

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARLO THOMAS,
Appellant,

v.
THE STATE OF NEVADA,
Respondent.

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**RESPONDENT'S APPENDIX
VOL. II**

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INDEX

Document Name	Document Date	Page numbers
Petition for Writ of Habeas Corpus	3-6-2008	000001-000012
Request for Funds for Investigative Assistance	11-9-2009	000013-000086
Response to Request for Funds for Investigative Assistance	12-8-2009	000087-000137
State's Response to Supp PWHC	4-14-2014	000179-000185
Supp PWHC	7-12-2010	000138-000156
RT Penalty Hearing Day 1	6-23-1997	000186-000422
RT Penalty Hearing Day 2	6-25-1997	000423-000567
RT Penalty Hearing (2)	10-31-2005	000568-000616
RT Penalty Hearing (2)	11-1-2005	000617-000671
RT penalty Hearing (2)	11-1-2005	001006-001042
RT Penalty Hearing (2)	11-2-2005	000672-000915
RT Penalty Hearing (2)	11-3-2005	000916-001005
RT Penalty Hearing (2)	11-4-2005	001043-001118

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ORIGINAL

FILED

DISTRICT COURT
CLARK COUNTY, NEVADA
JUN 24 11 44 AM '97

THE STATE OF NEVADA

Plaintiff

vs.

MARLO DEMETRIUS THOMAS

Defendant
.....

Loretta J. ...
CLERK
CASE NO. C136862

DEPT. NO. VI
DOCKET NO. "B"

Transcript of
Proceedings

BEFORE THE HONORABLE JOSEPH T. BONAVENTURE, DISTRICT JUDGE

JURY TRIAL - PENALTY PHASE - DAY 1
MONDAY, JUNE 23, 1997

APPEARANCES:

For the State:

DAVID P. SCHWARTZ
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Chief Deputy District Attorney

For Defendant Thomas:

PETER R. LaPORTA
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District Court

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RA 000186

1 LAS VEGAS, NEVADA, MONDAY, JUNE 23, 1997, 9:30 A.M.

2 (Court is called to order)

3 (Jury is present)

4 THE COURT: All right. Counsel, stipulate to the
5 presence of the jury?

6 MR. SCHWARTZ: Yes, Your Honor.

7 MR. LaPORTA: Yes, Judge.

8 MS. McMAHON: Yes, Your Honor.

9 THE COURT: All right. Good morning, ladies and
10 gentlemen. We're here to conduct the penalty phase of this
11 hearing.

12 Mr. Schwartz, on behalf of the State, would you like
13 to make some opening comments?

14 MR. SCHWARTZ: Yes, Your Honor.

15 Judge Bonaventure, counsel. Good morning, ladies
16 and gentlemen. You might notice that Mr. Roger is not present
17 today. He's next door conducting a sentencing in a case that
18 he was involved in. And he should be here momentarily. But,
19 in any event, we're ready to proceed with our witnesses prior
20 to his arrival.

21 As you were told at the outset of this trial, in the
22 State of Nevada any time an individual is found guilty of
23 first degree murder, the jury, which has found him guilty,
24 must determine what the appropriate punishment should be for
25 that crime. You've heard that in the State of Nevada there

1 are three possible forms of punishment; life in prison with
2 the possibility of parole, life imprisonment without the
3 possibility of parole, and the imposition of the death
4 sentence.

5 You'll be sentencing this defendant twice. You'll
6 be sentencing him for the first degree murder of Matt
7 Gianakis, and you will also be sentencing him a second time
8 for the first degree murder of Carl Dixon.

9 Today we're beginning the second phase of this
10 trial, known as the penalty phase. The first phase was the
11 guilt or innocence phase, now this is the penalty phase.

12 During the penalty phase both the State and the
13 defense are given an opportunity to present evidence to you.
14 Hopefully this penalty hearing will assist you in making a
15 determination regarding the appropriate sentence this
16 defendant should receive for the brutal first degree killing
17 of Matt Gianakis and the equally brutal killing of Carl Dixon.

18 During the penalty hearing you're going to hear a
19 lot about this defendant. You'll learn that the defendant has
20 a significant history of violent criminal behavior. And that
21 violent behavior is not limited to the streets. You will
22 learn that he has an extensive record for violence while
23 incarcerated in the prisons in the State of Nevada, as a
24 result of two separate felony convictions he has sustained for
25 crimes of violence.

1 During the penalty phase the State intends
2 introducing numerous individuals who have had dealings with
3 this defendant over the last decade or so.

4 You will learn that as early as 1984 the defendant
5 was arrested for the crime of robbery, where the victim was
6 Edward DeBrutz.

7 You'll learn that he was arrested again in 1984 for
8 attacking his teacher while at school, Sherron Robinson.

9 You'll hear that in 1987 the defendant was arrested
10 for the felony of grand larceny.

11 You'll hear that in 1988 he stole property belonging
12 to the then Broadway Southwest at the Meadows Mall. And when
13 a female security guard attempted to stop him, he punched her
14 in the face.

15 You'll hear evidence about a robbery of Hanifa
16 Alkareem. The defendant and his accomplice forced their way
17 into Mr. Alkareem's motel room. Once inside the room they
18 begin to beat him about the face and body, threw him to the
19 floor, continued to kick him in the head and in the body,
20 demanding money, and ultimately took some four hundred and
21 seventy-five dollars, I believe, or three hundred and fifty
22 dollars from his pants pocket.

23 You'll learn that the defendant was arrested in
24 March of 1990 for possession of a stolen vehicle, a felony.

25 You'll learn that the defendant was arrested again

1 in 1990 for the crime of robbery with the use of a deadly
2 weapon, a crime that carries as a maximum penalty 30 years in
3 the Nevada State Prison. However, through plea negotiations,
4 plea bargaining, his attorney was able to allow him to enter a
5 plea of guilty to only attempt robbery, which is probationable
6 and also carries as a maximum sentence, I believe, seven and a
7 half years in the Nevada State Prison.

8 The victim in that case was Preslyan Beltrane
9 [phonetic], who had just cashed a paycheck when he was
10 approached by two individuals. One of the individuals held
11 his hands behind the back while the second individual thrust a
12 knife to his throat and demanded money, and did in fact get
13 four hundred and seventy-five dollars (\$475) from Mr.
14 Beltrane. That was in 1990. The defendant pled guilty in
15 connection with that armed robbery. He pled guilty to attempt
16 robbery, and I believe he received a six-year prison sentence.

17 Many security guards from the State of Nevada's
18 Department of Prisons will testify as to their dealings with
19 the defendant while he was incarcerated for that attempted
20 robbery conviction. His victims in prison were not limited to
21 inmates, they included guards as well.

22 The defendant assaulted many inmates while
23 incarcerated in the Nevada State Prison. One particular
24 incident, he took a sock filled with rocks and beat it over an
25 inmate's face, causing serious eye damage, which required

1 surgery.

2 The defendant was released from prison in August of
3 1995, I believe.

4 Six months after his release the defendant went to
5 the home of Pam Davis and Loletha Jackson. He was looking for
6 his girlfriend, Angela, then his girlfriend. Loletha Jackson
7 told the defendant that Angela wasn't here, she's not here.
8 The defendant didn't like that, he became violent, he became
9 very threatening to her. Then he left, but returned a short
10 time after with a loaded handgun. He continued to question
11 Loletha Jackson, as he periodically hit her about the face and
12 body. He continued to question her while he had this handgun
13 placed at her head, demanding to know where his girlfriend
14 Angela was.

15 Loletha Jackson is expected to testify that he beat
16 her about the face. She required medical attention, she lost
17 at least one of her front teeth. And as the defendant was
18 leaving her house, he took his gun and shot through the living
19 room wall. On the other side of that wall was Loletha Jackson
20 and a small child. Fortunately for them, neither one was
21 hurt.

22 In connection with the crime against Loletha
23 Jackson, the defendant pled guilty to battery with substantial
24 bodily harm. The defendant pled guilty to battery with
25 substantial bodily harm on April the 5th, 1996. He was

1 allowed to remain on bail pending a sentence which was to take
2 place in June of that year.

3 Those horrible crimes we heard about last week all
4 took place just ten days after the defendant entered a plea of
5 guilty to a felony, battery with substantial bodily harm, and
6 was allowed out on bail.

7 The defendant's criminal history shows a pattern of
8 escalating violence. Enough is enough. In 1996 he reached
9 the top of the ladder when he committed not one but two
10 murders of the first degree, while using a deadly weapon, that
11 knife.

12 This defendant's criminal history also demonstrates
13 how the criminal system has failed this community. The
14 defendant was given a substantial break when his robbery with
15 use of a deadly weapon was reduced down to attempted -- I'm
16 sorry -- attempt robbery. A 30-year felony reduced down to a
17 seven and a half year felony. The defendant was given another
18 break on April the 5th, 1996, when the Court allowed him to
19 enter his plea of guilty and then to remain free on bail
20 pending sentencing. The defendant demonstrated his
21 appreciation for these breaks by brutally killing two young
22 and innocent men in a most horrific manner.

23 The State has alleged six aggravating circumstances
24 in this case. You may only consider the imposition of the
25 death penalty if you unanimously agree that the State has

1 proven at least one aggravating factor. If you feel the State
2 has proved one aggravating factor, then you can consider the
3 death penalty.

4 Ladies and gentlemen, the evidence will show that
5 the State has proven six aggravating factors. Two of those
6 aggravating factors have been proven by yourselves with your
7 verdict, that this was a murder which was committed during the
8 course of a robbery -- you've convicted the defendant of
9 robbery and first degree murder -- and that this was a murder
10 that occurred during the course of a burglary. You convicted
11 the defendant of burglary and a second count of first degree
12 murder. So, two of those six aggravating factors, I submit to
13 you, have been proven beyond any reasonable doubt, by
14 yourselves.

15 At the conclusion of this penalty hearing, ladies
16 and gentlemen, the State will ask you to do justice to this
17 case. Justice based upon the brutality of the two murders, as
18 well as the defendant's criminal history of violence, can only
19 be accomplished by imposing the maximum sentence that is
20 available to you.

21 Justice requires a punishment that protects the
22 citizens on the street, as well as the men and women who work
23 and happen to be housed in the Nevada State Prison system.

24 At the conclusion of this hearing, ladies and
25 gentlemen, the State is going to ask you to return two

1 sentences, two sentences of death; one for the brutal killing
2 of Carl Dixon and one for the brutal murder of Matt Gianakis.

3 Thank you.

4 THE COURT: Thank you, Mr. Schwartz.

5 And, Mr. LaPorta, would you like to make your
6 opening comment?

7 MR. LaPORTA: Yes, Your Honor.

8 Your Honor, counsel, ladies and gentlemen of the
9 jury. This is the first time that I've spoken to you, and I
10 find it a very very difficult and troubling moment.

11 My client stands convicted of a terrible, awful,
12 senseless and brutal crime; two murders. This is an
13 unforgivable crime, and we're not asking for forgiveness.
14 What we're doing here over the next day or two is what we
15 talked to you about during the jury selection process. And
16 that was, after the conviction you would look at the big
17 picture, you would look at Mr. Thomas's life.

18 Last week we looked at an incident. That incident
19 was the unfortunate murder of two innocent victims. This week
20 we're going to ask you to look at something much more
21 difficult, and that is a life. And just how do you present a
22 life to twelve people?

23 I'm not going to sit here and pretend that Marlo is
24 a good guy, because he certainly is not. We wouldn't be
25 standing here, or I wouldn't be standing here talking to you

1 if he didn't have a lot of significant bad things that he did
2 in his life. That's a foregone conclusion.

3 We want you to look at the larger picture and
4 consider everything, not only the bad, but the forces that
5 shaped his life, that brought him to this point. And then
6 we'll ask you to consider between two extreme forms of
7 punishment; imprisonment for the rest of his natural life or
8 to kill him.

9 Now, as we've talked to you before, murder -- first
10 degree murder in and of itself is no reason to give the death
11 penalty. The State has correctly stated they must prove their
12 aggravators beyond a reasonable doubt. And no doubt, if not
13 all, most of those aggravators will be proven to you beyond a
14 reasonable doubt.

15 Despite that, as the Judge will eventually instruct
16 you, at that point you still do not need to choose the death
17 penalty. There is no mandatory death penalty. It's simply a
18 choice you may make after the State has proven beyond a
19 reasonable doubt the aggravators.

20 The one question we are here to answer is, is Marlo
21 so beyond redemption that he should be eliminated from the
22 human race? That's the sole and single question, as the
23 defense sees it.

24 We're going to talk to you about this young man who
25 has previously sinned before man and God, no doubt. We're

1 going to ask you to look at the forces that pushed him in the
2 direction to where he finds himself today.

3 And I want to make this abundantly clear to all of
4 you, there's no excuse for what happened. There is no
5 justification for what happened. We do not offer you this
6 evidence in mitigation to excuse or to justify the crimes.
7 We're simply telling you once again to show you what forces
8 shaped his life. We'll tell of a life and a background that
9 we hope will help you in deciding between two severe forms of
10 punishment.

11 Some of the facts that you will hear throughout our
12 phase of the trial, and you will hear this through expert
13 witnesses, that Marlo is an individual with an IQ of 79. He's
14 ten points above mentally retarded. The expert will tell you
15 about the significance of that, and how it plays into his
16 ability to process present sensory information, things that
17 he's receiving through his eyes and his ears, and his ability
18 to solve those problems.

19 You'll hear about when his mother was pregnant with
20 him, during her nine months, that almost on a daily basis she
21 got extremely intoxicated on cheap wine and vodka. Marlo's
22 dad, you will hear, he never knew. You will hear testimony
23 that almost on a daily basis Marlo's mother was kicked,
24 repeatedly kicked and punched in the stomach all during the
25 pregnancy with Marlo.

1 You'll also hear some evidence as to a difficult
2 life growing up, in particular in grammar school. And you
3 will hear about a young man who was bladder incontinent, all
4 the way up until age 12 years old -- 12 years of age. His
5 classmates nicknamed him stinky. They ridiculed him, they
6 criticized him and made fun of him. Why did they call him
7 stinky? Because of his bladder incontinence, he could not
8 control himself, constantly urinated on himself, and was
9 always smelling of urine while he was in school, afterwards.
10 He was incessantly picked on, and his grammar school years
11 were full of negative experiences.

12 Getting back to the 79 IQ that you will hear about,
13 you will hear, in addition to that, that he had significant
14 learning and emotional disabilities, areas that touch on
15 Dyslexia, Attention Deficit Disorder and so forth. His mental
16 processing, the speed at which he solved social problems that
17 he's confronted with is inhibited, diminished. He's unable to
18 solve complex and even normal problems as most of the rest of
19 us can. It takes a considerable amount of work.

20 He has, as I've already alluded to, severe emotional
21 disabilities or disturbances. He's always had those, since
22 day one. He has trouble controlling his behavior. You're
23 going to hear evidence of a young man that's totally out of
24 control, from early on. Why? As the expert will tell you,
25 because of these intellectual and emotional defects that he

1 manifested from early on.

2 You're not going to hear a lot of psycho babble,
3 you're going to hear about a defective human being. His
4 wiring is different than everybody else's. That's what you'll
5 hear about. He has a significantly impaired ability for
6 social judgment and for social problem solving. He responds,
7 as the expert will testify, as a 14-year-old.

8 He's more a person or a human being who allows his
9 impulsive behavior, his impulses, to control what he does, as
10 opposed to thinking through his problems. His ability to
11 reason and rationalize is significantly impaired, as the
12 experts will tell you.

13 The experts will continue to tell you that he has no
14 grasp on who he is or his place in society. All of this, the
15 experts will continue to you, are due to his personal, social
16 and environmental factors. The expert will tell you that he's
17 not a sociopath without the capacity for remorse, that he's
18 more along the lines of a person with an antisocial
19 personality disorder.

20 I want to draw your attention to something you've
21 already witnessed, and that is the confession tape. If you
22 will recall, and this goes along with an antisocial disorder,
23 he apologized when given a chance, at the end of that tape, to
24 the families of the victims. That was not rehearsed. This
25 doesn't make what he did okay. It doesn't make it okay at

1 all. This was a horrible crime. A crime that Marlo needs to
2 be severely punished for. He needs to be removed from society
3 permanently, make no doubt about that. But this big guy over
4 here that you see behaves as a 14-year-old because of this
5 defective wiring.

6 The evidence will show you he wasn't dealt a full
7 hand at birth, and he wasn't given a full hand to play in
8 life. With his lack of intelligence and all the other
9 problems, he simply has trouble coping with life.

10 When all is said and done here, we're going to ask
11 you to severely punish this defective human being. We're
12 going to ask you to imprison him for the rest of his life and
13 not to kill him.

14 Thank you.

15 THE COURT: Thank you, Mr. LaPorta. That completes
16 the opening statements, ladies and gentlemen. Now we'll hear
17 the State's first witness.

18 MR. SCHWARTZ: Your Honor, may I be excused to see
19 which witnesses are in the --

20 THE COURT: Certainly. Absolutely.

21 MR. SCHWARTZ: Thank you.

22 THE COURT: Thank you, Mr. Schwartz.

23 (Pause in the proceedings)

24 THE COURT: Who is your first witness?

25 MR. SCHWARTZ: Your Honor, the State will be calling

CARLSON - DIRECT

1 Officer Jeff Carlson first.

2 THE COURT: All right. Officer, please remain
3 standing up over there, raise your right hand and be sworn.

4 JEFF CARLSON, PLAINTIFF'S WITNESS, IS SWORN

5 THE CLERK: Thank you. Please be seated.

6 THE COURT: Please state your name and spell your
7 last name for the record?

8 THE WITNESS: Jeff Carlson, C-A-R-L-S-O-N.

9 THE COURT: Mr. Schwartz?

10 MR. SCHWARTZ: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY MR. SCHWARTZ:

13 Q Sir, by whom are you employed?

14 A Las Vegas Metropolitan Police Department.

15 Q In what capacity?

16 A Currently in the search and robbery detail.

17 Q And how long have you been so employed by the Las
18 Vegas Metropolitan Police Department?

19 A Just over seventeen years.

20 Q Let me direct your attention, sir, to September the
21 19th, 1984. Did you have occasion to be dispatched to the
22 Childrens' Behavioral Services, located at 6171 West
23 Charleston?

24 A Yes, I did.

25 Q And what was the nature of that dispatch?

CARLSON - DIRECT

1 A I was dispatched regarding somebody in custody for a
2 battery.

3 Q Okay. And do you recall upon whom the battery was
4 allegedly to have occurred?

5 A The battery was against a teacher, Sherron Robinson.

6 Q Okay. When you arrived at the Childrens' Behavioral
7 Services, did you come in contact with Ms. Robinson?

8 A Yes, I did, I did speak with her.

9 Q And what, if anything, did she say to you?

10 A She said that she was a teacher at the -- at CBS
11 there, and two of the students were engaged in a fight or an
12 altercation, she tried to break it up and one of students
13 turned and kicked her in the leg.

14 Q Okay. Did she identify the student who turned and
15 kicked her in the leg?

16 A Yes, Marlo Thomas.

17 Q And did she indicate how Marlo Thomas and the other
18 student, as you've testified, got involved in the fight?

19 A I don't recall what their fight was about, no.

20 Q Okay. Did you complete an officer's report as a
21 result of this incident?

22 A I did an arrest report, yes.

23 Q An arrest report. So, Marlo Thomas was in fact
24 arrested?

25 A Yes, he was.

CARLSON - DIRECT

1 Q Do you see Marlo Thomas in the courtroom today?

2 A I don't --

3 Q Would you recognize him if you saw --

4 A I wouldn't --

5 Q -- him?

6 A -- recognize him at this point, no.

7 Q Okay. I'm going to show you what appears to be a
8 Las Vegas Metropolitan Police Arrest Report, and I'd ask you
9 if you could read to yourself what's contained in that report?

10 THE COURT: Is this any exhibit, Mr. Schwartz, or
11 this is just --

12 MR. SCHWARTZ: No, Your Honor.

13 THE COURT: -- his report, is that correct?

14 MR. SCHWARTZ: Yes.

15 THE COURT: All right. To refresh his memory.

16 All right. Proceed.

17 THE WITNESS: Okay.

18 BY MR. SCHWARTZ:

19 Q Have you read your report?

20 A Yes, I have.

21 Q Does that refresh your recollection --

22 A Yes.

23 Q -- about the incident?

24 A Yes, it does.

25 Q Does it indicate the nature of a conflict between

CARLSON - DIRECT

1 Marlo Thomas and the other student, how that all occurred?

2 A It just states that Marlo Thomas entered the
3 classroom and, without provocation, struck another student in
4 the back.

5 Q Okay. And that's what caused Sherron Robinson to
6 intervene?

7 A That is correct.

8 Q Thank you. On this police report, sir, does it
9 indicate a date of birth for Marlo Robinson?

10 A On the second page, I believe. For Marlo?

11 Q Yes.

12 A His date of birth -- well, the copy's not -- I'm not
13 sure on the middle number -- 11/6 or 11/8 of 1972.

14 Q Thank you. Officer, when you complete or fill out
15 police reports, after you make an arrest, are you careful to
16 obtain identification from the individuals that you've
17 arrested?

18 A As well as possible, yes.

19 Q And then you would put whatever information is
20 available to you on these police reports?

21 A That's correct.

22 Q Thank you.

23 MR. SCHWARTZ: I have no further questions, Your
24 Honor.

25 THE COURT: All right. Any cross -- any cross-

CARLSON - CROSS

1 examination?

2 MR. LaPORTA: Briefly, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. LaPORTA:

5 Q Officer, do you know -- you stated a date of birth
6 on there. Do you know, in chronological years, how old he was
7 at that point in time?

8 A I believe he was eleven years old.

9 Q Eleven years old?

10 MR. LaPORTA: No further questions.

11 THE COURT: Thank you very much, Officer. You can
12 go about your business now.

13 THE WITNESS: Okay.

14 THE COURT: Next witness, please, on behalf of the
15 State?

16 MR. SCHWARTZ: The Court's indulgence. Cathy
17 Barfuss.

18 THE COURT: Please remain standing up over here,
19 ma'am, and raise your right hand and be sworn.

20 CATHY BARFUSS-FRAZIER, PLAINTIFF'S WITNESS, IS SWORN

21 THE CLERK: Thank you, please be seated.

22 THE COURT: State your name and spell your first
23 name and your last name for the record.

24 THE WITNESS: Cathy Barfuss-Frazier, C-A-T-H-Y, B-A-
25 R-F-U-S-S, F-R-A-Z-I-E-R.

BARFUSS-FRAZIER - DIRECT

DIRECT EXAMINATION

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BY MR. SCHWARTZ:

Q Ma'am, directing your attention back to August the 12th of 1988, where were you employed?

A The Broadway.

Q And where -- which Broadway were you working at back in 1988?

A The Meadows Mall.

Q Okay. If I could ask you to speak into that microphone, so the members of the jury can hear, I'd appreciate that?

THE COURT: You could lift it up. Lift it up, get it to your mouth. All right, the best you can.

MR. SCHWARTZ: Thank you.

THE COURT: You can scoot your chair in. Proceed.

MR. SCHWARTZ: Thank you.

BY MR. SCHWARTZ:

Q In what capacity were you employed by the Broadway out at the Meadows Mall?

A I was a security guard, undercover.

Q An undercover security guard?

A Mm-hmm.

Q You have to answer out loud.

A Yes.

BARFUSS-FRAZIER - DIRECT

1 Q Okay. Directing your attention to August the 12th,
2 1988, while you were working as an undercover security guard
3 at the Broadway Southwest at Meadows Lane, did anything
4 unusual occur?

5 A Yes. A group of juveniles came in, about six of
6 them, and were loading up clothes and taking them outside,
7 shoplifting.

8 Q Okay. And what did you do after you witnessed these
9 individuals shoplifting, or stealing property from the store?

10 A I approached the individuals with some members of
11 mall security and store management to detain the people.

12 Q Okay. And when you approached the individuals, what
13 if anything happened?

14 A They all kind of took off in different directions.
15 Marlo didn't take off anywhere. I approached him and asked
16 him to come back in the store with me, and he said he wasn't
17 going anywhere.

18 Q What happened after that?

19 A I said, you have to come back with me, and he said,
20 I'm not going anywhere, and get out of my face, bitch. So, I
21 said, I'm not getting out of your face, and he punched me
22 right in the face. Then he punched one of the managers at the
23 -- at the Broadway and knocked one or two of his teeth out.
24 And then he took off running across the parking lot.

25 Q Did you give chase?

BARFUSS-FRAZIER - DIRECT

1 A Yes.

2 Q And what happened during the time you tried to
3 apprehend Marlo?

4 A I chased him across the parking lot behind Furr's
5 Cafeteria. One of his friends was behind me. When he got to
6 the back of Furr's he stopped running and turned around and
7 started coming toward me.

8 Q And what happened after that?

9 A Mall security drove up at that time in their
10 vehicle, and everybody started scattering again. And Marlo
11 somehow got into the vehicle that mall security was driving,
12 and started driving erratically around the parking lot, and
13 lodged the car up onto a curb and a tree, disabling the
14 vehicle.

15 Q Okay. Was he able to be apprehended after he
16 disabled the vehicle?

17 A He ran across the street, across the fence and got
18 onto the freeway, and got away from us. Then he appeared a
19 couple of weeks later in the same store that I was working.
20 And he had some individuals with him at that time and they
21 were watching me and following me around the store. So, I
22 contacted my boss and Metro and advised them that he was here
23 in the store.

24 Q Did you acknowledge, was he arrested on that second
25 occasion when he came into the store?

BARFUSS-FRAZIER - CROSS

1 A Yes, he was.

2 Q During this incident, you stated that one of the
3 managers was punched in the face and lost several teeth, is
4 that correct?

5 A Maybe one or two, I'm not for sure.

6 Q Did you sustain any physical injuries as a result of
7 what happened?

8 A I was a little sore, but nothing broken.

9 Q Okay.

10 MR. SCHWARTZ: Pass the witness, Your Honor.

11 THE COURT: Thank you. Any cross?

12 MR. LaPORTA: Just a few brief questions, Your
13 Honor.

14 CROSS-EXAMINATION

15 BY MR. LaPORTA:

16 Q You said there were a number of juveniles. How many
17 juveniles --

18 A I'd say about six.

19 Q -- were present at the beginning? About six. Were
20 there any adults within that group?

21 A I don't recall, because some of them got away. We
22 didn't get all of them.

23 Q Did Marlo appear to be the oldest or did he appear
24 to be somewhere in the middle, or the youngest?

25 A Maybe around the oldest, I'd say, or close to the

BARFUSS-FRAZIER - REDIRECT

1 oldest.

2 MR. LaPORTA: No further questions.

3 THE COURT: Thank you. Anything else?

4 MR. SCHWARTZ: Just a couple.

5 REDIRECT EXAMINATION

6 BY MR. SCHWARTZ:

7 Q Ma'am, you said six individuals on that first
8 occasion were involved in the taking property belonging to the
9 Broadway Southwest. How many individuals punched you?

10 A One.

11 Q And that was Marlo Thomas?

12 A Yes.

13 Q And you said that a car or a security car was
14 commandeered by one of these six individuals. Was that also
15 Marlo Thomas?

16 A Yes.

17 Q Thank you.

18 MR. SCHWARTZ: Nothing further, Your Honor.

19 THE COURT: All right. That completes the testimony
20 then, thank you very much. You can go about your business
21 now.

22 THE WITNESS: Okay, thank you.

23 THE COURT: The State's next witness?

24 MR. SCHWARTZ: Hanifa Alkareem.

25 THE COURT: Sir, please remain standing up over

ALKAREEM - DIRECT

1 there, I'd like you to raise your right hand and be sworn.

2 HANIFA ALKAREEM, PLAINTIFF'S WITNESS, IS SWORN

3 THE CLERK: Thank you. Please be seated.

4 THE COURT: Please state your name and spell your --
5 sit down, sir. Please state your name and spell your first
6 name and your last name for the record.

7 THE WITNESS: My name is Alkareem, A-L-K-A-R-E-E-M,
8 Hanifa, H-A-N-I-F-A.

9 DIRECT EXAMINATION

10 BY MR. SCHWARTZ:

11 Q Sir, I'm going to ask you some questions and then
12 defense counsel will be given an opportunity to question you.
13 If you could speak up into that microphone so all the members
14 of the jury can hear, we'd appreciate that.

15 Sir, I want to direct your attention to December the
16 28th, 1989. Were you staying at the Arrowhead Motel at 2403
17 Las Vegas Boulevard North?

18 A Yes, I was.

19 Q Okay. While you were in your room at the Arrowhead
20 Motel on that date, did two people have occasion to knock on
21 your door?

22 A Yes, they did.

23 Q What did these individuals want?

24 A They wanted to know did I want to buy any crack
25 cocaine.

ALKAREEM - DIRECT

1 Q And what, if anything, did you say to them?

2 A I told them no.

3 Q And what happened after you told these two
4 individuals no?

5 A When they attempted to walk over to the door, I
6 attempted to close it behind their backs, and Marlo and the
7 other guy pushed the door back and kicked the door back in and
8 proceeded to give me a good whupping.

9 Q Okay. When you say Marlo and the other guy, did
10 there come a time after the incident occurred that you learned
11 the identity of both individuals?

12 A Yes, by the manager of the hotel.

13 Q Okay. And what did you learn the name of the
14 individuals to be?

15 A One was named Marlo and the other one was named
16 Champ.

17 Q Okay. Did Marlo appear to be the younger of the two
18 or the older of the two?

19 A The younger.

20 Q Okay. Now, you testified that these two individuals
21 forced their way into your motel room and began to beat you
22 up, is that correct?

23 A That's correct.

24 Q Could you describe for the members of the jury what
25 happened, what they did to you?

ALKAREEM - DIRECT

1 A When I attempted to -- when I told them I didn't
2 want to buy any drugs and I attempted to close the door, Marlo
3 turned around with Champ and they forced their way back into
4 the motel room, kicking the door open. And I was pushed back,
5 and I got into a fist fight with Champ, the bigger of the two.
6 At the time I was fighting Champ, Marlo went into my pocket
7 and attempted to take the money out of my pocket. At that
8 time I was fighting Champ, man to man, and Marlo was standing
9 to the side. He ran outside the door, as me and Champ were on
10 the ground, he ran outside and picked up a boulder and
11 attempted to pop -- bust me in my head with it. As I seen him
12 having the boulder in his hand, he throwed it and I turned my
13 head to the side.

14 After he got the money out of my pocket they went,
15 walked out the room and left me there inside the room by
16 myself.

17 Q And after they left is when you contacted the
18 police?

19 A Yes, the assistant -- the manager of the motel
20 called the police for me.

21 Q Okay. Did you sustain any injuries as a result of
22 what had occurred to you on December 28th?

23 A Yes, I did. I broke my right wrist, my hand and I
24 received the bump that you see on my forehead that you see on
25 my forehead now. I lost a couple of teeth in the front part

ALKAREEM - DIRECT

1 of my mouth.

2 Q Are you certain that it was the individual named
3 Marlo who had the boulder in his hand and threw it at your
4 head?

