

1 clear and present danger to the community in
2 custody, in prison, then the death penalty would
3 be appropriate, because it is self-defense to
4 defend against a clear and present danger. In
5 this case we know that the right of self-defense
6 is not applicable, because Glenford is not a clear
7 and present danger. He is virtually an ideal
8 inmate. He is not a dangerous inmate. He is not
9 causing violence while incarcerated. And
10 obviously that would be a clear sign that he did
11 remain a clear and present danger if while
12 incarcerated he was a violent person.

13 Adding to this conclusion that he is
14 absolutely not a clear and present danger is his
15 record. This man has no prior criminal
16 convictions, none. This is not a career criminal
17 and I want to say this: Considering the horrific
18 nature of this crime, if the man had a significant
19 criminal history, then those two things combined
20 together would suggest that this is a person that
21 the death penalty might be appropriate for. But
22 Glenford has no criminal record. He has this one
23 day where he did this horrible thing. Under these
24 circumstances he simply is not a clear and present
25 danger, and under that circumstance we should not

1 use our right of self-defense against him.

2 There is also a saying that the death
3 penalty is preserved for the worst of the worst.
4 Glenford Budd is not the worst of the worst, and
5 we know that because of his record or his lack of
6 record, lack of criminal record. We know that
7 because he is a person who works well
8 institutionalized. Yes, he committed a horrible
9 crime, but a horrible crime does not put you in
10 the category of the worst of the worst. If this
11 man had a long history of violent crime, I
12 couldn't say this with a straight face, but he
13 doesn't. He's not the worst of the worst. He
14 doesn't need to be killed. You saw the pictures
15 of the prison. And I think you would agree it's a
16 grim life. And, quite frankly, that is the future
17 of Glenford Budd if he is given the chance to live
18 out a natural life.

19 What we are asking you for is to allow
20 Glenford Budd to live his natural life until he
21 dies, as we're all going to die when nature
22 decides that such is the case. By doing that,
23 ladies and gentlemen, a lot of suffering can be
24 prevented. And I submit to you that the killing
25 of Glenford Budd is absolutely unnecessary in this

1 case. We appreciate your time. We appreciate
2 your consideration. Thank you very much.

3 THE COURT: Mr. O'Brien?

4 MR. O'BRIEN: Thank you, your Honor.
5 Court's indulgence.

6 THE COURT: Of course.

7 MR. O'BRIEN: Jason Moore was 19.
8 Derrick Jones was 19. Dajon Jones was 14. When
9 we watch grieving family members identify their
10 loved ones from photos like that, it inflames our
11 passions. It inflames our passions to a point of
12 hatred. Hate is a great motivator. Hate fueled
13 the holocaust. Hate is the food of terrorism.
14 Terrorism feeds off of hate. It's hate that
15 rallies the mob. However, hate does not make for
16 good decisions. We have to set the hate aside.
17 It's not going to help any of us, and it's
18 certainly not going to help you to make this very
19 difficult decision. I realize that you are angry.
20 That's understandable. These three young men were
21 killed. It's such a waste. We understand the
22 anger. But don't make this decision in anger.
23 Don't make this decision based on anger and
24 vengeance. The legacy of this decision that
25 you're about to make is going to last far longer

1 than your sense of anger or any sense of
2 vengeance. Acknowledge the anger. Count to a
3 hundred. Pound on the table. Kick a chair. But
4 set it aside. You're not here to make a judgment
5 based on hate and vengeance. Set the anger aside,
6 and then and only then can you make a decision
7 that you will be confident that you can live with.

8 Now, the details of Glenford's life
9 haven't been offered because we want to paint a
10 picture of poor, poor, pitiful Glenford. And no
11 one is suggesting we pat him on the back and tell
12 him how sorry we feel. And no one is suggesting
13 that we give him probation, and no one is
14 suggesting that we forgive him. We are here
15 asking for a very severe punishment. No one has
16 forgotten those three young men I've just showed
17 you. Certainly you haven't forgotten it. You've
18 already found Glenford guilty. You've already
19 rendered the largest portion of justice in this
20 case.

21 When we offer this mitigation evidence,
22 first of all, the law demands we offer it. I have
23 an affirmative duty to put forth to you, as jurors
24 in a capital case, the facts and circumstances of
25 Glenford's life. Again it's not an excuse, and

1 it's not a defense. The purpose of this evidence
2 is to provide you with a context, because you have
3 a very difficult decision to make. And I think
4 Dr. Paglini was able to take this information and
5 put it into a further context for you, and you
6 need this context to determine if Glenford is the
7 worst of the worst, if Glenford is so dangerous
8 that he must simply be deleted and, finally, if
9 Glenford must be exterminated.

10 Now, the law instructs you, you must
11 consider and give effect to the mitigation
12 evidence. And, as Mr. Brooks told you, and I'm
13 going to cut out much of this, because Mr. Brooks
14 has talked to you about it, and you've, and I
15 believe you all have a good understanding of the
16 evidence we presented. But the important thing to
17 know is the mitigation evidence is not limited to
18 what we presented to you. It's not limited to the
19 way we presented it to you. You can take what you
20 learned here, and you can pick it up, and you can
21 turn it any way you want, or based on anything you
22 heard here you can create your own mitigating
23 circumstance. The law acknowledges what a
24 difficult decision this is, and it gives you every
25 opportunity to choose life.

1 I want to address briefly the mitigation,
2 mitigating circumstance of diminished IQ. And I
3 would like you to remember what we say here isn't
4 evidence, and I think the evidence you heard on
5 diminished IQ, first of all, I don't believe
6 Ms. Levy -- Ms. Levy is the school teacher -- ever
7 testified that Glenford had an average IQ. There
8 was no evidence presented at all that there was
9 any assessment done like that in that alternative
10 school. I would further submit that, that, as
11 tough a teacher as Ms. Levy said she was, when
12 you're in an alternative school, you're showing up
13 and you're trying hard, you know, maybe that's the
14 baseline to see. I don't know. But I would
15 submit that additionally she did not have a long
16 time to observe Glenford. As you may recall, I
17 think she said he only had two or two and a half
18 credits, and then he left. The point is, the only
19 evidence we have regarding his diminished
20 intelligence are those tests that Dr. Paglini
21 explained to you. And he explained to you that,
22 you know, I don't care who's giving this test.
23 He's going, he's going to range, forgive me if I'm
24 too low, but I believe it was from 75 to 84,
25 something in that general range. So, there is no

1 question whether or not we've shown you that
2 Glenford has a diminished IQ. That's
3 indisputable. I mean, we never suggested that he
4 was a blathering idiot that couldn't respond to a
5 question or write a letter or anything like that.
6 The fact is, the evidence shows, the only
7 evidence, Glenford does have a diminished IQ. All
8 those other things you heard and anything that
9 touches you, anything that causes you to choose
10 life can be a mitigating circumstance, anything.

11 Now, if any one of you feels, once you
12 enter that deliberation room, and to go along with
13 Mr. Brooks's analogy, you're through that first
14 room, we understand that, and you're into what
15 Mr. Brooks calls the weight room. If any one of
16 you at that point feels that you cannot consider
17 and give effect to the mitigation evidence that
18 you heard, send Cliff a note, because you can't,
19 you can't do that. The law demands that you
20 consider it and give effect to it. You must.

21 I do not ask you to be lenient. I ask
22 you to severely punish Glenford. I do ask you for
23 mercy. Unashamedly, I stand before you and ask
24 you for mercy, ask you to choose life. The mercy
25 I ask for is somewhat tampered, because Glenford

1 will be in prison for the rest of his life. He's
2 going to live a life of deprivation in a
3 structured confinement. I'm not going to detail
4 all the things that he's not going to have and
5 that he's going to miss, because these young men
6 aren't going to have those things. Now, some
7 might argue that a life in prison, a life in that
8 kind of prison that Jim Esten talked to us about,
9 some might argue, you know, that that's worse than
10 death. I don't buy it. I still ask you for life.
11 Choose life.

12 You know, I also ask for mercy for the
13 family. And that can be a point of mitigation for
14 any single one of you, mercy for the families,
15 mercy for the families of Jason, Derrick, and
16 Dajon and mercy for Glenford's family. Whatever
17 you decide, these families are going to grieve.
18 You can't change that. But you do have the
19 ability to lessen that grief. You have the
20 ability to give these families some finality. We
21 all understand that the death penalty isn't going
22 to be imposed in one year or two years or five
23 years or 10 years or maybe 20 years or 25 years.
24 We all know that. And each little maneuver that
25 comes down the little, each little legal maneuver

1 is going to resurrect this case, and these
2 families are going to be reliving it. Let's put
3 this matter to rest the best we can. And again,
4 no lenient options here. I'm asking you for
5 severe punishment. Just choose life. Even a life
6 for the rest of his life in prison, choose life.

7 Now, let's, let's talk about this
8 decision you have to make, that you are about to.
9 What you are about to decide is, is a very
10 personal decision. Any single one of you can
11 choose life, and any single one of you can take
12 death off the table. You don't have to justify
13 it. You don't have to explain it. You don't have
14 to support it. You don't have to quantify it.
15 Any single one of you can choose life. One way to
16 think about this is the launching of a nuclear
17 missile. You know, we've all seen those movies
18 where they're on the deck of a submarine and, you
19 know, you got the captain, and you got some
20 officer, and they both got a key, and they both
21 got a button. And not one man can set off that
22 nuclear missile. They both got to turn the key,
23 and they both got to hit the button. Well, each
24 one of you has a key, and you have a button. And
25 when you stand up there considering whether to

1 turn that key and press that button, any single
2 one of you that has any kind of doubt that this is
3 not the worst of the worst, any one of you who has
4 a single doubt that Glenford is not beyond
5 redemption, any one of you who feels like you can
6 give Glenford this tempered mercy of life in
7 prison, you have that power. Don't turn the key.
8 Don't hit the button. You don't have to talk
9 about it. You don't have to support it. You
10 don't have to defend it. You have the power to do
11 that all by yourself, any single one of you.

12 The one thing that doesn't abide by
13 majority rule is a person's conscience. And the
14 law acknowledges that. Let me say it again. The
15 one thing that doesn't abide by majority rule is
16 my conscience. And the law acknowledges that.
17 And that's why we have all these rooms they're
18 talking about, and that's why we have all these
19 seemingly artificial procedures that first you got
20 to figure this out and then, because the law knows
21 the enormity of this decision, and the law gives
22 you a way out. Remember, all we're asking for is
23 severe, severe punishment. All we're asking for
24 is life.

25 Of course, Mr. Kane is going to have an

1 opportunity to speak with you last, and I wish I
2 had that opportunity. But let me leave you with
3 one thought. On those occasions in our life where
4 we're kind of looking back, and maybe we're with a
5 son or a daughter, and we're kind of telling them
6 about the things we're proud of, the things we've
7 done that we're proud of, the things that we have
8 participated in that made a difference. I
9 guarantee you that when that time comes, there is
10 not one person here, there is not a single one of
11 you, not one of you who's going to look in that
12 son, son's or daughter's eyes and say, I voted to
13 execute a young man. It's not going to happen.
14 Choose life. Thank you.

15 THE COURT: Thank you, Mr. O'Brien.

16 Mr. Kane?

17 MR. KANE: Thank you. Ladies and
18 gentlemen, the first thing that I want to talk to
19 you about is the special verdict forms that you'll
20 actually be given. All this, all this talk about
21 rooms that you go into and step-by-step processes
22 are nice, but I said to you when this hearing
23 started, nobody envies the job you have to do.
24 And the best that we can do for you is at least
25 explain the mechanics of it so you can concentrate

1 on the job and not get too hung up with, hung up
2 with those mechanics. So, let me explain the
3 verdicts that you're given and what we're
4 suggesting that you do with them.

5 You're going to be given one verdict that
6 just deals with the aggravator circumstance in
7 this case. And as you've been told by each lawyer
8 that's talked to you, nothing in a death penalty
9 case is automatic. But, frankly, I'm unable to
10 come up with a logical way in which you could not
11 sign this verdict form. That, the aggravator
12 circumstance that we've alleged is that the
13 defendant in this case has been convicted of more
14 than one count of murder. He was. You know he
15 was, because you're the people who did it. So,
16 what the State is asking is, when you get back to
17 the secure room, the first thing you do is take a
18 vote and, and when you've agreed unanimously, go
19 ahead and sign this one that the aggravating
20 circumstance is present, because it is.

21 Now, when you're talking about the
22 mitigating circumstances, you're going to get a
23 special, separate special verdict that just deals
24 with those, and it's got little check marks that
25 you can make next to any of the mitigating

1 circumstances that we discussed here in court that
2 you, that even one of you feel exist. And on the
3 second page it's got a bunch of blank lines, and
4 what that's for is for any of you to write
5 anything in. If any individual juror feels that
6 anything, the defendant got in a fight in the
7 third grade; the defendant talks with a lisp;
8 anything you decide is a mitigating circumstance,
9 that's what that space is there for you to write
10 in. And make sure that you get them all listed.
11 So, those are the two special verdicts,
12 aggravator, mitigating. Those are pretty easy to
13 understand.

14 You'll also be given penalty verdicts for
15 each of the three counts of murder. And there is
16 three separate forms that you'll be given. And
17 again this may seem needlessly complicated, but
18 the law requires that you be given each of those
19 options. Now, you'll get three potential penalty
20 verdicts for each of the three murders. So,
21 you'll have nine all together. Put them in what I
22 suggest to you, how you do it is up to you. I
23 suggest you put them in three stacks. You have
24 the Dajon Jones penalty verdicts. You have the
25 Derrick Jones penalty verdicts. And you have the

1 Jason Moore penalty verdicts. And the first thing
2 you'll see is that one of them is a penalty
3 verdict for you to use if the jury finds that no
4 aggravating circumstance exist. Again I don't
5 know how you could find that in this case, but
6 it's a potential outcome, and it's a form that we
7 have to provide for you if you want to use it.

8 What I ask you to do based on the
9 evidence, first thing you do when you get this far
10 is take this penalty verdict and just put it
11 aside, because it doesn't apply. Secondly, you'll
12 be given an alternative to use if you make the
13 decision that the aggravating circumstances
14 outweigh any mitigating circumstance. And this is
15 the one that gets you into that final room or the
16 final step of the process or whatever you want to
17 call it. Because you'll notice that this
18 particular verdict form lists all four potential
19 penalties, hundred years, life with the
20 possibility of parole, life without parole, and
21 the death penalty. On the other hand, if you
22 reach the decision that mitigating circumstances
23 outweigh the aggravating circumstance, you're
24 given a verdict form to use for that. And as you
25 will notice, that does not include the death

1 penalty, because unless you all unanimously agree
2 that the aggravating circumstance outweighs all of
3 those mitigating circumstances, you can't vote for
4 death. And that's why you're given these two
5 alternative special verdicts. Please make sure
6 that when you're done, you only return one penalty
7 verdict on each count. We've given you these
8 alternatives as exactly that, alternatives or
9 choices. And when you get done, you should have,
10 as I think the judge indicated when she read the
11 instructions to you, five verdicts forms, your
12 special verdict form on the aggravator
13 circumstance, your special verdict form on the
14 mitigating circumstance, and then one penalty
15 verdict for each of the murders, one for the Dajon
16 Jones killing, one for the Derrick Jones killing,
17 one for the Jason Moore killing.

18 That's mechanics. As to substance,
19 you've heard a lot about mitigating circumstance.
20 And a mitigating circumstance again can be
21 anything that you feel helps to explain why this
22 happened, make it less serious. And in your, to
23 the defendant's benefit anyway. But how much
24 weight you give to those mitigating circumstances
25 and how important they are, that's up to you. You

1 can decide, yeah, there is a mitigating
2 circumstance. He had a tough childhood. But lots
3 of people have tough childhoods. I'm not going to
4 consider that very strongly, and I'm going to
5 suggest to you that at least two of the mitigators
6 that you've heard discussed are ones that should
7 not be given great weight by you. And one is a
8 mitigator that's been really stressed in argument,
9 and that's the fact that the defendant has no
10 prior record. And I'm going to suggest to you
11 that that should be one of the least important
12 mitigating circumstances, and you should give it
13 the least weight of any of the mitigating
14 circumstances you'll hear about, and the reason
15 is, membership in the human race is not a union
16 job.

17 In a union job you get progressive
18 discipline. No matter how bad you mess up, you
19 get an oral warning, and then you get a written
20 reprimand, and then maybe some time later you get
21 fired. Life doesn't work that way. Whether you
22 have a prior record or not, there are certain
23 offenses that are so serious, certain harms that
24 are so grievous that if you cause those, you
25 deserve the ultimate penalty. And it doesn't

1 matter if it's the first time that you've been
2 convicted of any major offense, and it doesn't
3 matter that you have no prior record. So, while
4 that's a mitigator that's present and you've got
5 to consider it and give effect to it, what effect
6 you give to it is up to you. And I would suggest
7 to you, for the reason stated, that that be very
8 little.

9 And the other mitigator that I would
10 suggest to you shouldn't be given much to you, and
11 this may sound callus, and I'll explain it. Don't
12 give a lot of weight to the effect that this
13 execution, if it is carried out, will have on,
14 would have on the members of the defendant's
15 family. And I do not mean to minimize what
16 they're going through. I would not suggest and I
17 wouldn't tolerate anyone else suggesting that any
18 of Mr. Budd's family members got on that stand and
19 faked anything. They were hurting. They told you
20 they were hurting. And that's a fact. You've
21 heard nothing but hurting for the last two days.
22 You've sat through a universe of pain in this
23 courtroom. But as my colleague's already pointed
24 out, there is only one person that's responsible
25 for that, and that's the defendant. And for a

1 defendant to come in and say to you, I have caused
2 all these people pain. I have caused all these
3 people, my family members to suffer and to grieve
4 and to worry, and because I did that, I want you
5 to consider that as a mitigating circumstance and
6 give me a lighter sentence than you would
7 otherwise is just inconceivable. It is so
8 logically inconsistent that you are entitled to
9 reject it. I'm sure it would make his family
10 members feel better if you sent him home tomorrow.
11 But if anybody suggested you do that, you would
12 say, well, we can't do that. That's not the right
13 thing to do.

14 Well, if you examine all the evidence and
15 you decide that, that the death penalty is the
16 appropriate and worthy and deserved punishment and
17 then you don't do it just because you feel bad for
18 the pain it's going to cause his family, that
19 would be just as wrong as letting him go. It's a
20 difference in degree, not in the form of what
21 you're doing. You've got to arrive at a decision
22 as to an appropriate penalty, and I suggest that
23 you not be swayed in performing that duty by the
24 pain that your decision will cause, because that
25 decision, just like everything else that throws

1 from the death of these three young men, isn't
2 your fault, isn't my fault, isn't the fault of
3 anyone on the face of the earth but the young man
4 sitting in the middle seat at that table.

5 The last thing I want to talk to you
6 about is a suggestion that was made by the defense
7 lawyers in this case, and that's that the death
8 penalty ought to be reserved for the worst of the
9 worst. That's hard to quarrel with, and I don't
10 intend to quarrel with it. But having said that,
11 how do you decide what's the worst of the worst?
12 And the worst of the worst what? The worst of the
13 worst murder? The worst of the worst murderer?
14 Can there be a worst of the worst murder? Isn't
15 every murder just horrible? I mean, it involves
16 the end of a human life. Can one murder be worse
17 than another? Sure it can. What's the worst of
18 the worst murder? Maybe it's the execution of a
19 child. Maybe it's waking a 14-year-old boy up
20 from the last sleep that he's ever going to enjoy
21 on the face of the earth to expose him to
22 intimidation, interrogation, and ultimately
23 extermination. Maybe that's the worst of the
24 worst. Or maybe the worst of the worst is the
25 agony that Derrick Jones went through as he fled

1 down a narrow hallway for his life as bullets tore
2 into his body from front and back, as he spent his
3 last moments on earth clinging to the vain hope
4 that a bag of toilet paper and paper towels would
5 somehow be transformed into something that would
6 save his life, that somehow paper would stop
7 bullets. But, of course, paper doesn't stop
8 bullets, and he died. Is that the worst of the
9 worst? Or is maybe the worst of the worst Jason
10 Moore, so close to freedom and yet so far,
11 collapsed on the threshold of the slaughter house,
12 crawling for his life, shot in the back once,
13 crawling further but in the wrong direction,
14 towards a corner, shot twice, continuing to crawl
15 until he curls up in a fetal position in the
16 corner and runs out of time and breath and blood.
17 Worst of the worst, your call, not mine.

18 And worst of the worst murderers, what's
19 the worst kind of murderer? Could it be somebody
20 that doesn't kill out of passion, out of
21 excitement, out of a sudden fit of rage but
22 somebody who makes an economic decision, somebody
23 who decides, people are hurting my business so
24 they have got to die, somebody who uses the guise
25 of his friendship to play a ball game with these

1 guys and try and feel out which one of them took
2 his dope, so which one is going to die first. Is
3 that the worst of the worst? Or maybe the worst
4 of the worst is somebody that takes a year to
5 think about what they have done, somebody who, not
6 in the heat of the moment but after calm
7 reflection, after a time to have been able to
8 consider the consequences of his actions, the pain
9 that those actions have caused, the agony that
10 everyone is going through and will continue to go
11 through, somebody who can sit down and write this:
12 They call me Smallz aka AI. Every day on the
13 street I used to get high. There's rules for a
14 killa. Don't get it confused. I'm wearing county
15 blues with my face on the news. Blew these niggaz
16 off the earth. That's the way it to go. I only
17 killed three but I shoulda killed four. Left them
18 dead on the floor, but just right before they was
19 cryin' and pleadin', screamin' for Jesus. Ya'll
20 can keep the weed cuz you can't smoke in now cuz
21 your ass is underground. Cross me, I blow like a
22 bomb. Took three niggaz from they moms. I'm a
23 thrilla killa. Ask Saratoga Palms. Call me Murda
24 Mann.

25 Defense counsel suggest that the State

1 asks you to impose the ultimate penalty in this
2 case out of hatred. Wrong. Defense counsel
3 asserts that the State asks you to impose the
4 ultimate penalty in this case out of anger.
5 Wrong. It would be wrong for you to do either of
6 those things. We are asking you to impose the
7 ultimate penalty in this case, because the
8 defendant's earned it. The defense says life is
9 precious. We agree. That life was precious.
10 That life was precious. And that life was
11 precious. And precious things are purchased with
12 precious coin. The defendant purchased those
13 three lives, and the coin is his own. Thank you.

14 THE COURT: Thank you, Mr. Kane.

15 Ladies and gentlemen, you will now be
16 excused from the courtroom to begin your
17 deliberations.

18 Ms. Clerk, would you swear the bailiff to
19 take charge of the jurors?

20 (Thereupon, the bailiff was sworn.)

21 THE COURT: Would you swear him and my
22 law clerk? In fact, let's swear Mr. Garcia first
23 to keep the alternate separate.

24 (Thereupon, the law clerk was sworn.)

25 THE COURT: Ladies and gentlemen, I would

1 ask that you now collect your belongings, your
2 notebooks, and I believe that Mr. Bailiff is going
3 to come back into the courtroom and take you to
4 your deliberation room. We will stand in recess.

5 Mr. Bailiff, you may take your jurors.

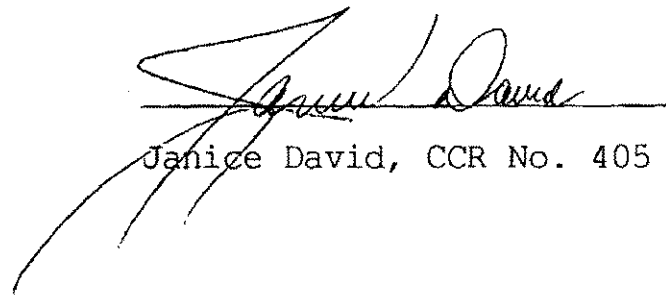
6 THE BAILIFF: Thank you.

7 THE COURT: We're in recess.

8 (Recess taken.)

9 * * * * *

10 Attest: Full, true, accurate transcript of
11 proceedings.
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16 Janice David, CCR No. 405
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'02	[2] 40:24 41:8	7 88:19	[5] 8:12 23:5 24:18 25:12 27:1
[3] 32:9 32:10 32:10	21	84	Acknowledge
1	[3] 47:10 70:15 87:22	[4] 22:15 49:10 88:19 113:24	[2] 43:19 111:2
10	22	86	Acknowledges
[9] 8:7 22:3 22:4 47:10 66:18 83:20 83:21 84:7 115:23	[1] 14:25	[2] 22:17 22:17	[3] 112:23 117:14 117:16
100	23	89	Acted
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11	23rd	8:30	Acting
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119	24	9	Action
[1] 22:4	[1] 21:24	9.5	[1] 54:4
12	24th	[1] 40:1	Actions
[11] 68:15 76:24 77:19 77:22 78:1 78:7 78:12 78:18 79:4 84:12 92:8	[2] 8:5 8:6	90	[3] 97:21 128:8 128:9
120	25	[2] 22:3 22:9	Activity
[1] 22:5	[4] 7:11 22:16 41:14 115:23	90th	[3] 14:19 67:5 85:12
129	25th	[1] 49:16	Add
[1] 22:5	[1] 25:1	91	[3] 39:3 54:10 74:7
12:30	27th	[2] 22:9 49:18	Added
[1] 27:25	[1] 95:1	92	[3] 65:1 65:1 67:22
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1 Mr. Brooks, is that, I know that you
2 continue to object to this instruction, but this
3 is what you anticipated based on, if you will, the
4 compromise that I make based upon your earlier
5 argument; is that correct?

6 MR. BROOKS: Well, it was the Court's
7 ruling, your Honor, yes, that the Court made a
8 ruling that, that took into account both positions
9 and both sides.

10 THE COURT: Very well. Mr. Kane,
11 Ms. Pandukht, you understand that this was the
12 Court's decision with respect to a compromise
13 instruction?

14 MR. KANE: Yes, judge.

15 THE COURT: Very well. Number 12,
16 mitigating circumstances are those factors which,
17 while they do not constitute a legal justification
18 or excuse for the commission of the offense in
19 question, may be considered, in the estimation of
20 the jury, in fairness and mercy, as extenuating or
21 reducing the degree of the defendant's moral
22 culpability. You must consider and give effect to
23 any aspect of the defendant's character or record
24 and any of the circumstances of the offense that
25 the defendant proffers as a basis for a sentence

1 less than death. In balancing aggravating and
2 mitigating circumstances, it is not the mere
3 number of aggravating circumstances or mitigating
4 circumstances that controls. Number 13, in
5 determining whether mitigating circumstances
6 exist, jurors have an obligation to make an
7 independent and objective analysis of all the
8 relevant evidence... Number 14, a reasonable
9 doubt is one based on reason... Number 15, the
10 jury is instructed that in determining the
11 appropriate penalty to be imposed in this case,
12 that it may consider all evidence introduced...
13 Number 16, in your deliberation you may not
14 discuss or consider the subject of guilt or
15 innocence... Number 17, the credibility or
16 believability of a witness should be determined...
17 Number 18, although you are to consider only the
18 evidence in the case in reaching a verdict, you
19 must bring to the consideration of the evidence
20 your everyday common sense and judgment... Number
21 19, during your deliberation you will have all the
22 exhibits which were admitted into evidence...
23 Number 20, the Court has submitted several sets of
24 verdicts to you. There is one special verdict
25 dealing with the alleged aggravating circumstance.

1 Should that be circumstances?

2 MR. KANE: No. There is only one
3 aggravating circumstance.

4 THE COURT: There is one special verdict
5 dealing with the mitigating circumstances. There
6 are three penalty verdict forms, one for each
7 count. At the conclusion of your deliberations,
8 if you find that the existence of the aggravating
9 circumstance has been proven beyond a reasonable
10 doubt, you should return five signed verdict
11 forms, the special verdict dealing with the
12 aggravating circumstances, the special verdict
13 dealing with the mitigating circumstance, and a
14 penalty verdict fixing the punishment for each of
15 the three counts... Number 21, now you will
16 listen to the arguments of counsel... There is a,
17 immediately following the listen to the
18 instruction there is the special verdict dealing
19 with aggravating circumstance. And, of course,
20 that is more than one offense. The next is
21 special verdict parenthetically describing
22 mitigating circumstances. And then there are one,
23 two, three, four, five, six, seven opportunities
24 to have the jury to check with respect to those
25 mitigators that they consider. So, that's a

1 two-page special verdict form, the next penalty
2 verdict, count one, having to do with Dajon Jones
3 and the punishment to be set for that conviction,
4 the next penalty verdict, count one, Dajon Jones
5 as the victim with respect to sentencing to be
6 set, the next penalty verdict, count one.

7 MR. KANE: That's also for Dajon Jones.
8 And, for the record, your Honor, this is the way
9 that I've done it, just so the court understands.

10 THE COURT: You can sense my confusion.
11 I'm sorry.

12 MR. KANE: I submit three proposed
13 verdict forms for each count in a death penalty
14 case. The first verdict form says the jury finds
15 that the aggravating circumstance outweighs the
16 mitigating circumstances and has the four options,
17 including the death penalty. The second form is
18 for the jury to use if they find that the
19 mitigating circumstances outweigh the aggravator,
20 and it does not include the death penalty. The
21 third option is for the jury to use if they don't
22 find that any aggravating circumstance exist. In
23 this case I understand that, I don't know how the
24 jury could rationally do that, but I think it's
25 required that it be included.

1 THE COURT: This was not based upon the
2 finding of guilt on three separate counts. Is
3 this verdict form even legally firm?

4 MR. KANE: I don't think it's rationally
5 possible, but I don't know that I can leave it out
6 unless the defense says it's okay to leave it out.

7 THE COURT: Mr. Brooks, Mr. O'Brien, I
8 mean, is it legally firm? I mean --

9 MR. KANE: I included a verdict form for,
10 for the jury to use if they don't find the
11 existence of an aggravating circumstance.

12 MR. BROOKS: Which --

13 MR. KANE: Because they have to make that
14 separate finding here in the penalty.

15 MR. BROOKS: In which case it's the
16 alternative, similarly do not include death.

17 MR. KANE: Correct.

18 MR. BOOKS: That's fine.

19 THE COURT: But can they find no
20 aggravating circumstances?

21 MR. BROOKS: Yes, judge, they could.

22 THE COURT: Even though there are
23 multiple murders?

24 MR. BROOKS: Yes, they could.

25 THE COURT: Okay. I, I trust both of

1 your expertise.

2 MR. KANE: Well, obviously I would be
3 hollering about it, because it's logically
4 inconsistent. But I think if I failed to include
5 it when the defense wants it in, I would be
6 inviting errors.

7 THE COURT: No question. No question.
8 The next one, then, is penalty verdict, count two,
9 having to do with Derrick, the exact same thing.
10 This is the one where aggravators outweigh
11 mitigator, includes the possibility of death.
12 Penalty verdict, count two, Derrick where they
13 find mitigators outweighing the aggravators,
14 therefore, include the possibility of death.
15 Penalty verdict, count two, Derrick, again they
16 find no aggravating circumstances. Next is
17 penalty verdict, count three, having to do with
18 Jason Moore. This is where they found, would find
19 that the aggravator outweigh the mitigators, and
20 they can potentially impose death. Next in
21 penalty verdict, count three, Jason Moore, again
22 with the mitigators outweighing the aggravators,
23 no possibility of death. And finally the penalty
24 verdict form, count three, as to Jason Moore where
25 the jury would potentially find no aggravating

1 circumstances and, of course, the possible range
2 of sentences does not include death.

3 Have we completed a review of the
4 proposed instructions for this phase of the trial?

5 MR. KANE: Yes, your Honor.

6 THE COURT: State, do you have anything
7 you wish to add?

8 MR. KANE: No, I do not.

9 THE COURT: And on behalf of the
10 defendant, other than the previously stated and
11 argued and decided upon objection, anything
12 further?

13 MR. BROOKS: No, judge.

14 THE COURT: Very well. When I was last
15 here in the courtroom, we were making a
16 determination as whether or not Mr. Budd was going
17 to take the stand.

18 Have we made that decision?

19 MR. O'BRIEN: We have, your Honor.
20 Defense would request that we be allowed to reopen
21 our case.

22 THE COURT: Very well. Then, counsel,
23 are we ready for the jury to be brought back?

24 MR. KANE: Judge, I believe that it's
25 clear on the record, but I just wanted to make

1 sure that the Court formally instructed the
2 defendant that his statement to the jury, whether
3 sworn or unsworn, is not to include any denial of
4 guilt -- and if that happens, the prosecution
5 would object -- but that the statement is limited
6 to statements of remorse, pleads for leniency, and
7 statements of future plans.

8 THE COURT: Mr. Budd, and, Mr. Kane, for
9 your benefit, I spoke, as you know, with Mr. Budd
10 and explained what I believed to be, was a simpler
11 explanation of what you just said. In fact --

12 MR. KANE: Than would be the first time.

13 THE COURT: I tried to take some of the
14 legalese out of it and talked to Mr. Budd. And,
15 frankly, this is going to be part of the record.
16 I urged him to consider talking to the jury. I
17 explained, with both counsel present, that he
18 would not, A, be placed under oath, would not be
19 subject to cross-examination so long as he stayed
20 within certain boundaries, and that the only thing
21 he really can talk about here is a plea that they
22 spare his life, a desire that he has to remain,
23 even though incarcerated, a part of his family,
24 and, if, in fact, he feels remorse or sorrow for
25 what happened in this case, he can tell the jury

1 that as well.

2 MR. KANE: Thank you.

3 THE COURT: Mr. Brooks, Mr. O'Brien,
4 anything else for the record?

5 MR. BROOKS: No, your Honor.

6 MR. O'BRIEN: No, your Honor.

7 THE COURT: Then the defense case will be
8 formally, will remain open. I don't know that you
9 said --

10 MR. BROOKS: Judge, I don't think we did
11 rest.

12 THE COURT: I don't think you rested.

13 MR. KANE: I thought they did, and I said
14 no rebuttal. But whatever happened, the State has
15 no objection to reopening the case.

16 THE COURT: Thank you, Mr. Kane. I think
17 what we'll do is, we'll bring the jury back in.
18 Why don't we get Mr. Budd on the stand before they
19 come in?

20 MR. O'BRIEN: Thank you.

21 THE COURT: Oh, and while Mr. Budd is
22 coming forward I just received a note. I'm
23 assuming that this came from Mr. Bailiff, says
24 juror number 12, your foreperson, said she knows
25 Dr. Paglini, says she knows the doctor that just

1 testified.

2 Do you wish for me to make inquiry as to
3 the extent of her knowledge or, and/or
4 relationship? You identified him in the
5 beginning?

6 MR. BROOKS: No. I don't think we did,
7 judge. So, I suppose that would be appropriate
8 just to ask her.

9 THE COURT: Mr. Bailiff -- and Mr. Budd
10 can stay right where he is -- why don't we bring
11 that juror in by herself, let us make a bit of
12 inquiry.

13 Good afternoon, Ms. Goldner. You don't
14 have to take your seat. Presumably we're probably
15 going to be here for a minute.

16 Mr. Bailiff provided to me a note
17 indicating that you think you know Dr. Paglini; is
18 that correct?

19 JUROR NO. 12: Yes.

20 THE COURT: What is the nature of your
21 knowledge and/or relationship:

22 JUROR NO. 12: Someone I know saw him as
23 a physician.

24 THE COURT: Okay. So, you've never
25 treated with him; is that correct?

1 JUROR NO. 12: No. I accompanied him on
2 his, the first time he went but, and then I didn't
3 further see --

4 THE COURT: You weren't a part of the
5 interview or the, the counseling or care and
6 treatment that the doctor provided directly?

7 JUROR NO. 12: No.

8 THE COURT: Okay. Is there anything
9 about that person's relationship with the doctor
10 and your relationship with that person that would
11 affect your ability to be fair and partial here?

12 JUROR NO. 12: Not at all, no.

13 THE COURT: So, the simple fact that
14 someone that you know at one time treated with the
15 doctor is not going to have you in any way
16 weighing his testimony in, with any greater weight
17 than anyone else, is it?

18 JUROR NO. 12: Not at all.

19 THE COURT: Mr. Kane?

20 MR. KANE: No, your Honor.

21 THE COURT: Mr. Brooks, Mr. O'Brien,
22 anything you wish to ask this juror?

23 MR. BROOKS: Judge, we have no questions.

24 THE COURT: You know, I wish I had that
25 on tape.

1 You can step back out into the corridor.
2 And I believe, Mr. Bailiff, we're ready for the
3 jury to come in.

4 JUROR NO. 12: Should I just stay, then?

5 THE COURT: Yeah. That's fine.

6 (Thereupon, the jury entered the courtroom.)

