

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 83796

DONTE JOHNSON,
Petitioner,

Electronically Filed
May 27 2022 06:03 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

v.

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

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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RENE L. VALLADARES
Federal Public Defender
Nevada State Bar No. 11479
RANDOLPH M. FIEDLER
Assistant Federal Public Defender
Nevada State Bar No. 12577
Assistant Federal Public Defender
ELLESE HENDERSON
Assistant Federal Public Defender
Nevada State Bar No. 14674

411 E. Bonneville, Suite 250
Las Vegas, Nevada 89101
Telephone: (702) 388-6577
Fax: (702) 388-6419
Randolph_Fiedler@fd.org
Ellesse_Henderson@fd.org

Counsel for Petitioner
Donte Johnson

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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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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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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
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¹ 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

whose sentence has been reversed and who has yet to be resentenced.

Finally, NRS 34.750 provides that, in the case of an indigent defendant filing a petition for post-conviction relief, "the court may appoint counsel to represent the petitioner." However, NRS 34.820 provides, where "a petitioner has been sentenced to death and the petition is the first one challenging the validity of the petitioner's conviction or sentence, the court shall (a) Appoint counsel to represent the petitioner . . ." If NRS 34.726(1) were to be interpreted to require a petitioner to file a petition for post-conviction relief on his conviction only, while resentencing was pending, the following results are possible: 1) the petitioner could be denied appointed counsel for this petition, as he is not currently facing the death sentence, and 2) if he is unsuccessful in his petition and he is again sentenced to death, he may be denied appointed counsel in a petition for post-conviction relief challenging his subsequent death sentence. Further, he would be required to file his direct appeal of his subsequent death sentence within thirty days of entry of judgment of conviction, at a time when he may have a petition for post-conviction relief pending. Similarly, he could receive an unfavorable decision on his petition for post-conviction relief, but be unable to appeal within the required thirty days because he may not yet have had his subsequent sentencing hearing.

"A fundamental rule of statutory interpretation is that the unreasonableness

of the result produced by one among alternative possible interpretations of a statute is reason for rejecting that interpretation in favor of another that would produce a reasonable result." Sheriff, Washoe County v. Smith, 91 Nev. 729, 733, 542 P.2d 440 (1975). An interpretation of Chapter 34 such as that suggested by the State would produce a clearly unreasonable result.

A "judgment" or "decision" is final for the purposes of appeal only when it terminates the litigation between the parties on the merits of the case, and leaves nothing to be done but to enforce by execution what has been determined. Parr v. United States, 351 U.S. 513, 518, 76 S.Ct. 912, 915, 100 L.Ed. 1377, 1383 (1956).

"'Final judgment in a criminal case means sentence. The sentence is the judgment.'" Id. (quoting Berman v. United States, 302 U.S. 211, 212-13, 58 S.Ct. 164, 84 L.Ed.2d 204 (1937)). "Adherence to the rule of finality has been particularly stringent in criminal prosecutions because 'the delays and disruptions attendant upon intermediate appeal,' which the rule is designed to avoid, 'are especially inimical to the effective and fair administration of the criminal law.'" Abney v. United States, 431 U.S. 651, 657, 97 S.Ct. 2034, 2039, 52 L.Ed.2d 651, 658 (1977) (quoting DiBella v. United States, 369 U.S. 121, 126 (1962)). See also Bateman v. Arizona, 429 U.S. 1302, 97 S.Ct. 1, 50 L.Ed.2d 32 (1976) (opinion of Rehnquist, J.) ("This Court is precluded from taking cases unless the petition is

from a 'final judgment' within the meaning of 28 U.S.C. § 1257. In a criminal case, the 'final judgment' is, of course, the imposition of a sentence." (Citing Parr v. United States, 351 U.S. 513, 518, 76 S.Ct. 912, 915, 100 L.Ed. 1377, 1383 (1956); Berman v. United States, 302 U.S. 211, 212, 58 S.Ct. 164, 84 L.Ed.2d 204 (1937)).

2. CASE AUTHORITY SUPPORTS MR. JOHNSON'S POSITION

This issue was considered at length by the United States Court of Appeals for the Ninth Circuit in Edelbacher v. Calderon, 160 F.3d 582 (9th Cir. 1998). In that case, a defendant sought habeas corpus review of his conviction at a time when his conviction had been affirmed but his sentence of death had been vacated and he was awaiting a new penalty hearing. The court held that "[w]hen there is a pending state penalty retrial and no unusual circumstances, we decline to depart from the general rule that a petitioner must wait the outcome of the state proceedings before commencing his federal habeas corpus action." Id. at 583. The Court explained that it was generally not feasible to conduct habeas review of the guilt phase of a case prior to a determination of the sentence in part because it was necessary to know whether the case was capital or not. Id. at 585-86. It emphasized that the Supreme Court "has repeatedly held that the death penalty is qualitatively different from all other punishments and that the severity of the death sentence mandates heightened scrutiny in the review of any colorable claim of error." Id. at 585 & n.4

(citing Ford v. Wainwright, 477 U.S. 399, 411, 106 S. Ct. 2595, 2602, 91 L. Ed.2d 336 (1986); Zant v. Stephens, 462 U.S. 862, 885, 103 S. Ct. 2733, 2747, 77 L. Ed.2d 235 (1983); Gardner v. Florida, 430 U.S. 349, 358, 97 S. Ct. 1197, 1204, 51 L.Ed.2d 393 (1977)). It also noted that "prisoners in state custody subject to a capital sentence are afforded numerous other procedural guarantees such as the appointment of counsel and greater compensation for counsel, investigators, and experts." *Id.* (citing 28 U.S.C. 2261). The Court further noted that the procedural ambiguity of such a situation created duplicative proceedings, confusion and judicial inefficiency. *Id.* See also Burris v. Parke, 95 F.3d 465, 467 (7th Cir. 1996) (noting that "guilt and sentencing are successive phases of the same case, rather than different cases"; holding that a judgment refers to the sentence rather than the conviction; and holding that the Antiterrorism and Effective Death Penalty Act of 1996 would not permit bifurcated habeas proceedings.

The Florida Court of Appeals reached the same conclusion in Snipes v. State, 843 So. 2d 1043 (Fl. App. 2003). Snipes was tried and convicted of first degree capital murder, and subsequently sentenced to death. On direct appeal, the Supreme Court of Florida affirmed the conviction, but reversed the death sentence and remanded to the trial court with instructions to impose a sentence of life imprisonment. After the trial court imposed sentence in accordance with the

instructions of the Supreme Court, Snipes appealed this sentence to the court of appeals, which affirmed the sentence. Id. at 1043-44. Florida post-conviction statutes provide that post-conviction relief proceedings must be filed within two years of the date the judgment and sentence become final. Fla. R. Crim. P. 3.850, 3.851 The supreme court's mandate on direct appeal was issued on May 24, 1999. The court of appeals issued its mandate affirming Snipes' life sentence on January 16, 2001. Snipes filed a motion for post-conviction relief on January 4, 2002. The trial court dismissed his petition as untimely, alleging that the two-year time period began to run when the supreme court issued its mandate on May 24, 1999 . Snipes argued that the time period did not begin to run until January 16, 2001, when the appeals court issued its mandate affirming his life sentence. Id. at 1044. The court agreed with Snipes. Further the court illustrated the unreasonable results which might have occurred if the time period had begun to run at the date of the issuance of the supreme court's mandate. Snipes could not have filed his motion for post-conviction relief while the appeal of his sentence was still pending in the appeals court, because the court would have been without jurisdiction to entertain it. Under the trial court's analysis, Snipes' two-year period of time would have been reduced from two years to two months. Further, the court stated that, given the trial court's determination that the time period began to run on May 24, 1999, if

the court of appeals had delayed its decision on Snipes' appeal of his life sentence for four additional months, Snipes would have forfeited his post-conviction rights altogether. Id.

3. THE STATE'S PROPOSED PROCEDURE HAS NOT BEEN FOLLOWED IN OTHER NEVADA CASES

Similarly situated defendants have not been required to utilize the procedure the State argues is required by Nevada law. The following cases are illustrative:

John Mazzan was convicted of one count of first degree murder and sentenced to death. On direct appeal from his judgment of conviction, this Court affirmed the finding of guilt on the charge of murder but vacated his sentence and remanded the matter for a new penalty hearing. Mazzan v. State, 100 Nev. 74, 675 P.2d 409 (1984). In the second penalty hearing he was again sentenced to death. Mazzan v. State, 103 Nev. 69, 733 P.2d 850 (1987). Following the decision on direct appeal from the second sentence of death, Mazzan filed in the district court a petition for post-conviction relief and a motion for a stay of execution. The district court granted the stay and held a hearing on appellant's petition. On December 2, 1987, the district court entered an order denying the petition for post-conviction relief. Mazzan v. State, 105 Nev. 745, 747, 783 P.2d 430 (1989). This Court subsequently noted that Mazzan's 1987 petitioner alleged. "ineffective assistance of

counsel at trial, on appeal, and during the second penalty phase." Mazzan v. Warden, Nevada State Prison, 112 Nev. 838, 840, 921 P.2d 920 (1996). At no point did this Court conclude that any of the claims raised in the 1987 petition were untimely because they were not filed within one year of the decision on the first direct appeal in 1984.

After a May 1987 mistrial resulting from a hung jury, Victor Jimenez's second trial in January 1988 produced convictions of first-degree murder and robbery with use of a deadly weapon, and a sentence of death. This Court affirmed his convictions on appeal, but reversed his capital sentence. Jimenez v. State, 105 Nev. 337, 775 P.2d 694 (1989). Following a second penalty hearing, Jimenez again received a death sentence, which this Court affirmed. Jimenez v. State, 106 Nev. 769, 801 P.2d 1366 (1990). In 1991, Jimenez filed a post-conviction petition in the district court. Counsel was appointed and counsel filed a supplemental petition in 1992. The post-conviction petition included claims relevant to the guilt phase and the penalty phase, and included claims that the State withheld exculpatory evidence relevant to the guilt phase. This Court found merit to the claims and ordered a new trial on both guilt and penalty. Jimenez v. State, 112 Nev. 610, 612, 918 P.2d 687 (1996). At no point in its opinion did the Court find that claims concerning the guilt phase were not timely raised because a

post-conviction petition was not filed within one year of the first appeal.

Henry Dawson was convicted of first degree murder and sentenced to death. This Court affirmed the conviction and remanded for a new penalty determination. Dawson v. State, 103 Nev. 76, 734 P.2d 221 (1987). After his second penalty hearing, Dawson was sentenced to death, and this Court affirmed the sentence. Dawson v. State, Docket, No. 18558, Order Dismissing Appeal, October 21, 1988. Dawson filed a proper person petition for post-conviction relief, alleging that he had received ineffective assistance of counsel in the guilt phase and penalty phase. The district court denied the request for counsel and dismissed the petition. This Court directed the district court to hold an evidentiary hearing to resolve the factual issues raised in Dawson's petition and to appoint counsel to represent him during those proceedings. Dawson v. State, Docket No. 20440, Order of Remand, November 17, 1989. After an evidentiary hearing, the district court denied Dawson's petition for post-conviction relief. This Court addressed the merits of the issues and affirmed. Dawson v. State, 108 Nev. 112, 825 P.2d 593, 594-595 (1992). At no point in its opinion did this Court conclude that the claims concerning the guilt phase of the case were procedurally barred as untimely based on the fact that the claims were not presented until completion of the second penalty hearing and the appeal therefrom.

There appear to be no case in which the State's proposed procedure of bifurcating guilt and penalty phase habeas corpus proceedings has been followed. Certainly it would be inequitable to mandate such a procedure without prior notice to the defendant.

4. COMMON SENSE SUPPORTS MR. JOHNSON'S POSITION

There are practical considerations which also support Mr. Johnson's position that the time for filing a post-conviction petition for a writ of habeas corpus does not commence until the judgment is final. The bifurcated procedure suggested by the State would lead to absurd results and outrageous costs. For example, the following issues would be presented:

a. Jurisdiction:

Under the State's proposed procedure, it is possible that this Court would entertain an appeal from the denial or grant of a post-conviction petition for a writ of habeas corpus at the same time the new penalty hearing was proceeding in the district court. In such a situation, both the district court and the Supreme Court would be claiming jurisdiction over the same case. This Court, however, has repeatedly held that jurisdiction over a case may not co-exist simultaneously in this Court and the district court. See Buffington v. State, 110 Nev. 124, 868 P.2d 643 (1994); Dickerson v. State, 114 Nev. 1084, 967 P.2d 1132 (1998).

b. Conflicts with Counsel:

Under the State's proposed procedure it is possible that a defendant would be represented by an attorney for the second penalty hearing at the same time that the defendant was challenging the effectiveness of that same attorney. In most cases, trial counsel represents the defendant upon remand for a new penalty hearing. If the State's procedure were followed, the defendant would be arguing that same attorney's performance was ineffective and prejudicial through post-conviction proceedings at the same time as the second penalty hearing. Such a procedure would be highly debilitating to the attorney-client relationship and would create additional conflicts that would be the source of future claims.

c. Appointment of Counsel:

A defendant who is sentenced to death is entitled to the appointment of post-conviction counsel. NRS 34.820(1) (providing for mandatory appointment of counsel for the first post-conviction petition challenging the validity of conviction or sentence where the petitioner has been sentenced to death). Cf. NRS 34.750(1) (providing for discretionary appointment of counsel in other cases). See Pellegrini v. State, 117 Nev. 860, 34 P.3d 519 (2001). Under the State's proposed procedure, the district court would not be able to determine whether or not counsel was mandated because the district court would not know the defendant's sentence.

Likewise, the district court would not be able to determine whether Supreme Court Rule 250, which governs procedures in capital cases, was applicable to the case. Further, the district court would not know whether to pay appointed counsel \$100, the rate for non-capital cases, or \$125, the rate for capital cases. Still further complications would ensue as the district court considered appointment of experts and investigators and considered the degree of scrutiny to give the claims presented in the petition.

d. Possession of the File:

Under the State's proposed procedure, duplicate copies of the entire file would be necessary as both trial counsel and post-conviction counsel would need a complete copy in order to adequately represent the defendant. As the files in capital cases are often enormous, considerable expense would be incurred. Still further expenses could be incurred unnecessarily if different Deputy District Attorneys were assigned for the penalty phase and habeas proceedings or if different District Court Judges were assigned to the two phases of the case. Duplicate copies would also be required if the original file was sent to this Court for an appeal from the penalty verdict if post-conviction proceedings were still pending in the district court.

e. Attorney-Client Privileged Matters:

A defendant has a right to have confidential and privileged conversations with his attorney. This privilege may be waived during post-conviction proceedings if certain issues are raised. A defendant may be hesitant to raise certain issues in a post-conviction petition if the privilege would be waived as a result and the penalty phase were still pending.

f. Federal Review

The federal courts are strict in their requirements both that a single habeas petition be filed and that it be filed within one year of the final decision of the state appellate court's decision on direct appeal. See Carey v. Saffold, 536 U.S. 214 (2002); 28 U.S.C.S. § 2244(d)(1)(A) (federal Antiterrorism and Effective Death Penalty Act of 1996). Under the State's proposed procedure, chaos and confusion would result as to when a defendant was obligated to file his federal court petition.

Conclusion

For each of the above stated reasons, the State's argument should be rejected. There is no support for the State's assertion that a capital defendant must file two post-conviction petitions - one challenging the guilt phase of his case and one challenging the penalty phase of his case. To the contrary, Nevada statutory and case authority clearly provides for a single post-conviction proceeding following a decision on direct appeal from a final judgment of conviction, which includes both

the finding of guilt and entry of a valid sentence. Accordingly, Mr. Johnson's claims concerning both the guilt phase and the penalty phase of this case are properly before this Court.

B. MR. JOHNSON RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL AS HIS ATTORNEYS HAD AN ACTUAL CONFLICT OF INTEREST IN VIOLATION OF THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

In the State's response, the State contends Mr. Johnson's issues relating to his actual convictions are time barred (State's Answering Brief p. 27).

On December 18, 2002, this Court affirmed Mr. Johnson's convictions. However, this Court reversed Mr. Johnson's sentences of death. Johnson v. State, 118 Nev. 787, 59 P.3d 450 (2002). At trial, Mr. Johnson was represented by Mr. Joe Sciscento and Mr. Dayvid Figler. On direct appeal, Mr. Johnson was represented by Lee McMahon of the Special Public Defenders office (See, Johnson v. State, 118 Nev. 787, 59 P.3d 450 (2002)). This Court issued a remittitur on January 14, 2003. The State claims Mr. Johnson's one year time limit to file a post-conviction writ began January 14, 2003. See NRS 34.726(1). Hence, the State argues that Mr. Johnson was required to file his post-conviction writ no later than January 13, 2004 (State's Answering Brief pp. 31).

During this time period, the special public defender continued to represent

Mr. Johnson. The Special Public Defender conducted investigation and began preparation for Mr. Johnson's third penalty phase. In fact, the special public defender represented Mr. Johnson during the third penalty phase. The Special Public Defender continued to represent Mr. Johnson on appeal from the sentences of death he received during his third penalty phase.

Accordingly, *assuming arguendo* this Court agrees with the State's position, Mr. Johnson received ineffective assistance of counsel based upon an actual conflict of interest. The court appointed the Special Public Defender to represent Mr. Johnson. Yet, counsel for Mr. Johnson should have filed a post-conviction proceedings. Mr. Johnson has been condemned to death and was represented by counsel. In the instant case, the undersigned has found numerous instances of ineffective assistance of trial and appellate counsel. All of the issues allege that the Special Public Defenders committed ineffective assistance of counsel. Rather than file these issues in a timely fashion, the Special Public Defender failed to ever file a post-conviction petition for Mr. Johnson. The Special Public Defender would have been required to argue that they had provided ineffective assistance of counsel both at trial and on appeal. Obviously, the Special Public Defender has an actual conflict in claiming that they had provided ineffective assistance of counsel to Mr. Johnson.

The Sixth Amendment provides that "in all criminal prosecutions, the

accused shall enjoy the right...to have the assistance of counsel for his defense”.

This right to counsel includes a “correlative right to representation that is free from conflicts of interest” Wood v. Georgia, 450 U.S. 261, 271, 67 L.Ed. 2d 220, 101 Sup. Ct. 1097 (1981); See also, Cuyler v. Sullivan, 446 U.S. 335, 345, 64 L.Ed. 2d 333, 100 Sup. Ct. 1708 (1980). Whether a defendant’s representation “violates the sixth amendment right to effective assistance of counsel is a mixed question of law and fact that is reviewed de novo” Triana v. United States, 205 F.3d 36, 40 (2nd Cir. 2000)(quoting United States v. Brau, 159 F.3d 68, 74 (2nd Cir. 1998), cert denied 531 U.S. 956 (2000).

Conflicts of interest can be placed into three categories. The first category describes those conflicts that are so severe that they are deemed per say violations of the sixth amendment. Such violations are unwaivable and do not require of showing that the defendant was prejudiced by his representation. See, United States v. Fulton, 5 F.3d 605, 611 (2nd Cir. 1993); United States v. John Doe # 1, 272 F.3d. 116, 125 (2nd Cir. 2000); Finlay v. United States, 537 U.S. 851, 154 L.Ed. 2d 82, 123 Sup. Ct. 204 (2002); Armienti v. United States, 234 F.3d 820, 823 (2nd Cir. 2000). By contrast when an actual conflict of interest occurs when the interest of the defendant and his attorney “diverge with respect to a material factual or legal issue or to a course of action” United States v. Schwarz, 283 F.3d 76, 91 (2nd Cir.

2002). To violate the sixth amendment, such conflicts must adversely affect the attorney's performance. See, United States v. Levy, 25 F.3d 146, 152 (2nd Cir. 1994). Lastly, a clients representation suffers from a potential conflict of interest if "the interest of the defendant may place the attorney under inconsistent duties at some time in the future" United States v. Kliti, 156 F.3d 150, 153 (2nd Cir. 1998). To violate the sixth amendment such conflicts must result in prejudice to the defendant. Levy, 25 F.3d at 152.

While a defendant is generally required to demonstrate prejudice to prevail on a claim of ineffective assistance of counsel. See, Strickland v. Washington, 466 U.S. 668, 687, 80 L.Ed. 2d 674, 104 Sup. Ct. 2052 (1984), this is not so when counsel is burdened by an actual conflict of interest. Id. 466 U.S. at 692. Prejudice is presumed under such circumstances. See also, United States v. Malpiedi, 62 F.3d 465, 469 (2nd Cir. 1995); United States v. Iorizzo, 786 F.2d 52, 58 (2nd Cir. 1986). Therefore, a defendant claiming he was denied a right to conflict free counsel based on an actual conflict need not establish a reasonable probability that, but for the conflict or a deficiency in counsel's performance caused by the conflict, the outcome of the trial would have been different. Rather, he need only establish 1) an actual conflict of interest that 2) adversely affected his counsel's performance. See, Cuyler v. Sullivan, 446 U.S. 335, 348, 64 L. Ed 2d 333, 100 Sup. Ct. 1708 (1980);

See also, Levy, 25 F.3d at 152.

“An attorney has an actual, as opposed to potential, conflict of interest when, during the course of the representation, the attorney’s and the defendant’s interest diverge with respect to the material factual or legal issue or to a course of action.” Winkler v. Keane, 7 F.3d 304, 307 (2nd Cir. 1993).

The State claims that Mr. Johnson missed his statutory time period for alleging ineffective assistance of counsel for his convictions. Mr. Johnson was represented by the Special Public Defender who did not file the petition (*assuming arguendo* this court rules that the State was correct). Based on this actual conflict of interest, the case law establishes Mr. Johnson received ineffective assistance of counsel. Mr. Johnson is entitled to a new penalty phase based on the failure of his counsel to recognize that an actual conflict of interest existed during the third penalty phase.

Mr. Johnson is entitled to a new penalty phase based upon ineffective assistance of counsel based upon a conflict of interest in violation of the sixth and fourteenth amendments to the United States Constitution.

C. MR. JOHNSON’S ISSUES REGARDING INEFFECTIVE ASSISTANCE OF COUNSEL FROM TRIAL AND ON APPEAL FROM THE JUDGMENTS OF CONVICTIONS ARE NOT TIME BARRED PURSUANT TO HOLLAND V. FLORIDA, 130 S.Ct. 2549 (JUNE 14, 2010).

In the instant case, Mr. Johnson’s counsel failed to timely file a post-conviction Petition for Writ of Habeas Corpus. Additionally, Mr. Johnson’s counsel failed to advise him of his need to file a timely petition.

In Holland v. Florida, 130 S. Ct. 2549 (June 14, 2010), the United States Supreme Court determined that limitation periods are customarily subject to equitable tolling. The United States Supreme Court reasoned that basic habeas corpus principles have always considered equitable principles.

The United States Supreme Court granted Holland’s petition for Certiorari. The Eleventh Circuit Court of Appeals application of equitable tolling doctrine to instances of professional misconduct, conflicted with the approach taken by other circuits Id. at 2560. The United States Supreme Court had not decided whether the statutory limits for the one year filing of the petition would be tolled for equitable reasons. Id. at 2560. See also, Pace v. DiGuglielmo, 544 U.S. 408, 418, n. 8 (2005). The United States Supreme Court determined that the AEDPA “statute of limitations defense... is not jurisdictional” Id. at 2560. See also Day v. McKonough, 547 U.S. 198, 205 (2006). “It does not set forth an inflexible rule requiring dismissal whenever it’s clock has run Id. at 208.

“It is hornbook law that limitation periods are customarily subject to equitable tolling” Id. at 2560. See Irwin v. Department of Veterans Affairs, 498

U.S. 89, 95)(internal quotations omitted). “...the presumption strength is reinforced by the fact that equitable principles have traditionally governed the substance of law of habeas corpus, Munaf v. Geren, 553 U.S. 674, 693 (2008), for we will not construe the statute to displace court’s traditional equitable authority absent the clearest command, Miller v. French, 530 U.S. 327, 340 (2000). Id. at 2560.

The United State Supreme Court in Holland, reasoned that the application of equitable tolling would not affect the substance of a petitioner’s claim. Id. at 2560. The United States Supreme Court reasoned that basic habeas corpus principles have always considered equitable principles, Holland (pp. 16). See also, Slack v. McDaniel, 529 U.S. 473, 483 (2000).

The United States Supreme Court provided,

The importance of the Great Writ, the only writ explicitly protected by the constitution, Art. I. Sec. 9, cl. 2, along with congressional efforts to harmonize the new statute with prior law, counsels hesitancy before interpreting AEDPA’s statutory silence as indicating a congressional intent to close courthouse doors that a strong equitable claim would ordinarily keep open Id. at 2562.

The United States Supreme Court has held that a petitioner is entitled to equitable tolling if she can show that 1) she was pursuing her right diligently, and 2) that some extraordinary circumstance stood in her way and prevented timely filing. Id. at 2562. See also, Pace v. DiGuglielmo, 544 U.S. 408, 418 (2005).

The United States Supreme Court reminds courts for the need of “flexibility”, for avoiding “mechanical rules ” Holland, 130 Sup. Ct. 2562. See also Holmberg v. Armbrecht, 327 U.S. 392, 396 (1946). The United States Supreme Court reasons,

...We have found a tradition in which court of equity have sought to relieve hardships which, from time to time, arise from hard and fast adherence to more absolute legal rules, which, if strictly applied, threaten the evils of archaic rigidity (Holland v. Florida, pp. 17)(Internal quotations omitted), See also Hazel-Atlas Glass Co. v. Hartford Empire Co., 322 U.S. 238, 248 (1944).

Moreover, the United States Supreme Court explained,

Taken together, these cases recognize that courts of equity can and do draw upon decisions made in other similar cases for guidance. Such courts exercise judgment in light of prior precedent, but with awareness of the fact that specific circumstances, often hard to predict in advance, could warrant special treatment in an appropriate case Holland, 130 Sup. Ct. 2563.

The United States Supreme Court enunciated that the Eleventh Circuit rule is difficult to reconcile with more general equitable principles and that it failed to recognize, at least sometimes, professional misconduct amounts to egregious behavior, which would create an extraordinary circumstance and demands equitable tolling. Holland, 130 Sup. Ct. 2563.

In this case, the failure of Mr. Johnson’s counsel to file a timely petition or advise Mr. Johnson of the need to file a timely petition demands the extraordinary

circumstance which warrants equitable tolling.

In Holland v. Florida, the United States Supreme Court provided the following ratio decidendi,

Several lower courts have specifically held that unprofessional attorney conduct may, in certain circumstances, prove egregious and can be extraordinary even though the conduct in question any not satisfy the Eleventh Circuit's rule. See, e.g. Nara v. Frank, 264 F.3d 310, 320 (CA3 2001)(ordering hearing as to whether client who was effectively abandoned by lawyer merited tolling); Calderon, 128 F.3d, at 1289 (allowing tolling where client was prejudiced by a last minute change in representation that was beyond his control); Baldayaque, 338 F.3d at 152-153 (finding that where an attorney failed to perform an essential service, to communicate with the client, and to do basic legal research, toling could, under the circumstances, be warranted); Spitsyn, 345 F.3d, at 800-802 (finding that extraordinary circumstances may warrant tolling where lawyer denied client access to files, failed to prepare a petition, and did not respond to this client's communications); United States v. Martin, 408 F.3d 1089, 1096 (CA8 2005) (client entitled to equitable tolling where his attorney retained files, made misleading statements, and engaged in similar conduct). We have previously held that a garden variety claim of excusable neglect, Irwin, 498 U.S., at 96, such as a simple miscalculation that leads a lawyer to miss a filing deadline, Lawrence, supra, at 336, does not warrant equitable tolling. But the case before us does not involve, and we are not considering, a garden variety claim of attorney negligence. Rather, the facts of this case present far more serious instances of attorney misconduct. And, as we have said, although the circumstances of a case must be extraordinary before equitable tolling can be applied, we hold that such circumstances are not limited to those that satisfy the test that the Court of Appeals used in this case. Holland, 130 Sup. Ct. 2564. (Internal quotations omitted).

Pursuant to Holland v. Florida, 130 S.Ct. 2549 (June 14, 2010), the United

States Supreme Court determined that limitation periods are customarily subject to equitable tolling. Therefore, Mr. Johnson's issues regarding ineffective assistance of counsel from trial and on appeal from the judgments of convictions were correctly heard on the merits for the failure of Mr. Johnson's counsel to file a timely writ.

TRIAL PHASE ARGUMENTS

II. MR. JOHNSON RECEIVED INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL FOR FAILURE TO RAISE ON DIRECT APPEAL THE UNCONSTITUTIONALITY OF JOHNSON'S JURY SELECTION PROCESS.¹

In the instant case, Mr. Johnson's entire voir dire was unconstitutional and Mr. Johnson was severely prejudiced. Mr. Johnson received ineffective assistance of appellate counsel for the failure to raise the following issues on direct appeal in violation of the fifth, sixth, eighth, and fourteenth amendments to the United States Constitution.

¹ Recently, in Buchanan v. State, 130 Nev. Adv. Rep. 82, 335 P.2d 207, 209 (2014), this Court held that "[w]hen a defendant asserts a Batson violation, it is a structural error to dismiss the challenged juror prior to conducting the Batson hearing because it shows that the district court predetermined the challenge before actually hearing it". This is because the "dismissal of a prospective juror before holding a Batson hearing may present the appearance of improper judicial bias." Id.

A. MR. JOHNSON RECEIVED AN UNCONSTITUTIONAL JURY VENIRE

At the conclusion of voir dire, trial counsel complained that the jury pool did not consist of a cross-section of Clark County, Nevada. Specifically, trial counsel noted that the jury pool consisted of over eighty potential jurors with only three potential minorities. The State's entire argument regarding this issue seems to fall on the failure of Mr. Johnson to demonstrate purposeful discrimination of African Americans (State's Answering Brief pp. 37-40).

The State contends that Mr. Johnson is unable to show systematic exclusion of African Americans. As noted in Mr. Johnson's second supplemental brief, this Court cited statistics that there are approximately 9.1 percent of African Americans in Clark County. Williams v. State, 121 Nev. 934, 941, 125 P.3d 627 (2005). In Williams, this Court noted that the jury venire included only one African American out of forty venire members. Id. Here, Mr. Johnson's jury venire consisted of three minority jurors out of eighty venire members. Accordingly, out of Mr. Johnson's entire jury venire, only 3.75 percent were minorities.

The State claims that there is no proof of a systematic exclusion. Mr. Johnson can establish a pattern of systematic exclusion in the state of Nevada. In Williams, approximately 2.5 percent (1 African American out of 40) made up the

jury venire. Here, Mr. Johnson's venire was made up of 3.75 percent of minorities. Mr. Johnson was facing a death sentence. In 2010, the undersigned was appellate counsel in Delbert Cobb v. State of Nevada, 50346. This Court considered Mr. Cobb's issues during oral argument.² In Williams, the African American venire was limited to 5 percent. In fact, Delbert Cobb's jury venire included only two African Americans out of 70 venire members. Hence, Mr. Cobb's percentage of African Americans was 2.8 percent (A.A. Vol. 36 p. 7732). During oral argument, this Court questioned Mr. Cobb's counsel regarding whether there was proof of systematic exclusion.

To show that a right to a cross-section has been violated, a defendant must demonstrate:

1) That the group alleged to be excluded is a distinctive group in the community; 2) that the representation of this group in venires from which jury's are selected is not fair and reasonable in relation to the number of such persons in the community; and 3) that the under representation is due to systematic exclusion of the group in the jury selection process. See, Evans v. State, 112 Nev. 1172, 1186, 926 P.2d 265, 274 (1996), Taylor v. Louisiana, 419 U.S. 522, 95 Sup .Ct. 692,

²In the district court below, Mr. Johnson attached Mr. Cobb's briefing in this Court (A.A. Vol. 36 p. 7732). Mr. Johnson is aware that unpublished decisions are not binding. However, Mr. Johnson uses this material to establish a systematic exclusion of African Americans in Clark County venire panels.

42 1.Ed. 2d 690 (1975).

Here, Mr. Johnson can prove that African Americans are a distinctive group. Next, Mr. Johnson can point to three recent cases to establish that juries are selected in an unfair and unreasonable relationship to the number of such persons in the community.

Lastly, Mr. Johnson must show that the under representation is due to systematic exclusion. In Cobb, this Court noted that Mr. Cobb examined the Clark County jury commissioner about the jury selection process and that the commissioner testified that jurors are selected from a list provided by the Department of Motor Vehicles. The jury commissioner also noted that a Senate Bill was pending that would expand the pool of potential jurors to include those who were customers of Nevada Power. Without much analysis, this Court then ruled that there was no proof of systematic exclusion. However, Mr. Johnson can now provide this court with at least three cases where African Americans have been grossly under represented in a jury venire. The courts should no longer ignore what appears to be obvious. Surely, the court cannot conclude that these statistics are simply a coincidence. Mr. Johnson would respectfully request an opportunity to establish systematic exclusion at an evidentiary hearing. Mr. Johnson would request permission to call the heads of the public defender, special public defender,

and federal public defender to establish a systematic exclusion.

On direct appeal, appellate counsel failed to raise this issue. If appellate counsel had raised this issue based upon the United States Constitution, the result of the appeal would have been different and Mr. Johnson would have been granted a new trial. Mr. Johnson should have had a fair cross-section of the community and was denied that right in violation of the due process clause and equal protection clause of the United States Constitution.

