

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Case No. 83796

Electronically Filed  
May 27 2022 05:46 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

DONTE JOHNSON,  
Petitioner,

v.

STATE OF NEVADA, *et al.*,  
Respondent.

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Appeal From Clark County District Court  
Eighth Judicial District, Clark County  
The Honorable Jacqueline M. Bluth, District Judge  
(Dist. Ct. No. A-19-789336-W)

APPELLANT'S APPENDIX

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Defendant's (Pro Se) Request for Petition to be Stricken as it is Not Properly Before the Court, <i>Johnson v. Gittere, et al.</i> , Case No. A-19-789336-W, Clark County District Court, Nevada	04/11/2019	46	11606-11608
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196. Trial Transcript (Volume IX), <i>State v. Smith</i> , District Court, Clark County, Nevada Case No. C153624 (June 18, 1999)	02/13/2019	46	11376–11505

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197. Voluntary Statement of Luis Cabrera (August 14, 1998)	02/13/2019	46	11506–11507
198. Voluntary Statement of Jeff Bates (handwritten)_Redacted (Aug. 14, 1998)	02/13/2019	46	11508–11510
199. Voluntary Statement of Jeff Bates_Redacted (Aug. 14, 1998)	02/13/2019	46	11511–11517
200. Presentence Investigation Report, State’s Exhibit 236, <i>State v. Young</i> , District Court, Clark County, Nevada Case No. C153461_Redacted (Sep. 15, 1999)	02/13/2019	46	11518–11531
201. Presentence Investigation Report, State’s Exhibit 184, <i>State v. Smith</i> , District Court, Clark County, Nevada Case No. C153624_Redacted (Sep. 18, 1998)	02/13/2019	46	11532–11540
202. School Record of Sikia Smith, Defendant’s Exhibit J, <i>State v. Smith</i> , District Court, Clark County, Nevada (Case No. C153624)	02/13/2019	46	11541–11542
203. School Record of Sikia Smith, Defendant’s Exhibit K, <i>State v. Smith</i> , District Court, Clark County, Nevada (Case No. C153624)	02/13/2019	46	11543–11544

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204. School Record of Sikia Smith, Defendant's Exhibit L, <i>State v. Smith</i> , District Court, Clark County, Nevada (Case No. C153624)	02/13/2019	46	11545–11546
205. Competency Evaluation of Terrell Young by Greg Harder, Psy.D., Court's Exhibit 2, <i>State v. Young</i> , District Court, Clark County, Nevada Case No. C153461 (May 3, 2006)	02/13/2019	46	11547–11550
206. Competency Evaluation of Terrell Young by C. Philip Colosimo, Ph.D., Court's Exhibit 3, <i>State v. Young</i> , District Court, Clark County, Nevada Case No. C153461 (May 3, 2006)	02/13/2019	46	11551–11555
207. Motion and Notice of Motion in Limine to Preclude Evidence of Other Guns Weapons and Ammunition Not Used in the Crime, <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154 (Oct. 19, 1999)	02/13/2019	46	11556–11570
208. Declaration of Cassondrus Ragsdale (Dec. 19, 2018)	02/13/2019	46	11571–11575
209. Post –Evidentiary Hearing Supplemental Points and Authorities, Exhibit A: Affidavit of Theresa Knight, <i>State v. Johnson</i> ,	02/13/2019	46	11576–11577

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210. Post –Evidentiary Hearing Supplemental Points and Authorities, Exhibit B: Affidavit of Wilfredo Mercado, <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154, June 22, 2005	02/13/2019	46	11578–11579
211. Genogram of Johnson Family Tree	02/13/2019	46	11580–11581
212. Motion in Limine Regarding Referring to Victims as “Boys”, <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154	02/13/2019	46	11582–11585
213. Declaration of Schaumetta Minor, (Dec. 18, 2018)	02/13/2019	46	11586–11589
214. Declaration of Alzora Jackson (Feb. 11, 2019)	02/13/2019	46	11590–11593
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216. <i>Holloway v. Baldonado</i> , No. A498609, Opposition to Motion for Summary Judgment Filed by Defendants Stewart Bell, David Roger, and Clark County, District Court of Clark County, filed Jan. 16, 2008	12/13/2019	48–49	11868–12111
217. Letter from Charla Severs, dated Sep. 27, 1998	12/13/2019	49	12112–12113
218. Decision and Order, <i>State of Nevada v. Johnson</i> , Case No. C153154, District Court of Clark County, filed Apr. 18, 2000	12/13/2019	49	12114–12120
219. State's Motion to Disqualify the Honorable Lee Gates, <i>State of Nevada v. Johnson</i> , Case No. C153154, District Court of Clark County, filed Apr. 4, 2005	12/13/2019	49	12121–12135
220. Affidavit of the Honorable Lee A. Gates, <i>State of Nevada v. Johnson</i> , Case No. C153154, District	12/13/2019	49	12136–12138

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221. Motion for a New Trial (Request for Evidentiary Hearing), <i>State of Nevada v. Johnson</i> , Case No. C153154, District Court of Clark County, filed June 23, 2000	12/13/2019	49	12139–12163
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223. Declaration of Dayvid J. Figler, dated Feb. 10, 2020	02/11/2019	49	12245-12247
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<sup>1</sup> This transcript was not filed with the District Court nor is it under seal.

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## **CERTIFICATE OF SERVICE**

I hereby certify that on May 27, 2022, I electronically filed the foregoing Appendix with the Nevada Supreme Court by using the appellate electronic filing system. The following participants in the case will be served by the electronic filing system:

Alexander G. Chen  
Chief Deputy District Attorney  
Clark County District Attorney's Office

/s/ Celina Moore

Celina Moore  
An employee of the Federal  
Public Defender's Office

1                   So, no longer do they have the belly  
2 chain?  
3           A       That's correct.  
4           Q       And no longer do they have chains around  
5 their legs?  
6           A       That's correct.  
7           Q       So, when they're walked to the small yard,  
8 they are just in handcuffs?  
9           A       That's correct.  
10          Q       Now, do they have two officers on each  
11 side of them when they move here in Level III?  
12          A       I don't know. I don't know whether it  
13 would be two of them or not. There would be at  
14 least one because he's got handcuffs on.  
15          Q       We mentioned about inmates who had spent  
16 some -- one year, five years; do you remember that  
17 line of questioning?  
18          A       Yes.  
19          Q       Two years?  
20          A       Yes.  
21          Q       Five years?  
22          A       Yes.  
23          Q       Ten years?  
24                   Fair to say -- I don't want to put words  
25 in your mouth, but over here in Level II, Level III

1 we have inmates that could be here one year?

2 A Could be.

3 Q Two years?

4 A It's possible.

5 Q And I want your knowledge, okay? I know

6 it's been a while since you've been there, but do

7 you know or not whether an inmate would be there for

8 a year?

9 A We didn't have the level system in Ely

10 when I was there.

11 Q You don't know?

12 A I can't tell you how long they've been in

13 the levels at that institution.

14 Q They could basically live there forever,

15 as far as you know?

16 A I really don't have a response for that

17 question.

18 Q It's a possibility?

19 A It's a possibility if they're in prison

20 forever they could be in Level III, yes. That's a

21 possibility.

22 Q Okay.

23 Let's talk about the differences between

24 Level III and administrative segregation. Okay?

25 A Okay.

1 Q We know that we have two people in the  
2 same cell over here, correct (indicating)?

3 A Yes.

4 Q Now, I think you mentioned -- let me check  
5 my notes here with regard to the differences.

6 They still only get one hour out of 24  
7 hours to go to the small yard?

8 A Seven days a week.

9 Q So, again, I just want to make sure we're  
10 on the same wavelength here.

11 They get one hour out of a day, out of  
12 every 24 hours to go to the small yard?

13 A To go outside, yes.

14 Q Up until that time they're still in that  
15 small cell with their friend or their other inmate,  
16 correct?

17 A Yes.

18 Q I'm not sure if I see any additional  
19 advantages.

20 Why don't you tell me what the advantage  
21 of being over here in Level III over administrative  
22 segregation is other than sharing your cell with  
23 another person?

24 A You get to wear your own clothes.

25 Q Okay.

1           A       You're not strip searched every time you  
2 leave your cell. You're in wrist restraints only  
3 and not regular irons and belly chains.

4           Q       Let me get that straight. You don't have  
5 to go through that invasive review of your body?

6           A       There's not a complete strip search every  
7 time you leave.

8           Q       What type of search is made?

9           A       There would be a body search but not a  
10 strip search every time you leave.

11          Q       Tell us, what's the difference between a  
12 strip search and body search?

13          A       A "strip search," as you indicated before,  
14 you would check the body cavities. In a pat-down  
15 search you would search them on the outside of their  
16 clothing.

17          Q       In Phase III when you go to that yard one  
18 hour out of every day, you get to leave your clothes  
19 on when you're searched?

20          A       Like I said, I don't work at that  
21 institution. The information that I have is that  
22 they're not strip searched every time they leave  
23 that facility. I don't know the specific response  
24 to your question.

25          Q       Okay.

1           But you did point out we know that there  
2 is potential movement between Level III and Level  
3 II, correct?

4           A     Yes, sir, there is.

5           Q     In fact, you mentioned the condition  
6 precedent, that's what we lawyers talk about; in  
7 other words, something you have to do is good  
8 behavior, correct?

9           A     Yes.

10          Q     So, again, you have to have good behavior  
11 to get from ad seg to Level III, right?

12          A     Yes.

13          Q     And you have to have good behavior to go  
14 down as well?

15          A     Yes. Now, the only contingency to get  
16 from ad seg to Level III is not good behavior. It  
17 depends on why that particular inmate was placed in  
18 that segment to start with.

19          Q     It's discretionary?

20          A     No; it's specific reasons why an inmate is  
21 placed in ad seg and it has nothing to do with his  
22 behavior.

23          Q     You're the warden, right?

24          A     Right.

25          Q     You're the boss of one of these places?

1           A       Southern Desert Correctional Center.  
2           Q       I apologize. My memory is not the best.  
3                    You're the warden at Southern Desert  
4 Correctional Center?  
5           A       Yes.  
6           Q       It's fair to say you have a lot of power  
7 out there?  
8           A       I'm the warden of the facility.  
9           Q       You would have influence as to whether an  
10 individual was to move in some of these directions?  
11           A       I have some influence, but we also have a  
12 classification committee that makes those decisions.  
13           Q       When you say you have some influence, who  
14 else has influence other than yourself?  
15           A       Classification committee.  
16           Q       Okay.  
17                    And again, you said good behavior is  
18 obviously an important part of that?  
19           A       Yes.  
20           Q       And safety and security of the system?  
21           A       Yes.  
22           Q       Anything else that comes to mind?  
23           A       Whether the inmate has a management  
24 problem or not.  
25           Q       That's kind of like safety and security,



1 isn't it, or is that different?

2 A It's all intertwined.

3 Q I don't want to put words in your mouth,  
4 but clearly good behavior coupled with the safety of  
5 the overall system and other inmates is what you're  
6 reviewing, correct?

7 A And safety for himself.

8 Q Okay.

9 Now, you mention in Level II, now, for the  
10 first time they get tier time, correct?

11 A Yes, they can have tier time in Level II.

12 Q And, in fact, that's when you get out of  
13 your cell, correct?

14 A Yes.

15 Q And, in fact, you can talk to some other  
16 individuals other than your roommate?

17 A You can.

18 Q Okay.

19 Now, I asked you once before how long did  
20 a person stay here in Level III. Was it one year,  
21 two years, five years, but you weren't sure,  
22 correct?

23 A They will be reviewed within 90 days, but  
24 they may stay there longer than that.

25 Q You can have people ten years in Level

1 III?

2 A It's possible, I suppose.

3 Q You haven't been up there since 1990; it's  
4 not something you're observing every day, correct?

5 A That's correct.

6 Q Same thing with Level II, individuals  
7 could be stuck at Level II for a number of years?

8 A Sometimes they get stuck at the levels  
9 because of lack of bed space to move them forward.

10 Q Would it be fair to say they get stuck  
11 from Level II to Level I because there's no jobs?

12 A It's because of jobs and sometimes it's  
13 because of body space.

14 Q The jobs sound like a positive thing,  
15 correct?

16 A They are.

17 Q Because you get to make a little money?

18 A At Ely State Prison I think there's very  
19 few jobs where you can make money.

20 Q But you get some privileges if you're  
21 working?

22 A Yes, you do.

23 Q But of course, you have to have openings  
24 before somebody could move down to take that  
25 position?

1           A       In order to get a job, the job would have  
2 to be open.

3           Q       Does a job have to be open to get to Level  
4 I?

5           A       As far as I know, Ely State Prison, their  
6 level system is a little different than mine, but as  
7 far as I understand about their level system, you  
8 would have to have a job to go to Level I.

9           Q       Those jobs, are they kind of like out  
10 there, like President Bush always trying to develop  
11 more jobs, or kind of a stagnant thing at Ely State  
12 Prison?

13          A       I don't know at Ely State Prison whether  
14 they have a way to cultivate jobs or not.

15          Q       They can have five jobs?

16          A       They have more than five jobs.

17          Q       Do you have any idea?

18          A       I don't know how many jobs they have, but  
19 they have more than five.

20          Q       I don't want to pin you down and put words  
21 in your mouth, but is it more than five or less than  
22 20 but what's your general sense, because the next  
23 question I'm going to ask you is how many inmates  
24 you have at Ely State Prison to kind of get a feel  
25 for things?

1           A       I don't know how many jobs they have, and  
2 I don't know what their population is. It's  
3 something over a thousand, but I did not research  
4 it. I do not know what their population is today.

5           Q       Do you think they have more than 20 jobs?

6           A       They have more than 20 jobs.

7           Q       How about more than a hundred?

8           A       I doubt it.

9           Q       Would it be fair to say Ely State Prison,  
10 to get to Level I, somebody has to die?

11          A       No.

12          Q       You tell me: If there's less than a  
13 hundred jobs and you've got over a thousand inmates,  
14 how do you get from Level II to Level I if those  
15 jobs are all taken?

16          A       I don't know specifically that there's  
17 less than a hundred jobs. I'm only guessing because  
18 of the type of facility they have, they would not  
19 have as many as I do, and I have quite a few.

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

21                   Nothing further. Thank you.

22

23                   REDIRECT EXAMINATION

24 **BY MR. STANTON:**

25          Q       Counsel asked you a question, Miss Foster

1 about the length of time someone is on ad seg, some  
2 inmates being over one year in greater lengths of  
3 time.

4 Do you remember those questions?

5 A Yes, I do.

6 Q What would be some of the factors that  
7 would cause someone to be on ad seg for that length  
8 of time as opposed to the 90-day approximate  
9 evaluation time?

10 A Well, first of all, it would be somebody  
11 who requires protective custody. If there is a lot  
12 of enemy situations that a person has and we can't  
13 identify them and separate them, he would remain in  
14 administrative segregation for his own protection,  
15 and that could be the duration of his prison  
16 sentence.

17 Q And who is the one person that has control  
18 over what level and phase they're in both at Ely  
19 State Prison and also at your facility as far as  
20 what levels they're able to obtain?

21 A The classification committee.

22 Q And besides them making the actual  
23 decision, whose behavior is the one that actually  
24 determines that?

25 A Oh, the inmates.

1           **MR. STANTON:** Nothing further.  
2           **MR. WHIPPLE:** Nothing, your Honor.  
3           **THE COURT:** All right. You're excused.  
4 Thank you.  
5           **THE WITNESS:** Thank you.  
6           **THE COURT:** Who is your next witness?  
7           **MR. STANTON:** That would be the State's  
8 rebuttal case, your Honor.  
9           **THE COURT:** Surrebuttal?  
10          **MS. JACKSON:** No, your Honor.  
11          **THE COURT:** No witnesses?  
12          **MS. JACKSON:** No, sir.  
13          **MR. STANTON:** Your Honor, may we approach  
14 on an administrative matter?  
15          **THE COURT:** Yes.  
16          (Sidebar conference outside the presence  
17 of the court reporter.)  
18          **THE COURT:** Ladies and gentlemen, this is  
19 where we are. The evidentiary portion of this trial  
20 section here is over with, so this is what I'm going  
21 to do. We have to get together and prepare the jury  
22 instructions, so we're not going to have you wait  
23 around until that time, so we're going to have you  
24 come back at 1:30 tomorrow. I'll instruct you on  
25 the law, they will make their argument, and you can

1 make your decision.

2           During this recess, as I told you before,  
3 do not read any newspaper articles, don't watch any  
4 television, news casts or reports about the case,  
5 don't listen to any kind of commentary about the  
6 case, don't talk to anyone about the case, don't let  
7 anyone talk to you about the case, don't express an  
8 opinion about the case to anyone and don't let  
9 anyone express their opinion to you about the case.

10           We'll see you tomorrow at 1:30.

11           **THE BAILIFF:** All rise.

12           Ladies and gentlemen, follow me.

13           (Outside the presence of the jury.)

14           **THE COURT:** Let the record reflect that  
15 we're outside the presence of the jury.

16           Counsel is present for the defendant as  
17 well as the State.

18           Mr. Johnson, I am going to address you  
19 about what we refer to as an "allocution." An  
20 "allocution" is an unsworn statement in mitigation  
21 of sentence. You shall have the opportunity to make  
22 an unsworn statement in mitigation of sentencing  
23 including statements of remorse, apology, chagrin,  
24 plans, hopes for the future and that sort of thing.  
25 However, you will not be permitted to tell

1 untruthful statements to the jury or to rebut any  
2 facts in evidence or deny your guilt. It's solely  
3 for the purpose of mitigation in telling the jury  
4 how you feel about the future and what your hopes  
5 and desires are, whether or not you're sorry and  
6 your apologies.

7 Do you understand that?

8 **THE DEFENDANT:** Yes, sir.

9 **THE COURT:** So, after you discuss this  
10 with your lawyer, you can decide if you want to make  
11 you one. If you make a statement of allocution, the  
12 State would not be allowed to cross-examine you  
13 about it.

14 Do you understand that?

15 However, if you go beyond that and start  
16 denying your guilt and denying other evidence or the  
17 facts of the case, then the Court will have to take  
18 corrective actions or possibly they would have the  
19 opportunity to cross-examine you. Okay?

20 You can discuss that with your lawyer, and  
21 you can let me know.

22 **THE DEFENDANT:** I don't need to discuss  
23 it.

24 **MS. JACKSON:** The record will reflect we  
25 have already discussed it on more than one occasion,



1 your Honor.

2 **THE COURT:** All right.

3 **MS. JACKSON:** We're prepared to make a  
4 decision right now.

5 **THE DEFENDANT:** No; I don't want an  
6 allocution.

7 **THE COURT:** All right.

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

9 **THE COURT:** The jury instructions -- have  
10 you guys already gotten them?

11 **MR. DASKAS:** Judge, in fact, we've  
12 discussed them. I've provided Miss Jackson with  
13 sort of a crude copy of our proposed instructions.  
14 I think we're probably in agreement on 90 percent of  
15 them.

16 **THE COURT:** Why don't you guys work them  
17 out. I want to go directly into them. We have a  
18 couple of hours here.

19 **MR. DASKAS:** We can do it right now,  
20 Judge. Absolutely.

21 **THE COURT:** Let me know what your problem  
22 is.

23 **THE BAILIFF:** All rise.

24 (Evening recess taken at 2:56 p.m.)

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REPORTER'S CERTIFICATE

STATE OF NEVADA)  
:SS  
COUNTY OF CLARK)

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

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

  
SONIA L. RILEY, CCR 727

554

**FILED**

DISTRICT COURT  
CLARK COUNTY, NEVADA

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THE STATE OF NEVADA, )  
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 PLAINTIFF, )  
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 VS. ) CASE NO.: C153154  
 )  
 DONTE JOHNSON, )  
 )  
 DEFENDANT. )  
 ----- )

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

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

DATED WEDNESDAY, MAY 4, 2005

FOR THE PLAINTIFF: ROBERT J. DASKAS, ESQ.  
DAVID STANTON, ESQ.  
FOR THE DEFENDANT: ALZORA B. JACKSON, ESQ.  
BRET WHIPPLE, ESQ.  
REPORTED BY: SONIA L. RILEY, CCR NO. 727

**RECEIVED**  
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COUNTY CLERK

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

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

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E X H I B I T S

<u>DEFENSE</u>	<u>DESCRIPTION</u>	<u>MKD.</u>	<u>ADM.</u>
259	Judgment of Conviction for Reginald Johnson		9

\*\* State's Exhibit 258 was excluded.

\* \* \* \* \*

P R O C E E D I N G S

\* \* \* \* \*

(Outside the presence of the jury.)

**THE COURT:** We're outside the presence of the jury. The defendant is present with his lawyer, and representatives of the State is present.

We spent yesterday going over the jury instructions, and we all agreed on the 13.

State, do you have a copy of the Instructions No. 1 through 13?

**MR. DASKAS:** Yes, sir.

**THE COURT:** Defense Counsel, do you have a copy of 1 through 13?

**MS. JACKSON:** Yes, we do.

**THE COURT:** It should be noted for the record that there were some objections by the defense, and they were corrected and some was taken out, and this is the 13 that we arrived at.

State, do you have any objections to the Court giving Instructions No. 1 through 13?

**MR. DASKAS:** No, Judge.

**THE COURT:** Do you object to either of the four verdict forms?

**MR. DASKAS:** No, Judge.

1           **THE COURT:** Do you have any additional  
2 instructions you want to tender?

3           **MR. DASKAS:** No, Judge, but at some point,  
4 I would like to make a record about the agreements  
5 we reached with Defense Counsel and the Court  
6 regarding some of the instructions.

7           **THE COURT:** All right. You can do that.

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

9           **THE COURT:** Miss Jackson, do you have any  
10 objections to Instructions No. 1 through 13?

11          **MS. JACKSON:** No, your Honor.

12          **THE COURT:** Do you have any additional  
13 instructions you want to tender?

14          **MS. JACKSON:** We do not.

15          **THE COURT:** Do you have any objections to  
16 the four verdict forms?

17          **MS. JACKSON:** No, your Honor.

18          **THE COURT:** What is it you want to put on  
19 the record?

20          **MR. DASKAS:** Just a couple of things.

21               On the first phase of the bifurcated  
22 hearing, we instructed the jury on reasonable doubt,  
23 and that's because they had to find the existence of  
24 aggravators beyond a reasonable doubt, and they had  
25 to weigh the aggravators and mitigators. There's no



1 such burden we have in this case, so the defense has  
2 agreed we should not instruct the jury a second time  
3 on reasonable doubt.

4           Number two is what's commonly referred to  
5 as the Evans instruction that explains to the jury  
6 the process of finding an aggravator, considering  
7 the mitigator, weighing the two and then considering  
8 the other bad act evidence, if you will, because  
9 your Honor saw appropriate to bifurcate these  
10 proceedings, so we just agreed that that instruction  
11 should not be given either.

12           A couple other brief matters, your Honor.

13           Instruction No. 7, that discusses, among  
14 other things, mercy -- was requested by the defense.  
15 We did not object to their request to give that  
16 instruction. It comes from the Evans case, as a  
17 matter of fact.

18           Instruction No. 10, your Honor, the second  
19 paragraph, we removed the word "sympathy" at the  
20 defense's request, because it's the defense's  
21 position, and we concur, that the jury is entitled  
22 to consider sympathy in a penalty hearing; so, the  
23 defense requested we remove that word.

24           And then finally, there is an instruction  
25 that we crafted, at the Court's request, and the

1 defense request that tells the jury they are not to  
2 consider anything they've heard regarding a previous  
3 penalty hearing or sentence the defendant received.

4           So, with those statements, Judge, we're  
5 satisfied with the instructions.

6           **THE COURT:** Off the record.

7           (Off the record.)

8           **THE COURT:** One other thing. There was an  
9 objection to -- first, the Court had originally said  
10 that it was going to admit State's Proposed 258,  
11 then Miss Jackson objected, then we had arguments on  
12 it, and I took it under submission. The Court is  
13 going to reconsider, and I'm going to not admit 258.  
14 I think it's more prejudicial than probative, and  
15 the reason is that Mr. Johnson is the one who pled  
16 guilty to this crime here, and of course, you want  
17 to use his plea of guilty to convict Mr. Johnson of  
18 the crime, and I think that's more -- even though it  
19 was to impeach him, I think the effect it's going to  
20 have is to make it look like he was guilty and  
21 admitted to being guilty of this crime when really  
22 the charges against him were dropped and he was  
23 never convicted; it was only Mr. Johnson. So, I'm  
24 going to exclude No. 258.

25           (State's Exhibit 258 was excluded from

1 evidence.)

2           **MR. DASKAS:** Judge, I assume we're still  
3 free to explain to the jury that Reginald Johnson,  
4 although he suggested or told the jury that he did  
5 the crime itself, that he pled to conspiracy.

6           **THE COURT:** You can argue that.

7           **MR. STANTON:** In addition, along those  
8 rulings, one other aspect that's important to the  
9 State is what the Judgment of Conviction reflects.  
10 The Judgment of Conviction --

11           **THE COURT:** I know, but do we normally  
12 admit judgment of convictions? We only admit that  
13 if they deny it, but he already admitted it.

14           **MR. STANTON:** He did, but one of the  
15 important things to impeach Reginald Johnson on is  
16 what sentence he received in this case.

17           **THE COURT:** Was it a sentence?

18           **MR. STANTON:** The State's position is that  
19 Reginald Johnson suffered no additional punishment  
20 by pleading guilty to that offense.

21           **THE COURT:** That only refers to him, so  
22 that's fine. I don't have a problem with his own  
23 judgment.

24           Do you object to that, the JOC?

25           **MS. JACKSON:** Court's indulgence.

1           **THE COURT:** It only has his name on that.

2           **MS. JACKSON:** That would be fine. We  
3 don't object to that.

4           **MR. STANTON:** It was part of that, so it  
5 would have to be separately marked.

6           **THE COURT:** Two fifty-nine would be  
7 admitted, which is the JOC for Reginald Johnson.  
8           (State's Exhibit 259 was admitted into  
9 evidence.)

10           **MR. WHIPPLE:** Actually, a housekeeping  
11 matter. We have two exhibits that are essentially  
12 the same thing. In the first phase of this penalty  
13 hearing, we had Exhibit JJ, which is a redacted  
14 letter of Johnnisha White, and the second phase we  
15 admitted the original, which was YY. At this point,  
16 there's no reason to have Defense Exhibit JJ. I ask  
17 that it be removed.

18           **THE COURT:** Do you want the original in?

19           **MR. WHIPPLE:** Take that out completely.

20           **THE COURT:** Any objection?

21           **MR. DASKAS:** No, sir.

22           **THE COURT:** Here you go.

23           JJ is hereby returned to Counsel, and  
24 we'll keep YY.

25           **MR. WHIPPLE:** Thank you.

1 (Jury present.)

2 (No audience seated in the gallery.)

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

5 **THE COURT:** Let the record reflect that  
6 the jury is present, and they're all accounted for  
7 as well as the parties and the attorneys.

8 A couple of things I want to go over with  
9 you.

10 One of them, as you note, I've been  
11 advising you not to read any newspaper articles  
12 because of the kind of publicity surrounding this  
13 case but also because a lot of these articles are  
14 utterly and completely false and not accurate, and  
15 that's why we don't want you to listen to that or  
16 read these papers. What I want to make sure of is  
17 can each of you assure me that you have not been  
18 reading these newspapers?

19 **JURORS:** Yes.

20 **THE COURT:** So, they all have assured the  
21 Court of that.

22 There's one other thing that I need to go  
23 over with you just for the record.

24 One of the jurors, I think, found a piece  
25 of glass on the floor there. What's your name,

1 ma'am?

2 **JUROR SUCKOW:** Linda Suckow.

3 **THE COURT:** When did you first see the  
4 glass?

5 **JUROR SUCKOW:** Monday morning when I came  
6 in, and I always put my purse down here  
7 (indicating); it was behind this chair (indicating).

8 **THE COURT:** Behind the chair?

9 **JUROR SUCKOW:** Yes, sir.

10 **THE COURT:** You had not seen it before?

11 **JUROR SUCKOW:** No, sir.

12 **THE COURT:** Had anyone else in the jury  
13 seen the glass before?

14 **JUROR SUMMERS:** I was the second person to  
15 see it. It was under her chair, and I got it.

16 **JUROR SUCKOW:** I picked it up because I  
17 always pick up trash, and I sat it on the chair  
18 here, and I must have kick it or somebody kicked it.

19 **THE COURT:** You guys hadn't seen it any  
20 other time except for when you came in that morning?

21 **JUROR SUMMERS:** I saw it right after  
22 Reginald was here.

23 **THE COURT:** What day was that?

24 **JUROR SUCKOW:** Monday.

25 **THE COURT:** You didn't see it any other

1 time except for Monday morning?

2 **JUROR SUCKOW:** No, sir.

3 **THE COURT:** Can all of you see this  
4 (indicating)?

5 **JUROR SUCKOW:** That's what I picked up.

6 **THE COURT:** Now, did all of you get a  
7 chance to look at this piece of broken glass?

8 Miss Oliver, you had never seen this glass  
9 before, have you?

10 **JUROR OLIVER:** No.

11 **THE COURT:** My question is, this glass  
12 don't belong to any of you, does it?

13 **JURORS:** No.

14 **THE COURT:** Let the record reflect that  
15 each juror has stated that this glass does not  
16 belong to them, and they didn't bring it in; is that  
17 correct?

18 **JURORS:** That's correct.

19 **THE COURT:** Any questions?

20 **MS. JACKSON:** No, your Honor. Thank you.

21 **THE COURT:** Any questions?

22 **MR. DASKAS:** No, Judge, although I think  
23 the bailiff indicated at some point that he further  
24 sort of explored the jury box.

25 **THE COURT:** He filed an affidavit that's

1 going to be filed with the Court.

2 **MR. DASKAS:** I appreciate it.

3 **THE BAILIFF:** I'll let them know that they  
4 were mentioned in the affidavit.

5 **MR. DASKAS:** Thank you.

6 **THE COURT:** We'll file that with the  
7 Court.

8 **JUROR SUCKOW:** My fingerprints are on  
9 that. Terrific.

10 **MR. DASKAS:** We'll give you immunity.

11 **JUROR SUCKOW:** Thank you. Can I have that  
12 in writing, please?

13 **THE COURT:** Counsel, approach the bench.

14 (Sidebar conference outside the presence  
15 of the court reporter.)

16 **THE COURT:** Let's come to order. Court is  
17 now back in session.

18 Ladies and gentlemen, what I'm going to do  
19 now is instruct you -- give you further instructions  
20 on the law that applies to this case.

21

22 JURY INSTRUCTIONS

23 **THE COURT:** Instruction No. 1: It is now  
24 my duty as Judge to instruct you in the law that  
25 applies to this penalty hearing. It is your duty as



1 jurors to follow these instructions and to apply the  
2 rules of law to the facts as you find them from the  
3 evidence. You must not be concerned with the wisdom  
4 of any rule of law stated in these instructions.  
5 Regardless of any opinion you may have as to what  
6 the law ought to be, it would be a violation of your  
7 oath to base a verdict upon any other view of the  
8 law than that given in the instructions of the  
9 Court.

10 Instruction No. 2: If, in these  
11 instructions, any rule, direction or idea is  
12 repeated or stated in different ways, no emphasis  
13 thereon is intended by me, and none may be inferred  
14 by you. For that reason, you are not to single out  
15 any certain sentence or any individual point or  
16 instruction and ignore the others, but you are to  
17 consider all the instructions as a whole and regard  
18 each in the light of all the others.

19 Instruction No. 3: The trial jury shall  
20 fix the punishment for every person convicted of  
21 murder of the first degree. The jury shall fix the  
22 punishment at:

23 1. A definite term of 100 years with  
24 eligibility for parole beginning when a minimum of  
25 40 years has been served or;

1           2. Life imprisonment with the possibility  
2 of parole with eligibility for parole beginning when  
3 a minimum of 40 years has been served;

4           3. Life imprisonment without the  
5 possibility of parole, which means exactly what it  
6 says, that the defendant shall not be eligible for  
7 parole; and

8           4. Death.

9           Instruction No. 4: A prison term of 100  
10 years with eligibility for parole beginning when a  
11 minimum of 40 years has been served does not mean  
12 that the defendant would be paroled after 40 years,  
13 but only that he or she will be eligible for parole  
14 after that period of time.

15           Life imprisonment with the possibility of  
16 parole is a sentence to life imprisonment which  
17 provides that the defendant would be eligible for  
18 parole after a period of 40 years. This does not  
19 mean that he would be paroled after 40 years but  
20 only that he would be eligible for parole after that  
21 period of time.

