

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 83796

DONTE JOHNSON,
Petitioner,

Electronically Filed
May 27 2022 06:05 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

Volume 32 of 50

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

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

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210. Post –Evidentiary Hearing Supplemental Points and Authorities, Exhibit B: Affidavit of Wilfredo Mercado, <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154, June 22, 2005	02/13/2019	46	11578–11579
211. Genogram of Johnson Family Tree	02/13/2019	46	11580–11581
212. Motion in Limine Regarding Referring to Victims as “Boys”, <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154	02/13/2019	46	11582–11585
213. Declaration of Schaumetta Minor, (Dec. 18, 2018)	02/13/2019	46	11586–11589
214. Declaration of Alzora Jackson (Feb. 11, 2019)	02/13/2019	46	11590–11593
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1. <i>Holloway v. Baldonado</i> , No. A498609, Plaintiff’s Opposition to Motion for Summary Judgment, District Court of Clark County, Nevada, filed Aug. 1, 2007	12/13/2019	49	12200–12227
2. Handwritten letter from Charla Severs, dated Sep. 27, 1998	12/13/2019	49	12228–12229

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216. <i>Holloway v. Baldonado</i> , No. A498609, Opposition to Motion for Summary Judgment Filed by Defendants Stewart Bell, David Roger, and Clark County, District Court of Clark County, filed Jan. 16, 2008	12/13/2019	48–49	11868–12111
217. Letter from Charla Severs, dated Sep. 27, 1998	12/13/2019	49	12112–12113
218. Decision and Order, <i>State of Nevada v. Johnson</i> , Case No. C153154, District Court of Clark County, filed Apr. 18, 2000	12/13/2019	49	12114–12120
219. State's Motion to Disqualify the Honorable Lee Gates, <i>State of Nevada v. Johnson</i> , Case No. C153154, District Court of Clark County, filed Apr. 4, 2005	12/13/2019	49	12121–12135
220. Affidavit of the Honorable Lee A. Gates, <i>State of Nevada v. Johnson</i> , Case No. C153154, District	12/13/2019	49	12136–12138

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223. Declaration of Dayvid J. Figler, dated Feb. 10, 2020	02/11/2019	49	12245-12247
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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

1 didn't tell him the witnesses he was scary, they told me
2 that.

3 Ace Hart said he left Everman because
4 he was worried. He didn't like it. He wanted him to
5 leave.

6 There was also I think some talk about
7 Sikia's drug dealing and that making him smart. And to
8 hear Mr. Daskas tell you you have balance sheet and
9 quarterlies, you file taxes and now it is complicated stuff
10 --

11 MR. DASKAS: I don't recall arguing that.

12 THE COURT: Sustained.

13 MR. CHRISTIANSEN: Sophisticated business. Use
14 your common sense.

15 How much brains does it really take if
16 that's all you have ever seen?

17 Let's talk about the law a little bit.
18 The statement that Sikia gave the police ultimately you
19 folks are entitled to decide and you are actually called
20 upon to decide in jury instruction number 47. I believe it
21 is 47. My numbers might be one or two off, is whether the
22 statement was voluntarily given. That was a question for
23 the jury.

24 And the State has an obligation to show
25 that beyond a reasonable doubt that the statement was

1 voluntarily given.

2 If you -- it says right here -- "if the
3 evidence in the case leaves the jury with a reasonable
4 doubt as to whether an admission or confession was volun-
5 tarily made, then the jury should disregard it." Okay. So
6 that's your job.

7 And this first big paragraph is how
8 when you -- what you apply to the facts you heard in this
9 case to decide to yourselves was it voluntarily made. And
10 you are free to read it and offer your own definitions and
11 discussions with each other as to what some of these
12 phrases mean.

13 And then you are free to remember the
14 taped confession, the taped confession, the taped statement
15 of Sikia Smith.

16 I think we all said it was eighteen
17 minutes is the right number, eighteen minutes where the
18 tape was on, where Detective Buczek, and at the end I think
19 Detective Thowsen, were questioning Sikia, were leading the
20 conversation.

21 And Dr. Bittker even had to agree with
22 me when I said "who led the conversation you read" as he
23 got done reviewing the taped statement. And he didn't want
24 to agree with me much that day.

25 But, he did side when police turned the

1 tape recorder the questions were asked and then turned off
2 and how to steer that conversation, how to steer this kid.

3 And they spent twenty-four minutes
4 getting him ready to take a statement.

5 And so the last thing you need to
6 believe I order to decide whether the statement wasn't
7 voluntarily given is that the police are somehow evil and
8 they somehow did something bad and coerced this kid and
9 threatened him and stood on him while he gave his state-
10 ment. That's not the law.

11 Okay. Both the detectives, Thowsen and
12 Buczek said that they didn't know or really even think
13 about the mental abilities of Sikia Smith. Both of them
14 said that on the stand from here and they are being candid,
15 good detectives, honest policemen.

16 And what was their job on that day on
17 September 8, 1998? Their job was to get a confession.

18 They had a statement. They already had
19 one statement. Remember they already talked to Red. That's
20 one of the detectives told us.

21 And he even told us that before he
22 turned the tape on he told that to Sikia.

23 Imagine something like this: "Sikia, we
24 already got Red's version. We know you were not the
25 shooter. Why don't you go on and give it up." That's a

1 reasonable inference you are entitled to draw.

2 You are entitled to think about how
3 they prepped Sikia and "prep" is a good word, and I think
4 the detectives both candidly told you that they do that,
5 they prep, they get a version of events from a witness or
6 a suspect and then in their mind they decide how they want
7 to go through to get it out in logical fashion.

8 So, when there is a transcript made and
9 when everybody has a chance to read it, it makes sense;
10 they don't want people jumping back and forth.

11 I think Detective Thowsen sometimes he
12 lacks chronological order. And that's what they did.
13 That's their job to lead that conversation.

14 Anybody that's got children knows how
15 hard it is to lead a third grader. And I would submit
16 there has not been one doctor who took the stand in this
17 courtroom in the last two weeks who characterized Sikia's
18 intellect as anything more than a third grader.

19 You ever tried to lead a third grader
20 through a conversation? Have you ever done it? It's not
21 real tough.

22 I mean, I was able to lead doctors
23 through conversations, decide what questions to ask them,
24 decide how to phrase the question. Much like the detec-
25 tives.

1 Sometimes I even decided how to finish
2 the answer.

3 Now, I am no saying they finished it
4 from a yes to a no but they steered it. They decided how
5 to ask things and how to get what they wanted because they
6 know the law. They are good cops. Good detectives. Smart
7 guys.

8 They know and they knew back then what
9 they had to get to support a case.

10 They started out with goal much like
11 Dr. Bittker. They started out with a goal -- remember Dr.
12 Bittker? He said his goal was to find Sikia knew right
13 from wrong. That was the goal, not whether but to go find
14 it.

15 The police officers had a goal: Get a
16 confession.

17 Imagine the scenario, in twenty-four
18 minutes we don't have a tape where a version of events
19 comes out that doesn't jive with the version the police
20 officers already know and for a second do you think they
21 let that version go that way or do they say, "come on,
22 Sikia, just not giving it up right. We know this is how it
23 happened."

24 Imagine doing that to a third grader.
25 Pretty soon you get them buying off on exactly what you

1 want.

2 Okay. And I want you to look at this
3 instruction when you go back. You get to determine whether
4 it was a voluntarily made statement.

5 The law says if it appears from the
6 evidence of the case that a confession or admission would
7 not have been made, but for some harm or offer or promise
8 of immunity from prosecution, Sikia, if you give it up we
9 will probably go easy on you.

10 Does that sound too out of line?
11 Leniency and punishment? This is going to go a lot easier
12 on you, Sikia, if you get in line and give it up like we
13 know it went down.

14 Or other reward.

15 And now, remember, one other thing.
16 This isn't the average high school graduate in their mind
17 deciding whether there has been offers of leniency,
18 immunity, punishments or rewards given. This is a third
19 grader -- a third grader deciding that in his mind before
20 he complies and gives a very, very -- I am trying to think
21 of the right word -- perfect statement. It is so perfect
22 it borderlines on the unbelievable. State's witnesses bear
23 that out.

24 Remember Dr. Green? Dr. Green, in
25 response to I think Mr. Guymon's question says -- and this

1 is gruesome and nobody likes to talk about it but it is
2 what happened.

3 Dr. Green says -- Mr. Guymon asks him,
4 "Doc, after one of these boys were shot would they have
5 wiggled around for a few minutes?" Because that's in the
6 confession. Remember, that's in the statement. It is
7 right at the end. Look for it when you turn it on.

8 The police got Sikia to say these
9 people wiggled around. Some of the victims were wiggling
10 after Donte shot them or one of them.

11 And I know this is callous, but the
12 facts are that that's impossible. Medically impossible.
13 That's what Dr. Green told you.

14 MR. GUYMON: Judge, I am going to object. He said
15 their bodies would have a spasm or a reaction, a jolt is
16 his quote.

17 MR. CHRISTIANSEN: My recollection is Mr. Guymon
18 said -- asked the doctor, "would these bodies potentially
19 wiggle around for minutes?"

20 MR. GUYMON: Judge, I am going to object.

21 MR. CHRISTIANSEN: That's my recollection.

22 THE COURT: No, he didn't ask that.

23 MR. CHRISTIANSEN: Those are the State's wit-
24 nesses.

25 Dr. Green by himself proved to you, I

1 would submit, that this confession was not knowingly,
2 voluntarily, intelligently made.

3 And here is the law right here. And it
4 is your job to read it and decide whether a third grader
5 what he was doing when he went along with the leading
6 questions when he let the police answer some of his
7 statements and he gave that statement of September the 8th.

8 And in probably a four by five concrete
9 room at the detention center were two experienced and
10 really smart homicide detectives.

11 And a couple of things that I point out
12 and submit way in favor of it wasn't a voluntary confes-
13 sion, one, the lack of waiver.

14 The detective said, "well, Sikia read
15 the waiver of rights card." But the detective, Detective
16 Buczek candidly admitted in this case he forgot to put it
17 on, you know, the tape and you won't hear it on the tape.
18 Play the tape, listen to the tape. It is not there.

19 But, it was there on the 26th. It was
20 there. And Detective Buczek said, "well, I breached my own
21 habit or code or policy." That's one place. And another
22 thing that kind of weights against Sikia really under-
23 standing what was going on and voluntarily talking on his
24 own volition that day is what's been submitted into
25 evidence by the State. It is the right or the consent to

1 search card.

2 Look on the card. It is one of the
3 exhibits.

4 Court's indulgence.

5 It is defendant's Exhibit C. You guys
6 get this to go back to the room with you.

7 Look at the bottom half of it where it
8 is the consent to search card.

9 And there is a spot where it says "I,"
10 and you will notice it says Sikia Smith signs it.

11 But then who has to write in Sikia's
12 name for him? Who had to fill out this card? That was the
13 detective. I think it was Detective Thowsen, Tom Thowsen.

14 He was bright enough that they weren't
15 concerned about his intellect but he couldn't fill his own
16 card out.

17 It says "I, Sikia Smith, give you a
18 right to take my blood" --

19 MR. DASKAS: Judge, I am going to object. There
20 is no testimony he couldn't fill out the card. It was
21 their practice to fill it out and have the suspect sign it.

22 THE COURT: Sustained.

23 MR. CHRISTIANSEN: If you take the statement and
24 you set it aside, what other evidence do you have in this
25 case? About Sikia's knowing involvement?

1 He told LaShaun after the fact what had
2 happened, and I think the words were once they got there
3 something had starting going wrong.

4 He told the doctors similar things to
5 that. A number of doctors.

6 And this is a guy who is not very
7 consistent in terms of remembering data and specifics and
8 everything else. But that is consistent throughout the
9 doctors. That is uncontroverted.

10 There is a law called the conspiracy
11 law, and Mr. Daskas talked to you about that.

12 And he focused on a middle part of it,
13 the act of one is the act of all.

14 That I think is jury instruction number
15 13, and he's got it here somewhere.

16 But it wasn't until I objected and
17 asked for the whole thing to come in that this portion
18 which is imperative in this case was read to you.

19 Every conspirator is legally responsi-
20 ble for an act of a co-conspirator that follows as one of
21 the probable and natural consequences of the object of the
22 conspiracy.

23 And it says "even though it was not
24 intended as a part of the original plan and even if it was
25 not present at the time of the commission of such acts."

1 So, for Sikia to be guilty of any
2 conspiracy or any of the acts that -- the conspiracy was
3 intended to achieve, he had to understand the natural and
4 probable consequence --

5 MR. DASKAS: That's not the law.

6 MR. CHRISTIANSEN: It is a jury instruction.

7 MR. DASKAS: The instruction is that the end
8 result is natural and probable cause, not that he under-
9 stands it.

10 THE COURT: Sustained.

11 MR. CHRISTIANSEN: Clearly Sikia had to understand
12 and have the requisite intent to commit the underlying acts
13 to make him culpable for the conspiracy.

14 And that gets us into his mindset, his
15 knowing.

16 What did he know that is vital to the
17 defense in this case? It is something you need to con-
18 sider.

19 Instruction 20 talks about the con-
20 spiracy to commit homicide and the conspiracy under the
21 felony rule that Mr. Daskas talked to you about.

22 And the important parts of that that I
23 would focus your attention on is this word right here
24 "knowingly and dangerously," okay, where the purpose of a
25 conspiracy is to knowingly commit a dangerous felony.

1 Knowingly and dangerous.

2 Not much different than a natural and
3 probable consequence. The ability to in the abstract
4 understand what's going to happen.

5 Every doctor that took this stand said
6 Sikia is flat, one dimensional. I take that back. Dr.
7 Bittker didn't say that. He wouldn't get into that with
8 me.

9 Dr. Sapp and Dr. Colosimo both testi-
10 fied that Sikia doesn't understand things in the abstract.
11 He doesn't understand the natural and probable consequences
12 of his actions and doesn't knowingly a lot of times do
13 stuff like you and I do things.

14 A third grader -- how does a third
15 grader know right from wrong? Because mom or dad has told
16 him or they see mom or dad do things.

17 Dr. Sapp explained to you that without
18 those types of role models or instruction at that impres-
19 sionable age with somebody with limited intellect, who is
20 flat and one dimensional, you don't understand. You don't
21 know something is dangerous.

22 You don't understand the natural and
23 probable consequences. You just don't get it that way.

24 That's the facts. You just don't get
25 it that way.

1 Like it or not, it is just like a third
2 grader. When does a third grader know something they are
3 doing for the first time may result in harm. It is when
4 you go off the jump on your little bicycle and you fall
5 flat on your face, that jump was too big, I shouldn't have
6 done that, and I am not going to do it again. That's when
7 you know.

8 Sikia is not a kid on a bike. He is a
9 kid that grew up in a crack house -- to a crack-addicted
10 mom, that he was taken by CBS when he was eight years old.

11 And I point out to you that none of the
12 State's doctors got up on the stand and said back in August
13 of 1998 "I can tell you people how this kid's mind worked."
14 None of them did that.

15 All of them got up and said when I
16 interviewed him months after the fact, he knew -- he knew
17 what happened was wrong. He knew. The State's doctors
18 said that.

19 Well, of course he knows now. But how
20 did his mind think about it then? Did he formulate
21 deliberate, premeditate intent?

22 Did he understand the natural and
23 probable consequences of going to that house that somebody
24 was going to die?

25 I would submit that the doctors we have

1 put up, Dr. Sapp who has examined hundreds of African-
2 American kids like Sikia and Dr. Colosimo are more credible
3 than the State's doctors. And that's for you to decide and
4 their opinion needs to be taken into consideration.

5 The State didn't put anybody up that
6 knew about the PCP. Dr. Mortillaro clearly didn't know
7 about it.

8 And we when asked about it he agreed
9 that it is a frontal lobe damage that inhibits the way you
10 process information, the way you think about the natural
11 and probable consequences of what you are going to do.

12 It is a disassociative drug.

13 In short, Dr. Kinsora talked about it.
14 He said in clinical studies he's seen what it does to
15 people.

16 And nothing the State has put on here
17 has shown to any degree of certainty, any degree of
18 certainty how that PCP that is uncontroverted this kid
19 ingested on the night in question affected his ability to
20 rationally think and to understand the natural and probable
21 consequences of what he does.

22 This isn't cute like lawyer words.
23 This is the law. You have to be able to do that.

24 And if you can't do it, you can't be
25 criminally culpable.

1 Mr. Daskas' recollection of Dr. Kinsora
2 said Sikia was as high as any other night. I recall him
3 saying he was extra high that night according to what Sikia
4 told him but that the ingestion of the drugs were the same
5 as on other days.

6 I thought Dr. Kinsora said that he was
7 extra high. That is something for you to consider.

8 The State has shown you the felony
9 murder instruction and gone over it with you pretty
10 thoroughly.

11 But, I would like to show you what's
12 been offered as an instruction as an alternative and talk
13 to you about it.

14 And that's instruction 42. And it is
15 the second-degree felony murder instruction.

16 In the first-degree murder instruction
17 remember I told you that they, the State has to show beyond
18 a reasonable doubt that Sikia had the subjective -- that
19 this kid had the ability to formulate the intent to commit
20 the underlying crimes understanding the natural and
21 probable consequences of what he does.

22 MR. DASKAS: Judge, I am going to object again.
23 He does not need to understand the natural and probable
24 consequences. The question is whether the end result was
25 a natural and probable consequence.

1 THE COURT: Rephrase it. You can read the
2 instructions for yourselves.

3 MR. CHRISTIANSEN: That is a subjective standard
4 as to Sikia. This instruction is a little bit different.

5 MR. GUYMON: I am going to object.

6 MR. DASKAS: Objection.

7 THE COURT: That is not there, Mr. Christiansen.
8 They can read the instruction. Don't misstate the instruc-
9 tions in final argument, please.

10 MR. CHRISTIANSEN: I apologize, Judge, if I did
11 that.

12 This instruction says the unlawful
13 killing of a human being with malice aforethought but
14 without a deliberately formed and premeditated intent to
15 kill is murder of the second degree when the killing
16 results from an unlawful act the natural consequences of
17 which are dangerous to life which act is intentionally
18 performed by a person who knows that his conduct endangers
19 the life of another even though the person has not specifi-
20 cally formed an intention to kill. Not specifically formed
21 an intention to kill.

22 There is nothing in this case that
23 shows that there was a specific intention to kill on the
24 part of Sikia.

25 This is a standard that you can apply

1 to the facts of this case as a lesser included offense of
2 first-degree murder under the felony murder rule as Mr.
3 Daskas and I have both talked about it to you.

4 To find Sikia guilty of the second
5 degree you don't have to show that he deliberately formed
6 and premeditated intent. You need not find that in this
7 particular case.

8 The police on the day they questioned
9 Sikia weren't concerned about his I.Q. And today as we sit
10 here the State has asked you to not be concerned about his
11 I.Q.

12 Don't be concerned about holding
13 mentally retarded, mildly mentally retarded individual who
14 doesn't think like you and me or part of the dominant
15 society like Dr. Mortillaro put it.

16 The message of the State, don't be
17 concerned about that and hold him responsible because Deko
18 is an evil, scary kid that murdered these four boys at
19 Terra Linda.

20 You have a hard job. I hope you
21 deliberate and give yourself the opportunity to afford this
22 entire process of the weight it deserves.

23 Mr. Sgro now has the opportunity to
24 talk to you a little bit.

25 And I thank you for your time.

1 THE COURT: Thank you, Mr. Christiansen.

2 Mr. Sgro?

3 MR. SGRO: May I proceed, your Honor?

4 THE COURT: Yes.

5 MR. SGRO: Only two more to go, ladies and
6 gentlemen.

7 Ladies and gentlemen, you have heard a
8 lot about countability in this case. You heard an opening
9 statement that talked about accountability. You heard a
10 closing statement by Mr. Daskas that talked about being
11 accountable.

12 And I ask you to hold everybody
13 accountable in this case including to the extent that
14 representations are made in this case about what the
15 evidence showed what the evidence didn't show.

16 What the opening statement given to you
17 by Mr. Guymon showed, he said it was kind of like a road
18 map or a guide or a table of contents of what the State
19 estimated that the evidence was going to prove to you.

20 I would ask you to keep in mind the
21 comments Mr. Daskas made about he's borderline intellectual
22 functioning or however he characterized it and remind you
23 of the following statement.

24 You may conclude from the evidence
25 despite what psychiatrists or psychologists come into this

1 court and say that Sikia Smith is not a bright young man
2 academically; that he may be mildly mentally retarded; that
3 he may not have done well in school; he is not a college
4 graduate, not even a high school graduate.

5 That's what Mr. Guymon told you the
6 evidence was going to show nine days ago or seven days ago.

7 Today, Mr. Daskas abandoned that
8 position and he in all candor just argued a little too hard
9 in this case because he represented things to you that did
10 not get borne out in this case.

11 The way this case breaks down, ladies
12 and gentlemen, at least from how we have viewed it is
13 somewhat complex in some counts and somewhat easy in
14 others.

15 If you recall the instructions that
16 were read to you in the counts that were charged in this
17 case, you have some counts that involve what is called a
18 specific intent. Okay.

19 And instruction 27 defines what a
20 specific intent is as more than general intent to commit
21 the act.

22 In other words, we have certain levels
23 of intent in our system depending on what the charge is.

24 And we have what's called a general
25 intent and we have what's called a specific intent which

1 requires more or a higher standard.

2 It requires more thought process in it
3 because it requires not only the act such as breaking and
4 entering into a home like a burglary, it also requires the
5 added element of intent to do something else after you have
6 gone into this home.

7 Now, Counts VII through X and Count XI
8 through XIV, okay. Count I is burglary, Count VII through
9 X are kidnaping and Counts XI through XIV are murder.

10 And XI through XIV in terms of first-
11 degree murder, not felony murder rule, all would involve a
12 specific intent element.

13 It appears therefore that your analysis
14 when you get back to the jury room can be divided into
15 specific intent crimes which appears to be the most easiest
16 to resolve because we have been talking about the most
17 fundamental ability a human person is supposed to have and
18 that is the ability to distinguish between right and wrong.

19 Burglary and kidnaping and first-degree
20 murder on a non-felony murder rule basis require even more
21 than that.

22 It should be fairly simple, therefore,
23 to resolve Counts I and VII through X with verdicts of not
24 guilty because they involve the highest standard of intent
25 we know in our system.

1 In terms of what the evidence showed in
2 this particular case, I turn immediately to the doctors.
3 And I ask you to contemplate whether or not this is psycho
4 babble or whether or not this is somewhat of a legitimate
5 science.

6 You were all asked in voir dire whether
7 you could follow the law regardless of sympathy and
8 prejudice you may have.

9 And you were all asked if you were
10 comfortable assessing credibility and you all indicated you
11 could do all those things.

12 Dr. Bittker and Dr. Mortillaro were
13 called by the State to tell you about Sikia Smith's mental
14 functioning.

15 Dr. Bittker and Dr. Mortillaro con-
16 flicted on significant areas in their testimony from who
17 was the most qualified to make the determination to whether
18 Sikia Smith was mildly mentally retarded.

19 If you recall, Dr. Bittker in his
20 report said Sikia Smith is mildly mentally retarded.

21 Dr. Mortillaro disagreed with that.

22 And I would point out something
23 interesting. Dr. Mortillaro said 75 percent of the times
24 he testifies for defense or for the defense and 25 percent
25 of the time he testifies for the State.

1 You have just heard in a closing
2 statement and you may well hear it in rebuttal about how
3 credentialed Dr. Mortillaro is about the fact he is the
4 president of the Board of Psychology and numerous other
5 things.

6 Now, imagine what the argument would be
7 by the same two prosecutors if Dr. Mortillaro in this case
8 had gone to the 75 percent of the defense. Would they
9 still be as willing to embrace his credentials as they are
10 today?

11 And that is pivotal in terms of
12 assessing who is more credible.

13 Is Dr. Mortillaro an individual who
14 simply goes where the money goes? Ask yourself that
15 question.

16 He obviously doesn't have any affinity
17 for a cause or any strong beliefs or whatever. Whoever
18 hires him that's who he testifies for.

19 Ask yourselves with regard to Dr. Sapp
20 and Dr. Colosimo what they testified to in terms of the
21 I.Q.

22 Remember, no one disputes the fact the
23 defendant a 73 I.Q. in this case.

24 No one disputes the fact that the DSM
25 4 is not a cookbook which was a term that was thrown

1 around.

2 The only difference of opinion that has
3 existed in this case in terms of whether or not Sikia Smith
4 is mildly mentally retarded or worse is the subjective
5 interpretation of objective data.

6 In its most simplest form that's what
7 it gets down to.

8 And think about this. Sikia Smith is
9 in trial. He has been in trial for eight days and he has
10 a doctor, Dr. Mortillaro see him one day or two days before
11 his trial is over.

12 Sikia Smith, just like you all did,
13 heard opening statement. He heard Dr. Colosimo come in and
14 say he was mildly mentally retarded.

15 He heard all sorts of things about the
16 idiot defense, if you will.

17 He heard himself being described as an
18 idiot.

19 And yet, after Dr. Mortillaro goes and
20 speaks with him he tries to do math problems. He tried to
21 read.

22 And the very fact that he tried to read
23 is used against him in this courtroom before you all.

24 And I ask you, what speaks more to the
25 fact that he doesn't fully appreciate the consequences of

1 his actions than when he provides the very testimony the
2 State relies on and they will now tell you he knows -- they
3 now tell you he knows right from wrong.

4 Come on, if the guy was street smart,
5 if he had this sophistication or he's that willing and
6 dealing drug dealer and he knew all this stuff out there on
7 the street and could take care of himself, wouldn't concern
8 number one be to act as mentally retarded as he could?
9 Wouldn't he say to Dr. Mortillaro when Dr. Mortillaro says
10 touch your head? Wouldn't he grab his chest? Wouldn't he
11 stick his arm in the air? Wouldn't he add 4 plus 8 as 17
12 instead of 12?

13 He didn't do that. And, in fact, not
14 one doctor came in here and told you that he ever faked
15 anything.

16 To the contrary, he cooperated.

17 MR. DASKAS: I will object to that, Judge. The
18 results of the MMPI suggests that he falsely claimed
19 psychological problems and that's the testimony.

20 MR. SGRO: The MMPI results said he falsely
21 claimed or alternatively couldn't read the questions.

22 There was an invalid profile in the
23 MMPI if you recall this chart of five questions that Mr.
24 Daskas would show five out of 370 or 390 questions and they
25 were true false questions.

1 The testimony was that there were
2 different possibilities as to why the MMPI was invalid.

3 And in an abundance of caution, all the
4 possibilities were thrown out.

5 Of course, Mr. Daskas says well it had
6 to be because it was deceitful.

7 Other doctors said the range of
8 possibilities also includes the fact that he couldn't read,
9 therefore he couldn't understand, therefore marking true
10 and false was of no consequence because he couldn't
11 understand the question.

12 And in terms of the DSM 4, you heard
13 about this chart that exists in the book where the break-
14 off for mentally retarded individuals is 69 and below.

15 You heard that he has an I.Q. of 73 and
16 there is a two point differential according to Dr.
17 Mortillaro. Fifteen point upward addition that needs to be
18 made according to Dr. Bittker.

19 And you heard about the ceiling in
20 terms of what Dr. Sapp told you.

21 I asked Dr. Mortillaro not being a
22 psychologist, can you just get the number and go to the
23 book and tell what somebody is? And he said "no."

24 In fact, the very next page of that
25 same book says that a psychologist has to bring his or her

1 experience to the table with the I.Q. to make an assessment
2 of where that person is.

3 And no matter how many times the
4 doctors reiterated the fact it is not a cookbook, the State
5 insists that 73 means he is not mildly mentally retarded.

6 But they don't have a doctor who said
7 that. It is not in the chart.

8 Dr. Mortillaro was asked about the term
9 "idiot." An idiot has been defined for you in the jury
10 instructions as someone who has a -- who is destitute of
11 mind at birth. That's instruction 48.

12 A person of weak and feeble mind from
13 birth as rendering him incapable of knowing right from
14 wrong or, and here is the part the State has never ad-
15 dressed in the statement I have heard them tell you or even
16 if you know right from wrong because you have such a weak
17 mind you have no willpower to resist. Okay. That's the
18 complete definition.

19 And I would urge you regardless of what
20 you have heard any lawyer say, go back if you refer to n
21 instruction and you have the concerns about it, read the
22 whole thing. Read the whole thing.

23 You saw the experience we had in trial
24 of the State handing doctors a report and asking them to
25 read half a sentence.