B. THE STATE PREEMPTED A JUROR IN AN UNCONSTITUTIONAL MANNER IN VIOLATION OF BATSON V. KENTUCKY.

When the State moved to dismiss juror number seven, defense counsel made a contemporaneous Batson challenge (ROA 8 1833). Defense counsel complained that the State had excluded the juror in violation of Batson v. Kentucky, 476 U.S. 79, 106 Sup. Ct. 1712, 90 L.Ed 2d 69 (1986). Juror number seven, Ms. Fuller indicated that she could consider the death penalty. Ms. Fuller stated that she could check the block on the form if the death penalty was appropriate. The prosecutor asked Ms. Fuller, “can you promise me this: That the verdict you pick will be a just and fair verdict no matter how difficult the choice?” Ms. Fuller stated, “definitely fair, yes”. The prosecutor then passed for cause.

The State’s argument provides that juror Fuller sat with her hands crossed

and the State had a sense that she had disdain for the questioning of her (State's Answering Brief pp. 39). The State also noted that she had a stepson in jail (State's Answering Brief pp. 40). Again, counsel for Mr. Johnson argued this identical issue in front of this Court in Delbert Cobb v. State of Nevada, 50346. In Cobb, counsel argued that trial attorneys routinely use pretextual excuses for excluding minority jurors. As in the instant case, in Cobb the prosecutors claimed they excluded African American jurors for their body language. Any experienced trial attorney knows they can make a record excluding virtually any juror based on body language. For example, counsel could argue, your honor, I noted that the juror appeared to pay much more attention to the defense attorney and appeared to ignore me when I questioned her. Your honor, the juror scowled at me several times during this week long voir dire process. Anyone can make these arguments. Does this argument preclude courts from recognizing that these pretextual reasons are in fact violations of the United States Constitution. These type of excuses can be used on a habitual basis. In fact, prosecutors often use these type of excuses because judges accept them.

In fact, in the State's Answering Brief in Cobb, the State made the following pretextual argument.

In addition, the State made the district court aware that Ms. Dawson

was standing at eye level right across from the prosecutor during the questioning regarding the close friend or relative charged with a crime. In her responses, she made no eye contact with the prosecutor, and was specifically looking at almost a ninety degree angle away in answering the questions about whether or not she felt that the person was treated fairly. The prosecutor noted that fact to his co-counsel immediately upon sitting down (Cobb, State's Answering Brief pp. 12).

Mr. Cobb's counsel tried to inform this Court that experienced trial attorney's can make these type of arguments anytime. The undersigned could make these type of arguments on virtually any juror, at any time. For example:

Look, your honor, I noticed juror number forty-eight spent approximately eighty percent of the time looking at the prosecutors and would almost never look at my co-counsel. Throughout the voir dire process, I alerted my co-counsel to this problem.

These arguments are obviously pretextual.

Next, the State claims that Ms. Fuller noted that she had a stepson in jail and that she could sentence a person convicted of quadruple homicide to life with parole (State's Answer pp. 40). Initially, it should be noted that a sitting juror is required to consider that they can consider all forms of punishment. Hence, the State's contention that Ms. Fuller indicated that she could consider life with the possibility of parole is misplaced.

However, the State's argument that Ms. Fuller had a stepson in jail is also predictable and pretextual. In Cobb, this Court entertained this identical argument

during oral argument. In the State's Answering Brief in Cobb, they established that the challenged African American juror was removed because she had close family members and friends who were charged with a crime. In the instant case, the State claims that Ms. Fuller was excused in part because her stepson was in jail. During oral argument, this Court appeared concerned with counsel's argument that virtually every potential African American juror can be excluded for this reason. However, during oral argument this Court noted that counsel had not provided statistics to establish the fact. Mr. Cobb's counsel argued that the statistics provide that almost every single African American will know someone who has been charged with a crime. This is now easily proven. In Mr. Johnson's supplement he has provided statistics to establish this fact.

Two studies conducted by Blumstein and Graddy in 1983, estimated the cumulative risks of arrest. The study found:

Alfred Blumstein and Elizabeth Graddy examined 1968-1977 arrest statistics from the country's fifty-six largest cities. Looking only at felony arrests, Blumstein and Graddy found that one out of every four males living in a large city could expect to be arrested for a felony at some time in his lifetime. When broken down by race, however, a nonwhite male was three and a half times more likely to have a felony arrest on his record than was a white male. Whereas only 14% of white males would be arrested, 51 % of nonwhite males could anticipate being arrested for a felony at some time during their lifetimes. See generally Alfred Blumstein & Elizabeth Graddy, Prevalence and Recidivism Index Arrests: A Feedback Model, 16 LAW & SOC'Y REV. 265 (1981-82).

Additionally, the United States Department of Justice concluded that in 1997, nine percent (9%) of the African American population in the United States was under some form of correctional supervision compared to two percent (2%) of the Caucasian population³. Statistics from the United States Department of Justice show that at midyear 2008, there were 4,777 black male inmates per 100,000 black males held in state and federal prisons and local jails, compared to 1,760 Hispanic male inmates per 100,000 Hispanic males and 727 white male inmates per 100,000 white males⁴. Under the state's argument, virtually, every African-American as a prospective juror would be ineligible under the state's theory of racial neutrality because the statistics show they will know someone who has been arrested.

According to the Bureau of Justice Statistics presented by the Department of Justice African American's were almost three (3) times more likely than Hispanics, and five times more likely than Caucasians to be in jail⁵. Additionally, midyear 2006, African American men comprised forty-one (41%) percent of the more than

³U.S. Department of Justice, *Bureau of Justice Statistics*, (1997) available at <http://www.ojp.usdog.gov/bjs/glance/cpracept.htm>

⁴U.S. Department of Justice, *Bureau of Justice Statistics*, (2008), available at <http://www.ojp.usdog.gov/bjs/glance/jailrair.htm>

⁵U.S. Department of Justice, *Bureau of Justice Statistics*, (2008), available at <http://www.ojp.usdoj.gov/bjs/prisons.htm>

two million men in custody. Overall, in 2006 African American men were incarcerated at a rate of six and a half percent (6.5%) times the rate of Caucasian Men⁶.

Hence, fifty-one percent of non-white males could anticipate being arrested for a felony at some time during their lifetime. Using this statistic alone, the prosecutors can pretextually preempt any African American juror. First, common sense dictates that every human being has a father. Therefore, every African American child has approximately a fifty percent chance that their father has been or will be arrested in their lifetime. For example: Your honor, I noted that the potential juror admitted that her father had been arrested. The point should now be clear. Every African American born would have two grandfathers (maternal and paternal). Therefore, there is approximately a fifty percent chance that the prospective juror's paternal grandfather would have been arrested. There would also be a fifty percent chance that the maternal grandfather would have been arrested. Now, upon birth, the prospective juror has three males in his or her life that have a fifty percent chance of being arrested during their lifetime. Already, the State has an opportunity to establish that the prospective juror was concerned about

⁶U. S. Department of Justice, *Number of jailed inmates and incarceration rates by race*, (2006) available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/pjim06.pdf>

the arrest or conviction of their paternal grandparent in 1977, who the prospective juror believed was unfairly treated. For another example: Additionally, did you note the way the prospective juror crossed her hands when I questioned her about the matter?

Upon birth, potential African American jurors may well have brothers. Again, one brother provides a fifty percent chance of arrest at some point in his life. Prospective jurors may have male offspring. Each male offspring provides a fifty percent chance of arrest. African American jurors most likely would have friends growing up in the community. Each male, has approximately a fifty percent chance of an arrest. The point should be obvious. In Cobb, this Court indicated that the undersigned had not provided statistics. Now, the undersigned has provided statistics. Therefore, any experienced trial attorney can simply question an African American juror as to whether any family member or friend has ever been arrested. The chance that the answer is no, is extremely slim. Once the prospective juror admits to the arrest of a friend or family member, the prosecutor has a pretextual reason to preempt. It appears very curious, that in Cobb and the instant case, the State uses the same excuses to exclude the prospective juror.

In the instant case, the State explains, “juror number seven also indicated that she had a stepson in jail and that she could sentence a person convicted of

quadruple homicide to life with parole” (State’s Answering Brief p. 40). In Cobb, the State explained that Ms. Dawson (African American female) was removed because “she had close family members and friends who were charged with crime”. This is pretextual and used on a systematic basis by prosecutors in Clark County to remove prospective jurors. The State was forced to pass for cause on Ms. Fuller because her answers rendered her death eligible. The State’s excuses are typically used and are capable of repetition.

Appellate counsel was ineffective for failing to raise this issue on direct appeal. Mr. Johnson’s due process and equal protection clause rights were violated by the exclusion of the juror.

C. THE DEFENSE OBJECTED TO THE STATE USING PEREMPTORY CHALLENGES TO REMOVE PERSPECTIVE LIFE AFFIRMING JURORS MR. MORINE AND MR. CALBERT.

This argument stands submitted as enunciated in the Opening Brief.

D. THE DISTRICT COURT IMPROPERLY DENIED MR. JOHNSON’S CHALLENGES FOR CAUSE ON THREE POTENTIAL JURORS. MR. JOHNSON WAS FORCED TO USE PEREMPTORY CHALLENGES ON ALL THREE OF THE DISTRICT COURT’S DENIALS OF THE CHALLENGES FOR CAUSE.

Compounded with the discriminatory and unconstitutional manner in which Mr. Johnson’s trial jury was selected, the district court abused its discretion in failing to grant the defense challenges for cause. The defense challenged three

prospective jurors who were clearly not qualified to perform as jurors in the instant case. The defense was forced to use a peremptory challenge to remove juror Fink. Mr. Fink indicated that he would always vote for the death penalty in a case of premeditated and intentional murder. The court denied the defenses' challenge for cause.

The defense was forced to use a peremptory challenge to remove juror Baker. Mr. Baker affirmed that an individual convicted of intentional and premeditated murder should receive the death penalty. Mr. Baker affirmed that there should be no parole for somebody convicted of premeditated and deliberate murder.

Lastly, the defense was forced to expend a peremptory challenge to remove juror Shink. Mr. Shink believed that prisoners who are convicted of crimes from car theft to murder should be eligible for Logan's runs numbers. That random drawings should occur and if your number is called you should be executed. Unbelievably, the district court denied the challenge for cause.

The State claims this matter should be dismissed as moot. The State claims that since Mr. Johnson was not sentenced to death, the exclusion of the potential jurors have nothing to do with their inability to be impartial in determining guilt (State's Answering Brief p. 42). In support of this argument, the State cites to

NCAA v. University of Nevada, Reno, 97 Nev. 56, 57, 624 P.2d 10 (1981) (State's Answering Brief pp. 44). A review of the single case cited by the State provides absolutely no analysis to the instant situation. Mr. Johnson received a jury that was selected in highly discriminatory and unconstitutional manner. Mr. Johnson was then convicted of four counts of first degree murder. In a separate penalty hearing, the State relied upon this jury's verdicts to inform the third penalty phase jury that the convictions had already been established and residual doubt could not be considered. Mr. Johnson was subsequently sentenced to death. The State's citation to NCAA v. University of Nevada, Reno, 97 Nev. 56, 57, 624 P.2d 10 (1981), has absolutely nothing to do with this issue. The State cites no legal authority for the proposition that Mr. Johnson could be convicted of first degree murder when the district court repeatedly denied proper challenges for cause. Additionally, it has long been noted that there is overwhelming evidence that death qualified juries are substantially more likely to convict or convict on more serious charges than juries on which unaltered opponents on capital punishment are permitted to serve. See, Buchanan v. Kentucky, 483 U.S. 402, 427, 107 Sup. Ct. 2906, 97 L. Ed 2d 336 (1987). As the State can cite no authority for their contention, this court must consider Mr. Johnson's complaints that he should not have been convicted with his counsel having to use approximately forty percent of their peremptory challenges

to remove jurors that should have been removed for cause.

Next, the State argues that appellate counsel was not ineffective for failure to raise this issue on appeal because the district court did not err in denying defendant's challenges for cause (State's Answering Brief p. 46). The State claims that Mr. Johnson has taken excerpts from the prospective jurors statements out of context. Mr. Johnson would respectfully request that the State re-read juror Shinks entire questioning during voir dire. There is nothing taken out of context that would explain Mr. Shink's bizarre and extreme opinions regarding his "Logan's Run" theory. It would be almost impossible to categorize Mr. Shink's position in any other fashion. More importantly, if the State believed that Mr. Shink's statements were taken out of context, surely, they could have informed this court how the statements were taken out of context. In fact, the State claims,

Defendant's assertion that prospective juror Shink wanted to pull numbers out of a barrel, similar to Logan's Run is a mischaracterization of Shink's attempt to explain his random suggestions about prison overcrowding, future deterrence of crime, and the money spent on prisoners could be better spent on society's youth (State's Answering Brief p. 45).

It is true that Mr. Shink believed that executing prisoners randomly from car theft to murder would permit society more money to spend on society's youth. It is true that Mr. Shink believed that this may help with prison overcrowding and

future deterrence. Mr. Johnson agrees. This is exactly why Mr. Shink was the most obviously unqualified juror to sit in a quadruple murder. Mr. Shink was not qualified to sit on a car theft case. In Leonard v. State, 117 Nev. 53, 17 P. 3d 397, this Court held,

We agree that “equal consideration of all three possible forms of punishment, including death, is not required. Rather the proper question is whether a prospective jurors views “would prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath” Wainwright v. Witt, 469 U.S. 412, 424, 83 L. Ed. 2d 841, 105 Sup. Ct. 844 (19985) (quoting Adams v. Texas, 448 U.S. 38, 45, 65 L. Ed. 2d 581, 100 Sup. Ct. 2521 (1980).

The State provides no citation to the record establishing that Mr. Johnson has improperly or inaccurately cited Mr. Shink’s statements. How can the State argue that these opinions did not substantially impair him for qualification in a first degree murder trial. The district court abused its discretion when it failed to grant the defense challenge for cause. Although the district court has broad discretion in rulings on challenges for cause, this amounted to abuse of discretion.

If appellate counsel had raised this issue on appeal, the result of the appeal would have resulted in reversal.

In the instant case, the defendant was forced to use three peremptory challenges after the trial judge erroneously failed to grant three challenges for cause even after the jury was announced. In the instant case, the defense clearly

complained about the juries makeup and their failure to represent a cross-section of the community. In Ross, the United States Supreme Court held that a loss of a single peremptory challenge does not constitute a violation of the constitutional right to an impartial jury Ross v. Oklahoma, 487 U.S. 81, 88, 108 S. Ct. 2273, 101 L. Ed. 2d 80 1988). So long as the jury which sits is impartial Id. The Majority in the United States Supreme Court decision in Ross determined that the single loss of the state law right to a single peremptory challenge did not violate his right to a fair trial under the federal constitution 47 U.S. at 90-91.

However, in United States v. Martinez-Salazar, the United States Supreme Court stated, “[i]n conclusion, we note what this case does not involve, a trial court deliberately misapplied the law in order to force the defendant’s to use a peremptory challenges to correct the court’s error” 528 U.S. 304, 316.

In Ross v. Oklahoma, the United States Supreme Court was divided five to four on a similar issue. Four dissenting justices opined,

The defense’s attempt to correct the court’s error and preserve it’s six amendment claim deprived it of a peremptory challenge. That deprivation could possibly have affected the composition of the jury panel under the Gray standard, because the defense might have used the extra peremptory to remove another juror and because the loss of a peremptory might have affected the defenses strategic use of it’s remaining peremptories 487 U.S. 81, 93.

The dissent explained, “The Court today ignores the clear dictates of these

and other similar cases by condoning a scheme in which a defendant must surrender procedural parity with the prosecution in order to preserve his Sixth Amendment right to an impartial jury”. 487 U.S. 81, 96.

Juror Baker affirmed that a person convicted of murder should not be considered for parole. In the State’s response they refuse to address Mr. Johnson’s citation establishing that juror Baker was not qualified pursuant to Leonard and Wainwright. Additionally, Mr. Fink affirmed that **every** person convicted of intentional premeditated deliberate murder should receive the death penalty. The State cannot dispute this contention. In the State’s answer, the State simply provides an opinion given by Mr. Fink, that life without parole maybe the worst possible punishment. However, the State provides no citation that Mr. Fink could consider all forms of punishment. In fact, none of the three jurors could consider all three forms of punishment. All three jurors answers established that they were substantially impaired in carrying out their duties. It was abuse of discretion for the district court to force Mr. Johnson to use almost half his peremptory challenges to remove jurors who were unqualified.

E. CUMULATIVE ERROR

Mr. Johnson is entitled to a new trial based upon a highly discriminatory and unconstitutional nature in which voir dire was conducted. First, there was an

obvious pretextual removal of a qualified African American female. Second, the jury venire did not represent a cross section of the community. Additionally, the defense was forced to use peremptory challenges to remove three prospective jurors because the district court abused its discretion in denying the challenges for cause. This resulted in cumulative error. Therefore, Mr. Johnson received ineffective assistance of appellate counsel for failure to raise this issue on direct appeal in violation of the Fifth, Sixth, Eighth, and Fourteenth amendments to the United States Constitution. Mr. Johnson's trial jury was selected in violation of the due process and equal protection clause of the United States Constitution.

III. MR. JOHNSON RECEIVED INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL FOR COUNSEL'S FAILURE TO OBJECT AND FILE A MOTION TO DISMISS THE KIDNAPPING AS IT IS INCIDENTAL TO THE ROBBERY. MR. JOHNSON RECEIVED INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL FOR FAILURE TO RAISE THIS ISSUE ON DIRECT APPEAL.

Mr. Johnson received ineffective assistance of counsel for failure to object to the kidnapping charges. In the instant case, four young men were shot inside a home. There is no indication from the facts that the convictions for kidnapping were not incidental to the robbery. The facts suggest that the victims were the victims of robbery and murder, not kidnapping.

In Pascua v. Nevada, 122 Nev. 1001, 145 P.3d 1031 (2006), this Court

clarified whether dual convictions can be obtained for kidnapping and murder when the convictions arise from a single course of conduct. Id. In Pascua, this Court held that a conviction for kidnapping and murder arising from the same course of conduct was proper under the test presented in Mendoza, Supra. This Court carefully considered the facts in Pascua's case and determined that the movement of the victim substantially exceeded that required to complete the associated crime 122 Nev. 1001, 1005.

The facts in Pascua's case are clearly different than the facts in the instant case. In Pascua, defendants entered the victim apartment to rob him of his casino sports book ticket valued at \$44,000 dollars. The assailant hit the victim with the hammer and defendants made repeated demands for money. After handing over his wallet, the victim was forced to surrender the combination to his safe but denied possession of the sports book ticket. The victim was then dragged from the kitchen to his bed. During this eight hour period, the victim was repeatedly hit in the head with a hammer. The defendant's strangled and choked the victim and actually filled his nostrils and mouth with caulking. Id.

After refusing to divulge information surrounding the sports book ticket, the victim was moved and eventually murdered. The victim was moved away from the broken window in the kitchen in attempting to make it more difficult for his

discovery. Additionally, the State contended that the victim had been tied down and the defendant's had climbed on top of the victim choking him and striking him with the hammer. Id. at 106.

Pursuant to the unique facts enunciated in Pascua, this Court determined “[t]hus, the movement of Upson (the victim) could have been found by the jury to have had the independent purpose of torturing Upson into revealing the location of the sports book ticket” Id. This Court further reasoned, “[h]ence, the jury could have found that Upson’s movement to the bed substantially exceeded that required to complete the associated crime, since it lessened his chances of being found or being able to escape while providing Pascua with greater opportunity to cause further harm to Upson” Id.

In the instant case, Pascua’s facts do not resemble the facts enunciated in Johnson’s trial. In fact, there is no evidence that the movement of the victim’s substantially increased the risk of harm over and above that necessary to commit the crimes charged.

In the State’s Answering Brief, the State reiterates the graphic and brutal nature of the instant crimes. Mr. Johnson acknowledges the crime was brutal. However, nothing in the facts establishes that the victims were kidnapped and that their limited movement increased their risk of harm. Mr. Johnson received

ineffective assistance of trial counsel for failure to file a motion to dismiss the kidnapping. Mr. Johnson received ineffective assistance of appellate counsel for failure to raise the issue on appeal. In the instant case, the factual scenario demonstrates that any evidence of kidnapping was clearly incidental to the robbery and therefore, the kidnapping charge should have been dismissed.

IV. MR. JOHNSON RECEIVED INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL FOR FAILURE TO RAISE THE ISSUE OF CHANGE OF VENUE ON DIRECT APPEAL.

This argument stands as submitted in the Opening Brief.

V. MR. JOHNSON RECEIVED INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL FOR FAILURE OF COUNSEL TO RAISE ON DIRECT APPEAL THE DISTRICT COURT'S RULING TO NOT ALLOW TRIAL COUNSEL TO INTRODUCE THE BIAS AND PREJUDICE OF THE STATE'S WITNESS.

This argument stands as submitted in the Opening Brief.

VI. APPELLATE COUNSEL WAS INEFFECTIVE FOR FAILING TO RAISE PROSECUTORIAL MISCONDUCT REGARDING INTESTINAL FORTITUDE ON DIRECT APPEAL.

During the voir dire, the prosecutor asked the jury during voir dire, “do you believe that you have the intestinal fortitude, for lack of a better word, to impose the death penalty if you truly believe that it fits this crime? (ROA 11 pp. 2640).

During voir dire, the prosecutor also speculated as to future dangerousness and whether a prisoner could kill a prison guard or a maintenance worker. (ROA 11 pp.

2672).

In the State's response, they claim that the issue was meritless (State's Answering Brief p. 55). The State claims that the prosecutor's questions were not objectionable. Additionally, the State claims that the words "intestinal fortitude" may have been used in an improper closing argument in Castillo v. State, 114 Nev. 271, 956 P.2d 103 (1998), but they were just "two words" and were completely unrelated (State's Response pp. 55). In fact, the State's comments during voir dire mirrored the improper argument made in the capital case of Castillo v. State, Supra. In Castillo, this improper prosecutorial argument to which Castillo objected at trial, was as follows:

The issue is do you, as the trial jury, this afternoon have the resolve and the **intestinal fortitude**, the sense of commitment to do your legal and moral duty, for whatever your decision is today, and I say this based upon the violent propensities that Mr. Castillo has demonstrated on the streets, I say it based upon the testimony of Dr. Etcoff and Corrections Officer Berg about the threat he is to other inmates, and I say it based upon the analysis of his inherent future dangerousness, whatever your decision is today, and it's sobering, whatever the decision is, you will be imposing a judgment of death and it's just a question of whether it will be an execution sentence for the killer of Mrs. Berndt or for a future victim of this defendant. 114 Nev. at 279.

In the instant case, the prosecutor appears to use the exact same tactics that were used in Castillo. The only difference is, the comments were directed to the jury during voir dire and not in closing argument. It is highly coincidental that the

prosecutor would ask a potential juror about their “intestinal fortitude” to impose the death penalty and whether Mr. Johnson could have future dangerousness in prison when this was the exact same problematic comments considered in Castillo. If the comments were improper in Castillo, then they are improper in the instant case. This Court did not rule that “intestinal fortitude” were two simple words used in a lengthy closing argument. This Court expressed concern that the prosecutor had used this language. More importantly, this Court’s ruling in Castillo occurred the same year as Mr. Johnson was indicted, but well before his jury trial.

Therefore, it was ineffective assistance of appellate counsel to fail to raise this issue on appeal in violation of Mr. Johnson’s constitutional rights.

VII. MR. JOHNSON RECEIVED INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL FOR FAILURE TO RAISE ON APPEAL THE ADMISSION OF HEARSAY IN VIOLATION OF THE UNITED STATES CONSTITUTION.

In the instant case, the district court permitted inadmissible hearsay during the direct examination of Todd Armstrong. During his testimony, Todd Armstrong was questioned regarding a conversation he overheard between Bryan Johnson and the police (ROA 8 pp. 2022). Hence, Mr. Armstrong was permitted to state that Bryan Johnson tells the police that “we knew who did it” (ROA 8 2022).

First, the State claims that the hearsay objection was unpreserved because it

was not objected to at trial (State's Answering Brief p. 57). Mr. Johnson recognizes that the hearsay was not objected to at trial. Mr. Johnson received ineffective assistance of trial and appellate counsel for failure to object and raise this issue on direct appeal. Mr. Johnson has informed this court in his supplemental brief that he complains that both his trial and appellate counsel were ineffective for numerous failures to object and raise issues.

The State claims "defendant fails to explain how the above statement was an admission of hearsay. The State fails to see what statement is being offered for the truth of the matter asserted" (State's Answering Brief pp. 57). The State further argues that Armstrong's statement was not used for the truth of the matter asserted and that Bryan's discussion with the police was relevant for the effect on leading Armstrong's voluntary statement as to who committed the crime (State's Answering Brief pp. 57). The State's claim is meritless. Often, when the State has violated the rules of hearsay, the State claims that the matter was not used for the truth of the matter asserted. Mr. Armstrong testified at trial. There was no need for Mr. Armstrong (the fourth suspect) to mention that Mr. Bryan Johnson made any comment to the police regarding who committed the crime.

In Crawford v. Washington, 541 U.S. 36, 124 Sup. Ct. 1354, 158 L. Ed. 2d 177 (2004), the United States Supreme Court determined that, 1) testimonial

hearsay must be excluded unless the declarant is available for cross-examination at trial, or 2) if declarant is unavailable the statement was previously subjected to cross examination. Here, Mr. Armstrong's statements imply that Bryan Johnson is also Donte Johnson's accuser. A review of the transcript would openly suggest that Bryan Johnson would implicate Donte Johnson as the killer. Obviously, Mr. Armstrong was concerned about his own credibility and used Bryan Johnson's statements to corroborate his testimony that Donte Johnson had committed the crime. Mr. Armstrong was specifically referring to a conversation between Bryan Johnson and the police. Therefore, the statement would clearly be testimonial. Bryan Johnson was unavailable for cross-examination and there was never an opportunity to confront Bryan Johnson regarding these statements.

Bryan Johnson's comments were clearly used for the truth of the matter asserted. That is, Bryan Johnson knew that Donte Johnson was the killer. This directly corroborated Mr. Armstrong. It was ineffective assistance of trial and appellate counsel for failure to object and raise this issue on direct appeal in violation of the standards enunciated by the United States Supreme Court in Strickland v. Washington, Supra.

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VIII. MR. JOHNSON RECEIVED INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL FOR THE FAILURE TO RAISE ON DIRECT APPEAL THE STATE'S FAILURE TO REVEAL ALL OF THE BENEFITS THE STAR WITNESSES RECEIVED FROM THE STATE OF NEVADA IN VIOLATION OF THE UNITED STATES CONSTITUTION AMENDMENTS FIVE, SIX AND FOURTEEN.

This argument stands as submitted in the Opening Brief.

IX. MR. JOHNSON RECEIVED INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL FOR FAILURE TO OBJECT TO THE PROSECUTORS REPEATED REFERENCE TO THE TRIAL PHASE AS THE GUILT PHASE. APPELLATE COUNSEL WAS INEFFECTIVE FOR FAILING TO RAISE THIS ISSUE ON DIRECT APPEAL.

This argument stands as submitted in the Opening Brief.

X. MR. JOHNSON IS ENTITLED TO A NEW TRIAL BASED UPON INADMISSABLE EVIDENCE BEING PRESENTED PURSUANT TO NRS 48.045.

This argument stands as submitted in the Opening Brief.

XI. MR. JOHNSON IS ENTITLED TO A NEW TRIAL BASED UPON IMPROPER CLOSING ARGUMENT IN VIOLATION OF THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

Appellate counsel failed to raise on appeal the following instances of improper argument which were objected to by trial counsel.

A. IMPROPER WITNESS VOUCHING

During closing argument the following exchange took place,

The prosecutor: “Now, I suppose it’s possible we can take each one of these points and explain it away. I guess Sharla Severs is lying, perhaps Todd Armstrong was lying, Bryan Johnson he must be lying too”.

Defense counsel: “Your honor, they objected during the course as to that terminology, we would have to object at this time for that as well”.

The Court then proceeded to overrule the defense’s objection.

The prosecutor: “And if Donte Johnson is not guilty and Lashawnya Wright must be lying too. So Sharla is lying, Todd is lying, Bryan is lying, and Lashawnya Wright is lying.” (13 ROA 3196).

During opening argument, the prosecutor informed the jury that Sharla Severs had been informed that she must tell the truth and had been warned. The State argues that the prosecutor has a right to occasionally argue that a witness is lying. The State cites state authority for this proposition. However, the State fails to acknowledge that the Ninth Circuit has specifically warned prosecutors against this type of argument. In United States v. Combs, 379 F. 3d 564, 575 (9th Cir. 2004), the Ninth Circuit warned that a prosecutor was improperly vouching when the prosecutor implied that the agent would be fired for committing perjury. Here, the prosecutor specifically made the identical argument to the jury claiming that Ms. Severs had been told the definition of perjury and instructed that she must tell the truth. The State fails to consider the Ninth Circuit’s warnings against these type of

arguments

B. IMPROPER ARGUMENT TO ASK THE JURORS TO PLACE THEMSELVES IN THE VICTIMS SHOES.

In the instant case, during closing argument, the prosecutor stated,

“Imagine the fear in the minds of these three boys as they lay face down, duct taped at their ankles and wrists, completely defenseless as they hear the first shot that kills their friend, Peter Talamanpez. Imagine the fear in their minds. And imagine the fear as they all lay waiting for their turn”.

Defense counsel stated, “Your honor, golden rule objection”. The objection was sustained. The judge asked the prosecutor to rephrase the statement and the prosecutor stated,

There should be no doubt in anyones mind that these three boys had fear in their minds as they laid face down, duct taped, and defenseless, waiting for the bullet that would send each of them into eternity. I’m certain that they were in fear as Donte placed the barrel of the gun two inches from the skull at each boy” (13 ROA 3181-3182).

The State acknowledges that the district court granted defense counsel’s objection (State’s Answering Brief p. 68). However, Mr. Johnson specifically referenced the prosecutor’s comments directly after the judge sustained “the golden rule” objection. The prosecutor explained that there should be “no doubt in anyone’s mind” regarding the fear of the victims. In essence, the prosecutor completely ignored the district court’s ruling sustaining defense counsel’s

objection. The prosecutor simply rephrased the same objectionable comment. The State utterly fails to address Mr. Johnson's citation to the record.

C. IT WAS IMPROPER FOR THE PROSECUTOR TO REFER TO FACTS THAT WERE NOT INCLUDED AT TRIAL.

During the testimony of the State's DNA expert, Mr. Tom Wahl, Mr. Wahl explained the DNA on a cigarette butt from the crime scene contained a major DNA component allegedly consistent with Donte Johnson and human DNA that was a mixture (JT Day 4 pp. 105-212).

In the State's response, they cite no legal authority for the proposition that blatant speculation is proper (State's Answering Brief p. 69-70). Mr. Johnson cited legal authority holding that facts not introduced into evidence is improper. See, Agard v. Portuondo, 117 F. 3d 696, 711 (2nd Cir. 1977).

In the instant case, Mr. Johnson received ineffective assistance of counsel for failure to raise these issues on direct appeal. If these issues had been raised on direct appeal, the result of the direct appeal would have been different.

XII. MR. JOHNSON IS ENTITLED TO REVERSAL OF HIS CONVICTIONS BASED UPON THE STATE'S INTRODUCTION OF OVERLY GRUESOME AUTOPSY PHOTOS.

This argument stands as submitted in the Opening Brief.

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XIII. MR. JOHNSON RECEIVED INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL FOR TRIAL COUNSELS TO FAILURE TO OBJECT AND STATE ON THE RECORD WHAT TOOK PLACE DURING THE UNRECORDED BENCH CONFERENCES.

This argument stands as submitted in the Opening Brief.

XIV. MR. JOHNSON RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL DURING HIS THIRD AND FINAL PENALTY PHASE WHEN COUNSEL FAILED TO INTRODUCE EVIDENCE THAT MR. JOHNSON HAD PREVIOUSLY HAD A FINDING OF NUMEROUS MITIGATING CIRCUMSTANCES WHICH WERE NOT ARGUED TO AND FOUND BY THE JURY WHICH SENTENCED HIM TO DEATH IN VIOLATION OF THE SIXTH, EIGHT, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION. APPELLATE COUNSEL WAS INEFFECTIVE FOR FAILING TO RAISE THIS ISSUE ON APPEAL.

This argument stands as submitted in the Opening Brief.

XV. MR. JOHNSON RECEIVED INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL FOR FAILING TO RAISE ON DIRECT APPEAL THE DISTRICT COURT GIVING INSTRUCTION NUMBERS 5, 36, 37 IN VIOLATION OF THE FIFTH AND FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION. MR. JOHNSON RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL FOR TRIAL COUNSELS FAILURE TO OFFER PROPER JURY INSTRUCTIONS ON MALICE.

This argument stands as submitted in the Opening Brief.

XVI. MR. JOHNSON RECEIVED INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL FOR COUNSEL'S FAILURE TO RAISE ON DIRECT APPEAL THE COURTS OFFERING OF JURY INSTRUCTION 12.

This argument stands as submitted in the Opening Brief.

XVII. MR. JOHNSON RECEIVED INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL FOR FAILURE OF TRIAL COUNSEL TO OFFER A JURY INSTRUCTION REGARDING MALICE.

This argument stands as submitted in the Opening Brief.

