 4th of 1998 when he shot  
21 a man in the face here in Vegas?

22 A No, I do not.

23 Q So, you would have no information to  
24 suggest that was on behalf of a gang either,  
25 correct?

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

225

1 A No, I would not.

2 Q You mentioned, obviously, that you're  
3 being compensated for your time here?

4 A I am.

5 Q What's your total bill for testifying on  
6 behalf of the defense?

7 A I don't have a total bill, but I will be  
8 calculating it tomorrow.

9 Q Did you spend time --

10 (Courtroom laughter.)

11 **BY MR. DASKAS:**

12 Q Did you spend time before you showed up  
13 here preparing for testimony?

14 A Yes, I did.

15 Q What did you do to prepare for your  
16 testimony?

17 A I did a number of things. Miss Jackson  
18 sent me lots of testimony from before which I  
19 reviewed a number of years ago, actually, and then I  
20 reviewed that again, as the time has passed between  
21 the time I got that and now, and I --

22 Q Let me interrupt you real quick. I  
23 apologize.

24 That testimony didn't include anything to  
25 do with the crime committed on August 14th, 1998?

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

226

1 A No, it did not.

2 Q You mentioned the term "collateral  
3 damage." We're talking about, for example, a  
4 drive-by shooting and maybe a toddler is crossing  
5 the street and takes a bullet.

6 That's collateral damage, correct?

7 A Yes, it is.

8 Q You're not suggesting the four victims in  
9 this case are collateral damage?

10 A No. I haven't been taught -- no one asked  
11 me that question.

12 Q Are you aware that the defendant, after he  
13 was in the gang, the Six Deuce Brims, was placed in  
14 a camp for over two years?

15 A I am aware of that.

16 Q Are you aware that camp offered vocational  
17 training programs, anger management classes, things  
18 like that?

19 A Yes. I'm not familiar with that camp  
20 specifically, but I am familiar with camps like  
21 that, and they do offer that, yes.

22 Q And you have no information to suggest  
23 that during that two-plus years the defendant was in  
24 the camp, he was being coerced to remain in a gang,  
25 do you?

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

227

1           A     I don't have any information to that.  
2           Q     Gangs often use military titles, don't  
3 they?  
4           A     Yes.  
5           Q     They might call their recruits "Soldiers,"  
6 for example?  
7           A     Yes.  
8           Q     They might call older, more senior members  
9 "Generals," for example?  
10          A     Yes.  
11          Q     How would someone earn the term "General"  
12 in a gang?  
13          A     A number of ways. First, they -- first,  
14 they would -- they could work themselves up by doing  
15 soldier tasks.  
16          Q     What are some soldier tasks?  
17          A     Robberies, steals, enforcement of turf,  
18 for example, physically beating, shootings. They  
19 could do it by having developed a new idea about how  
20 to make money and secured that. They could do it by  
21 being voted in if they were able to secure enough  
22 power within the agency -- within the organization  
23 itself because the sects themselves have different  
24 interests, and they could do it by moving up that  
25 way. They could also do it by the fact that a

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

228

1 number of people who had been generals were either  
2 killed or incarcerated and they just assumed the  
3 vacant spots.

4 **MR. WHIPPLE:** Your Honor, at this time,  
5 may we approach?

6 **THE COURT:** Yes.

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

9 **THE COURT:** Sustained.

10 **BY MR. DASKAS:**

11 Q You mentioned gangs under stress needed to  
12 recruit younger members.

13 Do you recall that testimony?

14 A Yes, I do.

15 Q Let's talk about the Six Deuce Brims.

16 Back in '93, do you know what the status  
17 of the Six Deuce Brims was in terms of being under  
18 stress?

19 A That, probably, I would know.

20 Q Tell me what you based that on. What did  
21 you research?

22 A What did I research?

23 Q Yes.

24 A I was with other groups that were in and  
25 around their area. I would assess their situation

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

229

1 as being stressful.

2 Q And that's because the Crips have more  
3 members?

4 A Yeah, because there were a number of Crips  
5 and another Crip sects, and they were actually  
6 infringing in their area and not just actually  
7 infringing in their area but I think actually  
8 confining them in a particular kind of way.

9 Q Did your research include anything about  
10 gangs, Crips or Bloods, here in Las Vegas?

11 A No, it did not.

12 Q So, you have no information about the  
13 status of the Crips and Bloods here in Las Vegas and  
14 certainly not back in 1998?

15 A That's correct.

16 Q And again, no information to believe that  
17 the crimes in this case have anything to do with  
18 gang activity?

19 A That's correct.

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

21 THE COURT: Redirect?

22 MR. WHIPPLE: Thank you, your Honor.

23 /////

24 /////

25 /////

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

230

REDIRECT EXAMINATION

1  
2 **BY MR. WHIPPLE:**

3 Q Mr. Jankowski, you are aware that there  
4 were homicides -- the four homicides on August 14th,  
5 1998?

6 A Yes.

7 Q Have we, in any way, tried to excuse, by  
8 your testimony, to say that those homicides were  
9 excused or justified?

10 A Well, on my part, I make no excuse for any  
11 homicide, and I'm not here to excuse any homicides.

12 Q Okay.

13 Now, Mr. Daskas had brought out a comment  
14 about the particular gang that you were referring  
15 to, you said that they were -- you said they  
16 confined them in a particular way. In other words,  
17 this group, the Six Deuce Brims, I believe they were  
18 confined, correct?

19 A I believe that they -- like any  
20 organization who wants to expand, but in this  
21 particular case I think it was in a contractual mode  
22 which means it was losing turf, it was losing  
23 ground, and it certainly was becoming much more  
24 difficult for them to entertain operations.

25 Q And again, this particular group was

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

231

1 what's known as a "Blood"?

2 A Yeah, it was a Blood sect.

3 Q And the groups that were confining it are  
4 what's known as "Crips"?

5 A Crips.

6 Q In fact, the Rollin 60s were one of them?

7 A One of them. They were probably the most  
8 powerful.

9 Q What would happen when a person of a Blood  
10 sect would find themselves in a Crip sect?

11 A You mean in a geographic area, correct?

12 Q Correct.

13 A That would simply mean that you would be  
14 shot at and attempt to be killed in either  
15 direction.

16 Q What would happen if a person in a Blood  
17 sect tried to cross through a Crip sect to get  
18 someplace, what would happen?

19 A Unless they had a pass, they would be shot  
20 at and attempt to be killed.

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

22 Thank you.

23 Nothing further.

24 **MR. DASKAS:** Nothing else, Judge.

25 **THE COURT:** Thank you very much, Doctor.

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

232



1 We appreciate it.

2           Folks, we're going to take our afternoon  
3 break or evening break. It's five to 5:00. We're  
4 going to reconvene Monday morning at 9:00 a.m. All  
5 right?

6           You're admonished not to -- listen, folks.  
7 It's very important -- you all took an oath that  
8 you're going to follow the law. It's very important  
9 that you not read any -- you saw these cameras and  
10 photographers in here. It's very important that you  
11 not read any of these newspaper articles or watch  
12 any television reports or news casts about this case  
13 or listen to any commentary about the case on the  
14 radio and don't talk to anyone about the case or let  
15 anyone talk to you about the case and don't express  
16 any opinion on it.

17           I'll see you Monday morning at 9:00 a.m.

18           **MS. JACKSON:** Your Honor, before you  
19 excuse the jury, we have about ten minutes, and we  
20 can be done. I have a witness that needs to go home  
21 because they're about to lose their job. I thought  
22 we would at least go to 5:00.

23           **THE COURT:** How do I know you're going to  
24 be finished in ten minutes?

25           Ten minutes, that's all you have.

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

233

1           **MS. JACKSON:** I can guarantee you, your  
2 Honor. Actually, I can do two in ten minutes, and  
3 they all can go home.

4           **THE COURT:** What?

5           **MS. JACKSON:** I can do two in ten minutes  
6 and they all can go home.

7           Donna Revonor, R-E-V-O-N-O-R.

8           **THE CLERK:** Ma'am, remain standing and  
9 raise your right hand.

10           (Oath administered.)

11           **THE WITNESS:** Yes.

12           **THE CLERK:** Thank you. Please be seated.  
13 State your full name spelling your last name for the  
14 record.

15           **THE WITNESS:** Donna Revoner, R-E-V, as in  
16 Victor, O-N-E-R.

17           **THE CLERK:** Thank you.

18  
19                   **DONNA REVONER,**

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

23       /////

24       /////

25       /////

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

234

DIRECT EXAMINATION

1  
2 **BY MS. JACKSON:**

3 Q Ma'am, are you related to my client, John  
4 White?

5 A Yes, I am.

6 Q What's your relationship?

7 A I'm his first cousin.

8 Q Who in that group of seven children that  
9 Miss Edwards has is your mother?

10 A The oldest daughter, Schaumetta Cain.

11 Q She's never had an alcohol or drug  
12 problem?

13 A No.

14 Q During the course of your growing up when  
15 John was a particular --

16 **MR. DASKAS:** I apologize. Judge, I  
17 apologize here, but I think a juror raised her hand  
18 a moment ago.

19 **JUROR:** Yes. I had something for the  
20 bailiff.

21 **THE COURT:** Roy, come over here.  
22 Continue.

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

24 **BY MS. JACKSON:**

25 Q You indicated you know John?

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

235

1 A Yes.

2 Q During the time that John -- you're aware  
3 that John, at one point in his life around the age  
4 of 13 or 14 years -- between 13 and 15, joined a  
5 gang, the Six Deuce Brims?

6 A Yes.

7 Q Did you know that?

8 A Yes, I knew that.

9 Q How did you come to have that information?

10 A Because Big Deko, he would come over to  
11 the house and get John or we would be walking to the  
12 store and he would tell John to come with him, and  
13 that was like almost every day.

14 Q Who was Big Deko?

15 A He was a member of a gang called "Six  
16 Deuce Brims."

17 Q And is that how John got his name "Baby  
18 Deko"?

19 A Yes.

20 Q What was it like walking around the area  
21 before John joined the gang?

22 A Very scared. I was scared. The guys  
23 would, like, pick on us, say little things,  
24 comments, be very nasty towards the girls.

25 Q Did the treatment that you received from

1 the gangs in that area improve, to some extent,  
2 after John joined the gang?

3 A Yes, it did.

4 Q Now, you grew up with your own mother  
5 because she was one of the ones able to take care of  
6 her own kids?

7 A Correct.

8 Q Nevertheless, there came a time when John  
9 resided in your home?

10 A Yes, he did.

11 Q When was that, ma'am? Approximately how  
12 old was John, if you know?

13 A He was about -- had to be about 16, 17.

14 Q Okay.

15 And during that time frame, how long did  
16 John live with you?

17 A Approximately about three to six months.

18 Q When he lived with you, you told me about  
19 an incident where John talked you out of getting  
20 into what could have been a very serious situation.  
21 Tell the jury about that.

22 A Well, me and my daughter's father were  
23 arguing, and he had really got me upset. He put his  
24 hands on me, so, you know, any person -- when  
25 someone hit you, you, you know, hit them back. So,

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

237

1 he was, you know, he would always hit me or say  
2 nasty things to me. So, an iron was near me, so I  
3 picked it up, and John said, "No, don't do that,  
4 because I don't want you to get in trouble, and you  
5 got to think about your child." So, if John wasn't  
6 there, then I think I would have done something to  
7 him to cause myself in a lot of trouble, and he  
8 basically talked to me and tried to get me out of  
9 that situation.

10 Q Do you appreciate John's intervening?

11 A I do; I really do.

12 Q You know why you're here?

13 A Yes -- for my cousin. I really love him,  
14 and when he was in my home, he used to talk to me,  
15 help me with my daughter, talk to her. He loved  
16 her, spent time with her, and she asks every day  
17 about him. She know what's going on because my  
18 daughter is 11, so when he was there, she was one  
19 years old, so she remembers him a lot and she just  
20 like ask me questions about him. I mean, I really  
21 don't want to go into detail with her because she's  
22 young or whatnot and she wouldn't understand, but  
23 she really loves him, and she told me to tell him  
24 that she really loves him.

25 MS. JACKSON: Thank you.

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

238

1                   That's all we have, your Honor.

2

3                   CROSS-EXAMINATION

4 **BY MR. STANTON:**

5           Q       Do you know Big Deko's name?

6           A       No, I don't.

7           **MR. STANTON:** Nothing further.

8           **MS. JACKSON:** That's all, your Honor.

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

10          **MS. JACKSON:** Miss Edwards.

11

12                   JANE EDWARDS,

13                   being recalled as a witness on behalf of  
14 the Defendant, was previously duly sworn and  
15 testified as follows:

16           **THE COURT:** You're still under oath.

17

18                   DIRECT EXAMINATION

19 **BY MS. JACKSON:**

20           Q       Good afternoon, Miss Edwards.

21           A       Good afternoon.

22           Q       You identified your grandson for us?

23           A       Yes, Donte.

24           **THE COURT:** Hold on a minute, ma'am. For  
25 the clerk, would you state your full name?

1           **THE WITNESS:** Jane Edwards, E-D-W-A-R-D-S.  
2           **THE CLERK:** Thank you.  
3           **MS. JACKSON:** Thank you, your Honor. I'm  
4 sorry.  
5 **BY MS. JACKSON:**  
6           Q     We all know there came a time in John's  
7 life when you had custody of John or you had  
8 guardianship, I should say, over John and quite a  
9 few of your grandchildren?  
10          A     Right.  
11          Q     Do you remember around '93 or '94,  
12 somewhere along in there, when John got into trouble  
13 for robbing a bank?  
14          A     Yes.  
15          Q     Do you remember the probation officer  
16 coming to interview you about that?  
17          A     Yes.  
18          Q     Do you remember them asking you if John  
19 was in school, if he was going to school?  
20          A     Yes.  
21          Q     Okay.  
22                 What did you tell them?  
23          A     That he wasn't going to school.  
24          Q     And that was the truth?  
25          A     Yes.

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

240



1 Q Did they ask you did you have any control  
2 over John?

3 A I don't remember if they asked me.

4 Q Okay.

5 I'll read you this from State's Exhibit --  
6 this is State's Exhibit 216. It says here that you  
7 stated that "She" -- and "she" being you -- "stated  
8 that the minor -- that she had no control over him.  
9 She states he is difficult, uncooperative in the  
10 home and will not go to school."

11 A Yes, at that time.

12 Q That sounds like something you would say  
13 if it's the truth?

14 A Um-hmm.

15 Q Okay.

16 Do you remember asking them or them asking  
17 you if he was in a gang?

18 A Well, they might have asked me that but I  
19 did not know if he was in a gang or not.

20 Q Okay.

21 It says here that you acknowledged that he  
22 was in a gang but you're not sure if he was using  
23 drugs or not.

24 Would this report probably be more  
25 accurate than what you can remember now?

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

241

1           A     Yeah. That sound like it. I don't  
2 remember.  
3           Q     And it says here that, lastly, "The  
4 minor's grandmother stated that the minor is acting  
5 like an adult so he should be tried as an adult."  
6           A     Yes.  
7           Q     You said that?  
8           A     Yes.  
9           Q     And you meant that?  
10          A     Yes.  
11          Q     You had other kids to worry about?  
12          A     Yes.  
13          Q     Do you know why you're here, ma'am?  
14          A     Yes.  
15          Q     What do you want to say to the jury about  
16 how do you feel about your grandson?  
17          A     Well, now John was -- when I had John,  
18 John was in the choir and singing, and he was good,  
19 you know. He used to do things, you know. He did,  
20 at first, was minding me and doing what I wanted him  
21 to do because he was just good.  
22          Q     He was a good boy?  
23          A     I love him, and I hate for him to be  
24 caught all up, you know.  
25          Q     We understand.

1           **MS. JACKSON:** Thank you, Miss Edwards.  
2           That's all I have, your Honor.  
3           **THE COURT:** Hold on a minute, ma'am.  
4           **MR. DASKAS:** Judge, we have no questions.  
5           **THE COURT:** Roy, come help her off the  
6 stand. She almost fell last time.  
7           **MS. JACKSON:** Your Honor, we have one  
8 final two-minute witness, Allen White, and we're  
9 done with the family.  
10          **THE COURT:** Come on.  
11          **THE BAILIFF:** Who is it?  
12          **MS. JACKSON:** Allen White, the minor  
13 child.  
14  
15                            **ALLEN WHITE,**  
16           being recalled as a witness on behalf of  
17 the Defendant, was previously duly sworn and  
18 testified as follows.  
19  
20                            **DIRECT EXAMINATION**  
21 **BY MR. WHIPPLE:**  
22           Q     Hi, Allen. How are you?  
23           A     Fine.  
24           Q     Thanks for coming back.  
25           Allen, do you remember at lunch when we

1 were talking briefly about your grandfather and how  
2 he passed away?  
3 A Yeah.  
4 Q And how it made you feel?  
5 A Yeah.  
6 Q How did it make you feel when your  
7 grandfather passed away?  
8 A Sad.  
9 Q And why?  
10 A Because he died.  
11 Q Okay.  
12 Now, I want to talk to you for just a few  
13 minutes about your daddy. Okay?  
14 A Okay.  
15 Q How do you feel about your daddy?  
16 A I feel fine.  
17 Q Do you love your daddy?  
18 A Yeah.  
19 Q How many daddies do you have?  
20 A One.  
21 Q How important is your daddy to you?  
22 A Real important.  
23 Q Why is he really important to you?  
24 A Because -- well, he's important to me  
25 because he's my real dad.

1 Q Do you love him?  
2 A Yeah.  
3 Q You want to be able to talk to him in the  
4 future?  
5 A Yeah.  
6 Q You want to be able to write him letters  
7 once in a while?  
8 A Yeah.  
9 Q Will that make you feel better?  
10 A (Inaudible response.)  
11 Q How does it make you feel when you get  
12 letters from your dad?  
13 A It make me feel happy.  
14 **MR. WHIPPLE:** Nothing further, your Honor.  
15 **MR. DASKAS:** Nothing, Judge.  
16 **THE COURT:** All right. You can step down.  
17 **MS. JACKSON:** Thank you, Judge.  
18 That completes our witnesses for today,  
19 and thank you so much, your Honor.  
20 **MR. WHIPPLE:** Thank you, your Honor.  
21 **THE COURT:** Folks, we'll take our recess  
22 now.  
23 Like I said before, don't read any  
24 newspaper articles, listen to any radio shows or  
25 reports or television news casts or anything about

1 the case in the media. To do so would be a  
2 violation of your duty, and I know you all are going  
3 to follow the oath.

4 Also, don't express any opinion on the  
5 case to anyone, and don't do any research on your  
6 own. Don't let anyone talk to you about this case.

7 We'll see you Monday morning at 9:00 a.m.

8 **THE BAILIFF:** All rise.

9 (Evening recess taken at 5:07 p.m.)

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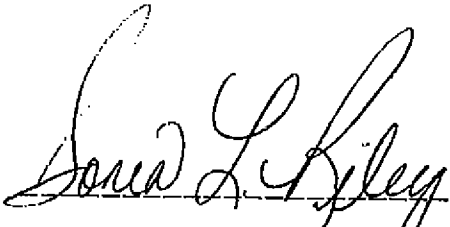
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REPORTER'S CERTIFICATE

STATE OF NEVADA)  
:SS  
COUNTY OF CLARK)

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

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

  
SONIA L. RILEY, CCR 727

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DISTRICT COURT  
CLARK COUNTY, NEVADA

*Shirley B. Hargrave*  
CLERK

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

CASE NO. C153154  
DEPT. NO VIII

ORDER TO PREPARE TRANSCRIPT

IT IS HEREBY ORDERED that SONIA L. RILEY, CCR 727, prepare a transcript in the above-captioned matter heard on May 2, 2005, 2005.

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

DATED THIS 2 DAY OF May, 2005.

*[Signature]*  
DISTRICT COURT JUDGE

S12

COUNTY CLERK

MAY - 7 2005

RECEIVED

SONIA L. RILEY, CCR 727  
455-3610



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DISTRICT COURT  
CLARK COUNTY, NEVADA 2005 MAY -31 A 8:45

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THE STATE OF NEVADA, )  
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 PLAINTIFF, )  
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 VS. )  
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 DONTÉ JOHNSON, )  
 )  
 DEFENDANT. )

CASE NO.: C153154

REPORTER'S TRANSCRIPT  
OF  
TRIAL BY JURY  
(VOLUME X)

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

DATED MONDAY, MAY 2, 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

**RECEIVED**  
MAY - 3 2005  
**COUNTY CLERK**

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

1 **S11**

1 APPEARANCES:

2 FOR THE PLAINTIFF:

3 ROBERT J. DASKAS, ESQ.  
4 DAVID STANTON, ESQ.  
5 DISTRICT ATTORNEY'S OFFICE  
6 200 South Third Street  
7 Las Vegas, Nevada 89101  
8 (702) 455-4711

9 FOR THE DEFENDANT:

10 ALZORA B. JACKSON, ESQ.  
11 SPECIAL PUBLIC DEFENDER'S OFFICE  
12 333 South Third Street  
13 Second Floor  
14 Las Vegas, Nevada 89155  
15 (702) 455-6265

16 BRET O. WHIPPLE, ESQ.  
17 229 S. Las Vegas Blvd.  
18 Suite 205  
19 Las Vegas, Nevada 89101  
20 (702) 257-9500

21 \* \* \* \* \*

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

2

I N D E X

PAGE

DEFENSE'S EVIDENCE IN MITIGATION (RESUMED)

7

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

3

W I T N E S S E S

|    |                                |             |
|----|--------------------------------|-------------|
| 1  |                                |             |
| 2  |                                |             |
| 3  | <u>DEFENSE</u>                 | <u>PAGE</u> |
| 4  | <u>GEORGE AUSTIN COTTON</u>    |             |
| 5  | DIRECT EXAMINATION             | 8           |
| 6  | CROSS-EXAMINATION              | 18          |
| 7  |                                |             |
| 8  | <u>TERMAINE ANTHONY LYTTLE</u> |             |
| 9  | DIRECT EXAMINATION             | 25          |
| 10 | CROSS-EXAMINATION              | 34          |
| 11 |                                |             |
| 12 | <u>REGINALD JOHNSON</u>        |             |
| 13 | DIRECT EXAMINATION             | 44          |
| 14 | CROSS-EXAMINATION              | 63          |
| 15 | REDIRECT EXAMINATION           | 76          |
| 16 |                                |             |
| 17 | <u>GLORIA NAVARRO</u>          |             |
| 18 | DIRECT EXAMINATION             | 84          |
| 19 | CROSS-EXAMINATION              | 126         |
| 20 |                                |             |
| 21 | <u>CRAIG CLARK</u>             |             |
| 22 | DIRECT EXAMINATION             | 156         |
| 23 | CROSS-EXAMINATION              | 185         |
| 24 | REDIRECT EXAMINATION           | 192         |
| 25 |                                |             |

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

4

W I T N E S S E S (CONT'D.)

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DEFENSE

PAGE

NANCY SARGENT HUNTERTON

DIRECT EXAMINATION

194

CROSS-EXAMINATION

210

JAMES ESTEN

DIRECT EXAMINATION

216

CROSS-EXAMINATION

259

REDIRECT EXAMINATION

270

RECROSS-EXAMINATION

271

\* \* \* \* \*

EXHIBITS (CONT'D.)

| <u>STATE'S</u> | <u>DESCRIPTION</u>                            | <u>MKD.</u> | <u>ADM.</u> |
|----------------|---|-------------|-------------|
| 258            | Information and<br>Judgment of Conviction     | 128         | 129         |
| DEFENSE<br>OO  | Parole report 4-1-96                          |             | 162         |
| PP             | Certificate of<br>Completion - 11-16-95       |             | 175         |
| ZZ             | Guilty Plea Agreement<br>for Reginald Johnson | 78          |             |
| AAA            | Photo of cells in CCDC                        | 96          | 97          |
| BBB            | Sentencing Memorandum<br>for Reginald Johnson | 111         | 114         |
| CCC            | Large picture of<br>detention cell            | 233         | 234         |
| DDD            | Large picture of<br>detention cell            | 233         | 234         |
| EEE            | Large picture of<br>detention cell            | 233         | 244         |
| FFF            | Template of floor<br>in cell (yellow paper)   | 236         | 259         |

\* \* \* \* \*

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

6

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

2                    \* \* \* \* \*

3  
4                    **THE COURT:** Be seated.

5                    (Jury present.)

6                    **JUROR:** Our notebooks.

7                    **THE COURT:** They will get them.

8  
9                    DEFENSE'S EVIDENCE IN MITIGATION (RESUMED)

10  
11                    **THE COURT:** Let the record reflect the  
12 presence of all the parties, all the attorneys, all  
13 members of the jury.

14                    Miss Jackson, call your next witness.

15                    **MS. JACKSON:** Thank you, your Honor. The  
16 defense calls George Austin Cotton.

17                    **THE CLERK:** Please raise your right hand.

18                    (Oath administered.)

19                    **THE WITNESS:** I do.

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

23                    **THE WITNESS:** George Austin Cotton,

24 C-O-T-T-O-N.

25 /////

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

GEORGE AUSTIN COTTON,

being called as a witness on behalf of the  
defendant, was first duly sworn and testified as  
follows:

**MS. JACKSON:** May I proceed, your Honor?

**THE COURT:** Yes.

DIRECT EXAMINATION

Q Good morning, Mr. Cotton.

A Good morning, Miss Jackson.

Q You recall about a year or so ago you  
received a subpoena from me.

Do you remember my name?

A Yes ma'am.

Q Before you received that subpoena, did you  
have any idea why you were being subpoenaed into  
court?

A No.

Q Did anyone from my office contact you in  
any way, shape, form or fashion?

A No.

Q Did anyone that Mr. -- do you know the  
gentleman seated over here with the --

A Yes, I do.

Q -- braids (indicating)?

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

8



1 A Yes.

2 Q You're going to have to let me finish,  
3 because otherwise, she'll get very upset with both  
4 of us.

5 Do you know my client?

6 A Yes, ma'am.

7 Q What is his name?

8 A Donte.

9 Q Where do you know him from, sir?

10 A Clark County Detention Center.

11 Q Okay.

12 Did Donte Johnson or anyone on his behalf  
13 contact you prior to or any time regarding your  
14 testimony in this matter?

15 A No, ma'am.

16 Q Has anyone threatened you or coerced you  
17 in any fashion --

18 A No, ma'am.

19 Q -- to get you to testify in a certain way?

20 A No, ma'am.

21 Q You're obviously in custody, Mr. Cotton?

22 A Um-hmm.

23 Q I presume you are a felon?

24 A Yes, ma'am.

25 Q Probably multi- -- many times over?

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

9

1 A Pretty much.

2 Q You are, I understand, serving -- is it 50  
3 years?

4 A Sixteen to 50.

5 Q Sixteen to 50 in the Ely Maximum Security  
6 Penitentiary?

7 A Yes, ma'am.

8 Q Have I or anyone on my behalf or any  
9 staff's behalf offered to assist you in any way with  
10 your litigation in exchange for your testimony?

11 A No, ma'am. My case is over.

12 Q Okay.

13 I'm going to take you back to  
14 February 24th of 2001, Mr. Cotton.

15 Do you recall that time frame?

16 A Yes, I do.

17 Q Where were you housed?

18 A I was housed in the Clark County Detention  
19 Center, Fifth Floor, C Wing, Cell 15.

20 Q Is that Unit 5C?

21 A Yes, ma'am.

22 Q Does that also have another slang in the  
23 jail?

24 Is that commonly called "The Hole"?

25 A Yes, ma'am. It is the "Hole."

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

10

1 Q It is The Hole.

2 Why were you there?

3 A I was maxed out there at that time for an  
4 assault.

5 Q For misbehaving?

6 A Yes, ma'am.

7 Q Your room was No. 15?

8 A Yes, ma'am.

9 Q Okay.

10 MS. JACKSON: Court's indulgence. I need  
11 an exhibit.

12 I'm going to approach the witness with the  
13 Court and Sergeant Jacoby's permission.

14 BY MS. JACKSON:

15 Q I'm going to show you what's been entered  
16 into evidence in these proceedings as Defense  
17 Exhibits double-Q, double-R and double-S,  
18 Mr. Cotton. I want you to take a look at these  
19 exhibits, and don't say anything, just listen,  
20 please.

21 Indicate to me if one or more of these  
22 exhibits depict the room or the area in which you  
23 were housed February of '01, sir?

24 A Okay. The closest one would be this one  
25 here (indicating). I'm next door to this here

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

11

( )

1 (indicating), this 16. I was in 15.

2 Q Give me a second, Mr. Cotton.

3 You've indicated that SS indicates, to  
4 some degree, where you were housed.

5 Your room number, sir?

6 A Fifteen.

7 Q Okay.

8 So, looking at this exhibit -- can you see  
9 it better if I bring it to you?

10 A If you would go up from where the man is  
11 standing -- if you would go to that top walk next to  
12 Cell 16, that's where my room is, directly in front  
13 of that 5C door (indicating).

14 Q Right over in this direction (indicating)?

15 A No. Right there where the 5C door is.

16 Q Oh, I see.

17 A My room is directly upstairs up over that.

18 Q In the area that I'm indicating here  
19 (indicating)?

20 A To the left on this side (indicating).

21 Q Further?

22 A On this side -- right there (indicating).

23 Q On the other side of C. I got you.

24 A But it's directly in front of that brown  
25 door that says "5C" (indicating).

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

12

1 Q I see. Very good, sir.

2 Taking you back to February 24th of that  
3 year, do you recall an incident with an inmate by  
4 the name of Oscar Irias?

5 A Yes, ma'am.

6 Q What happened -- the first thing that you  
7 saw?

8 A The first thing that I saw was I was  
9 laying on my bunk, and I heard somebody hollering  
10 "Help, help." I got up and went to the door. When  
11 I went to the door, my first thing was to look out  
12 into the day space and where The Bubble --

13 Q When you say, "day space," are you  
14 referring to (indicating) --

15 A The day space --

16 **THE COURT:** Excuse me. Where is the  
17 pointer, the electronic pointer?

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

19 **THE WITNESS:** When I say the "day space,"  
20 I'm saying right there (indicating), the little  
21 space right inside this first -- inside the  
22 second -- the first door here (indicating).

23 **BY MS. JACKSON:**

24 Q So, one would go through the door that's  
25 propped open that says 5- --

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

13

1 A That's day space.

2 Q Okay.

3 And inside that door on the other side is  
4 the day space?

5 A Yes.

6 Q Very good, sir.

7 And then what did you see or hear?

8 A The first thing I did when I looked out, I  
9 looked out, and Mr. Irias was standing right there  
10 (indicating).

11 Q You're indicating on the top tier?

12 A Top floor right in front of Room 21.

13 Q All right.

14 A Mr. Johnson had started up the steps --  
15 Reggie Johnson had started up the steps, and Irias,  
16 like I said, was standing right here (indicating).  
17 He didn't know to go this way (indicating) or that  
18 way (indicating); he was just in limbo.

19 Q Okay.

20 A Mr. Johnson -- Deko, the defendant -- was  
21 on this side (indicating) of the room coming up the  
22 steps on this side (indicating).

23 Q Okay.

24 A He never made it over here where none of  
25 the action was. He was standing right here

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

14

1 (indicating) between 16 and 17 when the man went  
2 over the rail right here (indicating).

3 Q Okay.

4 A When he went over the rail, Mr. Reggie  
5 Johnson had just made it up to the top of the steps.  
6 It was more like the man tried to jump off the rail  
7 than actually being carried off.

8 Q Now, Mr. Cotton, you recall testifying in  
9 this courtroom about this time last year?

10 A Yes.

11 Q And I asked you what did you see, and at  
12 that time, you indicated that the first thing you  
13 heard was a bunch of rumbling, and you heard someone  
14 holler "help"?

15 A Um-hmm.

16 Q Now, you did not give the background about  
17 going up the stairs that you're giving this morning.

18 A You didn't give me -- you didn't ask me  
19 about none of this here.

20 Q Very well, sir. Fair enough.

21 Now, after you saw Oscar coming off the  
22 top floor, what, if anything, did you observe?

23 A Like I said, when he came over that rail,  
24 he came over sideways, hanging. He came over, his  
25 arm hit the top of the rail like this (indicating).

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

15

1 He caught hisself, fell up against the railing,  
2 dropped down on his feet, fell on his butt, jumped  
3 up and ran in his cell, which is right there  
4 (indicating).

5 Q Okay.

6 Now, did you have occasion to observe the  
7 officer who was on duty that day, Mr. Cotton?

8 A Yes, I did.

9 Q And did you recognize that officer?

10 A Yes.

11 Q Who was it?

12 A It was -- I can't think of his name --  
13 Rodriguez.

14 Q A Hispanic?

15 A Yes.

16 Q Would "Gonzalez" sound correct?

17 A Gonzalez, yes.

18 Q Now, you testified when Mr. Oscar Irias  
19 hit the floor that he jumped up?

20 A He came down like this (indicating). His  
21 arm was up like this (indicating) on the top rail  
22 which is right there (indicating).

23 Q Yes, sir.

24 A He hung by the rail; his body hit flush  
25 like this (indicating) up side the rail. He landed

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

16



1 on his feet, fell on his butt, jumped up and ran in  
2 his cell.

3 Q All right.

4 And then what, if anything, did the  
5 officers do?

6 A The officers -- it was four officers in  
7 The Bubble, which The Bubble would be right up in  
8 this area here (indicating).

9 Q Okay.

10 A They don't have a picture of The Bubble  
11 sitting there, but it's right this side of the 5C  
12 door (indicating). The officers -- it was four of  
13 them in there. Gonzalez was at the computer playing  
14 a game. The other officers -- one was sitting on  
15 the F and G side, and one was sitting on this side  
16 (indicating). They was all sitting there talking to  
17 each other --

18 Q Okay.

19 A -- and looking toward the other side of  
20 the unit on this side (indicating), F and G door.  
21 Okay. Everybody's back was to this side here  
22 (indicating). Like I said, they did not even hear  
23 the man hollering, because the man was hollering, I  
24 know for a good two minutes before he even came off  
25 of that rail.

