

IN THE SUPREME COURT OF THE STATE OF NEVADA

---

Case No. 83796

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

DONTE JOHNSON,  
Petitioner,

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 34 of 50

---

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

411 E. Bonneville, Suite 250  
Las Vegas, Nevada 89101  
Telephone: (702) 388-6577  
Fax: (702) 388-6419  
Randolph\_Fiedler@fd.org  
Ellesse\_Henderson@fd.org  
  
Counsel for Petitioner  
Donte Johnson

DOCUMENT	DATE	VOLUME	PAGE(S)
Amended Verification, <i>Johnson v. Gittere, et al.</i> , Case No. A-19-789336-W, Clark County District Court, Nevada	05/17/2019	47	11613-11615
Amended Verification – Index of Exhibit and Exhibit in Support, <i>Johnson v. Gittere, et al.</i> , Case No. A-19-789336-W, Clark County District Court, Nevada	05/17/2019	47	11616-11620
Court Minutes, <i>Johnson v. Gittere, et al.</i> , Case No. A-19-789336-W, Clark County District Court, Nevada	02/13/2019	49	12248
Court Minutes, <i>Johnson v. Gittere, et al.</i> , Case No. A-19-789336-W, Clark County District Court, Nevada	10/28/2021	50	12365
Defendant's (Pro Se) Request for Petition to be Stricken as it is Not Properly Before the Court, <i>Johnson v. Gittere, et al.</i> , Case No. A-19-789336-W, Clark County District Court, Nevada	04/11/2019	46	11606-11608
Defendant's (Pro Se) Request to Strike Petition, <i>Johnson v. Gittere, et al.</i> , Case No. A-19-789336-W, Clark County District Court, Nevada	04/04/2019	46	11603-11605

DOCUMENT	DATE	VOLUME	PAGE(S)
Exhibits and Exhibit List in Support of Petition for Writ of Habeas Corpus	02/13/2019	25	6130–6146
6. Judgment of Conviction, <i>State v. Johnson</i> , Case No. 153154, District Court, Clark County (Oct. 3, 2000)	02/13/2019	25	6147–6152
7. Judgment of Conviction (Amended), <i>State v. Johnson</i> , Case No. 153154, District Court, Clark County (Oct. 9, 2000)	02/13/2019	25	6153–6158
8. Appellant’s Opening Brief, <i>Johnson v. State</i> , Case No. 36991, In the Supreme Court of the State of Nevada (July 18, 2001)	02/13/2019	25	6159–6247
10. Appellant’s Reply Brief, <i>Johnson v. State</i> , Case No. 36991, In the Supreme Court of the State of Nevada (Jan. 15, 2002)	02/13/2019	25–26	6248–6283
15. Motion to Amend Judgment of Conviction, <i>State v. Johnson</i> , Case No. 153154, District Court, Clark County (Apr. 8, 2004)	02/13/2019	26	6284–6295
16. Amended Judgment of Conviction, <i>State v. Johnson</i> , Case No. 153154, District Court, Clark County (Apr. 20, 2004)	02/13/2019	26	6296–6298
17. Judgment of Conviction, <i>State v. Johnson</i> , Case No. 153154, District Court,	02/13/2019	26	6299–6303

	DOCUMENT	DATE	VOLUME	PAGE(S)
	Clark County (June 6, 2005)			
21.	Judgment Affirming Death Sentence (45456), <i>Johnson v. State</i> , Case No. 45456, In Supreme Court of the State of Nevada (Dec. 28, 2006)	02/13/2019	26	6304–6330
22.	Notice of filing of writ of certiorari, <i>Johnson v. State</i> , Case No. 45456, In Supreme Court of the State of Nevada (Apr. 5, 2007)	02/13/2019	26	6331–6332
24.	Petition for Writ of Habeas Corpus, <i>State v. Johnson</i> , Case No. 153154, District Court, Clark County (Feb. 11, 2008)	02/13/2019	26	6333–6343
25.	Pro Per Petition, <i>Johnson v. State</i> , Case No. 51306, In the Supreme Court of the State of Nevada (Mar. 24, 2008)	02/13/2019	26	6344–6364
26.	Response to Petition Writ of Habeas Corpus, <i>State v. Johnson</i> , Case No. 153154, District Court, Clark County (Apr. 29, 2008)	02/13/2019	26	6365–6369
27.	Order denying Pro Per Petition, <i>Johnson v. State</i> , Case No. 51306, In the Supreme Court of the State of Nevada (May 6, 2008)	02/13/2019	26	6370–6372
28.	Supplemental Brief in Support of Petition for Writ of Habeas Corpus, <i>State v. Johnson</i> , Case No.	02/13/2019	26	6373–6441



	DOCUMENT	DATE	VOLUME	PAGE(S)
	153154, District Court, Clark County (Oct. 12, 2009)			
29.	Second Supplemental Brief in Support of Petition for Writ of Habeas Corpus, <i>State v. Johnson</i> , Case No. 153154, District Court, Clark County (July 14, 2010)	02/13/2019	26	6442–6495
30.	Response to Petition Writ of Habeas Corpus, <i>State v. Johnson</i> , Case No. 153154, District Court, Clark County (Jan. 28, 2011)	02/13/2019	26–27	6496–6591
31.	Reply to Response to Petition Writ of Habeas Corpus, <i>State v. Johnson</i> , Case No. 153154, District Court, Clark County (June 1, 2011)	02/13/2019	27	6592–6627
32.	Reply Brief on Initial Trial Issues, <i>State v. Johnson</i> , Case No. 153154, District Court, Clark County (Aug. 22, 2011)	02/13/2019	27–28	6628–6785
33.	Findings of Fact and Conclusions of Law, <i>State v. Johnson</i> , Case No. 153154, District Court, Clark County (Mar. 17, 2014)	02/13/2019	28	6786–6793
34.	Petition for Writ of Habeas Corpus, <i>State v. Johnson</i> , Case No. 153154, District Court, Clark County (Oct. 8, 2014)	02/13/2019	28	6794–6808

DOCUMENT	DATE	VOLUME	PAGE(S)
35. Response to Second Petition for Writ of Habeas Corpus (Post-Conviction), <i>State v. Johnson</i> , Case No. 153154, District Court, Clark County (Dec. 15, 2014)	02/13/2019	28	6809–6814
36. Reply to Response to Second Petition for Habeas Corpus (Post-Conviction), <i>State v. Johnson</i> , Case No. 153154, District Court, Clark County (Jan. 2, 2015)	02/13/2019	28	6815–6821
37. Appellant’s Opening Brief, No. 65168, Nev. Sup. Ct., Jan. 9, 2015	02/13/2019	28	6822–6973
38. Findings of Fact and Conclusions of Law), <i>State v. Johnson</i> , Case No. 153154, District Court, Clark County (Feb. 4, 2015)	02/13/2019	28	6974–6979
40. Appellant’s Reply Brief, No. 65168, Nev. Sup. Ct., Nov. 18, 2015	02/13/2019	28–29	6980–7078
45. Autopsy Report for Peter Talamantez (Aug. 15, 1998)	02/13/2019	29	7079–7091
46. Las Vegas Metropolitan Police Dept. Voluntary Statement of Ace Rayburn Hart_Redacted (Aug. 17, 1998)	02/13/2019	29	7092–7121
47. Las Vegas Metropolitan Police Dept., Voluntary Statement of Brian	02/13/2019	29	7122–7138

	DOCUMENT	DATE	VOLUME	PAGE(S)
	Johnson_Redacted (Aug. 17, 1998)			
48.	Indictment, <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154 (Sep. 2, 1998)	02/13/2019	29	7139–7149
49.	Las Vegas Metropolitan Police Dept., Voluntary Statement of Terrell Young_Redacted (Sep. 2, 1998)	02/13/2019	29	7150–7205
50.	Las Vegas Metropolitan Police Dept., Voluntary Statement of Charla Severs_Redacted (Sep. 3, 1998)	02/13/2019	29	7206–7239
51.	Las Vegas Metropolitan Police Dept., Voluntary Statement of Sikia Smith_Redacted (Sep. 8, 1998)	02/13/2019	29–30	7240–7269
52.	Superseding Indictment, <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154 (Sep. 15, 1998)	02/13/2019	30	7270–7284
53.	Las Vegas Metropolitan Police Dept., Voluntary Statement of Todd Armstrong_Redacted (Sep. 17, 1998)	02/13/2019	30	7285–7338
54.	Las Vegas Metropolitan Police Dept., Voluntary Statement of Ace Hart_Redacted (Sep. 22, 1998)	02/13/2019	30	7339–7358

DOCUMENT	DATE	VOLUME	PAGE(S)
55. Testimony of Todd Armstrong, <i>State of Nevada v. Celis</i> , Justice Court, Clark County, Nevada Case No. 1699-98FM (Jan. 21, 1999)	02/13/2019	30–31	7359–7544
56. Trial Transcript (Volume VIII), <i>State v. Smith</i> , District Court, Clark County, Nevada Case No. C153624 (June 17, 1999)	02/13/2019	31	7545–7675
57. Trial Transcript (Volume XVI-AM), <i>State v. Smith</i> , District Court, Clark County, Nevada Case No. 153624 (June 24, 1999)	02/13/2019	31–32	7676–7824
58. Motion to Permit DNA Testing of Cigarette Butt (Aug. 17, 1998)	02/13/2019	32	7825–7835
59. Trial Transcript (Volume VI), <i>State v. Young</i> , District Court, Clark County, Nevada, Case No. C153154 (Sep. 7, 1999)	02/13/2019	32	7836–7958
60. Interview of Charla Severs (Sep. 27, 1999)	02/13/2019	32	7959–7980
61. Motion to Videotape Deposition of Charla Severs, <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154 (Sep. 29, 1999)	02/13/2019	32–33	7981–8004
62. Opposition to Videotape Deposition of Charla Severs, <i>State v. Johnson</i> , District Court, Clark	02/13/2019	33	8005–8050