5 A Oh yes, definitely. I wasn't blind and I wasn't
6 drunk.

7 Q Now, when you say boulder, are you -- how big was
8 this rock that was thrown? I'm sure the jury can --

9 A This big. He had it over his head and I was laying
10 on the ground fighting Champ, and I looked up and I saw him,
11 he threw it down, he was dropping it, and I turned to the side
12 and hit the floor this.

13 Q Now, do you think, in view of the fact that this
14 occurred in 1989 you would be able to recognize this fellow
15 Marlo if you saw him again?

16 A Yes, I would.

17 Q Okay. Do you see him in the courtroom?

18 A Yes, I do.

19 Q Would you indicate where he's located and describe
20 what he's wearing?

21 A Here.

22 MR. SCHWARTZ: The record reflect he's pointing to
23 the defendant, Your Honor?

24 THE COURT: The record will so reflect.

25 MR. SCHWARTZ: Thank you. No further questions,

ALKAREEM - CROSS

1 Your Honor.

2 THE COURT: Thank you. Cross-examination?

3 MR. LaPORTA: Yes, briefly, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. LaPORTA:

6 Q Mr. Kareem [sic], is it?

7 A Yes, it is.

8 Q Did you know Marlo before that incident?

9 A No, I didn't. I never met the man a day in my life.

10 Q So, how did you come to identify him?

11 A Well, let's start the story --

12 Q Well, let me ask you, were you shown a police photo
13 lineup?

14 A No, no.

15 Q Were you shown a live lineup?

16 A No.

17 Q So, did the police tell you that they had arrested
18 him?

19 A No, the police asked me to give a description of the
20 individual who attempted to -- who robbed me and who attempted
21 to take my life. I gave them a physical description. They
22 brought the individual back to the motel room and asked me if
23 this was the individual and I pointed him out and said, yeah,
24 this is him.

25 Q All right. So, they brought him back. Was this

ALKAREEM - CROSS

1 daytime, night time --

2 A Hmm --

3 Q -- when they had done this, when they asked you to
4 identify him?

5 A I think it was night time, night time. The light
6 was -- you could see very well.

7 Q So, they brought one single individual to you and --

8 A Right.

9 Q -- set him in front of you. And this was how long
10 after the attempt on your life, as you explained it?

11 A About three hours.

12 Q About three hours or so?

13 A Yes.

14 Q And so they didn't -- there was nobody else there
15 that they asked you to differentiate --

16 A No, no.

17 Q They just said, is this the guy?

18 A Correct.

19 Q What was the name of this motel, do you remember?

20 A Arrowhead.

21 Q And where's that located at?

22 A It's at -- close to -- close to Carey and Las Vegas
23 Boulevard.

24 Q Carey and Las Vegas Boulevard?

25 A Yes.

ALKAREEM - REDIRECT

1 Q Okay. So, it's out there near Nellis Air Force
2 Base?

3 A Right.

4 Q And you say it was a boulder this big?

5 A As big as my hand.

6 Q Is there a parking lot --

7 A Oh, yes.

8 Q Is there a parking lot there?

9 A Yes.

10 Q Has it got asphalt or is it a desert parking lot?

11 A Both.

12 MR. LaPORTA: I have no further questions, Your
13 Honor.

14 THE COURT: Anything else, Mr. Schwartz?

15 MR. SCHWARTZ: Just briefly.

16 REDIRECT EXAMINATION

17 BY MR. SCHWARTZ:

18 Q Sir, you indicate that you were robbed. What if
19 anything was taken from you?

20 A My wallet with all of my ID. Basically the cash,
21 three hundred and fifty dollars (\$350).

22 Q So, your wallet, your ID, and three hundred and
23 fifty dollars (\$350) in cash?

24 A Correct.

25 Q Okay. Also, when Mr. LaPorta was asking you about

ALKAREEM - REDIRECT

1 the boulder you saw the defendant had in his hand, was he
2 holding it with one hand or with two hands?

3 A Two hands.

4 Q Two hands. Okay, thank you.

5 MR. SCHWARTZ: I have no further questions.

6 THE COURT: All right. Anything else?

7 MR. LaPORTA: No. No questions, Your Honor.

8 THE COURT: Thank you very much, sir, for
9 testifying, appreciate it. You can go about your business
10 now.

11 THE WITNESS: I will, thank you.

12 THE COURT: Thank you.

13 Next witness, please?

14 MR. SCHWARTZ: Officer Hanks [sic]. Thank you, sir.

15 THE COURT: Please remain standing, sir, raise your
16 right hand and be sworn.

17 CHARLES HANK, PLAINTIFF'S WITNESS, IS SWORN

18 THE CLERK: Thank you. You may be seated.

19 THE COURT: Please state your name and spell your
20 last name for the record?

21 THE WITNESS: My name is Charles Lee Hank, H-A-N-K.

22 THE COURT: Okay. Mr. Schwartz?

23 MR. SCHWARTZ: Thank you, Your Honor.

24 ///

25 ///

ALKAREEM - REDIRECT

DIRECT EXAMINATION

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BY MR. SCHWARTZ:

Q Sir, by whom are you employed?

A Las Vegas Metropolitan Police Department.

Q In what capacity?

A I'm a sergeant.

Q And how long have you been employed by the Las Vegas
Metropolitan Police Department?

A Just over seven and a half years.

Q Let me direct your attention, sir, to March the 8th,
1990. Did you have occasion to arrest an individual who was
identified to you as Marlo Thomas?

A Yes, sir.

Q And do you see that individual in the courtroom
today?

A Yes, sir.

Q Could you point to where he is sitting and indicate
what he's wearing today?

A This gentleman to my left. He's wearing tan
clothing, striped -- black striped shirt.

Q Thank you.

MR. SCHWARTZ: Would the record reflect the
identification of the defendant, Your Honor?

THE COURT: The record will so reflect.

///

ALKAREEM - REDIRECT

1 BY MR. SCHWARTZ:

2 Q Sergeant, could you relate to the members of the
3 jury the facts and circumstances leading you to arrest the
4 defendant?

5 A Yes. On that day I was driving westbound through
6 the project complex there. As I drove through the complex I
7 noticed three occupants in a vehicle appearing to back out of
8 a parking space. It appeared that as they saw my patrol
9 vehicle, they drove back into the parking space.

10 I then noted -- made a mental note of the license
11 plate of the vehicle and proceeded to the, what was considered
12 at that time the police substation within the project complex.

13 My partner then exited the vehicle and went inside
14 to use the restroom. I continued to watch the vehicle. At
15 that time the occupants of the vehicle exited the vehicle, and
16 one of the occupants stood at the front driver's side, and the
17 other two occupants stood at the passenger side, one of them
18 at the front and the other one just a little in front of the
19 passenger door of the vehicle.

20 At that time I got a return on my computer that the
21 vehicle was stolen. My partner came out of the restroom, I
22 told him, I said, that vehicle there is stolen. And he, in
23 fact, thought I was kidding. I said, no, I'm not. And we
24 then drove over to the vehicle. As I -- as I pulled in behind
25 the vehicle, I got out of my vehicle and started chasing Mr.

ALKAREEM - REDIRECT

1 Thomas and my partner started chasing one of the other
2 occupants of the vehicle.

3 And I lost him in an area just southwest of the
4 project complex. He was located over in a store which was at
5 an H&O and it's called Big Eight Market. I then went over
6 there. Two other officers had him in custody. They handed me
7 a set of keys, which they said they had removed from his pants
8 pocket. I then took the keys and went back to the vehicle and
9 the keys fit the vehicle.

10 I waited on a tow, and towed the vehicle and later
11 completed the police reports.

12 Q Okay. So, the stolen vehicle that you observed the
13 defendant in, the keys to that vehicle were in fact found on
14 the defendant himself?

15 A Yes, sir.

16 Q Thank you.

17 MR. SCHWARTZ: No further questions.

18 THE COURT: Any cross-examination?

19 MR. LaPORTA: No questions, Your Honor.

20 THE COURT: Thank you, Officer, you are free to go.

21 Thank you.

22 Your next witness?

23 MR. SCHWARTZ: The Court's indulgence. Michael
24 Holly.

25 THE COURT: Please remain standing up over here,

HOLLY - DIRECT

1 sir, raise your right hand and be sworn.

2 MICHAEL HOLLY, PLAINTIFF'S WITNESS, IS SWORN

3 THE CLERK: Thank you. Please be seated.

4 THE COURT: State your name and spell your last name
5 for the record?

6 THE WITNESS: Michael B. Holly, the last name is
7 H-O-L-L-Y.

8 THE COURT: Mr. Schwartz?

9 MR. SCHWARTZ: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY MR. SCHWARTZ:

12 Q Sir, by whom are you employed?

13 A The City of North Las Vegas Police Department.

14 Q And were you employed by the City of North Las Vegas
15 Police Department in 1990 as well?

16 A Yes, sir.

17 Q In what capacity were you employed back in 1990?

18 A As a patrol officer.

19 Q And what's your current capacity?

20 A Patrol officer.

21 Q Directing your attention, sir, to August the 10th,
22 1990, did you have occasion to arrest an individual by the
23 name of Marlo Thomas?

24 A Yes, sir, I did.

25 Q Do you see Mr. Thomas in the courtroom today? Would

HOLLY - DIRECT

1 you recognize him if you saw him?

2 A No, sir, I wouldn't recognize him, it's been too
3 long.

4 Q Okay. What were the facts and circumstances leading
5 you to arrest an individual by the name of Marlo Thomas?

6 A I was dispatched to the 7-Eleven store at 2325 Las
7 Vegas Boulevard, which is about one block south of the crime
8 location. A Spanish speaking person who that speaks some
9 English was reporting that he was robbed. Because of the
10 Spanish/English difficulty I brought him back to where the
11 crime occurred, which was in front of Rudy's -- in front of
12 Rudy's Bar -- in front of the bar at 2425 Las Vegas Boulevard.
13 It's had a different names since then.

14 And while I was standing there talking to the
15 victim, we were in front of the bar on Las Vegas Boulevard, a
16 little bit off the sidewalk, and the victim, Mr. Beltrane,
17 pointed out to me Mr. Thomas and said, he's the one that took
18 my money. When I turned around I saw Mr. Thomas walking
19 northbound on the Boulevard alone. I said, are you sure, and
20 he goes, he's the one that took my money.

21 So, I walked over to Mr. Thomas to get his
22 attention. He became kind of evasive and says, I didn't do
23 anything, I'm going home. And as I tried to stop him he kind
24 of sidestepping around me, to go around me. I told him to
25 stop, and I had my caps in my hand. He refused, so I sprayed

HOLLY - DIRECT

1 him in the face as he ran past me. I chased him a short
2 distance, lost him in the area. After about a ten-minute foot
3 search with other officers he was located approximately one
4 block away, hiding underneath a bush in front of a house. And
5 I arrested him for the robbery and took him -- I booked him in
6 the Clark County Juvenile Home.

7 Q Okay. Now, you indicated that the victim of this
8 robbery was a Mr. Beltrane, is that correct?

9 A Yes, sir.

10 Q Did Mr. Beltrane indicate to you how many people
11 participated in the robbery?

12 A Yes, sir, two.

13 Q And did he indicate what each person did, who
14 participated in the robbery?

15 A I didn't talk to him that long, because of the
16 English/Spanish difficulties. I wasn't able to get that much
17 of a clear indication of exactly what happened, who did what.

18 Q Did he indicate to you whether a weapon was used in
19 the commission of the robbery?

20 A Yes, sir, approximately an eight-inch knife.

21 Q In connection with this arrest of Marlo Thomas, did
22 you have occasion to complete a North Las Vegas Police
23 Department Investigative Report?

24 A Yes, sir, I did.

25 Q And do you complete this report soon after the

1 events have taken place?

2 A Yes, sir.

3 Q And is the -- are the events fresh in your mind at
4 the time you complete these reports?

5 A Yes, sir.

6 Q Would reviewing this report refresh your
7 recollection in certain areas with regard to the robbery that
8 was committed upon Mr. Beltrane?

9 A Some.

10 Q Okay.

11 MR. SCHWARTZ: May I approach, Your Honor?

12 THE COURT: Yes.

13 BY MR. SCHWARTZ:

14 Q First of all, with regard to the suspect, you said
15 you were not able -- you would not be able to recognize him
16 because it's been several years?

17 A Yes, sir.

18 Q Seven or so. Did you indicate the name of the
19 individual whom you arrested?

20 A Yes, sir, I did.

21 Q And what name did you put there?

22 A On the report I wrote down that his name is Mr.
23 Marlo Thomas.

24 Q And did you obtain a date of birth as well?

25 A I was given a date of birth of November the 6th,

1 1972.

2 Q Thank you. With regard to the robbery that
3 occurred, I direct your attention to the highlighted portion
4 of your -- page 3 of your report, and ask if it indicates --
5 after reading that, if that refreshes your recollection as to
6 what Mr. Beltrane told you had happened to him, with regard to
7 each individual who participated, what they did with
8 respectively?

9 A It was a little unclear. The way I understand it he
10 told me that he was approached by two subjects as he was
11 walking back from the bar. And as he was in front of another
12 bar at 2425 Las Vegas Boulevard the two suspects stopped him.
13 One had an approximately eight-inch knife in his hand. One of
14 the suspects grabbed his hands, the victim's hands, put it
15 behind his back. And one of the -- the other suspect reached
16 into his front pants pocket and took out approximately four
17 hundred and seventy-five dollars. And then --

18 Q From reviewing your report, would the report
19 indicate that the suspect who went into the pocket was the one
20 holding the knife on Mr. Beltrane?

21 A I'm not sure at this time, sir.

22 Q Well, one of the individuals held a knife to Mr.
23 Beltrane?

24 A Yes, sir.

25 Q And money was in fact taken from Mr. Beltrane?

HOLLY - CROSS

1 A Yes, sir.

2 Q Now, you indicated that the defendant was arrested
3 for robbery. Isn't it true, sir, that you placed the
4 defendant under arrest for robbery with the use of a deadly
5 weapon?

6 A Yes, sir, I did.

7 Q Thank you.

8 MR. SCHWARTZ: No further questions, Your Honor.

9 THE COURT: Thank you. Any cross?

10 MR. LaPORTA: Yes, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. LaPORTA:

13 Q Sergeant, good morning. How much time had elapsed
14 between when you first -- when the robbery occurred and when,
15 as you testified here today, Marlo came walking -- came
16 walking by?

17 A If I respond immediately to the store, which I
18 probably would in this case, I would guess approximately
19 fifteen to twenty minutes.

20 Q Fifteen to twenty minutes. And you indicated that
21 there was a language problem with the individual who had been
22 robbed, is that not correct?

23 A Yes, sir.

24 Q At the time that you were interviewing him, at all
25 times that you were gathering pertinent information, did you

HOLLY - CROSS

1 have a translator there?

2 A No, sir.

3 Q So, the information you were gathering was somebody
4 that you were having a language problem with?

5 A Yes, sir.

6 Q Do you feel that that language problem -- strike
7 that. In your report, which you've had a chance to review,
8 all right, did you indicate in there who held the knife?

9 A No, sir, I didn't.

10 Q All right. So, you weren't able to determine that
11 from the victim in this case?

12 A I'm not -- I believe it was Mr. Beltrane has, under
13 description -- a suspect description, I put him down as having
14 the eight-inch knife.

15 Q Okay. Was anyone hurt in this, to the best of your
16 knowledge?

17 A No, sir.

18 Q All right. So, it's safe to say that your report
19 was based upon an interview with a witness that you were
20 having a language problem with, is that not correct?

21 A Yes, sir.

22 Q All right.

23 MR. LaPORTA: No further questions.

24 THE COURT: Thank you. Anything else?

25 MR. SCHWARTZ: Just briefly.

HOLLY - REDIRECT

REDIRECT EXAMINATION

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BY MR. SCHWARTZ:

Q Sir, that same witness who you were having a language problem, does he appear to be the victim listed in an information which was filed October the 10th, 12:44 p.m., 1990? Do you see Mr. Beltrane's name as the victim?

A Yes, sir.

Q And whose name do you see as the defendant?

A Mr. Marlo Thomas.

Q Okay. Marlo Demetrius Thomas, is that correct?

A Yes, sir.

Q Additionally, this information charges the defendant with robbery with use of a deadly weapon, is that correct?

A Yes, sir.

Q Were you aware, sir, that the defendant pled guilty to this crime to a reduced charge of attempted robbery and was given a six-year sentence?

A I was advised about that last week.

Q Thank you.

MR. SCHWARTZ: No further questions, Your Honor.

THE COURT: Anything else?

MR. LaPORTA: Nothing, Your Honor.

THE COURT: Thank you very much, officer, you can go about your business.

THE WITNESS: Thank you, sir.

WOOD - DIRECT

1 THE COURT: Next witness?

2 MR. SCHWARTZ: Margaret Wood.

3 THE COURT: Please remain standing up over there,
4 raise your right hand and be sworn.

5 MARGARET WOOD, PLAINTIFF'S WITNESS, IS SWORN

6 THE CLERK: Thank you. Please be seated.

7 THE COURT: State your name and spell your last name
8 for the record?

9 THE WITNESS: Okay. Margaret Wood, W-O-O-D.

10 THE COURT: Okay. Mr. Schwartz?

11 MR. SCHWARTZ: Thank you.

12 DIRECT EXAMINATION

13 BY MR. SCHWARTZ:

14 Q By whom are you employed?

15 A Right now I'm at Southern Nevada Correctional
16 Center, Nevada Department of Prisons.

17 Q And how long have you been so employed?

18 A Seven years.

19 Q During that seven year period, while you were
20 employed with the Department of Prisons, here in the State of
21 Nevada, did you come in contact with an inmate by the name of
22 Marlo Thomas?

23 A Yes, I did.

24 Q Would you recognize Marlo Thomas if you saw him
25 again?

WOOD - DIRECT

1 A Yes, I would.

2 Q Do you see him in the courtroom?

3 A Yes, I do.

4 Q And can you describe where he's located and what's
5 wearing today?

6 A Okay. He's right here, he's in tan, he's got a
7 plaid shirt on.

8 Q Okay. Could you relate to the --

9 THE COURT: The record will reflect the --

10 MR. SCHWARTZ: I'm sorry, Your --

11 THE COURT: -- identification of the defendant, the
12 same as before.

13 MR. SCHWARTZ: Thank you.

14 BY MR. SCHWARTZ:

15 Q Ms. Wood, could you relate to the members of the
16 jury the contacts you've had with the defendant while in
17 prison? The ones you can recall?

18 A I worked at Ely State Prison, and I was working in
19 lockdown unit and Mr. Thomas was an inmate in the lockdown
20 unit.

21 Q What is a lockdown unit?

22 A It's where an inmate is being held for punishment,
23 being locked up.

24 Q Okay. And did you have any negative contacts with
25 the defendant while he was housed in the lockdown unit?

WOOD - DIRECT

1 A Yes, I did.

2 Q Can you describe them, please?

3 A Inmate Thomas was very angry, and he was always
4 calling me names, he was always calling me a slut and a whore,
5 and he was always exposing himself to me and showing me his
6 penis. And he basically -- one time he told me to suck his
7 dick.

8 Q I'm not trying to offend either yourself or the
9 members of the jury, or anyone else in this courtroom. Could
10 you relate -- when you say he exposed himself, could you
11 relate to the jury how this was done, under what
12 circumstances?

13 A Okay. In one incident I recall he had taken some
14 cleaning supplies into his cell to clean his cell, and he had
15 a sponge and a cleaning brush, and you know, we would give
16 those items to him through the food slot, and then when he was
17 finished he called me over there. And he had his penis on
18 the food slot under the cleaning brush, in hopes that when I
19 grabbed the cleaning brush I would grab him. And I did a
20 Notice of Charges on him for that.

21 Q Okay. With regard to this feeding slot, could you
22 describe it for the jury?

23 A The food slot?

24 Q The food slot.

25 A Okay. It was a food slot that unlocked, and you

WOOD - CROSS

1 brought it down and you put the food through it, or you put
2 toilet paper through it, or anything through it to the inmate.

3 Q Okay. So, it's larger than what we would think of a
4 standard mail slot?

5 A Yes, it would be a little bit larger than that.

6 MR. SCHWARTZ: I have no further questions, Your
7 Honor.

8 THE COURT: All right, thank you.

9 Cross-examination?

10 MR. LaPORTA: Yes, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. LaPORTA:

13 Q Is it Officer?

14 A Yes, that is correct.

15 Q Okay. Good morning, Officer.

16 A Good morning.

17 Q Are you presently working at Ely State Prison?

18 A No, I'm not.

19 Q But you had worked at Ely State Prison?

20 A Yes, I did.

21 Q And how long did you work at Ely State Prison?

22 A I worked about five years in Ely State Prison.

23 Q About five years?

24 A Mm-hmm.

25 Q Are you -- and you testified that he was in

1 lockdown, is that not correct?

2 A That is correct.

3 Q Okay. Can you describe physically what lockdown is
4 like?

5 A Physically, what lockdown is a like, the inmates
6 spends his time in a cell and the only time that he's taken
7 out -- at that time the only time he was taken out is if he
8 needed to make phone calls, legal or personal, and they were
9 taken to the outside recreation yard. And at any other time
10 they were locked in their cell, during feeding and all other
11 times.

12 Q Mm-hmm. When he's taken out to his -- out into the
13 yard for exercise or fresh air, or whatever, is he taken out
14 -- is he out there by himself?

15 A He would be out there with the same people that were
16 categorized like him. Like, if he was in disciplinary
17 detention he would be outside with disciplinary detention
18 people.

19 Q Was that what it is, disciplinary detention?

20 A Mm-hmm.

21 Q When he's taken from his cell to this area, is it
22 not true that he's taken in waist chains, belly chains, leg
23 irons?

24 A That is correct, fully restrained.

25 Q Fully restrained. And does he remain in any

1 restrained condition when he's out in that yard?

2 A No, they take the restraints off of him when he's in
3 the yard.

4 Q Okay. Are there inmates, though, that are left with
5 restraints on then when they're out in the yard, because of
6 their classification?

7 A Not to my knowledge.

8 Q Okay. To the best of your knowledge, there're not
9 inmates who are allowed into a recreation or an exercise area
10 where they're taken out by themselves?

11 A Yes. That would be considered a walk-alone inmate,
12 where he can't be put with any other inmates.

13 Q So, there are classifications for that? In other
14 words, there are procedures where you can isolate him from
15 other inmates, is that not correct?

16 A That could be correct, yes.

17 Q All right. So, Nevada State Prison, Ely -- the Ely
18 location, has methods and procedures to isolate Mr. Thomas
19 from other inmates?

20 A I don't know if Mr. Thomas was isolated from the
21 other inmates.

22 Q No -- they have methods and procedures by which you
23 can isolate him from other -- from other inmates?

24 A Yes, they would. They could.

25 Q And when he's taken out in this walk-alone or in

WOOD - CROSS

1 this -- with other restricted or disciplinary inmates, when --
2 how many officers take him from his cell?

3 A There are usually two officers.

4 Q And are these officers completely -- how would --
5 how would you say they're equipped, in terms of their personal
6 protection?

7 A Well, when I was there, they were dressed just like
8 I am.

9 Q Just like you are?

10 A Mm-hmm.

11 Q Do you know in fact if they dress differently now?

12 A I'm aware that they do have different things that
13 they wear now.

14 Q Okay. And what are those things, if you know?

15 A I believe they wear a vest that protects them from
16 being stabbed. I believe they wear a shield over their --
17 their head, so that they can't have things propelled on them.

18 Q Do they wear any head gear or any --

19 A Yeah, head gear. They have -- they wear like a --

20 Q How about face shields --

21 A Yes, mm-hmm.

22 Q -- anything like that? Okay. So, is it safe to say
23 that the Ely State Prison, okay, has methods and procedures in
24 place whereby they can protect other inmates and guards, and
25 all guards also take extra precautions for unruly or

1 disciplinary problems?

2 A Yes.

3 MR. LaPORTA: No further questions.

4 THE COURT: Anything else?

5 MR. SCHWARTZ: Just briefly.

6 REDIRECT EXAMINATION

7 BY MR. SCHWARTZ:

8 Q Ma'am, the Ely State Prison, you're not saying here
9 today that prison guards are never assaulted because of the
10 headgear they wear?

11 A No, I'm not.

12 Q You're not saying that because they have a face mask
13 on at a particular time that they're immune from being
14 stabbed, or cut, or beaten up?

15 A No, I'm not.

16 Q Okay. Now, in connection with the incident that
17 you've testified to, did you prepare a report, a violation
18 report?

19 A Yes, I did.

20 Q I'm showing you what has been marked as State's
21 Proposed Exhibit Number 105 in context, and ask you to look at
22 the third page and ask you to read it to yourself, if that
23 appears to be the report you prepared in connection with this
24 incident that occurred back in the Ely State Prison?

25 A Yes, it is.

1 Q Did you indicate on that proposed exhibit the date
2 when this incident occurred?

3 A Yes, I did.

4 Q And what date did you affix to that document?

5 A January 19th, 1992.

6 Q Okay. At the time that document was prepared was it
7 the ordinary course of business for the Ely State Prison to
8 keep these records?

9 A Yes, it was.

10 MR. SCHWARTZ: Your Honor, the State would move for
11 the admission of State's Proposed Exhibit 105.

12 THE COURT: Any objection?

13 MR. LaPORTA: No objection, Your Honor.

14 THE COURT: 105 will be admitted into evidence.

15 (Plaintiff's Exhibit No. 105 admitted)

16 MR. SCHWARTZ: One final question, Your Honor.

17 BY MR. SCHWARTZ:

18 Q Officer, Mr. LaPorta indicated to you through
19 questioning that at the time this occurred Marlo Thomas was in
20 lockdown, is that correct?

21 A Yes.

22 Q Ely State Prison was keeping him in lockdown?

23 A Yes, they were.

24 Q He was by himself, he didn't have access to other
25 individuals at that particular time?

WOOD - RECROSS

1 A He was alone in a cell.

2 Q And was that because of behavior that had occurred
3 prior to his being put in lockdown?

4 A Yes, it was a disciplinary action.

5 Q So, while these events occurred that happened to
6 you, or you were the victim of, they all occurred while he was
7 in lockdown?

8 A Yes, they did.

9 Q Thank you.

10 THE COURT: Anything else?

11 MR. SCHWARTZ: No, Your Honor.

12 MR. LaPORTA: Yes.

13 MR. SCHWARTZ: Anything else?

14 MR. LaPORTA: Yes, Your Honor.

15 THE COURT: Yes, Mr. LaPorta?

16 RECROSS-EXAMINATION

17 BY MR. LaPORTA:

18 Q Officer, these incidents, and I don't mean to be
19 titillating here, but his showing his penis and calling you
20 the slut and the whore, is he the one and only inmate who's
21 ever done that you've --

22 A No, he's not.

23 Q -- personally witnessed? So, you've witnessed this
24 on other occasions from other inmates, have you not?

25 A Yes, I have.

WOOD - RECROSS

1 Q All right. It's not unusual, is it?

2 A Not all of them do that. A very small amount does.

3 Q But it still happens --

4 A Yes, it does.

5 Q -- on occasion? All right. Also, I don't see in
6 this where there was any physical aggression towards you, to
7 what you've testified to. Is that not correct?

8 A Yes, that's correct.

9 Q So, he never got physically aggressive towards you?

10 A No, he didn't.

11 Q All right. And as to this lockdown, just to be
12 clear, there is an even higher classification where he's
13 totally segregated, is that not correct?

14 A I'm --

15 Q Walk-alone?

16 A Yes.

17 Q Okay. How much time does he spend in his cell, if
18 he was in a walk-alone status?

19 A I don't recall. And as far as I know, he wasn't on
20 a walk-alone.

21 Q All right. He wasn't, but I'm asking you in under a
22 walk-alone status, or what they call, I believe, HRP, High
23 Risk Prisoner, how much time do they spend in their cell?

24 A I'm not certain.

25 Q All right. Does 23 hours ring a bell?

WOOD - RECROSS

1 A I'm not certain.

2 Q They eat their meals in their cell, isn't that true?

3 A Yes, they eat their meals in their cell.

4 Q All right. They're only allowed out briefly for
5 forty-five minutes for some exercise, isn't that true?

6 A I'm -- I don't recall.

7 Q Okay.

8 MR. LaPORTA: No further questions, Your Honor.

9 THE COURT: All right. That completes the testimony
10 then?

11 MR. SCHWARTZ: Yes, Your Honor.

12 THE COURT: Thank you very much. You can go about
13 your business.

14 THE WITNESS: Thank you.

15 THE COURT: Thank you.

16 Ladies and gentlemen, don't converse among
17 yourselves or anyone else on any subject connected with the
18 trial, read, watch or listen to any report of or commentary on
19 the trial or any person connected with the trial by any medium
20 of information, including without limitation newspapers,
21 television and radio, and don't form or express any opinion on
22 any subject connected with the trial until the case is finally
23 submitted to you.

24 We'll take a ten-minute recess, ladies and
25 gentlemen.

HILL - DIRECT

(The Court recessed)

(Jury is present)

THE COURT: All right. Counsel, stipulate to the presence of the jury?

MR. SCHWARTZ: Yes, Your Honor.

MR. LaPORTA: Yes, Your Honor.

THE COURT: All right. Ladies and gentlemen, we're going to proceed with the State's witnesses at this time. The State will call their next witness, please.

MR. ROGER: Alyse Hill.

THE COURT: Alyse Hill.

Miss Hill, please remain standing up over here. Raise your right hand and be sworn.

ALYSE HILL, PLAINTIFF'S WITNESS, IS SWORN

THE CLERK: Thank you.

THE COURT: Please state your name and spell your last name for the record.

THE WITNESS: My name is Alyse Hill. Last name is spelled H-I-L-L.

DIRECT EXAMINATION

BY MR. ROGER:

Q Is it Miss or Mrs. Hill?

A It's Mrs.

Q Mrs. Hill, what is your business or occupation?

A I am a police officer for the Division of Family

1 Youth Services.

2 Q How long have you been a probation officer?

3 A Twenty-four years and three months.

4 Q What are your duties?

5 A They vary. I'm a field probation officer so it's my
6 responsibility, at this particular time, when the cases are
7 assigned to a field officer we have to make sure that the
8 youth that are placed on probation comply with all the court
9 orders, any special conditions that have been set down by the
10 court.

11 Q Okay. Are you also responsible from time to time in
12 preparing reports which are then submitted to the court to
13 assist the court or referee in sentencing an individual?

14 A That is true.

15 Q Will you describe some of the different services
16 which are available to the Juvenile Division short of
17 incarceration?

18 A We have formal probation; the least amount of time
19 in the field is six months. That can be either on a suspended
20 or a stayed commitment to one of the institutions. We have --
21 right now we have what we call a institution without walls,
22 which is called the Freedom Program. It's the last ditch
23 effort between the department and us to try and get the young
24 man or the young person turned around, rehabilitated. Those
25 are about the only services we have prior to commitment to one

1 of the institutions.