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

17

1 Q So, when you looked out and you saw the  
2 person hollering, the officers were not reacting?

3 A No.

4 Q And then based upon their non-reaction,  
5 you were able to determine that they did not hear  
6 this individual?

7 A I know they didn't hear it.

8 Q Alrighty.

9 It's your testimony that my client was not  
10 involved in that incident?

11 A No, he wasn't.

12 MS. JACKSON: I pass the witness, your  
13 Honor.

14

15

CROSS-EXAMINATION

16 BY MR. DASKAS:

17 Q Mr. Cotton, good morning.

18 A Good morning. Good morning.

19 Q I noticed when you walked in a moment ago,  
20 you winked at Donte Johnson; is that right?

21 A Um-hmm.

22 Q Is that "Yes"?

23 A Yes.

24 Q Tell me why you did that.

25 A Because that's my partner.

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

18

1 Q Your partner?

2 A Yes.

3 Q You want to help out your partner, don't  
4 you?

5 A If you mean would I lie for my partner --  
6 no.

7 Q No; I mean, you just want to help him out?

8 A Yeah.

9 Q Okay.

10 Miss Jackson asked you about your  
11 convictions.

12 You're convicted for two counts of robbery  
13 with a deadly weapon, correct?

14 A Um-hmm.

15 Q "Yes"?

16 A Yes.

17 Q You're serving a minimum of 16 years in  
18 prison?

19 A Sixteen to 50.

20 Q And a maximum of 50 years, correct?

21 A Yeah.

22 Q Now, Miss Jackson reminded you that you  
23 testified about a year ago about this incident,  
24 correct?

25 A Um-hmm.

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

19

1 Q I need you to answer out loud. "Yes"?

2 A Yes.

3 Q You would agree when you testified about a  
4 year ago, you never said anything about seeing Donte  
5 Johnson walking up the stairs, correct?

6 A Correct, but number one, nobody ever asked  
7 me where Mr. Donte Johnson was or where Mr. Reggie  
8 Johnson was at the time. The only question that was  
9 asked is where was the inmate that came off of that  
10 rail.

11 Q You don't recall being asked, and I'll  
12 quote at line 14, "What did you see, if anything?  
13 Do you recall?" Correct?

14 A Um-hmm.

15 Q "Yes"?

16 A Yes.

17 Q Now, this morning, I don't remember  
18 Miss Jackson asking you specifically where Donte  
19 Johnson was, but you seem to think she did ask you  
20 that.

21 A She didn't ask me. That's what I just  
22 said. She did not ask me, and you didn't ask me.

23 Q She didn't ask you this morning either,  
24 did she?

25 A No.

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

20

1 Q You just volunteered where Donte was?  
2 A You know why I volunteered that?  
3 Q Why? Why?  
4 A Because, number one, when I was here last  
5 year on May 13th, didn't nobody question me about  
6 where the presence of anybody was but the man that  
7 came off the rail. Okay? Number one, the only  
8 thing that was done when I was here the last time  
9 was the pictures was showed to me of where my unit  
10 was, where my housing unit was. That's the only  
11 question that was really asked of me.

12 Q What I heard you say on direct examination  
13 was that you believe Oscar Irias went over the  
14 railing on his own.

15 Is that what you think?

16 A Yes, sir.

17 Q So, if somebody pled guilty to throwing  
18 him off the railing, you wouldn't agree with that,  
19 would you?

20 A No.

21 Q Because he jumped over on his own?

22 A Because of the fact that when I seen him,  
23 no one was there with their hands on him when he was  
24 going over that rail.

25 Q No question he actually fell from the

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

21

1 second tier onto the first tier.

2 You would agree with that?

3 A I know automatically he was, because I was  
4 standing at my door. Just like I am looking at you  
5 now, I was looking at him.

6 Q Let me make sure I understand what called  
7 your attention to this incident.

8 You heard someone hollering for help,  
9 correct?

10 A Um-hmm.

11 Q "Yes"?

12 A Yes.

13 Q What's the first thing you did when you  
14 heard that?

15 A I jumped up and ran to the door.

16 Q And what's the first thing you saw?

17 A I looked out, and when I looked out, I  
18 looked for the voice. The voice was standing right  
19 there in front of Cell 21, right there (indicating).

20 Q When you say "the voice," you mean Oscar  
21 Irias?

22 A Yes.

23 Q At that moment, you hadn't looked to see  
24 where the guards were?

25 A No. That was my next step is looking to

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

22

1 see where the guards were. It's an automatic  
2 reaction.

3 Q From the time you heard someone  
4 hollering --

5 A Um-hmm.

6 Q -- until you looked to where the voice was  
7 coming from, you don't know what the guards were  
8 looking at, do you?

9 A Not -- well, I'll put it like this: When  
10 I looked out my door and seen that man over there  
11 hollering, he was running back and forth across the  
12 walk. When I looked to see where the guards was,  
13 which is a split second later, yeah, I knew what  
14 they was doing. Gonzalez was on the computer; the  
15 other four guards -- I mean, the other three guards  
16 was facing towards F and G Wing.

17 Q Before that -- before you looked to where  
18 the guards were --

19 A Um-hmm.

20 Q -- you don't know what they were looking  
21 at, correct?

22 A No.

23 Q What does it mean to be a snitch?

24 A A snitch --

25 MS. JACKSON: Your Honor, objection.

1 That's beyond the scope of my direct.

2 **MR. DASKAS:** It has everything to do with  
3 his bias towards testifying today.

4 **THE COURT:** Approach --

5 **THE WITNESS:** What?

6 **THE COURT:** -- the bench.

7 Excuse me. Hold on a second.

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

10 **THE COURT:** Sustained.

11 **MR. DASKAS:** Judge, we'll pass the  
12 witness.

13 Thank you, Mr. Cotton.

14 **MS. JACKSON:** No further, your Honor.

15 Thank you.

16 **THE COURT:** Thank you, sir.

17 **MS. JACKSON:** Mr. Lytle, Termaine Anthony  
18 Lytle, to be exact.

19 Thank you for coming down, sir.

20 **THE BAILIFF:** Remain standing and face the  
21 clerk.

22 **THE CLERK:** Please raise your right hand.  
23 (Oath administered.)

24 **THE WITNESS:** Yes, ma'am.

25 **THE CLERK:** Thank you.

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

24



1           Please have a seat. State your full name  
2 spelling your last name for the record.

3           **THE WITNESS:** My name is Termaine Lytle,  
4 last name is spelled L-Y-T-L-E.

5           **THE CLERK:** Will you please spell your  
6 first name also?

7           **THE WITNESS:** My first name is spelled  
8 T-E-R-M-A-I-N-E, middle initial is A.

9  
10                   TERMAINE LYTLE,  
11           being called as a witness on behalf of the  
12 Defendant, was first duly sworn and testified as  
13 follows:

14  
15                           DIRECT EXAMINATION

16 **BY MS. JACKSON:**

17           Q     Good morning, Mr. Lytle.

18           A     Good morning, ma'am.

19           Q     Do you remember me?

20           A     Yes, ma'am, I do.

21           Q     And do you remember testifying in this  
22 very courtroom -- Mr. Cotton said it was about  
23 May 13th of last year?

24           A     Yes, ma'am.

25           Q     Regarding the incident at 5C in February

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

25

1 of '01?

2 A Yes, ma'am, I do.

3 Q Now, let's talk about your custody status.  
4 You're obviously in prison?

5 A Yes, ma'am.

6 Q Where?

7 A I'm currently at High Desert, but I'm  
8 stationed at Ely.

9 Q You're only in High Desert, because I  
10 subpoenaed you down to court -- yes?

11 A Yes, ma'am.

12 Q Okay.

13 And you are a convicted felon many, many,  
14 many times over?

15 A On this -- the charge that I'm in Ely for  
16 right now that I'm up there, yes.

17 Q Suffice it to say, you're serving quite a  
18 bit of time. You told me last time two lives  
19 without, two lives with and a whole bunch of stuff  
20 behind?

21 A Yes, ma'am.

22 Q Is that a fair statement?

23 A Yes, ma'am.

24 Q So, you have no expectation, absent some  
25 appellate court deciding otherwise, of ever getting

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

26

1 out of Ely State Prison?

2 A No, ma'am.

3 Q Now, prior to May of -- February --  
4 actually, May of last year, had anyone in my office  
5 ever contacted you regarding this incident or  
6 telling you what to say here in court?

7 A Are you talking about the time when I came  
8 down from Ely, or are you talking about the time  
9 after I came down to High Desert from Ely?

10 Q I'm just asking you to tell this jury that  
11 I or anyone on my behalf -- did we tell you what to  
12 say?

13 A No, ma'am.

14 Q Do you know my client, Donte Johnson?

15 A Yes, I do.

16 Q And how do you know Mr. Johnson?

17 A I know Mr. Johnson from the County. He's  
18 a good friend of mine.

19 Q And that was when you were housed in 5C?

20 A Yes, ma'am.

21 Q Okay.

22 Now, you said he's a good friend of yours?

23 A Yes.

24 Q Would that motivate you to come in here  
25 and lie on his behalf?

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

27

1 A No, ma'am.

2 Q Now, when we first contacted you, were you  
3 surprised to be transported?

4 A Yes, ma'am.

5 Q Did you have any idea why you were even  
6 being moved from what has now become your home, Ely  
7 State Penitentiary?

8 A No, ma'am, I didn't have no idea.

9 Q Did anyone on behalf of Donte Johnson or  
10 anyone, period, threaten you or coerce you or make  
11 you any kind of promises for testifying a certain  
12 way in these proceedings?

13 A No, ma'am.

14 Q I'm going to take you back to  
15 February 24th of 2001.

16 You indicate you were housed in 5C?

17 A Yes, ma'am.

18 Q Do you recall your room number?

19 A I believe it was 7 at the time of the  
20 incident.

21 **MS. JACKSON:** I'm sorry. Bret, would you  
22 put QQ back on the overhead, please?

23 **BY MS. JACKSON:**

24 Q Do you believe it was No. 7?

25 A Yes, at the time of the incident you're

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

28

1 talking about.

2 Q Are you able to see your former cell in  
3 this exhibit, I think this is QQ?

4 A Actually, my room is blocking from the 5C  
5 door. It's directly behind the 5C door from this  
6 angle (indicating).

7 Q Okay. No. 7?

8 A Yes, ma'am.

9 Q Actually, there appears to be a 7 that's  
10 showing through?

11 A Oh, yeah, the door, through the window.

12 Q Do you see that 5, 7?

13 A Yes.

14 **THE COURT:** Where is the pointer?

15 **MS. JACKSON:** It's right in front of you,  
16 your Honor. You will probably need to show him how  
17 to use it.

18 **THE WITNESS:** This one. Okay. Thank you,  
19 sir.

20 I can see it right there (indicating).  
21 That's my room (indicating).

22 **S:**

23 Q All right.

24 Were you inside your room on February 24th  
25 of 2001 when there was an incident, sir, that caught

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

29

1 your attention?

2 A Yes, ma'am, it was.

3 Q What happened on that day that drew your  
4 attention, Mr. Lytle?

5 A I heard a commotion outside of the tier,  
6 sound like someone was yelling.

7 Q Now, when you say "outside of the tier,"  
8 would you take your pointer and indicate what you  
9 consider to be outside of the tier?

10 A Anything that's not inside my room, ma'am,  
11 this area right here (indicating), all out here  
12 (indicating).

13 Q Could you make out what the commotion was?  
14 Could you distinguish human voices, for example?

15 A Yes, ma'am, I could.

16 Q What did you hear, sir?

17 A Just yelling, "Help, help" and "No," "Ah,"  
18 "Ooh," "Eeee" -- that type of stuff.

19 Q Alrighty.

20 Did there come a time when you  
21 investigated, from your standpoint as best you could  
22 from your room, what was going on?

23 A No. I could only hear until the person  
24 came over the railing.

25 Q So, tell me in your own words what you

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

30

1 saw.

2 A From my room right here (indicating), I  
3 can't -- the incident had to happen up here  
4 (indicating), because the person came from this  
5 direction (indicating) on down right in front of me.

6 Q Okay.

7 A And his name was Oscar, and he fell, and  
8 he was bleeding all over. He got up, walked to his  
9 room -- which is his room right here (indicating).

10 Q His room was No. 6, it appears?

11 A Yes.

12 Q Right next to yours?

13 A He was right next door to me.

14 Q Okay.

15 A He was in this room right here  
16 (indicating) as you can see the little number. We  
17 used to be able to prop our door, because we only  
18 get one hour for tier time.

19 Q Okay.

20 A He had his door propped open, and as he  
21 got up, he went inside his room. As I said, I'm  
22 right -- right next door to him. I could hear what  
23 he was doing inside the room. It was thin walls.  
24 They don't pay too much for the building. When he  
25 got up after he sat down and went over there and

1 closed his door.

2 Q So, he went into his room?

3 A Sat down for a minute.

4 Q Sat down for a second, and there was some  
5 hesitation?

6 A I would say about a minute or two.

7 Q A minute or so?

8 A Yeah.

9 Q And then you heard his door close?

10 A Yeah. I heard him get back up and close  
11 his door.

12 Q You could hear him actually making the  
13 getting up sound?

14 A Yes.

15 Q And the room door was then closed by  
16 Mr. Irias.

17 Did you see any guards in or about the  
18 area during the time Oscar Irias came tumbling down  
19 from that top tier?

20 A No. I didn't see any guards come to this  
21 door right here (indicating), the 5C door. They did  
22 not come in, they came to that door right there  
23 (indicating) after he was in his room.

24 Q Okay.

25 And you had testified -- do you recall

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

32



1 testifying here in May of last year?

2 A Yes, ma'am.

3 Q You indicated that there were a lot of  
4 guards you thought?

5 A Five.

6 Q More than -- around five?

7 A It was five guards, ma'am. I remember  
8 that.

9 Q Okay.

10 And did you have occasion to observe the  
11 guards' behavior, what were they doing when you  
12 looked to see what they were doing?

13 A As I say, as you can see my room from  
14 right here (indicating), I have a clear view. From  
15 this view (indicating) coming all the way back as  
16 you're coming off the screen would be what we call  
17 "The Bubble" or what they call the "Command Post."

18 Q That's where the officers were?

19 A That's where the officers are stationed  
20 at, and on the opposite side of the Command Post is  
21 another classification unit called 5E, -F.

22 Q Yes, sir.

23 A They were facing the 5E, -F side during  
24 all the commotion. They didn't -- like I said, they  
25 didn't figure out that he was getting hurt until he

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

33

1 came over the tier, and like I said -- and by the  
2 time he got in his room and closed the door, that's  
3 when he was at the door.

4 Q So, your testimony is that these officers  
5 didn't even -- after Oscar went to his room, sat  
6 down, got back up, closed the door, still the  
7 officers had not made it over to the area of where  
8 the commotion was?

9 A No, ma'am.

10 Q And based upon what you observed and what  
11 you heard and what you saw, did the officers even  
12 see what happened?

13 A No, ma'am.

14 MS. JACKSON: Thank you. That's all I  
15 have.

16 THE COURT: Cross?

17 MR. DASKAS: Thank you, Judge.

18  
19 CROSS-EXAMINATION

20 BY MR. DASKAS:

21 Q Let me start with the same question Alzora  
22 did.

23 Do you remember me?

24 A Yes, sir, I do.

25 Q How do you know me?

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

34

1 A I know you as a prosecutor, sir.  
2 Q That prosecuted your case?  
3 A Yes, sir.  
4 Q Correct?  
5 A Yes, sir.  
6 Q You're serving a life without parole  
7 sentence consecutive to a life without parole  
8 sentence, correct?  
9 A Yes, on an illegal constitutional deal.  
10 Q I'm sorry?  
11 A On an illegal plea agreement on a  
12 constitutional deal the way my rights were -- direct  
13 appeal.  
14 Q Let's talk about that.  
15 **MS. JACKSON:** Objection as to relevance,  
16 your Honor.  
17 **MR. DASKAS:** You just opened the door to  
18 it, Judge.  
19 **THE COURT:** Sustained.  
20 You know, you can ask him what he was  
21 convicted of --  
22 **MR. DASKAS:** I will do that, Judge.  
23 **THE COURT:** -- the date and that sort of  
24 thing.  
25 /////

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

35

1 **BY MR. DASKAS:**

2 Q You've been convicted of First-degree  
3 Murder, correct?

4 A Yes, sir.

5 Q With Use of a Deadly Weapon?

6 A Yes, sir.

7 Q The victim was 65 years --

8 **MS. JACKSON:** Your Honor -- objection --

9 **BY MR. DASKAS:**

10 Q -- of age or older, correct?

11 **THE COURT:** Sustained.

12 **MR. DASKAS:** That's part of the  
13 conviction, your Honor.

14 **THE COURT:** The conviction is -- what is  
15 the charge? You can ask him what the charges are --

16 **MR. DASKAS:** Judge, that's what I'm doing.

17 **THE COURT:** -- when did it occur.

18 No. You were saying if he was -- was the  
19 victim 65 years of age or older?

20 **MR. DASKAS:** That was part of the  
21 enhancement, Judge.

22 **THE COURT:** Well, you should say, "Were  
23 you convicted of First-degree Murder of a Victim 65  
24 Years of Age or Older?" That is the charge. If  
25 that's what he was convicted of, that's what you ask

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

36

1 him.

2 **BY MR. DASKAS:**

3 Q Is that what you were convicted of?

4 **THE WITNESS:** Can I answer it a little bit  
5 better so he won't have to ask any more questions?

6 **THE COURT:** No. There's a certain way  
7 he's supposed to ask it, so he needs to ask it  
8 correctly.

9 **THE WITNESS:** Okay. Sorry, sir.

10 **BY MR. DASKAS:**

11 Q You've been convicted of First-degree  
12 Murder?

13 A Yes, sir.

14 Q With Use of a Deadly Weapon, Victim 65  
15 Years of Age or Older?

16 A Yes.

17 Q You've been convicted of Robbery, Victim  
18 65 Years of Age or Older, correct?

19 A Yes.

20 Q You've been convicted of First-Degree  
21 Kidnapping, Victim 65 Years of Age or Older,  
22 correct?

23 A Yes.

24 Q Among other convictions, correct?

25 A And all that is because my co-defendant

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

37

1 testified against me.

2 Q And a jury convicted you?

3 A No. Without him saying I did it, I would  
4 not be here.

5 Q Did a jury convict you?

6 A Because my co-defendant testified against  
7 me.

8 THE COURT: Sir, that only requires a  
9 "yes" or "no" answer.

10 THE WITNESS: Yes.

11 BY MR. DASKAS:

12 Q Yes. All right.

13 Let's talk about the incident at the jail.

14 If I understand it correctly, what you're  
15 saying is the first thing you heard was a commotion  
16 and someone hollering for help, correct?

17 A Yes.

18 Q And you looked toward the direction of the  
19 commotion; is that correct?

20 A I'm looking out my window, so I'm looking  
21 directly out from this room, sir (indicating).

22 Q And that's when you see Oscar Irias land  
23 on the first floor where you were?

24 A Yes, sir.

25 Q He had fallen from the second floor,

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

38

1 correct?

2 A Yes.

3 Q The first thing you did was looked in his  
4 direction; is that true?

5 A I have to look in his direction. It's  
6 directly out my door, sir.

7 Q Which is a different direction than the  
8 direction where The Bubble where the guards were  
9 looking?

10 A No. It's not same direction. It's  
11 directly from this direction right here  
12 (indicating). My room is directly right here  
13 (indicating). I can look from any one of these  
14 glasses, and "The Bubble" would be the outside part  
15 right here (indicating). I can see everything  
16 that's my room that's called the "Point Room."

17 Q After you first heard the commotion --  
18 after you first heard the commotion --

19 A Yes, sir.

20 Q -- what did you see first, Oscar Irias  
21 land or the guards?

22 A I seen Oscar land, and I could see the  
23 guards at the same time. I'm looking in the same  
24 direction.

25 Q And how many guards did you see?

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

39

1           A     Five, sir, in The Bubble.

2           Q     Now, when you initially heard the  
3 commotion and someone yelling for help, did you see  
4 what the guards were doing?

5           A     Yes, sir.

6           Q     So, at that moment when you heard someone  
7 yelling for help, you looked toward the direction of  
8 the guards?

9           A     Yes, sir.

10          Q     What did you see?

11          A     Them looking at 5E, -F direction. They  
12 faced the opposite direction from our unit.

13          Q     And who were the guards in The Bubble?

14          A     I remember Gonzalez and -- it was another  
15 guard that I didn't like, that's why I remember both  
16 of them, but I can't remember the other names.

17          Q     You say there was another guard you didn't  
18 like.

19                   Does that mean you didn't like Gonzalez  
20 also?

21          A     No. I didn't like him because of what he  
22 tried to say that we did. He's a known liar.

23          Q     Who is?

24          A     Gonzalez, sir.

25          Q     Officer Gonzalez is a known liar?

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

40



1           A       Excuse me. Officer Gonzalez is a known  
2 liar.

3           Q       And this is your testimony?

4           A       Yes, sir.

5           Q       Now, what you just told us on direct  
6 examination was you saw Oscar Irias land on the  
7 ground in front of you, correct?

8           A       Yes, sir.

9           Q       So, you wouldn't have looked up to see him  
10 coming over the railing, would you?

11          A       I cannot see over the railing, sir.

12          Q       Okay.

13                 So, if you testified to that at a previous  
14 hearing, that would be incorrect?

15          A       I have never testified to that, sir. I  
16 have not said that at all.

17                 **MR. DASKAS:** May I approach the witness,  
18 Judge?

19                 **THE COURT:** Yes.

20                 **MR. DASKAS:** Page 81.

21 **BY MR. DASKAS:**

22           Q       Mr. Lytle, let me show you a transcript of  
23 your previous testimony.

24                 Do you see at line four where you say, "I  
25 just seen the inmate coming over the railing"?

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

41

1           A       Um-hmm.

2           Q       Is that your testimony?

3           A       Yes.

4           Q       You're telling us now you didn't see him  
5 actually come over the railing, you just saw him  
6 land?

7           A       Seeing him come over and seeing him land  
8 is the same thing, sir. You're using metaphors  
9 there.

10          Q       So, you're telling me that's the same  
11 thing?

12          A       If I'm looking out my window, I can only  
13 see everything in front of me, so I'm seeing him  
14 come over, and I can see the guards, and I can see  
15 anything out of my door. I can only see one  
16 direction. There's only -- that room right there in  
17 the corner sir (indicating), and it's a stair part  
18 like a cement part on the top right there under my  
19 room. I cannot see above; I can only see out. I  
20 cannot see up. I cannot see anything up; I can only  
21 see out.

22          Q       Since you can't see up, you don't know how  
23 he got over the railing, do you --

24          A       No.

25          Q       -- based on what you saw?

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

42

1           A       No.

2           Q       You don't know if someone threw him over  
3 the railing, correct?

4           A       I don't know that at all.

5           Q       You don't know if he jumped over the  
6 railing?

7           A       I do not know.

8           Q       You can't tell us because you can't see  
9 whether Donte Johnson through him over the railing?

10          A       That's correct, sir.

11               **MR. DASKAS:** Thank you, sir.

12               I have nothing further.

13               **MS. JACKSON:** Nothing further, your Honor.

14 Thank you.

15               **THE COURT:** Thank you very much, sir.

16               **MS. JACKSON:** Mr. Reginald Johnson. He's  
17 our next witness, your Honor.

18               **THE BAILIFF:** Mr. Johnson, remain standing  
19 and face the 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; spell your last name  
25 for the record.

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

43

1                   **THE WITNESS:** Reginald Johnson,  
2 J-O-H-N-S-O-N.

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

5                   **REGINALD JOHNSON,**  
6                   being called as a witness on behalf of the  
7 Defendant, was first duly sworn and testified as  
8 follows:  
9

10                   **DIRECT EXAMINATION**

11 **BY MS. JACKSON:**

12           Q       Good morning, Mr. Johnson.

13           A       Good morning.

14           Q       Sir, you're obviously in custody?

15           A       Yes, ma'am.

16           Q       Is it fair to say you are a convicted  
17 felon many times over?

18           A       That's true.

19           Q       As a matter of fact, at your last hearing,  
20 you told us that you have no expectation of ever  
21 getting out absent some drastic action by an  
22 appellate court -- no expectation of ever getting  
23 out of Ely State Prison alive?

24           A       That's correct.

25           Q       Do you know this man (indicating)?

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

44

1 A Yes, I do.

2 Q Who is that?

3 A Donte.

4 Q Let me back up.

5 What have you been convicted of, sir?  
6 What are you serving time for? Let's get that on  
7 the record right now.

8 A Attempted murder, robbery, attempt  
9 robbery, assault, vandalism, burglary. I think  
10 that's it.

11 Q It could be more?

12 A It could be.

13 Q I was asking you about my client.  
14 Do you know that young man (indicating)?

15 A Yes, I do.

16 Q Who is that?

17 A That's Donte -- Donte Johnson.

18 Q Is he related to you, sir?

19 A No.

20 Q He just happened to have the same last  
21 name?

22 A That's right.

23 Q As a matter of fact, you are aware that  
24 "Donte Johnson" is actually not his true name?

25 A Yeah, I know that's true.

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

45

1 Q Do you know his true name?

2 A Yes, I do.

3 Q What is that?

4 A John -- John White.

5 Q John. Okay.

6 Last time we were here, you testified that  
7 my client is your friend?

8 A Yes, he is.

9 Q Is that still true today?

10 A That's true.

11 Q As a matter of fact, you told this Court  
12 that it was fair to say that you care very deeply  
13 about my client. You called him, as a matter of  
14 fact, "little brother"?

15 A Yeah, he is.

16 Q Because of your relationship with my  
17 client, would that cause you to come in here and  
18 testify falsely under oath, sir?

19 A No, ma'am.

20 Q Has anyone from my office or on my behalf  
21 contacted you now, or even last year, respecting  
22 your testimony in this matter?

23 A No, ma'am.

24 Q Has anyone on behalf of my client, his  
25 family or anyone put money on your books or anything

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

46

1 of that nature to influence your testimony?

2 A No, ma'am.

3 Q I'm going to take you back to  
4 February 24th of 2001, Mr. Johnson.

5 Where were you housed at that time, sir?

6 A Five C, -D.

7 Q And look at the monitor there. You see an  
8 exhibit on board. It's Defendant's QQ.

9 Do you recognize that area as being the  
10 module known as 5C?

11 A Yes, ma'am.

12 Q Commonly called "The Hole"?

13 A That's correct.

14 Q Why were you in The Hole?

15 A I was maxed out from booking. They never  
16 gave me a reason. They said, "high profile case."  
17 I never got a chance to go to general population;  
18 so, I was there initially for -- just because they  
19 said I had a high profile case.

20 Q So, you never got a chance to actually  
21 take a shot, if you will, at being in the regular  
22 part of the institution?

23 A No.

24 Q As a matter of fact, you asked that I not  
25 put you there awaiting these proceedings because

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

47

1 they don't treat you very well there?

2 A Yes, that's true. I gave them reason.

3 Q Okay. I appreciate your candor,

4 Mr. Johnson.

5 Did there come a time on February 24th of  
6 2001 when you did something on that day that caused  
7 you to sustain yet another conviction?

8 A That's true. Well, I have two convictions  
9 in 5C, -D for assaults.

10 Q Okay.

11 Directing your attention to February 24th  
12 of '01, did you assault someone on that day?

13 A Yes, ma'am.

14 Q Who did you assault?

15 A Oscar -- Oscar Irases (phonetic). I think  
16 that's how you pronounce his last name.

17 Q What did you do, sir?

18 A I assaulted him and helped him over the  
19 tier.

20 Q You helped him over the tier?

21 A Yes, ma'am.

22 Q There's a pointer in front of you.

23 **MS. JACKSON:** Mr. Bailiff, if you could  
24 show Mr. Johnson how to use that device, we would  
25 greatly appreciate it.

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

48



1                   **THE WITNESS:** You want me to push it?  
2 **BY MS. JACKSON:**  
3           Q       Yes, push it, and I want you to indicate  
4 for the jury -- tell them from the beginning to end  
5 how it is that you came to -- I think you said "to  
6 help Mr. Oscar over the tier." What happened?

7                   Why did you do that, first of all?

8           A       I don't like child molesters,  
9 Miss Jackson. I alerted CCDC to this, you know.  
10 Now, I understand that we all are in prison, but I  
11 just don't tolerate child molesters.

12           Q       You do not tolerate child molesters?

13           A       Yes.

14           Q       As a matter of fact, CCDC did something as  
15 a result of your alerting them to your dislike, if  
16 you will, to child molesters.

17                   Do you see this (indicating)? Can you  
18 recognize this as being a blue card?

19           A       A blue card.

20           Q       Do you see the name up top?

21           A       I see it.

22           Q       It's Oscar's blue card?

23           A       Right.

24           Q       Now, this designation down here says  
25 "DNHW" -- "do not house with" is what the officer

1 says that means, and they have down here, "Do not  
2 house with Reginald Johnson."

3 Is that you?

4 A That's me, yes, ma'am.

5 Q And it's because you made them aware that  
6 you do not like child molesters?

7 A Yes, ma'am.

8 Q And they also have a "do not house" with  
9 two other people.

10 Can you see those names?

11 A I don't know who those are.

12 Q Is it fair to say neither one of them is  
13 my client?

14 A That's correct.

15 Q It doesn't say "Donte Johnson"?

16 A No, ma'am.

17 Q It doesn't say "John White"?

18 A No, ma'am.

19 Q But it clearly down here says, "Do not  
20 house with Reginald Johnson"?

21 A That's correct.

22 Q You didn't make any secret about that, did  
23 you?

24 A I never made any secret about anything in  
25 the County, which is another reason why I'm really,

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

50

1 for lack of a better word, pissed off that they  
2 brought me down here, because I don't understand why  
3 the D.A. would drop charges against Donte --

4 Q Okay. We're going to get there. We're  
5 going to get there in just a moment. Let me slow  
6 you down a little bit.

7 Okay. After you threw Oscar over the  
8 railing or you helped him off the railing, to quote  
9 you, you were charged with that offense?

10 A Yes, ma'am.

11 Q And what were you charged with, sir?

12 A Conspiracy to commit murder and attempted  
13 murder.

14 Q And you were charged in conjunction with  
15 someone else?

16 A Yes, ma'am.

17 Q Who did they charge you in conjunction  
18 with?

19 A Donte.

20 Q And was there a preliminary hearing set in  
21 that matter?

22 A Yes, ma'am, that I recall.

23 Q And even before the preliminary hearing,  
24 did you take some steps or efforts to try to alert  
25 your attorney and others that Mr. Donte Johnson was

1 not involved in this?

2 A Yes, ma'am. I wrote a statement and gave  
3 it to Miss Gloria Navarro and asked her to please  
4 get this to his attorney and see if we could get the  
5 matter resolved, because I didn't want to go to  
6 trial, and they refused.

7 Q Okay.

8 Now, you knew at the time that my client  
9 would be facing a resentencing for his very life?  
10 You knew that?

11 A Then?

12 Q Yes.

13 A No. No.

14 Q So, that was not your motivation to  
15 indicate --

16 A No. At that particular time, all I knew  
17 is he was on death row. I didn't know he was going  
18 to receive a new sentencing.

19 Q As a matter of fact, the hearing that came  
20 down giving him a new sentence was pursuant to the  
21 Ring decision. Do you know?

22 A The what?

23 Q The -- Ring vs. Arizona.

24 MR. STANTON: Your Honor, can we approach?

25 THE COURT: No. No, no, no.

1                   **MS. JACKSON:** I can rephrase.

2                   **THE COURT:** Go on.

3 **BY MS. JACKSON:**

4           Q       As far as you know, Mr. Donte Johnson  
5 received a new penalty hearing sometime in the  
6 latter part of 2002?

7           A       Well, I'm aware now, but I didn't know at  
8 that time -- 2001 -- I had no idea that this would  
9 be a new sentencing; I just -- you know, I really  
10 felt like -- that it was a waste of time for them to  
11 charge him when I was already telling them that I  
12 did it, and they knew I did it.

13          Q       And you're saying at that time in '01 that  
14 my client had already been convicted and was on  
15 death row, and you didn't have a crystal ball that  
16 allowed you to see into the future to know that his  
17 conviction would be overturned?

18          A       That's correct.

19          Q       And obviously, you're not some kind of  
20 legal scholar that you could see the law was headed  
21 in a certain direction?

22          A       No, ma'am.

23          Q       So, there came a time now -- when was it  
24 that you finally was able to prevail upon the  
25 prosecution, if you will, to present you with a

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

53

1 satisfactory negotiation in this matter?

2 A I don't think any of it was satisfactory.

3 Q Okay.

4 A I just got tired of wasting time.

5 Q Okay.

6 A They waited until we picked the jury.

7 They waited until the day of trial, and then they

8 said we're willing to let Reginald plead guilty to

9 attempted murder as well as conspiracy to commit

10 murder.

11 Q Now, when you entered those pleas, sir --

12 and I assume that you did --

13 A Yes, ma'am.

14 Q The Judge gave you a thorough canvass,

15 correct?

16 A That's true.

17 Q When the Judge asked you who did you

18 conspire with, what did you say?

19 A They said "another." They worded as

20 "another." I conspired with Officer Gonzalez. I

21 just want to be real about the whole situation. I'm

22 not trying --

23 Q What do you mean you "conspired"?

24 A There was a conspiracy. I conspired with

25 Officer Gonzalez.

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

54

1 Q How so?

2 A I didn't know that Oscar was a child  
3 molester.

4 Q How did you find out?

5 A Officer Gonzalez told me that Oscar was a  
6 child molester as well as a couple of other guys  
7 that I attacked here in this county jail. These  
8 officers know me very well, and they know my  
9 history. If you check, Miss Navarro has copies of  
10 my disciplinary history and Donte's disciplinary  
11 history. It doesn't take a rocket scientist, but  
12 this man was in the County in general population  
13 which I never had a chance to be from '98 to 2001  
14 without one fight, and now they get here and say you  
15 can't give him life because he's going to kill  
16 again? Three years in general population without  
17 one fight. That's literally impossible. Prison is  
18 a violent place. The county jail is a violent  
19 place, especially if you're a gang member. Three  
20 years without one fight, you know. Now, I have a  
21 total of 17 assaults and two attempted murders.  
22 They knew I did this, you know.

23 Q As a matter of fact --

24 A Excuse me --

25 Q Go ahead, sir.

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

55

1           A       -- for being like that, but they knew.

2           Q       I just wanted to make sure that we move  
3 along pursuant to questions.

4                   So, the jury was about to be empaneled,  
5 and you took a deal?

6           A       Yes, ma'am.

7           Q       You also indicated at that time that you  
8 would take that deal under one condition, and that  
9 was that Mr. Johnson be cleared?

10          A       Drop charge with prejudice.

11          Q       Okay.

12          A       And Miss Navarro explained to me that  
13 means they can't bring the charge back up.

14          Q       And that was your understanding?

15          A       That's what I -- is that -- isn't that  
16 what it means?

17          Q       Yes, sir.

18          A       With prejudice.

19          Q       And you were very -- you're a little  
20 irritated today, fair to say?

21          A       Irritated with courtrooms, period. I've  
22 always admitted to what I've done. I'm not up here  
23 pretending to be a saint. I've done some things for  
24 which I deserve to be in prison. I'm not one of  
25 these nice guys; I'm not going to sit up here and

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

56



1 tell you I had remorse for what I did and I'm sorry  
2 and I found God. That just isn't the case.