1 So, please go back and read the whole
2 thing if you are concerned about a particular instruction.

3 Dr. Mortillaro interestingly enough was
4 asked a very specific question by Mr. Guymon. "Why in your
5 opinion does Sikia not fall within this definition?" And
6 the answer "you would see a lot of acting out behavior.
7 You would see a lot of violence. See a lot of self-
8 gratification. It is not unusual for those individuals to
9 be extremely promiscuous sexually."

10 Those three reasons, ladies and
11 gentlemen, are Dr. Mortillaro's reasons why Sikia Smith
12 does not fall within this definition.

13 Every one of those three reasons has
14 been demonstrated to you.

15 He was described by Dr. Bittker as
16 someone who would be prone to violence.

17 It was Mr. Daskas who kept throwing
18 those five true and false questions and talk about anti-
19 social behavior about being aggressive.

20 Remember that it was Dr. Bittker who
21 said indulging in drugs is a manifestation of someone
22 seeking out self-gratification.

23 It is in evidence that Sikia Smith at
24 nineteen years old has three children already. And that
25 appears to go along the line with extremely promiscuous.

1 Mortillaro who was retained two days
2 ago to go spend an hour and a half with Sikia and come into
3 court is the only one who disagrees with the fact that
4 Sikia Smith cannot fully appreciate the consequences of his
5 actions.

6 Even Dr. Bittker says he cannot fully
7 appreciate the consequences of his actions.

8 Now, he tried to explain that here in
9 court.

10 Dr. Sapp said the same thing, so did
11 Dr. Colosimo. Dr. Mortillaro says it is not true.

12 Dr. Mortillaro is the only one who says
13 that he's not mildly mentally retarded. Every other doctor
14 including Dr. Bittker indicated he was.

15 Dr. -- much was made about Dr. Sapp
16 never being called as a prosecution witness.

17 You will recall Dr. Bittker has never
18 worked for a defendant in the city of Las Vegas.

19 You will recall him testifying that
20 he's never found an African-American male to be incompe-
21 tent.

22 He has never found an African-American
23 male to be retarded.

24 Recall that testimony when you think
25 what bias exists in this case.

1 You also heard, as Mr. Christiansen
2 pointed out, that he was given a directive. Go find what
3 evidence there is to show Sikia Smith can prove between
4 right and wrong as opposed to go find out whether there is
5 any.

6 Ladies and gentlemen, that's a critical
7 distinction.

8 You will also receive an instruction
9 which was read to you yesterday. And we call this the
10 voluntary intoxication instruction.

11 And essentially -- and it is instruc-
12 tion 50.

13 Essentially this instruction stands for
14 the proposition, and again, like it or not, if you drink
15 alcohol, if you ingest drugs and it affects your state of
16 mind, it provides consideration in terms of whether or not
17 a person had an intent and an ability to form an intent to
18 perform a specific act.

19 And it seems somewhat ironic -- and we
20 are in the confines of a courtroom and the white walls and
21 everything and we are supposed to recognize certain things,
22 but it is no easy thing to argue to you that the fact that
23 a person commits a crime by ingesting an illegal drug
24 provides an excuse to another crime.

25 It may appear to you to make no sense.

1 In fact, you heard much in the voir dire process about
2 whether or not someone who takes drugs whether or not
3 that's an excuse, whether they should still be held
4 accountable.

5 But, you know what? We all live under
6 a system that says that even if you commit a crime by
7 taking the drugs, it still has to be considered in terms of
8 intent.

9 Like it or not, ladies and gentlemen,
10 you heard uncontroverted testimony about PCP use.

11 Even the State's witnesses, Dr. Bittker
12 and Mortillaro, told you about the incredible effects of
13 PCP, that it is a disassociative drug and that it makes you
14 have out-of-body experiences, it causes you to do things
15 you wouldn't normally do including violent behavior.

16 And it is something relevant for your
17 consideration when you go back into the jury room in
18 determining the extent to which the use of PCP would affect
19 someone who already has an overall low mental capability.

20 And if you recall the doctors when you
21 assess credibility and what to attach in their testimony,
22 remember Dr. Mortillaro when he said, "well, we all have
23 value systems."

24 And I asked him, "well, where do we get
25 that?" And he said "well, dominant American." I just

1 couldn't believe he said that. Dominant America.

2 And then he tried to equate dominant
3 America to Sikia Smith.

4 And I asked him is someone who grows up
5 with a mom who is addicted to crack, whose dad is in prison
6 and who has no recollection of from birth to age eight and
7 was born a crack baby, who has organic brain damage, is
8 that dominant America?

9 And then he finally admitted that his
10 dominant America is white suburbia.

11 Imagine that? This is a man who got
12 paid to testify that he knew right from wrong based on his
13 evaluations of white suburbia. How, ladies and gentlemen,
14 is that relevant to Sikia Smith?

15 And he had no idea about his back-
16 ground.

17 And he indicates another reason Sikia
18 Smith isn't an idiot is because if he would have been an
19 idiot he would have been institutionalized. We would be
20 going on a field trip out in the desert.

21 Who is there to recognize Sikia Smith
22 had these mental difficulties to put him in an institution?

23 It presupposes there is a responsible
24 adult who recognizes the symptoms and does something about
25 it.

1 And Dr. Mortillaro's tunnel vision did
2 not allow him to get out of that.

3 The evidence which is in this record
4 before you that shows that he had problems from birth are
5 as follows:

6 "He had attention deficit disorder."
7 All the doctors agreed that it either comes from birth or
8 that it could come from birth.

9 He had had a crack cocaine addicted
10 mother and she also was doing PCP. All the doctors agreed
11 that that would be something that would affect the person
12 at birth.

13 He had organic brain damage. All the
14 doctors except for Dr. Mortillaro who said it could, all
15 other doctors said that's something that does come from
16 birth.

17 And he had a detachment disorder which
18 all the doctors indicated is something that exists from
19 birth.

20 We are asked to bring our common sense
21 into the courtroom.

22 And I ask you, based on what you have
23 heard today, is Sikia Smith operating at a third grade
24 level where third graders do math, third graders read,
25 third graders communicate and many of you have had kids all

1 know there is a limited ability there to their kids or his
2 doing Windows.

3 Remember the question about interest
4 and computers? And I ask you to use your common sense. Is
5 the text in a third grade math book the same as what you
6 are going to find in Windows?

7 And that's why I asked you when we
8 first started this case out or I told you that probably the
9 most difficult thing you would have to do is judge Sikia
10 Smith as he thinks, not as how you all would think, because
11 you have to take into context his mental infirmities, his
12 mental capabilities.

13 Mr. Daskas indicates to you we are not
14 concerned with I.Q. This is psycho babble. Which experts
15 should you rely on? And that sort of thing.

16 And then he tells you what the good
17 things our Dr. Sapp said versus the bad so believe what Dr.
18 Sapp told you but don't believe that.

19 You know, ladies and gentlemen, the
20 time will now be yours to make an assessment in terms of
21 who to believe.

22 And the fact of the matter is, that we
23 do have to consider whether or not he had the intent to do
24 the crimes with which he's been charged. Instruction 49 is
25 the last one I will refer you to.

1 And it instructs you that you are to
2 consider whether Sikia Smith had substantially reduced
3 mental capacity due to mental illness, mental defect,
4 intoxication or any other cause.

5 And you are to consider whether this
6 diminished capacity had an effect on his ability to form n
7 intent.

8 Between Mr. Christiansen and I we have
9 referred you to six or seven different instructions that
10 all talk about intent.

11 So it is obviously something that the
12 Judge felt appropriate in instructing you about and --

13 MR. GUYMON: Your Honor, it is governed by the
14 law, not whether you feel it is appropriate. We are
15 governed by the law.

16 MR. SGRO: We are governed by the law not about
17 what Mr. Daskas' comments about what's appropriate for you
18 to consider and not what's appropriate for you to consider.

19 And I will leave you with the following
20 hypothetical situation.

21 You are instructed that in terms of the
22 State meeting their burden of proof beyond a reasonable
23 doubt that you must feel enough of an abiding feeling or
24 conviction such as would govern you in the more weighty
25 affairs of life.

1 The weighty affairs of life have been
2 interpreted by different people to mean different things.

3 It could be putting relative in a rest
4 home would be a big decision.

5 It may be buying your new dream home
6 after you just got married.

7 Whether or not to have children. These
8 are big decisions.

9 And the comfort level you would feel in
10 making one of those sorts of decisions is supposed to be
11 the comfort level you feel in terms of attaining or
12 determining whether or not there is a reasonable doubt.

13 If you don't get to that comfort level
14 that you determine, then it is your duty to return a
15 verdict of not guilty as to each and every crime.

16 I will leave you with the following
17 hypothetical situation which deals with buying a home which
18 for some people is a weighty decision.

19 When you get into the home you notice
20 some problems with the foundation. You notice problems or
21 what appears to you to be problems in different structures
22 that appear to you to be a little misplaced.

23 And when you arrive on the scene of the
24 home you are encountered by a real estate agent. And this
25 real estate agent's name is Dr. Bittker.

1 And you say to him, "Dr. Bittker, I
2 notice some problems here with the structure."

3 And he tells you, "listen, you have
4 already asked me that. Move along. I already answered
5 that question."

6 And he acted the same way he did here
7 on the witness stand and say, "Dr. Bittker, can you tell me
8 whether or not I am going to be okay in this place?"

9 And he tells you I have already given
10 you my opinion. My opinion I have already told you that
11 you are going to be fine. Just move along."

12 On the other side you have Dr. Sapp who
13 you ask, "what his experience is in homes like this?" And
14 he tells you "I have seen hundreds of homes like this and
15 you would be okay in this one because of these following
16 reasons."

17 And Dr. Mortillaro comes in and you ask
18 him "what do you think?" And he probably would respond,
19 "well, that depends on who is paying me what side should I
20 take."

21 Now, as simple as an example as it is,
22 I think it drives the point home. You have a very serious
23 task to undertake in this case, and that is an assessment
24 of who to believe.

25 No one in this courtroom will tell you

1 that Sikia Smith is above average or even average intelli-
2 gence.

3 Every one will tell you he has some
4 kind of mental defect. The question is to what extent does
5 it exist, and that is your job to determine, ladies and
6 gentlemen.

7 No matter how you slice this case,
8 Sikia Smith is not guilty of any specific intent crime
9 because it is an intent element that rises even beyond the
10 level of knowing right from wrong.

11 And we will ask you, ladies and
12 gentlemen, to consider all the other offenses in this case
13 and make a determination who to believe.

14 Thank you very much.

15 THE COURT: We will take a short recess, ladies
16 and gentlemen.

17 Ms. Thiel, are you pretty warm over
18 there?

19 JUROR THIEL: Yes.

20 THE COURT: Once again I want to admonish you you
21 must not discuss any of the facts of this case amongst
22 yourselves or with any other person, read, watch, or listen
23 to any news communicate about this trial whether it be
24 television, radio or newspaper or form any opinion about
25 the outcome until the matter is submitted to you for your

1 deliberation in the jury room.

2 We will be in recess for about ten
3 minutes.

4 Wait in the jury lounge and the bailiff
5 will come to get you.

6 (A short recess was taken).

7 THE COURT: This is a continuation of the matter
8 State of Nevada v. Sikia Smith.

9 The record will show the presence of
10 the same parties in court at the time we recessed.

11 Will counsel stipulate to the presence
12 of the jury and the three alternates?

13 MR. GUYMON: Yes.

14 MR. CHRISTIANSEN: Yes.

15 THE COURT: Mr. Guymon, are you ready to conclude
16 your final portion of your closing argument?

17 MR. GUYMON: Yes, Judge.

18 THE COURT: You may do so.

19 MR. GUYMON: Thank you.

20 Ladies and gentlemen, it was offensive
21 when it was asked the first time and it is offensive now.

22 We do not ask nor do we -- nor is there
23 a question as to whether or not this is a poor dumb black
24 kid.

25 We don't ask you to punish him for

1 being a dumb black kid.

2 And with all due respect to Mr.
3 Christiansen, that is not the issue. And that is not what
4 drives this prosecution.

5 What drives this prosecution is
6 accountability.

7 It is the defendant's conduct. And it
8 is your job now not to determine how smart he is but
9 whether or not he should be held responsible.

10 If he had the mental capacity to
11 understand right and wrong and if he, Sikia Smith, is
12 accountable for the most horrific crimes can commit on
13 another person.

14 Whether you like the concept of
15 conspiracy where the act of one becomes the act of all is
16 not the issue because each of you promised us that you will
17 follow the law.

18 And it is clear the law under conspir-
19 acy and those instructions are instructions 12 through 17
20 and number 20.

21 And I ask that you look, and I have
22 given you an index of the topics that we are going to talk
23 about and the instruction numbers.

24 You are governed by the law, whether
25 you like it or not or whether you like the fact that Sikia

1 Smith can be held accountable for his co-conspirators'
2 actions is not the issue.

3 If you follow the law, which you must,
4 based on your oath and your commitment, then you are to
5 look at all of the actions of all three persons and each
6 person adopts the action of the other.

7 Sikia is responsible for Donte's
8 actions, Sikia is responsible for Terrell's actions and
9 vice versa.

10 And you are here to pass judgment on
11 Sikia Smith and Sikia Smith only.

12 And I ask you to contrast just for a
13 minute and a quote from Shakespeare comes to mind. That
14 is, "oh, what men within him hide though angel on the
15 outward side."

16 I ask you not to judge the defendant
17 like a book. Don't judge him by the cover, but rather
18 judge him by his conduct and contrast his conduct from what
19 you see in court today to the conduct on the night in
20 question.

21 This same kid who said to be attention
22 deficit disorder, the same kid who had behavioral problems
23 in school, the same kid who had behavioral problems
24 throughout his schooling sits here like an angel in court
25 today. And you are not to judge him by what you see him do

1 in the court today but rather on the night in question.

2 And Mr. Christiansen somehow says
3 "he'll know the next time what he did was wrong."

4 He gives you the example of a child
5 that falls off his bike. The next time the child will not
6 make that jump.

7 Does that mean this crime was free for
8 Sikia Smith? That we'll wait until next time? We'll wait
9 for the next quadruple homicide Sikia Smith decides to
10 perpetrate with his friends and then we will say, "well,
11 gee, you knew about it the first time so we will hold you
12 accountable this time."

13 Or do we hold him accountable today for
14 his actions? And what it really comes down to is does
15 Sikia Smith have the mental capacity to know right from
16 wrong; should he be held accountable.

17 Should we disregard his criminal
18 accountability because he chose to use drugs voluntarily?

19 What consideration should you give his
20 drug use?

21 This is a kid who voluntarily chose to
22 use drugs, who used them on a regular basis on a daily
23 basis smoking four blunts a day according to his girl-
24 friend; a person that became accustomed to the lifestyle
25 and to the use of drugs a person who wasn't stumbling over

1 himself on the night in question who recognized who his
2 friends were, recognized who his girlfriend was, who kissed
3 her goodnight, and who recalls exactly what he did that
4 night when he returned the next day. He still has his
5 memory. And I ask you just how high was he.

6 And do we give him any discount
7 whatsoever? And if so, how much?

8 The same kid who had long-term memory
9 and how much do we discount for the use of his drugs?

10 Do we reward him? Or do we punish him?

11 The question comes down to whether or
12 not he knows right from wrong. And that is a jury instruc-
13 tion that addresses idiots.

14 And I will bring it to your attention.
15 And that is that an idiot is a person destitute of mind at
16 birth.

17 Is Sikia Smith destitute of mind? Can
18 he learn? Can he be taught? The answer is clearly yes.

19 He is not destitute of mind. He has a
20 mind and he uses it.

21 So, on the first issue he is not
22 destitute of mind.

23 On the second issue is he a person of
24 such weak and feeble mind existing from birth as rendering
25 him incapable of knowing right from wrong?

1 If he has such a feeble mind that he
2 doesn't know right from wrong he can't be held accountable.

3 And what do we do then? Do we excuse
4 him? Do we say what you did that night you won't be
5 punished for it because you, Sikia Smith, do not know right
6 from wrong?

7 But if he knows right from wrong, you
8 need to be governed and guided by the law and, indeed, you
9 need to hold him accountable.

10 If he is a person who knowing right
11 from wrong has not by reason of such mental condition the
12 willpower to resist, then we don't hold him accountable.

13 If you people conclude that he knows
14 right from wrong but he just doesn't have the willpower,
15 then we excuse his conduct.

16 But, if you find that he knows right
17 from wrong and he has the willpower to choose right or
18 wrong, then we hold him accountable.

19 And so I ask you to study his mind on
20 the night in question.

21 In order to study his mind on the night
22 in question, I have listed a number of pieces of evidence
23 for you to consider.

24 If he's an idiot, because if he's an
25 idiot he is not accountable.

1 But, if he is not an idiot he is
2 accountable we begin to study how feeble his mind is.

3 Is he destitute of mind? A person
4 destitute of mind couldn't learn. A person destitute of
5 mind couldn't learn to speak English.

6 A person destitute of mind could not
7 read on a fifth grade level.

8 And while the defense has repeatedly
9 said he's on a third grade level, what they seem to ignore
10 is that their own doctor indicated that Sikia Smith read on
11 a fifth grade level --

12 MR. CHRISTIANSEN: Objection. Mischaracterizes
13 the evidence what the doctor said, your Honor.

14 MR. GUYMON: In administering the MMPI 2 it was
15 doctors' opinion after having read --

16 THE COURT: That's admissible.

17 MR. GUYMON: That he could read at a fifth grade
18 level.

19 MR. CHRISTIANSEN: That is not the testimony, your
20 Honor. The testimony was he was given sentences that were
21 at a fifth grade level, knew the words but couldn't
22 comprehend them and therefore couldn't read.

23 THE COURT: You are correct, Mr. Guymon.

24 MR. GUYMON: Let me say it this way. I am not here
25 to prove whether he read on a third grade level or a fourth

1 grade level or a fifth grade level.

2 What I am here to establish is that he
3 is not destitute of mind because he can read. And no
4 matter what level he reads on he is able to read letters
5 like letter, run, plot, stock. He's not destitute of mind.
6 He can learn to do addition.

7 452 plus 137 plus 245 is 834. And you
8 people do the math and you find out that's a correct
9 answer. And he gets points for correct answers because he
10 is not destitute of mind.

11 And he can learn to subtract 497 from
12 176 and ultimately the answer is 321.

13 Now, can someone without a mind do
14 that? Math? Subtraction?

15 Can a plant, and a plant doesn't have
16 a mind, do math and subtraction and learn English?

17 No. But a human with a mind can.

18 And he learns multiplication 34 times
19 21 is 714.

20 Is he destitute of mind or does he have
21 a mind?

22 Can he learn division? And the answer
23 is "yes."

24 How does he answer on the true and
25 false questions? When people do me a wrong I feel I should

1 pay them back if I can just for the principle of the thing.
2 Answer, true.

3 We begin to find out if he knows right
4 from wrong because if he knows right from wrong he can be
5 held accountable.

6 If he knows right from wrong, we are
7 going to hold him accountable in this courtroom because you
8 people promised to follow the law.

9 And he knows when a person does him a
10 wrong he is going to pay him back. And so I ask you, we
11 have all heard the saying that two wrongs make a right?
12 No. But he knows if somebody wrongs him he is going to get
13 even. A characteristic common to criminals.

14 "I was suspended from school one or
15 more times for bad behavior." Answer "true."

16 So, we know he knows when he has bad
17 behavior there is a punishment. There is suspension. And
18 he says "that's true."

19 And Mr. Christiansen says, well, next
20 time he will know better. But this time he didn't.

21 MR. CHRISTIANSEN: Judge, I am going to object to
22 the inferences that was given by the doctor testified
23 couldn't even be scored because he didn't understand the
24 questions. Now Mr. Guymon is trying to imply he understood
25 them, comprehended, answered them accurately.

1 THE COURT: That's the testimony in the record.
2 Overruled.

3 MR. GUYMON: These are the questions and his
4 answers and it is up to you to make a determination if he
5 understood the question and the answer.

6 Was he guessing or is this his mind at
7 work?

8 In school, I was sometimes sent to the
9 principal for bad behavior. His mind says "true." He
10 knows bad behavior will be punished and he will be held
11 accountable.

12 Does he have such a feeble mind as to
13 not know right from wrong or do we hold him accountable?

14 I don't blame people for trying to grab
15 everything they can in this world. Answer "true."

16 On the night in question did he grab
17 everything he could as he scampered out of there like a
18 stranger in the night with the VCR in his hands?

19 It was his girlfriend who said he came
20 home that very next day after leaving with all three of his
21 companions, all three persons that acted together and he,
22 Sikia Smith, grabbed everything he could that night.

23 He grabbed the VCR.

24 His palm print was on it. And for a
25 minute the defense wanted you to believe that somehow

1 expert Guenther couldn't tell you people when that palm
2 print was placed on the bottom of the VCR. The evidence
3 tells you when that palm print was placed on the bottom of
4 that VCR. It was placed that very night when it was stolen
5 from that residence. It was proceeds from that robbery.

6 Most people make friends because
7 friends are likely to be useful to them.

8 Answer "true."

9 The mind at work? Knowing right from
10 wrong?

11 I have never been in trouble with the
12 law. "False."

13 I can easily make other people afraid
14 of me and sometimes do for the fun of it. Does he
15 understand his actions?

16 Does he understand when he does
17 something that is dangerous, when he does something to make
18 people afraid of him that maybe it is going to be fun for
19 him?

20 And I ask you again to contrast his
21 conduct here, "oh, what may man within him hide though
22 angel on the outward side."

23 And was it fun for Sikia Smith and his
24 companions when they brought the third person in and we,
25 using his words, taped him up at the hand behind the back,

1 palms together, fingers interlaced and duct taped him
2 around his legs. Was that fun for him?

3 It wasn't fun for the kids.

4 Does he know right from wrong? What is
5 his system of morality? As we look at words that talk
6 about moral values because if he understands right from
7 wrong he is, Sikia Smith, will be held accountable.

8 And he is asked what his loyalty
9 knowing that whatever happens they are going to be there
10 for you.

11 His two friends were with him were
12 there that night for him and he was there, they were going
13 to act together, and they are now held accountable to-
14 gether.

15 He was loyal to them and their purpose
16 and they were loyal to him.

17 And he understands morals and values
18 and betrayal. If you make a commitment and you break a
19 promise, and I ask you people to define what loyalty means
20 and what betrayal means and you people can do it because
21 you are not destitute of mind and neither is he.

22 He was not born without a mind at birth
23 and he knows right from wrong. He knows to lie when it is
24 appropriate.

25 Does he know right from wrong? And

1 when was he lying and when was he not?

2 He knows that music can silence gunfire
3 by his very statement.

4 He knows when asked, "do you know why
5 he, referring to Donte, turned up the music?" And he said
6 "I guess to kill the sound of the gunfire."

7 A mind at work? Someone that under-
8 stands the consequences? If we turn up the music real loud
9 then we are not going to hear the gunfire.

10 And he understands the meaning of
11 "kill," because he knows that to raise the sound of music
12 stifles or kills or silences the gunfire like the kids were
13 silenced that night as they lay face down on the ground.

14 He knows to thoroughly search the room.
15 I show you a series of pictures and ask you if this appears
16 to be a thorough search.

17 And interestingly enough in Exhibit 21,
18 the one in my far left hand, he can recall that morning
19 because he's not too high. And if he is accountable, he
20 can recall and he tells his girlfriend "I found some pills
21 in a hamper." And what do we find in the room? We find a
22 hamper. Clothes spewn about. Hamper knocked over.

23 He knows exactly what happened that
24 night and he knows who is responsible.

25 I show you one more of a thorough

1 search consistent with what he told the detectives and he
2 was responsible for that search.

3 He knows that a VCR and a Nintendo have
4 value. So I ask you now about this man's mind because he
5 sells the VCR to Donte for \$20.00. He knows this value
6 system that we set up in society, he knows that items have
7 value and he knows that he doesn't want to be in possession
8 of this stolen VCR because people can get in trouble when
9 they possess stolen property and so he sells it to his
10 companion. And he profits by his crimes and he know is
11 held accountable.

12 He learns the drug trade. I won't say
13 anymore about that other than to adopt what Robert Daskas
14 said.

15 Nonetheless, he can learn. He is not
16 destitute of mind.

17 And he knows right from wrong. He
18 learns not only the drug trade but he learns gang life, how
19 to survive on the street and the ramifications and conse-
20 quences of that lifestyle.

21 And Dr. Bittker asked him what would
22 you do if I saw you on the street? And Sikia's response
23 "nothing. You are just doing your job."

24 A mind at work? Dr. Bittker hadn't
25 done anything to offend him.

1 He went over to do an assessment. He
2 was only doing his job and Sikia recognized that.

3 He knows who his friends are. He
4 recognized his friends on the night in question.

5 He knew exactly who they were. He knew
6 who the cowboys were and who the Indians were, to use the
7 analogy if we are going to use school children of grade 3,
8 he recognizes the cowboys that night and the Indians.

9 And these boys, all four of them,
10 became their little Indians and the defendant is the
11 cowboys as they wrapped them up, taped them up, stole from
12 them and killed them.

13 LaShaun Wright knows and is able to
14 have a relationship with her.

15 She tells us he recognizes friends,
16 tells us he is street smart and tells us he confesses upon
17 his return.

18 He found pills in the hamper. I tore
19 up the place. And she said that he, Sikia Smith, knows Red
20 was standing over the boys with a gun.

21 And she said that Sikia said Donte
22 helped him with the search.

23 More importantly, LaShaun Wright knows
24 quoting the defendant that all three of them boys had done
25 wrong.

1 I asked her, "LaShaun," she's a woman
2 that knows him, knows him, a woman lived with him, woman
3 that subjected her children to him, they lived together.

4 And I asked her, "didn't you tell me,
5 LaShaun, that Sikia Smith had said `that all three of them
6 boys had done wrong.'"

7 She said, yes, he knows that all three
8 of them had done wrong.

9 He knows on 9/8/98 that Terrell had
10 spoke to the police and Sikia now knows he has to tell his
11 story.

12 And I ask you, if this is the boys that
13 knows to lie when he has to, does he mitigate his story to
14 the police?

15 I submit that he did mitigate his story
16 when he talked about the VCR because he knows that if he is
17 caught with the VCR he tells them he took the VCR he will
18 be responsible for that.

19 What Sikia Smith didn't know is he
20 didn't know the rule of first-degree felony murder. But
21 ignorance, number 52, is not excuse for the law.

22 Just because he didn't know what he's
23 going to be held responsible for his co-conspirators'
24 actions, doesn't mean we should excuse him.

25 He didn't know the rule of first-degree

1 felony murder.

2 And the first-degree felony murder rule
3 is real simple. If you can understand right from wrong, if
4 you know that a robbery is wrong and you participate in a
5 robbery with others and a killing happens during that
6 robbery, it is first-degree felony murder. It is
7 premeditated felony murder.

8 He didn't know that he adopted Donte
9 Johnson's actions and Donte Johnson's action were certainly
10 premeditated.

11 They were like successive thoughts of
12 the mind when Donte Johnson stands over the first boy, aims
13 the gun, draws the guns and pulls the trigger, that
14 requires successive thoughts of the mind. And that is
15 premeditation as Donte Johnson stands over the next boy and
16 aims and pulls the trigger and shoots, that is successive
17 thoughts of the mind. That is premeditation.

18 And he adopts the premeditation of
19 Donte Johnson if he knows right from wrong.

20 And so I continue to look to whether or
21 not he knows right from wrong or whether we should simply
22 excuse his conduct on the night in question.

23 Can he resist that which he knows to be
24 wrong?

25 There is an instruction, the last one

1 if I could have it, Mr. Daskas says that if knowing right
2 from wrong he has not by reason of his mental condition the
3 mental condition being the feeble mind or the destitute
4 mind, the willpower to resist. And just for a minute I ask
5 you simply because he didn't resist, does that mean he
6 doesn't have the willpower? Or does it mean that he makes
7 poor choices, that he makes choices that will satisfy him
8 and him only.

9 And I use for a moment his mother as an
10 example. His mother knew right from wrong. She told you
11 so.

12 His mother knew it was wrong to be
13 using drugs during the pregnancy.

14 She knew it was wrong to be using drugs
15 after the pregnancy.

16 And she knew it was wrong not to mother
17 that boy like she was supposed to. And that is tragic.

18 But it does not excuse criminal
19 conduct.

20 And despite the fact she knew those
21 things were wrong, she still chose to do those things.

22 She had the willpower to resist but she
23 didn't.

24 Any one of us could pull up late on a
25 Saturday night, maybe 1:00 or 2:00 o'clock, it is a red

1 light and we know that we are supposed to stop at that red
2 light.