2 Q You have what you call Spring Mountain Youth Camp,
3 is that right?

4 A That is one of our institutions, yes.

5 Q Is that the lowest level of institution that you
6 have in Juvenile Division?

7 A After a youth has escalated to that point, depending
8 on the severity of the crime, he can be recommended for
9 placement at that institution. The next step would be Nevada
10 Youth Training Center in Elko, Nevada.

11 Q Okay. How long is a commitment over
12 institutionalization of a juvenile, normally?

13 A We have no say in that. It mainly depends on the
14 behavior of the child.

15 Q Does the court set a maximum of nine months?

16 A No.

17 Q Spring Mountain is the first level of institution?

18 A Yes.

19 Q Back in 1990, did you also have Third Cottage?

20 A Yes, we did.

21 Q What is Third Cottage?

22 A That is no longer a viable option. It was one of
23 the cottages on campus on the Division of Youth Service campus
24 that was originally set aside for housing boys. But because
25 the institutions were full, that cottage was then set aside

1 for those youths who needed to be incarcerated but were
2 instead placed in that institution -- I mean in that cottage.

3 Q Where is Nevada Youth Training Center located?

4 A It's in Elko, Nevada.

5 Q Will you describe that institution for us?

6 A I can't describe it, I've never been there.

7 Q Is there any higher level than Nevada Youth Training
8 Center?

9 A At the time, no, I don't think so. I think
10 presently they have an institution in Tennessee, but I don't
11 know anything about that.

12 Q Okay. What is the age groups of juveniles,
13 according to law, where they can be treated in the juvenile
14 system?

15 A The youngest that I'm aware of is ten.

16 Q How about the oldest?

17 A Well, the oldest, depending on Nevada law and
18 depending on what the crime is, because at the age of -- prior
19 to the Legislature and -- of AB317, the age then was seven --
20 sixteen that a child could be certified up to the status of an
21 adult. Since that time the age is fourteen. By the same
22 token, we can -- if a child is -- commits a crime and it's
23 recommended by the District Attorney's office that he be
24 certified down to the status of a juvenile, we can then work
25 with that child until he's twenty-one or twenty-four.

HILL - DIRECT

1 Q When the State of Nevada requests that an individual
2 be certified as an adult, what process takes place with
3 respect to your job as a juvenile probation officer?

4 A My responsibility -- well, it all depends, really.
5 What happens initially is that the case is sent out to a field
6 officer. Then that case is assigned by the supervisor for the
7 report to be written. At that time, we have what we call a
8 format with different variables that we have to follow
9 depending on severity of the crime. And then at that time, a
10 report is written, the family is interviewed, and depending,
11 like I say, upon the severity of the crime, a recommendation
12 is then reached that has to be approved by the department.

13 Q Mrs. Hill, I'm showing you State's proposed Exhibit
14 number 85 which appears to be a numerous-page document
15 entitled "Petitions." Will you just briefly glance through
16 those and tell me if you recognize those documents?

17 A I recognize that it is a petition that was filed by
18 the District Attorney's office, yes.

19 Q Is a petition a document which is a charging
20 documents which alleges that the juvenile or what you refer to
21 as a subject, a minor, has committed an infraction or
22 violation of the law?

23 A Yes, it is.

24 Q So for each new infraction or breach of the law, a
25 new petition is filed?

HILL - DIRECT

1 A Yes.

2 Q Do those petitions relate to a particular
3 individual?

4 A What do you mean?

5 Q Is there a name on the --

6 A There is a name on the petition, yes.

7 Q What is the name?

8 A This name is Marlo Demetrius Thomas.

9 Q These are all documents that are kept in Juvenile
10 Court to start juvenile proceedings?

11 A Yes, they are.

12 MR. ROGER: Move for their admission, Judge.

13 THE COURT: Any objection to 85?

14 MR. LaPORTA: No, Your Honor, no objection.

15 THE COURT: Thank you. 85 will be admitted in
16 evidence.

17 (Plaintiff's Exhibit No. 85 admitted)

18 BY MR. ROGER:

19 Q With respect to the top of page, that is Petition
20 Number 25? You want to see --

21 A Yes, it is.

22 Q Okay.

23 A Mm-hmm.

24 Q I'm now showing you State's Proposed Exhibit Number
25 86. Will you go through that document, just briefly to

HILL - DIRECT

1 yourself, to identify the different contents in that document?

2 A Well, it's a certification order and all it is,
3 really, is a recapitulation of what the court -- what the
4 certification report states and it's an order that's handed to
5 the District Attorney and subsequently the judge on the day of
6 sentencing.

7 Q There are other documents there if you would. What
8 else is --

9 A There is the certification report which was filed
10 August 31 at 11:20 a.m. in 1990. There is a Clark County
11 Juvenile Court Service previous record sheet and a disposition
12 report that was filed July 23rd, 1990, at 9:46 a.m.

13 Q Are all those documents that -- which were prepared
14 by you?

15 A Yes, they were.

16 Q When you prepare these documents, do you have access
17 to all of the -- perhaps police report or prior juvenile
18 records of an individual?

19 A When we receive a certification petition order to do
20 a certification report, what we have available is the
21 certification petition, we also have available the subject
22 minor's record, and we have available to us -- that's about
23 all, really.

24 Q Is it customary to speak with the subject minor in
25 preparing the report?

HILL - DIRECT

1 A It's not -- it's not customary, but generally we do
2 and that's to just ascertain -- try and ascertain and do an
3 assessment of whether or not this young man -- this young
4 person meets the requirements of the department.

5 Q In addition, do you generally or do you try to
6 contact the parents or guardians to find out what the home
7 life is like?

8 A Yes, we do.

9 Q Are all of these reports, the certification order,
10 the certification report, as well as the review and
11 disposition report, do they relate to the same person, Marlo
12 Demetrius Thomas?

13 A Yes, they do.

14 MR. ROGER: I'd move for their admission, Judge.

15 THE COURT: 86, any objection?

16 MR. LaPORTA: No objection, Your Honor.

17 THE COURT: 86 will be admitted into evidence.

18 (Plaintiff's Exhibit No. 86 admitted)

19 BY MR. ROGER:

20 Q Mrs. Hill, I'd like to direct your attention to the
21 last document in that package, the review and disposition
22 report. That was authored by you on July 25th of 1990?

23 A Yes, it was.

24 Q What was the charge which Mr. Thomas had pled guilty
25 to?

HILL - DIRECT

1 A That was possession of stolen vehicle.

2 Q How old was he at the time?

3 A Seventeen.

4 Q I'd like to direct your attention to page 2 with
5 respect to prior services. This section of the report tells
6 the sentencing judge what services a juvenile has received
7 prior to this particular sentencing, is that right?

8 A Yes, it is. At the time that we received the case
9 for dispositional report, then the youth's juvenile record is
10 pulled from SCOPE, yes.

11 Q Okay. Would you please read lines 3 through 9 which
12 reflect past services which the defendant had received?

13 A It says,
14 "Prior services. Marlo has been detained on seven
15 previous occasions and has received extensive
16 services from the Probation Department and community
17 based programs, including placement in the
18 Children's Behavioral Services MOD program for
19 battering a teacher, the Home Management program,
20 the Third Cottage program, formal probation,
21 commitment to the Nevada Youth Training Center on
22 two occasions, and finally, three weeks in the Clark
23 County Detention Center, after being certified as an
24 adult on February 8th, 1990. Apparently nothing
25 impacted the subject minor's behavior, as he was

1 back before the court one month later on another
2 delinquent offense."

3 Q On the next page, Mrs. Hill, on page 3, lines 1
4 through 10, you submit an evaluation concerning what sentence
5 is appropriate. Would you please read that for us?

6 A The whole sentence? The whole statement?

7 Q Please.

8 A "Seventeen-year-old Marlo Demetrius Thomas is before
9 the court on Petition Number 23, possession of
10 stolen vehicle. Marlo's prior record with the
11 Juvenile Court is extensive and includes placement
12 out of the home on two different occasions,
13 placement in the Children's Behavioral Services MOD
14 Program, placement in the Home Management Program,
15 and three weeks placement in the Clark County
16 Detention Center. Marlo has made use of all the
17 services that are available and that could be
18 provided by the juvenile system without an impact on
19 his behavior.

20 "He has exhibited a total lack of commitment to
21 changing his negative lifestyle, in that he lacks
22 respects for authority, he's aggressive, he lacks
23 impulse and temper control, and is perceived as
24 being a threat to both himself and the community.
25 Mrs. Thomas agrees some form of punitive action must

HILL - DIRECT

1 be taken if Marlo is to be saved from himself, and
2 she agrees the recommendation would be in the
3 subject minor's best interest."

4 Q Going back to page 1, what was your recommendation
5 for the -- for Mr. Thomas?

6 A My recommendation at that time was that he be given
7 credit for time served in the Juvenile Court Detention
8 facility and that he spend thirty days in the Clark County
9 Jail.

10 Q Do you have an independent recollection as to what
11 sentence was imposed?

12 A No, I do not, that was seven years ago. I -- at the
13 time, let me say, at the time I was in the what we call court
14 report writing unit and it was my responsibility to write
15 these reports, then take it to court and subsequently the case
16 was assigned to a field officer, okay, for supervision. So I
17 don't know what happened after that.

18 Q Thank you. Subsequently, on September 14th, 1990,
19 you were requested to write a certification report, is that
20 right?

21 A That is true.

22 Q Marlo Thomas had been charged with robbery with use
23 of a deadly weapon? Is that right?

24 A That is true.

25 Q On page 5, on the subjective factors, would you

HILL - DIRECT

1 please read what you wrote there?

2 A "Marlo is a seventeen-year-old youth who has been
3 involved with the Juvenile Court System since March
4 28th, 1984, a period of six years and five months.
5 Marlo's first referral to the Juvenile Court was a
6 result of being charged with battery for hitting a
7 teacher at the Miley Achievement Center at
8 Children's Behavior Services. Since the initial
9 referral, Marlo has had thirteen arrests for
10 battery."

11 Do you want me to read -- continue?

12 Q Please.

13 A "Marlo has also had two other arrests which
14 demonstrates his explosive nature and inability to
15 solve issues without resorting to violence and
16 aggressive acting out. There was also an incident
17 at the Nevada Youth Training Center where he fought
18 with a staff person, causing that person to be
19 hospitalized. When placed on parole, the first five
20 months were uneventful. According to his parole
21 officer, Marlo secured a job at McDonald's and
22 worked for several months. He also followed the
23 conditions of his parole agreement and reported as
24 required. Marlo was arrested for curfew on October
25 25, 1989."

1 Q Will you turn to the next page, please? On page 7,
2 line 14, entitled community protection, would you please read
3 that section?

4 A "Marlo has received services from Clark County
5 Juvenile Court and the Las Vegas community since
6 1984. His biggest problem has been his tendency
7 toward aggressiveness and physical violence. Marlo
8 has received all services made available to him by
9 the Juvenile Court system without his behavior being
10 impacted. He has exhibited a total lack of
11 commitment to changing his negative lifestyle, in
12 that he lacks respect for authority, he's
13 aggressive, he lacks impulse and temper control and
14 he is perceived as being a threat to both himself
15 and the community. Marlo's tendency to resolve
16 issues confronting him with negative acting out
17 behavior and his tendency to continue to engage in
18 antisocial behavior increases the risk to the
19 community. As a result, it is in the best interests
20 of the child and the community that Marlo
21 transferred to the adult system."

22 Q Subsequently, Judge Shearing agreed with the
23 recommendation and the defendant was certified as an adult?

24 A That is true.

25 Q Thank you, Ms. Hill.

HILL - CROSS

1 THE COURT: That completes the testimony?

2 MR. ROGER: Yes, Judge.

3 THE COURT: Any cross?

4 MR. LaPORTA: Yes, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. LaPORTA:

7 Q Good morning, Ms. Hill.

8 A Good morning.

9 Q How are you? Ms. Hill, you've testified you've been
10 a probation -- working for the Juvenile Probation Department
11 for twenty-four years, is that correct?

12 A That is true.

13 Q Okay. And you've had a variety of jobs within that?

14 A Absolutely.

15 Q You've had a variety of exposures, I would take it
16 then, to different -- to different disciplines within the
17 Juvenile Court system, is that correct?

18 A That is true.

19 Q Okay. Now, how old was Marlo when you first came in
20 contact with him, do you recall?

21 A I don't recall but the report says seventeen.

22 Q He was seventeen years of age?

23 A Mm-hmm.

24 Q You've had opportunity obviously, as you've
25 testified to, to review all the other reports that go all the

HILL - CROSS

1 way back to when he was age twelve years?

2 A That is not true.

3 Q That's not true?

4 A No, it isn't.

5 Q So you have not had an opportunity to review any of
6 those reports?

7 A No, I have not.

8 Q Any of those dispositional reports --

9 A No.

10 Q -- or anything of that nature. Are you familiar,
11 during that period, and I would make this, oh, '84 through
12 '89, you were working for the Juvenile Department, were you
13 not?

14 A Yes, but I -- I'm not familiar with that period of
15 his -- of his involvement.

16 Q Of his personal history.

17 A Absolutely.

18 Q I'm going to ask you in general terms right now.
19 Obviously, from what -- would you not agree that Marlo was an
20 emotionally disturbed individual?

21 A I have no basis for saying that; I'm not a
22 psychologist so I can't attest to that.

23 Q Okay. Well, let me ask you this, what services did
24 the State of Nevada have through Juvenile Probation to assist
25 youths who were emotionally disturbed or intellectually

HILL - CROSS

1 challenged that found themselves in trouble with the law?

2 A We have very few, really, resources. We did have
3 the Miley Achievement Center at that particular time. There
4 was Children's Behavioral Services, I think, where the kids
5 are sent to the Youth Hospital for an assessment. I'm not
6 sure if that's -- if that happened in this case.

7 Q But as you stated, you had very few services --

8 A Very few.

9 Q -- through this time?

10 A Yes.

11 Q Okay. Isn't it true that the children who found
12 themselves in trouble with the law during this period of time
13 were viewed more as a criminal problem than as a social or
14 behavioral problem?

15 A That is true.

16 Q And at what age do these children enter into the
17 juvenile system?

18 A It all depends --

19 Q Well --

20 A -- because we work with children from babies up, you
21 know. We have kids who are brought down to Child Haven for
22 abuse, abandonment, and neglect, so it all depends. Criminal
23 activity can start as early as eight.

24 Q So you have heard or personally been part of
25 situations where a juvenile in trouble with the law was eight

JOHNSON - DIRECT

1 years of age?

2 A I think the youngest youth I had was nine.

3 Q Was nine years of age?

4 A Yes.

5 Q Okay.

6 MR. LaPORTA: No further questions, Your Honor.

7 THE COURT: All right. Anything else?

8 MR. ROGER: No, Your Honor.

9 THE COURT: Thank you very much, ma'am, for
10 testifying. You can go about your business now.

11 THE WITNESS: Thank you.

12 THE COURT: Next witness, please.

13 MR. SCHWARTZ: Richard Johnson.

14 THE COURT: Mr. Johnson, please remain up -- remain
15 standing up over there. Raise your right hand and be sworn.

16 RICHARD JOHNSON, PLAINTIFF'S WITNESS, IS SWORN

17 THE CLERK: Thank you. Please be seated.

18 THE COURT: All right, sir. Please state your name,
19 spell your last name for the record. Speak into that
20 microphone so we could all hear you, all right?

21 THE WITNESS: Okay. My name is Richard Johnson.
22 Last name is spelled J-O-H-N-S-O-N.

23 THE COURT: Mr. Schwartz.

24 MR. SCHWARTZ: Thank you.

25 //

JOHNSON - DIRECT

DIRECT EXAMINATION

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BY MR. SCHWARTZ:

Q Mr. Johnson, by whom were you employed back on August the 9th, 1993?

A I was employed by the Nevada Department of Corrections.

Q Okay. Can you speak into that microphone so everybody can hear?

A I was employed by the Nevada Department of Corrections.

Q In what capacity were you employed by them?

A I was a correctional officer.

Q And in August of 1993, what institution were you working at?

A Ely State Prison.

Q Okay. Also as a correction officer?

A That is correct.

Q Okay. What were your -- what were your duties and responsibilities at Ely as a correction officer?

A At that time, I was on the security squad, which is a -- like a first response type team.

Q Okay. So if there were problems within the prison you would be one of the first people to respond to them?

A That is correct.

Q Directing your attention to August the 9th, 1993,

JOHNSON - DIRECT

1 did you have occasion to come in contact with an inmate by the
2 name of Marlo Thomas?

3 A Yes, I did.

4 Q And do you see Marlo Thomas in the courtroom today?

5 A Yes, he's right there in the plaid shirt.

6 Q What's he wearing today?

7 A The brown plaid shirt and --

8 MR. SCHWARTZ: The record reflect the identification
9 of the defendant, Your Honor?

10 THE COURT: The record will so reflect.

11 BY MR. SCHWARTZ:

12 Q Mr. Johnson, on August the 9th, 1993, could you
13 relate to the jury what, if anything, transpired between
14 yourself and the defendant?

15 A Yeah. I was out on the Phase I yard and Mr. Thomas
16 was making a -- he was being uncooperative. And he started
17 making threats towards me, and so we pulled him off the yard,
18 took him up to the sergeant's office. And he continued to be,
19 you know, uncooperative and belligerent, so we took him up to
20 visiting holding, which is a cell -- isolation cells, more or
21 less, and therefore, you know, where you take an inmate for
22 like a little cool-down period. And he had made threats to me
23 where he was going to, you know, he told me I didn't run
24 nothing, I run this yard, you know, I'll kick your ass, and
25 that kind of thing. And then when we did get him up to

JOHNSON - DIRECT

1 visiting holding -- when you get him to visiting holding you
2 -- you know, you take all their possessions away from them,
3 you strip search them, and then you lock them in the cell.
4 And upon being released from his restraints he immediately
5 turned around and tried to make good on his threat to me and
6 the other officer.

7 Q Okay. How did he try to make good of those threats?

8 A He turned around and went to take a swing on us and
9 we immediately took him to the ground.

10 Q You said prior to that you had strip searched him.
11 What's the reason that you strip search inmates?

12 A Well, when you strip search them you, you know, make
13 sure they don't have any weapons or anything on them. But he
14 tried to attack us prior to being strip searched.

15 Q Is it unusual to find inmates in the Nevada State
16 Prison in possession of weapons?

17 A It's unusual, but it does happen.

18 Q It happened -- would you say it happens frequently?

19 A Fairly frequently, yeah.

20 Q And when I say weapons, I'm not meaning your
21 standard gun or your standard knife but --

22 A Yeah.

23 Q -- what else do you sometimes find in the prison?

24 A A prison manufactured weapon. A lot of times
25 they'll use a piece of metal, a long skinny piece of metal and

JOHNSON - DIRECT

1 fashion a handle, make it similar to an ice pick.

2 Q Okay. In connection with the incident that you've
3 been testifying to that occurred on August the 9th, 1993, did
4 you prepare an incident report or report of violation?

5 A Yes, I did.

6 MR. SCHWARTZ: Court's indulgence.

7 BY MR. SCHWARTZ:

8 Q Mr. Johnson, let me first show you what has been
9 marked for identification as State's Proposed Exhibit Number
10 106. Are you able to identify that document, sir?

11 A Yes, that is a notice of charges I --

12 Q Could you speak up, I'm sorry.

13 A This is a notice of charges that I wrote on Mr.
14 Thomas on that particular incident.

15 Q That'd be August 9th, 19 --

16 A August 9th, 1993.

17 Q 1993. Thank you. Are these documents kept in the
18 ordinary course of business of the Ely State Prison?

19 A Yes.

20 Q Let me show you what's been marked for purposes of
21 identification, State's Proposed Exhibits 91 and 107. Are
22 they also incident reports relating to a Marlo Thomas that are
23 kept in the ordinary course of the --

24 A Yes, they are.

25 Q -- Ely State Prison?

JOHNSON - VOIR DIRE

1 A Yes, this is a disciplinary hearing form, this is a
2 -- after we write him up, then a disciplinary committee
3 handles it and then they decide what sanctions are required.

4 Q Thank you.

5 MR. SCHWARTZ: Your Honor, the State would move for
6 the admission of State's 106, 91, and 107.

7 THE COURT: Any objection?

8 MR. LaPORTA: Your Honor --

9 (Off-record counsel colloquy)

10 MR. LaPORTA: Okay. Are you the -- voir dire, Your
11 Honor. Briefly.

12 THE COURT: Sure.

13 VOIR DIRE EXAMINATION

14 BY MR. LaPORTA:

15 Q Are you the author of -- obviously this report. Are
16 you the author of these?

17 A No, I am not.

18 THE COURT: Well, what are these now? Let's --

19 MR. LaPORTA: These proposed exhibits, 91 and --
20 well, it is -- just says 91.

21 THE COURT: 91 and --

22 MR. LaPORTA: What's the other -- oh, 107.

23 THE COURT: 107.

24 BY MR. LaPORTA:

25 Q Are you the author of these?

JOHNSON - VOIR DIRE

1 A No, I am not.

2 Q Are you --

3 A Those are handled by the disciplinary committee.

4 Q Okay. Are you the custodian of records --

5 A No, I am not.

6 Q -- at that location? Do you have any personal
7 knowledge about how these records are handled? What records
8 are kept?

9 A Well, the only personal knowledge I know of is once
10 we do our notice of charges, then it is turned over to
11 administration. They turn it over to the disciplinary
12 committee and what they do with it from there is out of our
13 hands.

14 Q Okay. So you have no idea how the records are
15 handled in the Nevada Department of Prisons?

16 A No.

17 Q All right.

18 MR. LaPORTA: Your Honor, I have no objection to
19 106, but I do as to all the other exhibits as I don't believe
20 they're being introduced through the right witness.

21 MR. SCHWARTZ: Well, Your Honor --

22 THE COURT: Well, just a minute, just a minute. 106
23 will be admitted in evidence. Now we're going to talk about
24 91 and 107.

25 (Plaintiff's Exhibit No. 106 admitted)

JOHNSON - DIRECT

1 THE WITNESS: I can shed some light on those. When
2 I get my copy --

3 MR. LaPORTA: Judge, we --

4 THE WITNESS: Oh.

5 MR. LaPORTA: -- we've made our objection.

6 THE COURT: Well, just a minute. Mr. Schwartz
7 there's an objection. Do you want to pursue this with the
8 witness or you want to --

9 MR. SCHWARTZ: Just for a moment.

10 THE COURT: Pardon me?

11 MR. SCHWARTZ: Just for a moment.

12 THE COURT: Yes, you're allowed to do that.

13 DIRECT EXAMINATION (Continued)

14 BY MR. SCHWARTZ:

15 Q Mr. Johnson, showing you again what -- just 107 this
16 time and 91, are you familiar with these records? Are you
17 familiar with whether or not they are kept by the Ely State
18 Prison in the ordinary course of prison business?

19 A Well, yeah, they would be kept. I receive a copy of
20 whatever the disciplinary committee's findings were when they
21 return my copy of the original write-up.

22 Q Okay. Let's look at 107 for a moment. There
23 appears to be the name Marlo Thomas on there and also the name
24 security officer or Officer Drain [phonetic], is that correct?

25 A Yes, that is correct.

JOHNSON - DIRECT

1 Q Are you familiar with Officer Drain?

2 A Senior Drain is now a case worker up there but he
3 was a correctional -- senior correctional officer at that time
4 of that report.

5 Q Are you aware of whether or not Officer Drain is
6 available today to testify?

7 A I do not believe he's available today to testify.

8 MR. SCHWARTZ: Your Honor, we again -- renew our
9 motion to admit State's 107 and 91. Although this witness
10 might be testifying to something that perhaps someone else
11 filled out, I believe hearsay is clearly admissible in a
12 penalty phase hearing.

13 THE COURT: All right. Go ahead, you want to say
14 anything else Mr. LaPorta?

15 MR. LaPORTA: Judge, still they haven't proved that
16 these are authentic records. He's going to be referring to
17 these, he was not the author of these, he can't testify as to
18 whether or not he saw this Officer Drain fill these out.
19 Judge, this is not the proper witness to introduce these
20 additional records through. He's not the custodian of
21 records. There's absolutely no authenticity to these records.

22 THE COURT: Well, over your objection, 91 and 107
23 will be admitted in evidence.

24 (Plaintiff's Exhibit Nos. 91 and 107 admitted)

25 //

JOHNSON - DIRECT

1 BY MR. SCHWARTZ:

2 Q Sir, let me show you State's Exhibit 107 and ask you
3 to read aloud the nature of the incident report in that
4 particular document.

5 A Let's see, the nature of the incident, it says,
6 "On September 30th, 1991, at approximately 7:30 a.m.
7 I responded to shots fired in Units 1, 2 -- and 2
8 hallway. At approximately 7:40 a.m., inmate Thomas
9 was being escorted out of the hallway back into Unit
10 1-B wing, when he attacked inmate Orange [phonetic]
11 who was wearing in -- who was in wrist restraints
12 and striking inmate Orange in the lower right back
13 with his fist. Inmate Thomas threw another punch
14 striking me" and that -- and in parenthesis it says,
15 "(Officer Drain) in the left shoulder, glancing
16 upwards along the left side of my head."
17 And that's all he has written.

18 Q Thank you, sir. Sir, showing you State's Exhibit
19 91, again I'd like you to read the incident report aloud into
20 the record, please.

21 A All right. It says:
22 "On January 20th, 1992, at approximately 3:20 p.m.,
23 during the 3:15 p.m. institutional count, I, Ceil
24 [phonetic] Leavitt was counting Unit 3-B wing.
25 Inmate Thomas, back" -- you know, it lists his back

JOHNSON - DIRECT

1 number and cell number -- "had cardboard in his
2 window. He removed it and said," and it's a quote
3 in parenthesis, "'(Do you like what you see? Suck
4 my dick, whore.)'" After count, while trying to
5 perform my duties on the tier, inmate Thomas
6 continually called my name and called me a slut and
7 told me to ('suck his dick.')" Which is also in
8 parenthesis, as a quotation.

9 Q Thank you.

10 MR. SCHWARTZ: Pass the witness, Your Honor.

11 THE COURT: Cross.

12 MR. LaPORTA: Yes, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. LaPORTA:

15 Q Mr. Johnson, you're no longer employed with Nevada
16 Department of Prisons, is that correct?

17 A Oh, I am -- I am currently employed in Department of
18 Prisons.

19 Q Oh, you are currently employed?

20 A Yes.

21 Q And what is your position, once again?

22 A I'm a correctional officer.**

23 Q Okay. And where are you located?

24 A Now I'm assigned to the Culinary.

25 Q Okay. And that's where, in Ely?

JOHNSON - DIRECT

1 A Yes, at Ely State Prison.

2 Q All right. So -- and how long have you been at Ely?

3 A Five years.

4 Q All right. And that security force, that first
5 response team I believe as you call it, that dealt with high
6 risk prisoners oftentimes, did it not?

7 A That is correct.

8 Q Okay. There is such a classification called high
9 risk prisoners there, is there not?

10 A Yeah, they do have that classification now.

11 Q Okay. Are you familiar with their routines,
12 procedures, the methods and manners that are employed with
13 high risk prisoners?

14 A They've changed those substantially. I've been off
15 the security squad for over three years --

16 Q All right. Well, what do --

17 A -- due to a motorcycle injury.

18 Q Okay. What do you know about procedures that they
19 -- that they now use?

20 A Well, I know that they -- when they feed them they
21 have to use a protective shield to prevent them from
22 propelling on them. And they have to -- when they come out of
23 their cell, it's with two officers in full body armor.

24 Q Okay.

25 A And they take them either to a -- to the yard -- rec

JOHNSON - DIRECT

1 yard, by themselves, which is just an enclosed area that has a
2 gun port that overlooks it. Or if they go to the shower,
3 which is an enclosed -- with steel bars, you know, they're
4 restrained at all times.

5 Q All right. Even while they're showering?

6 A They -- when they put them in the shower and close
7 the door and then they remove the restraints through the bars.

8 Q Okay. So, those restraints -- and when you say
9 restraints, what are we talking about? What are the --

10 A We're talking about handcuffs with hands behind
11 their back and leg shackles.

12 Q All right. Belly chains?

13 A They don't usually use belly chains when they're
14 escorting them to and from the shower or the yard. The only
15 time they would use belly chains is if they like came out for
16 a visit or something like that. Then they would be in full
17 oranges with belly chains and leg irons, if they were coming
18 out of the unit.

19 Q All right. How much time do they spend in their
20 cell when they're a high risk prisoner?

21 A About twenty-two hours a day.

22 Q Okay. And the rest -- and that other time is in the
23 yard by the --

24 A Well, they get like an hour of yard time every day
25 and then -- for their -- they bring them out for their shower.

JOHNSON - DIRECT

1 Q And then that yard time is strictly controlled and
2 monitored as you've already testified to?

3 A Yes, yes. They are --

4 Q All right.

5 A -- in , ,there by themselves.

6 Q All right. When they're put out into that yard are
7 the chains removed through a -- some kind of port?

8 A Yeah, they have bars on the lower halves of the
9 doors and the inmates are made to kneel. They remove their
10 leg irons --

11 Q And you --

12 A -- and then close the door.

13 Q -- and you testified there was a gun port that
14 overlooked that yard?

15 A Yes.

16 Q And there's someone actually attending or in that --

17 A When you only --

18 Q -- gun port?

19 A -- have one inmate out there they don't post a -- an
20 armed officer above that.

21 Q Okay. All right. And he's in that exercise yard?
22 That person who'd be considered a high risk prisoner would be
23 in that little exercise area by themselves?

24 A Yes, they would.

25 Q All right. And they would be escorted back from

JOHNSON - DIRECT

1 that exercise yard to their cell by two well-protected
2 officers, is that correct?

3 A That is correct.

4 Q All right. They take their meals inside that cell?

5 A Yes.

6 Q And just to be sure, you said that the chains and
7 everything and their handcuffs were removed from them when
8 they took a shower, but maybe you could describe that shower
9 facility. That's a secure facility?

10 A Well, it's -- each shower is a stall that's about
11 three by three and a half and it has a steel door which is all
12 bars. And what you do is, you know, you take the inmate in,
13 you have them kneel down, and then you take their leg irons
14 off prior to closing the door. And we do have a lot of staff
15 assaults from inmates jumping up.

16 Q All right. So, a high risk prisoner would be an
17 assaultive prisoner --

18 A Yes.

19 Q -- would he not? Somebody who has a history of
20 attacking inmates and being aggressive towards guards, is that
21 not right?

22 A That is correct.

23 Q All right. So the Ely State Prison has methods and
24 manners of dealing with this, do they not?

25 A Yes. Yes, they do.

JOHNSON - DIRECT

1 Q All right. I mean -- and they take their job
2 seriously, I would think, these officers that are assigned
3 that duty --

4 A Yeah.

5 Q -- they're very careful men. They don't intend to
6 be hurt, do they?

7 A Well, they try not to.

8 Q All right. This one incident where shots were fired
9 and I want to be clear on this. Who fired the shots?

10 A I don't know, I was not at that incident.

11 Q Well, it wasn't an inmate, was it?

12 A No, it would be an officer.

13 Q It was an officer who had fired the shots?

14 A Yeah.

15 Q The first incident that you testified to in '91
16 where you took him to an area, I believe it was visiting lock-
17 up you called it?