3 Q Yes, sir. As a matter of fact, after  
4 this, you entered a plea to conspiracy with another,  
5 and you said Gonzalez told you this guy was a  
6 molester.

7 Now, isn't it true that during this -- on  
8 5C, you fellows are only supposed to be let out one  
9 at a time?

10 A Well, I was, specifically. I'm not trying  
11 to orchestrate this or nothing, but --

12 Q Go ahead, sir.

13 A I was what you call a "Phase I Inmate"  
14 which means that I'm out of my cell for 15 minutes a  
15 day, and I'm supposed to have belly chains on and  
16 leg shackles. I showered that way, with one hand  
17 free. Now, you tell me how was I let out with him  
18 and Oscar. How?

19 Q Did the guards let you out that day?

20 A Gonzalez let me out, but I'm a Phase I  
21 Inmate. If you check these things, they will tell  
22 you, I was a Phase I Inmate. I'm out for 15 minutes  
23 a day by myself, full restraints every time I leave.

24 Q Were you restrained in full restraints?

25 A I was in nothing. I was in nothing.

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

57

1 Q And that's why you believe that there was  
2 a conspiracy involving Officer Gonzalez?

3 A I don't believe; I know. Gonzalez was not  
4 a regular officer in 5C, -D.

5 Q What do you mean, sir?

6 A He came -- he was not a regular officer.  
7 He did not work that module on a regular basis. He  
8 came by my cell when he came on because CERT was out  
9 doing their little exercise or whatever they do. He  
10 came past my cell and said, "Are you the guy who  
11 robbed the Treasure Island?" And I said, "Yes,  
12 that's me." He told me -- he said, "Do you know who  
13 that guy is, I think in 9 cell?" I said, "No. Who  
14 is it?" He said, "That's Oscar. Do you know what  
15 he's in here for?" I said, "No, I don't know what  
16 he's in here for." He said, "He's a child molester,  
17 you know. Do you want to come out with him?" I  
18 said, "I wouldn't mind." He said, "All right. Stay  
19 out of trouble" -- and let me out with Oscar, and  
20 that's the real deal.

21 Q Was at this time, same day, Mr. Johnson --

22 A That same day, that same day. Also,  
23 there's a log that Miss Navarro had, and it showed  
24 how long I was housed in there with Oscar Irias, and  
25 they had what you called "Information Only" that

1 they keep in the computer. Don't take my word for  
2 it. They have a log here that have "for information  
3 only," and it will tell you everybody that I had a  
4 problem with or had an argument with or anything  
5 that they overheard. I never had a problem with  
6 Oscar, ever.

7 Q Okay.

8 A Until that day.

9 Q All right.

10 Let me ask you this: Now, subsequent to  
11 this incident where you threw him over the railing  
12 and you pled guilty to it, did you have an  
13 opportunity to get to Oscar Irias once again while  
14 you --

15 A They put me back in the holding cell with  
16 him. They put different officers, same conspiracy.  
17 They put me back in the holding cell. You show his  
18 blue card.

19 Do you have a copy of mine?

20 Q No, sir, I do not.

21 A You should, because Ms. Navarro had it,  
22 and I signed a waiver, so she should be able to give  
23 all of that to you.

24 Q Okay.

25 A My blue card -- and you can get that,

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

59

1 because Miss Navarro has it -- my blue card makes  
2 that look like -- it has "Use extreme caution."  
3 Those cards are blue; mine is written in red -- "Use  
4 extreme caution. Do not house with several inmates  
5 as well as Oscar Irias," and they put me in there  
6 and said, "We made a mistake."

7 Q Okay.

8 Now, the second time that you got to  
9 Oscar, where did that take place, sir?

10 A In a holding cell on the way to court or  
11 back from court or one of those holding tanks.

12 Q Do you have any idea or do you recall  
13 how -- between February 24th of '01 and the second  
14 time, what did you do -- you beat him up?

15 A Yes, ma'am, I attacked him the second  
16 time.

17 Q How much time passed between the first  
18 time you assaulted him and the second time you beat  
19 him up?

20 A I'm not really sure.

21 Q Was it less than a year?

22 A Oh, heck, I was only in the County six  
23 months.

24 Q It had to be within a time frame of a few  
25 months?

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

60

1 A Yes, ma'am.

2 Q They gave you access to Oscar, yet again?

3 A Yes, they did.

4 Q Was my client part of that whole scenario?

5 A No.

6 Q Was he anywhere around?

7 A No.

8 Q And did you make it perfectly clear to  
9 CCDC and those in authority that every time you got  
10 close to Oscar that you would beat him up?

11 A Not just Oscar, I wrote administration.  
12 This wasn't something that I was trying to glorify.  
13 No, I don't like child molesters, and I have  
14 problems -- disciplinary problems with a lot of  
15 people, but prison is a violent place; so, I deal  
16 with them the best way I know how, and that's with  
17 blood shed. However, I was trying to get out of The  
18 Hole -- I couldn't order commissary; I was in Phase  
19 I. I was trying to get out of those chains, so I  
20 wrote administration and told them, "Listen, I've  
21 had some problems with child molesters" -- I think  
22 there was four of them that I attacked, two of them  
23 that I'm convicted on, and I told them, "Please, to  
24 circumvent any further problems, keep me away from  
25 these individuals."

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

61

1 Q So, you were actually trying to stay out  
2 of this situation so you could gain somewhat --  
3 A Exactly.  
4 Q -- more freedom and restraint --  
5 A Exactly.  
6 Q -- inside this facility?  
7 A Exactly.  
8 Q And still, you were put in close proximity  
9 with Oscar and others, on at least these two  
10 occasions?  
11 A Yes, ma'am.  
12 Q Now, you mentioned a waiver.  
13 As a matter of fact, do you recall  
14 executing a waiver of conflict September 22nd of  
15 2003 indicating that Miss Navarro, your then  
16 attorney, could release all of her file to me?  
17 A Yes, ma'am.  
18 Q Miss Navarro defended you during this time  
19 frame?  
20 A That's correct.  
21 Q And then she subsequently became a deputy  
22 in my office, the Special Public Defender?  
23 A Yes, ma'am.  
24 Q That's why the waiver was necessary?  
25 A Right, right.

1           **MS. JACKSON:** That's all I have, your  
2 Honor. Thank you.

3  
4                           CROSS-EXAMINATION

5 **BY MR. STANTON:**

6           Q       Mr. Johnson, I'd like to begin my  
7 questions to you to talk about your criminal  
8 history.

9                   You are housed currently at Ely State  
10 Prison?

11           A       That's correct.

12           Q       And you made a statement about --

13           A       Why didn't you take me to trial? If you  
14 felt he was guilty --

15                   **MR. STANTON:** Your Honor, there's no  
16 question before the witness.

17                   **THE WITNESS:** -- why didn't you take me to  
18 trial? Why did you let me plead guilty --

19                   **MR. STANTON:** Your Honor --

20                   **THE WITNESS:** -- to attempted murder --

21                   **THE COURT:** Mr. Johnson.

22                   **THE WITNESS:** -- and conspiracy to commit  
23 murder --

24                   **THE COURT:** Mr. Johnson.

25                   **THE WITNESS:** -- and have me receive 30

1 years for a crime I told you I committed, and you  
2 had me in here --

3 **THE COURT:** I call a recess.

4 **THE WITNESS:** -- in this man's death  
5 penalty phase. Why didn't you take me to trial?

6 **THE BAILIFF:** Mr. Johnson, relax.

7 **THE WITNESS:** Why didn't you do that?

8 **THE BAILIFF:** Relax, Mr. Johnson.

9 **THE WITNESS:** Punk mother fucker. Little  
10 bitch ass.

11 **THE COURT:** Take the jury out.

12 **THE WITNESS:** Fuck that punk.

13 **THE BAILIFF:** Take the jury out.

14 **THE WITNESS:** Bitch. Take me to trial,  
15 bitch. That's what you should have did, you should  
16 have took me to trial, punk. Bring me in here like  
17 you don't know what's going on, racist mother  
18 fucker.

19 (Recess taken.)

20 (Jury present.)

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

23 **THE COURT:** Let the record reflect the  
24 presence of the parties, the attorneys and all  
25 members of the jury.

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

64



1 Let's bring the witness back on.

2 **MS. JACKSON:** Mr. Stanton, will you need  
3 this exhibit, QQ?

4 **MR. STANTON:** If I do, I will bring it up.  
5 You can go ahead and give it to the clerk.

6 **THE COURT:** Are you going to use the  
7 pointer? Get the pointer.

8 Proceed.

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

10 **BY MR. STANTON:**

11 Q Mr. Johnson, I want to go back to begin my  
12 cross-examination by discussing your criminal  
13 record.

14 Would it be a fair statement to say that  
15 you have admitted to the criminal activities that  
16 you ultimately were charged with in courts?

17 A Yeah; it's true.

18 Q You've pled guilty to all those offenses?

19 A That's true.

20 Q And you have a 1992 conviction out of the  
21 State of Tennessee for aggravated robbery?

22 A That's true.

23 Q Nineteen ninety-three, State of  
24 Tennessee --

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

1 object to anything that's more than ten years old  
2 pursuant to the law in this jurisdiction.

3 **MR. STANTON:** Well, it's relevant also as  
4 it was used as an aggravation for the habitual  
5 offender status in which the defendant ultimately  
6 was adjudicated on --

7 **THE COURT:** Well --

8 **MR. STANTON:** -- out of this event.

9 **THE COURT:** Well -- sustained, unless you  
10 can show that he was on probation or parole within  
11 ten years.

12 **MR. STANTON:** Your Honor, I'm going to ask  
13 that the Judgment of Conviction and the charging  
14 document in this case be admitted into evidence and  
15 ask the Court to take judicial notice as  
16 self-authenticating documents as to the Information  
17 and the Judgment of Conviction arising out of this  
18 incident. In those documents, the State sought  
19 habitual offender treatment against Mr. Johnson. He  
20 was adjudicated as a habitual offender.

21 **THE COURT:** All right. You can ask him  
22 that, Counsel, but, you know --

23 **BY MR. STANTON:**

24 Q So, that would have been 1993, aggravated  
25 robbery as well out of the state of Tennessee?

1           A       That's correct.

2           Q       Prior to you being sentenced in the case  
3 involving Oscar Irias, you were convicted here in  
4 Las Vegas 2001, two counts of Robbery With Use of a  
5 Deadly Weapon?

6           A       That's correct.

7           Q       You had one count of Attempted Murder With  
8 Deadly Weapon and then in a separate case, an  
9 additional Attempted Robbery With Use of a Deadly  
10 weapon; is that correct?

11          A       That's correct.

12          Q       At the time that you were sentenced on the  
13 robbery charges, do you recall what the sentence  
14 was?

15          A       No. A lot.

16          Q       A lot?

17          A       Over a hundred.

18               **MS. JACKSON:** Your Honor, I would object  
19 on the basis of relevance.

20               **THE COURT:** Excuse me.

21               **MS. JACKSON:** My objection was on the  
22 basis of relevancy as to what the sentence was on  
23 the robbery cases.

24               **MR. STANTON:** Your Honor, it goes to bias  
25 of this witness relative to his previous testimony

1 on direct. This witness testified that he pled  
2 guilty because he alone did that. The State is  
3 attempting to elicit facts that show a bias that  
4 would indicate that that's not a complete and  
5 accurate statement.

6 **THE COURT:** What does that question -- I  
7 don't see how that question you asked has to do with  
8 bias.

9 **MR. STANTON:** Because at the time that he  
10 pled in this case, he had no additional exposure to  
11 any other realistic prison time.

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

13 **THE COURT:** Yes.

14 **THE WITNESS:** I'm lost. I don't  
15 understand that.

16 **THE COURT:** In 2001, were you under a  
17 sentence?

18 **THE WITNESS:** Yes. I had already been  
19 sentenced on my initial cases --

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

21 **THE WITNESS:** -- that I caught on the  
22 street.

23 (Sidebar conference outside the presence  
24 of the court reporter.)

25 /////

1 BY MR. STANTON:

2 Q Prior to you being sentenced ultimately in  
3 this case, the Oscar Irias incident, you had been  
4 sentenced to a minimum of 64 years in the Nevada  
5 State Prison; is that about right?

6 A If that's what you say. I know it was a  
7 lot. I'm not sure how much it was.

8 Q At that time when you entered -- all my  
9 questions for the next period of time, Mr. Johnson,  
10 relates to the time frame when you entered --

11 A I'm not going to flip out, man. Just ask  
12 what you gon' ask. I'm cool.

13 Q I know. I just want to give a foundation  
14 for this.

15 At the time that you entered your pleas to  
16 the Oscar Irias incident, you had been sentenced to  
17 64 years, correct?

18 A Correct.

19 Q In addition, you were waiting to be  
20 sentenced in another court for another felony  
21 matter, correct?

22 A Assault.

23 Q And in addition, the State of California  
24 was seeking your extradition for multiple counts of  
25 robbery, correct?

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

69

1           A       That's correct.

2           Q       Do you recall what offenses, what crimes

3 you pled guilty to in the case involving Oscar

4 Irias?

5           A       Conspiracy to Commit Murder and Attempted

6 Murder.

7           Q       So, you pled to two felonies?

8           A       That's correct.

9           Q       And the conspiracy you pled to was that

10 you conspired with Donte Johnson, correct?

11          A       No.

12          Q       I understand what your testimony is today.

13          A       No.

14          Q       Would it surprise you --

15          A       That isn't what it says.

16          Q       That's not what it says?

17          A       Read what it says.

18          Q       Okay.

19          A       It says "conspiracy with another." Now,

20 if it doesn't say that, then you got a false

21 document. I know what I pled to. It says,

22 "Conspiracy with another," and "another" was

23 "Gonzalez." It doesn't say "Donte Johnson."

24               **THE COURT:** What's the case number?

25               **MR. STANTON:** The case number of that

1 offense, your Honor --

2           **THE WITNESS:** It reads in black and white,  
3 "conspiracy with another."

4           **MR. STANTON:** C174692.

5           May I approach, your Honor?

6           **THE WITNESS:** You're as big a criminal as  
7 I am.

8           **MS. JACKSON:** I need to see what he's  
9 showing the witness.

10           **THE COURT:** Right, right, right.

11           Let me have a look at it.

12           (Both counsel approached the bench.)

13           **MR. STANTON:** Your Honor, may I approach?

14           **THE COURT:** Yes.

15 **BY MR. STANTON:**

16           Q     Mr. Johnson, would you look on that  
17 document?

18           Do you recognize what that is? If you  
19 could read out loud line 21, that paragraph that  
20 starts "That Donte Johnson" --

21           A     Is this the plea agreement?

22           **THE COURT:** I think it's just the  
23 Information.

24           **THE WITNESS:** Is this the plea agreement?

25           **MR. STANTON:** Could you go ahead and read

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

71

1 that out loud?

2           **THE WITNESS:** The reason why I'm asking,  
3 Judge, is he said the plea agreement.

4           **THE COURT:** Did you sign one?

5           **THE WITNESS:** Yes, I signed one, and it  
6 said "conspiracy with another," and his name was  
7 stricken from it, because they told me they wanted  
8 to reserve the right to file a habitual criminal on  
9 me because I had two prior convictions of Conspiracy  
10 to Commit Murder and Attempted Murder. It had his  
11 name nowhere on it. This is not a plea agreement.

12           **THE COURT:** Hold on.

13           **MS. JACKSON:** Hold on a minute.

14           **THE WITNESS:** He said this was a plea  
15 agreement.

16           **MS. JACKSON:** He doesn't have it, but I  
17 do. Okay?

18           **THE WITNESS:** He wants me to read this so  
19 his name could be on the record, and this is not a  
20 plea agreement. That is not what I signed.

21           **MS. JACKSON:** Reggie, I got the plea  
22 agreement. Just calm down. I have it.

23           Actually, I have the original in my file.

24           **THE COURT:** All right. Here is the  
25 agreement. She can let you -- when he finishes,

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

72



1 she's going to get a chance to explain everything.

2 **THE WITNESS:** Okay.

3 You want me to read this, right?

4 **BY MR. STANTON:**

5 Q Right, just the first -- on line 21 which  
6 is the columns over the left-hand side, and could  
7 you read out loud beginning with that paragraph?

8 A "That Donte Johnson and Reginald Johnson,  
9 defendants above-named having committed the crimes  
10 of Conspiracy to Commit Murder, felony, and  
11 Attempted Murder, felony.

12 Q On or about February 2001?

13 A Right.

14 Q That's what you pled to?

15 A No.

16 Q You believe it's something different?

17 A It's not a plea agreement, man.

18 Q Okay.

19 A It's not a plea -- I know what that is,  
20 and that's not a plea agreement. That's a  
21 Complaint. I didn't sign a Complaint; I signed a  
22 plea agreement, and I think you know that, and his  
23 name isn't on the plea agreement. I want to produce  
24 the plea agreement --

25 **THE COURT:** All right. Hold on a minute.

1           **THE WITNESS:** -- for what I signed.

2           **THE COURT:** Hold on. Excuse me,  
3 Mr. Johnson. Your attorney is going to be able to  
4 let you explain and produce the plea agreement.

5           **THE WITNESS:** He asked me if that's what I  
6 signed, and I didn't sign that. That's a Complaint.  
7 You know I can't sign a Complaint.

8           **THE COURT:** Is that what the question was?

9           **THE WITNESS:** That's what he asked me.

10          **MR. STANTON:** I didn't ask him that.

11          **THE WITNESS:** Repeat it.

12          **MR. STANTON:** May I move on to my next  
13 question, your Honor?

14          **THE COURT:** Yes, go ahead.

15          **THE WITNESS:** That would be wise.

16 **BY MR. STANTON:**

17           Q     Mr. Johnson, I was the one that prosecuted  
18 you for the incident involving Oscar Irias?

19           A     Are you saying what?

20           Q     I said you made some statements before a  
21 recess that I was the one that prosecuted you for  
22 the incident involving Oscar Irias.

23                   Do you remember that?

24           A     I don't recall saying that, man.

25           Q     Pardon me?

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

74

1           A       I don't recall saying that.

2           Q       So, was I the one that prosecuted you for  
3 that offense?

4           A       No, I don't think you were. I don't  
5 really remember who it was, but I don't think it was  
6 you. I prosecuted myself. I pled guilty.

7           Q       Now, you indicated in your direct  
8 testimony that on the date Oscar Irias was thrown  
9 over the second tier at CCDC, you were the person  
10 that did that, correct?

11          A       That's correct.

12          Q       Is it your testimony today that you did  
13 that alone and not with anybody else?

14          A       That's correct.

15          Q       Now, sir, do you know what the penalty for  
16 perjury is for lying under oath?

17          A       No, I don't.

18          Q       It's ten years in the Nevada State Prison.  
19 That wouldn't make much deal to you, would  
20 it?

21                   **MS. JACKSON:** Your Honor, objection --

22                   **THE WITNESS:** That's stupid.

23                   **MS. JACKSON:** -- argumentative, that last  
24 question.

25                   **THE COURT:** Sustained.

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

75

1 **BY MR. STANTON:**

2 Q Do you have any other felony convictions  
3 as you sit here today that arose after the  
4 conviction involving Oscar Irias?

5 A Yeah. I don't remember how many. I have  
6 two for weapons possession, one for battery by a  
7 prisoner with a deadly weapon and -- I don't know,  
8 man. I've been in a lot of trouble, man.

9 **MR. STANTON:** Court's indulgence one  
10 moment.

11 No further questions, your Honor.

12 **THE COURT:** Miss Jackson.

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

14

15 REDIRECT EXAMINATION

16 **BY MS. JACKSON:**

17 Q Mr. Johnson, during the time frame  
18 February 24th of '01, the prosecutor asked you how  
19 much time you were serving.

20 You were serving a lot of time, weren't  
21 you? — —

22 A Yes, ma'am.

23 Q Now, listen to my question.

24 In terms of who was better off, my client  
25 in terms of his situation was far worse than yours?

**PLEADING  
CONTINUES  
IN NEXT  
VOLUME**

1 Q The inmates call it "The Bubble"?  
2 A Yes.  
3 Q Where is that on any of these photographs,  
4 if you can point that out to me?  
5 A It's not on there.  
6 Q Okay.  
7 Do you know from what angle, looking here,  
8 that these photographs were taken?  
9 A That's inside the 5-Charlie in the inner  
10 day room.  
11 Q Um-hmm.  
12 A Same -- they're all taken in the same  
13 location.  
14 Q Okay.  
15 And they depict the big -- there's what  
16 appears to be a column or pole in the middle of  
17 these photographs?  
18 A That's correct.  
19 Q Okay.  
20 And what is that?  
21 A I believe it's a support pole to support,  
22 maybe, beams. I don't know.  
23 Q Does that obstruct your view -- and your  
24 testimony is that on the date that this happened  
25 that you were inside The Bubble?

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

74

1           A       Are you asking me if that obstructed my  
2 view?

3           Q       No. I'm asking you where were you?

4           A       I was inside the module --

5           Q       You were inside the --

6           A       -- by the front door.

7           Q       Okay.

8           A       To the right of that pole.

9           Q       To the right of this pole (indicating)?

10           **MS. JACKSON:** Okay. Your Honor, I would  
11 move for the admission of QQ, RR and SS.

12           **MR. STANTON:** No objection.

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

14                 (Defense Exhibits QQ, RR, SS was admitted  
15 into evidence.)

16           **MS. JACKSON:** I'm done, sir.

17                 Thank you, your Honor.

18           **THE COURT:** I have a question.

19                 What happened to Mr. Irias?

20           **THE WITNESS:** Mr. Irias -- after he was  
21 thrown over, he crawled to his room, and then we got  
22 him medical attention.

23           **THE COURT:** So, what was wrong with him?

24           **THE WITNESS:** I believe he was bleeding  
25 from his elbow and just shaken up.

1           **THE COURT:** Just scraped and no injuries  
2 other than a scrape?

3           **THE WITNESS:** No.

4           **THE COURT:** All right.

5

6                           REDIRECT EXAMINATION

7           **MR. STANTON:** Can I have this marked next  
8 in order?

9 **BY MR. STANTON:**

10           Q     For the record, I've shown Defense Counsel  
11 Exhibit 254.

12                   Counsel showed you a series of incident  
13 reports involving Inmate Oscar Irias.

14                   Do you recognize that incident report in  
15 254?

16           A     Yes.

17           Q     Who authored that report?

18           A     Myself.

19           Q     And is that your report regarding the  
20 incident that you previously testified to?

21           A     Yes.

22           **MR. STANTON:** Move for 254 into evidence,  
23 your Honor.

24           **MS. JACKSON:** Submit it, your Honor.

25           **THE COURT:** What does that mean -- no



1 objections or objections?

2 **MS. JACKSON:** I think it's probably  
3 admissible under the circumstances.

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

5 (State's Exhibit 254 was admitted into  
6 evidence.)

7 **BY MR. STANTON:**

8 Q Is that the report that you prepared as a  
9 result of the incident that you observed on that  
10 day?

11 A Yes.

12 Q And did you prepare that report on that  
13 date of the incident?

14 A Yes.

15 **MR. STANTON:** Your Honor, at this time,  
16 I'd like to have Mr. Gonzalez, with the Court's  
17 permission, come down to the floor equipment here to  
18 point out some items on the photographs that Defense  
19 Counsel just admitted.

20 **THE COURT:** Can't he do it from there?  
21 Don't you guys have a pointer?

22 **MR. STANTON:** Sure. I just want to --

23 **THE COURT:** Where is the pointer?

24 **MR. STANTON:** Oh, the laser pointer? Yes,  
25 we do, your Honor.

1                   MR. DASKAS: It's the bottom button.

2 BY MR. STANTON:

3           Q       For the record, this is Defendant's  
4 Exhibit QQ.

5                   Can you see that okay, Officer?

6           A       Yes.

7           Q       Okay.

8                   What are we looking at there (indicating)?

9           A       That's just 5-Charlie, the outside, the  
10 outer day room (indicating), and that's the inner  
11 day room (indicating).

12          Q       And -- okay.

13                   And for the record, you're pointing to the  
14 left quarter when you say "inner day room"?

15          A       Correct.

16          Q       Do you see in this photograph any of the  
17 cells or rooms inside?

18          A       Yes.

19          Q       And where -- could you point out where  
20 they are and any notifiable item on the cells  
21 themselves?

22          A       Yes. Those are the rooms (indicating), 4,  
23 5, 6, 7.

24          Q       So, the large numbers other than 5C on the  
25 door to the front of the photograph, those are the

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

78

1 actual cells (indicating)?

2 A Correct.

3 Q And where is The Bubble in relationship to

4 the glass wall where the door 5C is located?

5 A It's back this way more (indicating).

6 Q Would you --

7 A Back, like, this way more (indicating).

8 Q To the right of that photograph?

9 A Right.

10 Q Now, where is the Bubble in relationship

11 to that actual wall? Is it at the same level as the

12 wall or is it closer? In other words, is The

13 Bubble -- when you're standing there, are you

14 standing on the other side of this glass

15 (indicating) as far as the distance from the inside

16 tier?

17 A The Bubble?

18 Q Yes.

19 A The Bubble is probably, I would say a few

20 more feet this way (indicating).

21 Q Okay. So, this is what you're looking

22 through (indicating) when you see the tier, correct?

23 A Correct.

24 Q And do any of these photographs depict the

25 tier on where Oscar Irias was being thrown over?

1           A     Yes. From this angle (indicating) -- you  
2 can't see it, but it's right about there  
3 (indicating) --

4           Q     Okay.

5           A     -- in that upper tier right in that area  
6 (indicating).

7           Q     This is not the angle from where you were  
8 standing; is that correct?

9           A     That's correct.

10          Q     So, this post in this exhibit, QQ  
11 (indicating), was not in your way when you were  
12 looking up to that tier?

13          A     No, it wasn't.

14          Q     This is the glass that you were looking  
15 through (indicating)?

16          A     Correct.

17                **MR. STANTON:** Nothing further.

18                **THE COURT:** Anything else?

19                **MS. JACKSON:** Court's indulgence.

20                Nothing further, your Honor. Thank you.

21                **THE COURT:** All right. Thank you very  
22 much, Officer.

23                Come and get your pointer. They tend to  
24 disappear.

25                **MR. DASKAS:** Yeah, they tend to disappear.

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

80

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

2           **MR. STANTON:** Court's indulgence one  
3 moment.

4           **THE COURT:** All right.

5           **MR. DASKAS:** Judge, can we approach on  
6 this next witness, please?

7           **THE COURT:** Yes.

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

10          **MR. DASKAS:** Your Honor, the State calls  
11 Jim Buczek, please.

12          **THE CLERK:** Sir, please remain standing  
13 and raise your right hand.

14           (Oath administered.)

15          **THE WITNESS:** Yes. Yes, ma'am, I do.

16          **THE CLERK:** Thank you. Please have a  
17 seat. State your full name spelling your last name  
18 for the record.

19          **THE WITNESS:** My name is James Buczek.  
20 It's B-U-C-Z-E-K.

21          **THE CLERK:** Thank you.

22  
23                       **JAMES BUCZEK,**

24           being called as a witness on behalf of the  
25 State, was first duly sworn and testified as

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

81

1 follows:

2

3

DIRECT EXAMINATION

4 BY MR. DASKAS:

5 Q Mr. Buczek, by whom are you employed?

6 A I'm employed by the Las Vegas Metropolitan  
7 Police Department as a detective.

8 Q How long have you been with Metro?

9 A I've been with Metro just over 16 years  
10 now.

11 Q Back in August of 1998, what was your  
12 assignment?

13 A I was assigned to the homicide section.

14 Q And who was your partner in August of  
15 1998?

16 A Detective Tom Thowsen.

17 Q You and Detective Thowsen were assigned  
18 the quadruple homicide that occurred at 4825 Terra  
19 Linda?

20 A Yes, that is correct.

21 Q At my request, at some point did you  
22 become familiar with the testimony from the trial of  
23 Donte Johnson of Sergeant Robert Honea, H-O-N-E-A?

24 A Yes, I did.

25 Q I just want to ask you a few questions

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

82

1 about Sergeant Honea's testimony.

2 First of all, who was Sergeant Honea  
3 employed with?

4 A He's employed with the Nevada Highway  
5 Patrol.

6 Q And was he employed with the Highway  
7 Patrol back on August 17th of 1998?

8 A Yes, he was.

9 Q Am I correct that the defendant was  
10 arrested at the Everman home on the 18th of August?

11 A Yes.

12 Q So, I want to talk to you about Sergeant  
13 Honea's involvement in this case from August 17th,  
14 the night before.

15 What is your understanding of Sergeant  
16 Honea's contact with Donte Johnson?

17 A Sergeant Honea had conducted a traffic  
18 stop on US-95 right adjacent to the Charleston exit  
19 ramp.

20 Q That car was stopped for speeding,  
21 correct?

22 A That is correct.

23 Q And did Sergeant Honea testify that he  
24 approached the car and saw a driver and passenger?

25 A Yes, he did.

1 Q Who did Sergeant Honea identify as the  
2 driver of that car?

3 A The person identified himself as Donte  
4 Fleck.

5 Q Did Sergeant Honea, in court, identify the  
6 defendant, Donte Johnson, as the driver of that car?

7 A Yes, he did.

8 Q And was there a passenger that Sergeant  
9 Honea identified?

10 A Yes, there was.

11 Q Who was that?

12 A That was Red or Terrell Young.

13 Q Did Sergeant Honea testify to what Donte  
14 Johnson and Terrell Young did after Sergeant Honea  
15 approached the car?

16 A Yes. They fled the vehicle, and there was  
17 a brief foot pursuit, and he lost them in the area.

18 Q I should ask you, I suppose, maybe the  
19 obvious question. Was Sergeant Honea in a marked  
20 patrol car?

21 A Yes, he was.

22 Q He was in uniform?

23 A Yes, that is correct.

24 Q Were either Donte Johnson or Terrell Young  
25 apprehended the night of the 17th?

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

84



1           A       No, they were not.

2           Q       Was a search performed of the car that  
3 Donte Johnson was driving?

4           A       Yes, there was by the sergeant himself.

5           Q       What, if anything, did Sergeant Honea  
6 locate in the car?

7           A       He located a short-barreled shotgun  
8 underneath, I believe it was the passenger's seat.

9           **MR. DASKAS:** Your Honor, with the Court's  
10 permission, I asked the bailiff to clear this  
11 weapon.

12           **THE WITNESS:** Thank you. I'll have to  
13 correct that to a short-barreled rifle. Excuse me.

14 **BY MR. DASKAS:**

15           Q       Is there an exhibit number on that item, a  
16 red sticker, if you will?

17           A       Yes, there is. It would be State's  
18 Exhibit 196.

19           Q       And is State's Proposed Exhibit 196  
20 consistent with the description provided by Sergeant  
21 Honea of the gun he found in the car driven by Donte  
22 Johnson on August 17th, 1998?

23           A       Yes, it is.

24           **MR. DASKAS:** Judge, I would move for its  
25 admission.

1           **MS. JACKSON:** No objection.

2           **THE COURT:** Admitted.

3           (State's Exhibit 196 was admitted into  
4 evidence.)

5 **BY MR. DASKAS:**

6           Q     Did Sergeant Honea testify, in fact, that  
7 that gun that's now been admitted was loaded when he  
8 found it in the car?

9           A     Yes, he did.

10          Q     And do you recall how many rounds were in  
11 the clip?

12          A     Twenty, I believe.

13          Q     In addition to the gun being loaded with  
14 ammunition, was there an additional clip found  
15 during the search of the car driven by Donte  
16 Johnson?

17          A     I believe there was, yes.

18          Q     And that additional clip also had  
19 ammunition in it as well, correct?

20          A     Correct.

21               **MR. DASKAS:** May I have the Court's  
22 indulgence please, under --

23               **THE COURT:** Yes.

24               **MR. DASKAS:** May I approach the witness,  
25 your Honor?

1                   **THE COURT:** Yes.

2   **BY MR. DASKAS:**

3           Q     Detective Buczek, let me hand you what's

4   been marked as State's Proposed Exhibit 197.

5                   First of all, what is in that baggie?

6           A     There are two magazines containing

7   cartridges.

8           Q     You used the term "magazines."

9                   Is that synonymous with my term when I say

10   "clip" or "clips"?

11          A     That's correct, yes.

12          Q     Are those magazines or clips and the

13   ammunition contained in those consistent with a

14   description provided by Sergeant Honea about what he

15   found in the car driven by Donte Johnson on

16   August 17th, 1998?

17          A     Yes, they are.

18          Q     And in fact, is that what Sergeant Honea

19   testified to in an earlier proceeding?

20          A     Yes, he did.

21                   **MR. DASKAS:** Judge, I move for the

22   admission of 197.

23                   **MS. JACKSON:** No objection, your Honor.

24                   **THE COURT:** Admitted.

25                   (State's Exhibit 197 was admitted into

1 evidence.)

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

3 **MS. JACKSON:** Your Honor, we don't have  
4 any cross on this area, but there's another area  
5 concerning the trial. We wanted to re-call  
6 Detective Buczek this afternoon, if he's available.

7 **THE COURT:** All right.

8 Sir, you are to return back this  
9 afternoon.

10 **THE WITNESS:** I don't have the ability to.  
11 I have to pick up my child from school.

12 **THE COURT:** What time do you pick her up  
13 from school?

14 **THE WITNESS:** I pick her up at -- I have  
15 to be there at 3:11 over by Anthem.

16 **THE COURT:** Can you do it Monday?

17 **MS. JACKSON:** Sure.

18 **THE COURT:** Come back Monday.

19 **MS. JACKSON:** We'll get you in and  
20 out, Detective.

21 **THE WITNESS:** Thank you.

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

23 **THE COURT:** What time do you want him here  
24 Monday?

25 **MS. JACKSON:** We're going to start at

1 9:00, your Honor.

2 **THE COURT:** Right.

3 **MS. JACKSON:** So, we'll get you in and  
4 out.

5 **THE COURT:** You want to take the recess  
6 now?

7 **MR. DASKAS:** Yes, sir.

8 **THE COURT:** We're going to take our lunch  
9 break. We'll come back at approximately  
10 1:00 o'clock.

11 During this break, you're admonished not  
12 to discuss this case with anyone. Don't read any  
13 newspaper articles, listen to any radio reports,  
14 television reports or any commentary or let anyone  
15 talk to you about the case, and we'll see you back  
16 here at 1:00 o'clock.