22           Life imprisonment without the possibility  
23 of parole means exactly what it says, that the  
24 defendant shall not be eligible for parole.

25           If you sentence the defendant to death,

1 you must assume that the sentence will be carried  
2 out.

3           Instruction No. 5: In the penalty  
4 hearing, evidence may be presented concerning  
5 aggravating and mitigating circumstances relative to  
6 the offense and any other evidence that bears on the  
7 defendant's character. Hearsay is admissible in a  
8 penalty hearing.

9           Instruction No. 6: The law does not  
10 require the jury to impose the death penalty under  
11 any circumstances even when the aggravating  
12 circumstances outweigh the mitigating circumstances,  
13 nor is the defendant required to establish any  
14 mitigating circumstances in order to be sentenced to  
15 less than death.

16           Instruction No. 7: Any aspect of the  
17 defendant's character or record and any of the  
18 circumstances of the offense including any desire  
19 you may have to extend mercy to the defendant which  
20 a jury believes is a basis for imposing a sentence  
21 less than death may be considered a mitigating  
22 factor. Any one of them may be sufficient, standing  
23 alone, to support a decision that death is not the  
24 appropriate punishment in this case.

25           Instruction No. 8: The jury is instructed

1 that in determining the appropriate penalty to be  
2 imposed in this case that it may consider all  
3 evidence introduced and instructions given at the  
4 penalty hearing of this phase of the penalty  
5 proceedings and evidence introduced at the trial of  
6 this matter.

7           Instruction No. 9: The credibility or  
8 believability of a witness should be determined by  
9 his manner upon the stand, his relationship to the  
10 parties, his fears, motives, interests or feelings,  
11 his opportunity to have observed the matter to which  
12 he testified, the reasonableness of his statement  
13 and the strength or weakness of his recollection.  
14 If you believe that a witness has lied about any  
15 material fact in the case, you may disregard the  
16 entire testimony of that witness or any portion of  
17 his testimony which is not proved by other evidence.

18           Instruction No. 10: Although you are to  
19 consider only the evidence in the case in reaching a  
20 verdict, you must bring to the consideration of the  
21 evidence your everyday common sense and judgment as  
22 reasonable men and woman. Thus, you are not limited  
23 solely to what you see and hear as the witnesses  
24 testify. You may draw reasonable inferences from  
25 the evidence which you feel are justified in the

1 light of common experience keeping in mind that such  
2 inferences should not be based on speculation or  
3 guess. A verdict may never be influenced by  
4 prejudice or public opinion. Your decision should  
5 be the product of sincere judgment and sound  
6 discretion in accordance with these rules of law.

7           Instruction No. 11: During the course of  
8 this proceeding, testimony may have been elicited  
9 regarding a prior penalty hearing. You are hereby  
10 instructed that you are not to consider, during your  
11 deliberations, any evidence, statements or  
12 inferences regarding any prior penalty hearing or  
13 sentence.

14           Instruction No. 12: During your  
15 deliberation, you will have all the exhibits which  
16 were admitted into evidence, these written  
17 instructions and forms of verdicts which have been  
18 prepared for your convenience. Your verdict must be  
19 unanimous. When you have agreed upon your verdicts,  
20 they should be signed and dated by your foreperson.

21           Instruction No. 13: Now you will listen  
22 to the arguments of counsel who will endeavor to aid  
23 you to reach a proper verdict by refreshing in your  
24 minds the evidence and by showing the application  
25 thereof to the law, but whatever counsel may say,

1 you will bear in mind that it is your duty to be  
2 governed in your deliberation by the evidence as you  
3 understand it and remember it to be, and by the law  
4 as given to you in these instructions with the sole  
5 fixed and steadfast purpose of doing equal and exact  
6 justice between the defendant and the State of  
7 Nevada.

8 All right. State?

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

10

11 STATE'S CLOSING ARGUMENT

12 **MR. STANTON:** Ladies and gentlemen, in my  
13 remarks to you, I want to start off by asking the  
14 question -- an important question as part of your  
15 deliberations in this case, and that is, who is  
16 Donte Johnson? You have heard over the past several  
17 weeks evidence presented by both the State and the  
18 defense about who Donte Johnson is. He is, I would  
19 submit to you based upon the evidence before you,  
20 John White, Donte Johnson and Deko.

21 In our system of justice, this proceeding  
22 today is the time and place for that man, Donte  
23 Johnson, to answer for who he is and what he's done.  
24 There is one clear and honest mistakable fact in  
25 this case. It does not make a difference what age

1 you are, what gender you are, what race you are,  
2 whether it's in broad daylight, whether it's at  
3 nighttime, whether it's in the privacy and the  
4 sanctity of your own home or whether or not it's on  
5 the public street, whether or not you're in a bank  
6 in broad daylight -- none of those matter to the  
7 defendant Donte Johnson. He will victimize anybody  
8 under any of those circumstances. That's one  
9 unequivocal fact before you.

10 One of the most powerful parts of the jury  
11 process is you, ladies and gentlemen, determine the  
12 weight to lend to the evidence before you.  
13 Throughout my presentation, I will be highlighting  
14 to you the following concept:

15 When you review the evidence in this case  
16 as part of your deliberative process, I ask that you  
17 review the evidence very carefully to determine the  
18 source that it came from, the relative bias, if any,  
19 that exist from the person that it came from, and  
20 give it the attended weight that you deserve or you  
21 think it deserves.

22 One of the things I'm going to ask you to  
23 do is to look very closely forensically at the  
24 crimes and the evidence of the crimes that you've  
25 heard over the past several weeks, not necessarily

1 for what they are, as far as the crime that was  
2 committed -- a quadruple homicide, an armed robbery  
3 of a bank, a battery with a deadly weapon, throwing  
4 an inmate over a railing -- I'm going to ask you to  
5 look in between the lines, if you will, because in  
6 between the lines at the minute details of each and  
7 every one of those incidents, each and every one of  
8 those crimes will tell you volumes about who this  
9 gentleman is.

10 I'd like to start off with the Cen Fed  
11 Bank, the bank robbery that the defendant committed  
12 at the age of 16. It's reflected in these grainy  
13 black-and-white photographs that you've previously  
14 seen.

15 I'd like to talk to you about some minor  
16 details that speak to you about who Donte Johnson  
17 is. You heard from Lieutenant Jim Grayson of the  
18 Los Angeles Police Department, 40 years on the force  
19 in robbery/homicide, and specifically at the time  
20 that he investigated the Cen Fed Bank robbery, he  
21 was a supervisor within the Robbery Division of  
22 LAPD. Under his examination, he told you that the  
23 method, the manner that this robbery occurred was an  
24 important investigative fact to him and his  
25 detectives, and he told you several things about



1 that robbery.

2           One, that the crime was sophisticated. It  
3 was sophisticated in the following fashion: Number  
4 one, there was a rental truck involved. Number two,  
5 the roles of all the defendants in that case. Some  
6 were assigned to jump the counter and take the  
7 money; others were designed to stay on the floor and  
8 control the public and the employees of the bank.

9           Second, it was a takeover robbery. It was  
10 done with significant force in a very rapid fashion  
11 so that the customers and the employees of the bank  
12 had little or no time to react.

13           Additionally, the weapons that they used,  
14 they're not done by choice or happenstance; they  
15 were all weapons designed to intimidate, to be seen  
16 and for people to know what they were. You see  
17 these in these photographs -- shotguns and rifles.  
18 It's not done by accident.

19           Additionally, you see in the photographs  
20 themselves -- one of the compelling things about  
21 these photographs, when you look at three out of the  
22 four that are depicted in there to include the  
23 defendant, John White, as he was known at the time,  
24 is that it's somewhat difficult to see their faces.  
25 It's done by design. They wear hats, and as you

1 heard Lieutenant Grayson state in his testimony as  
2 well as in those photographs, they had bandanas on  
3 their faces to further conceal their identity, a  
4 fact that becomes very important when we look in  
5 detail at the quadruple homicide in this case.

6           What bank did they pick? Is that  
7 happenstance or degree of sophistication? It's in  
8 Marina del Rey. Lieutenant Grayson told you that  
9 this is an upscale area of Los Angeles surrounded by  
10 commercial shops, and as Sandra Gatlin, the victim,  
11 the employee who came before you and testified told  
12 you, that it is surrounded and very busy by shops  
13 and commercial establishments. It is very ripe to  
14 have large amounts of cash in the bank at the time  
15 that they robbed it. But for the timely  
16 notification to police in that case, ladies and  
17 gentlemen, and the use of several LAPD helicopters,  
18 the defendants could have easily have gotten away  
19 with this crime. So, when you compare that to  
20 Mr. Kinsora's testimony that this crime was, using  
21 his words, "unsophisticated," and that the crime,  
22 quote, "Fell apart at some point," I ask you to  
23 weigh that evidence between the sources I just told  
24 you about.

25           There has been a suggestion to you that

1 the robbery was the result of outside influences and  
2 that Donte Johnson, for the lack of a better term,  
3 was merely a "puppet" of others. Really? What  
4 evidence do you have to support that? When you  
5 evaluate and -- what weight you give that  
6 evidence -- once again, I respectfully ask you to  
7 look at these questions in your mind regarding that  
8 evidence, if it exists; where does it come from;  
9 when was the statement made; who made the statement;  
10 and what was their motives at the time they made  
11 that statement? I submit to you that the reality is  
12 different from Donte Johnson being a puppet.

13 In State's Exhibit 217 that will be  
14 available, as all the evidence admitted in this  
15 case, for your review, this is the probation report  
16 prepared in the State of California as the result of  
17 Donte Johnson's conviction for the armed robbery of  
18 the Cen Fed Bank.

19 Page 12 of that report -- during the  
20 juvenile proceedings, the defendants were joking and  
21 playing around. The Court had to admonish them.  
22 This is at the time that he's in court in a juvenile  
23 proceeding held to answer for his conduct of that  
24 robbery.

25 Evaluation, page 13 -- the defendant's

1 criminal sophistication has escalated. Also, the  
2 frequency of criminal activity has increased. He  
3 does not have any respect for authority and/or  
4 adults. Rehabilitative efforts have failed. Camp  
5 community placement at home on probation have proven  
6 ineffective in modifying his deviant behavior. He  
7 is definitely considered a threat to society. There  
8 is not any indication that he is remorseful. For  
9 the safety and welfare of the community, probation  
10 is not considered appropriate in the instant matter.  
11 John White, age 16.

12               Who is John White? Let's go a little  
13 further. Probation Officer Craig Clark told you,  
14 among other things, that he got a telephone call  
15 from the defendant and asked him, "Was there a  
16 warrant for my arrest." "Yes, there was." "If you  
17 arrest me, are you going to take me into  
18 incarceration or into custody?" "Yes, I am."  
19 "John, where are you?" "I'm in this place in  
20 California. I'm not going to tell you where I am,  
21 but let's see how good you are and see if you can  
22 catch me." That's who John White, Donte Johnson is.

23               Exhibit 216 -- this is, once again, a  
24 probation report prepared in the State of  
25 California. You heard several witnesses testify to

1 include the author of the following statement.

2 Speaking of the defendant, John White, his  
3 grandmother states, "The minor is acting like an  
4 adult, so he should be treated like an adult."

5 Think about that, ladies and gentlemen.  
6 Who is making that statement, what relationship she  
7 is to the defendant and her assessment? Who knows  
8 John White better at this time in his life than his  
9 grandmother? And that's what she tells the  
10 authorities.

11 Derrick Simpson -- I'd like to  
12 forensically examine the case of Donte Johnson and  
13 what he did to Derrick Simpson and what he did to  
14 his life. There's two things I'd like to start off  
15 to tell you about this case that are absolutes.

16 Number one, the defendant pled guilty to  
17 this offense. You heard the facts as you heard  
18 Derrick Simpson's videotaped testimony, how he  
19 described what happened that night. There is one  
20 thing that is without question before you. There is  
21 no legal justification whatsoever for what Donte  
22 Johnson did to him. He was found guilty. That  
23 judgment of conviction is before you, and it's in  
24 evidence in this case. There is no self-defense;  
25 there is no fear in apprehension; there is

1 absolutely no legal defense whatsoever. That's  
2 uncontroverted.

3           The number two thing is a very subtle  
4 thing in this case. Think about the timing of what  
5 Donte Johnson did to Derrick Simpson in relation to  
6 the quadruple murders in this case, and think what  
7 type of person had to commit the crime initially,  
8 and then what he did. It's very simple and very  
9 subtle. He tells Mr. Simpson, a man who, clearly in  
10 the videotape, is larger than the defendant -- he  
11 tells him one thing unequivocally, "You're going to  
12 die tonight." Derrick Simpson, hearing that  
13 statement, seeing him reach for his waistband for a  
14 gun that Derrick Simpson clearly sees, and by the  
15 evidence of what happens to him, he clearly has, in  
16 self-defense, punches Donte Johnson in the head, but  
17 he tells Mr. Simpson point-blank, "You are going to  
18 die tonight." What does that tell you about Donte  
19 Johnson? Then what does he do? Does he wait for  
20 Derrick Simpson in a dark alley hiding behind a  
21 dumpster to jump Derrick Simpson and to extract his  
22 revenge? Do you want to know who Donte Johnson is?  
23 It's what he did. He walked up to Derrick Simpson,  
24 right into his face, and pulled the trigger, blowing  
25 out most of his upper jaw, his teeth, and dropping

1 him instantly to the pavement. Did he intend to  
2 kill Derrick Simpson? He shot a loaded gun right  
3 into his face. I submit, absolutely he did. Where  
4 did he do it? Not in a back alley; right on a  
5 public street -- he drove right up to him like he's  
6 parking his car at a valet. That's who Donte  
7 Johnson is. Was he done? Did he walk away? Did he  
8 run away? No, he didn't. He stands over the body  
9 and shoots him right in the back. Did he intend to  
10 kill him? I submit he did. He didn't kill him, at  
11 least not right then. That second bullet paralyzed  
12 Derrick Simpson for the rest of his life.

13 Donte Johnson was not convicted of  
14 Mr. Simpson for the crime of murder, because Derrick  
15 Simpson lived. Exhibits 250 and 249, Derrick  
16 Simpson's autopsy report and his Certificate of  
17 Death will unequivocally tell you this fact: Donte  
18 Johnson killed him -- not that night, but he had  
19 killed him, and he was going to die, eventually,  
20 from his wounds, and that's what the autopsy report  
21 tells you.

22 After that fact, after doing that, after  
23 doing this to Mr. Simpson in public on a downtown  
24 Las Vegas street, what does Donte Johnson do? Go  
25 into hiding, lay low -- no. In fact, this shooting

1 takes place only a couple weeks before the quadruple  
2 murder. That's who Donte Johnson is.

3 And one other thing. After the quadruple  
4 murder, you heard evidence of the encounter of the  
5 defendant, Donte Johnson, his co-defendant Terrell  
6 Young when they encountered Sergeant Honea of the  
7 Nevada Highway Patrol -- that they were armed and  
8 that they fled the scene after being confronted by a  
9 uniformed officer after they had committed the  
10 quadruple homicide.

11 In evidence for you to review is the  
12 weapon that was found in that car, and I will submit  
13 that there are a couple of things you need to look  
14 for when you look at that weapon. Number one, look  
15 at how the rifle -- what caliber it is. It's a  
16 .30 caliber, fully functional, but it's been  
17 modified. Look at the modifications on that weapon  
18 as to why it was modified in the fashion it was.  
19 That tells you about Donte Johnson. Coupled with  
20 that are two clips that was in the weapon. One was  
21 in it; one was right next to it. They're fully  
22 loaded, and they have in excess of a dozen rounds a  
23 piece. One has 30.

24 Let's talk about Oscar Irias. Was this  
25 done at an correctional facility at night when the



1 inmates are asleep? No. It's done in a Bubble  
2 while four or five correctional officers are sitting  
3 there watching high-custody high-risk inmates.  
4 Officer Gonzalez testified that he had a clear view  
5 of the railing and observes the defendant Donte  
6 Johnson, and his good friend Reginald Johnson in  
7 tandem, acting in concert, beating Oscar Irias and  
8 then throwing him over the railing. Exhibit 254 is  
9 the written incident report prepared by  
10 Officer Gonzalez on the day this incident took  
11 place. Compare his version of events in this report  
12 with his testimony today or before you yesterday.  
13 It is clear from his testimony that the attack was  
14 coordinated and planned by both Johnsons -- Reginald  
15 and Donte. That is what a conspiracy is, as  
16 Miss Navarro has told you.

17 Now, I'd like you to think of the inherent  
18 inconsistencies that you heard regarding the  
19 testimony to rebut Officer Gonzalez's report and his  
20 testimony.

21 First of all, you heard from Reginald  
22 Johnson's attorney, Miss Navarro. Think about what  
23 Miss Navarro told you about this incident. She was  
24 preparing to go to a jury trial on the day that her  
25 client pled guilty to the attempted murder of Oscar

1 Irias and a conspiracy to commit murder. According  
2 to Reginald Johnson, he had been telling his own  
3 attorney for months, "I did it. I'm guilty. I  
4 threw this guy over the railing." Miss Navarro  
5 comes in and tells you, "I'm preparing this defense,  
6 and guess what, my defense concludes that  
7 Officer Gonzalez can't see the tier from where he  
8 says he was." Really? He can't see the tier.  
9 Reginald Johnson confirms everything that  
10 Officer Gonzalez says, everything except for one  
11 thing, one interesting fact. Donte Johnson wasn't  
12 there. Officer Gonzalez is making it up. What do  
13 the facts tell you?

14 Miss Navarro told you there's two ways to  
15 get to this tier; there's a stairwell on this end  
16 (indicating) and a stairwell on this end  
17 (indicating) to get up to the second tier. Remember  
18 what the two inmates testified to? They heard a  
19 commotion, and Inmate Irias was yelling for help.  
20 He was yelling for help. Ladies and gentlemen, the  
21 reason why he was yelling for help on the second  
22 tier, he's in the middle of that tier, and he's got  
23 nowhere to go. According to the defense, if Donte  
24 Johnson is not there, he could have run down the  
25 other stairwell. That's because there were two

1 people there, Reginald Johnson and Donte Johnson.

2 Let me talk to you briefly about Reginald

3 Johnson. I think his testimony speaks for itself,

4 but there are some things I think you should glean

5 from Reginald Johnson's testimony. Number one of

6 which is, for him to say that he pled guilty because

7 that's what he did, some might respect that, but let

8 me tell you something, ladies and gentlemen.

9 Reginald Johnson, as his own lawyer's sentencing

10 memorandum to the Court, there's one thing that's

11 inescapable about that situation, this crime of

12 throwing Inmate Irias over the railing, attempting

13 to kill him -- he intended to kill him when he did

14 it -- that was a freebee. Why? There was no

15 additional punishment that was any way meaningful to

16 Reginald Johnson. He was serving 64 years minimum

17 at the time that he pled guilty, in addition to

18 about to be sentenced for another felony, battery on

19 another person with a deadly weapon while an inmate.

20 The second incident with Oscar Irias, he's pleading

21 guilty to that, ladies and gentlemen, not that

22 there's a defense to it, as Mr. Johnson would

23 suggest to you that there's some sort of conspiracy

24 with correctional officers to set him up to further

25 do damage to Oscar Irias, he pled guilty to it, and

1 in addition, he was awaiting extradition to the  
2 State of California for multiple counts of robbery.  
3 What punishment did Reginald Johnson get beyond what  
4 he was already serving? Nothing. It was water off  
5 a duck's back to that man.

6 The arguments contained in Miss Navarro's  
7 sentencing agreement which attempts to impugn the  
8 integrity of Oscar Irias is simply arguments to  
9 counsel.

10 State's Exhibit 259 is the Judgment of  
11 Conviction for Reginald Andre Johnson for the  
12 attempted murder of Inmate Irias. Ladies and  
13 gentlemen, he was sentenced to life without the  
14 possibility of parole.

15 I'd like to briefly talk to you about the  
16 childhood testimony that you've heard regarding John  
17 White.

18 **MS. JACKSON:** Your Honor, excuse me. Life  
19 without the possibility of parole was not a sentence  
20 that's available for any crime other than murder.

21 **THE COURT:** I think he got sentenced a  
22 habitual.

23 **MR. STANTON:** He did.

24 **MS. JACKSON:** Then he needs to say that.

25 **MR. STANTON:** It's in the Judgment of

1 Conviction, your Honor.

2 **MS. JACKSON:** It's misleading without  
3 saying that.

4 **MR. STANTON:** I'd like to talk to you --

5 **THE COURT:** Anyway, like I said before, to  
6 the members of the jury, what the lawyers say is not  
7 evidence, it's argument. All right?

8 Go on.

9 **MR. STANTON:** The childhood testimony of  
10 John White -- you have already found some mitigating  
11 evidence in your previous verdict in this matter.  
12 You have also determined that the aggravating  
13 circumstances outweigh the mitigating evidence. I  
14 think a fair representation is that John White,  
15 growing up in Los Angeles, faced many challenges and  
16 obstacles in that neighborhood, and as members of  
17 his family -- indeed, several members of his own  
18 family and others in his extended family faced those  
19 same obstacles in that same environment.

20 I would like to point out to you when you  
21 review this evidence once again and you assess the  
22 weight to be attached to that evidence, to look  
23 carefully at the source and the integrity of all  
24 those items.

25 There was testimony regarding the length

1 of time that the defendant resided with other family  
2 members in a shack, and I'm sure you all remember  
3 that testimony. Defendant's Exhibit YY is a letter  
4 written by the defendant's sister in preparation of  
5 the prior proceeding. I ask that you read that very  
6 carefully regarding the content of that letter when  
7 you assess the weight attached to the evidence of  
8 the length of time they lived in the shack.

9           Another example I'd like to point out  
10 regarding the childhood testimony of John White,  
11 Mr. Kinsora talked about the poor school attendance  
12 of the defendant at the age of six telling you that  
13 he had attended school 58 out of 98 days. On  
14 cross-examination, Mr. Kinsora had to admit that,  
15 indeed, that was not a complete picture of the  
16 defendant's attendance at school. At the age of  
17 eight, he missed five out of 89 days; age nine, he  
18 missed nine out of 171 days; age ten, he missed 12  
19 out of 169 days; at age 11, 11 out of 169 days; age  
20 12, 22 out of 158 days; age 13, 19 out of 161 days.  
21 Conclusion -- that the defendant's grades were of a  
22 B or C variety, and that he, indeed, was a bright  
23 individual.

24           Finally, ladies and gentlemen, as far as  
25 the crimes go, this is, of course, the quadruple

1 homicide. These crime scene photos, while graphic,  
2 tell a story, and they tell a story in this sense:  
3 That's a still photograph of a video. That's the  
4 closing scene, in some regards. It's what happened  
5 before this that you need to look at.

6 I respectfully submit to find out who this  
7 man is. There's one thing that we know about these  
8 murders. When the defendant left Everman, he had  
9 previously asked at least a dozen times where these  
10 young men lived. This is a crime about greed, and  
11 it begins when that seed is planted. He and his  
12 co-defendants went over to Terra Linda armed to  
13 their teeth -- as I told you before, not with toy  
14 guns, not with unloaded guns, with real guns, with  
15 real ammunition. They took with them gloves but no  
16 masks. Ladies and gentlemen, this crime did not  
17 happen quickly. This is not an example of a crime  
18 where someone detonates a bomb and kills four young  
19 men. This is not a crime where someone takes an  
20 automatic weapon and squeezes the trigger and kills  
21 four young men in a quick fashion. Ladies and  
22 gentlemen, this crime took time. These murders took  
23 time to complete. Think about that evidence if you  
24 want to know who Donte Johnson truly is.

25 First, the evidence suggests to you that

1 Peter Talamentez is the first one killed. He is  
2 killed, because he somehow offended this man. How  
3 does he kill him? We know that he pistol whips him  
4 and he kicks him about the face. That's the  
5 testimony of Peter Talamentez's condition at  
6 autopsy. Those injuries were inflicted upon him and  
7 once again, corroborated by statements that he made  
8 to his friends and associates after the murder.

9 He's bound like this (indicating), and  
10 he's shot in the back of the head, but how is he  
11 shot? -- one inch away, according to the  
12 uncontroverted medical testimony; that he can't just  
13 look at that direction; it's not firing down the  
14 street; it's Derrick Simpson. It's one inch away  
15 from his head, and he pulls the trigger. Peter  
16 Talamentez, within seconds, is dead, but is that the  
17 end of the forensic examination of Peter  
18 Talamentez's murder? I submit to you, no, because  
19 what we know happens after this is two things.  
20 Number one, Peter Talamentez makes a noise, a  
21 grunting noise that the defendant unabashedly  
22 imitates and repeats for his friends. That's who  
23 Donte Johnson is. Number two, blood is spurting  
24 from Peter Talamentez, quote, "Like Niagara Falls."  
25 He sees this. He hears this -- the textual nature



1 of that murder. Who is Donte Johnson? The same  
2 thing (indicating), four times. Each person, same  
3 or similar circumstances, one inch away from their  
4 head, hears the victims grown, and the spraying of  
5 blood like Niagara Falls. I submit, ladies and  
6 gentlemen, the type of person to commit that is the  
7 real Donte Johnson.

8               We know that after the murders, Sikia  
9 Smith is scared as testified to and summarized  
10 before you, to LaShawnya Wright, his girlfriend.  
11 Sikia Smith is scared. What does Donte Johnson do?  
12 Uncontroverted testimony -- Exhibit 184, the Review  
13 Journal. This exhibit will be back there for your  
14 review, and right there on the front page in color  
15 is a story and a photograph of these quadruple  
16 murders. He's not scared. He's, quote, "thrilled."  
17 He laughs about it on several occasions.

18               I want you to consider the damage that  
19 Donte Johnson has done. He has devastated the lives  
20 of everybody that you will see in these next  
21 photographs -- Tracey Gorringer (indicating); Jeffrey  
22 Biddle (indicating); Peter Talamentez (indicating);  
23 and Matthew Mowen (indicating).

24               I respectfully submit to you that when  
25 someone by the deeds that they perform in the

1 underlying murder and murders presented to you in  
2 combination with the resume of their criminal life,  
3 there are some people, because of the conduct and  
4 the quality of that conduct, the horrific nature of  
5 it in the details, as you examine all of the  
6 evidence in this case and all of the crimes, that  
7 the just punishment in this case is that Donte  
8 Johnson forfeit his life, and that the fair and just  
9 punishment in this case is death.

10 I thank you for your time and attention.

11 **THE COURT:** Defense Counsel.

12 **MR. WHIPPLE:** Your Honor, with the Court's  
13 permission, may I take a few minutes and set up some  
14 exhibits?

15 **THE COURT:** All right.

16

17 DEFENSE'S CLOSING ARGUMENT

18 **MR. WHIPPLE:** Good afternoon, ladies and  
19 gentlemen. As I was walking into the courtroom this  
20 afternoon, the banner over that front door jumped  
21 out at me that said "Jury Appreciation Week." That  
22 made me realize, you know, how much we do appreciate  
23 your time and effort you put into this. I know that  
24 each of you have separate lives and take time from  
25 your lives to come here and spend time with us, and

1 we all do appreciate that time.

2           Now, over the next few minutes, I want to  
3 talk to you about a few things. I want to talk to  
4 you about some of the law that I've already  
5 discussed with you in the past. I want to talk to  
6 you and tell you about some of the things that we're  
7 not trying to do here. I want to clear up maybe  
8 some miscommunications or misunderstandings. I want  
9 to touch on what I anticipate the prosecutors have  
10 said and will continue to say, and I want to spend a  
11 few minutes discussing some of our witnesses, the  
12 reason we brought our witnesses in here to speak  
13 with you.

14           The first one was Mr. Jim Esten. If you  
15 recall when I first spoke with you, I said, "Society  
16 has been protected, and we are safe." Mr. Donte  
17 Johnson has been held accountable. We can't go back  
18 in time and change past wrongs. The question is,  
19 what now? What now? You have a tremendous power in  
20 your hand. Mr. Johnson committed a terrible crime,  
21 and he's paying a terrible punishment. You had  
22 Mr. Esten come in here and show you what life was  
23 like in Ely State Prison, something that Mr. Johnson  
24 has experienced for the past five years. He told  
25 you about this little cell where you can actually

1 touch both sides at one time. This is where  
2 Mr. Johnson lives and resides 23 hours out of 24  
3 hours a day. This is where he lives (indicating).  
4 We have pictures of what living in this environment  
5 looks like -- four gray walls, concrete. He told  
6 you -- explain to you how few riots Mr. Johnson has.  
7 I mean, the only decision he has in his life at this  
8 point is when he goes to sleep, basically, and when  
9 he goes to the bathroom. This little square, this  
10 little yellow square (indicating) is Mr. Johnson's  
11 bathroom, his living room, his front room, his  
12 dining room, his bedroom all in one, probably for  
13 the rest of his life. He told you what it's like  
14 when he just moves to go to -- when he does have one  
15 hour a day to go to a rec hall or a rec -- a place  
16 where there's four more gray walls, but he can look  
17 up and see the sky. He told you how he has to  
18 literally become naked in a strip search and every  
19 orifice is searched, and he is led by two  
20 individuals where he can look up and see the sky.  
21 There's nothing growing in here; there's no grass;  
22 there's no trees. There's nothing there except  
23 Mr. Johnson. The heart beats, the mind works, but  
24 he can't do anything with it. He is completely  
25 controlled. Society has been protected.

1           Now, I think, what is important to me?  
2 What is important to us? Why are we here, and why  
3 are we going forward? What is important to me? I  
4 think what's important to me is spending time with  
5 my family, knowing that my children will have  
6 birthdays and celebrating them with them, knowing  
7 that my siblings will get married and have kids.  
8 You know, Mr. Johnson will reside in this little  
9 square the rest of his life. How will he learn  
10 about his mother's death? He will read about it in  
11 a letter. How will he learn about -- maybe when his  
12 son, Allen, Allen White, gets his first girlfriend?  
13 He will maybe read about it in a letter. He can't  
14 go and enjoy Allen's birthdays with him. He can't  
15 go out and enjoy Johnnisha's marriage. He is locked  
16 in this cell for the rest of his life, a tremendous  
17 punishment. Society has been protected. The issue  
18 is, what now?

19           Now, in our first -- when I first spoke  
20 with you, I spoke with you a bit about the law and  
21 the issue of what now comes down to each and every  
22 one of you. You had an opportunity to hear a little  
23 bit about Mr. Johnson's background. In fact, you  
24 had a list of mitigators, reasons to choose life  
25 over death, and you went back and you spent about

1 half a day, and you evaluated some of Mr. Johnson's  
2 life, and you came back with each one of these  
3 (indicating) as a potential reason to choose life  
4 over death. These are the mitigators that you chose  
5 in your deliberations (indicating). Miss Jackson  
6 will have an opportunity to speak with you about  
7 that, but again, each one of these is a reason to  
8 choose life over death decisions or findings that  
9 you came to.

10 I also spoke with you about how each one  
11 of us is an individual. If you recall in my -- when  
12 I spoke with you earlier, I talked about how I was  
13 so surprised about the DNA of two twins, that those  
14 two twins are not the same person, how each one of  
15 us is an individual. The decision that each one of  
16 you makes over the next days or hours or whatever it  
17 may be will be something you're going to have to  
18 live with for the rest of your life, but it's an  
19 individual decision that each one of you will have  
20 to make and be holding to and accept over the  
21 future. What I said earlier remains the same today,  
22 and that is, as --

23 Could you hand me the jury instructions?

24 -- that is, that you all have a right to  
25 choose life.

1           Jury No. 6 -- I'm going to read Jury  
2 Instruction No. 6. I'm going to repeat it for you  
3 one more time. "The law does not require the jury  
4 to impose the death penalty under any circumstance.  
5 Death is never required. Even when aggravating  
6 circumstances outweigh the mitigating circumstances,  
7 nor is the defendant required to establish any  
8 mitigating circumstances in order to be sentenced to  
9 less than death.

10           I note that you've come up with many, but  
11 what's important for you to recognize is that you  
12 still, each one of you, have the right to choose  
13 life, but that's a decision that only you  
14 individually can make; that you have a right to  
15 choose life in prison; that Mr. Johnson will  
16 continue to reside the rest of his days and years in  
17 his small little cell. You have the right to have  
18 that position accepted. It's such an important  
19 decision that you will have to live with for the  
20 rest of your life. It's important that you  
21 understand that each one of you may have a different  
22 opinion, and that's to be accepted and understood.  
23 You have the right to give mercy, and you have a  
24 right not to explain your position. Those are the  
25 different rights that you each have.