18 A It's visiting holding. It's just some holding cells
19 up by the visiting room.

20 Q And you took him to cool down and so forth. You
21 stated that he made some statements, some --

22 A That was prior to being escorted up there. That was
23 what got him pulled off the yard.

24 Q Okay. All right. He runs this yard and --

25 A Yeah.

JOHNSON - REDIRECT

1 Q -- he's --

2 A Told me I didn't run anything and that he runs the
3 yard and that he was going to kick my ass.

4 Q Is he the first inmate that ever said he was going
5 to kick your ass?

6 A No.

7 Q It's happened before, hasn't it?

8 A Yeah.

9 Q With other inmates?

10 A Not that frequently. Usually they're --

11 Q But it has happened, has it?

12 A Yeah.

13 Q With inmates other than Marlo?

14 A Yeah.

15 Q Prison's a very violent place, isn't it?

16 A Yes, it is.

17 MR. LaPORTA: No further questions, Your Honor.

18 THE COURT: Anything else?

19 MR. SCHWARTZ: Yes, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. SCHWARTZ:

22 Q Mr. Johnson, Mr. LaPorta asked you about what is
23 taking -- what is done at Ely State Prison with regard to high
24 risk prisoners, and you talked about how guards usually work
25 in pairs and they have a suit of armor on at certain times or

1 at least --

2 A No, it's --

3 Q -- a vest?

4 A Yeah, it's just a vest.

5 Q Okay. It's not -- it's not a full suit that would
6 protect them in every area of their body?

7 A No, it's not.

8 Q Okay. Now, if a high risk prisoner is sick, very
9 sick, does he get medical treatment, or because he's a high
10 risk prisoner you just forget about him?

11 A No, he gets medical treatment.

12 Q So, a doctor has occasion to examine a high risk
13 prisoner who is sick?

14 A That is correct.

15 Q Is the doctor wearing a bulletproof vest or any kind
16 of armor to protect him?

17 A No, he is not.

18 Q If an inmate -- a high risk inmate has severe dental
19 problems, is he seen by a dentist?

20 A Yes, he is.

21 Q And is this dentist wearing protective gear to
22 protect his life?

23 A No, he is not.

24 Q Now you stated that there are occasions when people
25 lie to you -- inmates lie to you in -- sorry, inmates threaten

JOHNSON - REDIRECT

1 you in prison, is that correct?

2 A Yes, that is correct.

3 Q But you tempered that with the statement, but not as
4 frequently. Is the incident that you've related with regards
5 to yourself and the defendant the only negative contact you
6 came into the defendant with?

7 A No, it's just the one that stands out most in my
8 mind.

9 Q Okay. When you were subpoenaed to be here and you
10 learned it was in a case involving Marlo Thomas, did that name
11 ring a bell?

12 A Oh, yes.

13 Q How many such names would ring a bell of all the
14 people that have been in prison under your -- you've been a
15 correction officer?

16 A Not very many.

17 Q But his name stands out?

18 A Yes.

19 Q Thank you.

20 THE COURT: All right. That completes the
21 testimony?

22 MR. LaPORTA: Judge, just --

23 THE COURT: Sure.

24 MR. LaPORTA: -- a few more questions.

25 //

JOHNSON - RECROSS

RECROSS EXAMINATION

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BY MR. LaPORTA:

Q Mr. Schwartz asked you some questions about these prisoners, high risk prisoners, receiving medical and dental health. First of all, every precaution is taken to make sure that they're not faking this or exaggerating their --

A No, that's not for us to decide.

Q All right. Well, when they're taken for medical or dental help, all right, are they just put in a room with the dentist or with the doctor by themselves?

A No, they're in restraints.

Q They're in restraints at that point in time, is that not correct?

A That is correct.

Q And are there not Department of Prison first team response or other type --

A Oh, anytime a high risk potential inmate comes out of his unit, it will be escorted by two security squad officers in -- only.

Q All right. So when he sees the dentist or he sees the doctors he's in full restraints with two of the security team officers ready for anything --

A Yes.

Q -- present? Is that not correct?

A That is correct.

JOHNSON - RECROSS

1 Q Okay.

2 MR. LaPORTA: No further questions, Your Honor.

3 THE COURT: All right. Thank you very much, sir.

4 You can go about your business now. Thank you.

5 Next witness.

6 MR. ROGER: Roger Edwards.

7 THE COURT: Mr. Edwards, please remain standing up
8 over here. I'd like you to raise your right hand and be
9 sworn.

10 ROGER EDWARDS, PLAINTIFF'S WITNESS, WAS SWORN

11 THE CLERK: Thank you. Please be seated.

12 THE COURT: Please state your name and spell your
13 last name for the record, sir.

14 THE WITNESS: My name's Roger Edwards,
15 E-D-W-A-R-D-S.

16 THE COURT: All right. Put that microphone a little
17 up so you can talk into it.

18 DIRECT EXAMINATION

19 BY MR. ROGER:

20 Q Sir, please state your business or occupation.

21 A Right now I work for BHP Copper as an equipment
22 operator. I left the Department of Prisons two years ago.

23 Q What did you do for the Department of Prisons?

24 A I was a correctional officer.

25 Q How long were you a correctional officer?

JOHNSON - RECROSS

1 A A little over two and a half years.

2 Q What were your duties as a correctional officer?

3 A The safety and wellkeeping [sic] of the inmates, the
4 health, things of that nature.

5 Q Did you work at a particular prison in the Nevada
6 State Prison system?

7 A Ely State Prison.

8 Q Did you work at Ely the entire two and a half years?

9 A Yes, I did.

10 Q Would you describe Ely State Prison as a maximum
11 security prison?

12 A Yes, it is.

13 Q What types of inmates are sent to Ely Prison?

14 A We dealt with everything from maximum general
15 population inmates to death row. Everything in between.

16 Q During your two and a half years, were you generally
17 familiar with the workings of the prison?

18 A Yes, very familiar. My wife and I both worked
19 there.

20 Q Officer Edwards, will you please describe what type
21 of amenities prisoners receive at the prison?

22 A They have three meals a day, bed, blankets,
23 televisions, coffee pots, radio, stereos. Their cells are
24 small, they're concrete and stainless steel. A stainless bed
25 frame with a mattress, stainless steel sinks, stainless steel

JOHNSON - RECROSS

1 toilet. A light to the outside. Each cell has a light in it
2 or window. They have lights in the cells that they can
3 control and hot water and --

4 Q With respect to the electrical appliance --
5 appliances, is there a limit on how many appliances that each
6 inmate can have in their own individual cell?

7 A I believe there is. They can only have one of each.
8 They can have one television, one radio/tape player, one
9 coffee pot -- hot pot type thing, one razor, if it's an
10 electric razor. They can't have multiples.

11 Q With respect to the televisions, are the inmates
12 given cable TV --

13 A Yes, they are.

14 Q -- in their cell?

15 A They're given satellite cable TV, they're given
16 education on -- I think it's three channels, but it's at least
17 three channels of educational TV. They have a full
18 educational staff there at the prison to do just about
19 anything in college courses, high school courses, GED through
20 college-level courses. That's the main function of the TV is
21 education. They also get cable TV on top of that -- satellite
22 cable TV that they can watch any program you guys watch.

23 Q With respect to contact with -- people who are on
24 the outside of the prison, whether it be friends or relatives,
25 what access do they have to those people?

JOHNSON - RECROSS

1 A They have telephone access, they have access through
2 the mail system, they have visiting privileges and access to
3 have people come in and visit -- personal type visits.

4 Q What about recreation? What type of amenities do --
5 are they allowed?

6 A If they're general population, what -- you'd say
7 that regular inmates they have basketball, a full gymnasium
8 set up, handball, baseball outside, everything furnished. And
9 they get, depending on which part of the prison they're in,
10 they get a set number of hours per day per week for that. In
11 their units they have a recreation yard in their unit that
12 they can play handball in or basketball or whatever they want
13 right in their unit.

14 Q Are they also given access to spiritual guidance?

15 A Yes, they are. They -- there's full time Catholic
16 priest there. His name's Father Kelly and he has services
17 there quite often. They bring in other ministers and
18 preachers five days a week for services.

19 Q What years did you work at the Nevada State Prison
20 at Ely?

21 A I worked there '93 through June 26th of '95.

22 Q You say that your work -- your wife also worked
23 there?

24 A Yes, she still works there. My wife is the
25 administrative aide for the associate warden of programs.

JOHNSON - RECROSS

1 Q Officer Edwards, when you worked as a correctional
2 officer, were you personally armed?

3 A No. You don't carry arms with you. You don't carry
4 the riot clubs or sticks. All -- at that time we carried a
5 flashlight and a pair of handcuffs. Now, we don't carry
6 handcuffs either. All we have is a flashlight. Most of the
7 people will use a small light that's easier to carry.

8 Q How would you describe your job back then as a
9 correctional officer as far as safety is concerned?

10 A The main part of your job was to be safe, to make
11 sure the inmates didn't hurt each other and didn't hurt the
12 officers. It was -- it was more safety oriented than anything
13 else.

14 Q Recognizing that you are one guard, how many inmates
15 did you supervise at any one time?

16 A A standard unit holds a hundred and forty-eight
17 inmates, I believe, and the institution holds a thousand fifty
18 total and at any one time you might have two hundred inmates
19 on the yard and be walking the yard as a search and escort
20 officer or escort or whatever.

21 Q Generally speaking, what was the ratio, guard to
22 prisoners?

23 A It's very low there. I believe the ratio is seven
24 or eight inmates to one officer.

25 Q Did you consider your job to be hazardous?

JOHNSON - RECROSS

1 A Yeah, I did. I thought of it as a kind of job you
2 needed to stay on your toes, you needed to stay alert.

3 Q And clearly the inmates at Ely State Prison were the
4 worst of the worse?

5 A Yes sir, they are.

6 Q When an inmate violates certain rules within the
7 prison, is there a report which an officer fills out?

8 A Yes, there is. It's a notice of charges. I found
9 one in my file at home and brought it. And it's a Nevada
10 Department of Prisons, Code of Penal Discipline Disciplinary
11 Form, Notice of Charges.

12 Q Is that a document which the officer fills out?

13 A Yes, you do. You fill it out with the inmate's
14 name, back number, current housing location, date, time, and
15 the report of the violation.

16 Q Thereafter, after a notice has been filed -- and I
17 take it the inmate is given a copy of the notice?

18 A Yes, he is.

19 Q Does a hearing officer conduct an investigation and
20 make a disposition, whether it be sanctions or referring it to
21 a higher level?

22 A Yes, it does go that way. Your notice of charges
23 goes to your shift supervisor, and that is a lieutenant, and
24 he reviews it and then signs it and sends it to the hearing
25 officer. So it goes to a committee of quite a few people

JOHNSON - RECROSS

1 that's randomly selected.

2 Q Well, now we're talking about the disciplinary
3 hearing, which is the next level, is that right?

4 A Yes.

5 Q So the hearing officer has the option of resolving
6 the issue himself or either himself or the inmate can
7 recommend that it go to a full disciplinary hearing?

8 A Disciplinary committee.

9 Q And that is a committee comprised of several people
10 who work in the prison?

11 A Yes.

12 Q They hear evidence and they determine whether or not
13 the allegations are true?

14 A That's correct. They do the same thing a court
15 does. The inmate has an opportunity to call witnesses on
16 their behalf, have somebody there to represent them. This --
17 it's basically the same system we use in the court of law.

18 Q Thereafter, does the disciplinary hearing committee
19 fill-out a reform --

20 A Yes, they do.

21 Q -- a form reflecting their findings?

22 A Yes, they do.

23 Q You're familiar with all of these forms?

24 A Yes, I am.

25 Q These are forms which are kept in the ordinary

JOHNSON - VOIR DIRE

1 course of business within the prison?

2 A They are.

3 Q Officer Edwards, I'm showing you State's Proposed
4 Exhibits Numbers 92, 93, 95, and 98. If you would, just
5 briefly take a look at those documents. Do you recognize
6 those documents generally as being documents that are kept in
7 the ordinary course of business at prison with respect to
8 violation by inmates as well as hearing officer reports and
9 sometimes a summary of disciplinary hearings?

10 A Yes. Normally, they keep these in a file, in the
11 records department at the prison, in each inmate's file.

12 Q Recognizing that you're not a custodian of record,
13 but you have seen these reports generally before and you know
14 that these are official reports kept at the prison?

15 A Yes, I do.

16 MR. ROGER: Move for their admission, Judge.

17 THE COURT: Any objection to 92, 93, 95, and 98?

18 MR. LaPORTA: Voir dire, Your Honor?

19 THE COURT: Yes.

20 MR. LaPORTA: Briefly.

21 VOIR DIRE EXAMINATION

22 BY MR. LaPORTA:

23 Q Sir, were you the author of any of these reports?

24 A Not of these --

25 Q No, just any --

JOHNSON - VOIR DIRE

1 A -- but I do have one that I did.

2 Q No, just the ones that the State has presented you.
3 Are you the author of any of those reports?

4 A No, I'm not.

5 Q Are you the custodian of records now or were you
6 ever --

7 A No, I never was.

8 Q -- at Ely State Prison? Did you work in the records
9 department?

10 A No, I didn't.

11 Q All right. So then -- and you no longer work at Ely
12 State Prison, is that not correct?

13 A That's correct.

14 MR. LaPORTA: Your Honor, this witness can't testify
15 as to the authenticity of these records or the fact that they
16 are -- and he's not qualified to say these are records kept in
17 the ordinary course. We'd object to their introduction.

18 THE COURT: Mr. Roger.

19 MR. ROGER: Judge, as the Court is aware, hearsay is
20 admissible. I've even laid the foundation as an exception to
21 the hearsay rule. It is not required that he be a custodian,
22 only a person with knowledge and he's certainly demonstrated
23 that.

24 THE COURT: 92, 93, 95, and 98 will be admitted in
25 evidence.

JOHNSON - DIRECT

1 (Plaintiff's Exhibit Nos. 92, 93, 95, and 98 admitted)

2 DIRECT EXAMINATION (Continued)

3 BY MR. ROGER:

4 Q State's Proposed Exhibit Number -- is this a report
5 which you generated yourself as a result of contact with Marlo
6 Thomas?

7 A Yes, it is.

8 THE COURT: What -- is this an exhibit?

9 MR. ROGER: State's Proposed Exhibit Number 96.

10 THE COURT: 96. All right.

11 MR. ROGER: Move for its admission.

12 THE COURT: Any objection?

13 MR. LaPORTA: No objection to that one, Your Honor,
14 no.

15 THE COURT: 96 will be admitted in evidence.

16 (Plaintiff's Exhibit No. 96 admitted)

17 BY MR. ROGER:

18 Q Do you know Marlo Thomas?

19 A Yes, I do.

20 Q Do you see him in court today?

21 A Yes, I do.

22 Q Please point to him and describe an article --

23 A The gentleman --

24 Q -- of clothing that he's wearing today.

25 A -- setting right here in the brown pants, white

JOHNSON - DIRECT

1 shoes, checkered shirt, buttoned to the top.

2 MR. ROGER: May the record reflect the
3 identification of the defendant, Marlo Demetrius Thomas.

4 THE COURT: The record will so reflect.

5 BY MR. ROGER:

6 Q Now did you have contact with him at the Nevada
7 State Prison?

8 A Yes, I did.

9 Q I'd like to direct your attention to State's Exhibit
10 Number 92. That is a summary of disciplinary hearing on the
11 front page? Is that yes?

12 A Yes, it is.

13 Q Okay. If you would turn to the back of page -- is
14 that the notice of charges?

15 A Yes, it is.

16 Q Do you know Officer Cameron [phonetic]?

17 A I knew him, yes, I did.

18 Q He was a correctional officer at the Ely State
19 Prison?

20 A Mm-hmm -- yes, sir.

21 Q Did he indicate which date this infraction occurred?
22 Maybe in the upper right-hand corner.

23 A April 27th, 1992.

24 Q Will you please read for us paragraph 9 which refers
25 to the reporting employee's statement, Officer Cameron.

JOHNSON - DIRECT

- 1 A Paragraph 9:
2 "Reporting employee's statement. On April 27th,
3 1992, at approximately 8:45 p.m., I, Correctional
4 Officer Cameron, confiscated one prison- made
5 Cadillac made of torn stage sheets from inmate
6 Thomas, back number 32824, housed in 4-B, cell 32.
7 After confiscating the Cadillac, Thomas became
8 verbally abusive. 'Give me back my shit, you fucking
9 bitch.' Then Thomas threatened me saying, 'I'm
10 going to kick your ass, you bitch. That's right,
11 I'm getting out and I'm coming to Ely and I'm going
12 to kick your motherfucking whore ass, then you'll
13 call me daddy.' End of report."
14 Q Is Officer Cameron a male or female officer?
15 A Officer Cameron was a female, I believe.
16 Q Do you have -- back then, did you have very many
17 female correctional officers?
18 A No sir, we didn't. Very few.
19 Q I'd like to direct your attention to State's Exhibit
20 Number 93 and specifically to the last page. Again, is that a
21 notice of charges?
22 A Yes, sir, it is.
23 Q The Correctional Officer is Vern Kissel --
24 A Yes.
25 Q -- K-I-S-S-E-L?

JOHNSON - DIRECT

1 A Yes, it is.

2 Q Did you know Officer Kissel?

3 A I know Officer Kissel now. I've know him for years.

4 Q Will you please read from paragraph 9?

5 A Paragraph 9:

6 "Reporting employee statement. At approximately
7 1:30 p.m., on April 3rd, 1993, I and" -- there's a
8 name marked out, Officer something -- "standing
9 about three feet apart" -- I can't make out that
10 word.

11 Q No, I'm sorry. I think that you missed a line. "I,
12 Officer Vern Kissel did observe inmates, Marlo Thomas" --

13 A Let me start again. I did miss a line, it's my
14 mistake. Paragraph 9:

15 "Reporting employee statement. At approximately
16 1:30 p.m., on April 3rd, 1993, I, Officer Vern
17 Kissel, did observe inmates, Marlo Thomas, back
18 number 32824, and" -- this part's blacked out --
19 "standing about three apart arguing. I seen inmate
20 Thomas pick-up a chair and hit inmate Duckett"
21 D-U-C-K-E-T-T -- "and a fist fight started. I
22 observed three inmates run over to help out in the
23 fight. I kicked open the officer door and yelled
24 for them to stop. The fight stopped instantly.
25 Inmate Duckett walked to the sally port followed by

JOHNSON - DIRECT

1 three other inmates, inmate Thomas staying where he
2 was at. Thomas received a cut to the right cheek.
3 There was a shank involved, security squad found the
4 weapon in the trash can in the sally port. End of
5 statement."

6 Q What is a shank?

7 A A shank is a prison-made weapon, much like a knife
8 you'd make out of scrap pieces you might find in your garage
9 or a broken piece of metal some place or a -- you -- a piece
10 of glass filed down, a piece of wood filed on concrete until
11 it's sharp enough to cut you or stab you.

12 Q Now Ely State Prison is your maximum security
13 prison. There's one guard for every seven inmates. You do
14 your best to maintain peace and tranquility at the prison, is
15 that right?

16 A That's correct.

17 Q Nevertheless, despite your efforts, do inmates still
18 use their ingenuity in manufacturing weapons?

19 A They do, and it's amazing the kinds of weapons and
20 things they can come up with.

21 Q In addition to your efforts, do inmates,
22 nevertheless, engage in fights and use weapons against each
23 other?

24 A Yes, they do quite often. They have a lot of
25 altercations, a lot of fights, a lot of weapons are used.

JOHNSON - DIRECT

1 Q Guards out on the grounds are unarmed?

2 A Yes, they are. We do not carry weapons, we don't
3 carry any kind of self defense things, only handcuffs.

4 Q Is it dangerous?

5 A Yes, it is -- it can be.

6 Q I'd like to direct your attention to State's Exhibit
7 number 95, and if you would go to the last page, which is the
8 notice of charges. This is a report which was generated by
9 Officer Gerald Thompson, is that right?

10 A Yes, it is.

11 Q Did you know Officer Thompson?

12 A Yes, I do.

13 Q This was back on August 24th, 1993?

14 A Yes, it is.

15 Q Were you working at Ely back then?

16 A Yes, I was.

17 Q Were you personally familiar with this incident?

18 A No, I wasn't.

19 Q If you would, read paragraph 3, which is a report of
20 a violation.

21 A Report of violation, paragraph 3: "On August 24th,
22 1993, at approximately 8:10 p.m on the Unit 1-B
23 tier, inmate Thomas Marlo, back number 32824, did
24 physically assault" -- this part's blacked out --
25 "with his fist and a sock containing five rocks

JOHNSON - DIRECT

1 approximately five inches in circumference,
2 violation of NRS 200.400. Thomas's actions also
3 caused the firing of two .12 gauge shotgun rounds,
4 one blank and one 7-1/2 bird shot. Charges written
5 on completion of investigation refer to case file
6 ES93-0119."

7 Q Is this sock containing rocks in it a type of a
8 blackjack item?

9 A It is worse than a blackjack. It's almost like a
10 club because when you swing a sock full of rocks it stretches
11 out about that far and that pile of rocks can really -- it can
12 knock you out first hit. It's worse than a club, they're
13 horrible.

14 Q And then I'm going to refer you to State's Exhibit
15 Number 98. That is a report which was generated by
16 Correctional Officer Gina Boyter, B-O-Y-T-E-R?

17 A Yes, it is.

18 Q If you would, please turn to the final page. Well,
19 okay, second to the last page. That is the notice of charges
20 which was filed by Gina Boyter?

21 A Yes, it is.

22 Q Would you please read paragraph 3?

23 A Paragraph 3:

24 "Report of violation. At Ely State Prison on April
25 12th, 1994, I, Correctional Officer Gina Boyter, was

JOHNSON - DIRECT

1 assigned to unit 3-B wing, while feeding cell 3-B
2 29, inmate Marlo Thomas, back number 32824, was
3 given a dinner tray by myself. Inmate Thomas then
4 took his dinner tray and propelled it" -- "propelled
5 a cup of strong-odored urine at me, which hit my
6 face, hair, mouth, and upper right side of my body.
7 I then left the tier to go to the infirmary. End of
8 report."

9 Q The last page, is that a list of medical charges
10 which Officer Boyter incurred?

11 A It is. It is a list of restitution of medical
12 services.

13 Q Did you know Officer Boyter?

14 A Yes, I did.

15 Q How well did you know Officer Boyter?

16 A Officer Boyter drove back and forth to work with me
17 and my wife for about a year and a half. She rode with us the
18 day this incident happened.

19 Q Did you speak with Officer Boyter after this
20 incident where urine was thrown at her?

21 A Yes, we did. We -- when we got her to the parking
22 lot and got in the car and went home, we talked about this all
23 the way home that night.

24 Q How did it affect Officer Boyter?

25 A It really demoralized her. This lady is a small

JOHNSON - DIRECT

1 lady; she's maybe five foot two, maybe weighs a hundred
2 pounds. At the time of this incident she was about six months
3 pregnant. It really hurt her bad. It demoralized her
4 terrible.

5 Q Thank you. You also had contact with the defendant,
6 is that right?

7 A Yes, I did.

8 Q Were you one of the officers who was in charge of
9 supervising Marlo Thomas?

10 A Yes, I was.

11 Q How much contact did you have with Mr. Thomas?

12 A For quite a while in lockdown I had daily contact
13 with him, five days a week, eight hours a day.

14 Q He was eventually let out of lockdown to a general
15 population unit, he wound up back in lockdown a short time
16 later. He did his time there, went back to a general
17 population unit, and stayed there a short time and then went
18 back to lockdown. He didn't stay on the yard very long. I
19 was -- a year and a half, I dealt with him in lockdown and
20 then for the next year, maybe fourteen months, I dealt with
21 him as a search and escort officer.

22 Q You had quite a bit of contact with him?

23 A Yes, I did.

24 Q How would you describe him as a security risk?

25 A High. Maximum.

JOHNSON - DIRECT

1 Q Well, what do you mean by that?

2 A He was constantly assaultive and abusive of staff.
3 He was also assaultive and abusive of fellow inmates.

4 Q Did you take extra precautions whenever you had
5 contact with the defendant?

6 A If he was in lockdown, we wore safety glasses, we
7 wore bulletproof, knifeproof vests. We were not allowed
8 physical contact with them unless they were in leg irons and
9 handcuffs behind the back. Those were the rules.

10 Q Those were rules which would apply to the defendant?

11 A They applied to all inmates in lockdown, lockdown
12 status.

13 Q What is lockdown status?

14 A Lockdown status is where they put assaultive,
15 abusive inmates.

16 Q Can you tell us what percentage of the defendant's
17 incarceration was spent in lockdown status?

18 A What percentage of inmates?

19 A His -- no what percentage of the defendant's
20 incarceration time was spent in lockdown?

21 A I have -- I have no idea. While I was there, the --
22 my period of time, I would estimate over 80 percent was
23 lockdown.

24 Q On September 17th, 1993, you had contact with the
25 defendant, is that right?

JOHNSON - DIRECT

1 A Yes, I did.

2 Q You indicated to us earlier that you had a copy of
3 that incident report --

4 A Yes, I --

5 Q -- at home in your own file?

6 A Yes, I do. I found this in my file the night before
7 we came to Las Vegas.

8 Q Do you keep copies of all of your incident reports?

9 A I try to. Some of them were kept for AG referrals,
10 but the ones that I managed to keep, I kept at home in a file.

11 Q What shift were you working on that date?

12 A Night shift, 4:00 in the afternoon 'til 12:00
13 midnight.

14 Q What were you doing that evening?

15 A On this particular day, I was a floor officer in
16 unit 3.

17 Q Was the defendant housed in unit 3?

18 A Yes, he was. He was housed in unit 3-B29.

19 Q Did you have contact with him that evening?

20 A Yes, I did.

21 Q Tell the jury about your contact with him.

22 A At this particular time, my report of violation
23 read:

24 "On September 17th, 1993, at Ely State Prison, I,
25 Officer Roger Edwards, had just got back from

JOHNSON - DIRECT

1 pushing the food carts onto the 4-A wing from the
2 culinary. At this time, Officer David Oxborough
3 [phonetic] told me to pick up the phone at cell
4 4-A8; this is inmate Thomas Marlo 32824's cell.
5 When I picked up the phone, inmate Thomas became
6 abusive saying, 'Edwards, you bitch. I will get
7 your ass someday, then we'll see you, motherfucker.'
8 Inmate then began throwing newspaper and other
9 garbage out of his cell onto the tier saying, 'Here,
10 clean-up after me, you motherfucker. I'll get the
11 whole tier to go off, you asshole.' This type of
12 abuse continued for most of the night. When I swept
13 the tier, there was an inordinate amount of trash in
14 front of 4-A29."

15 Q With respect to the threats and vulgarities, do you
16 remember those?

17 A Yes, I do. That's not normal behavior for -- even
18 for an inmate, that is not normal.

19 Q Did you take those threats seriously?

20 A Of course.

21 Q When he said that he was going to get the whole tier
22 to go off, what was he referring to?

23 A There's forty-eight inmates housed on a tier, each
24 individual cells. If one inmate can get the rest of the
25 inmates on that tier to go off on the officer, you have a real

EDWARDS - CROSS

1 bad tour of duty.

2 Q In what way?

3 A They throw things on the officers or they threaten
4 you, cuss you, throw garbage out, every way imaginable.

5 Q Thank you.

6 MR. ROGER: That concludes direct examination.

7 THE COURT: So you're going to have to come back at
8 1:00, I'm sorry, for cross-examination.

9 Now don't converse among yourselves or anyone else
10 on any subject connected with the trial, read, watch or listen
11 to any report of or commentary on the trial or any person
12 connected with the trial by any medium of information,
13 including, without limitation, newspapers, television, and
14 radio. And don't form or express any opinion on any subject
15 connected with the trial until the cause is finally submitted
16 to you.

17 We'll we reconvened at 1:00 o'clock.

18 (Court recessed until 1:00 p.m.)

19 THE COURT: All right, Mr. Edwards, you're still
20 under oath. Mr. LaPorta has a few questions he wants to ask
21 you. All right?

22 MR. LaPORTA: Thank you, Judge.

23 CROSS-EXAMINATION

24 BY MR. LaPORTA:

25 Q Good afternoon, Mr. Edwards, how are you?

EDWARDS - CROSS

1 A Fine. How are you?

2 Q Good. Very good. I have some questions of you.

3 At the end of your direct testimony here today you testified
4 that threats and vulgarity were not a normal part of the
5 prison, were not normal behaviors by inmates; is that not
6 correct?

7 A It's as normal there as it would be here; it's not
8 normal in public, it's not normal there. That is a small
9 public, it's a small community.

10 Q Violent community.

11 A Small, violent community.

12 Q The "worst of the worst," as was testified to.

13 A Yes.

14 Q And so if someone had testified here, a Department
15 of Prisons employee had testified that it wasn't unusual to
16 have threats and vulgarity displayed and directed at a prison
17 employee, they would be mistaken?

18 A It happens quite often --

19 Q Okay. That's --

20 A -- but it is not normal.

21 Q Well -- all right, that's fine. Let me ask you
22 about lockdown versus a classification called HRP, which is
23 high-risk prisoner. Are you familiar with that?

24 A Yes, I am.

25 Q Okay. Are they the same classification, and if not,

EDWARDS - CROSS

1 which is the highest security classification?

2 A The highest security classification is death row.

3 Q Well, I'm asking between lockdown and HRP. Please
4 try to listen to my questions. And I asked you between
5 lockdown and HRP, which is the highest classification?

6 A It's HRP.

7 Q All right. To the best of your knowledge was Mr.
8 Thomas ever classified HRP?

9 A Not that I know of.

10 Q Okay. You take different methods and procedures and
11 precautions when somebody is classified HRP as opposed to
12 being placed in lockdown?

13 A You do.

14 Q Okay. Who --

15 A To deal with the nature --

16 Q All right. Who gets classified HRP, generally
17 speaking; what type of behaviors get you classified as HRP?

18 A Officer assault that is horrendous, if an officer
19 winds up in the hospital for the damage done to him; any
20 inmate assault where the inmate is maimed, that person would
21 get classified a --

22 Q By an "inmate maimed," you mean an inmate other
23 than, like say, the defendant in this situation?

24 A An inmate-on-inmate situation.

25 Q Okay.

EDWARDS - CROSS

1 A After the hearing, after the notice of charges, the
2 hearing, the normal procedure, he would get classified HRP.

3 Q Okay. Now you testified during direct that during
4 your employment there in Ely you were very familiar with
5 Marlo, and that was because he was general population lockdown
6 -- general population lockdown, something along those lines?

7 A Mm-hmm. Yes.

8 Q But now you've also testified here just a second ago
9 that at no time was he classified an HRP or high-risk
10 prisoner, put into that additional security situation, is that
11 not correct?

12 A I --

13 Q Yes or no?

14 A I said, not that I knew of.

15 Q Not that you knew of, okay. Lockdown, is that both
16 an individual and maybe a living unit status? In other words,
17 can an individual be placed in lockdown and can a wing, or a
18 living unit be placed in lockdown?