17 **THE BAILIFF:** All rise.

18 (Outside the presence of the jury.)

19 **MR. DASKAS:** Judge, can we address one  
20 matter before we take our break?

21 **THE COURT:** Yes.

22 **MR. DASKAS:** Miss Jackson, Mr. Whipple.

23 **MS. JACKSON:** Yes?

24 **MR. DASKAS:** As you know, Judge, we  
25 addressed the issue yesterday of which disciplinary

1 infraction reports were admissible. Miss Jackson  
2 and I agreed that in lieu of calling an officer who  
3 is prepared to testify about those reports, we would  
4 agree to the admission of certain infractions. I  
5 have removed from the documents that I have those  
6 that Miss Jackson had a concern with.

7 **THE COURT:** Okay.

8 **MR. DASKAS:** Again, it's my position they  
9 were admissible. I understand the Court's ruling or  
10 at least the stipulation, I should say, we entered.

11 **THE COURT:** All right.

12 **MR. DASKAS:** I'm going to ask Miss Jackson  
13 to look these over at the lunch hour, and then we  
14 would move to admit those when we return.

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

16 **MR. STANTON:** Logistically, your Honor,  
17 the ones that we -- photocopies so that they weren't  
18 highlighted --

19 **THE COURT:** Right.

20 **MR. STANTON:** -- was the Court going to do  
21 that?

22 **MS. JACKSON:** As a matter of fact, your  
23 Honor, I would join in that request. I  
24 inadvertently forgot to copy those.

25 **THE COURT:** Can you do that?

1           **THE CLERK:** Do what?  
2           **THE COURT:** Xerox those (indicating).  
3           **MS. JACKSON:** He wants to not have the  
4 originals because they're highlighted.  
5           **THE CLERK:** I will try to get it without  
6 it being black.  
7           **MS. JACKSON:** Thank you so much.  
8           **THE COURT:** Anything else?  
9           **MR. DASKAS:** No, sir.  
10          **THE COURT:** All right.  
11          We're in recess. See you guys after  
12 lunch.  
13          (A lunch recess was taken.)  
14          **THE BAILIFF:** All rise. Court is again in  
15 session. Please be seated and come to order.  
16          (Outside the presence of the jury.)  
17          **MS. JACKSON:** Good afternoon, your Honor.  
18 Your Honor, Mr. Daskas was kind enough to give me  
19 the stack of CCDC records that he intended to  
20 introduce on Donte Johnson over the lunch hour, and  
21 I and my colleagues have had a chance to go over  
22 them. Essentially, we would want the record to  
23 reflect even though this is a penalty hearing, and  
24 traditionally, hearsay has been admissible, we would  
25 object to these on the basis of the entire packet --

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

91

1 under the basis of Crawford v. Washington. I have  
2 that citation. I was handed this over the noon  
3 hour.

4           The Crawford case that comes down talks  
5 about the right of confrontation. I know you're  
6 familiar with it. It's our belief that Crawford may  
7 arguably expand the penalty hearings especially in  
8 this context where the issue is whether or not  
9 someone gets the death penalty, and we have items in  
10 here such as two or three references to him getting  
11 clothing that are too big, he gets what they call  
12 CAB'd or written up for getting a 3X and he's  
13 supposed to have a large. He's getting written up  
14 for having an extra suit. He's getting written up  
15 on another occasion he calls an officer a mother  
16 fucker, and oftentimes these documents are  
17 containing disrespect which we believe is the  
18 officer's opinion, and because we don't have a  
19 chance to confront and cross-examine these  
20 individuals, we believe that under Crawford, this  
21 entire packet would be a violation of his due  
22 process right and the sixth amendment right to  
23 counsel and his right to confront and cross-examine  
24 witnesses.

25           However, in the alternative, if the Court



1 feels inclined to let these in, we would at least  
2 want the opportunity to cross-examine the one  
3 Officer, Young, who has a kike in here that talks  
4 about he discovered a threatening letter that  
5 Mr. Johnson was writing and that he, my client,  
6 snatched it, tore it into small pieces; and  
7 therefore, we think that that is such a nature we  
8 would like to confront and cross-examine that  
9 officer in reference to that --

10 **THE COURT:** Is he around?

11 **MS. JACKSON:** Officer Young -- I don't  
12 know.

13 **MR. DASKAS:** And in responding --

14 **THE COURT:** Is he around?

15 **MR. DASKAS:** I can try to track him down.  
16 If I can respond firstly, Judge.

17 **THE COURT:** Go on.

18 **MR. DASKAS:** As the Court knows, we  
19 noticed the defendants twice about intending to  
20 introduce these records back in '99 and again in  
21 2004. As the Court knows, I redacted the infraction  
22 they objected to because they said they weren't  
23 prepared to address those. I did not have to do  
24 that, in my opinion, but I did.

25 **THE COURT:** Mr. Daskas, that's not the

1 issue now.

2           **MR. DASKAS:** It's the same thing.

3           **THE COURT:** The issue here is she's making  
4 an objection based on Crawford.

5           **MR. DASKAS:** I'll address that right now.

6           **THE COURT:** As I understand it, that's  
7 what she's -- her objection is mostly geared toward.

8           **MR. DASKAS:** Through Alex Gonzalez,  
9 Ms. Jackson admitted the exact type of information,  
10 the exact type of report for Oscar Irias. They were  
11 admitted as business records. These are business  
12 records. That is an exception to the hearsay rule,  
13 so Crawford is inappropriate. What's good for the  
14 goose is good for the gander. If they can do it, we  
15 can do it.

16           **THE COURT:** That is not true. How many  
17 times do I have to tell you that? You are the State  
18 of Nevada, and as prosecutors, you have different  
19 responsibilities than the defense lawyer, but that  
20 is not the issue anyway. That has nothing to do  
21 with whether or not -- the issue is whether or not  
22 Crawford applies to a penalty hearing. And first of  
23 all, is it testimonial; second, does it apply to a  
24 penalty hearing? Those are the only two issues.  
25 Everything else I don't think is of any import at

1 this point. Now, as I understand it, I haven't seen  
2 anything in Crawford. It applies to preliminary  
3 hearings; it applies to trials, and it applies to  
4 evidence that's testimonial. That's the only thing  
5 you look at. If it's testimony, you don't need any  
6 other analysis, but there is nothing -- is there  
7 anywhere in Crawford that says it applies to penalty  
8 hearings?

9           **MS. JACKSON:** Based upon my brief reading  
10 of this over the noon hour, I could not find  
11 anything specifically on point. Again, for the  
12 record, I talked to David Schieck, the head of our  
13 office who has been doing capital cases a lot longer  
14 than I have, and he advised me that I should make  
15 the record. I'm being very candid with the Court.  
16 I haven't sat down and studied or briefed this  
17 issue, and the record will so reflect. However, I  
18 don't think it's something that would be an issue on  
19 an IAC claim; however, I do want the record to say  
20 we raised it, and my response to Mr. Schieck was  
21 this was a penalty hearing. I understand hearsay is  
22 admissible, but in an overabundance of caution, I  
23 wanted the record to reflect that.

24           **THE COURT:** All right.

25           **MR. DASKAS:** Judge, may I address the

1 Crawford issue specifically?

2 **THE COURT:** Yes.

3 **MR. DASKAS:** Crawford -- you're right,  
4 Judge, applies to testimonial evidence, and what  
5 that is defined in Crawford is statements or  
6 evidence intended to be introduced at trial. That's  
7 the definition in Crawford, and I'm paraphrasing.  
8 These reports are created for use at the Clark  
9 County Detention Center so that they can safely  
10 house inmates. They're created for the members of  
11 the jail so they know who is a high-risk inmate.  
12 So, these are non-testimonial. Separate and apart  
13 from that, Judge, there's a separate hearsay  
14 exception for business records. They used it on  
15 cross-examination, and these are admissible as  
16 business records. They're non-testimonial. They  
17 are admissible, Judge.

18 **MS. JACKSON:** Your Honor, just briefly.  
19 Certainly they're testimonial. I've been trying  
20 cases since '84, and anyone who is facing any kind  
21 of substantial charges, as counsel is well aware,  
22 can expect, if they are in the Detention Center for  
23 any period of time, that these reports come in.

24 **THE COURT:** I know, but are the jailers  
25 taking those reports just for the purpose of

1 prosecution, because in 99 percent of the cases,  
2 they never even come in. But anyway, be that as it  
3 may, I don't think Crawford -- or at least there's  
4 no -- in Crawford, it doesn't say that you can't use  
5 hearsay in a penalty hearing for sentencing  
6 purposes, and of course, we had a bifurcated penalty  
7 hearing, and of course, at this juncture, it's just  
8 to decide upon the sentencing, and hearsay has  
9 always been allowable. And of course, Crawford  
10 didn't say it applied to this, it stated it applied  
11 to preliminary hearings and trials, even though your  
12 argument has merit, but the case law just doesn't  
13 support it at this point; so, the Court is going to  
14 deny the motion.

15 **MS. JACKSON:** As to the one specific one  
16 regarding the threatening letters?

17 **THE COURT:** Yeah. You can subpoena them  
18 or whatever. I don't know where he is. Subpoena  
19 him.

20 **MR. DASKAS:** Okay.

21 **MS. JACKSON:** Okay.

22 **MR. DASKAS:** Judge, I would just ask to  
23 have this packet marked as one exhibit. It consist  
24 of several documents of infractions at the Clark  
25 County Detention Center, and I'd ask to have this

1 marked and admitted as next in order, Judge.

2 **THE COURT:** All right.

3 **MS. JACKSON:** We would have the objection  
4 previously noted, your Honor.

5 **THE CLERK:** Two fifty-six.

6 (State's Exhibit 256 was admitted into  
7 evidence.)

8 **MS. JACKSON:** That would be all that we  
9 have outside the jury's presence, your Honor.

10 **THE COURT:** You better try to find -- when  
11 are you going to contact the officer? I'll give you  
12 a couple of minutes to do that.

13 **MR. WHIPPLE:** Your Honor, with the Court's  
14 permission, I'll walk into the hall and do a brief  
15 phone call.

16 **THE COURT:** Go on.

17 We'll be in recess for a couple of  
18 minutes.

19 **THE BAILIFF:** All rise.

20 (Recess taken.)

21 **THE BAILIFF:** All rise. Court is again in  
22 session. Be seated and come to order.

23 (Outside the presence of the jury.)

24 **THE COURT:** Who's on next.

25 **MR. DASKAS:** Judge, we have the victim

1 impact testimony, and that is the conclusion of our  
2 case.

3 **THE COURT:** All right.

4 Are you ready?

5 **MR. DASKAS:** We're ready as soon as the  
6 jury is here, Judge.

7 (Jury present.)

8

9 VICTIM IMPACT STATEMENTS

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

12 **THE COURT:** Let the record reflect the  
13 presence of all the parties, all two attorneys and  
14 all the members of the jury.

15 Call your next witness.

16 **MR. DASKAS:** Judge, the State calls  
17 Juanita Aguilar.

18 **THE CLERK:** Please raise your right hand.  
19 (Oath administered.)

20 **THE WITNESS:** I do.

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

24 **THE WITNESS:** My name is Juanita Aguilar,  
25 J-U-A-N-I-T-A, A-G-U-I-L-A-R.

1           **THE CLERK:** Thank you.

2  
3                           **JUANITA AGUILAR,**

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

7  
8                           **DIRECT EXAMINATION**

9 **BY MR. DASKAS:**

10           Q     You are the mother of Peter Talamentez?

11           A     Yes.

12                   **MR. DASKAS:** Judge, for the record, I've  
13 shown Defense Counsel proposed 255, and if there's  
14 no objection to its admission, I would move to admit  
15 it.

16                   **MR. WHIPPLE:** No objection.

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

18                   (State's Exhibit 255 was admitted into  
19 evidence.)

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

21 **BY MR. DASKAS:**

22           Q     I'm going to display for the members of  
23 the jury, Exhibit 255.

24                   Can you tell me who is in that photograph,  
25 please (indicating)?

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

100



1           A       It's Pete and myself and my other son  
2 Daniel in the blue shirt.

3           Q       Other than Pete and Daniel, do you have  
4 any other children?

5           A       Yes. I have an older son named Robert.

6           Q       Peter was how old at the time of his  
7 death?

8           A       Seventeen.

9           Q       Where is he in relation to your other  
10 sons, the oldest, the youngest, the middle?

11          A       No; he's the youngest. They're all three  
12 years apart in age.

13          Q       Tell me why this photograph is special to  
14 you.

15          A       We went to go see Splash, and it's really  
16 special, because it was almost near Pete's birthday.

17          Q       I want to talk to you a little bit about  
18 Pete and his goals and his dreams.

19                   Can you tell us a little bit about what  
20 Pete wanted to do with his life?

21          A       Pete was young. He could have done a  
22 number of things that he wanted. He was very smart,  
23 very caring. He could have done just about anything  
24 he wanted to, but at 17, you don't really think too  
25 much about what you want to be in the future because

1 you're still out having fun.

2 Q Can you tell us a little bit about how his  
3 death has affected your other sons?

4 A They carry a lot of anger and hostility  
5 around, a lot of guilt. It's very difficult for  
6 them to hear anything about this case or anything  
7 pertaining to the case, because they just get upset,  
8 and it's caused them to be a little bit unstable.  
9 It hurt them a lot. It hurt them a lot. That was  
10 the baby, and it hurt them a lot.

11 Q Let me ask the same question of you.  
12 How has his murder affected you  
13 personally?

14 A I've never been able to go back to work  
15 after his death. I'm on medication. I suffer from  
16 severe depression. There's times when I can't get  
17 out of my bed or come out of my house for two or  
18 three weeks, because I don't want to see no one. I  
19 just can't function. There's not one day I don't  
20 think about my baby.

21 Q It's been nearly seven years since he was  
22 killed. Is it any easier for you today than it was  
23 seven years ago?

24 A No, not at all. No. It will never be any  
25 easier, never. The holidays aren't the same --

1 nothing is -- nothing. Everything in my life has  
2 changed because of his death -- everything.

3 Q Without telling me what you want the  
4 sentence to be in this case, is there anything else  
5 you would like this jury to know about your son,  
6 Peter Talamentez?

7 A I know Pete wanted to be alive, to be with  
8 his brothers and his nieces and nephews that he  
9 never got a chance to see, and to be the first one  
10 to call me on Mother's Day, like he always used to.

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

12 THE COURT: Anything?

13 MR. WHIPPLE: Yes, your Honor.

14

15 CROSS-EXAMINATION

16 BY MR. WHIPPLE:

17 Q I'm sorry. I want to ask you just a few  
18 questions.

19 You had two other sons in addition to  
20 Pete?

21 A Yes, I do.

22 Q Are they still here in Las Vegas?

23 A No. One is in California and one is here  
24 in Las Vegas.

25 Q Okay.

1           How long did you live here in Las Vegas?

2           A     I just moved here two years ago. I was in  
3           Ventura County before that.

4           Q     Who was Pete living with when he was out  
5           here?

6           A     Pete lived with his dad. We were  
7           separated, since then divorced, and he lived out  
8           here with his dad.

9           Q     Where did the other boys live at the time?

10          A     Shortly after Pete -- well, before Pete  
11          was killed, both of my other sons moved out here as  
12          well, because they were very close and they all  
13          wanted to be together.

14          Q     So, the other boys were living here in  
15          Las Vegas at the time?

16          A     Yes.

17                **MR. WHIPPLE:** Thank you.

18                Nothing further, your Honor.

19                **THE COURT:** Anything else?

20                **MR. DASKAS:** No, sir.

21                **THE COURT:** All right, ma'am. You're  
22          excused.

23                **THE WITNESS:** Thank you.

24                **THE COURT:** Watch your step.

25                Who is next?

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

104

1           **MR. DASKAS:** Marie Biddle, please.  
2           **THE CLERK:** Raise your right hand.  
3           (Oath administered.)  
4           **THE WITNESS:** I do.  
5           **THE CLERK:** Thank you. Please have a  
6 seat. State your full name spelling your last name  
7 for the record.

8           **THE WITNESS:** Marie Biddle, the last name  
9 is spelled B, as in boy, I-D-D, as in David, L-E.

10          **THE CLERK:** Thank you.

11  
12                       **MARIE BIDDLE,**  
13           being called as a witness on behalf of the  
14 State, was first duly sworn and testified as  
15 follows:

16  
17                       **DIRECT EXAMINATION**

18 **BY MR. DASKAS:**

19       Q       Jeff Biddle is your son?

20       A       Yes.

21       Q       How old was Jeff at the time he was  
22 killed?

23       A       Nineteen.

24       Q       Do you have other children?

25       A       Yes, I do.

1 Q How many other children?  
2 A One.  
3 Q What is that child's name, and how old is  
4 he or she?  
5 A How old is he now?  
6 Q Yes.  
7 A Greg is Jeff's brother, and he just turned  
8 28 the end of November.  
9 Q So, Greg is Jeff's older brother?  
10 A That's right. They're just 22 months  
11 apart.  
12 Q Let me ask you about that, first of all.  
13 Tell us how Jeff's murder has affected  
14 your son Greg.  
15 A I think it has -- it has left him with  
16 anger, a lot of anger. He's very upset that I'm  
17 going to court, but I told him I'm there to  
18 represent Jeff, and it's okay.  
19 Q So, because of Greg's anger, he hasn't  
20 been able to attend the courtroom proceedings?  
21 A He prefers not to. He doesn't want to  
22 hear this horrible thing about his brother.  
23 Q Let me ask you about you and the rest of  
24 your family members.  
25 How has this crime impacted you and any

1 other family members?

2           A       It's been very devastating. I find myself  
3 not wanting to leave the house. I usually stay  
4 home. My trip out for the week is usually just to  
5 go to the market and come back home. I don't care  
6 to go shopping. All the holidays are ruined. I  
7 think if it weren't for Greg, I wouldn't ever  
8 celebrate anything again. And I come from a big  
9 family, and I have several sisters and a brother  
10 back East, and I used to take the kids home every  
11 summer since they were babies; so, my family back  
12 there is -- they're feeling it as much as I am.

13           Q       How about Jeff's father? How has the  
14 crime impacted Jeff's father?

15           A       I don't think he can deal with it. He  
16 keeps trying to leave town and just get away from  
17 the whole thing and not -- he loved Jeff very much,  
18 but it's really hard on him. Recently, I was going  
19 through some greeting cards, going through Jeff's  
20 things, and there was one birthday card to his dad,  
21 and he said, "Dad, happy birthday. What would you  
22 ever do without me?" It's just been very, very  
23 difficult. Since Jeff's death, my husband and I  
24 have separated, and Greg is about to go to Phoenix  
25 to go back to school.

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

107

1           **MR. DASKAS:** Judge, I'm showing Defense  
2 Counsel Proposed Exhibit 242. I think there's no  
3 objection to its admission. I would move to admit  
4 it.

5           **MS. JACKSON:** That's correct, your Honor.

6           **THE COURT:** Admitted.

7           (State's Exhibit 242 was admitted into  
8 evidence.)

9 **BY MR. DASKAS:**

10           Q     Ma'am, let me display for the jury what's  
11 been marked as or admitted as 242.

12                     Tell us about that photograph.

13           A     Pardon me?

14           Q     Tell us about that photograph.

15           A     I think it shows my great love for Jeff  
16 and that he cared very much for me too. We have a  
17 very special bond, and he was just such a wonderful,  
18 delightful person that he just --

19           Q     Can you tell us when that photograph was  
20 taken?

21           A     That was taken on my birthday about seven  
22 years ago.

23           Q     Seven years ago. That's how long it's  
24 been since he was killed.

25                     Is it any easier for you today than it was



1 when you found out?

2 A No. It gets harder every day, and I find  
3 myself sitting at the breakfast table and asking God  
4 to just give me strength to get through each day. I  
5 take one day at a time.

6 Q What kind of things did Jeff like to do?

7 A He was always a very good sportsman, and  
8 he started out -- I tried to start the kids out with  
9 a very solid upbringing with sports and summer camp.  
10 He liked to play soccer; he liked football, and he  
11 liked to go skiing and snowboarding, and he was a  
12 wonderful artist -- was a wonderful cartoon artist.

13 Q What were some of Jeff's goals?

14 A Well, he started -- when he was about  
15 ninth grade, we went to the police station in Idaho.  
16 He wanted to talk to the chief of police. He wanted  
17 to be a policeman, and of course, the chief said,  
18 "Well, Jeff, you're too young." So, one of the  
19 first things Jeff did when he came here -- we moved  
20 here in '97 -- his dad took him for a security  
21 check, and he got a job with the Green Valley as a  
22 security officer. And he also -- he wanted to go in  
23 the Air Force and be a fighter pilot, and when he  
24 was in high school, he was selected to go to the  
25 presidential classroom in Washington, and when he

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

109

1 came back from there, he really wanted to be an FBI  
2 agent. He was so frustrated, because he was just so  
3 young, and he had to be 21 to do a lot of these  
4 things. He just wouldn't wait to be 21.

5 Q Similar question I'll ask of you.

6 Without telling me what you want to see  
7 happen in this case, is there anything else you  
8 would like this jury to know about your son Jeff  
9 Biddle?

10 A He always tried to help people. He would  
11 do everything, and he had a wonderful gentleness  
12 about him with people and animals, and he just cared  
13 so much about everything. And you know, he wanted  
14 to, at some point in his life, get married and have  
15 a family, and so all of those goals will never be  
16 realized.

17 MR. DASKAS: We'll pass the witness,  
18 Judge.

19 CROSS-EXAMINATION

20 BY MR. WHIPPLE:

21 Q Hi, Mrs. Biddle.

22 A Hi.

23 Q Did you spend some time in Idaho before  
24 you came to Las Vegas?

25 A Yes.

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

110

1 Q Where at in Idaho?

2 A At Sun Valley.

3 Q How old was Jeff when he came to  
4 Las Vegas?

5 A Eighteen.

6 Q So, he had been here about a year?

7 A Yes.

8 Q You came as a family, I take it?

9 A Yes. We originally lived in Los Angeles,  
10 then we moved to Sun Valley in 1988, and then we  
11 came here in '96 and rented for about six months,  
12 and then March 1st of '97 we bought a house. Jeff  
13 had been living and working in Sun Valley, and then  
14 I begged him to come home for Thanksgiving, and  
15 that's how he was here. And then they rented their  
16 little house April 23rd, and he lived with us until  
17 April 23rd.

18 Q So, he had only been out of the house for  
19 a short period of time, from April till August?

20 A Yes.

21 Q Did he attend any high school here?

22 A No. He attended high school in Idaho, in  
23 Northern Idaho.

24 Q Okay.

25 Was he expecting -- was he planning to go

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

111

1 back? Once he moved out of the house, was he  
2 planning to go back to Idaho or was he planning to  
3 stay in Las Vegas at the time he moved out?

4 A Well, he just -- his dad thought it would  
5 be a good idea, you know, if he could be on his own,  
6 so -- and that's what happened, but he did plan to  
7 work and stay here, but Las Vegas wasn't one of his  
8 favorite places because it was just so hot and he  
9 just hated the sun, and he was really an outdoors  
10 person.

11 Q Sure.

12 A And he loved Idaho, so that's why we  
13 buried him in Idaho. He's up there buried beside  
14 his grandfather.

15 MR. WHIPPLE: Thank you very much.

16 THE COURT: Anything else?

17 MR. DASKAS: No.

18 THE COURT: All right.  
19 You're excused, ma'am.  
20 Who's next?

21 MR. DASKAS: Sandy Viau, please.

22 THE CLERK: Raise your right hand.  
23 (Oath administered.)

24 THE WITNESS: Yes, I do.

25 THE CLERK: Thank you. Please have a

1 seat. State your full name spelling your last name  
2 for the record.

3 **THE WITNESS:** My name is Sandy Viau. My  
4 last name is spelled V-I-A-U.

5 **THE CLERK:** Thank you.

6

7 **SANDY VIAU,**

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

11

12 **DIRECT EXAMINATION**

13 **BY MR. DASKAS:**

14 Q Tracey Gorringer is your son?

15 A Yes, he is.

16 **MR. DASKAS:** Judge, I've shown Defense  
17 Counsel 243, and I would move for its admission.

18 **THE COURT:** Yes.

19 No objections?

20 **MS. JACKSON:** No, your Honor, no  
21 objections.

22 **THE COURT:** All right. It will be  
23 admitted.

24 (State's Exhibit 243 was admitted into  
25 evidence.)

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

113

1 BY MR. DASKAS:

2 Q Tell us about that photograph.

3 A This photo was taken the end of May of  
4 1998. That's our extended family (indicating). You  
5 see myself, my husband Mark; Destiny and Brittany  
6 are the two girls. On the back row starting at the  
7 left is Shawn, my stepson; Spencer, my oldest boy;  
8 "Little Nick" is who we call him, he's my husband's  
9 oldest boy, Little Nick is my youngest son; and  
10 Tracey is on the end.

11 Q In terms of age or birth order, where was  
12 Tracey in relation to everybody else?

13 A Tracey was the middle of my three boys.

14 Q He was how old when he was killed?

15 A He was 20.

16 Q Tell us about some of Tracey's goals and  
17 dreams.

18 A Well, Tracey was born on March 8th of  
19 1978, and they were all about two-and-a-half years  
20 apart. We -- I was divorced in 1981, and I didn't  
21 remarry Mark until 1996; so, I raised my sons all by  
22 myself. Their father really had no involvement in  
23 their lives. I tried to get them as involved in  
24 sports as I possibly could being a single parent.  
25 He was a great athlete. He played baseball, he

1 snowboarded, he skied, he water-skied, he roller  
2 bladed, he rode motorcycles.

3 Q You mention that he snowboarded, and I  
4 think you provided us with a photograph of your son  
5 snowboarding; am I right?

6 A He used to ski and water-ski with a doctor  
7 that took a lot of photos of him, and I have a lot  
8 of photos of him involved in the sports, which was  
9 great.

10 Q Tell us about the impact his murder has  
11 had on all of his brothers and sisters.

12 A Since I had just remarried in '96, I was  
13 just starting to form relationships with the  
14 extended family, and when this happened to Tracey, I  
15 basically shut off anything to do with any of my  
16 stepchildren. It's hard for me to form any kind of  
17 an intimate bond with anyone. Spencer, my oldest --  
18 at the time of the murder, Spencer had moved here, I  
19 think in January of '98, Tracey had moved here, I  
20 think in May, and Nicholas was with me; so, we were  
21 all together as a family. Spencer now has a hard  
22 time coming back. He moved back. We were from  
23 Idaho, and he has since moved back to Idaho. He's  
24 come here once. I think he attended one of the  
25 trials and he did come for Thanksgiving last year,

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

115

1 but it's basically very hard for him to come here.  
2 My son Nick -- which was the fourth  
3 roommate in the house -- and he just happened to  
4 have been out of town when this happened -- I know  
5 he never got to go back home. When we flew him back  
6 into town, his home was a murder scene. He never  
7 got to go get any of his stuff out of the house. My  
8 husband and my oldest boy went and got both of the  
9 kids' belongings out of the house. Nick has a hard  
10 time dealing with life. He's got a lot of anger.  
11 He can't focus. I think he tries to hide a lot of  
12 stuff.

13 I think Mark's children -- I don't know  
14 how this has affected them, because I basically shut  
15 off from them.

16 Q What about you?

17 A It's hurt me professionally. I know  
18 before this happened I had entertained thoughts of  
19 going back to school, and I don't have any goals  
20 now. You know, it's one day at a time. You try to  
21 get up, and you try to live through one day.

22 Q You mentioned goals.

23 What were some of Tracey's goals?

24 A Tracey was a great cook. He started  
25 cooking when he was about ten years old. We used to



1 call him Shay Tray, and he would make crepes. He  
2 worked at Jesse's Restaurant in Sun Valley for  
3 probably three or four years as a prep cook. When  
4 he moved here, he was entertaining thoughts of  
5 culinary school. When I was going through some of  
6 his stuff, I found a resume that he had made, I'm  
7 sure for his school project, and his goal there was  
8 to become an electrical engineer and have his own  
9 company.

10 **MR. DASKAS:** Judge, I've shown Defense  
11 Counsel Proposed Exhibit 240. I believe there's no  
12 objection to that either.

13 **MS. JACKSON:** That's correct, your Honor.

14 **THE COURT:** Admitted.

15 (State's Exhibit 240 was admitted into  
16 evidence.)

17 **BY MR. DASKAS:**

18 Q Let me show you No. 240. You mentioned  
19 snow boarding and other sports he liked to do. Tell  
20 us about that photograph (indicating).

21 A In trying to support my kids, we moved  
22 around a lot. Whenever I had the opportunity to  
23 grow professionally, we moved, and I think that was  
24 taken probably in Northern Idaho. We lived in Couer  
25 d'Alene for a while and he skied Schweitzer Basin.

1 Every winter we would ski and snowboard, and every  
2 summer we would water-ski and play softball and go  
3 bike riding.

4 Q What do you miss most about Tracey?

5 A He was angelic. You know, raising three  
6 boys, there's always two fighting, and my two that  
7 fought were always the oldest and the youngest, and  
8 I always had Tracey being the intermediary and  
9 trying to break things up, and I miss that. I just  
10 miss him saying, "Hi, mom."

11 MR. DASKAS: We'll pass the witness,  
12 Judge.

13 THE COURT: Cross?

14 MR. WHIPPLE: Thank you, your Honor.

15

16 CROSS-EXAMINATION

17 BY MR. WHIPPLE:

18 Q Ma'am, I'm sorry, how do you pronounce  
19 your last name again?

20 A Vee-oh (phonetic).

21 Q Miss Viau, just a couple of questions.

22 Did Tracey know Jeff from Idaho? Is  
23 that --

24 A I believe they did, because we all lived  
25 in Sun Valley -- well, we lived in Ketchum, which is

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

118

1 right next to Sun Valley. We moved there in 1987,  
2 and I think we moved to Couer d'Alene in 1990.

3 Q How is it that Tracey decided to move to  
4 Las Vegas? I take it you're still living in Idaho?

5 A No. I moved to Las Vegas in 1994, and  
6 actually, Tracey moved here with me at that time.  
7 He attended Green Valley High School for a while.  
8 He didn't like Las Vegas. My oldest boy was living  
9 back in Sun Valley, and I let Tracey go live back in  
10 Sun Valley with him, and Tracey attended Wood River  
11 High School and graduated from there up in Sun  
12 Valley.

13 Q At some point he came back to be closer  
14 with yourself here in Vegas?

15 A After my oldest boy moved here in January  
16 of '98, Tracey felt that he should come and join the  
17 family now that we had -- they lived their whole  
18 lives without a father, and Mark is a great guy and  
19 he wanted to get to know him.

20 Q So, he moved back in May of '98?

21 A Yes.

22 Q So, he had only been here a short period  
23 of time as well?

24 A Yes.

25 Q Did he move right into the house with you?

1           A       He moved into my house, and then when one  
2 of the roommates from the boys' house moved out,  
3 then he moved in there.

4           Q       How long had he been living there at the  
5 time, do you remember?

6           A       Two months, maybe.

7           **MR. WHIPPLE:** Thank you.

8                   Nothing further, your Honor.

9           **MR. DASKAS:** Nothing else, Judge.

10          **THE COURT:** All right. You're excused,  
11 ma'am.

12                   Call your next witness.

13          **MR. DASKAS:** Jennifer Mowen.

14          **THE BAILIFF:** Remain standing and face the  
15 clerk.

16                   (Oath administered.)

17          **THE WITNESS:** Yes.

18          **THE CLERK:** Thank you. Please have a  
19 seat. State your full name spelling your last name  
20 for the record.

21                  **THE WITNESS:** Jennifer Mowen, M-O-W-E-N.

22                  **THE CLERK:** I'm sorry?

23                  **THE WITNESS:** M-O-W-E-N.

24                  **THE CLERK:** Thank you.

25          /////

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

120

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JENNIFER MOWEN,

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

DIRECT EXAMINATION

**BY MR. DASKAS:**

Q Matt Mowen was your big brother?

A Yes, still is.

Q How old were you when he was killed?

A I was 15.

Q We've heard, of course, from some mothers of the other victims. You have a different perspective. That was your brother. Tell us about how his loss has affected you.

A I looked up to my brother for everything. No matter what I did, I always looked up to him, and he always gave me the comfort and the strength, and he always protected me and watched out over me. I got my driver's permit two weeks before he died, and I was excited because I was going to get my license, and he was going to teach me to drive. I trusted in his opinion on everything.

Q What kind of things would you and Matt do together?

1           A       We did not really do a whole lot together  
2 being we were four years apart. We would always  
3 have family dinners, and Christmas of '97, he was  
4 still living at home, and he actually told us that  
5 this is going to be the year that we start a family  
6 night every weekend and told me how important a  
7 family truly is.

8           Q       Do you recall that in August of '98 at the  
9 time of his murder that he had returned to Las Vegas  
10 for a specific reason?

11          A       Yes.

12          Q       Why?

13          A       He came back home because my mom -- her  
14 cancer came back, so he rushed home to be back with  
15 her.

16               **MR. DASKAS:** Judge, I'd move for the  
17 admission of 244 which I've shown to Defense  
18 Counsel.

19               **MS. JACKSON:** No objection.

20               **THE COURT:** Admitted.

21               (State's Exhibit 244 was admitted into  
22 evidence.)

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

24 **BY MR. DASKAS:**

25          Q       Jennifer, let me show you and the members

1 of the jury No. 244.

2 Who is in that photograph?

3 A That's my mom and my brother.

4 Q How has this crime impacted your mom?

5 A Very severely. It's impacted all of us.  
6 We're all extremely depressed. My mom has a lot of  
7 guilt and a lot of regret and wished that she could  
8 have brought her baby home and protected him. Every  
9 day she lives with guilt and anger because she  
10 wasn't there to protect him.

11 Q It's been seven years since Matt was  
12 killed?

13 A Six-and-a-half, almost seven, yeah.

14 Q Right.

15 Any easier for you today than it was back  
16 when it happened?

17 A It never gets easier. It never gets  
18 easier. In fact, it gets harder. You just have to  
19 learn to deal with it, and I have to grow up without  
20 a brother.

21 Q What do you miss most about your brother?

22 A Every time he would walk in the door, he  
23 would just light up the room, and he gave great  
24 hugs. Being 6'3, he would just give you a great big  
25 bear hug every time. He was so friendly, everybody

1 loved him. He has impacted so many people's lives.  
2 His friends still don't stop coming around. To this  
3 day, they're still around because he's impacted so  
4 many people.

5 **MR. DASKAS:** We'll pass the witness,  
6 Judge.

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

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

9 **THE COURT:** All right. You're excused.  
10 Thank you.