3 And we look across and we look left and
4 we look right, it is late, we are tired, we roll on through
5 it.

6 We didn't resist what we knew to be
7 wrong but we had the willpower to but we simply didn't.

8 And I submit to you that's exactly what
9 this boy has done as he makes choices.

10 He has chosen his friends and his
11 companions. He has chosen his actions.

12 He is not to quote Dr. Mortillaro, a
13 robot. And he understands the consequences of his actions.

14 And Mr. Sgro invited me to address the
15 third prong, and I think I have, and I ask you people to
16 use your common sense. Does this man have the ability to
17 make choices?

18 With all due respect to Mr.
19 Christiansen, he says Sikia Smith is a follower. And I will
20 give them that. Sikia Smith is a follower.

21 He is a street soldier. He is a
22 supporting cast member to use I believe it was the words of
23 Colosimo's statement, street soldier.

24 And Dr. Sapp's statement supporting
25 cast member. Use what you like.

1 Use follower, street soldier, support-
2 ing cast. Nowhere -- nowhere in the jury instructions does
3 it say a follower cannot be punished.

4 Nowhere in the law does it say only
5 leaders will be punished and nowhere in the law does it say
6 only rocket scientists and doctors and accountants will be
7 punished.

8 The defendant's confession. You know,
9 Mr. Daskas hit on it for a minute and, you know, I will too
10 for a minute.

11 In every case the police department
12 gets put on trial. Our men and women who put on the badge
13 and hop in those black and white cars --

14 MR. SGRO: Objection. That is improper.

15 THE COURT: Sustained.

16 MR. GUYMON: You have two hard working detectives
17 in this case who go to crime scene and they make these
18 kinds of observations, Exhibit 63, and they say it is our
19 responsibility to find the suspect, to investigate this
20 crime, to find the leads and ultimately arrest that person
21 so that they can be held accountable.

22 And so they set out to do that. And,
23 you know, somehow in that process they get put on trial.
24 Their policies and procedures get put on trial as though
25 they was something wrong with them taking a statement from

1 a person while their tape recorder isn't on for the first
2 little while.

3 They have been doing it since the
4 beginning of time and they will continue to do it until the
5 end of time.

6 And you know, what's interesting about
7 that is if Mr. Sgro and Mr. Christiansen like the answer
8 they get they can live with it and the police aren't
9 corrupt.

10 They didn't make any issue whatsoever
11 of the procedure used with Ace Hart. And Ace Hart said or
12 at least the detective said when he talked with Ace Hart we
13 used the same process we did when we talked to Sikia.

14 We talked to Ace. He gave us some
15 information. We turned on the tape.

16 And once they turned on the tape Ace
17 Hart was asked "do you know the defendant?" He said "yeah,
18 I have seen him twice. Doesn't seem like a violent guy."

19 Again, do we judge the defendant based
20 on two observations or do we -- I lost my word. Do we look
21 to his conduct in its entirety?

22 And they like that answer. They liked
23 the procedure that was used with Ace Hart so they don't
24 find fault with it.

25 And they want you to believe this boy

1 is destitute of mind, he can't learn, and yet in twenty-
2 four or twenty-five minutes he learns a whole bunch of
3 things and more importantly now he can regurgitate them.
4 Does that make any sense to you?

5 I invite you to look at the tape,
6 listen to the tape. Nowhere on that tape will you hear
7 Sikia Smith say "I don't understand your question."

8 Nowhere on that tape will you hear him
9 say "what did you guys tell me to say? What is it you told
10 me? How many guys was there? What did we take?"

11 The reason he doesn't have to ask those
12 questions is because he had a perfect recollection of the
13 most horrific days in these four boys' lives.

14 He was there and he knew and he made
15 specific observations that will leave an indelible impres-
16 sion on his mind, and more importantly, that will impact
17 his life.

18 I want to run through his confession
19 very quickly.

20 He says "we were discussing, going over
21 to the guys' house to where, you know, where the robbery
22 occurred." The plan. He speaks of the plan and he speaks
23 of conspiracy and he speaks about "we," he and his compan-
24 ions. And the act of one becomes the act of all.

25 And he says that "Todd and Donte were

1 talking about, a, you know, these guys was supposed to have
2 a lot of money and drugs over there. And that they wanted
3 that, Todd wanted drugs, you know." He knew exactly what
4 the purpose was when they went over there. He knew those
5 boys had money and he knew they had drugs.

6 But this wasn't the big score he
7 thought it was. They only ended up with \$200.00.

8 And he was asked "did you, Sikia, bring
9 anything with you?" "No, they did." So he knows who to
10 blame on bringing the guns and the duct tape, a brown tote
11 bag, it had some guns inside with duct tape. And he knew
12 exactly what his companions had. And he knows to blame it
13 on them.

14 Tote bag, brought it to court for you.
15 We brought you duct tape. Didn't find the deadly weapon.

16 He knows it was dark outside so he has
17 the ability to assess his surroundings. He knows it was
18 dark outside and there somebody was watering the grass.

19 And what did the neighbor tell us? The
20 corroboration. I believe the name was Nicholas Delucia.

21 He says a boy was out there watering
22 the grass when I looked outside in the middle of the night
23 getting ready to go to work early in the morning hours.

24 He says that Donte and Red drew down on
25 the guy. Sikia wasn't too high to know exactly what was

1 happening. He knew exactly what his companions were doing.

2 There was another guy sitting in a
3 chair so now all of a sudden he knows as he is beginning to
4 assess his surroundings there is two persons. He said Red
5 tied both of them up.

6 Then we searched through the house.
7 And I showed you pictures of the search for the drugs and
8 the money. Red found about 200 and something dollars and
9 that was it.

10 And I ask you where did Red find the
11 \$200.00? If Red was the person standing over these kids,
12 and I show you clearly what is photographs of the empty
13 wallets, I ask you who found the money? And where do
14 people keep their money?

15 He knows exactly who the person was
16 that found the money. The very boy that he said was
17 standing over these kids. He knows who found the money in
18 their wallets.

19 He knows to lie to the police, to
20 mitigate his involvement and say that because they asked
21 him "did you guys take anything other than the 200 and
22 something dollars?" And his response is "no."

23 And they ask "you didn't take any VCR
24 or play station? And the answer is "no."

25 What he doesn't know is the police have

1 his palm print on the bottom of that VCR. And so he
2 perhaps can mitigate his involvement when he tells the
3 police because he knows to lie when it helps him. "No, I
4 didn't take the VCR or Nintendo." And yet he is the boy
5 who sells the VCR and gets the money for it and he's the
6 boy that shows up that very next morning. And I ask you
7 "who took the VCR?" The answer is clear.

8 He knowingly assisted with the third
9 victim. The question was asked "after finding out about
10 the two people because we are coming along in the story,
11 does anyone else come to the front door?" Answer "yes.
12 Another guy came to the door. He had some beer," and you
13 will see a picture there in the front room. You will see
14 there is beer, a 12-pack sitting there.

15 "And we also brought him in, tied him
16 up." And I ask you to contrast this boy's conduct from
17 that which you see in court to what it might have been like
18 on August 13 and 14 in the Terra Linda home.

19 When we brought him in, physically,
20 physically bring him in and order him to the ground and we
21 tie him up and we are accountable under the law.

22 And the fourth victim, he was brought
23 in and he was told or took to the dining room and also tied
24 up. Red went through their pockets and wallets and he took
25 some money.

1 We, Donte and Sikia, were looking
2 through the house. We went through bedrooms and through
3 dresser drawers. And the evidence supports that as well.

4 Is this a trained confession? Is this
5 good? Is that good that the police sat him down and said
6 "by the way, answer yes when we ask you about dresser
7 drawers. Tell us you ransacked the place and tell us where
8 the boys were and tell us that you went through their
9 wallets."

10 Is this a voluntary confession by a
11 knowing mind?

12 Please listen to that video, to that
13 audio tape and you, too, will understand that is a volun-
14 tary confession from a known line, a boy that knows right
15 from wrong and needs and should be held accountable so that
16 justice is done.

17 He knows that Donte shot all four
18 victims and he knows Todd was upset upon their return
19 because we didn't bring back any cocaine.

20 He was oriented as to time and place
21 because he knows that the search took about an hour.

22 And I ask you to look at the photo-
23 graphs to make a determination in your mind how long it
24 would take someone to thoroughly search a house like this,
25 to tear it up.

1 And isn't that consistent with four
2 kids, two at home, one straggles in and another straggles
3 in. And how much time in your mind did this act take?

4 And how much premeditation is there
5 when you pack the car and you load up the guys and you make
6 a plan and pack the guns and tote bag and you pack the duct
7 tape and you driver over there, a first time and you know
8 people are going to be there and you go back, get your
9 stuff and you go again. How much planning do we need before
10 you people begin to believe that there is premeditation?
11 Successive thoughts of the mind.

12 Two different trips. I just mentioned
13 it. His quotes were "the first time we knew that people in
14 the house would be killed." Yet he went anyway and he
15 participated.

16 And on the second trip they went back
17 to get their guns and he tells the detective that he knows
18 if we were to go over there and do what we are going to do
19 that they would have to be killed because he knew because
20 the guys knew, you know, where he lived and everything.

21 This man, Sikia Smith, knew exactly
22 what the plan was.

23 And he knew what would happen to those
24 boys.

25 And he was a participant, and his

1 involvement was just as important as anybody else's.

2 We needed to somehow even the score,
3 two or three boys live over there so two or three villains
4 are going to have to go and participate because there is
5 strength in numbers. And he becomes the number 3 man.

6 And he, like everyone else, has a role.
7 And he knows that there is two or three people that would
8 be over at the house.

9 And he tells the police we should --
10 Sikia admits "I was like back and forth." When asked did
11 he just search or what did he do and he says "no. I was
12 back and forth. I would go and search for a little while,
13 then I would come back to the front room and then I would
14 go back to the other room."

15 And so when he is going back and forth
16 he knows what his companions are doing. He knows that Red
17 is rifling through their pockets and stealing their monies.

18 And he goes back to his responsibility.

19 He knows that Donte's gun was a .380.
20 Is it any surprise to you that these gun casings were .380.

21 And what you don't hear on the tape is
22 you don't hear Sikia Smith, this poor little follower,
23 according to defense, saying when asked "what kind of gun
24 was it?" You don't hear him say "hey, you, hey, Thowsen,
25 what kind of gun did you say it was? What did you say

1 again?"

2 He knows. He has a knowing mind. He
3 knows right from wrong and he says that Donte had a .380.
4 And they had their hands behind their back and taped behind
5 him, palms together, feet taped. They were all taped the
6 same face down. He knows exactly what happened that night.

7 And I asked Mr. Daskas asked the
8 professionals in this case "does Sikia Smith know right
9 from wrong? Does he know that it is wrong to take some-
10 body?" And the answer "yes."

11 Does he know that it is wrong to steal
12 from somebody? And the answer is "yes."

13 And does he know what it means to shoot
14 somebody or what happens when someone is shot?

15 Does he know the consequences of his
16 actions?

17 He knows that one victim was just like
18 whimpering, like crying, like a whimper and cry.

19 Dr. Colosimo when asked if a police
20 officer is at the front door of Terra Linda would Sikia
21 enter to do the robbery? The answer was he would not enter
22 that front door because that a cop is a clear sign that
23 what he's about to do is wrong.

24 Their own expert told you people that
25 if there is a police officer there someone that's going to

1 hold him responsible, someone that's going to say "ulti-
2 mately if you go in here there is going to be conse-
3 quences," he knows he is not going to do it because he
4 knows there is punishment for wrong behavior. And he, too,
5 must be held accountable.

6 When Dr. Bittker asked him how he felt
7 about this and he said "I regret what I did. Look what I
8 did to myself. I lie when it is appropriate at the time."

9 He knows the consequences. He knows
10 what he did affects him.

11 And I would submit to you that a man
12 like that wrapped up in himself is a pretty small man.

13 This man does not acknowledge what he
14 had done to the victims but rather what he's done to
15 himself.

16 But ladies and gentlemen, he did it.
17 And as big a travesty as it might be that he grew up
18 without the comforts that many, many people enjoy as
19 children, he, too, knows right from wrong and we can't
20 excuse his conduct simply because he didn't have a mother
21 that took care of him like we think she should have.

22 We are not to feel sympathy for him.
23 We are not to feel simply for the victims but we are to
24 follow the evidence and reach a just conclusion. That
25 becomes your responsibility now.

1 Dr. Mortillaro asked him what was the
2 best thing that ever happened to him and he said "the best
3 thing that ever happened to me is that I didn't get hurt or
4 killed," and the quote went on something like "when I was
5 gang banging in the streets."

6 This man knows exactly what the
7 consequences of his choices. He made choices that have
8 impacted his life forever.

9 He chose his companions on the date in
10 question.

11 He chose his companions to be Donte
12 Johnson and Terrell Young. And he knows that from his past
13 experiences, from his choices, his choice to be involved in
14 gang life, that he could have been killed or he could have
15 been hurt.

16 And he says that's the best thing that
17 happened to him because he knows it is a good thing when
18 you don't get killed and it is a good thing when you don't
19 get hurt.

20 And he knows that people get hurt or
21 killed when force and violence is used on him.

22 And he knows that a gun is ultimately
23 going to kill somebody. And in this case there was a gun
24 that killed four people. And he was involved.

25 In conclusion, the final question you

1 people are left with when you conclude that he knows right
2 from wrong and that he has the ability to distinguish, the
3 ultimate question that you have got to be able to make a
4 determination of is is it first-degree murder or is it
5 second-degree murder?

6 Mr. Christiansen indicted to you that
7 this was at best second-degree murder. And I tell you
8 right here if you will read the very end that second-degree
9 murder is a murder when the person has not specifically
10 formed an intention to kill.

11 That becomes a distinction. If there is
12 no intention to kill on the part of any of these three
13 boys, then all we have is a second-degree murder.

14 So, we look at intentions. And I ask
15 you what is a person's intention when they duct tape
16 somebody --

17 When they plan, when they say we are
18 going over there, we know there is two or three boys and we
19 have to even out the score, we are going to pick our
20 companions and we are going to load up our bag and going to
21 load up our guns and we are going to kill those fellows.
22 We are not going to bring masks because we don't need masks
23 because we are not leaving anyone alive.

24 And they tape these boys up and they
25 put them face down and they turn up the music to kill the

1 gunfire.

2 And they put the gun on the person's
3 head and the trigger is pulled. Does that not show an
4 intention to kill?

5 I submit to you that it does. And this
6 is not second-degree murder.

7 I submit to you that second-degree
8 murder is a compromise and there was no compromise on the
9 night in question.

10 And we shouldn't compromise the lives
11 of these young boys because this is first-degree murder.

12 And I tell you that because of the
13 felony murder rule. We read "a killing which is committed
14 in the perpetration or attempted perpetration of a robbery
15 and/or a kidnaping is deemed to be murder in the first
16 degree. Whether the killing was intentional or uninten-
17 tional or accidental, this is called felony murder.

18 Now, you say you just talked about
19 intention and this talks about intention. How do we
20 distinguish the two? It is very simple.

21 Our legislators, the persons and people
22 that are responsible for writing the laws, have said that
23 when young, young or old, when anybody chooses to do a
24 robbery or a kidnaping and during that robbery or kidnaping
25 somebody is killed, it is automatically first-degree

1 murder.

2 And there is wisdom in that rule. And
3 the wisdom is we don't want robbers to go to 7-Elevens and
4 carry guns and put guns on citizens where ultimately a
5 citizen can be killed.

6 And if that citizen is going to be
7 killed it becomes first-degree murder, premeditated murder,
8 not the compromise of second-degree murder.

9 I conclude by telling you that this was
10 a first-degree murder. It was a planned robbery.

11 Sikia Smith has the mental capacity.
12 He may not resist his bad choices but he has the ability to
13 make choices. And he chose that night who his companions
14 would be.

15 And he chose to go along and he
16 benefitted by his conduct.

17 And if he benefitted and he knew, he,
18 too, must be held accountable.

19 He committed the crimes of burglary
20 when he entered with those boys with that handgun. He
21 committed the crimes of robbery when he participated in
22 stealing from those young men.

23 He didn't just steal their property. He
24 stole their lives.

25 Do not compromise this case. But

1 rather, return a just verdict of felony first-degree murder
2 of kidnaping with use of a deadly weapon, of robbery with
3 use of a deadly weapon, of the conspiracy, the dangerous
4 conspiracy that he entered into that night and tell him
5 that he knows right from wrong and you believe he should be
6 held accountable.

7 Thank you.

8 THE COURT: Thank you, Mr. Guymon.

9 Miss Clerk, will you swear the officer
10 to take charge of the jury, please.

11 (The bailiff was sworn to
12 take charge of the jury).

13 THE COURT: The matter is now submitted to you for
14 your deliberation in the jury room, ladies and gentlemen.

15 Our bailiff will be the officer in
16 charge of your deliberation.

17 Now, I don't know how long it is going
18 to take you to reach a verdict in this case. If you do not
19 have a verdict reached by sometime this evening, the
20 bailiff is going to excuse you and permit you to return to
21 your homes and ask you to come back into the courthouse
22 tomorrow morning at 8:00 o'clock in the jury lounge where
23 he will escort you back to the jury room for further
24 deliberation.

25 Now, you will recall that prior to each

1 recess I admonished you not to discuss the facts of this
2 case amongst yourselves or with any other person, read,
3 watch, or listen to any news communicate about this trial
4 whether it be television, radio or newspaper or form any
5 opinion about the outcome until the matter is submitted to
6 you for your deliberation in the jury room.

7 So, if you are excused this evening
8 remember the admonishment.

9 Now, Mr. Schibrowsky, Ms. Martinez and
10 Ms. Evans, you are going to be excused for this evening and
11 as of right now you are to give the bailiff your telephone
12 numbers. You are still a part of this jury.

13 I am not going to ask you to return
14 tomorrow morning but in case we do need you the bailiff
15 will give you a call and tell you to come back when we do,
16 in fact, need you.

17 So you will be excused as of this time
18 with the admonishment that I gave you prior to each recess.

19 Give Harry your telephone numbers so
20 that if we do need you we can give you call.

21 You do not have to report tomorrow, the
22 alternate jurors, but the regular jurors I want you back
23 tomorrow morning at 8:00 o'clock in the jury lounge.

24 We will be in recess. Mr. Guymon, Mr.
25 Sgro, Mr. Christiansen, give the bailiff your telephone

1 numbers so that when we do hear from the jury we can get in
2 touch with you.

3 Counsel approach the bench.

4 (An off-the-record discus-
5 sion was held between Court
6 and counsel at the bench out
7 of the hearing of the jury).

8 THE COURT: Mr. Bailiff, Harry, when the jury does
9 retire to deliberate this case, they will be permitted to
10 have in their presence a tape player to play the tape if
11 they so desire. Okay.

12 We will be in recess.

13 (The evening recess was
14 taken).

15 * * * * *

16 ATTEST: Full, true and accurate transcript of proceedings.

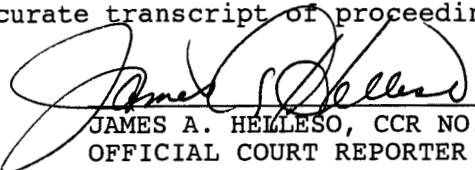
17 
18 JAMES A. HEILES0, CCR NO. 15
19 OFFICIAL COURT REPORTER
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EXHIBIT 58

EXHIBIT 58

ORIGINAL

24

0001
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DISTRICT ATTORNEY
Nevada Bar #000477
200 S. Third Street
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(702) 455-4711
Attorney for Plaintiff

FILED

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Shirley M. Rasmussen
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DONTE JOHNSON,
#1586283

Defendant.

Case No. C153154
Dept. No. V
Docket H

NOTICE OF MOTION AND MOTION TO PERMIT DNA TESTING OF THE
CIGARETTE BUTT FOUND AT THE CRIME SCENE BY THE LAS VEGAS
METROPOLITAN POLICE DEPARTMENT FORENSIC LABORATORY OR BY
AN INDEPENDENT LABORATORY WITH THE RESULTS OF THE TEST TO
BE SUPPLIED TO BOTH THE DEFENSE AND THE PROSECUTION

DATE OF HEARING: 08/30/99
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through
GARY L. GUYMON, Chief Deputy District Attorney, and files this Notice of Motion and
Motion To Permit DNA Testing of the Cigarette Butt Found at the Crime Scene by an
Independent Laboratory with the Results of the Test to be Supplied to Both the Defense and the
Prosecution.

This Motion is made and based upon all the papers and pleadings on file herein, the
attached points and authorities in support hereof, and oral argument at the time of hearing, if
deemed necessary by this Honorable Court.

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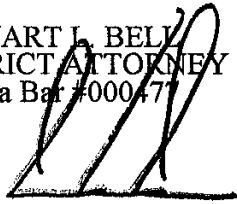
AA07826

1 NOTICE OF HEARING

2 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will
3 bring the foregoing motion on for setting before the above entitled Court, in Department V
4 thereof, on Monday, the 30th day of August, 1999, at the hour of 9:00 o'clock a.m., or as soon
5 thereafter as counsel may be heard.

6 DATED this 17 day of August, 1999.

7 STEWART L. BELL
8 DISTRICT ATTORNEY
9 Nevada Bar #000477

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

14 POINTS & AUTHORITIES

15 FACTUAL BACKGROUND

16 Defendant Donte Johnson is charged with the quadruple homicide on or about August 14,
17 1998, at 4825 Terra Linda Avenue.

18 Countless crime scene analysts from the Las Vegas Metropolitan Police Department
19 processed the crime scene and collected items which were believed to be of evidentiary value.
20 Among these items was a cigarette butt.

21 Las Vegas Metropolitan Police Department criminalist Tom Wahl conducted DNA tests
22 using the PCR testing technique (Polymerase Chain Reaction) to perform the DNA typing. As
23 a result of the PCR testing Tom Wahl indicated that "Donte Johnson cannot be excluded as the
24 source of the major DNA component of the mixture on the cigarette butt. He could be the
25 source of this DNA.". The PCR testing technique cannot establish the identification of a DNA
26 source. A criminalist can, however, identify a DNA source through STR (Short Tandem
27 Repeat).

28 Since the time of criminalist Wahl's analysis of the cigarette butt (August 1, 1998) the

1 Las Vegas Metropolitan Police Department forensic lab has acquired the ability to further
2 analyze the remaining DNA associated with the cigarette butt through STR testing techniques.
3 The STR testing technique will permit criminalist Wahl to identify the source of the DNA on
4 the cigarette butt found at the crime scene.

5 The prosecution in the above case has contacted criminalist Wahl in an effort to
6 determine whether or not there is sufficient remaining DNA sample on the cigarette butt in order
7 to perform further tests. Criminalist Wahl believes that there is sufficient remaining DNA on
8 the cigarette butt in order to conduct STR testing.

9 The defense has previously submitted a court order requesting the Las Vegas
10 Metropolitan Police Department to release the cigarette butt so that the defense's DNA expert
11 can analyze the remaining DNA associated with the cigarette butt.

12 As can be seen by exhibits 1 and 2, the prosecution has had a number of discussions with
13 the defense regarding the cigarette butt and the remaining DNA.

14 The State is in the tenuous position of having to make a decision associated with the
15 remaining DNA associated with the cigarette butt in question. The State seeks a ruling from this
16 court as to what, if anything, should be done so that the State can identify the DNA source
17 through STR testing and still give the defense a meaningful opportunity to conduct their
18 examinations.

19 LAW AND ARGUMENT

20 If, in fact, Mr. Wahl is correct in his opinion that there may well be insufficient quantity
21 for two separate tests at two separate laboratories then the defense is, in effect, proposing that
22 all remaining DNA be destroyed if the State is not permitted to conduct the necessary STR
23 testing. The State requests that they be able to conduct STR testing in their lab, or in the
24 alternative, that all of the sample be sent to a single laboratory for STR testing with the
25 understanding that the test results will be provided to both the prosecution and the defense.
26 Surely the truth-finding process demands no less. Physical evidence, if relevant, belongs to the
27 trier of fact rather than one of the parties to the litigation to the exclusion of the other. The
28 prosecution would have been absolutely entitled, without notification to the defense, to forward

1 the remaining DNA to the laboratory of its choice for STR testing. The law does not require
2 notification to the defense, but notification has been provided so that they would have an
3 opportunity to participate in any discussions associated with the remaining DNA. It is certainly
4 hoped that this attempt at fairness and the attempt to further refine the truth about a piece of
5 physical evidence does not result in its destruction in the event the test is unfavorable to the
6 defense.

7 A case almost directly on point comes to us from the Supreme Court of the State of
8 California entitled *People v. Cooper*, 53 Cal. 3d 771, 809 P.2d 865, 281 Cal Rptr. 90 (1991).
9 The defendant was convicted and sentenced to death for multiple homicides and his conviction
10 was affirmed on appeal. One of the issues raised on appeal pertaining to the scientific testing
11 of a series of tiny drops of blood collected from the victim's residence. The defense had filed
12 a written motion for the release of this blood for the purpose of independent testing, however,
13 the defense attorney objected because the blood drops were so small that serological testing
14 would entirely consume the blood. As in this case, the defense wanted to be given the remaining
15 DNA associated with the cigarette butt and be allowed to consume this DNA through testing
16 without informing the District Attorney of the results. The Court ordered that testing of all
17 samples be done in the presence of both prosecution and defense experts. The defense appealed
18 stating that the trial court erred by not allowing independent testing. The California Supreme
19 Court concluded:

20 "In this case, the blood samples were so small they could not
21 effectively be divided to give the defense a portion. Under these
22 facts, the defendant has no right to obtain the evidence collected
23 by the prosecution, to destroy that evidence in independent
testing, and then to withhold from the prosecution the results of
the testing."

24 The California Supreme Court argued by analogy from a previous decision *People v.*
25 *Meredith*, 29 Cal. 3d 682, 175 Cal. Rptr. 612, 631 P.2d 46 (1981). In that case the defendant
26 was charged with murder and robbery and the defendant's investigators recovered the victim's
27 wallet from a trash can. The Supreme Court held that not only was the prosecution entitled to
28 the wallet, the location of the wallet likewise had to be revealed to the prosecution. "When

1 defense counsel alters or removes physical evidence, he necessarily deprives the prosecution the
2 opportunity to observe that evidence in its original condition."

3 The Court therefore concluded that "Just as there was no defense right in Meredith to
4 destroy evidence" it found before the prosecution founded, so too, there is no defense right to
5 destroy evidence found by the prosecution. The Supreme Court in Cooper rejected arguments
6 based upon the fifth amendment privilege against self-incrimination, the sixth amendment right
7 to effective assistance of counsel, as well as attorney-client privilege.

8 The Nevada Supreme Court has, on numerous occasions, announced its revulsion to the
9 concept of keeping relevant physical evidence from the trier of fact. Indeed, there are several
10 Nevada reported decisions which have resulted in the reversal of jury verdicts where evidence
11 was inadvertently destroyed by the police while in the process of gathering evidence. *Sparks*
12 *v. State*, 104 Nev. 316, 759 P.2d 180 (1988); *Sanborn v. State*, 107 Nev. 399, 812 P.2d 1279
13 (1991). If all of the DNA goes to the defense for independent testing and the results are
14 unfavorable then the results will not be provided to the prosecution unless ordered to do so by
15 the Court. More importantly, if the defense does not elect to use STR analysis then the State
16 will never have the opportunity to identify DNA source on the cigarette butt. The courts have
17 consistently held that where physical evidence comes in possession of the defense from their
18 own client, such evidence cannot be concealed from the prosecution. See *Meredith*, 631 P.2d
19 46; *People v. Fairbank*, 192 Cal. App. 3d 32, 237 Cal. Rptr. 158 (1987); *People v. Lee*, 3 Cal.
20 App. 3d 514, 83 Cal. Rptr. 715 (1970). All of these cases were decided in favor of the
21 prosecution where the defense claimed attorney-client privilege. In *Lee*, the Court stated
22 "Neither the public defender, nor substituted counsel for the defendant, had the right to withhold
23 the evidence from the State by asserting an attorney-client privilege."

24 In addition to everything stated above, concealing or destroying evidence is a crime in
25 the State of Nevada. NRS 199.220 provides:

26 "Every person who, with intent to conceal the commission of
27 any felony, or to protect or conceal the identity of any person
28 committing the same, or with intent to delay or hinder the
administration of the law or to prevent the production thereof at
any time, in any court or for any officer, tribunal, judge or

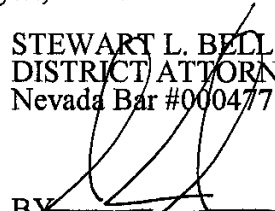
1 magistrate, shall wilfully... conceal any... instrument or thing
2 shall be guilty of a gross misdemeanor."