7 THE COURT: Welcome back. You may be
8 seated. Let the record reflect that we are again
9 present in the matter of State versus Budd. All
10 counsel and parties are present.

11 Will you stipulate to the presence of the
12 jury?

13 MR. KANE: Yes, your Honor.

14 MR. O'BRIEN: Defense will, your Honor.

15 THE COURT: Very well. Ladies and
16 gentlemen, we are very close to the end of this
17 proceeding and, frankly, none of us can, with any
18 meaningful recollection, remember whether or not
19 the State, the defense officially rested their
20 case. If they did, we are going to reopen it,
21 because, Mr. O'Brien, I believe you have another
22 witness that you would like to have the jury hear
23 from; is that correct?

24 MR. O'BRIEN: We do, your Honor. Thank
25 you.

1 THE COURT: And that next witness is?

2 MR. O'BRIEN: Glenford Budd.

3 THE COURT: You'll note that Mr. Budd is
4 presently seated here in the witness stand.

5 And, Mr. O'Brien, you may proceed.

6

7

DIRECT EXAMINATION

8

BY MR. O'BRIEN:

9

Q. Thank you, your Honor. Glenford, I
10 understand there is something you want to tell the
11 jury.

12

A. Yeah, not, not just the jury but jury,
13 the victim's family, and my family. I want to say
14 that I'm sorry. I'm not just saying that. It's
15 from here. Nobody deserve to go through this,
16 nobody at all, not the family, not my family,
17 nobody here. This is real hard for me. I'm not
18 good with expressing myself, you know. I'm sorry.
19 I really am.

20

Q. Do you want to say anything else,
21 Glenford?

22

A. It's hard. I can't explain it.

23

MR. O'BRIEN: Thank you, your Honor.

24

THE COURT: Mr. Budd, is there anything
25 else you would like to tell the jury?

1 THE DEFENDANT: Spare my life, please,
2 please.

3 THE COURT: Thank you, sir. Mr. Kane?

4 MR. KANE: Your Honor, as Mr. Budd has
5 elected to exercise his right to address the jury
6 in the manner of an unsworn statement, the State
7 has no right of cross-examination.

8 THE COURT: Thank you very much. Thank
9 you, Mr. Budd. Mr. O'Brien, any other witnesses?

10 MR. O'BRIEN: No. Thank you, your Honor.
11 The defense will rest.

12 THE COURT: Ladies and gentlemen, it is
13 now the time for me to instruct you with respect
14 to the nature of the law for this phase of the
15 trial.

16 (Thereupon, the Court read the jury instructions.)

17 THE COURT: On behalf of the State,
18 Mr. Kane, are you prepared to proceed?

19 MR. KANE: Ms. Pandukht.

20 THE COURT: Ms. Pandukht?

21 MS. PANDUKHT: The defendant deserves to
22 die for the murders of Dajon Jones, Derrick Jones,
23 and Jason Moore. He has earned that right. But
24 that is a decision that all of you have to make
25 unanimously, and it is a hard one. There is a lot

1 that you have to do before you can get there. And
2 the judge has read the instructions that you have
3 to follow, and I want to go through them with you,
4 as I know that Mr. Brooks and Mr. O'Brien are also
5 going to want to go through them with you, because
6 they are so important.

7 Now, they, the first one I want to focus
8 on is instruction number seven. Basically it's a
9 four-step process, at least the way I see it.
10 You, one, have to decide, is there the aggravating
11 circumstance that exist? Is it proven beyond a
12 reasonable doubt? That's step one. Step two,
13 then, is, if you find that an aggravating
14 circumstance exist, you have to then determine, do
15 one or more mitigating circumstances exist?

16 Now, this instruction will tell you that
17 that decision doesn't have to be unanimous, and
18 you don't need to find all of what's ending up
19 being listed as seven, I believe, mitigating
20 circumstances, but you have to make the
21 determination in the second step of the process to
22 find whether or not a mitigating circumstance or
23 circumstances exists. Now, once you go through
24 that process, then comes the third step.

25 Now, the third step is very, very

1 important. And that is, do any of the mitigating
2 circumstances outweigh the aggravating
3 circumstance? And if you decide that the
4 aggravating circumstance, or let me say it this
5 way: If you decide that the mitigating
6 circumstances do not outweigh the aggravating
7 circumstance, now the defendant is eligible for
8 the death penalty. And it is only until that
9 point that he is even eligible for that penalty.
10 Now, once you decide that the defendant can even
11 get the death penalty, it still is not mandatory.
12 You do not have to impose that sentence. You are
13 free to impose any one of the four possible
14 penalties in this case. And those are listed as
15 well in the instructions. But this instruction
16 tells you that once you find that the mitigating
17 circumstances do not outweigh the aggravator, you
18 can impose that sentence. And that instruction is
19 very, very important. And I'm going to now turn
20 to instruction number 10.

21 Instruction number 10 deals with the
22 aggravating circumstance in this case, and there
23 is only one, and it is, the murder was committed
24 by a person who has, in the instant proceeding,
25 been convicted of more than one offense of murder

1 in the first or second degree. Now, this is an
2 easy one, because you just found the defendant
3 guilty in the trial phase of first degree murder
4 with use of a deadly weapon, three counts. It's
5 more than one. You've already found that. This
6 should be the easiest part of your determination,
7 instruction number 10. Certainly the aggravating
8 circumstance has been proven beyond a reasonable
9 doubt. You all convicted him. So, I will focus
10 on the mitigating circumstance, and there is two
11 instructions that I want to focus on.

12 The first one is instruction number 12,
13 and that is basically, this instruction talks
14 about considering and giving effect to mitigating
15 circumstances. And they explain what they are.
16 They're basically factors that are not
17 justifications. They're not excuses. But they
18 may be considered by you as extenuating or
19 reducing the defendant's moral culpability, and it
20 does state in this instruction, just as you've
21 already heard, that you have to give effect to and
22 consider the defendant's character or record and
23 any of the circumstances of the offense that he
24 proffers as a basis for a sentence less than
25 death. And you heard testimony about that, and

1 you heard it relating to instruction number 11.

2 Instruction number 11 lists seven
3 mitigating circumstances. And what I want to do
4 is go through these one by one. You heard
5 considerable testimony yesterday as well as today
6 during this penalty phase from a variety of
7 witnesses, and they fit into these seven
8 categories, this list of mitigating circumstances.
9 A couple of these I'm going to concede right off
10 the top. First of all, number one, the defendant
11 has no significant history of prior criminal
12 activity. The State agrees with that as well as
13 number three, the youth of the defendant at the
14 time of the crime. The State also agrees, I would
15 also note that all three of the victims were
16 younger than the defendant at the time of their
17 murders. But I want to spend some time with what
18 I believe is the, what probably falls within the
19 second one and the seventh.

20 And the second one is, the murders were
21 committed while the defendant was under the
22 influence of extreme mental or emotional
23 disturbance and any other mitigating
24 circumstances. And I wanted to address that,
25 because you heard a lot of testimony from the

1 defense witnesses about the defendant's childhood,
2 the death of his stepfather, his father having an
3 alcohol and abuse problem with his mother. You
4 heard evidence about his father going to prison
5 for dealing marijuana. You heard a lot about
6 being evicted from residences, not having enough
7 food, all of those types of things. And where do,
8 where do they fit in? I could be wrong, and
9 Mr. Brooks or Mr. O'Brien may correct me, but I
10 believe they fit in the second and seventh
11 categories. What I wanted to address with you is
12 basically, you have to, in looking at these
13 mitigating circumstances, look at it twofold. One
14 is, do they exist? And then you have to think
15 about them in terms of, are any of these factors a
16 basis for reducing his moral culpability? Do they
17 extenuate or reduce his moral culpability?

18 Now, with regard to his family and
19 financial problems, you heard evidence from the
20 defense witnesses about all of that. I'm not
21 going to dispute that he certainly had
22 difficulties in his life. We all have
23 difficulties in our life. I hope that you recall
24 the Moores when they testified. Earl and Linda
25 Moore had testified about how they were once

1 homeless. I believe that they stated that as well
2 as Dajon's family. I believe Dajon's sister,
3 Kokitha, told you that they have had problems
4 where they have had, haven't had a place to live.
5 Every single family could probably give you
6 stories about somebody in their family dying,
7 somebody in their family going to jail, having
8 difficulties in their life. The question is, do
9 those rise to the level that they are a mitigator?

10 Now, there was also considerable
11 discussion about the defendant's illegal status,
12 that he was an illegal alien here in this country
13 without a social security card, without a birth
14 certificate, I believe, as well. And he has
15 brought through that testimony basically in terms
16 of why he couldn't find a job. You heard that he
17 could not get legitimate work, even though he
18 allegedly tried to get legitimate work, tried to
19 apply for jobs. But what we do know is that the
20 defendant didn't have a legitimate job. You heard
21 from Mr. Paglini that he was selling drugs from
22 age 17 until age 21. He was selling marijuana
23 just like his stepfather did before he died. He
24 was selling that to the quantity of up to six
25 pounds. You heard on cross-examination that the

1 defendant got six pounds of marijuana just in 2003
2 before the murder. So, in the spring of 2003
3 that's a considerable amount of marijuana. This
4 isn't just selling an ounce here and an ounce
5 there as Mr. Paglini would like you to believe.
6 He had six pounds of marijuana that he was dealing
7 in Las Vegas, and that was how he was earning his
8 living, and that was how he was making money.
9 Certainly the evidence that you heard in
10 mitigation, look at that as well in terms of, of
11 what really is going on there. Is that really
12 something that mitigates what the defendant did,
13 the fact that he chose to deal drugs instead of
14 have a legitimate job?

15 Now, you also heard evidence with regard
16 to number four, I believe it is. Number four is
17 the defendant's diminished intelligence. You
18 heard from Mr. Paglini that he had an average IQ
19 of, I'm not sure if it was 80, 84. It was
20 somewhere in that range. But it was basically a
21 low average IQ. Well, I would ask you to recall
22 the testimony of his teacher. Remember the
23 teacher yesterday that said that she had nothing
24 but positive things to say about this defendant?
25 She said that he had average grades and average

1 IQ. And who would know how someone is doing in
2 school better than their teacher. They certainly
3 had a great relationship. She liked him very
4 much. That was very, very obvious. She thought
5 that he was a good student, even got her jokes and
6 her humor, I believe she said. So, according to
7 his teacher, who he had for a significant amount
8 of time, he was an average student and did well
9 enough at Veil. That was the continuation school.

10 But what I would also like to draw your
11 attention to with regard to this particular
12 mitigator is, there was a lot made out of the
13 defendant not being able to express himself, not
14 being able to have the same kinds of skills that
15 other people might have. Well, I would ask that
16 when you go back into that deliberation room, you
17 read the letter, the letter he wrote to Greg
18 Lewis, which is State's Exhibit No. 49B. Frankly,
19 this letter speaks for itself. Because when you
20 read this letter, you read someone that can write
21 very well, you know. He can read well enough,
22 because he's responding to a letter written by
23 Greg Lewis, and you know that, because he
24 specifically responds to several things in this
25 letter that are answering questions that Greg

1 Lewis posed to him. Greg Lewis tells him he just
2 had a baby and another one is on the way. The
3 defendant congratulates him. He congratulates him
4 and says -- I believe it is on page two of the
5 letter -- congratulations on your shorty being
6 born. He also, Greg Lewis asks him in the letter,
7 you know, how is your hair? Is your hair long?
8 And the defendant responds in his letter back to
9 Greg Lewis, you asked if I'm still growing my hair
10 out. Right now I got it twisted up, going dread.
11 He is responding specifically to things that Greg
12 Lewis asked him.

13 He also not only makes it clear that he
14 can read and write just fine, he has the ability
15 to even know when it's appropriate to write thank
16 you cards. He says in the letter that he knew to
17 write a thank you card to the mother of Greg
18 Lewis. And he didn't send it to Greg Lewis
19 himself and sent it to his mother's address,
20 because he says that he didn't know where he was
21 living. He hadn't heard from him. So, he sends
22 it to his mother. But he wanted to thank him
23 specifically for putting money on his books, which
24 was in Greg Lewis's letter to him. So, he's
25 certainly smart enough to know not only to write a

1 thank you card when somebody gives you a gift, he
2 knew Greg Lewis's mother's address. Also in the
3 letter you'll notice that he knows cell phone
4 numbers and home numbers of the person named Wes.
5 He's listing those in the letter. It is a very
6 well-written letter and certainly contradicts any
7 alleged diminished intelligence that the defense
8 would like you to believe mitigates his offenses.

9 But most interestingly in that letter, he
10 counsels Greg Lewis. He gives him advice that's
11 pretty mature. The defendant tells Greg Lewis,
12 this time when you return, have it be your last.
13 You have kids. That ain't where it's at, feel me?
14 Get out and wait for my return. He's basically
15 telling him to quit committing crimes, because
16 you've got kids. And this jail, CCDC, that's not
17 where it's at. That isn't from somebody with that
18 diminished of an intelligence.

19 More importantly than all of that, this
20 defendant was smart enough to do a lot of things
21 in the course of these murders that somebody with
22 less intelligence may not have thought to do,
23 because, you see, this defendant doesn't just fly
24 off the handle and have a big argument where
25 everybody knows that he's mad at them and he's

1 going to kill them. This defendant is smart
2 enough to get ahold of a gun and smart enough to
3 hide that gun so that nobody sees him coming. He
4 is smart enough to know that, I'm going to need me
5 a gun that's going to be able to shoot a lot of
6 people with a lot of bullets without having to
7 reload. He had a gun that was a nine-millimeter
8 with a clip that could shoot at least 11, 12, 13,
9 up to probably 15, 16 slugs. He needed a gun like
10 that, because when you got three people or four
11 people in an apartment and you start shooting, you
12 don't want somebody to stop you and turn that gun
13 on you, do you? He wasn't stupid. The only thing
14 that he made a mistake about was letting Lazon
15 Jones get away. That's the only thing that this
16 defendant messed up on. He was certainly smart
17 enough to commit this crime without getting caught
18 right away. He was able to shave his head, change
19 his appearance, hide out at several different
20 residences without being caught for several days,
21 certainly was smart enough to do that.

22 And he was also smart enough and had
23 enough long-term memory to remember what he did a
24 year and three months after the murders. We know
25 that, because he writes it to Greg Lewis in those

1 rap lyrics. He certainly was smart enough to
2 remember how many people he killed, how many
3 people he should have killed. And he also
4 remembered what they probably said before he
5 killed them. So, with regard to the mitigator of
6 number four, the defendant's diminished
7 intelligence, I would certainly suggest that that
8 does not exist in this case.

9 Now, with regard to the impact of the
10 defendant's execution on his family members, and
11 I'm going to group five and six together. There
12 is no doubt that this has caused considerable pain
13 and grief for the defendant's family members.
14 There is no question. There is no question that
15 you saw that on the stand when his family,
16 friends, and his mother and his sisters and his
17 brother were testifying. But whose fault is that?
18 Who is to blame for the suffering of his family
19 members? The defendant is 100 percent responsible
20 for causing all of that. Because the defendant
21 had a choice. He had a choice whether or not to
22 fire those bullets into those three boys, and he
23 had the choice to kill them, a choice that he
24 didn't give to the three boys. Those three boys
25 didn't have the same choice, and he took away

1 those boys from their family members, too. So, in
2 addressing number five and six, I would also ask
3 that you consider the impact on the victim's
4 families.

5 MR. BROOKS: I'm going to object, your
6 Honor. This is inappropriate argument. It's
7 unethical. The instructions are absolutely clear
8 that that evidence cannot be considered where the
9 jury considers the adequacy of mitigating
10 evidence.

11 THE COURT: That is correct. I would ask
12 Ms. Pandukht to confine --

13 MS. PANDUKHT: I will move on.

14 THE COURT: Move forward.

15 MS. PANDUKHT: I will move on. These are
16 the seven mitigators, factors. Once you determine
17 that any one of these or more than one of these
18 exist, you then move on to the third step.

19 The third step is whether or not any of
20 these mitigating circumstances outweigh the
21 aggravating circumstance. And this is where you
22 need to consider what this defendant did on the
23 day of these murders and is the fact that he may
24 have diminished intelligence, any of the other
25 mitigating factors listed there, is that

1 outweighing what he did on May 27th, 2003 when he
2 brutally murdered those three boys. So, I would
3 ask, does his diminished intelligence outweigh
4 brutally murdering Dajon Jones when he is alone in
5 that bedroom, unarmed, no way to defend himself?
6 Does it outweigh what he did to him? Is the fact
7 that his mother was unattentive to him or too
8 permissive, does that outweigh shooting Derrick
9 Jones seven times, murdering Derrick Jones as he's
10 trying, trying to flee the apartment to run away
11 from a man shooting him four times in the back?
12 Is the fact that the defendant decides to deal
13 drugs and sell marijuana, does that outweigh
14 gunning down and murdering Jason Moore on the
15 balcony?

16 These pictures are hard to look at.
17 These pictures are hard. But you have to put a
18 face on them, because Jason, Derrick, and Dajon
19 aren't just dead bodies. They aren't just
20 faceless strangers. They're somebody's brother.
21 They were somebody's son, somebody's sister,
22 somebody's grandson, and somebody's father. I
23 would ask that you recall the testimony of Lizzie
24 Jones who stated that her grandson, who's
25 actually, you know, she adopted him as her son.

1 He was engaged and had a baby on the way. And
2 that little boy wasn't even born yet when his
3 father was killed. Kokitha had a baby, and Lazon
4 had a baby brother that Dajon never met, that
5 Dajon will never know. And Jason Moore was part
6 of a very, very close family, and they were torn
7 apart by this. And I would ask that you recall
8 that as well.

9 This is an extremely difficult, difficult
10 decision, but it is one that you are going to have
11 to make. And once you get to that point where you
12 decide that the mitigating circumstances, if you
13 decide that the mitigating circumstances do not
14 outweigh the aggravating circumstance, then it's
15 up to you to make the decision of what the
16 appropriate sentence is. And what is the
17 appropriate sentence for somebody who commits
18 three murders? The decision is yours. But the
19 death penalty is the appropriate decision in this
20 case.

21 This defendant, he acted like he was
22 their friend. He acted in such a way that nobody
23 ever would have thought he would have done
24 something like this. But just like his family
25 never thought he would do anything like this, same

1 with Lazon Jones and Dajon and Jason and Derrick,
2 you know. There was a lot of talk about him
3 coming to this country and being an immigrant and
4 trying to fit in and not having the support.
5 Well, you know what? Those boys, they hung out
6 with him. They befriended him. They took him in
7 and played basketball with him. They accepted
8 him, and they thought he was their friend, and he
9 repaid them by killing them over thinking they
10 stole some weed. This wasn't some heat of
11 passion, self-defense, anything like that. This
12 was cold-blooded murder. This was an economic
13 decision. And you heard that from Mr. --
14 Mr. Paglini himself. This was an economic
15 decision. He was a drug dealer selling up to six
16 pounds of marijuana, and he thought they took some
17 of his profits, and he was going to keep them, he
18 was going to kill them over it. And it was bad
19 enough that he killed one person, but the fact
20 that he killed more than one person, three young
21 men, one of them 14 years old, his actions have
22 earned him the right for the death penalty. And
23 that's a penalty that he deserves. Thank you.

24 THE COURT: Thank you, Ms. Pandukht.
25 Mr. Brooks?

1 MR. BROOKS: May it please the Court,
2 counsel, and ladies and gentlemen of the jury.
3 This is my last time to talk to you. What we're
4 going to do is, I'm going to talk a bit, and
5 Mr. O'Brien is going to talk a bit. Mr. O'Brien
6 is going to talk a bit about the evidence. I'm
7 going to concentrate more on the legal procedures,
8 the aggravation, mitigation, and the procedure you
9 will go through. And you may say, well,
10 Ms. Pandukht just explained that to us. But let
11 me tell you a little secret. You guys may be the
12 smartest jury in the world, but this stuff is
13 difficult, and it's complicated, and this is hard
14 for even lawyers to follow. So, forgive me if I
15 repeat some of the things that she has said, but I
16 think these are difficult processes and,
17 therefore, it may help to hear them again.

18 The key terms are aggravating
19 circumstances and mitigating circumstances. And,
20 of course, what the law is trying to do here is,
21 they're saying in this situation, we're not going
22 to be governed by passion. We're not going to be
23 governed by outrage and sympathy and things that
24 are not rational. We're going to try to be as
25 rational as possible in this process. From our

1 standpoint, Glenford's standpoint, aggravating
2 circumstances are bad. They're things that make
3 the crime worse. They're things that make a
4 sentencing jury want to impose a harsher sentence.
5 Mitigating circumstances, from our standpoint, are
6 things that simply help you understand why this
7 happened. And they would help you, we hope, make
8 a decision to show some mercy on Glenford Budd.
9 And please understand, in no way at all should
10 anyone say that we are trying to excuse what we
11 did or, or avoid responsibility or anything like
12 that. Mitigating circumstances simply help us
13 understand why this happened. And we are hoping
14 that if you understand everything, that you will
15 simply show Glenford Budd mercy.

16 Now, let me also explain exactly where
17 we're coming from. What we want in this
18 sentencing hearing is life in prison with or
19 without the possibility of parole. I mean, this
20 is a horrible crime. We're not in any way going
21 to suggest otherwise. If we get life in prison,
22 we are grateful. We are grateful for that mercy.
23 That's where we're coming from here.

24 Now, to understand this process I'm going
25 to use an example. And I didn't come up with

1 this. Other people did. I'm going to use the
2 example of rooms. Right now you are seated in a
3 room, and the borders of your room are borders of
4 the jury box. And I want you to pretend that
5 there is another room that goes right over here
6 and then a third room that's right over here. In
7 each room you have certain things you have to do,
8 certain decisions you have to make. Once you make
9 a decision you will either stay in that room, or
10 you will move to another room. All of you will
11 leave one room and go to another room together.
12 However, once you, what, what you do in each room
13 is not necessarily a group decision. Some of the
14 decisions you have to make are individual
15 decisions. There are times you will be in a room
16 and you will have a decision to make that
17 somebody, each one of you individually must
18 decide.

19 Now, I'm going to explain this in more
20 detail. The first room, the room you're in right
21 now, I'm going to call it the aggravation room.
22 While you're in the first room your job is to
23 decide whether the State has proved beyond a
24 reasonable doubt the existence of at least one
25 aggravating circumstance. It has to be a

1 unanimous decision. That's a group decision.
2 When you make that decision, the only evidence you
3 can consider is the evidence relating to the
4 aggravator. Now, in this case the State has
5 alleged one aggravating circumstance, that
6 Glenford killed more than one person and was
7 convicted in this proceeding of killing more than
8 one person. So, in making that decision you
9 simply are mentally going through the process of
10 reviewing what you have already decided once. If
11 you make the decision that, in fact, the State
12 proved the one aggravating circumstance, then all
13 of you will leave the first room, and you go to
14 the second room.

15 I'm going to call the second room the
16 weighing room. And I apologize for my accent.
17 Sometimes my words are not understood. By
18 weighing I mean like a scale, and here we're
19 weighing two different things. What you're going
20 to do in the weighing room is two things. First
21 you are to individually consider evidence of
22 mitigation. Individually each one of you, you are
23 to decide what mitigating circumstances exist in
24 the case. These circumstances do not have to be
25 proven beyond a reasonable doubt. They do not

1 have to be decided upon by your group in a
2 unanimous way. You can certainly discuss it, but
3 each one of you individually must decide what
4 mitigating circumstances exist.

5 Some mitigators are obvious. One of the
6 instructions list, I think, seven mitigators,
7 obviously that Glenford is a young man, the fact
8 that young people don't necessarily do things with
9 the, with the same deliberation and thinking
10 process that older people do. Another obvious
11 mitigator is Glenford's complete absence of a
12 prior criminal record. Now, that is clearly a
13 very important mitigating circumstance. You will
14 also consider evidence about his mental
15 intelligence. You will consider evidence about
16 his background, about the fact that he came here
17 from a different culture. You will consider his
18 family circumstances. You will consider the
19 evidence relating to the difficulties his family
20 had, the disintegration of his family, the death
21 of his stepfather. You will consider the
22 desperation that he experienced, the desperation
23 and inability to get a job that drove him to
24 selling drugs. All of this could be considered by
25 you. You are not limited to the list in the

1 instructions. In fact, we may have missed
2 mitigators. And you are entitled to look at that
3 and consider that and come up with your own
4 mitigators. The verdict form says any other
5 mitigators, anything you can think of. One juror
6 in one case put down as a mitigator the fact that
7 the client was represented by the public
8 defender's office. If you feel another lawyer
9 could have done a better job, put it down as a
10 mitigator.

11 Forgive me. I get dry mouth. That's why
12 I have to drink so much water.

13 You're still in the weighing room. Once
14 you individually decide what mitigators are
15 relevant, then while still in this weighing room
16 you must weigh the mitigating circumstances and
17 the aggravating circumstances. This again is an
18 individual process that each one of you
19 individually makes. And, by the way, I, I must
20 disagree with Ms. Pandukht when she suggest that
21 somehow finding that mitigating circumstance
22 outweighs the death of a human being is somehow
23 something that this, how could it ever happen.
24 We're not talking about that. The decision is
25 what to do in this case. And is it necessary to

1 kill another human being? And I will submit to
2 you that the nuclear bomb in that equation is
3 similar to the value of a human life. The taking
4 of human life in and of itself is of such
5 importance that that has to weigh enormously in
6 your proceeding. And I suggest to you that the
7 future taking of a human life must be considered
8 as more devastating and heavy and weighty than a
9 past taking of a human life, because ultimately
10 what we want to do is preserve life, not allow
11 life to be taken lightly.

12 While you're in this weighing room you
13 can discuss this stuff, but each person makes the
14 decision individually. And if one person says, I
15 have reviewed the evidence and, in my opinion, I
16 have come to the conclusion that the mitigating
17 circumstances outweigh the aggravating
18 circumstances, then you stay in this room. At
19 that point in time you will now sentence the
20 defendant, and death is off the table. And I want
21 to emphasize this. Each and every one of you has
22 the individual authority to do this. Each and
23 every one of you has the individual authority to
24 say, I have decided that mitigating circumstances
25 outweigh aggravating circumstances. And once one

1 person makes that decision, then you stop. You
2 stay in this room, and you sentence the client to
3 either life in prison or life with the possibility
4 of parole, life without the possibility of parole,
5 but death is off the table. Only in that
6 circumstance where each one of you individually
7 says, in my opinion, the aggravating evidence
8 outweighs the mitigating evidence, or to put it
9 another way, the mitigating evidence does not
10 outweigh the aggravating evidence, at that point
11 all of you have, all, if all of you have done that
12 process and made that decision, all of you go into
13 the final room. And in the final room, that is
14 where you simply decide what the appropriate
15 punishment is, and you can include all four
16 alternatives, life in prison with parole, life
17 without parole, the death penalty, and there is a
18 hundred years sentence with the possibility of
19 parole.

20 Now, this is a very complicated process.
21 It's onerous, but there is a theme that runs in
22 the process, and that is that life is precious.
23 And the theme is, you are never required to impose
24 the death penalty. And, in fact, there is a
25 presumption in the law essentially by the process

1 that you should not do that. Because there are so
2 many safeguards as you move through the system.
3 But if you get to the final room, you do have
4 death as an option. And in that circumstance you
5 still are not required to impose the death
6 penalty, but you certainly can if you find
7 yourselves in that final room.

8 Now, let's look briefly at the
9 aggravators and mitigators. It is very hard to
10 suggest that the first part of this process isn't
11 very much of a process. You've already convicted
12 Glenford of three counts of first degree murder in
13 this proceeding. So, I'm not going to spend a lot
14 of time there. Realistically, you would move on
15 to the second process, the second room, into the
16 weighing room. Once you get in the weighing room
17 there is substantial mitigation in this case. And
18 we discussed before, Mr. O'Brien is going to
19 discuss a little bit in a few minutes.

20 The law never tells you how much weight
21 you must give to one aggravator or to one
22 mitigator. It's simply an individual decision
23 that you have to make. I submit to you that the
24 weight of preserving life and preserving suffering
25 is the weightiest consideration that you will have

1 in these deliberations. And I submit to you that
2 the ending of suffering, the ending of killing is
3 so weighty that it allows you to conclude that the
4 mitigating circumstances do outweigh the
5 aggravator circumstances. If you find yourselves
6 in the third room with death as an option, you may
7 wonder, well, how do we know when death is the
8 right penalty? The law doesn't tell you that.
9 There is nothing in the Nevada Revised Statutes
10 that tells you when death is the appropriate
11 option. But I think I can help you figure this
12 puzzle out.

13 At the very beginning of this case during
14 jury selection we talked about several statements,
15 one of which was, thou shalt not kill. Another
16 statement was, the death penalty is appropriate in
17 some circumstances. Now, we didn't get into it in
18 great detail, but it could be argued that those
19 two statements are completely opposed to each
20 other. But they, they could be reconciled when we
21 also consider what someone said during jury
22 selection. And they said, a person has the right
23 to kill in self-defense. And that is where we
24 understand how the death penalty should
25 appropriately be used. If Glenford Budd is a

1 didn't really like to air any dirty laundry. And
2 so sometimes I would have to get information from
3 other people, like maybe his mom or friends of the
4 family, et cetera, et cetera.

5 So, we found out from Mrs. Budd or Karen,
6 which is his mom, is that her boyfriend,
7 Mr. Budd's father, was an alcoholic and verbally
8 and physically abusive to her when he was
9 intoxicated. So, at the age of four this should
10 be a parental separation. They separated. The
11 parents separated, and mother now moves to United
12 States. And Mr. Budd is raised by his maternal
13 grandmother, and his father lives across the
14 street. Now, the first question I have is, why
15 isn't the father raising the three kids? But
16 apparently the grandmother is really available,
17 and she's probably the matriarch of the family,
18 and she took care of things.

19 So, Glenn went to school, and he
20 completed the first grade in Belize. So, he went
21 on, and he seemed to adjust to school and was
22 probably like a C student. But what we're going
23 to find out a little later on is he had some
24 significant academic problems. Now, in middle of
25 childhood, he goes through age six to 11 without

1 much difficulties. He sees his father almost
2 daily. He talks to his mom a few times a month,
3 and everything is kind of fine. He bonds with his
4 maternal grandmother. He plays with his cousins,
5 and there is really nothing outstanding. It's
6 kind of an unremarkable childhood for the most
7 part with the exception of the parental
8 separation. He talks to his mom, but he's not
9 with his mother.

10 And so he eventually moves to the United
11 States in California. And what happens now, he's
12 separated from his father, and he's kind of
13 learning a new culture. He's kind of a small
14 young man or young boy, and he speaks broken
15 English. He's relatively shy, and he's trying to
16 get into a new culture and fit in. And he also
17 has a stepfather. He saw a few pictures of his
18 stepfather throughout the years. And he has a
19 brother, a half brother that he's introduced to
20 for the first time. So, for relatively seven
21 years he's not seen his mother.

22 So, what happens now is he's separated
23 from, actually should be two sisters, his extended
24 support system in Belize. And, interesting
25 enough, throughout the next numerous years he

1 rarely talks to his father, loves his dad, but his
2 dad's the one really not keeping in contact with
3 him. And, as you kind of find out later on, his
4 dad had some cocaine problems and eventually is
5 now in prison. So, but during the time there was,
6 you know, occasional talking, you know, but not
7 much, nothing you would expect for a father to be
8 involved with his son, even if you're far away.
9 So, he's adjusting to his life. He actually likes
10 his stepdad, Mr. Winston Miller. He's from
11 Jamaica, a decent guy, kind of loving, you know.
12 And as I think Glen said, you know, hey, he kind
13 of filled the hole, the gap, because I missed my
14 father. And he also saw that, for the most part,
15 I think Mr. Miller treated his wife pretty good.
16 So, that was relatively positive.

17 However, Mr. Miller didn't work. He sold
18 marijuana. So, that's what he was doing.
19 Sometimes he would sell clothes outside of his
20 car. Now, it was interesting when I was
21 interviewing Mrs. Gill, we're going to get to this
22 in a second. You know, I asked her. I said, you
23 know, well, you know, your husband went to prison,
24 you know, Glen's stepfather. I said, what did he
25 go to prison for, you know? And she was really

1 hesitant to tell me this information. You know,
2 it was kind of pooh pooh. And I guess even some
3 of the friends, a lot of the friends that knew the
4 family didn't know that he went to prison for
5 selling drugs. So, here we have this young boy
6 adjusting, and he starts sixth grade in a public
7 school in California, and he's getting kind of
8 like okay grades. Seventh grade comes along.
9 He's kind of struggling a little academically,
10 some Cs and Ds, not really any behavioral problems
11 at this time. And he's, for the most part
12 everything is fine, loves his family. He's happy
13 where he's at.

14 Now we come to the eighth grade. Now we
15 have difficulties here. Glen starts to exhibit
16 more educational problems. And at this point what
17 I think I want to do is, I want to fast-forward
18 and talk about his IQ, because this is kind of
19 important to understand his high school years.
20 So, if you can be patient with me, I'm going to
21 whiz through some of this. Here it is. Okay.

22 We gave an IQ test about, what, about 15
23 months ago. And now let me help you with what
24 this means. I had to compare him to 20 to 24
25 years 11 months, the standardized group in the

1 United States. VS IQ means verbal scale IQ. An
2 average IQ is 100. So, if you have like, let's
3 say, a 90 to a hundred and 10, that's more or less
4 average. If you're about a hundred and 10 to 119,
5 that's considered above average. And 120 to 129
6 is superior, and 130 is very superior. One thirty
7 and up is about two percent of the population.
8 Now, conversely, when we go the other way, you
9 know, if you have about a 90, 91, 92, I consider
10 that like average. Eighty to 89 is below average.
11 And 70 to 79 is what we call borderline
12 intelligence. And below, 69 and below is called
13 mental retardation at the second percentile.

14 Now, in Mr. Budd's case, he has a verbal
15 scale IQ of 84. So, when I line him up with a
16 hundred people from the group of 20, almost 25
17 years, 86 percent, 86 percent of those
18 individuals, young adults have better cut verbal
19 skills than Mr. Budd. And it gets a little worse.
20 When we talk about perceptualization skills,
21 visual, eye, hand coordination and things like
22 that, he falls down to the eight percentile. Now,
23 when we combine these two IQs, his full scale IQ
24 is an 80, which is at the ninth percentile. So,
25 what does that mean? That means he is of low

1 average intelligence. And if we sample him 95 out
2 of a hundred times, he would be anywhere from
3 borderline to low average.

4 Now, I also administered some, some
5 assessment in terms of achievement scores. And
6 his pronunciation abilities were in the low
7 average range of the 12th percentile, sixth grade
8 level. His spelling abilities are at the seventh
9 percentile compared to his standard IQ at the
10 fifth grade level. And math is severely impaired,
11 the second percentile, fourth grade level.

12 Now, I'm going to talk about, let me get
13 a little more stuff here. I also gave him a
14 memory test. Now, the memory test, I didn't list
15 everything here, but in the memory test his
16 short-term auditory memory was assessed as a 62,
17 at the first percentile. His visual short-term
18 memory was in the average range, hundred and three
19 of the 58th percentile. This guy had difficulty
20 processing auditory information in verbal form.
21 Now, that's just based on a few tests, but he had
22 some significant difficulties. And then his
23 long-term memory was severely impaired for his
24 auditory memory, once again the first percentile.
25 And his visual memory, long-term memory was

1 average. So, his verbal recognition memory, which
2 is much easier, I'll give you an example of verbal
3 recognition. If I say, who was the president of
4 the United States during the Civil War, that would
5 be, you have to recall that information. But if I
6 put it on a test and I said, well, it's either,
7 you know, George Washington, Franklin Delano
8 Roosevelt, or Abraham Lincoln. Then you see it
9 and go, oh, yeah. That's Lincoln. So, that's a
10 little easier. And he actually scored in the
11 average range with that, about the 37th
12 percentile. So, you know, I think that he has
13 difficulties kind of processing and kind of
14 retaining, but if he can get a little exposure,
15 he's doing much better. And his visual memory is
16 within the average range.