	DOCUMENT	DATE	VOLUME	PAGE(S)
	County, Nevada Case No. C153154 (Oct. 6, 1999)			
63.	Transcript of Video Deposition of Charla Severs (Filed Under Seal), <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154 (Oct. 6, 1999)	02/13/2019 <b>SEALED</b>	33	8051–8160
64.	Cellmark Report of Laboratory Examination (Nov. 17, 1999)	02/13/2019	33	8161–8165
65.	Motion for Change of Venue, <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154 (Nov. 29, 1999)	02/13/2019	33	8166–8291
66.	Records from the California Youth Authority_Redacted	02/13/2019	33–34	8292–8429
67.	Jury Instructions (Guilt Phase), <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154 (June 8, 2000)	02/13/2019	34	8430–8496
68.	Verdict Forms (Guilt Phase), <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154 (June 9, 2000)	02/13/2019	34	8497–8503
69.	Special Verdict, <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154 (June 15, 2000)	02/13/2019	34	8504–8506
70.	Affidavit of Kristina Wildeveld (June 23, 2000)	02/13/2019	34	8507–8509

DOCUMENT	DATE	VOLUME	PAGE(S)
71. Amended Notice of Evidence Supporting Aggravating Circumstances, <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154 (Mar. 17, 2004)	02/13/2019	34	8510–8518
72. Second Amended Notice of Evidence Supporting Aggravating Circumstances, <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154 (Apr. 6, 2004)	02/13/2019	34	8519–8527
73. Opposition to Second Amended Notice of Evidence Supporting Aggravating Circumstances, <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154 (Apr. 20, 2004)	02/13/2019	34	8528–8592
74. Reply to Opposition to Notice of Evidence Supporting Aggravating Circumstances, <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154 (Apr. 26, 2004)	02/13/2019	34–35	8593–8621
75. Jury Instructions (Penalty Phase 3), <i>State v. Johnson</i> , District Court, Clark	02/13/2019	35	8622–8639

DOCUMENT	DATE	VOLUME	PAGE(S)
County, Nevada Case No. C153154 (Apr. 28, 2005)			
76. Petition for rehearing, Johnson v. <i>State</i> , Nevada Supreme Court, Case No. 45456 (Mar. 27, 2007)	02/13/2019	35	8640–8652
77. John L. Smith, <i>Mabey takes heat for attending his patients instead of the inauguration</i> , Las Vegas Review-Journal (Jan. 5, 2007)	02/13/2019	35	8653–8656
78. Sam Skolnik, <i>Judge out of order, ethics claims say</i> , Las Vegas Sun (Apr. 27, 2007)	02/13/2019	35	8657–8660
79. EM 110 - Execution Procedure_Redacted (Nov. 7, 2017)	02/13/2019	35	8661–8667
80. <i>Nevada v. Baldonado</i> , Justice Court, Clark County, Nevada Case No. 04FH2573X (Mar. 30, 2004)	02/13/2019	35	8668–8698
81. Birth Certificate John White Jr_Redacted	02/13/2019	35	8699–8700
82. Declaration of Eloise Kline (Nov. 19, 2016)	02/13/2019	35	8701–8704
83. Jury Questionnaire 2000_Barbara Fuller_Redacted (May 24, 2000)	02/13/2019	35	8705–8727
84. Media Jury Questionnaire 2000	02/13/2019	35–36	8728–8900
85. Media Jury Questionnaire 2005	02/13/2019	36	8901–9025
86. News Articles	02/13/2019	36–37	9026–9296

DOCUMENT	DATE	VOLUME	PAGE(S)
87. State's Exhibit 63 – Photo	02/13/2019	37	9297–9299
88. State's Exhibit 64 – Photo	02/13/2019	37	9300–9302
89. State's Exhibit 65 – Photo	02/13/2019	37	9303–9305
90. State's Exhibit 66 – Photo	02/13/2019	37	9306–9308
91. State's Exhibit 67 – Photo	02/13/2019	37	9309–9311
92. State's Exhibit 69 – Photo	02/13/2019	37	9312–9314
93. State's Exhibit 70 – Photo	02/13/2019	37	9315–9317
94. State's Exhibit 74 – Photo	02/13/2019	37	9318–9320
95. State's Exhibit 75 – Photo	02/13/2019	37	9321–9323
96. State's Exhibit 76 – Photo	02/13/2019	37	9324–9326
97. State's Exhibit 79 – Photo	02/13/2019	37	9327–9329
98. State's Exhibit 80 – Photo	02/13/2019	37	9330–9332
99. State's Exhibit 81 – Photo	02/13/2019	37	9333–9335
100. State's Exhibit 82 – Photo	02/13/2019	37	9336–9338
101. State's Exhibit 86 – Photo	02/13/2019	37	9339–9341
102. State's Exhibit 89 – Photo	02/13/2019	37	9342–9344
103. State's Exhibit 92 – Photo	02/13/2019	37	9345–9347
104. State's Exhibit 113 – Photo	02/13/2019	37	9348–9350
105. State's Exhibit 116 – Photo	02/13/2019	37	9351–9353
106. State's Exhibit 120 – Photo	02/13/2019	37	9354–9356
107. State's Exhibit 125 – Photo	02/13/2019	37	9357–9359
108. State's Exhibit 130 – Photo	02/13/2019	38	9360–9362
109. State's Exhibit 134 – Photo	02/13/2019	38	9363–9365
110. State's Exhibit 137 – Photo	02/13/2019	38	9366–9368
111. State's Exhibit 145 – Photo	02/13/2019	38	9369–9371
112. State's Exhibit 146 – Photo	02/13/2019	38	9372–9374
113. State's Exhibit 148 – Photo	02/13/2019	38	9375–9377
114. State's Exhibit 151 – Photo	02/13/2019	38	9378–9380
115. State's Exhibit 180 – Photo	02/13/2019	38	9381–9384
116. State's Exhibit 181 – Photo	02/13/2019	38	9385–9388
117. State's Exhibit 216 - Probation Officer's Report - Juvenile_Redacted	02/13/2019	38	9389–9403
118. State's Exhibit 217 - Probation Officer's Report_Redacted	02/13/2019	38	9404–9420



DOCUMENT	DATE	VOLUME	PAGE(S)
119. State's Exhibit 221 – Photo	02/13/2019	38	9421–9423
120. State's Exhibit 222 – Photo	02/13/2019	38	9424–9426
121. State's Exhibit 256	02/13/2019	38	9427–9490
122. Las Vegas Metropolitan Police Dept. Crime Scene Report (Aug. 14, 1998)	02/13/2019	38	9491–9499
123. VCR at Terra Linda	02/13/2019	38	9500–9501
124. VCR Remote Control Buying Guide	02/13/2019	38	9502–9505
125. Jury Instructions (Penalty Phase 3), <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154 (May 4, 2005)	02/13/2019	38	9506–9519
126. Motion to Bifurcate Penalty Phase, <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154 (Apr. 27, 2004)	02/13/2019	38	9520–9525
127. Motion to Reconsider Request to Bifurcate Penalty Phase, <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154 (Apr. 11, 2005)	02/13/2019	38	9526–9532
128. Special Verdicts (Penalty Phase 3), <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154 (Apr. 28, 2005)	02/13/2019	38	9533–9544
129. Verdict (Penalty Phase 3), <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154 (May 5, 2005)	02/13/2019	38	9545–9549

DOCUMENT	DATE	VOLUME	PAGE(S)
130. Declaration of Arthur Cain (Oct. 29, 2018)	02/13/2019	38	9550–9552
131. Declaration of Deborah White (Oct. 27, 2018)	02/13/2019	38	9553–9555
132. Declaration of Douglas McGhee (Oct. 28, 2018)	02/13/2019	38	9556–9558
133. Declaration of Elizabeth Blanding (Oct. 29, 2018)	02/13/2019	38	9559–9560
134. Declaration of Jesse Drumgole (Oct. 27, 2018)	02/13/2019	38	9561–9562
135. Declaration of Johnnisha Zamora (Oct. 28, 2018)	02/13/2019	38	9563–9566
136. Declaration of Johnny White (Oct. 26, 2018)	02/13/2019	38	9567–9570
137. Declaration of Keonna Bryant (Oct. 30, 2018)	02/13/2019	38	9571–9573
138. Declaration of Lolita Edwards (Oct. 30, 2018)	02/13/2019	38	9574–9576
139. Declaration of Loma White (Oct. 31, 2018)	02/13/2019	38	9577–9579
140. Declaration of Moises Zamora (Oct. 28, 2018)	02/13/2019	38	9580–9582
141. Declaration of Vonjelique Johnson (Oct. 28, 2018)	02/13/2019	38	9583–9585
142. Los Angeles Dept. of Child & Family Services_Redacted	02/13/2019	38–39	9586–9831
143. Psychological Evaluation of Donte Johnson by Myla H. Young, Ph.D. (June 6, 2000)	02/13/2019	39	9832–9841
144. Psychological Evaluation of Eunice Cain (Apr. 25, 1988)	02/13/2019	39	9842–9845