3 CONCLUSION

4 In conclusion, the cigarette butt and any evidence that may be gleamed thereof, if
5 relevant, belongs to the trier of fact and must be made available to the party who's responsibility
6 it is to present the evidence to the jury. If, as it would appear, a greater refinement and greater
7 statistical relevance can be brought to the attention of the jury as it pertains to the defendant's
8 DNA then that evidence must be preserved and made available to the prosecution in its effort
9 to meet its burden of proof beyond reasonable doubt. The State respectfully requests that the
10 State be able to consume the remaining DNA associated with the cigarette butt for the purposes
11 of STR testing and provide the defense with the discovery associated with the same. In the
12 alternative, the State would respectfully request that the Court order the cigarette butt be
13 released to an independent lab for STR testing and that the results be made available to both the
14 prosecution and the defense.

15 DATED this 12 day of August, 1999.

16 STEWART L. BELL
17 DISTRICT ATTORNEY
18 Nevada Bar #000477

19 BY 
20 GARY L. GUYMON
21 Chief Deputy District Attorney
22 Nevada Bar #003726
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RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing Notice of Motion and Motion To Permit
DNA Testing of the Cigarette Butt Found at the Crime Scene by the Las Vegas Metropolitan
Police Department Forensic Laboratory or by an Independent Laboratory with the Results of the
Test to be Supplied to Both the Defense and the Prosecution is hereby acknowledged this
19th day of August, 1999.

SPECIAL PUBLIC DEFENDER'S OFFICE
ATTORNEY FOR DEFENDANT

BY Jeni Wade / for.
309 S. THIRD STREET, SUITE 400
LAS VEGAS, NEVADA 89101

GUYMG/sbs



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Assistant District Attorney

July 30, 1999

Dayvid Figler, Deputy Special Public Defender
Peter LaPorta, Deputy Special Public Defender
309 S. Third Street, Suite 400
Las Vegas, NV 89101

RE: State of Nevada vs. Donte Johnson
Case No. C153154

Dear Mr. Figler and Mr. LaPorta:

Most recently I spoke to you about your request to have the cigarette butt from the crime scene sent to your experts in order to do a DNA analysis.

As you know the Las Vegas Metropolitan Police Department has previously extracted DNA from the cigarette butt in question and done PCR testing on the same. The Las Vegas Metropolitan Police Department would now like to extract additional DNA from the cigarette butt in order to do STR testing. If our lab extracts additional DNA from the cigarette butt for STR testing there may not be sufficient DNA left for your lab to test.

Without knowing what tests your lab wishes to perform on the cigarette butt I have listed a number of options below:

The Las Vegas Metropolitan Police Department could extract additional DNA from the cigarette butt to perform STR testing and provide your lab with any and all findings associated with both the PCR test and STR tests.

The Las Vegas Metropolitan Police Department could extract all of the additional DNA from the cigarette butt and provide your lab with half of the extracted sample in order for your lab to perform whatever tests they wish to perform on the remaining DNA. Unfortunately, this procedure may leave our lab and your lab with an insufficient sample to do any meaningful DNA testing.

EXHIBIT "1"

AA07833

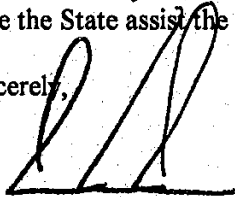
The Las Vegas Metropolitan Police Department could attempt to extract the additional DNA from the cigarette butt in the presence of your DNA expert and perform testing of the same with your expert presence. This is an option that I have not cleared with the director of the lab and, as such, it may be against their policies and procedures, but I would certainly be willing to explore the same.

The cigarette butt could be sent to your experts for DNA testing and have any and all results associated with the testing be made available to our lab, pursuant to the rules of reciprocal discovery. If, however, your lab is not going to perform STR testing I would be reluctant to do this, as the State has a particular interest in what numbers may be generated through STR testing procedures.

Lastly, the cigarette butt could be sent to a third lab unrelated to the Las Vegas Metropolitan Police Department lab or your expert's lab for STR testing, with the understanding that the results would be made available to both sides for analysis.

Should you have any questions about the above please contact me, as I am very hopeful to have the State assist the defense in any way in order to bring this case to trial.

Sincerely,

A handwritten signature in black ink, appearing to read 'G. L. GUYMON', written over a horizontal line.

GARY L. GUYMON
Chief Deputy District Attorney

GLG/sbs



OFFICE OF THE DISTRICT ATTORNEY

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August 6, 1999

Dayvid Figler, Deputy Special Public Defender
Peter LaPorta, Deputy Special Public Defender
309 S. Third Street, Suite 400
Las Vegas, NV 89101

RE: State of Nevada vs. Donte Johnson
Case No. C153154

Dear Mr. Figler and Mr. LaPorta:

Not long ago I sent you a letter outlining what I believe to be possibilities associated with the remaining DNA left on the cigarette butt found at the crime scene.

While awaiting your comments as to my letter I began asking others in our office if they were familiar with a similar circumstance and what they had done. I have subsequently learned that there is a case on point (People vs. Cooper, 53 Cal 3rd 771, 809 P.2d 865 (1991)) which actually adopts one of the options that I proposed. The case established the procedure of picking a third, independent laboratory to do the DNA extraction and testing and share the results with both sides. This proposal was adopted by the Court in the Strohmyer case and is the proposal which I will motion the Court to adopt in the event that the same becomes necessary.

I will be out of the office from August 9th thru August 13th. I am hopeful that I will promptly hear from you upon my return so that we can resolve this issue and any others associated with the above case.

Sincerely,

Gary L. Guymon
Chief Deputy District Attorney

GLG/sbs

EXHIBIT "2"

AA07835

EXHIBIT 59

EXHIBIT 59

DISTRICT COURT

FILED IN OPEN COURT

September 8 1999

CLARK COUNTY, NEVADA

SHIRLEY B. PARRAGUIRRE, CLERK

BY *Linda Skinner*

LINDA SKINNER, DEPUTY

ORIGINAL

STATE OF NEVADA,

Plaintiff,

vs.

TERRELL C. YOUNG,

Defendant.

CASE NO. 98-C-153461-C

REPORTER'S TRANSCRIPT of JURY TRIAL

VOLUME VI

BEFORE THE HONORABLE JOSEPH PAVLIKOWSKI
District Judge

Tuesday, September 7, 1999

2:30 o'clock p.m.

APPEARANCES:

For the State:

GARY L. GUYMON, ESQ.

ROBERT J. DASKAS, ESQ.

Deputy District Attorneys

For the Defendant:

WILLIAM WOLFBRANDT, ESQ.

MARTIN D. HASTINGS, ESQ.

REPORTED BY:

JANICE MURRAY, CCR NO. 405

LORI JUDD & ASSOCIATES
(702) 260-9678

AA07837

W I T N E S S E S

STATE'S Dr. Cr. Redr. Recr. VD.

RANDY SUTTON

By Mr. Guymon: 6 28

By Mr. Hastings: 24

ACE HART

By Mr. Guymon: 30 88

By Mr. Wolfbrandt: 75

LaSHAWNYA WRIGHT

By Mr. Guymon: 93 119

By Mr. Hastings: 109 121

E X H I B I T S

STATE'S IDNT'D MRK'D ADMT'D

Proposed 8 through 22 17 18

Proposed 23 through 54 19 20

Proposed 55 through 83 20 (55-63) 21

 excluding 64, 65, 68-70, (66,67) 22

 72-78, 80, 82 (71) 22

(79,81,83) 23

Proposed 158 through 159 36 36

Proposed 160 37 38

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1	Proposed 179	41	
2	Proposed 98	62	62
3	Proposed 99 through 107	63	63
4	Proposed 103	64	
5	Proposed 104	65	
6	Proposed 105	69	
7	Proposed 106	70	
8	Proposed 108	71	72
9	Proposed 109 through 112	72	72
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LORI JUDD & ASSOCIATES
(702) 260-9678

1 LAS VEGAS, NEVADA, SEPTEMBER 7, 1999, 2:30 P.M.

2 *****

3 THE COURT: This is the continuation
4 of the matter of the State of Nevada versus Terrell
5 Young. Be seated.

6 Counsel stipulate to the presence of
7 the jury and the four alternates?

8 MR. GUYMON: Yes.

9 MR. DASKAS: Yes.

10 MR. HASTINGS: Yes.

11 MR. WOLFBRANDT: Yes.

12 THE COURT: The record will so show.
13 Mr. Guymon, call your next witness.

14 MR. GUYMON: The State would call
15 Sergeant Randy Sutton.

16 THE COURT: Sergeant, step up here,
17 please, sir. Remain standing. Raise your right
18 hand to be sworn by the clerk.

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

25

LORI JUDD & ASSOCIATES
(702) 260-9678

AA07840

1 THE COURT: Be seated. Give us your
2 full name. Spell your last name, your business
3 address, and your occupation.

4 THE WITNESS: My name is Randy
5 Sutton. I'm employed as a sergeant with the Las
6 Vegas Metropolitan Police Department. The address
7 is 400 East Stewart, the City of Las Vegas.

8 THE COURT: How long have you been
9 employed with Metro, Sergeant Sutton?

10 THE WITNESS: Approximately 14 years.

11 THE COURT: And were you on duty on
12 the night of the 13th, early morning hours of the
13 14th --

14 THE WITNESS: Yes.

15 THE COURT: -- of 1998 of August?

16 THE WITNESS: Yes.

17 THE COURT: And what were your duties
18 at that time?

19 THE WITNESS: Patrol supervisor with
20 the police department stationed out of the
21 southeast area command.

22 THE COURT: What area did the
23 southeast area command, let me ask you, Tropicana
24 and Nellis area?

25 THE WITNESS: Yes.

1 THE COURT: All right. Mr. Guymon?

2
3
4 DIRECT EXAMINATION

5 BY MR. GUYMON:

6 Q. Sergeant Sutton, can you tell us what
7 your general responsibilities were as of August
8 14th when you were on duty?

9 A. My general responsibilities are to
10 supervise the patrol division in the southeast area
11 command, calls that take place, major crime scenes,
12 and the police officers that respond to those crime
13 scenes.

14 Q. With those responsibilities did you
15 have a black and white police car that you were in
16 that evening?

17 A. Yes. I am in uniform and in a marked
18 patrol car.

19 Q. And did you have a partner that night?

20 A. No, I did not.

21 Q. Is that usual or unusual?

22 A. I don't have a partner.

23 Q. All right. Now, did there come a point
24 in time when you received a call that required you
25 to respond to a location?

1 A. Yes.

2 Q. In the 4800 block of Terra Linda?

3 A. Yes.

4 Q. Is that here in Las Vegas, Clark
5 County, Nevada?

6 A. It is.

7 Q. Do you recall approximately what time
8 the call came out at?

9 A. Approximately 6:00 p.m.

10 Q. And how was it that you received a
11 call?

12 A. I monitored the radio, and I heard the
13 initial call come out requesting police response to
14 the address on Terra Linda, referencing some
15 suspicious activity that had taken place there.
16 And the first unit that got there, Patrolman Dave
17 West, I had, I was already en route to that
18 location. However, he came over the radio and
19 requested an immediate backup.

20 Q. Now, were you familiar with Officer
21 Dave West?

22 A. Yes.

23 Q. And how is it you're familiar with
24 David West?

25 A. I've worked with him, supervised a

1 sister squad for a couple years.

2 Q. Do you recall approximately how much
3 time it took from the time you received the call to
4 the time you arrived to 4800 Terra Linda?

5 A. Approximately 10 minutes.

6 Q. And I take it that Officer West had
7 arrived just before you?

8 A. Yes.

9 Q. All right. Now, then, with that, there
10 are now two officers at Terra Linda; is that
11 correct?

12 A. With my, with my being there, I was the
13 second officer, yes.

14 Q. There is a sergeant and an officer?

15 A. Yes.

16 Q. Now, what, what do the two of you now
17 do once there's backup there?

18 A. The first thing was Officer West filled
19 me in on the information that he had, and that was
20 that he had responded to a call which, by the fire
21 department. The fire department had requested that
22 we expedite getting to the scene, because there
23 were dead bodies in the house. When I got there,
24 Dave told me that he could see into the residence,
25 that there appeared to be dead bodies in the living

1 room, and that he had not cleared the house,
2 clearing the house meaning to do a protective sweep
3 of the residence to make sure that there's no
4 suspects still in the residence. And that is what
5 our initial conduct was going to be.

6 Q. Did you, in fact, attempt to, quote,
7 clear the house?

8 A. Yes.

9 Q. In an effort to clear the house, tell
10 the jury what it is you and Officer West did.

11 A. The, the house was located on the south
12 side of the street, and the door was ajar when I
13 arrived. I could see in through the, through the
14 opened door and observed three people laying on
15 the, on the floor. Their legs were duct taped
16 behind them. Their hands were duct taped behind
17 them. And there appeared to be a great deal of
18 blood underneath their heads that appeared to be
19 head wounds. Officer West and I made entry into
20 the house with our guns drawn in order to check and
21 see if there was any, any suspects still in the
22 house.

23 Q. You use the word suspects, and you put
24 a plural to it. Why would you be looking for
25 suspects?

1 A. It would be highly unusual for one
2 person to be able to control three people during,
3 during an event such as this. So, Officer West and
4 I made entry. He covered me as I walked into the
5 house. When I say covered, he was visually
6 observing to see if, if my safety would be impeded
7 by anybody coming out of, of any doorways. And
8 then we did a leapfrog motion where he then took a
9 position in front of me. And as he entered the
10 room adjoining the living room he told me, I got
11 another dead body here, sergeant. And we then
12 continued and checked the house for any signs of
13 suspects or further victims.

14 Q. Prior to the, using your expression,
15 the leapfrog motion, how many suspects or dead
16 people did you believe there was in the house?

17 A. I initially, well, initially I saw
18 three. I didn't make any determination if there
19 would be any others. But, in fact, there was
20 another. There was another dead body.

21 Q. So, the total was four, then, dead
22 bodies?

23 A. The total was four, yes, sir.

24 Q. Did you, in clearing the house and
25 making sure there was no suspects present in the

1 house, did you actually visually observe each and
2 every room of the house?

3 A. I did.

4 Q. Can you describe the house and its
5 condition as you observed it?

6 A. It was a single-family dwelling, had
7 two or three bedrooms. I don't recall how many.
8 The state of the house was in complete disarray.
9 The signs of the carnage there was visible in the
10 residence. The house itself appeared to have been
11 ransacked. Things were torn up, upended, and
12 basically it was, it was really a mess.

13 Q. Can you tell the jury what effort, if
14 any, you and your partner now, Officer West, used
15 in order to not disturb any potential evidence?

16 A. The only purpose for, for entering the
17 house itself is to check for suspects or signs of
18 life from a victim in order to give medical
19 attention. The, it was very, very obvious that
20 the, the people in the, in the house were dead.
21 Therefore, there would be no other reason, other
22 than to, to do a quick protective sweep, to touch
23 anything or do anything in the residence itself.

24 Our main focus at that point is to
25 secure the crime scene and let the investigators

1 and the crime scene analysts do their job. So,
2 we're very cognizant of the things that we touch
3 and the, just any disturbing of, of a crime scene
4 such as this.

5 Q. Did you or your partner, Officer West,
6 disturb or alter this particular crime scene in any
7 way?

8 A. You can't enter into, into any place
9 without leaving something of yourself there,
10 whether it's dirt on your, on your shoes or
11 something like that. But to touch anything other
12 than maybe to open a door to gain access to a room,
13 nothing else was moved.

14 Q. Did you move the bodies?

15 A. No.

16 Q. Did you move any billfolds?

17 A. No.

18 Q. Did you remove any monies from the
19 house?

20 A. Did not.

21 Q. All right. Now, once you were
22 satisfied as a sergeant that the house is secure
23 and there was no other suspects present, what is it
24 that you and Officer West then did?

25 A. At that point I had Officer West cordon

1 off the house itself with crime scene tape,
2 limiting access to, to any, any other personnel.
3 Other backup units were on the way, and some were
4 arriving, and had them secure the, keep the, the
5 house secure and then begin a canvass of the
6 neighborhood to see if any of the neighbors had
7 seen anything.

8 Q. Now, why the crime scene tape and why
9 secure off this particular scene?

10 A. The crime scene tape is a vivid yellow
11 tape that is very obvious. It's used to keep
12 anyone from coming in and out of a scene. In this
13 particular case the crime scene is, is the
14 residence itself and the adjoining property. That
15 is the house itself and the property that the house
16 is on, because you don't know what, what the
17 suspects' movements were during the crime. So, in
18 order to keep that scene secure, when I say secure,
19 keep anyone from accessing it, we would, we put the
20 tape up to, to denote no entry.

21 Q. And is putting the tape up consistent
22 with standard police procedure with the Las Vegas
23 Metropolitan Police Department?

24 A. It is.

25 Q. As a sergeant with the Las Vegas

1 Metropolitan Police Department were you satisfied
2 that you and your partner had not disturbed the
3 scene, that is moved the bodies or any evidence
4 and, likewise, now preserved the scene for further
5 investigation?

6 A. Yes.

7 Q. All right. Now, once the scene is
8 preserved and taped off are you present when other
9 detectives arrive at the scene?

10 A. Yes.

11 Q. Can you describe how it is that happens
12 and why it happens?

13 A. With a major crime scene such as this
14 our first notifications are to the general
15 assignment detectives, because our homicide
16 detectives don't work at night unless called into a
17 crime scene. And general assignment detectives
18 make that determination. They are the initial
19 investigators at the scene. They were requested,
20 and I also had homicide notified of the situation,
21 as they would obviously come out.

22 In addition to that I requested that
23 the crime scene analysts be sent to the residence
24 and also the field lieutenant who would, who has
25 overall supervisor, supervisory responsibility of

1 the southeast area command.

2 Q. In total can you tell me how many
3 police personnel responded to Terra Linda on the
4 night in question?

5 A. I, I couldn't, I couldn't give you the
6 number. I would guess somewhere around 30.

7 Q. And 30 would be yourself, homicide
8 detectives, perhaps a homicide lieutenant and
9 sergeant and crime scene analysts?

10 A. Yes. That would be all the patrol
11 personnel, the detective personnel, the crime scene
12 analysts, the supervisor personnel.

13 Q. When you say crime scene analysts using
14 a plural, approximately how many crime scene
15 analyst did you see arrive at the scene?

16 A. I saw two.

17 Q. And how many homicide detectives or
18 persons employed with the Las Vegas Metropolitan
19 Police Department homicide division arrived?

20 A. I'm sorry. I didn't hear your
21 question.

22 Q. How many homicide detectives or
23 personnel from homicide arrived?

24 A. I remember two, but there could have
25 been more.

1 Q. All right. Once homicide detectives
2 arrive who becomes responsible for that scene?

3 A. Homicide.

4 Q. All right. And do you recall what
5 homicide detectives actually worked this particular
6 case?

7 A. No.

8 Q. All right. Now, then, were you, how
9 long did you remain at Terra Linda?

10 A. Approximately an hour.

11 Q. Were you present when the crime scene
12 analysts began to do their analysis of this crime
13 scene?

14 A. Yes.

15 Q. Can you tell us what the general
16 procedure is, if you know, for a crime scene
17 analyst?

18 A. I can't tell you that.

19 MR. GUYMON: All right. Very well.
20 Your Honor, at this time counsel received
21 photographs eight through 54. I've given him all
22 the photographs that --

23 THE COURT: All right.

24 MR. GUYMON: If I can approach the
25 witness, your Honor --

1 THE COURT: Yes.

2 BY MR. GUYMON:

3 Q. Showing you, I want to ask you, if you
4 seen photographs or saw photographs of the actual
5 crime scene there at Terra Linda, would you be able
6 to recall that particular residence?

7 A. Yes.

8 Q. All right. I want to show you, I'll
9 just start with State's Proposed Exhibit 8 through
10 22 consecutively. And I believe if you'll verify
11 that, they are consecutive. As you look at them,
12 why don't you just briefly look at those? Are
13 those in --

14 A. They are in consecutive order, yes.

15 Q. Eight through 22, do you recognize
16 State's Proposed Exhibits 8 through 22?

17 A. Yes.

18 Q. And how is it that you recognize eight
19 through 22?

20 A. This is the scene that I was at where
21 the quadruple homicide took place.

22 Q. Do those photographs fairly and
23 accurately depict both the exterior and the
24 interior of the residence as you observed it on the
25 night in question?

1 A. Yes.

2 MR. GUYMON: Judge, at this point in
3 time I would move for the admission of State's
4 Proposed Exhibits 8 through 22.

5 THE COURT: Any objection?

6 MR. WOLFBRANDT: No, your Honor.

7 THE COURT: State's Proposed Exhibits
8 8 through 22 are admitted into evidence as eight
9 through 22.

10 BY MR. GUYMON:

11 Q. And do the items that appear in State's
12 Proposed 8 through 22 appear to have been moved or
13 altered in any way based upon your initial
14 observation?

15 A. No.

16 MR. GUYMON: All right. If I can
17 publish those, too, judge --

18 THE COURT: Look at one and just pass
19 it on. Okay?

20 BY MR. GUYMON:

21 Q. Showing you what has been marked as
22 State's Proposed Exhibits 23 through 54, let me
23 have you run through those as well and tell me if
24 you recognize those particular photographs. I will
25 tell you that they are in sequential order.

1 Detective, have you looked at, or
2 sergeant, I should say, I apologize. Have you
3 looked at State's Proposed 23 through 54 in their
4 sequential order?

5 A. Yes, I have.

6 Q. And do you recognize those?

7 A. Yes, I do.

8 Q. How is it that you recognize them, sir?

9 A. I was, this depicts the disarray
10 basically of the interior of the residence that I
11 was at.

12 Q. Now, are those photographs just as you
13 observed on the night in question?

14 A. As far as I recall, yes.

15 Q. Did you and your partner in any way
16 disturb any of the items that are depicted in those
17 photographs?

18 A. No.

19 Q. That is as you seen them, saw it then?

20 A. That's correct.

21 Q. Do they fairly and accurately depict,
22 for instance, the wallets of each of the decedents?

23 A. Well, I saw wallets there, and I, I saw
24 wallets that night. I don't know who they belonged
25 to.

1 MR. GUYMON: Judge, I would move for
2 the admission of State's Proposed Exhibits 23
3 through 54.

4 THE COURT: Any objection?

5 MR. WOLFBRANDT: No, your Honor.

6 THE COURT: 23 through 54 is admitted
7 into evidence.

8 BY MR. GUYMON:

9 Q. I would ask to publish those as well
10 one at a time. Thank you.

11 If I can approach and show him another
12 set of photographs, showing you what has been
13 marked as State's Proposed Exhibits 55 through 83
14 with the exception of 64 and 65, 68 through 70, 72
15 and 78, 70 through 78. I'm sorry.

16 THE COURT: Would you go through that
17 once more?

18 BY MR. GUYMON:

19 Q. I will, judge. I've shown you in
20 order, 55 through 83 excluding 64 and 65, 68
21 through 70, 72 through 78, 80 and 82.

22 Now, do the photographs, I would ask if
23 I could, judge. May I? Thank you.

24 State's Proposed Exhibits 55 through
25 63, do those photographs fairly and accurately

1 depict the crime scene as you observed it on the
2 night in question?

3 A. Yes, they do.

4 Q. Have they been altered in any way?

5 A. No.

6 Q. Are those items just as you observed
7 them as you cleared the house, being the first one
8 in and on the scene?

9 A. Yes.

10 MR. GUYMON: I would move for the
11 admission of 55 through 63, your Honor.

12 THE COURT: Any objection?

13 MR. WOLFBRANDT: No, your Honor.

14 THE COURT: 55 through 63 is admitted
15 into evidence.

16 MR. GUYMON: May I publish those,
17 judge?

18 THE COURT: Yes.

19 BY MR. GUYMON:

20 Q. Now, 66 and 67 are the next in order.
21 Does 66 and 67 fairly and accurately depict the
22 scene as you first observed it?

23 A. Yes.

24 Q. Did you alter or change the condition
25 of those bodies in any way?

1 A. No, I did not.

2 MR. GUYMON: I would move for the
3 admission of those, judge.

4 THE COURT: Any objection?

5 MR. WOLFBRANDT: No, your Honor.

6 THE COURT: 66 and 67 are admitted.

7 BY MR. GUYMON:

8 Q. State's Proposed 70, I ask you if you
9 recognize it. I'm sorry, 71?

10 A. Yes.

11 Q. And does that picture fairly and
12 accurately depict the body as you first observed
13 it?

14 A. Yes.

15 MR. GUYMON: I would move for the
16 admission of 71.

17 MR. WOLFBRANDT: No objection.

18 THE COURT: 71 is admitted.

19 BY MR. GUYMON:

20 Q. Giving you 79 and 81, I asked if you
21 recognize those two?

22 A. Yes.

23 Q. And do they fairly and accurately
24 depict the bodies of the decedents as you observed
25 it?

1 A. Yes.

2 Q. Had those persons been altered in any
3 way by yourself or your partner?

4 A. No.

5 Q. All right. And lastly, 83, is it
6 fairly and accurately depicted?

7 A. It is.

8 MR. GUYMON: And I would move for the
9 admission of 83 as well.

10 MR. WOLFBRANDT: No objection.

11 THE COURT: 79, 81, and 83 are
12 admitted into evidence.

13 BY MR. GUYMON:

14 Q. Now, then, detective -- sorry --
15 sergeant, once the scene's been secured and
16 homicide detectives arrive what was your
17 responsibility, if any?

18 A. At that point my supervisor
19 responsibility ended.

20 MR. GUYMON: Judge, I pass the
21 witness.

22 THE COURT: Mr. Wolfbrandt?
23 Mr. Hastings?

24

25

CROSS-EXAMINATION

BY MR. HASTINGS:

Q. Thank you, judge. Sir, you said you were at the location approximately one hour?

A. Approximately.

Q. That's from start to finish basically?

A. Yes.

Q. Can you tell us how long you were in the actual residence?

A. Two minutes, three minutes.

Q. So, it was a brief period of time?

A. Yes.

Q. And it was during this two to three minutes that you were securing the house, making sure nobody was in it; is that correct?

A. Yes.

Q. Okay. Would it be fair to state that you were moving rapidly at that point in time?

A. Fairly subjective, I wasn't toddling but moving at a safe, efficient manner. I wasn't running through the house, though.

Q. But you did the whole house in two to three minutes; is that correct?

A. Yes.

Q. Do you recall seeing any drugs at the

- 1 house?
- 2 A. No.
- 3 Q. Do you recall seeing any mushrooms?
- 4 A. No.
- 5 Q. Any pills?
- 6 A. No.
- 7 Q. Do you recall seeing a butane torch?
- 8 A. Yes.
- 9 Q. Okay. Can you tell us where the butane
- 10 torch was?
- 11 A. No.
- 12 Q. What would the butane torch indicate to
- 13 you with your training?
- 14 A. Butane torch would usually indicate
- 15 drug usage, used to cook narcotics.
- 16 Q. Okay. Did you know, sir, if there was
- 17 any Freon at the house?
- 18 A. Didn't notice.
- 19 Q. Okay. Would that indicate anything to
- 20 you?
- 21 A. Freon could be used as part of the
- 22 manufacturing substance for making drugs.
- 23 Q. Did you see any shell casings at the
- 24 residence?
- 25 A. No.

1 Q. Did you see a weapon on any of the
2 victims?

3 A. No.

4 Q. You stated you believed there was more
5 than one suspect; is that correct?

6 A. Yes.

7 Q. Were you able to determine how many
8 suspects at that point in time?

9 A. No.

10 Q. Were you able to determine a race at
11 that time?

12 A. No.

13 Q. You stated that you believe the house
14 was ransacked, I believe?

15 A. Yes.

16 Q. You don't have any knowledge of the
17 state or condition before the crime, do you?

18 A. No.

19 Q. So, you really have no evidence to back
20 that up at this point in time?

21 A. Just the observations that I made, no.

22 Q. You didn't have any witnesses or
23 anything along that line?

24 A. No.

25 Q. Now, you stated there was approximately

1 30 officers at the scene; is that correct?

2 A. From start to finish, some coming, some
3 going, relief officers, I would, I would estimate
4 that.

5 Q. Okay. And you stated that two analyzed
6 the house when you were leaving; is that correct?

7 A. No. I don't know how many crime scene
8 analyst eventually showed up. I saw a couple.

9 Q. Okay. There was only two when you
10 left. Is that fair to say?

11 A. That I recall, but I didn't really make
12 any particular note of it.

13 Q. Okay. Were you ever able to determine
14 approximately how many people went in the house
15 while you were there?

16 A. No.

17 Q. Can you approximate that number for me?

18 A. Several, you know, detectives and the
19 crime scene analysts, but I can't give you an
20 accurate number.

21 Q. And the number of people that enter
22 into a crime scene is of certain because of
23 contamination; is that correct?