17 Now, I want to go back to some of his
18 achievement scores. And he was assessed in eighth
19 grade, and we don't, this is ninth grade. But he
20 was given the Iowa Test of Basic Skills in eighth
21 grade on April, 1997. And he was compared to
22 national percentile ranks. His vocabulary was
23 assessed at the eighth percentile compared to the
24 nation of eighth graders. His reading
25 comprehension was actually the low average range

1 of the 25th percentile, which wasn't bad. His
2 spelling was at the second percentile, which is
3 kind of interesting. So, this is a little higher.
4 But what that indicates is, when he's doing school
5 work, you know, he can't spell. So, when he's
6 trying to express himself in written form, he's
7 totally lost. And his ability to comprehend is
8 kind of in the below average range at best. So,
9 this is the guy, this is a kid who's going to
10 struggle academically.

11 And then a year later they give him the
12 Stanford Achievement Test in April, 1998, and he
13 was assessed in the severely impaired range for
14 reading, and he was a little higher for, for math,
15 language, and science, in the low average range.
16 So, here we have a kid who is now in eighth grade,
17 and what we have is, he's starting to have
18 academic problems. He's getting Ds. He's kind of
19 sometimes missing class. He's kind of tardy. And
20 now he's exhibiting some behavioral problems,
21 also, a little -- defiance with the teachers. He
22 occasionally, I think he stole, not a taco or
23 tamale or something like that. And he was in
24 trouble from that. And so he's starting to
25 struggle.

1 Now, let me go back to, it's not working.
2 There we go. Okay.

3 So, what happens in eighth grade, his
4 stepfather, kind man who sells drugs, he's sent to
5 prison for the second part of the eighth grade and
6 for part of the ninth grade, for approximately 13
7 months, and he's on his own. Well, not on his
8 own. He's living with his mother and his sister
9 and younger brother, and he's doing the best he
10 can. But mom's working more, trying to make ends
11 meet. So, the family is a little more stressed,
12 and he's not doing well in school at all. So,
13 this kind of continues. He has some mild
14 behavioral problems, and so now we're kind of
15 moving long. He goes to high school at Montebello
16 High School, and we were fortunate enough, you
17 think, Emily Reeder of the public defender's
18 officer, social worker interviewed the principal,
19 the vice principal. I think it was within the
20 last month. And he clearly remembered Mr. Budd.
21 And he said, you know, he was kind of, you know,
22 kind of some oppositional defiance, kind of tough
23 in some ways, no violence, no major, serious
24 problems but always kind of getting in some mild
25 trouble and not doing well in school at all. And

1 we can see with his IQ and his achievement scores
2 that he would struggle. And usually kids who are
3 not doing well in school are going to try to, in
4 feeling bad about it, kind of resist that and move
5 in different directions.

6 So, you know, eighth and part of ninth
7 grade his dad's in prison. His stepdad is in
8 prison. He's not in much contact with his
9 biological father. His family is kind of
10 struggling, but they're getting by. And he ends
11 up, in the sophomore year he ends up getting
12 expelled from school for behavioral problems, and
13 what happens next is a short time after that he
14 has a bunch of kids in his house. His mom gets
15 upset. And he's sent to his Uncle Budd's house in
16 Los Angeles for three months. So, if I'm getting
17 the sequence down, he gets expelled from school.
18 He goes to Veil, which is continuation school. He
19 gets in trouble, and then he's sent to his Uncle
20 Budd's house in LA. And he goes to Dorsey High
21 School for about approximately three months, does
22 okay there, does fairly well. He goes back to
23 Veil High School, which is a continuation program,
24 that he's there from like 8:30 in the morning
25 until about 12:30, and it's much easier. And then

1 he plays basketball. And so that's more or less
2 his life. And around this time in roughly his
3 sophomore year he begins to smoke marijuana.

4 Now, he continues that education to have
5 educational lack, but he's actually doing okay at
6 this continuation school. His grades are kind of
7 like Cs, an occasional B, but it's not that, you
8 know, it's not a pressing school. So, this is
9 where his life takes a turn for the worst. What
10 happens at his junior year, he continues at this
11 school, Veil. During his junior year he's
12 involved in a, well, he and his buddies are
13 helping these girls on the side of the road, and
14 this car hits them. His buddy gets his leg
15 broken, and Mr. Budd is unconscious, and he
16 recovers, and everything is kind of fine. But
17 that happens. And then at one point during his
18 junior year, early senior year, actually I think
19 it was in his senior year. He recognizes he's
20 credit deficient, because he had all Fs in high
21 school his first year. So, he's behind. And he
22 ends up at a friend's house. I think it was
23 Mrs. Gadeau's home if I'm not mistaken. And she
24 helps him, and his best friend's sister helps him
25 with homework, and he kind of gets it together for

1 a little while. But since he's credit deficient,
2 he ends up dropping out of school. And then, then
3 this is the most important thing that happens, is
4 at age 18 his stepfather dies in a motor vehicle
5 accident. I think a drunk driver hit him. And
6 this is the beginning of, I would say, the end of
7 the family. This is such a, a major blow. Mother
8 is severely depressed. Eventually she loses her
9 job.

10 Glen moves back home, helps out with his
11 younger brother, younger sister, helps him with
12 his homework, make sure he's fed. At times there
13 is not enough food. Collateral sources indicate
14 that the neighbors sometimes feed the younger
15 kids. The electricity is turned off. They have
16 extension cords hooked from one house to the next
17 to give them some light for a while. They're
18 falling behind in the rent payments, and things go
19 from bad to worse. Glen is still screwing around
20 a bit, smoking marijuana and, you know, trying to
21 hang with the girls and, but he's a little more
22 responsible towards the family needs, because mom
23 lost her job. She's just overwhelmed with
24 despair. And what happens next is, within several
25 months, in approximately January, 2002, now this

1 is roughly 16 months before the crime. And this
2 is how fast the family is destabilized. I think
3 the father, the stepfather died several months
4 before that, and the family tried to keep it
5 together for about five or six months.

6 What happens next is that the family has
7 to move. They get evicted from their
8 three-bedroom town home. So, they move into a
9 studio apartment. And there is Mrs. Gill and her
10 three kids -- because there is still one child in
11 Belize -- and then, I think, her sister and a few
12 more people. So, they have eight people in a
13 studio apartment. And this last about anywhere
14 from six to eight weeks, and they get evicted,
15 because they have too many people. And they moved
16 from a decent area where they had a nice group of
17 friends and you got really connected to their
18 families and did a lot with their families to now
19 somewhere in LA that was crime-ridden. And within
20 that first month he was there he was with, I
21 think, one of his aunts, and he was just on the
22 porch, and there was a drive-by, and he was shot
23 at. And he was not involved in any gangs at all.
24 So, a significant deterioration of losing his
25 friends, losing his social network, going to a

1 crime-ridden area. You're there for X amount of
2 weeks. And then you're kicked out. You're
3 evicted. So, now they go to another place,
4 another studio, another seven or eight people in
5 the place, and they last about another six to
6 eight weeks there until they're kicked out once
7 the landlord finds out. They got to move them
8 out.

9 So, now we're at approximately late
10 March, 2002. They're evicted again. The mother
11 takes the younger son to a relative's house, and
12 Mr. Budd, who's dropped out of school, attempts to
13 get a job, but he's an immigrant, applies at ma
14 and pa grocery stores, can't get anything going.
15 He's unemployed, still smoking marijuana a few
16 times a week, playing basketball, hanging with the
17 girls. He's with his sister, and he move into his
18 friend's house for maybe a few weeks, and then
19 that doesn't work out. And then he moves again.
20 Now we're kind of like in the summer of 2002. And
21 he moves in with a girlfriend of his and, and her
22 mother. And he moves in with her, but they're on
23 section eight housing, and they had recently got,
24 just got this place. So, they're kind of
25 impoverished themselves. So, it's kind of rough

1 going. He sees his siblings on the weekend. It
2 gives him a lot of happiness. He plays
3 basketball. He's not getting a job. He said he
4 can't find one. And so within, by November, 2002
5 he calls his Uncle Budd, who now lives in Las
6 Vegas, and he says, hey, can I move out there with
7 you? And he goes, okay. Fine, see what I can do
8 to help you out.

9 So, between January of '02 and November
10 of '02 and December of '02 Mr. Budd is moved six
11 times. So, we can say that he lost his structure,
12 his support system. Life, he doesn't have any
13 money. What does he do to get money? He sells
14 marijuana. He sells an ounce here, sells some
15 joints, little baggies, and he's kind of surviving
16 that way. So, now he moves to, let's see. He
17 moves to Vegas. He moves in with his uncle and
18 aunt. He gets along fairly well with his uncle.
19 I think his uncle had some criminal problems early
20 on, also. And he doesn't get along too well with
21 his aunt. I think his aunt feels it's kind of an
22 imposition to have him there. And he continues to
23 sell marijuana, playing basketball. Several
24 months later, in May, 2003 the crime occurs, and
25 that brings us up to date. And now he's

1 incarcerated.

2 So, now I want to go into what went wrong
3 with this young man. Well, in terms of strong,
4 caring, guiding father, his biological father had
5 alcohol problems in, early in Glen's childhood.
6 Domestic violence resulted in the separation.
7 Biological father had cocaine problems during
8 Glen's adolescence, and he's now in prison in
9 Belize. Stepfather, decent man, sold drugs.
10 Okay. At age 18 Glen's stepfather dies, and the
11 family kind of deteriorates from that point on
12 and, you know, there is a parental loss there,
13 too. Let's move on.

14 Now, the mother, I want to kind of
15 explain when it says mother inattentive, because
16 based on, you know, when I talked to some of the
17 collateral sources of people who know Mrs. Gill,
18 they say, look. She's a nice lady. All right?
19 But you have to kind of understand it from a
20 perspective where she comes to this culture.
21 She's doing the best she can. She's a nurse's
22 assistant. Other times she has other different
23 kinds of jobs. After her husband dies she's
24 working two, three jobs trying to keep things
25 together, and they're impoverished. And so, but,

1 you know, consistently, you know, when things are
2 kind of going good, one of the collateral sources
3 said that she was more focused on giving the kids
4 material items as opposed to kind of the nurturing
5 stuff. Low supervision, permissive with alcohol
6 and education, that came from a collateral source
7 who likes Mrs. Gill but said, you know, the kid,
8 he's like 15 or 16, and they're at a family party,
9 and she's allowing him to have beer, and she goes,
10 well, what can you do? She should have been much
11 more firmer with him.

12 Significantly, she was depressed and
13 stressed after the second husband's death, which
14 is reasonable. One could expect that to occur.
15 And we're talking about significant stressors in a
16 short period of time. You know, the death of a
17 husband, of the economics, of the family
18 deteriorating, we're talking about now you're
19 impoverished. You lost your job. You're being
20 bounced back and forth from place to place,
21 probably feeling overwhelmed. And the same
22 pressure was on Glen, the same pressure of trying
23 to help his siblings, trying to make it work,
24 being a young man with a low IQ, not having many
25 possibilities, not having any mentoring to kind of

1 put him in the right direction. Once again
2 criminally responsible. Okay. But these are
3 factors that kind of were shaping him, you know,
4 the pressure that he's experiencing.

5 Stable parental marriage, well, this is
6 not, this should be separation. Parents separated
7 age four. At times his stepfather was in prison,
8 the stepfather's death. One parent always in a
9 different country from Glen. You know, from the
10 age of four until 11 he was with his dad, and then
11 from the age of 11 on he was not with his dad. He
12 was with his mom. So, there was always a
13 separation going on there. Stable secure home,
14 well, this kind of a redundant, we're getting
15 redundant from the other thing, but basically, you
16 know, raised in childhood by parental grandmother,
17 severe financial problems when stepfather dies,
18 multiple moves, the six moves during his 18th
19 year, not a lot of stability for this young man.
20 Consistent discipline and limits, basically, you
21 know, I think the collateral interview said the
22 mother was permissive and not structuring the
23 children, loved the children, decent mom but, you
24 know, somewhat permissive.

25 Academic success, we talked about his low

1 IQ, and kind of the parental involvement for
2 academics was low but, you know, let's once again
3 keep this in context. We have a family moving
4 here from a different country, you know, the kind
5 of stress to make things work. They're doing the
6 best they can. But one of the interesting things
7 we're going to come up to is one of the mother's
8 of Glen's best friend, when she was taking care of
9 him during that, I think his junior or senior
10 year, she had him do his homework, and he was very
11 respectful, and he was actually kind of doing well
12 for a little while. He was kind of in a different
13 environment, you know. There was probably a lot
14 of family stress. Accepted by peers, for the most
15 part, you know, yes. He was doing fairly well.
16 He had decent peers. He wasn't involved in, he
17 was involved in soccer as child in Belize. He
18 played some organized baseball for a little while,
19 basketball for a little while. Drugs and alcohol
20 abuse discouraged, prohibited, not really.
21 Biological father, alcohol and cocaine problem,
22 stepfather sold marijuana, mother permissive to
23 allow alcohol usage. Family had drug involvement
24 legal problems.

25 So, what's being modeled for this young

1 man? Well, it's not, it's not more or less that,
2 you know, you shouldn't be doing these kind of
3 things. You know, stepdad helps the family by
4 selling marijuana. Biological father is in
5 prison. So, positive socialization and mentoring
6 in late adolescence, stepfather is a decent guy.
7 I'm sure the father is a decent guy. But in terms
8 of being role models, some good, some not so good.
9 He didn't have anybody there at the age of 18.
10 You would think that maybe perhaps the biological
11 father would have stepped up a little and got more
12 involved to try to help this young man. He lost
13 his whole neighborhood once the stepfather died
14 and they had to move. And that was a big support
15 system for the two mothers of his best friends.
16 So, that's what went wrong with this young man.

17 Now, what I want to talk about next is,
18 remember this visual aid we had? And this is
19 Glen. And the base here where we had, you know,
20 kind of a no psychological disorders for the
21 family and no substance abuse problems, we have a
22 lot of different things going on, a lot of
23 different mitigations we covered. I'm just going
24 to kind of go over it again. Father's alcoholism,
25 stepfather sells drugs, stepfather and biological

1 father go to prison. Immigration, not able to
2 work. Well, you know, there is a lot of people
3 that work even if they don't have social security
4 cards. That's the reality. So, stepfather's
5 death result in extreme family instability, lack
6 of guidance, nuturing at that point, family
7 struggles financially, multiple moves that we
8 talked about.

9 So, what happens? Positive peer
10 relationships, well, he lost those when he moved.
11 Okay? Modeling of positive values, that was kind
12 of lost also at the age of 18 when the stepfather
13 died and the family struggled. Consistency,
14 structure, and stability decreased significantly.
15 He's not really getting this anymore. He's kind
16 of on his own. He has never really had an intact
17 family. And so then there is a higher chance of
18 drug dependency and criminal history. I'll give
19 the psychological disorder. So, these two are
20 supposed to be hightlighted here. So, the
21 stressors of this kid's life, all right, increased
22 and then the lack of resiliency factors and the
23 increase of the risk factors result in a higher
24 propensity of drug dependency and criminal
25 history. And that's what happens. This is what

1 happens here. Now, let me see if I'm, okay.

2 Continued mitigation, we talked about his
3 life. Now I want to add on some things. His
4 juvenile history indicates mild to moderate acting
5 out as juvenile. No gang involvement, which is
6 positive. One significant juvenile arrest, which
7 is verbal abuse of an officer. He completed six
8 months juvenile probation, no evidence of juvenile
9 antisocial behavior as revealed by numerous
10 collateral sources, and no prior adult violent
11 history. He did sell marijuana, and he engaged in
12 some minor petit thievery in the eighth and ninth
13 grade. And when we compare him, I don't think
14 he's a sociopath. And I say that for several
15 reasons. A sociopath is an individual who has a
16 history of instrumental violence and lacks a
17 conscience. I mean, he just doesn't care about
18 anything, ever. And, and when we compare him to,
19 when we did the -- Checklist, revised second
20 edition, this is on 20 realms, and you can get as
21 much as 40 points. So, each realm gives you two
22 points. And if you get a score of like 30 and up,
23 you know, that indicates that you really have some
24 severe problems, and you have sociopathic
25 personality traits or behaviors. He scores about

1 a 9.5, which is not necessarily, it's not a high
2 score at all. Now, I base that on not only my
3 clinical interviews but the collateral interviews,
4 talking to other people, which you're going to see
5 next, but people who knew this kid throughout his
6 formative years and early adult years. So, based
7 on that, you know, I don't see him as being a
8 sociopath.

9 Now, let's talk about cognitive
10 immaturity. There is a brief filed with the
11 supreme court, Roper versus Simons in 2005
12 pertaining to the juvenile death penalty. And
13 because of that brief, what they did is, they
14 outlawed juvenile death penalty. And the reason
15 why they did it is because they had all these CAT
16 scans and MRIs of these adolescents and young
17 adults, and they figured out -- they already kind
18 of knew this, but now this kind of gave them
19 proof -- that when you're, you know, as you
20 develop, as, if you have kids, you can understand
21 this. When your kids are 15, 16, 17 years old,
22 there's more defiance, more acting out, poor
23 judgment. And then all of a sudden they hit
24 their, maybe early, mid 20s. They mature a little
25 more, and they're much more reasonable. Well,

1 it's because what they found out, that in the
2 central part of the brain is over stimulated when
3 it comes to impulsiveness and, and issues like
4 that. And in your frontal lobes, which is the
5 executor, where you kind of do cost/benefit ratio,
6 should I do this? What are the long-term effects
7 of this? It's under developed. It continues to
8 develop in the late teen years and early 20s. And
9 that kind make sense. That's kind of why if, you
10 have, if you're like a young man and you 20 years
11 old and you're trying to get car insurance and
12 your rates are really high, because they kind of
13 know statistically that when you're hitting about
14 25 years old, you're settling down. Okay? So,
15 and that's part of because of how a young adult or
16 an adolescent processes information. They're not
17 hard wired as, I would say, I am as a 44-year-old
18 or somebody in their 30s. So, adolescents tend to
19 be less mature, more impulsive, less capable of
20 controlling their conduct and thinking in terms of
21 long-range consequences. Adolescents --
22 development which learns character and moral
23 judgment are incomplete and still undergoing
24 formation.

25 Now, this individual is almost 23 years

1 old. And the crime occurred probably when he was
2 a little over 20 years/four months. So, he's not
3 an adolescent. We all know that. But he's a
4 young adult. And that kind of still fits. And I
5 thought that was information that was important to
6 give. We already talked about the cognitive
7 immaturity in terms of his low IQ. So, if you
8 have a low IQ, how are you processing? How are you
9 thinking? Well, you can only process the best
10 that you can based on your cognitive ability.
11 Now, we already went through the test here. Let's
12 see what else we have. Okay.

13 Skipper versus South Carolina, another
14 supreme court decision, ruled that evidence of
15 adjustment in prison, jail goes to the character
16 of the defendant, character is highly relevant to
17 the jury sentencing determination. So, what did I
18 do? I reviewed the Clark County Detention Center
19 records for the last two and a half years. And
20 what we found out is he has no violent instances,
21 no attempted escapes, and no serious infractions.
22 What does he have? One time he had a magazine in
23 his cell. I think he got a day for that of
24 isolation, whatever. Another time his cell wasn't
25 cleaned. Another time he was banging on the door

1 to try to attract the girls. That was it. No
2 fights, no attempted escapes, no serious
3 infractions. Let's see what else we have here.

4 What I would like to do briefly is go
5 through some of the people I interviewed. I'm not
6 going to go through the mother. This is his
7 sister, and some things I highlighted here, just
8 to, so you can kind of understand where I kind of
9 was coming from. Ms. Angela Budd, his sister,
10 described her brother as a calm individual, gets
11 along well with others, no domestic violence. You
12 know, for the most part she has a positive
13 relationship. His ex-girlfriend of two years,
14 Ms. Kim Hensley, no evidence of anger control
15 problems or history of aggression, always treated
16 her well, described him as a sweet individual.
17 Patricia Byrd, this lady is about 23 years old.
18 Her brother is best friends with Mr. Budd. She
19 tutored him in high school, and she acknowledge
20 that Mr. Budd felt embarrassed because of his
21 academic deficits, and he couldn't understand
22 educational concepts. She also stated he has no
23 history of violence or gang involvement,
24 associated with a good group of people.
25 Mr. Budd's family was nice, and the family was

1 severely affected by Mr. Winston Miller's death.
2 Mr. Budd was described as very quiet and shy.
3 Ms. Sonya Dudley, Mr. Budd's best friend, Eddie
4 Byrd's mother, Ms. Dudley knew the family very
5 well. She had a close relationship with Ms. Karen
6 Gill. Mrs. Gill loved her children, yet provided
7 poor supervision. Mr. Budd was always respectful,
8 always enjoyed the Dudleys' family outings, called
9 her auntie, always affectionate and respectful in
10 the home. He was never violent. Ms. Dudley
11 confirmed the family's deterioration after
12 Mr. Winston's tragic death, described Mr. Budd as
13 a very good kid who did well when supervised.
14 Ms. Louise Dedo, she also knew the family for
15 about eight years. These are the people in his
16 life until the stepfather died and they had to
17 move. Verified parental arguments between
18 Mrs. Gill and Mr. Winston. Mr. Budd live with
19 Ms. Dedo for three or four months during high
20 school, secondary problems between Mr. Budd and
21 his mom. Mr. Budd got along exceptionally well
22 with her family, obeyed family rules, and had no
23 problems. She had no problems with him. She
24 described him as quiet, well-mannered, respectful.
25 And when Mr. Budd lived at her home, she expressed

1 the importance of education, and he completed all
2 his homework and was attentive to school needs.
3 She continues and says that, you know, there was a
4 severe emotional impact on the family after
5 Mr. Miller's death, that, for example, Mrs. Gill
6 was emotionally overwhelmed, worked excessively,
7 and kids were unattended. Tremendous amount of
8 responsibility fell on Glen's shoulder to take
9 care of his younger brother. Mr. Budd made meals
10 for his brother, watched him, and helped him with
11 his homework. Common for the Budd children to be
12 hungry. Other people in the neighborhood fed
13 them. Mrs. Gill was much more absent in the
14 children's life. The children were unsupervised
15 sometimes even at 1:00 o'clock in the morning.
16 Utilities were turned off on several occasions.
17 And Mr. Budd's academics declined once his
18 stepfather died. I think actually that might be
19 wrong, because I think he had dropped out of
20 school right before his stepfather's death.

21 Ms. Glass, this is the 18-year-old
22 daughter of Ms. Dedo, more or less said,
23 confirming once again that, you know, he had a lot
24 of responsibility when his stepfather died, no
25 violence, decent guy. Mr. Eddie Byrd, this is his

1 buddy. I don't know if he came here today. If he
2 did, I'm just going to whiz through this really
3 quickly. Mr. Byrd reported Mr. Budd's family were
4 permissive pertaining to academics. Mr. Budd
5 suffered from low self-esteem, was ashamed
6 pertaining to academics, confirmed the family's
7 disintegration after Mr. Miller's death.

8 Let's go on to the next one. Vernon
9 Glass, is he here today?

10 BY MR. O'BRIEN:

11 Q. No.

12 A. No? Okay. Another close friend, these
13 three guys were in the accident together, was
14 complementary of Mr. Budd's mother and stepfather,
15 confirmed the family's disintegration after
16 stepfather's death. Now Mr. Budd was severely
17 affected by Mr. Miller's death. After the family
18 was evicted he saw less and less of Mr. Budd.
19 These guys were friends for several years.
20 Confirmed Mr. Budd had a tremendous amount of
21 responsibility toward siblings. Mr. Budd was not
22 involved in gangs, carried weapons, or display of
23 violence. Mr. Glass confirmed that Mr. Budd was
24 of small stature, sometimes picked on, rarely
25 defend himself. When Mr. Budd was 16 years of

1 age, he was playing basketball with his siblings,
2 was intimidated by gang members. Mr. Budd carried
3 a small bat briefly to defend himself and his
4 siblings and never looked for trouble. And that
5 doesn't mean he wasn't wrong with this thing, but
6 just kind of shows some of the patterns and his
7 history.

8 So, basically I conducted approximately
9 11 collateral interviews. Emily Reeder conducted
10 approximately 10. So, there's 21 total. As
11 stated, I think the vice principal of Montebello
12 High School is, you know, say he wasn't in school
13 a lot, and he was kind of a opposition defiant
14 kid. He was getting in some trouble but nothing
15 violent tendencies, nothing serious. So, let's
16 see where we're at here. Okay. We're going to
17 move away from that.

18 So, what I would like to do is move back
19 once again just quickly. This is the mitigation.
20 Okay? You have a lot of things that went wrong in
21 this guy's life between this, the fact that he has
22 positive adjustment while incarcerated, low IQ,
23 the numerous collaterals that indicate that he was
24 actually a decent kid before all these things
25 happened. I think the most important thing I want

1 to stress is, is the stress, all of the
2 culmination of the poverty, the, the, all the
3 family deteriorating that increased the potential
4 for something to go wrong in this young man's
5 life. No skills, low IQ, decent kid for the most
6 part, really no history of violence before this.
7 Kind of minimal. All right? So, we don't have a
8 long history of somebody who's violently
9 re-offending, and that's, I guess, my presentation
10 for right now.

11 MR. O'BRIEN: Thank you, doctor.

12 Pass the witness, judge.

13 THE COURT: Mr. Kane?

14
15 CROSS-EXAMINATION

16 BY MR. KANE:

17 Q. The IQ number of 80 that you gave us,
18 that's not really a hard number, is it, doctor?

19 A. If we assess this guy a hundred times, if
20 we have a psychologist, different psychologists
21 assess this guy, he will come up with this IQ.
22 Let me give you the range. I want to, this way I
23 don't mislead you.

24 Q. That, you've anticipated my question.
25 What you're really saying by that 80 is there is a

1 margin of error for either side? And that is --

2 A. Yes, sir.

3 Q. -- 30 of your report.

4 A. Yeah. I'm going to actually, I'm taking
5 the test out, because we have ranges at the 95th
6 percentile, the 95th confidence international
7 okay. His full scale IQ is 80 at the ninth
8 percentile. So, if we test him 95 out of a
9 hundred times, he's going to range between 76,
10 borderline IQ, and 84, still low average. So, any
11 psychologist you're going to get here, if the guy
12 knows how to administer the test, which I'm sure
13 they do, he's going to be falling in that range,
14 borderline to low average. And I'm not going to
15 emphasize borderline as much as I'm going to
16 emphasize low average, roughly at the 90th
17 percentile. So, when you compare him to a hundred
18 people, 91 operate a little better than he does.

19 Q. Now, I want to be clear about what's not
20 in your report.

21 Glenford Budd is not mentally retarded,
22 correct?

23 A. He is not mentally retarded.

24 Q. He is not mentally ill, correct?

25 A. He is not mentally ill.

1 Q. On the spectrum of intelligence, he fits
2 into the below average range?

3 A. Correct.

4 Q. You described things that Mr. Budd told
5 you about his marijuana dealing, selling a bag
6 here and there to friends and things like that.
7 Do you remember that?

8 A. Correct.

9 Q. Actually it was more than that, wasn't
10 it, doctor?

11 A. In the spring of 2003 before his arrest,
12 he told me that on one occasion he went to
13 California and purchased four pounds of marijuana,
14 and on a second occasion he purchased, I think,
15 two pounds of marijuana. So, it escalated when he
16 was in Vegas here.

17 Q. Well, in fact, Mr. Budd never had a job,
18 and the only way he had ever earned money was from
19 selling marijuana, isn't it?

20 A. That is true.

21 Q. And, in fact, you state on page 14 of
22 your report, Mr. Budd had never been gainfully
23 employed. Mr. Budd sold marijuana from the age of
24 17 until his incarceration in May of 2003?

25 A. That would make sense to me.

1 Q. And he was dependent on those sales of
2 marijuana for the money that he used to live,
3 correct?

4 A. I would think that would be a correct
5 assumption.

6 Q. As far as what he or what anyone else
7 told you, he had no other source of income?

8 A. Correct.

9 Q. Based on that, did you form a hypothesis
10 as to why Glen Ford Budd killed the three people
11 that he killed?

12 A. Well, my hypothesis, and I'm just, and
13 I'm just thinking about this. I mean, you think
14 about all of the stress factors that occurred and
15 how this kid's life deteriorated. And if he's
16 selling marijuana, my hypothesis would be that,
17 hypothetically if it was ripped off, that would be
18 more or less his life line in terms of income and,
19 and he might engage in poor decision-making.

20 Q. And, in fact, you stated in your report,
21 it is this author's hypothesis that, I'm
22 reading from page 18 towards the bottom of the
23 page. It is this author's hypothesis that since
24 Glenford was living day to day in an economic
25 sense for years, if he felt these individuals

1 ripped him off of his marijuana, parentheses, and
2 profits, closed parentheses, he possibly responded
3 out of desperation.

4 Did I read that correctly?

5 A. Yes. Yes.

6 Q. And desperation would be desperation over
7 losing his profits?

8 A. I guess you can interpret it that way,
9 desperation in terms of, for him, his situation,
10 which would not, obviously it's a very poor
11 decision. He took the lives of three young men.
12 But the stressors and everything else, they likely
13 culminated in him making obviously a horrendous
14 decision.

15 Q. In addition to being a poor decision and
16 a horrendous decision, in the terms of your
17 hypothesis, doctor, it was just a straightforward
18 business decision, wasn't it?

19 A. Well, I wouldn't, that's hard for me to
20 say.

21 Q. These people were damaging his profits,
22 correct?

23 A. I hear what you're saying.

24 Q. He reacted to that, correct?

25 A. I would say to you that it's multifaceted

1 in regards to his stress level which, once again,
2 does not, you know, condone his behavior, but the
3 fact that, you know, the family had deteriorated
4 so much and that he didn't have any guides in his
5 life in terms of male role models in helping him
6 deal with this part of his life or he has no skill
7 level, low IQ and he gets to the point where he
8 makes a horrible decision, so it just, I think
9 it's a multifaceted situation where he felt a lot
10 of pressure.

11 Q. Doctor, I'll accept, and I won't argue
12 with you. All of the decisions that we make in
13 our life are the product of multiple factors,
14 correct?

15 A. Correct.

16 Q. And a lot of them we aren't even aware
17 of, correct?

18 A. Yeah. You're right.

19 Q. I may think I know why I became a lawyer,
20 and I might have become a lawyer for seven reasons
21 that I'm not even aware of buried somewhere back
22 in my subconscious, correct?

23 A. Could be.

24 Q. But we all have free will, correct?

25 A. Yes.

1 Q. And we all make decisions?

2 A. Right.

3 Q. And your hypothesis was that the motive
4 for this specific action, the death of these three
5 guys, was the economic motive that they were
6 interfering with the profits from Mr. Budd's drug
7 deal?

8 A. Now, that would be, yeah, one explanation
9 with a lot of different variables. Now, however,
10 let me just add something.

11 Q. Doctor, that's all I asked.

12 A. Okay.

13 MR. KANE: Thanks.

14

15 REDIRECT EXAMINATION

16 BY MR. O'BRIEN:

17 Q. Brief, judge.

18 Now, Dr. Paglini, you interviewed many
19 people. Of course, you talked to Glenford. Tell
20 me about this indicia of all these drug profits.
21 Did he have a car?

22 A. No.

23 Q. Did he have an expensive collection of
24 jewelry?

25 A. This is a kid who's living day to day.

1 That's my understanding. He was living in someone
2 else's home, you know. He was separated from his
3 family, and he didn't feel, I think, too welcomed
4 in the home, and he was living day to day and kind
5 of, interesting enough, modeling his stepfather,
6 you know, in terms of trying to survive in that
7 realm of selling marijuana.

8 Q. Did you receive any information that
9 Mr. Budd was earning a considerable or even a
10 moderate amount of money from any drug enterprise?

11 A. Well, I, I wouldn't call it a drug
12 enterprise. I would say it was probably pretty
13 small, but he was using it to survive, yeah.

14 Q. And, in fact, he often had periods of no
15 food?

16 A. That seemed to be more relevant, I think,
17 beforehand that he would, you know, rely on the
18 good graces, after his stepfather died, of
19 neighbors and other people and girlfriends and
20 things like that.

21 Q. But you didn't notice any marked increase
22 in his economic standing, did you?

23 A. Not, not that I'm aware of, sir.

24 MR. O'BRIEN: Thank you. Nothing
25 further.

1 THE COURT: Mr. Kane?

2 MR. KANE: No, your Honor.

3 THE COURT: Doctor, thank you. You may
4 step down.

5 THE WITNESS: Thank you.

6 THE COURT: Who's next, Mr. O'Brien,
7 Mr. Brooks?

8 MR. O'BRIEN: Court's indulgence, please.

9 THE COURT: Of course.

10 MR. O'BRIEN: Defense will rest, your
11 Honor.

12 THE COURT: Mr. Kane, Ms. Pandukht?

13 MR. KANE: No rebuttal.

14 THE COURT: Ladies and gentlemen, I think
15 we'll take our afternoon recess. We'll take about
16 15 minutes.

17 During the recess I must remind you, it
18 remains your duty not to discuss this case among
19 yourselves or with anyone else. Don't read,
20 watch, listen to a report of or commentary on
21 anything which might be associated with this
22 matter. Don't form or express an opinion in any
23 of these issues until it has been fully and
24 finally submitted to you under instruction of law
25 by me.

1 We'll see you in about 15 minutes.

2 (Thereupon, the jury exited the courtroom.)

3 THE COURT: At this point it would
4 certainly be my plan to instruct and allow you to
5 close after the break.

6 Are you all prepared to do that?

7 MR. KANE: Yes, your Honor.

8 MR. O'BRIEN: Yes.

9 MR. BROOKS: Judge, just for the record,
10 I think this is clear, but both defense attorneys
11 are allowed to argue. I'll be arguing first, then
12 Mr. O'Brien.

13 THE COURT: Mr. Kane, no objection to
14 that?

15 MR. KANE: No, judge.

16 THE COURT: Very well. Take about 15
17 minutes or however long you need to get set up.
18 Mr. Kane?

19 MR. KANE: Yes, your Honor. Before we
20 break I don't think there is any formal
21 requirement that, as there is at trial that the
22 Court advise the defendant of his right to
23 testify, but I think it should be made clear on
24 the record that the defendant has been informed
25 that he has the right to address this penalty jury

1 either under oath or by an unsworn statement.

2 THE COURT: Mr. Brooks, Mr. O'Brien, have
3 you explained to Mr. Budd the opportunity that he
4 would have to essentially talk to this jury?

5 MR. O'BRIEN: Yes, your Honor.

6 THE COURT: Mr. Budd, are you comfortable
7 that your attorneys have explained to you the
8 right that you have to talk to this jury?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: You know you can, this is a
11 wholly different legal proceeding than the guilt
12 phase? You understand that, correct?

13 THE DEFENDANT: Yes.

14 THE COURT: And you don't even have to be
15 sworn in this part of the proceeding if you want
16 to talk to the jury. There are some minor
17 limitations on what you could say to the jury but,
18 indeed, they're minor.

19 Is it your decision that you wish not to
20 talk to this jury?

21 THE DEFENDANT: Yes, ma'am.

22 MR. KANE: And I just ask that it be
23 clear on the record that the defendant is doing
24 this knowing that if he were to make an unsworn
25 statement in allocution, that he would not be

1 subject to cross-examination.

2 THE COURT: Yeah.

3 MR. O'BRIEN: May I interject, your
4 Honor?

5 THE COURT: Yes.

6 MR. O'BRIEN: Judge, I've advised
7 Mr. Budd of his right to make an unsworn
8 statement. I've advised him that if he chose
9 to --

10 THE COURT: To be free of
11 cross-examination?

12 MR. O'BRIEN: I told him if, if he
13 elected to exercise that right, he would not be
14 cross-examined by the district attorney, provided
15 he stayed within certain parameters. I also
16 discussed with him the ability to do sworn
17 testimony.

18 MR. KANE: Judge, I don't want to
19 nitpick, but I just, I want a clear record the
20 parameters that would apply to any statement the
21 defendant might make to the jury on, under my
22 understanding, would apply both to sworn or
23 unsworn statement. That is the limitations of
24 what he could say to a jury would be expressions
25 of remorse and pleads for leniency, without

1 denials of guilt. If he gave an unsworn statement
2 in allocution, if he departed from that, I get to
3 object to that and ask the Court not to let him
4 continue and have the jury disregard it. But
5 under no circumstances, no matter what he said in
6 an unsworn declaration, would I have the
7 opportunities to cross-examine him. And I want to
8 make sure he understands.

9 THE COURT: That's why I use the term,
10 Mr. Budd, you have the right to talk to the jury,
11 because really that's what it is at this point.
12 My concern, frankly, at this stage of the
13 proceeding is whether or not both defense counsel
14 are comfortable that Mr. Budd understands what I
15 think is a unique opportunity in criminal law he
16 has at this point to ask for leniency, ask that
17 his life be spared.