DOCUMENT	DATE	VOLUME	PAGE(S)
145. Psychological Evaluation of John White by Harold Kates (Dec. 28, 1993)	02/13/2019	39–40	9846–9862
146. Student Report for John White	02/13/2019	40	9863–9867
147. School Records for Eunnisha White_Redated	02/13/2019	40	9868–9872
148. High School Transcript for John White_Redacted	02/13/2019	40	9873–9874
149. School Record for John White_Redacted	02/13/2019	40	9875–9878
150. Certified Copy SSA Records_Eunice Cain_Redacted	02/13/2019	40	9879–9957
151. Declaration of Robin Pierce (Dec. 16, 2018)	02/13/2019	40	9958–9961
152. California Department of Corrections Records_Redacted (Apr. 25, 2000)	02/13/2019	40	9962–10060
153. Letter from Maxine Miller to Lisa Calandro re forensic lab report (Apr. 13, 1999)	02/13/2019	40	10061–10077
154. Letter from Lisa Calandro Forensic Analytical to Maxine Miller (Apr. 20, 1994)	02/13/2019	40	10078–10080
155. Memorandum re call with Richard Good (Apr. 29, 1999)	02/13/2019	40	10081–10082
156. Letter from Maxine Miller to Berch Henry at Metro DNA Lab (May 7, 1999)	02/13/2019	40	10083–10086
157. Letter from Maxine Miller to Richard Good (May 10, 1999)	02/13/2019	40	10087–10092

DOCUMENT	DATE	VOLUME	PAGE(S)
158. Letter from Maxine Miller to Tom Wahl (May 26, 1999)	02/13/2019	40	10093–10098
159. Stipulation and Order, <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154 (June 8, 1999)	02/13/2019	40	10099–10101
160. Stipulation and Order, <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154, (June 14, 1999)	02/13/2019	40	10102–10105
161. Letter from Maxine Miller to Larry Simms (July 12, 1999)	02/13/2019	40–41	10106–10110
162. Stipulation and Order, <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154 (Dec. 22, 1999)	02/13/2019	41	10111–10113
163. Letter from Maxine Miller to Nadine LNU re bullet fragments (Mar. 20, 2000)	02/13/2019	41	10114–10118
164. Memorandum (Dec. 10, 1999)	02/13/2019	41	10119–10121
165. Forensic Analytical Bloodstain Pattern Interpretation (June 1, 2000)	02/13/2019	41	10122–10136
166. Trial Transcript (Volume III), <i>State v. Young</i> , District Court, Clark County, Nevada, Case No. C153461 (Sep. 7, 1999)	02/13/2019	41	10137–10215
167. Trial Transcript (Volume VII), <i>State v. Young</i> ,	02/13/2019	41	10216–10332

DOCUMENT	DATE	VOLUME	PAGE(S)
District Court, Clark County, Nevada, Case No. C153461 (Sep. 13, 1999)			
168. National Research Council, <i>Strengthening Forensic Science in the United States: A Path Forward</i> , Washington, D.C.: The National Academies Press (2009)	02/13/2019	41	10333–10340
169. Las Vegas Metropolitan Police Dept. Forensic Lab Report of Examination (Sep. 26, 1998)	02/13/2019	41	10341–10343
170. Todd Armstrong juvenile records_Redacted	02/13/2019	41–42	10344–10366
171. Handwritten notes on Pants	02/13/2019	42	10367–10368
172. Declaration of Cassondrus Ragsdale (Dec. 16, 2018)	02/13/2019	42	10369–10371
173. Report of Dr. Kate Glywasky (Dec. 19, 2018)	02/13/2019	42	10372–10375
174. Curriculum Vitae of Dr. Kate Glywasky	02/13/2019	42	10376–10384
175. Report of Deborah Davis, Ph.D. (Dec. 18, 2018)	02/13/2019	42	10385–10435
176. Curriculum Vitae of Deborah Davis, Ph.D.	02/13/2019	42	10436–10462
177. Report of T. Paulette Sutton, Associate Professor, Clinical Laboratory Sciences (Dec. 18, 2018)	02/13/2019	42	10463–10472
178. Curriculum Vitae of T. Paulette Sutton	02/13/2019	42	10473–10486

DOCUMENT	DATE	VOLUME	PAGE(S)
179. Report of Matthew Marvin, Certified Latent Print Examiner (Dec. 18, 2018)	02/13/2019	42	10487–10494
180. Curriculum Vitae of Matthew Marvin	02/13/2019	42	10495–10501
181. Trial Transcript (Volume V), <i>State v. Smith</i> , District Court, Clark County, Nevada Case No. C153624 (June 16, 1999)	02/13/2019	42–43	10502–10614
182. Trial Transcript (Volume VI), <i>State v. Smith</i> , District Court, Clark County, Nevada Case No. C153624 (June 16, 1999)	02/13/2019	43	10615–10785
183. Las Vegas Metropolitan Police Dept. Interview of Tod Armstrong_Redacted (Aug. 17, 1998)	02/13/2019	43	10786–10820
184. Las Vegas Metropolitan Police Dept. Interview of Tod Armstrong_Redacted (Aug. 18, 1998)	02/13/2019	43	10821–10839
185. Las Vegas Metropolitan Police Dept. Interview of Charla Severs_Redacted (Aug. 18, 1998)	02/13/2019	43–44	10840–10863
186. Las Vegas Metropolitan Police Dept. Interview of Sikia Smith_Redacted (Aug. 17, 1998)	02/13/2019	44	10864–10882
187. Las Vegas Metropolitan Police Dept. Interview of Terrell Young_Redacted (Sep. 2, 1998)	02/13/2019	44	10883–10911
188. Declaration of Ashley Warren (Dec. 17, 2018)	02/13/2019	44	10912–10915

DOCUMENT	DATE	VOLUME	PAGE(S)
189. Declaration of John Young (Dec. 10, 2018)	02/13/2019	44	10916–10918
190. Brief of Plaintiffs-Appellants, <i>Abdur'rahman v. Parker</i> , Tennessee Supreme Court, Nashville Division, Case No. M2018-10385-SC-RDO-CV	02/13/2019	44–45	10919–11321
191. Sandoz' Inc.'s Motion for Leave Pursuant to NRAP 29 to Participate as Amicus Curiae in Support of Real Parties in Interest, <i>Nevada v. The Eighth Judicial District Court of the State of Nevada</i> , Nevada Supreme Court, Case No. 76485	02/13/2019	45	11322–11329
192. Notice of Entry of Order, <i>Dozier v. State of Nevada</i> , District Court, Clark County, Nevada, Case No. 05C215039	02/13/2019	45	11330–11350
193. Declaration of Cassondrus Ragsdale (2018.12.18)	02/13/2019	45	11351–11353
194. Affidavit of David B. Waisel, <i>State of Nevada</i> , District Court, Clark County, Case No. 05C215039 (Oct. 4, 2018)	02/13/2019	45–46	11354–11371
195. Declaration of Hans Weding (Dec. 18, 2018)	02/13/2019	46	11372–11375
196. Trial Transcript (Volume IX), <i>State v. Smith</i> , District Court, Clark County, Nevada Case No. C153624 (June 18, 1999)	02/13/2019	46	11376–11505

DOCUMENT	DATE	VOLUME	PAGE(S)
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



DOCUMENT	DATE	VOLUME	PAGE(S)
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

DOCUMENT	DATE	VOLUME	PAGE(S)
District Court, Clark County, Nevada Case No. C153154, June 5, 2005			
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
Exhibits in Support of Petitioner’s Motion for Leave to Conduct Discovery	12/13/2019	49	12197–12199
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

DOCUMENT	DATE	VOLUME	PAGE(S)
Exhibits in Support of Reply to State's Response to Petition for Writ of Habeas Corpus	12/13/2019	47	11837–11839
215. <i>Holloway v. Baldonado</i> , No. A498609, Plaintiff's Opposition to Motion for Summary Judgment, District Court of Clark County, Aug. 1, 2007	12/13/2019	47–48	11840–11867
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

DOCUMENT	DATE	VOLUME	PAGE(S)
Court of Clark County, filed Apr. 5, 2005			
221. Motion for a New Trial (Request for Evidentiary Hearing), <i>State of Nevada v. Johnson</i> , Case No. C153154, District Court of Clark County, filed June 23, 2000	12/13/2019	49	12139–12163
222. Juror Questionnaire of John Young, <i>State of Nevada v. Johnson</i> , Case No. C153154, District Court of Clark County, dated May 24, 2000	12/13/2019	49	16124–12186
Findings of Fact, Conclusions of Law and Order, <i>Johnson v. Gittere, et al.</i> , Case No. A–19– 789336–W, Clark County District Court, Nevada	10/08/2021	49	12352–12357
Minute Order (denying Petitioner’s Post–Conviction Writ of Habeas Corpus, Motion for Discovery and Evidentiary Hearing), <i>Johnson v. Gittere, et al.</i> , Case No. A–19–789336–W, Clark County District Court, Nevada	05/15/2019	49	12264–12266
Minutes of Motion to Vacate Briefing Schedule and Strike Habeas Petition	07/09/2019	47	11710
Motion and Notice of Motion for Evidentiary Hearing, <i>Johnson v.</i>	12/13/2019	49	12231–12241