24 A. Yes. And a log is made up by an
25 officer of all the people that go in and out of the

1 crime scene.

2 Q. Were you present when all those photos
3 were taken?

4 A. No, I was not.

5 Q. So, those were taken after the
6 individuals, at least a few, had entered into the
7 home; is that correct?

8 A. Yes.

9 Q. After you left from being at the house
10 approximately one hour have you had any involvement
11 in this case other than testifying in court?

12 A. No, I have not.

13 MR. HASTINGS: Court's indulgence. No
14 further questions, judge.

15 THE COURT: Mr. Guymon?

16

17 REDIRECT EXAMINATION

18 BY MR. GUYMON:

19 Q. Sergeant, you remained at the house for
20 approximately an hour, and homicide then takes
21 over. Did you, what efforts, if any, did you
22 visualize or observe homicide use so as not to
23 preserve or so as not to disturb the scene?

24 A. The homicide investigators, much like
25 the other personnel that get there, keep the scene

1 secure until the crime scene analysts can do their,
2 their job.

3 MR. GUYMON: And you were asked about,
4 say, drugs that may or may not have been found
5 there and shell casings. I might ask, whose
6 responsibility is it to, say, recover and preserve,
7 say, shell casings or those items of evidence?

8 THE WITNESS: Crime scene analyst.

9 THE COURT: Mr. Hastings?

10 MR. HASTINGS: Nothing further, your
11 Honor.

12 THE COURT: Sergeant Sutton, you are
13 excused. You are admonished not to discuss your
14 testimony with anyone until we complete the case.

15 Mr. Guymon?

16 MR. GUYMON: Ace Hart.

17 THE COURT: Ace, up here, please.
18 Remain standing. Raise your right hand to be sworn
19 by the clerk.

20

21 ACE HART,

22 called as a witness, and having been first duly
23 sworn to testify to the truth, the whole truth, and
24 nothing but the truth, was examined and testified
25 as follows:

1 THE COURT: Be seated. Speak loud and
2 clear. Give us your full name. Spell your last
3 name for the record.

4 THE WITNESS: H-a-r-t, Ace Hart.

5 THE COURT: Mr. Hart, how long have
6 you lived in Clark County?

7 THE WITNESS: 10 years.

8 THE COURT: Were you living in Clark
9 County on or about August 13th and 14th, 1998?

10 THE WITNESS: Yes, sir.

11 THE COURT: Where were you living at
12 that time, Ace?

13 THE WITNESS: On Everman, 4813
14 Everman.

15 THE COURT: And how old are you for
16 the record?

17 THE WITNESS: 20.

18 THE COURT: Thank you. Mr. Guymon?

19

20 DIRECT EXAMINATION

21 BY MR. GUYMON:

22 Q. Thank you, your Honor. Mr. Hart, do
23 you know an individual by the name of Todd
24 Armstrong?

25 A. Yes.

- 1 Q. And how is it that you know Todd
2 Armstrong?
- 3 A. One of my old best friends.
- 4 Q. When you say old best friends, when did
5 you first meet Todd Armstrong?
- 6 A. Three years ago.
- 7 Q. Excuse me?
- 8 A. Three years ago.
- 9 Q. All right. And do you remain best
10 friends with Ace Hart, I'm -- excuse me -- Todd
11 Armstrong today?
- 12 A. No.
- 13 Q. How long has it been since you've
14 spoken to Todd Armstrong?
- 15 A. About a year.
- 16 Q. A year?
- 17 A. Yeah.
- 18 Q. Okay. Do you know Brian Johnson?
- 19 A. Yes.
- 20 Q. And how do you know Brian Johnson?
- 21 A. One of our friends.
- 22 Q. Okay. You say our friends. Who are
23 you talking about?
- 24 A. Mine and Todd's.
- 25 Q. And what was your relationship with,

1 say, Brian Johnson in 1998?

2 A. Good friends.

3 Q. How would you describe your
4 relationship with Brian Johnson today?

5 A. We don't talk no more.

6 Q. When is the last time you heard from
7 Brian Johnson?

8 A. About eight months ago.

9 Q. Okay. And does Brian Johnson go by any
10 other names other than Brian Johnson?

11 A. No.

12 Q. Now, then, you told the judge earlier
13 that you lived on Everman. How, for how many
14 months did you live on Everman?

15 A. About five months.

16 Q. And who was the owner of that house?

17 A. Todd, Todd's mom.

18 Q. Did Todd's mother live in the house at
19 Everman with you?

20 A. No.

21 Q. And why is that if you know?

22 A. She lived in Hawaii. She had a job
23 there, worked for her aunt.

24 Q. When you first moved into Todd
25 Armstrong's house on Everman, who lived there with

1 you?

2 A. Me, Todd, BJ, and Joel.

3 Q. Who's BJ?

4 A. Brian Johnson.

5 Q. And Joel?

6 A. Yeah. He just, he was moving out as I
7 moved in, like a week maybe when I first moved in.

8 Q. What room did, say, Todd Armstrong stay
9 in at the house?

10 A. Just one of the regular bedrooms.

11 Q. Okay. How many bedrooms were in this
12 house on Everman?

13 A. Three.

14 Q. Did Todd stay in the master bedroom?

15 A. No.

16 Q. Why not if you know?

17 A. I don't know.

18 Q. Okay. Now, do you recall, how many
19 months did you live there?

20 A. About five, six months.

21 Q. And did you pay rent?

22 A. We split the bills.

23 Q. Who's we?

24 A. Me, Todd, and BJ.

25 Q. Okay. When did you move out?

1 A. The beginning of August.

2 Q. Okay. Now --

3 THE COURT: 1998?

4 THE WITNESS: Yeah.

5 THE COURT: Thank you.

6 BY MR. GUYMON:

7 Q. Before August 1998 did you get any
8 other roommates other than, say, BJ, Todd
9 Armstrong, or Joel?

10 A. Yes.

11 Q. And how did you get other roommates,
12 and who were they?

13 A. Deco, Red, and Lala.

14 Q. Donte, Red, and Lala?

15 A. Yes.

16 Q. Is Red in this courtroom today?

17 A. Yes.

18 Q. And can you point to him and describe
19 an article of clothing he's wearing in court today?

20 A. White shirt with the tie.

21 MR. GUYMON: Let the record reflect
22 the identification of the defendant, your Honor.

23 THE COURT: The record will so show.

24 BY MR. GUYMON:

25 Q. You mentioned Donte as well, or I think

1 you said Deco.

2 A. Yeah.

3 Q. Okay. Does Deco have any other names?

4 A. Donte.

5 Q. All right. And you mentioned, I think,
6 Lala?

7 A. Yeah.

8 Q. Does Lala have any other names that you
9 know of?

10 A. Not that I know of.

11 Q. What was Lala's relationship to Red and
12 Deco?

13 A. Deco's girlfriend apparently.

14 Q. Okay. Now, when did Deco, Lala, and
15 Red move into the house on Everman?

16 A. Late July, beginning of August,
17 probably late July.

18 Q. All right.

19 A. Mid-July.

20 Q. Excuse me?

21 A. Mid-July.

22 Q. How many weeks had Red, Deco, and Lala
23 stayed at this Everman house before you left?

24 A. About three.

25 Q. Three weeks?

1 A. About three weeks.

2 Q. Okay. I'm showing you what I, I had
3 previously showed counsel as State's Proposed
4 Exhibits 158 and 159. They are, do you recognize
5 the calendar months of July and August?

6 A. Yeah.

7 Q. Of 1998?

8 A. Yeah.

9 MR. GUYMON: I would move for the
10 admission of State's Proposed Exhibits 158 and 159.

11 THE COURT: Any objection?

12 MR. WOLFBRANDT: No, your Honor.

13 THE COURT: 158 and 159 are admitted
14 into evidence.

15 BY MR. GUYMON:

16 Q. All right. Now, then, I will keep
17 those there if you need to refer to dates if it
18 becomes important with the Court's permission.

19 All right. You say that Red, Deco, and
20 Lala were at the house for about three weeks while
21 you were still there?

22 A. Yes.

23 Q. What room did Red, Deco, and Lala stay
24 in?

25 A. Master bedroom.

1 Q. Anyone else stay in that bedroom?

2 A. No.

3 Q. Now, did BJ, Todd, or yourself keep any
4 of your items in the master bedroom while the three
5 of them stayed in the master bedroom?

6 A. There was a stereo in there and nothing
7 else.

8 Q. Okay. Who kept their personal items in
9 the master bedroom for the last three weeks that
10 you were at Everman?

11 A. Deco, Red, and Lala.

12 Q. Okay. And showing you what has been
13 marked as State's Proposed, I'm sorry, Ms. Clerk.
14 Okay. Showing you what has been, showing you what
15 has been marked as State's Proposed Exhibit 160, do
16 you recognize the individuals that are on this
17 particular board?

18 A. Yes.

19 Q. And who is on this particular board?

20 A. Deco, Tiny Bug, and Red.

21 Q. Deco, Tiny Bug, and Red?

22 A. Yeah.

23 MR. GUYMON: I moved for admission of
24 State's Proposed Exhibit 160.

25 THE COURT: Any objection?

1 MR. WOLFBRANDT: No objection.

2 THE COURT: 160 is admitted.

3 BY MR. GUYMON:

4 Q. Now, you mentioned the name Tiny Bug,
5 and I can display it. Did Tiny Bug stay at
6 Everman?

7 A. No.

8 Q. How is it that you know Tiny Bug?

9 A. Through a friend, Shawn.

10 Q. Shawn?

11 A. Yeah.

12 Q. Is Shawn a boy or a girl?

13 A. Girl.

14 Q. All right. If you know, was Tiny Bug
15 friends with Red and Donte Johnson?

16 A. Yeah, apparently. I guess so. I only
17 seen Tiny Bug at my house one time, and he was with
18 Deco and Scale and Horse.

19 Q. Okay. Deco, Scale, and Horse, Horse is
20 another person, I take it.

21 A. Another friend.

22 Q. All right. And you say that Tiny Bug
23 had only come to your house once?

24 A. That I know of.

25 Q. Is this at Everman?

1 A. Yeah.

2 Q. All right. Now, for the three months
3 before you moved out in July, early August you've
4 indicated that Donte, Red, and Lala stayed in the
5 master bedroom?

6 A. Yeah.

7 Q. Did they have personal items that they
8 had there at the house?

9 MR. WOLFBRANDT: Objection, asked and
10 answered.

11 THE COURT: I don't know. He asked if
12 they kept anything in his bedroom. Overruled.

13 BY MR. GUYMON:

14 Q. Did they have personal items at the
15 house?

16 A. Clothes and shoes and, yeah.

17 Q. Okay. And if you saw photographs of
18 the Everman residence, would you recognize them?

19 A. Yes.

20 Q. Now, then, you say there came a point
21 in time that you moved out of the Everman
22 residence?

23 A. Yes.

24 Q. And where did you move to?

25 A. BJ's, Brian Johnson's.

1 Q. And who was BJ living with?

2 A. His mom.

3 Q. Now, when you moved out of Everman and
4 you moved into BJ's mother's house, did you take
5 all of your stuff with you from Everman?

6 A. Just the clothes I wore every day.

7 Q. Okay. What kind of things did you
8 leave at Everman?

9 A. I left a bed and my dress clothes, and
10 that's it.

11 Q. Okay. Why wouldn't you take, say, your
12 dress clothes?

13 A. Because I barely wear them.

14 Q. Once you left the house in either late
15 July, early August, can you tell me which one it
16 was, or do you know?

17 A. When I left the house?

18 Q. Yes.

19 A. It was probably late July.

20 Q. Okay. Once you left did you ever go
21 back to the Everman house?

22 A. Yeah.

23 Q. And why?

24 A. Just because Todd still lived there.
25 We were still friends. And I had a job interview

1 one time, had to get my dress clothes.

2 Q. Okay. Did you recall what day your job
3 interview was?

4 A. 15th, Saturday.

5 Q. Of what month?

6 A. August.

7 Q. 1998?

8 A. Yes.

9 Q. All right. I'm going to get to the
10 15th, but before I do let me ask you a couple other
11 questions. Do you recognize the name Matt Mowen?

12 A. Yes.

13 Q. Would you recognize his picture if you
14 saw it?

15 A. Yes.

16 Q. I'm showing you what has been marked as
17 State's Proposed Exhibit 179. Does Matt Mowen
18 appear on this particular board?

19 A. Yes.

20 Q. Can you tell me where he appears on the
21 board?

22 A. Right there.

23 Q. Right here?

24 COURT: Top right?

25 THE WITNESS: Yes.

1 THE COURT: What exhibit is it?

2 MR. GUYMON: That's State's Exhibit
3 179.

4 THE COURT: The record will so show.

5 BY MR. GUYMON:

6 Q. Using 179, did you know any of the
7 other boys --

8 A. Yes.

9 Q. -- at this particular address?

10 A. Tracey.

11 Q. Tracey Gorringer?

12 A. Yes.

13 Q. First of all, how did you know Matt
14 Mowen?

15 A. We were good friends in junior high,
16 junior high school.

17 Q. Okay. And how about, say, in July of
18 1998? How would you describe your relationship
19 with Matt Mowen?

20 A. Just, I mean, we, we hadn't seen each
21 other in four years, and he came over, came over to
22 our house a couple times.

23 Q. Okay. I'm going to get to the couple
24 of visits. How about Tracey Gorringer? How did you
25 know him?

1 A. From high school. I went to Green
2 Valley High School.

3 Q. And how would you describe your
4 relationship with Tracey Gorringer in July of '98?

5 A. I hadn't even talked to him in four
6 years.

7 Q. Did you know where Tracey and Matt
8 lived?

9 A. Yes.

10 Q. How did you know where they lived?

11 A. Because I, I hung out with Tracey's
12 little brother, Nick.

13 Q. How often did you go over to the house
14 on Terra Linda?

15 A. I had only been there three or four
16 times, not that, few times.

17 Q. Would you recognize the house on Terra
18 Linda if you saw it?

19 A. Yes.

20 Q. Now, then, you mentioned that Matt
21 Mowen or Matt Mowen had been over to the house a
22 couple times?

23 A. Yes.

24 Q. Do you recall what month it was that
25 Matt Mowen had been to the house?

1 A. It had to have been in July.

2 Q. Okay. When we talk about the house,
3 are we talking about Everman?

4 A. Yes.

5 Q. And when Matt Mowen came over to the
6 house, can you tell me who all was present, say,
7 the first or second time that you came to the
8 house?

9 A. The people that lived there, me, Todd,
10 BJ, Red, Deco, and Lala.

11 Q. Okay. And who did Matt Mowen speak to
12 when he came over to the house those two times?

13 A. Me and Deco.

14 Q. When he spoke to Deco, was Red present?

15 A. Yeah.

16 Q. All right. And what was Matt Mowen
17 there for if you know?

18 A. They were dealing drugs.

19 Q. Who is they?

20 A. Deco and Matt.

21 Q. Tell me, actually was Matt there to buy
22 or to sell, or do you know?

23 A. I guess he was there to buy.

24 THE COURT: Do you know?

25 THE WITNESS: No. I don't know. I

1 don't, I don't know.

2 BY MR. GUYMON:

3 Q. Okay. Did you ever see a sale of
4 drugs --

5 A. No.

6 Q. -- transpire between the two of them?

7 A. No.

8 Q. Were you ever part of a conversation
9 about the sale of drugs?

10 A. No.

11 Q. Were you ever present for a
12 conversation about monies that Matt Mowen had or
13 had made?

14 A. There was a conversation one time that
15 Matt had followed --

16 THE COURT: Just a minute. Lay a
17 foundation.

18 BY MR. GUYMON:

19 Q. Okay. Who was present for that
20 conversation?

21 A. Everybody that, me, BJ, Todd, Red,
22 Deco, Lala.

23 Q. And when was the conversation?

24 A. One day that he came over there.

25 Q. Okay. In what month?

1 A. July.

2 Q. Of '98?

3 A. Yes.

4 Q. And was this over at the Everman house?

5 A. Yes.

6 Q. And tell me what, who Matt Mowen was
7 speaking to?

8 A. I don't know exactly who he was
9 speaking to. He was just telling, we were all
10 sitting there, telling us about he followed a Fish
11 group concert around and that they made a lot of
12 money selling pizzas and stuff out of the back of
13 their van.

14 Q. You said selling pizzas and stuff?

15 A. Drugs.

16 Q. Did he mention selling drugs as well?

17 A. Yes.

18 Q. Do you recall what either Red, Terrell
19 Young, or Deco said about that?

20 A. Nothing.

21 Q. Excuse me?

22 A. They didn't, did they say anything
23 about it?

24 Q. Yes.

25 A. No, not that I know of.

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1 Q. And about how long did that
2 conversation transpire? How long was Matt Mowen
3 over at the house that time?

4 A. 20, 20, 30 minutes.

5 Q. Okay. Now, then, you mentioned that
6 there was an interview that you had on the 15th?

7 A. Yes.

8 Q. What was the interview for?

9 A. Outdoor Services.

10 Q. And were you to be interviewed that
11 day?

12 A. Yeah.

13 Q. And what time was your interview at if
14 you know?

15 A. 12:00 to 12:30.

16 Q. You say 12:00 or 12:30?

17 A. Yes.

18 Q. In the afternoon?

19 A. Yes.

20 Q. Okay. And how had you gotten over to
21 the house on Everman?

22 A. BJ, Brian Johnson.

23 Q. Do you recall what time it was you
24 arrived at the house?

25 A. 10:00 or 10:30.

1 Q. In the morning?

2 A. Yeah.

3 Q. When you got over to the house on
4 Everman, why did you go to the house on Everman?

5 A. To pick up my interview clothes.

6 Q. Okay. When you got over there at 10:00
7 or 10:30, tell me who was home.

8 A. Todd, Deco, Red, and Lala.

9 Q. And Red is the person that you've
10 identified in court?

11 A. Yes.

12 Q. And can you tell me what Red, Deco,
13 Lala, and Todd were doing when you walked in the
14 door?

15 A. They were all sitting in the living
16 room watching the news.

17 Q. Did you see the news?

18 A. Yes.

19 Q. All right. What was on the news?

20 A. That quadruple murder that happened at
21 the house. I really wasn't paying attention at
22 that time.

23 Q. Okay. Did you pay attention to the
24 news once you heard it?

25 A. I can't say I paid attention to it, no.

1 Q. What did you see, if anything, on the
2 screen?

3 A. I just, they showed the house, and I
4 recognized the house as being Nick's and Tracey's
5 and Matt's house.

6 Q. All right. Now, when you recognized
7 the house as being Tracey, Nick, and Matt's, did
8 you say anything?

9 A. No. I was shocked. I was, just that I
10 knew them and that it was, looked like Matt and
11 Tracey's house.

12 Q. Now, as you saw that on the screen what
13 was Terrell doing?

14 A. Sitting there.

15 Q. What was Deco doing?

16 A. Sitting there.

17 Q. And Lala?

18 A. Sitting there.

19 Q. Okay. What happens next?

20 A. Nothing. I, Deco and Red got up and
21 left the room, and then Todd told me what had
22 happened. And I just started, I was fixing my
23 clothes up to leave, and Todd told me what happened
24 at the house the night before, two nights before.
25 And I went back towards the bathroom and talked to

1 Deco.

2 Q. You say you went back towards the
3 bathroom and talked to Deco?

4 A. Because they went in the master bedroom
5 to talk, I guess.

6 Q. They went in the back master bedroom.
7 Who is they?

8 A. Red and Deco.

9 Q. All right. So, they leave, and you now
10 talk to Todd?

11 A. Yeah.

12 Q. After you talked to Todd you walked
13 back towards the master bedroom?

14 A. Yes.

15 Q. And who do you speak with?

16 A. Deco.

17 Q. And who else is present?

18 A. Red.

19 Q. Okay.

20 THE COURT: Terrell Young?

21 THE WITNESS: Yes.

22 BY MR. GUYMON:

23 Q. Is it just the three of you?

24 A. I think so. I don't remember.

25 Q. Okay. And what was it that you now say

1 to Terrell Young and Deco?

2 A. If, what had happened and what happened
3 the night before, because Todd had told me.

4 Q. And did Terrell and Deco answer you?

5 A. Yes.

6 Q. And what is it that they answered?

7 THE COURT: Who?

8 BY MR. GUYMON:

9 Q. First of all, who's speaking? Are you
10 speak to --

11 A. Deco.

12 Q. Okay. And where is Red?

13 A. Standing right there.

14 Q. Is Red part of the conversation?

15 A. I guess so.

16 Q. All right. Well, who, tell me who all
17 was talking.

18 A. Well, we all were. It was just, all of
19 us were talking in a group.

20 Q. Okay. So, you're talking?

21 A. Yeah.

22 Q. Deco's talking?

23 A. Yeah.

24 Q. Red's talking?

25 A. Yes.

1 Q. Is anybody else talking in the
2 conversation?

3 A. Not that, I think Todd might have been,
4 but I don't remember exactly.

5 Q. What is it that you now say to Terrell
6 and Deco?

7 A. What had happened.

8 Q. And what is the response?

9 A. That they went over there --

10 THE COURT: Who's saying this to you?

11 THE WITNESS: Deco said that they went
12 over to the house, and Matt was in the front yard
13 watering the grass, and they, when they went in the
14 house, that there was just two people there, and a
15 third person came, and then a fourth came after
16 that.

17 BY MR. GUYMON:

18 Q. Okay. And as, as Deco says that does
19 Terrell also talk in the conversation?

20 A. I don't know. I don't know exactly who
21 was saying what.

22 Q. Okay. How long did the conversation go
23 on for?

24 A. About 20, 30 minutes.

25 Q. All right. Did they, did Deco or Red

1 tell you what happened in the house?

2 A. Yes.

3 Q. All right. And what is it that you
4 learned happened in the house?

5 A. That they tied them up, and they went,
6 the first two. And they asked them where the money
7 was at, and they said they didn't have none. And
8 the third person came, and they didn't say, they
9 said they didn't have none again. And then I guess
10 apparently the fourth person came and was talking
11 back to them. So, they were roughing them up.

12 Q. Who was, you say they were roughing
13 them up?

14 A. I guess apparently Deco or Red. I
15 don't know. They said they roughed them up and
16 took, took him back in the back bedroom and shot
17 him.

18 Q. Now, when they said, do you know who,
19 was it Red or was it Deco who said, and we took him
20 in the back room and shot him?

21 A. It was Deco.

22 Q. So, Deco said that?

23 A. (No audible response.)

24 Q. Is that a yes?

25 A. Yes.

1 Q. Did Deco say he was the one that shot
2 the first person?

3 A. Pretty much.

4 Q. Okay. And what did Red say as Deco
5 said that?

6 A. Deco told me that Red was telling him
7 that they can't leave the other three, because
8 they're witnesses.

9 Q. Okay. And what did Red say about
10 that?

11 THE COURT: That's what Red told Deco,
12 we can't leave the other three.

13 BY MR. GUYMON:

14 Q. I'm sorry. Tell me, did the
15 conversation go on?

16 A. Just --

17 MR. WOLFBRANDT: You know what,
18 judge? Actually I want him to answer him, because
19 I think the answer was that Deco tells him that's
20 what Red told him.

21 THE COURT: That's right.

22 MR. WOLFBRANDT: And so, the question
23 was, what was Terrell's reaction when Deco said
24 that?

25 THE COURT: That's the question.

1 BY MR. GUYMON:

2 Q. Okay.

3 A. I didn't pay no attention --

4 Q. Okay.

5 A. -- to the reaction.

6 Q. Okay. And was Deco doing most of the
7 talking?

8 A. Yes.

9 Q. Okay. What was Red doing as Deco spoke
10 to you about this?

11 A. Standing there.

12 Q. Okay. What do you specifically
13 remember Red saying as Deco spoke to you?

14 A. What was that?

15 Q. What do you specifically remember Red
16 speaking to you about while Deco, you, and Red
17 stood there?

18 A. The only thing I can remember Red
19 saying is that, I guess they had dogs in the house
20 and that he, that they should have killed the dogs,
21 too, but Deco said no, because he like dogs.

22 Q. Okay. Now, when Red said we should
23 have killed the dogs, too, how was Red acting as he
24 said that?

25 A. Normal.

1 Q. Okay. And how was Deco speaking as
2 Deco spoke to you?

3 A. Normal.

4 Q. Okay. Now, at any point in time did
5 either Deco or Red talk about bloodshed?

6 A. Yes, Deco did.

7 Q. And what did Deco say about the
8 bloodshed?

9 A. That there was blood coming out the
10 back of their head like Niagara Falls.

11 Q. And as, as Deco said that what was
12 Terrell doing?

13 A. Just standing there.

14 Q. At any point in time in the
15 conversation did you learn how much monies or what
16 property was taken from these kids?

17 A. I only heard \$240.

18 Q. And who did you --

19 A. And, and later on I found out a
20 pager --

21 Q. Okay.

22 A. -- as the conversation went on.

23 Q. Let me get to the pager. Who told you
24 that the \$240 was taken?

25 A. Deco.

1 Q. Okay. Did Red say anything about that?

2 A. No.

3 MR. WOLFBRANDT: Your Honor, I'm going
4 to object on foundation. It's a different
5 conversation. I don't know if Terrell was even
6 present.

7 THE COURT: It's the same
8 conversation, isn't it?

9 THE WITNESS: Yes.

10 MR. GUYMON: Yes.

11 MR. WOLFBRANDT: He said later on he
12 found out. Maybe I'm misunderstanding. He said
13 later on.

14 THE COURT: This is the same
15 conversation in the bedroom; is that correct?

16 THE WITNESS: This is in the hallway.

17 THE COURT: Same conversation, same
18 time.

19 MR. WOLFBRANDT: Okay.

20 THE COURT: Same people present.

21 THE WITNESS: Yes, but the pager
22 conversation wasn't, it was in the utility room
23 like afterwards.

24 BY MR. GUYMON:

25 Q. Right. I was going to bring us to

1 that. Now, approximately how long did you speak to
2 Deco and Red either in the bathroom or the hallway
3 right there by the bathroom?

4 A. About 20, 30 minutes.

5 Q. Okay. Now, then, there came a point in
6 time when there's a conversation about a pager?

7 A. Yes.

8 Q. And where were you at when the pager
9 conversation took place?

10 A. In the utility room. In the utility
11 room.

12 Q. Who was present?

13 A. Me, Todd, Red, and Deco.

14 Q. All right. And how did that pager
15 conversation come about?

16 A. Todd had broke his pager fighting with
17 his, his girlfriend weeks before. And he asked, I
18 guess Deco or somebody had showed him the pager.
19 And he brought it up in front of me saying, you
20 guys, can I have that pager that you have? And
21 they said they got rid of it.

22 Q. You said they said they got rid of it?

23 A. Deco said they got rid of it.

24 Q. And when he said they got rid of it,
25 where was Terrell at?

1 A. He was right there.

2 Q. Now, how would you describe Deco's and
3 Terrell's relationship back in July of '98?

4 A. Good friends.

5 Q. Okay. Of the two, how often were they
6 together based on your observations?

7 A. They were always together. They never
8 went anywhere without each other.

9 Q. And how long had you known Deco and
10 Terrell to be together always never without each
11 other?

12 A. Just that month of July.

13 Q. Now, how would you describe, say, if
14 Deco and Terrell were together all the time, how
15 about Sikia? How would you describe his
16 relationship, if you know, Terrell and Deco?

17 A. I, I don't know. I, I barely seen them
18 hang out together.

19 Q. Now, then, did you go to your interview
20 that day?

21 A. Yeah.

22 Q. And how did you get there?

23 A. BJ and Todd.

24 Q. And they both took you?

25 A. We all three went together.

1 Q. Okay. Now, then, did you think that
2 the information that you had learned from Deco and
3 Terrell was important to the police?

4 A. Well, yeah.

5 Q. Why did you think it was important?

6 A. Because four people had died.

7 Q. Now, knowing that it was important to
8 the police, did you immediately on the 15th after
9 you learned it, did you call the police?

10 A. No.

11 Q. Why?

12 A. Because we didn't know what to do.

13 Q. When you say we didn't know what to
14 do --

15 A. Me, Todd, or BJ.

16 Q. Did you talk to Todd and BJ about what
17 you should do?

18 A. There wasn't much conversation about
19 it.

20 Q. What did you decide to do with the
21 information on the 15th?

22 A. I, I didn't know what to do with it.

23 Q. All right. At some point in time did
24 you go to the police?

25 A. Yes. We were at BJ's house, and the

1 detective came there.

2 Q. Who's we?

3 A. Me, Todd, and BJ. And I guess they had
4 got a, a line that something happened to, they knew
5 we were at BJ's, and the detective came there and
6 asked us what, what happened.