18 MR. O'BRIEN: Judge, I will inform this
19 Court I have spent considerable time discussing
20 this very issue with Mr. Budd.

21 THE COURT: Counsel, will you approach?

22 (Conference at the bench.)

23 THE COURT: We're going, to Mr. Kane,
24 Ms. Pandukht, I'm going to ask for something that
25 is a bit unusual in that I want to speak to the

1 defendant in the presence of his counsel but
2 without, without the presence of the State. I
3 will make a record of it.

4 Let me stop there and ask whether or not
5 you have objection to me doing so.

6 MR. KANE: Judge, given the importance of
7 this issue, as long as there will be a record made
8 of it in case of any appeal problems, no, I do
9 not.

10 THE COURT: Thank you. I'm going to do
11 that now. I would ask, then, that Ms. Pandukht
12 and Mr. Kane please, and actually this side of the
13 room leave the courtroom, please.

14 MR. KANE: If we're going to do that,
15 judge, can we just clear the room?

16 THE COURT: Clear the room is fine, yes.
17 I think that's appropriate.
18 (Thereupon, the jurors, the State, and the
19 audience exited the courtroom.)

20 THE COURT: Mr. Budd, I want to talk to
21 you from a different position. It is likely hard
22 that you can separate me sitting next to you from
23 the person that's been sitting up here throughout
24 the course or your incarceration and throughout
25 the course of this trial. I am deeply concerned

1 about you not talking to this jury. I, I
2 understand, because your attorneys have told me
3 your feelings about not wanting to testify. They
4 have told me what your attitude and what your
5 belief is about what actually happened on the date
6 in question. But you don't have to talk that in,
7 at this stage of the game. All you have to do is
8 to talk to this jury about how you feel about the
9 loss of your friends, how you feel about the loss
10 that their family feels, how you feel about the
11 loss that you potentially face from your family if
12 you're put to death. Obviously you will never see
13 your mother, grandmother, nieces, nephews,
14 brothers, sisters. You don't have to talk about
15 what happened on that day.

16 Do you feel badly about those three young
17 men?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Do you feel badly about what
20 their family went through?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Do you feel badly about what
23 your family is going through?

24 THE DEFENDANT: Yeah.

25 THE COURT: I think it is important that

1 you tell, if nothing else, that you tell that to
2 the jury. I am deeply concerned about the
3 decision that this jury would make without you
4 getting up there and talking to them. I know how
5 frightening, how terrifying it must be but, and I
6 will leave it, of course, to counsel to guide you.
7 But it is my personal and professional opinion
8 that you should speak to this jury.

9 Do you have any questions for me?

10 THE DEFENDANT: No.

11 MR. O'BRIEN: She's telling you this,
12 because of everything I've been telling you. This
13 could make a difference. We just want you to say
14 what's on your heart. We don't want you to lie.
15 We just want you to tell the truth.

16 THE COURT: Is there any question in your
17 mind that what everybody went through, your
18 family, their family, is a horrible thing to go
19 through?

20 THE DEFENDANT: I'm going to do it.

21 THE COURT: He's going to do it.

22 MR. O'BRIEN: You're sorry for what their
23 family is going through, and you're sorry for what
24 your family is going through. That's just the
25 truth, Glen. That's how you feel; is that true?

1 THE DEFENDANT: Yeah.

2 MR. O'BRIEN: Now, as far as your plans
3 for the future, you want to still be able to be a
4 son, right, and a brother and an uncle? Don't you
5 still want to talk to Eddie Byrd and Vernon? If
6 you do, just say it from your heart, doesn't have
7 to be fancy.

8 Do you want to write down some notes? Do
9 you know what you're going to say?

10 THE DEFENDANT: (No audible response.)

11 (Recess taken.)

12 THE COURT: Let's go back on the record
13 in the matter of State versus Budd. I think that
14 we're to the place now where we can order the
15 instructions; is that correct?

16 MR. KANE: Yes, judge.

17 THE COURT: Very well. As I remember,
18 the only instruction that was to be modified had
19 to do with the one that talks about murder in the
20 first degree being, may be mitigated by any of the
21 following circumstances, and there was a one
22 through seven that the defense wanted to modify;
23 is that correct?

24 MR. KANE: Well, the next instruction
25 right after that, the defense wanted a couple of

1 words added and give effect, and I added those and
2 gave you the substituted case, judge.

3 THE COURT: Do you know whether or not it
4 was put into this packet? Let me see.

5 MR. KANE: I did. In fact, I put it in
6 personally.

7 THE COURT: Because you saw that on the
8 top.

9 MR. KANE: Right. And I left that on in
10 the front just because it had your writing on it.

11 THE COURT: Excellent. Okay.
12 Mr. Brooks, Mr. O'Brien, have you seen the revised
13 instructions?

14 MR. BROOKS: Judge, we have. And with
15 the understanding that our prior objection, which
16 was ruled upon by the Court, is preserved, the set
17 of instructions we now have is, as far as we know
18 is a correct statement of law.

19 THE COURT: Let's quickly go through them
20 and see if we have a complete agreed-upon set.
21 The first one, it is now my duty as judge...
22 Number two, if in these instructions any rule,
23 direction, or idea is repeated... Number three,
24 the trial jury shall fix the punishment for every
25 person convicted of murder of the first degree.

1 Number four, the jury shall fix... Number five,
2 life in prison without the possibility of parole
3 means exactly what it says, that the defendant
4 shall not be eligible for parole... Number six,
5 in the penalty hearing evidence may be presented
6 concerning... Number seven, in order to even
7 consider the death penalty as an option for
8 sentencing... Number eight, the law does not
9 require the jury to impose the death penalty...
10 Number nine, the full-page instruction, in
11 deciding on an appropriate sentence for the
12 defendant, you will consider three types of
13 evidence, evidence relevant to the existence of
14 aggravating circumstances, evidence relevant to
15 the existence of mitigating circumstances, and
16 other evidence presented against the defendant.
17 You must consider each type of evidence for its
18 appropriate purpose.... Number 10, you are
19 instructed that the following factor is the only
20 circumstance alleged in this case... Number 11,
21 murder of the first degree may be mitigated by any
22 of the following circumstances -- we're going to
23 read this in its entirety, because this is the one
24 that was the subject of the original objection.
25 Murder of the first degree may be mitigated by any

1 of the following circumstances, even though the
2 mitigating circumstance is not sufficient to
3 constitute a defense or reduce the degree of the
4 crime. Number one, the defendant has no
5 significant history of prior criminal activity.
6 Number two, the murder was committed while the
7 defendant was under the influence of extreme
8 mental or emotional disturbance. Number three,
9 the youth of the defendant at the time of the
10 crime. Number four, the defendant's diminished
11 intelligence. Number five, the impact of the
12 defendant's execution on his family members,
13 including his mother, grandmother, brother, and
14 sisters Shermaine and Angel.

15 Is that Angel or Angela? Did I
16 misunderstand?

17 MR. BROOKS: It should be Angela.

18 THE COURT: That's what I thought. I
19 could correct it here.

20 MR. KANE: I apologize.

21 THE COURT: That's okay. I just simply
22 added an A in black ink. Number six, the impact
23 of the defendant's execution on his other family
24 members, friends, and loved ones. Number seven,
25 any other mitigating circumstances.

1 counsel, not, to not testifying in this case?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: In other words, standing
4 behind that right?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Mr. Kane, Ms. Pandukht,
7 anything you think I should add?

8 MR. KANE: No, your Honor.

9 THE COURT: Mr. Brooks, Mr. O'Brien,
10 anything you think I should add?

11 MR. BROOKS: Not for this, your Honor.

12 THE COURT: Very well. Then the record
13 should reflect that the Carter instruction has
14 been given. The defendant understands that he
15 cannot be compelled to testify and that if his
16 attorneys specifically request, I will give that
17 instruction.

18 I guess we can bring the jury in now.

19 MR. BROOKS: Just another housekeeping
20 matter, judge. Once the State has rested and we
21 have read the stipulation into the record as part
22 of the defense case, I believe after consultation
23 today with Ms. Pandukht and Mr. Kane, that we can
24 probably resolve jury instructions in
25 approximately 10 minutes.

1 THE COURT: The only instruction that I
2 had that was in dispute at all was one that may
3 have changed since I got that mid-morning. But
4 that will be fine. So, what you're really
5 suggesting is that we go ahead and close off the
6 case and bring the jury back tomorrow for
7 closings?

8 MR. BROOKS: If that's what the defense
9 would suggest, yes.

10 MS. PANDUKHT: All of our exhibits have
11 been admitted with the exception of one which we
12 would like to withdraw or --

13 THE COURT: This would be proposed
14 exhibit --

15 MS. PANDUKHT: Proposed Exhibit No. 5.

16 MR. KANE: It was going to be a marked up
17 copy of that apartment diagram, but it wasn't --

18 THE COURT: Understood.

19 MS. PANDUKHT: But my, I show everything
20 else was admitted.

21 THE COURT: I always ask you, please
22 check with the court clerk to be sure that
23 everybody is on the same page.

24 MS. PANDUKHT: We can do that afterwards,
25 judge --

1 THE COURT: Okay.

2 MS. PANDUKHT: -- if you would like.

3 THE COURT: With that, anything else?

4 MR. BROOKS: Not from the defense, your
5 Honor.

6 THE COURT: Mr. Pandukht, Mr. Kane?

7 MR. KANE: No, your Honor.

8 THE COURT: Let's bring the jury back.

9 (Thereupon, the jury entered the courtroom.)

10 THE COURT: Counsel, will you approach
11 while the jury is assembling?

12 (Conference at the bench.)

13 THE COURT: Welcome back. Let the record
14 reflect that all parties are present with counsel.

15 Will you stipulate, please, to the
16 presence of the jury?

17 MR. KANE: Yes, your Honor.

18 MR. BROOKS: Defense will, your Honor.

19 THE COURT: Very well. Mr. Kane, who's
20 next?

21 MR. KANE: Judge, the State has no
22 further witnesses to call but wishes to announce
23 to the jury, with your permission, that the
24 prosecution and defense have agreed to two
25 stipulations.

1 THE COURT: Before you go on, Mr. Kane,
2 let met interrupt briefly. A stipulation is an,
3 and you'll likely hear a jury instruction on this,
4 but a stipulation is an agreement, in this case
5 between the State and the defendant's counsel,
6 that certain facts, as we're about to hear, are
7 agreed upon, no dispute, no witness testimony
8 required. But you can consider the stipulation as
9 if it were evidence given by a witness.

10 With that, Mr. Kane, you may continue.

11 MR. KANE: The two stipulations are,
12 first, your Honor, with respect to records of the
13 Clark County Detention Center. It is stipulated
14 that the defendant and Gregory Lewis were housed
15 in the same unit in the Clark County Detention
16 Center, which is unit 9C, from September the 29th
17 of 2003 through November the 13th of 2003 and also
18 that the defendant, Glenford Anthony Budd, was
19 moved to a single unit within the Clark County
20 Detention Center, that being 9C-18, on May the
21 24th of 2004.

22 The second stipulation has to do with
23 records of the court, and the stipulation is that
24 as of August of 2004 when the letters that were
25 referred to here in court were delivered,

1 Mr. Budd's trial date was set as November the 15th
2 of 2004.

3 THE COURT: Mr. Brooks, Mr. O'Brien, is
4 that a correct statement of the stipulation that
5 you entered into?

6 MR. BROOKS: That's correct, your Honor.

7 THE COURT: Very well. All that
8 information, then, can be considered by each and
9 every one of you as jurors.

10 And with that, save and except a recheck,
11 if you will, of exhibits, Mr. Kane, Ms. Pandukht,
12 do you, does the State rest?

13 MR. KANE: That is correct, your Honor.

14 THE COURT: Very well. Mr. Brooks?

15 MR. BROOKS: Judge, the defense would
16 like to read a stipulation to the jury, also,
17 which I believe has been filed.

18 THE COURT: Very well. And again, ladies
19 and gentlemen, another stipulation. It means the
20 parties have agreed that the information about to
21 be provided to you is true and accurate. Both
22 sides agree that no actual or live witness
23 testimony is necessary. And you may consider this
24 in the same way that you would any other evidence
25 that has been admitted or the testimony of any

1 other witness.

2 MR. BROOKS: I'll file it in open court.
3 December 12th, 2005, stipulation, the State and
4 defense stipulate that Defense Exhibits B and C
5 have been admitted into evidence. These exhibits
6 are photographs taken at the Saratoga Palm
7 Apartments, Las Vegas, Nevada. Exhibit C shows
8 the view from the balcony of Celeste Palau's
9 apartment, looking at apartment 2068 in building
10 nine. Exhibit B shows the light fixture over the
11 stairs outside apartment 2068. The light fixture
12 is between apartment 2068 and apartment 2067. The
13 State and defense stipulate that Steven Yoshida,
14 an investigator for the Clark County Public
15 Defender Office, took these photographs. The
16 distance between the bottom of the stairs outside
17 Celeste Palau's apartment and the bottom of the
18 stairs outside apartment 2068 in building nine is
19 218 feet. The stipulation is signed by myself and
20 by Mr. Kane.

21 THE COURT: And, ladies and gentlemen, as
22 I've indicated, you may consider that as you would
23 any other evidence provided in this case by a
24 witness and/or by evidence that is admitted and
25 become a part of the Court's record.

1 On behalf of the defendant, Mr. Brooks,
2 Mr. O'Brien, do you have other witnesses?

3 MR. BROOKS: Judge, the defense rests.

4 THE COURT: Thank you very much. The
5 next thing that will happen in the course of our
6 trial, ladies and gentlemen, is that I will
7 instruct you on the law, and then our attorneys
8 can make summations. It means that they will sum
9 up or summarize for you what they believe the
10 evidence shows or does not show.

11 It is nearly 5:00 o'clock. I'm,
12 sometimes in these instances the instructions are
13 long. They are always written in the language
14 that we refer to as legalese. And so it's very
15 important that I can be fresh when I read them,
16 that you can be fresh when you hear them, although
17 you will have copies of these instructions with
18 you when you begin your deliberations because of
19 how important the statement of law is. We're
20 going to be in recess for today. There are no
21 more witnesses that we will hear. The next thing
22 that will happen will be the reading of the jury
23 instructions and the closing arguments by counsel.
24 We will continue this trial, then, until 1:30
25 tomorrow.

1 I have to remind you, you're very close
2 to the end of the trial phase in this case. It's
3 extremely important that you carefully listen to
4 the admonishment that I'm going to give you and
5 that you remember how important it is not to
6 discuss this case among yourselves or with anyone
7 else. You cannot read, watch, listen to a report
8 of or commentary on anything which might be
9 associated with this matter. You cannot form or
10 express an opinion in any of these issues until it
11 has been fully and finally submitted to you under
12 instruction of law by me.

13 It is tempting at this point, when I tell
14 you that the evidence is closed, to begin to form
15 opinions about the case. And as subtle as it may
16 be in your own mind when you're driving home
17 tonight, when you're getting ready for your
18 evening or for your bedtime, you cannot do that.
19 You've only gotten through phase one. You got to
20 hear the instructions, and you have to hear the
21 closing arguments before you can form any opinion.
22 Don't do any research of any type on any of these
23 issues. And I look forward to seeing you tomorrow
24 at 1:30. We will stand in the evening recess.

25 (Recess taken.)

1 THE COURT: State versus Budd? I had a
2 copy here of a proposed packet of instructions.
3 The only one that I know right now that is at
4 issue reads as follows: It is, State, was yours
5 this two-liner? I presume yours was --

6 MR. KANE: The original, yes.

7 THE COURT: And the original is proposed
8 by the State as follows: In your deliberation you
9 may not discuss nor consider the subject of
10 punishment. Your duty at this time is confined in
11 determination of guilt or innocence of the
12 defendant.

13 The proposed instruction offered by the
14 defense to replace the one proposed by the State
15 reads, in your deliberation you may not discuss or
16 consider the subject of punishment. Your duty at
17 this time is confined to determination of whether
18 or not the State has proven the guilt of the
19 defendant beyond a reasonable doubt.

20 Now, before I hear further argument let
21 me go on the record. I suspect that you both have
22 already heard this. I consistently make a record
23 as the Court that there are a couple of stock
24 instructions within the State's instructions that
25 use the term determination of the guilt or

1 innocence of the defendant. I consistently note
2 my concern about these instructions, because I
3 think they are wrong.

4 MR. KANE: Judge, can I interrupt?

5 THE COURT: Sure.

6 MR. KANE: And I'll take the risk. I
7 agree with you. I've never understood why that
8 language is in there. And I guess it's because
9 defense lawyers don't object to it. The
10 instruction, the second one that you read is my
11 product after discussing this with Mr. Brooks this
12 morning, and will, at least from now on for me, be
13 the stock instruction. And I'm going to suggest
14 it to the other deputies in my office, because I
15 don't think the guilt or innocence --

16 THE COURT: Excellent. Excellent. And
17 if you would, there is at least one other
18 instruction that has the same use, determination
19 of guilt or innocence. And I'll try to find it.

20 MS. PANDUKHT: It's the one that, you are
21 not to consider the guilt of any other person --

22 THE COURT: But the guilt or innocence
23 of -- that should also be corrected. But believe
24 it or not, I've had defense lawyers to whom I
25 bring this to their attention, because it's, as I

1 said, I want to go on the record as saying how I
2 believe it is incorrect and an incorrect statement
3 of law. And I've had several defense attorneys
4 who still want it to be given.

5 MR. BROOKS: Judge, just to make things
6 really simple here, if we, if we go ahead and
7 number the instructions, I have two objections at
8 that point. And I have the case law here that
9 says, according to the Nevada Supreme Court, that
10 I am wrong. So, I'm going to make my objections
11 to those two instructions. I would like to make
12 my record as far as why I think that the Supreme
13 Court is wrong. And this is going to be really
14 simple for us.

15 THE COURT: All right. Let's start
16 numbering. Number one, and you both, you all know
17 how I do this: Number one, it is my duty as judge
18 to instruct you... Number two, if in these
19 instructions... Number three, an information is
20 but a formal method of accusing... Number four,
21 in this case the defendant... Number five, murder
22 is unlawful -- of human being... Number six,
23 malice aforethought -- intentional... Number
24 seven -- of first degree, which is murder which is
25 perpetrated by means... Number eight, law does

1 not measure in units of time the length of period
2 during which the thought must be upon... Number
3 nine, all murder which is not murder in the first
4 degree is murder in the second degree. Number 10,
5 you are instructed that if you find beyond a
6 reasonable doubt the State has... Number 11,
7 manslaughter is the unlawful -- of human being
8 without malice... Number 12 -- heat of passion --
9 it is manslaughter. Number 13, if you find beyond
10 a reasonable doubt that the State has established
11 and defendant has committed murder... Number 14,
12 deadly weapon means any instrument which...
13 Number 15, if you find beyond a reasonable doubt
14 the defendant committed murder... Number 16, to
15 constitute the crime charged... Number 17,
16 presume innocent if the contrary is proven...
17 Number 18, the evidence which you are to consider
18 in this case consist of the testimony of
19 witnesses... Number 19, credibility or
20 believability of a witness should be determined...
21 Number 20, a witness who has special knowledge,
22 skill, experience... Number 21, you are -- strike
23 that. Although you are to consider only the
24 evidence in this case in reaching a verdict...
25 Number 22, in your deliberation you may not

1 discuss nor consider the subject of punishment.
2 Oops! That has been, pull that one out. We are
3 now going to substitute the agreed-upon
4 instruction that reads as follows: In your
5 deliberation you may not discuss nor consider the
6 subject of punishment. Your duty at this time is
7 confined to the determination of whether or not
8 the State has approved the guilt of the defendant
9 beyond a reasonable doubt. Number 23, when you
10 retire to consider your verdict... Number 24, if
11 during your deliberations... Number 25, now you
12 will listen to counsel... And then there is a
13 verdict form.

14 Mr. Brooks, did you want to make a record
15 of objections?

16 MR. BROOKS: Yes, judge. On instruction
17 10, everything after line eight I object to, and
18 it is unnecessary and adds nothing. My legal
19 argument for this will be the same precise
20 argument that I will make with regard to
21 instruction 13, also, to which I also object. On
22 instruction 13 everything after line seven is
23 unnecessary and is wrong and is not in accordance
24 with the actual statutory law in the State of
25 Nevada.

1 Now, having said that, the Nevada Supreme
2 Court has ruled in Green v. State, 80 Pacific 3rd
3 93 119, Nevada Advanced Report 59, parentheses
4 December 11th, 2003, closed parentheses, that
5 these two instructions, 10 and 13, are, in fact,
6 correct statements of the law. But I just want to
7 make my record on this. First of all, judge,
8 going back a number of years, we never saw this
9 issue arise at all, because the essence of this is
10 saying, not only are we going to tell the jury
11 what the lessers are, we're also going to tell
12 them how they're going to go about looking at the
13 lessers and in what order they're going to look at
14 the lessers and how exactly we're going to go from
15 one lesser to other. There is nothing in Nevada
16 statutory law that authorizes any procedure for
17 that. In fact, the law, the law is that the jury
18 can simply look at all of that and figure it out
19 among themselves. And about four or five years
20 ago the State started posing a instruction that
21 said you have to look at one first and then look
22 at the other. And then there was a, a court in a
23 county in Nevada which granted this, this
24 instruction and, in fact, went so far as to say
25 you can't even consider second degree murder

1 unless you unanimously find that the defendant is
2 not guilty of first degree murder. And so the
3 Nevada Supreme Court came up with this new
4 language.

5 THE COURT: Having rejected the one that
6 was used in the other county?

7 MR. BROOKS: Correct. And my personal
8 belief is that is basically what we now have, is
9 we have two instructions here and some law that
10 the Nevada Supreme Court has said, this is how
11 we're going to do it. But I don't think it
12 accords with any statutory authority. So, that's
13 my objection.

14 THE COURT: Mr. Kane, do you wish to be
15 heard?

16 MR. KANE: Of course, Nevada Supreme
17 Court law, as it exists, is always controlling.
18 But the Green case made it real clear. They
19 didn't just say this is a good instruction. They
20 said this is how you instruct on lesser included
21 defenses, and this is the way you better do it.
22 So, it's not a discretion area.

23 THE COURT: At least at this point it is
24 my understanding, based upon that case, that as
25 judges in the trial court, we are precluded from,

1 at least by, I guess we do it occasionally. But
2 in light of the Supreme Court decision in Green,
3 this is supposed to be the instruction that is
4 given.

5 Your argument, Mr. Brooks, is noted for
6 the record. This really actually might be more
7 simply stated as the lesser included objection
8 that I think is being frequently made, and that is
9 how I would consider it. However, based upon the
10 Supreme Court's directive, I'm going to give both
11 10 and 13.

12 With that in mind, are there any other
13 objections to the numbered instructions?

14 MR. BROOKS: Not from the defense, your
15 Honor.

16 MR. KANE: Not from the State, your
17 Honor.

18 THE COURT: Have you both reviewed the
19 verdict form which is proposed in this case?

20 MR. BROOKS: Defense has, and there is no
21 objection.

22 THE COURT: Very well. These are the
23 instructions that will be given. As you know, it
24 is my practice and it has been recommended by the
25 jury commission and various other authorities that

1 copies of these instructions be given to the jury
2 upon their, when they retire to deliberate. It is
3 my habit to do that.

4 Is there any objection to that?

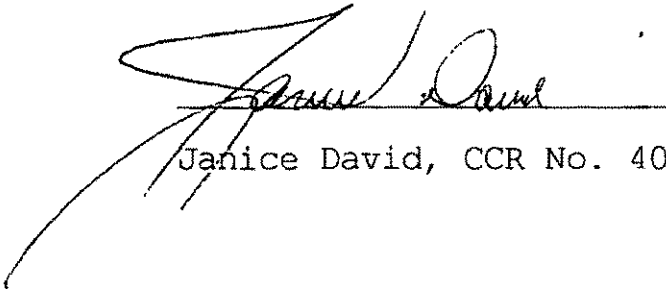
5 MR. KANE: No, your Honor.

6 MR. BROOKS: Not from the defense.

7 THE COURT: Very well. We'll be in
8 recess until tomorrow at 1:30.

9 * * * * *

10 Attest: Full, true, accurate transcript of
11 proceedings.

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15 Janice David, CCR No. 405
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'03	[5] 14 4:1 155:24 156:24 162:5	3	7
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002192

DISTRICT COURT
CLARK COUNTY, NEVADA

FILED

STATE OF NEVADA, MAR 7 9 10 AM '06

ORIGINAL

Plaintiff

vs.

CLERK

Case No. C193182

Dept. No. XVIII

GLENFORD ANTHONY BUDD,

VOLUME 8-B

Defendant.

REPORTER'S TRANSCRIPT OF JURY TRIAL

Before the Honorable Justice Nancy M. SaittaThursday, December 15, 2005
1:30 p.m.

APPEARANCES:

For the State:

EDWARD KANE, ESQ.
Deputy District AttorneyTALEEN PANDUKHT, ESQ.
Deputy District Attorney

For the Defendant:

HOWARD BROOKS, ESQ.
Deputy Public DefenderTIMOTHY O'BRIEN, ESQ.
Deputy Public Defender

REPORTED BY: JANICE DAVID, CCR NO. 405note note

COUNTY CLERK

MAR 07 2006

RECEIVED

W I T N E S S E SDEFENSEDr.Cr.Redr.Recr.VD.**JOHN PAGLINI**

By Mr. O'Brien: 4 54

By Mr. Kane: 48

GLENFORD BUDD

By Mr. O'Brien: 80

1 LAS VEGAS, NEVADA, DECEMBER 15, 2005, 1:30 P.M.

2 * * * * *

3 THE COURT: Welcome back. Let the record
4 reflect we are again present in the matter of
5 State versus Budd. All parties are present with
6 counsel.

7 Will you stipulate to the presence of the
8 jury?

9 MR. KANE: Yes, your Honor.

10 MR. O'BRIEN: Defense will, your Honor.

11 THE COURT: Very well. Who's going to be
12 our next witness, Mr. O'Brien?

13 MR. O'BRIEN: Thank you, your Honor.
14 Dr. John Paglini.

15 THE BAILIFF: Dr. Paglini, if you will
16 remain standing, please, raise your right hand,
17 and face the clerk.

18
19 JOHN ANTHONY PAGLINI,
20 called as a witness, and having been first duly
21 sworn to testify to the truth, the whole truth,
22 and nothing but the truth, was examined and
23 testified as follows:
24

25 THE CLERK: Please be seated.

1 THE WITNESS: Thank you.

2 THE CLERK: Will you please state your
3 name and spell it for the record?

4 THE WITNESS: John Anthony Paglini,
5 P-a-g-l-i-n-i.
6

7 DIRECT EXAMINATION

8 BY MR. O'BRIEN:

9 Q. Good morning, doctor. If I may approach?

10 A. Good afternoon.

11 THE COURT: Yes, you may.

12 BY MR. O'BRIEN:

13 Q. What is your occupation, doctor?

14 A. I'm a licensed clinical psychologist.

15 Q. And could you give the jury a brief
16 summary of the, the education you completed to
17 attain that position?

18 A. Sure. I have a bachelor's degree at
19 Catholic University in Washington DC. My
20 doctorate degree was at Illinois School of
21 Professional Psychology in Chicago, an AP approved
22 school, my AP approved internship from the United
23 States Air Force, Malcolm Grove Hospital, Andrews
24 Air Force Base. That was one year. My next two
25 years was with Nellis Air Force Base as a captain,

1 as a psychologist. I finished up my doctorate at
2 that time, a doctor of psychology. In 1991 I was
3 in Desert Storm as a psychologist for the air
4 force, did that for approximately three months,
5 separated from the service in September, 1991 with
6 an honorable discharge. Then I went into private
7 practice from 1991 to current. Experience usually
8 was about, experience as inpatient psychiatric
9 hospitalizations as well as outpatient. For the
10 last approximately seven to eight years I've
11 specialized in forensic psychology, and that's
12 predominantly where my practice is today.

13 Q. And do you, do you keep current on new
14 trends in your profession, attend seminars and so
15 forth?

16 A. Yes. I attend seminars with the American
17 Psychological Association, American Board of
18 Forensic Psychology, worked on approximately 20 to
19 30 death penalty cases, many more murder cases,
20 probably anywhere from, I'm thinking 50 to 75 or
21 higher, several hundred we call pretrial
22 competency evaluations. I also do risk
23 assessments, violence and sexual offender risk
24 assessments for the department of parole and
25 probation, public defenders, defense attorneys, as

1 well as occasionally I'm hired by the prosecution.

2 Q. And what about professional
3 organizations?

4 A. Member of the American Psychological
5 Association.

6 Q. And have you conducted forensic
7 psychological evaluations for the criminal courts
8 in this district previously?

9 A. Yes, numerous times, like I've outlined
10 beforehand. You know, probably 50 to 75 or higher
11 murder trials, testified in court for defense as
12 well as the prosecution.

13 Q. What is a forensic psychological
14 evaluation?

15 A. Forensic psychological evaluation is when
16 you talk to the defendant. You interview him,
17 conduct psychological tests, review the discovery
18 such as the police report or witness statements,
19 any prior psychological evaluations, also conduct
20 collateral interviews, which is basically you're
21 talking to the people in the person's life,
22 family, ex-girlfriends, ex-wives, current
23 girlfriends, anybody who has known the person for
24 quite some time. And so a forensic psychological
25 evaluation is very comprehensive. It's just not

1 get and receiving information from the defendant
2 but try to go above and beyond.

3 Q. And I believe you may have mentioned this
4 for the jury, but you clearly have testified
5 regarding forensic psychological evaluations in
6 both murder cases and death penalty cases?

7 A. I've testified actually, interestingly
8 enough, in only one death penalty case, because
9 all the cases that I'm on, they settle. They seem
10 to be settling. And so of the cases I've been on,
11 I've been on approximately 20 to 25 death penalty
12 cases. And this will be my second time testifying
13 in court.

14 Q. And on occasion you have been retained by
15 the district attorney's office?

16 A. Correct. I've been retained once on,
17 actually twice on a death penalty case as working
18 with them to help them cross-examine the defense
19 witness.

20 Q. And has my office retained you to
21 evaluate Mr. Budd in this case and secure your
22 testimony?

23 A. Yes.

24 Q. And tell us the process you went through
25 to evaluate Mr. Budd.

1 A. Well, I evaluated Mr. Budd. I had a
2 procedural meeting with his attorney in July 19,
3 2004 where I more or less tell him who I am, what
4 my role is. And then I evaluated Mr. Budd on July
5 23rd, August 24th, September 4th and 5th, October
6 23rd and 24th, 2004. In addition to that I
7 conducted approximately, I'm thinking either 10 or
8 11 collateral interviews where I talked to family
9 members and friends who know Mr. Budd, also
10 administered psychological testing, cognitive
11 testing, which is an IQ test, a memory test, and
12 an achievement test. In addition to that what I
13 did is, I reviewed the discovery in the case. And
14 in a latter part I received information on
15 discovery from the social worker for the public
16 defender's office -- she had interviewed some
17 additional people -- and reviewed that. So, my
18 evaluation consisted of, extensively of
19 psychological interviews, psychological testing,
20 review of the discovery provided, and then
21 collateral interviews.

22 Q. Do you feel you have a, an adequate grasp
23 and adequate information regarding the
24 psychosocial issues involving Mr. Budd to testify
25 to this jury?

1 A. Yes.

2 Q. And what are you going to focus on today?

3 A. Today I'm going to talk about mitigation.
4 And if I may get started, I'm going to use a power
5 point presentation here. Now, this is my first
6 time with a power point. So, hopefully I'm not
7 going to mess too many things up here.

8 Your Honor, is it okay if I stand?

9 THE COURT: It certainly is. And I
10 understand that you do have, if you will, a, and I
11 don't want to call him an assistant but someone
12 who may know the power point a bit, sorry, better
13 than you. If you need his assistance, he is free
14 to assist at any time.

15 MR. O'BRIEN: Thank you, your Honor.

16 THE WITNESS: Thank you very much. Okay.
17 What I would like to do today is talk about
18 mitigation. And before we get to mitigation I
19 want to tell you a story about seven years ago
20 when I was in a death penalty case. I was hired
21 by the prosecution. And one of my colleagues, a
22 female psychologist, was testifying on behalf of
23 the defense. And she had referred to the
24 defendant, who had killed someone, as a good guy,
25 a nice individual. And that kind of struck me,

1 because I said to myself, well, how do you, how do
2 you tell a jury he's a nice guy when he's
3 committed a murder? And as I listened to the
4 testimony, what I heard was, this individual had
5 decent qualities. And through my years working
6 with murders and individuals who committed crimes,
7 what I've recognized is that murders are a
8 heterogenous group, meaning that, it's like if you
9 go to a baseball stadium with 40,000 people, there
10 is probably 40,000 different worlds. It's a
11 commonality among people. Some people are good.
12 Some people are, you know, generally bad.
13 Sometimes decent people or okay people commit a
14 crime, and it's not necessarily characteristic of
15 them. And so one of the things I've learned about
16 murderers is, like I said, their a heterogenous
17 group.

18 Today what we're going to discuss is
19 Mr. Budd's life. We're going to, hopefully by the
20 end of my presentation you're going to have a
21 better understanding of what mitigation is, what
22 his life is about, how he evolved, and things
23 called risk and resiliency factors, how he was
24 shaped and formed into coming up to the time when,
25 unfortunately, he committed these murders. And

1 I'm going to get started here, but there is one
2 thing we have to talk about before I get into the
3 definition of mitigation, and that is criminal
4 responsibility. He's already been found
5 criminally responsible by a jury of his peers.
6 So, that's not mitigation. We've already got to
7 that point, and that was at the penalty phase, not
8 the penalty face, the trial. So, my point here
9 is, we're going to be talking about mitigation.

10 So, what is mitigation? Any aspect of
11 the defendant's character or record or any other
12 circumstances of defense the defendant exhibit as
13 a basis for a sentence less than death.

14 Mitigation is multifaceted and equates to moral
15 culpability. Now, once again, everyone is very
16 diverse. And mitigation can be anything, if the
17 defendant's mentally retarded, if the defendant
18 has any traumatic brain injuries or developmental
19 disorders or grew up in a very abusive home.

20 These are all different aspects of mitigation.

21 Mitigation also includes positive things, if he's
22 helped people or what has his time been like in
23 jail. In Mr. Budd's case, he's been incarcerated
24 for two and a half years. How has he performed
25 during that time while incarcerated? That is

1 another form of mitigation or -- mitigation
2 equates to moral culpability. And we're going to
3 kind of just understand what that is in a second.

4 I'm going to read this. It's kind of
5 long. Elementary psychological reality, you do
6 not arrive at all our choices on equivalent, raw
7 material. The nature of quality of understanding
8 perception, impulse control, judging values,
9 underlying choice, even the ones that result in a
10 heinous crime, are influenced by developmental,
11 cognitive, neuropsychological, relationship,
12 cultural, community, and situational factors.
13 These all kind of converge into what we have as a
14 person who led him up to this crime.

15 So, and if you think about this, we're
16 all different. I'm 44 years old but, you know,
17 the neighborhood I grew up in is fairly stable.
18 There could have been another guy in Chicago that
19 lived about a few miles away, was in a very
20 unstable family environment that had a different
21 lifestyle or different perceptions than I did, and
22 that's very true. And this is what this talks
23 about. Now, this doesn't mean he's not morally
24 responsible, because he is. But what this is
25 talking about is everyone is shaped differently

1 that brings them to certain life choices.

2 Now, we're going to talk about family
3 history. And what I would like to do is guide you
4 through what a healthy person is and a healthy
5 family and then, and this is what we call
6 resiliency factors. And then the next thing we're
7 going to talk about is risk factors, what happens
8 that increases a person's chance of offending.
9 So, as we all know, you know, behavioral patterns
10 are multigenerational. If you have parents who
11 are drug addicts or have alcohol problems and
12 their parents had drug and alcohol problems, there
13 is a higher propensity for the child to have drug
14 or alcohol problems. The child is predisposed to
15 heredity. Family shape child, and childhood is
16 formative.