DOCUMENT	DATE	VOLUME	PAGE(S)
<i>Gittere, et al.</i> , Case No. A-19-789336-W, Clark County District Court, Nevada			
Motion and Notice to Conduct Discovery, <i>Johnson v. Gittere, et al.</i> , Case No. A-19-789336-W, Clark County District Court, Nevada	12/13/2019	49	12187-12196
Motion for Leave to File Under Seal and Notice of Motion	02/15/2019		11600-11602
Motion in Limine to Prohibit Any References to the First Phase as the “Guilt Phase”	11/29/1999	2	302-304
Motion to Vacate Briefing Schedule and Strike Habeas Petition, <i>Johnson v. Gittere, et al.</i> , Case No. A-19-789336-W, Clark County District Court, Nevada	05/16/2019	46-47	11609-11612
Motion to Vacate Briefing Schedule and Strike Habeas Petition, <i>Johnson v. Gittere, et al.</i> , Case No. A-19-789336-W, Clark County District Court, Nevada	05/23/2019	47	11621-11624
Motion to Withdraw Request to Strike Petition and to Withdraw Request for Petition to be Stricken as Not Properly Before the Court), <i>Johnson v. Gittere, et al.</i> , Case No. A-19-789336-	06/26/2019	47	11708-11709

DOCUMENT	DATE	VOLUME	PAGE(S)
W, Clark County District Court, Nevada			
Notice of Appeal, <i>Johnson v. Gittere, et al.</i> , Case No. A-19-789336-W, Clark County District Court, Nevada	11/10/2021	50	12366-12368
Notice of Entry of Findings of Fact, Conclusions of Law and Order, <i>Johnson v. Gittere, et al.</i> , Case No. A-19-789336-W, Clark County District Court, Nevada	10/11/2021	49-50	12358-12364
Notice of Hearing (on Discovery Motion), <i>Johnson v. Gittere, et al.</i> , Case No. A-19-789336-W, Clark County District Court, Nevada	12/13/2019	49	12330
Notice of Objections to Proposed Order, <i>Johnson v. Gittere, et al.</i> , Case No. A-19-789336-W, Clark County District Court, Nevada	02/02/2021	49	12267-12351
Notice of Supplemental Exhibit 223, <i>Johnson v. Gittere, et al.</i> , Case No. A-19-789336-W, Clark County District Court, Nevada	02/11/2019	49	11242-12244
223. Declaration of Dayvid J. Figler, dated Feb. 10, 2020	02/11/2019	49	12245-12247
Opposition to Defendants' Motion in Limine to Prohibit	12/02/1999	2	305-306

DOCUMENT	DATE	VOLUME	PAGE(S)
Any References to the First Phase as the “Guilt Phase”			
Opposition to Motion in Limine to Preclude Evidence of Other Guns, Weapons and Ammunition Not Used in the Crime	11/04/1999	2	283–292
Opposition to Motion to Vacate Briefing Schedule and Strike Habeas Petition, <i>Johnson v. Gittere, et al.</i> , Case No. A–19–789336–W, Clark County District Court, Nevada	05/28/2019	47	11625–11628
Petition for Writ of Habeas Corpus, <i>Johnson v. Gittere, et al.</i> , Case No. A–19–789336–W, Clark County District Court, Nevada	02/13/2019	24–25	5752–6129
Post–Evidentiary Hearing Supplemental Points and Authorities	06/22/2005	22	5472–5491
Reply to Opposition to Motion to Vacate Briefing Schedule and Strike Habeas Petition	06/20/2019	47	11705–11707
Reply to State’s Response to Petition for Writ of Habeas Corpus	12/13/2019	47	11718–11836
State’s Response to Defendant’s Petition for Writ of Habeas Corpus (Post–Conviction),	05/29/2019	47	11629–11704

DOCUMENT	DATE	VOLUME	PAGE(S)
<i>Johnson v. Gittere, et al.</i> , Case No. A–19–789336–W, Clark County District Court, Nevada			
Stipulation and Order to Modify Briefing Schedule, <i>Johnson v. Gittere, et al.</i> , Case No. A–19–789336–W, Clark County District Court, Nevada	09/30/2019	47	11711–11714
Stipulation and Order to Modify Briefing Schedule, <i>Johnson v. Gittere, et al.</i> , Case No. A–19–789336–W, Clark County District Court, Nevada	11/22/2019	47	11715–11717
Transcript of All Defendant’s Pending Motions	03/02/2000	2	416–430
Transcript of Argument to Admit Evidence of Aggravating Circumstances	05/03/2004	12	2904–2958
Transcript of Argument: Petition for Writ of Habeas Corpus (All Issues Raised in the Petition and Supplement)	12/01/2011	22–23	5498–5569
Transcript of Arguments	04/28/2004	12	2870–2903
Transcript of Decision: Procedural Bar and Argument: Petition for Writ of Habeas Corpus	07/20/2011	22	5492–5497
Transcript of Defendant’s Motion for Leave to File Under	02/25/2019	46	11594–11599



DOCUMENT	DATE	VOLUME	PAGE(S)
Seal, <i>Johnson v. Gittere, et al.</i> , Case No. A-19-789336-W, Clark County District Court, Nevada			
Transcript of Defendant's Motion to Reveal the Identity of Informants and Reveal Any Benefits, Deals, Promises or Inducements; Defendant's Motion to Compel Disclosure of Existence and Substance of Expectations, or Actual Receipt of Benefits or Preferential Treatment for Cooperation with Prosecution; Defendant's Motion to Compel the Production of Any and All Statements of Defendant; Defendant's Reply to Opposition to Motion in Limine to Preclude Evidence of Other Guns, Weapons, Ammunition; Defendant's Motion in Limine to Preclude Evidence of Witness Intimidation	11/18/1999	2	293-301
Transcript of Evidentiary Hearing	05/17/2004	12	2959-2989
Transcript of Evidentiary Hearing	06/14/2005	22	5396-5471
Transcript of Evidentiary Hearing	04/04/2013	23	5570-5673
Transcript of Evidentiary Hearing	04/11/2013	23	5674-5677

DOCUMENT	DATE	VOLUME	PAGE(S)
Transcript of Evidentiary Hearing	06/21/2013	23	5678–5748
Transcript of Evidentiary Hearing	09/18/2013	23–24	5749–5751
Transcript of Excerpted Testimony of Termaine Anthony Lytle	05/17/2004	12	2990–2992
Transcript of Jury Trial – Day 1 (Volume I)	06/05/2000	2–4	431–809
Transcript of Jury Trial – Day 2 (Volume II)	06/06/2000	4–5	810–1116
Transcript of Jury Trial – Day 3 (Volume III)	06/07/2000	5–7	1117–1513
Transcript of Jury Trial – Day 4 (Volume IV)	06/08/2000	7–8	1514–1770
Transcript of Jury Trial – Day 5 (Volume V)	06/09/2000	8	1771–1179
Transcript of Jury Trial – Penalty – Day 1 (Volume I) AM	04/19/2005	12–13	2993–3018
Transcript of Jury Trial – Penalty – Day 1 (Volume I) PM	4/19/2005 <sup>1</sup>	13	3019–3176
Transcript of Jury Trial – Penalty – Day 10 (Volume X)	05/02/2005	20–21	4791–5065

---

<sup>1</sup> This transcript was not filed with the District Court nor is it under seal.

<b>DOCUMENT</b>	<b>DATE</b>	<b>VOLUME</b>	<b>PAGE(S)</b>
Transcript of Jury Trial – Penalty – Day 10 (Volume X) – Exhibits	05/02/2005	21	5066–5069
Transcript of Jury Trial – Penalty – Day 11 (Volume XI)	05/03/2005	21–22	5070–5266
Transcript of Jury Trial – Penalty – Day 12 (Volume XII)	05/04/2005	22	5267–5379
Transcript of Jury Trial – Penalty – Day 12 (Volume XII) – Deliberations	05/04/2005	22	5380–5383
Transcript of Jury Trial – Penalty – Day 13 (Volume XIII)	05/05/2005	22	5384–5395
Transcript of Jury Trial – Penalty – Day 2 (Volume I) AM	04/20/2005	13	3177–3201
Transcript of Jury Trial – Penalty – Day 2 (Volume II) PM	04/20/2005	13–14	3202–3281
Transcript of Jury Trial – Penalty – Day 3 (Volume III) PM	04/21/2005	14–15	3349–3673
Transcript of Jury Trial – Penalty – Day 3 (Volume III–A) AM	04/21/2005	14	3282–3348
Transcript of Jury Trial – Penalty – Day 4 (Volume IV) AM – Amended Cover Page	04/22/2005	16	3790–3791
Transcript of Jury Trial – Penalty – Day 4 (Volume IV) PM	04/22/2005	15–16	3674–3789

<b>DOCUMENT</b>	<b>DATE</b>	<b>VOLUME</b>	<b>PAGE(S)</b>
Transcript of Jury Trial – Penalty – Day 4 (Volume IV–B)	04/22/2005	16	3792–3818
Transcript of Jury Trial – Penalty – Day 5 (Volume V) PM	04/25/2005	16	3859–3981
Transcript of Jury Trial – Penalty – Day 5 (Volume V–A)	04/25/2005	16	3819–3858
Transcript of Jury Trial – Penalty – Day 6 (Volume VI) PM	04/26/2005	17–18	4103–4304
Transcript of Jury Trial – Penalty – Day 6 (Volume VI–A) PM	04/26/2005	16–17	3982–4102
Transcript of Jury Trial – Penalty – Day 7 (Volume VII– PM)	04/27/2005	18	4382–4477
Transcript of Jury Trial – Penalty – Day 7 (Volume VII–A)	04/27/2005	18	4305–4381
Transcript of Jury Trial – Penalty – Day 8 (Volume VIII– C)	04/28/2005	18–19	4478–4543
Transcript of Jury Trial – Penalty – Day 9 (Volume IX)	04/29/2005	19–20	4544–4790
Transcript of Jury Trial – Penalty Phase – Day 1 (Volume I) AM	06/13/2000	8	1780–1908
Transcript of Jury Trial – Penalty Phase – Day 1 (Volume II) PM	06/13/2000	8–9	1909–2068