PENALTY PHASE ARGUMENTS

XVIII. MR. JOHNSON IS ENTITLED TO A NEW TRIAL BASED UPON INEFFECTIVE ASSISTANCE OF COUNSEL WHEREIN TRIAL COUNSEL FAILED TO PROPERLY INVESTIGATE IN THE THIRD PENALTY PHASE.

Mr. Johnson's conviction is invalid under the federal and state constitutional guarantees of due process, equal protection, and effective assistance of counsel, due to the failure of defense counsel to conduct an adequate investigation. U.S. Const. Amends. V, VI, VIII & XIV; Nevada Constitution Art. I and IV.

Counsel's complete failure to properly investigate renders his performance ineffective.

[F]ailure to conduct a reasonable investigation constitutes deficient performance. The Third Circuit has held that "[i]neffectiveness is generally clear in the context of complete failure to investigate because counsel can hardly be said to have made a strategic choice when s/he [sic] has not yet obtained the facts on which such a decision could be made." See U.S. v. Gray, 878 F.2d 702, 711 (3d Cir.1989). A lawyer has a duty to "investigate what information ... potential eye-witnesses possess[], even if he later decide[s] not to put them on the stand." Id. at 712. See also Hoots v. Allsbrook, 785 F.2d 1214, 1220 (4th Cir.1986) ("Neglect even to interview available witnesses to a crime simply cannot be ascribed to trial strategy and tactics."); Birt v. Montgomery, 709 F.2d 690, 701 (7th Cir.1983) . . . ("Essential to

effective representation . . . is the independent duty to investigate and prepare.").

In the instant case, Mr. Johnson's trial counsel failed to properly investigate the facts of the case prior to trial.

In State of Nevada v. Love, 865 P.2d 322, 109 Nev. 1136, (1993), the Supreme Court considered the issue of ineffective assistance of counsel for failure of trial counsel to properly investigate and interview prospective witnesses. In Love, the District Court reversed a murder conviction of Rickey Love based upon trial counsel's failure to call potential witnesses coupled with the failure to personally interview witnesses so as to make an intelligent tactical decision and making an alleged tactical decision on misrepresentations of other witnesses testimony. Love, 109 Nev. 1136, 1137.

Under Strickland, defense counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. *Id. at* 691, 104 S.Ct. at 2066. (Quotations omitted). Deficient assistance requires a showing that trial counsel's representation of the defendant fell below an objective standard of reasonableness. *Id. at* 688, 104 S.Ct. at 2064. If the defendant establishes that counsel's performance was deficient, the defendant must next show that, but for counsel's errors, the result of the trial probably would

have been different. *Id. at* 694, 104 S. Ct. at 2068.

In the instant case, Mr. Johnson argues that the following facts show a lack of reasonable investigation by his trial counsel. Defense counsel failed to properly investigate several issues that should have been presented at the third penalty phase.

A. FAILURE TO PRESENT ANY MITIGATION ON FETAL ALCOHOL DISORDERS

A review of the file reveals that counsel failed to obtain or conduct testing on Mr. Johnson to determine whether he suffered from Fetal Alcohol Disorder. The State claims that Dr. Thomas Kinsora concluded there was no evidence that Mr. Johnson suffered from Fetal Alcohol Syndrome. Dr. Kinsora also labeled Mr. Johnson as “a really bright individual” (State’s Answering Brief p. 89). The State concludes that the defendant’s mitigation expert saw no reason to conduct any further inquiry, and therefore, there is no proof that Mr. Johnson suffered from Fetal Alcohol Syndrome. However, the State cites to the Fetal Alcohol Syndrom: Guidelines for referral and diagnosis (July 2004) wherein the guidelines state “it is easy for a clinician to misdiagnose Fetal Alcohol Syndrom” (State’s Answering Brief p. 89). The State recognizes that Mr. Johnson fits several of the factors of Fetal Alcohol Syndrome. The State admits that the defendant’s mother, Eunice

Cain testified that she drank alcohol while pregnant with the defendant (State's Answering Brief p. 87).

The State admits that Mr. Johnson is of extremely small stature (State's Answering Brief pp. 87). Additionally, the State admits that Mr. Johnson suffers from "poor reasoning and judgment skills".

Based on the factors, Mr. Johnson's counsel should have investigated the possibility that Mr. Johnson suffered from Fetal Alcohol Syndrome. Mr. Johnson received ineffective assistance of counsel based on the failure of counsel to properly investigate. If an expert had testified to Mr. Johnson's Fetal Alcohol Syndrome the result of the penalty phase would have been different. Hence, Mr. Johnson can meet both prongs of the Strickland standard.

B. FAILURE OF COUNSEL TO OBTAIN A PET SCAN

The State claims "even assuming that this Court somehow finds defendant's counsel deficient for failing to conduct a PET scan defendant's claim must still fail because he cannot meet the second prong of Strickland. Defendant has not even attempted to demonstrate that a PET scan could have possibly led to a more favorable outcome during his penalty phase" (State's Answering Brief p. 92-93). In fact, a PET scan may establish that Mr. Johnson suffered from brain injury. If a jury was aware that the defendant suffered from a brain injury, they most certainly

would have found this a mitigating circumstance. Had the jury been aware of additional mitigating circumstances, the result of the sentence would have been different. Mr. Johnson was entitled to funding by the state to determine whether there was brain injury.

C. FAILURE TO PRESENT EVIDENCE THAT THE CO-DEFENDANT SIKIA SMITH AND TERELL YOUNG RECEIVED SENTENCES OF LIFE.

The State acknowledges the defense failed to present any evidence establishing that the co-defendant's received life sentences (State's Answering Brief p. 93). The State claims that counsels mentioning of the life sentences during closing argument was sufficient. Yet, the State acknowledges that closing argument is just argument. The defense failed to present any evidence of the life sentences.

Moreover, the State objected to defense counsels argument and the objection was sustained. The State provides no case law for the proposition that proportionality cannot be considered. Defense counsel was ineffective for failing to present actual evidence, either by way of testimony or exhibit establishing that both defendants received life sentences. Appellate counsel was also ineffective for failing to raise this issue on appeal.

D. FAILING TO OFFER MITIGATORS WHICH HAD BEEN FOUND BY THE FIRST JURY.

In the instant case, during the third penalty phase, trial counsel failed to offer mitigating circumstances which the first jury had determined existed. According to the State, counsel during the third penalty phase had reason to avoid some of the twenty-three mitigating circumstances found by the jury in 2000 (State's Answering Brief p. 99-103). A comparison between the seven mitigating circumstance found by the third penalty phase jury compared to the twenty-three found by the initial jury demonstrates ineffective assistance of counsel. For instance, the jury in 2000 found mitigator three "witness to father's emotional abuse of mother". Whereas, the third penalty jury was not asked to specify the mitigator of the father's emotional abuse of the mother. The initial jury found that Mr. Johnson witnessed drug abuse by parents and close relatives. Whereas, the third penalty jury did not make such a finding. The 2000 penalty jury found that Mr. Johnson had poor living conditions while living with his great grandmother. The third penalty jury did not make such a finding. The 2000 penalty jury found the mitigator that the great grandmother turned Mr. Johnson into the police. The third penalty jury did not. The 2000 penalty jury found crowded living conditions while at the grandmothers house. The third penalty jury did not find this mitigator. The 2000 penalty jury found that Mr. Johnson lived a guarded life, whereas the third penalty jury made no such finding.

In fact, several of the twenty-three mitigators listed by the 2000 jury was not found by the third penalty jury. More importantly, trial counsel in the third penalty phase failed to offer these mitigators. Interestingly enough, Mr. Johnson's first trial jury was unable to reach a verdict as to his sentence. Having found twenty-three mitigators, the jury did not impose a sentence of death. Whereas, during the third penalty phase only seven mitigators were found and Mr. Johnson received sentences of death. According to the state,

Defendant's 2000 special verdict form only had five mitigating circumstances specifically enumerated, three of which were found by the jury. The remaining twenty mitigating circumstances were added to the special verdict form by a member of the jury (State's Response pp. 99-103).

The State's claim that twenty mitigators were added by a member of the jury is speculative. The State has no way of determining whether all the jurors found these mitigators or if just one found each mitigator. However, trial counsel during the third penalty phase failed to recognize that jurors found twenty-three mitigators and failed to offer these mitigators to the third penalty phase jury.

Additionally, during the third penalty phase, the State claimed that Mr. Johnson unequivocally fired the fatal shots according to the evidence. Yet, the 2000 penalty jury found that there was "no eyewitness to identify the shooter". The State argues that the first jury did not provide an expression of doubt as to who was

the actual shooter. The State speculates that “...it is simply a statement that one of the jurors may have felt more comfortable with returning a death verdict had he heard eyewitnesses testimony from a third party” (State’s Answering Brief p. 99-302). This is pure speculation. Maybe all of the jurors believed there was a doubt as to who actually pulled the trigger. For the State to conclude that a single juror may have felt comfortable returning a death verdict had there been an eyewitness is pure supposition.

The State provides no case law or reasonable rational for the failure of counsel to offer the twenty-three mitigators listed by the 2000 jury in the third penalty phase. There would be no rational or tactical reason for failing to offer mitigators that had already been found by a previous jury.

The failure to properly review and investigate the case rendered Mr. Johnson’s sentence of death unreliable. When twenty-three mitigators were found, the jury did not sentence Mr. Johnson to death. Whereas, when seven mitigators were found, he received multiple sentences of death.

E. FAILURE TO PRESENT EVIDENCE FROM THE DEFENDANT’S FATHER.

In the instant case, the defense presented evidence that Mr. Johnson had been abused by his father and that his father was abusive to his mother. The defense

failed to call Mr. Johnson's father in the penalty phase. The State claims that defense counsel could not be deemed ineffective for failing to call a witness that would likely have been hostile (State's Answering Brief p. 104). On the contrary, one of the most effective tactical decision a capital litigator can make is to present the following scenario: evidence that a parent has been neglectful and/or abusive. Thereafter, call the parent who claims to be a model parent. This type of evidence has been repeatedly effective in establishing the neglect and abuse of a parent.

In the instant case, Mr. Johnson presented overwhelming evidence of his father's abusive behavior. Having reviewed the transcripts, no rational trier would believe the father's denial of abuse. A jury would have rejected the father's denials of abuse and recognized the lack of parenting by Mr. Johnson's father. It was a significant tactical error in failing to call the abusive parent.

Mr. Johnson is entitled to an evidentiary hearing to establish the allegations of ineffective assistance of trial and appellate counsel for failure to investigate and present mitigation evidence in violation of the United States Constitutions amendments five, six, eight, and fourteen.

XIX. MR. JOHNSON RECEIVED INEFFECTIVE ASSISTANCE OF TRIAL AND APPELLATE COUNSEL FOR FAILURE TO PRECLUDE THE STATE FROM INTRODUCING AN INADMISSIBLE BAD ACT.

This argument stands as submitted in the Opening Brief.

XX. TRIAL COUNSEL WAS INEFFECTIVE FOR PROVIDING THE STATE A MITIGATION REPORT FROM TINA FRANCIS WHICH WAS USED TO IMPEACH A DEFENSE EXPERT.

Mr. Johnson's conviction is invalid under the Federal Constitution based on his counsel providing a copy of Tina Francis' mitigation report to the State in violation of the fifth, sixth, eighth, and fourteenth amendments to the United States Constitution. At the direction of the district court, defense counsel provided the State with a copy of Tina Francis' mitigation report. The State was permitted to impeach Dr. Kinsora with information contained within Tina Francis' report. Specifically, the State used the report to question Dr. Kinsora regarding the following: 1) Donte's mother had not used drugs or alcohol her pregnancy, 2) Donte Johnson allegedly took a small caliber gun and gave it to a co-defendant in another case because the c-defendant was angry with the cheerleader, 3) Donte's grandmother stated he should have been treated as an adult by California authorities, and 4) Donte Johnson moved to Las Vegas because he could make more money selling marijuana and crack in Las Vegas then in LA.

Prior to Dr. Kinsora's testimony, he admitted that he relied upon numerous documents for his opinions. One of the documents Dr. Kinsora admitted to reviewing was a report by the mitigation specialist, Tina Francis.

The State has no right to request the district court to order the production of reports generated by mitigation specialists. This issue is reoccurring in capital trials in this jurisdiction. First, capital litigators are required to obtain mitigation specialists. Prior to this requirement, capital litigators conducted their own mitigation investigation with the aid of private investigators. The information obtained by the capital litigators was not discoverable as it is work product. Now, in the infinite wisdom of higher courts, mitigation specialists are required. Admittedly, some capital litigators have proven so lazy that the mitigation investigation had not been conducted at the time of penalty phase. Thus, causing several courts concern regarding this issue. However, the result is proving to be equally devastating.

Mitigation specialists are required to interview many individuals associated with the defendant. Thereafter, the conversation with potential mitigation witnesses are recorded or placed in reports, then provided to the defense. Almost systematically, prosecutors now request that the mitigation information contained in these reports be produced to the State. It is difficult to imagine the information contained in these reports will not have evidence of the defendant's poor character. For instance, many defendants who are charged with capital murder have significant criminal histories. It is rare, that a capital defendant has an exemplary

past. Hence, an extensive investigation into the defendant's background will possibly lead to multiple witnesses who have very damaging information against the defendant. This information is then placed into reports.

Additionally, capital defense teams often work hand in hand. Therefore, it is common for the psychologist and/or psychiatrist and mitigation specialist to provide information to one another. It is also has been common for capital litigators to provide all mitigation information to each of the potential penalty phase experts. Often, a mitigation expert will list in his or her report everything they have reviewed. Therefore, the expert is now in a position to have rendered conclusions based upon the entire review of what is listed on the report. The State then claims that all of that information is now discoverable. However, the reports almost invariably contain extremely damaging information against the defendant. **This is exactly what occurred here. This is exactly is occurring throughout the state of Nevada.** This Court has not had an opportunity to have this issue extensively litigated and to consider the ramifications of their previous holdings.

In Floyd v. Nevada, 118 Nev. 156, 42 P.3d 249 (2002), this Court held that the State's use of evidence obtained from Mr. Floyd's own expert did not violate Floyd's constitutional rights. In Floyd, the defense filed notice of their intention to potentially call Neuropsychologist David Schmidt. The district court ordered the

defense to provide the State with Dr. Schmidt's report which included standardized psychological testing. Dr. Schmidt did not testify. During the penalty phase Mr. Floyd called Dr. Edward Dougherty. In rebuttal, the State called Dr. Lewis Mortillaro, Dr. Mortillaro relied in part on the results from the standardized testing administered by Dr. Schmidt. Id.

Floyd argued that Dr. Motillaro's testimony violated his constitutional rights and attorney client privilege. This Court determined that Dr. Schmidt's report and test results were not internal documents representing the mental processes of defense counsel. 118 Nev. 156, 168. NRS 174.234(2) and NRS 174.245(1)(b) require discovery from the defendant only when he intends to call an expert witness or to introduce certain evidence during his case in chief. The State often relies upon Floyd for the argument that the mitigation specialist's report should be produced for the State. The State continuously claims that the psychologist and psychologist have relied upon documents, including information from the mitigation specialist and therefore the report is discoverable.

In the instant case, the defense did not call Tina Francis as a witness. Yet, Tina Francis' report was used to impeach Dr. Kinsora and to establish extremely poor character evidence against Mr. Johnson. The concern is as follows. The defense is required to obtain a mitigation specialist who then proceeds to interview

numerous witnesses. In order to establish a thorough job, the mitigation specialist places in a report the information he or she has received. Everyone on the defense team obtains those reports. Therefore, the potential defense witnesses have reviewed the report and potentially relied upon information within the report. Now, the report is discoverable. In essence, the State has forced the defense to have an informant within the defense camp. This is logical given the State's continuous requests for the information from the mitigation specialist. The discovery statute that previously required defense counsel to turn over reports of non-testifying experts was declared unconstitutional by this Court. See, Binegar v. Eighth Judicial District Court, 112 Nev. 544, 551-52, 915 P.2d 889, 894 (1996).

In the instant case, the defense should not have placed their expert in such a position that he would be impeached with the mitigation specialists report. Additionally, appellate counsel should have raised this issue on appeal. Mr. Johnson was devastated by the mitigation specialists report that was mandated by the courts. The State's argument that this policy and procedure is constitutional is meritless. Mr. Johnson is entitled to a new penalty phase based upon ineffective assistance of appellate counsel. Mr. Johnson is also entitled to a new penalty phase based upon the unconstitutional ruling of the district court mandating the production of the mitigation specialist's report in violation of the fifth, sixth,

eighth, and fourteenth amendments to the United States Constitution.

XXI. MR. JOHNSON RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL FOR TRIAL COUNSEL TO DISAGREE AMONG THEMSELVES IN FRONT OF THE JURY.

In the instant case, during closing argument, defense counsel contradicted each other. One attorney indicated that there are no drugs in prison. However, co-counsel argued that drugs are present in the prison. In the State's response, the State takes great pains in attempting to surmise the tactical decision of both Mr. Johnson's attorneys for providing inconsistent arguments. There is no valid reason for inconsistent arguments to the jury. Defense counsel should have met and conferred regarding their potential arguments. For one attorney to argue there are no drugs in prison only to have the fact disputed by the other attorney amounts to a divided defense team. The State claims there were two motivations for the inconsistent arguments. Yet, there maybe two different motivations but the end result is inconsistency. Inconsistency in front of a jury does not equate to effective assistance of counsel. One defense counsel arguing to the jury that the other defense attorney is wrong because there are drugs in prison disparages counsel.

This issue is evidence of cumulative error and ineffective assistance of counsel. "The cumulative effect of errors may violate a defendant's constitutional right to a fair trial even though those errors are harmless individually" Butler v.

State, 120 Nev. 879, 900, 102 P.3d 71, 85 (2004); U.S. v. Necoechea, 986 F.2d 1273, 1282 (9th Cir.1993), (although individual errors may not separately warrant reversal, “their cumulative effect may nevertheless be so prejudicial as to require reversal”).

Mr. Johnson is entitled to a new penalty phase based upon ineffective assistance of trial counsel when counsel inconsistent arguments to the jury.

XXII. MR. JOHNSON RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL WHEN TRIAL COUNSEL REFERRED TO THE VICTIMS AS KID/KIDS.

During closing argument, the defense attorney explained that it didn’t matter whether Mr. Johnson laughed about the murders or not after one of the “kids” are killed. Defense counsel further stated, “does it make any worse? The poor kid is dead”. Defense counsel was ineffective for referring the victims as “kids” because this Court had already considered whether it amounted to prosecutorial misconduct for the district attorney to refer to the victims as “kids”. This Court noted,

Second, Johnson contends that the prosecutor violated a pre-trial order by the District Court when he referred to the victims as “boys” or “kids” during rebuttal argument. He is correct that the prosecutor violate the order but we conclude he was not prejudiced. The meaning of the term “boys” or “kids” is relative in our society depending on the context of its use and the terms do not inappropriately describe the victims in this case. One of the four victims was seventeen year old; one was nineteen years old; and two others were twenty years old. Referring to them as “young men” may have been the most appropriate

collective description. But we conclude that the State's handful of references to them as "boys" or "kids" did not prejudice Johnson. Johnson v. State, 122 Nev. 1344, 1356, (2006).

In the State's response, they admit that this Court found that the State violated the pre-trial order by referring to the victim as "kids" (State's Answering Brief pp. 131).

Next, the State spends great effort in attempting to surmise the tactical decision why defense counsel would move to preclude the State from referring to the victims as "kids" and thereafter, refer to the victims as "kids". There is no valid reason defense counsel forgot the court's own prior rulings. Mr. Johnson will not entertain reasons why defense counsel would move to preclude the use of the words "kids" to describe the victims and thereafter have his own attorney describe the victims as "kids".

This amounts to ineffective assistance of counsel. "The Supreme Court has clearly established that the combined effect of multiple trial errors violated due process when it renders the resulting criminal trial fundamentally unfair" Tarle v. Runnels, 505 F.3d 922, 927 (9th Cir. 2007)(citing, Chambers v. Mississippi, 410 U.S. 284 (1973); Montana v. Egelhoff, 518 U.S. 37, 53 (1996). The cumulative effect of multiple errors can violate due process even when no single error arises to the level of a constitutional violation or would independently warrant reversal. Id.

Citing, Chambers 410 U.S. at 290.

Mr. Johnson is entitled to a new penalty phase based upon numerous errors which have established a violation of both prongs of Strickland v. Washington, 466 U. S. 668, 104 S. Ct. 205, (1984). First, the errors fell below a standard of reasonableness. Second, the errors prejudiced the defendant, which resulted in a sentence of death.

XXIII. MR. JOHNSON RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL WHEN HIS ATTORNEYS SUCCESSFULLY MOTIONED THE COURT FOR A BIFURCATED PENALTY HEARING.

This argument stands as submitted in the Opening Brief.

XXIV. MR. JOHNSON RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL FOR THE FAILURE TO OFFER A MITIGATION INSTRUCTION.

This argument stands as submitted in the Opening Brief.

XXV. APPELLATE COUNSEL WAS INEFFECTIVE FOR FAILING TO RAISE ON APPEAL THE PROSECUTION IMPROPERLY IMPEACHING A DEFENSE WITNESS.

During the penalty phase, the prosecutor improperly impeached one of Mr.

Johnson's mitigation witnesses with evidence of a misdemeanor conviction.

The following questions and answers during Dr. Zamora's cross-examination by the prosecutor, illustrates the impermissible impeachment:

Prosecutor: Your not a convicted felon
Mr. Zamora: No
Prosecutor: You don't have any felony convictions or
misdemeanor convictions?
Mr. Zamora: I have misdemeanor convictions.
Ms. Jackson: Your honor that's not a proper question for
impeachment.
The Court: That is correct (A.A. Vol. 9, April 29, 2005).

NRS 50.095 states as follows:

“Impeachment by evidence of conviction of a crime.

1. For the purpose of attacking credibility of a witness, evidence that he has convicted of a crime is admissible but only if the crime was punishable by death or imprisonment for more than one year under the law under which he was convicted.
2. Evidence of a conviction is inadmissible under this section if a period of more than 10 years has elapsed since:
 - (a) The date of the release of the witness from confinement; or
 - (b) The expiration of the period of his parole, probation, or sentence, whichever is the later date.
3. Evidence of a conviction is inadmissible under this section if the conviction has been the subject of a pardon.
4. Evidence of juvenile adjudication is inadmissible under this section.
5. The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is inadmissible.
6. A certified copy of a conviction is prima facie evidence of the conviction.”

This Court has held that, “[o]n appeal from denial of a writ of habeas corpus, where during preliminary hearing counsel for defendant asked witness for State if he had ever been arrested, and objection to question was sustained and counsel

refused to cross-examine witness unless counsel could attack witness's credibility, defendant was not denied right to confront witness because pursuant to the statute, credibility may be attacked only by showing conviction of felony, not by mere arrest." Johnson v. State, 82 Nev. 338, 418 P.2d 495 (1966), *cited*, Plunkett v. State, 84 Nev. 145, at 148, 437 P.2d 92 (1968), Azbill v. State, 88 Nev. 240 at 247, 495, P.2d 1064 (1972), Bushnell v. State, 95 Nev. 570 at 572, 599 P.2d 1038 (1979).

In the State's answering brief, the State admits this was improper impeachment evidence (State's Response pp. 140-141). However, the State argues that Mr. Johnson suffered no prejudice as a result of the improper question (State's Response pp. 140). The State claims they had another motivation for questioning Dr. Zamora as opposed to impeachment. The State's argument makes no sense and violates the statute. It does not matter whether you have a separate motivation for desiring to question a witness regarding misdemeanor convictions. The law dictates you cannot impeach a witness with this type of cross-examination. Any skilled litigator could inform a trial court that they are not impeaching the witness with a misdemeanor conviction but simply want to establish that the witness has lied, deceived, is violent, or makes things up and that is why they want to question the witness about a misdemeanor conviction. Clearly, the State used improper

impeachment on Mr. Johnson's mitigation witness. The errors during the third penalty phase were numerous and cumulative and should result in a new penalty phase. Mr. Johnson's penalty phase was unconstitutional in violation of the fifth, sixth, eighth and fourteenth amendments to the United States Constitution.

XXVI. THE DEATH PENALTY IS UNCONSTITUTIONAL

This argument stands as submitted in the Opening Brief.

XXVII. MR. JOHNSON'S DEATH SENTENCE IS INVALID UNDER THE STATE AND FEDERAL CONSTITUTIONAL GUARANTEES OF DUE PROCESS, EQUAL PROTECTION, AND A RELIABLE SENTENCE, BECAUSE THE NEVADA CAPITAL PUNISHMENT SYSTEM OPERATES IN AN ARBITRARY AND CAPRICIOUS MANNER. U.S. CONST. AMENDS. V, VI, VIII AND XIV; NEV. CONST. ART. I SECS. 3, 6 AND 8; ART IV, SEC. 21.

This argument stands as submitted in the Opening Brief.

XXVIII. MR. JOHNSON'S CONVICTION AND DEATH SENTENCE ARE INVALID UNDER THE STATE AND FEDERAL CONSTITUTIONAL GUARANTEES OF DUE PROCESS, EQUAL PROTECTION, TRIAL BEFORE AN IMPARTIAL JURY AND A RELIABLE SENTENCE BECAUSE THE PROCEEDINGS AGAINST HIM VIOLATED INTERNATIONAL LAW. U.S. CONST. AMENDS. V, VI VIII AND XIV; NEV. CONST. ART. I SECS. 3, 6 AND 8; ART IV, SEC. 21.

This argument stands as submitted in the Opening Brief.

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XXIX. MR. JOHNSON IS ENTITLED TO A REVERSAL OF HIS CONVICTIONS AND SENTENCE OF DEATH BASED UPON CUMULATIVE ERROR.

Johnson's state and federal constitutional right to due process, equal protection, a fair trial, a fair penalty hearing, and right to be free from cruel and unusual punishment due to cumulative error. U.S. Const. Amend. V, VI, VIII, XIV; Nevada Const. Art. I, Sec. 3, 6 and 8; Art. IV, Sec. 21.

"The cumulative effect of errors may violate a defendant's constitutional right to a fair trial even though errors are harmless individually." Butler v. State, 120 Nev. 879, 900, 102 P.3d 71, 85 (2004); U.S. v. Necoechea, 986 F.2d 1273, 1282 (9th Cir. 1993) (although individual errors may not separately warrant reversal, "their cumulative effect may nevertheless be so prejudicial as to require reversal"). "The Supreme Court has clearly established that the combined effect of multiple trial errors violates due process where it renders the resulting criminal trial fundamentally unfair." Parle v. Runnels, 505 F.3d 922, 927 (9th Cir. 2007) (citing Chambers v. Mississippi, 410 U.S. 284 (1973); Montana v. Egelhoff, 518 U.S. 37, 53 (1996)). "The cumulative effect of multiple errors can violate due process even where no single error rises to the level of a constitutional violation or would independently warrant reversal." Id. (Citing Chambers, 410 U.S. at 290 n.3).

Each of the claims specified in this supplement requires vacation of the

sentence and reversal of the judgement. Johnson incorporates each and every factual allegation contained in this supplement as if fully set forth herein. Whether or not any individual error requires the vacation of the judgment or sentence, the totality of these multiple errors and omissions resulted in substantial prejudice.

In Dechant v. State, 116 Nev. 918, 10 P.3d 108,(2000), the Court reversed the murder conviction of Amy Dechant based upon the cumulative effect of the errors at trial. In Dechant, the Court provided, “[W]e have stated that if the cumulative effect of errors committed at trial denies the appellant his right to a fair trial, this Court will reverse the conviction. Id. at 113 citing Big Pond v. State, 101 Nev. 1, 3, 692 P.2d 1288, 1289 (1985). The Court explained that there are certain factors in deciding whether error is harmless or prejudicial including whether 1) the issue of guilt or innocence is close, 2) the quantity and character of the error and 3) the gravity of the crime charged. Id.

The errors in the instant case should result in a new penalty phase. The cumulative errors were numerous. The errors included counsel’s failure to properly investigate and present information regarding Fetal Alcohol Syndrome, failing to obtain a PET scan, failure to offer mitigators which had been found by a previous jury, failure to present evidence from the defendant’s father, failure to preclude the State from introducing inadmissible bad acts, failure for handing over mitigation

reports, and failure for the attorney's disputing facts with one another, failure to refer to the victims as "kids", and failure for not raising on appeal the prosecution improperly impeaching a defense witness. Therefore, Mr. Johnson is entitled to a new penalty phase.

CONCLUSION

Based on the foregoing, Mr. Johnson respectfully requests this Court order reversal of his convictions.

DATED this 13th day of November, 2015.

Respectfully submitted:

/s/ Christopher R. Oram, Esq.
CHRISTOPHER R. ORAM, ESQ.
Nevada Bar No. 004349
520 S. Fourth Street, 2nd Floor
Las Vegas, Nevada 89101
(702) 384-5563

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using 14 point font of the Times New Roman style.

I further certify that this brief complies with the page or type-volume limitations of NRAP 32(7)(b). Pursuant to NRAP 32(7)(b), this appellate brief complies because although it is comprised of 19, 206 words, the undersigned has filed the appropriate motion to exceed the page limitation.

Finally, I certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by appropriate references to the record on appeal. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 13th day of November, 2015.

Respectfully submitted by,

/s/ Christopher R. Oram, Esq.
CHRISTOPHER R. ORAM, ESQ.
Nevada Bar No. 004349
520 S. Fourth Street, 2nd Floor
Las Vegas, Nevada 89101
(702) 384-5563

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on the 13th day of November, 2015. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

ADAM PAUL LAXALT
Nevada Attorney General

STEVE OWENS
Chief Deputy District Attorney

CHRISTOPHER R. ORAM, ESQ.

BY:

/s/ Jessie Vargas
An Employee of Christopher R. Oram, Esq.

EXHIBIT 45

EXHIBIT 45

CLARK COUNTY CORONER MEDICAL EXAMINER
1704 PINTO LANE
LAS VEGAS, NEVADA 89106

August 15, 1998

Case No. 98-4164

AUTOPSY REPORT

PATHOLOGICAL EXAMINATION ON THE BODY

OF

PETER C. TALAMANTEZ

DIAGNOSES

1. Gunshot wound of head.
2. Blunt laceration of head.
3. Patulous anus.

OPINION

It is my opinion that the decedent, Peter C. Talmantez, came to his death as a result of a gunshot wound of the head, homicide.


Robert Bucklin, M.D., J.D., Deputy Medical Examiner

/ng

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CLARK COUNTY CORONER MEDICAL EXAMINER
1704 PINTO LANE
LAS VEGAS, NEVADA 89106

August 15, 1998

Case No. 98-4164

POSTMORTEM EXAMINATION ON THE BODY OF

PETER C. TALAMANTEZ

PRESENT AT AUTOPSY: Detectives Hefner, Thowsen and Buczek, Crime Scene Analysts Morton and Norman, Las Vegas Metropolitan Police Department.

HISTORY: The decedent is a young adult Caucasian male whose body was found at about 1800 hours on 14 August 1998 at 4825 Terra Linda Avenue, Las Vegas (See Companion Cases 98-4161, 4162, 4163). Death was pronounced at 2345 hours on 14 August 1998.

AUTOPSY: The autopsy is performed by Robert Bucklin, M.D., J.D., Deputy Medical Examiner, at 1530 hours, 15 August 1998, at the Clark County Morgue.

EXTERNAL EXAMINATION: The unembalmed body is that of a young adult Caucasian male measuring 69 inches from crown to heel, weighing 105 pounds and appearing to be about twenty years of age. On the posterior portion of the scalp slightly to the left of the midline at a point of the plane of the ear is what appears to be an abrasion which has some darkening and discoloration of the margins. This wound measures 1/2 inch in size. There is a pierced lobe in the left ear with a gold colored ring in position. The scalp hair is dark brown measuring up to 2-1/2 inches. Examination of the anal area shows a widely patulous anus with a funnel shaped track surrounded by short dark hair. The size of the anus is 3/4 x 1/2 inch and it is widely gaping and does not collapse. There is an earring on the right ear. The hair color is brown. The pupils are round and equal. The eyebrows appear normal and no clearly defined scar is observed. Blood issues from the nostrils. The teeth are natural and in good condition. There is a short growth of hair on the chin and few strands on the upper lip. A large amount of blood covers the pinna of the right ear. The neck is thin and symmetrical. The chest is symmetrical but is flat and has a scaphoid character. The breasts are small and glandular tissue is absent. The abdomen is soft and flat. Surgical scars are not seen. No organs are palpable. The penis is circumcised. Two testes are present in the scrotum. The lower extremities show a very shallow abrasion on the medial aspect of the right ankle 1/2 x 3/8 inch. On the medial aspect of the left arm above the elbow is a 1 x 3/4 inch

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superficial abrasion with irregular borders. Another shallow abrasion with a linear configuration is present close to the olecranon on the right elbow. This measures $3/4 \times 3/8$ inch. There is a faint 1-1/2 inch scar on medial aspect of the right knee. The back of the body shows no injury.

X-RAYS: X-rays taken prior to autopsy show metal fragments within the head. The largest piece is on the right side and appears to be in the midbrain area. There are multiple smaller fragments on the left side in the temporal area and behind the orbits.

After cleaning the face, an irregular scar is noted in the midportion of the left eyebrow and a poorly defined area of scarring is noted at the medial portion of the right eyebrow. There is a superficial abraded area at the bridge of the nose and there is some discoloration on the left side of the upper and lower lips which may be postural.