11 Call your next witness.

12 **MR. DASKAS:** David Mowen, please.

13 **THE BAILIFF:** Watch your step. Remain  
14 standing and face the clerk.

15 (Oath administered.)

16 **THE WITNESS:** I do.

17 **THE CLERK:** Thank you. Please have a  
18 seat. State your full name spelling your last name  
19 for the record.

20 **THE WITNESS:** David Mowen, D-A-V-I-D,  
21 M-O-W-E-N.

22 **THE CLERK:** Thank you.

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DAVID MOWEN,

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

DIRECT EXAMINATION

**BY MR. DASKAS:**

Q You are Matt Mowen's father?

A Yes, I am.

Q Tell us a little bit about Matt.

A If I just told you a little bit, I would be here for several days. He was quite a young man. Like my daughter said, he affected a lot of people. He was one of those special individuals that, for whatever reason, he had that ability to connect with many, many different types of people. Everybody seemed to love him. Over 800 people at his funeral, and most of them couldn't make it because they were in college or working or what have you. It had been that way since he was born, since he was about a year-and-a-half, two years old. He had that special ability, quite a young man.

Q Jennifer, of course, is your daughter who just testified?

A Yes, she is, my beautiful little baby.

1 I'm very proud of her. Yes.

2 Q And Matt was your only son?

3 A Yes.

4 Q Can you put into words, or try to, what it  
5 means to lose your only son?

6 A In answer to your question, there are no  
7 words. I could not, after six-and-a-half years,  
8 come up with any words that would truly describe the  
9 pain. I lost my dad in '93, five years before this,  
10 and was very close with him. It's extremely  
11 difficult. It took me about six months to kind of  
12 come back around. It was my son who welcomed me  
13 back to the family finally when I got my head kind  
14 of back in the game, I guess, and to lose your son  
15 in comparison to an adult parent is incredibly  
16 difficult. Every single day of your life, it goes  
17 on and on. I've had six-and-a-half years to live  
18 this and think about this stuff. It just hit me the  
19 other day what it's like. I remember the movie  
20 Ground Hog Day with Bill Murray, and he had the same  
21 day over and over, and I realize that's my life.  
22 It's the same pain, the same misery, the same  
23 angeriness that you have every single day. It  
24 doesn't get better. Some days I manage it a little  
25 bit better. The pain is still there. I've had to

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

126

1 go on a lot of medication, 16 tablets of these and  
2 16 of these and five of those to get through a day  
3 anymore. I was never on pills before. That's what  
4 it takes sometimes just to get me through a day.

5 **MR. DASKAS:** Judge, I'd move for the  
6 admission of 242. I believe there's no objection.

7 **MS. JACKSON:** That's correct, your Honor.

8 **THE COURT:** All right.

9 Admitted.

10 (State's Exhibit 242 was previously  
11 admitted into evidence.)

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

13 **BY MR. DASKAS:**

14 Q Tell us about that photograph  
15 (indicating).

16 A It's June of '97. Matt, in his senior  
17 year, had a health challenge. He had some -- we  
18 were told by doctors some heart problems, and they  
19 couldn't find out what it was, and it wasn't until  
20 February of his senior year that we realize it was  
21 some medication he had taken for a little bit of  
22 light acne that affected his heart, and it was like  
23 one day in February, he just made a miraculous  
24 turnaround. He didn't get any credits for his  
25 senior year, and we had quite a special

1 relationship. We would jazz each other and play  
2 games on each other and -- just quite special. He  
3 came to me and said, "Dad, if I graduate on time,  
4 can I have a bunch of friends over and have a keg?"  
5 And I'm not a drinking person, and I was already  
6 told by the schools it ain't going to happen. I  
7 said, "Sure, Matt." Friday before they were all  
8 supposed to graduate, he was a half a credit short.  
9 The schools were proud of him, we were extremely  
10 proud of him, and he just sat at that desk and  
11 listened to everybody at that school talk about how  
12 great he was and everything that you came so close,  
13 you got to finish it up this summer, and he just  
14 listened. And they got done talking, and he said,  
15 "I've got a test scheduled tomorrow morning with a  
16 teacher, and if I pass that, I get my credits." He  
17 aced it, went through it, graduated on Tuesday, and  
18 I had to eat my words. I'm sure damn glad that I  
19 did. Quite a special time. Like I said, I'm not --  
20 don't approve of that kind of thing, but we watched  
21 over the kids, and we all had a great time.

22 Q And that's the graduation present?

23 A Yep. He never had a chance to graduate  
24 from any college or anything. We received his  
25 enrollment package for the education, but we buried

1 him.

2 Q What do you miss most about Matt?

3 A I guess I miss life. It's been 2,451  
4 days -- just one day at a time. All the things we  
5 used to do together as a family, the things that him  
6 and I had done special together doesn't mean  
7 anything. From the time Matt was very young, he had  
8 a natural ability with sports. He loved it from the  
9 age a year and a half throwing a little sandbag. I  
10 either refereed or coached him in basketball,  
11 football, baseball, soccer, wrestling, taekwondo --  
12 you name it, he did it. We did it together. There  
13 was a football in the back of his car. I still  
14 haven't been able to pick it up. It's just a nice  
15 car. All these things we used to do a lot together,  
16 kind of guy things, and I'm able to do some things  
17 with Jenny and with my wife, but it's different with  
18 a guy. I lost my son, lost my best friend. I hope  
19 like hell you never have to go through this pain.

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

21

22 CROSS-EXAMINATION

23 BY MR. WHIPPLE:

24 Q Mr. Mowen, just a couple of questions.

25 A Yes, sir.

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

129

1           Q     The pictures of Matt there, what school  
2 did he go to?

3           A     Matthew went to Green Valley through his  
4 senior year. Like I said, he didn't get any  
5 credits. He enrolled in the -- I can't even think  
6 of what it's called right now, but like an  
7 alternative school.

8           Q     Sure.

9           A     He had ordered classes from Utah and I  
10 think another state that was accredited where he  
11 could quickly gain those credits that he needed and  
12 has a high school diploma from Clark County schools,  
13 not a GED.

14          Q     Was he living with you when he was going  
15 through high school for the most part?

16          A     Matt moved out six months before he was  
17 killed. He moved out basically on his birthday,  
18 February. He had been out of the house six months.  
19 He moved into an apartment with a couple of friends  
20 that some of them weren't taking care of their share  
21 of responsibilities. A couple of friends had this  
22 house down there, and he decided to move down there.  
23 He spent about six weeks down at that house out of  
24 the 12 weeks he was there. We know what it's like  
25 to work hard and often, my wife and I, so we allowed

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

130

1 him to go on the road and enjoy some music for a few  
2 months, and I'm so glad I did. He had a fabulous  
3 time.

4 Q From the time of the homicides from the  
5 time he graduated, how much time was in between?

6 A From the time that he died until the  
7 homicide?

8 Q No, no, no, I'm sorry. From the time that  
9 he graduated from high school until the time of the  
10 homicides.

11 A Matthew graduated in June of '97. He was  
12 murdered on August 14th of '98. He had gone to ITT  
13 for a short period of time, and when he had to go up  
14 there and correct the professor on how to do some  
15 geometry, he had had enough of it and decided to go  
16 elsewhere. He wanted to go into medicine.

17 Q Okay.

18 A And now my daughter has carried on his  
19 desires of being able to be a doctor. She's a  
20 massage therapist, and that's what he was going to  
21 start with.

22 Q Were you the owner of the house at Terra  
23 Linda? Who owned the house at Terra Linda?

24 A I have absolutely no idea. I own my house  
25 that we all lived in. He was invited down there to

1 come down there and live down there for a short  
2 period of time.

3 Q Do you know how long he had been living  
4 there?

5 A He was in his apartment approximately  
6 three months. He had been out of the house about  
7 six months; so, he was there approximately three  
8 months.

9 Q Okay.

10 A Out of that time, about six to eight weeks  
11 of that time he was back East enjoying his music.  
12 He spent about a week and a half or two weeks with  
13 all of our family, my wife and I. We have been  
14 married since 1976, and have known each other since  
15 '69. We have a lot of family and friends together,  
16 and he had the opportunity to go back and visit a  
17 lot of his friends before he was killed.

18 MR. WHIPPLE: I understand. Thank you  
19 very much.

20 THE COURT: Anything else?

21 MR. DASKAS: Nothing else, Judge.

22 THE COURT: All right.

23 You're excused, sir.

24 THE WITNESS: Thank you.

25 THE COURT: Who is next?



1           **MR. DASKAS:** Judge, with the exception of  
2 admitting the records that we discussed at the  
3 break, the State rests.

4           **THE COURT:** All right.

5           Approach the bench, Counsel.

6           (Sidebar conference outside the presence  
7 of the court reporter.)

8           **THE COURT:** We're going to take a  
9 ten-minute recess. You're admonished not to read  
10 any newspaper articles, listen to any radio reports,  
11 television reports or discuss this case with anyone.

12           Ten minutes.

13           **THE BAILIFF:** All rise.

14           (Recess taken.)

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

17           **THE COURT:** All right.

18           (Outside the presence of the jury.)

19           **MR. DASKAS:** Judge, just real quick before  
20 they step in.

21           For the record, there was an issue about  
22 number of victim impact witnesses and duration. For  
23 the record, we called a total of five victim impact  
24 witnesses, and I think the shortest one was up there  
25 for --

1           **MR. STANTON:** Started at 1:50 and  
2 concluded at 2:38.

3           **MR. DASKAS:** So, less than an hour,  
4 certainly for five witnesses. We just make that for  
5 the record, Judge.

6           **THE COURT:** Of course, the Court didn't  
7 give you a specific time limit.

8           **MR. DASKAS:** No, I understand, Judge.

9           **THE COURT:** All right.  
10 Anything else?

11           **MR. DASKAS:** No.

12           **MS. JACKSON:** No, sir.

13           **THE COURT:** All right.

14           (Jury present.)

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

17           **THE COURT:** Let the record reflect the  
18 presence of all the parties, the attorneys and all  
19 members of the jury.

20           Miss Jackson, call your witness.

21  
22           DEFENSE'S EVIDENCE IN MITIGATION

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

24           Your Honor, the defense calls Miss Keonna  
25 Bryant to the stand, please.

1 I'm sorry, it's Keonna Atkins. She got  
2 married last year. That's my mistake.

3 **THE CLERK:** Please remain standing and  
4 raise your right hand.

5 (Oath administered.)

6 **THE WITNESS:** Yes, I do.

7 **THE CLERK:** Thank you. Please have a  
8 seat. State your full name spelling your first and  
9 last name for the record.

10 **THE WITNESS:** First name is Keonna,  
11 K-E-O-N-N-A; last name is A-T-K-I-N-S, Atkins.

12 **THE CLERK:** Thank you.

13

14 **KEONNA ATKINS,**

15 being recalled as a witness on behalf of  
16 the Defendant, was resworn and testified as follows:

17

18 **DIRECT EXAMINATION**

19 **BY MS. JACKSON:**

20 Q Good afternoon, Miss Atkins.

21 A Good afternoon.

22 Q You had a chance to testify earlier this  
23 week or last week, I forget which, but you had a  
24 chance to address this jury, correct?

25 A Correct.

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

135

1           Q     You had a chance to share with them in a  
2 very specific way what it was like growing up in  
3 your neighborhood?

4           A     Yes.

5           Q     You gave us some details about John in  
6 your life in the shack and things of that nature?

7           A     Yes, I did.

8           Q     However, there were some things that I  
9 had -- you left out at that time because it wasn't  
10 appropriate to talk about those things.

11          A     Uh-huh.

12          Q     In particular, the issue of gangs.

13          A     Right.

14          Q     We want to talk about that this afternoon.  
15 Okay?

16          A     Okay.

17          Q     In the neighborhood that you grew up in,  
18 what is your first memory of being aware that there  
19 were gangs in or about your neighborhood?

20          A     We were living on 43rd and Ascot.

21          Q     So, this would be after Miss Edwards came  
22 and retrieved you kids from the foster care?

23          A     Right.

24          Q     Alrighty.

25                About how old were you then?

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

136

1           A       Maybe about 11, 12.

2           Q       So, that would make John about how old?

3           A       He was about eight or nine.

4           Q       What were your first observations or what  
5 was it that first made you aware that there was such  
6 a thing as gangs in your neighborhood?

7           A       Well, there were a lot of guys who used to  
8 hang out in the neighborhood, some right around the  
9 corner. We lived right on the corner on 43rd and  
10 Ascot. It was like the second house on the corner,  
11 so the gangs right around the corner were Bloods,  
12 and then we also had Crips that stayed around the  
13 other side of the corners.

14          Q       Okay.

15                   So, you had the Crips and Bloods.

16                   Are they friends with each other or what  
17 is their relationship with each other?

18          A       They don't get along with each other at  
19 all.

20          Q       They're rival gangs?

21          A       Right.

22          Q       And as a result of their being rival  
23 gangs, was there violence in connection with that  
24 rivalry?

25          A       All the time. We usually would see, like,

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

137

1 guys running down the street with guns in their  
2 hands, you know, going to shootouts and stuff like  
3 that.

4 Q What, if anything, did your grandmother  
5 do? What efforts did she take to try to shield you  
6 kids from that type of situation, the guns and so  
7 forth?

8 A Basically, she would just make us stay in  
9 the yard and not have get-togethers like with family  
10 members, you know, to keep us sheltered. She would  
11 keep the family together either in the yard or in  
12 the backyard with, you know, some type of function,  
13 you know, to keep us on a positive note.

14 Q Now, there would, of course, be times when  
15 you would have to go to the market or to school.  
16 Describe for the jury what the typical go to the  
17 store to pick up a candy bar or something -- what  
18 was that like?

19 A It was -- it was horrible, actually,  
20 because, umm, it was always guys hanging out at the  
21 store, you know, shooting dice, gambling, you know  
22 that nature -- also harassing us.

23 Q What type of harassment?

24 A One guy, umm -- one guy told me -- I don't  
25 know if I can say this.

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

138

1 Q Just take your -- would you like some  
2 water?  
3 A No. One guy told me that I would suck his  
4 penis the way my mom did.  
5 Q This is the type of things you had to be  
6 subjected to when you went to the store?  
7 A Every day.  
8 Q Okay.  
9 This was over on 43rd -- on 43rd and  
10 Ascot?  
11 A Right.  
12 Q Okay.  
13 Now, during that time, was John old enough  
14 to have any pressure from the gangs?  
15 A No. He was too young at that time.  
16 Q Did he know about the type of things that  
17 you just said?  
18 A It was -- it was all around us. I mean,  
19 it's hard to not know it when they're out there.  
20 You know, they're shouting it out. Basically, if he  
21 was walking with me, I'm sure he heard a lot of the  
22 stuff they said to us.  
23 Q Did there come a time when you moved from  
24 the 43rd and Ascot address?  
25 A Yes.

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

139

1 Q Where did you move to?

2 A Sixtieth and Normandie.

3 Q Okay.

4 And during that time frame, was John still  
5 with the family?

6 A Yes, he was.

7 Q About how old would John be at that time?

8 A I'd say about 13, maybe 14.

9 Q And during that time frame, did John begin  
10 to try to take a different role within the family to  
11 try to do something to shield you folks from -- you  
12 girls in particular from the type of comments that  
13 you just --

14 A Right.

15 Q -- told us here?

16 What would he do?

17 A A lot of times he would stand up for us,  
18 you know, because he was the only male that we, you  
19 know, really had around us. We had my grandfather,  
20 but he worked a lot and he drank a lot, and a lot of  
21 times he would be fussing at us, so we really just  
22 had each other, you know.

23 Q Now, John is your cousin?

24 A Right.

25 Q Your first cousin?

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

140



1 A Right.

2 Q Is the relationship that you had growing  
3 up with John, was it a cousin relationship or was it  
4 closer?

5 A He was like my little brother.

6 Q Was that because you guys all grew up  
7 together?

8 A We're all very close. We're all -- I  
9 mean, we're cousins, but you know the relationships  
10 that we have together are so close, you know, you  
11 can't find one without the other, and that's  
12 normally how we are.

13 Q There came a time you said when John began  
14 to take on a role of protector of the family.

15 Would that be a fair characterization?

16 A Yes.

17 Q Especially of you girls?

18 A Right.

19 Q Did you have a particular problem over on  
20 60th and Normandie with a high ranking gang member?

21 A His name was Baby Sonny.

22 Q Baby Sonny.

23 What type of problem did you have with  
24 Baby Sonny?

25 A He used to -- sometimes if I walked to the

1 store, him and a friend, they would come running  
2 toward me, you know, and I would have to run around  
3 cars to get away from them. And sometimes I would  
4 be in the store, and one of them would grab me, and  
5 the other one would grab my butt and one grabbed my  
6 arm, you know. It was just hard, because I -- like  
7 right now, I can't imagine my daughter going through  
8 something like that.

9 Q And this was a regular occurrence?

10 A Yes.

11 Q Did there come a time when you witnessed  
12 Baby Sonny do something to Donte?

13 A Yeah. It was one morning I saw John down  
14 the street, him and my cousin Cornelius, and I saw  
15 Baby Sonny standing with him, and the next thing I  
16 knew, he socked him and kind of dazed him a little  
17 bit. So, my first reaction was to run out the house  
18 and, you know, try and help him, but, you know, by  
19 the time I came down the street, he was, like, you  
20 know, "Don't worry about it. I got this, you know.  
21 Don't trip." So, basically, he wanted us to back  
22 away from the situation so that we wouldn't get  
23 involved.

24 Q Did there come a time when you found out  
25 that there was a threat made against you that caused

1 John to do something in reference to the gang?

2 A Yeah.

3 Q What happened, Keonna? Just take your  
4 time.

5 A My cousin told me that the reason why he  
6 became a gang member is because they threatened to  
7 rape me.

8 Q Who threatened to rape you?

9 A Baby Sonny.

10 Q This is the same Baby Sonny who had been  
11 charging toward you when he would see you in the  
12 streets?

13 A Yeah.

14 Q This is the same Baby Sonny who grabbed  
15 your private parts in public, him and his friends?

16 A Yeah.

17 Q Did you believe that they would rape you?

18 A Yeah.

19 Q Did John have reason to believe they would  
20 rape you?

21 A Yes.

22 Q After John -- did there come a time when  
23 you found out that John had been what we call "beat  
24 up" or "jumped" by the gang?

25 A Yes.

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

143

1 Q Do you know the name of that gang?  
2 A I call them "Six Deuce Brims."  
3 Q After John was -- became part of the gang,  
4 was he allowed to stay at home and just be part of  
5 the family?  
6 A A lot of times when they used to come  
7 over, they come early in the morning around time for  
8 us to get ready for school.  
9 Q They show up for John?  
10 A Yeah.  
11 Q What would happen?  
12 A Basically, he would get dressed like he  
13 was, you know, on his way to school, and they say  
14 they were dropping him off, but I don't think they  
15 were taking him to school.  
16 Q How often -- did you begin to see John  
17 less and less during this time?  
18 A Sometimes he wouldn't come home, so that's  
19 how we begin to know something was going on.  
20 Q Do you remember an incident when you told  
21 me that John was -- one of his friends -- after he  
22 became a member of this gang, that John would try to  
23 keep this away from you all?  
24 A Right.  
25 Q Can you tell the jury about the incident

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

144

1 where one of John's friend's brought it to your  
2 home, so to speak? Can you tell the jury about  
3 that?

4       A       There was a time when we were all at home,  
5 and John had came to see us. We hadn't seen him for  
6 a little while, so he came in and gave everybody  
7 their hugs and their kisses, and, you know, we were  
8 telling him how much we missed him and everything,  
9 and we wanted him to stay home, but you know, he was  
10 with his friends and everything. So, you know, we  
11 were like, "Well, hurry up and get back home." So,  
12 they were leaving out the door, and as they were  
13 getting toward the end of the driveway, the police  
14 swooped up on them, and the first thing John did was  
15 he just stopped, you know. He stood there and he  
16 just waited for them to do whatever they wanted to  
17 do, but one of his friends -- he ran back in the  
18 house and, you know, I'm, like, "What are you  
19 doing?" you know. "This is not where you're  
20 supposed to be. This is our house." So, I pushed  
21 him out, and then the police came, and he made all  
22 of us come out the house.

23       Q       Okay.

24               What was John's reaction to his friend  
25 running into the home where his family lived?

1           A       He just looked at him and said, "Man,  
2 what's wrong with you? What are you doing? That's  
3 my family."

4           Q       After John joined the gang and was one of  
5 them, did you still have to run from Baby Sonny?

6           A       It didn't stop. It never stopped, and it  
7 became more than just Baby Sonny. It was too many.

8           Q       Okay.

9                   Did John's joining the gang provide you  
10 some protection?

11          A       Yeah, it did.

12          Q       What about when you guys moved into an  
13 area -- you moved away from the Six Deuce Brims  
14 neighborhood, you moved into a neighborhood that was  
15 another gang neighborhood. Do you recall that?

16          A       That would be sixty-eighth and Broadway.

17          Q       Okay. And that was -- tell me what type  
18 of neighborhood was -- what gang hung out in that  
19 area?

20          A       I think they were 66 and 67 they called  
21 themselves.

22          Q       And were they a gang that was friendly to  
23 John's group?

24          A       They were Crips, so....

25          Q       And that means that John is a Blood?

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

146

1           A     Right.

2           Q     Excuse me.

3                   Was there -- come a time when John was  
4 attempting to visit with you all and something  
5 happened?

6           A     Him and my cousin had came over one night  
7 and they were standing outside and everybody was  
8 inside, and when we came out to see him, he said,  
9 "Well, I have to go." We're looking at him like,  
10 you know, why, you just got here. He said, "Well,  
11 you know, the guys just came by here and they told  
12 me today they will give me a pass but next time I  
13 come through here, they're not going to give me a  
14 pass."

15          Q     What does that mean that they were going  
16 to give him a pass?

17          A     Basically, they would let him sit there,  
18 you know, for the time being and visit with the  
19 family but he needed to make it quick and make sure  
20 he doesn't come back again.

21          Q     Okay.

22                   And based upon your growing up in South  
23 Central L.A. when a gang member gives another one a  
24 pass, that means there will be no consequences this  
25 time?

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

147

1           A     Right.

2           Q     What would normally happen if a Blood is  
3 caught in a Crip neighborhood?

4           A     He wouldn't make it out.

5           Q     After that confrontation, what was the  
6 frequency or any visits at all from John?

7           A     We would have to find him. We would have  
8 to go to his neighborhood and look for him.

9           Q     And did you guys care enough about him to  
10 do that?

11          A     Yes, we did.

12          Q     You know, you talked about in your earlier  
13 testimony that your grandmother sacrificed some  
14 things for the family and saved up money so that you  
15 could be allowed to go to a different school?

16          A     Right.

17          Q     Where was that school located?

18          A     It was in Hawthorne, California.

19          Q     And was that outside of your neighborhood?

20          A     Yes, it was. I had to be bussed.

21          Q     Okay.

22                Do you think that your experiences in  
23 going to that different school and having a chance  
24 to venture outside of your neighborhoods, do you  
25 think that has helped you to make good choices in

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

148



1 your life?

2 A Yes, it has.

3 Q How has it affected you taking care of  
4 your siblings? You testified that you took one baby  
5 straight from the hospital and another one there and  
6 another one there.

7 A Basically, I just look at it as taking  
8 care of my own, you know. My grandmother, she did  
9 it for us, and if we don't look out for each other,  
10 who will.

11 Q Miss Atkins, you realize that your little  
12 cousin sits here convicted of four counts of capital  
13 murder, and you've known that for a long time now?

14 A Yeah.

15 Q Have you maintained a relationship with  
16 John?

17 A Yeah, I try to as much as possible.

18 Q Have the actions that John engaged in  
19 caused you to love him any less?

20 A That's my cousin. How can you love him  
21 less? He's family.

22 Q And you were taught to stand by family no  
23 matter what?

24 A No matter what.

25 Q Will you maintain a relationship and

1 support John and make sure that he knows -- your  
2 children know who he is if he's allowed to live in  
3 prison?

4 A We talk about him a lot, and they always  
5 ask me is he coming home, and they always ask me why  
6 he is where he is, and it's still hard to tell my  
7 kids why my cousin is locked up. It's not something  
8 you want to tell your kids. That's not something  
9 you want to go through.

10 Q I understand. I understand.

11 A It's not something you want your kids to  
12 grow up and have in their mind, you know.

13 Q Sure. Sure.

14 A It's very hard.

15 Q Do you maintain telephone and written  
16 communication contact with your cousin?

17 A We write. We write.

18 Q And even maybe on occasion, maybe get out  
19 to Ely to see him maybe once or twice a year to see  
20 him every now and then?

21 A Well, we can't visit him in the prison  
22 because it's too far. It's hard to come out here  
23 and visit him like that.

24 Q I understand.

25 When is the last time you saw him before

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

150

1 seeing him this time?

2 A I haven't seen him in about -- maybe two  
3 or three years.

4 Q The last time you were here for court?

5 A Right.

6 MS. JACKSON: That's all I have, your  
7 Honor.

8 THE COURT: Counsel, cross-examination?

9 MR. STANTON: Yes, please, briefly, your  
10 Honor.

11

12 CROSS-EXAMINATION

13 BY MR. STANTON:

14 Q I'm just a little bit confused,  
15 Miss Atkins, if you can clear up for me.

16 You said there was a time period where  
17 your cousin -- you couldn't find him and he was  
18 living in another neighborhood?

19 A Right. We were on 68th and Broadway.

20 Q Okay.

21 A And he was in our old neighborhood.

22 Q That would be the Ascot or the Normandie?

23 A Normandie.

24 Q Normandie.

25 You were under the impression that your

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

151

1 cousin couldn't come back to your neighborhood?

2 A He couldn't.

3 Q That was because of the gang activity?

4 A It was because of the gang activity.

5 Q Okay.

6 What year was that, do you recall?

7 A It was maybe about '94, '95. I'm not  
8 sure.

9 Q Okay.

10 Were you aware that your cousin had been  
11 arrested and convicted for an armed robbery?

12 A No.

13 **MR. STANTON:** Thank you.

14 Nothing further.

15 **MS. JACKSON:** Nothing further, your Honor.  
16 Thank you.

17 **THE COURT:** All right. You're excused.  
18 Call your next witness.

19 **MR. WHIPPLE:** Johnnisha Zamora.

20 **THE BAILIFF:** Remain standing and face the  
21 clerk.

22 **THE COURT:** You're already sworn in.

23 /////

24 /////

25 /////

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

152

1                                    JOHNNISHA ZAMORA,  
2                    being called as a witness on behalf of the  
3 Defendant, was previously duly sworn and testified  
4 as follows:

5                                    DIRECT EXAMINATION

6 **BY MR. WHIPPLE:**

7            Q        Johnnisha, we had an opportunity to talk  
8 at lunch today?

9            A        Yes.

10          Q        And you told me about all the things that  
11 are going through your mind right now?

12          A        Yes.

13          Q        This has been a very difficult time for  
14 you?

15          A        Yes.

16          Q        Did you start a brand new job?

17          A        Yes.

18          Q        Why don't you tell the folks about what  
19 job you just started.

20          A        MV transportation.

21          Q        What you do and the fact that you're on  
22 probation?

23          A        Transporting elderly people back and forth  
24 to the doctor and to the market.

25          Q        And you just started your job, so --

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

153

1           A     Yes, and I'm still on probation.  
2           Q     So, how long have you been on your job?  
3           A     A month.  
4           Q     So, that's something in the back of your  
5 mind?  
6           A     Yes.  
7           Q     And obviously, you have some children?  
8           A     Yes.  
9           Q     How many children do you have?  
10          A     I have three. I have one here with me,  
11 and I also have a three-year-old and a  
12 five-year-old.  
13          Q     And where is your three-year-old and your  
14 five-year-old?  
15          A     They're with my mother-in-law.  
16          Q     So, you're obviously thinking about them  
17 as well?  
18          A     Yes.  
19          Q     And then the other thing, of course, is  
20 why we're here.  
21          A     My brother.  
22          Q     You mentioned to me about how difficult it  
23 is knowing where to look.  
24                 Do you remember that?  
25          A     Yes.

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

154

1 Q What did you mean by that? Why don't you  
2 tell the folks what you meant.

3 A I don't know. When I see my brother, I  
4 smile because I'm happy to see him, and then I see  
5 the family, and I -- I don't know what to say to  
6 them. I don't know if I should look at you guys.  
7 It's just a lot going on in my head.

8 Q Is it fair to say you're very scared and  
9 nervous, Johnnisha?

10 A Yes.

11 Q But you're here -- why are you here?

12 A To support my brother.

13 Q I want to talk a little bit about the  
14 issue of gangs that's come up in this phase of the  
15 proceeding, and I want to bring to your attention  
16 the name of Big Deko.

17 You've heard that name before?

18 A Yes.

19 Q Who is Big Deko?

20 A It would be the person who always come and  
21 get my brother.

22 Q If you would, please, just describe him  
23 physically, the size and what he looks like?

24 A He was about 6'3. He weighed about 250.

25 Q And when do you remember first hearing the

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

155

1 name "Deko"? When did you remember first hearing  
2 that name?

3 A Him knocking on my door and me asking him  
4 who he is and him asking for my brother.

5 Q How did he act when he knocked on your  
6 door?

7 A He just asked for my brother.

8 Q Now, I want to stop right there and back  
9 up a little bit in time, okay, as to why he was even  
10 at your door. Okay?

11 A Um-hmm.

12 Q Do you feel comfortable with that?

13 A A little.

14 Q Now, this is when you were at 60th and  
15 Normandie when this occurred?

16 A Yes.

17 Q What was the environment like at the 60th  
18 and Normandie?

19 A It was a lot of traffic.

20 Q Tell us, if you would, just about the gang  
21 environment, I mean, how it affected you and what  
22 are the things that you saw?

23 A Guys hanging out, seeing them going back  
24 when we were going to school, seeing them hanging  
25 out, hang in front of the house.

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

156



1 Q How did they treat you back before Big  
2 Deko came into the picture? How did they treat you  
3 and how did they treat your brother?

4 A They treated us -- they picked on him;  
5 they picked on me.

6 Q So, before Big Deko came in the picture,  
7 if you would, just kind of describe what it was like  
8 living at 60th and Normandie.

9 A It was hard. It was hard. You had to  
10 worry about them messing with you, messing with my  
11 brother and hanging in front of our house. They  
12 won't move. They would be telling to, and they act  
13 like they own everything.

14 Q How did they treat you girls?

15 A Like we was just a piece of meat, like we  
16 was just something -- just there.

17 Q And after Big Deko came in and started --  
18 tell us, when Big Deko came to your house, what  
19 would happen to your brother?

20 A He would leave.

21 Q And what time of day would Big Deko show  
22 up?

23 A Days, nights, whenever he felt like it.

24 Q And what would happen when he showed up?

25 A My brother would put his shoes on and then

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

157

1 leave.

2 Q Every time?

3 A Every time.

4 Q And how long would your brother be gone  
5 for?

6 A Sometimes days, sometimes weeks.

7 Q Now, after Big Deko came into the picture,  
8 did you notice that the people around your  
9 neighborhood treat you any differently?

10 A It stopped a little.

11 Q When you say "it stopped," how would you  
12 describe to these folks how they treated you before  
13 versus after?

14 A They stopped harassing us. It wasn't that  
15 much harassing.

16 Q From what you saw and you heard, why did  
17 your brother become involved with the gangs?

18 A To protect his family.

19 Q Did it work?

20 A Yes.

21 Q How do you know?

22 A Because you don't have nobody bothering  
23 you anymore.

24 **THE COURT:** Excuse me. How old was he  
25 when he became affiliated with that gang?

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

158

1                   **THE WITNESS:** He had to be about 13, 14.

2 **BY MR. WHIPPLE:**

3           Q       And you mention Big Deko is about 6'3,  
4 over 200 pounds I think you said?

5           A       Yes.

6           Q       How old was Big Deko?

7           A       He was older. He had to be at least in  
8 his 30s.

9           Q       How did he treat your brother?

10          A       Like he was his kid but not teaching him  
11 positive things.

12          Q       Now, I want to talk just for a few minutes  
13 about -- you said he didn't teach him positive  
14 things?

15          A       Yes.

16          Q       You mentioned earlier about growing up  
17 basically just the three of you?

18          A       Yes.

19          Q       Do you remember that?

20                   Did you have a father in your home at any  
21 time?

22          A       He would be in and out -- no.

23          Q       You mentioned at lunch the fact that he  
24 recently moved into the same neighborhood as  
25 yourself?

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

159

1 A Yes.

2 Q How does he treat you now?

3 A He don't. When I speak to him, he will  
4 walk up, say "Hi," and say he will come to the house  
5 and hurry and speeds away.

6 Q You mentioned the Thanksgiving where your  
7 brother came to see -- were here and your father was  
8 at the Thanksgiving and your brother showed up to  
9 see his dad.

10 What happened?

11 A My father left.

12 Q How soon did he leave?

13 A As soon as we got there.

14 Q Did you ever see your brother have any  
15 interaction with his father?

16 A No.

17 Q Who was the person that John could look up  
18 to?

19 A Big Deko.

20 Q Now, we heard stories about you were taken  
21 away from your mother, right?

22 A Yes.

23 Q How old were you when you were taken away  
24 from your mother?

25 A About four or five.

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

160

1 Q So, you were living with your grandmother,  
2 correct?

3 A Yes.

4 Q And during this time when Big Deko came  
5 by, how many kids were in that house?

6 A It was ten, then two more end up coming.

7 Q And --

8 A Two, maybe three.

9 Q And how many adults were in that house at  
10 that time?

11 A It was two.

12 Q Who is that?

13 A My grandmother, my grandfather and one  
14 more -- my auntie.

15 Q Did you see your brother -- how much  
16 interaction was he able to spend with your  
17 grandparents?

18 A None. It was too many of us.

19 Q You said there was too many of you. I  
20 mean, did you ever see him have the opportunity one  
21 on one to spend some quality time?

22 A No.

23 Q Now, I want to talk about your  
24 relationship with your brother and your sister.  
25 It's fair to say you're very close?

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

161

1           A     Yes.

2           Q     Why is that?

3           A     Because it's just us three. He's my big  
4 brother and that's my younger sister.

5           Q     When you think about the relationship that  
6 you have with your brother, your big brother and  
7 your younger sister, how do they contrast? Explain  
8 the difference in relationship?

9           A     My sister is younger, so it's kind of  
10 harder to talk to her about certain things. My  
11 brother older; I can talk to him about anything.

12          Q     Before you got married, who was the most  
13 important -- who was the person you were closest to  
14 in this world?