7 Q. Do you recall when that was?

8 A. No.

9 Q. How many days approximately had gone by
10 since the 15th?

11 A. A couple days, two days. BJ had said
12 something to his mom about what happened, and she,
13 either she or some girl that was at her house had
14 heard the conversation and called the detective and
15 told them that we were all in the house, to come
16 over there right then.

17 Q. All right. And did you talk with the
18 police then?

19 A. Yes.

20 Q. All right. Now, counsel, I've
21 previously shown you photographs.

22 Showing you, Mr. Hart, State's Proposed
23 Exhibit 98, for starters, do you recognize State's
24 Proposed Exhibit 98?

25 A. Yes.

1 Q. And what is depicted in States Proposed
2 Exhibit 98?

3 A. Front door of my house.

4 Q. And is that Everman?

5 A. Yes.

6 Q. Does it fairly and accurately depict
7 the front door of the Everman residence, say, in
8 July and August of 1998?

9 A. Yes.

10 MR. GUYMON: I would move for the
11 admission of State's Proposed Exhibit 98.

12 THE COURT: Any objection?

13 MR. WOLFBRANDT: No, your Honor.

14 THE COURT: 98 is admitted.

15 MR. GUYMON: If I can publish it,
16 please, your Honor --

17 THE COURT: Go ahead.

18 BY MR. GUYMON:

19 Q. Showing you what's marked as State's
20 Proposed Exhibits 99 through 107, I want you to
21 look at all of those photographs and tell me if you
22 recognize those particular photographers.

23 A. Yeah.

24 Q. Okay. And what is depicted in those
25 particular photographs, what residence?

1 A. My house.

2 Q. And your house there at Everman?

3 A. Yes.

4 MR. GUYMON: All right. I would move
5 for the admission of State's Proposed Exhibits 99
6 through 107, your Honor.

7 THE COURT: Any objection?

8 MR. WOLFBRANDT: No, your Honor.

9 THE COURT: 99 through 107 is
10 admitted.

11 BY MR. GUYMON:

12 Q. Okay. Now, then, in State's Proposed
13 Exhibit 99 there appears to be a VCR and an
14 Nintendo?

15 A. Yes.

16 Q. Is that correct?

17 A. Uh-huh.

18 Q. What room in that Everman house is
19 this?

20 A. This is our living room.

21 Q. Okay. Now, then, when you moved out
22 in, say, late July, early August, was that Nintendo
23 and VCR in the house?

24 A. No.

25 Q. Okay. So, the Nintendo and the VCR had

1 to have come after you moved out, say, in late
2 July, early August?

3 A. Yes.

4 MR. GUYMON: All right. I would move
5 to publish --

6 THE COURT: All right.

7 BY MR. GUYMON:

8 Q. -- 99 and 100, 101, 102.

9 Showing you what's now been admitted as
10 State's Proposed Exhibit 103, do you recognize the
11 items that are in the shoe box in 103?

12 A. Yes.

13 Q. And whose items are those if you know?

14 A. Deco's.

15 Q. Okay. There are, there's a box of,
16 say, Black & Mild cigarettes and cigars in that
17 box, are there not?

18 A. Yes.

19 Q. In fact, there's two boxes at least.
20 Can you tell me who smoke Black & Milds?

21 A. Deco.

22 Q. Okay. And how regularly did Deco smoke
23 Black & Milds?

24 A. Like a cigarette, like someone would
25 smoke a cigarette.

1 Q. More than one cigarette a day?

2 A. Yeah.

3 Q. Approximately how many cigarettes a day
4 would Deco smoke?

5 A. Three or four, maybe five. I'm not
6 sure.

7 MR. GUYMON: I would move to publish
8 103 as well.

9 THE COURT: You may do so.

10 BY MR. GUYMON:

11 Q. Now, I might ask you, I'm going to, in
12 104 there is a duffle bag. Had you ever seen, say,
13 duffle bags in the house in July of '98?

14 A. Yes.

15 Q. And who owned a duffle bag?

16 A. I, I don't know. It came whenever Deco
17 moved in.

18 Q. Okay. And when Deco moved in, who came
19 with Deco?

20 A. Red and Lala.

21 Q. Do you know when the, so I guess the
22 duffle bag came with them?

23 A. Yeah.

24 Q. Do you know who owned, of the three,
25 the duffle bag?

- 1 A. No.
- 2 Q. Who would handle or touch the duffle
3 bag?
- 4 A. Deco.
- 5 Q. Anyone else?
- 6 A. Red and Lala.
- 7 Q. Okay. And tell me, had you ever seen
8 any items in the duffle bag in July when Red, Deco,
9 and Lala came with the duffle bag?
- 10 A. Yes.
- 11 Q. What items had you seen in the duffle
12 bag?
- 13 A. Guns.
- 14 Q. How many guns?
- 15 A. A couple rifles and a few pistols.
- 16 Q. I want to talk to you about the term a
17 couple rifles. Are you familiar with rifles?
- 18 A. Yes.
- 19 Q. And how is it you're familiar with
20 rifles?
- 21 A. Just, I don't know. I know guns.
- 22 Q. Can you describe the couple of rifles?
23 I take it that means two or more.
- 24 A. I think there was only two.
- 25 Q. Describe the two that you remember.

1 A. There is a .22 with a banana clip.
2 There was some other, I don't know what it was. It
3 was, it was all broke up. There wasn't no stock on
4 it.

5 Q. All right. You say there was a .22
6 with a banana clip?

7 A. Yeah.

8 Q. And there was a second gun that had no
9 stock on it?

10 A. Yeah.

11 Q. What do you mean by no stock on it?

12 A. Like no grip, handle part for it.

13 Q. Is the stock of a rifle something you
14 put against your shoulder?

15 A. Yeah.

16 Q. So, that was gone?

17 A. Yeah.

18 Q. Was there anything on the end that you
19 would hold on to?

20 A. Not that I remember.

21 Q. All right. So, that's the two rifles.
22 Let's talk about the other guns. How many of them
23 were there?

24 A. I can't, I think maybe three or four.

25 Q. Okay. Can you describe the type of

1 handguns there were of the three or four?

2 A. Just maybe a .380 and a .38, and I
3 don't remember what, I don't know what the other
4 ones were.

5 Q. Was the .380 an automatic or a
6 revolver?

7 A. The .380?

8 Q. Yes.

9 A. It was a semiautomatic.

10 Q. Semiautomatic?

11 A. Yeah.

12 Q. And how about the .38?

13 A. Revolver.

14 Q. Okay. Was there anything else in the
15 bag that you noticed back in July?

16 A. No.

17 Q. Okay. This particular bag in State's
18 Exhibit 104, do you recognize it as being one of
19 the bags or a bag that came with Terrell, Deco, and
20 Lala?

21 A. Yes.

22 Q. There's some duct tape in the
23 particular bag. Had you ever seen the duct tape
24 back when you were staying at the house in July?

25 A. I don't know. I don't remember.

1 Q. Okay.

2 A. I don't remember it being in there.

3 MR. GUYMON: All right. I moved for
4 the admission of, to publish 104.

5 THE COURT: You may do so.

6 BY MR. GUYMON:

7 Q. Now, lastly I want to show you, you've
8 looked at, and they're now admitted, State's
9 Exhibits 105 through 107. And I ask you, in 105
10 there is a leg of a pair of black jeans, and there
11 are some Fubu brown shoes. Do you know who wore
12 black jeans?

13 A. The black jeans Deco and Red wore.
14 They had matching outfits, these things right here.

15 Q. Okay. You've just pointed to 107.
16 There are two pair of jeans. What bedroom is that
17 picture from?

18 A. That's the master bedroom.

19 Q. Okay. There's two pair of jeans.
20 Whose jeans were they?

21 A. Deco and Red's.

22 Q. All right. There's also what appears
23 to be a rifle with a banana clip?

24 A. Yeah.

25 Q. Whose rifle did that belong to?

1 A. I guess Deco.

2 Q. Okay. It came with the other three in
3 the duffle bag?

4 A. Yeah.

5 Q. Does it have a banana clip, the same
6 clip you described earlier?

7 A. Yes.

8 Q. And there are, looks like a pair of
9 woman shoes in the bottom corner?

10 A. Yes.

11 Q. Do you know whose those are?

12 A. Lala's.

13 Q. And there is three pair of shoes in the
14 other corner. If you will, whose shoes are those?

15 A. I just remembered the black Nikes is
16 Red's. The other shoes, I don't know.

17 Q. So, Deco wore, excuse me. Red wore the
18 black Nikes?

19 A. Yes.

20 Q. All right. And in 106 there's some
21 black Nikes as well; is that correct?

22 A. Yes.

23 Q. Are there also in the master bedroom?

24 A. Yes.

25 MR. GUYMON: I would move to publish

1 105 through 107.

2 THE COURT: You may so.

3 BY MR. GUYMON:

4 Q. Lastly, are you familiar with the back
5 yard of the Everman residence?

6 A. Yes.

7 Q. If you saw a photograph, would you
8 recognize the back yard?

9 A. Yes.

10 Q. All right. Showing you what I've
11 previously showed counsel, 108, do you recognize
12 108?

13 A. Yes.

14 Q. What is 108?

15 A. Back yard.

16 Q. Okay. There at Everman?

17 A. Yes.

18 Q. All right. Now, were you present when
19 the police did a search of the back yard?

20 A. Yes.

21 Q. Okay. And how did they search the back
22 yard? What did they use?

23 A. A metal detector.

24 Q. Were you present, and can you tell us
25 if they ever found anything?

1 A. Yes.

2 Q. What did they find if you were there?

3 A. Pager and two keys, two room keys.

4 Q. Okay. I want to have you, having shown
5 you 108, I want to show you 109, 10, 11, and 12.

6 Do you recognize those items as the items that the
7 police found in the Everman back yard?

8 A. Yes.

9 Q. And approximately how many days after
10 your interview -- say, your interview was the 15th
11 of August -- did the police search that yard and
12 find these things if you know?

13 A. Three days.

14 Q. Okay. And do you recognize the keys
15 and the pager that were found in your back yard?

16 A. Yes.

17 MR. GUYMON: I move for the admission
18 of 108 through 112.

19 THE COURT: Any objection?

20 MR. WOLFBRANDT: No, your Honor.

21 THE COURT: 108 through 112 are
22 admitted.

23 MR. GUYMON: I would ask to publish
24 them, judge.

25 THE COURT: You may do so.

1 BY MR. GUYMON:

2 Q. Now, the keys, do you know where those
3 keys are from or what they go to?

4 A. I guess the Thunderbird Hotel.

5 Q. I want to talk to you about the
6 Thunderbird Hotel. Do you know where the
7 Thunderbird Hotel is located?

8 A. Yes.

9 Q. Now, prior to July when Donte, Red,
10 Terrell Young, and Lala came to the house, do you
11 know where the three of them were staying?

12 A. Before they came to my house?

13 Q. Yes.

14 A. The Thunderbird.

15 Q. All right. The Thunderbird Hotel?

16 A. Uh-huh.

17 THE COURT: Is that a yes?

18 THE WITNESS: Yes. They --

19 THE COURT: Thank you. You answered
20 it.

21 BY MR. GUYMON:

22 Q. Now, how long did they stay at the
23 Thunderbird Hotel?

24 MR. HASTINGS: I would ask for some
25 foundation on this area, judge.

1 THE COURT: If he knows.

2 THE WITNESS: A few weeks, a couple
3 weeks.

4 BY MR. GUYMON:

5 Q. Does, okay. And was that before or,
6 say, the middle of August, middle of July?

7 A. That was before.

8 Q. Okay. Who got them the room --

9 A. I did.

10 Q. -- at the Thunderbird?

11 A. I got, Red or Lala wasn't with us when
12 we got the room.

13 Q. Okay. So, who was present?

14 A. Just me and Deco.

15 Q. Just you and Deco?

16 A. Yes.

17 Q. So, for the, for the two weeks before
18 they came to Everman you had gotten a room for --

19 A. Deco.

20 Q. -- Deco at the Thunderbird?

21 A. Yes.

22 MR. GUYMON: Okay. Court's
23 indulgence. We'll pass the witness, your Honor.

24 THE COURT: Mr. Wolfbrandt?

25

CROSS-EXAMINATION

BY MR. WOLFBRANDT:

Q. Thank you. Ace, how old are you?

A. 20.

Q. You won't be 21 until, what, November?

A. Yes.

Q. Todd Armstrong was your best friend for a lot of years, wasn't he?

A. Yes, two and a half years.

Q. Two and a half years? All right. Now, when Todd, Todd was living at the Everman house with his mother for a period of time, right?

A. No, not that I know of.

Q. Do you know that Todd's mom owns the house at Everman?

A. Yes.

Q. Okay. Did she ever live, did Todd's mother ever live in that house?

A. Maybe years ago. She's lived in Hawaii for years now, for since I've known Todd I've known his mom to live in Hawaii.

Q. Since you've known Todd he always lived in the room opposite from the master bedroom, didn't he?

A. Yes.

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1 Q. This was even long, long before Deco
2 came over to stay at the house, right?

3 A. Yes.

4 Q. So, it wasn't anything unusual that
5 Todd wasn't staying in the master room, right?

6 A. No.

7 Q. In fact, wasn't that because he has
8 some big heavy-duty water bed that he didn't want
9 to move?

10 A. That's probably part of it.

11 Q. Now, you used to, well, how long did
12 you live with Todd at that Everman house?

13 A. Five or six months.

14 Q. So, going backwards from July, you
15 moved in there, what, about February?

16 A. Yeah.

17 Q. And where did you live before that?

18 A. With my mom.

19 Q. Who were your other good friends along
20 with Todd?

21 A. Just BJ.

22 Q. So, you and Todd and BJ used to hang
23 around together?

24 A. We had a bunch of different friends
25 that came over but mainly me, Todd, and BJ.

1 Q. Okay. How is it that you got to know
2 Matt Mowen?

3 A. From junior high.

4 Q. You went to junior high school
5 together?

6 A. Yeah.

7 Q. Is that a yes?

8 A. Yes.

9 Q. How about Tracey Gorringer? How did you
10 get to know him?

11 A. He gave me rides to high school.

12 Q. Was that at Chaparral?

13 A. No, at Green Valley.

14 Q. Oh, okay. And I think you said on
15 direct that you knew Nick a little better than you
16 knew Tracey?

17 A. Yeah. Me and Nick and Chris Toche used
18 to hang around together when we were younger.

19 Q. How about Jeffrey Biddle? Did you know
20 him?

21 A. No.

22 Q. You just knew he lived at the house
23 with --

24 A. I really didn't know that much or
25 anything about him.

1 Q. Okay. For the house on Terra Linda,
2 though, the ones you really knew there was Matt,
3 Tracey, and Nick?

4 A. Yeah.

5 Q. Did you ever go over to that house to
6 visit --

7 A. I've been --

8 Q. -- Tracey, Nick, and Matt?

9 A. I've been there a couple times.

10 Q. More than twice?

11 A. Maybe twice, three times maybe.

12 Q. Okay.

13 A. I haven't been, I've only been there a
14 couple times that I can remember, too, but I might
15 have been there more.

16 Q. Do you remember how long they had lived
17 in that house?

18 A. No.

19 Q. When you went over to the house on
20 Terra Linda, did you party with them?

21 A. No.

22 Q. Did you ever drink beer with them?

23 A. No.

24 Q. Do you know they had a lot of drugs
25 around the house?

1 A. No.

2 Q. Did you ever tell the police they had a
3 lot of drugs around that house?

4 A. Just from what I heard from Todd.

5 Q. Do you recall telling the police that
6 there was about 30 pounds of mushrooms at the
7 house?

8 A. Yes, that I heard that there was that
9 much.

10 Q. Okay. You had heard all that from
11 Todd?

12 A. Yes.

13 Q. Now, Matt Mowen had, that one day he
14 was over buying drugs from Deco, was that the same
15 day that he was bragging about having made all this
16 money on tour with Fish?

17 A. Yes.

18 Q. And pretty much he was just saying that
19 to whoever would listen to him, wasn't he?

20 A. Yeah.

21 Q. Did you come to know or have you ever
22 known whether or not Tracey or Nick had ever toured
23 around with the Fish band even?

24 A. Nick.

25 Q. Okay. In fact, Nick had supposed to

1 have gone on tour for about the whole month of
2 July, wasn't he?

3 A. I don't know. I didn't know nothing
4 about what they were doing. I just knew that's
5 what they did from what Matt had said to me.

6 Q. Was, well, did Nick ever tell you how
7 he had traveled around with the band?

8 A. No.

9 Q. Had Matt told you during that
10 conversation there at the, at the Everman house,
11 did you come to have an understanding that Nick had
12 been touring with the band in July of last year?

13 A. No.

14 Q. Had you seen Nick during July of last
15 year?

16 A. Not that I remember.

17 Q. Did you used to buy drugs from Deco?

18 A. Yes.

19 Q. What did you used to buy from him?

20 A. Cocaine.

21 Q. Cocaine? Is that rock cocaine or
22 powder?

23 A. Rock.

24 Q. You used to smoke a lot of cocaine?

25 A. Not that much.

1 Q. How often would you buy rock from Deco?

2 A. Whenever we were partying.

3 Q. You used to party with him, too?

4 A. With who?

5 Q. With Deco or just you and BJ?

6 A. Just me, BJ, Todd and whoever was at
7 the house.

8 Q. You haven't seen a picture yet today of
9 Todd, have you?

10 A. No.

11 Q. All right. Now, Deco moves into the
12 house on Everman in the first part of July, was it?

13 A. Middle of July, sometime the beginning
14 of July, yeah.

15 Q. Okay. And you moved out when?

16 A. Beginning of August. I started staying
17 at BJ's mom's.

18 Q. Okay. So --

19 A. Maybe the end of July, beginning of
20 August.

21 Q. Okay. Now, this duffle bag that you've
22 seen, there's no mistake that was Deco's bag,
23 right?

24 A. I guess. I don't know exactly whose it
25 was, but I've seen him with it, yes.

1 Q. It was Deco mostly carrying it or doing
2 whatever with it?

3 A. Yes.

4 Q. All right. Now, the day you had this
5 conversation with Deco where Terrell was present,
6 how long had you been there that day doing your
7 laundry?

8 A. Since 10:00 o'clock, 10:00, 10:30 that
9 morning.

10 Q. Okay. And what time did you start
11 having this conversation with Deco?

12 A. I don't remember exactly.

13 Q. Several hours later?

14 A. No. It was, I was gone by 11:30 or
15 12:00, because I had to be there by 12:00, so
16 within the hour.

17 Q. Okay. All right. Had you been smoking
18 any cocaine that day?

19 A. No.

20 Q. Did you see Deco smoking anything that
21 day, anything illicit?

22 A. No.

23 Q. Cocaine, marijuana?

24 A. No.

25 Q. How about Terrell?

1 A. No.

2 Q. Do you recall being interviewed by the
3 police on August 17th at about 6:30 in the evening?

4 A. Yes.

5 Q. Do you recall telling the police at
6 that time that usually when you saw Terrell, Deco,
7 and Lala, that they were smoking weed?

8 A. That's all they ever did, was smoke
9 weed.

10 Q. Anytime you saw them they were smoking
11 weed, right?

12 A. No, not every time I saw them, but I
13 meant to say that they never messed with cocaine.

14 Q. Okay. Fair enough. Did you ever see
15 Terrell, well, let me back up.

16 Do you know what sherm is?

17 A. Yes.

18 Q. Okay. What is your understanding of
19 what sherm is?

20 A. I guess embalming fluid or something.
21 They dip their cigarettes in it.

22 Q. Like PCP?

23 A. I guess so. I don't know. I never
24 messed with it.

25 Q. You don't use it, but you've heard of

1 it?

2 A. I heard about it.

3 Q. Did you ever see Deco smoking sherm?

4 A. No.

5 Q. How about Terrell?

6 A. No.

7 Q. All right. Now, Deco and Lala you saw
8 around the house all the time, didn't you, for the
9 two weeks that you were, you were living there,
10 that they were living there, right?

11 A. Yes.

12 Q. Okay. Now, Terrell had a girlfriend
13 living somewhere else, though, didn't he?

14 A. I guess. I don't know.

15 Q. Okay. I mean, there was some times,
16 many times, weren't there, that Deco and Lala were
17 there at the house on Everman when Terrell wasn't
18 there?

19 A. Yes.

20 Q. There were many nights that Terrell
21 didn't stay the night there but, yet --

22 A. I don't know.

23 Q. -- Deco and Lala did, right?

24 A. I remember nights that Red wasn't there
25 but, and Deco was. I don't know how many, though.

1 Q. Have you gotten any benefits? Have you
2 received anything from the State in exchange for
3 your testimony?

4 A. No.

5 Q. Did you get any cases, have you been
6 arrested before?

7 A. Yes.

8 Q. Did you have any charges pending that
9 were dismissed or reduced because of your
10 testimony?

11 A. No.

12 Q. You don't live in Nevada anymore, do
13 you?

14 A. No.

15 Q. Did the State pay for, for you to move?

16 A. No.

17 Q. Okay. Have you, did you have to pay
18 your own money to come out here to testify?

19 MR. GUYMON: Judge, I'm going to
20 object. He knows when you bring somebody from out
21 of state, it has to be the State's cost. That's
22 statutory. We have to pay for it.

23 THE COURT: Sustained.

24 BY MR. WOLFBRANDT:

25 Q. Okay. So, is it your testimony this

1 morning that you've received nothing from the State
2 in exchange, no benefit in exchange for your
3 testimony?

4 A. No.

5 Q. Okay. Let me direct your attention
6 again to this conversation that you had, I believe
7 it was in the, in a back room of the Everman house
8 first with Deco.

9 A. Uh-huh.

10 Q. Right?

11 A. Yes.

12 Q. And from there, then some more of it
13 occurred in the hallway and then some in a utility
14 room, right?

15 A. Yes.

16 Q. Okay. And that entire conversation was
17 with Deco, wasn't it?

18 A. Pretty much.

19 Q. Other than when you talked about the
20 puppies --

21 A. Yeah.

22 Q. -- everything else, was your
23 conversation with Deco?

24 A. Yes.

25 Q. Okay. Terrell was there. Was he

1 paying attention?

2 A. I don't remember. I mean, I wasn't, it
3 was a year ago. I don't remember exactly who said
4 what and what was really going on at the time.

5 Q. Okay. Did Deco tell you that Sikia,
6 Tiny Bug was there, too?

7 A. I knew nothing about Tiny Bug being
8 there.

9 Q. Did he tell you Todd was involved?

10 A. No.

11 Q. You haven't, Todd did not, let me retry
12 that.

13 As of that day Todd was no longer your
14 best friend; is that true?

15 A. No. He moved to Hawaii, and I didn't
16 talk to him no more. I haven't talked to him
17 since. So --

18 THE COURT: You answered it.

19 BY MR. WOLFBRANDT:

20 Q. Okay. You've never written to each
21 other or ever called each other on the phone?

22 A. He called me one time from Hawaii right
23 after he went, and I talked to him for like five,
24 10 minutes. That was the last time I heard from
25 him.

1 Q. Okay. Court's indulgence. You seen
2 Matt Mowen come over to your house on Everman to
3 buy drugs from Deco on at least one, maybe two
4 occasions?

5 A. Yes.

6 Q. Did you ever know of Deco to go to
7 Matt's house?

8 A. Not that I know of.

9 Q. Did you know if Deco ever even knew
10 where Matt lived?

11 A. Not that I know of.

12 Q. Did you know whether Terrell knew where
13 Matt and Tracey and Nick lived?

14 A. No.

15 Q. Todd Armstrong knew where they lived,
16 though, didn't he?

17 A. Yes. Todd had been to their --

18 THE COURT: You answered yes.

19 MR. WOLFBRANDT: All right. Thank
20 you. I've got nothing.

21 THE COURT: Mr. Guymon?

22

23 REDIRECT EXAMINATION

24 BY MR. GUYMON:

25 Q. Very briefly. Mr. Hart, defense

1 counsel asked you about Lala, Deco, and Terrell
2 smoking marijuana?

3 A. Yes.

4 Q. Do you recall those questions?

5 A. Yes.

6 Q. Did the three of them smoke marijuana?

7 A. Yes.

8 Q. How often?

9 A. I don't know. They, they just smoked.

10 Q. How often did you see them smoke?

11 A. I don't know. They would just get
12 high. I don't know how often.

13 Q. Was Terrell and Deco getting high
14 during this conversation on the 15th in the hallway
15 and by the bathroom?

16 A. No.

17 Q. How were the two of them acting as you
18 had a conversation with them?

19 A. Fine.

20 Q. Lastly, about the promises that the
21 prosecution has given you, have you been given any
22 promises for your testimony?

23 A. No.

24 Q. Have I met with you about any case of
25 yours?

1 A. No.

2 Q. Have I got you out of trouble with the

3 law?

4 A. No.

5 Q. You live out of state now?

6 A. Yes.

7 Q. Do you have a job?

8 A. Yes.

9 Q. Okay. Now, how is it that you get from

10 out of state to here? Who brings that about?

11 A. I fly.

12 Q. All right. And do you purchase the

13 ticket?

14 A. No.

15 Q. Who purchased the ticket?

16 A. Your office.

17 Q. Okay. You do that through our

18 out-of-state coordinator?

19 A. Yes.

20 Q. And who is that?

21 A. Pat.

22 Q. Okay. Now, other than the State having

23 to bear the cost to bring you here, have we given

24 you any other promises?

25 A. No.

1 Q. What is it I've asked of you?

2 A. Just to come up and tell the truth.

3 MR. GUYMON: I have no other
4 questions.

5 THE COURT: Mr. Wolfbrandt?

6 MR. WOLFBRANDT: Nothing further.

7 THE COURT: Mr. Hart, you are
8 excused. You're admonished not to discuss your
9 testimony with anyone until we complete the case.
10 You're free to go. Thank you very much.

11 Got another witness?

12 MR. GUYMON: We do, your Honor.

13 THE COURT: How long will it take?

14 MR. GUYMON: Should be pretty brief.
15 LaShawnya Wright. May I?

16 THE COURT: Yeah. Who are you
17 calling?

18 MR. GUYMON: LaShawnya Wright.

19 THE COURT: Gary, that would be our
20 last witness today. If you have any more out
21 there, you can excuse them. Have them come back
22 tomorrow morning at 9:30. Did you hear?

23 MR. GUYMON: Yes, your Honor.

24 THE COURT: LaShawnya, up here,
25 please. Raise your right hand, please. Stand over

1 here, LaShawnya.

2

3

LaSHAWNIA WRIGHT,

4

called as a witness, and having been first duly

5

sworn to testify to the truth, the whole truth, and

6

nothing but the truth, was examined and testified

7

as follows:

8

9

THE COURT: Be seated. Speak loud and

10

clear. Give us your full name. Spell both names,

11

please.

12

THE WITNESS: LaShawnya,

13

L-a-S-h-a-w-n-y-a W-r-i-g-h-t.

14

THE COURT: And how long have you

15

lived in Clark County, LaShawnya?

16

THE WITNESS: 14 years.

17

THE COURT: And were you living here

18

during the month of August 1998?

19

THE WITNESS: Yes.

20

THE COURT: Where were you living at

21

that time?

22

THE WITNESS: Fremont Plaza

23

Apartments.

24

THE COURT: Mr. Guymon?

25

.....

DIRECT EXAMINATION

BY MR. GUYMON:

Q. And who were you living with?

A. Sikia.

Q. Is that Sikia Smith?

A. Uh-huh.

THE COURT: You have to answer yes or
no.

THE WITNESS: Yes.

THE COURT: Thank you. Speak loud and
clear. Sit back and relax.

BY MR. GUYMON:

Q. Ms. Wright, showing you what has been
marked as State's Exhibit 160, do you recognize
Sikia in that particular exhibit?

A. Yes.

Q. Is he the young man in the center?

A. Yeah.

Q. Do you know the other two persons that
are in the photograph?

A. Yes.

Q. Okay. How do you know the other two?

A. Through him.

THE COURT: Through Sikia?

THE WITNESS: Yeah.

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1 BY MR. GUYMON:

2 Q. Now, then, do you know Terrell Young?

3 A. Not really.

4 Q. Okay. Would you recognize him if you
5 see him?

6 A. Yes.

7 Q. Is he in court today?

8 A. Yes.

9 Q. Would you point to him and describe an
10 article of clothing he's wearing in court today?

11 A. He in front of me with the blue tie.

12 MR. GUYMON: Let the record reflect
13 the identification of the defendant.

14 THE COURT: White shirt?

15 THE WITNESS: White shirt.

16 THE COURT: The record will indicate.

17 BY MR. GUYMON:

18 Q. Now, then, do you know, if you know,
19 where Terrell Young and Donte Johnson were living
20 in July of '98 and August of '98?