17 Now, for healthy development this is
18 pretty easy to kind of understand. If an
19 individual has a strong, caring, guiding father, a
20 nurturing mother, stable parental marriage and
21 stable secure home, if the parents model, control
22 aggression, they help the child understand how to
23 respond to conflict, if there is academic success,
24 if they have adhesive friends and if the family
25 discourages drug and alcohol abuse or prohibit it

1 and there's positive socialization and mentoring,
2 you have a higher chance that your child is going
3 to do fairly well in the world. It doesn't mean
4 that if your child has all these things, he's not
5 going to commit a crime. But there is more
6 resiliency factors and less risk factors, and
7 that's what really it comes down to.

8 Now, this is a good idea, kind of
9 conceptualize, this is a visual conceptualization
10 of what I'm talking about. Let's assume this is
11 Mr. Budd. Okay? If there is no family history of
12 alcohol or drug dependence, no family history of
13 psychological disorder, no developmental
14 abandonment or instability, and if he has
15 positive, pure relationships, modeling of
16 positive -- consistency, structure, stability,
17 acceptance, and affirmation and intact family,
18 then the less chance of psychological disorder,
19 drug dependency, and criminal activity. Once
20 again, it doesn't mean that if this person has all
21 this, he's not going to develop a drug problem,
22 but it's less so. Now, we're going to explore in
23 a second here what this means.

24 Now, approximately five years ago the
25 department of justice brought 22 researchers

1 together for two years, and they synthesized 66
2 studies, and their goal was identifying risk
3 factors in terms of violence. And what they came
4 up with, they identified individual, family,
5 school, peer-related, community, and neighborhood
6 risk factors. What they discovered -- and this is
7 kind of common sense, too -- is that the larger
8 number of risk factors the youth was exposed to,
9 the greater probability of violent behavior in the
10 community. And this is some of the things they
11 understood. The United States Department of
12 Justice, once again April, 2000 individual
13 factors. If the individual is hyperactive, they
14 have a two- to five-time chance of engaging in
15 criminal behavior. If they have been aggressive,
16 it's like a half to six times chance. Early
17 initiation of violent behavior, that times it by
18 six. And then, you know, beliefs and attitude,
19 favorable -- antisocial behavior.

20 Now the family factors, I have
21 highlighted in blue some of the things that apply
22 to Mr. Budd. So, anytime you see something
23 highlighted in blue, this is something we're going
24 to discover as I talk about his life. Parental
25 criminality, child maltreatment but for Mr. Budd,

1 poor family management practices, low levels of
2 parental involvement, residential mobility,
3 parental attitudes favorable to substance abuse,
4 and parent/child separation. Now, before I kind
5 of kick this off I want to be able to address
6 something. I feel I've interviewed Mr. Budd's
7 mother and sister and a bunch of family members.
8 And these are all decent people. They're not
9 horrible people. They came from a different
10 country. They're doing the best that they could.
11 But, you know, sometimes as an immigrant you come
12 here. You're faced with an uphill struggle. And
13 sometimes you cannot be as attentive to your
14 children because of different factors. So, we're
15 going to discuss that in a second.

16 Here are some more factors that increase
17 criminality: Academic failure, for Mr. Budd, low
18 bonding in school, dropping out of school, high
19 delinquency rate in school. He doesn't have that.
20 Peer-related factors, he really didn't hang out.
21 He wasn't involved with any gangs. He really
22 didn't, he never -- siblings or peers for the most
23 part. Community and neighborhood factors, poverty
24 times two. If you live in poverty conditions, you
25 have a greater chance of criminal acting out.

1 Community disorganization, that happened a little
2 in his latter part of his years, we're going to
3 discover in a few moments. Exposure to violence
4 and racial prejudice rage is another one. So,
5 these are some of the factors that the department
6 of justice came up with that influenced violent
7 behavior. And it's important just to kind of get
8 an idea of these factors in Mr. Budd's life.

9 Now, we're going to talk about his life.
10 And what I've done is I've highlighted some of the
11 things that have occurred in his family. Mr. Budd
12 was born on December 23rd, 1982. He's a second
13 of three. His parents were not married. He grew
14 up in Belize City, Belize, which is basically a
15 country in Central America that's relatively poor.
16 He had a tremendous amount of family around him,
17 and for the most part he was born healthy, decent
18 childhood, no developmental milestones, on time.
19 Everything was kind of fine. But when I talked to
20 Mr. Budd, I said, gees, why did your parents
21 separate? He goes, well, I'm really not sure.
22 And the constant thing with Mr. Budd was, during
23 all my interviews, is that he was kind of
24 protective of his family. He has positive
25 relationships with everyone in his family, and he

1 that's something you want to know about?

2 A. Of course.

3 Q. And if someone is giving aid to Glenford
4 Budd, that's something you want to know about?

5 A. Yes.

6 Q. And, in fact, under certain circumstances
7 that could be a crime, depending on what the
8 person knew?

9 A. Yes. I'm sure it was.

10 Q. I mean, you've arrested people for that
11 before, haven't you?

12 A. Maybe. I can't think about it right off
13 the top of my head but --

14 Q. Okay. Now, you testified here that you
15 met Greg Lewis in, I think, August of 2004?

16 A. Yes. It would be August 13th.

17 Q. And I believe you've testified that
18 you're the lead detective on this case?

19 A. Yes.

20 Q. This is your case? You've been with this
21 case from day one all the way through today?

22 A. Yes.

23 Q. And you're really Metro's man in charge
24 of this case, aren't you?

25 A. Well, we look at it as a team approach,

1 but my partner, Marty, and I are really the people
2 involved with this case. It sort of whittles down
3 from the initial response. The reason that I
4 would even suggest that I was the lead --

5 Q. Let me simply, if Mr. Kane wants to talk
6 to someone about the case, he's going to call you,
7 right?

8 A. Or Marty. The reason that we say I'm the
9 lead is because I authored the report, the scene
10 report. That makes you the lead. Had Marty done
11 the report, he would be the lead on it.

12 Q. And Marty is your partner?

13 A. Yes, Marty Wildemann.

14 Q. Now, it's originally David Schwartz was
15 the prosecutor in this case, correct?

16 A. Yes, he and Ms. Pandukht.

17 Q. Okay. And then later on he was not on
18 the case, and Mr. Kane came on the case?

19 A. Yes.

20 Q. You've testified that Greg Lewis met you,
21 I think, in August of 2004. He provided to you
22 the rap song, which is State's Exhibit 49C?

23 A. That's right.

24 Q. And you seen that correct?

25 A. Yes.

1 Q. It would be very, very helpful to you if
2 you had in your possession other rap songs in that
3 handwriting that you knew belonged to Glenford
4 Budd; isn't that right?

5 A. For like a comparison for handwriting?

6 Q. Absolutely.

7 A. I suppose.

8 Q. Don't you think it would be incredibly
9 helpful to have a document that you knew was
10 Glenford Budd's in that precise handwriting?

11 A. Well, I don't think it would be
12 incredibly helpful.

13 Q. Of course, it would be.

14 A. But I have --

15 MS. PANDUKHT: Objection, argumentative.

16 MR. BROOKS: Okay. Let the man answer.

17 THE COURT: Sustained.

18 THE WITNESS: Well, I had --

19 THE COURT: Or to explain his answer.

20 THE WITNESS: Yeah. I'm sorry. I had
21 what I, appeared to be two different styles of
22 handwriting. We had a, sort of a nice pleasant
23 cursive in the letter, and then we had this
24 strange-looking, I don't even know how to refer to
25 what those letters were in the song.

1 BY MR. BROOKS:

2 Q. Okay. I don't care about the whole issue
3 of his nice handwriting.

4 A. Right.

5 Q. Wouldn't it be helpful to you to have
6 handwriting from Glenford Budd in that rap style
7 that you know is Glenford Budd's?

8 A. I, it didn't, it didn't pose itself to
9 me. I didn't think that that would be helpful to
10 me.

11 Q. All right. So, you're saying it would
12 not be helpful to you to have in your possession a
13 handwriting in that style which you know is
14 Glenford Budd's? It would not be helpful to you?

15 A. No. I'm not saying it would not be
16 helpful. It didn't occur to me to further that,
17 to try to find more of that.

18 Q. Wouldn't it be helpful to you?

19 A. I don't know whether it would be
20 comparable or not because, as I said, I knew what
21 his handwriting was. I don't know what that was.
22 And I guess we could beat that up all afternoon
23 about whether --

24 Q. Mr. Vaccaro, wait a second. You know
25 what I'm getting at. Let's assume that you could

1 have a document in the same handwriting --

2 A. Uh-huh.

3 Q. -- as 49C --

4 A. Okay.

5 Q. -- that you know comes from Glenford
6 Budd. That would certainly be helpful to you,
7 wouldn't it?

8 A. If I had him write that, sure.

9 Q. Absolutely. And the jail is cooperative
10 with you; isn't that right?

11 A. Yes. They did, I would say they are.

12 Q. Did you initiate any effort to have the
13 contents of his jail cell searched to see if you
14 could find one piece of rap music in that
15 handwriting?

16 A. No, I didn't.

17 Q. Okay. But that would be helpful to you
18 if you did?

19 A. It didn't occur to me at the time, no.

20 Q. But it would certainly be helpful to you?
21 It would be helpful to you if the State's Exhibit
22 49C had Glenford Budd's fingerprints on it,
23 wouldn't it?

24 A. Yes.

25 Q. Was there ever a request made to do a

1 fingerprint analysis of that document?

2 A. No.

3 Q. It would be very helpful to you if you
4 found out that, that 49C that, that gang script --

5 MS. PANDUKHT: Objection.

6 MR. BROOKS: What?

7 THE COURT: It's not been characterized
8 in that manner.

9 BY MR. BROOKS:

10 Q. Okay. I'll take away gang script.

11 Excuse me.

12 The rap, the rap script, it would be
13 helpful to you if you found a document with that
14 script in the cell occupied by Greg Lewis in the
15 prison?

16 A. I disagree.

17 Q. Why?

18 A. I thought that that, when I read it, was
19 personalized enough that it was the product of
20 Glenn Budd. So, it has enough things in it that
21 personalized it to me that it's his product, and
22 so I took no further steps.

23 Q. So, you don't care about the possibility
24 that Greg Lewis wrote that in his cell at prison?
25 Is that what you're saying?

1 A. No. I'm not saying I don't care about
2 that. Certainly I would be interested in knowing
3 if that was the case, but I have no way of knowing
4 that.

5 Q. And wouldn't it have been helpful just to
6 go through Greg Lewis's cell at prison and see if
7 you might find that exact handwriting there in his
8 prison cell?

9 MS. PANDUKHT: Objection, asked and
10 answered.

11 MR. BROOKS: No. I don't think it has
12 been answered.

13 THE COURT: I would agree with it, but
14 I'll give you one more shot.

15 THE WITNESS: I didn't examine
16 Mr. Lewis's cell or Mr. Budd's cell. I didn't
17 cause that to happen.

18 BY MR. BROOKS:

19 Q. Okay. Ms. Pandukht has asked you about
20 the whole procedure that happened when
21 Mr. Schwartz sent the letter to the parole board.

22 Did you have conversations with David
23 Schwartz about his sending that letter to the
24 parole board?

25 A. No. I said, David, don't forget

1 Mr. Lewis. And I don't know what his process was.
2 It's not my arena for me to address the parole
3 board on behalf of an inmate. And so I knew
4 something had taken place with Mr. Schwartz, but I
5 did not know nor have I been copied with that.
6 So, I don't know. I've never seen the product.

7 Q. But you had a conversation with him on
8 the telephone, which you said, don't forget
9 Mr. Lewis?

10 A. Actually I think he was in the office,
11 and it was a face-to-face thing.

12 Q. Okay. You yourself, you never sent any
13 information to the parole board on behalf of
14 Mr. Lewis?

15 A. No. No.

16 Q. Did your, your partner, Mr. Wildemann?

17 A. No.

18 Q. Do you know of anyone else who sent
19 information to the parole board on behalf of
20 Mr. Lewis?

21 A. I don't, no. I have, you know, I know
22 that Mr. Schwartz sent a letter. That's the
23 extent of it. I don't know of anybody else that
24 wrote the board.

25 Q. And that's the only letter that you're

1 aware of?

2 A. That I am aware of, yes.

3 MR. BROOKS: Thank you very much. I'll
4 pass the witness.

5 THE COURT: Redirect?
6

7 REDIRECT EXAMINATION

8 BY MS. PANDUKHT:

9 Q. Just a couple of questions. Mr. Brooks
10 asked you if you got handwriting samples, other
11 samples from the defendant.

12 Did you have any information that other
13 handwriting samples existed or were found --

14 A. No.

15 Q. -- of the defendant's?

16 A. No. I didn't know of any others.

17 Q. I mean, if other handwriting samples came
18 into your possession or you were made aware of --

19 A. I had nothing but what we have here today
20 in those exhibits.

21 Q. And generally how do you obtain
22 handwriting samples of an individual?

23 A. There is a process where I would cause a,
24 the jail, they have a sheet. They can provide the
25 inmate with that sheet, and then he's to copy down

1 certain phrases, certain letters in cursive, block
2 letter, upper case, lower case, so on and so
3 forth. Whether that was done or not, I don't
4 know.

5 Q. And, and why did you not have the jail
6 cell searched for the defendant?

7 A. I, I don't know. I, to be honest with
8 you, I would just simply say that I accepted the
9 letter and let it stand for what it said there in
10 the letter. I didn't cause the search to happen
11 and probably more importantly, I know from my
12 experience as a narc, working with informants,
13 that going there to the pod and shaking his cell
14 out could cause some scrutiny. And I have an
15 individual who's provided me with some
16 information, and I didn't want to do that at that
17 point. So, that was probably more of the reason
18 than anything else.

19 THE COURT: I'm going to just interrupt
20 for a moment and ask the detective, please, to
21 define what he means by his experience being a
22 narc.

23 THE WITNESS: Okay. I'm sorry. As a
24 narcotics detective for 10 years, you work with
25 people that provide us with information all the

1 time. And these people are referred to by lots of
2 names, informants, cooperating individual, niche,
3 and so. When we receive information, we handle it
4 delicately, as you might imagine that we're in
5 positions where someone's providing us with
6 information, and we have an obligation to filter
7 or use the information. And in my experience, I
8 handled it the right way with regard to the letter
9 from Mr. Budd to Mr. Lewis.

10 MS. PANDUKHT: Thank you. I have nothing
11 further.

12
13 RECROSS-EXAMINATION

14 BY MR. BROOKS:

15 Q. Would it surprise you to know that I've
16 had lots of cases where they go and into the jail
17 cell and seize documents?

18 MS. PANDUKHT: I would object to defense
19 counsel acting as a witness.

20 MR. BROOKS: Mr. Vaccaro just did the
21 same thing.

22 THE COURT: I'm going to give him a
23 little leeway.

24 BY MR. BROOKS:

25 Q. Would that surprise you?

1 A. No, sure doesn't surprise me.

2 Q. Okay. Your testimony here today is that
3 you are trying to protect Greg Lewis, and you
4 thought that if Greg Lewis's sell at prison was
5 shaken down, it would cause Greg Lewis problems,
6 right?

7 A. No, not Greg's so much as I was Mr. Budd.

8 Q. So, you're trying to protect Mr. Budd?

9 A. No. No. That's not what I'm saying at
10 all here. What I'm saying is if he has a
11 conversation with an individual and he has maybe
12 told no one else that information and then he gets
13 his room torn down, he may very well make a
14 conclusion about who he had that conversation
15 with. So, I left the matter alone. And I take
16 the responsibility. I didn't cause his cell to
17 get tossed, nor did I to have Greg Lewis's get
18 tossed.

19 MR. BROOKS: Okay. Thank you.

20 THE WITNESS: Okay.

21 MS. PANDUKHT: No re-redirect.

22 THE COURT: No re-re? You may step down,
23 detective. Thank you so much.

24 Who's next?

25 MR. KANE: Krissy Smith, your Honor.

1 THE BAILIFF: Ma'am, if you'll remain
2 standing, please, raise your right hand, and face
3 the clerk.

4
5 KRISSY SMITH,

6 called as a witness, and having been first duly
7 sworn to testify to the truth, the whole truth,
8 and nothing but the truth, was examined and
9 testified as follows:

10
11 THE CLERK: Please be seated. Will you
12 please state your name and spell it for the
13 record?

14 THE WITNESS: Caronol -- Smith,
15 C-a-r-o-n-a -- S-m-i-t-h.

16
17 DIRECT EXAMINATION

18 BY MR. KANE:

19 Q. So, that long spelling was your first
20 name?

21 A. Yes.

22 Q. But you go by Krissy?

23 A. Yes.

24 Q. Can we use Krissy here?

25 A. Yes, we can.

1 Q. Krissy, I want to talk to you about, I
2 want to talk to you about Memorial Day. That is
3 May the 27th back in 2003.

4 Where were you living then?

5 A. I was living in Sedona Hills, Saratoga.

6 Q. Did you also stay sometimes at the
7 Saratoga Palms Apartments?

8 A. Did I stay?

9 Q. Yeah.

10 A. Yes.

11 Q. And who was living there who you stayed
12 with?

13 A. My mom and grandma.

14 Q. Okay.

15 THE COURT: I can't, my mom and --

16 THE WITNESS: Grandparents.

17 BY MR. KANE:

18 Q. Do you remember what their apartment was?

19 A. I believe 1040.

20 Q. Okay. Did you know other people who
21 lived in the complex?

22 A. Yes.

23 Q. Did you know an individual named Glenford
24 Budd?

25 A. Yes, I did.

1 Q. Do you know his nickname?

2 A. AI.

3 Q. Is AI present here in court?

4 A. Yes.

5 Q. Point to him, please, and tell me what he
6 has on.

7 A. He has on a tie and a suit.

8 MR. KANE: Ask that the record reflect
9 identification of the defendant, your Honor.

10 THE COURT: Tie and a suit isn't going to
11 do it.

12 MR. KANE: Well, she pointed also, but
13 tell me what color shirt.

14 THE COURT: It's the gentleman without a
15 jacket. Would that be a fair statement?

16 THE WITNESS: Yes.

17 THE COURT: Very well. The record will
18 reflect identification of the defendant.

19 BY MR. KANE:

20 Q. Thanks, judge.

21 Now, had you and AI been dating prior to
22 Memorial Day of 2003?

23 A. No.

24 Q. Okay. Were you dating at that time?

25 A. No. We was --

1 Q. What was your relationship?

2 A. Before we dated for about a month.

3 Q. Okay. But you weren't dating as of May
4 the 27th of 2003?

5 A. No.

6 Q. Were you still friends?

7 A. Yes.

8 Q. Were you hanging around with AI on that
9 day? That is May the 27th, 2003.

10 A. Yes. We went to a picnic with his
11 family.

12 Q. Okay. And at sometime during that day
13 did you and AI return to the Saratoga Palms
14 Apartments?

15 A. Yes, we did.

16 Q. And about what time was that?

17 A. About 8:30, 9:00 o'clock.

18 Q. And what happened once you got back to
19 the apartment complex?

20 A. Well, me and Rayanna, we went to my mom
21 house. Well, we went to my house afterwards. We
22 went to go sit on the stairs that, where
23 everything, where it happened at. Anthony was
24 going to the basketball court. So, we followed
25 behind him, me, Rayanna, and the guy that we went,

1 who went with us to the park. Anthony approached
2 Derrick and them. They was talking, but I'm not
3 for sure what they was talking about. I wasn't
4 paying attention.

5 Q. Okay. Let me slow you down a little bit.
6 You said you were hanging around on the stairs by
7 the apartment where everything happened?

8 A. Yes.

9 Q. Now, you know there was a shooting at
10 apartment 2068?

11 A. Yes.

12 Q. That's the apartment you're talking
13 about?

14 A. Yes.

15 Q. So, a few of you were sitting there on
16 the stairs, correct?

17 A. Uh-huh.

18 THE COURT: Is that yes?

19 THE WITNESS: Yes.

20 BY MR. KANE:

21 Q. Then you went over to the basketball --

22 A. Yes. We followed behind them.

23 Q. Who was that went to the basketball --

24 A. AI, me, Rayanna, and the guy from, went
25 to the picnic with us. I believe his name was

1 Arnell. And that's it.

2 Q. And was there a basketball game then
3 played at the basketball court?

4 A. Yes.

5 Q. Who was playing?

6 A. AI, AI, Shawn, Arthur, Jason, Derrick,
7 and Casper.

8 Q. And who's Casper?

9 A. Casper is, I believe his name is Lazon,
10 Lazon. I'm not for sure, Lazon or --

11 Q. Did he live in apartment 2068?

12 A. Yes.

13 Q. Okay. And he went by the nickname of
14 Casper?

15 A. Yes.

16 Q. Now, were you there the whole time that
17 they were playing basketball?

18 A. No.

19 Q. Where did you go?

20 A. I went, first I went home, and I came
21 back, and I walked Rayanna halfway home.

22 Q. Now, while you were there and they were
23 playing basketball were you aware of any arguments
24 or fights between anybody?

25 A. No.

1 Q. How long did the basketball game go on?

2 A. For about 30 minutes maybe.

3 Q. After the basketball game where did you
4 go?

5 A. We went, well, I went to apartment 20 --
6 wait, the apartment where everything happened.

7 Q. Okay. And who went there with you?

8 A. Anthony, AI.

9 Q. Okay. And how long were you at the
10 apartment at the same time AI was there?

11 A. For a little bit, not long.

12 Q. Longer than 15 minutes?

13 A. No.

14 Q. And did you then leave to go somewhere
15 else?

16 A. Yes.

17 Q. What was your reason for leaving?

18 A. Day Day, which is Dajon, asked me could
19 he use a CD.

20 Q. Okay. And, and what do you mean when you
21 say use a CD?

22 A. Could he listen to a CD.

23 Q. Okay. And you didn't have it there, and
24 you went somewhere to get it?

25 A. Yes. I went home.

1 Q. Okay. Now, when you say home, where are
2 you talking about?

3 A. 1040.

4 Q. Okay. So, you mean the apartment right
5 there in Saratoga Palms, not somewhere else?

6 A. Yes. Yes.

7 Q. So, you went to 1040 to get the CD?

8 A. Yes.

9 Q. Did you then go back to apartment 2068?

10 A. Later on, about maybe 15 minutes later I
11 went back.

12 Q. Okay. You anticipated my question. So,
13 you were gone about 15 minutes by the time you got
14 back?

15 A. Yes.

16 Q. Now, when you got back, did you see AI?

17 A. No.

18 Q. Who did you see when you got back?

19 A. Jason and Derrick.

20 Q. And where were they?

21 A. Jason was outside listening to music, and
22 Derrick was inside on the telephone.

23 Q. Now, when you went back to the apartment
24 this, this last time with the CD, did you go
25 inside the apartment?

1 A. I stepped in the doorway, because Derrick
2 asked me a question.

3 Q. Okay. And was it a question about the CD
4 or something else?

5 A. A question about drinking.

6 Q. Okay. And you answered that question
7 from right on the threshold of the apartment right
8 in the doorway?

9 A. Yes.

10 Q. What happened then?

11 A. Afterwards I had went outside, and Jason,
12 he told me I could get my CD. I guess it wasn't
13 the type of music he liked or whatever. So, I got
14 my CD, and I was talking to him for a little bit,
15 because he asked me the same question Derrick did.
16 And like a couple minutes later we heard a shot,
17 and we hit the deck.

18 Q. Now, when you say we, who's out there in
19 the patio?

20 A. Jason and then, Jason and myself.

21 Q. And anybody else who's in the apartment
22 is inside, correct?

23 A. Yes.

24 Q. What happens once you hear the shot?

25 A. We get down on the ground. He gets over

1 me. Derrick and Casper runs out. Casper replies
2 that they're shooting. He say, he tells us
3 they're shooting, and he tells us to run. So, I
4 run with him.

5 Q. Okay. So, you and Casper, who's actually
6 which, which of the boys? Do you know his real
7 name?

8 A. Lazon, I believe.

9 Q. Okay. So, you and Lazon run down the
10 stairs, correct?

11 A. Yes.

12 Q. Where does everybody else go?

13 A. I'm not for sure. I remember Derrick
14 went back inside the house, and I, Lazon ran. I
15 don't know. I'm not for sure where he ran to, but
16 I ran downstairs.

17 Q. Now, you said you heard a shot while you
18 were up on the patio?

19 A. Yes.

20 Q. Did you see anything that led you to
21 believe shots were being fired?

22 A. I saw powder substance come from the
23 window, the bedroom window.

24 Q. And that's, as you're looking at the
25 door, that is a window on your right, and there is

1 a window on your left. That's the bedroom window,
2 which one was it that stuff came out of?

3 A. It was the one by the stairs, above the
4 stairs.

5 Q. As far as you know, that's the bedroom
6 window?

7 A. Yes.

8 Q. And once you got to the bottom of the
9 stairs what happened? Did you go with Lazon
10 somewhere?

11 A. No. I ran to the Shawn house.

12 Q. I'm sorry?

13 A. Shawn, downstairs, the neighbor
14 downstairs.

15 Q. And is that the apartment that's directly
16 underneath apartment 2068?

17 A. Yes.

18 Q. Do you know the people who lived there?

19 A. Yes.

20 Q. So, you were acquainted with them as well
21 as the people in 2068?

22 A. Yes.

23 Q. Now, when you run down the stairs, are
24 the people in apartment 1068 in their apartment or
25 outside or --

1 A. Inside. Inside.

2 Q. Okay. What happens then?

3 A. I started banging on the door. He
4 answered. He said, what's happening? I told him
5 that Casper said they were shooting, and then I
6 went into the house. He told me to come inside.

7 Q. Okay. And do you stay in there, well,
8 how long do you stay in --

9 A. I stayed in there for a long time, until
10 he waves the gang unit.

11 Q. Now, you realize that at some point
12 police had showed up, and they were investigating?

13 A. Yes.

14 Q. Did they talk to you that night, the
15 police?

16 A. No. They just told us to get behind the
17 yellow, the caution sign, the little caution tape.

18 Q. Right.

19 A. And that was it.

20 Q. So, you weren't interviewed that night
21 about anything that you may have seen?

22 A. No.

23 Q. A couple days later you were contacted by
24 the police, correct?

25 A. Yes.

1 Q. And you gave a statement to them?

2 A. Yes.

3 Q. Did you tell the police the truth about
4 what happened that night as well as you could
5 remember it?

6 A. Yes.

7 Q. Have you done the same thing today?

8 A. Yes.

9 MR. KANE: Pass the witness, your Honor.

10 THE COURT: Mr. Brooks?

11

12 CROSS-EXAMINATION

13 BY MR. BROOKS:

14 Q. You were with AI most of that day,
15 correct?

16 A. Yes.

17 Q. And you and AI did not actually arrive at
18 that apartment at 2068 until approximately 8:30 or
19 9:00 o'clock at night?

20 A. We arrived at home. They dropped me off
21 at home.

22 Q. What time did ya'll actually arrive at
23 apartment 2068?

24 A. Between 8:30, 9:00 o'clock.

25 Q. Okay. And you had not been there before,

1 at that apartment that day?

2 A. No.

3 Q. That was your first time?

4 A. Yes.

5 Q. Was it still light outside?

6 A. When we arrived?

7 Q. When you arrived at 8:30 or 9:00 o'clock?

8 A. No.

9 Q. It's already dark?

10 A. Yes.

11 Q. Okay. How would you characterize, I
12 mean, you're sitting out there on the porch up
13 there on the balcony, aren't you, with Jason?

14 A. Yes.

15 Q. Is it light out there, or is it dark?

16 A. It's dark outside.

17 Q. It's dark? It's dark outside. There is
18 a light outside the apartments?

19 A. Uh-huh.

20 Q. Is that a bright light or not such a
21 bright light?

22 A. It's kind of bright.

23 Q. Kind of bright. But would you say that
24 the overall atmosphere out there, even with that
25 light up, was it overall well-light or just mildly

1 light?

2 A. Mild.

3 Q. Mildly lit?

4 THE COURT: I'm sorry?

5 THE WITNESS: Mildly.

6 BY MR. BROOKS:

7 Q. Were you ever actually inside the
8 apartment?

9 A. No, just by the doorway.

10 Q. Okay. You never actually went inside?

11 A. No.

12 Q. You stayed outside?

13 A. Yes.

14 Q. You heard gunshots, correct?

15 A. Yes.

16 Q. You did not see who fired the shots?

17 A. No.

18 Q. You left and went downstairs, correct?

19 A. Yes.

20 Q. And you joined a person named Shown?

21 A. Shawn and a couple others.

22 Q. Is Shown also called Sin?

23 A. No.

24 Q. It's a different person?

25 A. Yes.

1 Q. The police arrived, correct?

2 A. Yes.

3 Q. You're still downstairs, correct?

4 A. Correct.

5 Q. The police secure the premises?

6 A. Uh-huh.

7 THE COURT: Is that a yes?

8 THE WITNESS: Yes.

9 BY MR. BROOKS:

10 Q. You wind up going outside at some point
11 and joining the crowd of people there?

12 A. Correct.

13 Q. How big is the crowd?

14 A. It was only about four, four of us.

15 Q. Four of you? Later on was it larger?

16 A. People came from the apartment.

17 Q. People from the surrounding apartments
18 came?

19 A. I'm not for sure where they lived. Just
20 who lived in the apartments came out.

21 Q. Were any family members out there of the
22 deceased?

23 A. No.

24 Q. None? Later, how long did you stay there
25 before you left?

1 A. Not long.

2 Q. How long?

3 A. I say about 20 minutes.

4 Q. So, you were gone pretty early?

5 A. Uh-huh.

6 THE COURT: Is that a yes?

7 THE WITNESS: Yes. I'm sorry.

8 BY MR. BROOKS:

9 Q. You didn't give a statement to the police
10 until May 30th?

11 A. I believe so.

12 Q. About three days later?

13 A. Yes.

14 MR. BROOKS: Pass the witness.

15 THE COURT: Mr. Kane?

16 MR. KANE: No, your Honor.

17 THE COURT: You may step down. Thank
18 you.

19 Can this witness be excused? Who's next?

20 MS. PANDUKHT: Judge, at this time we're
21 going to do the reading.

22 THE COURT: Very well. Did you have a
23 reader?

24 MS. PANDUKHT: I do.

25 MR. BROOKS: Judge, I would just

1 reiterate the objection that was made previously
2 in which the Court has already ruled.

3 THE COURT: It is noted for the record.
4 The same ruling will be made or has been made.

5 In fact, ladies and gentlemen, we're
6 going to read a transcript into the record. We're
7 going to have someone actually play the part of a
8 reader. In fact, he will be reading what is
9 designated as the witness, who could not be here.
10 Anything that that person said at the time of the
11 other examination, he will be responding. You're
12 going to get an instruction on this when we go to
13 the jury instruction phase of this trial, but for
14 now you should consider this testimony just as if
15 the person who actually made the statements under
16 oath in the prior proceeding was sitting here and
17 giving testimony. In other words, it is the same
18 as any other witness who you have heard testify
19 here in the courtroom.

20 And you're calling for the record?

21 MS. PANDUKHT: For the record, this is
22 Glen O'Brien with the district attorney's office.

23 THE COURT: Remain standing, sir.
24 (Thereupon, Glen O'Brien was sworn with respect to
25 the reading of the transcript.)

1 MR. BROOKS: Court's indulgence, your
2 Honor. May we approach?

3 THE COURT: You may, yes.

4 (Conference at the bench.)

5 THE COURT: You may proceed.

6 (AS READ BY MS. PANDUKHT): Would you
7 state your first and last name, spelling them both
8 for the record?

9 THE WITNESS: Winston Budd, W-i-n-s-t-o-n
10 B-u-d-d.

11
12 DIRECT EXAMINATION

13 BY MR. SCHWARTZ (AS READ BY MS. PANDUKHT):

14 Q. Mr. Budd, I'm going to ask you a few
15 questions, and then Mr. Brooks will ask you some
16 questions. We'd appreciate it if you answer
17 slowly and speak into this microphone so everybody
18 can hear what you're saying.

19 Mr. Budd, do you know Glenford Budd?

20 A. Yes, sir.

21 Q. Do you see Glenford Budd in the courtroom
22 today?

23 A. Yes, sir.

24 Q. Could you point, point to where he is and
25 describe what he's wearing today?

1 A. A blue outfit.

2 MR. SCHWARTZ: May the record reflect --
3 that's me. May the record reflect the
4 identification of the defendant, your Honor?

5 THE COURT: That will be noted.

6 BY MR. SCHWARTZ:

7 Q. Thank you. How, how is it that you know
8 the defendant?

9 A. My nephew.

10 Q. And do you know the defendant by any
11 other name besides Glenford?

12 A. Junior.

13 Q. Junior, okay. Let me direct your
14 attention now to Tuesday, May 27th, 2003 at about
15 3:30 in the morning.

16 Did you receive a phone call from your
17 brother, Kirk?

18 A. Yes.

19 Q. Without telling us what Kirk said to you
20 on the phone, as a result of that phone call did
21 you become concerned regarding your nephew,
22 Junior?

23 A. Yes.

24 Q. Okay. Now, let me direct your attention
25 to May the 27th -- that's Tuesday -- at about

1 11:00 o'clock in the morning.

2 Did you receive a phone call from the
3 defendant, your nephew?

4 A. Yes.

5 THE COURT: Wait a second. Let me keep
6 this straight. Eleven a.m., is this still the
7 27th?

8 MR. SCHWARTZ: Tuesday. Tuesday, yes,
9 your Honor.

10 THE COURT: Okay. Still the 27th?

11 MR. SCHWARTZ: Yes.

12 THE COURT: That's, actually I meant to
13 say Tuesday. Thank you.

14 BY MR. SCHWARTZ:

15 Q. Okay. What did the defendant tell you
16 when he called you at about 11:00 o'clock that
17 Tuesday morning?

18 A. He asked me to get in touch with their
19 mother to get some money so he can get out of
20 here.

21 Q. And what else did he say when you talked
22 to him on the phone this Tuesday morning?

23 A. He also told me that he needed me to come
24 pick him up.

25 Q. What, okay. What did he say? What, if

1 anything, did he say regarding why he needed you
2 to pick him up?

3 A. Could you repeat that again?

4 Q. Sure. Why did the, why did your nephew
5 need you to come pick him up?

6 A. Because where, where, wherever he was,
7 the person didn't want him to stay there no more.

8 Q. What did the defendant tell you about any
9 trouble he might be in?

10 A. Could you repeat it?

11 Q. What did the defendant say regarding what
12 possible trouble he could be in? What had he done
13 that caused you some concern?

14 A. I couldn't remember. He told me that he
15 went to get some money.

16 Q. Uh-huh.

17 A. Get some, they were supposed to rob him
18 or something, or something. I don't remember
19 exactly.

20 Q. About 20 minutes ago you and I spoke in
21 my office, and you had a clear memory then, didn't
22 you?

23 A. Yes.

24 Q. Why don't you tell us what your nephew
25 told you that Tuesday morning?

1 A. He told me that he went, he told me that
2 they was trying to rob him.

3 Q. What did you do as a result of them
4 trying to rob him?

5 THE COURT: What did he do?

6 BY MR. SCHWARTZ:

7 Q. What did he do as a result of them trying
8 to rob him?

9 A. He said he shoot them.

10 Q. Okay. Did he tell you how many of them
11 he shot?

12 A. No.

13 Q. Did you ask him anything about the gun?

14 A. Yes.

15 Q. What did you ask him?

16 A. I asked him where the gun at.

17 Q. What did he say?

18 A. He said he give it back to some friend.

19 Q. Did he mention the name of the friend who
20 he gave the gun back to?

21 A. No.

22 Q. Did he indicate what he was being robbed,
23 robbed of when he shot them?

24 A. Weed.

25 Q. Weed?

1 A. (Nods head.)

2 Q. Do you know what weed is?

3 A. Marijuana, same thing.

4 Q. Did your nephew, the defendant, indicate
5 where he was when he called you Tuesday morning?

6 A. Yes.

7 Q. Where did he say he was?

8 A. Henderson.

9 Q. Henderson?

10 A. Yes.

11 Q. Okay. Did there come a time when you
12 drove up to and went to Henderson to pick up your
13 nephew, sir?

14 A. Yes.

15 Q. And would that have been the following
16 day, Wednesday?

17 A. Yes.

18 Q. And when you picked up your nephew, the
19 defendant, on Wednesday, was he alone?

20 A. Yes.

21 Q. Did he have anything in his hands?

22 A. Yes.

23 Q. What did he have?

24 A. Plastic bag with some clothes.

25 Q. Could you notice anything unusual about

1 the clothes that was in the plastic bag?

2 A. Yes.

3 Q. What did you notice about the clothes?

4 A. About the clothes?

5 Q. Yeah?

6 A. I didn't see the clothes. I only seen in
7 the plastic bag.

8 Q. Was there anything different about your
9 nephew's appearance when you saw him on Wednesday
10 as opposed to a day or two earlier?