15          A     My brother.

16          Q     What type of things did you talk about?

17          A     Anything we wanted to talk about.

18          Q     Did you ever fight with your brother?

19          A     No.

20          Q     Why didn't you ever fight with your  
21 brother? Isn't that natural?

22          A     That's my brother. Not with me it's not  
23 natural.

24          Q     You never had any problems with him?

25          A     No.

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

162

1 Q You told me at lunch that you only saw him  
2 be violent one other time.

3 Do you remember telling me that?

4 A Yes.

5 Q Why don't you tell me the one time you saw  
6 him being violent.

7 A When I told him one of my cousins touched  
8 me.

9 Q Which cousin was that?

10 A Cornelius.

11 Q And is that while you're living at the  
12 same place?

13 A Yes.

14 Q On 60th and Normandie?

15 A Yes.

16 Q Why don't you tell the folks how your  
17 cousin touched you and where he touched you?

18 A He touched me on my private.

19 Q How did he touch you on your private?

20 A With his hands.

21 Q What were you doing when he did that?

22 A Laying down on the couch.

23 Q Were you asleep at that time?

24 A Yes.

25 Q Did his touching wake you up?

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

163

1           A       Yes.

2           Q       What did you do as soon as you woke up  
3 immediately and found your cousin touching you  
4 inappropriately?

5           A       Told my brother.

6           Q       What did your brother do?

7           A       He pushed him.

8           Q       What did you see him do?

9           A       Pushed him.

10          Q       Pushed him where?

11          A       In the window.

12          Q       Did your cousin ever touch you  
13 inappropriately again?

14          A       No.

15          Q       Did your brother take care of you while  
16 you were growing up?

17          A       Yes.

18          Q       Did he keep your cousins and other people  
19 off of you?

20          A       Yes.

21          Q       Did he keep the gangs off of you?

22          A       Yes.

23          Q       Now, do you have a favorite photo? We  
24 mentioned -- I asked you if you had seen some  
25 pictures.

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

164



1 Do you remember the first time you  
2 testified?

3 A Yes.

4 **MR. WHIPPLE:** If I could grab those  
5 photos.

6 If I may approach, your Honor.

7 **THE COURT:** Yes.

8 **BY MR. WHIPPLE:**

9 Q Johnnisha, I'm showing you some different  
10 photos, and I'm not sure which the favorite one was.

11 Is that it?

12 A Um-hmm.

13 Q That's State's Exhibit HH, excuse me,  
14 Defense Exhibit HH.

15 Johnnisha, why is that your favorite  
16 photo?

17 A It was my brother birthday. We both was  
18 happy. Everybody there was happy.

19 Q When you think back, Johnnisha, how many  
20 times do you remember being happy?

21 A Not many.

22 Q Did your brother bring happiness to you?

23 A Yes.

24 Q And how does he bring happiness to you?

25 A He stayed, the conversation, just being

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

165

1 there, basically.

2 Q Today, do you feel any differently about  
3 your brother today than you did --

4 A No.

5 Q -- back then?

6 A No.

7 Q Why not?

8 A Because that's my brother, and I love him.

9 Q You've heard these -- you've heard some of  
10 the horrible things?

11 A Yes, I have.

12 Q How does it make you feel?

13 A It hurts me.

14 Q Why does it hurt you?

15 A Because I don't like to hear bad stuff  
16 about my brother.

17 Q Do you communicate with your brother?

18 A Yes.

19 Q Why?

20 A Because I love him.

21 Q How important is that?

22 A It's very important.

23 Q Now, you have more than just three  
24 children living with you?

25 A Yes. I have his son.

SONIA L. RILEY, CCR NO. 727

(702) 455-3610

166

1 Q Whose son do you have living with you?  
2 A My brother's.  
3 Q Why, of all the people -- why does he live  
4 with you?  
5 A Because his mother gave him to me.  
6 MR. WHIPPLE: I'm showing, at this point,  
7 your Honor, Defense Exhibit KK.  
8 BY MR. WHIPPLE:  
9 Q Who are those kids in that photo,  
10 Johnnisha?  
11 A That's my brother kids.  
12 Q What are their names again?  
13 A Anijah and Allen.  
14 Q How long has Allen been living with you?  
15 A He's been with me straight for two years,  
16 but I had him off and on since he was one.  
17 Q What kind of grades is he getting in  
18 school?  
19 A He get good grades.  
20 Q What kind of grades does he get?  
21 A He get straight As. They call them --  
22 they by numbers now.  
23 Q What does he talk about when he talks  
24 about his father?  
25 A John.

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

167

1 Q What type of things does he tell you about  
2 his father?

3 A When he coming home.

4 Q Does he communicate with his father to the  
5 best of his ability?

6 A Yes, he does.

7 Q What does he act like when he receives a  
8 letter of communication from his father?

9 A He be very excited.

10 Q You've got a wonderful husband taking care  
11 of him as well -- yes?

12 A Yes, thank God for him.

13 Q Does he act like his father?

14 A He do the best he could.

15 Q Who is Allen's father?

16 A John.

17 Q Johnnisha, I'm showing you Defense  
18 Proposed Exhibit double-Y -- YY.

19 Is that the original letter that you had  
20 forwarded to my office some years ago?

21 A Yes.

22 Q Is that the same way that you had sent it  
23 to us?

24 A Yes.

25 **MR. STANTON:** We would have no objection

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

168

1 to its admission, your Honor.

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

3 **THE COURT:** Are you offering it?

4 **MR. WHIPPLE:** I am, your Honor.

5 **THE COURT:** All right.

6 Admitted.

7 (Defense Exhibit YY was admitted into  
8 evidence.)

9 **BY MR. WHIPPLE:**

10 Q Johnnisha, I realize it's very difficult  
11 for you being here, but again, why are you here?

12 A To stand by my brother and to ask you guys  
13 to please don't take his life.

14 **MR. WHIPPLE:** Nothing further.

15

16 CROSS-EXAMINATION

17 **BY MR. STANTON:**

18 Q It's Mrs. Zamora, correct?

19 A Yes.

20 Q Mrs. Zamora, I want to ask you a couple of  
21 questions regarding this gentleman Big Deko.

22 Your brother joined a gang at what age?

23 A I think he was about 14.

24 Q And there came a time where you didn't see  
25 your brother anymore, he didn't come around and

1 wasn't either in the neighborhood or wasn't even in  
2 Los Angeles.

3 Do you remember that?

4 A Yes.

5 Q How old was your brother at that point?

6 A Probably about 19. I'm not sure.

7 Q You're not sure?

8 A About that age.

9 Q Do you know how long after he joined the  
10 gang that it was that you didn't see him anymore --  
11 how many years had elapsed?

12 A It was at least about -- he did not leave  
13 until at least about four or five years after.

14 Q Okay.

15 So, four or five years you knew him to be  
16 in a gang and you were around him?

17 A Um-hmm.

18 Q During that time period, how many times  
19 did you see Big Deko around your brother?

20 A Whenever he came to our house.

21 Q So, that was a lot?

22 A Yes.

23 Q Did he have any tattoos on him, Big Deko  
24 that is?

25 A I never looked at his -- I wasn't looking

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

170

1 at him to see if he had tattoos.

2 Q I'm sorry?

3 A I never paid no attention to his tattoos.

4 Q What is Big Deko's name?

5 A His real name?

6 Q Yes.

7 A I would have no idea.

8 Q You have no idea?

9 A Huh-uh.

10 **MR. STANTON:** Thank you. Nothing further.

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

12 **THE COURT:** Call your next witness.

13 **MS. JACKSON:** Moises Zamora, please.

14 **THE CLERK:** Sir, remain standing and raise  
15 your right hand.

16 (Oath administered.)

17 **THE WITNESS:** I do.

18 **THE CLERK:** Thank you. Please be seated.

19 **THE COURT:** I forgot to tell you, he's  
20 already sworn.

21

22 **MOISES ZAMORA,**

23 being recalled as a witness on behalf of  
24 the Defendant, was resworn and testified as follows:

25 /////

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

171

1 MS. JACKSON: May I proceed, your Honor?

2 THE COURT: Yes.

3 MS. JACKSON: Thank you, your Honor.

4

5 DIRECT EXAMINATION

6 BY MS. JACKSON:

7 Q Good afternoon, Moises.

8 A Good afternoon.

9 Q You testified at the first juncture of  
10 these proceedings, and I had you -- actually,  
11 Mr. Whipple had you talk about your relationship  
12 with my client. Now, you have another relationship  
13 besides from being an in-law.

14 You're familiar with gangs, aren't you?

15 A Yes.

16 Q As a matter of fact, you're what they  
17 would call a Crip?

18 A Correct.

19 Q He's a Blood?

20 A Right.

21 Q However, that did not interfere with your  
22 relationship.

23 You guys appeared to get along okay when  
24 he was living with you?

25 A Right.

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

172



1 Q Taking you back to where you grew up, sir,  
2 where did you grow up?  
3 A South Central LA.  
4 Q How old are you?  
5 A Now, at the time, 27.  
6 Q You're right around my client's age?  
7 A Right around there.  
8 Q The experiences that you had in South  
9 Central would probably be similar to his?  
10 A Correct.  
11 Q Even though -- now, you described for the  
12 jury your ethnicity is -- your mother, I believe, is  
13 Mexican?  
14 A My mother is white.  
15 Q Your mother is white and your father is  
16 Hispanic?  
17 A Mexican, yes.  
18 Q Mexican. Okay.  
19 Now, the area that you grew up in, how  
20 would you describe that neighborhood?  
21 A Predominantly black.  
22 Q So, is it fair to say you were treated  
23 just like any other -- as if you were a young black  
24 man in South Central around that same time? Were  
25 you treated any differently when it came to the gang

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

173

1 activity?

2 A Yeah, for the most part.

3 Q Okay.

4 And how did that go?

5 A Rough.

6 Q Rough. Okay.

7 Let's just back up a wee bit.

8 You recall testifying a few years ago?

9 A Yes.

10 Q And during that testimony, you talked

11 about an experience that you and your brother had, I

12 think at the elementary school age?

13 A Right. I believe I was about eight, and

14 my brother must have been about five.

15 Q What happened?

16 A There was a young man -- I wouldn't say

17 young man, he was probably in his 18s, 19s --

18 approached us on a bike on the way to school and

19 drew a gun to my brother's face and demanded money

20 or any type of valuables that we had.

21 Q And this was your younger brother?

22 A Yes, my little brother, my only brother.

23 Q Your only brother. Okay.

24 This type of occurrence, would you say

25 that's rare in South Central at the elementary

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

174

1 school?

2 A It's not real rare, but it happens to  
3 others, yes.

4 Q Were there other dangers such as that  
5 associated with going to elementary school in South  
6 Central LA during the time period you were there?

7 A I think gangs have gotten rough now, but  
8 back then -- I mean, it was rough, basically. If  
9 you had to walk to school --

10 Q Um-hmm.

11 A -- or even if you had to drive to school  
12 sometimes, it was always constant, you know, you had  
13 to watch yourself or watch your surroundings. You  
14 had to make sure nobody was watching you or anybody  
15 preying on you.

16 Q When this person assaulted you and your  
17 brother with a weapon, did you guys give him your  
18 money?

19 A I believe we didn't have anything. I  
20 think the only thing I had at the time I think were  
21 lunch tickets.

22 Q Did you give him those?

23 A He didn't take them.

24 Q Okay.

25 Did he take anything of value? Did you

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

175

1 guys have anything to give him of value?

2 A No, nothing. We were, what, eight and  
3 five.

4 Q Okay.

5 And he just left you guys alone?

6 A Yeah. He put his gun back in his waist  
7 and pedaled off.

8 Q Gave you guys a pass?

9 A If you want to call it that.

10 Q Did there come a time when you began to  
11 come to the attention, if you will, of the gang that  
12 lived in your neighborhood? The term that gangs  
13 use I think is they call it their "turf"?

14 A Yeah.

15 Q What turf did you live in?

16 A I stayed off of Gage and Broadway which is  
17 East Coast neighborhood, East Coast Crips.

18 Q East Coast Crips.

19 Now, because of your location, because of  
20 your living in that neighborhood, did that give the  
21 Crips some kind of dibs on you? How does that work?

22 A Well, basically, anybody in that  
23 neighborhood -- once you get to a certain age, they  
24 try to convince you to gang-bang or force you to  
25 gang-bang.

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

176

1 Q You said two things there. You said two  
2 things there. You said they would try to convince  
3 you or they would try to force you?

4 A Um-hmm.

5 Q Let's talk about those two things in turn,  
6 because I notice that before you broke those down,  
7 When they tried to convince you, is that  
8 called "courting"?

9 A Well, no; that would come into almost the  
10 forcing part. Convincing you would basically  
11 consist of harassment, letting you know that look,  
12 you're either going to join our gang or we're going  
13 to harass you all the time. We'll be picking on  
14 you.

15 Q Did that include picking on your family?

16 A Umm -- to an extent, maybe like my brother  
17 who would be out with me or anybody like my cousins  
18 that would walk around with me to the store or  
19 anything.

20 Q From your understanding of being -- you're  
21 an East Coast Crip?

22 A No. We're a click. Well, at the time we  
23 were a click off of in the East Coast neighborhood  
24 which was 67 Gangster Crips.

25 Q So, that was the title of your group, the

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

177

1 67 Gangster Crips?

2 A Right. That was the second click.

3 Q Based upon your affiliation with that  
4 sect, how does one become a member of that  
5 particular gang as it existed when you were a young  
6 man around 13, 14 years old?

7 A Most of it was done by courting.

8 Q And what does that mean, sir?

9 A Basically, you jump in individuals.  
10 "Jumping in" means take three, four minute segments,  
11 get about four or five guys beat up on this one cat  
12 or one guy, and he would have to sit there and  
13 basically either get beat down or fight back, and  
14 after you're done, you basically took your  
15 punishment and you're hugged and welcomed in?

16 Q Once you're in the gang, you're in?

17 A Yeah.

18 Q You heard the phrase, "Putting in work  
19 with the gang." What does that mean in reference to  
20 being a gang member, "putting in some work"?

21 A "Putting in work" means -- basically, it's  
22 like putting in your time. You have to do -- you  
23 have to do what either you're asked to do or, you  
24 know, you have to perform duties that basically gain  
25 you rank or stripes.

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

178

1 Q Are you allowed to refuse to put in your  
2 work?

3 A For the most part, no.

4 Q Okay.

5 What happens if one refuses?

6 A Then you get disciplined.

7 Q Okay.

8 Now, you've heard testimony because you've  
9 been in the courtroom about there being a Big Deko,  
10 someone about 6'3, 250 pounds, and then my client  
11 being given the moniker "Baby Deko."

12 Are you familiar with what that  
13 relationship entails between a Big Deko and a Baby  
14 Deko. What does that mean in the gang world?

15 A It basically means Baby Deko has an OG,  
16 which is an older gangster than him which basically  
17 took him on, like a prodigy or project. There's  
18 cases where you have ones and twos and maybe even  
19 threes where a guy who has been there for a long  
20 time. I guess in this case, Big Deko would have a  
21 Baby Deko or Little Deko or Tiny Deko or whatever.

22 Q Is it unusual for a gang-banger to be --  
23 your wife testified that she believed Big Deko to be  
24 in his 30s during this time frame. Does that  
25 sound --

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

179

1           A       No, there's gang-bangers that still bang  
2 in their late 30s. I mean, those are gang-bangers  
3 for life.

4           Q       And hence, the moniker "OGs"?

5           A       Yes.

6           Q       How did you become a member of the sect  
7 that you belonged to?

8           A       We used to be from another click, which is  
9 Money Weed. And the 67 Click that was in our  
10 neighborhood basically said, "You guys either turn  
11 Gangster Crips or you guys face the punishments of  
12 trying to run your own click in our neighborhood."  
13 So, we basically had to end up getting courted on by  
14 the Gangster Crips to become 67 to avoid any  
15 troubles with them and their click.

16          Q       Now, there's been a lot of talk in this  
17 case about choices, about one chooses to join a  
18 gang.

19                   Do you think that that's a true statement,  
20 that you choose to join a gang in your situation?

21          A       You can -- it's almost a choice, but you  
22 almost feel obligated.

23          Q       What is involved in that process? What  
24 makes the young man feel that he has to join a gang?

25          A       Fear of the gang itself.

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

180



1 Q Fear.

2 Also, are there any other techniques that  
3 the gang would use to attract a poor young person in  
4 South Central that make it sound glamorous?

5 They promise you benefits?

6 A Yeah, I mean --

7 Q What type of benefits, Moises?

8 A Well, in most of the gangs, there's drug  
9 activity, selling of drugs and all that which brings  
10 in a large amount of currency.

11 Q Okay.

12 A They promise you money, protection, cars,  
13 clothes, everything down to food, whatever.

14 Q Okay.

15 And the neighborhood -- most of the  
16 neighborhoods in South Central, from what I  
17 understand it -- and I've been there -- and what I  
18 see on TV are relatively poor?

19 A Yes.

20 Q And that would make these things seem even  
21 more attractive?

22 A Yes, because -- well, in that area?

23 Q Yes, sir.

24 A Everybody wants to have the stuff you see  
25 on TV, you know, the Westwoods and the Culver Cities

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

181

1 and all that; so, you never want to grow up having  
2 to wear bummy clothes or bummy shoes, because you're  
3 going to get harassed about it. People will pick on  
4 you just because you don't have the nice things, so  
5 when you're growing up and you see that all the  
6 older kids around you or the gang-bangers around you  
7 have on Jordans and better --

8 Q When you were growing up, what was the  
9 average price of Jordans? By "Jordans," you mean  
10 tennis shoes --

11 A When I was growing up?

12 Q -- named after the legendary ball player  
13 Michael Jordan?

14 A When I was growing up, a pair of Jordans  
15 could range anywhere from \$80 to \$140.

16 Q Could the average family in South Central  
17 who wasn't involved in the dealing of drugs -- could  
18 they afford a pair of shoes like that?

19 A Maybe a small percentage.

20 Q There was a very small percentage?

21 A Very small.

22 Q Would that serve to make the gang life  
23 somewhat attractive to young men like yourself?

24 A Well, the thing about it is it was easy  
25 money. It was fast money.

1 Q Okay.

2 Now, what would happen if you wandered  
3 outside of your turf?

4 A In enemy turf?

5 Q In enemy turf.

6 A You would be lucky to come back.

7 Q Did you have an experience where you found  
8 yourself in enemy turf without you placing yourself  
9 there?

10 A Yes.

11 Q What happened?

12 A Umm, it was -- I think it was around -- it  
13 was between '96 and '98. We were in our  
14 neighborhood, and there was an altercation between  
15 me and some of my gang friends --

16 Q Um-hmm.

17 A -- some women that were there and some of  
18 their friends. One of our friends got jumped,  
19 things got heated. I ended up assaulting one of the  
20 females that was there.

21 Q Okay.

22 Were the police called?

23 A Police was outside.

24 Q Okay. The police were outside. Alrighty.

25 Were you arrested?

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

183

1 A At the scene, yes.

2 Q What happened after that?

3 A They took me down to -- it was 30- -- it  
4 was like 30- -- I believe it's like 32nd and  
5 Central, which is about two to three miles from  
6 where I lived or where my hood was at.

7 Q Enemy turf?

8 A Yeah, because that's Florence, Florencia  
9 gang. It's a Hispanic gang which can't stand any  
10 Bloods or Crips. And they booked me into the  
11 station, held me for about 30 minutes to an hour.

12 Q Um-hmm.

13 A They did a fingerprint check on me.

14 Q Okay.

15 A Came back clean, and the head officer  
16 basically told me, all right, we're not going to  
17 book you in. We know that it was real heated at the  
18 time, so we're just going to let you go.

19 Q So, you were set loose in enemy turf?

20 A Um-hmm.

21 Q Did you have any money to make a phone  
22 call to have anybody to come pick you up?

23 A They kept my money.

24 Q Do you think that was on purpose?

25 A For the most part, yeah, that's what I

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

184

1 believe.

2 Q People who are in your neighborhood and  
3 most South Central neighborhoods don't have much  
4 trust of the police officers, do they?

5 A Very, very little.

6 Q Moises, obviously, you testified  
7 previously, and we've had a chance to observe you,  
8 and you say you finished high school?

9 A Um-hmm.

10 Q You even have some college?

11 A Yes. A little less than a year.

12 Q Okay.

13 But you have some?

14 A Um-hmm.

15 Q That counts.

16 A Yes.

17 Q Are you gang-banging now?

18 A Not anymore.

19 Q Well, how did you get out?

20 A Basically had to run away.

21 Q What does that mean, sir?

22 A You kind of leave under the cover of the  
23 night. You try to -- just -- you had to leave  
24 everything behind. I left my mom's home, my brother  
25 and my sister behind, and I just left to friend's

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

185

1 house as far as I could go and I stayed there.

2 Q Did there come a time when you were able  
3 to return safely?

4 A Later.

5 Q How much later?

6 A About two or three months, but it wouldn't  
7 be for -- I wouldn't stay there.

8 Q And you were able to successfully  
9 extricate yourself from that type of lifestyle?

10 A Fortunately.

11 Q Were you raised by both your parents?

12 A Yes.

13 Q Your father was in your life?

14 A My father was in the home.

15 Q Your father was actually in the home with  
16 you?

17 A Yes.

18 Q Along with your mother?

19 A Yes.

20 Q Were they addicts?

21 A No.

22 Q Were they alcoholics?

23 A No.

24 Q Did they ever lock you in the closet and  
25 tell you that they were seeing ghosts?

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

186

1 A No.

2 Q Did you ever fail to get enough to eat on  
3 a regular basis?

4 A No.

5 Q Did you start school on time or did you  
6 start school two years behind everybody else?

7 A I started on time.

8 Q Did you ever live in a shack?

9 A No.

10 Q Did you ever see your father hit your  
11 mother?

12 A A couple times.

13 Q Okay. Fair enough.

14 Did you ever see him knock her teeth out?

15 A No, not to that extent.

16 Q Did you ever see him beat -- do you know  
17 what a "beat down" is, being from South Central?

18 A I know what a beat down is.

19 Q Did your father give your mother beat  
20 downs, that type of thing?

21 A Not to that extent.

22 Q Did you ever see your father hang your  
23 mother over a banister about her neck?

24 A No, never.

25 MS. JACKSON: That's all I have.

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

187

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

2

3                           CROSS-EXAMINATION

4 **BY MR. STANTON:**

5           Q     Mr. Zamora, if I understand your testimony  
6 correctly, you claim 67 Gangster Crips?

7           A     Yes.

8           Q     And when did you jump into that?

9           A     It was in -- it was the early part of --  
10 no, actually, it was the later part of '96.

11           **MS. JACKSON:** Your Honor, for the record,  
12 he didn't jump in; he was jumped in. There's a big  
13 difference.

14           **MR. STANTON:** I asked the question and he  
15 answered it, your Honor.

16           **MS. JACKSON:** The record should be  
17 correct.

18           **MR. STANTON:** The record is quite correct.

19           **THE COURT:** When you get him on cross, you  
20 can ask him.

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

22 **BY MR. STANTON:**

23           Q     And when did the last time,  
24 chronologically, would you consider yourself  
25 banging?

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

188



1           A     It was early 2000, late '99.  
2           Q     And did you have a moniker?  
3           A     Excuse me?  
4           Q     Did you have a moniker when you were  
5 banging?  
6           A     By that you mean --  
7           Q     Street name.  
8           A     Yeah. I was Mo.  
9           Q     Mo?  
10          A     M-O.  
11          Q     Mr. Zamora, you said to me about this time  
12 the police at least arrested you or put you in  
13 custody?  
14          A     Yes.  
15          Q     You're not a convicted felon?  
16          A     No.  
17          Q     You don't have any felony convictions or  
18 misdemeanor convictions?  
19          A     I have misdemeanor convictions.  
20                **MS. JACKSON:** Your Honor, that's not a  
21 proper question for impeachment account.  
22                **THE COURT:** That's correct.  
23                **MR. STANTON:** I'm not trying to impeach  
24 him.  
25                **THE COURT:** If you asked him the question,

1 so that's correct. Sustained.

2 The jury is ordered to disregard it.

3 MR. STANTON: My reason for asking is the  
4 question is not --

5 THE COURT: It's already sustained.

6 MR. STANTON: If the purpose is not to  
7 impeach, your Honor --

8 THE COURT: It's the same effect. It's  
9 sustained. I'm not going to argue with you. I  
10 already told you. All right?

11 BY MR. STANTON:

12 Q Were you forced to do any criminal  
13 activity in that gang?

14 A I think we all were.

15 Q What type of crimes that you were dealing  
16 in, Mr. Zamora?

17 A I must talk about them?

18 Q Well, let me put it to you this way: Were  
19 they property crimes?

20 A It was theft and shootings.

21 Q Okay.

22 And you said that you knew an individual  
23 by the name of Big Deko?

24 A I heard of him here in the courtroom.

25 Q Okay.

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

190

1           You don't know who he is?

2       A     I don't know him specifically.

3       Q     Have you ever seen him before?

4       A     I've never seen him.

5       Q     So, you wouldn't know his name?

6       A     I wouldn't know his name, no.

7       Q     Now, how -- when do you recall seeing the  
8 defendant as far as friendship? When did that  
9 begin?

10      A     I think, like, a couple months after I met  
11 his sister was when I saw him for the first time.

12      Q     Do you remember a month or year? I'm just  
13 looking for approximations.

14      A     Let's see. I met -- it was maybe about a  
15 month.

16      Q     But do you remember what month and year  
17 that would have been?

18      A     Oh, umm -- let's see. I met her in April,  
19 so it may have been around May, June of '97.

20      Q     And when was the last time you saw the  
21 defendant?

22      A     It was right around May -- it could have  
23 been May or June of '98.

24      Q     And you indicated that on a question by  
25 Miss Jackson about wanting things, that gang members

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

191

1 wanted things, and you mentioned Westwood and Culver  
2 City.

3 Do you remember that testimony?

4 A Yes.

5 Q Westwood and Culver City are cities within  
6 the greater Los Angeles area, correct?

7 A They're on the outer border parts of South  
8 Central.

9 Q So, when you say people wanted to get  
10 things that they have in Westwood and Culver City, I  
11 believe is your testimony, is that because they're  
12 nicer areas?

13 A Yes.

14 MR. STANTON: Nothing further.

15 THE COURT: Counsel?

16 MS. JACKSON: No redirect, your Honor.

17 Thank you.

18 THE COURT: All right. You're excused.

19 THE WITNESS: Thank you.

20 THE COURT: Who's next?

21 MR. WHIPPLE: Your Honor, I have Martin  
22 Jankowski here ready to testify.

23 THE CLERK: Sir, please remain standing  
24 and raise your right hand.

25 (Oath administered.)

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

192



IN THE SUPREME COURT OF NEVADA

DONTE JOHNSON,

CASE NO. 65168

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

OPENING BRIEF APPENDIX

| <u>VOLUME</u> | <u>PLEADING</u>   | <u>PAGE NO</u> |
|---------------|---|----------------|
| 7             | ADDENDUM TO NOTICE OF EVIDENCE IN<br>SUPPORT OF AGGRAVATING CIRCUMSTANCES<br>(FILED 04/26/2000)                                 | 1733-1734      |
| 6             | AFFIDAVIT OF JOSEPH S. SCISCENTO IN SUPPORT<br>OF THE MOTION TO CONTINUE<br>(FILED 12/14/1999)                                  | 1428-1433      |
| 19            | AMENDED EX PARTE ORDER ALLOWING<br>WITHDRAWAL OF ATTORNEY OF RECORD FOR<br>MATERIAL WITNESS CHARLA SEVERS<br>(FILED 08/24/2000) | 4585           |
| 7             | AMENDED JURY LIST<br>(FILED 06/06/2000)   | 1823           |
| 8             | AMENDED JURY LIST<br>(FILED 06/08/2000)   | 2131           |
| 3             | AMENDED NOTICE OF MOTION AND MOTION<br>TO VIDEOTAPE THE DEPOSITION OF<br>CHARLA SEVERS<br>(FILED 10/08/1999)                    | 659-681        |
| 31            | APPELLANT'S OPENING BRIEF<br>(FILED 02/03/2006)   | 7174-7225      |
| 19            | CASE APPEAL STATEMENT<br>(FILED 11/08/2000)   | 4651-4653      |
| 42            | CASE APPEAL STATEMENT<br>(FILED 03/06/2014)   | 8200-8202      |
| 31            | APPELLANT'S REPLY BRIEF<br>(FILED 05/25/2006)   | 7254-7283      |

|    |    |   |           |
|----|----|---|-----------|
| 1  | 3  | CERTIFICATE FOR ATTENDANCE OF OUT<br>OF STATE WITNESS CHARLA CHENIQUA SEVERS<br>AKA KASHAWN HIVES<br>(FILED 09/21/1999)   | 585-606   |
| 2  |    |   |           |
| 3  | 7  | CERTIFICATE OF MAILING OF EXHIBITS<br>(FILED 04/17/2000)  | 1722      |
| 4  |    |   |           |
| 5  | 19 | CERTIFICATION OF COPY   |           |
| 6  | 7  | DECISION AND ORDER<br>(FILED 04/18/2000)  | 1723-1726 |
| 7  | 2  | DEFENDANT JOHNSON'S MOTION TO SET BAIL<br>(FILED 10/05/1998)  | 294-297   |
| 8  | 6  | DEFENDANT'S MOTION AND NOTICE OF MOTION<br>TO SUPPRESS EVIDENCE ILLEGALLY SEIZED<br>(FILED 12/03/1999)  | 1340-1346 |
| 9  |    |   |           |
| 10 | 5  | DEFENDANT'S MOTION FOR CHANGE OF VENUE<br>(FILED 11-29-1999)  | 1186-1310 |
| 11 |    |   |           |
| 12 | 5  | DEFENDANT'S MOTION FOR DISCLOSURE OF ANY<br>POSSIBLE BASIS FOR DISQUALIFICATION OF<br>DISTRICT ATTORNEY<br>(FILED 11/29/1999)   | 1102-1110 |
| 13 |    |   |           |
| 14 | 5  | DEFENDANT'S MOTION FOR DISCLOSURE OF<br>EXCULPATORY EVIDENCE PERTAINING TO THE<br>IMPACT OF THE DEFENDANT'S EXECUTION UPON<br>VICTIM'S FAMILY MEMBERS<br>(FILED 11/29/1999)   | 1077-1080 |
| 15 |    |   |           |
| 16 |    |   |           |
| 17 | 5  | DEFENDANT'S MOTION FOR DISQUALIFICATION<br>FROM THE JURY VENUE OF ALL POTENTIAL JURORS<br>WHO WOULD AUTOMATICALLY VOTE FOR THE DEATH<br>PENALTY IF THEY FOUND MR. JOHNSON GUILTY OF<br>CAPITAL MURDER<br>(FILED 11/29/1999) | 1073-1076 |
| 18 |    |   |           |
| 19 |    |   |           |
| 20 |    |   |           |
| 21 | 5  | DEFENDANT'S MOTION FOR INSPECTION OF<br>POLICE OFFICER'S PERSONNEL FILES<br>(FILED 11/29/1999)  | 1070-1072 |
| 22 |    |   |           |
| 23 | 5  | DEFENDANT'S MOTION FOR JURY QUESTIONNAIRE<br>(FILED 11/29/1999)   | 1146-1172 |
| 24 | 15 | DEFENDANT'S MOTION FOR NEW TRIAL<br>(FILED 06/23/2000)  | 3570-3597 |
| 25 |    |   |           |
| 26 | 5  | DEFENDANT'S MOTION FOR PERMISSION TO<br>FILED OTHER MOTIONS<br>(FILED 11/29/1999)   | 1066-1069 |
| 27 |    |   |           |
| 28 | 4  | DEFENDANT'S MOTION IN LIMINE FOR ORDER<br>PROHIBITING PROSECUTION MISCONDUCT IN<br>ARGUMENT<br>(FILED 11/29/1999)   | 967-1057  |

|    |    |   |           |
|----|----|---|-----------|
| 1  | 4  | DEFENDANT'S MOTION IN LIMINE REGARDING<br>CO-DEFENDANT'S SENTENCES<br>(FILED 11/29/1999)  | 964-966   |
| 2  |    |   |           |
| 3  | 4  | DEFENDANT'S MOTION IN LIMINE TO PRECLUDE<br>EVIDENCE OF WITNESS INTIMIDATION<br>(FILED 10/27/1999)  | 776-780   |
| 4  |    |   |           |
| 5  | 5  | DEFENDANT'S MOTION IN LIMINE TO PROHIBIT<br>ANY REFERENCES TO THE FIRST PHASE A THE<br>"GUILT PHASE"<br>(FILED 11/29/1999)  | 1063-1065 |
| 6  |    |   |           |
| 7  | 5  | DEFENDANT'S MOTION TO ALLOW THE DEFENSE<br>TO ARGUE LAST AT THE PENALTY PHASE<br>(FILED 11/29/1999)   | 1058-1062 |
| 8  |    |   |           |
| 9  | 5  | DEFENDANT'S MOTION TO AUTHENTICATE AND<br>FEDERALIZE ALL MOTIONS, OBJECTIONS, REQUESTS<br>AND OTHER APPLICATIONS AND ISSUES RAISED IN<br>THE PROCEEDINGS IN THE ABOVE ENTITLED CASE<br>(FILED 11/29/1999) | 1081-1083 |
| 10 |    |   |           |
| 11 |    |   |           |
| 12 | 5  | DEFENDANT'S MOTION TO BIFURCATE PENALTY<br>PHASE<br>(FILED 11/29/1999)  | 1142-1145 |
| 13 |    |   |           |
| 14 | 5  | DEFENDANT'S MOTION TO DISMISS STATE'S NOTICE<br>OF INTENT TO SEEK DEATH PENALTY BECAUSE<br>NEVADA'S DEATH PENALTY STATUTE IS<br>UNCONSTITUTIONAL<br>(FILED 11/29/1999)                                    | 1115-1136 |
| 15 |    |   |           |
| 16 |    |   |           |
| 17 | 5  | DEFENDANT'S MOTION TO EXCLUDE AUTOPSY<br>PHOTOGRAPHS<br>(FILED 11/29/1999)  | 1098-1101 |
| 18 |    |   |           |
| 19 | 5  | DEFENDANT'S MOTION TO PRECLUDE EVIDENCE<br>OF ALLEGED CO-CONSPIRATORS STATEMENTS<br>(FILED 11/29/1999)  | 1091-1097 |
| 20 |    |   |           |
| 21 | 5  | DEFENDANT'S MOTION TO PROHIBIT THE USE OF<br>PEREMPTORY CHALLENGES TO EXCLUDE JURORS<br>WHO EXPRESS CONCERNS ABOUT CAPITAL<br>PUNISHMENT<br>(FILED 11/29/1999)  | 1084-1090 |
| 22 |    |   |           |
| 23 |    |   |           |
| 24 | 5  | DEFENDANT'S MOTION TO REQUIRE PROSECUTOR<br>TO STATE REASONS FOR EXERCISING PEREMPTORY<br>CHALLENGES<br>(FILED 11/29/1999)  | 1137-1141 |
| 25 |    |   |           |
| 26 |    |   |           |
| 27 | 19 | DEFENDANT'S MOTION TO SET ASIDE DEATH<br>SENTENCE OR IN THE ALTERNATIVE MOTION<br>TO SETTLE RECORD<br>(FILED 09/05/2000)  | 4586-4592 |
| 28 |    |   |           |