21 A. Do I know?

22 Q. Yes.

23 A. No.

24 Q. Okay. Can you tell me on the, on this
25 particular evening, August 14th or actually 13th

1 into the 14th, can you tell me if you remember
2 those particular days?

3 A. Yes.

4 Q. Okay. And how is it you remember those
5 days specifically?

6 A. Because I got out of jail on the 12th.

7 Q. Okay. You say you got out of jail on
8 the 12th. When you got out of jail, where did you
9 go?

10 A. Home.

11 Q. Over to Fremont Plaza?

12 A. Uh-huh.

13 Q. And who was at home?

14 A. Bug.

15 Q. Okay.

16 THE COURT: Who was at home?

17 THE WITNESS: Sikia.

18 THE COURT: Thank you.

19 BY MR. GUYMON:

20 Q. Okay. Now, did you all stay together
21 on the 12th and into the 13th?

22 A. Yeah.

23 Q. And you were boyfriend and girlfriend
24 back then?

25 A. Yeah.

1 Q. Okay. Now, did Sikia Smith leave the
2 house on the 13th, say, late at night?

3 A. Yeah.

4 Q. Okay. Who did he leave the house with?

5 A. With Red and Deco.

6 Q. Red and Deco? And is Red the person to
7 my left in the blue tie?

8 A. Yeah.

9 Q. Okay. Now, when the three of them left
10 the house on the 13th, do you recall about what
11 time it was?

12 A. Like 11:30, 11:00 o'clock.

13 Q. 11:00 o'clock, 11:30, late at night?

14 A. Yeah.

15 Q. Okay. Was anyone else with those
16 three --

17 A. No.

18 Q. -- when they left?

19 A. No.

20 Q. Do you know if any of those three had a
21 vehicle that night?

22 A. Yeah.

23 Q. What kind of vehicle did they have?

24 A. A Tempo, a Taurus, a white car.

25 Q. A white car? Okay. That's fair. Had

1 you seen the white car before the 13th?

2 A. Yeah. I think, I think so. I think
3 so.

4 Q. Okay. And who had you seen the white
5 car with? Who had the white car before then?

6 A. Deco and Red.

7 Q. Okay. What was Deco and Red's
8 relationship if you know?

9 A. I guess they was just cool or
10 whatever. They was just homies. I guess they was
11 just friends.

12 Q. Homies, friends, cool with each other;
13 is that, is that right?

14 A. Yeah.

15 Q. Okay. Now, then, you say the three of
16 them left together. When's the next time that you
17 saw Sikia, Deco, and Terrell?

18 A. That Friday at like 1:00.

19 Q. In the morning or in the afternoon?

20 A. That afternoon.

21 Q. Okay. So, Sikia, Terrell, and Red
22 left -- excuse me. Sikia, Terrell, and Deco left,
23 and they were gone for 24 or 26 hours, it sounds
24 like; is that right?

25 A. Yeah.

1 Q. I'm sorry, 14 hours; is that right?

2 A. Trying to make me look like I can't
3 count. Yeah.

4 Q. All right. I'm sorry. And where did
5 you see Sikia next?

6 A. What do you mean? He came home.

7 Q. He came home, and you were still there
8 waiting for him?

9 A. Yeah.

10 Q. All right. When he came home, was
11 anybody with him?

12 A. Didn't nobody come in with him.

13 Q. Okay. Did somebody stay outside with
14 him?

15 A. Yeah.

16 Q. All right. Who was outside when Sikia
17 comes to the house?

18 A. Red and Deco.

19 Q. Okay. The same two that were with him
20 when he left?

21 A. Yeah.

22 Q. Did Sikia have anything in his hands
23 when he came back home?

24 A. Yeah.

25 Q. What did he have in his hands?

1 A. A VCR and Nintendo.

2 Q. Okay. Now, when he came home, do you
3 remember, and he had the VCR and the Nintendo,
4 what's the first thing you said to him?

5 A. Where were you at? Where you been?

6 Q. Okay. Did he answer?

7 A. No.

8 Q. Did you think he was going to be gone
9 for 14 hours?

10 A. Unt-uh.

11 THE COURT: Is that no?

12 THE WITNESS: No.

13 THE COURT: Thanks.

14 BY MR. GUYMON:

15 Q. When he didn't answer, did you ask him
16 again, where you been?

17 A. Yeah. I asked him.

18 Q. And did he answer that time?

19 A. No.

20 Q. Now, did there come a point in time
21 while Sikia was there at the apartment with you and
22 Terrell and Deco were outside, that the three of
23 them spoke to each other?

24 A. They came up. They came upstairs
25 later.

1 Q. Came upstairs later? How much later?
2 A. Five, 10 minutes.
3 Q. Okay. And when Terrell and Deco came
4 upstairs, did they actually come into your
5 apartment there?
6 A. Yes.
7 Q. And did they talk with Sikia?
8 A. Yeah.
9 Q. Do you know what they talked about?
10 A. Not really.
11 Q. Now, can you tell me what happened to
12 the VCR?
13 A. Deco bought it.
14 Q. And who did Deco buy it from?
15 A. Bug.
16 Q. So, Bug or Sikia actually sold the
17 VCR --
18 A. Yeah.
19 Q. -- to Deco; is that right?
20 A. Yeah.
21 Q. Now, tell me what happened to the
22 Nintendo.
23 A. It stayed there.
24 Q. It stayed at your place?
25 A. Yeah.

1 Q. Now, did Terrell say anything about the
2 Nintendo to Bug?

3 A. He just wanted it.

4 Q. You say he wanted it. What did Terrell
5 say that made you think he wanted it?

6 A. He was just, let me have that.

7 Q. Now, how long, well, did, did Bug
8 actually let Terrell have it?

9 A. No.

10 Q. Okay. And how long did, say, Terrell
11 and Deco stay there at the house?

12 A. Five minutes.

13 Q. And then did they leave?

14 A. Yeah.

15 Q. Okay. After they left, without telling
16 me what Sikia said, did you talk still some more
17 with Sikia about where he had been and what he had
18 done?

19 A. Yeah.

20 Q. Okay. Did you learn about what he had
21 done?

22 A. Not that day.

23 Q. Okay. How many days later did you
24 learn about it?

25 A. Till Tuesday, like three days, three

1 days.

2 Q. About three days later?

3 A. Yeah.

4 Q. And how did you learn?

5 A. Through the newspaper and when Deco
6 went to jail.

7 Q. Okay. How many days after Deco showed
8 up and Deco bought the VCR did Deco go to jail
9 later?

10 A. Three.

11 Q. About three days later?

12 A. Yeah.

13 Q. Okay. And once Deco went to jail did
14 you see Terrell?

15 A. I seen him like once after that.

16 Q. Okay. And do you recall where Terrell
17 was when you saw him once after?

18 A. At the Desert Hills.

19 Q. Okay. And who was present at the
20 Desert Hills?

21 A. A whole bunch of people.

22 Q. Okay. And can you name a few?

23 A. Can I name a few?

24 Q. Of the folks that were there?

25 A. Me, Horse, Bug, whole bunch of people.

1 Q. Okay. And Terrell was there; is that
2 right?

3 A. Yeah.

4 Q. Now, what was Terrell talking about, or
5 what did he say about the quadruple homicide?

6 A. Nothing really.

7 Q. Okay. You say nothing really?

8 A. He ain't say, he didn't say nothing
9 really.

10 Q. Did he say whether or not he was going
11 to stick around town?

12 A. No. Bug told him to leave. He
13 ain't --

14 Q. And what was Terrell's response?

15 A. He said he was going to leave.

16 Q. Did Terrell at some point in time in
17 the conversation talk about what happened to the
18 four boys at Terra Linda?

19 MR. WOLFBRANDT: I'll object. This
20 was asked and answered.

21 THE COURT: Overruled.

22 THE WITNESS: Did he talk about it?

23 THE COURT: What's your answer?

24 THE WITNESS: Not, not really.

25

1 BY MR. GUYMON:

2 Q. Okay. Do you recall telling me that
3 Terrell talked in that setting about what
4 happened? Do you recall that conversation?

5 A. Yeah.

6 Q. Okay. And what is it that you told me
7 Terrell said at the Desert Hills?

8 MR. WOLFBRANDT: Your Honor, can we
9 get a better foundation?

10 THE COURT: When, the same night?

11 BY MR. GUYMON:

12 Q. Approximately one week ago, let's think
13 about that. Were you in jail?

14 A. Was I in jail a week ago?

15 Q. Yes.

16 A. Yeah.

17 Q. And did I come interview you over at
18 the jail and talk to you?

19 A. Yeah.

20 Q. Do you recall who else was there other
21 than you and I?

22 A. Nobody.

23 Q. Okay. Describe for the jurors, if they
24 have never been in the jail, what kind of room we
25 were in.

1 A. A little box.

2 Q. Okay.

3 A. Like, that's what it was.

4 Q. All right. Is there a piece of glass
5 between you and I?

6 A. Yeah.

7 Q. Is there a hole in the glass?

8 A. No.

9 Q. There's, is there a, two telephones,
10 one on your end, one on mine, and speakers?

11 A. Not where we was at, no.

12 Q. Did we have to go to one that had
13 speakers?

14 A. Yeah.

15 Q. Did you and I go to the second room
16 that had speakers?

17 A. Yeah.

18 Q. Okay. And do you recall talking to me
19 about what Terrell said there at the Desert Hills
20 then?

21 A. I don't want, I don't want to sit up
22 here and lie. Yeah, but, yeah.

23 Q. Okay. Did you tell me then that
24 Terrell said that --

25 THE COURT: Wait a minute. Do you

1 recall what you told Mr. Guymon on that day in the
2 jail?

3 THE WITNESS: I remember some of what
4 I told him, yeah.

5 THE COURT: What did you tell him?

6 BY MR. GUYMON:

7 Q. What did you tell me?

8 A. Obviously I told you that they was
9 talking about who did what, who did what, and, and
10 he was just, he was supposed to leave.

11 Q. Okay. And what did you tell me that
12 Terrell said that he had done?

13 A. Tied them up.

14 Q. Anything else?

15 A. No. Everybody, no. I said the boy
16 that work at the car wash I was working at just
17 told me he was bragging. But other than that --

18 Q. Okay. Do you recall having, during
19 that same conversation while you were at the jail
20 do you recall talking about a boy watering the
21 lawn?

22 A. Yeah.

23 Q. Okay. And who told you about the boy
24 watering the lawn?

25 A. Bug.

1 Q. Bug said that?

2 A. Uh-huh.

3 Q. And based on your conversation at the
4 Desert Hills, who were the persons that went into
5 the house at Terra Linda?

6 A. The three of them.

7 MR. WOLFBRANDT: Object. Now it's,
8 her information is based on hearsay unless it came
9 from Terrell.

10 MR. GUYMON: I asked based on
11 Terrell's conversation who were the kids that went
12 into Terra Linda.

13 MR. WOLFBRANDT: Now that's a
14 different question, your Honor.

15 THE WITNESS: The three of them.

16 THE COURT: He said on Terrell's
17 conversation.

18 THE WITNESS: Deco, Red, and Bug.

19 BY MR. GUYMON:

20 Q. Okay. Now, prior to the incident where
21 the three of them leave together here, had you ever
22 seen, say, Deco with a gun, say, before the 13th?

23 A. Before?

24 Q. Yes.

25 A. I seen him plenty of times with a gun.

1 Q. Plenty of times?

2 A. Yeah.

3 Q. Okay. How about Terrell Young? Had
4 you seen him with a gun before?

5 A. Yeah.

6 Q. And how about Sikia Smith?

7 A. Yeah.

8 Q. Okay. And what was your relationship
9 with Sikia Smith, say, right around August?

10 A. In August?

11 Q. Yeah.

12 A. We was talking.

13 Q. Okay. Now, then, before the three of
14 them left that night on the 13th and into the 14th
15 had Sikia, Deco, and Terrell used any drugs?

16 A. Yeah.

17 Q. Okay. What drugs had they used?

18 A. Sherm and marijuana.

19 Q. Sherm and marijuana?

20 A. Yeah.

21 Q. Okay. And had you seen Terrell, Tiny
22 Bug, and Deco use drugs before that date?

23 A. Before that day?

24 Q. Yes.

25 A. Weed.

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1 Q. Marijuana, weed?

2 A. Yeah.

3 Q. Lastly, as you sit here today do you
4 want to be here testifying?

5 A. No.

6 THE COURT: Speak up.

7 THE WITNESS: No.

8 BY MR. GUYMON:

9 Q. Why is it that, how is it that you're
10 here?

11 A. Why am I here? Because I got
12 subpoenaed.

13 Q. Okay. You got subpoenaed by the State;
14 is that right?

15 A. Yeah.

16 Q. Now, have I made any promises to you
17 about your testimony?

18 A. No.

19 MR. GUYMON: Pass the witness, your
20 Honor.

21 THE COURT: Mr. Hastings?

22

23 CROSS-EXAMINATION

24 BY MR. HASTINGS:

25 Q. Thank you, judge. You stated that you

1 talked to Mr. Guymon previously; is that correct?

2 A. Yeah.

3 Q. You were in the jail at that time?

4 A. Yeah.

5 Q. Okay. Have you ever talked to him any
6 other times?

7 A. Yeah.

8 Q. Okay. Was there any other times
9 outside of court that you have talked to him?

10 A. Yeah.

11 Q. Okay. Can you tell me when those were?

12 A. When Sikia's trial, when, when Sikia
13 was having his trial.

14 Q. Okay. Any other times outside of that
15 trial?

16 A. No.

17 Q. Can you tell me what Mr. Guymon told
18 you when he was talking to you in the jail?

19 A. He, he was just asking me questions.

20 Q. Okay. And were you shortly released
21 out of jail after that conversation?

22 A. Yeah.

23 Q. Has the DA helped you with any of your
24 criminal problems?

25 A. Not really.

1 Q. Not really?

2 A. No.

3 Q. Have they helped you be released from
4 jail at any point in time?

5 A. Yeah.

6 Q. Can you tell me what kind of cases
7 those were?

8 A. It was just a warrant, a warrant.

9 Q. And the warrant was for what?

10 A. Possession.

11 Q. Possession of?

12 A. Cocaine.

13 Q. Was there any other cases they have
14 helped you with?

15 A. No.

16 Q. So, the only case they have ever helped
17 you with is the possession of cocaine; is that
18 correct?

19 A. Yes.

20 Q. And that was the case that you were in
21 on when Mr. Guymon talked to you in the jail?

22 A. I have two possession cases. The first
23 one was when I was, when Bug's trial was. And the
24 second one was when, is when I was in jail last
25 week, the week before last, yeah.

1 Q. On the first case, what happened with
2 it, during Bug's trial?

3 A. Nothing. I go to court tomorrow.

4 Q. I'm sorry? What?

5 A. Nothing.

6 Q. Okay. Is that case still in the
7 system?

8 A. Yeah.

9 THE COURT: It goes to court tomorrow,
10 was her statement.

11 BY MR. HASTINGS:

12 Q. And the second case was a week ago; is
13 that correct?

14 A. It wasn't a week ago. It was actually
15 back in March, but they dropped the charges and
16 brought them back up.

17 Q. And they released you out of custody
18 after you talked to the DA; is that correct?

19 A. Yeah.

20 Q. Okay. One more question about the
21 first case, was that matter continued until after
22 your testimony today?

23 A. No.

24 Q. How would you describe Deco?

25 A. Deco, Deco, I can't describe Deco.

1 Q. Okay. Would you say he's the leader?

2 A. Yeah.

3 Q. Would you describe him as being scary?

4 A. Scary? Scary how?

5 Q. Are you scared of Deco?

6 A. No, I'm not.

7 Q. Okay. Are other people usually scared
8 of Deco?

9 A. Yeah.

10 MR. GUYMON: Objection, relevance.

11 THE COURT: Narrow it down.

12 BY MR. HASTINGS:

13 Q. Do you think he's kind of scary?

14 A. He could be.

15 Q. Would you say he's unpredictable?

16 A. Yeah.

17 Q. Okay. And he usually carries a gun
18 with him; is that correct?

19 A. Yeah.

20 Q. Okay. How long has Tiny Bug known
21 Deco?

22 A. I don't, I don't know.

23 Q. Do you know if they go back to
24 California together?

25 A. They should, yeah.

- 1 Q. They should?
- 2 A. (No audible response.)
- 3 Q. Okay. How long ago was Tiny Bug in
- 4 California?
- 5 A. Last year, last year in April.
- 6 Q. Okay.
- 7 A. May, April.
- 8 Q. Would you know if Tiny Bug is closer
- 9 than Red was to Deco?
- 10 A. I can't, I, I don't know, no. I
- 11 wouldn't know.
- 12 Q. Now, Tiny Bug had the VCR and the
- 13 Nintendo, right?
- 14 A. Yeah.
- 15 Q. Those were like his property when they
- 16 came home?
- 17 A. Yeah.
- 18 Q. They definitely weren't Red's property,
- 19 right?
- 20 A. No.
- 21 Q. In fact, Deco purchased the VCR from
- 22 him; is that correct?
- 23 A. Yes.
- 24 Q. How far back do you go with Tiny Bug?
- 25 A. May.

- 1 Q. Excuse me?
- 2 A. May.
- 3 Q. May of '98?
- 4 A. Last year.
- 5 Q. And how would you describe your
- 6 relationship with Tiny Bug?
- 7 A. What do you mean?
- 8 Q. Were you boyfriend/girlfriend?
- 9 A. Yeah.
- 10 Q. Okay. Do you have any kids in common?
- 11 A. Somewhat, yeah.
- 12 Q. Okay. Would that be one?
- 13 A. Yeah.
- 14 Q. You stated that you overheard a
- 15 conversation that Tiny Bug told Red that he should
- 16 leave; is that correct?
- 17 A. Yeah.
- 18 Q. Was Donte around during that
- 19 conversation?
- 20 A. He was in jail.
- 21 Q. Did you ever hear Donte say that he
- 22 pulled the trigger?
- 23 A. Yeah.
- 24 Q. And he told you that, or you overheard
- 25 that?

1 A. I overheard that.

2 Q. Okay. Did you ever hear Donte say that
3 he killed the four individuals?

4 A. Yeah.

5 Q. And you said you've seen Terrell with a
6 gun. Would it be true you've only seen Terrell
7 with a gun on one occasion?

8 A. That's still seeing him with a gun.

9 Q. Would that be true? It was only one
10 occasion?

11 A. Yeah. Yeah.

12 Q. Okay. And was that Tiny Bug's gun at
13 that time?

14 A. I don't know who gun it was.

15 Q. Okay. Could it have been Tiny Bug's
16 gun?

17 MR. GUYMON: Objection, calls for
18 speculation.

19 THE COURT: Sustained.

20 BY MR. HASTINGS:

21 Q. Do you know what kind of gun it was?

22 A. .25, .22.

23 Q. Was it a pistol?

24 A. Yeah.

25 Q. Okay. And do you know if it was a

1 wheel gun or semiautomatic?

2 A. It was a automatic.

3 Q. And can you tell us what color it was?

4 A. Either brown or black.

5 Q. Okay. And can you show us
6 approximately the size of it?

7 A. A .22, about this big.

8 MR. HASTINGS: About four inches in
9 length, judge?

10 THE COURT: Four or five inches in
11 length.

12 BY MR. HASTINGS:

13 Q. And about how high was it?

14 A. Like this.

15 MR. HASTINGS: Three inches, judge?

16 THE COURT: Three, four inches.

17 BY MR. HASTINGS:

18 Q. Court's indulgence, please. We've
19 talked a little bit about the conversations at the
20 Desert Hills; is that correct?

21 A. Uh-huh.

22 THE COURT: Is that a yes?

23 THE WITNESS: Yes.

24 BY MR. HASTINGS:

25 Q. Would it be true to state the majority

1 of that conversation was between you and Tiny Bug?

2 A. No.

3 Q. Was Terrell, we know he was also
4 there. How much was he talking during that
5 conversation?

6 A. They was talking. I'm just, I'm just
7 overhearing everything. I don't be, I don't need
8 to be in nobody business.

9 Q. And a couple more questions, we talked
10 about your first case. That was possession of
11 cocaine; is that correct?

12 A. Yeah.

13 Q. Okay. Can you tell us how much cocaine
14 you were originally arrested for in that case?

15 MR. GUYMON: Objection, relevance,
16 judge.

17 THE COURT: What's the relevance? She
18 has to be in court tomorrow. What's the
19 relevance?

20 THE WITNESS: How much?

21 THE COURT: You can't answer.

22 Sustained.

23 MR. HASTINGS: Nothing further at this
24 time judge.

25 THE COURT: Mr. Guymon?

REDIRECT EXAMINATION

BY MR. GUYMON:

Q. Shawn, tell me, you're still boyfriend and girlfriend with Sikia. Is that how you describe your relationship?

A. We friends.

Q. Okay. And who prosecuted your boyfriend, Sikia Smith?

A. You.

Q. Okay. Is that something that made you happy about me?

A. No.

Q. I'm not going to ask you what, what your thoughts are about me, but let me ask you this: Has either of your two cases gone away?

A. No.

Q. Have I helped you on, in other words, have I made those cases disappear?

A. No.

Q. Okay. Have I promised you that I would?

A. No.

Q. Did you have only one of those two cases at the time that you testified in Sikia's case?

1 A. Yeah.

2 Q. You had already been arrested for both
3 of them; is that right?

4 A. Yeah.

5 Q. And then after your testimony, Sikia's,
6 the arrest warrant came on the second case?

7 A. Yeah.

8 Q. Is that right?

9 A. Yeah.

10 Q. Okay. Do you have an expectation, or
11 do you believe that I'm going to make those cases
12 go away for you?

13 A. Nope.

14 Q. Have I asked anything of you, well, in
15 the times I've talked to you did you want to talk
16 with me?

17 A. No.

18 Q. And have I asked anything of you, or
19 what have I asked of you when I did speak with you?

20 A. Nothing, did I want to come, nothing
21 really.

22 MR. GUYMON: Okay. Pass the witness,
23 your Honor.

24 THE COURT: Mr. Hastings?

25

RE CROSS-EXAMINATION

BY MR. HASTINGS:

Q. One question, your Honor. Did you believe you were looking at mandatory time in one of your two cases?

A. No, mandatory probation.

MR. HASTINGS: Nothing further, your Honor.

MR. GUYMON: Nothing else.

THE COURT: Ms. Wright, you're excused. You're admonished not to discuss your testimony with anyone until we complete the case with the exception of the attorneys of record. You're free to go.

Let's take our evening recess. Ladies and gentlemen, at this time I'm going to excuse you until 9:20 tomorrow morning. When you do come back tomorrow morning, wait in the jury lounge, and the bailiff will come to get you. I hope to get started about 9:30. I have a morning calendar, but we'll get rid of it about that time. Be here at 9:20.

I want to admonish you that you must not discuss the facts of this case amongst yourselves or with any other persons, read, watch,

1 or listen to any news communique about this trial,
2 whether it be television, radio, or newspaper, or
3 form any opinion as to what the final result will
4 be until the entire matter is submitted to you for
5 your deliberation in the jury room.

6 You're excused until 9:20. When you do
7 come back tomorrow morning, wait in the jury
8 lounge. We'll be in recess.

9 (Recess taken.)

10 *****

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

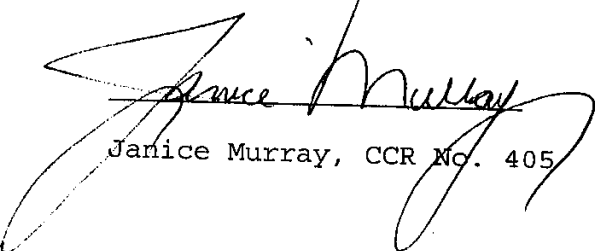
13 
14 Janice Murray, CCR No. 405
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EXHIBIT 60

EXHIBIT 60

INTERVIEW WITH CHARLA SEVERS

P: My name is Pete Baldonado. Uh, today is September the 27th. I am with, uh, Officer Chrystal Cooper and, uh, Charla Severs. Charla, uh, do we have permission to record this?

C: Yes.

P: Okay. Uh, I want you to tell me, when did you leave Las Vegas?

C: February 22nd.

P: Okay. And where did you go?

C: To, first I went to Atlantic City and then I went to New York City.

P: Okay. Why did you go?

C: Because I was scared.

P: Why were you scared?

C: Because somebody told me that, um, Deco said he was gonna fuck me up.

P: Who said that?

C: Scale. My friend (not clear) told me that Scale told her that.

Page 2

P: Okay. And then, uh, subsequently you, uh, were arrested, right?

C: Yes.

P: And, uh, you were picked up by us. Now tell me, um, about the incident that happened, uh, the, the day of the robbery... do you know what day that was? Or do you recall?

C: No. I don't remember....

P: What happened that morning?

C: Um. When I, what, after the murder?

P: No. The morning of the murder. What happened that morning?

C: It was in the morning time. It, they left in the night time because I was 'sleep. I remember I went to, I went to go to sleep, and um...

P: Who's they?

C: Deco, Donte Johnson, Terrell Young, Sikia...

P: Smith?

C: Smith and, um, I don't know who else left with them, but they all left.

P: Okay. And do you know where they were going?

C: No.

P: You...

C: I didn't know. Not at the time, I didn't know where they was goin' 'cause I was in the back room.

P: Okay. And then, uh, when did they come back?

C: They came back later that night.

P: And what happened when they came back?

C: Deco came in the room and he kissed me and I woke up. And we went in the living room and then he s, he said he, that you have to go to sleep after you kill somebody.

P: So then he went to sleep?

C: Umm-hmm. Then we went back in the room and he went to sleep. And then...

Page 4

P: And then. You didn't know that they were gonna go do a robbery?

C: No. I, I didn't know they, I knew that they was gonna rob somebody, but I didn't know they was doin' it that night.

P: And what else would, besides robbing somebody, what else were they gonna' do?

UKN SPKR: Have a nice lunch.

C: Um, whadya say?

P: What else, besides the robbery, were they going to do? Were they gonna rob somebody for money?

C: Yes. Money and drugs.

P: And drugs?

C: Umm-hmm.

P: Okay. And, but you didn't know beforehand that they were gonna' go?

C: No. I knew they were gonna go, but not that night.

P: Okay. You knew they were gonna go do this, this robbery...

C: Umm-hmm.

P: ...and, for drugs and money, but you didn't know it was that night.

C: Yes.

P: Okay. The next morning when you, uh, woke up what happened then?

C: Um, Deco said he wanted me to braid his hair so we went in the living room and me and Red, Terrell Young was sittin', and Deco was sittin' in the living room. And then the news was comin' on so Deco said "hold on, hold on, watch this" and then I was watchin' the news and Matt face showed on the tv. And I remember his face, 'cause I remember that he was the only one that came to the house one day. And then I was, and then he said "watch the news" and we's watchin' it and I seen his face and I was, I was shocked because I had seen him before in the house. And was shocked to see him on the news. And then Deco was like be quiet, don't say nothin'. And I was like I know you didn't do that. And he was like, ya, he was like just be quiet. And then I went in the back room.

P: And, and what house, what was the address of the house?

C: Uh... gosh... I don't even remember.

P: Who's house was this?

Page 6

C: Todd's, Todd's mother's house.

P: And you guys were staying there?

C: Umm-hmm.

P: Okay. When, was there, did there come a time when, uh, when Donte Johnson told you that he killed them?

C: Ya. He told me the morning we was watching the news and I said "I know you didn't" and he said "yes I did".

P: And did he tell you how he did it?

C: Ya.

P: What did he say? What were his exact words, uh, you, best you can remember?

C: He said that he, um, duct taped they hands and they feet. And he shot 'em in the back of the head...

(intercom or something in the background)

C: ...and then I asked him... and this was when me and him was in the room by ourself after he said he had to go to sleep... and then he said he shot 'em in the back of the

head and I asked him what they sound like when he shot 'em in the back of the head and he said they s, sounded like "uh". That's the noise they made when he shot 'em in the back of the head.

P: Did he say they were, did they say anything before he shot 'em?

C: Just the, um, spanish boy was talking, talking mad shit. That's what he said.

P: And then, uh, did you, uh, was there any other indication that, uh, that proved to you that he did it? On his clothes or...

C: No, 'cause I didn't see his clothes, but I know, I know he did it, 'cause I know how he was. I know he did it.

P: Did, uh, did there come a time when he was arrested?

C: Yes.

P: Did he say anything when he was ar, gonna be arrested?

C: Yes. When we were sittin' on the curb after the S.W.A.T. team got us out the house and then they was tryin' to see if more people was in the house and they started (not clear) the house, they had us sittin' on the sidewalk. Me, Scale and Deco and Deco was like tell them that he just met, that he just met me and don't, because we really didn't know what they was there for because they had did so much stuff. We didn't know it was

for that and I didn't really know it was for that and then...