1           Now, we did -- Miss Jackson and I produce  
2 a number of witnesses about Mr. Johnson's  
3 background. The one thing I wanted to mention to  
4 you is clear up some confusion. We're not here  
5 trying to explain or to justify away his actions.  
6 Okay. There's no legal justification. He committed  
7 murder, we recognize that, but what we wanted you to  
8 understand a little bit, and Miss Jackson will  
9 discuss this in the future, is he did not have the  
10 same choices that you and I had, and again, this  
11 abuse excuse issue. Was Donte Johnson abused?  
12 You've already explained that he was, but is that an  
13 excuse? No. We're not saying that it's an excuse,  
14 we're not here saying what he did was right, we're  
15 just here saying you know what, he did not have the  
16 same decisions that you and I did, that his choices  
17 were not that unreasonable given the circumstances  
18 of his life. Did the gang -- did his gang  
19 background cause the homicide here in Las Vegas?  
20 No. That's not what we're trying to do. We're not  
21 trying to justify or explain it; we're just putting  
22 you in Mr. Johnson's shoes for a minute so you can  
23 understand how and why some of the decisions that he  
24 made turned out the way they did.

25           I think it's important also to recognize



1 when we talk about family and how his family  
2 essentially is going to be taken away from him.  
3 He's going to learn about his family through  
4 letters, that's the extent, and an occasional visit.  
5 That's the extent of the communications that he's  
6 going to have. What caused him to start this trek  
7 of poor decisions was to protect his own family.  
8 You heard about some of the situations that he found  
9 himself in where members were threatening his  
10 family, and Mrs. Jackson will speak to you about  
11 that as well.

12 I also brought Mr. Esten in here for a  
13 very important reason, and that is to show you that  
14 there are no drugs in prison. We know for a fact  
15 that those individuals, that Mr. Johnson and the  
16 other individuals were simply loaded on drugs.  
17 There are no drugs in prison. I spoke to you  
18 earlier about what is the similarity, what is the  
19 connection between our client and some of the four  
20 young men, and it's drugs and youth. You know, I  
21 don't know how many of you have ever been under the  
22 influence, but when you're on drugs, you make  
23 choices that you wouldn't make normally. Donte  
24 Johnson and Todd Armstrong told you he was loaded on  
25 drugs. He was loaded on drugs when these homicides

1 occurred, and in prison, there are no drugs. You  
2 saw the way they searched the inmates as they come  
3 and go, there are no drugs in prison. That's  
4 another reason that society is protected. These  
5 were mind-altering drugs. I mean, you can imagine,  
6 those of you who drink alcohol and felt its affect  
7 by yourself, how that affects your ability to make  
8 choices. The drugs that Mr. Johnson was on, those  
9 are mind-altering drugs, and those drugs are not in  
10 prison, and that is another way why we in society  
11 are protected, and that's why I brought Mr. Esten in  
12 here to talk to you.

13           Now, the main thing that I want to speak  
14 with you about is to really understand what the  
15 State is asking here. You know, what they are  
16 asking is that you take the life of somebody because  
17 he's taken the life of somebody else. In other  
18 words, to continue the violence. To me, it's so  
19 hypocritical. I mean, you want me to take the life  
20 of somebody because he's killed somebody else? Does  
21 that seem right to you? So, I have to step back and  
22 I have to think, why would they be doing this? How  
23 do they get away with doing this? And I started  
24 thinking, as a society, how did this come about?  
25 Why are we here? Why are we even evaluating this?

1 Why is death an issue? I started thinking, where do  
2 we start in? Where did we start as human beings?  
3 When we started, it was, the strongest survive. It  
4 was he who was the strongest, you know, he was the  
5 law. It was violence and anarchy. There was no  
6 structure; it was the person who had, perhaps, the  
7 biggest knife, or the strongest -- that was the  
8 person that ruled, and he did no wrong, because that  
9 was the law. That's where we started.

10 Over generations and centuries and maybe  
11 thousands and hundreds of thousands of years we  
12 tended to band together as individuals. We came up  
13 with a monarchy. That's what led -- that's what  
14 took away that violence, because at least we had  
15 kings. A king was a person that was in charge. A  
16 king said that person dies -- he lives or dies, and  
17 he was killed, that was the only accountable, but at  
18 least it was better. At least if we had a king in  
19 charge, at least it was better than absolute anarchy  
20 and unpredictable. We still lived and died at the  
21 whim of another person, but it's better than anarchy  
22 and violence.

23 Then we moved into the old law that was  
24 the Magna Carta, and we -- as the people started  
25 taking back the rights from the leader that had

1 absolute control, that we as the individuals started  
2 believing that we counted and our decisions were  
3 important, and that was the old law, the old law --  
4 that eye for an eye, and it's still in existence in  
5 many countries today. You know, in some countries,  
6 if a thief is caught stealing something, they chop  
7 off his arm. That's the punishment. It's still in  
8 existence in some countries. You know, in some  
9 countries, if a wife is caught fooling around, I  
10 mean, she's led into a square into the center of the  
11 town and stoned. There is an old law that exists  
12 out there.

13               So, why did we move beyond that law? Why  
14 did we move beyond that eye-for-an-eye,  
15 tooth-for-a-tooth mentality? Because that's where  
16 we are. That's where we are. Why did we move  
17 beyond that? Because we started realizing that  
18 there's something more important than revenge. We  
19 recognize that there was a higher road that we could  
20 take that would benefit society as a whole; that it  
21 wasn't just the wounded, the person who got hurt and  
22 the person who hurt them; it's because it's all of  
23 us. We all live together. We're all part of this  
24 society, and we started creating laws that took into  
25 consideration the entire society. That's my view on

1 this. That's where we are now is on this. We have  
2 this new law. We don't cut off -- if I go and steal  
3 some gum, I don't get my fingers cut off anymore.  
4 That's not the law, okay, but that is exactly what  
5 the State is asking you to do, essentially.

6 Now, I've thought about this and how to  
7 explain, you know, because the person who really is  
8 going to pay for the wrongs that we've heard here  
9 with regard to those four young adults and  
10 Mr. Simpson -- do you know who the people who are  
11 really paying the price? It's not Donte Johnson,  
12 it's Donte Johnson's family. I mean, we have spent  
13 years making, you know -- don't get me wrong --  
14 strapping a person down to a gurney and putting a  
15 needle in them and killing them is an act of  
16 violence. It's terrible, and the death certificate  
17 reads "homicide." It's a murder. I mean, it's a  
18 killing. It's violent, but he's not the one who  
19 suffers. Who suffers? Well, you saw the people who  
20 suffered. You saw Allen White here. You saw how  
21 that man loves his father unconditionally, just like  
22 each one of us loves our parents, whether they're  
23 good or bad, we love them unconditionally. Those  
24 are the people that you will be affecting -- Allen  
25 White, Johnnisha. I mean, they went through hell,

1 right? There are some loves that we just don't  
2 understand. You know, siblings that go through that  
3 type of hell that those people went through, there's  
4 an understanding in a relationship there that we  
5 can't understand, but those are the people that your  
6 decisions will be affecting. Make no doubt. Now,  
7 you know, I come back to the State, and I say,  
8 "They're going to kill somebody because he killed  
9 somebody." That makes no sense to me, and I go,  
10 "Let's carry that to the far extreme, that  
11 eye-for-an-eye mentality, that tooth-for-a-tooth.  
12 Let's take that to a full extreme." I'm thinking,  
13 you know, "What's a good example?" I'm thinking,  
14 "How about a child molester?" Okay. What do we do  
15 with a child molester? What I want to say is crazy,  
16 it's outlandish. You never think about it, but if  
17 you carry it to an extreme, that's basically what  
18 they're saying -- you take a child molester and  
19 throw them in with a bunch of child molesters.  
20 That's what they're saying, but why does that even  
21 cross our mind? Beyond being completely unnatural  
22 and absurd, why does that cross our mind, because  
23 it's not that poor little kid who did the wrong,  
24 because he shouldn't be paying the price, but that's  
25 exactly what the State is doing. It's not Donte

1 Johnson who is going to pay for this, it's his  
2 family and it's society. It's all of us. Violence  
3 begets violence. Where does it stop? I mean,  
4 that's what we're asking. He killed somebody; let's  
5 go kill him. That's what their theory is. You  
6 know, we've moved beyond that. We've moved beyond  
7 that. We're better than that. We can take the high  
8 road. We don't need to punish Allen White. We  
9 don't need to punish Johnnisha. We don't need to  
10 punish Johnnisha. They've already been punished  
11 enough. Do you know what it's like to have a parent  
12 in prison? I see those kids, and they love their  
13 parents so much, and they're embarrassed, you know.  
14 At the parent conference, there's no parent, because  
15 he's in prison. It's difficult. Can you imagine  
16 the embarrassment of having to say "My father was  
17 killed by his fellow citizens, by society"? I mean,  
18 what signal is that sending to Allen White? What  
19 are we doing here if we can't do something better,  
20 if we can't break the violence? Do we -- I just ask  
21 you to think about that.

22 Now, I'm going to tell you how the State  
23 is going to get you in a mode. I want to comment on  
24 nerve topics, on some of the things they said,  
25 because the way that they're going to get you to be

1 prepared to take the life of another person is not  
2 to think about the high road, it's not to think  
3 about society, it's not to think about what's best  
4 for all of us in society in general; they're going  
5 to get you to think about the terrible, horrendous  
6 things that happened. Okay? That's how they're  
7 going to prep you, probably just the same way Donte  
8 Johnson was, all excited, not thinking. That's what  
9 they're going to do, and that's why when they talk  
10 about -- when they bring in the visuals, that's why  
11 they do it, because they know it has the power of  
12 full effect. That's why when they start talking  
13 about Niagara Falls and joking and laughing, that's  
14 why they say that. Does it really matter if Donte  
15 Johnson laughed or not after one of these kids are  
16 killed? Does it make it any worse? The poor kid is  
17 dead. He can't come back. It's terrible. It just  
18 doesn't get any worse. The reason they say these  
19 things are to get you in a mode to dehumanize my  
20 client, to kill him. That's why they're saying  
21 those things, to get you emotional. Now, they're  
22 doing it in two different ways. You saw the first  
23 one during their first closing, and that's when they  
24 said, "Donte Johnson is different." Okay. They  
25 want you to think he's different from the rest of



1 us, because it's a lot easier if you kill somebody  
2 if they're different from you and I. Okay?

3 Now, the other way they do it -- they go  
4 about it is to get those pictures and those  
5 comments. Now, I want to point something out to  
6 you. John White, Donte Johnson and Deko are all the  
7 same person, and when they attempt to suggest that  
8 Donte Johnson is different than John White or Deko  
9 is different, that's the way they dehumanize him.  
10 He's the same person, just like you and I. He  
11 loves; he'd like to love. He's going to be  
12 painfully, painfully construed or controlled for the  
13 rest of his life, but he's just another human being  
14 just like the rest of us.

15 You heard from Craig Clark; he said  
16 there's bad and there's good, and you heard from the  
17 social worker that worked in the Clark County  
18 Detention Center who said, "I don't understand it.  
19 I can't explain it to you." It's sympathetic,  
20 understanding, concern. He is a human being. He's  
21 just a human being, a very imperfect human being,  
22 but you always talk about let the first perfect  
23 human being throw the rock -- yeah, he's much more  
24 imperfect than most of us, thank goodness, but we're  
25 all imperfect, and they are asking you to throw the

1 rock. They're dehumanizing him to make him  
2 something he's not, and I ask you to recognize that  
3 when you start talking about him being Donte Johnson  
4 or Deko or John White or something other than you  
5 and I. He's not an animal that's laying and needs  
6 to be put down. He's a human being, and I know we  
7 all recognize that.

8           So, I want to turn to the other way. They  
9 want to put you in a frame, in a mode to take the  
10 life of another man, and that is what you've already  
11 seen. They've shown you pictures of these four  
12 victims' families; they show you pictures of the  
13 person in life and in death. They want you to  
14 concentrate on the crime and not society. They want  
15 to feed you old law, not new law. They want you to  
16 take the low road, not the high road. They want you  
17 to react instead of think. They want you to respond  
18 instead of reason, and that is why they're going to  
19 do and say those things. That, they've said, and  
20 I'm asking you to be reasonable, to reason, to  
21 think, because Donte Johnson is not the one who will  
22 pay the price for the actions that you make over the  
23 next few hours or days.

24           Now, I had an opportunity to -- these are  
25 some of the prosecutor's comments that I've seen in

1 the past? "What is justice but that every man gets  
2 his due." Donte Johnson will get -- has received  
3 his justice. I mean, I hope that you take this back  
4 into your jury room with you and see the size of  
5 this (indicating). Will he be alive? Yes. Will he  
6 think? Yes. Will he have the ability to feel?  
7 Yes, but he will be able to do nothing more, nothing  
8 more. A 15-minute shower three times a week. What  
9 was it -- one phone call for 15 minutes a week, and  
10 that is it. His heart will beat, his mind will  
11 work, but he can do nothing with it -- nothing  
12 except stare at the walls and think about what he  
13 could have been, think about what could have been  
14 and what he did. Is that the ultimate punishment?  
15 The heart works, the brain works, but you can't do  
16 anything with it. That's what he's subject to the  
17 rest of his life. He has received justice by  
18 getting life in prison for the rest of his life.  
19 You heard Mr. Esten tell you he will probably spend  
20 it in this small cell alone the rest of his life.  
21 You know what's amazing to me is we heard the warden  
22 talk about how they preferred to have a second  
23 person in this cell. This is it (indicating). I  
24 can't imagine -- my wife and I would end up in a  
25 fight within 15 minutes if we had to live in this

1 small corner, and yet, these people -- do you  
2 remember Mr. Esten talking about sensory  
3 deprivation? That's how they punish these people.  
4 There's nothing to do. There's nothing to do with  
5 that heart and mind that's working, because they're  
6 stuck in this little hole. How they would actually  
7 rather share this small space with another person  
8 than live alone, that shows the type of punishment  
9 life in prison truly is. I mean, do you want to  
10 live in something like this 23 out of 24 hours a day  
11 with another person?

12 **MR. DASKAS:** Judge, objection. I  
13 apologize. He's asking the jurors to put themselves  
14 in the shoes of the defendant, and that  
15 mischaracterizes the evidence presented. He would  
16 not spend 23 hours a day in his cell. It  
17 mischaracterizes the testimony.

18 **THE COURT:** The jury heard the testimony,  
19 and it's how they remember the testimony to be.

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

21 Look at these pictures. I'm asking you to  
22 take these pictures back into the jury room with  
23 you. I mean, this is the top bunk, there's a bottom  
24 bunk (indicating). Look at them yourself and think  
25 what -- how far you would have to go in order to

1 make the determination that you would rather live in  
2 that environment with another person, how you would  
3 have to be in pain, how you would have to be  
4 punished in order to want to live in that small an  
5 environment with another person, because that is  
6 what Donte Johnson has facing him the rest of his  
7 life. It is a terrible, terrible punishment. The  
8 worst possible crime, worst possible defendant -- I  
9 mean, these are things that you can potentially  
10 hear. What about Timothy McVeigh? That's the worst  
11 possible crime. You know, the small kids -- 50, 60,  
12 70 -- I don't even know. He attacked our standard.  
13 He attacked who we are as a people. He wanted to  
14 stop democracy. He attacked our lifestyle. That is  
15 the worst of the worst.

16           Is life in prison sufficient or is  
17 something more required? Folks, I just showed  
18 you -- I can't imagine that it gets any worse than  
19 to have to live in this environment and not be able  
20 to do anything with the faculties that you have.  
21 Should Donte Johnson be allowed to live and the four  
22 young men die? Isn't that a great question? Is  
23 there anything you can do to bring them back? I  
24 know that any of us, given the opportunity, would do  
25 anything we could to bring them back, and I want

1 their families to know that I suffer -- I feel  
2 terrible for their loss. I recognize the suffering,  
3 but we can't bring them back. There's no way we can  
4 go back into history and write or change history. I  
5 wish we could. I would be the first leading the  
6 charge -- let's go back. Let's make this whole.  
7 Let's change it, but you know what, taking the life  
8 of Donte Johnson doesn't make them whole, it just  
9 furthers the pain; it just furthers the violence.  
10 There's nothing we can do. Unfortunately, there is  
11 no perfect answer. Unfortunately, that pain and  
12 that suffering will go on. Killing another human  
13 being is not going to change that. Killing another  
14 human being is only going to affect other people so  
15 that they feel the same way that those poor folks  
16 do. That's what killing another human being will  
17 do, and that's why I'm here to ask you -- there are  
18 other options. We can stop the pain. Is Donte  
19 Johnson's life somehow more valuable? You know  
20 what, I'm not even going to go there. I don't  
21 compare lives. Our maker is a person that decides  
22 the value, and Donte Johnson some day will be in  
23 front of him, and he will have to account for his  
24 wrongdoings. The decision is when. He has been  
25 held accountable.

1           Now, these are a couple of my comments  
2 that I threw up here talking about revenge, talking  
3 about vengeance. You know, there are other  
4 alternatives. I know that you all have hatred and  
5 you're all mad and you all want to make something --  
6 do what's right. You all want to make those poor  
7 families whole, but you can't. I know you feel that  
8 anger; I know you feel that pain, because we're all  
9 human because we can see it in them, and it affects  
10 us and we feel it as well, and we want to do  
11 something with it. What I want you to know is what  
12 are you going to do with all that pain and all that  
13 anger if you take that man's life is transfer it on  
14 to his family. That's all that's going to happen.  
15 All this pain, all this anger can stop here. Any  
16 one of you can make that determination. Vengeance  
17 is powerful and destructive. They know that; that's  
18 why they're feeding it to you. It is not feeding  
19 and it will not sustain you in the course of your  
20 life.

21           Folks, I want to talk to you for a  
22 minute -- vengeance does not sustain history,  
23 because this affects each one of you individually.  
24 Soon, you're going to be done with the Clark County  
25 courthouse, and you'll be moving on, and you're

1 going to have to live with the decisions that you  
2 make. It's a difficult decision. You know, I once  
3 tried to explain to you how I see all this anger and  
4 this violence and this fear and this meanness and  
5 how important it is and how mercy, and it's breaking  
6 that cycle for me.

7 I think back -- I just want to tell it in  
8 an analogy. I want to give an analogy a little bit  
9 from my life. I grew up a hundred miles north of  
10 here, and I'm kind of different from other folks. I  
11 got a kick out of the summer. My favorite time of  
12 the year was not the spring or the fall, it was when  
13 that first storm came in in like late August. I  
14 mean, we've been weltering like you down here, we  
15 welter in heat all summer long, just so tired of it  
16 and it just -- it eats you up day after day after  
17 day. And the first storm that comes in in the  
18 middle of August, I cherish it, and I go out -- I go  
19 out away from the house from other people to watch  
20 it come in. You're going to be away, you're going  
21 to be alone with your decisions in the future, and I  
22 watch that storm coming in, the mountains in the  
23 background, they have the purple and then they turn  
24 to red and the dark clouds come in and the lightning  
25 starts thundering and hitting the mountains around.



1 It hasn't rained in months, and then I feel that  
2 cool breeze coming in and the rain falls down, and  
3 it's funny because the rain kicks up dust. Only in  
4 Nevada will rain kick up dust, and then pretty soon  
5 that rain diminishes to dust and turns to mud, and  
6 the desert just comes alive, and there's this  
7 wonderful smell, and it's just peaceful. It's life.  
8 Water brings life to the desert. You can stop that  
9 pain. You can stop that anger. You can stop that  
10 evilness. You have the opportunity to bring peace  
11 to society. You have an opportunity to make sure  
12 that this young man who testified up here, Allen  
13 White, does not have to tell parents -- tell people  
14 that his parents, his father, excuse me, was killed  
15 by society, that he does have a father, that he does  
16 love him. You can break that cycle of violence.  
17 You can bring in that peace, that mercy to these  
18 proceedings. That rain is mercy. That rain is  
19 life, and that's what I'm asking you to think about,  
20 what you can do, think about, what they want you to  
21 do and why.

22 I ask that you'll go back, look at the  
23 law, recognize it. Death is never required, but  
24 each of you have an individual choice to make that;  
25 each of you will have to individually live with that

1 choice; that you had witnesses come in here that --  
2 again, we're not trying to justify or explain away  
3 that we feel the same pain, we just want to stop it;  
4 that we brought witnesses in here to show you that  
5 Mr. Johnson will receive a terrible, terrible  
6 punishment; that he live in a hole the rest of his  
7 life and will be protected from society; that he is  
8 held accountable that some day he will face his  
9 maker and he will answer for those things. I ask  
10 that you evaluate everything; that you recognize  
11 that the State is trying to serve you -- is trying  
12 to push you into old law, the one vestige of old law  
13 that we still have, and I ask that you recognize  
14 that these have answers (indicating), that life has  
15 value, that the cycle can be broken, and I'm going  
16 to ask that you give a life -- life sentence to  
17 Mr. Johnson, and I thank you for your time.

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

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

21 **THE COURT:** We're going to take a short  
22 recess.

23 During this recess, the jury is admonished  
24 not to read any newspaper articles, listen to any  
25 radio or television reports, express any opinion to

1 anyone, talk to anyone about the case and don't let  
2 anyone talk to you about the case. All right?

3 **THE BAILIFF:** All rise.

4 (Recess taken.)

5 **THE BAILIFF:** Be seated. Remain seated;  
6 come to order. Court is again in session.

7 **THE COURT:** Miss Jackson.

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

9

10 DEFENSE'S SECOND CLOSING ARGUMENT

11 **MS. JACKSON:** May it please the Court, my  
12 esteemed co-counsel and Mr. Johnson and ladies and  
13 gentlemen of the jury, I was watching your faces as  
14 my colleague was talking, and I was studying your  
15 faces, and I was asking myself, has this jury  
16 already made up its mind? There are some studies  
17 that say you make up your mind within the first day  
18 or two, and I studied your faces, and I wondered,  
19 have you made up your mind? What an awful feeling,  
20 because you know, when I sit down, the State gets to  
21 speak again in these proceedings. They get to, for  
22 reasons which I'm sure I don't understand, they get  
23 to talk twice. So, when I sit down, that is the  
24 last time you will ever hear anybody say anything on  
25 behalf of that young man, and then you will listen

1 to Mr. Daskas. So, I wonder, I wonder, have you  
2 already made up your minds? I mean, what does one  
3 say standing here in the well of a courtroom, it's  
4 almost surreal trying to tell you something to  
5 convince you not to kill my client, you know, it is  
6 surreal almost, and I begin to wonder, have you  
7 already made up your minds? I don't know. You  
8 know, I'm not going to show you any visuals; I'm not  
9 going to go through a lot of the evidence -- and  
10 it's a lot.

11           There is a presumption in the law that  
12 says that we presume that you perform your duty as  
13 you are instructed, and it says that we presume that  
14 you follow the law, and I think those are things  
15 that we desperately hang on to, because if you  
16 don't, then we're all in a lot of trouble. So, I'm  
17 not going to use any visual aids; I'm not going to  
18 take a whole lot of time; I'm not going to think  
19 that I have the ability to say something so profound  
20 and so moving as to persuade you if you already have  
21 your minds made up. I don't have that ability.  
22 What I'd like to do is just to reason with you, one  
23 human being to another, one citizen to another. And  
24 I prepared a few notes, because this is very  
25 stressful for all of us, and I prepared a few notes

1 because there are some things that I feel are  
2 important. I don't know if you feel they are  
3 important or not. I don't even know if Mr. Johnson,  
4 if my client, feels they are important, but what  
5 I've done is I prepared a few comments, and I just  
6 want to talk with you for a few minutes about some  
7 things.

8           Well, you know, here you have it. You  
9 have the whole story of how my client came to be  
10 facing you today, you know, and we look around --  
11 the media, the gallery -- and I've done a few of  
12 these cases, and I've never had a microphone taped  
13 to the lecturn where I have to beg for my client's  
14 life. As Mr. Whipple was talking about the lynch  
15 mob mentality, I began to look around and think  
16 about, why is all of this here? You know, what is  
17 this about (indicating)? I think Bret may be right.  
18 You know, before you can lynch somebody, you got to  
19 whip up a mob.

20           This case is about family. It's very  
21 personal. You know, it's really about children, and  
22 it's difficult to consider these four families out  
23 there who've lost -- they've lost their sons. A  
24 young lady has lost her brother. It's hard to think  
25 about those things when we go to August 14th of 1998

1 and we see such a violent image, the kind of image  
2 that -- when we see it on television -- I don't know  
3 about you, but I quickly hit my remote, and I change  
4 the channel, because I don't bombard myself with  
5 those kind of violent images, and you know -- and no  
6 matter how much the State tries to pooh-pooh it, no  
7 matter how much they say, it doesn't matter, you  
8 know, the stuff that we turn away from that we turn  
9 our children's -- avert their faces away from. Life  
10 took Donte Johnson's face and stuffed it down in his  
11 face, and we had a doctor to tell you what that does  
12 to a person, but we did not need a doctor to tell  
13 you that, now, did we really? How can you avert  
14 your eyes when you see something really palpable.  
15 We have to look at it again, because they're going  
16 to put it up there again, I would dare say. Who  
17 among us is not reviled by such a horrific act? How  
18 can somebody who is wrapped in flesh and blood --  
19 despite what Mr. Stanton says, he is made of flesh  
20 and blood, and he's wrapped in skin just like you  
21 and I. How can somebody do that?

22           Well, John's life started out with a  
23 severe handicap. What you have is the remnants of  
24 abuse and neglect. Remember I told you in my first  
25 closing that children learn what they live? John

1 has been serving a life sentence since the day --  
2 well, since before he was born, because mom drank a  
3 wee bit while he was inside of her. John has been  
4 serving a life sentence all of his life. What I'd  
5 like to do, if I can, is to give you some reasons to  
6 let him go to a place where he can finish serving  
7 out his sentence, where he won't harm anybody and  
8 nobody will harm him.

9           Now, the prosecution will undoubtedly tell  
10 you that he is a danger wherever he goes, and they  
11 have already done that, and you're going to hear it  
12 again, that he cannot be safely housed; that he will  
13 hurt people, Mr. Stanton said, day, night, black,  
14 white, short, tall. He is so dangerous that you  
15 have to kill -- stand up, Donte. Stand up, John. I  
16 dwarf this man.

17           You may be seated.

18           How large do you think the average inmate  
19 is? How large do you think Dorian Daniels and those  
20 guys are? They produce one episode, one episode to  
21 convince you that he is just so dangerous inside.  
22 We know what he's done outside. You know, I'm not  
23 going to -- you know, what can one really say about  
24 that? We came in here guilty, four counts of murder  
25 plus Derrick Simpson. That's our starting point,

1 and yet, the law -- the law that you're charged to  
2 follow still says after all of that, death is never  
3 required. Perhaps they know something about these  
4 circumstances. We learn that when this happened, he  
5 was 21 years old. If you do the math, when he was  
6 16 or before that, he did about six months, if  
7 memory serves, but if memory is incorrect it's not  
8 intentional; you will have those documents, but I  
9 believe he served somewhere around half a year when  
10 he was about 13 or 14 years old in a camp and then  
11 at 16 he goes to CYA for over two years, if memory  
12 serves. He's been locked up most of his life. And  
13 they brought you one incident. You know what, we  
14 deny that, and we fault that, and we brought you the  
15 evidence to prove it. You don't normally do that.  
16 We had almost a trial within a trial, but it was so  
17 very important. It was so very important, because  
18 you know, that's the one thing that he did not do.  
19 He didn't do that, and I could have just brought  
20 Miss Navarro in here, you know, who works for  
21 Mr. Roger. She is a Deputy District Attorney. She  
22 has nothing to gain and everything to lose. I could  
23 have just brought in Reggie who lost his temper. I  
24 could have just let those guys stay up in Ely where  
25 they were. We brought them in here because when



1 something happens in 5C in The Hole, we wanted you  
2 folks to see who's there. There's not people there  
3 like you and I; it's people like Reggie Johnson.  
4 But they hear and they see and, you know, they tell  
5 you that, "Well, Reggie had nothing to lose. He was  
6 already doing a minimum of 64 years." Well, this  
7 happened in February 24th of 2001. Do you think  
8 Reggie had more on his plate than a man who had been  
9 convicted of killing four people; a man who was not  
10 a legal scholar nor was he clairvoyant to know that  
11 in 2000, the Supreme Court would do something that  
12 would overturn his sentence? You heard me ask  
13 Reggie that. I mean -- come on. He had no idea in  
14 '01 that they would try to use that incident to get  
15 you to kill him.

16 Miss Navarro came in here and she backed  
17 up everything Reggie told you, George Cotton told  
18 you and Termaine Lytle told you. She said, unlike  
19 what Mr. Stanton said, that Reggie, from the very  
20 beginning said, "I did this. I'll plead to it."  
21 And why did not he do it? He was trying -- he wrote  
22 her a letter before preliminary hearing, and I think  
23 you heard from Miss Navarro, I think you can decide  
24 what kind of advocate, by George, she is, and she  
25 said he would not take the deal, why, because they

1 wanted him to implicate this man (indicating) and he  
2 refused. And then all of a sudden from February to  
3 October that same year as a jury is being selected,  
4 the State of Nevada says, you know, hey, your client  
5 just wants us to say he didn't conspire with that  
6 man. Okay, we'll do that, and that's what he did.  
7 That's why he took the negotiation in October of  
8 '01, because they finally, after months and months  
9 and months of insisting that he implicate that man,  
10 they are the ones who conceded, ladies and  
11 gentlemen, oh -- and by the way, the prosecutor  
12 involved in that case -- you did not hear from him,  
13 because you know what, I think -- me thinks they  
14 think they pulled a fast one. Miss Navarro said  
15 that they were supposed to file the paperwork later  
16 to clean this up and they didn't, and it could have  
17 been just an oversight, because at that time, I  
18 don't believe anyone knew that we would be here  
19 today because you would have to be clairvoyant to  
20 know that. Anyway, the paperwork never got filed.  
21 And so, you ask yourself, if Miss Navarro came in  
22 here and lied to you, a lady who works for -- she's  
23 a Deputy District Attorney now. You think she came  
24 in here and lied to you? But we did all we could to  
25 give you a complete picture, because that incident

1 is the one thing that they point to and say, you  
2 see, he cannot be safely housed. You know, and  
3 Reggie misbehaved while he was here, and I hope that  
4 you can press past that and listen to what he said.  
5 Listen to what Reggie said. You know, we don't want  
6 to believe that guards do things that are wrong, but  
7 you know what, there's one thing my learned  
8 co-counsel said that I beg to differ; he said there  
9 are no drugs in prison. I beg to differ. And you  
10 know how they get in prison? The guards. You know,  
11 how often do we pick up a paper and see where guards  
12 have brought drugs into prisons? Inmates can't get  
13 them in there. You know, they're human beings and  
14 they make mistakes just like anybody else. I  
15 don't -- you know, to say that we are impugning the  
16 integrity of Oscar Irias, a child molester at the  
17 bottom of the food chain even in prison. What  
18 integrity? You know, how do you impugn his  
19 integrity? When Reggie sat there and told you that  
20 this same young Officer Gonzalez who seems to be a  
21 decent enough young man -- I don't know, I don't  
22 know him, but I do know what the facts in this case  
23 have shown. They have shown that he was not in a  
24 place that he was accustomed to being; that he was a  
25 brand new recruit; that the regular 5C people were

1 training, and you know why this rings true? The  
2 officers in that Bubble we've heard there was two up  
3 to five -- those men, those convicts is what they  
4 are, they told you that these officers didn't see  
5 what was going on, they did not hear it. You know  
6 why you can believe them, because if someone is  
7 trying to toss anybody over a railing, there has to  
8 be a struggle and the one fellow even described the  
9 struggle to some extent. You didn't have any  
10 evidence of an officer yelling out or yelling for  
11 help or trying to get there to stop this. There  
12 would have been sufficient time for an officer to  
13 get there if they had seen it. They didn't see it.  
14 As a matter of fact, Oscar had enough time to hit  
15 the floor, fall on his butt, get up, run in his  
16 cell, sit down, get back up, go over and close his  
17 door before the officer even knew what was going on.