HEAD: The usual coronal incision is made. The skin and subcutaneous tissues are thin. There is no injury to the temporal muscles or to the scalp or the surface of the calvarium. The blunt laceration described in the scalp is now identified as such and the bullet wound is in the left lateral portion of the skull at the point described above. The calvarium is of normal thickness and shows no injury. The dura is intact. There is no epidural or subdural hemorrhage but there is diffuse subarachnoid hemorrhage which covers both right and left hemispheres. Embedded in the substance of the right temporal lobe is a flat piece of metal representing a portion of the projectile. A larger piece of metal representing the main portion of the bullet is recovered from the left lobe of the cerebellum. Adjacent to it is a third smaller metal fragment.

The brain weighs 1440 grams. After removal of the brain and inspection of the skull base a large defect is noted in the left middle fossa posteriorly. This represents an entrance type track and has a bevel on the internal aspect. No fractures are seen at this point. Examination of the brain shows diffuse subarachnoid hemorrhage which covers the main portion of the skull base. There is a bullet track passing through the left lobe of the cerebellum destroying about third of this. The track extends into the cerebral cortex on the left and then into the right cerebral cortex in the frontal area and from the later point the bullet jacket was recovered. The brain is examined by coronal sections at 1 centimeter intervals which reveal the extent of the bullet track which passes from the cerebellum into the right hemisphere. The track measures up to 1 inch in size and there are satellite hemorrhagic areas along its course. There are several cortical contusions within the right temporal cortex. No space occupying lesion is seen in the brain and no antemortem cerebral disease is apparent. The base of the skull with the exception of the findings above is normal. The pituitary gland is not enlarged.

INTERNAL EXAMINATION: The usual Y-shaped thoracoabdominal incision is made. The skin and subcutaneous abdominal fat is thin measuring less than 1/4 inch for skin and 3/8 inch for muscle. The pectoralis and rectus muscles are small. The pleural spaces are both dry. There are no adhesions. The pericardial sac contains a small amount of straw-colored fluid. The abdominal organs are in their usual normal position. There is a moderate degree of gas in the transverse colon. No blood or excess fluid is seen in the peritoneal cavity.

CARDIOVASCULAR SYSTEM: The heart weigh 240 grams. The epicardial surface is smooth and normal. The fat layer is not increased. The chambers contain a small amount of dark fluid blood and no significant intracardiac clot. The endocardium is normal. All valves are well developed and do not show congenital or acquired abnormalities. The coronary vascular system has normal points of origin and the distribution is within usual limits. No narrowing or occlusion can be demonstrated. There is fluid blood in the pulmonary artery and in the inferior vena cava and portal vein. The aorta is free of atherosclerotic disease and is entirely normal.

RESPIRATORY SYSTEM: The trachea and bronchial mucosa shows a very mild degree of hyperemia. The lungs together weigh 900 grams. The pleural surfaces are mottled with carbon pigment in the pleura. No emphysematous changes are seen and the lungs are well aerated throughout. Only moderate edema and congestion can be noted. No inflammatory neoplastic or granulomatous disease is present.

GASTROINTESTINAL SYSTEM: The esophagus has a pale gray smooth mucosal lining. The stomach contains about 30 cc of dark fluid which does not have a characteristic odor. No well defined food particles are seen. The mucosa is smooth. The rugal pattern is distinct. The duodenum, small intestine and colon are not unusual. The appendix is present and free of inflammatory disease.

PANCREAS: The size, shape and position of pancreas are normal. The organ on section shows no structural details.

ADRENALS: The adrenals are of usual size and are normal in position. Sections show well defined intact cortex and medulla without nodularity.

SPLEEN: The spleen weighs 100 grams. The capsule is wrinkled and cut sections show coarse trabeculae and poorly defined follicles.

LIVER: The liver weighs 1000 grams. The capsule is tan-brown. The inferior border is sharp. Sections through the liver show the internal structure to be anatomically normal. No scarring is noted and no excess fat is present. There is no evidence of specific hepatocellular disease. The gallbladder contains less than 3 cc of bile and the extrahepatic biliary system is normal.

GENITOURINARY SYSTEM: The kidneys each weigh 140 grams. The capsules strip easily and are thin. The cortical surfaces are smooth and dark. Cut sections show well defined corticomedullary lines and demarcation. The renal blood vessels, pelvises and calyces are normal. The ureters are fully patent. The bladder contains about 3 ounces of pale yellow urine. The mucosal lining is normal. The prostate is firm. No nodules are seen and the posterior urethra is not compromised. The testes are in their usual position. The tubules string without difficulty and the epididymides are intact.

NECK ORGANS: The tongue is grossly normal. The epiglottis and larynx are lined by pale gray mucosa. The vocal cords do not show abnormality. The larynx contains no foreign material. The epiglottis, larynx, trachea and vocal cords are all normal and the thyroid lobes are symmetrical and of usual size. The hyoid bone and thyroid cartilages do not show injury.

DESCRIPTION OF INJURIES: There is a gunshot wound of entrance on the left side of the occipital scalp 5 inches below the plane of the crown and 2 inches left of the anterior midline. The wound is slightly ovoid measuring $5/8 \times 3/8$ inch. There is charring of the borders but no soot, powder or stippling is noted in the skin. No soot is identified in the hair around the entrance wound. Above the entrance wound by 3 inches is a crusted recent blunt laceration which measures $1/2$ inch in diameter. It has crushed edges and hemorrhage is noted in subcutaneous tissues extending as far as the calvarium. No injury to the bone is noted and no sign of a bullet entrance is present at this point.

The bullet direction was from left toward right and upward with the bullet passing through the left middle fossa, the left lobe of the cerebellum and the right lobe of the cerebrum. Bullet fragments were recovered close to the skull at the entrance point and in the right frontal lobe tip.



ASSOCIATED
PATHOLOGISTS
LABORATORIES

4230 Burnham Ave., Suite 250
Las Vegas, Nevada 89119
(702) 733-7866

Raymond C. Kelly, Ph.D., DABFT
Director of Toxicology

CAP No. 89109-004-011

PATIENT DOE #4 98-04164, JOHN "TERRA LIND APL ROUTE SPC00 1084
REFERRED BY CC CORONERS OFFICE P035240
AGE/SEX 99Y M
COLLECTED 08/15/1998 00:00
RECEIVED 08/17/1998 09:38
TOXICOLOGY NO. 98-058296

ACCESSION NO. 01852958
MED. RECORD NO. 0006288339
CHART NO.
SS NO.

1704 PINTO LANE
LAS VEGAS, NV 89106

TOXICOLOGY REPORT

TEST NAME - SPECIMEN

=====

COMPREHENSIVE BLOOD SCREEN

RESULTS: ETHANOL = NEGATIVE

08-24-98 10:57 RCVD

METHAMPHETAMINE = 3.169 NG/ML.

AMPHETAMINE = 324 NG/ML.

THE FOLLOWING BLOOD SCREEN FOR ACIDIC, NEUTRAL AND BASIC DRUGS
INCLUDES BUT IS NOT LIMITED TO:

Amitriptyline	Amphetamine	Benzoylecgonine
Cocaine	Codeine	Desipramine
Diphenhydramine	Hydrocodone	Hydromorphone
Imipramine	Lidocaine	Meperidine
Methadone & Metabs	Methamphetamine	Methaqualone
Morphine	Nortriptyline	Oxycodone
Pentazocine	Phencyclidine	Phenylpropanolamine
Propoxyphene & Metabolites		
Acetaminophen	Amobarbital	Barbital
Butabarbital	Butalbital	Carbamazepine
Chlordiazepoxide	Diazepam	Ethchlorvynol
Ethosuximide	Glutethimide	Mephobarbital
Meprobamate	Methaqualone	Methsuximide
Methyprylon	Nordiazepam	Pentobarbital
Phenobarbital	Phenytoin	Salicylate
Secobarbital	Theophylline	Valproic Acid

FORENSIC URINE DRUG SCREEN

RESULTS: METHAMPHETAMINE AND AMPHETAMINE IDENTIFIED.

THIS SPECIMEN HAS BEEN SCREENED FOR THE FOLLOWING DRUGS:

Acetaminophen	Amitriptyline	Amobarbital
Amphetamine	Barbital	Benzoylecgonine
Butabarbital	Butalbital	
Cannabinoids (THC/Marijuana)		Chlordiazepoxide
Cocaine	Carbamazepine	Desipramine
Diazepam	Dihydromorphinone	Diphenhydramine
Ethchlorvynol	Ethosuximide	Glutethimide
Imipramine	Lidocaine	Meperidine
Mephobarbital	Meprobamate	Methadone & Metabolite
Methamphetamine	Methaqualone	Methsuximide
Morphine	Methyprylon	Nordiazepam
Nortriptyline	Oxycodone	Pentazocine

AA07085



4230 Burnham Ave., Suite 250
Las Vegas, Nevada 89119
(702) 733-7866

Raymond C. Kelly, Ph.D., DABFT
Director of Toxicology

CAP No. 89109-004-011

PATIENT DOE #4 98-04164, JOHN "TERRA LIND APL ROUTE SPC00 1084
AGE/SEX 99Y M REFERRED BY CC CORONERS OFFICE P053240
COLLECTED 08/15/1998 00:00 ACCESSION NO. 01852958 1704 PINTO LANE
RECEIVED 08/17/1998 09:38 MED. RECORD NO. 0006288339 LAS VEGAS, NV 89106
TOXICOLOGY NO. 98-058296 CHART NO.
SS NO.

TOXICOLOGY REPORT

TEST NAME - SPECIMEN
=====

Pentobarbital	Phencyclidine (PCP)	Phenobarbital
Phenylpropanolamine	Phenytoin	
Propoxyphene & Metabolite		Salicylate
Secobarbital	Theophylline	Valproic Acid

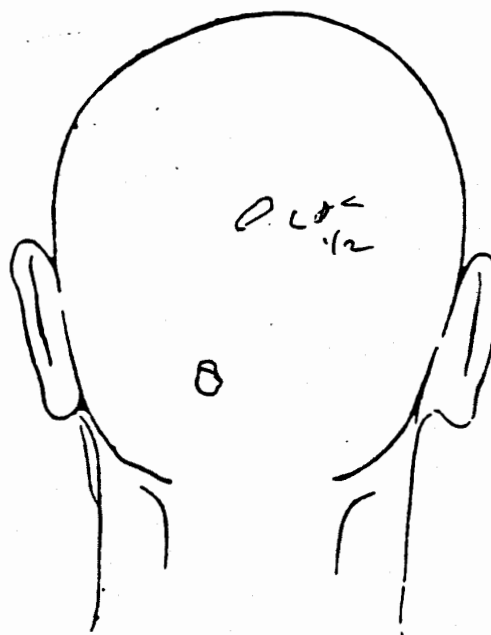
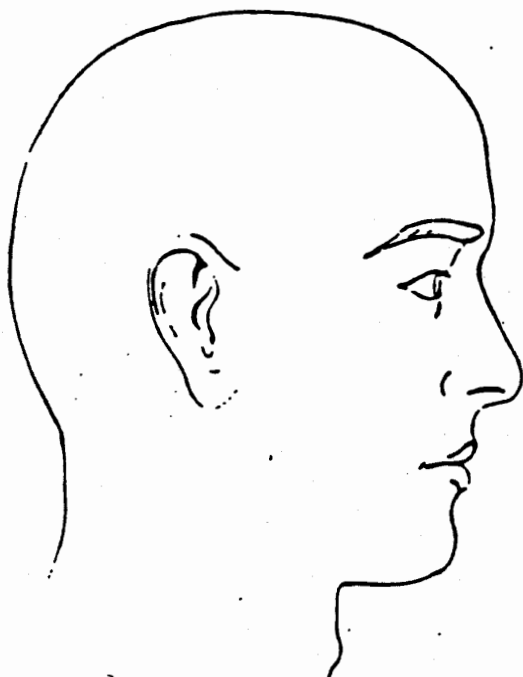
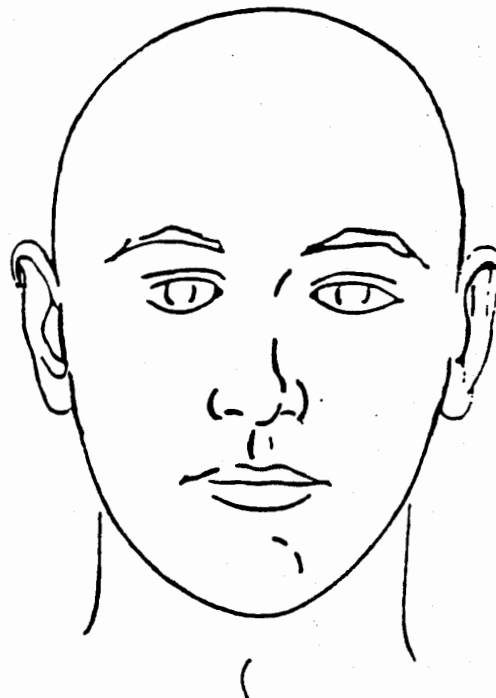
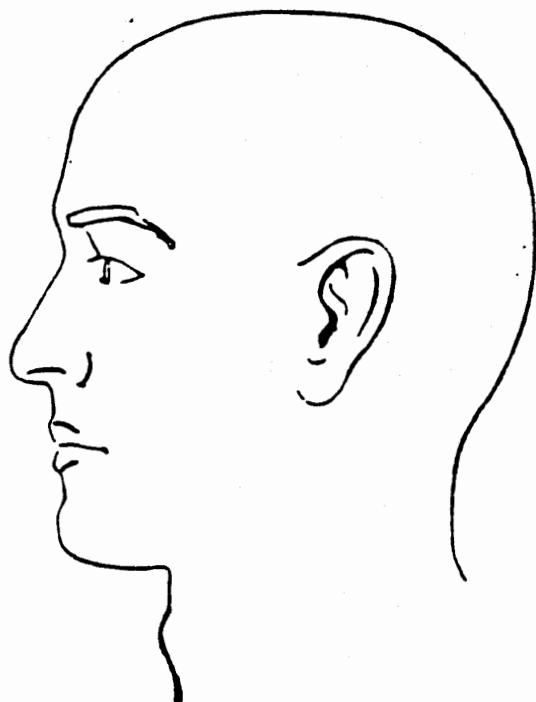
ANY OTHER DRUGS OR TOXINS DETECTED ARE ALSO INCLUDED IN THIS REPORT.

AA07086

CLARK COUNTY CORONER-MEDICAL EXAMINER

Name PETER TOLAMEN TEE Autopsy No. 98-4164

Race C Age 17 Sex M Date 15 AUG 98



5 62
2000

15 AUG 98

AA07087

Case No. 98-04164

REPORT OF INVESTIGATION
OFFICE OF THE CORONER MEDICAL EXAMINER, CLARK COUNTY, NEVADA
1704 Pinto Lane, Las Vegas, Nevada 89106

DECEDENT TALAMANTEZ, PETER C.

AKA

Status S DOB

Residence Address

Tel No. Desc: Sex M Race S Age 17

SS #

Height 69.00

Weight 105.00 Hair BROWN

Eyes BROWN

Scars/Tattoos & Other identifying features

SCAR TO LEFT KNEE AND SCAR TO LEFT WRIST

Rigor Mortis FULL BODY

Livor Mortis FIXED, RIGHT-SIDED

Decomposed? No

Clothing WHITE JERSEY W/ "T. BROWN #81", BROWN BELT, BLACK PANTS

Drugs & Medications

UNKNOWN

Occupation STUDENT

Employed by NONE

Agency Reporting LVMPD

Date & Time Reported 08/14/98 23:05

Location of body 4825 TERRA LINDA AVE., LAS VEGAS, NV 89120

Type of Death V At Work:

CIRCUMSTANCES	DATE	TIME
Reported to Agency by	08/14/98	18:02
Name & Address	JUSTIN PERKINS	
Last Seen Alive by		
Name & Address	UNKNOWN	
Found Dead by	08/14/98	18:00
Name & Address	JUSTIN PERKINS	
Pronounced Dead by	08/14/98	23:45
Name & Address	JOHN T. HARRIS, CCCME	
Body Viewed by	08/14/98	23:45
Name & Address	JOHN T. HARRIS, CCCME	
Identified by	08/15/98	15:00
How Identified	VIEWING POSTMORTEM PHOTOGRAPH	
Name & Address	ALBERT TALAMANTEZ (FATHER)	
Witnesses		

Law Enforcement Agency LVMPD

Event # 980814-1600

Officers SGT. KEN HEFNER P#2185

DET. JIM BUCZEK P#3702

Property Receipt # 57404 (57322)

In Custody of PROPERTY LEFT ON BODY (IN CCCME VAULT)

CUSTODY OF BODY: Removed by BUNKER

To CCCME

Driver J. RIMSEY

Assisted by D. HINES

Requested by PER ROTATION

DEATH NOTIFICATION

N.O.K. ALBERT TALAMANTEZ

Address 5840 MEDALLIAN DRIVE, #202, LAS VEGAS, NV 89122

Other #1

Address

Other #2

Address

Means

PERSONAL CONTACT

Notification Made by RICK JONES (CCCME)

Date 08/15/98 Time 15:00

Relationship FATHER

Tel No. (702) 434-9442

Relationship

Tel No.

Relationship

Tel No.

VEHICULAR DEATHS: Deceased was

Vehicle

Accident location

Seat Location

Lic No

Date

State

Time

AA07088

CLARK COUNTY CORONER MEDICAL EXAMINER
1704 PINTO LANE
LAS VEGAS, NEVADA 89106

NAME TALAMANTEZ, PETER C. AGE 17 DATE 08/14/98 CASE # 98-04164

On 08/14/98, at approximately 2305 hours, I responded to 4825 Terra Linda Ave., Las Vegas, Nevada 89120. Las Vegas Metropolitan Police Department (LVMPD) Homicide Detective Jim Buczek reported a quadruple homicide at this location. I responded at approximately 2310 hours and arrived on scene at approximately 2330 hours. This case is associated with CCCME Case #98-4161, #98-4162 and #98-4163.

Bunker Mortuary was dispatched per rotation.

Upon my arrival at the scene, Homicide Detectives Jim Buczek and Sgt. Ken Hefner met me. The detectives related the following information.

At approximately 1802 hours, the 911 Dispatcher at LVMPD received a call from a citizen reporting a medical emergency with four people down in a house. LVMPD patrol units were dispatched and found four subjects in the single-family dwelling. All four subjects were bound with duct tape and appeared to have had trauma to their heads. The scene was sealed off and protected by LVMPD patrol officers, and Homicide was notified.

The crime scene is a four-bedroom structure located on the south side of the street with a dining room, living room, and one bath. It is located in a neighborhood surrounded by single family dwellings on both sides. I observed a truck parked in the shed in front of the house and the front door is accessed from the north center portion of the structure. LVMPD Crime Scene Analysts (CSA) were on scene and had completed a preliminary investigation of the crime scene. The following CSA personnel were on scene: M. Perkins P#4242, D. Horn P#1928, S. Fletcher P#5221, and J. Donald P#5709.

I entered the residence through the front door and observed the bodies of three Caucasian males. The decedents were bound with their hands taped behind their backs with what appeared to be duct tape. Each decedent was also bound with what appeared to be duct tape around their ankles. I observed what appeared to be blood on the head of each of these three decedents and it appeared that the blood had drained to the carpeted floor under each decedent's head. The entire residence was in disarray and appeared ransacked.

Continued:

AA07089

CLARK COUNTY CORONER MEDICAL EXAMINER
1704 PINTO LANE
LAS VEGAS, NEVADA 89106

NAME TALAMANTEZ, PETER C. AGE 17 DATE 08/14/98 CASE # 98-04164

Continued Page-Two:

The three decedents in the living room were all face down and their hands were behind their backs, and their legs were taped together. The three decedents were all lying in prone positions on the floor. A fourth body was located in the dining room on the floor lying on the right side. This decedent was also bound with what appeared to be duct tape around his hands behind his back and his legs were also taped. It also appeared that this decedent had trauma to the head.

I had been advised by LVMPD that there were two dogs loose in the residence upon their arrival. The dogs had access to each body and it appeared that the dogs had tracked blood over the bodies of the decedents. The dogs had been removed from the residence by Animal Control.

Each decedent was identified as John "Terra Linda" Doe. The decedents were marked for identification as John Doe 1, 2, 3, and 4.

The decedent, John Doe #4, was lying on the carpeted floor of the dining room. He was lying on his right side. This decedent was also bound with his hands behind his back and at his ankles with what appeared to be duct tape. He was dressed in a white jersey style shirt with the number 18 on it and the name "T-Brown", a brown belt and black pants. This decedent had no life signs and was in full body rigor mortis. I pronounced death approximately 2345 hours.

This decedent appeared to be a Spanish male and was in possession of a handgun that was located in the waistband of his trousers. This handgun was inside a holster and was stuck down un-secure inside the front waistband. The handgun was removed by CSA M. Perkins and identified as a Colt Automatic, Series-80, "ACP" .45 caliber, Serial #LFA3510. This weapon was loaded with a round in the chamber and rounds inside the magazine. This decedent was placed inside a body bag and sealed with Coroner Seal #856356. The weapon was taken as evidence by the CSA.

A person identified as Albert Talamantez, 5840 Medallion Drive, Las Vegas, Nevada 89122, (702) 434-9442, appeared at the scene. He

Continued:

AA07090

CLARK COUNTY CORONER MEDICAL EXAMINER
1704 PINTO LANE
LAS VEGAS, NEVADA 89106

NAME TALAMANTEZ, PETER C. AGE 17 DATE 08/14/98 CASE # 98-04164

Continued Page-Three:

said that he had been contacted by an unknown subject that told him his son maybe one of the victims. He said that his son owned a jersey with the number 18 on it and the name "T-Brown". He identified his son as Peter Chris Talamantez, DOB 11/21/80, and that he has a two-inch scar on his left leg and a scar over his left eyebrow. He was advised that an investigator from the Coroner's Office would be in contact with him later today for identification.

The Senior CSA said that the decedents could be removed. The following procedures were followed on each decedent.

The decedents were placed on a new sheet in the same position that they were found in. No property was removed from the decedents bodies. The decedents were then placed inside new body bags to preserve any evidence and Coroner Seals were attached to each respective body bag.

Bunker Mortuary made the removal from the scene to Clark County Coroner/Medical Examiner's Office (CCCME). Two mortuary units were used and had left the scene at the same time at approximately 0055 hours. The mortuary units were followed by Senior Investigator Bill Gazza to CCCME and arrived at CCCME at approximately 0120 hours.

All property was left on John Doe #4 per Property Receipt #574041.

EXAMINING PHYSICIAN Bucklin AUTOPSY Yes VIEW No
/WG



JOHN T. HARRIS - CORONER INVESTIGATOR

EXHIBIT 46

EXHIBIT 46

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 1

EVENT: 980814-1600

SPECIFIC CRIME MURDER WITH DEADLY WEAPON (4 COUNTS)

DATE OCCURRED 08/14/98

TIME OCCURRED

LOCATION OF OCCURRENCE

CITY OF LAS VEGAS

CLARK COUNTY

NAME OF PERSON GIVING STATEMENT HART, ACE RAYBURN

DOB: 1 [REDACTED]

SOCIAL SECURITY #: [REDACTED]

RACE: W

SEX: M

HEIGHT:

WEIGHT:

HAIR:

EYES:

WORK SCHEDULE:

DAYS OFF:

HOME ADDRESS: [REDACTED]
VEGAS, NV. 89121

HOME PHONE: NONE

WORK ADDRESS: [REDACTED]

WORK PHONE: [REDACTED]

BEST PLACE TO CONTACT: MSG. PHONE NUMBERS: [REDACTED]

BEST TIME TO CONTACT:

The following is the transcription of a tape-recorded interview conducted by DETECTIVE J. BUCZEK, P# 3702, LVMPD HOMICIDE Detail, on 08/17/98 at 1825 hours. Also present is DETECTIVE T. THOWSEN, P# 1467, LVMPD HOMICIDE Detail.

Q: Ace, are you aware this is being taped?

A: Yes.

Q: Okay. Could you tell me where, where you are, where you were residing?

A: At [REDACTED].

Q: Okay. And how long were you staying there, Ace?

A: Uh, about four, I've been there about four or five months.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 2

EVENT: 980814-1600

HART, ACE RAYBURN

Q: Okay. Uh, who, who do you live there with?

A: Tod and his girlfriend.

Q: Anyone else live there with you?

A: No.

Q: Okay. Who are you renting the place from?

A: Tod's mom.

Q: Okay. And where does she live?

A: In Hawaii.

Q: Okay. Uh, did there come a time where, uh, you, you met some people that eventually moved into your house with you?

A: Yeah.

Q: Okay. How, how did that go about?

A: Uh, we...I had met one of the guys in jail and...

Q: What's his name?

A: Deco. And then I saw him again at the Stratosphere about a month and a half ago. And I got him a ... and I ran into him and we just started talking and Tod, I guess, kind of knew of the other guy Red from Chaparral High School, just knew he went there. And I got him a room at the Thunderbird Hotel. And then, uh, a week or two later after that they left there, came to our house, and was talking about...they

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 3

EVENT: 980814-1600

HART, ACE RAYBURN

was...needed to stay there because something, something happened but they weren't telling us everything. And then...

Q: Okay. Just stop, stop there just a second. Could you go back to Deco. How, how else do you know Deco? Does he have another name?

A: Uh, Rashad.

Q: Okay. Do you know him by any other names other than that?

A: Uh, Little, Little D.

Q: Okay. Does John Smith come up at all? Do you know him as John Smith?

A: Un un.

Q: Okay. Uh, could you describe him to me.

A: Uh, he's about 5-9, stocky, got long, he's got kind of long, I mean not that long, braids. He usually has it straight or braids in his hair.

Q: Okay. Does he have any tattoos?

A: Yeah. He has two tear drops on his left eye.

Q: Okay. And does he have any other tattoos that you know of?

A: Uh, he has "CK" on one of his...right here...like the web part.

Q: Okay. The web between the, uh...

A: I don't know which hand it's on the...

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 4

EVENT: 980814-1600

HART, ACE RAYBURN

Q: Between the thumb and the, and the index finger. Okay. And is he light skinned or dark skinned?

A: Dark.

Q: Okay. Now, did you ever come to meet another one of his friends...you said, I believe Red?

A: Yes.

Q: Okay. How...what does he look like?

A: He's about, a little bit taller, maybe 5-10 and kind of heavy-set, stocky guy. And he's got short hair.

Q: When you say heavy-set, stocky guy, what would you say he weighed?

A: About, between, I don't know...175 maybe. Kind of big guy.

Q: Okay.

A: Uh, he ain't that tall, though. Little bit, maybe a little bit taller than me, though.

Q: Is he, is he fat or is he muscular?

A: He's fat.

Q: Okay.

A: And he's got short hair like little bitty braids...like they, they just come down to the ends of his head, the braids do.

Q: Okay.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 5

EVENT: 980814-1600

HART, ACE RAYBURN

- A: Like his hair ain't long enough.
- Q: Okay. Is it, is it cut on the sides?
- A: Like the braids just go into each other and then they just stop.
- Q: Okay. Uh, corn rows? Is it, ...
- A: No. They're like stuck to his head...
- Q: Okay.
- A: You know what I'm talking about?
- Q: Yeah. Okay, so, does he have any tattoos?
- A: Um, I think I remember seeing one on his arm but I couldn't tell you what it is 'cause he's dark complected, too.
- Q: Do you know how old he is?
- A: No.
- Q: But you said he went to Chaparral High School?
- A: Yeah. Tod had knew him from Chaparral High School.
- Q: When did he go there?
- A: I don't know. I didn't know...
- Q: Okay.
- A: He didn't know what they were talking about because he went to Chaparral, too.
- Q: Alright. Um, could you tell me what happened when they moved in?

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 6

EVENT: 980814-1600

HART, ACE RAYBURN

A: Uh, they were just...they were kind of quiet but they were always walking around with all their guns, smoking weed and, uh, watched the news all the time about what was going on and they, they'd just have their buddies come over and they were just acting weird like they was _____, like pace the floor and just be like "are you guys ready? Are you guys ready?" And they just were like "yeah" and they'd just leave.

Q: Okay.

A: They've got about six guns, though.

Q: Did you eventually move out?

A: Yes. I moved out not too long after that. I've been staying over at B.J.'s house.

Q: Okay. What kind of guns did they have?

A: Uh, they had a bunch of little pistols. They had like four pistols. Then they, I remember, they had a .22 big rifle like a hunting rifle.

Q: Uh huh.

A: Uh, then they had a little .22 like where the...it was a pistol grip and then the thing would come out off the side...

Q: Uh huh.

A: And it had a little banana clip on it and then, uh, some 30-30, some real big gun with a big banana clip on it.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 7

EVENT: 980814-1600

HART, ACE RAYBURN

- Q: Okay. Um, how long ago did you see those guns?
- A: About two weeks ago.
- Q: Okay. Did they happen to carry 'em in a bag at all?
- A: Yeah. They had 'em all in one bag.
- Q: What kind of bag?
- A: It was just like a big, black duffel bag. It was pretty...it was like a big duffel bag. They'd just carry them all around in there.
- Q: Okay. Did they carry anything else in there that you know of?
- A: Uh, I _____ went through their stuff.
- Q: Okay. Um, did you eventually move out?
- A: Yes.
- Q: When did you move out?
- A: About two weeks ago.
- Q: Why'd you move out?
- A: Just because it just didn't seem right because they were talking about something that happened at the Thunderbird and when our phone was hooked up at that time, uh, they had called the Thunderbird room that I had rented for them and the homicide detectives were there. And they said something about the homicide detectives. And then, uh, that's when I started thinking something was wrong

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 8

EVENT: 980814-1600

HART, ACE RAYBURN

because I knew it was in my name and I didn't know what to do, go to the cops, or think I had something on my name 'cause I had rented the room. Uh, then they were watching the news and they were saying, uh, they were talking about some, someone on the side of the freeway and wrapped up in sheets.

Q: Uh huh.

A: And they said they couldn't determine if it was a guy or a girl. And then one of 'em looked and the other one was like "they're just doing that to throw us off." Saying they're just doing that to throw them off.

Q: Okay.

A: And that's when I thought something was up. I was like I ain't staying around this stuff 'cause I don't them that well and I don't want to...and I've had a couple of times that when we were there, that Tod would pull me aside when, like, their buddies were walking around and like "are you ready? Are you ready?" And they'd just look at each other. Talking like _____ are they going to do something to us. And _____ don't.

Q: Who, who were their other buddies? What, what...what were their names?

A: I don't know. They nev..., I've only talked to one of their...there's three other buddies. I only talked to one of 'em one time. And they never talked. They just

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EVENT: 980814-1600

HART, ACE RAYBURN

would sit. Sit...they're like lay into the corner of the room and just watch. They'd all be smoking weed all the time. They were constantly smoking weed.

Q: Okay. Um, did you hear them say anything about any, any...about this murder at all or?

A: No, I...not personally.

Q: Okay.

A: And I heard of anything.

Q: What did you hear?

A: Uh, I just heard that they had...were the ones that killed the four people.

Q: How did you hear that?

A: From Tod.

Q: How did Tod know?

A: I guess... Tod told me that they told him. Because I was there changing for a job interview that I had at Stallion Mountain, uh, Saturday at 12:30 and, uh, I was talking...they were, someone was talking about it in the house about the four people. And I was good friends with two of 'em.

Q: Uh huh.

A: And...

Q: What two were you good friends with?

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EVENT: 980814-1600

HART, ACE RAYBURN

A: Tracey and Matt Mowen.

Q: Okay.

A: I don't remember Tracey's last name though. And they, they were talking something about it and they acted real shady like different towards me after I said "Yeah, they were my good friends. They weren't even that type of people that would even deserve to get killed like that." And they'd just go in the back and talk to each other. And then I kind of thought something but I never thought that, you know, especially since I knew the people that this happened to and then Tod told me this morning that that's what happened.

Q: Okay.

A: That he, that they were saying something about that they were the ones and I guess they did get scared that I knew and that I was good friends with 'em.

Q: Okay. Were you, were you at the house at all on Friday?

A: No. I haven't been there in two weeks. I've been there once and that Saturday morning for an hour and changed into, I got a suit and tie.

Q: Okay. Do you have anything, Tom?

TT: Did they ever talk about any specific shootings that they were bragging about in front of you?

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EVENT: 980814-1600

HART, ACE RAYBURN

A: No. They always...they were really real quiet. But, like uh, I never really asked 'em, you know. They would just, they'd come to the house, they ordered food. We'd eat, uh, play Play Station, and then they'd just leave. They take...I'd seen grab the bag. They'd walk out the door and I knew that's _____.

TT: What kind of stuff did they play on the Play Station?

A: Uh, taking quarters.

TT: What's that?

A: It's some game that Tod had.

TT: What type of game is it, though?

A: Uh, Snowboardin', Snowboardin' and then _____ 2. We have Takken 2. And it was like a karate game.

TT: Okay. They like to play that a lot?

A: (No audible response.)

TT: Some?

A: Yeah. They were barely there though. Like they'd come in at like 2 in the morning with girls or their buddies and then stay for a little while and leave, come back in the morning and they'd sleep for awhile.

TT: They have any type of car that they rode around in?

A: They rode around with some girl. I didn't know...I didn't know her name either.

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EVENT: 980814-1600

HART, ACE RAYBURN

TT: Were they all white or black?

A: All, everyone I seen was black.

TT: And what about the girl?

A: Black.

TT: What kind of car did the girl have?

A: Uh, it was, it was a light like Tempo type car, Sable.