11 A. Yes.

12 Q. What was different about his appearance?

13 A. He cut, cut his hair.

14 Q. Okay. Where did you, once you picked up
15 your nephew on Wednesday where did the two of you
16 go?

17 THE COURT: Mr. Budd, do you want some
18 water?

19 THE WITNESS: To get to my house.

20 BY MR. SCHWARTZ:

21 Q. Who was at your house when you and your
22 nephew arrived, sir?

23 A. My family.

24 Q. Okay. Did there come a time while you
25 were at your house with your nephew when the

1 police arrived?

2 A. Yes.

3 Q. And was it obvious to you who they were
4 looking for?

5 A. Yes.

6 Q. They were looking for your nephew?

7 A. Yes.

8 Q. Did you make any suggestions to your
9 nephew as to what you thought he should do?

10 A. Yes.

11 Q. What did you tell him?

12 A. To turn his self in.

13 Q. What did he say to that?

14 A. He say he prefer to run.

15 Q. Did you talk to him about what possible
16 sentences he could receive?

17 A. Yes.

18 Q. What did you say to him?

19 A. I say he could possibly get death or
20 life, life in prison.

21 Q. And what, if anything, did he say in
22 response to that?

23 A. Nothing.

24 MR. SCHWARTZ: I have no further
25 questions, your Honor.

1 THE COURT: Cross-examination?

2

3

CROSS-EXAMINATION

4

BY MR. BROOKS:

5

Q. Mr. Budd, you speak with an accent. Are
6 you from Belize?

7

A. Yes.

8

Q. But you speak English? That's your
9 native language?

10

A. Broken English.

11

Q. Do you speak any foreign languages?

12

A. (Shakes head.)

13

THE COURT: For the record --

14

THE WITNESS: No.

15

THE COURT: Thank you.

16

BY MR. BROOKS:

17

Q. You are Glenford's uncle. Is his father
18 your brother?

19

A. Yes.

20

Q. What's the name of his father?

21

A. Glenford Budd.

22

Q. And his father, Glenford Budd, lives in
23 Belize still?

24

A. Yes.

25

Q. How long was my client, AI or Glenford,

1 in Las Vegas before the shooting occurred?

2 A. I think in December.

3 Q. I'm sorry?

4 A. In December.

5 Q. He came to Las Vegas in December?

6 A. Yes.

7 Q. Of last year?

8 A. Yes.

9 Q. So, he's been here since December of
10 2002?

11 A. Yes.

12 Q. So, he's been here roughly six months?

13 A. Yes.

14 Q. Was he living with you at your house?

15 A. No.

16 Q. Did he live at your house at all during
17 the six months?

18 A. No.

19 Q. Do you know where he was living?

20 A. With my brother.

21 Q. With your brother?

22 A. (Nods head.)

23 Q. What is your brother's name?

24 A. Kirk.

25 Q. Is that K-i-r-k?

1 A. Yes.

2 Q. And he lives here in Las Vegas?

3 A. Yes.

4 Q. Is that where my client was living almost
5 the entire six months as far as you know?

6 A. Yes.

7 Q. You've testified that when you picked him
8 up on Wednesday the 27th, his hair was cut,
9 correct?

10 A. Yes.

11 Q. Prior to that day when was the last time
12 you had seen him?

13 A. Memorial Day.

14 Q. I'm sorry?

15 A. Memorial Day.

16 Q. Memorial Day?

17 A. Uh-huh.

18 Q. And at that time on Memorial Day his hair
19 was not cut?

20 A. No.

21 MR. BROOKS: Pass the witness.

22 MR. SCHWARTZ (AS READ BY MS. PANDUKHT):

23 No redirect, your Honor. Thank you.

24 THE COURT: And Mr. Budd is free to go, I
25 presume?

1 MR. SCHWARTZ: Yes, your Honor.

2 THE COURT: I don't think we need to read
3 much more, do we?

4 MS. PANDUKHT: No.

5 THE COURT: Very well. That concludes
6 the testimony of Mr. Budd, Mr. -- I'm sorry --
7 Winston Budd. Thank you, sir. You may step down.

8 Who's next?

9 MR. KANE: Judge, I would like to have
10 marked for purposes of identification and offer
11 State's Proposed 50 and 51, which are certified
12 copies of the custody records of the defendant and
13 Greg Lewis respectively.

14 THE COURT: Mr. Brooks?

15 MR. BROOKS: Judge, I would ask for a
16 brief hearing outside the presence, please.

17 THE COURT: Very well. I'm wondering if
18 this might be a good time, how long do you
19 anticipate that hearing will take?

20 MR. BROOKS: No more than five minutes,
21 judge.

22 THE COURT: Let's take a brief recess,
23 then. I'll excuse the jury, ask them to remain in
24 a close-by area, at least somewhere where they
25 don't have to take too many elevators.

1 During the recess, ladies and gentlemen,
2 I must remind you that during the recess it
3 remains your duty not to discuss this case among
4 yourselves or with anyone else. Don't read,
5 watch, listen to a report of or commentary on
6 anything which might be associated with this
7 matter. Don't form or express an opinion in any
8 of these issues until it has been fully and
9 finally submitted to you under instruction of law
10 by me.

11 Mr. Bailiff will keep close by. See you
12 in a few minutes.

13 (Thereupon, the jury exited the courtroom.)

14 THE COURT: Okay, Mr. Brooks.

15 MR. BROOKS: Judge, I'm just concerned
16 that perhaps this information which is, which
17 consist of data that came off of a computer, is
18 very confusing. And I'm wondering if this cannot
19 better be done with a stipulation between the
20 parties regarding the gist of these two records.

21 MR. KANE: Absolutely. And let me short
22 circuit things. What I'm interested in
23 establishing through the records -- and if we can
24 stipulate to it, that's fine -- would be that
25 between the dates of September the 29th, 2003 and

1 November the 13th, 2003 the defendant and
2 Mr. Lewis were in the same unit at the Clark
3 County Detention Center, that being unit 9C, also
4 that on May the 25th of 2004 the defendant was
5 moved to unit 9C-18, a single cell. These are
6 both things that are referred to in the record and
7 are self-authenticated.

8 THE COURT: Would that --

9 MR. BROOKS: Yes, judge. The defendant
10 would enter the stipulation as to those basic
11 facts. I just object to the idea of giving the --

12 MR. KANE: That's fine.

13 THE COURT: Stipulation is always better
14 and almost always clearer for the jury.

15 Can we bring the jury back in?

16 MR. KANE: One other thing, judge, if I
17 could, and on that same issue, I was going to ask
18 the Court to take judicial notice -- and perhaps
19 we can do this by stipulation as well -- that as
20 of the time of the writing of the letters, which
21 was August of 2004, the currently set trial date
22 for Mr. Budd was November the 15th of 2004. Again
23 that's referred to in the letter.

24 THE COURT: Understood. Mr. Brooks,
25 Mr. O'Brien?

1 MR. BROOKS: That would not be coming
2 into the stipulation, though.

3 MR. KANE: Well, I'll either ask the
4 Court to take judicial notice of that from the
5 Court's own records, or we can stipulate to it.

6 THE COURT: Now, Court's own records
7 don't go to the jury.

8 MR. KANE: No. I understand that, judge,
9 but I would ask you to take judicial notice, and
10 then I would announce in open court that you've
11 taken notice, or we can stipulate. I'm not trying
12 to hide the ball. The defendant says in the
13 letter, my trial date just got bumped to November.
14 And I want to be able to say to the jury that's a
15 fact.

16 MR. BROOKS: Okay. I have no objection
17 to that.

18 THE COURT: Very well.

19 MR. BROOKS: Also, judge, while we're
20 here --

21 THE COURT: So, it will be by
22 stipulation? I'm sorry, but it will be by
23 stipulation, then?

24 MR. BROOKS: That's correct. I have no
25 problem with that.

1 THE COURT: Very well.

2 MR. BROOKS: Judge, we have a stipulation
3 which we have previously discussed here on the
4 record. And I would ask to read this now and make
5 sure it's clear with the Court's permission.

6 THE COURT: Certainly.

7 MR. BROOKS: The stipulation which we've
8 now had retyped and signed by Mr. Kane and myself
9 state's the following: The State and defense
10 stipulate that Defense Exhibits B and C have been
11 admitted into evidence. These exhibits are
12 photographs taken at the Saratoga Palm Apartments,
13 Las Vegas, Nevada. Exhibit C shows the view from
14 the balcony of Celeste Palau's apartment, looking
15 at apartment 2068 in building nine. Exhibit B
16 shows the light fixture over the stairs outside
17 apartment 2068. The light fixture is between
18 apartment 2068 and apartment 2067. New paragraph.

19 The State and defense stipulate that
20 Steven Yoshida, an investigator for the Clark
21 County Public Defender Office, took these
22 photographs. The distance between the bottom of
23 the stairs outside Celeste Palau's apartment and
24 the bottom of the stairs outside apartment 2068 in
25 building nine is 218 feet.

1 And this document is signed by both
2 myself and Mr. Kane. I would ask that the matter
3 be entered into the record and filed and all that
4 kind of stuff.

5 THE COURT: Is that your recollection,
6 Mr. Kane, of what the stipulation was?

7 MR. KANE: It is, your Honor.

8 THE COURT: Very well. It will be
9 admitted.

10 MR. BROOKS: And, judge, may I ask a
11 housekeeping matter here on the record so we can,
12 Court's indulgence.

13 Judge, it's my understands from Mr. Kane
14 that he intends to rest after the stipulations.
15 Under those circumstances it might be appropriate
16 for us to go ahead now and take care of the
17 admonition for Mr. Budd, because it's my
18 expectation that we will probably just have the
19 stipulation read into the record, and that would
20 be the defense case.

21 THE COURT: Very well.

22 MR. BROOKS: Just as a matter of saving
23 time here.

24 THE COURT: I think it's appropriate. We
25 don't need to take the jury in and out or delay

1 them anymore.

2 Mr. Bailiff, we're almost there.

3 Mr. Budd, I am certain that your
4 attorney -- would you stand, please -- that your
5 attorneys have discussed with you the right that
6 you have to testify; is that correct?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: And, in fact, I suspect that
9 they have also explained to you the absolute right
10 that you have not to testify in this case; is that
11 correct?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: I'm sorry?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: And they have, I presume,
16 told you that if you choose not to testify, that I
17 can give an instruction to the jury that says that
18 they can't hold that against you.

19 Do you understand that?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: And, in fact, formally in the
22 constitution of the United State's, under the
23 constitution of the State of Nevada, you cannot be
24 compelled to testify in this case.

25 Do you understand that?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: And you may, at your own
3 request, give up this right and take the witness
4 stand and testify. If you do, you will be subject
5 to cross-examination by the district attorney, and
6 anything that you may say, be it on direct or
7 cross-examination, will be the subject of fair
8 comment when the district attorney speaks to the
9 jury in his final argument.

10 Do you understand that?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: If you choose not to testify,
13 the Court will not permit the district attorney's
14 office to make any comments to the jury because
15 you have not testified.

16 Do you understand that?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: If you elect not to testify,
19 I will instruct the jury, if your attorney
20 specifically requests, an instruction that would
21 read as follows: The law does not compel -- to
22 testify and -- presumption may be raised --
23 inference -- drawn from the fact that the
24 defendant has not testified.

25 And actually that's what we call a Carter

1 instruction. In fact, this entire formal
2 admonition that I'm reading to you is essentially
3 taken from or as a result of findings in that
4 case.

5 Do you understand that?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Do you have any questions for
8 me?

9 THE DEFENDANT: No, ma'am.

10 THE COURT: Do you fully understand the
11 fact that you do not have to take the stand in
12 this case?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: And, in fact, the
15 constitution of our country does not ever compel a
16 defendant to take the stand and testify.

17 Do you understand that?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Are you comfortable giving up
20 that right?

21 THE DEFENDANT: Huh?

22 THE COURT: You know what? Let me
23 rephrase that. You look at me questioningly with
24 good reason.

25 Are you comfortable, upon the advice of

1 rather have it than not have it?

2 A. Yeah.

3 Q. But there's no connection between your
4 producing this information and the writing of this
5 letter, or is there a connection?

6 A. Could you be more specific?

7 Q. Sure. I mean, basically the letter
8 that's identified as 50 from Mr. Schwartz to the
9 parole board --

10 A. Yeah.

11 Q. -- is really given to you as a result of
12 your work in this case?

13 A. Yes.

14 Q. It's given to you as a result of your
15 cooperation?

16 A. Yes.

17 Q. And your cooperation was producing these
18 letters to the State and also giving us, talking
19 to the detectives about what Mr. Budd told you?

20 A. Yes. But prior to me getting that letter
21 they never told me anything about you'll get a
22 letter, or I didn't even know who David Schwartz
23 was. I didn't even know that the letter was
24 coming.

25 Q. In your letter dated August 9th, 2004,

1 which is Defense Exhibit A, you mention in there
2 that there are snitches around, correct?

3 A. Correct.

4 Q. And you told Glenford to be careful about
5 snitches?

6 A. Correct.

7 MS. PANDUKHT: Judge, I'm going to object
8 to him quoting a letter. It hasn't been admitted.

9 MR. BROOKS: Okay, judge. I'll ask that
10 the letter be admitted.

11 MS. PANDUKHT: And the only foundational
12 objection I had so far is, I don't think we've
13 established the date of when that letter was
14 postmarked. I think that's the only foundational
15 thing we were lacking.

16 BY MR. BROOKS:

17 Q. Okay. What is the postmark on the letter
18 if you can tell?

19 A. August 10th, 2004.

20 MR. BROOKS: Okay. I will move to admit
21 the letter as Defense Exhibit A.

22 MS. PANDUKHT: With that I have no
23 objection.

24 THE COURT: Defense Exhibit A?

25 MR. BROOKS: Correct, your Honor. And A

1 includes the envelope and two pages.

2 THE COURT: Two pages, letter and
3 envelope.

4 BY MR. BROOKS:

5 Q. So, basically in this letter to Glenford
6 in August of 2004, before you met with the
7 detective, you were already well-aware of the
8 whole snitch business, correct?

9 A. Yeah.

10 Q. And you warned him to be careful about
11 snitches?

12 A. Does it say that in here? Can I check
13 that out?

14 Q. Sure. Go through it. You can find it.

15 A. Yes, I did, right here.

16 Q. It's kind of interesting, isn't it, that
17 in the letter that's 49C, the rap song, there is
18 also warning about snitches, isn't there?

19 A. Yes.

20 Q. But you didn't write the rap song warning
21 about snitches, correct?

22 A. Correct.

23 MR. BROOKS: Court's indulgence.

24 THE COURT: Of course.

25

1 BY MR. BROOKS:

2 Q. We talked about the fact that they open
3 your mail at CCDC. Do you know why they do that?

4 A. Yeah, pretty much.

5 Q. Why is that?

6 A. I have an idea, like I guess they don't
7 want people sending stuff to the facility that's,
8 that you're not allowed to have.

9 Q. And that fact is commonly known
10 throughout the jail, correct?

11 A. Correct.

12 Q. Okay. And also in August of 2000 --
13 well, so you got probation on your original case,
14 correct?

15 A. Correct.

16 Q. And then you were revoked off probation?

17 A. Yes.

18 Q. And so in August of 2004 you are awaiting
19 results of whether you're going to get revoked off
20 probation?

21 A. I was already revoked. I was already
22 sentenced and revoked.

23 Q. You were revoked when, in early August,
24 2004?

25 A. July 28th.

1 Q. July 28th?

2 A. Yeah.

3 Q. Okay. So, once you actually turned this
4 information over to the detective the only thing
5 you can look forward to in terms of getting
6 released is really the parole board?

7 A. Yeah.

8 Q. And you'll be going up before the parole
9 board again this next year sometime?

10 A. Yes.

11 Q. When will you be going before the parole
12 board?

13 A. Like about March, about March, '06.

14 MR. BROOKS: Okay. Well, thank you, sir,
15 and good luck at the parole board. Pass the
16 witness.

17 THE COURT: Ms. Pandukht?

18 MS. PANDUKHT: I have no redirect.

19 THE COURT: The witness may be excused?

20 MS. PANDUKHT: Yes.

21 THE COURT: Who's next?

22 MS. PANDUKHT: State calls Detective
23 James Vaccaro.

24 THE BAILIFF: Detective Vaccaro, if you
25 would remain standing, please, raise your right

1 hand, and face the clerk.

2 THE WITNESS: Sure.

3
4 JAMES CHARLES VACCARO,

5 called as a witness, and having been first duly
6 sworn to testify to the truth, the whole truth,
7 and nothing but the truth, was examined and
8 testified as follows:

9
10 THE CLERK: Please be seated. Will you
11 please state your name and spell it for the
12 record?

13 THE WITNESS: My name is James Charles
14 Vaccaro, V-a-c-c-a-r-o.

15 THE CLERK: Thank you.

16
17 DIRECT EXAMINATION

18 BY MS. PANDUKHT:

19 Q. How are you employed?

20 A. I'm employed with the Las Vegas
21 Metropolitan Police Department.

22 Q. How long have you been with the Las Vegas
23 Metropolitan Police Department in total?

24 A. In total, a little bit more than 28
25 years.

1 Q. Are you currently assigned to a
2 particular unit or division?

3 A. Yes. I'm a homicide detective.

4 Q. How long have you been a homicide
5 detective?

6 A. For 12 years, more than 12 years.

7 Q. And before that were you a detective in a
8 different unit?

9 A. Yes.

10 Q. Which one?

11 A. I was an undercover narcotics detective
12 for 10 years before that.

13 Q. So, in total how long have you actually
14 been a detective with the police department here
15 in Las Vegas?

16 A. Well, the 10 and the 12, plus I was
17 actually considered a detective as of four years
18 SWAT officer, too. So, pretty much the whole time
19 I've been here I've been a detective except for
20 some patrol time.

21 Q. Now, were you on duty or on call on May
22 26th or May 27th, 2003 around the hour of
23 midnight?

24 A. Yes.

25 Q. Could you tell the jury what it means to

1 be on call? How does that work?

2 A. We refer to it as being up. It's your
3 turn. The next homicide that occurs in the valley
4 is the team that's up. We have 24 detectives, and
5 they are set up in two-man teams. And my partner
6 and I happen to have our up on that particular
7 holiday weekend. And, and the next thing, when
8 you're up, you have to wait for the next homicide
9 to occur or officer-involved shooting or whatever
10 it may be that requires homicide investigators to
11 go there. And on that particular occasion that
12 was our responsibility on that night.

13 Q. And by holiday weekend, you're referring
14 to the Memorial Day weekend?

15 A. Yes.

16 Q. Now, who was your partner at the time?

17 A. He still is. His name is Martin
18 Wildemann, W-i-l-d-e-m-a-n-n.

19 Q. Now, did you get a call on that evening
20 around the hour of midnight between May 26th, May
21 27th, 2003?

22 A. Yes, I did.

23 Q. Were you notified at that time that there
24 was a shooting at the Saratoga Palms II East
25 apartment complex?

1 A. Yes.

2 Q. And is that located at 2865 East
3 Charleston in Clark County, Nevada?

4 A. I think it's 2895.

5 Q. Yeah. Did I get the address wrong?

6 A. I think that's right.

7 Q. Okay. Thank you for correcting me. That
8 is in Clark County, Nevada?

9 A. Yes.

10 Q. Now, about how long did it take you to
11 get there, do you remember?

12 A. Well, I live out in Green Valley. So, by
13 the time I shake out the sleep when you get called
14 at night and throw on some clothes and get in your
15 police car, you log on and drive to the location,
16 could have taken me 30 to 45 minutes to get there.

17 Q. Now, when you got there, were there
18 already other police personnel already there?

19 A. Oh, yes, right from the moment that the
20 initial call for police response, in this
21 particular case it was almost immediate, because
22 we know that there were police officers on the
23 property at the time of the incident. So, yes,
24 the scene is immediately protected by those
25 officers awaiting our arrival.

1 Q. Now, could you describe what you mean by
2 protected? What actually had you seen around the
3 apartment and apartment complex?

4 A. Well, as police officers, we're all
5 trained to protect the crime scene. And so when I
6 arrive at a crime scene as homicide detective, I
7 expect to find that it is taped out with that
8 yellow crime scene tape that we all see and, and
9 hopefully it's been protected in, in a way that no
10 one can get in or out of that scene to alter
11 anything that may be of evidence to us in our
12 investigation.

13 So, in this case the front entrance was
14 protected by police officers, and that would be
15 the entrance on the, Charleston. I believe only
16 police vehicles were allowed to go in, and people
17 leaving by vehicle were being screened by officers
18 that were on the property and, of course, very
19 tight around the building in question we had
20 yellow tape. And we create sort of a buffer for
21 investigators to arrive inside of a buffer. But
22 still the media is outside of that buffer. So,
23 the media might have been out on Charleston. But
24 we were allowed to get inside the parking area,
25 but no one can go up the stairs to that apartment

1 once we've determined that there has been a
2 homicide there except for those that are
3 responsible for that investigation.

4 Q. And the scene was already secured in that
5 fashion as soon as you arrived?

6 A. When I arrived, it was well-secured, yes.

7 Q. Now, was there an actual detective that
8 was assigned as the lead detective?

9 A. That would be me.

10 Q. That was you? Could you tell the jury
11 what it means to be assigned as the lead
12 detective? What special responsibilities do you
13 have?

14 A. My partner and I share duties. One, in
15 one instance I will be responsible for the
16 investigation of the crime scene and work with the
17 crime scene analysts, and his duties on those
18 occasions would be to interview witnesses that
19 have information about the case. And we flip
20 every, every other time. However, there, in this
21 case I believe there were probably upwards of six
22 homicide detectives that were called. That
23 includes supervisors and other detectives that
24 were asked to help us out. All total there were
25 probably upwards of 30 police personnel in that

1 complex right at the time that this happened.

2 Q. Now, is one of the responsibilities that
3 you have is to get information from other police
4 officers and other detectives?

5 A. That's the nature of the whole game. I
6 mean, you're constantly getting information from
7 other people, because we're walking into the
8 middle of a movie, and we learn from those people
9 that are there what they saw, what they learned,
10 what they can tell us so that we can begin our
11 investigation.

12 Q. And in this case you received information
13 from other patrol officers, witnesses, and
14 detectives about what had already occurred before
15 you got there?

16 A. Yes.

17 Q. Do you also get all of the reports,
18 witness statements, analysis of evidence that is
19 requested, results of those analysis?

20 A. Yes. That would be a combination of
21 these two books right here. Just about everything
22 you wanted to know about this case is sitting
23 right here on the desk.

24 Q. Those two big binders sitting there on
25 the witness stand are all for this case?

1 A. Yes.

2 Q. Now, every time something happens, a
3 piece of paper is generated on this case, it goes
4 to you to put in that binder?

5 A. Yes. I mean, there is an exception.
6 Occasionally there is some correspondence between
7 different organizations, district attorney's
8 office and such that I may not have in here but,
9 yes, anything that's investigative is in these two
10 books right here.

11 Q. Generally that's how it's supposed to
12 work?

13 A. Right.

14 Q. Now, when you arrived at the crime scene,
15 in this case at apartment 2068, could you describe
16 who was actually present inside the apartment and
17 what was being done?

18 A. Actually when I arrived, we were briefed
19 outside the apartment in the parking lot so that
20 we have an understanding of what we're up against.
21 In this particular case we knew that the apartment
22 and the immediate area around that apartment was
23 probably mostly what we were going to be concerned
24 with. It wasn't like the whole complex. So, it
25 was building nine in the second floor apartment

1 two -- 2068. We would later learn that there was
2 an impact site from a bullet on another building
3 neighboring, but that was as far away as we really
4 got with regard to our homicide investigation.

5 Once we were briefed by the detectives
6 and the officers that are at the scene, myself,
7 supervisors from the homicide section would go
8 with crime scene investigators and proceed slowly
9 up the stairs to the apartment so that we could
10 begin to assess what we had. And this is
11 basically a walk-through to have an understanding
12 of what we're up against. There is no evidence
13 being collected at this point. We're looking.
14 We're documenting. We're being careful where
15 we're walking, and we're trying to document and
16 get in your mindset where we're going to go with
17 this investigation.

18 Q. And there was a crime scene analyst that
19 were already there upon your arrival?

20 A. Yes.

21 Q. What about medical? Had medical already
22 come and gone by the time you got there?

23 A. Yes. As you might imagine, with my
24 30-minute to 45-minute response time, had they,
25 had they been needed, they would have already have

1 arrived, done their medical evacuation, and have
2 left. So, in this particular case that did occur.
3 And I learned that, as my responsibility for the
4 scene is to find out who was there, who was in my
5 scene, because I need to know who was there.

6 Q. So, you were advised, then, that Derrick
7 Jones had actually been removed from the scene?

8 A. Yes. What I learned was that we had two
9 deceased and one that was very critical, and he
10 had been transported.

11 Q. Now, I would like to show you some
12 photographs. And I'm going to show defense
13 counsel exactly which ones I'm going to show him.

14 I'm going to show you what has been
15 marked as State's Proposed Exhibit 6 through --
16 let's see here -- through 31 and then 43 through
17 46. And what I would like you to do is just flip
18 through these and let me know if you recognize
19 these photos.

20 A. Yes, I do.

21 Q. Now, we're going to go through all of
22 these one by one, but as a group the numbers that
23 I've already mentioned, do these photographs
24 fairly and accurately depict, first let me say six
25 through 31, do they fairly and accurately depict

1 the scene at apartment 2068 on May 27th, 2003?

2 A. Yes, they do.

3 Q. And then with regard to 43 through 44, do
4 they accurately depict the defendant shortly
5 afterward?

6 A. Yes, they do.

7 MS. PANDUKHT: I'm going to move to admit
8 all of these now, and then we'll move to publish
9 for the jury and go through them one by one.

10 MR. BROOKS: No objection.

11 THE COURT: They will be admitted. Would
12 you repeat the number of those exhibits again for
13 the record, please?

14 MS. PANDUKHT: Yes. Well, six through
15 31. However, 18, 21, and 24, I believe, have
16 already been admitted. And that's the first group
17 I'm going to go through, and then the other ones
18 are 43 through 46.

19 THE COURT: Very well.

20 BY MS. PANDUKHT:

21 Q. Okay. All ready to go. Okay. So, I
22 want, like I'm going to put each one at a time up
23 on the board, and I would like you to describe
24 them for the jury. And then as soon as, and you
25 can see it on your screen.

1 A. Okay.

2 THE COURT: Or at least you should.

3 We're getting used to the technology.

4 Mr. Bailiff, are we sure that this is
5 turned on in terms of connection?

6 MR. KANE: That picture was on my
7 monitor.

8 MR. O'BRIEN: Mine as well. When you
9 first hit the switch, it appeared on mine.

10 THE COURT: At the top.

11 MR. O'BRIEN: Yeah.

12 THE COURT: Far be it from me,
13 Ms. Recorder, but do we need to ask permission
14 again? I mean, does that go to gallery monitors
15 by any chance?

16 THE COURT RECORDER: It's a projector.

17 THE COURT: Well, in fact, we can
18 probably take our afternoon recess and come back
19 while we work on our technology. You know, all
20 kidding aside, this is very, very new and very
21 advanced technology. So, it's not easy to make it
22 work. And sometimes there is a reason it's not
23 working, and it's not the operator's fault. But
24 let's take about a 10-minute break.

25 Ladies and gentlemen, I must remind you

1 that during the recess it remains your duty not to
2 discuss this case among yourselves or with anyone
3 else. Don't read, watch, listen to a report of or
4 commentary on anything which might be associated
5 with this matter. Don't form or express an
6 opinion in any of these issues until it has been
7 fully and finally submitted to you under
8 instruction of law by me.

9 About 10 minutes, please.

10 (Recess taken.)

11 THE COURT: Welcome back. Let the record
12 reflect the presence of all parties.

13 And will you stipulate to each of, the
14 presence of the jury?

15 MS. PANDUKHT: Yes on behalf of the
16 State.

17 MR. BROOKS: Defense will, your Honor.

18 THE COURT: And I see that we have either
19 our technology resolved or the expert here to help
20 us.

21 MS. PANDUKHT: Yes.

22 THE COURT: You may proceed.

23 BY MS. PANDUKHT:

24 Q. Thank you. I am showing you first what
25 has been marked as or admitted as State's Exhibit

1 No. 6. Obviously, could you tell the jury what
2 this is?

3 A. The sign out in front of the apartment
4 complex.

5 Q. This is State's Exhibit No. 7. Could you
6 describe this for the jury?

7 A. That's just a long range shot of the
8 typical building that's in the complex there, and
9 that's the building in question. And it's just a
10 far away shot of, they're multi-unit, two-story
11 buildings.

12 Q. So, this is building nine?

13 A. Building nine.

14 Q. Where would apartment 2068 be?

15 A. You know, I've seen this shot before. If
16 this is the west face of building nine, then that
17 building in question or the apartment in question
18 is going to be top right.

19 THE COURT: And if you touch the screen,
20 it should mark it for you.

21 THE WITNESS: Okay. You know, if this is
22 here, if this is it, then I would say that, if
23 that's the building, but I'm sure there is a
24 better photograph than that one.

25

1 BY MS. PANDUKHT:

2 Q. Okay. Now, this is State's Exhibit No.
3 8. Could you tell the jury what we're looking at
4 in this photograph?

5 A. Yeah. It's just another pullback shot.
6 When these crime scene analysts come, they take
7 overall photographs of the area, and we direct
8 them to take many shots. We even, in some
9 occasions, take aerial shots. In this particular
10 case we had them take overall shots of the complex
11 itself, and so I can't see or differentiate the
12 exact building, but I know we have some close-ups
13 of the building.

14 Q. And now State's Exhibit No. 9, would you
15 tell us what this photograph shows?

16 A. Okay. So, clearly now we've come into
17 the apartment in question. Right here would be
18 the numbers 2068. This is building nine, and this
19 is the apartment that we spent hours in
20 investigating this homicide.

21 Q. And number 10 is just a close-up of the
22 apartment number?

23 A. Yes.

24 Q. How about number 11?

25 A. Eleven is one of those pullback shots.

1 Here's our apartment up here. This is the
2 staircase leading down, and we have a patrol
3 officer here at the bottom of the stairs, and
4 there is some people milling about outside here.
5 These are all people involved with our
6 investigation, though, police vehicles and
7 possibly a vehicle from the mortuary or coroner's
8 office there.

9 Q. And State's Exhibit No. 12, what does
10 this show?

11 A. This is the staircase going up to
12 apartment 2068. And we took this as a pullback
13 shot, because there was some evidence that we
14 located on these stairs as we're getting our
15 investigation. So, up and to the right is the
16 2068.

17 Q. Now, what kind of evidence were you
18 talking about?

19 A. Blood evidence.

20 Q. And where did you locate it on the
21 stairs?

22 A. I think here below the stairs on the
23 landing is a drop of blood. I think on the third
24 or fourth step up in this area it was another drop
25 of blood. And I think there was another further

1 up here once you make the turn. And so I made
2 note of that. I have it, either the crime scene
3 analyst have it listed, the exact stair and such,
4 but we noticed that we had blood droplets coming
5 either up or down. So, that became part of our
6 investigation.

7 Q. Did you ask crime scene to do anything
8 with regard to those blood droplets?

9 A. Yes, I did.

10 Q. What did you ask them to do?

11 A. As I said, my responsibility is the scene
12 and to work with the crime scene investigators. I
13 instructed them to use their techniques to take a
14 sample of those blood drops so that I could use
15 those to examine them at a later time to determine
16 whose blood that was. I wanted to know who it was
17 that came down those stairs that was bleeding, and
18 that would go into, further into my investigation.
19 So, I'm thinking about everything when I'm there.
20 And I have blood outside of the apartment. I want
21 to know whose that is.

22 Q. Did you then have that sent out for
23 analysis?

24 A. Yes.

25 Q. That, those blood droplets were analyzed

1 by someone employed at the Las Vegas Metropolitan
2 Police Department?

3 A. Yes.

4 Q. Who was that?

5 A. You know, I could look at the file. I'm
6 not sure if it was David Welch in this case or
7 not, but he's one of our DNA criminalists.

8 Do you want me to make sure who I'm
9 talking about here?

10 Q. Well, you know, did you receive a report
11 from that person?

12 A. Sure, I did. And I got a definitive
13 report back that the blood on the stairs was that
14 of one of the victims, that victim that I talked
15 about that was medically evacuated, that Derrick
16 Jones. So, that made sense to me, because it was
17 on the stairs. And I know the ambulance people
18 took him down those stairs.

19 Q. So, the blood droplets, all of the blood
20 droplets that you had found on the stairs and on
21 the base of the stairs were attributed as
22 belonging to Derrick Jones?

23 A. Yes.

24 Q. And not to any other person?

25 A. No.

1 Q. Now, in State's Exhibit No. 13, could you
2 tell the jury where this is in the apartment?

3 A. Yes, I can. You are standing at the
4 threshold looking into the apartment, as you can
5 see, the, the door here to the left. And you're
6 looking into the apartment, and to the left this
7 way is a master bedroom, and this is a living room
8 area here. The kitchen area would be back here
9 deep into the apartment. And if you were to walk
10 in and go around the back of this couch and head
11 in that direction, you would travel to the south
12 to two other bedrooms and a bathroom that's back
13 in that area.

14 Q. Could you describe what is in State's
15 Exhibit No. 14?

16 A. Yes. This is a photograph taken from
17 sort of back by the hallway looking north. Again
18 here's the front door of the apartment. And this
19 would be the doorway to the master bedroom of the
20 apartment, and to the right this way would be that
21 kitchen area. So, we've kind of turned and backed
22 up and took that picture.

23 Q. And State's Exhibit No. 15?

24 A. Okay. We're, the door, the entry door is
25 behind you now if you're the photographer. And

1 this is in this area the hallway towards those two
2 south bedrooms, and they had the couches sort of L
3 shaped here in the living room area, little coffee
4 table here. So, this is the living room.

5 Q. Now, in State's Exhibit No. 16, what is
6 this a close-up of?

7 A. Well, actually there should be a closer
8 shot of that, but this little item right in here
9 is a cartridge case. And that was of interest to
10 us because of what had happened inside the
11 apartment. So, that became an item of evidence
12 for us.

13 Q. And that piece of furniture that it's
14 on --

15 A. That would be the couch that's on the
16 south wall in the living room.

17 Q. In State's Exhibit No. 17?

18 A. Okay. This is a photograph looking
19 towards the north. This is the master bedroom
20 door again, and I can see here on the floor the
21 body of Dajon Jones. I can see him. He's right
22 behind the door. I remember that from being
23 there. And there is a little closet here, too.

24 Q. Now, can you tell the jury about what is
25 in State's Exhibit No. 18?

1 A. Okay. Well, we've just walked into that
2 bedroom that I just described. Here's that little
3 closet that I talked about. So, now once you
4 enter the bedroom, the master bedroom, here is the
5 master bath here and, and this is Dajon Jones,
6 where I first saw him when I was doing my
7 investigation.

8 Q. And 19?

9 A. It's another photograph of Dajon there.

10 Q. How about in 20?

11 A. Okay. We are standing in the southeast
12 bedroom looking to the west. And if you could
13 imagine, this is the hallway that takes you to the
14 living room that way. Okay. If you went this
15 way, you would go into the southwest bedroom, and
16 this debris in the hallway here is kind of
17 obstructing the location where Derrick Jones was
18 found by officers when they entered the apartment.
19 He was on the floor there. The door to this room
20 was closed at the time that, that he was shot at
21 that location.

22 Q. In State's Exhibit No. 21, is this a
23 close-up of that same area?

24 A. Yes, same thing, a couple feet forward.

25 Q. Was anything found in that same

1 photograph in relation to the objects in that
2 hallway?

3 A. Well, there was, there's a lot right in
4 this whole area right here that we could get into,
5 probably five cartridge cases, bullet impact
6 sites, bullet impact sites in this pack of toilet
7 paper. That's there where the bullets actually
8 passed through the toilet paper. There are
9 cartridge cases on the top of this storage unit.
10 There are impact sites in the carpet inside of
11 this room after the bullets had passed through the
12 door of this closed bedroom door. Oops! That was
13 bad. This closed bedroom door here. And so this
14 was a very busy area for us. We spent a lot of
15 time there with the crime scene investigators.