18 Well, why would young Officer Gonzalez say  
19 that he saw it? Well, you know, he's broke  
20 protocol. He broke protocol. I don't know if it  
21 was his idea -- back to my idea of COs who are less  
22 than perfect -- you know, Reginald told you that  
23 every chance he gets he's going to get at a child  
24 molester. He told you he got to Oscar again when  
25 they had him in the mittens. They're like big oven

1 mitts. Miss Navarro described those. He was belly  
2 chained. He was all hooked up like the Hannibal  
3 Lecter kind of thing except he didn't have anything  
4 on his face or his mouth and these same COs --  
5 remember, they put him in there in the holding cell  
6 with Oscar again? And Gloria called it like a cock  
7 fight, you know. Reggie is all chained up so they  
8 figure we'll put him in there and see what happens,  
9 and he says, to quote him, "I beat the shit out of  
10 him again," even with all of this stuff on, so, he's  
11 driven by a fierce hatred of child molesters. And  
12 hence, you will see -- you have this in the jury  
13 room -- his blue card. Reggie said I should have  
14 gotten his; perhaps I should have. I don't have  
15 that, but I do have Oscar's and you now know that  
16 when it says "DNHW," it's "Do not house with," and  
17 you'll see that my client's name is not on here.  
18 So, you know what -- I don't know. I know we don't  
19 like to think that guards do things that are wrong  
20 and we don't like to come into court and say we have  
21 rotten guards, but do you think it was a mistake to  
22 put Reggie all chained up and defenseless, they  
23 thought, in there with Oscar after Reggie threw him  
24 off the tier? You know -- I don't know. We are  
25 flawed. You know, God help us, we're all flawed,

1 and if somebody did that, it was wrong. But doesn't  
2 that give you something to ponder? You know, how  
3 did that happened? It was within months that they  
4 stick this man back in there with Reggie, and he did  
5 what he was supposed to do according to the way he  
6 feels.

7           And we did not hear from a DA who was on  
8 this case, and they could have called him. Somebody  
9 took the plea on Reggie. He yelled at David. It  
10 wasn't David. It was somebody else. You didn't  
11 hear from that person to come in here and say, "No,  
12 that wasn't the deal." You know, this was supposed  
13 to, as Miss Navarro said, never come up against  
14 Donte again. Her exact phrase was, "It was to be  
15 dismissed with prejudice forever." That's what  
16 "dismissed with prejudice" means, ladies and  
17 gentlemen, and yet, here you are being asked to kill  
18 my client because somebody else tossed a child  
19 molester over the -- and not that a child molester  
20 needs to be tossed -- don't get me wrong, I don't  
21 mean to be cavalier, but I can understand Reggie's  
22 frustration. What we're dealing with here is bad  
23 enough. What we're dealing with here is horrific.  
24 You don't need to come in here and lie on my client.  
25 It's frustrating.

1           You know, you heard from Jim Esten, and  
2 Mr. Whipple covered that, I thought, in very  
3 eloquent detail about where my client will go, about  
4 how all of the decisions are made for you, and you  
5 know, interesting thing about the prison and CCDC,  
6 you know. They have a whole stack of write-ups  
7 ranging from, you know, my client called some guard  
8 a mother fucker, to my client popping some guy in  
9 the mouth, to my client saying, "I don't want to  
10 take GED classes." And oh, by the way, on that GED  
11 class thing, notice the date. When you consider  
12 Nancy Hunterton's testimony -- remember the humanity  
13 that she saw in my client and how they yanked him  
14 out of the classes and put him in ad seg so he  
15 couldn't come? This "I don't want to take GED  
16 classes" came afterwards. Do you think he got a  
17 little discouraged? Do you think he got a little  
18 frustrated? Do you think he didn't despair some?  
19 But Mr. Gonzalez -- I want to get back to him for a  
20 second before I leave that. Another reason, the  
21 main reason why you should not believe what he  
22 says -- and I don't know, he doesn't seem like a bad  
23 person, but he certainly is, at the very best,  
24 misinformed. He sat right here and in his very  
25 openly comments, he said Oscar was a quiet,

1 nonviolent, barely spoke English guy who just stayed  
2 to hisself. Well, you know what -- and then I had  
3 him read these write-ups. My God! I mean these  
4 four -- you just read them -- calling the guards  
5 names, one guard saying that F this, F that. He  
6 resisted being chained up. One officer even says  
7 that "I had problems with him before." This is in  
8 evidence, looks like TT. "I had problems with him  
9 before, and he seems as if he's trying to test  
10 officers to get them upset or pretending that he  
11 does not understand what the officers are saying.  
12 Obviously, Irias has some problem with cooperation  
13 and at times becomes very defiant."

14           Another one that says he is a psych  
15 patient with a violent temper, attacked another  
16 roommate, another inmate. So, when you look at  
17 these (indicating) -- and they're in evidence -- it  
18 should make you wonder -- and you look at this --  
19 you know, you don't have to find Gonzalez is a bad  
20 guy to find out that he is a liar, and maybe he told  
21 this story at first, you know, maybe he told this  
22 story because he was not where he was supposed to be  
23 pursuant to protocol and he was scared because he's  
24 got a family and he wants his job like anybody else,  
25 and then once he told the story -- you know how it



1 is with that, you kind of have to stick to it. You  
2 don't have to find him to be a bad guy, but you  
3 know, you can't ignore this (indicating). I will  
4 submit to you that with all of the evidence that  
5 just screams that Donte did not do this, to consider  
6 that a decision of this weight is just wrong. It's  
7 just wrong, you know. And then they brought the  
8 lady in here from Indian Springs. She came in to  
9 rebut or disprove or take away from what Jim Esten  
10 said. I think her name was Miss Sheryl Foster, the  
11 lady who has not been to Ely, I think she said since  
12 1989. I lost track how many times she said under  
13 Mr. Whipple's questioning "I don't know. I don't  
14 know, I don't know," and how each time -- these are  
15 things that you have to look at, because that's  
16 what -- how you determine what to give weight to.  
17 Every time they ask her a question, she's looking at  
18 some notes, and Mr. Whipple said, "What are you  
19 looking at?" "May I see that?" "And you see by law,  
20 he gets to see it. She didn't even know anything.  
21 But you know why they brought her in here? They  
22 brought her in here to tell you that she has several  
23 what we call LWOPPs -- life without the possibility  
24 of parole -- in her prison industries work program,  
25 and therefore, you should never consider life

1 without parole for Donte, because he could be  
2 working in her prison industries program one day.  
3 That's why they brought her in here. That's what  
4 she came in here to tell you. I mean, that's what  
5 they brought her in here to tell you. And then her  
6 testimony should be very disturbing because the  
7 Court, you know, not me, not Whipple, the Court  
8 said, "Well, ma'am, how many is 'several'?" "Well,  
9 several". Well, ma'am, how many is 'several'?"  
10 "Well, several." Well, I don't know what that  
11 means. Does that mean one? Does that mean some old  
12 guy who has been there 50 years who has somehow  
13 redeemed himself and has worked his way up through  
14 the ranks is now in her prison industries program?  
15 What does that mean? You come in here to court to  
16 testify, and you can't even answer a direct question  
17 from the Court. "Ma'am, how many is 'several'?" Do  
18 we have 50 LWOPPs running around doing work at the  
19 prison? Do we have one? Do we have 50? We have  
20 several, she said. Now, what does that mean? I'm  
21 sure I don't know.

22           You know, let's look at this life. Let's  
23 look at this life, because this is the penalty  
24 hearing for Donte Johnson. This is the life we're  
25 going to take a look at, and the law demands that

1 you consider all of the circumstances. You know,  
2 John is convicted of killing four people, and their  
3 families are hurting. They are suffering, and you  
4 heard them testify and you heard them say that they  
5 are unable to find any peace; that they are unable  
6 to go on, and I agree with Mr. Whipple. You know,  
7 that creates in us an urge to want to help them.  
8 They deserve to be helped. If there was a way that  
9 you could take my client and put him right here  
10 (indicating) and take the victims and put them right  
11 there (indicating) and exchange their lives, we  
12 would not have an issue, now, would we? If only we  
13 could do that, but you can't give them back what's  
14 been taken. You don't have that power. You know,  
15 you think about when you look at Donte's life, you  
16 look at the way he started and then you remember  
17 what these parents and loved ones of these victims  
18 said. And I don't mean to be cruel here, and I  
19 don't mean to be disrespectful, but I'm going to  
20 tell you some facts that must be said. These young  
21 people had very good upbringings. One father  
22 testified that he had coached his son or refereed  
23 his son in virtually every sport, and that's a very  
24 good thing. You know, even the single mother --  
25 awesome lady -- and they loved their kids and they

1 went to great lengths for their kids because they  
2 love them as we all do, and by George, with all of  
3 that love, with all of that attention, these young  
4 men, when they were killed, were drug dealers, and  
5 they were drug users. Those are the uncontroverted  
6 facts. And if you think me cruel for saying that,  
7 just look at the evidence. I did not make it up.  
8 You know, we do everything for our children. We  
9 would die for our children, and we have good kids,  
10 good children, you know, who get on drugs and become  
11 drug dealers with all of that love, what kind of  
12 chance do you think he had (indicating)? No -- you  
13 know, why would I say something like that? It might  
14 seem mean, but you know what, that is Donte Johnson,  
15 John White's penalty hearing. And when we think  
16 about why -- when Officer Buczek -- I gave you an  
17 example that happened right here in this courtroom.  
18 Remember the detective, Officer Buczek, he was here  
19 testifying, and then we said, "Your Honor, we want  
20 to have him testify in our case," and the Judge  
21 said, "Well, yes. Can you come back?" And he said,  
22 "No. At 3:15, I have to get my kid." Now, did  
23 anybody in here question, "Well, this is more  
24 important"? You know, that just is one example, and  
25 I don't have to tell you about John's father. You

1 know, before it would have been better if he had  
2 just left sooner, but before he left, he beat this  
3 child, he beat the child's mother, dehumanize. My  
4 client has no idea what it's like to go to a ball  
5 game with his father. My client's idea of a father  
6 is monstrous, scary. You know, the image of his  
7 mother sleeping and this man coming in and punching  
8 her in the face and the blood squirting out onto  
9 John possibly dehumanizing, desensitizing.

10           You know, what does it take to be a  
11 survivor in South Central? That CPS report that you  
12 have, that exhibit talks about the children being  
13 survivors. You know, imagine what it takes, being  
14 beaten, not even knowing why you're being beaten,  
15 being hungry. You know, few Americans really  
16 truly -- never truly experience hunger in this  
17 country, but John has -- crawling inside a dumpster  
18 for food, being locked in a closet hearing your mom  
19 scream, being taken on drug runs with your mother  
20 and your aunt, being kept out of school at an early  
21 age simply because your mom couldn't get around to  
22 sending you, being small in stature and watching,  
23 you know, your mom get beat down, I mean to a bloody  
24 pulp, and not being able to do anything about it.  
25 What did that do to my client? It took him deep,

1 deep, deep, deep, deep, deep, deep down inside of  
2 himself where nobody could ever hurt him again.  
3 Dr. Kinsora told you about that. And you know what,  
4 in this letter, whether it was a day, whether it was  
5 a month, whether it was a year, have you ever lived  
6 inside a shack with no toilet, no electricity, no  
7 food? The CPS report says they were living there.  
8 Do you think John's family was lying to you when  
9 Keonna and Johnnisha and Eunisha even talked about  
10 living in that place? There is a credibility  
11 instruction. There are some things that you just  
12 can feel. You think they were exaggerating the  
13 memories of a situation like that?

14           And then the State says, well, they did  
15 not give you a complete picture of his schooling, as  
16 if we were trying to somehow fool you, as if we were  
17 somehow trying to give you a little bit of this and  
18 not the rest of it. Of course, when John got with  
19 his grandmother, that lady, you know she was trying  
20 to reach down past her generation of children who  
21 were all on drugs and alcohol and trying to get her  
22 arms around those grandkids. I'm the one who told  
23 you that she said "He's acting like an adult, treat  
24 him like an adult." When he was with her, he went  
25 to school. We are the ones who came in here and

1 showed you the videotape of John in the choir  
2 singing "Does Anybody Here Love My Jesus." That was  
3 grandma's rules. She insisted. So, you know, when  
4 they get up and try to say that we're telling you  
5 half truths and we're trying to somehow do something  
6 less than be candid and they try to pooh-pooh John's  
7 childhood and try to say well, he was just there a  
8 day, did you need a doctor to come in here and tell  
9 you that things -- Kinsora told you if you take a  
10 child who is only six months old and that child has  
11 been abused, and then you adopt that child, he said  
12 that you take a chance that that child's inner core  
13 may already be damaged at six months. Some may  
14 bounce back, but many do not. Did it take a doctor  
15 to tell us that? We had him come in to tell us  
16 this, because had he not done so, I couldn't talk to  
17 you about it. I could only talk to you about things  
18 that happened inside the four walls of this  
19 courtroom; that's why I had to have him come in, but  
20 I don't think for a minute that you needed to be  
21 told that it's a bad thing to drink while you're  
22 pregnant, and that if you take a child's mind and  
23 you just bombard it with violence, day in, day out,  
24 that warps that child's mind so that you produce a  
25 very violent, desensitized -- just a messed up kid.

1 I did not have to tell you that. But if he had not  
2 come in here and shared that with you, we couldn't  
3 have this discussion. Excuse me.

4 So, we come to the part of his life where  
5 when John saw a way out, he took it. There were too  
6 many negative things for John to overcome. You  
7 know, as the State says, "Well, what about Moises?"  
8 You can't really compare him to Moises, the  
9 brother-in-law who is Hispanic. We did bring him in  
10 here because he's Hispanic, that's a fact, but he's  
11 also his brother-in-law. He also grew up in South  
12 Central. He also loves this man. Well, Moises  
13 didn't turn out like that. Well, Moises's mother  
14 wasn't retarded. Moises's mother did not drink  
15 while she was pregnant. Moises was not kept out of  
16 school almost a whole first two years of his life.  
17 You know, it's like taking two runners, two  
18 athletes, and putting one into a shed and giving  
19 that one just bread and water, and then taking  
20 another one and giving him the state-of-the-art  
21 training and the equipment for about a month, and  
22 then taking those two athletes who were equal to  
23 start with -- because criminals are not born,  
24 remember that -- they are made. They started out  
25 equal, and then you say, "Okay. You're going to run



1 the hundred yard dash. On your mark, get set, go.  
2 Now you guys are equal." That's what it's like  
3 comparing. That's what Donte was like. He was  
4 just, you know, so deprived, so handicapped, so  
5 damaged, and now they want you to say, well, he  
6 started out equal with all of us, and let's hold him  
7 to those standards. And yet, in a way, you already  
8 have, because he stands convicted times four. You  
9 know, the space that we're talking about -- I was  
10 watching the template, it goes from here  
11 (indicating) to about here (indicating). You know,  
12 imagine sitting on the toilet doing your business  
13 and then turning around and then having to drink  
14 from that faucet within the next five minutes. It's  
15 one unit.

16           You know, what were these choices, the  
17 choices that the State will convince you -- will try  
18 to convince you that Donte Johnson made, that John  
19 White made -- ask yourself, were they real? You  
20 see, for a choice to be a choice, it has to be  
21 meaningful. It has to have -- I have to -- this  
22 morning I decided to wear this suit. I have more  
23 than one. I have more than one that I like. I  
24 chose this one.

25           You know, Dr. Kinsora called South Central

1 a third world country and he showed you images from  
2 Bosnia and Sierra Leone, and I'm sure Counsel will  
3 get up and say, you know, that was just to make you  
4 feel sorry for my client. You know, Kinsora  
5 suggested that you take a drive down through South  
6 Central sometime if you think we're exaggerating.  
7 It is a third world country. The atmosphere, the  
8 military garb of the soldiers in the wake of the  
9 Rodney King riots, seeing dead bodies, people  
10 running, chasing people with guns -- you become a  
11 survivor, and Kinsora says it best. "The dye was  
12 already cast." By the time grandma got Donte, he  
13 was too small to not obey the rules, but the dye was  
14 already cast. He did not have any choice about  
15 whether or not to become desensitized to violence.  
16 It was that or die. So, he became a survivor. You  
17 become so desensitized to it -- and this is just by  
18 way of explanation -- how could someone do this?  
19 This is how. You know, you have blood splattered on  
20 your face when you're four or five years old, and  
21 there's this business of Niagara Falls. Mr. Whipple  
22 said they will use that to get you into a mob  
23 mentality. When you've had your own mom's blood  
24 probably splattered in your face, it becomes easier.  
25 Does that make it right? No. We're simply giving

1 you a picture of how someone becomes a person who  
2 can do this, and he is still a person despite all of  
3 this; he's still a person.

4 Well, what about the gang membership?  
5 What would you do to protect your family? You know,  
6 that's a fair question, because here you have John  
7 White, a small-in-stature boy, but the oldest boy  
8 who looked around him and he made up in his mind  
9 that he was not going to allow Keonna and Johnnisha  
10 to get on their knees and perform oral sex on the  
11 local thugs the way their mothers had. He made up  
12 in his mind that when these sisters -- his sisters  
13 decided that we're not going to do that, that he was  
14 not going to let Baby Sonny rape Keonna, he made up  
15 his mind that when that burglar came in and touched  
16 his sister the way that he did, that was the last  
17 time. He made up his mind that he was going to do  
18 what he had to do. The only thing he could do, he  
19 joined the gang. He would not let them be robbed of  
20 their self-respect. He would not do it. He had to  
21 stop the terror. And it never really stopped.  
22 Keonna told you that it never really stopped, but it  
23 got a whole lot better. And he thought that if he  
24 joined this gang and became one of them, it would  
25 make it better for his family, and it did for a

1 while, but he didn't know the whole gang deal.

2           We brought Dr. Martin Sanchez-Jankowski in  
3 here to talk to you, the man who came from being the  
4 son of Mexican migrant workers going all the way to  
5 MIT, a man who teaches at University of Cal at  
6 Berkeley, one of our most prestigious universities,  
7 a man who was jumped into a gang, been shot three  
8 times, stabbed two times and beaten about the face  
9 with a chain, we brought him in here to tell you  
10 what gangs are like, and he says they've been around  
11 for a long, long time, about 150 years, and he said  
12 they always exist in poor areas. It's very, very,  
13 very seldom we have a situation with the boys we  
14 have here, the 411 boys all out in Summerlin.  
15 That's very rare, very rare, but like any rule,  
16 there are exceptions to it, but he told you that  
17 gangs are very, very, very powerful, and that this  
18 is a gang, and Dr. Kinsora, who never met Jankowski,  
19 by the way, came in here and told you the same  
20 thing, that this is a gang under stress.

21           What did Jankowski tell you when a gang is  
22 under stress? They have to recruit constantly, and  
23 this little Blood gang, the Six Deuce Brims are  
24 surrounded by countless Crip gangs. Do you think  
25 Donte Johnson just made this up? You know, Martin

1 Jankowski is an award winning writer, written books  
2 that have received accolades, conducted research  
3 that is respected throughout the world, and they  
4 will probably want to pooh-pooh what he had to say.  
5 Notice, however, no one came in here and got up  
6 there and said, "I'm a gang expert, and I dispute  
7 what he has to say," because it's true. This man  
8 taught at the Quantico, Virginia FBI school. His  
9 credentials are impeccable. They're sterling, and I  
10 don't know anybody who is willing to go and be  
11 jumped into a gang, but he did it, and I dare say  
12 you can trust what he has to tell you about this  
13 gang situation.

14           Along with poverty comes desperation.  
15 Well, that's news. He told us that people join  
16 gangs for protection and for financial reasons.  
17 What else did he tell you? He said violence is the  
18 means of exchange that a gang has. It's how gangs  
19 relate to one another. It's how they relate to  
20 other gangs. So, when the State tells you that,  
21 well, Donte Johnson robbed a bank for financial --  
22 well, of course he did, and we'll talk about that  
23 again in a moment. And Donte Johnson committed  
24 these hideous crimes for money and for drugs. Well,  
25 of course he did. That's part of the gang

1 mentality. Now, we're not blaming the gang for  
2 anything, we are giving you what we are required to  
3 give you at this penalty hearing. We're introducing  
4 you to Donte Johnson and letting you see the factors  
5 as best we can, the factors that made who he is.  
6 There are things that are so far into you and I that  
7 it just blows the mind, and yet, they're real.

8           So, John joined the gang, and remember I  
9 told you in my opening comments that he thought that  
10 that would make things better, and you heard his  
11 family talk about when John was at home probably  
12 thinking, you know, it's not so bad here, we got  
13 food. Remember what he told the CPS workers? "I  
14 want to stay here. My parents are mean to me" --  
15 seven-and-a-half-year-old Johnny. So, here he is  
16 now, he's about 13, 14, he's joined the gang, and  
17 he's in. They stop trying to rape his sisters, and  
18 then he finds out he can't get any peace. You don't  
19 get to stay at home when you're in a gang. Every  
20 day Big Deko -- and he would tell grandma, according  
21 to Johnnisha, "We're going to go to the mall. We're  
22 going to go watch movies" or some nonsense. It was  
23 a form of slavery, I told you in my opening, and  
24 truly it was. Jankowski told you you don't get to  
25 decide not to go. And yes, the younger ones are

1 precious commodities. Remember that expression,  
2 "put in some work"? We talked about that in my  
3 opening. Say what you will about that bank robbery,  
4 but ladies and gentlemen, it was a lot of things,  
5 and sophisticated just is not one of them. A Ryder  
6 van that was rented -- wouldn't that make it more  
7 easier to trace, plus they're huge, they're bright  
8 yellow. Stuffing money -- money that has the -- the  
9 police reports will tell you this, they have what  
10 they call bait money. A sophisticated bank  
11 robber -- and I represented quite a few -- they know  
12 how to detect bait money, and they don't take it.  
13 These children took the bait money, and they  
14 grabbed -- what -- a little over a thousand dollars.  
15 That's sophisticated? You know, anything to work  
16 you into a tizzy. Was it wrong? Did it terrify  
17 those people? Of course. Was it dangerous? Yes.  
18 Was it criminal? Yes. It was a lot of things, but  
19 by George, it was not sophisticated. And to use  
20 that word -- I don't care what lieutenant from  
21 California says, it's just not true. He talked  
22 about one of the boys telling you that the older  
23 members of the gang had told them to do this because  
24 the older Crip members were on one of the Bloods --  
25 something that they told this man. Maybe it was a

1 cry for help by these juveniles. They're not  
2 supposed to tell, but they told. And he reads a  
3 report they were sitting in court laughing and  
4 joking in court. They're kids. Does that show  
5 you -- does that show sophistication? They're  
6 stupid kids. That's what kids do. They took these  
7 weapons of mass destruction, they could have killed  
8 people, and we fully concede that, but we just beg  
9 of you to please look at the big picture. Don't  
10 just take bits and pieces and let them create a  
11 fictional character, someone -- a John Gotti, bigger  
12 than life, that you have to kill for them. The law  
13 says "death is never required." If it was ever  
14 required in every quadruple homicide, ask yourself  
15 how come Vornelius Evans got life. He killed four  
16 people. You ask yourself that. The law doesn't say  
17 if you kill a certain number, then death is  
18 required. What the law says is that death is never  
19 required, because there are reasons, there are  
20 circumstances.

21           You know, you heard from Dr. Kinsora and  
22 you heard from Martin Jankowski, and you heard from  
23 Mr. Esten, and I know you're tired and I'm going to  
24 be as swift as I can. I know you're tired, and I  
25 appreciate your patience. This is the only time we



1 get to talk to you about John, so please bear with  
2 me. John does well in a controlled environment. He  
3 does so well that Nancy Hunterton came in here and  
4 told you that she saw compassion in him and that she  
5 would have come to court even if I hadn't subpoenaed  
6 her, and that she was -- she found value in that  
7 life. Nancy Hunterton saw it. We had to bring you  
8 his parole officer; they did not. We brought Craig  
9 Clark in here to tell you that he saw some value in  
10 that life and he explained to you why John quit  
11 going. Now that you've seen the map, can you blame  
12 him? He had to cross, according to Mr. Clark, seven  
13 different gangs to get to that school. The first  
14 two or three months he said he was doing great. Can  
15 you just see Johnny around there? They all call him  
16 "One Punch" because they thought it was funny  
17 because he was so small and he was going to knock  
18 somebody out with one punch, but he was happy to go  
19 to school. He was happy to clean up around there.  
20 He probably felt safe, but you know, he couldn't go  
21 there, because it's like running a gauntlet. And he  
22 says he had to take the bus, and one of the things  
23 that you find out as a gang-banger is that you don't  
24 get on the bus, and you're on the bus and you're  
25 trapped. Your enemies get on there and they kill

1 you. Remember the statistics that Dr. Kinsora  
2 showed you and the number of homicides? My God, the  
3 people that kill each other because of colors is  
4 ridiculous to us. That's his life. That's his  
5 life, and he has been serving that life sentence  
6 since the day he was born. Thank God it's not my  
7 life. I don't know about you. I don't think I  
8 would have made it. My client made it. It's his  
9 life. Let him go to Ely and just finish serving out  
10 his sentence.

11           You know, I had the opportunity to be at  
12 Arizona State University last October when my girls  
13 are getting ready to go to school, and they were  
14 scouting out this campus, and we were there for this  
15 football game. I did not notice then, but Pat  
16 Tillman, the brave young man who died, he went to  
17 school there, and they were retiring his jersey.  
18 And they had his family there and they had some of  
19 his teammates there, and it was an awesome ceremony.  
20 There was not a dry eye in that stadium, and it was  
21 packed on both sides. I began to think about that  
22 young man, a young man who -- I mean, they were  
23 talking about the way he was at school, the way he  
24 was, and I believe them, because of what he did. He  
25 gave up a chance to make millions, to be famous, to

1 be on TV. He just wanted to go and be a Ranger, an  
2 Army Ranger with his brother, and he gave his life  
3 for something that's bigger than revenge, bigger  
4 than an eye for an eye. And as I was preparing my  
5 remarks for you, did Pat Tillman die for Donte  
6 Johnson too or did he just die for those of us who  
7 live in Summerlin? I think not. And then when they  
8 captured Saddam Hussein in that war that makes no  
9 sense, perhaps, but because you know a young man  
10 like Pat Tillman would give up his life makes me  
11 proud of this country and the good in us, and then  
12 we captured that man, that man who has murdered and  
13 tortured millions, and a friend -- and we were  
14 watching the TV, and a friend of mine who has a  
15 five-year-old -- remember when they were giving  
16 Hussein -- and checking his ears and making sure he  
17 was okay and giving him a physical -- and this  
18 five-year-old says to daddy, "Daddy, why are we  
19 helping him? Why don't you" -- "Why don't we just  
20 kill him?" You know what my friend told his son?  
21 "Son, that's what we do. That's what we do."

22           The quality of mercy is not strained. It  
23 dropeth as a gentle rain from heaven. Upon the  
24 place beneath. It is twice blest. It is blessed by  
25 him that gives and him that takes. It is an

1 attribute to God himself, an earthly power doth show  
2 like a God when mercy seasons justice.

3           Why show Donte mercy? He has killed four  
4 people -- five. He has killed five people. Why  
5 show him mercy? He does not deserve it. Well, of  
6 course not. That's what mercy is. When you show  
7 mercy to your best friend who has gotten sideways  
8 with you, when you show mercy to your child who has  
9 made you angry, when you show mercy to people that  
10 you love, that's not mercy, that is  
11 self-gratification, because it makes you feel good.  
12 People who need mercy are the people that we hate,  
13 but they deserve mercy, they don't need it. That's  
14 not mercy, that's self-gratification.

15           You know, there was once a great teacher,  
16 and in his day, adultery was a capital offense. You  
17 know in this mob that had blood on their mind, they  
18 were thirsty. They wanted to kill and they also  
19 wanted to trap the teacher, and they brought this  
20 woman in, and they said, "You know what, we caught  
21 her in the very act, and you know what the law says?  
22 What are you going to do with her?" The teacher did  
23 not say the law was wrong; he did not say that they  
24 were wrong for wanting to kill her; he just kneeled  
25 down in the sand and he began to write. You know,

1 for over 2000 years all kind of scholars have tried  
2 to figure out what it was that he wrote, and to this  
3 day, they have not been able to determine what it  
4 was that he wrote. But at some point he looked up,  
5 and he said, "Those among you who don't have any  
6 fault, cast the first stone," and he went back to  
7 his writing. We don't know what he wrote. He  
8 looked up again, and all the lynch mob was gone.  
9 They were dispersed. It probably had something to  
10 do with mercy.

11 Don't kill my client.

12 **THE COURT:** All right. We're going to  
13 take another recess. Five minutes.

14 **THE BAILIFF:** All rise.

15 (Recess taken.)

16 **THE COURT:** Proceed.

17  
18 STATE'S REBUTTAL ARGUMENT

19 **MR. DASKAS:** It always strikes me as I  
20 participate in these penalty hearings how things get  
21 turned around. We hear so much about criminal  
22 defendants, about opportunities they never had,  
23 about their difficult childhoods, about privileges  
24 they were never afforded, and you heard a lot about  
25 Donte Johnson over the course of the past two and a

1 half or three weeks.

2 Don't misunderstand me; it's important for  
3 you to have as much information about this man as  
4 possible before you make the decision you are about  
5 to make, but allow me to remind you why we're here.

6 Let me introduce you to the four young men  
7 whose lives were ended by Donte Johnson on  
8 August 14th of 1998.

9 This is Peter Talamentez (indicating),  
10 Matt Mowen (indicating), Jeff Biddle (indicating)  
11 and Tracey Gorringer (indicating). These are the  
12 four young men Donte Johnson executed. None of them  
13 lived to see the ripe old age of 21. This is what  
14 brings us to court today, the four lives this  
15 defendant single-handedly ended in 1998, and the  
16 question for you is what is the appropriate  
17 punishment for this quadruple homicide? What value  
18 do we put on these four lives? Donte Johnson put a  
19 value on their lives. He decided their lives were  
20 worth less than a VCR and a PlayStation. But I want  
21 you to keep something else in mind. Donte Johnson  
22 didn't just end four lives, he destroyed countless  
23 other lives.

24 You know, we're going to finish our jobs  
25 here today or maybe tomorrow, and we're going to get

1 on with our lives. I'm sure you'll think about this  
2 case occasionally, but there are lives that will  
3 never, ever be the same, and you heard from a  
4 handful of those people last week, the family  
5 members who were affected by what Donte Johnson did.  
6 David Mowen, Matt's father, told you it's been 2,451  
7 days since his son was murdered, but it feels like  
8 yesterday. And I think I probably articulated what  
9 the other families are feeling, and I'll quote David  
10 Mowen. "It's the same day over and over again.  
11 It's the same pain, the same misery, the same anger  
12 every single day. It doesn't get better." After  
13 2,451 days, it hasn't gotten any easier, and it  
14 dawned on me as I listened to those parents, these  
15 parents weren't supposed to outlive their kids.  
16 Parents aren't supposed to bury their children.  
17 Remember Marie Biddle's testimony, Jeff's mom? She  
18 was recently going through some belongings, and she  
19 came across a card that Jeff had sent to his father,  
20 and he wrote something in that card, no doubt,  
21 jokingly. "Dad, what would you ever do without me?"  
22 Jeff's parents never imagined they would have to  
23 find out.

24                   These are the consequences of this man's  
25 decisions on August 14th, 1998. That's what brings

1 us to court today, and the question for you is, how  
2 do you punish him? It's not his lack of  
3 opportunities; it's not his tragic childhood that  
4 brings you to court; it's his decisions on  
5 August 14th of 1998. And the question for you is  
6 what punishment is due Donte Johnson, because that's  
7 why you're here. You're here to punish this man for  
8 his criminal conduct. This is a penalty hearing.  
9 You're not here to rehabilitate Donte Johnson,  
10 you're not here to protect society as the defense  
11 would have you believe, and you're not here to  
12 determine if he can be safely housed. That's not  
13 your decision. You're here to penalize Donte  
14 Johnson for his criminal conduct.

15           How do we do that? How do we punish Donte  
16 Johnson? Do we simply send him to prison for the  
17 rest of his life? Is that appropriate? Do we give  
18 Donte Johnson what he wants? And if it's as bad as  
19 the defense would have you believe, why are they  
20 begging for it? Why are they begging for it? Or is  
21 it like Warden Foster described. Ask yourselves  
22 this question. What would your punishment be if  
23 Donte Johnson had stopped after executing Peter  
24 Talamentez? Imagine for a moment that he was the  
25 only victim in this case. Assume that Pete was the



1 only one who was laid face down on the ground, duct  
2 taped, hands behind his back, motionless and  
3 defenseless when the defendant pistol whipped him,  
4 kicked him in the face and then executed him. What  
5 if that were the only crime Donte Johnson committed  
6 on August 14th? What would your punishment be?  
7 Keep in mind, you would still consider what he had  
8 done three months earlier on May 4th of 1998 when he  
9 shot Derrick Simpson in the face and stepped over  
10 him and calmly fired a bullet into his spine. Don't  
11 forget about the bank robbery at age 16. What would  
12 your punishment be? Based on this man's criminal  
13 record and the execution of a 17-year-old kid,  
14 wouldn't life in prison without parole at a minimum  
15 be your punishment? Would you actually consider  
16 letting this man out of custody if he stopped after  
17 executing Peter Talamentez?