19 A Placed on lockdown status, yes.

20 Q Okay. Both individual and, let's say, not barracks
21 but let's say living quarters, a whole wing?

22 A A tier could be placed on lockdown status --

23 Q Okay.

24 A -- at the discretion of the warden --

25 Q All right --

EDWARDS - CROSS

1 A -- for safety or security.

2 Q All right. Is it not true that Ely State Prison
3 currently or while you were there has always had at least a
4 partial lockdown situation, if not a total lockdown situation
5 for its whole inmate population?

6 A They have always had at least one unit dedicated
7 just to lockdown, yes.

8 Q All right. And when you say "units," are you
9 talking about a living unit?

10 A A forty-eight-person unit, yes --

11 A All right --

12 A -- a forty-eight-person tier.

13 Q And to the best of your knowledge, is that 48-person
14 living unit maxed out, in other words are 48 people in
15 lockdown?

16 A Always. The entire institution is maxed out.

17 Q Okay. High risk prisoner, are they ever -- they
18 spend twenty -- is it not true that they spend approximately
19 twenty-three hours a day in their cell by themselves?

20 A Twenty-two to twenty-three hours, yes, sir.

21 Q When they are allowed out of their cells they are
22 shackled prior to being released from that cell?

23 A Yes.

24 Q There are two officers present at the time they are
25 released?

EDWARDS - CROSS

1 A Yes.

2 Q And when the cell is unlocked, they are completely
3 shackled, is that not true?

4 A They're hands are shackled through the food slot,
5 they are ordered to turn around and kneel; then the door is
6 opened and their leg shackles are put on 'em at that time.
7 They're helped to their feet and escorted to the yard.

8 Q Okay. Now I'm talking about the HRPs, okay. Then
9 they go into a concrete-enclosed yard, is that not correct?

10 A That's correct.

11 Q And then a door is shut behind them and secured --

12 A Correct.

13 Q -- and then these handcuffs are pulled off of them,
14 is that not correct?

15 A They remove the leg irons while they're knelt at the
16 doorway, the door is closed, they stick their hands through
17 the bars after the door is secured, and you remove their
18 cuffs; they they're put on the yard.

19 Q And then the shower it's a similar --

20 A The same situation.

21 Q How often a week are they allowed to shower?

22 A Every other day.

23 Q Okay. And there's always two officers who are in
24 protective garb in attendance at all times, is that not
25 correct?

EDWARDS - CROSS

1 A That's correct.

2 Q Okay. How about medical and dental situations where
3 they need to see either a doctor or a dentist, they are
4 shackled while they're there seeing the doctor or dentist?

5 A If the doctor or dentist requests that the shackles
6 be removed, they're removed.

7 Q And that would be for purposes of treatment only?

8 A Right.

9 Q Is there a time, any time, when those two officers,
10 or if -- excuse me -- if need be, more officers are not
11 present while the inmate is seeing the doctor or dentist?

12 A There are times that there will be four to five
13 officers present, depending on the inmate, whether he's HRP
14 lockdown; the minimum is two.

15 Q The minimum is two. And there are situations where
16 you can more than two on a particular inmate --

17 A Yes, there are.

18 Q -- if his behavior so calls for it?

19 A Violence.

20 Q All right. You described where -- or testified
21 during your direct that safety was an issue, and I can -- is
22 that not true?

23 A That's true.

24 Q All right. So you're always aware of what's going
25 on around you. You also made a statement that today you're

EDWARDS - CROSS

1 more aware, more oriented towards safety than what you were
2 sometime in the past; is that not true? I mean, you made that
3 statement during your direct testimony.

4 A Well, as I get older, I'm -- yeah.

5 Q That was --

6 A When I was --

7 Q That was a statement about you personally, or about
8 the prison itself?

9 A Myself personally, and the prison also.

10 Q The prison has become a little more secure today?

11 A Yes, it has.

12 Q In other words, they've learned from their errors
13 and their mistakes?

14 A Yes, they have.

15 Q You stated that there were no arms, no guns or
16 weapons allowed in the prison by the correction officers such
17 as yourself. What about gas?

18 A There were no --

19 Q Pepper spray?

20 A -- no guns or arms on the yard; there are guns in
21 secured places. You do not walk the yard with guns,
22 ammunition or any kind of weapon.

23 Q Is gas or pepper spray considered a weapon?

24 A It's -- you don't walk the yard with gas or pepper
25 spray either, that's --

EDWARDS - CROSS

1 Q Okay.

2 A -- that's kept contained in secure areas.

3 Q Okay. Getting back to the twenty-three hours that
4 the HRP prisoners put in, who have earned that distinction,
5 getting back to that, you testified as to what they have
6 available to them, okay. Just what specifically does the
7 State give an inmate when he arrives in terms of what's in his
8 cell, not what he can have, but what the State gives him?

9 A His blanket, sheet, mattress, toiletries, inclusive,
10 razors, toothbrushes, toothpaste. If he has no clothes, he's
11 given clothes. If he requests a television in writing and
12 he's an indigent inmate, the State gives him a television set.

13 Q Okay. Anything -- well, will the State give him
14 anything beyond a television set if he's indigent, such as a
15 radio and everything else that you're --

16 A I -- I don't know.

17 Q -- testifying to? Okay.

18 Now, the Director of Prisons approves that policy,
19 does he not, as to televisions and so forth?

20 A That policy was approved before the current director
21 of prisons.

22 Q But still, the director of prisons, no matter who it
23 was, approved that, along with maybe a committee or something.

24 A I would suppose.

25 Q All right --

EDWARDS - CROSS

1 A Through the legislature.

2 Q Okay. Now, is it not true that during these
3 hearings that you have for incidents such as what you
4 testified to, that one of the forms of punishment is loss of
5 appliances --

6 A Yes.

7 Q -- loss of --

8 A Yes, it is.

9 Q All right. So in other words, you give -- allow a
10 TV an inmate, you can attempt to control his behavior by
11 taking that television away from him for a week, thirty days,
12 what have you; is that not correct?

13 A That's correct.

14 Q Is that the same for telephone privileges that are
15 given to them?

16 A Yes, it is.

17 Q So they could lose their telephone privileges if
18 they don't behave as they should?

19 A If they abuse the telephone they can lose their
20 privileges to use the telephone.

21 Q All right. You also testified during direct that at
22 times you -- when you're out in the yard there can be up to
23 two hundred prisoners and they have various recreational
24 activities available to 'em, handball, basketball, things of
25 that nature. That's not -- isn't it true that's not available

EDWARDS - CROSS

1 high-risk prisoners, is it?

2 A No, not the high-risk or lockdown prisoners; they
3 are restricted to the mini-yards, the small yard.

4 Q Yeah. And the high-risk prisoners are restricted
5 even further, to being by themselves in this concrete-enclosed
6 yard?

7 A Correct.

8 Q All right. Would you -- have you seen that
9 concrete-enclosed yard?

10 A Yes, I have.

11 Q How big is that concrete-enclosed yard?

12 A Roughly the size of this courtroom.

13 Q And a great concrete wall surrounding it?

14 A Approximately twelve-foot high --

15 Q All right.

16 A -- concrete walls.

17 Q Uncovered, with the sky?

18 A Right.

19 Q And they're in that enclosure as a HRP
20 classification for approximately forty-five minutes a day?

21 A One to two hours.

22 Q One to two hours?

23 A Yeah.

24 Q All right. Now, you testified to a number of
25 incidents here, and -- with other guards. And your general

EDWARDS - CROSS

1 descriptives were those of assaultive behavior. Can you
2 define for this jury what you, as a prior correction officer
3 in the prison, what you mean by "assaultive behavior"?

4 A Any abusive verbal assault, any contact, any
5 propelling. If someone was to throw something on me I would
6 consider that assaultive behavior. If someone was to talk
7 derogatorily about my wife, my family, myself, try to touch
8 me, I would consider all that assaultive.

9 Q Okay, so, all right. But that's different than an
10 actual physical attack upon a guard, is that not true?

11 A I believe physical assault, assault and battery, is
12 anytime you touch someone and you don't request it.

13 Q Well, not to get into the legal distinctions between
14 assault and battery, but are there not different charges that
15 can be made towards a prisoner who has threatened and been
16 verbally abusive, versus a prisoner who has, or an inmate, who
17 has actually physically attacked a guard; are there -- is
18 there --

19 A There's distinctions, yes.

20 Q So there distinctive charges --

21 A Yes.

22 Q -- that can be made and filed against an inmate, is
23 that not correct?

24 A That's correct.

25 Q Okay. And all we heard during your direct testimony

EDWARDS - CROSS

1 was incidents of assaultive behavior, no incidents where he
2 had physically attacked a guard; is that not true?

3 A I don't remember reading anything that had physical
4 attack.

5 Q Okay. For the jury, can you describe what a
6 "Cadillac" is? During one of your incidents you had taken a
7 Cadillac away from him.

8 A The inmates will take a prison-issued sheet and tear
9 it into strips approximately a half-inch wide and tie them
10 together, tie a heavy object on the end like a bar of soap, a
11 plastic sack full of water or anything else, and send it out
12 from underneath their door and whip it around and get it to
13 another door, where the other inmate will reach out and get
14 it; or whip it out and hook it to something and pull it to
15 their house, pull it in underneath the door. There's two,
16 three, four inches of space between the doors, depending on
17 how the tier is laid out, underneath that they can do this.
18 That's a Cadillac. We call it a Cadillac because it is a
19 transportation thing.

20 Q All right. Now is that an offensive weapon?

21 A It can be, yes.

22 Q Have you -- have you personally seen it used --

23 A Yes, I have.

24 Q As an offensive weapon?

25 A Yes, I have.

EDWARDS - CROSS

1 Q All right. And I shank I think everybody would know
2 here. That's a weapon, as you say, fashioned from scratch
3 metal or something like that?

4 A Yes.

5 Q You also testified that fights were quite -- quite
6 common in the -- this prison setting?

7 A Fights are common. You put over a thousand men
8 together in a contained area, yeah, you have fights on
9 occasion.

10 Q And shanks offensive -- which were --

11 A Offensive.

12 Q -- offensive weapons, are they also defensive
13 weapons at times for some inmates?

14 A I suppose they could be.

15 Q Now, isn't it true that all the incidents that you
16 testified to, that you read from the incident reports that
17 only one officer who had urine thrown on her --

18 A Mm-hmm.

19 Q -- only one officer ever had to go to the infirmary,
20 is that not true?

21 A That is all I know of.

22 Q That's all you know of?

23 A Yes, sir.

24 Q All right. You also stated during your testimony
25 that oftentimes you keep notes for yourself for --

EDWARDS - CROSS

1 A Yes, I do.

2 Q And that's for possible charges filed by the
3 attorney general's office, is that not correct?

4 A Not necessarily. I kept a daily diary of where I
5 worked, who I worked with, if there was an incident that day I
6 responded to, who was there.

7 Q If charges, criminal charges in court are to be
8 filed against an inmate, what institution, would it be the
9 attorney general's office that would be the prosecutor in that
10 situation?

11 A I have no idea.

12 Q All right.

13 A I -- I know of cases in Ely where the district
14 attorney has handled the charges --

15 Q Okay.

16 A -- if they're misdemeanor-type charges.

17 Q All right. All right, then -- then -- then you do
18 know of situations where criminal charges were actually filed
19 in a county or a state court against an inmate at Ely?

20 A Yes.

21 Q All right, you know personally of those situations
22 like that?

23 A Yes.

24 Q To the best of your knowledge, were criminal charges
25 during -- anytime during Marlo's stay at Ely State Prison

EDWARDS - CROSS

1 filed with either the county prosecutor or the attorney
2 general's office of the State of Nevada for behavior that
3 arose out of activities while he was staying at Ely State
4 Prison?

5 A I can't say.

6 Q To the best of your knowledge?

7 A That I know of? No. Of the incidents I was
8 involved in.

9 MR. LaPORTA: Court's indulgence.

10 No further questions, Your Honor.

11 THE COURT: All right. Anything else?

12 MR. ROGER: No, Your Honor.

13 THE COURT: Thank you very much, sir. Appreciate
14 you coming back after lunch and testifying. Thank you.
15 You're free to go.

16 Next witness.

17 MR. ROGER: Gina Morris.

18 THE COURT: Ms. Gina Morris. Please remain standing
19 up over there, please, and -- this way. And raise your right
20 hand and be sworn.

21 GINA MORRIS, PLAINTIFF'S WITNESS, IS SWORN

22 THE CLERK: Thank you. You may be seated.

23 THE COURT: Please state your name and spell your
24 last name for the record.

25 THE WITNESS: My name is Gina M-O-R-R-I-S, Gina

MORRIS - DIRECT

1 Morris.

2 THE COURT: How do you spell Gina?

3 THE WITNESS: G-I-N-A.

4 THE COURT: All right, proceed.

5 DIRECT EXAMINATION

6 BY MR. ROGER:

7 Q Is it Miss or Mrs.?

8 A Miss.

9 Q Miss Morris, back in 1994 what was your business or
10 occupation?

11 A I was a correctional officer at Ely State Prison,
12 which I still am a correctional officer there.

13 Q And how long have you been a correctional officer?

14 A I've been there for six years.

15 Q Ms. Morris, back in April of 1994 were you
16 responsible for at least supervising part-time an inmate by
17 the name of Marlo Thomas?

18 A Yes, I was.

19 Q Do you see him in court today?

20 A Yes, I do.

21 Q Please point to him and describe an article of
22 clothing that he's wearing today?

23 A He's right there sitting to my left, and he's
24 wearing a beige shirt with brown stripes.

25 MR. ROGER: May the record reflect the

MORRIS - DIRECT

1 identification of Defendant Marlo Thomas.

2 THE COURT: The record will so reflect.

3 BY MR. ROGER:

4 Q Ms. Morris, back in 1994 during your shift, were you
5 responsible for providing meals to inmates who were locked in
6 their cells?

7 A Yes, I was.

8 Q In April of '94 -- we have heard from Roger Edwards,
9 you know him?

10 A Yes, I do.

11 Q He indicated that you were pregnant during that
12 period of time; is that true?

13 A Yes, it is.

14 Q On April 12th, 1994 do you recall having contact
15 with the defendant where you went to serve him his meal while
16 he was in his room?

17 A Yes, I do.

18 Q How did you serve inmates while they were in their
19 room?

20 A We had to wear safety glasses, and at times we had
21 to have a shield for protection.

22 Q Was there a slot in the cell door which had a tray
23 and you could send things back and forth to the inmate?

24 A Yes, there is.

25 Q As you went to provide the defendant with his meal

MORRIS - DIRECT

1 that day, can you tell the jury what happened?

2 A I went up the stairs to pour the juice for him and
3 give him his meal, and he had a cup of some urine, or some --
4 it was a odored substance, and he threw it at me. So I ran
5 downstairs and went to the sally port and went to the
6 infirmary and got cleaned off. And it took a few hours for me
7 to -- until I could come back and finish my duties, 'cause I
8 had to get cleaned up. But he threw that at me and hit me in
9 the face.

10 Q You indicated that it was a strong odor, did you
11 tell correctional officers that it was urine?

12 A Yes, I did.

13 Q How strong was the odor?

14 A Well, it stung my face, and my face was stinging for
15 a couple days, even after I had showered several times. But
16 it was -- it smelled really strong, and I don't know if he put
17 something else in there with it; but it was very strong.

18 Q Were you aware that he alleged that it was iced tea?

19 A No, I wasn't.

20 Q Would you agree that the -- there's a difference
21 between the smell of iced tea and urine?

22 A Yes, there is.

23 Q And did it smell like ice tea to you?

24 A No, it did not.

25 Q What did it smell like?

MORRIS - DIRECT

1 A To me it smelled a lot like urine. There might have
2 been -- it was the color of urine -- there might have been
3 some cleanser mixed in there, or something, I don't know if
4 anything else was mixed in there, bleach or anything like
5 that; I don't -- I don't know.

6 Q Where were you struck?

7 A In the face.

8 MR. ROGER: That concludes direct.

9 THE COURT: All right. Do you have any cross?

10 MR. LaPORTA: No cross-examination, Your Honor.

11 THE COURT: All right. Thank you very much, ma'am,
12 for testifying. You're free to go about your business. All
13 right?

14 THE WITNESS: Okay.

15 THE COURT: Next witness, please.

16 MR. ROGER: Marty Neagle.

17 THE COURT: Please remain standing up over here,
18 sir, and raise your right hand and be sworn.

19 MARTY NEAGLE, PLAINTIFF'S WITNESS, IS SWORN

20 THE CLERK: Thank you. Please be seated.

21 THE COURT: State your name and spell your last name
22 for the record.

23 THE WITNESS: Name is Marty Neagle, N-E-A-G-L-E.

24 //

25 //

NEAGLE - DIRECT

DIRECT EXAMINATION

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BY MR. ROGER:

Q What is your business or occupation?

A I'm a correctional sergeant at Ely State Prison.

Q And how long have you been a correctional officer?

A Approximately twelve years and eight months.

Q And how about a sergeant, how long have you been a sergeant?

A Approximately six years.

Q Now, Sgt. Neagle, do you know an individual by the name of Marlo Thomas?

A Yes, I do.

Q Do you see him court today?

A Yes, I do.

Q Please point to him and describe an article of clothing that he's wearing.

A He's right here, brown shirt.

MR. ROGER: May the record reflect the identification of the defendant.

THE COURT: The record will so reflect.

BY MR. ROGER:

Q Sgt. Neagle, between 1991 and 1994, were you working as a sergeant at the Ely State Prison when the defendant, Marlo Thomas, was an inmate?

A Yes, I was.

NEAGLE - DIRECT

1 Q As a sergeant, what were your duties back then?

2 A Part of the time I was the property sergeant, and I
3 believe part of the time I was the lockup sergeant.

4 Q Directing your attention to March 3rd, 1994, did you
5 have an incident where you had contact with the defendant?

6 A You're referring to the notice of charges that I did
7 on the inmate?

8 Q Yes.

9 (Pause in the proceedings)

10 BY MR. ROGER:

11 Q Sgt. Neagle, I'm showing you State's Proposed
12 Exhibit Number 97. Will you please take a look at that
13 document and familiarize yourself with it.

14 Do you recognize those documents?

15 A Yes, I do.

16 Q Are those documents that relate to an incident that
17 you had with the defendant in March 3rd, 1994?

18 A Yes, they are.

19 MR. ROGER: Move for their admission.

20 THE COURT: Wait, what 97?

21 MR. ROGER: It says -- yes, 97.

22 THE COURT: Any objection to 97?

23 MR. LaPORTA: If I may see it, Your Honor, first --

24 THE COURT: Yes, sure.

25 MR. LaPORTA: -- I'm sure I've seen it before.

NEAGLE - DIRECT

1 Yeah.

2 THE COURT: Any objection?

3 MR. LaPORTA: No objection, Your Honor.

4 THE COURT: 97 will be admitted in evidence.

5 (Plaintiff's Exhibit No. 97 admitted)

6 BY MR. ROGER:

7 Q Do you have an independent recollection of this
8 incident?

9 A Yes, I do.

10 Q Okay. Will you please tell us, where was the
11 defendant located when you had this contact with him?

12 A At Ely State Prison, housed in Unit 3B, which is a
13 lockdown unit at the prison.

14 Q Was he out on the yard?

15 A Yes, he was out on the recreation yard.

16 Q Were other inmates out there on the recreation yard
17 as well?

18 A Yes, they were.

19 Q Can you estimate how many?

20 A During that time frame they were allowed twelve at a
21 time out on that yard; at that particular time I don't know
22 how many was out. Up to twelve.

23 Q Up to twelve. Did you observe the defendant and
24 other inmates engaged in some type of activity?

25 A I didn't personally see it, no. As a supervisor, I

NEAGLE - DIRECT

1 was called to the incident; I would have been called over to
2 where the incident took place.

3 Q So there were correctional officers who were
4 supervising the defendant and other inmates on the recreation
5 yard?

6 A Correct.

7 Q You received a call to respond to that area?

8 A Yes.

9 Q What was the reason for the call?

10 A Apparently a fight had taken place between two
11 inmates on the yard.

12 Q Did the correctional officer indicate to you who was
13 involved in the fight?

14 A Once I -- once I got at the scene, sure, they would
15 have told me who was involved in the fight.

16 Q Who was involved in the fight?

17 A Yeah, they would have told me who was involved in
18 it.

19 Q Okay, the question is: who was involved in it?

20 A I'm not sure.

21 Q Was the defendant involved in the fight?

22 A I don't believe he was in the fight.

23 Q Will you refer to your incident report.

24 A Okay.

25 Q Does your report reflect whether or not the

NEAGLE - DIRECT

1 defendant was fighting?

2 A No, it don't. It does reflect there was two other
3 individuals fighting.

4 Q Okay. What happened when you arrived?

5 A From what I can recall, the -- the inmates had
6 already been placed onto the ground in the recreation yard,
7 they were ordered to lay face down onto the ground. As a
8 supervisor I'd get a team of officers together, go into the
9 recreation yard, restrain the inmates, take 'em out of the
10 yard individually, one at a time back to their respective
11 cells.

12 Q How were these inmates ordered to get down on the
13 ground?

14 A Up above the recreation yard there's an officer
15 who's assigned to a gun post, who is -- he has a shotgun in
16 his hand. So I imagine he gave 'em a verbal order to get on
17 the ground. My report doesn't indicate if there was any shots
18 fired or not.

19 Q It does not indicate whether shots were fired?

20 A No, it doesn't.

21 Q What happened when you arrived, were all of the
22 inmates down on the ground?

23 A Excuse me, it does say that shots were fired on the
24 recreation yard.

25 Q So that would suggest to us that the inmates did not

NEAGLE - DIRECT

1 comply with the verbal command --

2 A Correct.

3 Q -- and shots were fired from a shotgun in order to
4 get their attention?

5 A Correct.

6 Q When you arrived, did you assist other officers, or
7 did you supervise these officers in handcuffing the inmates
8 down in the yard?

9 A No, I would -- I would assist them in entering the
10 recreation yard, assign a group of officers to each inmate to
11 restrain them and escort 'em out of the yard. I wouldn't
12 physically put the restraints on myself; as a supervisor, I'd
13 sit back and make sure that things were done right.

14 Q As you sat back, did you observe officers trying to
15 place handcuffs on these inmates?

16 A Yes, I did.

17 Q Did you observe the defendant?

18 A Yes, I did.

19 Q What was he doing?

20 A He was -- he was on the ground. When the officers
21 entered the recreation yard I believe he yelled several
22 comments and tried to entice the other inmates to jump up and
23 assault the staff members.

24 Q Was that a volatile situation --

25 A Yeah, yes --

NEAGLE - DIRECT

1 Q -- with these inmates fighting?

2 A Yes, it was.

3 Q Did you have concern for the safety of the inmates
4 as well as the correctional officers?

5 A For both, yes.

6 Q And this was volatile situation, especially in light
7 of the fact that a shotgun had to be fired to get their
8 attention?

9 A Correct.

10 Q Were these inmates who were down on the ground in an
11 agitated state?

12 A Oh, yeah, sure. There would be -- there was a lot
13 of yelling, screaming, you know, a lot of verbal abuse towards
14 the staff members.

15 Q Were you trying to maintain order and extricate all
16 of these inmates, as quickly as you could, back to their
17 cells?

18 A Yes.

19 Q When the defendant was trying to urge these other
20 inmates to rebel against the officers, did you indicate in
21 your report exactly what he said?

22 A Yes, I did.

23 Q Did you include the defendant's words in quote?

24 A Yes, I did.

25 Q What exactly did he say?

NEAGLE - DIRECT

1 A He made the statement to the other inmates, let's
2 get up and kick these officers' ass. I'll kill every one of
3 you.

4 Q When he said, I'll kill every one of you, who was he
5 referring to?

6 A The staff, the officers that entered the recreation
7 yard.

8 Q And this is even while he was down on the ground?

9 A Right.

10 Q Sgt. Neagle, I'd like to show you a couple of
11 documents. Now, you're familiar with the general records at
12 Ely State Prison?

13 A Yes.

14 Q You're familiar with the record keeping function, as
15 far as disciplinary violations?

16 A Yes.

17 Q Are you also familiar with discharge papers which
18 were kept in an inmate's file?

19 A No.

20 Q Never seen them before?

21 A I believe I have seen them. I don't think I have a
22 good understanding of them.

23 Q Okay. But when a person is discharged from prison,
24 they are given certain documents that tell them what to do, is
25 that right?

NEAGLE - VOIR DIRE

1 A Correct.

2 Q I'm showing you State's Proposed Exhibit Number 100.
3 Is that a computer generated disciplinary hearing for the
4 defendant, Marlo Thomas?

5 A Yes, it is.

6 Q Does it include, to the best of your knowledge, all
7 of the charges that he was charged with throughout his stay at
8 the Nevada State Prison?

9 A Yes.

10 MR. ROGER: Move for its admission.

11 THE COURT: Any objection to 100?

12 MR. LaPORTA: Voir dire, Your Honor?

13 THE COURT: Yes.

14 VOIR DIRE EXAMINATION

15 BY MR. LaPORTA:

16 Q Sir, are you the author of any of these documents or
17 reports?

18 A I may have been, yes.

19 Q Well, why don't you look at them and see whether or
20 not you were?

21 A This -- this ain't going to tell me if I'm the
22 author of these charges.

23 Q All right. Do you recognize the handwriting or the
24 report itself?

25 A Of this report that I --

NEAGLE - DIRECT

1 Q Either --

2 A Yes.

3 Q No, no. The documents that --

4 A These -- no, these don't have any handwriting, no
5 signature, nothing. This is a computerized sheet.

6 Q All right. So, you can't tell if you're the author
7 of --

8 A No, sir.

9 Q -- those, right? Okay. Are you the custodian of
10 records?

11 A No, I'm not.

12 Q Do you regularly come in contact and work with these
13 documents as part of your ordinary duties?

14 A Yes, I do.

15 MR. LaPORTA: No objection.

16 THE COURT: 100 will be admitted in evidence.

17 (Plaintiff's Exhibit No. 100 admitted)

18 DIRECT EXAMINATION (Continued)

19 BY MR. ROGER:

20 Q What is the date of the first charge?

21 A January 2nd, 1991.

22 Q Recognizing -- well, actually, how many pages of
23 charges are indicated on this?

24 A Eleven pages.

25 Q When was the last discharge -- I mean, violation?

NEAGLE - DIRECT

1 A November 6th, 1994.

2 Q I'm showing you State's Proposed Exhibit Number 101.
3 Will you take a look at these documents, just briefly, to
4 yourself?

5 A Okay.

6 Q Recognizing that you did not author any of those
7 reports, do you still recognize those as official documents of
8 the Nevada Department of Prisons, relating to the discharge of
9 the defendant, Marlo Thomas?

10 A Yes, I do.

11 Q The first page, does it have a picture on it?

12 A Yeah.

13 Q Who is depicted in that photograph?

14 A Mr. Thomas.

15 Q The defendant here in court?

16 A Yes, sir.

17 Q Is the first page entitled "Certificate of
18 Discharge"?

19 A Yes, it is.

20 Q The following pages, they all relate to his
21 discharge?

22 A Yes, they do.

23 MR. ROGER: Move for their admission.

24 THE COURT: 101, any objection?

25 MR. LaPORTA: No objection, Your Honor.

1 THE COURT: 101 will be admitted into evidence.

2 (Plaintiff's Exhibit No. 101 admitted)

3 BY MR. ROGER:

4 Q Let me just ask you briefly, when an inmate is
5 incarcerated at Ely, or any of the prisons within the Nevada
6 Department of Prisons, are they given statutory good time
7 credits?

8 A Yes, they are.

9 Q What are statutory good time credits?

10 A It's credits that inmates earn for being on good
11 behavior, which means they haven't gotten on -- in any type of
12 trouble, been respectful to the officers, done what they're
13 told. As long as they do that and abide by the rules of the
14 prison, they earn good time. That good time may get an inmate
15 out a lot earlier than it would if he's always in trouble. If
16 he's always in trouble, he may end up doing day for day.

17 For instance, if he has a five-year sentence, he may
18 do all five years if he has bad conduct. If he had good
19 conduct, he may be -- may do three years and ten months. It
20 depends how much good time he earns.

21 Q If an inmate is charged with numerous violations,
22 there are many different sanctions which can be imposed, is
23 that right?

24 A That's right.

25 Q Including the loss of his statutory good time

1 credits?

2 A Correct.

3 Q On page 1, under Certificate of Discharge, does it
4 indicate when the defendant was sentenced to prison?

5 A Yes, it does.

6 Q Okay. What was the date?

7 A November -- it looks like 29th, 1990.

8 Q When was he discharged?

9 A The 8th day of October, 1995.

10 Q So, he served almost a total of five years?

11 A Yeah. It looks like four years, eleven months,
12 close to four years and eleven months.

13 Q On page two, does this document request that the
14 inmate, Marlo Thomas, provide -- well, let me ask you this,
15 Mr. Thomas was not paroled, is that right?

16 A That's right.

17 Q He was discharged, meaning that he served all of his
18 time?

19 A Yes, he did.

20 Q That would suggest to you that based upon the nine
21 or eleven pages of sanctions, that he lost all of his
22 statutory good time credits?

23 A Yes, it would.

24 Q So, he served the maximum term that he was sentenced
25 to?

NEAGLE - DIRECT

1 A Correct.

2 Q You indicated to us that had Marlo Thomas behaved
3 and not lost his good time credits, he would have served half
4 the time?

5 A Probably a little bit more than half. I believe
6 they can earn up to twenty days a month good time.

7 Q But that didn't happen in Mr. Thomas's case?

8 A Apparently it didn't, no.

9 Q Does this second page of the document request a
10 forwarding address?

11 A Yes, it does.

12 Q Did Mr. Thomas give a forwarding address?

13 A No, he did not.

14 Q He refused to give one?

15 A Yes. That's what it says.

16 Q On -- I lost track of the pages, but there's a
17 document entitled "Nevada Department of Prisons Notification
18 of Registration and Gun Laws'.

19 A Okay.

20 Q Do you see that document?

21 A Yes, I do.

22 Q When an inmate is -- are you a peace officer?

23 A Yes, I am.

24 Q When an inmate or a person is convicted of a felony,
25 are they entitled to carry firearms on their person?

NEAGLE - DIRECT

1 A No, they are not.

2 Q Is that a right that they lose as a result of their
3 conviction?

4 A Yes, they do.

5 Q Does this document inform Marlo Thomas that he is
6 not entitled to carry a firearm?

7 A Yes, it does.

8 Q On the next page, is there an acknowledgement
9 section, which reads, the undersigned acknowledges receipt of
10 a copy of the foregoing document of information --

11 A Yes, it does.

12 Q -- on this 8th day of October, 1995?

13 A Yes, it does.

14 Q And is there a signature?

15 A Yes, there is.

16 Q Where is the signature?

17 A Marlo Thomas.

18 Q So, he was advised that he could not carry a
19 firearm?

20 A Yes.

21 Q Could not own a firearm?

22 A Yes.

23 Q Under any circumstances?

24 A Correct.

25 MR. ROGER: That concludes direct examination.

NEAGLE - CROSS

1 THE COURT: All right. Do you have any cross-
2 examination?

3 MR. LaPORTA: Yes, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. LaPORTA:

6 Q Good afternoon, Officer Neagle. You had testified
7 to an incident where shots were fired on the yard, and the
8 defendant was one of maybe up to twelve different inmates in
9 the yard at that time. Was -- you also testified that the
10 defendant became verbally abusive and made some threats. Was
11 he the only one of the other twelve people that made -- that
12 was verbally abusive or made threats?