16 Q. And I have another close-up actually from
17 another angle in number 22. Could you describe
18 this photograph?

19 A. Yes. We've just walked past all that
20 into that southwest bedroom. We're now looking
21 back. This would be that hallway we talked about
22 going toward the living room. And this is the
23 location where Derrick Jones was before he was
24 evacuated by the paramedics that came upstairs.

25 Q. And again this door here, right here?

1 A. Yes. This door, if you could imagine, it
2 was closed. And we know that because of the
3 bullet impacts that were on the door and the
4 recovery of the bullets in the carpet here inside
5 the bedroom, and everything just sort of lines up
6 with, just when we were there at the scene, we
7 used some rods and made sure they lined up.
8 That's how we were able to find the bullets in the
9 carpet.

10 Q. And this was the door to which bedroom
11 again?

12 A. To the southwest bedroom.

13 Q. Okay. Now, could you describe what is
14 depicted in State's Exhibit No. 23?

15 A. Sure. As you come up the stairs to
16 apartment 2068, as you're arriving on the landing
17 here there is a little patio, balcony, if you
18 will, and a storage room right there. And here is
19 the body of a man that I came to know as Jason
20 Moore. Jason Moore is lying right here, and
21 obviously he's still there in the photograph,
22 because he wasn't alive at the time. Otherwise,
23 he would have been evacuated as well.

24 Q. How about in State's Exhibit No. 24?

25 A. It's a close-up of the same, you see some

1 things out here on the patio. We would later find
2 items of evidence there in the form of cartridge
3 cases and bullets.

4 Q. Let me show you a close-up, number 25.

5 A. Yeah. Here is Jason Moore, a bucket with
6 a radio on top of it. There is a kid's scooter
7 right here, some kind of plastic scooter and a
8 pretty good-sized blood pool that's formed here
9 over to the doorway to the closet.

10 Q. A further close-up in number 26?

11 A. This is an important photograph for us
12 because of the observation of that nine-millimeter
13 cartridge case. And it would give us an
14 indication about the location of the shooter at
15 the time that that shot is fired.

16 Q. How about in number 27? Is this also on
17 the patio?

18 A. Yes, it is. You could see here in the
19 bottom left corner some of that blood that I
20 talked about. So, we're still on the same patio
21 deck. Here's a little bit of the socked foot of
22 Jason. These are just some chairs that were on
23 the patio. And we found some other items of
24 evidence in and amongst the things that were on
25 the patio there.

1 Q. Now, in State's Exhibit No. 28, tell me
2 if I'm holding this the right way.

3 A. I think that needs a 180 flip. One more.
4 Okay. Here is the leg of one of those green
5 chairs, and this is just a kid's scooter knocked
6 over. But what's of interest to us is that right
7 there, that's another cartridge case in
8 nine-millimeter.

9 Q. How about in State's Exhibit No. 29? Do
10 I have that the right way?

11 A. Yeah. That's good. And there is the
12 cartridge case a little bit closer, a little bit
13 clearer.

14 Q. Now, what are we looking at in number 30?

15 A. Okay. I directed this photograph because
16 of that hole. In my experience, that is caused by
17 a bullet passing through a window. And that is
18 the exterior of the master bedroom. It's a
19 west-facing window, and it's clearly a bullet
20 hole. And we would later find an impact site on
21 building six at about the same level, second floor
22 level, but it hit the stucco. And that would be
23 the building across from nine, and it would be the
24 east face of building six.

25 Q. Now, in number 31, is this a close-up

1 shot?

2 A. Yes. We can tell that, since the blinds
3 were on the inside here, we're inside the room.
4 And we see that the bullet has perforated or gone
5 through that one blind right there and gone
6 through the double pane window.

7 Q. Now, is there anything else about the
8 crime scene that wasn't shown in any of those
9 photographs that was important?

10 A. Yes. It's hard to just describe the
11 scene in just a handful of photographs. There was
12 an impact site on one of the two couches. You'll
13 recall one couch was sort of free-standing in the
14 middle of the room, and it created sort of a
15 hallway. We found an impact site there. It's
16 directionality, in my opinion, was to the south.
17 We also had another impact site on the wall. This
18 would be where a bullet struck the wall just
19 before you enter the hallway where Derrick Jones
20 was found, and we were able to dig that out of the
21 wall and recover it. And I didn't see that in one
22 of the photographs. These are big scenes, and we
23 have to spend a lot of time in there trying to
24 find everything.

25 Q. Now, approximately how much time did you

1 spend at the scene that day?

2 A. Because it's my responsibility to work
3 the crime scene, we're going to go as slow as we
4 can and move our way methodically through that
5 apartment. And I know that by the time I arrived,
6 let's say, it's one, 1:00 o'clock in the morning.
7 We were there for sunup and well beyond. So, we
8 were in there for hours and hours. We may have
9 freed that place up to Ms. Jones at some point
10 later on that morning. I don't recall, without
11 looking at the actual police log, when we started
12 to clear out of there.

13 Q. And after you did finally complete your
14 investigation of the scene you did release the
15 residence back to Ms. Jones?

16 A. Yes.

17 Q. And that was Cheryl Jones?

18 A. Cheryl Jones.

19 Q. Now, did you later learn that something
20 had been found by one of the family members at
21 that apartment?

22 A. Yes.

23 Q. What did you learn? Could you tell the
24 jury about that?

25 A. Yes. Sometimes when we have these

1 apartments and we're spending so many hours in
2 there and there is someone that wants to get back
3 into that apartment to try to get their life back,
4 so we try to do our best job that we can do when
5 we're in there and leave and give it back to them.
6 In this case we returned it to Cheryl, as I said.
7 And as they were, I think were moving out of the
8 apartment in the clothing in the master bedroom a
9 bullet was found by one of the family members.
10 I'm not sure who it was, but I know that it
11 eventually became an item of evidence, and it was
12 analyzed and analyzed by our firearms examiner,
13 and it was, no doubt, from our shooting situation.

14 Q. Did you come to learn that that bullet
15 that was found by the family member was then given
16 to a district attorney investigator and then given
17 over to the Las Vegas Metropolitan Police
18 Department?

19 A. Yes. That's the progression. The family
20 member gave it to an investigator named Reg
21 Weaver. Reg Weaver gave it to my partner, Marty
22 Wildemann. And Marty put it into the evidence
23 vault so it can be retrieved by the firearms
24 examiner and be examined with the other ballistics
25 in the case.

1 Q. Now, one of the things that you and your
2 partner had to do during the course of your
3 investigation is attempt to locate the suspect?

4 A. Yes.

5 Q. How did you go about doing that? Did you
6 talk to people to try and get information about
7 where he might be and who he was?

8 A. Yes, we did.

9 Q. Would you tell the jury about that?

10 A. So, here we are at this crime scene, and
11 we're beginning to learn information that the
12 suspect is a man that goes by the name of AI.
13 That's all we know. Maybe his first name is
14 Anthony. We learn that that's really nothing more
15 than a nickname or a street name for him. We come
16 to find out that it's in reference to a
17 professional basketball player named Allen
18 Iverson. In fact, his actual name is Glenford
19 Budd. And we learned that while we're there still
20 on the premises.

21 We at some point after sunup contact
22 members of our criminal apprehension team, which
23 are other detectives that often help us locate
24 suspects in our cases, and based on the fact that
25 we learned about Glenford Budd, we also learned

1 that he resided in building 12 of the very same
2 apartment complex, and he lived there with his
3 uncle. So, other detectives went to that location
4 and made some contact there with that man. Based
5 on that information we had these criminal
6 apprehension team members try to locate
7 Mr. Budd, and it was approximately 48 hours or so
8 later, maybe a little bit more than that, that he
9 did get taken into custody. I know that's a big
10 leap for you, but there was a lot of investigation
11 in that two- to three-day period and a lot we
12 learned about his movements during that time
13 period.

14 Q. Did you find out where he was actually
15 moving to, from what residence to what residence?
16 Did you get information about that?

17 A. I know of, of several things that I'm --

18 MR. BROOKS: I'm going to object now,
19 your Honor. I think we're in the realm of
20 hearsay.

21 THE COURT: Whether or not he learned
22 about other things?

23 MR. BROOKS: If you can testify as to the
24 truth of the matter, yes, I think it is hearsay.

25 MS. PANDUKHT: It goes to how he was able

1 to locate the suspect.

2 MR. BROOKS: That's irrelevant at this
3 point.

4 THE COURT: So long as the foundation is
5 as it presently is, I'm going to have to sustain
6 the objection unless you can back up a little bit
7 and properly found it with respect to the
8 investigation.

9 BY MS. PANDUKHT:

10 Q. You already testified that you had
11 received information from other detectives and CAT
12 team officers?

13 A. Yes.

14 Q. And you were still at this point trying
15 to locate the defendant?

16 A. Yes.

17 Q. You had stated that he was ultimately
18 found at a certain location?

19 A. Yes.

20 Q. What location was that?

21 MR. BROOKS: Objection, irrelevant.

22 MS. PANDUKHT: How is it irrelevant?

23 MR. BROOKS: It's absolutely irrelevant.
24 Who cares where he was arrested. It's totally
25 irrelevant to this case where he was arrested

1 unless it goes to an issue of guilt or innocence.
2 The circumstances of arrest are not admissible
3 unless they can be shown to be admissible by some
4 other way. And in this case it's totally
5 irrelevant.

6 THE COURT: And, counsel, would you
7 approach for a second?

8 (Conference at the bench.)

9 BY MS. PANDUKHT:

10 Q. Detective Vaccaro, did you have an
11 opportunity to contact the suspect after he had
12 been located?

13 A. Yes.

14 Q. Where did you contact him?

15 A. At the Clark County Detention Center.

16 Q. Now, previously you have identified
17 photographs, specifically 43 through 46. These
18 photographs are of the person that was located?

19 A. Yes, they are.

20 Q. And that person you contacted at the
21 Clark County Detention Center?

22 A. Yes.

23 Q. In State's Exhibit No. -- well, first of
24 all, let me ask you this: Is he present in court
25 today?

1 A. Sure, he is. He's seated next to
2 Mr. Brooks with a white shirt on. And that's
3 Glenford Budd.

4 MS. PANDUKHT: May the record reflect the
5 identification of the defendant?

6 THE COURT: It will so reflect.

7 BY MS. PANDUKHT:

8 Q. Is this a photograph of the defendant in
9 number 43?

10 A. Yes, it is.

11 Q. And that was taken on what date?

12 A. The date of his arrest, and can I refer
13 to that?

14 Q. If that would refresh your recollection?

15 A. That whole Memorial Day weekend was kind
16 of confusing date-wise, but I can tell you
17 immediately. I caused that photograph to be taken
18 by a crime scene analyst that met us at the jail
19 by the name of Tom Kerns. Not so immediately.
20 Sorry. 5/29/03 at 1640 hours was the arrest time.
21 So, within 20 minutes or so I was at the jail
22 meeting with Mr. Budd --

23 Q. Okay.

24 A. -- on the 29th of '03, probably around
25 1700, 5:00 o'clock in the afternoon.

1 Q. Now, State's Exhibit No. 44 shows what
2 part of the defendant?

3 A. Right side profile.

4 Q. Why were you taking these photographs?

5 A. A couple of reasons, you know. It's been
6 my experience to take what I call 360s. I'll take
7 front, side, back, side, and I want to look at
8 this man to see if he has any marks or injuries on
9 him as well. I think it's my responsibility to
10 document his appearance at the time of his arrest,
11 and it was in a close enough proximity of time
12 from the incident that I wanted to see if he had
13 had any injuries on him.

14 Q. Did the defendant have any injuries on
15 him?

16 A. No, none that I noted.

17 Q. Did you note anything about his hair?

18 A. Well, it was nothing as it was described
19 early in the investigation. We were told that he
20 had braids or, or long hair that was in braids,
21 and so here we have him with very short hair.

22 Q. And I'm just going to show you number,
23 I'll skip to number 46.

24 A. Back shot.

25 Q. That's the back?

1 A. Back.

2 Q. Did you advise the defendant of his
3 constitutional or Miranda rights?

4 A. Yes.

5 Q. What are Miranda rights?

6 A. Well, these are rights that are provided
7 to an individual if he's in a custodial situation
8 and certainly if he's in the Clark County
9 Detention Center. I knew that it was my
10 responsibility to advise him of that before I
11 asked him any questions. So, I told him that he
12 had the right to remain silent and that if he gave
13 up the right to remain silent and told me
14 anything, that those things could be used against
15 him in a court of law. I told him that he had the
16 right to an attorney and that if he couldn't
17 afford an attorney, one would be provided to him
18 for free. And I asked him if he understood his
19 rights, and he told me that he did understand.

20 Q. Did you recite those rights to the
21 defendant exactly how you did today to the jury?

22 A. Yes. I've done it several times, you
23 might imagine, over the years, and I have it down
24 pretty good. When I have a card with me, I take
25 advantage of reading it directly from the card,

1 but I know that those are the words that I said to
2 Mr. Budd inside the jail.

3 Q. Did he indicate whether he understood
4 those rights?

5 A. Yes, he did.

6 Q. How did he indicate that he understood
7 them?

8 A. He communicated with me and said, yes, I
9 understand.

10 Q. Did he agree to waive those rights and
11 agree to speak with you?

12 A. It was not in the terminology or the
13 verbiage that you said, but he, I told him that I
14 was interested in talking with him to clear up
15 what happened in the apartment. And he made some
16 statements to me.

17 Q. And you were the person that he actually
18 spoke with?

19 A. Yes. I was in the room. Detective
20 Wildemann was in the room. And I think that that
21 was before a crime scene investigator, Tom Kerns,
22 showed up. So, it would have been the three of us
23 in the room. It was a small room where physical
24 lineups are conducted at the jail.

25 Q. And what did the defendant tell you?

1 A. Well, I have some handwritten notes that
2 I attached to the back of the arrest report. Can
3 I refer to those so that I could be accurate?

4 Q. If it would refresh your recollection?

5 A. Okay.

6 Q. Please review them and let me know when
7 you're done.

8 A. Okay. I remember well now.

9 Q. What did the defendant tell you?

10 A. He told me that he was present in the
11 apartment with Dajon Jones, Derrick Jones, and
12 also with Jason Moore and that he had gone to the
13 apartment to inquire about who had stolen his
14 marijuana. He said that while he was in the
15 apartment he heard a gunshot, and he ran from the
16 apartment. And I asked him basically, how could
17 it be that those three individuals were hurt and
18 killed, eventually killed -- I'm sorry -- and that
19 he's the only one that ran away. And he said,
20 well, I heard the shot and ran away. And that was
21 all he really wanted to tell me.

22 Q. And then did he say how much marijuana?

23 A. Yes, he did. He said that it was a half
24 a pound of marijuana that he had stolen from him.

25 Q. And did he say who else left the

1 apartment?

2 A. No. I don't think so. He, I don't think
3 he volunteered that to me at that point, no,
4 unless I'm not seeing it here in my handwritten
5 notes.

6 Q. Could you refer to page five of your
7 arrest report? It would be the second page of
8 your handwritten notes toward the top.

9 A. Oh, okay. I'm sorry. I will read it.
10 He said when he heard the gunshot, he ran out of
11 the apartment down the stairs. He said Lazon
12 Jones also ran from the apartment.

13 Q. Okay. And then did he say anything about
14 whether he saw Jason Moore and where?

15 A. Yes. He indicated in the very next
16 sentence that he looked up the stairs back towards
17 the apartment door, and he saw Jason Moore sitting
18 on a bucket on the landing in front of the door.

19 Q. Okay. Thank you. And then at some point
20 after, in 2004, okay. On or about August 13th,
21 2004 were you contacted by an individual named
22 Greg Lewis?

23 A. Yes, I was.

24 Q. How did that come about?

25 A. He called the homicide office, and I

1 answered the phone, said homicide. And he
2 identified himself.

3 Q. And did he contact you on that same day,
4 August 13th, 2004?

5 A. Yes. He contacted, he contacted me on
6 the 13th, and I contacted him the same day a
7 little bit later, physically face to face.

8 Q. Did you actually interview him on that
9 day?

10 A. Yes.

11 Q. Where did you interview him?

12 A. He was in the Clark County Detention
13 Center, and I caused him to be removed from his
14 room basically and brought to a private room where
15 I could talk to him.

16 Q. Where was Greg Lewis being housed in
17 relation to the defendant?

18 A. I don't think they were in the same room,
19 but I think they were in the same pod, as they're
20 called. These are sort of like an airport docking
21 station if you will. There is a lot of little
22 rooms off of a center room, and people can gather
23 together in that pod, but they each have their own
24 room. And I don't think they were in the same
25 room, but I think they met in the pod.

1 Q. Would that be on the same floor?

2 A. Yes.

3 Q. Now, when you went over to interview him,
4 did you tape-record that conversation?

5 A. Yes, I did.

6 Q. Before you actually interviewed and spoke
7 with Greg Lewis for the first time did you make
8 him any promise in his exchange for his making a
9 statement?

10 A. No, I did not.

11 Q. Did you tell him you would do anything
12 for him in exchange for that information in terms
13 of his own situation?

14 A. I simply told him, as it is in the taped
15 statement, that I would talk to the prosecutor
16 attorney that I knew was managing the case at the
17 time.

18 Q. And did you later talk to a prosecutor
19 attorney?

20 A. Yes.

21 Q. Do you remember about when that was?

22 A. I'm sure it was shortly after, because
23 the case, as you can tell, is May 27th of '03, and
24 here I have fresh information that I'm learning in
25 August of the next year. So, I, I would have

1 wanted to get that information to, to that
2 prosecutor right away.

3 Q. Let me ask you this: Were you contacted
4 a second time by Greg Lewis shortly after August
5 13th, 2004?

6 A. Yes, I was.

7 Q. What was the purpose of that contact?

8 A. Mr. Lewis told me that he had received
9 correspondence in the form of a letter and asked
10 me if I wanted it. And he said that it was from
11 Mr. Budd, and I told him, yes, I did want the
12 letter. And I came to see him again at the Clark
13 County Detention Center.

14 Q. I'm showing you what's been already
15 admitted as State's Exhibit 49A, B, and C. Do you
16 recognize this?

17 A. Yeah, because I put my J1480V initials on
18 there and the date, 8/18/04. That's five days
19 later than when I did the taped interview.

20 Q. What's the significance of the date of
21 8/18/04?

22 A. That's the date that I received it from
23 Greg.

24 Q. Did you receive that letter personally
25 from Greg Lewis?

1 A. Yes. He handed it to me just like you
2 did, and the contents.

3 Q. And those are the contents in there?

4 A. Yeah. I recall there's sort of a
5 handwritten letter, a couple pages.

6 Q. And, for the record, that's State's
7 Exhibit 49B?

8 A. Right.

9 Q. And then there is a half of page that is
10 49C, Exhibit 49C. And it's really written in some
11 funny kind of lettering, but it was a part of the
12 correspondence as well?

13 A. Yes.

14 Q. Now, were you aware that a deputy
15 district attorney named David Schwartz had written
16 a letter to the parole board on Greg Lewis's
17 behalf?

18 A. I was.

19 Q. How did that come about, and was it
20 before or after you received that letter?

21 A. Everything with David Schwartz was after
22 the receipt of the letter. And I, and all I said
23 to Mr. Schwartz was, hey, remember Greg Lewis, and
24 do you remember the information that he gave us?
25 And I don't remember by whose design it was that a

1 letter was written. It certainly wasn't mine.
2 But I didn't author the letter or design it, but I
3 knew that there was a correspondence.

4 MS. PANDUKHT: Pass the witness.

5 THE COURT: Cross-examination,
6 Mr. Brooks?

7
8 CROSS-EXAMINATION

9 BY MR. BROOKS:

10 Q. Mr. Vaccaro, my name is Howard Brooks. I
11 represent Mr. Budd.

12 Going back to the 26th, May 26th, the
13 killing occurs sometime before midnight, correct?

14 A. I would --

15 Q. As far as you know?

16 A. I would say, because it's 0001, is the
17 time of the police call. So, I would imagine it
18 was busy before one minute after midnight.

19 Q. And you arrived at the crime scene within
20 an hour after midnight?

21 A. Yes.

22 Q. Okay. Once you arrived you eventually
23 interviewed Lazon Jones, correct?

24 A. It wasn't me. Actually it was another
25 detective. Lazon was interviewed by Detectives

1 Mesnard and Wildemann.

2 Q. You did not interview Lazon Jones that
3 night?

4 A. Not personally, no.

5 Q. Okay. After Lazon was interviewed,
6 though, the focus of the investigation was on AI,
7 right?

8 A. Yes.

9 Q. And you had that information in your
10 hands that evening in the early morning hours?

11 A. Yes.

12 Q. Okay. And within 24 hours or 12 hours
13 you basically knew AI is Glenford Budd?

14 A. Within how many? Did you say 24?

15 Q. Say, 12 hours?

16 A. Yes. That's a good estimation, sure.

17 Q. Okay. And you didn't catch, AI was not
18 caught the 27th?

19 A. No.

20 Q. Okay. The information was released to
21 the media on the 27th?

22 A. Gee, I'm not, you know, I don't know
23 exactly when. I'm pretty sure that there was a
24 statement made --

25 Q. I mean --

1 A. -- the next morning.

2 Q. Correct.

3 A. I may have some press material here. I
4 know that this particular one was mentioned on the
5 29th, Mr. Brooks, but I would --

6 Q. Let me stop you.

7 A. Go ahead.

8 Q. Do you know when the story was released
9 to the public that you guys were looking for
10 Glenford Budd?

11 A. I don't think it was ever released that
12 we were looking for Glenford Budd. I think a
13 description of a suspect was released at some
14 point, but I really don't, you know, that's the
15 lieutenant's position to do the press release.
16 And I'm not aware of what exactly was said on the
17 morning of --

18 Q. The information in your book, there is a
19 news article the date of the 29th, correct?

20 A. Actually it's printed on the 29th, but I
21 see it says May 28th, Wednesday, '03. And it's an
22 article from the Review Journal, and it has a
23 young man being interviewed by a reporter from the
24 Review Journal.

25 Q. Does it mention Glenford Budd?

1 A. It does. Here it does say that police
2 are seeking 20-year-old Glenford Anthony Budd, who
3 was known as AI. So, that would be --

4 Q. Let me stop you. So, as of the morning
5 of the 28th the Review Journal has a story that
6 the police are seeking Glenford Budd?

7 A. Sometime on the 20th, yes.

8 Q. So, obviously we can conclude that
9 sometime before the early morning hours of the
10 28th the Review Journal knows that you guys are
11 looking for Glenford Budd?

12 A. It's right there.

13 Q. That's a fair statement?

14 A. I'll go with you on that.

15 Q. Okay. And basically the information was
16 out there in the public domain that you have three
17 people killed, correct?

18 A. Yes. I think at that point Derrick had
19 expired, yes.

20 Q. And you also have the information that it
21 was over a drug deal or over some, some weed or
22 marijuana?

23 A. Yes.

24 Q. Okay. Now, in your investigation if you
25 learned that someone was harboring Glenford Budd,

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IN THE SUPREME COURT OF THE STATE OF NEVADA

GLENFORD A BUDD,
Appellant,
vs.
THE STATE OF NEVADA
Respondent.

Supreme Court No.:
District Court Case No. 03C193183
Electronically Filed
Nov 10 2014 09:41 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

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MATTHEW D. CARLING
51 East 400 North, Bldg. #1
Cedar City, Utah 84720
(702) 419-7330 (Office)
Attorney for Appellant

STEVEN B. WOLFSON
Clark County District Attorney
200 Lewis Avenue, 3rd Floor
Las Vegas, Nevada 89155
Counsel for Respondent

CATHERINE CORTEZ MASTO
Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717
Counsel for Respondent

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10	States Opposition to Defendants Motion for Jury Questionnaire to be Completed by Jure Venire One Week Prior to Trial filed on 09/22/2004	308-311
11	States Opposition to Defendants Motion for Recording of all Proceedings Pursuant to Supreme Court Rule 250 filed on 09/21/2004	291-293
12	States Opposition to Defendants Motion in Limine for Order Prohibiting Prosecution Misconduct in Argument; and for Order that Court Takes Judicial Notice of Authority Cited in this Motion if Defense Objects at Trial to Improper Argument filed on 09/21/2004	284-287
13	States Opposition to Defendants Motion in Limine to Prohibit any Reference in Front of the Jury to the Trial Phase of the Proceedings as the "Guilt Phase" filed on 09/21/2004	297-299
14	States Opposition to Defendants Motion in Limine to Prohibit the State from Using Peremptory Challenges to Remove Minorities from the Jury to filed on 10/06/2004	383-386
15	States Opposition to Defendants Motion to Allow the Defense to Argue Last in a Potential Penalty Phase Proceeding filed on 09/21/2004	288-290
16	States Opposition to Defendants Motion to Bifurcate Penalty Phase filed on 09/21/2004	304-307
17	States Opposition to Defendants Motion to Dismiss the State's Notice of Intent because Nevada's Death Penalty Scheme Violates Due Process Guarantees by Failing to Require a Pre-Trial Finding of Probable Cause for Alleged Aggravators filed on 10/14/2004	404-410
18	States Opposition to Defendants Motion to Disqualify all Potential Jurors who Knew or were Acquainted with the Victim's or Their Families filed on 09/21/2004	294-296
19	States Opposition to Defendants Motion to Disqualify all Potential Jurors who would Automatically Vote for the Death Penalty in the Event of a First Degree Murder Conviction filed on 09/21/2004	300-303
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1	States Opposition to Defendants Motion to Preclude the Introduction of	
2	Victim Impact Evidence Pertaining to Victim and Family Members	
3	Characterizations filed on 10/12/2004	396-399
4	States Response to Defendant Budd's Motion to Strike Allegations of	
5	Certain Aggravating Circumstances Alleged in States Notice of Intent to	
6	Seek Death Penalty filed on 10/12/2004	392-395
7	States Response to Defendant's Petition for Writ of Habeas Corpus Post	
8	Conviction filed on 11/27/2007	2797-2807
9	Stipulation and Order Extending Time filed on 07/23/2013	2916-2918
10	Stipulation filed on 12/12/2005	1299
11	Stipulation to Enlarge Briefing schedule and Order filed on 03/29/2013	2845-2846
12	Third Supplemental Petition for Writ of Habeas Corpus (Post Conviction)	
13	filed on 12/12/2013	2986-2989
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TRANSCRIPTS

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Transcript – Jury Trial Volume 1 filed on 12/06/2005	443-653
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Transcript – Jury Trial Volume 5 filed on 03/07/2006	2013-2192
Transcript – Jury Trial Volume 5 filed on 12/13/2005	1302-1481
Transcript – Jury Trial Volume 6 filed on 12/15/2005	159-1602
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EXPRESS BOX

Eighth Judicial District Court
Clark County, Nevada

2006 JAN 31 P 4:05

FILED AFTER HOURS

JAN 31 2006

Shirley B. Pappas
State of Nevada

Plaintiff,

vs.

Glendord Budd

Defendant

Case No.: 03-C-193182-C

Dept No.: 18

MEDIA REQUEST AND ORDER FOR CAMERA
ACCESS TO COURT PROCEEDINGS

10 Mike Christensen of KTNV Action News, requests permission
11 to broadcast, record, photograph or televise proceedings in the above-entitled
12 case in the courtroom of Dept. No. 18, the Honorable Judge Nancy Saitta,
commencing on the 30th day of January, 2006.

13 I certify that I am familiar with the contents of Nevada Supreme Court
14 Rules 229-249, inclusive, and understand this form MUST be submitted to the
15 Court at least SEVENTY-TWO (72) hours before the proceedings commence, unless
16 good cause can be shown. IT IS FURTHER UNDERSTOOD that approved media must
arrange camera pooling prior to any hearing, without asking this Court to
mediate disputes.

17 DATED this 26th day of January, 2006.

Mike Christensen

Media Representative

19 The Court determines camera access to proceedings, in compliance with the
20 court's policy, ☐ WOULD ☒ WOULD NOT distract participants, impair the
21 dignity of the court or otherwise materially interfere with the achievement of
a fair trial or hearing herein:

22 Therefore, the Court hereby ☐ DENIES ☒ GRANTS permission for camera
access to Mike Christensen of KTNV Action News,
23 as requested for each and every hearing on the above-entitled case, at the
discretion of the judge, and unless otherwise notified. This Order is in
24 accordance with Nevada Supreme Court Rules 229-249, inclusive, and is subject
to reconsideration upon motion of any party to the action.

25 IT IS FURTHER ORDERED that this entry shall be made a part of the record
26 of the proceedings in this case.

27 DATED this 27 day of January, 2006.

Nancy Saitta
District Court Judge

Fax Form 72 hours prior to the hearing to (702) 671-4533

002009

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JAN 19 2006

COURT ADMIN

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RAO

RECEIVED IN
 Eighth Judicial District Court
 Clark County, Nevada

2006 JAN 31 P 4:05

State Of Nevada Shirley B. Pangloss Case No.: 03-C-193182-C

JAN 31 2006

Plaintiff, CLERK Dept No.: 18

vs.

Budd Glenford

Defendant

MEDIA REQUEST AND ORDER FOR CAMERA
 ACCESS TO COURT PROCEEDINGS

Polo Corona of KTNV Action News, requests permission to broadcast, record, photograph or televise proceedings in the above-entitled case in the courtroom of Dept. No. 18, the Honorable Judge Nancy M. Saitta, commencing on the 30th day of January, 2006.

I certify that I am familiar with the contents of Nevada Supreme Court Rules 229-249, inclusive, and understand this form MUST be submitted to the Court at least SEVENTY-TWO (72) hours before the proceedings commence, unless good cause can be shown. IT IS FURTHER UNDERSTOOD that approved media must arrange camera pooling prior to any hearing, without asking this Court to mediate disputes.

DATED this 19 day of January, 2006.Polo Corona

Media Representative

The Court determines camera access to proceedings, in compliance with the court's policy, ☐ WOULD ☒ WOULD NOT distract participants, impair the dignity of the court or otherwise materially interfere with the achievement of a fair trial or hearing herein;

Therefore, the Court hereby ☐ DENIES ☒ GRANTS permission for camera access to Polo Corona of KTNV Action News, as requested for each and every hearing on the above-entitled case, at the discretion of the judge, and unless otherwise notified. This Order is in accordance with Nevada Supreme Court Rules 229-249, inclusive, and is subject to reconsideration upon motion of any party to the action.

IT IS FURTHER ORDERED that this entry shall be made a part of the record of the proceedings in this case.

DATED this 27 day of January, 2006Nancy M. Saitta
District Court Judge

002010

ORIGINAL

9

1 JOCP
2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 200 Lewis Avenue
6 Las Vegas, Nevada 89155-2212
7 (702) 671-2500
8 Attorney for Plaintiff

FILED

MAR 1 10 53 AM '06

Shirley S. Rungius
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

GLENFORD ANTHONY BUDD,
#190089

Defendant.

Case No: C193182

Dept No: XVIII

JUDGMENT OF CONVICTION (JURY TRIAL)

The Defendant previously entered plea(s) of not guilty to the crime(s) of COUNT 1 - MURDER WITH USE OF A DEADLY WEAPON (Felony); COUNT 2 - MURDER WITH USE OF A DEADLY WEAPON (Felony); and COUNT 3 - MURDER WITH USE OF A DEADLY WEAPON (Felony), in violation of NRS 200.010, 200.030, 193.165, and the matter having been tried before a jury, and the Defendant being represented by counsel and having been found guilty of the crime(s) of COUNT 1 - FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON (Category A Felony); COUNT 2 - FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON (Category A Felony); and COUNT 3 - FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON (Category A Felony); and thereafter on the 22nd day of February, 2006, the Defendant was present in Court for sentencing with his counsel, HOWARD BROOKS, Deputy Public Defender, and good cause appearing therefor,

THE DEFENDANT HEREBY ADJUDGED guilty of the crime(s) as set forth in the jury's verdict and, in addition to the \$25.00 Administrative Assessment Fee, \$150 DNA

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FEB 23 2006

COUNTY CLERK

1 Analysis Fee, submission to a test to a determine genetic markers and \$28,500 restitution,
2 the Defendant is sentenced as follows: Deft SENTENCED as to COUNT 1 - to LIFE
3 WITHOUT THE POSSIBILITY OF PAROLE plus an equal and CONSECUTIVE LIFE
4 WITHOUT THE POSSIBILITY OF PAROLE for use of a deadly weapon; as to COUNT 2 -
5 to LIFE WITHOUT THE POSSIBILITY OF PAROLE plus an equal and CONSECUTIVE
6 LIFE WITHOUT THE POSSIBILITY OF PAROLE for use of a deadly weapon to run
7 CONSECUTIVE to Count 1; and as to COUNT 3 - to LIFE WITHOUT THE POSSIBILITY
8 OF PAROLE plus an equal and CONSECUTIVE LIFE WITHOUT THE POSSIBILITY OF
9 PAROLE for use of a deadly weapon to run CONSECUTIVE to Count 2 with 995 DAYS
10 credit for time served.

11 DATED this 24 day of February, 2006.

12 
13 DISTRICT JUDGE
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DISTRICT COURT
CLARK COUNTY, NEVADA

FILED

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ORIGINAL

STATE OF NEVADA,

Plaintiff,

vs.

GLENFORD ANTHONY BUDD,

Defendant.

CLERK

) Case No. C193182

) Dept. No. XVIII

) VOLUME 5

REPORTER'S TRANSCRIPT OF JURY TRIAL

Before the Honorable Justice Nancy M. Saitta

Monday, December 12, 2005
1:30 p.m.

APPEARANCES:

For the State:

EDWARD KANE, ESQ.
Deputy District Attorney

TALEEN PANDUKHT, ESQ.
Deputy District Attorney

For the Defendant:

HOWARD BROOKS, ESQ.
Deputy Public Defender

TIMOTHY O'BRIEN, ESQ.
Deputy Public Defender

REPORTED BY: JANICE DAVID, CCR NO. 405

COUNTY CLERK
MAR 07 2006
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W I T N E S S E S

STATE'S Dr. Cr. Redr. Recr. VD.

GREG LEWIS

By Ms. Pandukht: 9

By Mr. Brooks: 34

JAMES VACCARO

By Ms. Pandukht: 53 107

By Mr. Brooks: 95 109

KRISSY SMITH

By Mr. Kane: 112

By Mr. Brooks: 123

WINSTON BUDD

By Mr. Schwartz: 129

By Mr. Brooks: 137

E X H I B I T S

<u>STATE'S</u>	<u>Mrk'd</u>	<u>Idnt'd</u>	<u>Admt'd</u>
Proposed Exhibits 6 - 31			63
Proposed Exhibits 43 - 46			63
Proposed Exhibit 49A - C			27
Proposed Exhibit 49D			32
Proposed Exhibit 50			20

1 LAS VEGAS, NEVADA, DECEMBER 12, 2005, 1:30 P.M.

2 * * * * *

3 THE COURT: In the matter of State versus
4 Budd, there is a stipulation.

5 MR. BROOKS: Judge, Howard Brooks on
6 behalf of Mr. Budd. I provided to Mr. Kane and
7 Mr. Kane has reviewed and signed the following
8 document, which I've also signed, in which I'll be
9 asking to file in open court. The document states
10 the following: Stipulation, the State and defense
11 stipulate that:

12 Defense Exhibits B and C have been
13 admitted into evidence. These exhibits are
14 photographs taken at the Saratoga Palm Apartments,
15 Las Vegas, Nevada. Exhibit C shows the view from
16 the balcony of Celeste Palau's apartment looking
17 at apartment 2068 in building nine. Exhibit B
18 shows the light fixture over the stairs outside
19 apartment 2068.

20 The State and defense stipulate that
21 Steven Yoshida, an investigator for the Clark
22 County Public Defender Office, took these
23 photographs. The distance between the bottom of
24 the stairs outside Celeste Palau's apartment and
25 the bottom of the stairs outside apartment 2068 in

1 building nine is 218 feet.

2 And the document is signed by myself and
3 also signed by Mr. Kane. With the Court's
4 permission, I would like to file both of these
5 documents, this one document.

6 THE COURT: I have one question. And I'm
7 not sure what paragraph it was, but you made a
8 comment about the light at the top of the stairs.

9 MR. BROOKS: Yes, your Honor.

10 THE COURT: Will you read that again,
11 because I want to be sure that we're talking about
12 the one that I envisioned as being the one that
13 sometimes is shot out but wasn't apparently in
14 that building. And it was, as I understood it, it
15 was actually between the two apartments. Now, I'm
16 sure that --

17 MR. BROOKS: Exhibit, the last sentence
18 of the first paragraph says, Exhibit B shows the
19 light fixture over the stairs outside apartment
20 2068.