|    |    |   |            |
|----|----|---|------------|
| 1  | 3  | DEFENDANT'S OPPOSITION TO STATE'S MOTION TO<br>VIDEOTAPE THE DEPOSITION OF CHARLA SEVERS<br>(FILED 10/06/1999)  | 650-658    |
| 2  |    |   |            |
| 3  | 3  | DEFENDANT'S OPPOSITION TO WITNESS SEVER'S<br>MOTION TO VIDEOTAPE THE DEPOSITION OF<br>CHARLA SEVERS<br>(FILED 10/12/1999)   | 686-694    |
| 4  |    |   |            |
| 5  | 43 | COURT MINUTES   | 8285 -8536 |
| 6  | 5  | DONTE JOHNSON'S MOTION IN LIMINE TO<br>PRECLUDE THE INTRODUCTION OF VICTIM<br>IMPACT EVIDENCE<br>(FILED 11/29/1999)   | 1111-1114  |
| 7  |    |   |            |
| 8  |    |   |            |
| 9  | 2  | EX PARTE APPLICATION AND ORDER TO<br>PRODUCE<br>(FILED 05/21/1999)  | 453-456    |
| 10 |    |   |            |
| 11 | 2  | EX PARTE APPLICATION AND ORDER TO<br>PRODUCE JUVENILE RECORDS<br>(FILED 05/14/1999)   | 444-447    |
| 12 |    |   |            |
| 13 | 2  | EX PARTE APPLICATION AND ORDER TO<br>PRODUCE JUVENILE RECORDS<br>(FILED 05/14/1999)   | 448-452    |
| 14 |    |   |            |
| 15 | 2  | EX PARTE APPLICATION FOR ORDER REQUIRING<br>MATERIAL WITNESS TO POST BAIL<br>(FILED 04/30/1999)   | 419-422    |
| 16 |    |   |            |
| 17 | 2  | EX PARTE APPLICATION TO APPOINT DR. JAMES<br>JOHNSON AS EXPERT AND FOR FEES IN EXCESS<br>OF STATUTORY MAXIMUM<br>(FILED 06/18/1999)                                 | 493-498    |
| 18 |    |   |            |
| 19 | 19 | EX PARTE MOTION FOR RELEASE OF EVIDENCE<br>(FILED 10/05/2000)   | 4629       |
| 20 |    |   |            |
| 21 | 15 | EX PARTE MOTION TO ALLOW FEES IN EXCESS<br>OF STATUTORY MAXIMUM FOR ATTORNEY ON<br>COURT APPOINTED CASE FOR MATERIAL WITNESS<br>CHARLA SEVERS<br>(FILED 06/28/2000) | 3599-3601  |
| 22 |    |   |            |
| 23 |    |   |            |
| 24 | 15 | EX PARTE MOTION TO WITHDRAWAL AS<br>ATTORNEY OF RECORD FOR MATERIAL WITNESS<br>CHARLA SEVERS<br>(FILED 06/20/2000)  | 3557-3558  |
| 25 |    |   |            |
| 26 | 15 | EX PARTE ORDER ALLOWING FEES IN EXCESS OF<br>STATUTORY MAXIMUM FOR ATTORNEY ON<br>COURT APPOINTED CASE FOR MATERIAL WITNESS<br>CHARLA SEVERS<br>(FILED 06/28/2000)  | 3602       |
| 27 |    |   |            |
| 28 |    |   |            |

|    |    |   |           |
|----|----|---|-----------|
| 1  | 15 | EX PARTE ORDER ALLOWING WITHDRAWAL OF<br>ATTORNEY OF RECORD FOR MATERIAL WITNESS<br>CHARLA SEVERS<br>(FILED 06/20/2000) | 3559      |
| 2  |    |   |           |
| 3  | 42 | FINDINGS OF FACT, CONCLUSIONS OF LAW AND<br>ORDER<br>(FILED 03/17/2014)   | 8185-8191 |
| 4  |    |   |           |
| 5  | 42 | FINDINGS OF FACT, CONCLUSIONS OF LAW AND<br>ORDER<br>(FILED 03/17/2014)   | 8192-8199 |
| 6  |    |   |           |
| 7  | 1  | INDICTMENT<br>(FILED 09/02/1998)  | 1-10      |
| 8  |    |   |           |
| 9  | 10 | INSTRUCTIONS TO THE JURY<br>(FILED 06/09/2000)  | 2529-2594 |
| 10 | 15 | INSTRUCTIONS TO THE JURY<br>(FILED 06/16/2000)  | 3538-3556 |
| 11 | 26 | INSTRUCTIONS TO THE JURY  | 6152-6168 |
| 12 | 19 | JUDGMENT OF CONVICTION<br>(FILED 10/03/2000)  | 4619-4623 |
| 13 |    |   |           |
| 14 | 30 | JUDGMENT OF CONVICTION<br>(FILED 06/06/2005)  | 7142-7145 |
| 15 | 19 | JUDGMENT OF CONVICTION<br>(FILED 10/09/2000)  | 4631-4635 |
| 16 |    |   |           |
| 17 | 7  | JURY LIST<br>(FILED 06/06/2000)   | 1822      |
| 18 | 2  | MEDIA REQUEST<br>(FILED 09/15/1998)   | 274       |
| 19 |    |   |           |
| 20 | 2  | MEDIA REQUEST<br>(FILED 09/15/1998)   | 276       |
| 21 | 2  | MEDIA REQUEST<br>(09/28/1998)   | 292       |
| 22 |    |   |           |
| 23 | 2  | MEMORANDUM FOR PRODUCTION OF<br>EXCULPATORY EVIDENCE<br>(FILED 05/12/1999)  | 432-439   |
| 24 |    |   |           |
| 25 | 3  | MEMORANDUM FOR PRODUCTION OF<br>EXCULPATORY EVIDENCE<br>(FILED 09/20/1999)  | 577-584   |
| 26 |    |   |           |
| 27 | 3  | MEMORANDUM IN PURSUANT FOR A CHANGE<br>OF VENUE<br>(FILED 09/07/1999)   | 570-574   |
| 28 |    |   |           |

|    |    |  |           |
|----|----|--|-----------|
| 1  | 4  | MEMORANDUM IN PURSUANT FOR A MOTION<br>TO DISMISS INDICTMENT<br>(FILED 11/02/1999)   | 783-786   |
| 2  |    |  |           |
| 3  | 17 | MEMORANDUM IN SUPPORT OF GRANTING STAY<br>(FILED 07/18/2000)   | 4149-4152 |
| 4  | 17 | MEMORANDUM REGARDING A STAY OF THE<br>PENALTY PROCEEDINGS<br>(FILED 07/19/2000)  | 4160-4168 |
| 5  |    |  |           |
| 6  | 17 | MEMORANDUM REGARDING THE THREE JUDGE<br>PANEL<br>(FILED 07/12/2000)  | 4102-4110 |
| 7  |    |  |           |
| 8  | 2  | MEMORANDUM TO THE COURT<br>(FILED 03/23/1999)  | 394-399   |
| 9  |    |  |           |
| 10 | 2  | MEMORANDUM TO THE COURT<br>(FILED 06/28/1999)  | 499-504   |
| 11 | 6  | MEMORANDUM TO THE COURT<br>(FILED 12/22/1999)  | 1457-1458 |
| 12 |    |  |           |
| 13 | 6  | MEMORANDUM TO THE COURT<br>(FILED 12/29/1999)  | 1492-1495 |
| 14 | 7  | MEMORANDUM TO THE COURT<br>(FILED 02/02/2000)  | 1625-1631 |
| 15 |    |  |           |
| 16 | 7  | MEMORANDUM TO THE COURT<br>(FILED 04/04/2000)  | 1693-1711 |
| 17 | 7  | MEMORANDUM TO THE COURT<br>(FILED 04/11/2000)  | 1715-1721 |
| 18 |    |  |           |
| 19 | 7  | MEMORANDUM TO THE COURT FOR REQUEST<br>OF MOTION TO BE FILED<br>(FILED 02/24/2000)   | 1652-1653 |
| 20 |    |  |           |
| 21 | 4  | MEMORANDUM TO THE COURT FOR REQUESTED<br>MOTION TO BE FILED BY COUNSELS<br>(FILED 11/15/1999)  | 956-960   |
| 22 |    |  |           |
| 23 | 7  | MOTION AND NOTICE OF MOTION FOR DISCOVERY<br>OF PROSECUTION FILES, RECORDS, AND INFORMATION<br>NECESSARY TO A FAIR TRIAL<br>(FILED 04/26/2000) | 1727-1732 |
| 24 |    |  |           |
| 25 | 3  | MOTION AND NOTICE OF MOTION IN LIMINE TO<br>PRECLUDE ANY MEDIA COVERAGE OF VIDEO<br>DEPOSITION OF CHARLA SEVERS<br>(FILED 10/26/1999)          | 769-775   |
| 26 |    |  |           |
| 27 |    |  |           |
| 28 | 3  | MOTION AND NOTICE OF MOTION IN LIMINE<br>TO PRECLUDE EVIDENCE OF OTHER CRIMES OR<br>BAD ACTS<br>(FILED 10/18/1999)                             | 699-704   |

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| 1  | 3  | MOTION AND NOTICE OF MOTION IN LIMINE TO PRECLUDE EVIDENCE OF OTHER GUNS WEAPONS AND AMMUNITION NOT USED IN THE CRIME (FILED 10/19/1999)   | 743-756   |
| 2  |    |  |           |
| 3  | 2  | MOTION FOR DISCOVERY (FILED 05/13/1999)  | 440-443   |
| 4  |    |  |           |
| 5  | 5  | MOTION FOR DISCOVERY AND EVIDENTIARY HEARING REGARDING THE MANNER AND METHOD OF DETERMINING IN WHICH MURDER CASES THE DEATH PENALTY WILL SOUGHT (FILED 11/29/1999)   | 1181-1185 |
| 6  |    |  |           |
| 7  |    |  |           |
| 8  | 17 | MOTION FOR IMPOSITION OF LIFE WITHOUT THE POSSIBILITY OF PAROLE SENTENCE; OR IN THE ALTERNATIVE, MOTION TO EMPANEL JURY FOR SENTENCING HEARING AND/OR FOR DISCLOSURE OF EVIDENCE MATERIAL TO CONSTITUTIONALITY OF THREE JUDGE PANEL PROCEDURE (FILED 07/10/2000) | 4019-4095 |
| 9  |    |  |           |
| 10 |    |  |           |
| 11 |    |  |           |
| 12 | 6  | MOTION FOR OWN RECOGNIZANCE RELEASE OF MATERIAL WITNESS CHARLA SEVERS (FILED 01/11/2000)   | 1496-1500 |
| 13 |    |  |           |
| 14 | 5  | MOTION TO APPLY HEIGHTENED STANDARD OF REVIEW AND CARE IN THIS CASE BECAUSE THE STATE IS SEEKING THE DEATH PENALTY (FILED 11/29/1999)  | 1173-1180 |
| 15 |    |  |           |
| 16 | 2  | MOTION TO DISMISS COUNSEL AND APPOINTMENT OF ALTERNATE COUNSEL (FILED 04/01/1999)  | 403-408   |
| 17 |    |  |           |
| 18 | 2  | MOTION TO COMPEL DISCLOSURE OF EXISTENCE AND SUBSTANCE OF EXPECTATIONS, OR ACTUAL RECEIPT OF BENEFITS OR PREFERENTIAL TREATMENT FOR COOPERATION WITH PROSECUTION (FILED 06/29/1999)  | 511-515   |
| 19 |    |  |           |
| 20 |    |  |           |
| 21 | 3  | MOTION TO COMPEL DISCLOSURE OF EXISTENCE AND SUBSTANCE OF EXPECTATIONS, OR ACTUAL RECEIPT OF BENEFITS OR PREFERENTIAL TREATMENT FOR COOPERATION WITH PROSECUTION (10/19/1999)  | 738-742   |
| 22 |    |  |           |
| 23 |    |  |           |
| 24 | 2  | MOTION TO COMPEL THE PRODUCTION OF ANY AND ALL STATEMENTS OF THE DEFENDANT (FILED 06/29/1999)  | 516-520   |
| 25 |    |  |           |
| 26 | 3  | MOTION TO COMPEL THE PRODUCTION OF ANY AND ALL STATEMENTS OF THE DEFENDANT (FILED 10/19/1999)  | 727-731   |
| 27 |    |  |           |
| 28 | 2  | MOTION TO CONTINUE TRIAL (FILED 06/16/1999)  | 481-484   |

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|----|----|--|-----------|
| 1  | 6  | MOTION TO CONTINUE TRIAL<br>(FILED 12/16/1999)   | 1441-1451 |
| 2  | 2  | MOTION TO PROCEED PRO PER WITH CO-COUNSEL<br>AND INVESTIGATOR<br>(FILED 05/06/1999)  | 429-431   |
| 3  |    |  |           |
| 4  | 2  | MOTION TO REVEAL THE IDENTITY OF INFORMANTS<br>AND REVEAL ANY BENEFITS, DEALS, PROMISES OR<br>INDUCEMENTS<br>(FILED 06/29/1999)  | 505-510   |
| 5  |    |  |           |
| 6  |    |  |           |
| 7  | 3  | MOTION TO REVEAL THE IDENTITY OF INFORMANTS<br>AND REVEAL ANY BENEFITS, DEALS, PROMISES OR<br>INDUCEMENTS<br>(FILED 10/19/1999)  | 732-737   |
| 8  |    |  |           |
| 9  | 19 | MOTION TO SET ASIDE DEATH SENTENCE OR IN THE<br>ALTERNATIVE MOTION TO SETTLE RECORD<br>(FILED 09/05/2000)  | 4593-4599 |
| 10 |    |  |           |
| 11 | 2  | MOTION TO WITHDRAW COUNSEL AND APPOINT<br>OUTSIDE COUNSEL<br>(02/10/1999)  | 380-384   |
| 12 |    |  |           |
| 13 | 19 | NOTICE OF APPEAL<br>(FILED 11/08/2000)   | 4647-4650 |
| 14 |    |  |           |
| 15 | 42 | NOTICE OF APPEAL<br>(FILED 03/06/2014)   | 8203-8204 |
| 16 | 7  | NOTICE OF DEFENDANT'S EXPERT WITNESSES<br>(FILED 05/15/2000)   | 1753-1765 |
| 17 |    |  |           |
| 18 | 42 | NOTICE OF ENTRY OF FINDINGS OF FACT,<br>CONCLUSIONS OF LAW AND ORDER<br>(FILED 03/21/2014)   | 8184      |
| 19 |    |  |           |
| 20 | 2  | NOTICE OF EVIDENCE IN SUPPORT OF<br>AGGRAVATING CIRCUMSTANCES<br>(FILED 06/11/1999)  | 460-466   |
| 21 |    |  |           |
| 22 | 4  | NOTICE OF EXPERT WITNESSES<br>(FILED 11/17/1999)   | 961-963   |
| 23 |    |  |           |
| 24 | 2  | NOTICE OF INTENT TO SEEK DEATH PENALTY<br>(09/15/1998)   | 271-273   |
| 25 |    |  |           |
| 26 | 3  | NOTICE OF MOTION AND MOTION TO PERMIT DNA<br>TESTING OF THE CIGARETTE BUTT FOUND AT THE<br>CRIME SCENE BY THE LAS VEGAS METROPOLITAN<br>POLICE DEPARTMENT FORENSIC LABORATORY OR<br>BY AN INDEPENDENT LABORATORY WITH THE<br>RESULTS OF THE TEST TO BE SUPPLIED TO BOTH THE<br>DEFENSE AND THE PROSECUTION<br>(FILED 08/19/1999) | 552-561   |
| 27 |    |  |           |
| 28 |    |  |           |

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| 1  | 3  | NOTICE OF MOTION AND MOTION TO VIDEOTAPE<br>THE DEPOSITION OF CHARLA SEVERS<br>(FILED 09/29/1999)  | 622-644   |
| 2  |    |  |           |
| 3  | 3  | NOTICE OF MOTION AND MOTION TO VIDEOTAPE<br>THE DEPOSITION OF MYSELF CHARLA SEVERS<br>(10/11/1999)   | 682-685   |
| 4  |    |  |           |
| 5  | 17 | NOTICE OF MOTION AND STATE'S MOTION IN LIMINE<br>SUMMARIZING THE FACTS ESTABLISHED DURING THE<br>GUILT PHASE OF THE DONTE JOHNSON TRIAL<br>(FILED 07/14/2000)  | 4111-4131 |
| 6  |    |  |           |
| 7  | 3  | NOTICE OF WITNESSES<br>(FILED 08/24/1999)  | 562-564   |
| 8  |    |  |           |
| 9  | 6  | NOTICE OF WITNESSES<br>(FILED 12/08/1999)  | 1425-1427 |
| 10 | 4  | NOTICE OF WITNESSES AND OF EXPERT WITNESSES<br>PURSUANT TO NRS 174.234<br>(FILED 11/09/1999)   | 835-838   |
| 11 |    |  |           |
| 12 | 19 | NOTICE TO TRANSPORT FOR EXECUTION<br>(FILED 10/03/2000)  | 4628      |
| 13 |    |  |           |
| 14 | 31 | OPINION<br>(FILED 12/28/2006)  | 7284-7307 |
| 15 | 6  | OPPOSITION TO DEFENDANT'S MOTION FOR<br>DISCLOSURE OF ANY POSSIBLE BASIS FOR<br>DISQUALIFICATION OF DISTRICT ATTORNEY<br>(FILED 12/06/1999)  | 1366-1369 |
| 16 |    |  |           |
| 17 |    |  |           |
| 18 | 6  | OPPOSITION TO DEFENDANT'S MOTION FOR<br>DISCLOSURE OF EXCULPATORY EVIDENCE<br>PERTAINING TO THE IMPACT OF THE DEFENDANT'S<br>EXECUTION UPON VICTIM'S FAMILY MEMBERS<br>(FILED 12/06/1999)  | 1409-1411 |
| 19 |    |  |           |
| 20 |    |  |           |
| 21 | 6  | OPPOSITION TO DEFENDANT'S MOTION FOR<br>DISCOVERY AND EVIDENTIARY HEARING<br>REGARDING THE MANNER AND METHOD OF<br>DETERMINING IN WHICH MURDER CASES THE<br>DEATH PENALTY WILL BE SOUGHT<br>(FILED 12/06/1999)                             | 1383-1385 |
| 22 |    |  |           |
| 23 |    |  |           |
| 24 | 6  | OPPOSITION TO DEFENDANT'S MOTION FOR<br>DISQUALIFICATION FROM THE JURY VENIRE OF<br>ALL POTENTIAL JURORS WHO WOULD AUTOMATICALLY<br>VOTE FOR THE DEATH PENALTY IF THEY FOUND<br>MR. JOHNSON GUILTY OF CAPITAL MURDER<br>(FILED 12/06/1999) | 1380-1382 |
| 25 |    |  |           |
| 26 |    |  |           |
| 27 |    |  |           |
| 28 | 6  | OPPOSITION TO DEFENDANT'S MOTION FOR<br>INSPECTION OF POLICE OFFICERS' PERSONNEL FILES<br>(FILED 12/06/1999)   | 1362-1365 |

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|----|---|--|-----------|
| 1  | 6 | OPPOSITION TO DEFENDANT’S MOTION FOR PERMISSION<br>TO FILE OTHER MOTIONS<br>(FILED 12/06/1999)   | 1356-1358 |
| 2  |   |  |           |
| 3  | 6 | OPPOSITION TO DEFENDANT’S MOTION IN LIMINE<br>FOR ORDER PROHIBITING PROSECUTION<br>MISCONDUCT IN ARGUMENT<br>(FILED 12/06/1999)  | 1397-1399 |
| 4  |   |  |           |
| 5  | 6 | OPPOSITION TO DEFENDANT’S MOTION IN LIMINE<br>TO PRECLUDE THE INTRODUCTION OF VICTIM<br>IMPACT EVIDENCE<br>(FILED 12/06/1999)  | 1400-1402 |
| 6  |   |  |           |
| 7  |   |  |           |
| 8  | 6 | OPPOSITION TO DEFENDANT’S MOTION IN LIMINE<br>TO PROHIBIT ANY REFERENCES TO THE FIRST PHASE<br>AS THE “GUILTY PHASE”<br>(FILED 12/06/1999)   | 1392-1393 |
| 9  |   |  |           |
| 10 | 6 | OPPOSITION TO DEFENDANT’S MOTION TO ALLOW<br>THE DEFENSE TO ARGUE LAST AT THE PENALTY<br>PHASE<br>(FILED 12/06/1999)   | 1386-1388 |
| 11 |   |  |           |
| 12 |   |  |           |
| 13 | 6 | OPPOSITION TO DEFENDANT’S MOTION TO APPLY<br>HEIGHTENED STANDARD OF REVIEW AND CARE<br>IN THIS CASE BECAUSE THE STATE IS SEEKING<br>THE DEATH PENALTY<br>(FILED 12/06/1999)  | 1370-1373 |
| 14 |   |  |           |
| 15 |   |  |           |
| 16 | 6 | OPPOSITION TO DEFENDANT’S MOTION TO<br>AUTHENTICATE AND FEDERALIZE ALL MOTIONS<br>OBJECTIONS REQUESTS AND OTHER APPLICATIONS<br>AND ISSUES RAISED IN THE PROCEEDINGS IN THE<br>ABOVE ENTITLED CASE<br>(FILED 12/06/1999) | 1394-1396 |
| 17 |   |  |           |
| 18 |   |  |           |
| 19 | 6 | OPPOSITION TO DEFENDANT’S MOTION TO BIFURCATE<br>PENALTY PHASE<br>(FILED 12/06/1999)   | 1359-1361 |
| 20 |   |  |           |
| 21 | 6 | OPPOSITION TO DEFENDANT’S MOTION TO DISMISS<br>STATE’S NOTICE OF INTENT TO SEEK DEATH PENALTY<br>BECAUSE NEVADA’S DEATH PENALTY STATUTE IS<br>UNCONSTITUTIONAL<br>(FILED 12/06/1999)                                     | 1403-1408 |
| 22 |   |  |           |
| 23 |   |  |           |
| 24 | 6 | OPPOSITION TO DEFENDANT’S MOTION TO EXCLUDE<br>AUTOPSY PHOTOGRAPHS<br>(FILED 12/06/1999)   | 1377-1379 |
| 25 |   |  |           |
| 26 | 6 | OPPOSITION TO DEFENDANT’S MOTION TO PRECLUDE<br>EVIDENCE OF ALLEGED CO-CONSPIRATORS<br>STATEMENTS<br>(FILED 12/06/1999)  | 1374-1376 |
| 27 |   |  |           |
| 28 |   |  |           |

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| 1  | 6  | OPPOSITION TO DEFENDANT’S MOTION TO PROHIBIT<br>THE USE OF PEREMPTORY CHALLENGES TO EXCLUDE<br>JURORS WHO EXPRESS CONCERNS ABOUT CAPITAL<br>PUNISHMENT<br>(FILED 12/06/1999) | 1389-1391  |
| 2  |    |  |            |
| 3  |    |  |            |
| 4  | 6  | OPPOSITION TO DEFENDANT’S MOTION TO REQUIRE<br>PROSECUTOR TO STATE REASONS FOR EXERCISING<br>PEREMPTORY CHALLENGES<br>(FILED 12/06/1999)                                     | 1415-1417  |
| 5  |    |  |            |
| 6  | 3  | OPPOSITION TO MOTION IN LIMINE TO PERMIT THE<br>STATE TO PRESENT “THE COMPLETE STORY OF THE<br>CRIME”<br>(FILED 07/02/1999)  | 524-528    |
| 7  |    |  |            |
| 8  |    |  |            |
| 9  | 4  | OPPOSITION TO MOTION INN LIMINE TO PRECLUDE<br>EVIDENCE OF OTHER GUNS, WEAPONS AND<br>AMMUNITION NOT USED IN THE CRIME<br>(FILED 11/04/1999)                                 | 791-800    |
| 10 |    |  |            |
| 11 | 6  | OPPOSITION TO MOTION TO CONTINUE TRIAL<br>(FILED 12/16/1999)   | 1434-14440 |
| 12 |    |  |            |
| 13 | 6  | ORDER<br>(FILED 12/02/1999)  | 1338-1339  |
| 14 | 15 | ORDER<br>(FILED 06/22/2000)  | 3568       |
| 15 |    |  |            |
| 16 | 17 | ORDER<br>(FILED 07/20/2000)  | 4169-4170  |
| 17 | 6  | ORDER APPOINTING COUNSEL FOR MATERIAL<br>WITNESS CHARLA SEVERS<br>(FILED 12/02/1998)   | 1337       |
| 18 |    |  |            |
| 19 | 2  | ORDER DENYING DEFENDANT’S MOTION TO SET<br>BAIL<br>(FILED 10/20/1998)  | 378-379    |
| 20 |    |  |            |
| 21 | 10 | ORDER FOR CONTACT VISIT<br>(FILED 06/12/2000)  | 2601-2602  |
| 22 | 17 | ORDER FOR CONTACT VISIT<br>(FILED 07/20/2000)  | 4173-4174  |
| 23 |    |  |            |
| 24 | 7  | ORDER FOR PRODUCTION OF INMATE MELVIN<br>ROYAL<br>(FILED 05/19/2000)   | 1801-1802  |
| 25 |    |  |            |
| 26 | 7  | ORDER FOR PRODUCTION OF INMATE SIKIA SMITH<br>(FILED 05/08/2000)   | 1743-1744  |
| 27 | 7  | ORDER FOR PRODUCTION OF INMATE TERRELL<br>YOUNG<br>(FILED 05/12/2000)  | 1751-1752  |
| 28 |    |  |            |



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|----|----|---|-----------|
| 1  | 19 | ORDER FOR RELEASE OF EVIDENCE<br>(FILED 10/05/2000)                         | 4630      |
| 2  | 19 | ORDER TO STAY OF EXECUTION<br>(10/26/2000)                                  | 4646      |
| 3  |    |   |           |
| 4  | 3  | ORDER FOR TRANSCRIPT<br>(FILED 09/09/1999)                                  | 575-576   |
| 5  | 2  | ORDER FOR TRANSCRIPTS<br>(FILED 06/16/1999)                                 | 486-487   |
| 6  |    |   |           |
| 7  | 2  | ORDER GRANTING PERMISSION OF MEDIA ENTRY<br>(FILED 09/15/1998)              | 275       |
| 8  | 2  | ORDER GRANTING PERMISSION OF MEDIA ENTRY<br>(FILED 09/15/1998)              | 277       |
| 9  |    |   |           |
| 10 | 2  | ORDER GRANTING PERMISSION OF MEDIA ENTRY<br>(FILED 09/28/1998)              | 293       |
| 11 | 7  | ORDER GRANTING PERMISSION OF MEDIA ENTRY<br>(FILED 01/13/2000)              | 1610-1611 |
| 12 |    |   |           |
| 13 | 19 | ORDER OF EXECUTION<br>(FILED 10/03/2000)                                    | 4627      |
| 14 | 2  | ORDER REQUIRING MATERIAL WITNESS TO POST<br>BAIL OR BE COMMITTED TO CUSTODY |           |
| 15 |    | (FILED 04/30/1999)  | 423-424   |
| 16 | 7  | ORDER TO PRODUCE JUVENILE RECORDS<br>(FILED 05/31/2000)                     | 1805-1806 |
| 17 | 2  | ORDER TO TRANSPORT<br>(FILED 03/16/1999)                                    | 392-393   |
| 18 |    |   |           |
| 19 | 2  | ORDER TO TRANSPORT<br>(FILED 03/25/1999)                                    | 400-401   |
| 20 | 3  | ORDER TO TRANSPORT<br>(FILED 07/27/1999)                                    | 549-550   |
| 21 |    |   |           |
| 22 | 3  | ORDER TO TRANSPORT<br>(FILED 08/31/1999)                                    | 567-568   |
| 23 | 3  | ORDER TO TRANSPORT<br>(FILED 10/18/1999)                                    | 708-709   |
| 24 |    |   |           |
| 25 | 15 | PAGE VERIFICATION SHEET<br>(FILED 06/22/2000)                               | 3569      |
| 26 | 2  | RECEIPT OF COPY<br>(FILED 03/29/1999)                                       | 402       |
| 27 |    |   |           |
| 28 | 2  | RECEIPT OF COPY<br>(06/16/1999)   | 485       |

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|----|---|---------------------------------------|-----------|
| 1  | 3 | RECEIPT OF COPY<br>(FILED 06/29/1999) | 521       |
| 2  | 3 | RECEIPT OF COPY<br>(FILED 06/29/1999) | 522       |
| 3  |   |                                       |           |
| 4  | 3 | RECEIPT OF COPY<br>(FILED 06/29/1999) | 523       |
| 5  | 3 | RECEIPT OF COPY<br>(FILED 07/02/1999) | 529       |
| 6  |   |                                       |           |
| 7  | 3 | RECEIPT OF COPY<br>(FILED 07/28/1999) | 551       |
| 8  | 3 | RECEIPT OF COPY<br>(FILED 09/01/1999) | 569       |
| 9  |   |                                       |           |
| 10 | 3 | RECEIPT OF COPY<br>(FILED 10/18/1999) | 710       |
| 11 | 3 | RECEIPT OF COPY<br>(FILED 10/18/1999) | 711       |
| 12 |   |                                       |           |
| 13 | 3 | RECEIPT OF COPY<br>(FILED 10/19/1999) | 757       |
| 14 | 3 | RECEIPT OF COPY<br>(FILED 10/19/1999) | 758       |
| 15 |   |                                       |           |
| 16 | 3 | RECEIPT OF COPY<br>(FILED 10/19/1999) | 759       |
| 17 | 3 | RECEIPT OF COPY<br>(FILED 10/19/1999) | 760       |
| 18 |   |                                       |           |
| 19 | 3 | RECEIPT OF COPY<br>(FILED 10/19/1999) | 761       |
| 20 | 4 | RECEIPT OF COPY<br>(FILED 10/27/1999) | 781       |
| 21 |   |                                       |           |
| 22 | 6 | RECEIPT OF COPY<br>(FILED 11/30/1999) | 1311-1313 |
| 23 | 6 | RECEIPT OF COPY<br>(FILED 12/06/1999) | 1418-1420 |
| 24 |   |                                       |           |
| 25 | 6 | RECEIPT OF COPY<br>(FILED 01/11/2000) | 1501      |
| 26 |   |                                       |           |
| 27 | 6 | RECEIPT OF COPY<br>(FILED 01/12/2000) | 1502      |
| 28 | 7 | RECEIPT OF COPY<br>(FILED 03/31/2000) | 1692      |

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| 1  | 7  | RECEIPT OF COPY<br>(FILED 04/27/2000)  | 1735      |
| 2  | 14 | RECEIPT OF COPY<br>(FILED 06/14/2000)  | 3248      |
| 3  | 15 | RECEIPT OF COPY<br>(FILED 06/23/2000)  | 3598      |
| 4  | 17 | RECEIPT OF COPY<br>(FILED 07/10/2000)  | 4101      |
| 5  | 17 | RECEIPT OF COPY<br>(FILED 07/20/2000)  | 4171      |
| 6  | 17 | RECEIPT OF COPY<br>(FILED 07/20/2000)  | 4172      |
| 7  | 19 | RECEIPT OF COPY<br>(FILED 09/06/2000)  | 4600      |
| 8  | 19 | RECEIPT OF EXHIBITS<br>(FILED 10/18/2000)  | 4645      |
| 9  | 40 | RECORDER'S TRANSCRIPT OF EVIDENTIARY<br>HEARING<br>(FILED 04/11/2013)  | 7972-8075 |
| 10 | 41 | RECORDER'S TRANSCRIPT OF EVIDENTIARY<br>HEARING<br>(FILED 04/11/2013)  | 8076-8179 |
| 11 | 41 | RECORDER'S TRANSCRIPT OF EVIDENTIARY<br>HEARING<br>(FILED 04/11/2013)  | 8180-8183 |
| 12 | 42 | RECORDER'S TRANSCRIPT OF HEARING<br>EVIDENTIARY HEARING<br>(FILED 09/18/2013)  | 8207-8209 |
| 13 | 42 | RECORDER'S TRANSCRIPT OF HEARING STATUS<br>CHECK<br>(FILED 01/15/2014)   | 8205-8206 |
| 14 | 37 | RECORDER'S TRANSCRIPT OF PROCEEDINGS<br>DEFENDANT'S MOTION TO PLACE ON CALENDAR TO<br>RESCHEDULE EVIDENTIARY HEARING<br>(FILED 10/29/2012) | 7782-7785 |
| 15 | 42 | RECORDER'S TRANSCRIPT OF PROCEEDINGS<br>DEFENDANT'S MOTION TO PLACE ON CALENDAR<br>TO RESCHEDULE EVIDENTIARY HEARING<br>(FILED 04/29/2013) | 8281-8284 |
| 16 | 42 | RECORDER'S TRANSCRIPT OF PROCEEDINGS<br>EVIDENTIARY HEARING<br>(FILED 06/26/2013)  | 8210-8280 |