P: And that, you mean the, the shooting.

C: The, the murders, ya. And he was like don't, don't say nothin', don't say nothin'.

P: That's what he told you, huh?

C: Umm-hmm.

P: Is that the last time you saw him?

C: After they took us to City Hall and question us, that's the last time I seen him.

P: That's the last time. You didn't visit him in, in...

C: Oh yes. I started visitin' him.

P: You visited him a number of times, right?

C: Ya.

P: Did he, uh, say anything to him while you were visiting him?

C: No.

P: He didn't tell you to say nothin' or anything?

C: He told me I was his only hope.

P: Only hope for what?

C: To get out of this mess.

P: Were you gonna do, uh, uh, make an alibi for him?

C: Umm-hmm. Yes.

P: Did he tell you to make an alibi?

C: No. When I seen him on the news that morning he was like, he was with his girlfriend. And so, I was just, and when I went to go visit him and stuff he was just sayin' I was his only hope so I knew that that was me that he was talkin' about. I would see that he was with his girlfriend.

P: Okay. Did you at any time, (clearing throat) find any blood in, in some trousers?

C: No, I never did. I never did.

P: But you, you didn't know that he had blood on his trousers?

C: Not until I went to court. In front of the grand, in front of the jury.

P: But the, did they ask you to recognize some pants?

C: Ya.

P: Were they, they his pants?

C: (sigh)

P: Do you know?

C: Ya. But I didn't say that they was his pants. I said he didn't have no pants. But they was his pants, 'cause...

P: You told the grand jury that they, they weren't his pants, but for truth and fact they are his pants.

C: Ya.

P: And you were covering up for him.

C: Ya.

P: Why were you covering up for him?

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C: Because, mm (pause). Because. He was my boyfriend and he, that's what he wanted me to do.

P: And, uh, now that you're coming back to Las Vegas you want to tell the truth?

C: Ya. I had told the truth already.

P: Ya, but you changed your story once.

C: I know.

P: But, is this the truth you're telling me now?

C: Ya.

P: Okay. Um, I'm gonna turn it off for a minute, okay.

TAPE STOPPED

P: Back on the record. When, when you were talking to, uh, Donte Johnson, uh, how did you communicate with him?

C: In code.

P: In code? And these, these were through phone calls that he made to you?

C: Yes.

P: And in this code what were your, what was he trying to convey to you during this code?

C: That, that, um, I was gonna say that I was there and not him. And then when, um...

P: You were, that, that he was with you, not over there doing this?

C: No. That I was, I was over there doing that. And he was not nowhere around.

P: At the robbery?

C: Ya.

P: He wanted you to take the fall?

C: Ya. And then when he, um, and then after he get out of jail he wanted me to say that he threatened me and stuff like that. And threatened my family, that's why I said that. And, um, then we'd meet up and then when they let me out of jail me and him was supposed to live happily ever after.

P: And, uh, and in this code... explain this code to me.

C: Okay. When we talk about the murder we call it a disease. And I have to lis, I

can't really remember, but I know that murder, when we talk about the murder we call it disease so nobody know what we's talkin' about. I can't remember any other words we said in code. I would have to hear it again to know it, it was, but I know what we was talkin' about.

P: Okay. But he,he, he wanted you to take the rap so, and then, then later on after he was out, you'd say you were lying to cover up or you were afraid of him and then you would, you'd get out and meet him in California.

C: Ya.

P: Now, do you know, uh, when the, when this, when this thing after it happened and, and he had told you he had done it, what were you thinking in your head? You think he was mean enough to do it?

C: I wasn't really thinkin' nothin', but I know that he would, I know he would do it.

P: Did he have, did he have any guns that you know of?

C: Ya.

P: Did he tell you what, what weapon he used to commit this crime?

C: A little, ya. It was a little handgun.

P: Little? Do you know the caliber?

C: Like a .38. I think.

P: Like a .38. Did he have any other guns besides that?

C: Ya.

P: What, what kind? Do you know?

C: A big, it was like, it looked like a sawed-off shotgun, or something. One of 'em.

P: It was a sawed-off shot....

C: One of 'em was a big shot gun, like a machine gun.

P: Uh huh.

C: And the other one was like, is like it was cut off, sort you know?

P: Sawed-off.

C: Ya, sawed-off.

P: Okay. And, do you know what he used these things for?

C: Ya. To rob people.

P: Did he do that a lot?

C: Ya.

P: Do you know of him shootin' anybody else? For a fact?

C: Ya.

P: Who did he shoot?

C: He shot up the Longhorn Casino. A bunch of Crips. He shot up in the Longhorn Casino.

P: A bunch of Crips at the Longhorn Casino. How do you know that?

C: Because. After they did it they ran back to the house, 'cause we stayed right around the corner from the Longhorn, and they ran back to house so he told me to go back to the Longhorn Casino and go get the car.

P: Oh, they left the car there?

C: Ya.

P: And did you go back and get the car?

C: Ya.

P: Did anybody question you about that?

C: No. They woulda, I was just lucky and I seen a bunch of police and people layin' down bleedin', but nobody, they didn't see me.

P: And you just went and got the car and took off?

C: Ya.

P: Do you know of any other times he committed any other crimes?

C: (pause) Ya.

P: Well, what?

C: Mm.

P: Do you know of him shootin' anybody else?

C: No. I just know he, he poisoned somebody.

P: Did he die?

C: Ya.

P: Who?

C: His name Snoop.

P: Is who?

C: Snoop.

P: Snoop? Snoop, you don't know his name?

C: I don't know his real name, but they found his body in the desert by the race tracks.
Wrapped up in sheets.

P: How do you know he poisoned him?

C: Because, at first I didn't know he poisoned him, but when I went to go visit him one time after he had sent me the, wright the statement of Terrell and Sikia, when they had told, I had, I had seen Red, um, Terrell talking about, um, Snoop in there. So when I asked, um, when I asked him about it he was like he made him eat uh, he told him to either eat, uh, this big block of dope or he was gonna shoot 'em and he ate the block of dope and he poisoned hisself and he died.

P: He told you that himself? What?

C: Yes.

P: Oh. Okay. So, okay. And do you know, you know for a fact he did that?

C: Ya.

P: You didn't see the body? You didn't see the dope?

C: No. I just know he told me when he was, after he was locked up, and I asked him about it I was like tell me you didn't do that, because when Terrell was talkin' about the body, when I was readin' it, he said Deco kicked the body down the mountain and then I asked Deco I was like how you do it and he was, and he was like doin' it, 'cause we was at the visit so he wasn't talkin' he was like, doin' sign, you know what I'm sayin. And he was like I told him to eat this dope and he just ate it like a idiot and he got, killed hisself.

P: Was he by himself when he did that?

C: No.

P: Who was with him?

C: Um. I, well, he didn't tell me, but Scale, um, Scale was with him.

Page 19

P: Gail was?

C: Scale.

P: Dale, oh, uh, Terrell you mean?

C: No, Scale. I don't his....

P: Scale.

C: Ya. I don't know his real name, oh, Damien, no, Dwayne Anderson.

P: Dwayne Anderson was with him when he committed that one?

C: Ya.

P: Okay. So, uh, you know of anything else, or... He's a bad guy, isn't he?

C: Ya.

P: Were you, that's why you're afraid of him?

C: I wasn't really afraid of him 'til he bust me in my eye.

P: He, he hit you in the eye?

C: Ya.

P: How did he do that?

C: Um, I don't know. He came in the house one day, because I had snuck out the night before, and then he, when he came in the house, when I got back home nobody was there and then when he came home I was sittin' on the couch and he asked me where I been and I started laughin' at him and he, he bust me in the eye with his hand, I don't know if it was, it was with his hand or was it with the back of guns he had, but he hit me in my eye.

P: After that you were afraid of him?

C: Umm-hmm. Yes.

P: Okay. Well, you know of anything else that, uh. I might come and talk to you later in the jail, okay?

C: Okay.

P: If I can think of anymore questions. But, uh, thank you for being truthful and, uh, everything you've told me is true, right?

C: Yes.

Page 21

P: And, uh, no one's promised you anything or told you anything to tell the truth?

C: No.

P: You gonna tell the truth, why?

C: Because I wanna get this over with.

P: And it's the right thing to do, right?

C: Yes.

P: Okay. Thank you very much.

C: You're welcome.

END OF TAPE

[Umm-hmm; represents affirmative answer]

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AA07980

EXHIBIT 61

EXHIBIT 61

97
ORIGINAL

FILED

SEP 23 3 11 PM '99

Shirley S. Rungius
CLERK

1 0001
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4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,
9 Plaintiff,

10 -vs-

11 DONTÉ JOHNSON, aka
12 John White, #1586283

13 Defendant.
14

Case No. C153154
Dept. No. V
Docket H

15 NOTICE OF MOTION AND MOTION TO VIDEOTAPE THE
16 DEPOSITION OF CHARLA SEVERS

17 DATE OF HEARING: 10/11/99
18 TIME OF HEARING: 9:00 A.M.

19 COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through
20 GARY L. GUYMON, Chief Deputy District Attorney, and files this Notice of Motion and
21 Motion to Videotape the Deposition of Charla Severs.

22 This Motion is made and based upon all the papers and pleadings on file herein, the
23 attached points and authorities in support hereof, and oral argument at the time of hearing, if
24 deemed necessary by this Honorable Court.

COUNTY CLERK

SEP 24 1999

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AA07982

1 accompanying affidavit, witness Charla Severs may be prevented from attending the trial
2 because of threats she has received associated with this case.

3 This Court should take no comfort in her promise to appear in light of the fact that she
4 has previously perjured herself in this case and fled the jurisdiction in an effort to avoid
5 testifying.

6 Wherefore, it is respectfully requested that this honorable Court grant the State's Motion
7 to Videotape the Deposition of Charla Severs, and that said deposition be taken in the courtroom,
8 with Judge Sobel presiding.

9 DATED this 29 day of September, 1999.

10 STEWART L. BELL
11 DISTRICT ATTORNEY
12 Nevada Bar #000477

13 BY

14 GARY L. GUYMON
15 Chief Deputy District Attorney
16 Nevada Bar #003726

17
18 AFFIDAVIT

19 STATE OF NEVADA }
20 COUNTY OF CLARK } ss:

21 GARY L. GUYMON, being first duly sworn, deposes and says:

22 1. That he is a Deputy District Attorney with the Clark County District Attorney's Office,
23 assigned as co-counsel with Robert J. Daskas to prosecute the case entitled State of Nevada v.
24 Donte Johnson, aka John White, Defendant, Case No. C153154, District Court Department V.

25 2. That a trial date in the above case has been set for January 10, 2000.

26 3. That witness Charla Severs was recently brought back to the State of Nevada from
27 Manhattan, New York, by investigators with the Clark County District Attorney's Office as a
28 result of this Court's issuance of a Material Witness Warrant. A copy of the State's Ex-Parte

1 Application for Order Requiring Material Witness to Post Bail is attached hereto, as well as a
2 copy of this Court's Order Requiring Material Witness to Post Bail or Be Committed to Custody
3 as Exhibit "1".

4 4. That the State has previously advised this Court that on August 18, 1998, Charla
5 Severs was interviewed by Detective Thowsen, with the Las Vegas Metropolitan Police
6 Department, Homicide Section, at which time she provided a series of false information to
7 Detective Thowsen in an effort to exonerate Donte Johnson, Terrell Young and Sikia Smith.

8 5. That on or about September 1, 1998, Charla Severs testified before the grand jury and
9 provided false information in an effort to absolve Donte Johnson, Terrell Young and Sikia Smith
10 in the quadruple homicide which occurred on August 14, 1998, at the Terra Linda residence.
11 Charla Severs' testimony was meant to thwart prosecution in the above cases.

12 6. That on or about September 3, 1998, Charla Severs again interviewed with Detective
13 Thowsen wherein she provided truthful information, which included the fact that she had
14 personal knowledge that the homicide had been done by the above named individuals.

15 7. That on or about September 15, 1998, Charla Severs testified before the grand jury,
16 under oath, and provided information which incriminated Defendants Donte Johnson, Terrell
17 Young and Sikia Smith in the quadruple homicide.

18 8. That on or about September 27, 1998, Charla Severs attempted to recant her previous
19 testimony which incriminated the above individuals. Charla Severs' efforts to recant her
20 testimony were done by way of a written letter which is attached as Exhibit "2".

21 9. That Charla Severs again attempted to exonerate Donte Johnson by sending a letter
22 to Channel 8 news, said letter being dated December 2, 1998, and being attached hereto as
23 Exhibit "3".

24 10. That Investigator Alexia Conger, with the Clark County District Attorney's Office,
25 determined that Ms. Severs had been declared missing by her mother, Vernell Dyess. A missing
26 persons report was filed with the Las Vegas Metropolitan Police Department on April 12, 1999.
27 Mrs. Dyess filed the missing persons report because she had not heard from her daughter for a

28 //

1 number of months, which was highly unusual and the word on the street was that Charla Severs
2 had been killed.

3 11. That prior to April 12, 1999, efforts to locate Ms. Severs had included telephone
4 number and address verification which had met with negative results. Prior residences had been
5 checked and had negative results as well. Ms. Severs had not been arrested and was not in
6 custody at the time the missing persons report was filed.

7 12. That Ms. Severs' family members had been interviewed by members of the Clark
8 County District Attorney's Office wherein said family members advised the District Attorney's
9 Office that Charla Severs had previously indicated that she would not cooperate with the State,
10 nor would she come to court.

11 13. That a review of Donte Johnson's jail records evidence that Charla Severs had been
12 to the jail on a number of occasions to visit Donte Johnson. Charla Severs has previously
13 indicated that she is the girlfriend of Donte Johnson and, more importantly, has testified to the
14 same.

15 14. That on or about June 1, 1999, two investigators with the Clark County District
16 Attorney's Office were assigned to work full-time, for a period of three weeks, in an effort to
17 locate Charla Severs as a material witness in the prosecution of Donte Johnson, Terrell Young
18 and Sikia Smith. Despite the efforts of experienced investigators with the Clark County District
19 Attorney's Office, Charla Severs was not located.

20 15. That on or about September 17, 1999, Charla Severs was arrested in Manhattan, New
21 York, for the charges of Solicitation of Prostitution. At the time of Charla Severs' arrest, she was
22 using the name Kashawn Hives. Authorities with the Manhattan, New York, Police Department
23 were able to successfully determine Kashawn Hives' identity as Charla Severs, at which time
24 they notified Detectives Buczek and Thowsen, with the Las Vegas Metropolitan Police
25 Department. Charla Severs was subsequently released from the authorities in Manhattan, New
26 York, to investigators with the Clark County District Attorney's Office so that she could be
27 returned to Las Vegas, Nevada, as a material witness and booked on said Material Witness
28 Warrant.

1 16. That a search warrant was issued and served on September 17, 1999, a copy of which
2 is attached as Exhibit "4". The search warrant permitted the State to seize letters written to and
3 from Donte Johnson, Terrell Young and Sikia Smith which contain incriminating information
4 associated with the homicide and/or future threats directed at witnesses.

5 17. That your affiant reviewed the above seized materials and found numerous threats
6 directed at witnesses associated with this case.

7 18. That your affiant spoke to witness Charla Severs on September 28, 1999, and learned
8 that Charla Severs left the jurisdiction after being threatened by Dwayne Anderson, aka Skill.
9 Charla Severs was threatened because she did not want to cooperate with Donte Johnson and
10 continue to lie on his behalf.

11 19. That Charla Severs believed the threats were serious because she personally knows
12 the persons involved and their deadly capacity.

13 20. That your affiant knows Dwayne Anderson to be closely associated with Donte
14 Johnson. Your affiant knows of a prior homicide that Dwayne Anderson and Donte Johnson
15 participated in together.

16 21. That the purpose of the instant motion is to record, preserve and perpetuate the
17 testimony of Charla Severs in the event that her attendance can not be obtained for the jury trial
18 and/or penalty phase of said trial, if the same is deemed necessary. Defense counsel Dayvid
19 Figler has previously indicated an interest in having Charla Severs testify in the above case and
20 the taping of a deposition of Charla Severs will give the defense an opportunity to interview her
21 prior to trial and to preserve her testimony.

22 22. That NRS 174.228(2) provides that a videotaped deposition may be allowed by a
23 court in all cases.

24 23. That there is no reason why a videotaped deposition is not an appropriate remedy
25 to preserve the testimony of Charla Severs. The Defense has previously expressed an interest

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1 in having Charla Severs testify. Witness Charla Severs has demonstrated by her actions that she
2 is unwilling to testify and that she may be unable to testify if the threats made against her are
3 carried out.

4 I declare under penalty of perjury that the foregoing is true and correct.

5
6
7 
GARY L. GUYMON

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10
11
12 RECEIPT OF COPY

13 RECEIPT OF COPY of the above and foregoing Notice of Motion and Motion to
14 Videotape the Deposition of Charla Severs is hereby acknowledged this 24th day of
15 September, 1999.

16 SPECIAL PUBLIC DEFENDER'S OFFICE
17 ATTORNEY FOR DEFENDANT

18
19 BY  / for.
20 309 South Third Street, Suite 400
21 Las Vegas, Nevada 89101

22
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27
28 GUYMG/sbs

1 **EXPT**
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**

FILED

APR 30 9 25 AM '99

Shirley S. Rasmussen

DISTRICT COURT
CLARK COUNTY, NEVADA

8 **THE STATE OF NEVADA,**

9 **Plaintiff,**

10 **-vs-**

11 **TERRELL COCHISE YOUNG**
12 **#1509343**

13 **Defendant.**

Case No. C153461
Dept No. III
Docket E

14
15 **EX PARTE APPLICATION FOR ORDER REQUIRING**
16 **MATERIAL WITNESS TO POST BAIL**

17 **COMES NOW, STEWART L. BELL, Clark County District Attorney, by and through**
18 **GARY L. GUYMON, Chief Deputy District Attorney, and makes application to the above-**
19 **entitled Court that an Order be entered herein requiring CHARLA SEVERS be taken into**
20 **immediate custody as a material witness for the purpose of posting bail for her appearance in**
21 **the jury trial of the above-entitled matter for the said reason of attempting to avoid testifying**
22 **before the Eighth Judicial District Court.**

23 **Further application is made that the Court set bail in the amount of \$10,000.00 and if the**
24 **said witness fails to post bail in the amount of \$10,000.00 for her appearance as a witness in this**
25 **matter that the Court further direct and order that said witness be delivered into the custody of**
26 **the Sheriff of Clark County, pending final disposition of the jury trial in the above entitled**
27 **matter on or until further Order of this Court.**


28 **//**

EXHIBIT "1"

1 This application is made pursuant to the provision of NRS 178.494 and is based upon
2 Affidavits attached hereto which are incorporated herein by this reference.

3 DATED this _____ day of April, 1999.

4 STEWART L. BELL
5 DISTRICT ATTORNEY
6 Nevada Bar #000477

7 BY 
8 GARY L. GUYMON
9 Chief Deputy District Attorney
10 Nevada Bar #003726
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1 Investigator Alexia Conger, with the Clark County District Attorney's Office determined that Ms.
2 Severs has been declared missing by her mother, Vernell Dyess. A missing persons report was filed with
3 the Las Vegas Metropolitan Police Department on April 12, 1999. Prior to this date efforts to locate Ms.
4 Severs have included telephone number and address verification which have met with negative results.
5 Prior residences have been checked and are negative as well. Ms. Severs has not been arrested and is not
6 in custody at this time. Ms. Severs family members have been interviewed and are concerned that she
7 is not willing to come to Court. Further attempts to locate Ms. Severs include verification of employment
8 and credit history. Several weekly/daily rental motels in the downtown area have been checked as well
9 with negative results.

10 Charla Severs has been to the jail on numerous occasions to visit Donte Johnson. Charla Severs
11 has previously indicated that she is the girlfriend of said Donte Johnson, and more importantly has
12 testified to the same.

13 Based on the facts we believe her to be an adverse witness who is attempting to avoid
14 service of process.

15 THEREFORE, your affiant would respectfully pray that this Honorable Court under the
16 authority of NRS 178.494 issue an Order directing that any police officer of this State shall
17 forthwith take the said CHARLA SEVERS, ID#1421158 into custody and forthwith convey her
18 to the jail of the County of Clark, State of Nevada, for incarceration to insure her presence
19 before the Eighth Judicial District Court.

20 I declare under penalty of perjury that the foregoing is true and correct.

21
22 Executed on 4-27-99
(Date)



(Signature)

1 **ORDR**

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

FILED

APR 30 9 25 AM '99

Shirley L. Pungina

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 TERRELL COCHISE YOUNG,
12 #1509343

13 Defendant.

Case No. C153461
Dept. No. III
Docket E

15 **ORDER REQUIRING MATERIAL WITNESS TO POST**
16 **BAIL OR BE COMMITTED TO CUSTODY**

17 STATE OF NEVADA }
18 COUNTY OF CLARK } ss:

19 TO: Any Sheriff, Constable, Marshal,
20 Policeman or Peace Officer in
the State of Nevada

21 An ex parte application upon sworn affidavit having been presented to this Court pursuant
22 to NRS 178.494, wherein it appears that the testimony of CHARLA SEVERS, ID#1421158 is
23 material to the jury trial in the above-entitled matter, and it further appearing to the Court by the
24 way of affidavit that the attendance of said witness in the jury trial of this matter by subpoena
25 is impracticable;

26 YOU ARE THEREFORE commanded forthwith to place said witness in your immediate
27 custody for the purpose of said witness posting bail with the above entitled court in the amount
28 of \$10,000.00 in order to secure the attendance of said witness CHARLA SEVERS, ID#1421158

1 before the Court on the 21st day of June, 1999, at 8:30 a.m., in the jury trial of the above entitled
2 matter.

3 IT IS FURTHER ORDERED and directed that if said witness CHARLA SEVERS,
4 ID#1421158 fails to post bail in the sum of \$10,000.00 to secure her attendance as a witness in
5 the jury trial in the above-stated matter as above provided, then you are further commanded to
6 deliver said witness into the custody of the Sheriff of Clark County pending final disposition of
7 the jury trial in the above-entitled matter or until further Order of this Court.

8 YOU ARE FURTHER ORDERED to direct the Sheriff of the County of Clark, State of
9 Nevada, to make the said CHARLA SEVERS, ID#1421158 available in custody in the Eighth
10 Judicial District Court of the State of Nevada, in and for the County of Clark at 8:30 a.m. on the
11 21st day of June, 1999, for the testimony in the captioned matter and further disposition by this
12 Court.

13 The arresting officer is further authorized, in the event that further communication
14 indicates that the said CHARLA SEVERS, ID#1421158 will appear at the jury trial at the time
15 above stated without the necessity of incarceration in the Clark County Jail or the posting of the
16 bond above described, to make arrangements for food and lodging for the said CHARLA
17 SEVERS for the night of the 20th day of June, 1999.

18 DATED this 29 day of April, 1999.

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21 DISTRICT JUDGE
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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

TERRELL COCHISE YOUNG,
#1509343

Defendant.

Case No. C153461
Dept. No. III
Docket E

WARRANT OF ARREST

FOR MATERIAL WITNESS CHARLA SEVERS, ID#1421158

THE STATE OF NEVADA,

To: Any Sheriff, Constable, Marshall, Policeman, or Peace Officer in This State:

An affidavit upon oath has been this day laid before me by GARY L. GUYMON accusing CHARLA SEVERS, ID#1421158 thereof of being a Material Witness;

YOU ARE THEREFORE COMMANDED forthwith to arrest the above named CHARLA SEVERS, ID#1421158 and bring her before the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark after it is determined that the said CHARLA SEVERS, ID#1421158, is in the custody of the Sheriff of Clark County, State of Nevada, or in case of my absence or inability to act, before the nearest and most accessible Magistrate in this County.

WITNESS my hand this 29 day of April, A.D. 1999.

And I direct that this Warrant may be served at any hour of the day or night


DISTRICT COURT JUDGE

SHERIFF'S RETURN

I hereby certify that I received the above and foregoing Warrant on the ____ day of _____, 19__, and served the same by arresting the within named Defendant, _____, and bringing _____ into Court his ____ day of _____, 19__.

JERRY KELLER, Sheriff, Clark County, Nevada

BY _____
Deputy

DA#C153461/sbs
LVMPD EV#9808141600
CONSP;RWDW;KDNPWDW;MWDW - F
070978; BFA; 530267749
(TK3)

P:\WPDOCS\ORDR\FORDR\812\81255601.WPD

AA07995

LaJa

To Whom It May Concern: 09-27-98

Thanks a whole lot! I did exactly what B-lodeuce told me even though it tore me apart. But I did not want to come up missing in action^(MIA). I

wish I would of never did that shit. I should of ~~a~~ hit him fuck me off! Instead of lying on Deke, like that. They all hate him and I did this shit like I hate him too. I cant even face him, because I feel like I betrayed him, how could I tell him he is going to be fucked because I was scared B-lo was going to do me in. My Baby still dont know I said anything. I just wish shit would of went differently. Now I have to hideout from this punk bitch! So if you find me I hope I aint looking like those 4 white boys you all found. I hope you all find him too. So now I guess you could perjure me because I lied about some other shit too. But Im not a liar, just scared!

EXHIBIT "2"

CHARLA SEVERS
DETENTION CENTER
City of North Las Vegas
2222 Constitution Way
North Las Vegas, Nevada 89030



CHANNEL 8 NEWS
3228 Channel 8 Dr.
Las Vegas, NV 89015

89103/9037



EXHIBIT "3"

AA07997

12-02-98

Hello my name is Charla
and I have a story for you the
only reason I did not call
you is because I am in jail
at North Las Vegas Detention Ctr.
Well what I wanted to tell you
all is that my boyfriend is in
jail for that quadruple homicide,
you remember the one you had
on the news not too long ago?
Donte Johnson. Well he didn't have
anything to do w/ that. Terrell
Young and Sikia Smith testified against
him as well as myself because I
was scared. Donte was not there
just Terrell, Sikia and myself but
noone knows I was there. Donte was
gone the night Terrell, Sikia came
over they was looking for Donte
so they could go do that but he
took to long to come so instead
they made me go. I couldn't say no!
When we got back home Donte was there
and he was upset at me because he
wanted to know where I had been.
~~LATE~~ HE DIDNT KNOW ANYTHING ABOUT
IT AND HE STILL DOESNT, HE IS JUST
TRYING TO PROTECT ME. WHEN THE
D.A CALLED ME TO THEIR OFFICE THE
DAY AFTER I TESTIFIED THAT
DONT WAS WITH ME AND WE DIDNT

AA07998

KNOW ANYTHING ABOUT IT. AND I
REALLY DIDNT REMEMBER HOW
IT HAD HAPPENED UNTIL THE
DISTRICT ATTORNEY PLAYED TERRELL'S
STATEMENT FOR ME AND THE WHOLE
THING CAME BACK TO ME AND THAT'S
WHEN I GOT SCARED AND INSTEAD
OF CONFESSING I PUT IT ON DONTÉ.
I REALLY DONT WANT TO SEE HIM GO
DOWN FOR SOMETHING HE WASNT
EVEN AROUND AND DIDNT KNOW NOTHING
ABOUT. I WONT LET HIM PROTECT
ME ANY LONGER! Sincerely.

C. P. S.

APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

Alexia Conger, being first duly sworn deposes and states that she is the affiant herein and is an Investigator with the Clark County District Attorney's Office (hereinafter referred to as CCDA) presently assigned to the Criminal Division. That I have been employed with the CCDA for the past 3 years, 10 months and have been assigned to the Criminal Division for the past 3 years, 10 months.

There is probable cause to believe that certain property hereinafter described will be found at the following described premises, to-wit:

Clark County Detention Center
330 South Casino Center
Las Vegas, Nevada 89101
Current Housing Units for Inmate Donte Johnson ID# 1586283; Inmate Terrell Young ID # 1509343 and Inmate Sikia Smith ID# 1594788, Inmate Property Holding for the above names inmates, and Gang Intelligence Office.

The property referred to and sought to be seized consists of the following:

Correspondence, letters, papers, envelopes and notes, which have been written to and/or from Inmates Donte Johnson (ID# 1586283); to and/ or from Terrell Cochise Young (ID# 1509343) to and/or from Sikia Lafayette Smith (ID# 1594788) and tend to incriminate themselves in the crimes of Murder, Conspiracy to Commit Murder, First Degree Kidnaping, Robbery with Use of Deadly Weapon and Burglary, and/or Threats, directed at known or unknown individuals.

The property hereinbefore described constitutes evidence which tends to

EXHIBIT "4"