18 If that would be your punishment, what  
19 about victim number two? What about Matt Mowen? If  
20 life in prison with no chance of parole is the  
21 punishment for the execution of a 17-year-old with  
22 this man's criminal background, what is the  
23 additional punishment for Matt Mowen? There has to  
24 be additional punishment for additional victims, or  
25 do we simply ignore that second murder from August

1 14th? Do we give Donte Johnson a pass? Do we  
2 pretend it never happened and just give him life  
3 without parole? Do we treat Donte Johnson as if he  
4 had stopped after executing Peter Talamentez or is  
5 something more required in this case of this  
6 defendant? Maybe some of you believe that a double  
7 murderer deserves life without parole.

8           What about victim number three? What  
9 about Jeff Biddle? Where is the punishment for that  
10 execution? Do we treat Donte Johnson as if he had  
11 stopped after killing Peter Talamentez and Matt  
12 Mowen? Do we pretend he never executed Jeff Biddle?  
13 Do we imagine that Jeff Biddle wasn't lying there  
14 taped up, defenseless and motionless when he was  
15 executed or is something more required of this  
16 defendant? Or do you now give him a pass for both  
17 the murder of Matt Mowen and Jeff Biddle, treat him  
18 the same as if he had stopped after killing  
19 17-year-old Peter Talamentez? Maybe some of you  
20 believe a triple murderer deserves life in prison  
21 without parole.

22           What about victim number four? What about  
23 Tracey Gorringer? How do we punish Donte Johnson for  
24 the murder of Tracey Gorringer, or do we pretend that  
25 never happened? Do you remember Tracey Gorringer?

1 He was the last of the four executions. Consider  
2 his execution. He was lying face down, fingers  
3 interlaced, hands behind his back, taped thoroughly  
4 and tightly, legs bound at the ankles with duct  
5 tape, unable to defend himself, unable to move. The  
6 defendant armed with a .380 handgun and his  
7 co-defendants armed with the sawed-off .30 caliber  
8 rifle and the gun with the folding stock no doubt  
9 pointed at Tracey Gorringer. What did Tracey  
10 Gorringer know and what did Tracey Gorringer hear?  
11 Let's think about that. He surely heard the first  
12 shot to Peter Talamentez. He was in the next room  
13 in the dining room. Maybe Tracey even heard the  
14 grunting noise that Pete made, the one that Donte  
15 Johnson laughed about.

16 **MS. JACKSON:** I'm sorry, Counsel.

17 Your Honor, I'm going to have to object.  
18 Under Butler vs. State, the Supreme Court  
19 specifically said that the prosecutor making  
20 comments about what the victim may have been  
21 thinking while he was being chased is improper  
22 unless there was some evidence of that in in the  
23 trial. We don't have any evidence of what Counsel  
24 is referring to now.

25 **MR. DASKAS:** Judge, there's absolutely

1 evidence that he was the last victim shot. The  
2 evidence of the grunts come from the defendant  
3 himself to his friends, and I'm not asking them to  
4 put themselves in the victim's shoes, entitled to  
5 consider all four executions in this case.

6 **MS. JACKSON:** He's asking them to  
7 speculate as to what the victims were thinking, your  
8 Honor. That's improper under Butler.

9 **THE COURT:** Sustained. You can say that  
10 but you can't say what they're thinking or what you  
11 think they were thinking.

12 **MR. DASKAS:** Shot number two, Matt Mowen.  
13 Matt Mowen was in the same room as Tracey Gorringer,  
14 perhaps a foot or two away. While Tracey Gorringer  
15 was still alive as the shots got closer and closer,  
16 Jeff Biddle took bullet number three inches away  
17 from Tracey Gorringer, yet Tracey Gorringer couldn't  
18 do anything about it. He couldn't move. He was  
19 completely defenseless as his three friends were  
20 executed, inches away -- and the question for you  
21 is, how do we punish Donte Johnson for that  
22 execution? Is life in prison still appropriate or  
23 do we pretend that execution never took place? Has  
24 not the defendant, at that point, forfeited his  
25 right to live?

1           If a quadruple killer who laughs about his  
2 crimes isn't deserving of the death penalty, then it  
3 has no meaning. If a quadruple killer who has  
4 previously killed isn't deserving of death, then the  
5 death penalty has no meaning. We heard some  
6 comments from defense counsel about other famous, if  
7 you will, criminals and horrendous acts of violence.  
8 Well, common sense and experience tells you that  
9 criminals who commit single homicides receive life  
10 in prison without parole. In fact, you heard from  
11 one, Termaine Lytle, their witness, convicted of a  
12 single homicide doing consecutive lives in prison  
13 with no chance of parole. That's the punishment  
14 they want for a five-time killer, the same  
15 punishment Termaine Lytle received. Is that  
16 appropriate? What message do we send to would-be  
17 criminals if we give this man without parole? Do  
18 you send this message, if you're going to kill, you  
19 may as well eliminate witnesses, you may as well  
20 commit additional murders because the punishment is  
21 going to be the same? I submit to you that's a  
22 dangerous message to send.

23           Understand this, as we discussed during  
24 jury selection, you may impose different punishments  
25 for different victims. For example, if you think he

1 deserves life in prison for the first execution, you  
2 can impose that sentence, but what do you do by the  
3 time you get to victim number four and that  
4 execution? Isn't death necessary in that case? I'm  
5 not suggesting that one of these lives is more  
6 valuable than the next, because it's not, but the  
7 point is there has to be additional punishment for  
8 additional victims or you make a mockery of the  
9 "what about his actions afterwards." Did he ever  
10 express remorse or did he laugh about this when he  
11 described the grunting noises these young men made,  
12 and I'll say it again, when he described how the  
13 blood squirted out of their heads like Niagara  
14 Falls, what punishment is due Donte Johnson? Is  
15 life in prison really appropriate for this man for  
16 what he did? And the defense notion that back in  
17 1993 when he was jumped into a gang that this was  
18 all predetermined, that he was going to find himself  
19 in this courtroom years later facing this charge, I  
20 don't buy it and it's not supported by the evidence.

21 Remember his sister Johnnisha, she told  
22 you she saw the exact same things Donte saw growing  
23 up, the exact same violent images, yet, here she  
24 sits, a law abiding respectful citizen. This wasn't  
25 predetermined.

1 Craig Clark told you there's no  
2 information to suggest this had anything to do with  
3 gang activity, because it didn't. He also told you  
4 that his parolees make it, that they look to him.  
5 Craig Clark as a role model; that they don't all  
6 commit quadruple murders like Donte Johnson did.

7 Dr. Jankowski, the defense gang expert,  
8 told you there's nothing to suggest this crime has  
9 anything to do with gang activity -- their  
10 witness -- because it didn't?

11 Dr. Kinsora, their neuropsych testified  
12 there's nothing to suggest this had anything to do  
13 with gang activity, because it didn't. More  
14 importantly, I asked Dr. Kinsora a question during  
15 cross-examination. Quote, "You're not suggesting  
16 that it was predetermined back in 1993 when he  
17 joined a gang that Donte Johnson would have  
18 committed a quadruple homicide, are you?"

19 "Answer: No, of course not.

20 "Question: At some point free will comes  
21 into play, true?

22 "Answer: Correct."

23 This wasn't predetermined. The bottom  
24 line is this: The evidence in this case proves only  
25 one thing. In 1996, Donte Johnson moved to

1 Las Vegas because he could make more money selling  
2 drugs here than in Los Angeles. His move was  
3 motivated by greed and it was supported by the  
4 testimony you heard of Derrick Simpson on videotape,  
5 the young man who has since died as a result of his  
6 gunshot wounds. Derrick Simpson testified that he  
7 bought drugs from Donte Johnson for months back in  
8 1998 because Donte Johnson was here dealing drugs.  
9 The greed is supported by the evidence of the  
10 homicide itself. It is undisputed the defendant  
11 went to Terra Linda to take money and drugs. He was  
12 motivated by greed, the same greed that caused him  
13 to move to Las Vegas in 1996 to make more money as a  
14 drug dealer. Nobody ordered Donte Johnson to move  
15 here. He did not have to cross rival gang territory  
16 to get to the Terra Linda house, and he certainly  
17 did not commit this crime to protect his family.  
18 This wasn't about gangs, this was about greed. The  
19 notion that this was predetermined when he was  
20 jumped into a gang is belied by the evidence  
21 presented. I don't buy it.

22 Donte Johnson went to the Terra Linda  
23 house to get drugs and money. He got neither --  
24 when he didn't get what he wanted, somebody had to  
25 pay. Unfortunately, for Peter Talamentez, he just



1 happened to be Mexican. That's why he was killed.  
2 And Mr. Whipple actually said and I'll quote --  
3 about Donte Johnson -- "his choices weren't that  
4 unreasonable given his background." Are you kidding  
5 me? His choices weren't that unreasonable given his  
6 background. Are you kidding me? Donte Johnson's  
7 background didn't make him commit a quadruple  
8 homicide and it did not even make him hold a gun  
9 inches from Derrick Simpson's face and squeeze the  
10 trigger.

11                Whatever punishment the 12 of you impose  
12 we will graciously accept. Whatever you  
13 collectively decide, we will accept, but I simply  
14 make one request of you. If after careful  
15 consideration you all agree on a verdict in this  
16 case and you're about to check the box that  
17 designates life without parole as your punishment  
18 for all four of these victims, I ask you to stop and  
19 ask yourselves, does that punishment fit this crime?  
20 Mr. Jackson -- I apologize -- Mr. Whipple and  
21 Miss Jackson were right about one thing. The death  
22 penalty is never required. On behalf of the State  
23 of Nevada, however, I would suggest that it is  
24 sometimes absolutely necessary. Donte Johnson is  
25 deserving of the death penalty.

1                   Thank you.

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

3                   (Bailiff sworn.)

4                   **THE BAILIFF:** I do.

5                   All rise. Ladies and gentlemen, at this

6 time bring your books with you and follow me this

7 way.

8                   (Outside the presence of the jury.)

9                   **THE COURT:** Counsel, before the jury comes

10 back, after they come back you are going to have a

11 chance to probably talk or express anything, but I

12 want to congratulate both sides for doing an

13 excellent job. You were very professional. I

14 thought both of you did a great job regardless of

15 the outcome.

16                   **MR. DASKAS:** Thanks, Judge.

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

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

19                   **THE COURT:** I will probably let them stay

20 however long they want to deliberate. If you give a

21 cell number to the clerk, she will call you if we

22 get a verdict.

23                   **MS. JACKSON:** All right.

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

25                   (Evening recess taken at 7:30 p.m.)

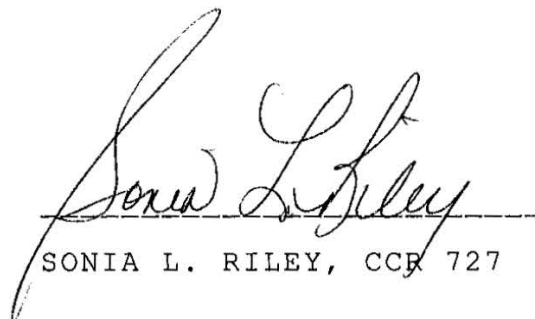
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REPORTER'S CERTIFICATE

STATE OF NEVADA)  
:SS  
COUNTY OF CLARK)

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

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

  
SONIA L. RILEY, CCR 727

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**FILED**

2005 MAY -6 A 9:55

*Shirley A. Riley*  
CLERK

DISTRICT COURT  
CLARK COUNTY, NEVADA

**ORIGINAL**

THE STATE OF NEVADA, )  
 )  
 PLAINTIFF, )  
 )  
 VS. ) CASE NO.: C153154  
 )  
 DONTE JOHNSON, )  
 )  
 DEFENDANT. )

REPORTER'S AMENDED TRANSCRIPT  
OF  
TRIAL BY JURY (DELIBERATIONS)  
(VOLUME XII)

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

DATED WEDNESDAY, MAY 4, 2005

FOR THE PLAINTIFF: ROBERT J. DASKAS, ESQ.  
DAVID STANTON, ESQ.  
FOR THE DEFENDANT: ALZORA B. JACKSON, ESQ.  
BRET WHIPPLE, ESQ.  
REPORTED BY: SONIA L. RILEY, CCR NO. 727

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

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RECEIVED  
MAY - 6 2005  
COUNTY CLERK

AA05380

1 APPEARANCES:

2 FOR THE PLAINTIFF:

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

9 FOR THE DEFENDANT:

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

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

21 \* \* \* \* \*

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

1           **THE COURT:** All right. Bailiff.  
2           (Bailiff sworn.)  
3           **THE BAILIFF:** I do.  
4           All rise. Ladies and gentlemen, at this  
5 time bring your books with you and follow me this  
6 way.  
7           (Deliberations commenced at 5:03 p.m.)  
8           (Outside the presence of the jury.)  
9           **THE COURT:** Counsel, before the jury comes  
10 back, after they come back you are going to have a  
11 chance to probably talk or express anything, but I  
12 want to congratulate both sides for doing an  
13 excellent job. You were very professional. I  
14 thought both of you did a great job regardless of  
15 the outcome.  
16           **MR. DASKAS:** Thanks, Judge.  
17           **MS. JACKSON:** Thank you, your Honor.  
18           **MR. STANTON:** Thank you, your Honor.  
19           **THE COURT:** I will probably let them stay  
20 however long they want to deliberate. If you give a  
21 cell number to the clerk, she will call you if we  
22 get a verdict.  
23           **MS. JACKSON:** All right.  
24           **MR. DASKAS:** Thank you.  
25           (Deliberations adjourned at 7:40 p.m.)

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REPORTER'S CERTIFICATE

STATE OF NEVADA)  
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COUNTY OF CLARK)

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CLARK, STATE OF NEVADA.

  
SONIA L. RILEY, CCR 727

**FILED**

DISTRICT COURT  
CLARK COUNTY, NEVADA

2005 MAY -6 A 8:31

**ORIGINAL**
  
CLERK

THE STATE OF NEVADA, )

PLAINTIFF, )

VS. ) CASE NO.: C153154

DONTE JOHNSON, )

DEFENDANT. )

## REPORTER'S TRANSCRIPT

OF

TRIAL BY JURY

(VOLUME XIII)

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

DATED THURSDAY, MAY 5, 2005

FOR THE PLAINTIFF: ROBERT J. DASKAS, ESQ.  
DAVID STANTON, ESQ.

FOR THE DEFENDANT: ALZORA B. JACKSON, ESQ.  
BRET WHIPPLE, ESQ.

REPORTED BY: SONIA L. RILEY, CCR NO. 727

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

**RECEIVED**

MAY - 6 2005

**COUNTY CLERK**



1 APPEARANCES:

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3 ROBERT J. DASKAS, ESQ.  
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SONIA L. RILEY, CCR NO. 727 (702) 455-3610

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PROCEEDINGS

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VERDICT

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E X H I B I T S

<u>COURT</u>	<u>DESCRIPTION</u>	<u>MKD.</u>	<u>ADM.</u>
A	Two-page redacted letter from Johnnisha previously Defense Exhibit JJ		6

\* \* \* \* \*



1           **THE COURT:** Okay.

2           **MR. WHIPPLE:** Thank you.

3           (Court Exhibit A was admitted into  
4 evidence.)

5           (Jury present.)

6           **THE COURT:** You can be seated.

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

9           **THE COURT:** Let the record reflect the  
10 presence of all members of the jury panel with the  
11 exception of the alternates who have been previously  
12 released.

13           Ladies and gentlemen, I understand that  
14 you reached a verdict. However, before I receive  
15 the verdict, I want to take this opportunity to  
16 thank you for spending three weeks here hearing the  
17 case. I'm not thanking you for any particular  
18 verdict or anything, but I just want to thank you  
19 for taking the time from your jobs and the home to  
20 come down here to listen to the case and make a  
21 decision.

22           The question may arise as to whether or  
23 not you can discuss this case with anyone. The  
24 answer is yes. As soon as you're released, you can  
25 talk to anyone you want to about the case, and

1 likewise, if you don't want to talk to anyone, you  
2 don't have to. And if someone should persist, let  
3 one of the bailiffs around the courthouse or Roy  
4 know, and we'll take care of it. All right.

5 Miss Carpenter.

6 **JUROR CARPENTER:** Yes.

7 **THE COURT:** Have you all reached a  
8 verdict?

9 **JUROR CARPENTER:** Yes, we have.

10 **THE COURT:** Would you give the verdict  
11 form to the bailiff, please?

12 All right. We'll have the verdicts read  
13 out loud.

14 **THE CLERK:** District Court, Clark County,  
15 Nevada. The State of Nevada, plaintiff, vs. Donte  
16 Johnson, defendant. Case No. C153154.

17 Verdict

18 The defendant, Donte Johnson, having been  
19 found guilty of Count XI, Murder of the First Degree  
20 With Use of a Deadly Weapon, Jeffrey Biddle, we the  
21 jury having found that the aggravating circumstance  
22 outweighs any mitigating circumstance, impose a  
23 sentence of death.

24 Dated at Las Vegas, Nevada, this 5th day  
25 of May, 2005, Jami Carpenter, foreperson.

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1           Dated at Las Vegas, Nevada, this 5th day  
2 of May 2005, Jami Carpenter, foreperson.  
3           **THE COURT:** Poll the jury.  
4           **THE CLERK:** Shelita Oliver, are these your  
5 verdicts as read?  
6           **JUROR OLIVER:** Yes.  
7           **THE CLERK:** Rachael Ritchie, are these  
8 your verdicts as read?  
9           **JUROR RITCHIE:** Yes.  
10          **THE CLERK:** Michael Krispli, are these  
11 your verdicts as read?  
12          **JUROR KRISPLI:** Yes.  
13          **THE CLERK:** Jami Carpenter, are these your  
14 verdicts as read?  
15          **JUROR CARPENTER:** Yes.  
16          **THE CLERK:** Theresa Thurston, are these  
17 your verdicts as read?  
18          **JUROR THURSTON:** Yes.  
19          **THE CLERK:** Linda Suckow, are these your  
20 verdicts as read?  
21          **JUROR SUCKOW:** Yes.  
22          **THE CLERK:** David Larson, are these your  
23 verdicts as read?  
24          **JUROR LARSON:** Yes, they are.  
25          **THE CLERK:** Kenneth Clarke, are these your



1 verdicts as read?

2 **JUROR CLARKE:** Yes.

3 **THE CLERK:** Twila Morgan, are these your  
4 verdicts as read?

5 **JUROR MORGAN:** Yes.

6 **THE CLERK:** Karen Batts, are these your  
7 verdicts as read?

8 **JUROR BATTs:** Yes.

9 **THE CLERK:** Matthew Taylor, are these your  
10 verdicts as read?

11 **JUROR TAYLOR:** Yes.

12 **THE CLERK:** Jeremy Summers, are these your  
13 verdicts as read?

14 **JUROR SUMMERS:** Yes.

15 **THE COURT:** Set a sentencing date in 30  
16 days.

17 Your Honor, may I be heard before the  
18 Court sets a sentencing date? I've discussed this  
19 matter with my client Mr. Johnson extensively. We  
20 have a PSI, recognizing it's five years old from  
21 2000. Mr. Johnson has been incarcerated since that  
22 time. The Court's formal sentencing in this matter  
23 is simply pro forma. We would request that he be  
24 sentenced as soon as possible so that he can get  
25 back to Ely.

1 Is that correct, Mr, Johnson, that is your  
2 request?  
3 **THE DEFENDANT:** That is correct.  
4 **THE COURT:** He can still go to Ely, can't  
5 he?  
6 **MS. JACKSON:** No.  
7 **THE COURT:** Why.  
8 **MS. JACKSON:** He needs to be sentenced  
9 first. He'd just like to be -- not to have to come  
10 back, your Honor.  
11 **THE COURT:** All right.  
12 **MS. JACKSON:** If we can do it as soon as  
13 possible, that is our sincere request to the Court.  
14 **THE COURT:** What date do you want?  
15 **MS. JACKSON:** If we could have one week  
16 from today, your Honor, we would be grateful.  
17 **THE COURT:** That will be the order.  
18 **MS. JACKSON:** Thank you.  
19 **THE COURT:** All right. We're in recess.  
20 **THE BAILIFF:** All rise.  
21 Ladies and gentlemen, step this way.  
22 **THE CLERK:** May 12 at 9:00 o'clock.  
23 **MS. JACKSON:** Okay.  
24 (The proceedings were concluded at 11:11  
25 a.m.)

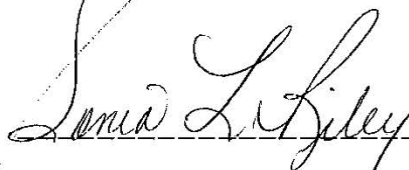
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REPORTER'S CERTIFICATE

STATE OF NEVADA)  
:SS  
COUNTY OF CLARK)

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

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



SONIA L. RILEY, CCR NO. 727

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DISTRICT COURT  
CLARK COUNTY, NEVADA

2005 JUN 15 PM 12:32

**ORIGINAL**

THE STATE OF NEVADA, )  
 )  
 PLAINTIFF, )  
 )  
 VS. ) CASE NO: C153154  
 )  
 DONTE JOHNSON, )  
 )  
 DEFENDANT. )

REPORTER'S TRANSCRIPT  
OF  
EVIDENTIARY HEARING

BEFORE THE HONORABLE JUDGE LEE A. GATES  
DISTRICT COURT JUDGE  
DEPARTMENT VIII  
11:21 A.M.

DATED TUESDAY, JUNE 14, 2005

FOR THE PLAINTIFF: ROBERT J. DASKAS, ESQ.  
DAVID STANTON, ESQ.  
FOR THE DEFENDANT: ALZORA B. JACKSON, ESQ.  
BRET O. WHIPPLE, ESQ.

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\* \* \* \* \*



1 LAS VEGAS, NEVADA; TUESDAY, JUNE 14, 2005

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

3 \* \* \* \* \*

4  
5 **THE COURT:** Let the record reflect we're  
6 on the record here in The State of Nevada vs. Donte  
7 Johnson.

8 Let the record reflect this is a motion  
9 that was filed by the defense counsel. Mr. Johnson  
10 is not present.

11 Do you waive his presence, Counsel?

12 **MS. JACKSON:** Yes, your Honor. The record  
13 will reflect that he also waived his presence on the  
14 record on June 6th. It was his sentencing. He knew  
15 this hearing was coming. He specifically waived any  
16 appearance in that regard.

17 **THE COURT:** All right.

18 Miss Jackson, this is your motion. Who is  
19 your first witness?

20 **MS. JACKSON:** Thank you, your Honor. The  
21 defense, on behalf of Mr. Johnson, would call  
22 Miss Jami Carpenter to the stand, please.

23 **THE COURT:** Just for the record, we polled  
24 the jurors. Two of them, Miss Knight and  
25 Miss Carpenter, didn't want to be filmed, and the

1 Court is going to order that the press and camera  
2 not film them because they're entitled to some  
3 anonymity and privacy for safety reasons because of  
4 the allegations that certain gangs may be involved  
5 or not involved, but they're fearful; so, we've  
6 ordered them not to be filmed. That's for the  
7 record.

8 Bring in Miss Carpenter.

9 The other ones can, they don't care, but  
10 just those two. Of course, you can record the  
11 voice.

12 **THE CLERK:** Remain standing; raise your  
13 right hand.

14 (Oath administered.)

15 **THE WITNESS:** Yes.

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

18 **THE WITNESS:** Jami Carpenter, J-A-M-I,  
19 C-A-R-P-E-N-T-E-R.

20

21 DEFENSE WITNESSES

22 **JAMI CARPENTER,**

23 being called as an adverse witness on  
24 behalf of the Defense, was first duly  
25 sworn and testified as follows:

1 DIRECT EXAMINATION

2 **BY MS. JACKSON:**

3 Q Good morning, Miss Carpenter.

4 You appeared here this morning pursuant to  
5 a subpoena that was issued by my office?

6 A Yes.

7 Q Of course, you recognize who I am?

8 A Yes.

9 Q And isn't it true that you were a juror in  
10 the State of Nevada vs. Donte Johnson?

11 A Yes.

12 Q As a matter of fact, you were selected  
13 foreperson of that jury?

14 A Yes.

15 Q Now, you recall during voir dire  
16 examination that this Court asked you if you had any  
17 information about this particular case?

18 A Yes.

19 Q Okay.

20 And do you recall what you were asked and  
21 what you said?

22 A Yes.

23 Q Okay.

24 What were you asked?

25 A I was asked if I knew about the case, and

1 I said it was on the questionnaire that we had been  
2 given when we were first selected as jury members.

3 Q Now, you specifically recall the Court  
4 asking you if you had discussed with other jurors  
5 the procedural posture of this case, that is to say,  
6 how it is that you, as a jury, came to be here?

7 A Yes.

8 Q And what was said?

9 A What did I say?

10 Q Um-hmm.

11 A I said that I had heard that the Supreme  
12 Court had ruled that a case had to be decided by a  
13 jury.

14 Q And you were specifically asked if you had  
15 heard that a three-judge panel imposed death on  
16 Mr. Johnson.

17 Do you recall that?

18 A No.

19 Q If I show you a copy of your transcript,  
20 would that refresh -- refresh your memory, you  
21 think?

22 A I remember that it was asked if I had  
23 heard that a three-judge panel --

24 **THE COURT:** That wasn't the question,  
25 ma'am. She said if you look at the transcript, will

1 that help you refresh your memory?

2           **THE WITNESS:** I have a very clear memory,  
3 but if you wanted to show me.

4           **MS. JACKSON:** I'm going to show page 2-  
5 290. For the record, the question to the witness  
6 is -- the Court asked the direct question, quote,  
7 "Did you also say that he had been sentenced to  
8 death?"

9           **THE COURT:** Well, I thought you were going  
10 to show it to her. Show it to her and let her see  
11 it to see if it refreshes her memory, if she can  
12 remember.

13 **BY MS. JACKSON:**

14           Q       Miss Carpenter, this is a transcript of  
15 those proceedings. I'll refer you back to the first  
16 page so you can feel comfortable that this was, in  
17 fact, you.

18                    You were Prospective Juror No. 262; is  
19 that correct, ma'am?

20           A       Yes.

21           Q       This is your testimony. You will refer  
22 here (indicating) -- do you see that question and  
23 your answer?

24           A       My answer is "No, I did not." And  
25 that's --

1           Q       So, it's your testimony that you never  
2 knew that the defendant had received death?

3           A       I did not.

4           Q       And you did not share that information  
5 with other prospective jurors sitting out in that  
6 hallway?

7           A       I did not.

8           Q       So, if I tell you that three other jurors  
9 said that you did, would you be surprised?

10           **MR. DASKAS:** Objection, Judge. That's an  
11 improper question. That's assuming facts not in  
12 evidence.

13           **MS. JACKSON:** I can go to --

14           **THE COURT:** True.

15           **MS. JACKSON:** I can go to -- I can ask her  
16 some questions, your Honor.

17           **THE COURT:** All right.

18 **BY MS. JACKSON:**

19           Q       Did you make a statement in the presence  
20 of Prospective Juror No. 40 -- No. 42 -- and these  
21 statements would have been, quote, "No. 262 said  
22 that she had seen the news that morning and seen  
23 that the defendant had already been given a death  
24 sentence by a three-judge appellate panel, and this  
25 was to empanel a jury because there was a

1 constitutional issue as to whether the Judge could  
2 give the death penalty as opposed to jurors. That  
3 was all that she said," end quote, page 4.

4 Did you make that statement Prospective  
5 Juror No. 42?

6 A I made a statement that I had heard on the  
7 news --

8 Q Yes or no, ma'am. Did you make that  
9 statement to Juror No. --

10 A I made part of that statement.

11 Q Did you make the part that relates to,  
12 quote, "The defendant had already been given the  
13 death sentence"?

14 A I do not remember making that statement.

15 Q But you could have made that statement?

16 A No, I do not think so, because I didn't  
17 have that information.

18 Q Okay.

19 Did you declare to Prospective Juror  
20 No. 164 -- it says that you were talking about what  
21 you saw on the news. I'm going to read it verbatim,  
22 page 146. "She was talking about what she saw on  
23 the news the night before or something like that on  
24 the day of when we were sitting there, and she kind  
25 of summarized what she saw on the news, and I turned

1 to Larry, and I told him that 'she need to keep her  
2 big mouth shut or something to that effect, because  
3 we don't have this kind of time to just sit here for  
4 nothing.'"

5 Do you recall making those statements in  
6 that juror's -- prospective juror's presence?

7 A Absolutely not.

8 **MR. DASKAS:** Judge, if I might just  
9 interpose an objection for the record, the issue  
10 that brings us here today is the accusation that  
11 this juror had her mind made up regarding the  
12 sentence she would impose before deliberations  
13 began, and what this has to do with that issue -- I  
14 don't see the relevance, Judge. The question should  
15 be whether she had her mind made up.

16 **MS. JACKSON:** Your Honor --

17 **MR. DASKAS:** So, I object to the relevance  
18 of this line of questioning.

19 **THE COURT:** Counsel?

20 **MS. JACKSON:** If I may respond. As I  
21 stated to the Court and counsel on many occasions  
22 that this particular juror had an agenda and that  
23 she was basically making statements about the death  
24 penalty before this hearing began and that that,  
25 therefore, is evidence of her intention of her bias



1   beforehand, that we can't look at this in a vacuum,  
2   and for those reasons, we are alleging that she made  
3   statements about the death penalty before this trial  
4   began, and that she came in under oath, she denied  
5   making those statements, and therefore, it shows  
6   evidence, if you will, of the fact that she had her  
7   mind made up in that regard before these hearings  
8   ever began.

9               **THE COURT:** Counsel, the only problem with  
10   that is we went over all of this before, and you  
11   neither -- she wasn't excused for cause. She was  
12   admonished by the Court. I mean, the problem with  
13   this case is so many people had heard about it, it  
14   was all over the news, there was so much publicity  
15   about it, and the Court was careful to go over it  
16   with them and to ascertain whether or not those  
17   statements were made, and you were aware that they  
18   had allegedly been made, and of course, she was not.  
19   You didn't use any peremptory challenges to get rid  
20   of her. I don't know if you had made a proper  
21   challenge for cause, but anyway, she wasn't removed  
22   for cause, and not only that, they were instructed  
23   by the Court to disregard and not let anything that  
24   they may have heard before the case to influence  
25   their decision and to put it aside. The Court took

1 them under oath that that's what they would do, so  
2 it's not like this is -- I agree with the State  
3 here, I think this is already -- we've been over  
4 this before, and I don't know how this plays into  
5 the "she had her mind made up already." I  
6 thought -- the idea, I thought, is that you were  
7 alleging that she was writing a book, and that she  
8 was -- maybe her decision was influenced by her  
9 writing the book or something to that effect --

10 **MS. JACKSON:** Your Honor, that --

11 **THE COURT:** -- she had her mind made up  
12 and she was doing this just to write a book. I  
13 don't think this goes to that.

14 **MS. JACKSON:** Your Honor, that is our  
15 contention that, in fact, Miss Carpenter, the  
16 prospective juror, as a prospective juror from the  
17 beginning to the end, that she had an agenda, and I  
18 believe that, for the record, we had no peremptory  
19 challenges left at that time, and because of -- we  
20 have the luxury now -- we could not challenge her on  
21 a peremptory basis. We had none left.

22 **THE COURT:** What do you mean you had none  
23 left? When was she seated? She was Juror No. --  
24 she was Juror No. 4, so you had a lot of peremptory  
25 challenges left when she was seated.

1           **MS. JACKSON:** No.

2           **THE CLERK:** She was actually No. 262.

3           **MS. JACKSON:** She was No. 262. We were  
4 well, well, well into the process.

5           **THE COURT:** There was a number of people  
6 seated after her.

7           **MS. JACKSON:** Those were alternates seated  
8 after her.

9           **THE COURT:** If she's Juror No. 4 --

10          **MR. DASKAS:** Judge --

11          **THE COURT:** How many was left? I'm sure  
12 with the time that I excluded her -- the transcript  
13 will tell you how many was left after she was  
14 seated. She came in toward the end.

15          **MR. DASKAS:** What the transcript does bear  
16 out, Judge, and I think most importantly, is that  
17 they passed this prospective juror for cause, and  
18 what I'm hearing now is, in hindsight, they believe  
19 they potentially had a basis for cause. Well, they  
20 had the same information at the time Miss Carpenter  
21 was questioned that they do today, and they did not  
22 choose to challenge her for cause.

23          **THE COURT:** Anyway, the Court is going to  
24 sustain the objection.