13 A No.

14 Q So, some of the others were verbally abusive?

15 A Yes.

16 Q And some of the others made threats?

17 A Yes.

18 Q Did all of them -- were all of them verbally
19 abusive?

20 A I don't recall if every one of them were verbally --

21 Q Were the majority verbally abusive?

22 A Yes.

23 Q Were the -- did the majority of those, up to twelve
24 inmates, make threats?

25 A Yes.

NEAGLE - CROSS

1 Q Verbal abuse and threats to harm are not unusual in
2 a prison setting, are they?

3 A No.

4 Q It's part of the job --

5 A Yes.

6 Q -- that you have to deal with on a daily basis, is
7 that not true?

8 A That's true.

9 Q The shots fired in the yard, those were by a
10 correctional officer, to the best of your knowledge?

11 A Yes.

12 Q All right. Are you familiar with the classification
13 HRP or High Risk Prisoner?

14 A Yes, I am.

15 Q Okay. To the best of your recollection -- well,
16 strike that. You testified, after reviewing some documents,
17 that Mr. Thomas had eleven violations that he was written up
18 for, is that not correct?

19 MR. ROGER: That's not --

20 THE WITNESS: Eleven pages.

21 BY MR. LaPORTA:

22 Q Oh, eleven pages?

23 A Eleven pages.

24 Q All right.

25 A Each page with --

NEAGLE - CROSS

1 Q And each page had numerous -- had a number of
2 violations on it, is that not correct?

3 A Correct.

4 Q Okay. That's quite a bit, isn't it?

5 A That's quite a few, yes.

6 Q Yeah. During the four years and ten months, or
7 eleven months that he was housed at Ely State Prison, were you
8 there that whole time?

9 A Yeah. Eight hours a day, five days a week.

10 Q As a result of these eleven pages of violations, all
11 right, was he ever classified a high risk prisoner?

12 A Not that I can recall, no.

13 Q Okay. As a result of these eleven pages of
14 violations, were any criminal charges ever filed against him
15 in a courtroom setting such as this, where the State of Nevada
16 was prosecuting him for criminal behavior, or was all of this
17 handled in-house?

18 A I have no idea if he was ever prosecuted for any of
19 it.

20 Q For any of his behavior or not?

21 A Right.

22 Q Do you think you would have known if the State of
23 Nevada, the Department of Prisons, had had charges filed
24 against him for prison behavior?

25 A If I was involved in the incident, yes, I would have

NEAGLE - CROSS

1 known.

2 Q But, to the best of your knowledge, no charges were
3 ever filed in a criminal setting such as this, against Mr.
4 Thomas for prison behavior?

5 A I -- I do not know.

6 Q All right. You don't recall?

7 A I don't recall.

8 Q All right.

9 MR. LaPORTA: No further questions, Your Honor.

10 THE COURT: Anything else?

11 MR. ROGER: No, Your Honor.

12 THE COURT: Thank you very much, sir. You can go
13 about your business.

14 THE WITNESS: Thank you.

15 THE COURT: Next witness?

16 MR. SCHWARTZ: The State would call Robert Sedlacek.

17 THE COURT: Remain standing up over there, sir,
18 raise your right hand and be sworn.

19 ROBERT SEDLACEK, PLAINTIFF'S WITNESS, IS SWORN

20 THE CLERK: Thank you. Please be seated.

21 THE COURT: State your name and spell your last
22 name?

23 THE WITNESS: My name is Robert Sedlacek. The last
24 name is spelled S-E-D-L-A-C-E-K.

25 THE COURT: Okay.

NEAGLE - CROSS

DIRECT EXAMINATION

1

2 BY MR. SCHWARTZ:

3 Q Sir, by whom are you employed?

4 A Department of Prisons.

5 Q And where are you currently working?

6 A Ely, Nevada, the maximum security prison.

7 Q In what capacity are you working at Ely, Nevada?

8 A I'm a senior correctional officer.

9 Q Were you working at Ely back on December the 30th,
10 1994?

11 A Yes, I was.

12 Q In what capacity?

13 A It was a CO at the time, working the floor.

14 Q When you say CO, do you mean correctional officer?

15 A Correctional officer, yes.

16 Q Okay. On December the 30th, 1994, did you come into
17 contact with an inmate by the name of Marlo Thomas?

18 A Yes, I did.

19 Q And do you see that individual in the courtroom
20 today?

21 A Yes, I do.

22 Q Could you point to where he's located and describe
23 an article of clothing he's wearing?

24 A Oh, he's got a brown pair of pants on, brown shirt
25 with some stripes through it, directly --

NEAGLE - CROSS

1 MR. SCHWARTZ: The record reflect the identification
2 of the defendant, Your Honor?

3 THE COURT: The record will so reflect.

4 BY MR. SCHWARTZ:

5 Q Would you describe for the members of the jury what
6 occurred on December the 30th, 1994?

7 A Well, as I remember, we were doing showers, and we
8 brought him back from the shower. Whenever we pull an inmate
9 out for a shower we do a cell shakedown, as a rule. Anything
10 that they have that might be contraband is taken from them.
11 Well, at that particular day we took a Cadillac, which is a
12 passing device that the inmate uses to pass from one cell to
13 the other, you know, small items usually. We took that from
14 his cell.

15 When we put him back in he was -- he seen us take
16 the Cadillac, and the time he was in the shower he was
17 verbally abusive, you know, calling us names, saying he was
18 going to get even, give me back the Cadillac, I'll make you
19 give me back the Cadillac, so on and so forth. We put him
20 back in the cell, we closed the -- well, first he kneels down,
21 you take the leg irons off, and then you close the door behind
22 him and he puts his hands out through a food slot. The food
23 slot's about waist high, and it's about, oh, probably eight
24 inches tall by about two foot long. He sticks his hands out
25 through the food slot, you disconnect his cuffs, and then he

NEAGLE - CROSS

1 pulls back in and you close the food slot, under normal
2 conditions.

3 Well, disconnected his second cuff, he turned around and
4 he tried to punch through the food slot. He would come up
5 short, because I was far enough away he couldn't reach me.
6 The partner I was with grabbed his arm that he punched with
7 and pulled it to one side. He was trying to reach through the
8 other side and grabbed him, so I grabbed his other arm and
9 pulled it to the other side.

10 In the meantime he tried to pull me in and bite me.
11 He was trying to get down to my arm or something, and he was
12 biting at my arm to get me to let go of him. And, you know,
13 again, very abusive, you know, I'm going to get even with you,
14 I'm going to kill you, whatever. All kinds of remarks. I
15 don't remember all of the remarks that were made.

16 And at that -- and then we both let go at the same
17 time, he held the food slot for a period of time and finally
18 gave us back the food slot. We were able to shut it, and go
19 on with our normal duties.

20 Q And, sir, in connection with this incident of
21 December the 30th, 1994, did you prepare a Violation Report?

22 A Yes, I did. Actually, mine was an informative. The
23 other officer done the write-up itself.

24 Q Thank you. Earlier this morning, did I have
25 occasion to allow you to read a report of that violation on

NEAGLE - CROSS

1 December 30th, 1994?

2 A Yes. Yes, you did.

3 Q Sir, showing you what has been marked for
4 identification as State's Proposed Exhibit Number 99. Would
5 you look at that report --

6 A Yes, I will.

7 Q -- the contents of that report and indicate whether
8 or not you recognize it?

9 A I did not go to the disciplinary on him, so the
10 disciplinary part's this. But the write-up, yes, I read the
11 write-up at the time it was done, and I've also got my
12 informative in here, which, yeah, it's in my handwriting, it's
13 one that I -- that I have wrote.

14 Q So, you prepared that --

15 A This one here, the -- it says misconduct, yes.

16 Q -- the last page of this document yourself?

17 A Yes, I did.

18 Q Which at the top says "Nevada Department of Prisons
19 Misconduct Report"?

20 A Yes.

21 Q Did you recognize the incident report that you read
22 that was prepared by a different --

23 A Yes.

24 Q -- officer?

25 A Yes, I did.

NEAGLE - CROSS

1 Q And that document, State's Exhibit -- or, Proposed
2 Exhibit Number 99 is basically a package that deals with this
3 specific incident?

4 A Mm-hmm.

5 Q That's a yes?

6 A Yes.

7 Q Are you familiar with those documents, sir?

8 A Yes, I am.

9 Q And are they kept in the regular course of business
10 of the Nevada State Prisons system?

11 A Yes, they are.

12 MR. SCHWARTZ: Your Honor, we'd move for the
13 admission of State's Proposed 99.

14 THE COURT: Any --

15 MR. LaPORTA: No objection, Your Honor.

16 THE COURT: 99 will be admitted in evidence.

17 (Plaintiff's Exhibit No. 99 admitted)

18 BY MR. SCHWARTZ:

19 Q Sir, was that the only dealing or negative dealing
20 you had with the defendant?

21 A No.

22 Q Okay. Without getting into specifics, about how
23 many times would you say you were involved in negative conduct
24 on behalf of the defendant?

25 A That would be rough to estimate, because to my

NEAGLE - CROSS

1 recollection he was one of the very, you know, verbally
2 abusive in most everything. He didn't -- rules meant nothing.
3 You know, if you wanted him to go by a rule or a regulation,
4 it was, you know, a problem for him, I guess, and he would be
5 abusive towards you all at, you know, any time you tried to
6 make him go by rules, so many other times. I don't know, I
7 couldn't give you a --

8 Q Okay.

9 A -- count, because I wouldn't know.

10 Q About how many inmates would you say you've
11 supervised over the years?

12 A That would be tough. Right now we've got about --
13 oh, about a thousand and twenty-five approximately at Ely
14 State Prison, I suppose. I've been there for six years and
15 three months, so you can probably take that times three.

16 Q Okay.

17 A Probably roughly, because a lot of inmates come and
18 go.

19 Q Okay. Do you remember --

20 A I'd say three thousand.

21 Q -- the names of all the inmates that you've
22 supervised?

23 A No, I sure would not.

24 Q When you received the subpoena to appear in court
25 and testify in a case involving a Marlo Thomas, did you have

NEAGLE - CROSS

1 any difficulty remembering --

2 A Not any problem at all.

3 Q -- who he was?

4 A Not any problem at all. And the reason for that is,
5 is because I've only been personally involved in any type of a
6 personal assault two or three times, and this happens to be
7 one of them, where they've tried to take a poke at me
8 personally, so --

9 Q Thank you.

10 MR. SCHWARTZ: No further questions, Your Honor.

11 THE COURT: Cross?

12 MR. LaPORTA: Yes, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. LaPORTA:

15 Q Good afternoon.

16 A Good afternoon.

17 Q I won't try to pronounce your last name and butcher
18 it here.

19 A That's no problem.

20 Q But let me ask you, can you -- how big was that
21 sally port, or the dinner port?

22 A It's about eight inches tall, like I say, by about
23 two foot, maybe a foot and a half wide.

24 Q All right. And it's about where off of the floor,
25 how many inches --

NEAGLE - CROSS

1 A It's --

2 Q -- waist high, or --

3 A -- just -- just right at the waistline, I'd say,
4 which would be roughly three feet --

5 Q And it was --

6 A -- two and a half feet.

7 Q And it was through this dinner port that he tried
8 to --

9 A Yes.

10 Q -- took the punch at you?

11 A Yes, he did.

12 Q All right. So, he had to be leaning or crouched
13 down and --

14 A Oh, yeah. Yeah, he just wheeled right around when
15 we took the last cuff out, and about like this through the
16 food slot.

17 Q Yeah. Okay.

18 A Yeah. It's pretty common for an inmate to -- you
19 know, in some cases to try to do something through a food
20 slot. You know, to bend over and try to, you know, attack
21 another officer or something. The first time it's ever and
22 the only time it's ever happened to me through a food slot,
23 but usually it's in person. But this was one of the times,
24 yes.

25 Q But to just use the words you yourself use, it's

NEAGLE - CROSS

1 common for them to --

2 A Oh, it's --

3 Q -- to use that port --

4 A -- for other things. Yeah, for anything.

5 Q -- to try something?

6 A Yeah.

7 Q Some type of assaultive behavior --

8 A Yeah

9 Q -- towards an officer?

10 A Oh, yes, yeah.

11 Q Okay. Were you or anybody treated for injuries as a
12 result of this?

13 A No.

14 Q Did you have to go to the infirmary or --

15 A No.

16 Q -- anything?

17 A No.

18 Q To the best of your knowledge, outside of an
19 incident where a correction officer had what appeared to be a
20 urine type substance thrown on her or propelled on her, do you
21 recall any officer having ever received any injuries as a
22 result of Marlo Thomas's behavior?

23 A No.

24 Q You say that he was mouthy, verbally abusive, is
25 that not correct?

STALEY - DIRECT

1 A Yes.

2 Q And the reason for that was because he just had
3 trouble following the rules?

4 A Yes.

5 MR. LaPORTA: Nothing further, Your Honor.

6 THE COURT: Anything else?

7 MR. SCHWARTZ: No, Your Honor.

8 THE COURT: Thank you very much, you can go about
9 your business.

10 THE WITNESS: Thank you.

11 THE COURT: Next witness, please?

12 MR. ROGER: Dick Staley.

13 THE COURT: Please remain standing up over there,
14 raise your right hand and be sworn.

15 RICHARD STALEY, PLAINTIFF'S WITNESS, IS SWORN

16 THE CLERK: Thank you. Please be seated.

17 THE COURT: State your name and spell your last name
18 for the record.

19 THE WITNESS: Richard Michael Staley, S-T-A-L-E-Y.

20 DIRECT EXAMINATION

21 BY MR. ROGER:

22 Q Sir, what is your business or occupation?

23 A I'm a police officer with the Las Vegas Metropolitan
24 Police Department.

25 Q How long have you been employed as a police officer?

STALEY - DIRECT

1 A Nineteen years.

2 Q Officer Staley, prior to court did you review a
3 report which was generated by both yourself and Sergeant Ron
4 Moise of the Las Vegas Metropolitan Police Department?

5 A It was produced by myself, not Sergeant Moise.

6 Q Okay. Were you working as a patrol officer on
7 Thursday, June 4th, 1987 at around 10:55 to 11:00 a.m.?

8 A Yes.

9 Q Did you receive a dispatch to Garside Junior High
10 School, located at 300 South Torrey Pines Drive, Las Vegas,
11 Clark County, Nevada?

12 A Yes.

13 Q Did you contact a security guard as well as an
14 assistance principal at that location?

15 A Yes.

16 Q Did you learn that the Assistant Principal, Donald
17 Chaineyworth, had observed a Marlo Thomas steal a bicycle?

18 A Yes.

19 Q Were you then directed to the Smith's Food King
20 located at Jones and Clarice, where Sergeant Moise had Marlo
21 Thomas in custody?

22 A Yes.

23 Q Did you speak with Marlo Thomas at that time?

24 A Yes, I did.

25 Q Prior to speaking with him, did you confirm that the

STALEY - DIRECT

1 bicycle had been stolen, and did you speak with Richard Baird,
2 B-A-I-R-D, who was the owner of the bicycle?

3 A I subsequently talked with the owner of the bicycle.

4 Q Okay. And after speaking with the defendant and
5 speaking to the victim and the eyewitnesses, did you learn
6 that the defendant had gone to another location, another high
7 school, junior high school, stolen a bicycle and gone with an
8 accomplice to Garside, where he stole that second bicycle?

9 A From talking with both suspects, I determined that
10 both of them had gone to Garside Junior High earlier and
11 allegedly stole another bicycle that they went to Garside
12 Junior High School with, and apparently stole the second
13 bicycle from Garside.

14 Q Okay. That other junior high school is Cashman
15 Junior School, where the other bicycle was stolen?

16 A Yes, it was Cashman.

17 Q Did you place the defendant under arrest for grand
18 larceny?

19 A Yes.

20 MR. ROGER: That concludes direct examination.

21 THE COURT: Anything?

22 MR. LaPORTA: No cross-examination, Your Honor.

23 THE COURT: Thank you very much, sir, you're
24 excused, you can go about your business. Next witness?

25 MR. SCHWARTZ: Loletha Jackson.

JACKSON - DIRECT

1 THE COURT: Yes?

2 MR. SCHWARTZ: Your Honor, I believe she's in the
3 back -- I'm not sure.

4 THE COURT: All right. Mr. Bailiff, come here a
5 minute. Tell Hank what you told me.

6 MR. SCHWARTZ: Ms. Jackson, I think might be in the
7 back with one of our investigators.

8 (Pause in the proceedings)

9 THE COURT: Please remain standing up over there and
10 raise your right hand and be sworn.

11 LOLETHA JACKSON, PLAINTIFF'S WITNESS, IS SWORN

12 THE COURT: All right, please have a seat. I'd like
13 you to state your name, spell your first name and your last
14 name for the record, and speak into the microphone. All
15 right?

16 THE WITNESS: L-O-L -- Loletha Jackson,
17 L-O-L-E-T-H-A, J-A-C-K-S-O-N.

18 THE COURT: Thank you. Mr. Schwartz?

19 MR. SCHWARTZ: Thank you, Your Honor.

20 DIRECT EXAMINATION

21 BY MR. SCHWARTZ:

22 Q Ms. Jackson, how old are you?

23 A Thirty-two.

24 Q And back in March, March the 5th, 1996, were you
25 living at 2500 Clayton?

JACKSON - DIRECT

1 A Yes.

2 Q And who were you living there with or staying there
3 with?

4 A With a father and some friends.

5 Q Okay. On that date of March the 5th, 1996, did a
6 Pam Davis visit you at your home?

7 A Yes.

8 Q I'm going to ask you some questions, if you could
9 speak up into that microphone, so everybody here can hear you,
10 okay?

11 A Mm-hmm.

12 Q Is that a yes?

13 A Yes.

14 Q After Pam Davis visited you on March the 5th, 1996,
15 did there come a time when an individual by the name of Marlo
16 Thomas came into your home?

17 A Yes.

18 Q Where were you when Marlo Thomas entered your
19 residence?

20 A In the back, in the back room.

21 Q What, if anything, did you hear after Marlo Thomas
22 entered your home?

23 A A lot of arguing --

24 Q Okay.

25 A -- before, and then gunshot.

JACKSON - DIRECT

1 Q So you heard a lot of argument and then you heard a
2 gunshot?

3 A Yes.

4 Q Okay. What, if anything, did you do after hearing
5 this loud argument and -- this argument and the gunshot?

6 A What did I do then? I ran for cover.

7 Q Okay. Where did you go for cover?

8 A I hid behind the door in the bedroom.

9 Q Was there anybody with you in the bedroom at that
10 time?

11 A Yeah, my son.

12 Q Who? Your son?

13 A Mm-hmm.

14 Q Is that a yes?

15 A Yes.

16 Q How old was your son?

17 A About five.

18 Q Okay. Did there come a time when you came out of
19 hiding and you went to see what had happened?

20 A Yes.

21 Q And what did you see when you came out of hiding?

22 A Marlo coming down the hallway, pointing a gun at me.

23 Q You indicated that he had a gun in his hand?

24 A Yes.

25 Q And it was pointed at you?

JACKSON - DIRECT

1 A Yes.

2 Q What's the next thing you remember happening?

3 A Him busting me in the face, and I just remember

4 being unconscious, that's it.

5 Q So, for some period of --

6 A I was knocked unconscious.

7 Q -- time you were rendered unconscious?

8 A Yes.

9 Q Do you remember anything happening between the time

10 you were busted in the face and the time you woke up?

11 A No.

12 Q Did you feel any pain to your stomach area?

13 A Yes. To my chest.

14 Q What caused that?

15 A Him stomping me with his feet.

16 Q So, Marlo Thomas was stomping you --

17 A Yes.

18 Q -- as well? What area of the body was he stomping

19 you?

20 A Up in the chest area.

21 Q The chest area?

22 A Yes.

23 Q Did you lose any teeth as a result of this incident?

24 A Yes.

25 Q Do you see Marlo Thomas in the courtroom today?

JACKSON - DIRECT

1 A Yes.

2 Q Would you point to where he's located and describe
3 what he's wearing today?

4 A Oh, he's to the left there, got on a beige shirt and
5 beige pants.

6 MR. SCHWARTZ: The record reflect the identification
7 of the defendant, Your Honor?

8 THE COURT: The record will so reflect.

9 MR. SCHWARTZ: Thank you.

10 BY MR. SCHWARTZ:

11 Q Ms. Jackson, presently are you incarcerated in the
12 North Las Vegas Detention Center?

13 A Yes.

14 Q And is that on a drug charge?

15 A Yes.

16 Q And did you plead guilty to some drug charge and
17 have you been referred to Drug Court?

18 A Yes.

19 Q Is that to help you get off of --

20 A Yes.

21 Q -- the drug problems?

22 A Yes.

23 Q Do you have any other convictions?

24 A No.

25 Q Thank you.

JACKSON - CROSS

1 THE COURT: Does that complete your --

2 MR. SCHWARTZ: Yes.

3 THE COURT: All right. Do you have any cross?

4 MR. LaPORTA: Yes, Your Honor, thank you.

5 CROSS-EXAMINATION

6 BY MR. LaPORTA:

7 Q Ms. Jackson, isn't it true that Mr. Thomas was there
8 that day and was quite upset and agitated over the fact that
9 he believed that his wife's wedding rings, or some rings were
10 stolen?

11 A No, they weren't stolen.

12 Q They weren't stolen?

13 A No, they weren't.

14 Q Was there -- was there an issue about some rings
15 though?

16 A It was -- didn't never get to that point, until
17 after he was sent to jail and -- no, there wasn't.

18 Q There was no issue, I mean, that's -- today's the
19 first time you've heard anything about rings?

20 A No, it isn't.

21 MR. LaPORTA: The Court's indulgence.

22 (Pause in the proceedings)

23 BY MR. LaPORTA:

24 Q Do you recall an individual by the name of Angela
25 Thomas or Angela Love?

JACKSON - CROSS

1 A Yes.

2 Q All right. How do you know her?

3 A This is my neighbor's niece.

4 Q And do you know her to be Mr. Thomas's wife or
5 fiancée at the time?

6 A No, I didn't know that was his wife.

7 Q All right.

8 MR. LaPORTA: The Court's indulgence.

9 THE COURT: Sure.

10 BY MR. LaPORTA:

11 Q These rings that I've asked you about earlier --

12 A Mm-hmm.

13 Q -- did Marlo ask you for some rings back? Just yes
14 or no.

15 A No.

16 Q He never asked you for the rings back?

17 A No.

18 Q So, are you denying that today?

19 A When he come to me down my hallway with a gun
20 pointed to me, he was like, bitch, where's my rings. The next
21 thing I know was a boom, boom, boom. He never gave me a
22 chance to say nothing. I was knocked out conscious [sic].

23 Q And whose rings were he -- was he referring to?

24 A He's referring to Angela's rings.

25 Q All right. And those were her wedding rings?

RODRIGUES - DIRECT

1 A I don't know what kind of rings they were, sir.

2 Q But it's your testimony he never gave you an
3 opportunity to answer?

4 A That's right.

5 MR. LaPORTA: No further questions.

6 THE COURT: Anything else?

7 MR. SCHWARTZ: No, Your Honor.

8 THE COURT: All right, thank you very much. She
9 could be excused now.

10 Next witness?

11 MR. SCHWARTZ: Mike Rodrigues.

12 THE COURT: Mike Rodrigues. All right.

13 Please remain standing up over there, raise your
14 right hand and be sworn.

15 MIKE RODRIGUES, PLAINTIFF'S WITNESS, IS SWORN

16 THE CLERK: Thank you. Please be seated.

17 THE COURT: State your name and spell your last name
18 for the record.

19 THE WITNESS: My name's Mike Rodriguez. It's
20 R-O-D-R-I-G-U-E-S.

21 DIRECT EXAMINATION

22 BY MR. SCHWARTZ:

23 Q Sir, by whom are you employed?

24 A The City of North Las Vegas.

25 Q In what capacity?

RODRIGUES - DIRECT

1 A I'm a police officer.

2 Q And how long have you been so employed?

3 A Almost eight years with North Las Vegas.

4 Q Directing your attention to March the 5th, 1996, did
5 you have occasion to respond to 2500 Clayton in North Las
6 Vegas?

7 A Yes, I did.

8 Q And what was your purpose in responding to that
9 particular location on that date?

10 A Myself and Officer Burns were dispatched there on a
11 shots fired call.

12 Q Excuse me. And when you arrived at 2500 Clayton,
13 did you come in contact with a woman by the name of Pamela
14 Davis?

15 A Yes, I did.

16 Q Did you also come in contact with a woman by the
17 name of Loletha Jackson?

18 A Yes, I did.

19 Q With regard to those women, did you have a
20 conversation with them?

21 A Yes, with both of them.

22 Q Okay. And could you relay to the members of the
23 jury the nature of that conversation, or those conversations?

24 A With Pamela Davis, when we first arrived, she was
25 outside of the house. She stopped us and contacted us,

RODRIGUES - DIRECT

1 advised us that a subject named Marlo was inside the house,
2 and he was battering Loletha Jackson, and that he had
3 discharged a firearm inside the house.

4 So, at that time other officers showed up. We
5 approached the house. We were contacted by another witness.
6 I believe her name was Lawanda [phonetic].

7 Q Would that be Trotter [phonetic]?

8 A Yes. And she advised that she was in the house and
9 Marlo had already left. So, we went into the house.

10 Q Okay. And when you entered the house, did you speak
11 to yet another individual inside the house?

12 A Yeah, there were several individuals inside the
13 house.

14 Q Okay. More specifically, did you speak with Loletha
15 Jackson?

16 A Yes, I did.

17 Q And what, if anything, did Ms. Jackson tell you had
18 occurred?

19 A Well, when I first walked into the house she was
20 bleeding from the face and mouth area. I had talked to her
21 and could see that she had some -- had a tooth missing from
22 her mouth, so I called medical for her. She advised me that a
23 subject named Marlo, who lived directly behind them on Raymond
24 Street, had come over looking for, I believe it was his
25 girlfriend named Angie. And when he was told that Angie

RODRIGUES - DIRECT

1 wasn't there, he became upset and started threatening people
2 in the house. Then he left the house, and he returned a few
3 minutes later with a handgun, and he had questioned Loletha
4 Jackson again about where Angie was. This time he was holding
5 the gun to her head as he was questioning her. And that's
6 when he started beating her about the face and kicking her.

7 Q Did Ms. Jackson and/or Ms. Davis indicate to you
8 whether or not a shot had been fired within the house?

9 A Yes. Ms. Davis, Pamela Davis and Jackson, Loletha
10 Jackson. They had taken Jackson into the first bedroom down
11 the hallway that adjoins the living room wall, where he had
12 left her there. And when he came out of the back bedroom he
13 fired a round through the -- into the wall that bordered the
14 room where Loletha Jackson and a small child was.

15 Q So, he fired a shot into the wall that separated the
16 area where Loletha Jackson and a child were located?

17 A Yes.

18 Q From the living room?

19 A Yeah. At that point, Pamela Davis said she
20 confronted him, then Marlo turned and pointed the gun in her
21 face. She said she pushed the gun away and ran outside of the
22 house.

23 Q Did there come a time, Officer Rodrigues, when you
24 had a conversation with the owner of the residence?

25 A Yes, I did. I believe his name was James Jackson.

RODRIGUES - DIRECT

1 Q And did Mr. Jackson relate anything to you with
2 regard to his contact with the defendant that day?

3 A No, just that he was the owner of the house. There
4 was another gentleman there. His name escapes me right now.
5 Donald Smith, I believe his name was. And he was --

6 Q Did Mr. -- I'm sorry.

7 A And he --

8 Q Did Mr. --

9 A -- was present during the time.

10 Q Okay. Did anyone else discuss with you the
11 defendant and his use of a weapon, other than Ms. Jackson and
12 Ms. Davis?

13 A No. The other people did. Those were the only two
14 that would actually fill out witness statements. The other
15 people were reluctant to fill anything out.

16 Q Even though the reluctant witnesses didn't fill out
17 statements, did they tell you what they had observed?

18 A Yes.

19 Q And was it consistent with what you heard from Ms.
20 Davis?

21 A Yes, it was.

22 Q And Ms. Jackson?

23 A Yes, it was.

24 Q Thank you.

25 MR. SCHWARTZ: The Court's indulgence.

RODRIGUES - DIRECT

1 BY MR. SCHWARTZ:

2 Q Do you see -- strike that. You didn't -- did you
3 personally arrest Marlo Thomas?

4 A No, I didn't.

5 Q Okay. Would you know Marlo Thomas if you saw him?

6 A No, I wouldn't.

7 Q Okay. Thank you.

8 MR. SCHWARTZ: Pass the witness.

9 THE COURT: All right.

10 MR. LaPORTA: No questions, Your Honor.

11 THE COURT: All right. Thank you so much. You're
12 excused.

13 THE WITNESS: Thank you.

14 THE COURT: Don't converse among yourselves or
15 anyone else on any subject connected with the trial, read,
16 watch or listen to any report of or commentary on the trial,
17 or any person connected with the trial by any medium of
18 information including, without limitation, newspapers,
19 television or radio, and don't form or express any opinion on
20 any subject connected with the trial until the cause is
21 finally submitted to you.

22 We'll take a ten-minute recess. We'll be at ease
23 until the jury leaves.

24 (The Jury Recessed)

25 THE COURT: This is outside the presence of the

1 jury. How many witnesses have you got left? It seems more
2 than the other part of the case.

3 MR. SCHWARTZ: Five, Your Honor.

4 THE COURT: You've got five others left?

5 MR. ROGER: We have --

6 MR. SCHWARTZ: Two are the victim impact and three
7 regular witnesses.

8 THE COURT: All right, we'll proceed with this. Let
9 me -- I didn't know you had that many left. I thought you had
10 one or two left. But let me read the defendant's right to
11 allocution in the penalty phase. Mr. LaPorta, you've
12 discussed this with your client, I'm sure?

13 MR. LaPORTA: Yes, Your Honor, we have.

14 THE COURT: I think I should read this during this
15 phase of the trial, the penalty phase.

16 Mr. Thomas, you will have an opportunity to make a
17 sworn or unsworn statement. A sworn statement is one made
18 after you have taken an oath to tell the truth. Should you
19 decide to make a sworn statement, you could address any issue
20 that is relevant to the case or trial. However, the
21 prosecutor will be allowed to cross-examine you.

22 Instead, you may make an unsworn statement to the
23 jury. In your statement you must limit your comments to
24 expression of remorse, pleas of leniency, and plans and hopes
25 for the future. You may not testify concerning the facts and

1 circumstances relating to your guilt or innocence. If you say
2 anything beside your expressions of remorse, pleas of
3 leniency, and plans and hopes for the future, as I have told
4 you, you will be subject to corrective actions by the Court.
5 These actions may include, but are not limited to my comments
6 on your testimony, the State's comment upon your statement, or
7 the State's cross-examination of you concerning your
8 statement.