TT: Older or newer?

A: It was an older car.

TT: Okay. You said they'd be interested in the news, was there any other cases that they seemed interested in besides the person in the sheet that you recall?

A: No. I just remember because it was just funny to me 'cause like when they were sitting there, we were all in a big group talking, you know, we're not knowing nothing about what they done or nothing and there was like, sh..., and they'd just would listen, case like the weather came on, sports came on...they didn't pay no attention to it. But when that came over they were like...it just looked obvious to me. And then when they said well we can't, the police can't determine whether or not it is a boy or a girl or whatever they said on the news, boy or something, couldn't determine who it was or some..., and he looked at that and he's like "they're just saying that to throw us off."

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EVENT: 980814-1600

HART, ACE RAYBURN

TT: Who was the person that said that?

A: Deco... Rashad.

TT: Do you remember what names, the names of the other three guys?

A: No. I don't know none of 'em.

TT: Are they about the same age or are they older or younger?

A: I think they're all about the same age.

TT: And how old would that be for all them?

A: Between 18 and 21.

TT: Did any of them work that you know about?

A: No. I know that they always had a lot of money.

TT: Did you see the money?

A: Yes. They'd just pull out just all kinds of money.

TT: They say where they got the money from?

A: No. They just like...I wasn't working at the time and I'd like "you guys order some food". He'd like, yeah, they'd order food and he'd just pull out all kinds of money. I didn't know...they never said anything about nothing. I just know that and that's another thing, when they first got there, I never, I just seen one of the, or two guns then and I wasn't thinking of nothing then and then right before I moved out is when

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EVENT: 980814-1600

HART, ACE RAYBURN

I seen all the other guns. Like they had just came up with a whole bunch more guns, too.

TT: Did it seem like, you know, one person was kind of in charge, calling the shots, or were they just all kind of on an even turf?

A: Um, they never really talked about it in front of us. They just all kind of did their own thing.

TT: I mean did it seem like one person was always, be the one to say "come on, let's get going, let's go do this"?

A: No.

TT: Nothing like that?

A: No.

TT: They just all kind of seemed to be just grouped together?

A: Yep.

TT: Okay. That's all I have.

Q: Okay. It's currently 1839 hours. This will be the end of statement. Thank you.
Okay, we'll be starting the tape again, uh...

TT: Ace, we just asked you a minute ago about what, what sort of drugs that the victims like to have and would participate with and, and sell. Could you explain again what, what their drugs were and what quantities they'd be?

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EVENT: 980814-1600

HART, ACE RAYBURN

- A: Every type of drug and, uh, mass quantities of, uh, like I only, I only heard them talking about one quantity of something, was shrums.
- TT: And shrums, you're talking about mushrooms?
- A: Mushrooms. Like to make you hallucinate.
- TT: And uh, how much?
- A: 30 pounds.
- TT: Of mushrooms?
- A: Yeah.
- TT: And they had other drugs also?
- A: They did their share of like...
- TT: Could you explain like you did earlier the specific types of drugs that you knew that they dealt with?
- A: Acid and ecstasy. They were into coke and they, they, uh, smoke weed and ____.
- TT: How would they, how would they, uh, utilize the acid?
- A: Uh, I don't know. But I know they were kind of slow...like I know them...
- TT: But what I'm saying is do you know if they were putting ____ any specific thing?
- A: Oh no, I don't know about.
- TT: Okay.

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EVENT: 980814-1600

HART, ACE RAYBURN

A: 'Cause I, I really haven't hung out with them for three years, about two years now and I seen 'em one time and he was telling me about this room but I know I could, I could tell when I seen him at the store, they was like a lot slower then he used to be.

TT: Can you, can you explain to me also again how you were, uh, say how they would make money by going on tour?

A: Yeah, they'd follow...

TT: Follow the bands.

A: They'd follow the bands. Like they always talked about it, too. Like the Grateful Dead was here a long time ago, uh, at the Silver Bowl, er Super Bowl, whatever it is and, uh, they were...they'd go there and they were talking about following a concert and I was talking to them and that's when they were talking, uh, about they were following the Pfish on tour...the Pfish...some rock group.

TT: Uh huh.

A: And they just stayed, have a wagon, a van, and they'd sell food and glass pipes and pizzas and different drugs to make their money.

TT: And did they seem to make a lot of money from what you heard from them?

A: Yes. They, they...he was telling me.

TT: Which, which he are you talking about?

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EVENT: 980814-1600

HART, ACE RAYBURN

A: Matt was telling me they made about 600 bucks a night. So that's pretty good money.

TT: Okay.

Q: That will be it. That's the end of the interview. Currently it is 1845 hours. Thank you.

I HAVE READ THIS STATEMENT CONSISTING OF 17 PAGES AND AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED HEREIN. THIS VOLUNTARY STATEMENT WAS COMPLETED AT: 6753 W. CHARLESTON-HOMICIDE OFFICE ON THE DAY OF AUGUST, 1998 AT 1845 HOURS.

WITNESS: _____

WITNESS: _____

SIGNATURE OF PERSON GIVING STATEMENT

/kb
98v0708

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PAGE 1

EVENT: 980814-1600

SPECIFIC CRIME MURDER WITH A DEADLY WEAPON

DATE OCCURRED 08-14-98

TIME OCCURRED _____

LOCATION OF OCCURRENCE _____

CITY OF LAS VEGAS

CLARK COUNTY

NAME OF PERSON GIVING STATEMENT HART, ACE RAYBURN

DOB: [REDACTED]

SOCIAL SECURITY #: [REDACTED]

RACE: W

SEX: M

HEIGHT:

WEIGHT:

HAIR:

EYES:

WORK SCHEDULE:

DAYS OFF:

HOME ADDRESS: [REDACTED]
LAS VEGAS, NV 89121

HOME PHONE: Currently no home
phone.
CONTACT PHONES:
228-9176 or 363-6041

WORK ADDRESS: STALLION MOUNTAIN
COUNTRY CLUB

WORK PHONE: 456-2440

BEST PLACE TO CONTACT:

BEST TIME TO CONTACT:

The following is the transcription of a tape-recorded interview conducted by DETECTIVE J. BUCZEK, P# 3702, and DETECTIVE T. THOWSEN, P# 1467, LVMPD HOMICIDE SECTION, on 08-17-98 at _____ hours.

Q: Ace, are you aware this is being tape recorded?

A: Yes.

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AA07110

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
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EVENT: 980814-1600

HART, ACE RAYBURN

- Q: Okay. Ace, uh, did you happen to have any, uh, uh, conversation with, uh, uh, either Deco or Red reference the four murders that occurred over on, uh, Terra Linda?
- A: No. Just, just that, uh, I told him, uh, they were my friends and he acted different towards me and then said something about after I had knew, he said something about, uh, one...Matt was standin' in the yard or one of the guys was standin' in the yard.
- Q: What was he doing in the yard?
- A: He was watering the lawn.
- Q: What time was that, do you know?
- A: No. I didn't get any, I didn't really know that much about that.
- Q: But who had said this?
- A: Deco.
- Q: And what did he say? Did he say that he was...
- A: No. That's...
- Q: ...at the house or?
- A: Yeah. He just said that one...he was saying one guy was standing outside watering the lawn. And that's all he said to me in person.
- Q: Okay.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
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EVENT: 980814-1600

HART, ACE RAYBURN

- A: The rest I had found out through Tod.
- Q: Okay. Uh, did he also, uh, uh, go on to tell you about an incident that occurred on Fremont Street?
- A: Yes.
- Q: Okay. And who, who told you this?
- A: He did.
- Q: No. Who's he?
- A: Deco.
- Q: Okay.
- A: Uh, that, uh, Profit, that's a nickname, I guess, was drunk walked up to him and punched him in the face and he shot him.
- Q: Okay.
- A: In the face or shot him in the head or something.
- Q-2: Who shot who?
- A: Uh, Deco shot Profit.
- Q-2: Okay.
- Q: Okay. Uh, is Profit still alive? Do you know?
- A: He said he wasn't but I'm not sure. He said he wasn't. He said he killed him.
- Q: Okay. Now how long ago was that, did he say?

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EVENT: 980814-1600

HART, ACE RAYBURN

- A: Uh, within the last year.
- Q: When did he...
- A: Maybe it was longer than that. Uh, I can't remember. It was in front of the Economy Inn.
- Q: When, when did tell you about it?
- A: Uh, I think the day that I got him a room at the Thunderbird he was talking about that.
- Q: Okay. So you got him a room at the Thunderbird, then, right?
- A: Yeah.
- Q: Uh, did you get him one room or two rooms?
- A: I got him, I got him one room...
- Q: Uh huh.
- A: ...but when he came up to my house he said he'd switched rooms.
- Q: Okay.
- A: I don't know the room numbers though.
- Q: Okay. So did he switch rooms under your name?
- A: Yeah.
- Q: Okay. And, uh, uh, did something happen over at the Thunderbird?
- A: He said he took Snoop and...Deco said he took Snoop and choked him out.

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VOLUNTARY STATEMENT
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EVENT: 980814-1600

HART, ACE RAYBURN

- Q: Okay. Why did he choke him out?
- A: Because he had robbed...Snoop had robbed Skill for a quarter piece of crack.
- Q: Okay. How much is a quarter piece of crack worth?
- A: I don't know.
- Q: All right. Uh, when he, when he choked him out, did he do anything with the body?
- A: He, Skill had told me that he was playing with the body.
- Q: What do you mean by playing with the body?
- A: Like he was, after he was dead he was talking shit to him. Heh.
- Q: And who was this? Who was, who was talking shit to him?
- A: Deco was talking crap to the dead guy, Snoop.
- Q: Okay. By doing what?
- A: Just was like slapping him and he was pullin' him off the bed and he was like, "Yeah, you can't say nothing now, can ya'?"
- Q: Okay. Did he tell you, uh, uh, what, what he did with the body? Did he leave it there or...?
- A: No. He said he, they wrapped it up in a sheet.
- Q: Uh huh.
- A: And took Snoop's car. Took the body to the desert by a freeway. That's all I know. I don't know what freeway or not and dropped the body and then took his car back.

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EVENT: 980814-1600

HART, ACE RAYBURN

Or took his car somewhere. I don't where he left the car, but he said, but I heard him and Red talkin' that they messed up because they took his car to a gas station and put gas in it afterwards that was probably on camera.

Q: Okay. Do you happen to know where that gas station is by any chance?

A: I don't. I don't know. Huh uh.

Q: Okay.

Q-2: Do you know what kind of car it is?

A: Uh, it was a tan with black half leather top, uh, Cutlass, older Cutlass or a Regal. You know what type, uh, like gangsters drive around in on the wire wheels and stuff. Them kind of cars.

Q-2: Okay.

Q: Uh, how, how do you happen to know that car?

A: Uh, I seen the guy, Snoops, before. We went to the Thunderbird, he's been up to my house before I got the room there, like, like the first month I moved in with the guy, Snoop. So I met the guy, Snoop, personally at my house.

Q: Okay.

Q-2: Why did Deco want you to get the room at the Thunderbird?

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VOLUNTARY STATEMENT
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EVENT: 980814-1600

HART, ACE RAYBURN

A: I don't know. He just didn't have an I.D. He said he didn't have an I.D. and he needed me to get him a room. And I didn't think nothin' like that would ever happen.

Q: Okay. Uh, did he ever, uh, talk about shooting up some Crips?

A: Yeah. He...

Q: What did he, what did he say about that?

A: Apparently he...him, Red and Skill, I think it was. Him and Red, well, I don't know if it was Skill...

Q-2: Who's him?

A: Uh, Deco Red, sorry, uh, went to Sunrise Apartments.

Q-2: Uh huh.

A: On Boulder Highway and tied that guy up and took everything he had and came back...

Q: And what guy's that?

A: That Crip.

Q: Okay.

A: I don't know his name. And they came back to the house and that's when they were flashin' all money. One at a time they were flashing a lot of money.

Q: Uh huh.

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EVENT: 980814-1600

HART, ACE RAYBURN

A: And, uh, then apparently the Crips knew him and tried to shoot at him in the Vegas or the Valley Motel on Fremont.

Q: Uh huh.

A: And they were shootin' out of their room and then they were tryin' to watch them. And where Deco and Red were tryin' to follow them around to see where they were at to try to get them before they got...tryin' to get the Crips before the Crips got Deco and Red.

Q: Okay.

A: And then they, Deco had found out where they were staying. I don't know what motel they said. They never said anything to us about that and shot it up. They said there was supposed to be three Crips and three girls in there. But he don't know. He said he was watchin' the news but nothin', so I'm not sure about that.

Q: Okay. But you have no idea as to what...

A: Where it was at.

Q: ...what hotel or anything?

A: No. No.

Q-2: When you say shot it up, you mean he was like shootin' into the apartment from outside?

A: Uh, that's what I...

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VOLUNTARY STATEMENT
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EVENT: 980814-1600

HART, ACE RAYBURN

Q-2: Or could you, could you clarify that?

A: ...that's how I took it. That's how I took it. That's how it was relayed to me that he was shootin' up the building.

Q-2: Okay.

A: So, I'm not sure if he was inside or outside or not.

Q-2: Okay. How long ago was that one?

A: Uh, that was right before I moved out. Two, about a week and a half, two weeks ago.

Q-2: Okay.

A: It was probably about a good two weeks I've been, I've not been in their house. It was at least a good two weeks by now. And it was right before then, so two weeks ago.

Q: Did, uh, Deco ever make a comment to you about if he's going to be arrested?

A: Yeah, that he, he, he made a comment...Deco made a comment that if he was ever going to be arrested that he's gonna go out takin' cops with him or shootin', takin' someone with him. That he ain't never goin' back to jail.

Q: Okay. Is there anything else you can think of that could help us?

A: No, sir.

Q: Tom, do you have anything. (Talking to Detective Tom Thowsen.)

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
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EVENT: 980814-1600

HART, ACE RAYBURN

Q-2: Yeah. A few minutes ago before we started the tape I showed you two photographs and asked you if you recognized the people in the photographs. I'll show you the photographs again that I showed you. This first one here, do you recognize the person in this picture?

A: Yes.

Q-2: Who is that?

A: That's Deco.

Q-2: And this is..?

A: Uh, Roshad. _____ Deco.

Q-2: What name do you know him by?

A: Deco and Roshad.

Q-2: And Roshad?

A: And Roshad.

Q-2: Any other names?

A: No.

Q-2: Okay. This is LVMPD I.D.# 1586283? Is that correct?

A: Yes, sir.

Q-2: I'll show you another photograph. Do you recognize that person?

A: Yes.

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VOLUNTARY STATEMENT
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EVENT: 980814-1600

HART, ACE RAYBURN

Q-2: Who is that?

A: That's Skill.

Q-2: And that's LVMPD I.D.# 1588560? Is that correct?

A: Yes, sir.

Q-2: Any doubt in your mind about these two people?

A: I'm positive.

Q-2: Is that similar to what they look like now or do they look any different?

A: Exactly, he don't have braids and that was two weeks, that was Saturday. Late Saturday I seen him, he had them braids in his hair but they went this way. But they went this way. They went down...

Q-2: Sideways instead of front to back?

A: Yeah.

Q-2: You're talkin' about Deco?

A: Yeah.

Q: Kind of like dread locks?

A: Yeah. That's I...I can't remember though, but usually every night that he takes 'em out and he just has long straight hair and he usually puts 'em in like pigtails on the side. I mean.

Q-2: Okay.

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 12**

EVENT: 980814-1600

HART, ACE RAYBURN

Q: All righty. This will be the end of the statement. It's currently 2222 hours.

98V0693 /JB:lr

**I HAVE READ THIS STATEMENT CONSISTING OF 12 PAGES AND AFFIRM TO THE TRUTH AND
ACCURACY OF THE FACTS CONTAINED HEREIN. THIS VOLUNTARY STATEMENT WAS COMPLETED
AT: LVMPD HOMICIDE OFFICE ON THE 17th DAY OF AUGUST, 1998 AT 2222 HOURS.**

WITNESS: _____

WITNESS: _____

SIGNATURE OF PERSON GIVING STATEMENT

EXHIBIT 47

EXHIBIT 47

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 1

EVENT: 980814-1600

SPECIFIC CRIME MURDER WITH DEADLY WEAPON (4 COUNTS)

DATE OCCURRED 08/14/98

TIME OCCURRED

LOCATION OF OCCURRENCE

CITY OF LAS VEGAS

CLARK COUNTY

NAME OF PERSON GIVING STATEMENT JOHNSON, BRYAN CHRISTOPHER

DOB: [REDACTED]

SOCIAL SECURITY #: [REDACTED]

RACE: W

SEX: M

HEIGHT:

WEIGHT:

HAIR:

EYES:

WORK SCHEDULE:

DAYS OFF:

HOME ADDRESS: [REDACTED]
[REDACTED] LAS VEGAS, NV.
89128

HOME PHONE: [REDACTED]

WORK ADDRESS: UNEMPLOYED

WORK PHONE:

BEST PLACE TO CONTACT:

BEST TIME TO CONTACT:

The following is the transcription of a tape-recorded interview conducted by DETECTIVE J. BUCZEK, P# 3702, LVMPD HOMICIDE Detail, on 08/17/98 at 2100 hours.

Q: Uh Bryan, are you aware that this is being taped?

A: Yes sir.

Q: Okay. Earlier we were discussing, uh, uh two different people...one name that you know by the name of Red and the other one's name is?

A: Deco.

Q: Okay. What...do you know Deco by his real name?

A: Uh, believe it to be John Smith or Donte Jones.

AA07123

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 2

EVENT: 980814-1600

JOHNSON, BRYAN CHRISTOPHER

Q: Okay.

A: Johnson.

Q: Okay. And uh, have you been over to Tod's house in the past?

A: A couple of times briefly not for an extended period of time.

Q: Okay. And would that be during the time period where, where, uh, uh, Deco and, and Red were staying there?

A: Yes sir.

Q: Okay. And when you were there, did you happen to see a, a duffel bag by any chance?

A: Yes sir.

Q: What color was the duffel bag?

A: Black.

Q: What did it contain?

A: Uh, approximately four guns, sir.

Q: Where were they...where was the bag located?

A: In the master bedroom in the back.

Q: Okay. Did you happen to see what kind of guns they were?

A: Uh, I think two handguns, a shotgun and an automatic weapon, a 9 mil.

Q: Okay. How...did you happen to know whose guns these were?

AA07124

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 3

EVENT: 980814-1600

JOHNSON, BRYAN CHRISTOPHER

- A: Uh, they belonged to Red or Deco or both.
- Q: How do you know that they belonged to them?
- A: They were carrying 'em and no one else in the house had guns at all.
- Q: Okay. Uh, you then went on to tell us a little about, uh, uh, some of their past history. Can you tell us, uh, uh, of an incident over on Fremont Street that occurred?
- A: Uh, Deco had shot and killed a guy named _____ in the head. I'm actually, I'm not sure that he was dead. He did shoot.
- Q: Okay.
- A: And, uh, that's all I know.
- Q: Do you know how long ago that was?
- A: Approximately a year.
- Q: Okay. What was the situation over there...why did it happen?
- A: It was over someone telling on ____ or something.
- Q: Okay.
- A: Someone ratting to the police.
- Q: Okay. Is there anything else that you know about that case that you can tell us?
- A: Un un.
- Q: Do you know what gun he shot him with?

AA07125

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 4

EVENT: 980814-1600

JOHNSON, BRYAN CHRISTOPHER

A: No sir.

Q: Okay, then, uh, you referred to an incident in L.A. Can you tell us about the incident in L.A.?

A: Uh, Deco and another person named Little Brim had robbed a pizza man. And Deco had shot him. And also while they were running away, the gun, Deco's gun accidentally went off and he hit Little Brim in the head but he didn't die or anything.

Q: Okay. What happened to Little Brim, did he, he?

A: He's still in L.A. as far as I know.

Q: Okay. Is he uh, brain damaged or anything like that?

A: Oh no, it grazed him.

Q: Okay. How long ago did that occur?

A: I'm not sure how long ago that occurred.

Q: How did you find out about this?

A: He had told.

Q: Who's he?

A: Deco.

Q: Okay. Uh, the next incident you told us about was, uh, at the T-Bird. Could you tell us what happened there?

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JOHNSON, BRYAN CHRISTOPHER

- A: Uh, a guy nicknamed Snoop had a...stolen a quarter piece, approximately \$200.00 worth of crack cocaine from a guy named Scale who is another 60's Brim. And, uh, Scale and Deco and Red went back there and they tied him up and choked him to death.
- Q: Okay.
- A: And dumped the body on I-15.
- Q: Where did they, where did they do this at the T-Bird?
- A: In the room.
- Q: Okay. Do you happen to know what room number?
- A: No sir.
- Q: Okay. Then you said that they, that...how was the manner of killing him again?
- A: They had tied him up and choked him.
- Q: Okay. And then what did they do?
- A: They dropped the body on I-15 in his, in the guy Snoop's car they took.
- Q: Okay.
- A: And they stopped at a gas station somewhere on the way.
- Q: Alright. Now when they, when they dropped the body off, did they say anything about how the body was or what they, what they did?
- A: Not really.

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JOHNSON, BRYAN CHRISTOPHER

Q: Okay. Um, off of I-15, do you know a closer place where this?

A: By the Speedway.

Q: Okay.

TT: Who was present for that?

A: Uh, Scale, Deco and Red.

TT: And how did you hear about it?

A: From Deco and Red.

Q: Okay. Then, uh, there was a incident that occurred at the Longhorn?

A: Uh yeah. That was...they had robbed some Crips for \$2000.00 approximately in cash and some drugs for, and uh, they didn't kill him though, they left him _____. And they were coming back at him and shooting at Scale on Fremont Street and they went back to the Longhorn to get him and Red shot a guy in the head.

Q: Okay.

TT: Was that the same day as the robbery or did that happen on a different day?

A: It was a different day.

Q: Okay. And when, when did that occur?

A: Uh, within the last week, approximately a week ago.

Q: Okay.

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JOHNSON, BRYAN CHRISTOPHER

TT: And what happens after the Longhorn when he shot up this guy?

A: Uh, they, they just took off. He _____.

TT: Did they decide to do any other action towards the Crips?

A: Yeah. I think they went back and uh, from what I know, they killed three guys and three girls in a room at the ho..., at a hotel, I don't know. I don't know which hotel it was.

TT: What was the time frame as far as from the Longhorn shooting until the killing of the three guys and the three girls?

A: A couple days.

TT: And that was supposed to be directly related to the robbery and the retaliation shooting?

A: Yes sir.

TT: And how did you hear about that?

A: From them.

TT: Who is them?

A: Deco and Red.

TT: Did they talk about the people who were wounded or died or what?

A: Said they were dead.

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JOHNSON, BRYAN CHRISTOPHER

- Q: Do you have anything else that you could, uh, tell us that will help us in our investigation?
- A: Uh, the only other thing I know is they all are drug dealers and basically that's about all I know.
- Q: Okay. And uh, did you ever see any of these individuals with guns?
- A: Yes. I've seen, I've seen all of 'em with guns.
- Q: Okay.
- A: Except for Lit..., Little Brim, I never seen him in my life.
- Q: Okay.
- TT: What do you think will happen if the police confront these individuals?
- A: Uh, they'll shoot. I, I don't see them going to jail. I mean either they'll get shot and die or they'll shoot back until they get away. It won't go all just, you know, in cuffs.
- TT: Why do you think that?
- A: Why do I think that? Oh, they told me before that if the cops ever came for them, they'd, they'd shoot. They wouldn't just go to jail.
- TT: Okay.
- Q: Okay. That will be the end of the statement. Uh, currently 2115 hours. Thank you.

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JOHNSON, BRYAN CHRISTOPHER

Okay, the tape is turned back on. Bryan, originally we came here to discuss the incident that occurred with the, uh, four people that were murdered last, uh, we discovered last Friday. Do you have any information on that?

A: Yeah. I know that Deco and Red went there knowing, thinking that the people had a lot of money that lived at the house. And uh, they went in there...and there was two people in the house. They, uh, went inside and tied them up. Two other people had came to the door while they were inside tying those people up. And they brought them in and tied them up also. They were asking about money and drugs, if they had any, where it was, while they were inside the house, then they, uh, one guy I guess was lippping off to 'em or something, they brought him in the back room and they killed him first. And then the other three were tied up and uh, he killed all them and took \$240.00 and I don't know if they had any merchandise or not.

Q: Okay. Who told you this?

A: Deco and Red.

Q: When did they tell you that?

A: Oh, the next day. The day after...it was Wednesday I think that they had, or Thursday...I can't quite remember. I believe it was Wednesday that they did...I think.

Q: Did they say what time they went over?

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JOHNSON, BRYAN CHRISTOPHER

A: No. They didn't.

Q: Did they say if they took any, any other merchandise other than money or?

A: No. They didn't get any drugs or anything that I know of. So...

TT: Did they say if they did anything to secure these people?

A: Uh, they had tied them up.

TT: Did they say how they did it?

A: Duct tape.

TT: They said that?

A: Yes.

TT: Did they say where they got the duct tape from?

A: No. But Deco said that he went back out to get the duct tape. Oh, they had a car from...that they stole from the Crip that they robbed. There was a, a four door, maybe Tempo, maybe a Ford Tempo, light in color, either white or real light baby blue. And they had used that car continuously.

Q: What Crip did they rob, what are you referring to?

A: I don't know the guy's name. It's what started that between them and the Crips. When they didn't kill him at first.

Q: Okay. Do you know where they keep this car?

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A: They keep it up, uh, around Tod's house somewhere...to walk to. They walk to it and get it and drive it.

Q: Do they have keys for it or?

A: Yeah.

Q: Okay.

TT: Does it have plates?

A: I believe so.

Q: And where did they tell you that this happened? Where, where were you guys?

A: At Tod's.

TT: Who was present?

A: Uh, Deco, Red, a girl that, named Lala, she's Deco's girlfriend. She hasn't done anything _____.

TT: Was she there when it happened?

A: No. She hasn't been with them when they _____ or anything. And Tod Armstrong, Ace Hart, and myself.

TT: Did they say what the one person had said to them that was mouthing off?

A: Uh, they might have but I don't remember. They just said that he was loud and getting on their nerves or whatever.

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JOHNSON, BRYAN CHRISTOPHER

TT: Did they talk like they planned on killing the whole time or that something was decided, this guy is mouthing off, that they...

A: Uh, I think that they were planning on killing them so, because of what happened before with the other guy shooting back at them. I think they just killed 'em so that they wouldn't tell...wouldn't go to the police with it and that. Not just planning to kill 'em because they didn't like 'em.

Q: How did they know to go to that house?

A: That I'm not aware of.

Q: Did they, did they know each other, was there a connection?

A: Not that I know of. I think they thought there was a lot of money there or something.

Q: Okay. Is there anything else that you can think of that would be able to help us in our investigation?

A: Uh, all the people that were involved were 62 Scrim. It's a, a Blood gang, started in L.A.

Q: Okay. Did they say that they were the only ones that were there at the house or was there anyone else present?

A: They were the only ones...Deco and Red _____, Deco had _____.

Q: Okay.

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JOHNSON, BRYAN CHRISTOPHER

TT: Did they say if one of them did the shooting that involved four people or did each of them do shooting?

A: I don't know. They ... I think they both did. I'm not sure.

TT: Which one told you that they took the one person in the back room?

A: Deco.

TT: Deco? And how did he, what were the words that he used if you can remember?

A: Just said he was acting like it was a fucking joke.

TT: And so what else did he say up to the point where he mentioned the shooting?

A: Just what I've told you. I mean they....and how he tied them up and everything. Said one of them was being real cooperative, Tracey...said the kid Tracey was being real cooperative and he didn't want to shoot him.

TT: Did he say that he shot or we shot or do you know what words that he used?

A: No, I don't.

TT: Okay. That's fine.

Q: Did they say where they got the money from?

A: No. I don't know if it was in the house or on the people or what.

Q: Okay. But it was how much again?

A: Approximately \$240.00.

Q: Okay.

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TT: Did they say who it was that was showing them around the house or showing where things were hidden?

A: No they didn't. They said they were there for quite awhile...hours.

TT: Did they say anything about wearing gloves or being careful or anything?

A: They always wore gloves. We call them browns. Brown, uh, kind of uh, probably cotton.

TT: Have you seen these gloves?

A: Yeah.

TT: But they're garden gloves or something ____?

A: Yes. Small, like not like a thick. That's about it.

TT: They say anything about leaving anything behind that they were worried about at the scene?

A: No. They said "there's a lot of blood", uh, said it looked like Niagara Falls when they shot. Blood just spilled everywhere. Uh, Deco had mentioned that he had got blood on the back of some pants, some jeans, and he brought back to Tod's house.

TT: Okay. Did he say if they seemed like they died right away or if they lived?

A: Uh, one kid, I know he said made a, kind of stutter sound like (makes sound) and he died...and when he had shot him. But I think they were all pretty much died a ____ death.

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JOHNSON, BRYAN CHRISTOPHER

- TT: Did they say if there was any other people that were _____ house?
- A: Not to my knowledge. They were looking for drugs I think but didn't find any or something.
- TT: Did they find any animals?
- A: Yeah. There was a dog and Red said he wanted to kill the dog but some kind of dog...I don't know what kind of dog.
- TT: And how come they didn't kill the dog?
- A: I don't know.
- TT: He just said that he wanted to?
- A: Yeah.
- TT: Anything else you can think of?
- A: No sir.
- Q: Okay. That will be the end of the interview. It is currently 2124 hours. Thank you.

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JOHNSON, BRYAN CHRISTOPHER

**I HAVE READ THIS STATEMENT CONSISTING OF 16 PAGES AND AFFIRM TO THE TRUTH AND
ACCURACY OF THE FACTS CONTAINED HEREIN. THIS VOLUNTARY STATEMENT WAS COMPLETED
AT: HOMICIDE OFFICE ON THE 17TH DAY OF AUGUST, 1998 AT 2124 HOURS.**

WITNESS: _____

WITNESS: _____

SIGNATURE OF PERSON GIVING STATEMENT

/kb
98v0711

AA07138

EXHIBIT 48

EXHIBIT 48

1 IND
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

ORIGINAL

FILED
SEP 2 11 58 AM '98
Loretta Thompson
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,
9 Plaintiff,

10 -vs-

11 DONTE JOHNSON,
12 #1586283, John Lee White

13 Defendant(s).

Case No. C153154
Dept. No. V
Docket H

INDICTMENT

15 STATE OF NEVADA }
16 COUNTY OF CLARK } ss.

17 The Defendant(s) above named, DONTE JOHNSON, aka John Lee White, accused by
18 the Clark County Grand Jury of the crimes of **BURGLARY WHILE IN POSSESSION OF**
19 **A FIREARM (Felony - NRS 205.060, 193.165); MURDER WITH USE OF A DEADLY**
20 **WEAPON (Open Murder) (Felony - NRS 200.010, 200.030, 193.165); ROBBERY WITH**
21 **USE OF A DEADLY WEAPON (Felony - NRS 200.380, 193.165); and FIRST DEGREE**
22 **KIDNAPPING WITH USE OF A DEADLY WEAPON (Felony - NRS 200.310, 200.320,**
23 **193.165),** committed at and within the County of Clark, State of Nevada, on or about the 14th
24 day of August, 1998, as follows:

25 COUNT I - BURGLARY WHILE IN POSSESSION OF A FIREARM

26 did then and there wilfully, unlawfully, and feloniously enter, while in possession of a
27 firearm, with intent to commit larceny and/or robbery and/or murder, that certain building
28 occupied by MATHEW MOWEN, located at 4825 Terra Linda Avenue, Las Vegas, Clark

1 County, Nevada; the Defendant and an unknown individual aiding or abetting each other by
2 counsel and encouragement and by entering into a course of conduct whereby the said Defendant
3 and the unknown individual arrived at 4825 Terra Linda Avenue; the said Defendant and/or the
4 unknown individual entering the residence while the Defendant and/or the unknown individual
5 was in possession of a firearm; the said Defendant and/or the unknown individual binding the
6 said MATTHEW MOWEN and placing him on the floor of the residence; then the said
7 Defendant and/or the unknown individual shooting at and into the body of the said MATTHEW
8 MOWEN with a firearm.

9 COUNT II - MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER)

10 did then and there wilfully, feloniously, without authority of law, and with premeditation
11 and deliberation, and with malice aforethought, kill JEFFREY BIDDLE, a human being, by
12 shooting at and into the body of the said JEFFREY BIDDLE, with a deadly weapon, to-wit: a
13 firearm; the said Defendant and an unknown individual being responsible under the following
14 theories of criminal liability, to-wit: 1) Premeditation and Deliberation; 2) Felony Murder,
15 Defendant and an unknown individual committing the murder in the perpetration or attempted
16 perpetration of kidnapping and/or robbery; 3) Aiding or Abetting, the Defendant and an
17 unknown individual aiding or abetting each other by counsel and encouragement and by entering
18 into a course of conduct whereby the said Defendant and an unknown individual arrived at 4825
19 Terra Linda Avenue; the said Defendant and/or an unknown individual entering the residence
20 while the said Defendant and/or the unknown individual was in possession of a firearm;
21 Defendant and/or unknown individual binding the victim and placing him on the floor of the
22 residence; the said Defendant and/or an unknown individual shooting at and into the body of the
23 said JEFFREY BIDDLE with a firearm; 5) Conspiracy; by the said Defendant and/or an
24 unknown individual acting pursuant to a conspiracy to commit kidnapping and/or robbery and/or
25 murder, whereby the said Defendant and an unknown individual arriving at 4825 Terra Linda
26 Avenue; the said Defendant and/or unknown individual entering the residence while the said
27 Defendant and/or an unknown individual was in possession of a firearm; the said Defendant
28 and/or unknown individual binding the said JEFFREY BIDDLE and placing him on the floor

1 of the residence; then the said Defendant and/or an unknown individual shooting at and into the
2 body of the said JEFFREY BIDDLE with the said firearm.