DOCUMENT	DATE	VOLUME	PAGE(S)
Transcript of Jury Trial – Penalty Phase – Day 2 (Volume III)	06/14/2000	9–10	2069-2379
Transcript of Jury Trial – Penalty Phase – Day 3 (Volume IV)	06/16/2000	10	2380–2470
Transcript of Material Witness Charla Severs’ Motion for Own Recognizance Release	01/18/2000	2	414–415
Transcript of Motion for a New Trial	07/13/2000	10	2471–2475
Transcript of Petition for Writ of Habeas Corpus and Setting of 1. Motion for Leave and 2. Motion for Evidentiary Hearing, <i>Johnson v. Gittere, et al.</i> , Case No. A–19–789336–W, Clark County District Court, Nevada	02/13/2020	49	12249–12263
Transcript of Preliminary Hearing	10/12/1999	2	260–273
Transcript of State’s Motion to Permit DNA Testing	09/02/1999	2	252 – 254
Transcript of State’s Motion to Videotape the Deposition of Charla Severs	10/11/1999	2	255–259
Transcript of Status Check: Filing of All Motions (Defendant’s Motion to Reveal	10/21/1999	2	274–282

DOCUMENT	DATE	VOLUME	PAGE(S)
the Identity of Informants and Reveal Any Benefits, Deals, Promises or Inducements; Defendant's Motion to Compel Disclosure of Existence and Substance of Expectations, or Actual Receipt of Benefits or Preferential Treatment for Cooperation with Prosecution; Defendant's Motion to Compel the Production of Any and All Statements of Defendant; State's Motion to Videotape the Deposition of Charla Severs; Defendant's Motion in Limine to Preclude Evidence of Other Crimes; Defendant's Motion to Reveal the Identity of Informants and Reveal any Benefits, Deals' Defendant's Motion to Compel the Production of any and all Statements of the Defendant			
Transcript of the Grand Jury, <i>State v. Johnson</i> , Case No. 98C153154, Clark County District Court, Nevada	09/01/1998	1–2	001–251
Transcript of Three Judge Panel – Penalty Phase – Day 1 (Volume I)	07/24/2000	10–11	2476–2713
Transcript of Three Judge Panel – Penalty Phase – Day 2 and Verdict (Volume II)	07/26/2000	11–12	2714–2853

<b>DOCUMENT</b>	<b>DATE</b>	<b>VOLUME</b>	<b>PAGE(S)</b>
Transcript Re: Defendant's Motions	01/06/2000	2	307–413
Verdict Forms – Three Judge Panel	7/26/2000	12	2854–2869

## **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



<4>

AMENABILITY DETERMINATION FINDINGS (Cont'd)  
WHITE, John Lee, D4787

The defendant has been described as an impulsive, impressionable, immature, and easily manipulated young man who would be vulnerable to the influences of older and more criminally sophisticated, as well as aggressive, individuals.

In view of the above, there is a reasonable possibility that the defendant's criminal behavior would be exacerbated more by the other disposition alternatives available to the court.

FINDING

John Lee White is amenable to the treatment and training offered by the California Youth Authority.

Date: December 28, 1993

For the Youth Authority:



Joe Kraics, LCSW  
Supervising Casework Specialist I

jar

## INTRODUCTION

John Lee White is a sixteen year-old African-American male convicted in Los Angeles County Superior Court of charges of second degree robbery/principal armed with a shotgun. John is an unfit juvenile. He has been referred to the California Youth Authority for a diagnostic evaluation to determine his amenability to training and treatment services offered by the California Youth Authority.

According to the accompanying probation report, John and three co-offenders entered the Sanfed Bank and committed an armed robbery.

John has a prior record of arrests for armed robbery, possession of a weapon on school grounds, and unlawful taking of a motor vehicle. He has had the benefit of probation supervision in the community and one previous commitment to junior probation camp. John is an admitted gang member (62 Brim Bloods Gang). John became a gang member at age fourteen. His moniker is "Deko." John's gang activity has interfered with his ability to attend school on a regular basis. He has become increasingly dependent on his gang for most of his social activities. According to John, the bank robbery was arranged by an older fellow gang member who supplied the boys with a rented getaway vehicle and a weapon. John stated he committed the bank robbery even though he knew it was wrong because he did not want to get a "jacket" as a coward with the other gang members. Her also stated that, if he had declined to go along with the plan to rob the bank, he would have been punished by his fellow gang members.

John's previous performance on a grant of juvenile probation was considered marginal to unsatisfactory, noting that he was not attending school, continued to have contact with law enforcement, and was out of control at home.

John does not appear to have benefited from efforts on his behalf by the courts and the probation department.

## SOCIAL HISTORY

### FAMILY BACKGROUND

John is one of three children born to his mother. John's natural parents were never married and John's natural father, Michael Walton, is deceased. John stated he last saw his natural father when he was six years old. John and his two sisters (ages fourteen and nine) have resided with his maternal grandmother and grandfather for most of their lives. According to John, his mother is a cocaine addict who cannot care for herself or her children and who has a history of arrests. John's grandmother has stated that she cannot control John at home, noting that he is difficult and

WHITE, John Lee

D4787

SRCC

SOCIAL HISTORY

<2>

uncooperative and that he will not attend school. John's grandmother is aware that John is a gang member, although she cannot confirm or deny that he used narcotics. (John admitted that he used marijuana on a daily basis.) John denied a history of abuse or neglect in his grandparents' home. He believes his grandmother will allow him to return to her home when he is referred to parole. However, John stated that his grandparents are not visiting him during the time he is incarcerated and he doubts he will have any contact with them throughout his custody time.

#### PEER ASSOCIATES

John has admitted to membership in the "62 Brims (Bloods) Gang." He has been a gang member since age fourteen. John is heavily dependent upon his gang. His gang has become a sort of extended family. John's loyalty to his gang exceeds his obligation to obey the law or to abide by his grandparents' efforts to supervise or structure his behavior. In the instant offense, John would rather have risked death or jail than to have appeared cowardly to his fellow gang members.

#### COMMUNITY BACKGROUND

Records reflect that John was born and raised in Los Angeles, California. His grandparents live in an inner-city neighborhood noted for high rates of crime, gang activity, and drug trafficking.

#### ACADEMIC EDUCATION

Probation records indicate that John last completed the ninth grade. John admitted to chronic truancy. He claimed that pressure from rival gang members have interfered with his ability to attend school on a regular basis. John's grandmother has indicated that John refused to attend school.

Academic testing at the Southern Reception Center and Clinic reveals that John is reading at the 6.4 grade-level, performing math at the 4.7 grade-level, and understanding language at the 3.3 grade-level, for an overall total battery for basic academic skills equivalent to a 4.9 grade-level.

John denied he has ever been a special education student. Apparently, his poor academic showing is the result of infrequent attendance in a regular school program.

WHITE, John Lee

D4787

SRCC

SOCIAL HISTORY

<3>

#### VOCATIONAL EDUCATION/WORK EXPERIENCE

John's only work experience has been selling candy. He has yet to set vocational goals for himself. His response to the vocational interest and aptitude assessment reveals an interest in mechanics. In whatever program John is eventually placed, he would benefit from participation in work experience/vocational training and employability skills training.

#### ALCOHOL/DRUG USE AND ABUSE

John admitted to the use of marijuana on a daily basis. Probation records also indicate that John drank alcohol occasionally. John stated he believes he was able to conceal his drug use from his grandmother by using eye drops so she would not observe his eyes being red. He denied he was under the influence of drugs or alcohol when he committed the instant offense.

#### CORRECTIONAL EXPERIENCE

John was initially arrested on February 20, 1992 by the Los Angeles Police Department on charges of armed robbery. The petition was sustained on February 20, 1992 and John was ordered to the probation department's camp community placement program. According to John, he spent seven months in Camp Kilpatrick. Probation records indicate that John performed satisfactorily in the camp community placement program. However, once he was released back into the community, John was not attending school; he continued to have contacts with law enforcement; he continued to associate with gang members; and he continued to defy his grandparents' efforts to supervise him.

On January 4, 1993, John was arrested by the Los Angeles Police Department and charged with being in possession of a weapon on school grounds. John claimed this was a case of mistaken identity and that he was not in possession of a weapon.

On April 10, 1993, John was arrested and charged with reckless driving and unlawful taking of a motor vehicle. John's story is that a friend of his let him drive a stolen car. John denied he knew the vehicle was stolen.

WHITE, John Lee

D4787 SRCC

SOCIAL HISTORY

<4>

From the records, it appears that John's criminal activity is increasing in frequency and severity. Camp community placement and home on probation have proven ineffective in modifying his behavior. The instant offense is extremely serious. The victims were severely traumatized and it is a matter of pure luck that no one was injured. John does not appear to have any guilt, concern, or remorse regarding his behavior. In fact, he claimed that, although he knew robbing banks was wrong, he did not consider it serious.

#### SELF PERCEPTIONS

John does not regard himself as a danger to the community. He does not believe he is as seriously delinquent as his record would indicate. According to John, he did not believe participating in a bank robbery was a "serious" crime and, furthermore, he believed he and his co-offenders would be successful in getting away. He related that he went along with the robbery because he did not want the other gang members to think he was a coward. He acknowledged that he gave no thought to the possibility that the victims might be injured or traumatized or that he himself may have been injured during the arrest procedure. John believes that an appropriate disposition in his case would be commitment to the California Youth Authority. He believes he would benefit from participation in a California Youth Authority program of continuing education, counseling, and work experience or vocational training. John believes that what he needs most to turn his life around is to be given "another chance."