9 Did you explain this to your client, Mr. LaPorta?

10 MS. McMAHON: Yes, Your Honor, I have.

11 MR. LaPORTA: Yes.

12 THE COURT: Is that correct, Mr. Thomas?

13 THE DEFENDANT: Yes.

14 THE COURT: Did they explain this right to
15 allocution?

16 THE DEFENDANT: Yes.

17 THE COURT: Is he going to make an unsworn
18 statement? At least you'll tell me at the appropriate time?

19 MS. McMAHON: That's correct, Your Honor.

20 THE COURT: All right. All right then, we'll take a
21 recess.

22 (The Court Recessed)

23 (Jury is present)

24 THE COURT: All right, counsel stipulate to the
25 presence of the jury?

COMPTON - DIRECT

1 MR. ROGER: Yes, Your Honor.

2 MR. SCHWARTZ: The State does, Your Honor.

3 MR. LaPORTA: Defense does, Your Honor.

4 THE COURT: All right. The State's next witness,
5 please.

6 MR. ROGER: Michael Compton.

7 THE COURT: Would you remain standing up over here,
8 sir, raise your right hand and be sworn.

9 MICHAEL COMPTON, PLAINTIFF'S WITNESS, IS SWORN

10 THE CLERK: Thank you. Please be seated.

11 THE COURT: State your name and spell your last name
12 for the record.

13 THE WITNESS: I'm Michael Compton, C-O-M-P-T-O-N.

14 DIRECT EXAMINATION

15 BY MR. ROGER:

16 Q What is your business or occupation?

17 A I'm a parole and probation officer with the Division
18 of Parole and Probation.

19 Q And how long have you been a parole and probation
20 officer?

21 A About seven years.

22 Q Are you assigned to a certain section of the Parole
23 and Probation Department at the present time?

24 A Yes. I work in the Court Services Unit writing
25 presentence investigation reports.

COMPTON - DIRECT

1 Q And how long have you been assigned to that section?

2 A Well, I've done it on and off for about three years.

3 Q What is a presentence investigation report?

4 A It's a report that prepared for the Court prior to a
5 defendant's sentencing that summarizes his criminal history
6 and social background.

7 Q In that report, do you also offer a recommendation
8 to the Court as to what sentence might be appropriate?

9 A Yes, we do.

10 Q What sources of information do you have to draw
11 from?

12 A We have criminal history reports from NCIC, the
13 National Crime Information Center, Federal Bureau of
14 Investigation, state -- various state depositories, including
15 the State of Nevada, SCOPE and other criminal histories. We
16 also ask the defendant to fill out a questionnaire that asks
17 about his criminal history and social background. We also
18 have access to juvenile court records if the person is under
19 twenty-four years of age. We can also have access to
20 educational information, educational background. And we also
21 do a face-to-face interview with the defendant whenever
22 possible.

23 Q Officer Compton, I'm showing you State's Proposed
24 Exhibit Number 87. Do you recognize that document?

25 A Yes, I do.

COMPTON - DIRECT

1 Q What is it?

2 A It's a presentence investigation report.

3 Q What was the -- what is the defendant's name?

4 A Marlo Demetrius Thomas.

5 Q What is the date of the report?

6 A It's dated November 20th, 1990.

7 Q What was the charge which he had pled guilty to?

8 A Attempt robbery.

9 Q And do you know who the author of the report is?

10 A Yes. Officer Norma Price.

11 Q She was working in the Court Services Division at
12 that point?

13 A Yes, she was.

14 MR. ROGER: I move for its admission, Judge.

15 THE COURT: Any objection?

16 MR. LaPORTA: No objection, Judge.

17 THE COURT: 87 will be admitted in evidence.

18 (Plaintiff's Exhibit No. 87 admitted)

19 BY MR. ROGER:

20 Q With respect to this report, is there reference to
21 his -- Marlo Thomas's juvenile arrest?

22 A Yes, there is.

23 Q Is there a -- on page 3 of that document, is there
24 reference to a July 6, 1984 arrest?

25 A Yes.

COMPTON - DIRECT

1 Q What was the arrest for?

2 A Robbery, amended to battery.

3 Q That was his juvenile arrest?

4 A Yes, sir.

5 Q Was it a North Las Vegas Police Department arrest?

6 A North Las Vegas Police Department, yes.

7 Q You've seen different police reports throughout your
8 career in generating these PSIs, is that right?

9 A Yes.

10 Q I'm showing you State's Proposed Exhibit Number 108.
11 Is that a two-page incident report from the North Las Vegas
12 Police Department?

13 A Yes, it is.

14 Q In the top right-hand corner, does it have a date
15 for the incident?

16 A Yes, it does. It looks like July 6th of '84.

17 Q Does that correspond with the second entry for his
18 arrest for robbery?

19 A Yes, it does.

20 Q Does it list a suspect's name?

21 A Yes.

22 Q What is the suspect's name?

23 A Marlo Demetrius Thomas.

24 Q Are these -- this the type of report which either
25 yourself or Ms. Price might have relied upon in preparing that

COMPTON - DIRECT

1 report?

2 A Yes.

3 MR. ROGER: Move for its admission.

4 THE COURT: What is that, 108?

5 MR. ROGER: Yes, Your Honor.

6 THE COURT: Any objection?

7 MR. LaPORTA: No objection.

8 THE COURT: 108 will be admitted.

9 (Plaintiff's Exhibit No. 108 admitted)

10 BY MR. ROGER:

11 Q With respect to the defendant's social history --
12 I'm sorry for reaching in front of you --

13 A All right.

14 Q -- does it have a section on page 6 entitled "Social
15 History"?

16 A Yes.

17 Q Does it indicate whether or not the defendant told
18 Ms. Price whether or not he had a close relationship with his
19 family?

20 A Yes. He said that he had a close relationship with
21 his family.

22 Q Does it also refer to a certification report where
23 the defendant's mother was interviewed?

24 A Yes, it does.

25 Q Will you please read those two paragraphs which

COMPTON - DIRECT

1 relate to the defendant's mother's interview.

2 A According to the certification report:

3 "The defendant's mother indicated that her son was,"
4 quote marks, "'spoiled rotten and somewhat independent.'
5 Her degree of parental control has been fair. She relied
6 on the defendant's older brother's to help her discipline
7 him, since they moved from the residence he became more
8 aggressive. She did not believe that the defendant was
9 involved in drugs, but believed that he would get into
10 drugs if it provided," quote, "'quick money.' She
11 describes him as 'a child who grew up too quickly. He is
12 basically quiet and is a loner or a follower.' He
13 continued to the lifestyle of a teenager while remaining
14 in his mother's home, but he has become more dangerous.

15 "A telephone interview on November 15th, 1990, with
16 Ms. Thomas indicated that much of the above report was
17 exaggerated by juvenile authorities. She wants her son
18 to come home, get a job, and help her with the household
19 expenses."

20 Q Does it indicate whether or not the defendant
21 claimed to have any health problems?

22 A He claimed not to have any.

23 Q Does that include mental health problems?

24 A Well, the next page -- well, it usually does; I
25 don't see one on here, but.

COMPTON - DIRECT

1 Q Okay.

2 A It's normally a part of the report, yes.

3 Q Does it indicate whether he had any problems with
4 alcohol or narcotics?

5 A It indicates that he said he did not.

6 Q On the final page, was the defendant given an
7 opportunity to write a statement for the Court's
8 consideration?

9 A Yes.

10 Q Will you please read that for us?

11 A "I was helping my cousin out when I committed the
12 crime. I should be granted probation because I'm a nice
13 person and about to turn 18 soon. And my adult life --
14 and I won't -- and I want to start it off doing things
15 that are good for me and for my family, and I don't want
16 to start my adult life behind bars. I know what I done
17 was wrong, but I don't think you should hold that against
18 me because I was there. I have a job waiting for me at
19 Bally's if I get out. And I want to do for my community
20 now."

21 Q Is it signed Marlo Thomas?

22 A Signed Marlo Thomas, yes.

23 Q I'm showing you State's -- what was the
24 recommendation for imprisonment?

25 A The recommendation was for a term of three years and

COMPTON - DIRECT

1 restitution in the amount of two hundred and thirty-seven
2 dollars and fifty cents (\$237.50).

3 Q What was the maximum term of imprisonment for
4 attempted robbery?

5 A One to seven and a half years in the Nevada
6 Department of Prisons.

7 Q I'm showing you State's Proposed Exhibit Number 88,
8 which is a three-page document. Does this appear a certified
9 copy defendant's judgment of conviction for attempt robbery?

10 A Yes, it does.

11 MR. ROGER: Move for its admission.

12 THE COURT: Any objection?

13 MR. LaPORTA: No objection, Your Honor.

14 THE COURT: 88 will be admitted in evidence.

15 (Plaintiff's Exhibit No. 88 admitted)

16 BY MR. ROGER:

17 Q Moving to page 2. Is it signed by the district
18 judge, dated December 6, 1990?

19 A Yes, it is.

20 Q Is that generally the date where -- on which he was
21 sentenced?

22 A Yes.

23 Q What was the defendant's sentence imposed by the
24 Court?

25 A Six years in the Nevada State Prison with credit for

COMPTON - DIRECT

1 time served of 111 days.

2 Q Subsequently, you conducted an interview and you
3 were requested to prepare a presentence investigation report
4 for the defendant?

5 A Yes.

6 Q I'm showing you State's Proposed Exhibit Number 102.
7 Is that a copy of your presentence investigation report?

8 A Yes, it is.

9 MR. ROGER: Move for its admission.

10 MR. LaPORTA: No objection, Your Honor.

11 THE COURT: Which exhibit is this?

12 MR. ROGER: 102.

13 THE COURT: Any objection?

14 MR. LaPORTA: No objection, Your Honor.

15 THE COURT: 102 will be admitted in evidence.

16 (Plaintiff's Exhibit No. 102 admitted)

17 BY MR. ROGER:

18 Q What did the defendant plead guilty to?

19 A Battery with substantial bodily harm.

20 Q Was that a negotiated plea?

21 A Well, it was negotiated. The State agreed to retain
22 the right to argue facts and circumstances at the time of
23 sentencing. And the defendant agreed to pay restitution.

24 Q When did he enter his guilty plea?

25 A April 5th, 1996.

COMPTON - DIRECT

1 Q When did you prepare your report?

2 A It's dated May 20th, 1996.

3 Q When a defendant enters a guilty plea, is he given
4 certain instructions by the Court as to contacting the
5 Department of Parole and Probation?

6 A Yes. He is supposed to call us and make an
7 appointment to come in for an interview.

8 Q Do you have any independent recollection as to
9 whether or not the defendant called you to set up the
10 appointment?

11 A He didn't.

12 Q You're saying that he did not call you to set up an
13 appointment?

14 A That's correct.

15 Q On April 15th, 1996, on the date of this murder in
16 which the defendant was convicted, he was a convicted felon
17 for attempted robbery?

18 A Yes.

19 Q Was he -- under the laws of the State of Nevada was
20 he allowed to carry a firearm?

21 A No.

22 Q Is that an additional crime?

23 A Yes, it is.

24 Q When you interviewed the defendant, what was his
25 attitude?

COMPTON - DIRECT

1 A He wasn't very cooperative; he didn't want to talk
2 to me. He said that he didn't know why he was talking to me
3 because he had more important things to worry about.

4 Q In the course of your investigation, did you rely on
5 Norma Price's report to a great extent?

6 A Yes.

7 Q Do you have a section in your report which refers to
8 the defendant's conduct while he was incarcerated on the
9 attempted robbery charge?

10 A Yes.

11 Q Does this report indicated that he had an
12 altercation with an inmate while he was incarcerated?

13 A Yes, it does.

14 Q Does your report reflect what happened to the
15 inmate?

16 A The report says that he assaulted a fellow inmate,
17 and the result of that was that the inmate was injured to the
18 extent that he required surgery to one of his eyes.

19 Q What was the result of the defendant's infraction?

20 A Served 12 months in disciplinary segregation.

21 Q Were you aware that the defendant was not paroled,
22 but merely discharged from his sentence?

23 A Yes.

24 Q What was your recommendation?

25 A Maximum term of 60 months with the minimum parole

COMPTON - DIRECT

1 eligibility of 13 months in the Nevada Department of Prisons.

2 Q I'm showing you State's Proposed Exhibit Number 103.
3 Is that a certified copy of the defendant's judgment of
4 conviction?

5 A Yes.

6 MR. ROGER: Move for its admission.

7 THE COURT: Any objection?

8 MR. LaPORTA: No objection, Your Honor.

9 THE COURT: All right, that'll be admitted.

10 Is it 103?

11 (Plaintiff's Exhibit No. 103 admitted)

12 BY MR. ROGER:

13 Q What was the defendant's sentence as imposed by the
14 district court judge?

15 A A maximum of 60 months with the minimum parole
16 eligibility of 13 months in the Nevada Department of Prisons.

17 Q And what the date of his conviction?

18 A July the 12th, 1996.

19 Q Thank you.

20 MR. ROGER: Judge, that's concludes direct
21 examination.

22 THE COURT: Do you have any cross?

23 MR. LaPORTA: Yes, Your Honor, a little bit of
24 cross.

25 //

COMPTON - CROSS

CROSS-EXAMINATION

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BY MR. LaPORTA:

Q Good afternoon. This report that you referred to wherein there was an attack upon an inmate that required surgery, you gathered that information strictly from a report?

A It came from a report from the Department of Prisons.

Q All right. Did you interview any correction officers as to what had occurred?

A No.

Q Did you interview any Department of Prison officials as to what had occurred?

A No.

Q Did you interview the inmate that the injury occurred to?

A No.

Q So this -- the conclusion you came to was strictly off of a sterile report that you had read?

A Yes.

Q Okay. You had testified that there was no mention as to health problems, specifically mental health problems, in some of these presentence investigation reports. Is it the Department of Parole and Probation's normal activity in processing these to review school district records, and specifically in the areas of behavioral and emotional problems

COMPTON - CROSS

1 that a child may have had?

2 A We do sometimes. If it's -- if we have information
3 that that is the case, then we will try to, yes.

4 Q Okay. How about Children's Behavioral Services, do
5 you review those on occasion?

6 A If we have information that that is -- that he has
7 been there, then we would try to, yes.

8 Q And that information usually comes through the
9 defendant or his family, is that not true?

10 A The fact that he was there, yes.

11 Q That he's had those kinds of problems?

12 A Yes, uh-huh.

13 Q All right. Otherwise then you would have no reason
14 to search those records unless something like that triggered
15 that?

16 A Yes, that's true.

17 MR. LaPORTA: No further questions, Your Honor.

18 THE COURT: That completes this one. We thank you.
19 You can go about your business now.

20 Next witness.

21 MR. SCHWARTZ: Paul Wheelock.

22 THE COURT: Mr. Wheelock.

23 THE WITNESS: Yes.

24 THE COURT: Remain standing up over there, raise
25 your right hand and be sworn.

WHEELOCK - DIRECT

1 PAUL WHEELOCK, PLAINTIFF'S WITNESS, IS SWORN

2 THE CLERK: Thank you. Please be seated.

3 THE COURT: State your name and spell your last name
4 for the record. Have a seat, sir, yes. And state your name
5 and spell your last name.

6 THE WITNESS: Paul Wheelock, W-H-E-E-L-O-C-K.

7 THE COURT: All right.

8 DIRECT EXAMINATION

9 BY MR. SCHWARTZ:

10 Q Sir, by whom are you employed?

11 A The State of Nevada.

12 Q In what capacity?

13 A Correctional Officer, Department of Prisons.

14 Q And where are you currently assigned?

15 A Southern Desert Correctional Center.

16 Q Directing your attention to August the 1st, 1996,
17 were you also employed by the Department of Prisons on that
18 date?

19 A Yes, sir, I was.

20 Q And where were you assigned on August the 1st, 1996?

21 A Inmate work detail.

22 Q At what -- at what prison?

23 A Southern Desert.

24 Q Okay. Did there come a time on August the 1st,
25 1996, when you made contact with an individual by the name of

WHEELOCK - DIRECT

1 Marlo Thomas?

2 A Yes, sir, there was.

3 Q And do you see Marlo Thomas in the courtroom today?

4 A Yes, sir. He's sitting right to my left.

5 Q And can you describe what he's wearing today?

6 A Right now, yes, sir. He's in white shoes, looks
7 like brownish/grayish socks and tan pants and the same with
8 the shirt.

9 Q Thank you.

10 MR. SCHWARTZ: Will the record reflect the
11 identification of the defendant, Your Honor?

12 THE COURT: The record will so reflect.

13 BY MR. SCHWARTZ:

14 Q On August the 1st, 1996, did an incident occur at
15 the prison involving yourself and the defendant?

16 A Yes, sir, it did.

17 Q Could you describe for the jury, please, what took
18 place?

19 A Yeah. I had a trash crew; we were picking up the
20 trash in unit 7. Of course I did not know the defendant at
21 the time, he was screaming out the window. Kind of racist,
22 because the institution at the time was in a lockdown
23 situation. He was kind of getting a little racial because we
24 were -- I had two white inmates on my work crew, and he was
25 kind -- let's say he was really belly aching because I didn't

WHEELLOCK - DIRECT

1 have any blacks out there.

2 Q Okay.

3 A Started calling 'em --

4 Q Without getting into what was said at that time,
5 what else happened between yourself and the defendant?

6 A When I went inside of the unit to pick up the rest
7 of the trash, deliver some bags to my porters that were
8 serving food at the time, he carried out with telling me he
9 was going to whip my whatever and got rather verbal.

10 Q Okay. Did the defendant attempt to assault you or
11 one of your helpers?

12 A He attempted to assault me, sir.

13 Q Okay. Tell us about that.

14 A Well, when he wouldn't quit screaming and hollering
15 and calling me names through the cell, I went over to find out
16 what is the problem here; don't need this. Lockdown
17 situation. So when I opened the cell door to talk to the
18 inmate, told him let's go out here, let's discuss this, let's
19 shut this up, don't need it, he attempted to take a swing at
20 me. At that time I -- basically I blocked the swing and put
21 him up against the wall.

22 Q Thank you.

23 MR. SCHWARTZ: I have no further questions, Your
24 Honor.

25 THE COURT: Do you have anything?

WHEELLOCK - CROSS

1 MR. LaPORTA: Just a few questions.

2 CROSS-EXAMINATION

3 BY MR. LaPORTA:

4 Q Officer, the correction officers as you work through
5 a shift are assigned areas, are they not?

6 A Yes, sir.

7 Q And what was your assignment at that time? Were you
8 assigned -- you said work details.

9 A Yes, sir. I'm all over the yard.

10 Q You're all over the yard. I mean, do you have
11 responsibilities inside these living areas, these residences?

12 A Absolutely, sir. We -- my crews do the painting,
13 the cleaning, we pick up all the trash. Basically we're in
14 any unit on the yard and every square inch of the yard.

15 Q All right. And inside the residences?

16 A Each and every unit.

17 Q Okay. So your being in there was not out of the
18 ordinary?

19 A Oh, no, sir. I'm in there probably three times on
20 the average of a day.

21 Q One swing and one swing only?

22 A Yes, sir.

23 MR. LaPORTA: No. No further questions.

24 THE COURT: You got 104, now you don't want to do
25 anything with that?

1 MR. SCHWARTZ: Your Honor, we'll move for its
2 admission. Let me show it to ---
3 (Off-record counsel colloquy)
4 THE COURT: All right. You move to admit 104?
5 MR. SCHWARTZ: Yes, Your Honor.
6 MR. LaPORTA: No objection, Your Honor.
7 THE COURT: There's no objection. 104 will be
8 admitted into evidence.
9 Thank you very much, sir. You're excused.
10 Next witness.
11 MR. SCHWARTZ: Wendy Cecil.
12 THE COURT: Ms. Cecil, please remain standing up
13 over there, raise your right hand and be sworn.
14 WENDY CECIL, PLAINTIFF'S WITNESS, IS SWORN
15 THE CLERK: Thank you. Please be seated.
16 THE COURT: Please state your name and spell your
17 last name for the record.
18 THE WITNESS: My name is Wendy Lynn Cecil,
19 C-E-C-I-L.
20 THE COURT: And spell your first name perhaps, too,
21 please.
22 THE WITNESS: Wendy, W-E-N-D-Y.
23 THE COURT: All right.
24 THE WITNESS: L-Y-N-N.
25 THE COURT: All right. Thank you.

CECIL - DIRECT

1 Mr. Schwartz.

2 MR. SCHWARTZ: Thank you, Your Honor.

3 DIRECT EXAMINATION

4 BY MR. SCHWARTZ:

5 Q Ms. Cecil, I'm going to ask you a few questions and
6 then defense counsel can ask you some questions. We'd
7 appreciate it if you could speak up into that microphone so
8 the members of the jury can hear. Okay?

9 About a year ago were you residing in the state of
10 Nevada?

11 A Yes.

12 Q And did there come a time you moved away from the
13 state of Nevada?

14 A Yes.

15 Q Okay. So currently you reside outside of the state
16 of Nevada?

17 A Yes.

18 Q Did you know a young man by the name of Carl Dixon?

19 A Yes.

20 Q How was it that you knew Carl Dixon?

21 A He was a very close family friend.

22 Q So you were social acquaintances with one another,
23 or social friends?

24 A Yeah. He stayed at our house several times.

25 Q So he'd hang out at your house on occasion?

CECIL - DIRECT

1 A Yeah. Yes.

2 Q Were you aware of the fact that Carl Dixon worked at
3 the Lone Star Steakhouse located on Rainbow?

4 A Yes, I did.

5 Q Did you realize that he worked there on a -- for a
6 certain period of time and then left to go work at Applebee's?

7 A Yeah.

8 Q But then returned back to the Lone Star?

9 A Yes.

10 Q How well did you know Carl?

11 A Really well.

12 Q Okay. Did he ever talk to you about problems that
13 he was encountering at his job or just in life in general?

14 A Not really, but just one incident.

15 Q Okay. When he talked -- when he confided in you
16 this one time and talked about an incident, did he have to do
17 with where he was working?

18 A Yes.

19 Q And was that at the Lone Star Steakhouse?

20 A Yes.

21 Q Did the incident he relate to you deal with a
22 co-employee, somebody who worked there with him?

23 A Yes.

24 Q Or used to work there with him?

25 A Yes.

CECIL - DIRECT

1 Q What did he say about this individual?

2 A First it was just backtalking, smartaleck; it was
3 just a person named Thomas that was just a smart mouth.

4 Q Okay. In addition to saying that this Thomas was a
5 smart mouth, did there come a time when Carl Dixon indicated
6 to you a specific incident that had occurred while he was at
7 work with Mr. Thomas?

8 A Yeah. Well, the first time it was just backtalking,
9 and then he left that company, and then I guess moved to a
10 different location, to Applebee's. And then I bumped into him
11 at the Lone Star and that's when he was very disturbed.

12 Q Okay. You bumped into Carl --

13 A Yeah.

14 Q -- is that correct?

15 A Yeah.

16 Q And he appeared disturbed?

17 A Yeah.

18 Q Very different than his normal behavior?

19 A Oh, yeah.

20 Q When you bumped into Carl and he appeared disturbed,
21 when was that in relationship to April the 15th when he was
22 killed?

23 Would you like a glass of water, ma'am?

24 A It was about a week.

25 Q So you bumped into Carl Dixon about a week before

CECIL - DIRECT

1 his death?

2 A Yes.

3 Q And you -- you believe he appeared, at least in your
4 opinion, to be troubled by something?

5 A Yes. Yes. I'm sorry.

6 Q Did he confide in you as to what was troubling him?

7 A When we -- at first he didn't want to talk about it,
8 and then I just -- then jokingly we were kidding around and I
9 told him, you know, come on, you can talk to me; and he said
10 that he was having a problem that came back, that Thomas came
11 back. And I asked him, is this the guy, you know, you were
12 talking about a year ago? And he said, yeah. And he -- and
13 then he came in the -- that he felt like he was the cause of
14 some disturbance, from the manager I guess, said that he
15 caught -- saw Thomas taking money out of the till and -- and
16 that he was the only person there, and Carl said that, he saw
17 him and Thomas came by and took a knife, one of the steak
18 knives, and put it up -- up in the back and said that if you
19 tell anybody I'll kill you.

20 Q Did Carl indicate to you some type of a premonition
21 about what he thought might happen to him?

22 A Yeah. I said, are you kidding me, you know, I
23 thought we were just kidding around, that he was just joking
24 around; and he was like stone-cold face, he said, no, this is
25 not a guy to be messed with. And I asked him, I'm like, you

CECIL - DIRECT

1 know kidding around, I said, you're not afraid of anybody.
2 And he was like, no, I'm afraid; look, he threatened my life.
3 And I was like, well, what are you going to do? And he was,
4 there's nothing to do, it's already -- it's just going to go
5 down that way, it's just going to come to a head.

6 Q Did Carl ever demonstrate how this Mr. Thomas
7 utilized the knife when he made threats?

8 A No. He just said he's -- he just stuck it up --

9 Q I -- I'm sorry, I can't hear you.

10 A He just said that he stuck it up to his back, and
11 just --

12 Q Up to his back?

13 A -- and just threatened him.

14 Q Did Carl appear to be serious when he was relating
15 these events to you?

16 A Oh, yeah. More serious than I was.

17 Q Well, you didn't work at the Lone Star, did you?

18 A No.

19 Q And did you know an individual by the name of Mr.
20 Thomas?

21 A No.

22 Q Did Carl tell you anything about him, either his
23 size or his race or anything like that?

24 A No, just referred to him as a black man that was
25 working there.

CECIL - CROSS

1 Q Okay. Was Carl Dixon a quiet person?

2 A Yeah, he was kind of a loner.

3 Q Did you ever see him involved in any kind of a
4 fight?

5 A No. No, no.

6 Q Did you ever see him act violent with anyone?

7 A No. No.

8 Q And you said that you told him that, based on you
9 knowing Carl that he wasn't afraid of anybody?

10 A Yeah. Before -- when we were sitting and watching
11 T.V. I asked him if he was ever afraid of anything; and he
12 said, no. And then this night -- that's what kind of made
13 calm down a little bit and get serious with him, he was
14 definitely afraid.

15 Q Thank you.

16 A Definitely.

17 MR. SCHWARTZ: Pass the witness.

18 THE COURT: All right. Thank you, Mr. Schwartz.
19 Do you have any questions?

20 MR. LaPORTA: Yeah. A few questions, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. LaPORTA:

23 Q Ms. Cecil, you gave a statement to the police, did
24 you not?

25 A Yes.

CECIL - CROSS

1 Q Is it --

2 A Yes, I did.

3 Q All right. And that was when?

4 A I -- last -- about four months ago maybe.

5 Q About -- less -- about four months ago, maybe.

6 Q About four months ago. Have you given them any
7 other statements other than that one?

8 A No. Just that one.

9 Q Just the one. And were you here, or did they come
10 to wherever you now live?

11 A Yeah, they came to my apartment. I was leaving
12 then.

13 Q Okay. Was anybody else present then?

14 A Yes. My mother and my fiance'.

15 Q Okay. Have you had a chance to review that
16 statement since then?

17 A Yeah. Today.

18 Q Okay. Do you have it there?

19 A Yes, I do.

20 Q Isn't it not true that you never mentioned to the
21 police anything about hiding the knife --

22 A I didn't --

23 Q -- at that time?

24 A -- say hiding the knife.

25 Q What did you say then?

CECIL - CROSS

1 A I said he was hold it up to his back.

2 Q Holding a knife.

3 A Mm-hmm.

4 MR. LaPORTA: The Court's indulgence.

5 (Off-record colloquy)

6 BY MR. LaPORTA:

7 Q Do you have the statement with you right now?

8 A Yes.

9 Q All right. May I see that statement, please?

10 MR. LaPORTA: Approach the witness, Your Honor?

11 THE COURT: Yeah.

12 MR. LaPORTA: The Court's indulgence.

13 (Off-record counsel colloquy)

14 MR. LaPORTA: Your Honor, at this time we have no
15 further questions, but we'd ask for at least the next hour or
16 two that Ms. Cecil remain in the area. We may recall her.

17 MR. SCHWARTZ: Your Honor, if they have questions,
18 they can cross-examine her now. She has a flight that's
19 scheduled to leave at 5:00 o'clock. We've made every
20 opportunity for them to talk to her; we've been courteous to
21 them. They've had all day long to speak with her.

22 THE COURT: All right, all right, we'll -- yeah, I
23 think you should finish up now, Mr. --

24 MR. LaPORTA: Judge, I've never had an opportunity
25 to talk to her.

DIXON - DIRECT

(Off-record colloquy)

MR. LaPORTA: No further questions, Your Honor.

THE COURT: All right, thank you very much. Nothing else then?

Thank you. You can be excused then, all right?

THE WITNESS: Thank you.

THE COURT: Thank you so much.

Next witness, please.

MR. ROGER: Fred Dixon.

MR. SCHWARTZ: Thank you, Wendy.

THE COURT: Mr. Dixon, please remain standing up over there, raise your right hand and be sworn.

FRED DIXON, PLAINTIFF'S WITNESS, IS SWORN

THE CLERK: Thank you. Please be seated.

THE COURT: State your name and spell your last name for the record.

THE WITNESS: Fred Dixon, D-I-X-O-N.

THE COURT: Okay.

DIRECT EXAMINATION

BY MR. ROGER:

Q Mr. Dixon, you're Carl Dixon's father?

A Yes.

Q I know that you have a prepared statement that you'd like to read to the jury, but I'd like to ask you a few questions about Carl, if that's okay?

DIXON - DIRECT

1 A Certainly.

2 Q How old was Carl at the time of his death?

3 A Twenty-four, I believe.

4 Q Did he have any brothers or sisters?

5 A No -- he had one sister, I'm sorry.

6 Q How old is his sister?

7 A Twenty-eight.

8 Q How was Carl as he was growing up in the home?

9 A He was very joyful. We never had any problems with
10 him. He was just a joy to be around.

11 Q Did he graduate from high school?

12 A Yes, sir.

13 Q Did he hold regular jobs during his young adult
14 life?

15 A Yeah, he did.

16 Q Can you tell us what types of jobs?

17 A Well, he had paper routes and various jobs that high
18 school kids have. He worked for a computer company building
19 computers at one time. And he worked at McDonald's while he
20 was going to high school. And of course after high school is
21 when he enrolled in UNLV. I believe that's the only three
22 jobs that I can remember he had during high school.

23 Q Okay. While he was attending UNLV, he started
24 working at the Lone Star?

25 A No. He had started attending UNLV after graduation

DIXON - DIRECT

1 from high school, and he had completed, I believe about three,
2 three and a half years. He was in the nuclear medicine field
3 and then he completed his internship at UMC, and I really
4 think he was kind of getting burned out of going to school
5 because he had started right after high school so he had
6 decided to lay out for a couple of semesters and get a job and
7 -- to make some money.