3 COUNT III - MURDER WITH USE OF A DEADLY WEAPON

4 did then and there wilfully, feloniously, without authority of law, and with premeditation
5 and deliberation, and with malice aforethought, kill TRACEY GORRINGE, a human being, by
6 shooting at and into the body of the said TRACEY GORRINGE, with a deadly weapon, to-wit:
7 a firearm; the said Defendant and an unknown individual being responsible under the following
8 theories of criminal liability, to-wit: 1) Premeditation and Deliberation; 2) Felony Murder,
9 Defendant and an unknown individual committing the murder in the perpetration or attempted
10 perpetration of kidnapping and/or robbery; 3) Aiding or Abetting, the Defendant and an
11 unknown individual aiding or abetting each other by counsel and encouragement and by entering
12 into a course of conduct whereby the said Defendant and an unknown individual arrived at 4825
13 Terra Linda Avenue; the said Defendant and/or an unknown individual entering the residence
14 while the said Defendant and/or the unknown individual was in possession of a firearm;
15 Defendant and/or unknown individual binding the victim and placing him on the floor of the
16 residence; the said Defendant and/or an unknown individual shooting at and into the body of the
17 said TRACEY GORRINGE with a firearm; 5) Conspiracy; by the said Defendant and/or an
18 unknown individual acting pursuant to a conspiracy to commit kidnapping and/or robbery and/or
19 murder, whereby the said Defendant and an unknown individual arriving at 4825 Terra Linda
20 Avenue; the said Defendant and/or unknown individual entering the residence while the said
21 Defendant and/or an unknown individual was in possession of a firearm; the said Defendant
22 and/or unknown individual binding the said TRACEY GORRINGE and placing him on the floor
23 of the residence; then the said Defendant and/or an unknown individual shooting at and into the
24 body of the said TRACEY GORRINGE with the said firearm.

25 COUNT IV - MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER)

26 did then and there wilfully, feloniously, without authority of law, and with premeditation
27 and deliberation, and with malice aforethought, kill MATT MOWEN, a human being, by
28 shooting at and into the body of the said MATT MOWEN, with a deadly weapon, to-wit: a

1 firearm; the said Defendant and an unknown individual being responsible under the following
2 theories of criminal liability, to-wit: 1) Premeditation and Deliberation; 2) Felony Murder,
3 Defendant and an unknown individual committing the murder in the perpetration or attempted
4 perpetration of kidnapping and/or robbery; 3) Aiding or Abetting, the Defendant and an
5 unknown individual aiding or abetting each other by counsel and encouragement and by entering
6 into a course of conduct whereby the said Defendant and an unknown individual arrived at 4825
7 Terra Linda Avenue; the said Defendant and/or an unknown individual entering the residence
8 while the said Defendant and/or the unknown individual was in possession of a firearm;
9 Defendant and/or unknown individual binding the victim and placing him on the floor of the
10 residence; the said Defendant and/or an unknown individual shooting at and into the body of the
11 said MATT MOWEN with a firearm; 5) Conspiracy; by the said Defendant and/or an unknown
12 individual acting pursuant to a conspiracy to commit kidnapping and/or robbery and/or murder,
13 whereby the said Defendant and an unknown individual arriving at 4825 Terra Linda Avenue;
14 the said Defendant and/or unknown individual entering the residence while the said Defendant
15 and/or an unknown individual was in possession of a firearm; the said Defendant and/or
16 unknown individual binding the said MATT MOWEN and placing him on the floor of the
17 residence; then the said Defendant and/or an unknown individual shooting at and into the body
18 of the said MATT MOWEN with the said firearm.

19 COUNT V - MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER)

20 did then and there wilfully, feloniously, without authority of law, and with premeditation
21 and deliberation, and with malice aforethought, kill PETER TALAMANTEZ, a human being,
22 by shooting at and into the body of the said PETER TALAMANTEZ, with a deadly weapon, to-
23 wit: a firearm; the said Defendant and an unknown individual being responsible under the
24 following theories of criminal liability, to-wit: 1) Premeditation and Deliberation; 2) Felony
25 Murder, Defendant and an unknown individual committing the murder in the perpetration or
26 attempted perpetration of kidnapping and/or robbery; 3) Aiding or Abetting, the Defendant and
27 an unknown individual aiding or abetting each other by counsel and encouragement and by
28 entering into a course of conduct whereby the said Defendant and an unknown individual arrived

1 at 4825 Terra Linda Avenue; the said Defendant and/or an unknown individual entering the
2 residence while the said Defendant and/or the unknown individual was in possession of a
3 firearm; Defendant and/or unknown individual binding the victim and placing him on the floor
4 of the residence; the said Defendant and/or an unknown individual shooting at and into the body
5 of the said PETER TALAMANTEZ with a firearm; 5) Conspiracy; by the said Defendant and/or
6 an unknown individual acting pursuant to a conspiracy to commit kidnapping and/or robbery
7 and/or murder, whereby the said Defendant and an unknown individual arriving at 4825 Terra
8 Linda Avenue; the said Defendant and/or unknown individual entering the residence while the
9 said Defendant and/or an unknown individual was in possession of a firearm; the said Defendant
10 and/or unknown individual binding the said PETER TALAMANTEZ and placing him on the
11 floor of the residence; then the said Defendant and/or an unknown individual shooting at and
12 into the body of the said PETER TALAMANTEZ with the said firearm.

13 COUNT VI - ROBBERY WITH USE OF A DEADLY WEAPON

14 did then and there wilfully, unlawfully, and feloniously take personal property, to-wit:
15 lawful money of the United States, from the person of JEFFREY BIDDLE, or in his presence,
16 by means of force or violence, or fear of injury to, and without the consent and against the will
17 of the said JEFFREY BIDDLE, said Defendant using a deadly weapon, to-wit: a firearm, during
18 the commission of said crime; the Defendant and an unknown individual aiding or abetting each
19 other by counsel and encouragement and by entering into a course of conduct whereby the said
20 Defendant and the unknown individual arrived at 4825 Terra Linda Avenue; the said Defendant
21 and/or the unknown individual entering the residence while the Defendant and/or the unknown
22 individual was in possession of a firearm; the said Defendant and/or the unknown individual
23 binding the said JEFFERY BIDDLE and placing him on the floor of the residence; then the said
24 Defendant and/or the unknown individual shooting at and into the body of the said JEFFERY
25 BIDDLE with a firearm.

26 COUNT VII - ROBBERY WITH USE OF A DEADLY WEAPON

27 did then and there wilfully, unlawfully, and feloniously take personal property, to-wit:
28 lawful money of the United States, from the person of TRACEY GORRINGE, or in his

1 presence, by means of force or violence, or fear of injury to, and without the consent and against
2 the will of the said TRACEY GORRINGE, said Defendant using a deadly weapon, to-wit: a
3 firearm, during the commission of said crime; the Defendant and an unknown individual aiding
4 or abetting each other by counsel and encouragement and by entering into a course of conduct
5 whereby the said Defendant and the unknown individual arrived at 4825 Terra Linda Avenue;
6 the said Defendant and/or the unknown individual entering the residence while the Defendant
7 and/or the unknown individual was in possession of a firearm; the said Defendant and/or the
8 unknown individual binding the said TRACEY GORRINGE and placing him on the floor of the
9 residence; then the said Defendant and/or the unknown individual shooting at and into the body
10 of the said TRACEY GORRINGE with a firearm.

11 COUNT VIII - ROBBERY WITH USE OF A DEADLY WEAPON

12 did then and there wilfully, unlawfully, and feloniously take personal property, to-wit:
13 lawful money of the United States, from the person of MATHEW MOWEN, or in his presence,
14 by means of force or violence, or fear of injury to, and without the consent and against the will
15 of the said MATHEW MOWEN, said Defendant using a deadly weapon, to-wit: a firearm,
16 during the commission of said crime; the Defendant and an unknown individual aiding or
17 abetting each other by counsel and encouragement and by entering into a course of conduct
18 whereby the said Defendant and the unknown individual arrived at 4825 Terra Linda Avenue;
19 the said Defendant and/or the unknown individual entering the residence while the Defendant
20 and/or the unknown individual was in possession of a firearm; the said Defendant and/or the
21 unknown individual binding the said MATHEW MOWEN and placing him on the floor of the
22 residence; then the said Defendant and/or the unknown individual shooting at and into the body
23 of the said MATHEW MOWEN with a firearm.

24 COUNT IX - ROBBERY WITH USE OF A DEADLY WEAPON

25 did then and there wilfully, unlawfully, and feloniously take personal property, to-wit:
26 lawful money of the United States, from the person of PETER TALAMANTEZ, or in his
27 presence, by means of force or violence, or fear of injury to, and without the consent and against
28 the will of the said PETER TALAMANTEZ, said Defendant using a deadly weapon, to-wit: a

1 firearm, during the commission of said crime; the Defendant and an unknown individual aiding
2 or abetting each other by counsel and encouragement and by entering into a course of conduct
3 whereby the said Defendant and the unknown individual arrived at 4825 Terra Linda Avenue;
4 the said Defendant and/or the unknown individual entering the residence while the Defendant
5 and/or the unknown individual was in possession of a firearm; the said Defendant and/or the
6 unknown individual binding the said PETER TALAMANTEZ and placing him on the floor of
7 the residence; then the said Defendant and/or the unknown individual shooting at and into the
8 body of the said PETER TALAMANTEZ with a firearm.

9 COUNT X - FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON

10 did wilfully, unlawfully, feloniously, and without authority of law, seize, confine,
11 inveigle, entice, decoy, abduct, conceal, kidnap, or carry away JEFFREY BIDDLE, a human
12 being, with the intent to hold or detain the said JEFFREY BIDDLE, against his will, and without
13 his consent, for the purpose of committing robbery and/or murder, said Defendant using a deadly
14 weapon, to-wit: a firearm, during the commission of said crime; the Defendant and an unknown
15 individual aiding or abetting each other by counsel and encouragement and by entering into a
16 course of conduct whereby the said Defendant and the unknown individual arrived at 4825 Terra
17 Linda Avenue; the said Defendant and/or the unknown individual entering the residence while
18 the Defendant and/or the unknown individual was in possession of a firearm; the said Defendant
19 and/or the unknown individual binding the said JEFFERY BIDDLE and placing him on the floor
20 of the residence; then the said Defendant and/or the unknown individual shooting at and into the
21 body of the said JEFFERY BIDDLE with a firearm.

22 COUNT XI - FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON

23 did wilfully, unlawfully, feloniously, and without authority of law, seize, confine,
24 inveigle, entice, decoy, abduct, conceal, kidnap, or carry away TRACEY GORRINGE, a human
25 being, with the intent to hold or detain the said TRACEY GORRINGE, against his will, and
26 without his consent, for the purpose of committing robbery and/or murder, said Defendant using
27 a deadly weapon, to-wit: a firearm, during the commission of said crime; the Defendant and an
28 unknown individual aiding or abetting each other by counsel and encouragement and by entering

1 into a course of conduct whereby the said Defendant and the unknown individual arrived at 4825
2 Terra Linda Avenue; the said Defendant and/or the unknown individual entering the residence
3 while the Defendant and/or the unknown individual was in possession of a firearm; the said
4 Defendant and/or the unknown individual binding the said TRACEY GORRINGE and placing
5 him on the floor of the residence; then the said Defendant and/or the unknown individual
6 shooting at and into the body of the said TRACEY GORRINGE with a firearm.

7 COUNT XII - FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON

8 did wilfully, unlawfully, feloniously, and without authority of law, seize, confine,
9 inveigle, entice, decoy, abduct, conceal, kidnap, or carry away MATHEW MOWEN, a human
10 being, with the intent to hold or detain the said MATHEW MOWEN, against his will, and
11 without his consent, for the purpose of committing robbery and/or murder, said Defendant using
12 a deadly weapon, to-wit: a firearm, during the commission of said crime; the Defendant and an
13 unknown individual aiding or abetting each other by counsel and encouragement and by entering
14 into a course of conduct whereby the said Defendant and the unknown individual arrived at 4825
15 Terra Linda Avenue; the said Defendant and/or the unknown individual entering the residence
16 while the Defendant and/or the unknown individual was in possession of a firearm; the said
17 Defendant and/or the unknown individual binding the said MATHEW MOWEN and placing him
18 on the floor of the residence; then the said Defendant and/or the unknown individual shooting
19 at and into the body of the said MATHEW MOWEN with a firearm.

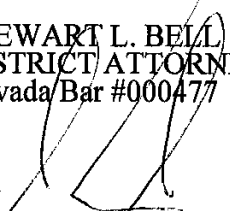
20 COUNT XIII - FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON

21 did wilfully, unlawfully, feloniously, and without authority of law, seize, confine,
22 inveigle, entice, decoy, abduct, conceal, kidnap, or carry away PETER TALAMANTEZ, a
23 human being, with the intent to hold or detain the said PETER TALAMANTEZ, against his will,
24 and without his consent, for the purpose of committing robbery and/or murder, said Defendant
25 using a deadly weapon, to-wit: a firearm, during the commission of said crime; the Defendant
26 and an unknown individual aiding or abetting each other by counsel and encouragement and by
27 entering into a course of conduct whereby the said Defendant and the unknown individual
28 arrived at 4825 Terra Linda Avenue; the said Defendant and/or the unknown individual entering

1 the residence while the Defendant and/or the unknown individual was in possession of a firearm;
2 the said Defendant and/or the unknown individual binding the said PETER TALAMANTEZ on
3 the floor of the residence; then the said Defendant and/or the unknown individual shooting at
4 and into the body of the said PETER TALAMANTEZ with the said firearm.

5 DATED this 2nd day of September, 1998.

6 STEWART L. BEIL
7 DISTRICT ATTORNEY
8 Nevada Bar #000477

9 BY 
10 GARY L. GUYMON
11 Deputy District Attorney
12 Nevada Bar #003726

13 ENDORSEMENT: A True Bill

14 
15 Foreperson, Clark County Grand Jury

16 Names of witnesses testifying before the Grand Jury:

17 ACE HART, C/O DISTRICT ATTORNEY INVESTIGATOR ALEXIA CONGER

18 TOD ARMSTRONG, C/O DISTRICT ATTORNEY INVESTIGATOR ALEXIA CONGER

19 NICHOLAS DE LUCIA, , LVN 89120

20 DR. ROBERT BUCKLIN, CCME, [REDACTED], LVN 89106

21 SHAWN FLETCHER, P#5221, LVMPD

22 B.C. GROVER, P#4934, LVMPD

23 EDWARD GUENTHER, P#5891, LVMPD

24 KEN HEFNER, P#2185, LVMPD

25 CHARLA (LA LA) SEVERS, C/O DISTRICT ATTORNEY INVESTIGATOR ALEXIA
26 CONGER

27 BRYAN C. JOHNSON, C/O DISTRICT ATTORNEY INVESTIGATOR ALEXIA CONGER

28 JUSTIN ULRICH PERKINS, [REDACTED], HENDERSON, NV 89014

DEWAYNE ANDERSON, C/O DISTRICT ATTY INVESTIGATOR ALEXIA CONGER

1 Additional witnesses known to the District Attorney at the time of filing this Indictment:
2 CARLON J. FRUGE, P#1460, LVMPD
3 THOMAS THOWSEN, P#1467
4 DAVID HORN, P#1928, LVMPD
5 DEBRA MCCrackEN, P#2542, LVMPD
6 JAMES STELK, JR., P#2550, LVMPD
7 RANDY SUTTON, P#3239, LVMPD
8 JAMES BUCZEK, JR., P#3702, LVMPD
9 MICHAEL PERKINS, P#4242, LVMPD
10 DAVID L. WEST, P#4338, LVMPD
11 SHAWN MCLAIN, P#5221, LVMPD
12 JAMES E. ODonnell, P#5709, LVMPD
13 SHEREE NORMAN, P#3110
14 COR LVMPD COMMUNICATIONS
15 LUIS AMADO CABRERA, [REDACTED] LVN 89121
16 JEFF LYNN BATES, [REDACTED] LVN 89120
17 GREGORY TRAVIS, [REDACTED] 89101
18 ALBERT TALAMANTEZ, [REDACTED] LVN 89122
19 M. WASHINGTON, P#4725, LVMPD
20 MELVIN E. ROYAL, [REDACTED], #E, NLVN
21
22
23
24
25
26
27 97BGJ184X/98F11830X/lg
LVMPD EV#9808141600
28 BURG WDW; MURD WDW; RWDW; 1ST KIDNP WDW - F

EXHIBIT 49

EXHIBIT 49

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 1

EVENT: 980814-1600

SPECIFIC CRIME MURDER WITH DEADLY WEAPON (4 COUNTS)

DATE OCCURRED 08/14/98

TIME OCCURRED

LOCATION OF OCCURRENCE

CITY OF LAS VEGAS

CLARK COUNTY

NAME OF PERSON GIVING STATEMENT YOUNG, COCHISE TERRELL

DOB: [REDACTED]

SOCIAL SECURITY #: [REDACTED]

RACE: B

SEX: M

HEIGHT:

WEIGHT:

HAIR:

EYES:

WORK SCHEDULE:

DAYS OFF:

HOME ADDRESS: [REDACTED]
LAS VEGAS, NV.
89107

HOME PHONE: [REDACTED]

WORK ADDRESS:

WORK PHONE:

BEST PLACE TO CONTACT:

BEST TIME TO CONTACT:

The following is the transcription of a tape-recorded interview conducted by DETECTIVE T. THOWSEN, P# 1467, LVMPD HOMICIDE Detail, on 09/02/98 at 1955 hours. Also present is DETECTIVE J. BUCZEK, P# 3702, LVMPD HOMICIDE Detail.

Q: Terrell, first off, you're aware this statement is being tape recorded?

A: Yes.

Q: Okay. Make sure you please speak up loud for me. And, uh, earlier today when we first spoke with you, we had you read a Rights of Person Arrested card, you understand that, is that correct?

A: Yes.

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YOUNG, COCHISE TERRELL

Q: And you know that that still applies?

A: (No audible response.)

Q: Is that yes?

A: Yes.

Q: Okay. Um, since we brought you down to the jail today to, to book you on the charges, um, you've voluntarily agreed to have your DNA tested and you've signed a Consent to Search card for a buccal swab to be taken, is that correct?

A: Yes.

Q: And you've submitted buccal swabs?

A: Yes.

Q: And after that you pulled me aside and mentioned to me that you were concerned and upset and you wanted to explain the actual truth about what happened. Is that correct?

A: Yes.

Q: And we're talking about the quadruple homicide that happened on 8/14/98 at 4825 Terra Linda. Is that correct?

A: Yes.

Q: Can you tell me how the whole thing evolved, Terrell? Where were you at when the idea first came up and who came up with the idea?

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EVENT: 980814-1600

YOUNG, COCHISE TERRELL

A: I was over on Everman. I was at Tod's house and he told us, he was telling us that there was some guys he knows that we could rob. We, we had seen the guy before, uh, the guy, the guy...he...I seen the guy before. He told me he was at the party and he described him to me. I didn't remember but he said he was there and he was telling me who the guy was and that the guy had lots of 'shrooms and lots of acid.

Q: Lots of 'shrooms and lots of acid?

A: Yes. And that, that, I said "I don't know nothing to do with 'shrooms or acid" and he was telling us and, and then he said he knew how to sell it. He could sell it real fast. And that he could get the, he could just give us half the money that he makes, and I was like "yeah, that's alright. That's cool, that's cool." And then...

Q: Who was present when Tod was saying all this?

A: Uh, Deco.

Q: Deco and you?

A: Yeah.

Q: Was there anybody else there?

A: No.

Q: And where, where did this take place?

A: In Tod's living room. Uh, Lala may have been there.

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EVENT: 980814-1600

YOUNG, COCHISE TERRELL

Q: Lala might have been there?

A: Maybe. I'm not sure.

Q: Okay.

A: But she probably was somewhere in the house.

Q: Do you know Tod's last name?

A: Uh, Tod...I know if I...Tod, uh....Tod, uh...fuck. The guy, Ace Hart, was living with Tod. I can't...

Q: Was it...does the name Armstrong sound familiar?

A: Tod Armstrong. Tod Armstrong.

Q: What does Tod look like?

A: Tall white male. Short haircut on the sides, a little bit longer on the top.

Q: Does he have any tattoos or any piercings or anything?

A: He has his tongue pierced.

Q: And he, uh, lives at the house on Everman?

A: Yes.

Q: And who else lives there with him on Everman?

A: Ace Hart.

Q: Are they the only ones that actually live there?

A: Actually live there, yeah.

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EVENT: 980814-1600

YOUNG, COCHISE TERRELL

Q: Okay. Was Ace present when he was happened...when Tod was telling you this information?

A: No. But Ace told us a couple weeks before but Ace knew like exactly the right time to go. Tod really didn't know shit. He just was telling us so that we could get the stuff so he can get some money and so he can go smoke some crack.

Q: Does Tod smoke crack?

A: Yes.

Q: And crack is crack cocaine?

A: Yes.

Q: Do you remember what time of day it was or what day it was that this conversation took place?

A: I think it....no. Uh, I don't...

Q: Was it night time or day time?

A: It was day time. No, I'm, I'm, I'm not exactly sure.

Q: It was some time last month?

A: Yes.

Q: So, uh, what happened next after Tod explained this for you?

A: He showed us where the house was.

Q: How did he do that?

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YOUNG, COCHISE TERRELL

- A: He got in the car with me, Deco and then we went and picked up Tiny Bug and then he got in the car.
- Q: What's Tiny Bug's real name?
- A: I don't know.
- Q: What does Tiny Bug look like?
- A: Uh, black male, _____ like 5-7, skinny.
- Q: How old?
- A: He says he's 19 but someone told me he was 17.
- Q: And where does Tiny Bug live?
- A: I don't know. He's from California.
- Q: Do you...does he have a girlfriend or anything?
- A: Uh, she from California, too.
- Q: Do you know what her name is?
- A: No.
- Q: And you don't know where they stay?
- A: No. They used to stay on Fremont but they moved ever since I _____
after it's been on the news, they moved.
- Q: Okay. And uh, aft...so where did you pick Tiny Bug up at?
- A: At Fremont Plaza.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
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YOUNG, COCHISE TERRELL

Q: Is that where he was living?

A: Yeah.

Q: What apartment?

A: I don't know.

Q: So what happened next?

A: And then after that he went, he went...we, we went to the house and then we was driving past the house...we...Tod took us down the street and showed us where the house was and then he was like "that's the house right there" and then we seen the guy outside watering the grass when, when Tod us showed us the house. And we passed the house up at first, on our way back.

Q: What did the house look like?

A: I think it was a white house. Had a gate around it.

Q: How many stories was it?

A: One story.

Q: And do you remember what was across the street from it?

A: Apartments.

Q: Okay. And, is it still daylight at this point?

A: No.

Q: Or it's starting to get dark?

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EVENT: 980814-1600

YOUNG, COCHISE TERRELL

A: No. It was dark. It was dark.

Q: Okay. And Tod's in the car?

A: Uh, this is after we dropped Tod off when we came back looking...uh, when Tod showed us the first time...

Q: Yeah.

A: It was dark that time, too.

Q: Okay. Was the guy watering the grass when Tod drove by?

A: Yes.

Q: Was Tod driving the car or passenger?

A: Passenger in the back seat.

Q: Who was driving?

A: Deco.

Q: And where were you sitting?

A: In the front passenger seat.

Q: And, uh, where was Tiny Bug?

A: In the back seat with Tod.

Q: Behind the driver or passenger?

A: Uh, Tod was behind me so Tiny Bug was on the other side.

Q: Okay. So then you went and dropped Tod off?

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YOUNG, COCHISE TERRELL

A: Uh huh.

Q: And then how long until you went back to the house?

A: We went like 30 minutes 'cause we wanted, we wanted him to be in the house. And then, and he still was outside watering the grass.

Q: Who was driving the car when you went back?

A: Deco.

Q: What car was it?

A: A white stolen car.

Q: What, do you know what kind it was?

A: A Tempo.

Q: Is that the same car that the Highway Patrol stopped?

A: Yes.

Q: Who was in the car when the Highway Patrol stopped it?

A: Me and Deco.

Q: And what happened when the Highway Patrol stopped it?

A: He stopped us and we had beer and everything in the car and then like we were already scared 'cause we knew the car stolen. Deco put his gun under my seat and then I put my gun under, under my lap.

Q: What kind of gun did you have then?

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YOUNG, COCHISE TERRELL

A: A .38, I mean...yeah. A, a .38.

Q: Was it a revolver or a semi-automatic?

A: A revolver.

Q: And what happened next?

A: And next...uh, at the police thing?

Q: With the police thing only it was a different night.

A: Oh, uh, when we jumped...he took Deco to the front of the car and asked him what's his name and stuff and Deco kept looking back and me and I kept looking back at Deco and I opened my door slightly so the seat belt could come off me...and then when I seen Deco, I ran...I jumped out of the car.

Q: What road were you on?

A: What freeway?

Q: Which part of the freeway?

A: We was, we was on the left _____, mean we're....

Q: Like where...

A: The Charleston exit...

Q: Were you on I-15 or 95?

A: The, the freeway that you would take like if you were going to downtown from Tropicana, if you were going downtown from Tropicana.

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YOUNG, COCHISE TERRELL

- Q: I-15?
- A: Yeah, I guess. I think so.
- Q: Okay.
- A: And then...
- Q: And what was the cross street there?
- A: The Charleston was the exit right there.
- Q: Okay.
- A: The Charleston exit.
- Q: And where did you run to?
- A: I ran to some apartments, then I ran to a house. I just sat in the backyard.
- Q: What happened with the gun that you had?
- A: The cop told me "freeze" or "drop the gun" or he was going to shoot me. And I dropped the gun, I kept running.
- Q: Did you...from when you were in the car, were you facing towards going downtown or towards going towards California?
- A: We was going downtown.
- Q: And did you go to the east to your right?
- A: When I ran?
- Q: Yeah.

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YOUNG, COCHISE TERRELL

A: I ran to the right, yeah.

Q: Okay. And somewhere could you jump the wall as you dropped the gun?

A: No. I dropped the gun right there...like I hopped over the, the...oh, you're talking about the first one, the, the divider on the freeway 'cause it was like a divider wall and then it was a wall to some apartments.

Q: Okay.

A: So I hopped the divider wall like the wall that's on the freeway. After I hopped over that and then, and then I was running in some rocks right there and I dropped the gun right there.

Q: And then you jumped over a wall for some apartments?

A: Yeah, into some apartments.

Q: Okay.

A: And then we seen the police in those apartments and we jumped into some other apartments.

Q: Did you ever go back and, and get the gun?

A: No.

Q: Okay. So let's go back now to the night that you went over with, uh, Deco and Tiny Bug to the, the house over on Terra Linda. Um, when you drove up, where, where did you park your car or where did Deco park the car?

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YOUNG, COCHISE TERRELL

A: In the driveway. In the driveway.

Q: And who was there at the house?

A: The guy that was watering the grass.

Q: What he look like?

A: About my height. Kind of fat guy.

Q: Was he wearing a shirt or no shirt?

A: No shirt.

Q: And what happened once you pulled up?

A: Then Deco...Deco got out the car. He, he wasn't surprised to see Deco 'cause he knew Deco and stuff, so...and Deco got out the car but when he seen the gun Deco's like "get your ass in the house."

Q: What gun did Deco have at that point?

A: The big gun, a big 30, 30 something. It take 30 caliber bullets. I don't know what kind of gun it was.

Q: Is that the one that the highway patrolman got in the car?

A: Yes. That was...

Q: Stolen car?

A: Under the seat.

Q: And, what gun did you have?

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YOUNG, COCHISE TERRELL

A: I had a Ruger rifle.

Q: What caliber?

A: .22.

Q: And what did Tiny Bug have?

A: He had a handgun.

Q: What kind of handgun did he have?

A: Um, I don't know.

Q: You don't know what kind it was?

A: Un un.

Q: Was it a semi-automatic or was it a revolver?

A: A semi-automatic.

Q: Do you know what caliber it was?

A: No.

Q: Do you know whose it was?

A: It was Tiny Bug's.

Q: Do you know where he got it?

A: No.

Q: Okay. So did you take anything else in the house besides the guns when you first went in the house?

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YOUNG, COCHISE TERRELL

A: A duffel bag.

Q: What color was that?

A: I think that be a black one or either it was the green and black one, green and brown one. 'Cause there was two duffel bags at the house. There was a black one and then there was a green and brown one...an all green bag with brown edges.

Q: And what was in the duffel bag?

A: Tape, gloves.

Q: What kind of tape and what kind of gloves?

A: It was brown gloves, brown cotton gloves.

Q: Okay.

A: And it was grey duct tape.

Q: And what did everybody do with the cotton gloves?

A: Put 'em on.

Q: Who put gloves on?

A: Everyone.

Q: Which would be who?

A: Tiny Bug, Deco and me.

Q: And then what happened with the duct tape?

A: Deco taped them up.

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YOUNG, COCHISE TERRELL

Q: And who held Deco's gun while he taped them up?

A: Deco handed me his gun and then when he taped them up.

Q: And did anybody help Deco tape?

A: No. And he just was telling 'em "put your hands behind your back, mother fucker."

And then, and then he asked to have the little gun, he asked for Tiny Bug to have other gun so that he could put it right on the side of 'em right now. And then Tiny Bug handed him his gun or gave him the gun that Tiny Bug...that Deco had.

Q: So Tiny Bug ended up with the rifle and Deco...

A: With the big gun.

Q: With the big gun. And Deco ended up with the little...

A: Yeah.

Q: Semi-automatic gun?

A: Yeah.

Q: Okay. How many people are in the house at that point when you first go in?

A: Two.

Q: And what was the other person looking like? Where was he?

A: He was sitting in this chair right there with all black on.

Q: Okay. And where did those people get put once they were taped up?

A: They were laying right there where they got taped up at.

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YOUNG, COCHISE TERRELL

Q: How were they taped exactly?

A: They had their hands and legs taped behind their back.

Q: Were the hands and legs taped together or you're saying hands were behind their back and...

A: No. Hands were behind their back and the leg was behind their back.

Q: And how were the hands and the fingers?

A: The hands were behind their back and their fingers were...up, _____, uh, what would you say, like this.

Q: Interlaced is what you're showing me?

A: Interlaced.

Q: So were the palms together or palms apart?

A: Palms together.

Q: And how were their legs done, where were they taped?

A: They were, they were taped at the ankles.

Q: At the ankles?

A: Yes.

Q: Okay. And then what happened next?

A: Then some guy drove up and it was the other guy who lived there I guess. And then...

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YOUNG, COCHISE TERRELL

- Q: What did he look like?
- A: I don't remember what he looked like. He was the one in the middle, I think.
- Q: Okay. Was he a white guy, black guy?
- A: He's a white guy.
- Q: What kind of car did he have?
- A: A black truck.
- Q: And what happened when he came inside?
- A: When he came inside...well he came, he...I don't know why Deco would, would be, 'cause was going out to the car, but he had went outside to get something out of the car and then the guy pulled up and, um, he was...he just backed out and pulled up behind him and when the guy came in, Tiny Bug grabbed him by his face and told him to get on the floor.
- Q: So Deco had moved the car out of the driveway for a minute?
- A: Yes. And pulled right back in on the black car so like if he tried to go somewhere or anything.
- Q: Okay. So then once Tiny Bug pulled the guy inside, who taped him up?
- A: Deco. Him the only one who had the tape.
- Q: Okay. Did he seem like he knew what he was doing when it come to taping people up?

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YOUNG, COCHISE TERRELL

A: Yes.

Q: Did he say he had done it before?

A: Yeah.

Q: Did he say where he learned how to tape it like that?

A: No.

Q: What happened next?

A: And then, then next, ____ I asked 'em where the drugs and stuff were and then we was like, he, he counted all the money. He was like "you haven't got enough money. You haven't got enough money."

Q: Who counted the money?

A: Deco.

Q: How much money was there do you think?

A: Shit. Probably about 160 bucks or something. And then the other guy had like 60, 40 bucks...I don't....and...

Q: Where was the money at? Was it in their pockets or in, hidden away somewhere?

A: No, in their pockets.

Q: And what about drugs?

A: The drugs were like...I didn't find anything. I was sitting in the living room, sitting down having a beer.

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YOUNG, COCHISE TERRELL

Q: And...

A: And, uh, and...

Q: Where were you sitting in the living room having a beer?

A: I, I was, I was like sitting by the window so I could watch out. I was like the look-out.
That's why.

Q: Okay. And, uh, had anybody said anything about killing anybody at this point?

A: No.

Q: Okay.

A: And then they paged the other guy.

Q: Who paged the other guy?

A: The guy with the blonde hair.

Q: With, the one with no shirt?

A: Yeah. He paged the other...the Mexican guy, the Mexican guy. He told us that the Mexican guy had over \$400.00 and then he thought that the Mexican guy would have the money so he paged him. And in less than three or four...three to five minutes, the Mexican guy was there.

Q: Okay. And what happened when the Mexican guy got there?