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|----|----|---|-----------|
| 1  | 37 | RECORDER'S TRANSCRIPT OF PROCEEDINGS STATUS<br>CHECK: EVIDENTIARY HEARING<br>(FILED 10/01/2012)   | 7786-7788 |
| 2  |    |   |           |
| 3  | 37 | RECORDER'S TRANSCRIPT OF PROCEEDINGS STATUS<br>CHECK: EVIDENTIARY HEARING<br>(FILED 07/12/2012)   | 7789-7793 |
| 4  |    |   |           |
| 5  | 37 | RECORDER'S TRANSCRIPT OF PROCEEDINGS STATUS<br>CHECK: EVIDENTIARY HEARING PETITION FOR WRIT<br>OF HABEAS CORPUS<br>(FILED 03/21/2012)   | 7794-7797 |
| 6  |    |   |           |
| 7  | 37 | REPLY BRIEF ON MR. JOHNSON'S INITIAL TRIAL<br>ISSUES<br>(FILED 08/22/2011)  | 7709-7781 |
| 8  |    |   |           |
| 9  | 4  | REPLY TO OPPOSITION TO MOTION IN LIMINE<br>TO PRECLUDE EVIDENCE OF OTHER GUNS,<br>WEAPONS AND AMMUNITION NOT USED IN THE<br>CRIME<br>(FILED 11/15/1999)   | 950-955   |
| 10 |    |   |           |
| 11 |    |   |           |
| 12 | 17 | REPLY TO RESPONSE TO MOTION FOR NEW TRIAL<br>(FILED 07/10/2000)   | 4096-4100 |
| 13 |    |   |           |
| 14 | 36 | REPLY TO THE STATE'S RESPONSE TO DEFENDANT'S<br>PETITION FOR WRIT OF HABEAS CORPUS<br>POST-CONVICTION, DEFENDANT'S SUPPLEMENTAL BRIEF,<br>AND SECOND SUPPLEMENTAL BRIEF IN SUPPORT OF<br>DEFENDANT'S WRIT OF HABEAS CORPUS POST<br>CONVICTION<br>(FILED 06/01/2011)   | 7672-7706 |
| 15 |    |   |           |
| 16 |    |   |           |
| 17 |    |   |           |
| 18 | 15 | REPLY TO STATE'S OPPOSITION REGARDING THREE<br>JUDGE PANEL<br>(FILED 07/18/2000)  | 4153-4159 |
| 19 |    |   |           |
| 20 | 7  | REPLY TO STATE'S OPPOSITION TO MOTION TO<br>SUPPRESS<br>(FILED 02/16/2000)  | 1632-1651 |
| 21 |    |   |           |
| 22 | 19 | REPLY TO STATE'S RESPONSE TO MOTION TO SET<br>ASIDE DEATH SENTENCE OR IN THE ALTERNATIVE<br>MOTION TO SETTLE RECORD<br>(FILED 10/02/2000)   | 4615-4618 |
| 23 |    |   |           |
| 24 | 7  | REPLY TO STATE'S SUPPLEMENTAL OPPOSITION TO<br>MOTION TO SUPPRESS<br>(FILED 03/30/2000)   | 1683-1691 |
| 25 |    |   |           |
| 26 | 35 | REPLY TO THE STATE'S RESPONSE TO DEFENDANT'S<br>PETITION FOR WRIT OF HABEAS CORPUS<br>(POST-CONVICTION), DEFENDANT'S SUPPLEMENTAL<br>BRIEF, AND SECOND SUPPLEMENTAL BRIEF IN SUPPORT<br>OF DEFENDANT'S WRIT OF HABEAS CORPUS<br>POST CONVICTION<br>(FILED 06/01/2011) | 7579-7613 |
| 27 |    |   |           |
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| 1  | 1 | REPORTER'S TRANSCRIPT OF SEPTEMBER 1, 1998<br>PROCEEDINGS<br>(FILED 09/14/1998)  | 11-267  |
| 2  | 2 | REPORTER'S TRANSCRIPT OF SEPTEMBER 2, 1998<br>RE: GRAND JURY INDICTMENTS RETURNED IN<br>OPEN COURT<br>(FILED 10/06/1998)   | 299-301 |
| 3  | 2 | REPORTER'S TRANSCRIPT OF SEPTEMBER 8, 1998<br>ARRAIGNMENT<br>(FILED 09/14/1998)  | 268-270 |
| 4  | 2 | REPORTER'S TRANSCRIPT OF SEPTEMBER 15, 1998<br>SUPERSEDING INDICTMENT<br>(FILED 10/20/1998)  | 309-377 |
| 5  | 2 | REPORTER'S TRANSCRIPT OF PROCEEDINGS OF<br>APRIL 12, 1999 PROCEEDINGS<br>(FILED 05/03/1999)  | 425-428 |
| 6  | 2 | REPORTER'S TRANSCRIPT OF APRIL 15, 1999<br>DEFENDANT'S PRO PER MOTION TO DISMISS<br>COUNSEL AND APPOINTMENT OF ALTERNATE<br>COUNSEL (FILED AND UNDER SEALED)<br>(FILED 04/22/1999) | 409-418 |
| 7  | 2 | REPORTER'S TRANSCRIPT OF JUNE 8, 1999<br>PROCEEDINGS<br>(FILED 06/17/1999)   | 491-492 |
| 8  | 3 | REPORTER'S TRANSCRIPT OF JUNE 29, 1999<br>PROCEEDINGS<br>(FILED 07/15/1999)  | 541-548 |
| 9  | 3 | REPORTER'S TRANSCRIPT OF JULY 8, 1999<br>PROCEEDINGS<br>(FILED 07/15/1999)   | 530-537 |
| 10 | 3 | REPORTER'S TRANSCRIPT OF JULY 13, 1999<br>PROCEEDINGS<br>(FILED 07/15/1999)  | 538-540 |
| 11 | 3 | REPORTER'S TRANSCRIPT OF AUGUST 10, 1999<br>STATE'S MOTION TO PERMIT DNA TESTING<br>(FILED 08/31/1999)   | 565-566 |
| 12 | 3 | REPORTER'S TRANSCRIPT OF SEPTEMBER 2, 1999<br>STATE'S MOTION TO PERMIT DNA TESTING<br>(FILED 10/01/1999)   | 647-649 |
| 13 | 3 | REPORTER'S TRANSCRIPT OF SEPTEMBER 30, 1999<br>STATE'S REQUEST FOR MATERIAL L WITNESS<br>CHARLA SEVERS<br>(FILED 10/01/1999)   | 645-646 |
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| 1  | 3 | REPORTER'S TRANSCRIPT OF OCTOBER 11, 1999<br>STATE'S MOTION TO VIDEOTAPE THE DEPOSITION<br>OF CHARLA SEVERS<br>(FILED 10/18/1999) | 712-716   |
| 2  |   |   |           |
| 3  | 3 | REPORTER'S TRANSCRIPT OF OCTOBER 14, 1999<br>STATE'S MOTION TO VIDEOTAPE THE DEPOSITION<br>OF CHARLA SEVERS<br>(FILED 10/18/1999) | 717-726   |
| 4  |   |   |           |
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| 6  | 4 | REPORTER'S TRANSCRIPT OF OCTOBER 21, 1999<br>STATUS CHECK: FILING OF ALL MOTIONS<br>(FILED 11/09/1999)                            | 821-829   |
| 7  |   |   |           |
| 8  | 4 | REPORTER'S TRANSCRIPT OF OCTOBER 26, 1999<br>VIDEO DEPOSITION OF CHARLA SEVERS<br>(FILED UNDER SEAL)<br>(FILED 11/09/1999)        | 839-949   |
| 9  |   |   |           |
| 10 | 4 | REPORTER'S TRANSCRIPT OF OCTOBER 28, 1999<br>DECISION: WITNESS RELEASE<br>(FILED 11/09/1999)                                      | 830-831   |
| 11 |   |   |           |
| 12 | 4 | REPORTER'S TRANSCRIPT OF NOVEMBER 8, 1999<br>PROCEEDINGS<br>(FILED 11/09/1999)  | 832-834   |
| 13 |   |   |           |
| 14 | 6 | REPORTER'S TRANSCRIPT OF NOVEMBER 18, 1999<br>DEFENDANT'S MOTIONS<br>(FILED 12/06/1999)   | 1347-1355 |
| 15 |   |   |           |
| 16 | 6 | REPORTER'S TRANSCRIPT OF DECEMBER 16, 1999<br>AT REQUEST OF COURT RE: MOTIONS<br>(FILED 12/20/1999)                               | 1452-1453 |
| 17 |   |   |           |
| 18 | 7 | REPORTER'S TRANSCRIPT OF DECEMBER 20, 1999<br>AT REQUEST OF COURT<br>(FILED 12/29/1999)   | 1459-1491 |
| 19 |   |   |           |
| 20 | 6 | REPORTER'S TRANSCRIPT OF JANUARY 6, 2000<br>RE: DEFENDANT'S MOTIONS<br>(FILED 01/13/2000)   | 1503-1609 |
| 21 |   |   |           |
| 22 | 7 | REPORTER'S TRANSCRIPT OF JANUARY 18, 2000<br>PROCEEDINGS<br>(FILED 01/25/2000)  | 1623-1624 |
| 23 |   |   |           |
| 24 | 7 | REPORTER'S TRANSCRIPT OF FEBRUARY 17, 2000<br>PROCEEDINGS<br>(FILED 03/06/2000)   | 1654-1656 |
| 25 |   |   |           |
| 26 | 7 | REPORTER'S TRANSCRIPT OF MARCH 2, 2000<br>PROCEEDINGS<br>(FILED 03/16/2000)   | 1668-1682 |
| 27 |   |   |           |
| 28 | 7 | REPORTER'S TRANSCRIPT OF APRIL 24, 2000<br>PROCEEDINGS<br>(FILED 05/09/2000)  | 1745-1747 |

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| 1  | 7     | REPORTER'S TRANSCRIPT OF MAY 8, 2000<br>PROCEEDINGS<br>(05/09/2000)                                      | 1748-1750 |
| 2  |       |  |           |
| 3  | 7     | REPORTER'S TRANSCRIPT OF MAY 18, 2000<br>PROCEEDINGS<br>(FILED 05/30/2000)                               | 1803-1804 |
| 4  |       |  |           |
| 5  | 7     | REPORTER'S TRANSCRIPT OF MAY 23, 2000<br>PROCEEDINGS<br>(FILED 06/01/2000)                               | 1807-1812 |
| 6  |       |  |           |
| 7  | 7     | REPORTER'S TRANSCRIPT OF JUNE 1, 2000<br>PROCEEDINGS<br>(FILED 06/02/2000)                               | 1813-1821 |
| 8  |       |  |           |
| 9  | 11&12 | REPORTER'S TRANSCRIPT OF JUNE 5, 2000<br>JURY TRIAL-DAY-1- VOLUME I<br>(FILED 06/12/2000)                | 2603-2981 |
| 10 |       |  |           |
| 11 | 8     | REPORTER'S TRANSCRIPT OF JUNE 6, 2000<br>JURY TRIAL- DAY 2- VOLUME II<br>(FILED 06/07/2000)              | 1824-2130 |
| 12 |       |  |           |
| 13 | 9&10  | REPORTER'S TRANSCRIPT OF JUNE 7, 2000<br>JURY TRIAL-DAY 3- VOLUME III<br>(FILED 06/08/2000)              | 2132-2528 |
| 14 |       |  |           |
| 15 | 15    | REPORTER'S TRANSCRIPT OF JUNE 8, 2000<br>JURY TRIAL- DAY 4- VOLUME IV<br>(FILED 06/12/2000)              | 2982-3238 |
| 16 |       |  |           |
| 17 | 14    | REPORTER'S TRANSCRIPT OF JUNE 9, 2000<br>JURY TRIAL (VERDICT)- DAY 5- VOLUME V<br>(FILED 06/12/2000)     | 3239-3247 |
| 18 |       |  |           |
| 19 | 14    | REPORTER'S TRANSCRIPT OF JUNE 13, 2000<br>JURY TRIAL PENALTY PHASE- DAY 1 VOL. I<br>(FILED 06/14/2000)   | 3249-3377 |
| 20 |       |  |           |
| 21 | 15    | REPORTER'S TRANSCRIPT OF JUNE 13, 2000<br>JURY TRIAL PENALTY PHASE- DAY 1 VOL. II<br>(FILED 06/14/2000)  | 3378-3537 |
| 22 |       |  |           |
| 23 | 16    | REPORTER'S TRANSCRIPT OF JUNE 14, 2000<br>JURY TRIAL PENALTY PHASE- DAY 2 VOL. III<br>(FILED 07/06/2000) | 3617-3927 |
| 24 |       |  |           |
| 25 | 17    | REPORTER'S TRANSCRIPT OF JUNE 16, 2000<br>JURY TRIAL PENALTY PHASE DAY 3 VOL. IV<br>(FILED 07/06/2000)   | 3928-4018 |
| 26 |       |  |           |
| 27 | 15    | REPORTER'S TRANSCRIPT OF JUNE 20, 2000<br>STATUS CHECK: THREE JUDGE PANEL<br>(FILED 06/21/2000)          | 3560-3567 |
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| 1  | 17      | REPORTER'S TRANSCRIPT OF JULY 13, 2000<br>DEFENDANT'S MOTION FOR A NEW TRIAL<br>(FILED 07/21/2000)                 | 4175-4179 |
| 2  |         |  |           |
| 3  | 17      | REPORTER'S TRANSCRIPT OF JULY 20, 2000<br>PROCEEDINGS<br>(FILED 07/21/2000)  | 4180-4190 |
| 4  |         |  |           |
| 5  | 18      | REPORTER'S TRANSCRIPT OF JULY 24, 2000<br>THREE JUDGE PANEL- PENALTY PHASE- DAY 1<br>(FILED 07/25/2000)            | 4191-4428 |
| 6  |         |  |           |
| 7  | 19      | REPORTER'S TRANSCRIPT OF JULY 16, 2000<br>THREE JUDGE PANEL- PENALTY PHASE- DAY 2<br>VOL. II<br>(FILED 07/28/2000) | 4445-4584 |
| 8  |         |  |           |
| 9  | 19      | REPORTER'S TRANSCRIPT OF SEPTEMBER 7, 2000<br>PROCEEDINGS<br>(FILED 09/29/2000)                                    | 4612-4614 |
| 10 |         |  |           |
| 11 | 19      | REPORTER'S TRANSCRIPT OF OCTOBER 3, 2000<br>SENTENCING<br>(FILED 10/13/2000)                                       | 4636-4644 |
| 12 |         |  |           |
| 13 | 20      | REPORTER'S TRANSCRIPT OF APRIL 19, 2005<br>TRIAL BY JURY- VOLUME I- A.M.<br>(FILED 04/20/2005)                     | 4654-4679 |
| 14 |         |  |           |
| 15 | 20      | REPORTER'S TRANSCRIPT OF APRIL 19, 2005<br>TRIAL BY JURY- VOLUME I- P.M.<br>(FILED 04/20/2005)                     | 4680-4837 |
| 16 |         |  |           |
| 17 | 21      | REPORTER'S TRANSCRIPT OF APRIL 20, 2005<br>TRIAL BY JURY- VOLUME I-A.M.<br>(FILED 04/21/2005)                      | 4838-4862 |
| 18 |         |  |           |
| 19 | 21      | REPORTER'S TRANSCRIPT OF APRIL 20, 2005<br>TRIAL BY JURY- VOLUME II- P.M.<br>(FILED 04/21/2005)                    | 4864-4943 |
| 20 |         |  |           |
| 21 | 21 & 22 | REPORTER'S TRANSCRIPT OF APRIL 21, 2005<br>TRIAL BY JURY- VOLUME III-P.M.<br>(FILED 04/22/2005)                    | 4947-5271 |
| 22 |         |  |           |
| 23 | 22      | REPORTER'S TRANSCRIPT OF APRIL 21, 200<br>PENALTY PHASE- VOLUME IV- P.M.<br>(FILED 04/22/2005)                     | 5273-5339 |
| 24 |         |  |           |
| 25 | 23      | REPORTER'S TRANSCRIPT OF APRIL 22, 2005<br>TRIAL BY JURY- VOLUME IV- P.M.<br>(FILED 04/25/2005)                    | 5340-5455 |
| 26 |         |  |           |
| 27 | 23      | REPORTER'S TRANSCRIPT OF APRIL 22, 2005<br>PENALTY PHASE- VOLUME IV- B<br>(FILED 04/25/2005)                       | 5457-5483 |
| 28 |         |  |           |



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| 1  | 23      | REPORTER'S TRANSCRIPT OF APRIL 25, 2005<br>TRIAL BY JURY- VOLUME V- P.M.<br>(FILED 04/26/2005)                    | 5484-5606 |
| 2  |         |   |           |
| 3  | 24      | REPORTER'S TRANSCRIPT OF APRIL 25, 2005<br>PENALTY PHASE- VOLUME V-A<br>(FILED 04/26/2005)                        | 5607-5646 |
| 4  |         |   |           |
| 5  | 24      | REPORTER'S TRANSCRIPT OF APRIL 26, 2005<br>TRIAL BY JURY- VOLUME VI- P.M.<br>(FILED 04/27/2005)                   | 5649-5850 |
| 6  |         |   |           |
| 7  | 25      | REPORTER'S TRANSCRIPT OF APRIL 26, 2005<br>PENALTY PHASE- VOLUME VI-A<br>(FILED 04/26/2005)                       | 5950-6070 |
| 8  |         |   |           |
| 9  | 25      | REPORTER'S TRANSCRIPT OF APRIL 27, 2005<br>TRIAL BY JURY- VOLUME VII-P.M.<br>(FILED 04/28/2005)                   | 5854-5949 |
| 10 |         |   |           |
| 11 | 26      | SPECIAL VERDICT   | 6149-6151 |
| 12 | 26      | REPORTER'S TRANSCRIPT OF APRIL 27, 2005<br>PENALTY PHASE - VOLUME VII- A.M.<br>(FILED 04/28/2005)                 | 6071-6147 |
| 13 |         |   |           |
| 14 | 26      | REPORTER'S TRANSCRIPT OF APRIL 28, 2005<br>PENALTY PHASE - VOLUME VIII-C<br>(04/29/2005)                          | 6181-6246 |
| 15 |         |   |           |
| 16 | 26 & 27 | REPORTER'S TRANSCRIPT OF APRIL 29, 2005<br>TRIAL BY JURY- VOLUME IX<br>(FILED 05/02/2005)                         | 6249-6495 |
| 17 |         |   |           |
| 18 | 27 & 28 | REPORTER'S TRANSCRIPT OF MAY 2, 2005<br>TRIAL BY JURY- VOLUME X<br>(FILED 05/03/2005)                             | 6497-6772 |
| 19 |         |   |           |
| 20 | 30      | REPORTER'S TRANSCRIPT OF MAY 2, 2005<br>TRIAL BY JURY (EXHIBITS)- VOLUME X<br>(FILED 05/06/2005)                  | 7104-7107 |
| 21 |         |   |           |
| 22 | 29      | REPORTER'S TRANSCRIPT OF MAY 3, 2005<br>TRIAL BY JURY- VOLUME XI<br>(FILED 05/04/2005)                            | 6776-6972 |
| 23 |         |   |           |
| 24 | 29      | REPORTER'S TRANSCRIPT OF MAY 4, 2005<br>TRIAL BY JURY- VOLUME XII<br>(FILED 05/05/2005)                           | 6974-7087 |
| 25 |         |   |           |
| 26 | 30      | REPORTER'S AMENDED TRANSCRIPT OF<br>MAY 4, 2005 TRIAL BY JURY (DELIBERATIONS)<br>VOLUME XII<br>(FILED 05/06/2005) | 7109-7112 |
| 27 |         |   |           |
| 28 | 30      | REPORTER'S TRANSCRIPT OF MAY 5, 2005<br>TRIAL BY JURY- VOLUME XIII<br>(FILED 05/06/2005)                          | 7113-7124 |

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| 1  | 31 | RESPONDENT'S ANSWERING BRIEF<br>(FILED 04/05/2006)  | 7226-7253 |
| 2  | 3  | REQUEST FOR ATTENDANCE OF OUT-OF-STATE<br>WITNESS CHARLA CHENIQUA SEVERS AKA<br>KASHAWN HIVES<br>(FILED 09/21/1999)   | 607-621   |
| 3  |    |   |           |
| 4  | 4  | SEALED ORDER FOR RLEASE TO HOUSE ARREST<br>OF MATERIAL WITNESS CHARLA SEVERS<br>(FILED 10/29/1999)  | 782       |
| 5  |    |   |           |
| 6  | 33 | SECOND SUPPLEMENTAL BRIEF IN SUPPORT<br>OF DEFENDANT'S WRIT OF HABEAS CORPUS<br>(FILED 07/14/2010)  | 7373-7429 |
| 7  |    |   |           |
| 8  | 19 | SPECIAL VERDICT (COUNT XI)<br>(FILED 07/26/2000)  | 4433-4434 |
| 9  |    |   |           |
| 10 | 19 | SPECIAL VERDICT (COUNT XI)<br>(FILED 07/26/2000)  | 4439      |
| 11 |    |   |           |
| 12 | 19 | SPECIAL VERDICT (COUNT XII)<br>(FILED 07/26/2000)   | 4435      |
| 13 |    |   |           |
| 14 | 19 | SPECIAL VERDICT (COUNT XII)<br>(FILED 07/26/2000)   | 4440-4441 |
| 15 |    |   |           |
| 16 | 19 | SPECIAL VERDICT (COUNT XIII)<br>(FILED 07/26/2000)  | 4436      |
| 17 |    |   |           |
| 18 | 19 | SPECIAL VERDICT (COUNT XIII)<br>(FILED 07/26/2000)  | 4442-4443 |
| 19 |    |   |           |
| 20 | 19 | SPECIAL VERDICT (COUNT XII)<br>(FILED 07/26/2000)   | 4437-4438 |
| 21 |    |   |           |
| 22 | 19 | SPECIAL VERDICT (COUNT XIV)<br>(FILED 07/26/2000)   | 4444      |
| 23 |    |   |           |
| 24 | 2  | STATE'S MOTION IN LIMINE TO PERMIT THE STATE<br>TO PRESENT " THE COMPLETE STORY OF THE CRIME"<br>(FILED 06/14/1999)   | 467-480   |
| 25 |    |   |           |
| 26 | 17 | STATE'S OPPOSITION FOR IMPOSITION OF LIFE<br>WITHOUT AND OPPOSITION TO EMPANEL JURY<br>AND/OR DISCLOSURE OF EVIDENCE MATERIAL TO<br>CONSTITUTIONALITY OF THE THREE JUDGE PANEL<br>PROCEDURE<br>(FILED 07/17/2000) | 4132-4148 |
| 27 |    |   |           |
| 28 | 6  | STATE'S OPPOSITION TO DEFENDANT'S MOTION<br>FOR CHANGE OF VENUE<br>(FILED 12/07/1999)   | 1421-1424 |
|    |    |   |           |
|    | 6  | STATE'S OPPOSITION TO DEFENDANT'S MOTION IN<br>LIMINE REGARDING CO-DEFENDANT'S SENTENCES<br>(FILED 12/06/1999)  | 1412-1414 |

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| 1  | 4  | STATE'S OPPOSITION TO DEFENDANT'S MOTION<br>TO COMPEL THE PRODUCTION OF ANY AND ALL<br>STATEMENTS OF THE DEFENDANT<br>(FILED 11/04/1999)   | 787-790   |
| 2  |    |  |           |
| 3  | 4  | STATE'S OPPOSITION TO DEFENDANT'S MOTION TO<br>REVEAL THE IDENTITY OF THE INFORMANTS AND<br>REVEAL ANY DEALS PROMISES OR INDUCEMENTS<br>(FILED 11/04/1999)   | 816-820   |
| 4  |    |  |           |
| 5  |    |  |           |
| 6  | 2  | STATE'S OPPOSITION TO DEFENDANT'S MOTION<br>TO SET BAIL<br>(FILED 10/07/1998)  | 302-308   |
| 7  |    |  |           |
| 8  | 2  | STATE'S OPPOSITION TO DEFENDANT'S PRO PER<br>MOTION TO WITHDRAW COUNSEL AND APPOINT<br>OUTSIDE COUNSEL<br>(FILED 02/19/1999)   | 385-387   |
| 9  |    |  |           |
| 10 | 7  | STATE'S OPPOSITION TO MOTION TO SUPPRESS<br>EVIDENCE ILLEGALLY SEIZED<br>(FILED 01/21/2000)  | 1612-1622 |
| 11 |    |  |           |
| 12 | 4  | STATE'S RESPONSE TO DEFENDANT'S MOTION<br>TO COMPEL DISCLOSURE OF EXISTENCE AND<br>SUBSTANCE OF EXPECTATIONS, OR ACTUAL<br>RECEIPT OF BENEFITS OR PREFERENTIAL<br>TREATMENT FOR COOPERATION WITH PROSECUTION<br>(FILED 11/04/1999)                   | 801-815   |
| 13 |    |  |           |
| 14 |    |  |           |
| 15 | 34 | STATE'S RESPONSE TO DEFENDANT'S PETITION FOR<br>WRIT OF HABEAS CORPUS (POST-CONVICTION)<br>AND DEFENDANT'S SUPPLEMENTAL BRIEF AND SECOND<br>SUPPLEMENTAL BRIEF IN SUPPORT OF DEFENDANT'S<br>WRIT OF HABEAS CORPUS (POST-CONVICTION)<br>ON 04/13/2011 | 7436-7530 |
| 16 |    |  |           |
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| 18 |    |  |           |
| 19 | 19 | STATE'S RESPONSE TO DEFENDANT'S MOTION<br>TO SET ASIDE SENTENCE OR IN THE ALTERNATIVE<br>MOTION TO SETTLE RECORD<br>(FILED 09/15/2000)   | 4601-4611 |
| 20 |    |  |           |
| 21 | 3  | STATE'S RESPONSE TO DEFENDANT'S OPPOSITION<br>TO STATE'S MOTION TO VIDEOTAPE THE DEPOSITION<br>OF CHARLA SEVERS  | 762-768   |
| 22 |    |  |           |
| 23 | 15 | STATE'S RESPONSE TO MOTION FOR NEW TRIAL<br>(FILED 06/30/2000)   | 3603-3616 |
| 24 |    |  |           |
| 25 | 2  | STIPULATION AND ORDER<br>(FILED 06/08/1999)  | 457-459   |
| 26 |    |  |           |
| 27 | 2  | STIPULATION AND ORDER<br>(FILED 06/17/1999)  | 488-490   |
| 28 |    |  |           |
|    | 3  | STIPULATION AND ORDER<br>(FILED 10/14/1999)  | 695-698   |

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|----|----|---|-----------|
| 1  | 6  | STIPULATION AND ORDER<br>(FILED 12/22/1999)   | 1454-1456 |
| 2  | 7  | STIPULATION AND ORDER<br>(FILED 04/10/2000)   | 1712-1714 |
| 3  | 7  | STIPULATION AND ORDER<br>(FILED 05/19/2000)   | 1798-1800 |
| 4  | 2  | SUPERSEDING INDICTMENT<br>(FILED 09/16/1998)  | 278-291   |
| 5  | 32 | SUPPLEMENTAL BRIEF IN SUPPORT OF<br>DEFENDANT'S WRIT OF HABEAS CORPUS<br>(FILED 10/12/2009)   | 7308-7372 |
| 6  | 39 | SUPPLEMENTAL EXHIBITS<br>(FILED 04/05/2013)   | 7880-7971 |
| 7  | 3  | SUPPLEMENTAL MOTION TO VIDEOTAPE<br>DEPOSITION OF CHARLA SEVERS<br>(FILED 10/18/1999)   | 705-707   |
| 8  | 7  | SUPPLEMENTAL NOTICE OF EXPERT WITNESSES<br>(FILED 05/17/2000)   | 1766-1797 |
| 9  | 2  | SUPPLEMENTAL NOTICE OF INTENT TO SEEK<br>DEATH PENALTY PURSUANT TO AMENDED<br>SUPREME COURT RULE 250<br>(FILED 02/26/1999)  | 388-391   |
| 10 | 6  | SUPPLEMENTAL OPPOSITION TO DEFENDANT'S<br>MOTION IN LIMINE TO PRECLUDE EVIDENCE OF<br>OTHER GUNS, WEAPONS AND AMMUNITION NOT<br>USED IN THE CRIME<br>(FILED 12/02/1999) | 1314-1336 |
| 11 | 7  | SUPPLEMENTAL OPPOSITION TO DEFENDANT'S<br>MOTION IN LIMINE TO PRECLUDE EVIDENCE OF<br>OTHER GUNS, WEAPONS AND AMMUNITION NOT<br>USED IN THE CRIME<br>(FILED 05/02/2000) | 1736-1742 |
| 12 | 7  | SUPPLEMENTAL POINTS AND AUTHORITIES IN<br>OPPOSITION TO MOTION TO SUPPRESS<br>(FILED 03/16/2000)  | 1657-1667 |
| 13 | 38 | TRANSCRIPT OF PROCEEDINGS STATUS CHECK:<br>EVIDENTIARY HEARING AND PETITION FOR WRIT<br>OF HABEAS CORPUS<br>(FILED 01/19/2012)  | 7798-7804 |
| 14 | 38 | TRANSCRIPT OF PROCEEDINGS STATUS CHECK:<br>EVIDENTIARY HEARING AND PETITION FOR WRIT<br>OF HABEAS CORPUS<br>(FILED 1/01/2012)   | 7805-7807 |

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| 1  | 38 | TRANSCRIPT OF PROCEEDINGS ARGUMENT: PETITION<br>FOR WRIT OF HABEAS CORPUS ALL ISSUES RAISED IN<br>THE PETITION AND SUPPLEMENT<br>(FILED 12/07/2011)   | 7808-7879 |
| 2  |    |   |           |
| 3  | 35 | TRANSCRIPT OF PROCEEDINGS DEFENDANT'S MOTION<br>TO PLACE ON CALENDAR TO EXTEND THE TIME TO FILE<br>A REPLY BRIEF IN SUPPORT OF DEFENDANT'S WRIT OF<br>HABEAS CORPUS<br>(FILED 04/12/2011)   | 7614-7615 |
| 4  |    |   |           |
| 5  |    |   |           |
| 6  | 35 | TRANSCRIPT OF PROCEEDINGS: HEARING<br>(FILED 10/20/2010)  | 7616-7623 |
| 7  |    |   |           |
| 8  | 36 | TRANSCRIPT OF PROCEEDINGS DECISION:<br>PROCEDURAL BAR AND ARGUMENT: PETITION FOR<br>WRIT OF HABEAS CORPUS<br>(FILED 07/21/2011)   | 7624-7629 |
| 9  |    |   |           |
| 10 | 36 | TRANSCRIPT OF PROCEEDINGS DEFENDANT'S MOTION<br>TO PLACE ON CALENDAR TO EXTEND THE TIME TO FILE<br>REPLY BRIEF IN SUPPORT OF DEFENDANT'S WRIT OF<br>HABEAS CORPUS/HEARING AND ARGUMENT:<br>DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS<br>(FILED 07/06/2011) | 7630-7667 |
| 11 |    |   |           |
| 12 |    |   |           |
| 13 | 36 | TRANSCRIPT OF PROCEEDINGS DEFENDANT'S<br>MOTION TO PLACE ON CALENDAR TO EXTEND THE<br>TIME TO FILE A REPLY BRIEF IN SUPPORT OF<br>DEFENDANT'S WRIT OF HABEAS CORPUS<br>(FILED 04/12/2011)   | 7707-7708 |
| 14 |    |   |           |
| 15 |    |   |           |
| 16 | 36 | TRANSCRIPT OF PROCEEDINGS DEFENDANT'S MOTION<br>TO PLACE ON CALENDAR TO EXTEND THE TIME TO<br>FILE A REPLY BRIEF IN SUPPORT OF DEFENDANT'S<br>WRIT OF HABEAS CORPUS<br>(FILED 06/07/2011)   | 7668-7671 |
| 17 |    |   |           |
| 18 |    |   |           |
| 19 | 33 | TRANSCRIPT OF PROCEEDINGS STATUS CHECK:<br>BRIEFING/FURTHER PROCEEDINGS<br>(FILED 06/22/2010)   | 7430-7432 |
| 20 |    |   |           |
| 21 | 33 | TRANSCRIPT OF PROCEEDINGS DEFENDANT'S MOTION<br>TO PLACE ON CALENDAR TO EXTEND THE TIME<br>FOR THE FILING OF A SECOND SUPPLEMENTAL BRIEF<br>IN SUPPORT OF DEFENDANT'S WRIT OF HABEAS CORPUS<br>AND TO PERMIT AN INVESTIGATOR AND EXPERT<br>(FILED 10/20/2009)   | 7433-7435 |
| 22 |    |   |           |
| 23 |    |   |           |
| 24 | 35 | TRANSCRIPT OF PROCEEDINGS DECISION:<br>PROCEDURAL BAR AND ARGUMENT: PETITION FOR<br>WRIT OF HABEAS CORPUS<br>(FILED 07/21/2011)   | 7531-7536 |
| 25 |    |   |           |
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| 1  | 35 | TRANSCRIPT OF PROCEEDINGS DEFENDANT'S MOTION<br>TO PLACE ON CALENDAR TO EXTEND THE TIME TO FILE<br>REPLY BRIEF IN SUPPORT OF DEFENDANT'S WRIT OF<br>HABEAS CORPUS/HEARING AND ARGUMENT:<br>DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS<br>(FILED 07/06/2011) | 7537-7574 |
| 2  |    |   |           |
| 3  |    |   |           |
| 4  | 35 | TRANSCRIPT OF PROCEEDINGS DEFENDANT'S<br>MOTION TO PLACE ON CALENDAR TO EXTEND THE TIME<br>TO FILE A REPLY BRIEF IN SUPPORT OF DEFENDANT'S<br>WRIT OF HABEAS CORPUS<br>(FILED 06/07/2011)   | 7575-7578 |
| 5  |    |   |           |
| 6  |    |   |           |
| 7  | 10 | VERDICT<br>(FILED 06/09/2000)   | 2595-2600 |
| 8  |    |   |           |
| 9  | 19 | VERDICT (COUNT XI)<br>(FILED 07/26/2000)  | 2595-2600 |
| 10 | 19 | VERDICT (COUNT XII)<br>(FILED 07/26/2000)   | 4429      |
| 11 |    |   |           |
| 12 | 19 | VERDICT (COUNT XIII)<br>(FILED 07/26/2000)  | 4430      |
| 13 | 19 | VERDICT (COUNT XIV)<br>(FILED 07/26/2000)   | 4432      |
| 14 |    |   |           |
| 15 | 19 | WARRANT OF EXECUTION<br>(FILED 10/03/2000)  | 4624      |
| 16 |    |   |           |
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**CERTIFICATE OF SERVICE**

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on the 9<sup>th</sup> day of January, 2015. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

CATHERINE CORTEZ-MASTO  
Nevada Attorney General

STEVE OWENS  
Chief Deputy District Attorney

CHRISTOPHER R. ORAM, ESQ.

BY:

/s/ Jessie Vargas  
An Employee of Christopher R. Oram, Esq.

CHRISTOPHER R. ORAM, LTD.  
520 SOUTH 4<sup>TH</sup> STREET | SECOND FLOOR  
LAS VEGAS, NEVADA 89101  
TEL. 702.384-5563 | FAX. 702.974-0623