8 Q How long did he work at the Lone Star Restaurant?

9 A Probably for about a year. I really don't know, to
10 give you exact dates.

11 Q Okay. You have a statement that you'd like to read
12 to the jury?

13 A I have a statement, and I have a statement that was
14 prepared by his mother that she would like also to be read.

15 Q Is his mother present in court?

16 A Yes, she is.

17 Q Go ahead and read the statement if you would.

18 A Okay. The first one I'd like to read is from Carl's
19 mother, Phyllis.

20 "My son Carl, was a gentle, kind and loving person.
21 He was a good son and very protective of me, his mother.
22 I have wonderful memories of Carl as a baby, as a small
23 boy and as a young man. Carl lived with me for twenty-
24 one of his twenty-three years of life. He was quite an
25 adolescent who loved to play computer games with his

DIXON - DIRECT

1 friend Charlie.

2 "Carl excelled in his junior and senior years of
3 high school, becoming a member of DECA and receiving many
4 awards in marketing.

5 "Carl never gave me any problems of the -- never
6 gave me any of the problems that most teenagers gave
7 their parents. I always knew where he was and what he
8 was doing. He was either at our house with his friend
9 Charlie playing games on the computer, or at Charlie's
10 house doing the same thing. I can still hear the two of
11 them laughing.

12 "I remember the day of Carl's confirmation into
13 church, and just three years later his high school
14 graduation, followed by his admission to UNLV. There
15 were supposed to be many, many more memories, memories
16 that were stolen from me. Carl's life was taken from him
17 before he had a chance to meet and fall in love with his
18 dream girl. There will be no wedding for Carl, no
19 children for Carl, and no grandchildren for me from him.

20 "The holidays that have passed since Carl's death
21 have been very painful for me, especially Thanksgiving,
22 Christmas and his two birthdays.

23 "I dread the endless years ahead without my son. My
24 heart is broken because I was given no chance to tell him
25 goodbye. I have shed so many tears that sometimes I

DIXON - DIRECT

1 think I cannot cry any more, but the tears still come.

2 "The loss of my son Carl has been devastating to me
3 and the rest of my family. The thought of the rest of my
4 life without my son is unbearable."

5 And this is statement that I prepared. I preferred
6 not to read the jury a statement, but I -- I'm scared I will
7 leave something out that I wanted to say.

8 "Today I'm here to represent my only son Carl
9 Frederick Dixon. As I tried to think of what to say
10 today, and to especially think of what Carl would want me
11 to say, so many memories of him went though my mind.
12 Memories that a father has of his son, memories that
13 cannot be taken from me, his mother, his sister,
14 grandparents and friends.

15 "Remembering the first time I took Carl to a daycare
16 center, how he cried when I left him and how joyful he
17 was when I came to pick him up. When he first learned
18 how to swim, how scared he was of the water. The first
19 tooth he lost and put under his pillow, awakening to find
20 the tooth fairy had left a quarter where his tooth had
21 been. Remembering how proud I was of Carl when he was
22 selected by Clark High Principal Allan Coles as
23 marketing and occupational student of the month.

24 "After graduation from high school Carl enrolled at
25 UNLV and was majoring in nuclear medicine. After

DIXON - DIRECT

1 completing his internship at UMC, Carl decided to take a
2 break from school and work for awhile. He had so much
3 going for him, but had he of known, so little time to do
4 it in.

5 "As Carl lived with me for the past couple of years,
6 we had become more than father and son; we had became
7 best friends. Going out to dinner, joking around with
8 each other, but not to say we did not have our difficult
9 times, as parents will be parents trying to point their
10 children in the right direction and help guide them to a
11 better life.

12 "I have dedicated most of my entire life to the law
13 enforcement profession, and I cannot recall how many
14 messages of death I've delivered, feeling compassion for
15 the receivers and trying to comfort them. However, as I
16 talk here today to you the jury, I wish I could find the
17 words to express my feelings on the tragic loss of my
18 son. I cannot even begin to imagine what horror and
19 tremendous pain Carl endured, and often wonder just what
20 my son was thinking of during his final moments.

21 "Never a day goes by that I do not think of my son,
22 think of the terrible tragedy that happened to him or how
23 it has devastated my life. I can still feel his presence
24 and laughter in my home. Hearing a noise during the
25 night I sometimes think for a brief moment Carl's coming

DIXON - DIRECT

1 home.

2 "I sometimes look at his Star Trek plate collection
3 that he was so proud of, and I think of all the dreams he
4 must have had of the wonderful life that was ahead of
5 him.

6 "Carl was a gentle person, someone that was always
7 willing to help others, someone who would go an extra
8 just to help.

9 "I'd like to close by telling the jury a little
10 story about my son, a story that will sum up the kind of
11 caring and honest person he was.

12 "During his middle school years, Carl had a paper
13 route in the apartment complex where we lived. One day
14 while doing his paper route he found an envelope on the
15 ground with the last name on it. Carl looked in the
16 envelope and found that it contained a one-hundred-dollar
17 bill.

18 "Now, Carl like all kids liked to spend money and
19 buy things. So what did he do? Well, he went to the
20 mail room of the apartment complex where we lived,
21 checked all the mailboxes for the last name that was on
22 the envelope. After locating the name on the mailbox, he
23 went to that apartment number and asked the lady if she
24 had lost a hundred dollars. The lady said, yes, she did,
25 and was so thankful that the money had been returned, as

GIANAKIS - DIRECT

1 she told Carl that was their family grocery money. Carl
2 received a ten-dollar reward from the lady.

3 "And that was my son Carl."

4 MR. ROGER: That concludes direct examination,
5 Judge.

6 THE COURT: Anything, Mr. --

7 MR. LaPORTA: No, Your Honor.

8 MS. McMAHON: No, Your Honor.

9 THE COURT: All right. Thank you so much.

10 THE WITNESS: Thank you.

11 THE COURT: Next witness, please.

12 MR. ROGER: Al Gianakis.

13 THE COURT: Please remain standing, raise your right
14 hand and be sworn.

15 ALEXANDER GIANAKIS, PLAINTIFF'S WITNESS, IS SWORN

16 THE CLERK: Thank you. Please be seated.

17 THE COURT: State your name and spell your last name
18 for the record, sir.

19 THE WITNESS: Alexander Gianakis, G-I-A-N-A-K-I-S.

20 DIRECT EXAMINATION

21 BY MR. ROGER:

22 Q Mr. Gianakis, you are Matthew's father?

23 A Yes, I was.

24 Q How old was Matthew at the time of death?

25 A Twenty-one.

GIANAKIS - DIRECT

1 Q Did he have brothers and sisters?

2 A He had one brother and one sister.

3 Q How old are -- is brother?

4 A Well, today his brother is thirty and his sister
5 twenty-eight.

6 Q Is his mother present in court today?

7 A Yes, she is.

8 Q Do you have a statement which you'd like to read to
9 the jury?

10 A Yes, I do.

11 Q Please go ahead and do so.

12 A "Your Honor and members of the jury.

13 "The death of our son Matthew has left a void in
14 our" -- excuse me -- "in our lives that can never be
15 filled. When they killed our son, they also killed us,
16 only we are dying a slow death, a little bit each day.
17 Death is so final, it boggles the mind. We just can't
18 get it through our heads that we'll never see our son
19 alive again. We're still waiting for him to come
20 bouncing through the front door into the house.

21 "A day without Matthew is like a day without
22 sunshine. We miss his radiant smile, his tremendous
23 sense of humor, his willingness to help when help was
24 needed, and most of all, his companionship.

25 "Sure we have memories of our son. Okay? But you

GIANAKIS - DIRECT

1 can't hug a memory, you can't kiss a memory; you cannot
2 share in a memory's future aspirations. We also have the
3 memory of our son lying in his coffin; that vision will
4 haunt us the rest of our lives. Every time I think of
5 the way he passed away it gnaws at my insides, I
6 hyperventilate for a moment or two.

7 "You know, in a way, strange as it may sound, I envy
8 the defendant's parents. If they want to see their son,
9 all they have to do is just go to the correctional
10 facility where he's located. If we want to see our son
11 we have to go to the cemetery.

12 "Our ordeal will never be over until the day we die.
13 The Court can never know the devastation that this has
14 wrought upon my family and myself. You know, we as
15 civilized human beings, living in a civilized society are
16 responsible for our actions, whether they be good or bad
17 and must face the consequences. I beg the Court, please
18 don't forget this."

19 Thank you.

20 THE COURT: Anything else?

21 MR. ROGER: No, Your Honor.

22 THE COURT: Mr. LaPorta?

23 MR. LaPORTA: No, Your Honor.

24 THE COURT: Thank you so much, sir.

25 MR. ROGER: May I confer with the clerk for a

1 moment?

2 THE COURT: Yes. Sure.

3 (Off-record colloquy)

4 MR. ROGER: Judge, there are a few exhibits which
5 were not admitted.

6 THE COURT: Yeah, 89, 90 and 94.

7 MR. ROGER: Correct. We'd move for their admission.

8 THE COURT: They're violation reports. Any
9 objection?

10 MR. McMAHON: No.

11 MR. LaPORTA: No. No objection as to those, Your
12 Honor.

13 THE COURT: They'll be admitted.

14 (Plaintiff's Exhibit Nos. 89, 90, 94 admitted)

15 MR. ROGER: Thank you. The State rests.

16 THE COURT: All right. Ladies and gentlemen, don't
17 converse among yourselves or with anyone else on any subject
18 connected with the trial, read, watch or listen to any report
19 of or commentary of the trial or any person connected with the
20 trial by any medium of information, including without
21 limitation newspapers, television and radio; and don't form or
22 express any opinion on any subject connected with the trial
23 until the cause is finally submitted to you.

24 We'll take ten minutes.

25 (The Court Recessed)

McGILBRA - DIRECT

(Jury is present)

THE COURT: -- of the jury?

MR. ROGER: Yes, Your Honor.

MS. McMAHON: Yes, Your Honor.

THE COURT: All right. The State has called their witnesses in this penalty phase.

Mr. LaPorta, Ms. McMahon.

MS. McMAHON: Thank you, Your Honor. The defense would call Linda McGilbra.

THE COURT: Okay. Linda McGilbra?

MS. McMAHON: McGilbra. That's correct, Your Honor.

THE COURT: Please remaining standing up over here, I'd like you to raise your right hand and be sworn.

LINDA McGILBRA, DEFENDANT'S WITNESS, IS SWORN

THE CLERK: Thank you. Please be seated.

THE COURT: Please state your name and spell your last name for the record.

THE WITNESS: Linda McGilbra, M-C-G-I-L-B-R-A.

THE COURT: Ms. McMahon.

MS. McMAHON: Thank you, Your Honor.

DIRECT EXAMINATION

BY MS. McMAHON:

Q Good afternoon, Ms. McGilbra. Would you tell us what it is that you do for a living, Ms. McGilbra?

A CNA, certified nurse's assistant.

McGILBRA - DIRECT

1 Q Okay. And you're a full-time employee?

2 A Yes.

3 Q Now you're related to Marlo Thomas, is that correct?

4 A I'm his aunt.

5 Q You're his?

6 A Aunt.

7 Q Okay. Can you -- or I'm going to ask you to tell
8 the ladies and gentlemen of the jury some of your
9 recollections that you have about Marlo and about your family.

10 A When Marlo was younger he used to come over to my
11 house and have dinner with my kids and play football and
12 basketball with my two sons.

13 Q How old are your boys now?

14 A My oldest boy is twenty-three, my youngest is
15 twenty-one.

16 Marlo and Patrick -- Patrick in high school -- I
17 don't know did -- was Marlo going to school or what, but
18 Patrick ditched school with Marlo one day and they went over
19 on the west side around about Monroe. Later on Patrick came
20 back to tell me that there was a drive-by shooting, and
21 someone fired the gun and missed Patrick's head about -- about
22 that much. And Patrick looked at Marlo and said, man, I'm
23 suppose to be in school, my mom's at work and she's thinking
24 that I'm in school right now; here I am hanging out with you.
25 And he told me that Marlo looked at him and told him, well,

McGILBRA - DIRECT

1 man, maybe you should stop hanging out with me. And that's
2 what Patrick did, Patrick stopped hanging out with Marlo, he
3 went back to school and he graduate himself.

4 Maybe if Marlo wouldn't of talked as to that he
5 would have kept hanging out with Marlo and God knows what
6 would have happened. I don't know, but he did stop hanging
7 out with Marlo and he did go ahead to graduate.

8 Q Marlo had a close relationship with you, with your
9 son?

10 A Well, no, he didn't have a close relationship with
11 me, with my sons he did.

12 Q Oh, okay. And do you feel he was influential in
13 helping your son not to be involved with the problems that
14 other teenagers were having in that area?

15 A Well, yeah. Patrick, you know, like I said, Patrick
16 stopped hanging out, Patrick went back to school; Patrick
17 finished school.

18 Q Is there anything else that you'd like to say to the
19 jury today about Marlo or on his behalf?

20 A Last night I talked to my eldest son Patrick about
21 the situation that's going on. And from what he said is that
22 Marlo went out and, God knows what he did, because God and
23 Marlo knows exactly what Marlo did, and he feeled that it was
24 Marlo's way of maybe getting attention, asking for help. So
25 now he done went out and supposedly -- suppose he went out and

McGILBRA - DIRECT

1 killed these two young mans, and now they asking to take his
2 life. And my heart go out to their families. But if you take
3 his life, it's not going to bring Carl back or the other young
4 man. All you're going to be doing is taken Marlo's, and
5 that's not helping Marlo. And I don't know, than him spending
6 the rest of life in prison is that going to help? I don't
7 know. All I know is that killing him is not going to help and
8 it's not going to bring the victims back.

9 And, you know, I'm sorry.

10 Q Thank you very much for coming and testifying.

11 THE COURT: Just a minute. Do you have anything?

12 MR. ROGER: No, Your Honor.

13 THE COURT: Thank you very much. You're excused.
14 Appreciate it. You're excused, you go about your business.

15 Next witness please.

16 MS. McMAHON: Your Honor, if we would call Georgia
17 Thomas, please.

18 THE COURT: Okay. Georgia Thomas, Mr. Bailiff.
19 Bring Georgia in.

20 Please remain standing up over here, raise your
21 right hand and be sworn.

22 GEORGIA THOMAS, DEFENDANT'S WITNESS, IS SWORN

23 THE CLERK: Thank you. Please be seated.

24 THE COURT: Please state your name and spell your
25 first name and your last name for the record, please.

GEORGIA THOMAS - DIRECT

1 THE WITNESS: Georgia Thomas, T-H-O-M-A-S.
2 G-E-O-R-G-I-A.

3 THE COURT: Thank you. Ms. McMahon.

4 DIRECT EXAMINATION

5 BY MS. McMAHON:

6 Q Mrs. Thomas, you're related to Marlo, is that
7 correct?

8 A Yes.

9 Q Okay. Can you pull that microphone up a little and
10 make it easier for you to speak.

11 And in fact, you're Marlo's mother, is that correct?

12 A Yes.

13 Q Okay. Mrs. Thomas, your sister just told the ladies
14 and gentlemen of the jury one of her recollections about Marlo
15 and his relationship with her sons. I'd like you, if you
16 could, to tell the ladies and gentlemen of the jury some of
17 your recollections about your son and about his growing up
18 that shows the jury some other parts of Marlo's personality
19 and character.

20 A Well, when he was growing up it was only me. It was
21 only me that raised him. He --

22 Q Mrs. Thomas, where was Marlo's father?

23 A He wasn't around. He was not in the home.

24 Q How many children did you have?

25 A Four.

GEORGIA THOMAS - DIRECT

1 Q How many children, if any, did you have that were
2 older than Marlo?

3 A Two.

4 Q And then one younger?

5 A Yes.

6 Q Now, when you say there was only you, you mean you
7 were the only working adult?

8 A I was the only adult in the house, period.

9 Q Okay.

10 A And I was the only working one.

11 Q Okay. And working full-time?

12 A Yes.

13 Q Okay. And supporting all of your children?

14 A Yes.

15 Q Okay. Was Marlo like your other children?

16 A No, he was a little different.

17 Q Can you describe to us how he was different?

18 A He was more higher -- higher -- I can't say it.

19 Q Hyper?

20 A Yeah, very hyper.

21 Q Did Marlo have problems at school?

22 A Yes, he did.

23 Q Did he have problems with other children his own
24 age?

25 A Yeah.

GEORGIA THOMAS - DIRECT

1 Q Okay. What, if anything, did you and the school
2 district try to do?

3 A We tried to -- we tried to help him. He was put in
4 the Children Behavior Center in the mental -- mental
5 institution out there on Charleston for a while.

6 Q Was he put on medication?

7 A I can't remember whether they gave -- yes, they gave
8 him some medication.

9 Q Did it seem to help?

10 A A little.

11 Q What was the relationship like between Marlo and
12 your older children?

13 A Between Marlo and his older two brothers, when I
14 wasn't there they helped me -- they helped me with him. He --
15 he listened, and sometimes he didn't listen, but they helped
16 him a lot; they talked to him.

17 Q Okay. Is it correct that during the first years
18 that your boy was in grammar school, that he had an
19 incontinent problem, that he couldn't stop from wetting
20 himself?

21 A Yes, he did.

22 Q Is it correct that the other children picked on him
23 about that?

24 A They called him stinky. They said he didn't take --
25 take baths and stuff.

GEORGIA THOMAS - DIRECT

1 Q Did you try and help him with that?

2 A Yes.

3 Q You eventually were successful?

4 A Not really. He couldn't see that he had a problem.
5 He couldn't see it.

6 Q I know this is very difficult.

7 A It's very hard.

8 Q Did Marlo like school?

9 A Not really.

10 Q Did he have trouble learning?

11 A He couldn't -- some things that he would know, and
12 some things that it was hard for him to understand.

13 Q Did Marlo think that you liked your other boys
14 better than you liked him?

15 A Yes, he did.

16 Q Was it true?

17 A I acted like it. I -- I acted like I did.

18 Q Ms. Thomas, you've sat here through this entire
19 trial, and I know it's not been easy, any more than sitting
20 there today is easy.

21 A No, it hasn't.

22 Q Is there anything else you'd like to say to the jury
23 about your son, or on his behalf?

24 A Marlo, he helped me out with his younger brother, he
25 would babysit. He helped me clean, he helped me cook. As he

GEORGIA THOMAS - DIRECT

1 got older, I don't know what happened.

2 My heart goes out to the victims' family because I
3 hurt. What he did, I hurt it. He didn't only take their
4 lives, but he took mine, too. And by taking his life, it's
5 not hurting him, it's hurting me. If you takin' -- if you
6 take his life you take mine, too, because he's a human being,
7 he don't deserve to die. The victims didn't deserve to die
8 either. I can't bring 'em back; if I could, I would, because
9 I know what they going through, because I cry, I shed tears
10 right along with them. But by taking his life, you're not
11 hurting Marlo, you're only hurting me. He need to be put
12 where he would understand and think about what he did each
13 day. He needs to think about that, he don't need to die,
14 because if he die he just gone, he don't think about what he
15 did; it leaves me and the victims' families to think about it.

16 Please, please don't take my child's life. Give him
17 a chance, let him go to prison and spend the rest of his life
18 there. Please don't take my child's life. I'm begging you
19 with all my heart, don't take my child's life, please don't
20 take his life, please don't take him.

21 Q Thank you, Mrs. Thomas. I have no further questions
22 of you.

23 THE COURT: Anything else?

24 MR. ROGER: No, Your Honor.

25 THE COURT: Thank you very much, ma'am. You're

DARRELL THOMAS - DIRECT

1 excused.

2 Next witness.

3 MS. McMAHON: Your Honor, the defense would call
4 Darren [sic] Thomas, please --

5 THE COURT: Okay.

6 MS. McMAHON: -- Darrell Thomas, I'm sorry.

7 THE COURT: Please remain standing, raise your right
8 hand and be sworn.

9 DARRELL THOMAS, DEFENDANT'S WITNESS, IS SWORN

10 THE CLERK: Thank you. Please be seated.

11 THE COURT: State your name and spell your first
12 name and your last name for the record.

13 THE WITNESS: Darrell Thomas, D-A-R-R-E-L-L
14 T-H-O-M-A-S.

15 DIRECT EXAMINATION

16 BY MS. McMAHON:

17 Q Good afternoon, Reverend Thomas.

18 A How you doing?

19 Q You're Marlo Thomas's older brother, is that
20 correct?

21 A The second-oldest.

22 Q The second-oldest brother, okay. Mr. Thomas, can
23 you tell me and the ladies and gentlemen of the jury briefly
24 what it is that you do in life?

25 A I work in the school district as a teacher's

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1 assistant, also pastor at church.

2 Q And where are you a teacher's assistant?

3 A At Variety School, a special school for children.

4 Q Okay. When you say a special school, do you mean a
5 school for children with special needs?

6 A Mentally-, physically-challenged students.

7 Q And you're assistant pastor at what church?

8 A The Philadelphia Church of God of Divine Christ.

9 Q Okay. It was the testimony of your mother that
10 during the years that Marlo was growing up, she was the only
11 economic support of the household, and that you and your
12 brother were involved basically as babysitters for Marlo?

13 A Yeah. My older brother played football, so I
14 basically babysitted Marlo and my younger brother, PJ.

15 Q Okay. Were Marlo and your younger brother PJ alike,
16 were they similar in their behavior?

17 A Marlo and PJ? No. No, they wasn't.

18 Q How long have you been at Variety School?

19 A About three years, and probably five months, five,
20 six months.

21 Q And the children that are there, you said are the
22 special needs children, is that correct?

23 A Mm-hmm.

24 Q And these are --

25 A Yes.

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1 Q -- children with intellectual handicaps or physical
2 handicaps?

3 A Some of them, yeah, emotional --

4 Q Emotional problems?

5 A -- physical, mentally, disabilities that they have.
6 It's a school for special children.

7 Q Now that you've had the experience of working with
8 special children, do you see behavior in these children that
9 reminds you of behavior you saw in Marlo when he was a child?

10 A When I worked in the aggressive behavior unit for
11 about a year -- as a matter of fact, my first year I worked
12 there and part of my second year -- some of -- some of the
13 behavior that the students brought forth kind of put me in the
14 mind of some of the things that Marlo would do and say.

15 Q During the years when Marlo was growing up, when you
16 were taking care of Marlo and PJ, did you try and help Marlo
17 learn school work?

18 A I'm sorry?

19 Q Did you try and help Marlo learn to understand his
20 school work?

21 A To a certain degree, because I was in school myself.
22 Marlo didn't want to really listen to what myself had to say.
23 We -- we weren't really close, but he didn't want to listen;
24 you couldn't tell him nothing. He wanted to kind of do what
25 Marlo wanted to do. He -- you know, I would make statements

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1 to him like, you know, you've got a problem up here, and you
2 know, that would just make him mad, because he felt he didn't
3 have a problem. But --

4 Q Now that --

5 A -- looking at myself and my older brother, and
6 looking at Marlo, that's night and day.

7 Q Now that you've been working with children who are
8 special, who have problems, do you see the same inability, or
9 lack of paying attention, the inability in these children to
10 follow up with things as you saw with Marlo?

11 A Yes. Most of those students are on medication, so
12 that -- that helps their behavior. They take Ritalin and
13 Thorazol so it helps them to be able to maintain themselves.

14 Q Maintain control, to learn?

15 A Of their behavior. We have some that are very
16 aggressive toward the staff, some that we have to physically
17 restrain. You know, your typical -- most of these kids are --
18 the older kids are 13, 14, 15, and even 18. And they're like
19 -- they're regular high school students, but they have to
20 attend that school because they have a problem, some type of
21 disorder. And they're just typical students, like a regular
22 high school kid. You can't tell them nothing, they don't want
23 to listen. And there we have to kind of physically restrain
24 them to -- to make them sit, to make them do as we ask them to
25 do, to follow instructions.

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1 Q And you see many of these children that are there in
2 school are on medication, is that correct?

3 A Yeah, just about all of them there are on some type
4 of meds.

5 Q And is it fair to say that for the most part during
6 these years that your brother Marlo was having these problems
7 and in the special schools, that he was not on medication?

8 A I don't really know whether he was on meds. My
9 mother would have known. I don't really know whether he was
10 on medication or not.

11 When I got the knowledge -- when I had started
12 working in the school district and my eyes kind of came open
13 to a lot of things, because I was taught and took some
14 classes, and so I knew the different signs to look for, and I
15 kind of came to the conclusion -- but I think Marlo was -- I
16 believe he was incarcerated then -- that as many times as
17 Marlo had been in and out of the system, some type of help, he
18 should have had some type of help somewhere down the line.
19 Someone should have seen -- seen, you know, this guy is a time
20 bomb here, you know, he's going to explode any moment, we have
21 to -- we have to get him help. But I don't think he got the
22 help that he needed in and out of jail, you know. He -- he
23 just didn't get the proper help that he should have gotten.

24 Looking now, from two point of views, both a spiritual
25 and then a natural point of view, that if Marlo had a got the

DARRELL THOMAS - DIRECT

1 help mentally that he needed, we -- we probably wouldn't even
2 be here today. But he didn't get the help that he needed.
3 You -- you try to talk to Marlo, he -- he just can't -- he
4 can't comprehend. When you say things to him he think you're
5 coming against him, when you're not, you're only offering him
6 help. You drop a -- he drop a piece of paper, hey, let me
7 pick it up; well, why can't I pick it up, I dropped it, you
8 know, and stuff. Something like -- something as simple as
9 that.

10 I just -- I wish he had of gotten some type of help
11 somewhere.

12 Q Reverend Thomas, is there any last thing you'd like
13 to say to the jury regarding Marlo, regarding the choice of
14 sentences they have to impose?

15 A Well, this is my first time being in a setting like
16 this. I'm not a person that would take sides, and my family
17 knows that. I've always believed -- and Marlo knows this --
18 if any -- a man commit a crime, according to the Bible they
19 got to be punished. I would hate to see any man under any
20 circumstances be put to death. I'm not rehearsed anything to
21 say, because I didn't really know I would be called today, but
22 I would say that, yes, two innocent lives were taken [sic]
23 and cut short. There's families hurting on both sides.

24 I watched my mother during the duration of this thing,
25 from the time it started, and not only does she cry for Marlo,

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1 but she cry from a mother's point of view, of these two
2 mothers and fathers losing their child. That's a painful
3 thing when you have a kid here one day and he's gone the next
4 day, and you have no more memories of being with him but a
5 memory.

6 And I would like to say that, to the jury, whatever you
7 do, make the right decision and let it be something that you
8 can live with. I don't personally believe in sentencing
9 anybody myself, but of course I'm not a juror. So I can only
10 pray that they will make the right decisions that they can
11 live with.

12 Once again, and it has already been stated, if Marlo died
13 it can't bring anybody else back. Most people believe an eye
14 for an eye, a tooth for a tooth. But in this case you've got
15 to look -- you've got to look at an individual and you gotta
16 say to yourself, if I sentence this man to die, and he dies,
17 is that going to help anybody. It's not going to help nobody.
18 I believe in my heart that God will always get the final word.
19 And the best punishment that could ever be is when God
20 punished you, because you don't get away from him.

21 And that's basically all I have to say.

22 Q Thank you, Reverend Thomas.

23 MS. McMAHON: I have no further questions.

24 THE COURT: Thank you very much, sir. You're
25 excused.

1 MS. McMAHON: Your Honor, may we approach the bench,
2 please?

3 THE COURT: Certainly.

4 (Off-record bench conference)

5 THE COURT: Ladies and gentlemen, it's been a long
6 day, and unfortunately, due to nobody's fault, one witness is
7 not available 'til Wednesday morning at 9:00 o'clock or 9:30.
8 I'd rather, rather than have one or two witnesses tomorrow, I
9 just -- I want to make it convenient for the jury, I'd rather
10 you have the day off tomorrow, because we can't finish anyway,
11 we have to wait for this witness on Wednesday.

12 So, what we'll do is have off tomorrow, Tuesday;
13 we'll come back at 9:15 on Wednesday, we'll hear one or two
14 witnesses, or whatever it is, and we'll have instructions
15 again for you, we'll have brief closing statements, and the
16 case will be submitted to you Wednesday at 12:00, 1:00
17 o'clock, or whatever it is. So, that's it, that's what we're
18 going to do. And I appreciate your tolerance, but
19 unfortunately this witness is not available tomorrow, so we
20 can't finish it tomorrow, we'll finish it Wednesday. All
21 right?

22 That being said, don't converse among yourselves or
23 with anyone else on any subject connected with the trial,
24 don't read, watch or listen to any report of or commentary on
25 the trial or any person connected with the trial by any medium

1 of information, including and without limitation newspapers,
2 television and radio; and don't form or express any opinion on
3 any subject connected with the trial until the cause is
4 finally submitted to you.

5 So, we'll be reconvened, Ms. Clerk, Wednesday at
6 9:15. What day is that?

7 THE CLERK: June 25th.

8 THE COURT: Okay? Thank you.

9 (Proceedings recessed until the following day,
10 June 24th, 1997 at 10:00 a.m.)

11 * * * * *

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INDEX

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
-------------	---------------	--------------	-----------------	----------------

PLAINTIFF'S WITNESSES

Jeff Carlson	14	18	--	--
Cathy Barfuss-Frazier	19	22	23	--
Alkareem Hanifa	24	28	30	--
Charles Hank	31	--	--	--
Michael Holly	34	40	41	--
Margaret Wood	42	45	49	52
Alyse Hill	56	69	--	--
Richard Johnson	73/79	82	88	91
Roger Edwards	92/101	113	--	--
Gina Morris	129	--	--	--
Marty Neagle	133/142	148	--	--
Robert Sedlacek	152	158	--	--
Richard Staley	161	--	--	--
Loletha Jackson	164	--	--	--
Mike Rodrigues	171	--	--	--
Michael Compton	179	191	--	--
Paul Wheelock	193	196	--	--
Wendy Lynn Cecil	198	203	--	--
Fred Dixon	206	--	--	--
Alexander Gianakis	213	--	--	--

DEFENDANT'S WITNESSES

Linda McGilbra	217	--	--	--
Georgia Thomas	221	--	--	--
Darrell Thomas	226	--	--	--

EXHIBITS

DESCRIPTION:

ADMITTED

PLAINTIFF'S EXHIBITS

85	Petition re Marlo Thomas, Juvenile	61
86	Certification Order and Report and Review and Disposition Report	63
87	PSI Report	181
88	Marlo Thomas J&C	186
89	Violation Report	216
90	Violation Report	216
91	Incident Report, Ely State Prison	80
92	Ely State Prison Records	101
93	Ely State Prison Records	101
94	Violation Report	216
95	Ely State Prison Records	101
96	Report of Officer Edwards	101
97	Incident Report	135
98	Ely State Prison Records	101
99	Misconduct Report	156
100	Ely State Prison Computer Report	142
101	Ely State Prison Document	144
102	PSI Report	187
103	Marlo Thomas J&C	190
104		197
105	Notice of Charges Report (Ely State Prison)	51
106	Ely State Prison Incident Report	79
107	Ely State Prison Incident Report	80
108	NLVPD Incident Report	183

CERTIFICATION

I (WE) CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM
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