A: He came in. They put him on...they grabbed him in and put him on the floor. He was like "what the fuck is going on?" ... talking about "aw shit, what the fuck's going

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YOUNG, COCHISE TERRELL

on?" And then, he, Deco said "get your ass on the ground." He got on the ground.

Deco taped him up.

Q: Did anybody hit him?

A: Yeah. 'Cause he was talking shit. He got into _____ with the, with the

Q: Before he taped or after he got taped?

A: Before he got taped. 'Cause he was talking shit already.

Q: What was he saying, do you remember?

A: He was like "what the fuck is going on? Who the fuck are you? You don't fucking know me" ...shit like that.

Q: And what room did he get taped up in?

A: He got taped in the living room.

Q: And then what happened next?

A: And then Deco...then, then he stopped and _____. He was when he was taping him up and then he says something "what the fuck you doing, cuz?" And Deco said "what? Cuz? Hey, Tiny Bug you hear that shit? Tiny Bug, you hear that shit?" And then he said "oh yeah, I heard him." And then Tiny Bug kicked him in the stomach and then Tiny Bug grabbed his leg and Deco grabbed his arms and they carried him in the kitchen.

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Q: What happened next?

A: And then I, I don't know, I was still...I'm still at the window. See the house like curves around. I can't see when they go in the kitchen. The house curves around. But I don't think there would be ____ 'cause I didn't hear him screaming or anything. The kitchen wasn't that far from where I was sitting at.

Q: Is there anybody looking through the house and moving things around?

A: Yeah.

Q: Who's doing that?

A: Everyone, like, like Tiny Bug went to the first room and Deco went to the back. I never left the living room but I lifted the cushions I think.

Q: You lift up the cushions and...

A: Yeah, yeah.

Q: Did you move any of the VCR's or anything like that?

A: No. And then...no. I don't remember. I think.

Q: Was there any cards or papers that were moved around?

A: Papers, papers were moved around.

Q: Any kind of cards in particular they have in the house?

A: No, I don't remember any particular cards.

Q: Okay.

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- A: But they were, I don't remember anything in particular.
- Q: And so the other three guys were still in the living room?
- A: Yeah.
- Q: How were they laying?
- A: On their stomachs.
- Q: And which way is their head facing?
- A: Towards the front.
- Q: Did they say anything?
- A: No...they quiet. They're saying that they don't have any money and stuff like "we don't have any drugs" and that stuff...that they don't have anything right now.
- Q: Were they trying to fight with anybody?
- A: No. Just the Mexican guy kept talking shit.
- Q: He wouldn't shut up, huh?
- A: Wouldn't shut up.
- Q: And so what happened next?
- A: No...I was like "fuck him, fuck him...don't fucking listen to him" and then they just kept looking and he just still was talking shit. And then after, after we, after we looked...after I looked through the living room and they looked through everywhere else, shit, it was like "ain't shit in here. Ain't nothing in here." Then Deco went and

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turned up the music and then he went in the kitchen and he was like "alright, let's go." 'Cause he said he was turning up the music so that no one could hear 'em yell or nothing.

Q: And was anybody else in the kitchen when Deco went in the kitchen with the Mexican?

A: Uh, I was, I was the first one out. I was the first one in the car. And I was getting into the front passenger seat...

Q: And that's in the driveway?

A: Yes, in the driveway. And then when I...then went like "you, you can't" then I heard four shots, four shots and then...

Q: Where was Tiny Bug at that point?

A: Tiny Bug was walking out, too and...

Q: You could still hear the shots?

A: When he heard the first one, he turns around and look...and then we was still was walking out. And then the last shot is the only one I saw. And then I ____ see, I seen the shot and I just seen the fool bleeding. I seen the blood like squirting out.

Q: That was from the guy closest to the door you said?

A: Yeah.

Q: And who was doing the shooting?

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A: Deco.

Q: He's the only one doing the shooting?

A: Yes.

Q: And what gun did he have?

A: Little black gun.

Q: What kind of property did you guys take out of the house?

A: VCR and Play Station, Super Nintendo.

Q: And where did they end up?

A: And, and a pager.

Q: Where did the pager end up?

A: Buried in the backyard. In Tod's backyard on Everman.

Q: And what about the VCR?

A: It ended up over Tod's girlfriend's house.

Q: What's her name?

A: I think it's Jennifer, I'm not sure.

Q: And what about the Play Station?

A: The Play Station ended up at Tod's house, too. Tod was playing the games and everything. Tod...Tod know everything, man. Tod, Tod set everything up, man...this shit.

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Q: Did Tod get some of the money?

A: Tod got some crack.

Q: He got some crack?

A: Yeah.

Q: Did they have some crack at the house?

A: Uh, I don't remember. I didn't see any drugs but _____ I didn't know nothing there...that they found the stuff in their own...I still was in the living room.

Q: What kind of drugs did you see in the house?

A: Some pills. They had put, they had some pills right there. It was some white shit. I think it was pills.

Q: And did they get left on purpose?

A: Yes.

Q: Where did they get left?

A: In the living room I think on the floor. That's what I think.

Q: And what was the purpose of leaving the pills behind?

A: For it could be drug related. It was drug related but he left the pills so they'd know _____.

Q: Okay. So when you went over there, did you have any idea there was going to be a killing or did you think there was just going to be a robbery?

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- A: No. I, I, I knew there wouldn't be a murder because after we got the money, we were supposed to leave town.
- Q: So you thought you'd just get the money and split?
- A: Right. 'Cause I was scared, I was scared 'cause of...I was scared that...I was scared to go home because they told me that Homicide came to my room looking for me so I was scared to go home. So I went to get some money. I was...soon as I got some money, I was going to split from here.
- Q: And where was your room?
- A: I had a room at the Thunderbird.
- Q: And what room number was it?
- A: Sixty..., I mean 6704.
- Q: And so the car that you were in, that ended up getting captured by the NHP a few days later?
- A: The black car?
- Q: The white car?
- A: Yeah.
- Q: And what happened to the guns?
- A: Well, the black, the revolver was dropped right there and the big, the big gun was under the seat of the car.

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Q: And what about the one that Deco used to do the shooting?

A: Oh, I don't know what happened to that gun. I think, uh, I'm...I think Tiny Bug had it.

Q: How do you feel about what happened to the victims?

A: I feel remorse. I feel, I feel that by me saying something it's like freeing them or somehow, I feel, because I didn't want anybody to die. I just wanted to get out of town because I was scared, man. I just wanted to get out of town. They told me the police was looking for me and stuff, man.

Q: Okay.

A: And the whole time I was in there, it...I didn't even want to be there. It didn't sit right. It was like...that's why I was standing by a window...I kept looking out the window at nothing, felt like, felt like, like we were going to get caught robbing them or something. I was scared the whole time. I didn't want ... I didn't think like they would die.

Q: Okay.

A: I feel sorry, man. Even though I didn't kill 'em, I didn't kill anyone. I didn't shoot anyone but I, I just know Deco and...

Q: Are you afraid of Deco?

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- A: Yeah. 'Cause like he's crazed like...so I guess if you do something wrong or something, he'll kill you. He, what he told me once to hisself was his own _____, "anybody, I could kill anyone who disrespects me."
- Q: Do you believe he would do that?
- A: Yeah. I believe he'd kill anybody that disrespects him.
- Q: Okay. The incident that happened at the Thunderbird, was that before this or after this?
- A: Before.
- Q: How soon before?
- A: Like about a lot before, I think. It was a couple of weeks. That's why I was scared. That's why I was staying at Tod's house.
- Q: Okay. Can you explain to me how that one happened?
- A: I was in the, uh,...I was outside selling...I was outside selling and then...
- Q: Selling what?
- A: Crack.
- Q: Outside the Thunderbird?
- A: Yeah.
- Q: Hotel?
- A: Yeah. Uh, they're selling crack and then they told me that ...

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Q: Who told you?

A: And Ace came up and told me.

Q: Which Ace?

A: Baby Ace. Look like ____ and he came and told me...

Q: What's his real name?

A: No one knows his real name. We just met him up there. He was from California.
He didn't...he from Compton.

Q: So what did Baby Ace tell you?

A: He was telling me like, he was like "damn, the fool is crazy...that fool is crazy." And I was like "what you talking about? What the fuck are you talking about?" And I think that...he was telling me like "I think they killed somebody." And I was like "nah, ____" and like "hell yes" 'cause Deco is _____. But this, he didn't tell me this the first day. The first day he was just saying "they crazy, they crazy." And then...

Q: This is back in your room he's talking about?

A: No, no...yeah...he...this what...that's what he's talking about what happened in the room but the first day he didn't tell me...the first time I seen him, he's just like "they crazy, they crazy. Whenever they leave, I'm going to get my stuff and I'm going

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home. I ain't never seen no shit like this. I never seen no shit like it." He just kept saying that. I kept telling him "what, what, what?" And he wouldn't tell me nothing.

Q: And so when did you go to your room and find out that something happened?

A: I was staring up and nothing happened. When he came...when he came up there and told me that.

Q: When who came up?

A: When Baby Ace came and told me that, I, I went back there and then we got...

Q: Back to your room?

A: Yeah.

Q: And who was at your room?

A: Uh, Deco and Scale.

Q: Deco and Scale?

A: Yeah.

Q: And who else was in there?

A: Who else? Nobody. Those two was in there.

Q: Was there anything missing from the room? Was there a mess in the room?

A: No. I mean we never made up our beds. It was...it wasn't clean or nothing.

Q: So when did you find out something happened?

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- A: When we got...when we got towards the desert... when Deco told me to get in the car and put my gloves on, I knew something was wrong right then.
- Q: So was it the same day when, when Little Ace...
- A: Yeah.
- Q: Came to you and said something...he thinks they killed somebody?
- A: Right. _____ 10 minutes apart.
- Q: Okay. And you went to the room.
- A: He didn't tell me they killed, he thought they killed somebody...he was just saying "they crazy, they crazy." And I didn't know what he was talking about. Thought they tried to do something to him. And I went to go see what they was...he was talking about.
- Q: And then who told you to get in the car?
- A: Deco. He said "get in the car, come on, we going somewhere." I said "where we going?"
- Q: And whose car did you get in?
- A: Uh, Snoop's car.
- Q: What's Snoop's real name?
- A: Lamont.
- Q: Lamont what?

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A: I don't know.

Q: Why were they mad with Snoop?

A: Because he stole Scale's dope.

Q: When did he steal the dope?

A: Two weeks ahead of time...it's when we were in room 6865.

Q: And so after you got in, in the car...what did they explain to you? What did they say happened?

A: They didn't explain anything. They just said "fuck it"...I asked 'em where we was going. And they was like "you'll see when we get there." And then I didn't keep questioning 'em because...

Q: Where did you go to?

A: We got on the freeway and went out towards Reno, I think. And then we got off when we seen, seen no more houses. When we, you know, we didn't see no more houses...

Q: Were you going towards Reno or were you going towards Utah?

A: I don't know...it's the same road. I think it's the same road that you take when you going to the Springs, the Indian Springs...it's that road.

Q: To Indian Springs?

A: Yeah.

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Q: Okay. And so what happened when you finally stopped, was there any other sign or anything around or?

A: It was a...it was a big sign...a big sign...and it was flashing on and off.

Q: What did it say, do you remember?

A: No.

Q: And what happened next?

A: Then that's when I found out they killed...that's when we got this ____ and they opened up the truck, he had to open it with a screwdriver. They opened the trunk and I looked in there.

Q: And who was in the trunk?

A: I didn't see...it was like a body of sheets and I smell...and it stinked. It smelled bad.

(Tape beeping)

Q: Hang on...let me turn the tape over.

(End of Tape, Side A)

(Beginning of Side B)

Q: Okay. The tape's been turned over. There was no conversation while it was turned over. You were saying that it stunk real bad in the sheet.

A: It's a, it, it wasn't like a funky, stinky odor but it was just a odor that like you had never smelled before. It was like (makes sound) and then I walked to the front of

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the car and they tried to pull him out. They tried to pull him out and then they asked me for my help and I helped them pull him out.

Q: And so who was there?

A: Deco and Scale... and then after that time it was too late. At that time it was too late. It was too late for me to ____ to be like "oh fuck, you fucking ____." I, I didn't even know what I was out there for and then I was just fucking scared that the body was in the trunk and we had to get that body out of the trunk or else we all going to jail, you know, 'cause...

Q: And so did you get the body out?

A: Yeah. We got the body out right then.

Q: What happened to the body?

A: Deco kicked it down the hill and it started running down the hill.

Q: Still inside the sheet?

A: Yeah.

Q: And what did you guys do then?

A: We went back to the room.

Q: To the room at the Thunderbird?

A: Yeah.

Q: And did Deco tell you how it was that he killed him or who killed him?

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A: Uh, they didn't tell me that then.

Q: When did you find out?

A: The next day. Baby Ace told me.

Q: What did Baby Ace tell you?

A: He just said "that fool is crazy." He's like...he was standing on, he was standing on his legs...

Q: Who was standing on his legs?

A: Baby Ace said that he was standing on his leg and that Deco was on his back and that Scale was like standing on his butt part so that he couldn't get out when Deco was choking him.

Q: What was Deco choking him with?

A: He said it was, it...he tied him up with a cord so he couldn't choke him with a cord. And, and then, uh, I think he choked him with a pillowcase. He said a pillowcase or a sheet or something. He choked him with a pillowcase or a sheet.

Q: Okay. And then so what happened after that?

A: After Baby Ace told me that, he...

Q: After...well no...back up to the car...after you got the body out of the car.

A: They dropped me back, they dropped me back off at the hotel 'cause I was scared. I didn't want...I know I was scared after I seen that shit.

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Q: Okay.

A: I never seen...I ain't never seen no shit like that. I was scared. I was "fuck... drive, fucking drop me off." And they said, they was telling me "you got to help and get him out of this car. He gonna get us caught." That's what they tell me.

Q: Was the car still smelling?

A: No, the car didn't smell...just the trunk.

Q: And so then where did they hide the car?

A: Let's see...I don't, I don't even really know that part. They dropped me off. They told me _____.

Q: What did they tell you?

A: They said they parked it at some, this lady house, inside her garage. That she...they took the license plates off and that they, that they was going to go back there and take it somewhere but they...I don't think, think they never went back.

Q: What's the lady's name?

A: I don't know. They didn't say ... the only thing they said she was a crack head. They just gave her some crack to hold it in her garage.

Q: What side of town is it on?

A: I don't know. I didn't go with them.

Q: I thought earlier you told us that you could show it where it was.

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A: No. I was, I wasn't saying that.

Q: You don't really know where it is?

A: Nuh uh.

Q: Were you in the room when Snoop got killed?

A: No.

Q: Did you have anything to do with Snoop getting killed?

A: No. I, I, I kind, I kind of knew 'cause they was mad about that dope and then he was like...I don't think he was saying, he was saying he was gonna kill...he was like "that's disrespect Snoop...knows better than to disrespect me. How he gonna steal my brother's dope." And Deco was referring to Scale as his brother.

Q: Are there any other incidences that you know about involving Deco that he's done?

A: From his say...they said that he, uh, they said that he, he shot some guy for...that owed him 10 bucks before. And only person seen was a cab driver and that he thought the guy was dead and he went to California and came back.

Q: The cab driver is who he shot you're saying?

A: No. The cab driver was going past when they saw.

Q: He saw it happen?

A: Yeah.

Q: Anybody else?

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A: No. Nobody else seen what happened.

Q: Any other crimes that, where he's shot somebody that you're aware of?

A: Uh, I...I heard some guy socked him in the head and he shot him.

Q: Do you know who the guy is?

A: No.

Q: Do you know what street it happened on?

A: No.

Q: Anything else you know from hearing from Deco?

A: No. This is just stories that my cousin was telling me that how...what kind of guy he is. If she comes in, she _____, she'll tell you guys, you know, that..

Q: What's your cousin's name?

A: 'Cause it's going to be hard to do around where she at. Theresa Johnson.

Q: Theresa Johnson?

A: Yeah.

Q: How old is Theresa Johnson?

A: Like...shit, 14. 15, around 15.

Q: Where does she stay?

A: She was staying _____ at my mom's house at 6724 Reggie. But she in California now.

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Q: How come she went to California?

A: Because like my mom got in some trouble the other day and she, uh, she...the Child Protective Services trying to take her and she jumped out the car while it was running. And she caught the bus to California.

Q: Okay. Jim, do you have anything?

JB: Yes I do. Um, earlier when you were talking to us, you told us, uh, Tod said that they had money inside the house.

A: Yeah.

JB: How much money did Tod say was in the house?

A: Tod said like 6,080.

JB: Did he say where it was in the house?

A: No. He didn't, he, he didn't tell us where...he just knew and that's what he was telling us.

JB: Okay. And uh, when you guys went over to, to do the robbery over there, uh, what time was it?

A: It was dark. It was kind...I don't know...about 10.

JB: Okay. And uh, how long, how long did you guys stay inside?

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A: Oh, we was inside, um, a half hour, an hour...I'm not sure 'cause it was a long time, it seemed like a long time. Every fucking second seems like a minute to me. I was scared the whole time I was in there. And, and...

JB: And...I'm sorry, go ahead.

A: No, I've never do nothing like this...now I never would have thought about ever in my life...if I had never met this fool, I'd never even thought about killing anyone.

JB: Okay. Now, did you go buy the tape and the gloves?

A: I bought the tape.

JB: Where did you buy the tape?

A: At Sav-on's.

JB: Which Sav-on's?

A: Think the Sav-on's on Bonanza and Eastern.

JB: Okay. And who, who got the gloves?

A: He had, he had the gun....the gloves and the tape were just for the robbery ____ and we wasn't, when we got the gloves, when we got the gloves and the tape, we didn't even know who we was going to rob. We just was getting it because we needed some money to get out of town. You know, we wasn't just going to rob anybody, though. It was going to be a drug dealer because like if they had crack, we knew how to sell crack and we knew what to do with the money.

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JB: Did you guys rob any other people?

A: No. We knew...we were supposed to but we didn't _____.

JB: Did you ever go over to the front of the house before to really try to roust those guys?

A: No. Deco had _____ before and tried to rob 'em. This is what they told me. I think Ace told me that they tried to rob 'em before and...this was even before I knew Deco, that he tried to rob them before and that, uh, he was mad that he couldn't rob 'em so he just robbed somebody that was sitting outside in the car.

JB: Okay. Uh, did he, did he say what he took?

A: No.

JB: Nothing...didn't say at all?

A: He didn't say.

Q: But he was saying that's in that same neighborhood?

A: It's the same house.

Q: Right by the same house, that was sitting outside?

A: Yeah. Some guy was sitting outside in the car.

JB: Did he say...did he have any conversation with the guy or anything?

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A: No. He say he just walked up and told him to "give me your shit." And I think the guy had no money or something and I think he took his watch or something...I don't know. I'm not sure...he took something from him.

JB: Okay.

Q: Do you know if he tied the guy up or anything?

A: No, he didn't tie the guy up. Um, well, he didn't say he tied the guy up _____, he was saying.

JB: Okay, now during, during uh, during the robbery, did Deco up and leave?

A: During the robbery...yeah.

JB: Where did, where did he go?

A: To move the car back when the other car pulled in.

JB: Okay. Did he ever go anyplace else?

A: No.

JB: Okay.

Q: Where did he move the car to when he moved it?

A: He backed it up and pulled back in behind the black truck that came up.

Q: Did he know the black truck was coming so he's just...

A: Yes.

Q: Like waiting for him to pull in?

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A: No, he didn't know it was coming but he had...after he had went outside, uh, it was just like a coincidence. He went outside the same time the black truck was pulling up. And then he backed out and the black truck, let him back out, then he pulled in behind the black truck.

Q: Okay.

JB: What kind of cigars does Deco smoke?

A: Black and Mild's.

JB: And did he smoke any that night...during the robbery?

A: I don't think, no sir, I don't think so.

JB: Okay. Did you guys ever go back to the scene the next day?

A: No.

JB: Do you know if anyone else did?

A: I don't know...maybe Tod and them probably may, but, uh, no.

JB: Okay. Uh, do you know where the keys are to the Thunderbird..the hotel?

A: ___ I thought, I thought they would have all ____.

JB: Okay. And uh, what kind of car did Snoop have?

A: A white car. A old, an older car...an '87, '88, '86...I don't know what kind of car it was.

JB: Okay. Was it a two door or four door?

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A: Two door.

JB: And what was the interior...what was the color of that?

A: I don't know...I was...I only rode in it one time...tan I think.

JB: Was it in good shape or...

A: Shit, I guess...I, it was, it looked shitty to me but they thought, he thought it was in good shape.

JB: Did you guys ever live over by the Stardust at all?

A: No.

JB: Do you know anyone that's lived by the Stardust?

A: Yeah.

JB: Who?

A: The Horse did...by the Stardust and Budget Suites.

JB: Okay. Who...did, uh, how long ago did The Horse live there?

A: Like last week, the week before.

JB: How long has he lived there?

A: Just, just two weeks.

JB: Did you guys ever go over to the, over to where Horse was living before, I mean, probably a few months ago?

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A: No. He wasn't living there. It was just like, ... the only reason why he went to the Budget Suites is 'cause he had to move off Fremont 'cause it was getting too hot over there.

JB: Did, uh, did uh...Deco ever say he did a, he did a lick over at the Stardust?

A: No. I never heard of it. And then he bragged about how, you know, and _____ then _____ bragged about the Stardust. _____ said nothing about that.

JB: Okay.

Q: What about P-Devil? How long have you known P-Devil?

A: Oh, when I first came out here...the first summer that I came out here, I had went to Juvenile Hall because I got in a fight at the grocery store and that's the first time I was out here, I think, '96, something. And then there was me, I had met him in Juvenile Hall and then he was cool and I liked to play basketball and stuff and then me and him had exchanged numbers in Juvenile...you not supposed to do that but we did it anyway. And then when we got out, we went to a couple parties together and stuff, kicked it with a couple girls before.

Q: Do you remember what his real name is?

A: Jermaine Davis.

Q: Do you know where he was staying?

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YOUNG, COCHISE TERRELL

A: When? I knew a long time ago where he used to stay, but, he was staying with his mom and ____.

Q: Do you know where he was staying when he was by himself in an apartment?

A: No. I didn't even know he had apartment. He told me when he got into Elko that they put him in like a home or something and he had a job and everything. I had seen him once when he got ____ Erika.

Q: When was the last time that you saw him?

A: In, I would say...the last time I saw him probably had to be in, it was sometime I think...no, it had to be like in June or maybe even before that because, it was before I met Deco.

Q: What did you hear happened to him?

A: This guy named He-man told me that...

Q: Who?

A: He-man. I don't know...

Q: He-man?

A: But if I needed to get his real name, I can get it.

Q: What did He-man tell you?

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EVENT: 980814-1600

YOUNG, COCHISE TERRELL

A: He told me that, that Jermaine was at a party with some people and he met a Blood guy, a dude from Tree Top....this what He-man say. He met a guy from Tree Top. And then he said he think the guy from Tree Top lured him out to the mountains.

Q: Tree Top is another set?

A: Yeah. Tree Top probably is just a Blood gang in California.

Q: Out of which part of California?

A: Compton.

Q: Okay. He thinks this Tree Top guy lured P-Devil...

A: Yeah.

Q: To where?

A: To, he said, to...he said out to the mountains. He didn't say like no certain mountains or no certain desert or nothing. He just said to the mountains.

Q: And what did he say that happened when he got him out there?

A: He said that, that the Donis had came up some Crips and then that the Crips had shot him. He said that the Bloods...I set him up.

Q: How come the Blood guy would set him up for the Crips, do you know?

A: I don't...that's, that's what I don't understand. I asked He-man and He-man said he don't even know. Only thing I could think of but I don't have any base on this or any

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YOUNG, COCHISE TERRELL

background is that they probably 'cause they related to the Crips or something.
That's the only way I could think.

Q: Did P-Devil do something to them that they were mad at him for?

A: No. P-Devil was a gang member and like he didn't like Donis and then like if he, in Juvenile Hall, he beat up someone, too, like in Elko...he got in fights with some...at parties, everywhere. Then the gangs on getting together, get on together, the Bloods and Crips you know what I mean.

Q: And what kind of gang member was P-Devil?

A: A Burgundy Square Piru.

Q: Did you hear anything else about it?

A: No.

Q: Where did you hear he got shot?

A: All's they said in the mountain.

Q: Did they say with what?

A: No.

Q: Was, was the Tree Top guy there?

A: I asked him what kind of gun and then I asked He-man what kind of gun it was and he didn't know.

Q: What's He-man look like?

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EVENT: 980814-1600

YOUNG, COCHISE TERRELL

A: Skinny black guy. Real, real, real skinny.

Q: Where does he stay?

A: In Cheyenne _____.

Q: Does he _____?

A: No, but I, if I.... if I can get out there and get the free phone call, I can call my cousin and tell him to tell me.

Q: Okay.

A: But if _____.

Q: Is there anything else that you know about it?

A: No.

Q: Is there anything about any other cases that you know about that you want to tell us while you're helping us like this?

A: Uh, I don't, uh...I don't know anything but for the record, man, the whole time I was with Deco after, after he's dropped me, well, I couldn't tell. I was scared to leave him because I thought like he would try to get me....he would think I tell...he'd try to do me before I could tell on him or something, you know. And then it seemed like he felt it but it was like he still was playing the _____ 'cause he's smarter than shit, man. And, it was just terror the whole time. The only reason why I was hiding out

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EVENT: 980814-1600

YOUNG, COCHISE TERRELL

A: Skinny black guy. Real, real, real skinny.

Q: Where does he stay?

A: In Cheyenne _____.

Q: Does he _____?

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AA07201

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EVENT: 980814-1600

YOUNG, COCHISE TERRELL

with them because they told me that Homicide canceled my room looking for me.

And they all scared. And I was scared both ways.

Q: Did you call it, your room, and talk to somebody from Homicide?

A: Yes. Uh, I don't remember no name but he talked to me, tried to get me to come down there. But when he was in the room I knew that something was wrong.

Q: Okay. Is everything that you've told us this time the truth?

A: Yes.

Q: And how come earlier when you were giving us those statements, you didn't tell us all the truth?

A: Because, uh man, the only reason why I'm giving you guys the truth now because I've been in here so long and I've been thinking about it, you know, _____ I'm going to die or anything. The other guy told me I was going to die and stuff, man. I don't want to die. And then I started to think about my girlfriend and her baby and then I started to think about the people family...I started to think about the people family and I...what they living through right now 'cause I only had one person I know that died and that's Little Zack and he got killed and, and it hurt me...it hurt me for months. Uh, and I, I feel sorry for that family and for my _____. Even if, even by me doing this, I'm gonna still, at the least, probably be like 15 years. 15 years, man. And I won't probably get this here off the _____ 'cause she in high school

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YOUNG, COCHISE TERRELL

and, and that's fucked up for that family has to go through this just because of some shit, 'cause the dude got mad 'cause...I don't know why he got mad...it's just that he shouldn't be up and just kill people, man. I never...I never tried to kill nobody in my life, man. I shot at one guy and I ain't try to shoot the man...I ain't even try to shoot. I just accidentally shoot at him 'cause I was scared, man. It was like, you know...

Q: You talking about the guy at the Longhorn?

A: Yeah. And they made me shoot him. And I've been scared ever since, every time, the whole time that I was living at...every minute I was scared, I was scared. Tod was scared 'cause Tod told Lala, Tod was telling Lala he was scared that...and Lala told me. I never told Deco 'cause Deco probably already knew. And then they was telling everybody that they was scared. That's how I knew something was going to go wrong, I knew, I knew that Tod and them were going to finally come through and tell because they were scared, man.

Q: Do you think Lala's afraid of Deco?

A: No. That's like, hey I think, I don't know, 'cause like she liked him, it was like his girlfriend and stuff, so, I don't think...I don't think she would be scared.

Q: Okay.

A: He punched her one time but I think everybody's scared of him...even his own friends.

AA07203

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YOUNG, COCHISE TERRELL

Q: Okay. Anything else you can think of?

A: _____

Q: Anything else you want to say before we stop the tape?

A: Man, I can't do nothing for what already happened and man, it's not...I didn't kill anyone. I just...I went to get the drugs, man. I just needed some money to get out of town because, because of Snoop and for Snoop's family, too, man. I didn't even know nothing about his murder. I just happened to be...they told me come around with them and I didn't have, I didn't have no choice but to go...I didn't have any choice but the body out man. I didn't have any choice. I was already in the car. The body was already in the trunk and I was sorry for Snoop _____ 'cause he had kids, man. But, I didn't do...I didn't kill anybody. I never killed anybody. I just went to rob somebody one time, man.

Q: Okay.

A: And it just went all bad. I'm sorry.

Q: Anything Jim?

JB: No.

Q: That will be the end of the statement. The same persons are present. The time is 2045. That's all, thank you.

AA07204

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EVENT: 980814-1600

YOUNG, COCHISE TERRELL

I HAVE READ THIS STATEMENT CONSISTING OF 54 PAGES AND AFFIRM TO THE TRUTH AND
ACCURACY OF THE FACTS CONTAINED HEREIN. THIS VOLUNTARY STATEMENT WAS COMPLETED
AT: CLARK COUNTY DETENTION CENTER ON THE 2ND DAY OF SEPTEMBER, 1998 AT 2045 HOURS.

WITNESS: _____

WITNESS: _____

SIGNATURE OF PERSON GIVING STATEMENT

/kb
98v0731

AA07205

EXHIBIT 50

EXHIBIT 50

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EVENT: 980814-1600

SPECIFIC CRIME MURDER WITH DEADLY WEAPON (4 COUNTS)

DATE OCCURRED 08/14/98

TIME OCCURRED

LOCATION OF OCCURRENCE 4825 TERRA LINDA

CITY OF LAS VEGAS

CLARK COUNTY [X]

NAME OF PERSON GIVING STATEMENT CHARLA SEVERS AKA: LALA

DOB: [REDACTED]

SOCIAL SECURITY #: [REDACTED]

RACE: B

SEX: F

HEIGHT:

WEIGHT:

HAIR:

EYES:

WORK SCHEDULE:

DAYS OFF:

HOME ADDRESS: [REDACTED]
[REDACTED]
VEGAS, NV. 89030

HOME PHONE: [REDACTED]

WORK ADDRESS:

WORK PHONE:

BEST PLACE TO CONTACT:

BEST TIME TO CONTACT:

The following is the transcription of a tape-recorded interview conducted by DETECTIVE T. THOWSEN, P# 1467, LVMPD HOMICIDE Detail, on 09/03/98 at 1835 hours. Also present is DETECTIVE K. HARDY, P# 3031, LVMPD HOMICIDE Detail.

Q: Charla, first off, you're aware this statement's being tape recorded. Is that correct?

A: Yes.

Q: And we're talking about the quadruple homicide that occurred on Terra Linda on 8/14 of '98, is that correct?

A: Yes.

Q: Can you tell me, uh, what the name of your boyfriend is?

AA07207

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EVENT: 980814-1600

CHARLA SEVERS AKA: LALA

A: Um, Deko...Donte Johnson.

Q: And how do you spell Deko?

A: D-E-K-O.

Q: And it's Donte, D-O-N-T-E Johnson?

A: Yes.

Q: And how long have you been boyfriend-girlfriend with him?

A: About two months.

Q: And could you tell me on the day on the day prior to this, on 8/13/98, where you were visiting? What house you were visiting?

A: Um, [REDACTED].

Q: And who lives there?

A: Tod.

Q: Do you know what Tod's last name is?

A: Tod Armstrong.

Q: And who else lives there with Tod?

A: Ace.

Q: And what's Ace's last name?

A: Uh, I don't know.

Q: And can you describe Tod briefly?

AA07208

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EVENT: 980814-1600

CHARLA SEVERS AKA: LALA

- A: Yes. He's a tall white guy with, um, he got brown hair.
- Q: Does he have any tattoos or piercings or anything?
- A: Yeah. He's got a tattoo on his right arm and, um, a tongue ring.
- Q: Okay. And, uh, what about the other person that you mentioned that lives there?
- A: Oh, Ace?
- Q: Uh huh.
- A: Yeah. He's a...he's like a medium...he's medium height, white guy with blonde hair.
He's slim.
- Q: And those are the only two people that actually live in that house, is that right?
- A: Yes.
- Q: And do other people sometimes come by to visit and party with them?
- A: Yes.
- Q: And have you stopped to visit and party at times there?
- A: Yes.
- Q: Uh, prior to that date, had you been over there, uh, in the company of Deko and
Tod when somebody came to visit and, and talk about, uh, drugs that they had at
their house?
- A: Yes.
- Q: Who was the person that came to visit?

AA07209

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PAGE 4

EVENT: 980814-1600

CHARLA SEVERS AKA: LALA

A: Matt.

Q: Do you know Matt's last name?

A: Mowen or something.

Q: Okay. And is he a white guy or a black guy?

A: He's a white guy.

Q: About who...how soon prior to the murders happening did Matt come to the Everman house?

A: Like three days.

Q: And what was he saying?

A: He was just asking about, um, some, some crack cocaine. And he, he showed...gave me and Red some little pills like Valiums.

Q: And was he wanting to buy some crack cocaine for himself? Is that what he was doing?

A: Yes, I think so.

Q: Okay. And did he make any mention of, of him having drugs at his house or making money selling drugs or anything in front of you?

A: No. He just talk, talked about the pills that he had.

Q: And who else was at the Everman house when Matt was there that day?

A: Uh, Red and Deko and Tod and myself.