21 THE COURT: Is it more accurate, and you
22 can do this -- but do you enter -- by crossing it
23 out, starting it over again. Would it be more
24 accurate to suggest that it's a light between the
25 two apartments? Isn't it actually --

1 MR. BROOKS: Both statements are
2 accurate.

3 MS. PANDUKHT: Yeah, because the stairs
4 are between.

5 THE COURT: I don't know how much of an
6 issue this is going to be in the trial. I suspect
7 we're going to hear at least argument about it.
8 To me, that was how I envisioned it. And I think
9 that the way it is presently worded suggests that
10 it is closer to the apartment than I believe the
11 picture depicts it as.

12 MR. BROOKS: How about if we rephrase it
13 to be Exhibit B shows the light fixture, I don't
14 know what the apartment number is on the --

15 THE COURT: You can simply say between
16 2086 and the apartment immediately adjacent
17 thereto, because all these buildings are the same
18 way, staircase go up, and you got two apartments,
19 right? You go up the staircase, you go to one
20 apartment, another apartment, go up the
21 staircase --

22 MR. BROOKS: How about if we leave the
23 sentence, Exhibit B shows the light fixture over
24 the stairs outside apartment 2068, period. Then
25 add a sentence that says the light fixture is

1 between apartment 2068 and the apartment adjacent
2 thereto.

3 THE COURT: And I'm not trying to be
4 weird about it. I'm just concerned, because to me
5 the way it reads, it's suggesting that it's closer
6 to one apartment than the other. And I think that
7 they're, it's equally spaced.

8 MS. PANDUKHT: Adjacent thereto with the
9 neighboring apartment.

10 THE COURT: And I think Mr. O'Brien may
11 be thinking what I'm already thinking. Somewhere
12 on this we might already know the other apartment
13 number on --

14 MR. O'BRIEN: And I believe this is, I'm
15 going to show it to Ms. Pandukht, because I
16 believe the adjacent apartment would be 2067.

17 THE COURT: Well, that would sure make
18 sense, depending upon what the numbering scheme
19 is.

20 MR. BROOKS: Why don't we go ahead,
21 judge, and we'll just go off the record again, and
22 at the close of the State's case, and I will get
23 this retyped with that additional language.

24 THE COURT: That's fine.

25 MR. BROOKS: Okay.

1 THE COURT: We'll wait to see whether or
2 not we've got a full jury, and then we'll come
3 back.

4 (Recess taken.)

5 THE COURT: Welcome back. Let the record
6 reflect that we are again present in the matter of
7 State versus Glenford Budd, 193182. All parties
8 are present with counsel.

9 Will you stipulate, please, to the
10 presence of the jury?

11 MS. PANDUKHT: Yes, on behalf of the
12 State.

13 MR. BROOKS: Defense would, your Honor.

14 THE COURT: Very well. We have a witness
15 already in the witness stand.

16 Sir, would you state your name and spell
17 it, please, for the record.

18 THE WITNESS: Greg Lewis, G-r-e-g
19 L-e-w-i-s.

20 THE COURT: And you need to stand and
21 raise your right hand to take the oath.

22
23 GREG LEWIS,
24 called as a witness, and having been first duly
25 sworn to testify to the truth, the whole truth,

1 and nothing but the truth, was examined and
2 testified as follows:

3
4 THE CLERK: Please be seated.

5
6 DIRECT EXAMINATION

7 BY MS. PANDUKHT:

8 Q. Mr. Lewis, do you know an individual by
9 the name of Glenford Budd?

10 A. Yes.

11 Q. Is he in the courtroom?

12 THE COURT: You have to keep your voice
13 up. Everything is being recorded.

14 THE WITNESS: Yes.

15 BY MS. PANDUKHT:

16 Q. Is he in the courtroom today?

17 A. Yes.

18 Q. Could you point him out and describe
19 something he's wearing today?

20 A. White T -- white shirt, tie, bald head.

21 MS. PANDUKHT: May the record reflect
22 identification of the defendant?

23 THE COURT: It will so reflect.

24 BY MS. PANDUKHT:

25 Q. Did you know the defendant by any other

1 names?

2 A. Budd.

3 Q. Any other nicknames? Just Budd?

4 A. Yeah.

5 Q. Now, when you knew the defendant back in
6 2003, about sometime before May of 2003, what was
7 his hair like?

8 A. Long, it was like in braids.

9 Q. And what did you say before it was in
10 braids?

11 A. It was long.

12 Q. About how long was it?

13 A. Like this long.

14 THE COURT: This long indicating --

15 THE WITNESS: Shoulder.

16 THE COURT: -- about shoulder length.

17 BY MS. PANDUKHT:

18 Q. And did you have an occasion to meet up
19 with the defendant again after May 27th of 2003?

20 A. Yeah.

21 Q. Where did you meet up with the defendant?

22 A. In Clark County Detention Center.

23 Q. And how long had you known him before you
24 saw him at the Clark County Detention Center?

25 A. About six months, a year.

1 Q. How did you know him?

2 A. From around the way in some apartments.

3 Q. What apartments?

4 A. The Palms East, the Palms, Saratoga.

5 Q. The Saratoga Palms East?

6 A. Yeah.

7 Q. And how did you know him there? Did
8 either of you live there?

9 A. I didn't live there. I used to just be
10 around.

11 Q. Did Mr. Budd live there?

12 A. From what I'm, I'm, I understand, from
13 what I was understanding.

14 Q. Okay. And then when you went to the
15 Clark County Detention Center, were you somewhere
16 near to the defendant in terms of where you were
17 housed?

18 A. Yeah, the same unit.

19 Q. Okay. And when you were, when you're on
20 the same unit, you're on the same floor?

21 A. Yeah, the same floor, the same, it's the
22 same area.

23 Q. Okay. Did you actually share a cell with
24 him?

25 A. No.

1 Q. Now, the defendant, well, first let me
2 ask you this: Do you have a prior felony
3 conviction?

4 A. Yes.

5 Q. Is it for challenge to a fight with a
6 weapon from 2004 in the State of Nevada?

7 A. Yes.

8 Q. Now, when you were with the defendant at
9 the Clark County Detention Center, did he talk to
10 you about anything that happened at the Saratoga
11 Palms Apartments?

12 A. Briefly.

13 Q. Okay. How did that happen?

14 A. What do you mean? How did the
15 conversation --

16 Q. Did he approach you or you approached
17 him? How did it come about?

18 A. We was just talking. I didn't approach
19 him. He didn't approach me. We was just already
20 talking.

21 Q. Do you remember about when that was?

22 A. About October, 2003, November, between
23 there.

24 Q. And what did the defendant say?

25 A. What had happened in the apartments, why

1 it happened, real brief, though.

2 Q. Do you remember exactly what he told you?

3 A. Some kids got killed about some weed that
4 he thought they took from him, and it happened in
5 the apartments, in the Saratoga.

6 Q. Did he say how they got killed?

7 A. He shot them.

8 Q. Did he say who shot them?

9 A. He did. He said he did.

10 Q. Did he say how many people he shot?

11 A. Three.

12 Q. All right. Did he say that it was more
13 than three?

14 A. No.

15 Q. Did he say anything about a fourth
16 person?

17 A. Yeah.

18 Q. What was that?

19 A. I guess the fourth person got away.
20 That's what I was told.

21 Q. Okay. And I'm just asking you what he
22 told you.

23 A. Yes.

24 Q. You said that he mentioned something
25 about weed, right?

1 A. Yeah.

2 Q. What is weed?

3 A. Marijuana.

4 Q. Okay. And did he say how much weed?

5 A. I think it was a half a pound or
6 something like that.

7 Q. Okay. Did the defendant say anything
8 about why he thought they did it, took his weed?

9 A. I guess because they was smoking weed,
10 and they had it. They usually didn't have it.

11 Q. Did he say anything about what he did
12 with them before the shootings?

13 A. Hung out, played ball, smoked weed.

14 Q. Okay. Did he say anything about how he
15 was trying to figure out --

16 A. That was how, I guess, he was trying to
17 figure it out.

18 Q. Figure out what?

19 A. Who took it, by hanging out and playing
20 basketball.

21 Q. Did he say anything about how old they
22 were? Did he call them anything?

23 A. No.

24 Q. How did he refer to the three people that
25 he shot?

1 A. It was just kids that was, that lived
2 around the, in the apartments.

3 Q. Did he call them kids?

4 A. As I remember.

5 Q. Is that, did you say that's what you
6 remember?

7 A. Yeah. That's what I remember.

8 Q. Okay. All right. And then did he say
9 anything about himself smoking weed?

10 A. Yeah.

11 Q. Did he make any statements to you about
12 whether or not he was high at the time of the
13 shooting?

14 A. No. No. I don't think he was. I don't
15 remember him saying he was high at the time of the
16 shooting, but prior to it they was smoking weed.

17 Q. How did he look when you talked to him in
18 terms of his hair?

19 A. At what point?

20 Q. In October or November of 2003?

21 A. He had shorter hair.

22 Q. How short was it?

23 A. It was like in a little Afro, I guess.

24 Q. Was it still in the braids?

25 A. In little braids now, different, a

1 different style of braids.

2 Q. Okay. And did he say anything about what
3 he did after the shooting?

4 A. Cutting his hair off, he said he cut his
5 hair off, and that was pretty much it.

6 Q. Did he say he went anywhere?

7 A. To some girl's house to hide out, I
8 guess.

9 Q. Okay. And is there anything else that
10 you remember him saying about what he was going to
11 say to the police?

12 A. That he was there just like everybody
13 else was, but he didn't shoot.

14 Q. Now, you were at the Clark County
15 Detention Center, then, in October or November of
16 2003. At some point did you then have the
17 occasion to talk to a detective?

18 A. Yes.

19 Q. Did you talk to Detective James Vaccaro?

20 A. Yes.

21 Q. Was that about August of 2004?

22 A. Yeah, if I recall correctly.

23 Q. So, do you remember whether it was
24 sometime after you had talked to the defendant?

25 A. Yeah, it was.

1 Q. Could you explain why you waited to tell
2 the detective?

3 A. Because I figured if it, if that's what
4 happened, it took some time on, on my brain, but I
5 figured if that's what happened, then he, what's
6 right needs to come out, and they need to know
7 what happened.

8 Q. Now, when you talked to the detective,
9 did the detective initiate contacting you, or did
10 you call him?

11 A. No. I contacted him.

12 Q. And when you contacted him, how long did
13 it take him to come out and talk to you?

14 A. About two days, three days. I don't
15 know, about three days.

16 Q. Okay. And when the detective came out to
17 talk to you, did he tape-record a statement with
18 you?

19 A. Yeah.

20 Q. And that statement was then later typed
21 out about what you said?

22 A. Yes.

23 Q. Okay. And you've seen a copy of that
24 statement, also?

25 A. Yes.

1 Q. Now, before he actually talked to you
2 about what happened, Detective Vaccaro, did he
3 make any promises to you?

4 A. No.

5 Q. Did he say he would do anything for you
6 in exchange for giving him a statement?

7 A. No.

8 Q. Now, you told him, Detective Vaccaro, you
9 know, you made your statement, right?

10 A. Right.

11 Q. After that time, so after August of 2004
12 did you learn that a letter had been written on
13 your behalf?

14 A. Could you repeat the question?

15 Q. Well, did you find out that there was a
16 letter that someone had written to the parole
17 board?

18 A. Did I find out before or after?

19 Q. After August of 2004?

20 A. Yes.

21 Q. How did that come up? How did that
22 happen?

23 A. Well, because it was sent to me. The
24 letter was sent to me, but I only had it for a
25 couple days.

1 MS. PANDUKHT: May I approach the
2 witness?

3 THE COURT: You may.

4 BY MS. PANDUKHT:

5 Q. I'm showing you what we have marked as
6 State's Proposed Exhibit No. 50. Do you recognize
7 what this is?

8 A. Yes.

9 Q. Have you seen something like this before?

10 A. Yes.

11 Q. What is it?

12 A. It's the letter that was sent to me.

13 Q. Now, I see here it's not signed. The
14 letter that you saw, did it have a signature on
15 the bottom?

16 A. Yes.

17 Q. And who is the letter written by?

18 A. David Schwartz.

19 Q. Did you know who he was?

20 A. Kind of. I didn't know of him. I had
21 heard of him about one time between, from Vaccaro.

22 Q. Did you know that he worked in the
23 district attorney's office?

24 A. When Vaccaro told me when I talked to him
25 beforehand.

1 Q. Now, you're familiar with the contents of
2 this letter?

3 A. Yes.

4 Q. This is the letter that you had seen, you
5 said, when you were --

6 A. Yeah.

7 Q. Were there, is there a date on the
8 letter?

9 A. Yes.

10 Q. What is that date?

11 A. December 8th, 2004.

12 Q. Of 2004? And who is the letter written
13 to?

14 A. Me. It was written to the parole board.

15 Q. And then what you got was just a copy?

16 A. Yeah.

17 MS. PANDUKHT: And is this letter, well,
18 I'm going to move to admit the letter. I don't
19 know if there is going to be an objection from the
20 defense.

21 MR. BROOKS: No objection.

22 THE COURT: It will be admitted as either
23 previously marked or next in order.

24 BY MS. PANDUKHT:

25 Q. Okay. Now, in the letter does it, I'm

1 just going to have him read it into the record,
2 make that simple.

3 Can you read that into the record for us?

4 A. The whole thing?

5 Q. Yeah. Would you mind?

6 A. December 8th, 2004, Nevada Board of
7 Parole Commissioners, 2601 East Sahara, Las Vegas,
8 Nevada. To whom it may concern, the purpose of
9 this letter is to inform you that Greg Lewis has
10 been extremely cooperative to both the Las Vegas
11 Metro Police Department and the Office of the
12 District Attorney's Office in solving a homicide
13 case where three young men were murdered.
14 Mr. Lewis has agreed to testify in the trial in
15 this matter. His help in this matter has greatly
16 assisted me in this prosecution. If you have any
17 questions, please don't hesitate to call me at
18 (702) 671-2830, David P. Schwartz.

19 Q. And you're currently serving a prison
20 sentence right now, right?

21 A. Yes.

22 Q. You're doing 28 to 72 months?

23 A. Yes.

24 Q. You actually had gotten probation right
25 before?

1 A. Yes.

2 Q. And then you were revoked?

3 A. Yeah.

4 Q. Your sentence wasn't lowered --

5 A. No.

6 Q. -- when you went to prison?

7 A. No. It's the same.

8 Q. And is that the only letter or assistance
9 that you are aware of?

10 A. Yes. This is it.

11 Q. And that happened after you made the
12 statement to Detective Vaccaro?

13 A. Yeah. I was already sentenced.

14 Q. Okay. Now, you spoke to Detective
15 Vaccaro in August of 2004. Did you receive
16 something in the mail from the defendant a few
17 days later?

18 A. While I was in the county jail?

19 Q. Yes.

20 A. Yes.

21 Q. What did you receive?

22 A. A letter.

23 Q. I'm going to trade you. I'm now showing
24 you what has been marked as State's Proposed
25 Exhibit 49A. Do you recognize this?

1 A. Yes.

2 Q. What do you recognize it as?

3 A. A letter I got when I was in the county
4 jail.

5 Q. Who was the letter addressed to?

6 A. To me, Greg Lewis.

7 Q. And your name's on there?

8 A. Yeah.

9 Q. Does it say who it's from?

10 A. Yeah, Budd, 190089.

11 Q. Now, do you recognize the handwriting
12 that's on the envelope?

13 A. Yes.

14 Q. Whose handwriting do you recognize it to
15 be?

16 A. Budd's.

17 Q. Now, have you gotten letters from the
18 defendant before?

19 A. Once. Once when I was already at home.

20 Q. Okay. How do you know that it's his
21 handwriting?

22 A. Because of the letter I got before.

23 Q. Okay. Now, the postmark on that letter,
24 can you see that?

25 A. Yeah.

1 Q. When is it postmarked?

2 A. August 13th, 2004.

3 Q. You didn't get it on that same day, did
4 you?

5 A. No. I got it like a day afterward.

6 Q. Okay. And then inside, I'm taking out
7 the contents. And is this kind of how it looked
8 when you opened it up?

9 A. Yeah.

10 Q. Now, the first thing I'm going to show
11 you here from the inside of it is marked as
12 State's Proposed Exhibit No. 49B. Do you
13 recognize this in its two pages?

14 A. Yeah.

15 Q. What is it?

16 A. It's a letter.

17 Q. And who's the letter from?

18 A. Budd.

19 Q. Here it's, at the very top it says it's
20 addressed to Munee, M-u-n-e-e?

21 A. Yeah.

22 Q. Who's Munee?

23 A. It's me, my nickname.

24 Q. That's a nickname that Budd had for you?

25 A. Yeah. That's what everybody called me.

1 Q. And then at the end of the letter, on the
2 second page of the letter is it signed by anyone?

3 A. Budd.

4 Q. Okay. And again in the contents of
5 State's Proposed Exhibit 49B, do you recognize the
6 handwriting?

7 A. Yes.

8 Q. And whose handwriting do you recognize it
9 to be?

10 A. Budd's.

11 Q. Okay. Now, this piece of paper is
12 State's Proposed Exhibit 49C. Okay? Could you
13 take a look at this and tell me if you recognize,
14 one, that it came inside the envelope?

15 A. Yeah.

16 Q. Okay. And then do you recognize the type
17 of handwriting this is?

18 A. Yeah. I recognize the writing.

19 Q. It looks different than the handwriting
20 in 49B. Do you know why?

21 A. It's harder to read for other people.

22 Q. Why is that?

23 A. Because when you writing in that style of
24 writing, you make it for hard for other people to
25 read. That's the purpose of it. You don't want

1 it to be deciphered.

2 Q. Have you, you know, ever written this
3 kind of writing?

4 A. No. I write regular, cursive.

5 Q. Have you seen anyone writing this kind of
6 writing?

7 A. Once.

8 Q. Who?

9 A. In jail we write, well, they write like
10 that when you make raps and you don't want people
11 reading your stuff.

12 Q. And who did you see write like this?

13 A. Budd.

14 Q. Did you actually see him writing out
15 something similar to this kind of writing?

16 A. Yeah.

17 Q. What was he doing?

18 A. Writing a rap song.

19 Q. And were you there when he was doing
20 that?

21 A. Yeah.

22 Q. And this kind of writing, you still
23 recognize it as belonging to someone?

24 A. Yeah.

25 Q. As whose?

1 A. Budd.

2 Q. Now, this actual letter, this is exactly,
3 this page is exactly how you found it in the
4 envelope?

5 A. Yeah.

6 Q. And on the back there is some
7 handwriting. Is that written the same style as on
8 the front?

9 A. Yeah.

10 MS. PANDUKHT: I move to admit State's
11 Proposed Exhibits 49A, B, and C.

12 MR. BROOKS: I have no objection, but can
13 we clarify again what is the C and B, please?

14 MS. PANDUKHT: C is the page with the rap
15 lyrics. B is the handwritten letter.

16 MR. BROOKS: Is A the envelope?

17 MS. PANDUKHT: A is the envelope.

18 MR. BROOKS: Thank you. No objection.

19 THE COURT: They will be admitted as 49A,
20 B, and C.

21 BY MS. PANDUKHT:

22 Q. Now, this, this, put this back in here in
23 this envelope. I see that it's been opened. Did
24 you open the envelope?

25 A. No.

1 Q. How did you get this envelope?

2 A. It was, I got it like that, but I didn't
3 open it. The COs opened it.

4 Q. And CO is an abbreviation for what kind
5 of person?

6 A. Correction officer.

7 Q. Okay. Now, when, when you got this
8 letter from the CO, how did he hand it to you?

9 A. Just like that.

10 Q. Just like this from CO to you?

11 A. Yeah.

12 Q. And then did you give this letter to
13 somebody?

14 A. No.

15 Q. Did you give this letter to the
16 detective?

17 A. Yeah.

18 Q. And when the detective came back to get
19 this letter from you, did he interview you a
20 second time?

21 A. No.

22 Q. He just came and got the letter?

23 A. Yeah.

24 Q. And you handed this letter directly to
25 the detective?

1 A. Yeah.

2 Q. Okay. Now, have you seen what's been
3 marked for identification as State's Proposed
4 Exhibit 49D?

5 A. Yes.

6 MS. PANDUKHT: And do you know what I'm
7 referring to now?

8 MR. BROOKS: Yes, I do.

9 BY MS. PANDUKHT:

10 Q. Sorry. I'm all the way over here. All
11 right.

12 Now, 49D, did I show you this --

13 A. Yes.

14 Q. -- before?

15 A. Yes.

16 Q. Have you looked at this piece of paper
17 and compared it to the piece of paper marked and
18 admitted as 49C?

19 A. Yes.

20 Q. How does the 49D compare to 49C?

21 A. It's pretty much the same.

22 Q. Now, you didn't type out 49D. That was
23 actually my co-counsel, Mr. Kane. But is it the
24 same as --

25 A. Yeah.

1 Q. -- as 49C?

2 A. Pretty much. Pretty much.

3 Q. And that includes the entire front of
4 this piece of paper but not the back?

5 A. Yeah.

6 Q. Okay. So, it's just the front?

7 A. Yeah, just the front.

8 MS. PANDUKHT: Okay. At this time I move
9 to admit State's 49D for the purpose of assisting
10 the jury in being able to understand the contents
11 of 49C.

12 MR. BROOKS: Judge, I'm going to object.
13 He just testified it was pretty much the same. He
14 did not testify it was precisely the same. It's a
15 typewritten summary of what's in 49C. If it's not
16 precisely the same, it shouldn't be admitted. If
17 it's just pretty much and close, it's not, it
18 doesn't work.

19 THE COURT: Sustained.

20 MS. PANDUKHT: I can lay some additional
21 foundation.

22 THE COURT: I will give her an
23 opportunity to back up a bit.

24 BY MS. PANDUKHT:

25 Q. And here I'm going to, all right. I'm

1 going to see if, can you hold that for me? All
2 right. If there is something that's different
3 between this letter in 49C and then 49D, could you
4 let me know what it is?

5 A. This on the back, this, only thing that's
6 different is the statement on the back.

7 Q. Okay. This statement on the back of 49C?

8 A. That's the only thing that was different.
9 That's not on here.

10 Q. What about, the one thing that comes out
11 at me is on 49D I see the parentheses, s-i-c,
12 parentheses. Is that actually in this exhibit,
13 which is 49C?

14 A. No, it's not.

15 Q. Okay. And that means again --

16 MR. KANE: Judge, it's my translation.
17 Judge, I inserted sic, meaning thus in the
18 original there are two times when the word of is
19 used in the document. I believed that what the
20 writer meant to write was the word off. So, I put
21 sic to indicate that's the way it was written in
22 the original.

23 THE COURT: And, in other words, it also
24 indicates that it is not an exact translation of
25 what appears before, and/or it indicates there was

1 an error, at least grammatically, in the original.

2 MR. KANE: It is an exact transcription
3 with grammatical error intact. The sic indicates
4 that I think it's an error.

5 THE COURT: Understood.

6 BY MS. PANDUKHT:

7 Q. So, with the exception of the two places
8 that says, parentheses, s-i-c, end parentheses and
9 what's written on the back of 49C, are the
10 contents of 49C identical to the contents of 49D?

11 A. Yes.

12 MS. PANDUKHT: Renew my motion to admit.

13 MR. BROOKS: No objection.

14 THE COURT: It will be admitted as 49D.

15 BY MS. PANDUKHT:

16 Q. Now, which would you prefer reading into
17 the record? I'm going to ask that you read it
18 into the record. Do you want to read it off 49C
19 or D?

20 A. This one.

21 Q. Okay.

22 THE COURT: Let the record reflect that
23 the defendant -- strike that -- that the witness
24 has chosen to read in the record the typewritten
25 copy.

1 BY MS. PANDUKHT:

2 Q. Could you read it into the record exactly
3 as it's written there?

4 A. This is part one of my song. I'm gonna
5 release it when they release me. Killer in Me off
6 the Murda Music CD.

7 They call me Smalls, aka AI. Every day
8 on the street I used to get high. There's rules
9 for a killa. Don't get it confused. I'm wearing
10 county blues with my face on the news.

11 It got some curse words in here.

12 THE COURT: You can read them into the
13 record.

14 THE WITNESS: Blew these niggas of the
15 earth. That's the way it had to go. I only
16 killed three, but I should have killed four. Left
17 them dead on the floor, but just right before they
18 was crying and pleading, screaming for Jesus.
19 Ya'll can keep the weed, because you can't smoke
20 it now, because your ass is in the ground. Cross
21 me, I blow like a bomb, took three niggas from
22 their moms. I'm a thrilla killa. Ask Saratoga
23 Palms.

24 Sorry, so sorry. This is how I write so
25 people can't read over my shoulder. This shit is

1 for your eyes only. Some niggers is snitches, CD
2 coming fall '06.

3 MS. PANDUKHT: Thank you, Mr. Lewis.
4 I'll pass the witness.

5 THE COURT: Cross?

6
7 CROSS-EXAMINATION

8 BY MR. BROOKS:

9 Q. Thank you, judge. May I call you Greg?

10 A. Yes.

11 Q. My name is Howard Brooks. I represent
12 Glenford Budd. I just have a few questions to ask
13 you to clarify a few things.

14 You did know Glenford prior to going to
15 Clark County Detention Center, correct?

16 A. Yeah. I knew of him.

17 Q. So, ya'll were not friends before you
18 were in jail?

19 A. No. We were cool. We weren't friends,
20 associates if you want to call it that.

21 Q. I mean, you had hung out with him at the
22 Saratoga Palms?

23 A. Yeah. I hung around him.

24 Q. Okay. You smoked marijuana with him,
25 hadn't you?

1 A. Yeah.

2 Q. Okay. So, you guys were acquaintances.
3 You had been around each other, right?

4 A. Right.

5 Q. And if you saw him, you would be able to
6 say who he was? You would say his name?

7 A. Right.

8 Q. Okay. And there was no bad, ill will
9 between the two of you, right?

10 A. No.

11 Q. So, basically you wind up getting
12 arrested, and you're at CCDC, correct?

13 A. Yes.

14 Q. And he winds up being at CCDC -- this is
15 the jail -- over this murder charge, correct?

16 A. Correct.

17 Q. And you guys were on the same floor?

18 A. Yes.

19 Q. And during the course of being on the
20 same floor you guys would talk?

21 A. Yes.

22 Q. And during the course of being on the
23 same floor you guys would do rap music together
24 and talk about rap music?

25 A. Yes.

1 Q. And the fact is, you both were involved
2 with a group of people where ya'll would make up
3 rap songs, right?

4 A. Yes.

5 Q. And Glenford would make up rap songs?

6 A. Yes.

7 Q. You would make up rap songs?

8 A. Yes.

9 Q. A guy named Wes would make up rap songs?

10 A. Yes.

11 Q. And other people would make up rap songs?

12 A. Yeah. It was about five of us.

13 Q. And you would trade them among each other
14 and read each other's rap songs?

15 A. Yes.

16 Q. Now, the State has shown you -- and I
17 hope I have this correct -- State's Exhibit 49A?

18 A. Yes.

19 Q. Which is a letter from Glenford to you,
20 correct?

21 A. Correct.

22 Q. Forty-nine A is the envelope. Forty-nine
23 B is the first part of the letter in Glenford's
24 regular handwriting, correct?

25 A. Correct.

1 Q. Forty-nine C is the rap song, correct?

2 A. Correct.

3 Q. It's my understanding you're still at
4 CCDC, the jail when you received this?

5 A. Yes.

6 Q. Is that right or wrong?

7 A. That's correct.

8 Q. And his address on there is, in fact, the
9 jail?

10 A. Yes.

11 Q. So, he's in jail, and you're in jail?

12 A. Yes.

13 Q. Okay. He sends this to you, and you
14 receive it there in the jail?

15 A. Yes.

16 Q. When you receive it, this is already
17 opened?

18 A. Yes.

19 Q. Okay. And you open it up, and when you
20 open this, you read a letter in Glenford's
21 handwriting, correct?

22 A. Correct.

23 Q. And, in fact, the jury will get a chance
24 to see this and take it back to the room. This is
25 a letter written in pencil?

1 A. Yes.

2 Q. Correct?

3 A. Correct.

4 Q. And I guess you would call it white
5 notebook paper that comes in a pad. Is that fair
6 to say?

7 A. Yes, fair to say.

8 Q. They sell this at the jail, don't they?

9 A. Yes.

10 Q. Okay. And, in fact, it has little blue
11 lines across it, correct?

12 A. Correct.

13 Q. Okay.

14 A. Well, if you can bring it to me so I can
15 identify it, I'm not sure if it had blue lines.

16 Q. Okay. Take a look at that. Look at the,
17 is this 49B?

18 A. Yeah. It has blue lines.

19 Q. And 49C, which has the rap song, is also
20 the same type of white, I'll call it notebook
21 paper. Is that fair to say?

22 A. Yes. That's fair to say.

23 Q. And it also has the same blue lines?

24 A. Yeah. It has the same blue lines.

25 Q. Now, this 49C with the rap song is not as

1 long as 49B in terms of the size of the paper, is
2 it?

3 A. No, it's not.

4 Q. It's shorter?

5 A. Yes.

6 Q. And something has been torn off the
7 bottom, correct?

8 A. Correct, from what it looks like.

9 Q. Do you know anything about that?

10 A. No.

11 Q. So, it arrived to you already torn off?

12 A. Already torn off.

13 Q. And you have no idea what was on that
14 part that was torn off?

15 A. No.

16 Q. Both of those are in pencil; is that
17 correct?

18 A. Yes, from what I'm seeing.

19 Q. Okay. Now, you and Glenford were
20 friends. He wrote you a letter. You also had
21 written him letters, hadn't you?

22 A. Yes.

23 Q. In fact, I'm going to approach now with
24 what's been marked as Defense Exhibit A. And this
25 is a letter, well, you tell me. What is that?

1 A. That's a letter I wrote him.

2 Q. Okay. Where are you when you wrote him
3 that letter?

4 A. In Clark County Detention Center.

5 Q. Okay. It has here, by the way, an
6 envelope and two full pages, correct?

7 A. Correct.

8 Q. And the envelope has on there your name
9 with the address for Clark County Detention
10 Center?

11 A. Yeah.

12 Q. And it also, that is going to Glenford
13 Anthony Budd, also in the Clark County Detention
14 Center?

15 A. Yeah.

16 Q. Is that your handwriting?

17 A. Yes.

18 Q. In fact, this whole document has your
19 handwriting, correct?

20 A. Could you turn through it?

21 Q. Certainly. You can handle it.

22 A. Okay. Yeah.

23 Q. That is, in fact, your letter?

24 A. Yes.

25 Q. That is your handwriting on the envelope

1 and the letter itself?

2 A. Yes.

3 Q. That's your handwriting on the back of
4 the envelope?

5 A. Yes.

6 Q. Now, the paper that you're using to write
7 to Glenford is precisely the same paper that was
8 used in Glenford writing to you, isn't it?

9 A. Yes.

10 Q. It's the same paper with the, the white
11 notebook paper with blue lines, correct?

12 A. Correct.

13 Q. Okay. It's the standard paper that you
14 would get in the jail?

15 A. Yes.

16 Q. Okay. So, you were using the same kind
17 of paper when you wrote your communications that
18 he is using in writing to you?

19 A. Yes.

20 Q. Now, in discussing Exhibit 49B and C,
21 which is the letter Glenford wrote to you and the
22 rap song, Ms. Pandukht, the prosecutor, has
23 basically said the handwritings are two entirely
24 different types of handwriting, correct?

25 A. Correct.

1 Q. And it's your testimony that you
2 recognize both of these as being Glenford's
3 handwriting?

4 A. Two different, yes. It's just two
5 different types.

6 Q. And the handwriting on 49B is what we
7 would call normal handwriting, correct?

8 A. This is 49B?

9 Q. Correct.

10 A. Yes.

11 Q. And 49C is sort of a highly stylized
12 special handwriting that someone would use to
13 write rap songs?

14 A. Yeah.

15 Q. And you say that you have seen Glenford
16 write that way before?

17 A. Have I seen him write this paper right
18 here?

19 Q. No. Have you seen him write like that
20 before?

21 A. Yeah.

22 Q. In the highly stylized rap way?

23 A. Yeah.

24 Q. Okay. But you're saying you yourself
25 have not written like this?

1 A. I don't know how to write like that. I
2 wrote regular.

3 Q. So, you --

4 A. Cursive.

5 Q. So, you would agree, then, this is
6 absolutely not your handwriting?

7 A. Yeah.

8 Q. That you're --

9 A. Would I agree that that's not my
10 handwriting?

11 Q. Correct, 49C?

12 A. Correct.

13 Q. And you're saying here that you did not
14 write this rap song?

15 A. Yes.

16 Q. And, in fact, you're, you're sure that
17 nobody else wrote this rap song?

18 A. I'm sure I didn't write it.

19 Q. Okay. To your knowledge, has anyone ever
20 asked you to contribute a handwriting analysis to
21 examine with this thing?

22 A. No.

23 Q. Has anyone ever checked fingerprints, as
24 far as you know, to see if your fingerprints or
25 the fingerprints of Mr. Budd are on the rap song?

1 A. Not to my knowledge.

2 Q. I mean, you would admit your fingerprints
3 could be on this, because you had possession of
4 49C?

5 A. Yes.

6 Q. When you were discussing with
7 Ms. Pandukht the language in the rap song -- and
8 we're referring now to both 49C and 49D -- you
9 said that there were curse words in here, correct?

10 A. Yeah.

11 Q. Which curse words are you referring to?

12 A. As, just vulgar language that's, I guess,
13 not appropriate for the courtroom.

14 Q. So, you're just referring to the word
15 ass?

16 A. Niggas.

17 Q. So, were you kind of surprised at the
18 language of niggers in this rap song?

19 A. No.

20 Q. Isn't that pretty common?

21 A. Yeah.

22 Q. I mean, the fact is, in your letter to
23 Mr. Budd you talk about niggers?

24 A. Yeah.

25 Q. Okay. So, it's not that unusual?

1 A. It's just not for courtroom. I didn't
2 want to read it out unless it was approved.

3 Q. And I appreciate your sensitivity on that
4 point.

5 Now, you're currently in prison for 72
6 months, correct?

7 A. Correct.

8 Q. With parole eligibility after 28 months?

9 A. Yeah.

10 Q. You don't like being in prison?

11 A. No.

12 Q. You don't like being told when to go to
13 bed and when to get up?

14 A. No.

15 Q. You don't like the food in prison?

16 A. Well, the food is all right.

17 Q. The food's okay? Okay. You don't like
18 being deprived of freedom?

19 A. No.

20 Q. If you got out, you've got something to
21 go back to, don't you?

22 A. As far as, what do you mean?

23 Q. Well, in your letter to Mr. Budd you talk
24 about having a girlfriend, don't you?

25 A. Yeah.

1 Q. And you also talk about having two kids
2 and one on the way?

3 A. Yeah.

4 Q. Did you have the third child?

5 A. Yeah.

6 Q. So, you have three children now?

7 A. Yeah.

8 Q. And you want to get out to help these
9 kids?

10 A. Yeah.

11 Q. And you want to get out to be with this
12 girlfriend?

13 A. Not really.

14 Q. Not really? Okay. But you obviously
15 want to get out of prison as soon as you can?

16 A. Yeah.

17 Q. And the way to do that is to get parole,
18 correct?

19 A. Yeah.

20 Q. Parole means they're going to release
21 you, and you'll be on some kind of supervised
22 release, and you can live with your family?

23 A. Correct.

24 Q. Now, Ms. Pandukht showed you State's
25 Exhibit 50, which is a letter from David Schwartz

1 to the State Board of Parole Commissioners. I'm
2 going to show it to you again.

3 What is the date of this letter?

4 A. December 8th, 2004.

5 Q. Now, that letter is to the parole board.
6 It's not to a sentencing court, correct?

7 A. Correct.

8 Q. So, it's not going to affect your actual
9 sentence, is it?

10 A. No.

11 Q. It's just going to affect whether you get
12 parole, correct?

13 A. Is that letter going to affect whether I
14 get parole or not?

15 Q. Well, you hope it does, right?

16 A. Yeah.

17 Q. And you're hoping that by the DA writing
18 to the parole board on your behalf, the parole
19 board will give your application for parole
20 consideration?

21 A. They're going to consider it regardless
22 of that letter or not.

23 Q. But clearly it's going to help, isn't it?

24 A. It should, yes.

25 Q. It should help you? I mean, you would