25          **MS. JACKSON:** Your Honor, I only have one

1 left. For the record, it would take about two  
2 minutes.

3 **THE COURT:** If you only have one left, go  
4 on.

5 **MS. JACKSON:** I have one left. I have a  
6 list of three, and I completed one, if I may make  
7 the record.

8 **BY MS. JACKSON:**

9 Q Miss Carpenter, did you declare to  
10 Prospective Juror No. 207, Miss Vu, that you were  
11 aware that this defendant had been found guilty,  
12 that the punishment was death? Did you declare that  
13 to another juror, No. 207?

14 A I think I've already answered that, that I  
15 did not know that.

16 Q Did you, ma'am? Did you or did you not  
17 declare to No. 207 that the prior punishment had  
18 been death, "yes" or "no," please?

19 A No.

20 Q Well, if I read to you and to the record  
21 Miss Vu's testimony -- the Court asked prospective  
22 juror, "It was said that the verdict was reached" --  
23 and she's talking about what you told her -- the  
24 Court asked, "What verdict was that?"

25 "PROSPECTIVE JUROR: The

1 defendant was found guilty.

2 "THE COURT: All right. We know  
3 that he was found guilty, but what was  
4 the punishment?

5 "PROSPECTIVE JUROR: The  
6 punishment was the death penalty.

7 "THE COURT: And what happened?

8 "PROSPECTIVE JUROR: It was  
9 decided by the Supreme Court judges of  
10 Nevada; however, it should have been  
11 decided by a juror."

12 Did you provide that information to  
13 juror -- Prospective Juror No. 187 -- strike that,  
14 Prospective Juror 207?

15 A I said that we were all in the hallway,  
16 several of us.

17 **MS. JACKSON:** "Yes" or "no," ma'am?

18 **THE WITNESS:** And I said -- no. I'll have  
19 to say no.

20 Q Thank you.

21 Now, with respect --

22 **MR. DASKAS:** Judge, I apologize. I  
23 thought there was just one more question.

24 **MS. JACKSON:** On that issue. I'm not  
25 done. On that issue, you made an objection

1 regarding that relevance. I said I had one more on  
2 that.

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

4 **MS. JACKSON:** I had just begun with this.

5 **BY MS. JACKSON:**

6 Q Did you serve as a foreperson on the Donte  
7 Johnson jury?

8 A Yes.

9 Q And is it true that you declared on a  
10 daily basis to alternate Theresa Knight that you  
11 were writing a book about this process during the  
12 trial itself?

13 A No.

14 Q When did -- did you, at some point, decide  
15 to write a book?

16 A I thought about it.

17 Q The question, ma'am, was did you, at some  
18 point, decide to write a book?

19 A I have not decided to write a book.

20 Q And you never told anyone that?

21 A I said that I thought it would be  
22 interesting to write a book, but I have not decided  
23 to write a book.

24 Q However, isn't it true that you, during  
25 the process of Donte Johnson's hearing, would take

1 notes and write down information from the witness  
2 stand and things of that nature and preserve that  
3 information in the event that you decided you wanted  
4 to write a book?

5 A Absolutely not. I took notes so that I  
6 could make an informed decision when it came to  
7 deliberation.

8 Q And you never told Theresa Knight that  
9 different information that was brought up during the  
10 penalty phase would be used in your book?

11 A No.

12 Q You never told her that you were writing a  
13 book on being a juror in the Donte Johnson case?

14 A You make it difficult to answer these  
15 questions, because what we talked about in the  
16 hallway had nothing to do with the Donte Johnson  
17 case. I was talking about the experience of being a  
18 juror.

19 Q They are very simple questions, ma'am.  
20 Did you tell another alternate, Theresa  
21 Knight, that you were writing a book on being a  
22 juror in the Donte Johnson case? "Yes" or "no"?

23 A But I wasn't writing a book.

24 Q Ma'am, did you say that you were?

25 A I said I was -- I was -- it would be an

1 interesting experience to write a book about this,  
2 but I am not writing a book.

3 **THE COURT:** I have a question for you.  
4 Have you ever written a book?

5 **THE WITNESS:** No, I have not.

6 **THE COURT:** So, you never published a  
7 book?

8 **THE WITNESS:** No.

9 **THE COURT:** Heck, I'm writing a couple of  
10 books.

11 **BY MS. JACKSON:**

12 Q You had an attorney -- as a matter of  
13 fact, he's in the court --

14 **MR. DASKAS:** Objection to relevance, your  
15 Honor.

16 **MS. JACKSON:** He's in the courtroom --  
17 Mr. Coleman.

18 **THE COURT:** Let her get the answer out --  
19 I mean the question out.

20 **BY MS. JACKSON:**

21 Q Isn't it true that you had an attorney who  
22 is in the courtroom, a Mr. Coleman --

23 What's your first name, sir?

24 **MR. DASKAS:** Objection to relevance,  
25 Judge.



1           **THE COURT:** I don't know what the question  
2 is.

3           **MR. DASKAS:** The question is -- she's  
4 turning around asking somebody in the audience a  
5 question, and I don't think that's going to be borne  
6 out by the record. There's nothing relevant about  
7 this line of questioning.

8           **MS. JACKSON:** Oh, yes, it is. Only people  
9 who think they've done something wrong hire counsel.

10          **MR. DASKAS:** Let's talk about what she  
11 does for a living then, Judge.

12          **THE COURT:** Excuse me. Excuse me. That's  
13 preposterous.

14          **MS. JACKSON:** Am I allowed to ask my  
15 question, your Honor?

16          **THE COURT:** Yeah, you can ask the  
17 question.

18 **BY MS. JACKSON:**

19           Q     Ma'am, is it true that after you were  
20 subpoenaed by my office, in particular me, that you  
21 hired an attorney?

22          **MR. DASKAS:** Judge, my objection is to  
23 relevance.

24          **THE COURT:** She can answer.  
25               Go on. I don't know what --

1 **BY MS. JACKSON:**  
2 Q Did you? Did you hire an attorney?  
3 A No, I did not.  
4 Q Well, isn't it true that you told me that  
5 you did?  
6 A I have not spoken to you.  
7 Q And that my office was to serve a  
8 Mr. Coleman with my subpoena and not you directly?  
9 A I have not spoken with you and told you  
10 that at all.  
11 Q My representative, my investigator --  
12 isn't it true that you instructed her that she was  
13 to serve your attorney?  
14 A I did not.  
15 Q Okay.  
16 A I did not say that.  
17 Q So, is it your testimony that a  
18 Mr. Coleman, the man who gave you advice this  
19 morning right in front of me, is not your attorney,  
20 the man who is seated, for the record, directly  
21 behind him -- behind me, who has represented to me  
22 that he is -- in front of the DA -- that he is  
23 Miss Carpenter's attorney? You are denying that?  
24 **MR. DASKAS:** Judge, let me interpose an  
25 objection, number one, to Miss Jackson testifying;

1 number two, she's assuming facts not in evidence;  
2 number three, the problem is the way she phrased  
3 this question. She asked the witness if she hired  
4 an attorney, and I'm sure that's the distinction  
5 this witness is making and when Miss Jackson doesn't  
6 like the answer, now she's becoming argumentative;  
7 so, I object on those grounds.

8 **THE COURT:** First of all, this is sort of  
9 like an adverse witness, so she doesn't have to --  
10 she can ask leading questions, which that was --  
11 it's a leading question.

12 Secondly, she didn't answer the question.  
13 All right?

14 **BY MS. JACKSON:**

15 Q Do you have --

16 **THE COURT:** Overruled.

17 **BY MS. JACKSON:**

18 Q Do you have an attorney?

19 A I have an attorney present who is here as  
20 a friend to give me advice. I have not hired an  
21 attorney.

22 **BY MS. JACKSON:**

23 Q But you do have an attorney?

24 **MR. DASKAS:** Objection. Asked and  
25 answered, Judge. She just said she did.

1                   **THE COURT:** Overruled.

2 **BY MS. JACKSON:**

3           Q       You do have an attorney?

4           A       I guess in that framework, yes.

5           Q       Why is it that you thought you needed an  
6 attorney when you were simply being summoned as a  
7 juror?

8                   **MR. DASKAS:** Objection to relevance,  
9 Judge.

10                   **MS. JACKSON:** No, your Honor, it may go to  
11 this -- we're here because we've alleged misconduct.

12                   **THE COURT:** I don't see how -- anybody can  
13 hire an attorney whether you've done something or  
14 not, so sustained.

15 **BY MS. JACKSON:**

16           Q       Isn't it true that you said to my  
17 investigator, Maribel Rosales, and I quote here --  
18 when Miss Maribel spoke with you, Maribel Rosales  
19 spoke with you -- that's R-O-S-A-L-E-S -- let's back  
20 up.

21                   You were first contacted by Miss Rosales  
22 on or about May 26th.

23                   Does that sound accurate, ma'am?

24           A       Okay.

25           Q       Does that sound accurate?

1           A       That sounds fine, yes.

2           Q       Okay.

3                    She asked you some questions about the

4 Donte Johnson case -- yes?

5           A       Yes. Ah -- she did not ask about the

6 case; she asked about the jury experience.

7           Q       All right.

8                    And you expressed to her that you knew the

9 sentencing had been postponed, correct?

10          A       Yes.

11          Q       And then you asked Miss Rosales if her

12 being there interviewing you had anything to do with

13 the postponement?

14          A       I don't recall asking that.

15          Q       Could you have asked that?

16          A       I could have.

17          Q       Okay.

18                   And during the course of that interview,

19 you never mentioned anything about writing a book,

20 correct?

21          A       Correct.

22          Q       Okay.

23                   And then she contacted you again, I

24 believe by phone, on June 2nd, and she expressed to

25 you that some of the other jurors had mentioned that

1 you had -- were writing a book, and your response  
2 was, "Oh, yeah. That was a way of letting off  
3 steam."

4 Did you make that statement?

5 A Yes.

6 Q And further, that "this was a way of  
7 keeping all of the jurors connected"?

8 A Yes.

9 Q Okay.

10 You further indicated that you had thought  
11 about writing a book but hadn't done it yet, and  
12 then you asked if that was illegal?

13 A In jest, yes, I did.

14 Q Okay.

15 You indicated you had taken lots of notes  
16 and that you had pages of notes stored in the bottom  
17 of a drawer, correct?

18 A Correct.

19 Q And that since you were an English  
20 teacher, you had always wanted to write a book, and  
21 that you had already asked some jurors if you could  
22 use their real names?

23 A Yes.

24 Q Okay.

25 But your testimony here today is that you

1 had not made up your mind whether or not you were  
2 going to write a book?

3 A That's true.

4 Q And your testimony is that you never told  
5 anybody that you knew my client had received the  
6 death penalty before?

7 A That's true.

8 Q Did you have your mind made up before all  
9 of the evidence was in as to what your decision was  
10 going to be, ma'am?

11 A I did not.

12 Q Now the Wednesday morning before  
13 deliberations, did you state to Theresa Knight that  
14 you, quote, "felt sick to your stomach and could not  
15 eat because one of the parties was going to be upset  
16 with your decision"?

17 A Yes.

18 Q And you declared that to Theresa Knight?

19 A I declared that to all of us standing,  
20 waiting.

21 Q And that was before all the evidence was  
22 in?

23 A I thought -- I don't recall when that was.

24 Q So, it could have been before all of the  
25 evidence was in?

1           A       Yes.

2           Q       The notes that you provided to the Court  
3 this morning, are those all of the notes, ma'am,  
4 that you prepared in preparation for the book that  
5 you were writing?

6           **MR. DASKAS:** Objection, Judge. That  
7 assumes facts not in evidence.

8           **THE WITNESS:** What now?

9           **MR. DASKAS:** The form of the question was  
10 that you reviewed some notes this morning, and  
11 Miss Jackson asked if those are the notes that you  
12 prepared in anticipation of writing a book. There's  
13 been no testimony that that's why she took notes.  
14 Some of the notes were taken during witness  
15 testimony from the stand that you reviewed, Judge;  
16 so, the form of the question is improper.

17           **MS. JACKSON:** Your Honor, I went through  
18 each question with Miss Carpenter. She admitted  
19 that she told Miss Knight --

20           **THE COURT:** Overruled.

21                   Go on.

22           **MS. JACKSON:** All right.

23 **BY MS. JACKSON:**

24           Q       Did you give the Judge, the Court, all of  
25 the notes that you made in preparation for the



1 writing of your book?

2 **THE COURT:** So, you're saying these notes  
3 are made in preparation for the writing of the book?

4 **MS. JACKSON:** Yes.

5 **BY MS. JACKSON:**

6 Q You're under oath, Miss Carpenter.

7 **MR. DASKAS:** I'm sure she's aware of that,  
8 Judge. That's improper.

9 **MS. JACKSON:** Your Honor, I object to  
10 counsel testifying or commenting.

11 **THE COURT:** Stop commenting. She's  
12 correct.

13 Counsel, you will have your turn to  
14 examine her.

15 **THE WITNESS:** Those are all of my notes.

16 **THE COURT:** Excuse me.

17 Rephrase the question.

18 **BY MS. JACKSON:**

19 Q Have you, in fact, complied with the  
20 Court's order to turn over all of the notes that you  
21 made in conjunction with the Donte trial in  
22 preparation for the writing of your book?

23 **THE COURT:** Hold on a minute. What was  
24 the question? Are you asking for the notes about  
25 the trial or about the book, Miss Jackson, or are

1 you combining them both?

2           **MS. JACKSON:** Your Honor, for the record,  
3 she was provided a copy of an order which said, "It  
4 is hereby ordered that any and all notes, electronic  
5 recordings, digital recordings, any type of  
6 memorialization created by or in the possession of  
7 Jami Carpenter or any party, agent or anyone acting  
8 on her behalf relating to the Donte Johnson case be  
9 preserved." I followed this order with a subpoena  
10 duces tecum which contained this same language  
11 asking her to bring those items to court. The Court  
12 ruled before these proceedings.

13           **THE COURT:** I know. Just ask the  
14 question. Don't give me a rendition of all of this;  
15 just ask the question. I couldn't understand the  
16 question.

17           **MS. JACKSON:** Okay.

18           **THE COURT:** It was kind of long, so I'm  
19 just telling you, ask the question over again.

20 **BY MS. JACKSON:**

21           Q       Miss Carpenter, did you turn over to the  
22 Court all notes, electronic recordings, digital  
23 recordings or any type of memorialization created by  
24 you or in your possession during the course relating  
25 to the Donte Johnson case?

1           A       Yes.

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

4           **THE COURT:** Ma'am, I have a couple of  
5 questions for you.

6

7                   EXAMINATION BY THE COURT

8           **THE COURT:** Now, this book here, this is  
9 your jury notebook here --

10          **THE WITNESS:** Right.

11          **THE COURT:** -- with the notes in it?

12          **THE WITNESS:** Yes.

13          **THE COURT:** And then I have -- when did  
14 you -- I have another, I think -- one, two, three --  
15 three pages of loose-leaf notes.

16               When did you make these notes, ma'am?

17          **THE WITNESS:** Those were in the hallway,  
18 but the jury notes had to stay in here. These were  
19 just notes as we were sitting in the hallway.

20          **THE COURT:** That you made.

21               Do you have any other notes other than  
22 these notes?

23          **THE WITNESS:** Absolutely not.

24          **THE COURT:** Anything else, Counsel?

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

1                    DIRECT EXAMINATION (CONT'D.)

2 **BY MS. JACKSON:**

3            Q        Miss Carpenter, did you destroy any notes?

4            A        I did not.

5            **MS. JACKSON:** No, your Honor. I would  
6 renew my request that A, that we be allowed, as  
7 Donte Johnson's advocates, to see those items which  
8 the Court has denied. The record will reflect that  
9 we object to that.

10           We're also making a second request that  
11 these records that the Court has reviewed be made a  
12 Court exhibit under seal and be made as part of the  
13 record.

14           **THE COURT:** Mr. Daskas, what's your  
15 response to that?

16           **MR. DASKAS:** I'd like to ask some  
17 questions on cross, but before --

18           **THE COURT:** I know before -- I'm talking  
19 about her motions first.

20           **MR. DASKAS:** It's a couple. Judge, the  
21 defense is required to meet some threshold before  
22 they can go on a fishing expedition and review these  
23 jurors' notes. Now, at my request, Judge, you  
24 reviewed this juror's notes in camera for the  
25 specific issue of whether she had her mind made up

1 prior to the deliberation, because that is the  
2 allegation made by the defense. I'm satisfied that  
3 this Court has represented to us that you reviewed  
4 the notes thoroughly, and secondly, that there's  
5 nothing in the notes that suggest this juror had her  
6 mind made up. So, based on that, your comments can  
7 be part of the record for appellate review, and the  
8 defense is not entitled to review this juror's notes  
9 since they haven't met the threshold necessary to  
10 suggest juror misconduct, and there's no reason to  
11 make these part of the court exhibit. You can make  
12 the record that there's nothing in there to suggest  
13 juror misconduct, and that preserves the issue from  
14 now until the end of time.

15 **THE COURT:** All right.

16 This is what -- this is what the Court --  
17 the Court did examine the notes that I was given,  
18 and of course, for the record, the notes were pretty  
19 much verbatim of the evidence that was presented by  
20 the attorneys and the statements by the attorneys.  
21 In fact, there was not a lot of analysis, it was  
22 just a rendition of facts, and of course, the other  
23 three loose-leaf papers just concern what was  
24 happening when they were being called in for jury  
25 service, when they were taking their breaks, how

1 long the breaks were, little notes on things that we  
2 did, nothing that would suggest that she had her  
3 mind made up or suggest any kind of bias or  
4 prejudice on her part. But this is what I am going  
5 to do. I am going to make a copy of them, and I'm  
6 going to seal them as part of the record for  
7 appellate review, but of course, the attorneys are  
8 not to go into the deliberative process of the  
9 jurors, and I think that's a rule that's been around  
10 since we've been having jury trials. You can't go  
11 in there and look at how they came up with their  
12 decisions or why and what was said and what they  
13 said, because it doesn't show any kind of prejudice,  
14 bias or any kind of jury misconduct, and I don't see  
15 any from these notes here -- any misconduct on the  
16 part of this juror so far. I don't know -- I'm  
17 talking about just in reference to the notes. I  
18 don't know what transpired otherwise that I'm not  
19 aware of, but just of course, with the notes, that's  
20 what the Court found.

21 Proceed with your cross.

22 (Court Exhibit I was marked for  
23 identification.

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

25 /////

1 CROSS-EXAMINATION

2 **BY MR. DASKAS:**

3 Q Miss Carpenter, you were asking questions  
4 about the alternate juror Theresa Knight.

5 Did Theresa Knight participate in the  
6 deliberations of the Donte Johnson case?

7 A No.

8 Q You were asked some questions about  
9 Maribel Rosales, the defense investigator. Did  
10 Miss Rosales participate in the jury deliberation of  
11 the Donte Johnson case?

12 A No.

13 Q You were asked some questions about  
14 another alternate, I believe Mr. Mercado?

15 **MS. JACKSON:** I don't think she was. She  
16 was not asked a single question by me.

17 **MR. DASKAS:** Let me rephrase the question.

18 **BY MR. DASKAS:**

19 Q The defense has provided an affidavit from  
20 the other alternate, Mr. Mercado.

21 **MS. JACKSON:** I object; beyond the scope.

22 **THE COURT:** This is cross-examination.

23 Go on.

24 **BY MR. DASKAS:**

25 Q Did Mr. Mercado participate in jury

1 deliberations of the Donte Johnson case?

2 A No.

3 Q Let me ask you just the question. Did you  
4 have your mind made up about the punishment you were  
5 going to impose against Donte Johnson before  
6 deliberations began?

7 A No.

8 Q Without telling me the reason you reached  
9 your decision, what was your initial vote for  
10 punishment when you began deliberations?

11 A My personal initial vote?

12 Q Yes.

13 **MS. JACKSON:** Objection as to relevance,  
14 your Honor.

15 **THE COURT:** Counsel?

16 **MS. JACKSON:** It goes into the exact thing  
17 that he said we cannot get into.

18 **THE COURT:** That's true, Counsel. It's  
19 going into the deliberative process and what they  
20 were doing in there.

21 **MR. DASKAS:** Judge, that's not true. The  
22 question was what her vote was, not the reason she  
23 reached that vote.

24 **THE COURT:** I think that's the process  
25 when they're voting initially and they're, like,



1 discussing and arguing about what they're going to  
2 vote and what they're not going to vote, and I don't  
3 know how relevant that is anyway.

4 **MR. DASKAS:** Judge, the accusation is she  
5 had her mind made up that she wanted to vote for  
6 death before deliberations began. Of course it's  
7 relevant what her initial vote was; that's why we're  
8 here.

9 **MS. JACKSON:** Objection, your Honor. It  
10 is irrelevant, and it also goes to the deliberative  
11 process as well.

12 **THE COURT:** That's true; you did argue she  
13 already had her mind made up.

14 **MS. JACKSON:** Your Honor, how do we know  
15 the initial vote doesn't belie that fact? How do we  
16 know that? That's why it's irrelevant. It doesn't  
17 have a bearing on anything.

18 **MR. DASKAS:** Judge, I'm very mindful of  
19 the statute and the case law that says we're not  
20 entitled to go into the deliberative process, and I  
21 don't want to do that. I won't do that. I'm not  
22 asking her why she reached the ultimate decision she  
23 reached; I'm asking her what the initial vote was --

24 **THE COURT:** I know, but there's a  
25 conflict. In order to disprove that she had her

1 mind made up, you want to go through all the steps  
2 and everything that they did while they were in  
3 there which is part of the deliberative process. I  
4 can understand why you want to bring it out to try  
5 to show that she didn't have her mind made up.

6 **MR. DASKAS:** Judge, that's precisely what  
7 I'm avoiding are the steps they went through to get  
8 to make their decision.

9 **THE COURT:** No, you didn't, because that's  
10 deliberative process when people are in there voting  
11 a certain way and then they're changing their vote,  
12 they're arguing with each other about why they  
13 should change their vote. Well, if that's not  
14 deliberative process, I don't know what is.

15 **MR. DASKAS:** That's why I'm avoiding it.

16 **THE COURT:** You're not avoiding it.  
17 Sustained. Just ask if the woman had her mind made  
18 up. That's all you have to do.

19 **MR. DASKAS:** That's been asked and  
20 answered.

21 **THE COURT:** What else is there?

22 **BY MR. DASKAS:**

23 Q There's been questions that you indicated  
24 to other jurors you were going to write a book.

25 You heard those questions?

1           A     Yes.

2           Q     Did you have discussions with other jurors  
3 about the potential of writing a book?

4           A     Yes.

5           Q     Tell me what you were going to write about  
6 if you decided to write a book.

7           A     I had never been a juror, I had never even  
8 been down to the courthouse for any proceedings, and  
9 I thought the process, the experience was something  
10 that I might want to write about. So, with the  
11 other jurors, we talked, because during -- in the  
12 hallways, you can't talk about the case, and we  
13 didn't know each other, so we really didn't want to  
14 talk about our personal lives, so we talked about  
15 what we were going through, and that became a basis  
16 of wouldn't this be an interesting book just about  
17 becoming a juror and serving in the jury process?

18          Q     Not about the Donte Johnson case  
19 specifically?

20          A     No.

21          Q     Not about witnesses that had testified?

22          A     No.

23          Q     Not about the facts of the case?

24          A     No.

25                **THE COURT:** So, you think a book like that

1 is going to sell, just on the process? Geez.

2 **THE WITNESS:** Can I answer that?

3 **THE COURT:** You don't have to.

4 **BY MR. DASKAS:**

5 Q There had been some suggestions that you  
6 had some information about the Donte Johnson case  
7 before you were selected as a juror. In fact, you  
8 had some information about the case, am I correct?

9 A Yes.

10 Q Did you base your decision ultimately on  
11 the information you had previously or what you heard  
12 from the witness stand?

13 A Only what I heard in the courtroom.

14 Q Were you ever given an admonishment by the  
15 Court to disregard anything you heard about the  
16 case? Did you comply with the Judge's admonition?

17 A Yes, I did.

18 Q And did you base your decision solely on  
19 the evidence you heard?

20 A Yes, I did.

21 Q Did the fact that you had considered  
22 writing a book have anything to do with the  
23 punishment you imposed in this case?

24 A None.

25 **MR. DASKAS:** Miss Carpenter, thank you so

1 much.

2 Judge, I have nothing else.

3

4 REDIRECT EXAMINATION

5 **BY MS. JACKSON:**

6 Q Miss Carpenter, when you were testifying  
7 on cross, you said that other people as well as  
8 yourself were talking about wouldn't it be  
9 interesting to write a book, but you were the only  
10 one that actually were talking about writing a book,  
11 right?

12 A I was the only one who would probably be  
13 the one to write it, but we were all talking about a  
14 book.

15 Q You all were talking about your book --  
16 yes?

17 A About my concept of writing a book, yes.

18 Q You described for Mr. Daskas the type of  
19 material that you were going to cover.

20 Do you think a book like the one you  
21 described would sell? .

22 **MR. DASKAS:** Objection. Irrelevance,  
23 Judge.

24 **MS. JACKSON:** It goes to bias, Judge.

25 **THE COURT:** Overruled. Go on.

1           **THE WITNESS:** I think there's a lot of  
2 books out there that sell that I don't think would  
3 be interesting to me, and I find some that might be  
4 interesting to some, others that aren't to me.

5 **BY MS. JACKSON:**

6           Q       Listen to the question. Do you think a  
7 book about the items that you described, ma'am, out  
8 of your own mouth -- do you think a book like that  
9 would sell? "Yes" or "no"?

10          A       I really don't know, and I did not even  
11 care if it would sell or not.

12          Q       Okay. That's your answer.

13                 Have you read the Scott Peterson book?

14          A       No, I have not.

15          Q       Did you talk about the Scott Peterson book  
16 with anybody?

17          A       No.

18                 **MS. JACKSON:** That's all I have, your  
19 Honor. Thank you so much.

20                 **MR. DASKAS:** Nothing else.

21                 **THE COURT:** Anything else?

22                 All right, ma'am. You're excused. You  
23 can wait outside there. We'll let you know.

24                 Who is your next witness?

25                 **MS. JACKSON:** Your Honor, we rest. That's

1 all we have to submit on behalf of Mr. Johnson in  
2 this hearing. Thank you.

3 **THE COURT:** Counsel?

4 **MR. DASKAS:** Judge, the State calls  
5 Shelita Oliver, please.

6 Judge, I'm assuming Miss Carpenter is now  
7 excused from her subpoena?

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

9 **MR. COLEMAN:** Do you want me to approach,  
10 Judge?

11 **MS. JACKSON:** No.

12 I would object to him approaching, your  
13 Honor.

14 (Sidebar conference outside the presence  
15 of the court reporter.)

16  
17 STATE'S WITNESSES

18 **MR. DASKAS:** Miss Oliver.

19 **THE CLERK:** Remain standing and raise your  
20 right hand.

21 (Oath administered.)

22 **THE WITNESS:** I do.

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

25 **THE WITNESS:** Shelita Oliver,

1 S-H-E-L-I-T-A, O-L-I-V-E-R.

2

3

**SHELITA OLIVER,**

4

being called as a witness on behalf of

5

the State, was first duly sworn and

6

testified as follows:

7

8

**DIRECT EXAMINATION**

9

**BY MR. DASKAS:**

10

Q Miss Oliver, you were a juror in The State

11

of Nevada vs. Donte Johnson that concluded in May of

12

2005; is that correct?

13

A Yes.

14

Q Was the foreperson of that jury Jami

15

Carpenter?

16

A Yes.

17

Q Without telling me what was discussed

18

during the deliberation process, was there anything

19

to suggest to you that Miss Carpenter had her mind

20

made up about the punishment to impose before

21

deliberations began?

22

A Absolutely not.

23

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

24

**THE COURT:** Counsel?

25

**MS. JACKSON:** Your Honor, I'd like to go



1 beyond the scope of direct or just recall  
2 Miss Oliver as my own witness in rebuttal.

3 **THE COURT:** It depends on what you're  
4 going to go on.

5 **MS. JACKSON:** I'd like to ask her if  
6 Miss Carpenter asked her about writing a book.

7 **MR. DASKAS:** I don't object to that if she  
8 would like to inquire.

9  
10 CROSS-EXAMINATION

11 **BY MS. JACKSON:**

12 Q Good morning, Miss Oliver.

13 A Good morning.

14 Q During the course of deliberations, did  
15 Miss Carpenter declare to you that she was writing a  
16 book about this process?

17 A Yes.

18 Q What did she say?

19 A Umm, actually, the book was more -- it  
20 wasn't about the actual trial itself, it's kind of  
21 about the little quirky stuff that things take  
22 longer, like judicial time, things that people might  
23 have said, but not really about the Court, more  
24 about the jury kind of situation.

25 Q Yes, ma'am.

1           And in connection with her writing this  
2 book, was it your impression that she needed to  
3 engineer a certain result in order to have her book  
4 be successful?

5           A     No.

6           Q     Nothing happened to give you that opinion?

7           A     No, huh-uh, because it really wasn't about  
8 the actual court case itself; it was more about --  
9 just the whole process and the quirky things that  
10 kind of -- being bonded as a jury and the comments.

11          Q     Isn't it true, however, that she would  
12 make notes, and then at the end of the day or -- the  
13 jury -- it was kind of like a joke among the jury  
14 that she would run to her car and record things  
15 while they were fresh in her mind?

16          A     Yeah, more like comments and things like  
17 that, yes.

18          Q     Yes.

19               And you were aware of that?

20          A     Um-hmm.

21          Q     And at the end of the day, she would rush  
22 to her car and also record the day's events while  
23 they were, quote, fresh in her mind, and you were  
24 certainly aware of that?

25          A     Yeah, during the day, yes.

1                   **MS. JACKSON:** Thank you. Court's  
2 indulgence.

3 **BY MS. JACKSON:**

4           Q       Before the deliberative process and aside  
5 from that, did Miss Carpenter declare to you or  
6 declare to any juror in your presence that she knew  
7 what the penalty had been to Mr. Johnson before in  
8 the prior proceeding? In other words, did you hear  
9 her say that he's already been given death? Was  
10 that said in your presence, ma'am?

11           A       I don't recall that, actually.

12           Q       I mean, it could have been said and you  
13 just don't recall?

14           A       It could have, but it doesn't seem  
15 familiar. I don't think so.

16           Q       All right.

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

19                   **MR. DASKAS:** Just one question.

20

21                               REDIRECT EXAMINATION

22 **BY MR. DASKAS:**

23           Q       Miss Oliver, as you sit here today,  
24 there's nothing to suggest to you that  
25 Miss Carpenter ever expressed to anyone that Donte

1 Johnson had been given the death penalty?

2 **MS. JACKSON:** Objection; leading as to  
3 form. This is his witness.

4 **MR. DASKAS:** Judge, a "yes" or "no"  
5 question doesn't mean it is leading.

6 **MS. JACKSON:** Yes, it does. You can't  
7 lead with a "yes" or "no" question.

8 **THE COURT:** To suggest the answer is  
9 leading.

10 **MR. DASKAS:** Sure, but I'm asking the  
11 question --

12 **THE COURT:** It sounds like you were  
13 leading, Counsel.

14 **MR. DASKAS:** Let me ask it over.

15 **BY MR. DASKAS:**

16 Q Well did -- this is a "yes" or "no" -- did  
17 Miss Carpenter, based on your recollection, ever  
18 express to anyone that Donte Johnson had already  
19 been given the death penalty?

20 A No.

21 **MR. DASKAS:** Thank you. Nothing else.

22 **MS. JACKSON:** Nothing else, your Honor.  
23 Thank you.

24 **THE COURT:** Thank you, Miss Carpenter --  
25 not Miss Carpenter -- Miss --

1           **THE WITNESS:** Oliver.

2           **THE COURT:** -- Oliver. All right. Sorry

3 about that.

4           She's excused.

5           **MR. DASKAS:** Actually, Judge, for the

6 record, none of these other witnesses have been

7 subpoenaed, so they're here voluntarily, so there's

8 no reason to excuse anybody.

9           **THE COURT:** All right.

10          **MR. DASKAS:** Jeremy Summers.

11          **THE COURT:** Camera man, what's your name?

12          **CAMERA MAN:** Mark.

13          **THE COURT:** Mark. Mark what?

14          **CAMERA MAN:** McBride.

15          **THE COURT:** Anyway, the rest of the jurors

16 don't want to come in if they're going to be filmed.

17          **CAMERA MAN:** Okay.

18          **THE COURT:** You can record their voices

19 but don't film. All right?

20          **CAMERA MAN:** Gotcha.