AA07210

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EVENT: 980814-1600

CHARLA SEVERS AKA: LALA

Q: Okay. Um, I'm going to show you a photograph that has LVMPD ID number 1509343. Do you know the person in this picture?

A: Yes.

Q: Who is that?

A: Red.

Q: That's Red?

A: Uh huh.

Q: Do you know Red's real name?

A: No.

Q: Only by Red?

A: Well I know it 'cause I heard it on the thing but, yeah, that's it.

Q: Okay.

A: Yeah.

Q: So Red's what you've always known him by?

A: Yes.

Q: Okay. And as we're going along here, let me show you another photograph. This photograph, uh, has LVMPD ID number 1594788. Do you recognize the person in this photograph?

A: Yes.

AA07211

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EVENT: 980814-1600

CHARLA SEVERS AKA: LALA

Q: Who is this?

A: Bug.

Q: Bug?

A: Yeah.

Q: Do you know what Bug's real name is?

A: No.

Q: Is Bug the only name that you know him by?

A: Yes.

Q: Okay. How long have you known Bug?

A: Only... since we had from mentioned it...the house on Everman.

Q: Alright. How long has that been do you think?

A: Um, like about three weeks or so.

Q: Okay. How long have you known Red?

A: For like month and a half, two months.

Q: Okay. So, the day that, uh, Matt came to the house talking about crack, did he get any crack that night?

A: No.

Q: After he left, did anybody have any conversations about Matt?

A: Yes.

AA07212

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EVENT: 980814-1600

CHARLA SEVERS AKA: LALA

Q: Who had a conversation about him?

A: Tod.

Q: And who was Tod talking to?

A: Talking to, um, Deko and Red.

Q: And what did he tell them?

A: That Tod, that they keep like \$10,000.00 in their house. And they have a bunch of mushrooms.

Q: And what else?

A: That was it.

Q: Did, did Tod mention anything that he could do with the mushrooms or anything or what anything would be done with any of the money from the house?

A: No. I, I didn't overhear that.

Q: You just heard him tell them that that stuff was available at Matt's house?

A: Yes.

Q: Did he mention if he knew where Matt lived?

A: Yeah.

Q: Okay. Can you tell me what happened on the evening of, um, 8/13/98?

A: Um, yeah, they, they left, they left the house.

Q: Who, who was at the house? And we're talking about the Everman house?

AA07213

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EVENT: 980814-1600

CHARLA SEVERS AKA: LALA

A: Yes. Um, Tod, Red, Bug and Deko...they left the house. And then, uh, they didn't come back until later on the next morning, like 3:00 in the morning.

Q: Okay. Who else was at the house after they left?

A: Just myself.

Q: Just you?

A: Uh huh.

Q: Did you stay up or did you go to sleep for awhile?

A: I went to sleep for awhile.

Q: And where did they tell you that they were going to go when they left?

A: They didn't tell me. They told me they'd be right back.

Q: What did they take with them when they left?

A: They took a bag.

Q: What, what did the bag look like?

A: It was like green and brown...a big, a big duffel bag.

Q: And had you seen what that bag had in it in previous times?

A: Yes.

Q: What did it normally have in it?

A: Guns.

Q: What kind of guns?

AA07214

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EVENT: 980814-1600

CHARLA SEVERS AKA: LALA

- A: Uh, like, um, well like a little .22 automatic and a, um...
- Q: Rifle or a pistol?
- A: Oh I don't know...
- Q: Do you know the difference between a rifle... A rifle is usually longer that you hold with two hands and a pistol is short that you hold with one hand.
- A: Yeah, just the one little handgun, the one that you hold with one hand.
- Q: Okay. What else?
- A: And there was like a gun with holes in it. Um, it had a clip, a big clip on it. It looked like an automatic. You could just pump and keep shooting...
- Q: It had a clip that went underneath it?
- A: Yeah.
- Q: You say it had holes. Are you talking about towards the front of it?
- A: Yes.
- Q: On top or on the bottom?
- A: On the top.
- Q: Kind of like it's a protection thing?
- A: Yeah.
- Q: To keep you from touching it?
- A: Yeah.

AA07215

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EVENT: 980814-1600

CHARLA SEVERS AKA: LALA

- Q: Okay. And what else?
- A: And then the other gun.
- Q: What kind of other gun?
- A: Trying to remember what other gun it was.
- Q: Handgun or rifle?
- A: It was a hand...it was a handgun.
- Q: Okay. Do you know if it was an automatic or a revolver?
- A: A revolver.
- Q: A revolver?
- A: Uh huh.
- Q: Do you know the difference between a revolver and automatic?
- A: Yeah. You just...it spins around, you play Russian roulette with it.
- Q: Right. And what about, did anybody have a, uh, automatic handgun? The kind that has a clip that goes in it?
- A: Yeah.
- Q: Was that in the bag also?
- A: Yeah.
- Q: Okay. Do you know who the guns belonged to?
- A: No. I just know one of 'em belonged to Scale.

AA07216

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EVENT: 980814-1600

CHARLA SEVERS AKA: LALA

- Q: Which one belonged to Scale?
- A: The one with the clip on it with the holes on it on the top.
- Q: The rifle?
- A: (Mumble)
- Q: The longer one?
- A: Yes.
- Q: Okay. And who did the other guns belong to?
- A: I don't know.
- Q: Just all the boys would have access to them?
- A: Yeah.
- Q: And did they have anything else in that bag?
- A: No, not ...
- Q: Any kind of rope or the tape or, or cloth or anything?
- A: No. Not that I seen.
- Q: Not that you saw?
- A: No.
- Q: Okay. And, uh, how were they dressed when they left?
- A: Um, Deko had on some red and tan plaid shorts with, um, his, with his Nike Air Max, black Nike Air Max.

AA07217

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EVENT: 980814-1600

CHARLA SEVERS AKA: LALA

- Q: Okay.
- A: Um, Red had on some, some black pants, something like jeans, with a black shirt and I think he had some black Fubu shoes on him.
- Q: Fubu?
- A: Yeah.
- Q: That's a brand name?
- A: Yeah.
- Q: Okay.
- A: And Bug had on some, um, brown like Dickies with a, um, with a black, like a black hoody on that you put over your, you put it over your head.
- Q: Okay.
- A: With some black Converse on.
- Q: Okay.
- A: And Tod had on a white shirt with some blue jeans and these white tennis shoes.
- Q: Okay. And when they left, they didn't tell you where they were going to go?
- A: No. They just told me they'd be right back.
- Q: Did they say anything about doing a lick?
- A: No. Just said when they come back they're going to have some money.
- Q: Okay. Did you have a feeling where they were going to go since they took the bag?

AA07218

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EVENT: 980814-1600

CHARLA SEVERS AKA: LALA

- A: I didn't know where...I knew I should. I figured they was going to get, get some...rob somebody.
- Q: They were going to go rob somebody?
- A: Yeah.
- Q: Had they done that in the past?
- A: Yeah.
- Q: How, how many times do you think?
- A: Like once or twice before.
- Q: Okay. Did you ever see any gloves in the bag?
- A: Yeah. They...well they had, no, they had 'em on their hands.
- Q: They already had them on their hands when they left?
- A: Yes. Yes.
- Q: Who had the gloves on their hands?
- A: Um, I, I just remember Red and Bug having 'em on their hands when they left the house. That's all I remember.
- Q: Okay. What about Tod and Deko?
- A: No. I don't...Deko, I know he didn't have 'em 'cause he came, he came...before he left, he's the one told me that he'd be right back. And he didn't have none on. Tod didn't have none on either.

AA07219

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EVENT: 980814-1600

CHARLA SEVERS AKA: LALA

Q: Okay. And did you see if there was anymore in the bag?

A: No, I didn't see.

Q: Okay. Do you know what car they got into when they left?

A: A white car.

Q: What kind of a white car?

A: I think it's, um, Tempo. I think it was. It looks, it looks like a little Toyota but I think it's a Tempo or something.

Q: And do you know where the car came from originally?

A: No, I don't.

Q: Did you hear any rumor about it being stolen?

A: No. I just know that they told me if I ever get, if a cop ever get behind me, I should put 'em on high speed chase...I'll run.

Q: They didn't want you to get stopped with that car?

A: Yeah.

Q: Would that make you think maybe something was wrong with it?

A: Yeah.

Q: Okay. So after they left, did you go to bed?

A: Yeah. I went to sleep.

Q: And where did you go to sleep?

AA07220

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EVENT: 980814-1600

CHARLA SEVERS AKA: LALA

- A: In the back, in the master room, bedroom.
- Q: Master bedroom. And how did you end up waking up?
- A: 'Cause he came and gave me kisses on my cheek.
- Q: Who came in and gave you kiss?
- A: Deko.
- Q: Okay. What time was it then when you looked?
- A: It was like 3:00 in the morning.
- Q: And who else was with him when he came in?
- A: Well, when he came in the room, he was by hisself. But when I went out in the living room, there was Tod and Bug and Red with Deko.
- Q: Tod, Red, Bug and Deko?
- A: Yeah.
- Q: Were they wearing the same clothes?
- A: Yeah.
- Q: Were they still wearing the gloves or no?
- A: No.
- Q: And what about the bag?
- A: They had it, um, they had it and they had threw it to the side. They put it...it was on the side next to the big couch.

AA07221

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EVENT: 980814-1600

CHARLA SEVERS AKA: LALA

- Q: Did you see it when they put it next to the couch?
- A: Yeah.
- Q: What, what was inside of it?
- A: Guns. I didn't see...I know guns was in it because I heard it when it hit the ground.
- Q: Okay. Could you see also some of the barrels and stuff that it was guns?
- A: Yeah.
- Q: Could you see any of the gloves?
- A: No.
- Q: Could you see anything else?
- A: No, that's it. Just guns.
- Q: Did anybody have any rope or tape or anything else like that with them at that point?
- A: I didn't see.
- Q: You were talking earlier about they often kept some kind of tape under the table.
- A: Yes, some duct tape under the coffee table.
- Q: And what did they keep the duct tape for?
- A: I don't know.
- Q: What did they tell you they did with it before?
- A: Oh, you mean, um, ...

AA07222

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
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EVENT: 980814-1600

CHARLA SEVERS AKA: LALA

- Q: Did they mention anything they would do with it when they robbed the people in the past?
- A: No. They took no...they didn't mention that.
- Q: Okay. So, after they come back and then you get talking with, with Deko...what did Deko tell you?
- A: Um, the next day?
- Q: Was it that night or was it the next day?
- A: The next day.
- Q: Did he tell you how much money they got that night?
- A: Nuh uh. No, he didn't.
- Q: He didn't say anything else about it that night?
- A: No. Said you're supposed to go to sleep.
- Q: Okay. He was tired?
- A: Uh huh.
- Q: So did you go back to sleep with him?
- A: Yeah.
- Q: Okay. And then what happened the next day, what did he tell you?
- A: Told me to watch the news. And then I watched the news.
- Q: And what did he point out that was on the news?

AA07223

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
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EVENT: 980814-1600

CHARLA SEVERS AKA: LALA

A: Him, Matt...showed me about, um, Matt and some other guys that got murdered in the house.

Q: And what did you say when you saw that?

A: I said "that's fucked up."

Q: Okay. And what did he say?

A: He told me to don't worry about it.

Q: And how come he told you don't worry about it?

A: Because he didn't want me to worry. (Crying)

Q: And what else did he say?

A: He just told me "don't worry about it" and just that's it...he told me everything was going to be okay.

Q: And why did he say that it happened?

A: Because they, they knew who they were.

Q: He said that the boys that died knew who they were?

A: Yeah.

Q: What were the exact words that he said?

A: He said, um, "we had to kill 'em because they was, uh, they was, they knew who we were."

Q: Did he say if anybody with fought with them?

AA07224

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
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PAGE 19

EVENT: 980814-1600

CHARLA SEVERS AKA: LALA

A: No. He just...no, like physical fight?

Q: Uh huh.

A: No.

Q: When, when he said they went over there, how many people did he describe being there?

A: Just two people. They was outside.

Q: And when he went over, who went in the house and did anybody stay in the car?

A: Um, Tod stayed in the car. And, and Deko and Red and um, Bug, went up in the house. They took...they told 'em to go in the house. And they went in the house.

Q: And there was how many people in the house at that point?

A: Two people.

Q: And what did they do with those two people?

A: Uh, I think they, they duct taped them up.

Q: Okay. And what happened after that?

A: Then somebody else knocked on the door and they let 'em in and then they duct taped 'em up and then somebody else knocked on the door and they let 'em in and did the same thing.

Q: Okay. And how much money did he say they found?

A: Only a couple of hundred dollars.

AA07225

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 20

EVENT: 980814-1600

CHARLA SEVERS AKA: LALA

- Q: How much were they expecting to find?
- A: \$10,000.00.
- Q: And so were they upset that they weren't finding that right amount of money?
- A: Yeah.
- Q: And so did they look through other things in the house did he say?
- A: He didn't say.
- Q: What did...did he say they questioned the people to ask them where the money was?
- A: He didn't say that either.
- Q: Okay. Did he say if anybody, any one of the boys that was in the house was, was running his mouth and giving him a bad time?
- A: Yeah.
- Q: Which, which boy?
- A: Um, the Hispanic one...Talamentez or something like that.
- Q: Okay. And what was he saying to 'em?
- A: They just saying he was talking a lot of shit.
- Q: And so what did they have to do because he was talking shit to them?
- A: He killed him. 'Cause, you know, he don't like, he don't like Hispanics anyway.

AA07226

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
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EVENT: 980814-1600

CHARLA SEVERS AKA: LALA

Q: He didn't like Hispanics anyway. And then it made him upset because the guy was ...kept running his mouth?

A: Yeah.

Q: Is that the way he explained it?

A: Yeah.

Q: And did he say what room he did that in?

A: No. He didn't say.

Q: Did he say it was the same room or a different room?

A: Un un. He didn't say.

Q: Okay. Did he say if that was the first person that was killed?

A: Yeah, it was the first one.

Q: Did he say who he killed next?

A: No he didn't say. He just told me that he was the first one he killed and that was it.

Q: Okay. And did he say he did anything to keep people from hearing the shots?

A: He turned the music up real loud.

Q: And then so after he killed the first guy, what did he do next?

A: He didn't, he didn't say. He just told me he had to...he had to kill the Mexican dude 'cause he was talking shit and he don't like Mexicans anyway.

Q: And then what about the other three?

AA07227

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EVENT: 980814-1600

CHARLA SEVERS AKA: LALA

- A: He didn't say that he shot them. I don't know who shot them.
- Q: He just told you that he shot the Mexican kid 'cause he didn't like the Mexican kid and he was talking?
- A: Yeah.
- Q: Talking smack?
- A: Yeah.
- Q: And then he, did he say that the other ones had to die because they knew who he was?
- A: He, he said that after, that they had to kill them 'cause they knew who came to the house.
- Q: Okay. And was Tod still out in the car the whole time?
- A: Yeah.
- Q: That's what Deko said?
- A: That's not what he said but that's what I'm assuming...that he was still out in the car.
- Q: Okay. 'Cause he never, Deko never explained that he went into the house?
- A: Yeah.
- Q: Do you know, did he say where Tod parked the car and was waiting?
- A: In the front. Right in the front of the house.
- Q: Right in the driveway itself?

AA07228

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
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EVENT: 980814-1600

CHARLA SEVERS AKA: LALA

A: Yes.

Q: Did he explain, uh, if anybody was, was trying to get away or anything from them?

A: No.

Q: Did he explain if anybody made a noise?

A: When...after they got shot?

Q: Yeah.

A: Yeah. He said after he shot 'em, he just said (makes noise) and that was it.

Q: And...

A: After he shot the Hispanic guy.

Q: He said the guy made an "uh" noise?

A: Yeah.

Q: Did he say anything else about it?

A: (No audible response.)

Q: Did he say if the other boys tried to get up and run when they heard the Hispanic boy get shot?

A: No. They just said that it was quiet. They didn't say nothing.

Q: They just stayed right there?

A: Yeah.

Q: Did he say if they were face up or face down? Or how did he say they were?

AA07229

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PAGE 24

EVENT: 980814-1600

CHARLA SEVERS AKA: LALA

- A: Face down.
- Q: Face down. And, and where did he say they got shot?
- A: In the back of the head. Well, he, he told me he shot the Hispanic guy in the back of his head.
- Q: Did he say if he hit anybody with the gun?
- A: No. He didn't say that.
- Q: Did he say if anybody else hit anybody with a gun?
- A: No.
- Q: Did he say if they found any drugs there?
- A: No he didn't.
- Q: Did he say anything else about drugs there?
- A: No.
- Q: And how much money did he say they ended up with total?
- A: Just like 200 bucks.
- Q: 200 bucks and that was it?
- A: Yeah.
- Q: And did they find that on the boys or in the house?
- A: On...I think they found it on the boy.
- Q: Do you know which boy?

AA07230

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
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PAGE 25

EVENT: 980814-1600

CHARLA SEVERS AKA: LALA

A: No, I don't know.

Q: You're not sure?

A: I'm not sure.

Q: And then when they left the house did they leave the music up or did he say they turned the music back down?

A: I don't know. They didn't say.

Q: Where did they go after they left?

A: They came home...on, on Everman.

Q: And when they came home, did everybody stay there or did some of the people leave?

A: Um, I know they stayed there for awhile. And when I woke up the next morning, Tod wasn't there and Bug wasn't there. Just Red and Deko.

Q: And did Deko say he was concerned about any of the other guys because they hadn't come back?

A: Not the first, not the first night. But he said, um, the night, um, he said that a couple of nights later like the same night the SWAT team came in, he said that he...that Tod didn't come back and he must have been...didn't come back he was scared because he thought he was going to be killed or something for sending them on a bunk mission.

AA07231

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EVENT: 980814-1600

CHARLA SEVERS AKA: LALA

- Q: Because there was not the \$10,000.00 he told them about?
- A: Yes.
- Q: Did Deko tell him that he might kill him because it was a bunk mission because it was not like he said?
- A: No.
- Q: Did he give any, any reason that he would think that?
- A: No.
- Q: He just figured that's what Tod assumed on his own?
- A: Yes.
- Q: What about, um, Ace Hart and B.J.? Did they come over at a certain point afterwards?
- A: Yeah, they came, they came over, um, I can't recall what day it was but they came over when I was home. I was home by myself.
- Q: This the next day after the killing or the day after or what day exactly?
- A: It was on the next...it was, um, on Saturday...I believe it was on...no, it had to be...it was on Sunday that...like the Sunday after the murder.
- Q: Okay. And what, what did they say?
- A: They, um...
- Q: Did you hear them talking back and forth to each other?

AA07232

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EVENT: 980814-1600

CHARLA SEVERS AKA: LALA

A: Yeah. Um, Ace had...B.J. asked Ace "did, um, did, um, did they do it?" and he said "yeah." Then he asked them "did you, you didn't see the news?" And that was it.

Q: So B.J. asked Ace "did they do it?"

A: Uh huh.

Q: And Ace said "yeah they did...didn't you see the news"?

A: Yeah.

Q: Did they say anything else about it?

A: No, that was it.

Q: Did it sound like they heard about it after it happened or like they figured it was going to happen some time but they just didn't know when?

A: Yeah, they figured it was going to happen some time. They just didn't know when. That's what it sounded like to me.

Q: Had you heard either of them talking about it before that these guys had any money?

A: No.

Q: These boys?

A: No.

Q: So you're just judging that by what that conversation was that day?

A: Yes.

AA07233

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EVENT: 980814-1600

CHARLA SEVERS AKA: LALA

Q: What did they like to use?

A: Crack cocaine.

Q: How often would they use it?

A: Every, every day.

Q: A lot?

A: Yeah. A lot.

Q: Was anybody worse than anybody else or were they all about the same?

A: B.J. was worse.

Q: Do you know what B.J.'s real name is?

A: Um, I think it's Bryan but I don't know his last name.

Q: What does he look like?

A: He, um, tall white guy. He got like, um, he had a short haircut and brown hair. And he got like a lot of acne pimples in his face.

Q: Okay. What kind of car does he usually drive?

A: Um, he used to drive a Beamer.

Q: What color?

A: Black Beamer.

Q: Know what kind, what model?

A: Nuh uh.

AA07234

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PAGE 30

EVENT: 980814-1600

CHARLA SEVERS AKA: LALA

Q: New one or old one?

A: It was new, real new.

Q: And do you know if that was his or his parents?

A: It was his.

Q: And did his parents have a car that he would drive?

A: Yeah. He drove his mother's car. It was like a blue, I think, it looked like a Taurus,
Ford Taurus.

Q: Okay. What about Ace, did he have a car?

A: No.

Q: He would ride with who?

A: With B.J.

Q: Were they pretty tight?

A: Yeah.

Q: Would they be together most of the time would you say?

A: Yes.

Q: And what does Ace look like?

A: Um, he's, he's like medium, medium sized. He's a skinny white guy with blonde
hair.

Q: About how old?

AA07235

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EVENT: 980814-1600

CHARLA SEVERS AKA: LALA

A: Um, 20. He's 20.

Q: Okay. Kenny, do you have anything that you would like to ask?

KH: In reference to the murder of Snoop which is a murder that occurred at the Thunderbird around August 4th, did Deko tell you anything about that?

A: No.

KH: He...were you aware that Snoop was dead?

A: No.

Q: Did there come a time when Deko told you about anything happening with that white car that he was driving around in...about being stopped by the police or anything?

A: Well as far as me getting stopped by ...

Q: Not him...about him, him being stopped?

A: Oh yeah, that he had, um, jumped out and ran while he talked to the police for a minute. And then he, um, looked at Red and then he ran and Red seen him running and Red started running.

Q: Do you know what day that was?

A: Um, the...yeah...I think it's the night...the night the SWAT team came. I think it was like the 17th or 18th.

Q: That was the same day the SWAT team came?

AA07236

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EVENT: 980814-1600

CHARLA SEVERS AKA: LALA

A: Yeah.

Q: And do you know where he was when he ran from the police?

A: He was on the highway.

Q: Does he know who stopped him, if it was the Highway Patrol or if it was the Metro Police?

A: Highway Patrol.

Q: And did he say if they had any guns with them?

A: Yeah. They had, they had two guns with 'em.

Q: Which guns did they have?

A: They had the, um, the brown one with the holes on the top, the one, like...

Q: The rifle with the magazine you're talking about?

A: Yeah.

Q: And what kind...who had that gun?

A: Um, I don't know. Think took, think, um, took both of them.

Q: Okay. And what was the other gun?

A: The other gun? I think it was, um, a revolver.

Q: Okay. Do you know what happened to the gloves that everybody wore?

A: No.

Q: Do you know what happened to the gun that was used to shoot the boys?

AA07237

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EVENT: 980814-1600

CHARLA SEVERS AKA: LALA

A: No.

Q: Nobody ever told you about it?

A: No.

Q: Okay. Do you still have feelings for Deko?

A: Yeah.

Q: Is, is it hard for you to come forward and tell the truth about what happened?

A: Yeah.

Q: Because of your feelings?

A: Yes.

Q: And is it fair to say that even though it hurts you to have to tell us this, that you are telling us the truth now?

A: Yeah. (Crying)

Q: Are those same feelings that you have for him, is that what kept you from telling the truth originally?

A: Yeah. Yeah.

Q: Is what you told us now the truth?

A: Yeah.

Q: Okay. Is there anything else that you'd like to say before we stop?

A: No.

AA07238

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EVENT: 980814-1600

CHARLA SEVERS AKA: LALA

Q: Okay. That's going to be the end of the statement. The same persons are present.

The time is now 1900 hours.

**I HAVE READ THIS STATEMENT CONSISTING OF 34 PAGES AND AFFIRM TO THE TRUTH AND
ACCURACY OF THE FACTS CONTAINED HEREIN. THIS VOLUNTARY STATEMENT WAS COMPLETED
AT: CLARK COUNTY COURTHOUSE-4TH FLOOR ON THE 3RD DAY OF SEPTEMBER, 1998 AT 1900
HOURS.**

WITNESS: _____

WITNESS: _____

SIGNATURE OF PERSON GIVING STATEMENT

/kb
98v0735

AA07239

EXHIBIT 51

EXHIBIT 51

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 1

EVENT: 980814-1600

DATE: 09/08/98

TIME: 1704

PLACE: LVMPD DETECTIVE BUREAU, 400 E. STEWART

I, SIKIA LAFAYETTE SMITH, am 18 years of age, and my address is [REDACTED], [REDACTED], Las Vegas, Nevada 89101, telephone [REDACTED]

WARNING: *Before you are asked any questions, you must understand your rights.*

I am Detective J. Buczek of the Las Vegas Metropolitan Police Department and inform you that:

1. You have the right to remain silent.
2. If you give up that right to remain silent, anything you say can and may be used against you in a court of law.
3. You have the right to speak to an attorney before answering any questions, and to have an attorney present with you while you answer any questions.
4. If you cannot afford an attorney, an attorney will be appointed for you by the court at no cost to you, and you need not answer any questions until that attorney has been appointed for you.
5. If you decide to answer questions now, you may stop at any time and ask to talk to an attorney before any questioning continues.
6. If you decide to stop answering questions once you have begun, all questioning will stop.

WAIVER: *I have read this statement of my rights and I understand what my rights are. I am willing to make a statement and waive these rights. I do not want a lawyer present with me during the making of this statement. I know that I may revoke this waiver at any time during the questioning and ask that an attorney be present. No promises or threats have been made to me, and no pressure or coercion of any kind has been used against me.*

SIKIA LAFAYETTE SMITH

The following is the transcription of a tape-recorded interview of Sikia Lafayette Smith conducted by Detective James Buczek, P#3702, LVMPD Homicide Section. Also present is Detective T. Thowsen, P#1467, LVMPD Homicide Section. Sikia Smith is described as a black male adult, DOB [REDACTED], SS# [REDACTED]

Q. Sikia, are you aware that this is being tape recorded?

A. Yes, sir.

Q. Okay. Do you also go by another name?

A. Yes, Tiny Bug.

AA07241

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EVENT: 980814-1600
SMITH, SIKIA LAFAYETTE

- Q. Tiny Bug. Okay. Sikia, on, uh, uh, August 14th, 1998, there was a... a robbery that occurred over on Terra Linda. Uh, were you involved in that robbery?
- A. Yeah.
- Q. Okay. Now, starting from the beginning, when you g... when you were over at Todd's house, could you tell me what happened.
- A. We were over at Todd's house.
- Q. Who was at Todd's house?
- A. Uh, Todd, Donte, Red, myself and La-La.
- Q. Okay. What were you discussing?
- A. We were discussing, uh, goin' over to the guy's house. To over where, uh... You know. Where...
- Q. Where the robbery occurred?
- A. Yeah. Where—
- Q. Over on—
- A. —the robbery—
- Q. —Terra Linda?
- A. Yeah, Terra Linda.
- Q. Okay. What was bein' discussed? W... Could you tell me what you guys were talkin' about?

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
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EVENT: 980814-1600
SMITH, SIKIA LAFAYETTE

- A. Todd and Donte were talkin' about, um, you know, these guys was supposed to have a lot of money and drugs over there. And that they wanted... that Todd wanted the drugs, you know.
- Q. Okay. Okay, uh, did Todd ever take you guys over there and show you where the house was located?
- A. Um, never. Never when I was around.
- Q. Okay. How did you guys know where to go?
- A. Dante knew where to go.
- Q. All right. So, what was Todd wanting to get out of the... out of the house? What was... What was he looking for?
- A. Um, he was lookin' for rock. Cocaine.
- Q. Okay. Did he tell you what other types of drugs would be found in the house?
- A. No.
- Q. Okay. So, you guys decide to... on August 14th, to go over and do it. Was there any particular reason why that night?
- A. No.
- Q. Okay. So you... you were gonna leave the house. Do you bring anything with you?
- A. No.
- Q. You didn't bring a bag?

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EVENT: 980814-1600
SMITH, SIKIA LAFAYETTE

A. I didn't.

Q. Okay.

A. They did.

Q. Did someone bring—

A. Yeah.

Q. —a bag with them?

A. Red brought the bag.

Q. What was the bag... What did it look like?

A. It was a brown, like, tote bag. Like a... Like a, uh... uh, can't really... like a... like a bag, like.

Q. Kinda like a gym bag type thing?

A. Yeah.

Q. Okay.

A. Kinda like a gym bag.

Q. Okay. And what was inside the bag?

A. It was... it was some guns inside the bag.

Q. Anything else?

A. Mmm, some duct tape.

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EVENT: 980814-1600
SMITH, SIKIA LAFAYETTE

- Q. Okay. So you... you take... you guys take the bag and... and you get into a car.
What kinda car was it?
- A. It was a white car. I'm not sure what kind of car. A white four-door car.
- Q. Do you know whose it was?
- A. No, I don't.
- Q. Okay. So, what happens from there? Wh... About what time is it right now?
- A. Um... I'm not sure. I'm not sure.
- Q. Okay.
- A. Uh....
- Q. Was it dark out or was it light out?
- A. It was dark.
- Q. Okay. So, you guys drive over to the address on Terra Linda?
- A. Mm-hmm (affirmative).
- Q. Okay. Then what happens?
- A. Then we get out the car. And, uh, Donte and Red, they draw down on the guy. Tell him to go in the house.
- Q. What was the guy doin'?
- A. He was waterin' his grass.
- Q. Okay.

AA07245

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
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EVENT: 980814-1600
SMITH, SIKIA LAFAYETTE

A. Tell him to go in the house. T... Came in the house, there was another guy sitting in a chair. And they laid him on the grou... on the... on the floor. Red tied 'em... both of them up. Then we searched through the house for the drugs and the money. We didn't find anything. Red found about two hundred and somethin' dollars. And that was it.

Q. Did you guys take anything other than the two hundred and somethin' dollars?

A. No.

Q. You... you didn't take any, uh, uh, VCR or—

A. No.

Q. —play station or anything like that?

A. No.

Q. Okay. So, what happens after the two guys are... are taped? Does anyone else come up to the front door?

A. Yes. It was another guy. Came to the door. He had some beer in his hand. And we also brought him in. Tied him up.

Q. Okay. And, uh, does anyone else appear at—

A. Yeah.

Q. —the front door?

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EVENT: 980814-1600
SMITH, SIKIA LAFAYETTE

A. It was another guy. And he was brought in and he was took to the... the... the dining room. And also tied up.

Q. Okay. Now when you guys were... were there, did... did anyone go through their pockets?

A. Yeah.

Q. Who... Who went through the pockets?

A. Red.

Q. Okay. Anyone, uh, uh, uh, go... take anything out of their wallets?

A. Yes, Red.

Q. Okay.

A. He took some... some money.

Q. Okay. And, um, what did you and Donte do?

A. What... We were lookin' through the house.

Q. So you went through the different bedrooms and--

A. Yeah.

Q. --and, did you go through dresser drawers and...?

A. Yes.

Q. Okay. And, so now you guys are getting ready to leave?

A. Yeah.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
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EVENT: 980814-1600
SMITH, SIKIA LAFAYETTE

- Q. Okay. Could you tell me what happens at that point?
- A. After... after that point, uh, Donte, the victim in the... the far bedroom, he shot... he shot him.
- Q. The bedroom or the dining room?
- A. No, the dining room.
- Q. Okay.
- A. Excuse me. And he shot that victim. And then he shot the other three victims.
- Q. Do you know where he shot 'em?
- A. Uh, I think in the head, I'm not sure.
- Q. Okay. And, Donte, do you know his full name?
- A. No, I don't.
- Q. You just know him as Donte?
- A. Yeah.
- Q. Does he have any other street names or anything like that?
- A. No. Oh, uh, Deko. I know him by Deko. (Name spelled phonetically)
- Q. Okay.
- A. ____ Deko.
- Q. Okay. So the, what happens after that? Did... prior... prior to the... to the shots bein' fired, did, uh, anything happen? Did Donte do anything?

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- A. No. What do you mean?
- Q. Did he turn up the music or--
- A. Yeah, oh, yeah, he turned up the music.
- Q. Okay, what... Do you know why he turned up the music?
- A. I guess to kill the... the s... the so... the sound of the gunsh... gunfire.
- Q. Okay. So, at that point do you guys get in the car and leave?
- A. Yes.
- Q. Where'd you go to from there?
- A. We went back to Todd's house.
- Q. Okay. Uh, what did you do at Todd's house?
- A. Mmm, we sat at Todd's house for... told Todd what went on.
- Q. Okay. What did you guys tell him?
- A. Well, I'm not sure what they were tellin' him. Uh, I don't know, 'cause he was pretty upset.
- Q. Well, why was he upset?
- A. I guess we because we didn't come back with cocaine.
- Q. Okay. Now, how... how long were you guys gone, do you know?
- A. Mmm, I'm not sure, maybe about a... about a hour maybe.
- Q. Spent some time in the house then?

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A. Yeah.

Q. Okay. Tom.

TT. Yes. Uh, you mentioned earlier that when you were over at Todd's house, you...
you made two different trips from Todd's house over to the place.

A. Yeah.

TT. Before it actually happened. Which of those times was it that you were saying that
it was first discussed that, uh, the people in the house would have to be killed?

A. Uh, the first time.

TT. The very first time.

A. Yeah.

TT. And who brought that up?

A. Uh, Todd brought that up.

TT. What did he say exactly?

A. He said that if we were to go over here and do what we're gonna do, that they
would have to be killed because he knew... because the guys knew, you know,
where he lived and everything.

TT. And did they know anybody else also?

A. Oh, they knew Donte, too.

TT. And did Todd say that he was worried about them knowing anybody else?