#### CLINICAL IMPRESSIONS

In the clinical interview, John Lee White was polite, cooperative, and respectful. He is a thin, small young man who appears to be even younger than his stated chronological age of sixteen. John is an inarticulate, quiet, and shy-appearing individual who demonstrates marked immaturity. John does not impress as highly sophisticated or hardcore in a criminal sense. Rather, he impresses as a careless, naive, passive, and easily led young man. Needless to say, John's judgment is extremely poor. John's immaturity, poor judgment, and dependence upon his gang have combined to make him a dangerous individual in the community. He does not appear to understand or appreciate the serious nature of the charges against him. John acknowledges that he knew what he was doing was wrong, but that he went along anyway because he did not want to disappoint his co-offenders.

WHITE John Lee

D4787

SRCC

SOCIAL HISTORY



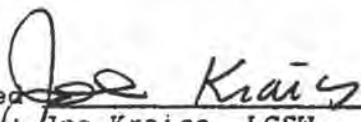
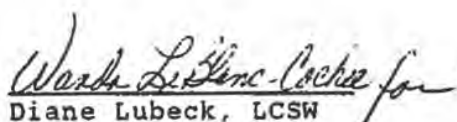
<5>

John's pattern of behavior is common to many delinquent youths. Coinciding with the onset of adolescence, John joined a youth gang, began to ditch school and defy authority, and involved himself in repeated violations of the rights and property of others. Probation supervision in the community and referral to the probation department's camp community placement program have proved ineffective. John appears to be content to drift aimlessly through life in a hedonistic fashion seizing whatever opportunity comes up, including criminal activity, with no thought of the consequences. He has made little to no effort to obtain job skills or to prepare himself to live independently as an adult. John's immaturity and need for approval from older gang members have led directly to his involvement in the instant offense.

John does not appear to be an appropriate candidate for commitment to state prison. He is, after all, only sixteen years old. There have been minimal prior rehabilitative efforts. John's small stature, immaturity, and passive nature would make him a vulnerable target for older, more hardcore inmates in a state prison setting.

Given the current Superior Court charges, California Youth Authority jurisdiction over John's case would extend to age twenty-five. John appears to be capable of materially benefiting from California Youth Authority programs of continuing education, counseling, and participation in work experience/vocational training. Commitment to the California Youth Authority, as opposed to housing in the California Youth Authority pursuant to Section 1731.5(c) WIC, would require John to appear before the Youthful Offender Parole Board on an annual basis to assess his progress in program and to assess his readiness for parole. Sufficient time remains in the jurisdiction and confinement time available to effect needed attitudinal and behavioral changes.

Date: December 20, 1993

Approved 	Prepared 
By: Joe Kraics, LCSW, Supv. Casework Specialist I	By: Diane Lubeck, LCSW Parole Agent I

jar

WHITE, John Lee

D4787

SRCC

SOCIAL HISTORY

## PSYCHIATRIC EVALUATION

### REASON FOR REFERRAL

This evaluation is part of a court-ordered 90-day diagnostic study. Defendant was informed of my identity and the purpose of the interview. He was, furthermore, told that the information he provided me might be used in the report, and could have significant bearing on the disposition of his case.

### PRIOR PSYCHIATRIC/PSYCHOLOGICAL EVALUATIONS

No prior psychiatric evaluation was recorded in the file.

### METHOD OF EVALUATION

One-hour clinical interview with the defendant and review of records in file, including the Probation Officer's Report.

### BACKGROUND INFORMATION

Family and background information are detailed in the social history (q.v.). Briefly, according to the defendant, he was born and raised in the Los Angeles area. He is the oldest of three children. He has two younger sisters, ages 11 and 14. The defendant stated that his parents separated when he was 7 years old. He said that presently he has no contact with his mother or father, and does not know where they are living. According to the referral documents, his mother lost custody of the minor, due to her drug usage (rock cocaine).

At the time of his arrest, he said that he was living with his grandmother, grandfather, and two younger siblings. He said that his grandfather is a retired security guard. When asked about conflicts with his grandparents, he said that problems at home relate to his not going to school, and staying out with gang members from 24 hours up to three days. His grandmother had stated that she "does not have any control over him. He is difficult and uncooperative at home. He will not attend school." She had also stated that she was aware that the defendant is a gang member.

According to the defendant, he completed the 9th grade while in camp. He said that he was not attending school at the time of his arrest "because I had too many enemies (gang related)." He said that he had been expelled from school in the 8th grade for truancy. He was not employed and has no work history. Medical history is unremarkable, except for bronchial asthma since early childhood for which he is taking Theodor, and some residual effects of a fractured ankle sustained when he was 9 or 10 years old.

When asked about the use of drugs or alcohol, he stated that he "tried beer last year--didn't like it. Was using marijuana for 6 or 7 months, about 3 times a week." According to the information in the Fitness Report, he had told

WHITE, John

D4787

SRCC

PSYCHIATRIC EVALUATION

f  
the Probation Officer that he began smoking marijuana when he was 15 years old and uses marijuana approximately 4 times a week. When asked about gang-related activity, he stated that he was in a "Bloods gang" for two years prior to his arrest, adding that he was "jumped in," when he was 14 years old. He described it as a "very big gang." When asked about gang activities, he replied, "Don't know." He said that his gang moniker is "Deko." When asked what his moniker means, he also replied, "I don't know."

When asked about prior offenses, the minor said that he had only one prior offense, when he was 15 years old, for robbery, for which he went to camp for several months. According to his juvenile record, the minor has had three prior offenses. He was arrested when he was 14 years old for armed robbery, (vehicle theft) for which he was ordered to CCP. When he was 15 years old, he was again arrested for having a handgun on probation and possession of a weapon at school for which he was also ordered to CCP. About 3 months later (about 4 months prior to the instant offense), he was arrested for reckless driving and taking a vehicle without owner's consent.

The current offense occurred when the defendant was 16 years old. He was charged with armed robbery involving the use of a shotgun. According to the Probation Officer's Report submitted 8-19-93, the defendant and three accomplices entered Cen-Fed Bank. . . armed with a semi-automatic handgun and a sawed-off shotgun at about 1:40 p.m., and announced: "This is a robbery. Everyone get down!" When asked about the circumstances of the bank robbery, he replied that it was not gang-related, stating, "I robbed a bank--don't want to talk about it because I want to forget about it."

#### MENTAL STATUS EXAMINATION

The defendant is a 16-year-old Black male of short stature and slight build. He is about 5 feet, 6 inches tall, and weighs approximately 125 pounds. He has no noticeable tattoos. He was dressed in institutional garb, neatly groomed, and appeared to maintain good personal hygiene. He showed no unusual mannerisms or expressions. His attitude toward the interviewer was passively compliant and courteous. Throughout the interview, he was calm, pleasant, and attentive. However, he declined to discuss matters pertaining to himself, gang-involved activities, or the present offense. He appeared to be in no apparent distress. He was alert and fully oriented for time, place, and person. There was no evidence of memory impairment or other signs of organicity. His speech was clear, and verbal responses were coherent and relevant to the subject matter. Cognitively, he appeared to be functioning within the low-average intellectual range, based upon vocabulary and verbal responses. Thought content was negative for psychotic or delusional material. Thought processes were organized and goal-directed. He had sufficient insight into his present personal and legal problems. He demonstrated a correct understanding of the sentencing process, as well as the the purpose of the 90-day evaluation, stating that he "took a deal because



it was a good deal for 4 years, instead of a lot more time. Discrepancies between information elicited from the defendant and that in the referral documents, suggested his responses may be of questionable validity.

#### FINDINGS AND CONCLUSIONS

There are no signs of psychosis or impaired mental functioning on mental status examination.

The minor was on probation for robbery at the time of his present arrest. He had been released from camp about 11 months prior to the instant offense. He had been a member of a criminal street gang since 14 years of age. His juvenile record indicates a pattern of criminal behavior, starting at age 14, to the time of the instant offense. He had been ordered to CCP for two prior offenses. Performance under probation supervision was described as marginal to unsatisfactory, and he continued to have adverse contact with law enforcement, and continued to participate in gang activity. In the present offense, the investigating officer stated that the minor "had not displayed any remorse." According to the Probation Officer's Fitness Report evaluation: "Criminal behavior has continued to escalate in seriousness. (Defendant) does not have any respect for authority and/or adults, and rehabilitative efforts, CCP, and HOP have been ineffective."

#### DIAGNOSIS (PER DSM-III-R CRITERIA)

Axis I: 1) 312.20 Conduct disorder, group type  
Severity: severe, with strong antisocial traits  
2) 305.20 Cannabis abuse, in incarceration remission

Axis II: Developing antisocial personality disorder

Axis III: No contributing Axis III diagnosis

#### RECOMMENDATIONS

At the present time, the minor states that he is "going to stop gangbanging because of the trouble you get into with people you know." He states that he hopes that he can continue school while incarcerated at CYA, and then continue with college after he is released. He said that he hopes to become a lawyer or a probation officer "because it's easy money."

In summary, although the minor's past history is inconsistent with interest in educational or vocational pursuits, he may, at this time, benefit from education and vocational programs at the Youth Authority, as well as avoiding the negative influence of older, hardcore criminals in an alternate facility at this juncture.

-4-

Date Dictated: December 28, 1993

Date Typed: December 28, 1993

Dictated by:



Harold H. Kates, M.D., Staff Psychiatrist  
Diplomate, American Board of Psychiatry & Neurology

Reviewed by:



Sharon Rose Bloss, LCSW,  
Supervising Casework Specialist II

5906t

WHITE, John

D4787

SRCC

PSYCHIATRIC EVALUATION

STATE OF CALIFORNIA  
DEPARTMENT OF THE YOUTH AUTHORITY  
REFERRAL DOCUMENT  
Y.A. 1.41 (12/85)

FOR YOUTH USE  
PRIOR Y.A. NUMBER

Y.A. NUMBER

Please type. IF ADDITIONAL SPACE IS REQUIRED ATTACH SEPARATE SHEET.