21          **THE COURT:** I don't know what happened to

22 them. Maybe Miss Carpenter went out and told them.

23          **THE BAILIFF:** Step right up there and face

24 the clerk.

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

1 (Oath administered.)  
2 **THE WITNESS:** Yeah.  
3 **THE CLERK:** Please be seated and state  
4 your name and spell your name.  
5 **THE WITNESS:** Jeremy Summers, J-E-R-E-M-Y,  
6 S-U-M-M-E-R-S.  
7  
8 **JEREMY SUMMERS,**  
9 being called as a witness on behalf of  
10 the State, was first duly sworn and  
11 testified as follows:  
12  
13 **DIRECT EXAMINATION**  
14 **BY MR. DASKAS:**  
15 Q Mr. Summers, did you serve as a juror in  
16 the State of Nevada vs. Donte Johnson which returned  
17 verdicts of death against Donte Johnson on May 5th  
18 of 2005?  
19 A Yes, sir.  
20 Q Was Jami Carpenter the foreperson of that  
21 jury?  
22 A Yes.  
23 Q Without telling me what was discussed, was  
24 there anything to suggest to you that Miss Carpenter  
25 made her mind up about the punishment to impose

1 before deliberations began?

2 A No.

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

4

5 CROSS-EXAMINATION

6 BY MS. JACKSON:

7 Q Good morning, Mr. Summers.

8 A Good morning.

9 Q Did Miss Carpenter declare to you that she  
10 was writing a book about the process during the  
11 course of the hearing?

12 A I don't know if it was process; it was  
13 more of -- it seemed more the problems with the jury  
14 system.

15 Q All right.

16 Did you have information -- did you see  
17 her, for example, preserving her memory at the end  
18 of the day by making notes and things of that  
19 nature?

20 A Just notes the same as us, I believe.

21 Q Okay.

22 Did you get the impression that because of  
23 her writing her book, that she had to engineer a  
24 certain result, sir?

25 A No; it wasn't nothing about the trial. It

1 was about how screwed up the jury system is, and in  
2 my opinion, that's what I got from it.

3 Q Okay.

4 And you're basing your opinion on what she  
5 told you?

6 A What I know, you know, just --

7 Q No, no.

8 A It was more of a joke, like -- you know,  
9 like, we were all talking about the whole -- during  
10 the whole time, all of us were, you know, and it was  
11 like -- you know, something came up like the crack  
12 pipe -- "Hey, put that in your book."

13 Q By the way, that wasn't yours?

14 A No, definitely not.

15 Q I didn't think so.

16 A It was more or less -- just more of a  
17 joke, like, you know, telling about what happened,  
18 you know, like not the case itself, more or less  
19 just jury service, drowning in the jury pool.

20 Q What do you mean by "screwed up," sir?

21 A Just, like, how it took us three or four  
22 days out in the hallway. We have a thing called  
23 "judicial time." It's like two-and-a-half hours  
24 after, you know. We would be here -- be here at  
25 10:00, we would start at 12:00, you know, just stuff



1 like that.

2 Q Okay.

3 Now, everything that you said just now --  
4 you didn't actually see what Miss Carpenter was  
5 writing, did you?

6 A No.

7 Q So, you have given us just this  
8 dissertation based upon what she told you, correct?

9 A Not just her, it was just everyone. It  
10 was more or less everyone kind of, you know, ah --

11 Q But you know what she was doing because of  
12 what she told you. You never got her notes. You  
13 never read her notes, correct, sir?

14 A No.

15 Q Okay.

16 So, you're basing what you're telling us  
17 on what she told you?

18 A No; it wasn't that she told me; it was  
19 more or less we all -- everyone -- you know, if  
20 something happened, you know, it would be like, oh,  
21 you know, put that in your book, you know. It was  
22 like more of a joking around kind of making light of  
23 the whole subject.

24 Q Okay.

25 A It wasn't that she told me.

1 Q The only way that you could know what  
2 Miss Carpenter were writing about was two ways,  
3 either she told you or you saw what she was writing,  
4 correct?

5 A No.

6 Q Correct? You can't read her mind, right?

7 A No, but it was more or less what  
8 everyone -- all 14 of us were saying, you know.

9 Q All right. I just want to focus on you,  
10 sir, just you.

11 A Just me.

12 Q Mr. Summers, just you.

13 She told you certain things, right?  
14 Correct? She was saying things and you heard  
15 them -- yes?

16 A I heard everyone say it, not just her --  
17 yeah.

18 Q But you never got her notes and read them?

19 A No.

20 Q Okay. Thank you. Wait a minute.

21 Before the evidence was in, did  
22 Miss Carpenter ever talk about the death penalty as  
23 having already been imposed on Donte Johnson?

24 A She was against the death penalty,  
25 actually.

1           Q     No, no, no; the question is a "yes" or  
2 "no" question.

3                     Before the evidence was all the way --  
4 everything was in, did she ever talk about the death  
5 penalty having been previously imposed whether she  
6 was against it or not?

7           A     No.

8           Q     She never did.

9                     And she never declared to you or anybody  
10 else in your presence that she knew that Donte  
11 Johnson had been given the death penalty by a  
12 three-judge panel, and that's why this jury was  
13 here? You never heard her say that?

14          A     No.

15          Q     Okay.

16                     Are you saying you knew she was against  
17 the death penalty before you began to deliberate?

18          A     We all -- you know, we kind of got a feel  
19 for everyone.

20                     **MR. DASKAS:** Let me -- I apologize. Let  
21 me object. Now they're getting into the  
22 deliberative process.

23                     **THE COURT:** She said "before."

24                     **MS. JACKSON:** Before deliberation.

25                     **THE WITNESS:** Just more or less -- not

1 everyone, just kind of a feel for everyone, just  
2 more or less a general knowledge -- not general  
3 knowledge. What I got from her, I felt more that  
4 she was against it.

5 **BY MS. JACKSON:**

6 Q Before -- we're talking about before  
7 deliberations --

8 A Yeah.

9 Q -- just to be clear?

10 A This was in the hallway.

11 Q Okay.

12 What did you base that on?

13 A I just talked to her. I talked to, you  
14 know, just a couple of people.

15 Q No, no, no. We're just talking about her,  
16 sir, Miss Carpenter.

17 A That's what I'm saying; it was just  
18 something -- you know, you kind of have a feeling on  
19 each person.

20 Q The question, sir, is you have an opinion  
21 that prior to deliberations, Miss Carpenter was  
22 against the death penalty. What are you basing that  
23 opinion on?

24 A Just the feel that I got from her, the  
25 vibes.

1 Q Just the gut feeling?

2 A Yeah.

3 Q Fair enough.

4 **MS. JACKSON:** Thank you. That's all I

5 have, your Honor.

6 **THE COURT:** Any questions?

7 **MR. DASKAS:** Briefly.

8

9 REDIRECT EXAMINATION

10 **BY MR. DASKAS:**

11 Q Mr. Summers, the discussion about this

12 book, was it your understanding the book was going

13 to be, if it were written, about the Donte Johnson

14 case itself or just the jury process in general?

15 A Just the jury process in general.

16 Q Was anything discussed specifically about

17 the Donte Johnson case in terms of someone authoring

18 a book or just the jury process in general?

19 A Just the jury process.

20 **MR. DASKAS:** Thank you, sir. I have

21 nothing else.

22 **THE COURT:** Anything else?

23 **MS. JACKSON:** Nothing else, your Honor.

24 Thank you.

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

1           **MS. JACKSON:** Thank you, Mr. Summers.  
2           **THE WITNESS:** No problem.  
3           **MR. DASKAS:** Michael Krispli, please.  
4           **THE BAILIFF:** Step right up there; face  
5 the clerk.  
6           **THE CLERK:** Remain standing, raise your  
7 right hand.  
8                   (Oath administered.)  
9           **THE WITNESS:** I do.  
10          **THE CLERK:** Please be seated. When you're  
11 seated, state your name and spell your name.  
12          **THE WITNESS:** My name is Michael Krispli.  
13          **THE COURT:** Spell the last name.  
14          **THE WITNESS:** Krispli is K-R-I-S-P-L-I.  
15  
16                   **MICHAEL KRISPLI,**  
17 being called as a witness on behalf of  
18 the State, was first duly sworn and  
19 testified as follows:  
20  
21                   DIRECT EXAMINATION  
22 **BY MR. DASKAS:**  
23           Q       Mr. Krispli did you serve as a juror in  
24 The State of Nevada vs. Donte Johnson which returned  
25 verdicts of death against Mr. Johnson on May 5th,

1 2005?

2 A Yes, I did.

3 Q Without telling me what was discussed, was  
4 there anything to suggest to you as a juror that the  
5 foreperson, Jami Carpenter, had her mind made up  
6 about the punishment to impose before deliberations  
7 began?

8 A No, absolutely not.

9 Q Am I correct that there was some  
10 discussion in the hallway on occasion about writing  
11 a book?

12 A Correct.

13 Q Did some of that discussion involve Jami  
14 Carpenter?

15 A Yes.

16 Q Was it your understanding that the book,  
17 if it were written, was going to be about the Donte  
18 Johnson case itself or the jury process in general?

19 **MS. JACKSON:** Your Honor --

20 **THE WITNESS:** It was going to be about  
21 being a juror, not about the case.

22 **MR. DASKAS:** I have nothing else.

23 Thank you, sir.

24

25 /////

1 CROSS-EXAMINATION

2 **BY MS. JACKSON:**

3 Q Good morning, Mr. Krispli. How are you  
4 today, sir?

5 A Good, thank you.

6 Q Now, was there anyone else who was  
7 involved, as far as you knew it, writing a book on  
8 the jury other than Jami Carpenter?

9 A No.

10 Q Did she declare in your presence or to you  
11 that she was every day making notes to preserve what  
12 had happened so she could keep it fresh in her mind?

13 A Not every day it happened. On occasion,  
14 we would be in the hallway and we would say  
15 something humorous about being a juror, and she  
16 would say, "Oh, I'm going to write that one down.  
17 That's funny."

18 Q Did she, in your presence, write that  
19 down?

20 A Yeah -- yes.

21 Q Were you also privy to -- did she state in  
22 your presence, sir, or to you -- referring to  
23 Miss Carpenter -- at the end of the day that she  
24 would go to her car, remember all the witnesses that  
25 took the stand and other pertinent information and



1 preserve her memories by writing that down? Was  
2 that said or done in your presence?

3 A No, it wasn't.

4 Q Prior to deliberations, and by that, I  
5 mean before everything was in and the Judge said you  
6 may now go and deliberate, did Jami Carpenter say to  
7 you or anyone in your presence that, quote, "I feel  
8 sick to my stomach because one side is going to be  
9 upset with my decision" or words to that effect?

10 A I don't recall. I don't recall that. I  
11 couldn't say "yes" or "no."

12 Q Is there anything at all that happened  
13 before the deliberation, that is to say, before the  
14 Judge gave the jury the case, that Miss Carpenter  
15 said either to you or in your presence, sir, that  
16 indicated that she already had her mind made up?

17 A No.

18 Q Did you ever hear her talking to anyone in  
19 your presence or to you directly before  
20 deliberations that she knew that Donte Johnson had  
21 received the death penalty before by judges and the  
22 three-judge panel?

23 A No; I don't remember that.

24 Q Okay.

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

1           Thank you, Mr. Krispli.

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

3           **THE COURT:** Thank you, sir. You're

4 excused.

5           **MR. DASKAS:** Judge, I've shown to

6 Miss Jackson an affidavit from one of the other

7 jurors by the name of Twila Morgan -- T-W-I-L-A --

8 who has completed an affidavit and essentially

9 saying what the jurors we just called said. I would

10 like to have this marked.

11           **THE COURT:** File it.

12           **MR. DASKAS:** And submit it as an exhibit.

13           **MS. JACKSON:** Your Honor, we would like an

14 exhibit or we would object to it being filed. I

15 briefly read it before court. I can't even recall

16 what it said, so before it's admitted, I would like

17 to have a chance to review it with co-counsel who

18 hasn't seen it.

19           **THE COURT:** All right. They can just add

20 it as an exhibit to their stuff.

21           Didn't you put in some exhibits from

22 jurors?

23           **MS. JACKSON:** They have copies of

24 everything that we have.

25           **THE COURT:** I said yes, you can review it.

1 We'll make you a copy, if you want.  
2 Do you want a copy?  
3 **MS. JACKSON:** Yes, sir.  
4 (Mr. Stanton left the courtroom.)  
5 **THE COURT:** Bailiff, do you want to make  
6 her a copy of this (indicating). She wants a copy  
7 of this (indicating).  
8 Do you have any more affidavits that need  
9 to be copied?  
10 **MR. DASKAS:** No, your Honor.  
11 Judge, with the exception of that, we've  
12 elected not to call the remaining jurors that are  
13 here. We think we satisfied rebutting the  
14 allegation that they made, so we would rest at this  
15 point, Judge.  
16 **MS. JACKSON:** Your Honor, we don't have  
17 any evidence to present in surrebuttal, but I would  
18 like a chance to review the affidavit.  
19 **THE COURT:** All right. We're going to  
20 have it. As soon as he finishes, he will bring it  
21 back.  
22 **MS. JACKSON:** Your Honor, may I address  
23 the affidavit?  
24 **THE COURT:** Yes. Go on.  
25 **MS. JACKSON:** Your Honor, I would object

1 to Declaration No. 7. It states that "None of the  
2 jurors who participated in the deliberation process,  
3 including foreperson Jami Carpenter, reached a  
4 decision regarding the penalty prior to the  
5 deliberation process." The other declarations I  
6 have no problem with, but there's absolutely  
7 positively no way that Miss Twila Morgan could know  
8 what was in the mind of Miss Jami Carpenter, and for  
9 that reason, we would ask that that paragraph be  
10 stricken. Now, if she were to have said that  
11 Miss Carpenter did not do or say anything that led  
12 me to believe that her mind was made up, that's  
13 fine, but she is not in the position to make this  
14 blanket statement unless she's clairvoyant, and if  
15 she were, I would question that. For that reason,  
16 we ask that No. 7 be stricken.

17 **THE COURT:** Counsel?

18 **MS. JACKSON:** All she can give, Judge, is  
19 her impressions.

20 **THE COURT:** This is only opinion anyway.

21 **MR. DASKAS:** Judge --

22 **THE COURT:** We know she can't know what a  
23 person was thinking in their own mind.

24 **MR. DASKAS:** Judge, if I might, an  
25 affidavit or declaration of necessity is based on

1 the declarant's or the affiant's personal knowledge,  
2 and I appreciate her comments; perhaps that goes to  
3 the weight of the affidavit, and I would submit it's  
4 admissibility. The point is, there was nothing to  
5 suggest to this juror, like the other jurors who  
6 testified, that Miss Carpenter had her mind made up  
7 in direct --

8 **THE COURT:** I know.

9 **MR. DASKAS:** -- contradiction to  
10 Miss Jackson's suggestion.

11 **THE COURT:** She realizes that, but it's  
12 not artfully written, because she wouldn't know --  
13 she should have said that she didn't say or do  
14 anything that would lead her to believe, but anyway,  
15 the Court is not accepting this that she actually  
16 knows what the person was thinking in her mind; so,  
17 I'm assuming that she means by this it's her  
18 impression that they had not.

19 Anyway, I'm going to admit it.

20 (State's Exhibit 1 was admitted into  
21 evidence.)

22 **THE COURT:** What else do we have --  
23 anything else?

24 **MS. JACKSON:** Your Honor, having made that  
25 record, we would have nothing else to submit in the

1 way of evidence. We would just like to briefly  
2 summarize --

3 **THE COURT:** All right. Go on.

4 **MS. JACKSON:** -- some points.

5

6 DEFENSE'S ARGUMENT

7 **MS. JACKSON:** We're not going to belabor  
8 the point. This Court sat through a very lengthy  
9 penalty hearing in this case.

10 (Mr. Stanton re-entered the courtroom.)

11 **MS. JACKSON:** The issue is -- and  
12 Mr. Daskas has stated it several times -- we have  
13 not met a threshold showing in this case. Well,  
14 certainly we have. That was met when Miss Carpenter  
15 admitted under oath that she could not be sure the  
16 statement I asked her about -- and it's Item No. 12  
17 on Miss Knight's affidavit, that on Wednesday  
18 morning prior to deliberations, Juror No. 262, Jami  
19 Carpenter, stated that she felt sick to her stomach  
20 and could not eat because one of the parties was  
21 going to be upset with her decision. She admitted  
22 on the stand to me that she's not sure if at that  
23 point she had made up her mind or if, in fact, all  
24 of the evidence was in. I think that her  
25 uncertainty in light of the other statements that

1 she had made, and again, I think that cannot be  
2 emphasized enough that you have a juror, a  
3 prospective juror who denied to this court that she  
4 discussed Mr. Johnson receiving death with other  
5 prospective jurors, and we have at least two other  
6 prospective jurors or three saying that "yes, in  
7 fact, she told me that." I think when you take  
8 those things together and look at them together,  
9 that you certainly have some cause for concern and I  
10 think that is a threshold requirement under the  
11 cases we cited in our brief, Oliver vs. State and  
12 that line of cases -- State vs. Crockett, Mortensen  
13 vs. State -- M-O-R-T-E-N-S-E-N vs. State, and for  
14 that reason, we would ask this court to allow us at  
15 least an opportunity to get this transcript and  
16 brief this issue whether or not she had her mind  
17 made up prior to the final deliberation, and with  
18 that, we would submit it.

19 **THE COURT:** Counsel?

20

21 STATE'S ARGUMENT

22 **MR. DASKAS:** Judge, I think the record  
23 couldn't be any clearer from Miss Carpenter and  
24 every other juror who testified that Miss Carpenter  
25 did not have her mind made up prior to deliberation.

1 If you review the motion filed by the defense,  
2 they're making three accusations, and I'm reading  
3 from page 3 of their motion.

4           The first is that Miss Carpenter had  
5 stated she was writing a book. Well, there's  
6 nothing improper about writing a book or declaring  
7 your intention to write a book. Judge, I've done  
8 research on Westlaw over the past couple of days on  
9 this issue, and I found a single case -- United  
10 States vs. Abbell or A-bell (phonetic) --  
11 A-B-B-E-L-L. The citation is 271 F3d, 1286 out of  
12 the 11th circuit in 2001. It's the only case that I  
13 could find which addresses this issue which says  
14 there's nothing improper or it's not misconduct for  
15 a juror to write a book. It happens all the time.

16           The second accusation they make in their  
17 motion is Miss Carpenter was going to use  
18 information brought up in the penalty hearing to be  
19 used in her book. That's belied by the record; it's  
20 belied from the testimony that we heard from Miss  
21 Carpenter and every other juror who testified. In  
22 fact, they all testified that they joked about  
23 writing about the process in general -- and this is  
24 my word -- how inefficient it was; so, there's  
25 nothing improper about that.



1           The third and final accusation in the  
2 defense motion is that Miss Carpenter had her mind  
3 made up regarding the penalty to impose before  
4 deliberations began, and obviously, Judge, that's  
5 clearly belied by the record, by the testimony of  
6 everyone who provided information to this court  
7 today.

8           Judge, out of an abundance of caution, I'm  
9 sure you reviewed Miss Carpenter's notes. You've  
10 represented to us there's nothing in the notes to  
11 suggest she had her mind made up, so everything the  
12 defense has alleged is belied by the record, and  
13 belied by the record I'm sure you can make after  
14 reviewing those notes; so, their motion should be  
15 denied. There's no reason to delay this any longer  
16 and brief the issue any further. They have nothing  
17 to suggest anything improper was done or there was  
18 any jury misconduct, so I would ask you to deny  
19 their motion.

20           **THE COURT:** The Court -- first of all, the  
21 first issue that was raised this morning was whether  
22 or not Miss Carpenter, who turned out to be the  
23 foreman, had already stated to the jurors and other  
24 members of the prospective jury panel that she had  
25 read where the Supreme Court had reversed this case

1 and that he had been given a death sentence by the  
2 three-judge panel. Well, all of the jurors were  
3 asked about that. They were asked whether or not  
4 they had read it in the newspapers, heard it on  
5 television, and I think some vaguely remember that  
6 they had, and she recalled she had heard something.  
7 We discussed it with her in depth, as we did with  
8 the other jurors, and of course, we solicited from  
9 them whether or not they would be able to put aside  
10 whatever they had heard from the press and the media  
11 from other people, and of course, under oath, they  
12 all assured us that they would put it aside if, in  
13 fact, they had heard anything. Not to mention it  
14 came out from the defense's own witness that the  
15 defendant was on death row during their case, but I  
16 think them having brought it up, we discussed it, we  
17 went over it with all the jurors, they told us  
18 everything that they knew about the case and they  
19 assured the Court that they would put whatever they  
20 heard outside the courtroom out of their minds and  
21 base their decision on the facts adduced at trial,  
22 so, of course, given that, I don't think there was  
23 any violation or misrepresentation by Miss Carpenter  
24 to that effect or that it shows any kind of bias or  
25 prejudice on her part because she appears to have

1 been forthright during the voir dire process, and  
2 then the defense did not challenge her for cause on  
3 that.

4           Secondly, nothing indicates in the record  
5 based upon the witnesses' testimony and this  
6 affidavit here or her notes which I went through  
7 that she had made her mind up as to what the  
8 sentence should be or ought to be. Based on the  
9 witnesses' testimony, she had not. Based upon the  
10 notes, I didn't see anything in the notes that came  
11 close to indicating that she had, and of course, the  
12 Court has made those notes a part of the record and  
13 are sealed and to be opened only by court order and  
14 this is in case the appellate court wants to look at  
15 it.

16           Also, a person can write a book  
17 preferably -- we would prefer that they wait until  
18 after the case is over with if they decide to write  
19 a book, but a lot of people I know -- I don't know  
20 how many people who are always saying they're  
21 writing a book but they've never written one. I  
22 think everyone would like to be a published author  
23 and sell millions of copies, but of course, the  
24 reality of that is very few of us write books, and  
25 even fewer profit from it. I think just by her

1 saying that she wants to write a book does not  
2 indicate bias or prejudice unless, of course, it can  
3 be shown that her decision was for the mere purpose  
4 of having something to write about that would  
5 increase her sales. The testimony said she wasn't  
6 even writing the book about the particular facts of  
7 the case but only about the jury service and serving  
8 as a juror and the problems that they face serving  
9 as a juror. So, I don't think that in itself  
10 indicates that she had her mind made up. There was  
11 no evidence that she was making an outcome happen so  
12 she could put it in her book and increase sales or  
13 even have a book to sell, so there's nothing from  
14 the witnesses or the notes that would suggest that.  
15 In fact, the witness's testimony's been contrary,  
16 that she wasn't even writing about the case; she was  
17 writing about, like I said before, about jury  
18 service and jury duty and the problems they had.

19 I notice in the notes there was a lot of  
20 reference to the time they had to wait for breaks,  
21 like how a ten-minute break turned in to a 30-minute  
22 break, how they -- all different things -- wait for  
23 the Court to finish its earlier calendar and the  
24 things that people say and do and pay -- in fact,  
25 there were notations to those matters in some of her

1 notes. Also, there's nothing in the record to  
2 indicate that she had her mind made up as to what  
3 the verdict should be. There was nothing in the  
4 notes; I heard nothing from the witnesses to  
5 indicate that she had her mind made up; so, based  
6 upon the totality of the circumstances and the  
7 facts, the notes, the testimony of Miss Carpenter,  
8 the testimony from the other jurors, the Court  
9 doesn't find that there was any bias or prejudice or  
10 any misconduct by the jury, and the Court doesn't  
11 find that she had her mind made up, and therefore  
12 the Court denies the motion.

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

14 **MS. JACKSON:** Your Honor, one other  
15 matter.

16 Your Honor, the prosecution stated a case  
17 of something vs. Abbell -- US vs. Abbell, 271 F3d,  
18 1286, 2001. We ask permission of the Court to file  
19 a motion to reconsider after we've had a chance to  
20 brief this issue and file a proper motion.

21 **THE COURT:** I'm not doing anything.  
22 Whatever you file, you file. I'm not extending any  
23 time limits or doing anything else. If you have  
24 something to file, you can file it.

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

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How soon can we have the transcript?

**COURT REPORTER:** Tomorrow.

(WHEREUPON, THE PROCEEDINGS WERE  
CONCLUDED AT 12:33 P.M..)

\* \* \* \* \*

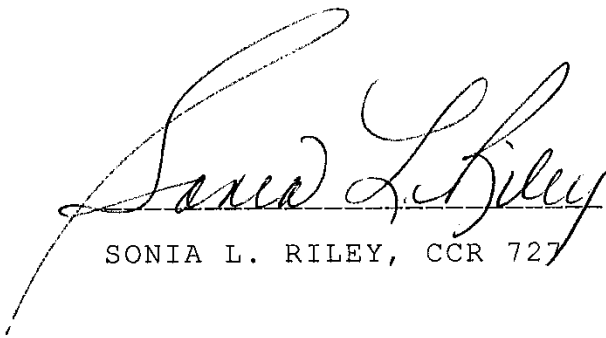
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REPORTER'S CERTIFICATE

STATE OF NEVADA)  
:SS  
COUNTY OF CLARK)

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

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



SONIA L. RILEY, CCR 727

ORIGINAL

5

596

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FILED

JUN 22 3 50 PM '05

*Chloe J. Chapman*  
CLERK

DISTRICT COURT  
CLARK COUNTY, NEVADA

13 THE STATE OF NEVADA,	)	CASE NO. C153154
14 Plaintiff,	)	DEPT. NO. VIII
15 vs.	)	
16 DONTE JOHNSON,	)	DATE OF HEARING:
17 Defendant.	)	TIME OF HEARING:
18	)	

**POST-EVIDENTIARY HEARING SUPPLEMENTAL  
POINTS AND AUTHORITIES**

21 COMES NOW, the Defendant, DONTE JOHNSON, aka JOHN LEE WHITE, by and  
22 through his attorneys, DAVID M. SCHIECK, Special Public Defender, ALZORA B.  
23 JACKSON, Deputy Special Public Defender, and BRET O. WHIPPLE, and hereby  
24 supplements the Evidentiary Hearing which was held on June 14, 2005, with the  
25 attached Points and Authorities.

26 ...

27 ...

28 ... **RECEIVED**

JUN 22 2005

**COUNTY CLERK**

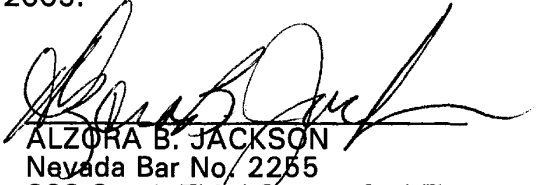
SPECIAL PUBLIC  
DEFENDER  
CLARK COUNTY  
NEVADA

\$15



1 Said Points and Authorities are based upon the transcript of the Evidentiary  
2 Hearing, and on all papers and pleadings on file herein.

3 DATED this 22 day of June, 2005.

4  
5   
6 ALZORA B. JACKSON  
7 Nevada Bar No. 2255  
8 333 South Third Street, 2nd Floor  
9 Las Vegas, NV 89155-2316  
10 (702) 455-6265

11 **POINTS AND AUTHORITIES**

12 **FACTS**

13 On May 10, 2005, a family member of alternate juror, Teresa Knight, contacted  
14 Attorney Bret Whipple concerned that jury misconduct might have occurred during the  
15 penalty phase of State of Nevada v. Donte Johnson. On May 11, 2005, Attorney Bret  
16 Whipple and mitigation investigator, Maribel Rosales, met with Teresa Knight. Ms.  
17 Knight, stated that during the Donte Johnson penalty phase hearing that jury foreman,  
18 Jaime Carpenter, stated on numerous occasions, that she was writing a book on being  
19 a juror in the Donte Johnson case. Jaime Carpenter also stated that the information that  
20 was brought up during the penalty phase would be used in her book. Lastly, Jaime  
21 Carpenter also indicated that she had made up her mind regarding a decision in the Donte  
22 Johnson penalty phase prior to hearing all of the evidence. (See Exhibit "A").

23 On May 24, 2005, mitigation investigator, Maribel Rosales, met with Wilfredo  
24 Mercado who also confirmed that jury foreman, Jaime Carpenter, stated on a daily basis  
25 that different information brought up during the penalty phase would be used in her book  
26 about being a juror in the Donte Johnson case. (See Exhibit "B").

27 On May 26, 2005, mitigation investigator, Maribel Rosales, met with Jaime  
28 Carpenter. During this face to face meeting Ms. Carpenter never mentioned her  
comments to other jury members about writing a book during the penalty phase.

1 On June 2, 2005, Maribel Rosales again spoke with Ms. Carpenter by phone. At  
2 this time Ms. Rosales mentioned the fact that other members of the jury made reference  
3 to the writing of a book. Ms. Carpenter then asked Ms. Rosales if writing a book was  
4 illegal. Ms. Carpenter then stated that because she was an English teacher she had  
5 always wanted to write a book and that she had taken a lot of notes and that she had  
6 pages of notes stored in the bottom of a drawer. (See Exhibit "C").

7 That in preparation for the Evidentiary Hearing that was set on June 14, 2005,  
8 counsel for Mr. Johnson went back and reviewed the voir dire transcripts surrounding Ms.  
9 Carpenter's selection as a juror in this case. The transcript reveals that Ms. Carpenter  
10 was less than candid with the Court during the jury selection process as will be revealed  
11 below.

12 Ms. Carpenter was first brought to the Court's attention by prospective juror  
13 number 42 on April 21, 2005. At page 4 of the transcript from that day, the following  
14 takes place:

15 **PROSPECTIVE JUROR NO. 42:** I was warring [sic] about this, but I feel it's  
16 the right thing to do. There are several jurors I know that have knowledge  
about the case.

17 **THE COURT:** Who are they?

18 **PROSPECTIVE JUROR NO. 42:** 262, 205, 207 and Aaron Stam. Aaron was  
19 the fellow that raised his hand when you all asked if he knew anybody. Do  
20 you want me to tell you what happened? If I could, it will just take a  
minute.

21 **THE COURT:** Go on.

22 **PROSPECTIVE JUROR NO. 42 :** 262 is a female, blond, about 50, was  
23 sitting in the hallway. Next to her was 205, 207, an Asian woman and  
across from them was 205; 207, gentleman about 60, Aaron was across  
from them. I was next to him.

24 262 said she had seen the news that morning and seen that the  
25 Defendant had already been given the death sentence by a three judge  
26 appellate panel, and this was to impanel a jury because there was a  
Constitutional issue as to whether the Judge could give the death penalty,  
as opposed to jurors. That was all she said.

27 I don't think she did it to be malicious or anything like that. Quite  
28 frankly, had she continued to speak, I would have stopped her, but that was  
it. It was clear that the group of people head that. I felt you should know

1 because my concern would be to go through the whole thing, and if it came  
2 out later, that would be prejudicial, I assume and you would have to do it  
again.

3 **THE COURT:** We appreciate that. You did the right thing.  
4 (Trial Transcript, Vol. III, pgs. 4-5).

5 The next time we heard about this individual, Ms. Carpenter, was from juror  
6 number 164, Aaron Stam.

7 **THE COURT:** Okay. I understand there were some people out there who  
8 were talking about this case?

9 **PROSPECTIVE JUROR:** Yeah. One of - - I was sitting with Larry Parry, I  
10 guess is his last name - - one of the ladies across - - I don't know her name -  
11 - I know her badge number - - she was talking about what she saw on the  
12 news the night before or something like that or the day of when we were  
13 sitting there, and she kind of summarized what she saw on the news, and  
14 I turned to Larry, and I told him that she need to keep her fat mouth shut or  
15 something to that effect, because we don't have this kind of time to just sit  
16 here for nothing, especially if we all get dismissed because of this.  
17 Somebody else is going to have to do this all over again. So, I think we got  
18 up and moved or something like that.

19 (Trial Transcript, Vol. III, pg. 146)

20 This issue is raised again with prospective juror number 205.

21 **THE COURT:** What do you think about serving on this jury here?

22 **PROSPECTIVE JUROR:** I'm afraid of where I got my mind made up.

23 **THE COURT:** You already have it made up. I heard you were out there  
24 talking about the case earlier; is that true?

25 **PROSPECTIVE JUROR:** Pardon me?

26 **THE COURT:** Were you outside talking about the case with some more  
27 jurors?

28 **PROSPECTIVE JUROR:** I didn't recall saying much about it other than what  
we already knew.

**THE COURT:** What is it that you already knew?

**PROSPECTIVE JUROR:** That he had been tried and convicted.

**THE COURT:** Okay. What else?

**PROSPECTIVE JUROR:** That there was four possibilities, I believe, and we  
were to do a judgment.

**THE COURT:** So you already have your mind made up? What would you

1 sentence to?  
2 **PROSPECTIVE JUROR:** Death.  
3 **THE COURT:** Is there anything that would, could change your mind on that?  
4 **PROSPECTIVE JUROR:** Very little, unless it was self-defense . . .  
5 **THE COURT:** Tell me this here: Who else were you talking to? You were  
6 talking to juror No. 262, 207 and Mr. Stam?  
7 **PROSPECTIVE JUROR:** Mr. Stam?  
8 **THE COURT:** Stam, Aaron Stam, No. 164.  
9 **PROSPECTIVE JUROR:** I couldn't tell you.  
10 **THE COURT:** You don't remember the people who you were talking to?  
11 **PROSPECTIVE JUROR:** No.  
12 **THE COURT:** All right.  
13 (Trial Transcript, Vol. III, pgs. 185-186)  
14 This issue again comes up with prospective juror number 207:  
15 **THE COURT:** We got a report that you and Juror No. 262 and 205 were  
16 talking about what had happened in the previous case.  
17 **PROSPECTIVE JUROR:** In the previous sentencing?  
18 **THE COURT:** Right, right.  
19 **PROSPECTIVE JUROR:** Okay.  
20 **THE COURT:** Did you discuss that?  
21 **PROSPECTIVE JUROR:** Yes.  
22 **THE COURT:** All right. What was said?  
23 **PROSPECTIVE JUROR:** It was said that the verdict was reached.  
24 **THE COURT:** What verdict was that?  
25 **PROSPECTIVE JUROR:** That the defendant was found guilty.  
26 **THE COURT:** All right. We know he was found guilty, but what was the  
27 punishment?  
28 **PROSPECTIVE JUROR:** The punishment was death penalty.  
**THE COURT:** And what happened?

1 **PROSPECTIVE JUROR:** It was decided by the Supreme Court in Nevada,  
2 however, it should have been decided by a jury.  
3 **THE COURT:** All right. So, that was discussed out there. Who else was in  
4 this conversation with you? How many people were talking about this?  
5 **PROSPECTIVE JUROR:** I believe two or three, including myself.  
6 (Trial Transcript, Vol. III, pg. 189-190)  
7 Finally, when Ms. Jami Carpenter, prospective juror number 262, was subjected  
8 to voir dire, the following took place:  
9 **THE COURT:** I understand, ma'am, that you had quite a recall here about all  
10 the facts surrounding this case.  
11 **PROSPECTIVE JUROR:** Absolutely not.  
12 **THE COURT:** I heard you were out there telling the other jurors about how  
13 this case had been tried, the defendant had been convicted of four counts,  
14 he went up to the Supreme Court, it was reversed because of a three-judge  
15 panel and it was supposed to have been done by a jury, and that's why he's  
16 here. He already had gotten the death penalty before. Are those the  
17 statements you made, ma'am?  
18 **PROSPECTIVE JUROR:** The statements about being convicted was already  
19 in the papers that we read, and someone had said that they were wondering  
20 why there was another jury - - why it wasn't heard by the other jury, and  
21 I said that I had heard that - - yes, that it had been heard by a three-judge  
22 panel, but I don't have any other information.  
23 **THE COURT:** Did you also say that he had been sentenced to death?  
24 **PROSPECTIVE JUROR:** No, I did not.  
25 **THE COURT:** And that it had been reversed?  
26 **PROSPECTIVE JUROR:** No, I did not.  
27 **THE COURT:** So, you didn't know that information?  
28 **PROSPECTIVE JUROR:** I knew that there had been a jury - - a judge - - a  
three-judge panel. I happened to hear that on the news when I was waiting  
for the weather.  
**THE COURT:** But you did not know what the sentence was?  
**PROSPECTIVE JUROR:** No, I did not. I had to go to work. I didn't hear the  
end.  
What high school do you work at . . . .  
(Trial Transcript, Vol. III, pgs. 289-290)

1 The above record from the voir dire selection, together with what was adduced at  
2 the Evidentiary Hearing on June 14, 2005, clearly show that Mr. Johnson has met the  
3 threshold requirement for a showing of juror misconduct and is entitled to a new trial as  
4 will be set forth below.

### 5 **LEGAL ARGUMENT**

6 In Oliver v. State, 85 Nev. 418, 456 P.d. 431(1969) the Nevada Supreme Court  
7 set out criteria granting a new trial on the grounds of new evidence:

8 ...Consideration by the trial court in granting or denying a new  
9 trial has been clearly set down in several recent cases. Paycheck v. State, 81 Nev. 639, 408 P.d. 715 (1965); Burton  
10 v. State, 84 Nev. 191, 437 P.d. 861 (1968); State v. Cracked,  
11 84 Nev. 516, 444 P.d. 896 (1968). The statute governing the  
12 granting of new trials was amended by the 1967 legislature  
13 and appears as NRS 176.515. Appellant contends, and we  
14 agree, that in seeking a new trial the newly-discovered  
15 evidence must be (1) newly discovered, (2) material to  
16 movant's defense, (3) such that it could not with reasonable  
17 diligence have been discovered and produced for the trial, (4)  
not cumulative, and (5) such as to render a different result  
probable upon retrial. To which we add (6) that it does not  
attempt only to contradict a former witness or to impeach or  
discredit him, unless witness impeached is so important that  
a different result must follow, While v. While, 36 Nev. 16, 131  
P. 967 (1913); and (7) that these facts be shown by the best  
evidence the case admits, People v. Sutton, 15 P. 86 (Cal.  
1887); People v. Beard, 294 P. d. 29 (Cal. 1956).

18 Id. At 424. Also see, State v. Crockett, 84 Nev. 516, 444 P.2d 896 (1968) and  
19 Mortenson v. State, 115 Nev. 273, 986 P.2d 1105 (1999).

20 Juror misconduct raises serious concerns in evaluating a Motion for a New Trial.  
21 The evidence suggests that the foreperson of this jury, Ms. Jami Carpenter, had an  
22 agenda from the very beginning and was fatally biased when it came to imposing an  
23 appropriate punishment on Donte Johnson. In addition to the statements that she made  
24 during the voir dire process, it was brought to counsel's attention after the trial, that Ms.  
25 Carpenter had stated during the course of the trial that she was writing a book. Ms.  
26 Teresa Knight caused the defense attorneys to be contacted because she was so troubled  
27 by these activities. While counsel certainly appreciates the fact that it is not illegal for  
28 anyone to write a book, when writing a book causes one to engineer a certain result, that

1 certainly rises to the level of misconduct. As illustrated by the testimony adduced during  
2 the Evidentiary Hearing, Ms. Carpenter lied under oath during the voir dire process and  
3 furthermore lied under oath during the Evidentiary Hearing as will be illustrated herein.  
4 First of all, Ms. Carpenter was dishonest during the course of her voir dire. She  
5 emphatically denied that she ever shared information with other prospective jurors  
6 regarding the Defendant having received the death penalty. (See, Evid. Hearing Trans.,  
7 June 14, 2005, pg. 11).

8 Q. So, it's your testimony that you never knew that the defendant had  
9 received death.

10 A. I did not.

11 Q. And you did not share that information with other prospective jurors  
12 sitting out in that hallway?

13 A. I did not.

14 Juror No. 42 was the gentlemen who felt compelled to bring to the Court's  
15 attention what he felt was problematic conduct going on in the hallway. Juror No. 42  
16 quoted Ms. Carpenter as saying:

17 That she had seen the news that morning and seen that the defendant had  
18 already been given the death sentence by a three-judge appellate panel, and  
19 this was to empanel a jury because there was a constitutional issue as to  
20 whether the Judge could give the death penalty as opposed to jurors. That  
21 was all that she said.

22 At page 12 of the Evidentiary Hearing transcript, Ms. Carpenter admits that she  
23 did not remember making that statement. However, when asked:

24 Q. But you could have made that statement?

25 Her answer was:

26 A. No, I do not think so, because I didn't have that information.

27 Obviously, this was not true as illustrated by not only Juror No. 42 but prospective  
28 Juror No. 205 as well who also informed the Court that the conversation in the hallway  
29 which was clearly initiated by Ms. Carpenter included the statement that Donte Johnson  
30 had been given the death penalty. (Trial trans., Vol. III, pgs. 185-186)

Also prospective Juror No. 207 was unequivocal in stating that he had been told

1 by Ms. Carpenter that the punishment previously given to Donte Johnson was death.  
2 (Trial Trans., Vol. III, pgs. 189-190). Ms. Carpenter denies making these statements to  
3 not only Juror No. 42, she denied after being asked specifically as to Juror No. 207 she  
4 indicated that she did not provide the information regarding the Defendant having been  
5 given the death penalty as well. (See Evid. Hearing trans., pg. 17).

6 Clearly, all of these individuals are reporting the exact same information that Ms.  
7 Carpenter did in fact declare to them as prospective Jurors that Donte Johnson had  
8 previously been given the death penalty. Ms. Carpenter denied this during voir dire as  
9 well as during the Evidentiary Hearing. It is submitted that the only reason Ms. Carpenter  
10 would deny making these statements is obviously she knew that it would be improper  
11 and it also was evidence of her agenda from the very beginning to impose the death  
12 penalty in this case regardless of what the evidence in this case revealed.

13 We further find that Ms. Carpenter was dishonest about her intention and/or her  
14 statements about writing a book. At page 19 of the Evidentiary Hearing transcript the  
15 following takes place:

16 Q. And is it true that you declared on a daily basis to alternate Theresa  
17 Knight that you were writing a book about this process during the  
trial itself?

18 A. No.

19 Q. When did - - did you, at some point, decide to write a book?

20 A. I thought about it.

21 Q. The question, ma'am, was did you, at some point, decide to write a  
22 book?

23 A. I have not decided to write a book.

24 Q. And you never told anyone that?

25 A. I said that I thought it would be interesting to write a book, but I have  
not decided to write a book.

26 Additionally, it is reflected at page 24 of the record that after much prodding, Jami  
27 Carpenter finally admitted that she brought an attorney with her to give her advice at the  
28 Evidentiary Hearing. Moreover, Ms. Carpenter admitted under oath that she had already



1 asked some of the jurors if she could use their real names in her book. (Evidentiary  
2 Hearing Trans., pg. 27).

3       Thereafter, the State called Juror Shelita Oliver as a witness. Ms. Oliver was  
4 asked during cross-examination:

5       Q.     During the course of deliberations, did Miss Carpenter declare to you  
6             that she was writing a book about this process?

7       A.     Yes.  
8 (Evid. Hearing Trans., pg. 46).

9       Ms. Oliver further testified that the foreperson, Ms. Carpenter, would make notes  
10 and then at the end of the day she would run to her car and record things while they  
11 were fresh in her mind. (Evid. Hearing Trans., pg. 47).

12       The State next called Jeremy Summers on behalf of the State. Mr. Summers also  
13 admitted that Ms. Carpenter declared to him that she was writing a book during the  
14 course of Donte Johnson's penalty hearing. (Evid. Hearing Trans., pg. 52).

15       The State then called Michael Krispli. Mr. Krispli also admitted that as far as he  
16 knew Jami Carpenter was the only person on the jury who was writing a book. (Evid.  
17 Hearing Trans., pg. 61).

18       Based upon the testimony of the other three (3) jurors, it was clear that Jami  
19 Carpenter at the Evidentiary Hearing lied about whether or not she was in the process of  
20 writing a book. Again, it is not illegal to write a book, however, it is illegal to lie under  
21 oath and this conduct is only indicative of a juror who has something to hide.

22       Finally, Jami Carpenter violated her oath as a juror beyond a reasonable doubt as  
23 evidenced by the following questions and answers:

24       Q.     Now the Wednesday morning before deliberations, did you state to  
25             Theresa Knight that you, "felt sick to your stomach and could not eat  
26             because one of the parties was going to be upset with your  
27             decision."

28       A.     Yes.

      Q.     And you declared that to Theresa Knight?

1 A. I declared that to all of us standing waiting.

2 Q. And that was before all the evidence was in?

3 A. I thought, I don't recall when that was.

4 Q. So it could have been before all of the evidence was in?

5 A. Yes.

6 (Evid. Hearing Trans., pgs. 28-29).

7 To serve on a jury, a juror must be free of all bias, including the bias that would be  
8 generated by an individual looking to create a best selling book. See, NRS 175.036.  
9 Donte Johnson certainly has the right to challenge jurors for actual bias. See, Darbin v.  
10 Nourse, 664 F.2d 1109 (9<sup>th</sup> Cir. 1981), State v. McClear, 11 Nev. 39 (1976).  
11 Foreperson Jami Carpenter was not free of bias and was not forthright with this tribunal  
12 during the voir dire process nor at the Evidentiary Hearing.

13 Compounding this error, this juror admitted that she had her mind made up about  
14 what her decision was going to be before all of the evidence was in and before the Judge  
15 actually charged the jury to go and deliberate. The Nevada Supreme Court has  
16 established a review procedure for juror misconduct, to wit:

17 We have established certain considerations which are relevant to the  
18 decision of whether the error is harmless or prejudicial. These include  
19 whether the issue of innocence or guilty is close, the quantity and character  
20 of the error and the gravity of the crime charged.


21 Hui v. State, 103 Nev. 321 (1987); citing Big Pond v. State, 101 Nev. 1, 3 (1985).

22 In the present case, it cannot be disputed that the gravity of the crime charged  
23 could be no more serious under any circumstances. This alone should be the decisive  
24 factor in determining prejudice. This Court cannot rely upon the integrity of this verdict  
25 when we look at the circumstances and facts surrounding the imposition of death on  
26 Donte Johnson in this case. We have a prospective juror, Ms. Carpenter, essentially  
27 contaminating the jury pool and then coming into the voir dire process and denying it.  
28 Upon information and belief, the defense team did not have any peremptory challenges  
left at that point, and Ms. Carpenter's deceitfulness prevented us from challenging her




1 occurred if Mr. Johnson had received a fair trial. Therefore, this Honorable Court has no  
2 choice except to grant the Motion for a New Trial.

3 DATED this 22 day of June, 2005.

4  
5   
6 ALZORA B. JACKSON  
7 Nevada Bar No. 2255  
8 333 South Third Street, 2nd Floor  
9 Las Vegas, NV 89155-2316  
10 (702) 455-6265

11 **RECEIPT OF COPY**

12 RECEIPT OF COPY of the foregoing **POST-EVIDENTIARY HEARING**  
13 **SUPPLEMENTAL POINTS AND AUTHORITIES** is hereby acknowledged this 22 day of  
14 June, 2005.

15  
16   
17 DAVID ROGER  
18 District Attorney  
19 200 S. Third Street  
20 Las Vegas, NV 89155  
21 Attorney for Plaintiff  
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***EXHIBIT "A"***

**AFFIDAVIT OF THERESA KNIGHT**

1       **STATE OF NEVADA**       )  
2                                )  
3       **COUNTY OF CLARK**       )       **ss.**

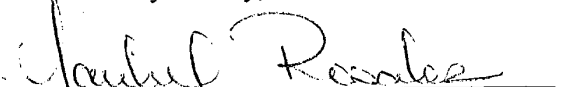
4       THERESA KNIGHT, being first duly sworn according to law, deposes and states as follows:

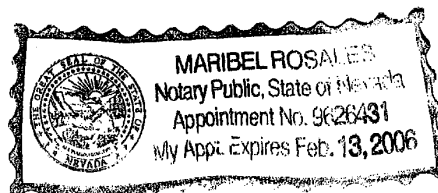
- 5       1.       That I was an alternate juror in the case of State of Nevada v. Donte Johnson.
- 6       2.       That I was present throughout the penalty phase of Donte Johnson.
- 7       3.       That I was not present when the jury returned a verdict of death.
- 8       4.       That following the verdict I discussed with a family member certain issues that I was  
9       concerned about during the penalty phase of State of Nevada v. Donte Johnson.
- 10      5.       That I agreed that my family member would contact Attorney Bret Whipple to convey  
11      my concerns.
- 12      6.       That on May 10, 2005, my family member contacted Attorney Bret Whipple and that  
13      he called me that same day.
- 14      7.       That on May 11, 2005, I met with Attorney Bret Whipple and Mitigation Investigator  
15      Maribel Rosales.
- 16      8.       That Mr. Whipple inquired into jury conduct during the penalty phase in the case  
17      State of Nevada v. Donte Johnson.
- 18      9.       That during that penalty phase, juror number 262 Jamie Carpenter declared to me on a  
19      daily basis, that she was writing a book on being a juror in the Donte Johnson case.
- 20      10.      That juror number 262 Jamie Carpenter stated that different information that was  
21      brought up during the penalty phase, would be used in her book.
- 22      11.      That juror number 262 Jamie Carpenter also stated that at the end of the day, she  
23      would go to her car, remember all witnesses that took the stand, including other  
24      pertinent information and preserve her memories by writing down everything she  
25      could remember about being a juror in the Donte Johnson penalty hearing.
- 26      12.      That on Wednesday morning, prior to deliberations, juror number 262 Jamie  
27      Carpenter stated that she felt sick to her stomach and could not eat because one of the  
28      parties was going to be upset with her decision.

Further Affiant sayeth naught.

  
THERESA KNIGHT

SUBSCRIBED AND SWORN to before me  
This 11<sup>th</sup> day of May, 2005.

  
NOTARY PUBLIC, In and for the County of  
Clark, State of Nevada.



AA05486

***EXHIBIT "B"***

AFFIDAVIT OF WILFREDO MERCADO

STATE OF NEVADA )  
COUNTY OF CLARK ) ss.


WILFREDO MERCADO, being first duly sworn, deposes and states as follows:

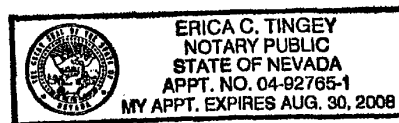
1. That I was an alternate juror in the case of State of Nevada v. Donte Johnson.
2. That I was present throughout the penalty phase of Donte Johnson.
3. That I was not present when the jury returned a verdict of death.
4. That on May 24, 2005, I met Mitigation Investigator Maribel Rosales.
5. That Ms. Rosales inquired into jury conduct during the penalty phase in the case State of Nevada v. Donte Johnson.
6. That during that penalty phase, juror number 262 Ms. Carpenter declared to me on a daily basis, that she was writing a book on being a juror in the Donte Johnson case.
10. That juror number 262 Ms. Carpenter stated that different information that was brought up during the penalty phase, would be used in her book.
11. That juror number 262 Jamie Carpenter also stated that at the end of the day, she would go to her car, remember all witnesses that took the stand, including other pertinent information and preserve her memories by writing down everything she could remember about being a juror in the Donte Johnson penalty hearing.

Further Affiant sayeth naught.

  
WILFREDO MERCADO

SUBSCRIBED AND SWORN to before me  
This 25<sup>th</sup> day of May, 2005.

  
NOTARY PUBLIC, In and for the County of  
Clark, State of Nevada.





***EXHIBIT "C"***

*AFFIDAVIT OF Maribel Rosales*

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STATE OF NEVADA       )  
                                  )  
COUNTY OF CLARK       )       ss.

I MARIBEL ROSALES, being first duly sworn, deposes and states as follows:

1. That I am an Investigator for the Special Public Defender Office.
2. That on May 11, 2005, Attorney Bret Whipple and myself, met with alternate Juror #1, Theresa Knight.
3. That we inquired into jury conduct during the penalty phase in the case of State of Nevada v. Donte Johnson.
4. That during our interview with Theresa Knight, Alternate Juror #1, she declared that juror number 262, Jamie Carpenter, had made it clear that she was writing a book on being a juror in the Donte Johnson case.
5. Theresa Knight also declared to us that juror number 262, Jamie Carpenter, had stated that different information that was being brought up during the penalty phase would be used in her book.
6. Theresa Knight also declared to us that juror number 262, Jamie Carpenter, had stated that at the end of the day, she would go to her car, remember all witnesses that took the stand, including other pertinent information and preserve her memories by writing down everything she could remember about being a juror in the Donte Johnson penalty hearing.
7. That on Wednesday morning, prior to deliberations, juror number 262, Jamie Carpenter, stated that she felt sick to her stomach and could not eat because one of the parties was going to be upset with her decision.
8. That on May 24, 2005, I met Alternate Juror #2, Wilfredo Mercado.
9. That I inquired into jury conduct during the penalty phase in the case of State of Nevada v. Donte Johnson.
10. That during my interview with Wilfredo Mercado, Alternate Juror #2, he declared that juror number 262 Ms. Carpenter made it clear that she was writing a book on being a juror in the Donte Johnson case.
11. Wilfredo Mercado also declared to me that juror number 262, Jamie Carpenter, had stated that at the end of the day, she would go to her car, remember all witnesses that took the stand, including other pertinent information and preserve her memories by writing down everything she could remember about being a juror in the Donte Johnson penalty hearing.
12. That on May 26, 2005 I met with Jamie Carpenter, Jury Foreman for the State of Nevada v. Donte Johnson Penalty Hearing.
13. Jamie Carpenter said she was following the case very closely and knew that Donte Johnson's sentencing date had been postponed. She asked me if the interview with

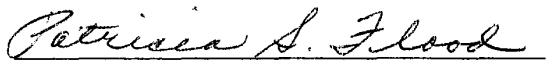
her that day had anything to do with the postponement.

14. Jamie Carpenter also told me that during initial deliberation the jurors did not meet eye to eye, but that she made sure everybody had an opportunity to talk.
15. That during my interview with Jamie Carpenter, she never mentioned anything about writing a book or taking notes at the end of each day.
16. On June 2, 2005, I again spoke with Jamie Carpenter again, Jury Forman for the State of Nevada v. Donte Johnson Penalty Hearing, via phone.
17. I told her that some of the other jurors had mentioned she was writing a book, she said "Oh yea, that was a way of letting off steam". She told me this was a way of keeping the all the jurors connected.
18. She said that she had thought about it (writing the book), but hadn't done it yet and then proceeded to ask me if this was illegal.
19. She said that they had taken a lot of notes and that she had pages of notes stored in the bottom of a drawer.
20. She said that since she had been an English teacher she had always wanted to write a book. She told me that she had already asked the jurors if she could use their real name.

Further Affiant sayeth naught.

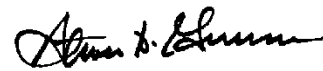
  
MARIBEL ROSALES

SUBSCRIBED AND SWORN to before me  
This 3<sup>rd</sup> day of June, 2005.

  
NOTARY PUBLIC, In and for the County of  
Clark, State of Nevada.



PATRICIA S. FLOOD  
NOTARY PUBLIC  
STATE OF NEVADA  
MY COMM. EXP. 03-27-07  
NO. 92-3783-1



CLERK OF THE COURT

TRAN

ORIGINAL

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DONTE JOHNSON,

Defendant.

CASE NO. C153154

DEPT. VI

BEFORE THE HONORABLE ELISSA F. CADISH, DISTRICT COURT JUDGE

WEDNESDAY, JULY 20, 2011

**TRANSCRIPT OF PROCEEDINGS**

**DECISION: PROCEDURAL BAR AND ARGUMENT: PETITION FOR WRIT OF  
HABEAS CORPUS**

**APPEARANCES:**

For the State:

STEVEN S. OWENS, ESQ.  
Chief Deputy District Attorney

For the Defendant:

CHRISTOPHER R. ORAM, ESQ.

RECORDED BY: JESSICA KIRKPATRICK, COURT RECORDER

DEPT 6

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1 Wednesday, July 20, 2011 8:53 a.m.

2  
3 THE MARSHAL: Top of page 1, State of Nevada v. Johnson, Donte.

4 MR. ORAM: Good morning, Your Honor.

5 THE COURT: All right, good morning.

6 MR. OWENS: Good morning.

7 THE COURT: So, when we were last here we had kind of lengthy  
8 discussion about the whole time bar issue and whether within the  
9 circumstances of this case where the convictions and all other sentences were  
10 affirmed but it was remanded for a new penalty phase hearing, whether that  
11 began the time to run for any habeas issues arising out of those parts other  
12 than the penalty phase that it was remanded for. And unfortunately we don't  
13 have any published Nevada decisions addressing that particular issue, which  
14 only applies in that circumstance where convictions are affirmed but a death  
15 penalty is reversed and remanded.

16 So, it was brought to my attention the Nevada Supreme Court  
17 unpublished decision in Chapel [sounds like], *Chappel*, I'm not sure how he  
18 pronounces it, but -- which of course we can't use as legal authority. I've got  
19 six Supreme Court Justices and an unpublished decision in that case saying  
20 that in fact they were the prior trial phase issues or guilt phase issues were  
21 barred, and citing *Phillips vs. Vasquez* from the Ninth Circuit, as well as two  
22 California decisions from 1974 and 1967 regarding the finality of the underlying  
23 judgment, if you will, other than the penalty phase of the remand.

24 And Mr. Oram has cited for me the *Edelbacher* decision from the  
25 Ninth Circuit in 1998, subsequent to *Vasquez* that, you know, now of course

1 both *Vasquez* and *Edelbacher* are considering issues under the federal habeas  
2 standards in a federal court proceeding. But, in *Edelbacher* it was saying that  
3 the *Phillips v. Vasquez* was a narrow decision and absent unusual  
4 circumstances the general rule is that a petitioner must await the outcome of  
5 the state proceeding before commencing his federal habeas corpus action. And  
6 in that case saying wait until the new penalty phase is all done before you  
7 proceed at least for the federal court habeas.

8 All of which still leaves the issue still up in the air frankly. I was  
9 hope -- you know, on the one hand obviously seeing what six Supreme Court  
10 Justices did is kind of hard to say otherwise, although it's not binding and not  
11 authority. But once -- I guess make a long story short, having looked further at  
12 the Supreme Court's brief discussion in that decision, which they knew was  
13 not going to be a precedential decision, I'm not convinced that they gave that  
14 particular issue the full and detailed analysis that it should have for a  
15 precedential decision on that issue.

16 And it seems to me that the Nevada Statutes contemplated one  
17 habeas petition raising all issues in a case. And that these type of parallel  
18 tracks of proceedings where we'd be in habeas on a guilt phase and I guess  
19 and presumably sentence on all other charges at the same time as a new  
20 penalty phase on the murder charge -- charges would be contrary to that  
21 scheme. And it seems that it would lead to confusion on several levels,  
22 including as pointed out entitlement to counsel, which they're entitled to  
23 counsel on the habeas in a death penalty case, not on others. It would be  
24 unclear whether -- which one this would be in that circumstance.

1           And so I acknowledge what *Chappel* says, but knowing that the  
2 Supreme Court Justices knew that would not be regarded as precedent,  
3 couldn't be cited as legal authority, and given that even the *Vasquez* decision  
4 itself frankly appears in my view to be in question or only have narrow  
5 applicability even in the Ninth Circuit which issued that decision, I find that the  
6 claims are not time barred from that underlying trial.

7           So, Mr. Oram, I know you did not do your reply brief regarding  
8 those issues because this issue was pending.

9           MR. ORAM: Yes.

10          THE COURT: How long do you need to do your reply brief on the merits  
11 of those issues?

12          MR. ORAM: Could I have 30 days, Your Honor?

13          THE COURT: Sure. So, what's 30 days for a deadline for that?

14          THE CLERK: Yes, Your Honor. August 22<sup>nd</sup>.

15          THE COURT: Okay, so August 22<sup>nd</sup> to file the reply. So, after that we'll  
16 have oral argument regarding the merits of the issues that are raised and  
17 determine whether an evidentiary hearing is needed or not when we have that  
18 discussion.

19          MR. OWENS: And that'll be argument on all issues, guilty and the third  
20 penalty hearing?

21          THE COURT: Correct.

22          MR. OWENS: Okay, very good.

23          THE COURT: You know, let me -- I think we should probably look for a  
24 special setting on that, because I expect that'll take a while.

25          MR. OWENS: Yeah, that may take some time.

1 THE COURT: Let me take a look at my calendar here. I could -- so full  
2 disclosure I'm looking at like Thursday morning September 1<sup>st</sup>. I don't have any  
3 calendar that Thursday morning. The full disclosure is that that weekend is  
4 Labor Day Weekend. I'll be here, but just I would rather deal with any conflicts  
5 now than later. But, if you can do it that Thursday morning I've got it clear.

6 MR. ORAM: That's fine.

7 THE COURT: You could be the only matter on that morning.

8 MR. OWENS: That works for me.

9 THE COURT: Let's do September 1<sup>st</sup> at -- 8:30 work for you?

10 MR. ORAM: Yes, Your Honor.

11 MR. OWENS: Yes.

12 THE COURT: Okay.

13 THE CLERK: September 1<sup>st</sup>, 8:30.

14 MR. ORAM: And so that's argument on absolutely everything?

15 THE COURT: That's argument regarding all issues raised in the petition  
16 and the supplements.

17 MR. ORAM: Yes, Your Honor.

18 THE COURT: Okay.

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MR. ORAM: Thank you very much, Your Honor.

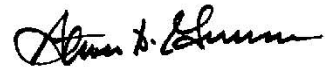
THE COURT: Thank you.

MR. OWENS: Thank you.

[Proceeding concluded at 9:01 a.m.]

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

  
Jessica Kirkpatrick  
Court Recorder/Transcriber



CLERK OF THE COURT

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**ORIGINAL**

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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THE STATE OF NEVADA,

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Plaintiff,

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vs.

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DONTE JOHNSON,

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Defendant.

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BEFORE THE HONORABLE ELISSA F. CADISH, DISTRICT COURT JUDGE

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THURSDAY, DECEMBER 1, 2011

16

**TRANSCRIPT OF PROCEEDINGS**

17

**ARGUMENT: PETITION FOR WRIT OF HABEAS CORPUS  
(ALL ISSUES RAISED IN THE PETITION AND SUPPLEMENT)**

18

APPEARANCES:

19

For the State:

STEVEN S. OWENS, ESQ.

Chief Deputy District Attorney

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For the Defendant:

CHRISTOPHER R. ORAM, ESQ.

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RECORDED BY: JESSICA KIRKPATRICK, COURT RECORDER

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1 Thursday, December 1, 2011 at 8:51 a.m.

2  
3 THE COURT: All right. Good morning.

4 MR. ORAM: Good morning, Your Honor.

5 THE COURT: So, we're on for argument on the petition for writ of  
6 habeas corpus. We didn't transport Mr. Johnson for this. I -- it's just  
7 argument today. It's not an evidentiary hearing. There's no --

8 MR. ORAM: Right.

9 THE COURT: -- issue with that I presume?

10 MR. ORAM: Correct.

11 THE COURT: Okay, good. Okay, so we now have issues, the  
12 substantive issues raised in the petition regarding ineffective assistance at both  
13 the trial phase which was back in, when was it 2000, and then the penalty  
14 phase in 2005, pursuant to my prior ruling. So, I know there is a lot of paper  
15 and don't feel compelled to re-argue everything that's in your papers. But, if  
16 you can focus on what you think the most important issues are. Mr. Oram.

17 MR. ORAM: Your Honor, and that is sort of a concern of mine, because  
18 the issues are so voluminous.

19 THE COURT: Yeah.

20 MR. ORAM: And I thought -- you know, I think a lot of the issues are  
21 important. But, basically I think I'll start from the end and say to the Court we  
22 want an evidentiary hearing. I think I have put forth enough here so that there  
23 are questions for all the attorneys involved as to the decision making process.  
24 And so I guess in brief if I only had seconds to argue it I'd say grant me an  
25 evidentiary hearing, --

1 THE COURT: Okay.

2 MR. ORAM: -- grant Mr. Johnson an evidentiary hearing so that --

3 THE COURT: Okay. I put you on a special hearing, so you have more  
4 than seconds.

5 MR. ORAM: Okay.

6 THE COURT: But, I do understand that that's the end game.

7 MR. ORAM: And unfortunately I think what I would be doing -- when I  
8 talked to Mr. Owens in preparation for this we were talking about how much  
9 argument there would be.

10 THE COURT: Right.

11 MR. ORAM: And it's not as though I have a lot to say other than for  
12 example what's in the reply briefs and what's contained within these  
13 supplements. It really is thought out. And then I responded to what the State  
14 had to say.

15 THE COURT: Yeah.

16 MR. ORAM: So, I guess I can sort of summarize my arguments. And I'll  
17 do it reasonably efficiently hopefully.

18 THE COURT: Okay.

19 MR. ORAM: With regard -- I will start with the issues contained in the  
20 second penalty phase first.

21 THE COURT: Okay. The -- which one are you calling the -- the second  
22 one which was the three judge panel?

23 MR. ORAM: No, I'm sorry.

24 THE COURT: Okay.

25 MR. ORAM: The second penalty phase where he's sentenced to death.