NAME (LAST - FIRST - MIDDLE) White, John Lee		OTHER NAME(S) (ALIASES) "Deko" "DKO"		SOCIAL SECURITY NUMBER [REDACTED]	
LAST ADDRESS (NUMBER - STREET - CITY - STATE) [REDACTED] LA, CA 90044		BIRTHPLACE [REDACTED]		SEX <input checked="" type="checkbox"/> M <input type="checkbox"/> F	
ETHNIC IDENTIFICATION <input type="checkbox"/> WHITE <input type="checkbox"/> SPANISH SPEAKING/SURNAMED <input checked="" type="checkbox"/> BLACK <input type="checkbox"/> ASIAN <input type="checkbox"/> NATIVE AMERICAN <input type="checkbox"/> FILIPINO <input type="checkbox"/> OTHER		U.S. CITIZEN <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		COMMITMENT DATE 9-17-93	
COURT (CHECK ONE) <input type="checkbox"/> JUVENILE <input type="checkbox"/> MUNICIPAL JUSTICE <input checked="" type="checkbox"/> SUPERIOR		COUNTY OF REFERRAL Los Angeles		COURT NUMBER 5A014380	
PERSON HAS COMMUNICABLE/CHRONIC DISEASE/PHYSICAL HANDICAP <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES (SUBMIT MEDICAL REPORTS)		IS FEMALE PREGNANT? <input type="checkbox"/> NO <input type="checkbox"/> YES		MARITAL STATUS Single	
SCHOOL LAST ATTENDED		ADDRESS OF SCHOOL		GRADE	
FOR FURTHER INFORMATION FROM COUNTY, CONTACT NAME: DPO S. Thompson		Santa Monica AVO		TELEPHONE (310) 458-5488	

FAMILY RELATIONSHIPS (INCLUDE SIGNIFICANT RELATIONSHIPS—SIBLINGS—CHILDREN—LEGAL GUARDIAN(S))

RELATION	AGE	NAME (LAST—FIRST—MIDDLE)	ADDRESS (NUMBER—STREET—CITY—STATE—ZIP CODE)	TELEPHONE NUMBER
FATHER		White, John Sr.	Unk	
MOTHER		Cain, Eunice	[REDACTED] LA, CA 90011	
SPOUSE				
SIBLINGS				
Grandmo		Edwards, Jane	[REDACTED] LA, CA 90044	[REDACTED]

CO-OFFENDERS (MOST RECENT OFFENSE)

NAME (LAST—FIRST—MIDDLE)	AGE	DISPOSITION
Walton, Michael [REDACTED] MALCOM		case # 5A014380 - 707.2 wic 9/17/93 JUVENILE
[REDACTED], MELVIN		JUVENILE

FOR YOUTH AUTHORITY USE ONLY

DATA PROCESSOR'S CODE

REFERRAL OFFENSE PC 211 / 2022 (a)(1), robbery 2°/principal armed (shotgun)		TENTATIVE BOARD HEARING CATEGORY <input type="checkbox"/> SEC 1737	
DELIVER TO <input type="checkbox"/> NRCC <input checked="" type="checkbox"/> SRCC <input type="checkbox"/> VRCC <input type="checkbox"/> YTS <input type="checkbox"/> OTHER (SPECIFY)		REGISTRATION REQUIRED <input type="checkbox"/> DRUG 11590 H&S <input type="checkbox"/> SEC 290 PC <input type="checkbox"/> ARSON	
STATUS <input type="checkbox"/> NEW COMMITMENT <input type="checkbox"/> ADDITIONAL COMMITMENT <input type="checkbox"/> RE-COMMITMENT <input checked="" type="checkbox"/> DIAGNOSTIC 707.2 405		ACTION <input checked="" type="checkbox"/> ACCEPT <input type="checkbox"/> REJECT	
PAROLE OFFICE TO COMPLETE INITIAL HOME VISIT REPORT		NAME OF CLASSIFICATION SPECIALIST Thomas L. Bly	
DATE EXP. BY AGE		DATE EXP. BY OFFENSE	
IDENTIFYING MARKS		AVAILABLE CONFINEMENT TIME	
HEIGHT		WEIGHT	
HAIR		EYES	
COMPLEXION		DATE RECEIVED	
ALIEN I.D. NUMBER			

ASE NO. SA014380-01  
(Parties and counsel checked if present)  
PEOPLE OF THE STATE OF CALIFORNIA  
VS  
01 WHITE JOHN LEE  
211 001CTS  
Counsel for People: S. Barshop  
DEPUTY DISTRICT ATTY:  
Counsel for Defendant: R LEVINE ADC  
C WEISS  
(BOX CHECKED IF ORDER APPLICABLE)

NATURE OF PROCEEDINGS P&S P&S REM 08-09-1993

- 71 ☐ IS SWORN AS THE ENGLISH/ INTERPRETER ☐ OATH FILED PER 68500 G.C.  
☐ DUE TO CONFLICT OF INTERESTS. PUBLIC DEFENDER RELIEVED. PURSUANT TO PENAL CODE SECTION 987.2/GOVERNMENT CODE SECTION 31000  
ALTERNATE DEFENSE COUNSEL IS APPOINTED.
- 72 ☒ CRIMINAL PROCEEDINGS ARE ADJOURNED/REMAIN ADJOURNED/ARE RESUMED.  
73 ☐ DEFENDANT ORDERED DELIVERED TO DEPARTMENT OF CORRECTIONS PURSUANT TO PENAL CODE SECTION 1203.003  
☐ DEFENDANT ORDERED DELIVERED TO CALIFORNIA YOUTH AUTHORITY PURSUANT TO WELFARE AND INSTITUTIONS CODE SECTION 707.3
- 74 ☐ ON MOTION, PROBATION AND SENTENCE HEARING/FURTHER PROCEEDINGS CONTINUED TO  
AT A.M. IN DEPT. ☐ NON-APPEARANCE CALENDAR ☐ DEFENDANT ORDERED TO RETURN  
75 ☐ DEFENDANT PERSONALLY AND ALL COUNSEL WAIVE TIME FOR SENTENCING.  
☐ SUPPLEMENTAL PROBATION REPORT/PROGRESS REPORT ORDERED RE:
- 76 ☒ PROBATION DENIED/SENTENCE IMPOSED AS FOLLOWS:  
☒ IMPRISONED IN STATE PRISON FOR TERM PRESCRIBED BY LAW  
☐ COURT SELECTS THE TERM OF YEARS/MONTHS PURSUANT TO SECTION 12022A OF THE PENAL CODE AS INDICATED BELOW  
☐ PLUS YEARS/MONTHS PURSUANT TO SECTION 12022A OF THE PENAL CODE AS INDICATED BELOW  
☐ PLUS YEARS/MONTHS PURSUANT TO SECTION 12022A OF THE PENAL CODE AS INDICATED BELOW  
☐ TO BE HOUSED AT CALIFORNIA YOUTH AUTHORITY PURSUANT TO SECTION 1731.5(C) W.I.C.  
☐ COMMITTED TO CALIFORNIA YOUTH AUTHORITY. THE TERM OF IMPRISONMENT TO WHICH THE DEFENDANT WOULD HAVE BEEN SENTENCED  
PURSUANT TO SECTION 1170 PENAL CODE IS YEARS MONTHS.  
☐ IMPRISONED IN LOS ANGELES COUNTY JAIL FOR TERM OF YEARS MONTHS AS TO COUNT(S)  
☐ PAY \$ FINE TO SUPERIOR COURT, PLUS PENALTY AND SURCHARGE.  
☐ PAY \$ RESTITUTION FINE TO STATE VICTIMS RESTITUTION FUND PURSUANT TO SECTION 13967(A) G.C.  
77 ☐ SENTENCE IS SUSPENDED.  
78 ☐ IMPOSITION OF SENTENCE SUSPENDED. PROBATION GRANTED FOR YEAR(S). ☐ PROBATION TO BE WITHOUT FORMAL SUPERVISION.  
79 ☐ DIVERSION GRANTED FOR PERIOD OF YEARS/MONTHS PER SECTION 1000.2 P.C.  
☐ DEFENDANT PERSONALLY AND ALL COUNSEL WAIVE TIME FOR TRIAL.  
1 ☐ SPEND FIRST DAYS/MONTHS IN COUNTY JAIL. ☐ NOT TO BE ELIGIBLE FOR COUNTY PAROLE  
☐ WORK FURLOUGH PROGRAM RECOMMENDED  
2 ☐ PAY A FINE OF \$ PLUS PENALTY ASSESSMENT (1484 P.C. & 78000 G.C.) THROUGH PROBATION OFFICER.  
☐ PAY \$ LAB FEE PURSUANT TO 11372.5 H&S CODE (\$50 FOR EACH H&S VIOLATION) THROUGH PROBATION OFFICER  
3 ☐ PAY RESTITUTION TO THE VICTIM(S)/VICTIM RESTITUTION FUND PURSUANT TO 1203.04 P.C. IN AMOUNT OF \$  
IN AMOUNT AND MANNER AS INSTRUCTED BY PROBATION OFFICER, INCLUDING SERVICE CHARGE PER 1203.1 P.C.  
☐ MINIMUM PAYMENT OF RESTITUTION TO BE  
4 ☐ PAY \$ RESTITUTION FINE PURSUANT TO SECTION 13967(A) G.C. THROUGH PROBATION OFFICER. ☐ TOTAL AMOUNT  
TO INCLUDE A SERVICE CHARGE IN THE AMOUNT OF \$ PURSUANT TO SECTION 13967(d) G.C. ☐ STAYED WHILE  
DEFENDANT PAYS RESTITUTION AND IF RESTITUTION IS PAID IN FULL, STAY SHALL BE PERMANENT.  
5 ☐ NOT DRINK OR POSSESS ANY ALCOHOLIC BEVERAGE AND STAY OUT OF PLACES WHERE THEY ARE THE CHIEF ITEM OF SALE.  
6 ☐ NOT USE OR POSSESS ANY NARCOTICS, DANGEROUS OR RESTRICTED DRUGS OR ASSOCIATED PARAPHERNALIA EXCEPT WITH VALID  
PRESCRIPTION, AND STAY AWAY FROM PLACES WHERE USERS, BUYERS OR SELLERS CONGREGATE.  
7 ☐ NOT ASSOCIATE WITH PERSONS KNOWN BY YOU TO BE NARCOTIC OR DRUG USERS OR SELLERS.  
8 ☐ SUBMIT TO PERIODIC ANTI-NARCOTIC TESTS/ALCOHOL TESTS AS DIRECTED BY THE PROBATION OFFICER OR OTHER PEACE OFFICER.  
9 ☐ HAVE NO BLANK CHECKS IN POSSESSION; NOT WRITE ANY PORTION OF ANY CHECKS; AND, NOT HAVE BANK ACCOUNT UPON WHICH  
YOU MAY DRAW CHECKS. NOT USE OR POSSESS OR APPLY FOR ANY CREDIT OR ATM CARD.  
10 ☐ NOT ASSOCIATE WITH/STAY AWAY FROM  
11 ☐ COOPERATE WITH PROBATION OFFICER IN A PLAN FOR  
12 ☐ SUPPORT DEPENDENTS AS DIRECTED BY PROBATION OFFICER.  
13 ☐ SEEK AND MAINTAIN TRAINING, SCHOOLING, OR EMPLOYMENT AS APPROVED BY PROBATION OFFICER.  
14 ☐ KEEP PROBATION OFFICER ADVISED OF YOUR RESIDENCE AT ALL TIMES.  
15 ☐ SURRENDER DRIVER'S LICENSE TO CLERK OF COURT TO BE RETURNED TO DEPARTMENT OF MOTOR VEHICLES.  
16 ☐ NOT DRIVE A MOTOR VEHICLE UNLESS LAWFULLY LICENSED AND INSURED.  
17 ☐ NOT OWN, USE OR POSSESS ANY DANGEROUS OR DEADLY WEAPONS.  
18 ☐ SUBMIT YOUR PERSON AND PROPERTY UNDER YOUR CONTROL TO SEARCH OR SEIZURE AT ANY TIME OF THE DAY OR NIGHT BY  
ANY PROBATION OFFICER OR OTHER PEACE OFFICER, WITH OR WITHOUT A WARRANT OR PROBABLE CAUSE.  
19 ☐ OBEY ALL LAWS. OBEY ALL ORDERS, RULES AND REGULATIONS OF THE PROBATION DEPARTMENT AND OF THE COURT.  
20 ☐ USE ONLY YOUR TRUE NAME, STATED TO BE  
21 ☐ REPORT TO PROBATION OFFICER UPON RELEASE FROM CUSTODY/WITHIN  
22 ☐ IF YOU LEAVE THE COUNTRY, DO NOT REENTER THE UNITED STATES ILLEGALLY. IF YOU DO RETURN, REPORT TO THE PROBATION  
OFFICER WITHIN AND PRESENT DOCUMENTATION WHICH PROVES YOU ARE IN THE UNITED STATES LEGALLY.  
30 ☒ DEFENDANT GIVEN TOTAL CREDIT FOR 215 DAYS IN CUSTODY (212 DAYS ACTUAL CUSTODY AND 106 DAYS GOOD TIME/WORK TIME).  
11 ☐ SENTENCE/COUNTS TO RUN CONSECUTIVELY TO/CONCURRENTLY WITH GRANTED TO  
12 ☐ STAY OF EXECUTION OF ON MOTION OF PEOPLE, COUNTS/ENHANCEMENTS REMAINING ARE DISMISSED IN FURTHERANCE OF JUSTICE/PER CASE SETTLEMENT  
13 ☒ AGREEMENT.  
14 ☐ COURT ADVISES DEFENDANT OF HIS APPEAL/PAROLE RIGHTS. ☐ NOTICE OF APPEAL IS RECEIVED.  
15 ☐ "NOTICE RE CERTIFICATE OF REHABILITATION AND PARDON" GIVEN TO DEFENDANT.  
16 ☐ DEFENDANT TO PAY COSTS OF PROBATION SERVICES IN AMOUNT OF \$ /AMOUNT TO BE DETERMINED BY PROBATION  
OFFICER.  
17 ☐ COURT FINDS DEFENDANT DOES NOT HAVE PRESENT ABILITY TO PAY COSTS OF INCARCERATION/LEGAL SERVICES/PROBATION SERVICES.  
18 ☐ DEFENDANT IS REFERRED TO THE TREASURER/TAX COLLECTOR FOR FINANCIAL EVALUATION.  
19 ☐ PROBATION OFFICER IS ORDERED TO REGISTER THE DEFENDANT WITH C.I.I. AND REPORT ANY NEW ARREST TO THE COURT.  
20 ☐ FURTHER ORDER AS FOLLOWS/ADDITIONAL CONDITIONS OF PROBATION



Date <u>SEPTEMBER 17 1993</u>		DEPT. <u>J CITRON</u>		WEB <u>Deputy Clerk</u>	
HONORABLE: <u>RICHARD WEIDORE</u>		JUDGE <u>L JOHNSON</u>		Reporter	
207 <u>K CHAFFIN</u>		Deputy Sheriff			

SE NO. SA01+400-01 (Parties and counsel checked if present)

ARGE PEOPLE OF THE STATE OF CALIFORNIA VS JOHN LEE 211 001CTS

Counsel for People: F. Leber  
DEPUTY DISTRICT ATTY: R LEVINE AUC

Counsel for Defendant: R LEVINE AUC

(BOX CHECKED IF ORDER APPLICABLE)

RE OF PROCEEDINGS TRIAL PTC T/S REM 03565510 08-09-1993

☐ IS SWORN AS THE ENGLISH/ INTERPRETER

☐ OATH FILED PER SECTION 68560 GOVERNMENT CODE. ☐ DEFENDANT WAIVES SEPARATE INTERPRETER

☐ DUE TO CONFLICT OF INTEREST, PUBLIC DEFENDER RELIEVED. PURSUANT TO SECTION 987.2 PENAL CODE/31000 GOVERNMENT CODE ALTERNATE DEFENSE COUNSEL IS APPOINTED.

☐ ON PEOPLE'S MOTION, AMENDMENT TO / AMENDED INFORMATION FILED / DEEMED FILED / INFORMATION AMENDED BY INTERLINEATION / AS FOLLOWS \_\_\_\_\_

☐ ARRAIGNED, PLEADS NOT GUILTY. ADMITS / DENIES / ALLEGATION(S). \_\_\_\_\_

☐ ON \_\_\_\_\_ MOTION, CASE \_\_\_\_\_ CONSOLIDATED INTO CASE \_\_\_\_\_ AS COUNT(S) \_\_\_\_\_ THEREOF. SEE CASE \_\_\_\_\_ FOR FURTHER PROCEEDINGS.

☐ MOTION PURSUANT TO SECTION 995 PENAL CODE GRANTED/DENIED/WITHDRAWN/IS SET/CONTINUED TO \_\_\_\_\_

☐ THE COURT STATES IT HAS READ AND CONSIDERED THE TRANSCRIPT OF THE PRELIMINARY HEARING.

☒ MOTION PURSUANT TO SECTION 1538.5 PENAL CODE CALLED FOR HEARING ☐ MOTION SUBMITTED PER STIPULATION 41 BELOW. CAUSE IS CALLED FOR TRIAL. ☐ CAUSE SUBMITTED PER STIPULATION 41 BELOW.

☒ DEFENDANT PERSONALLY AND ALL COUNSEL WAIVE TRIAL BY JURY AND BY COURT. COURT ACCEPTS WAIVER(S).

41 ☐ By stipulation of defendant and all counsel issue is submitted on the testimony contained in the transcript of the proceedings had at the preliminary hearing, subject to this court's rulings, with each side reserving the right to offer additional evidence and all stipulations entered into at the preliminary hearing be deemed entered into in these proceedings. It is further stipulated that all exhibits received or marked for identification at the preliminary hearing are received in evidence and marked for identification in these proceedings, bearing the same number as used in the preliminary hearing, subject to this court's rulings. People's exhibit \_\_\_\_\_ (Preliminary Transcript) admitted into evidence by reference \_\_\_\_\_

42 ☒ Defendant advised and personally waives his right to confrontation of witnesses for the purpose of further cross-examination, and waives privilege against self-incrimination. Defendant advised of possible effects of plea on any alien/citizenship/probation/parole status.

☐ ALL SIDES REST. COUNSEL WAIVE ARGUMENT/ARGUE AND CAUSE IS SUBMITTED.

☐ MOTION PURSUANT TO SECTION 1538.5 PENAL CODE GRANTED/DENIED/WITHDRAWN/CONTINUED TO \_\_\_\_\_

☐ COURT FINDS DEFENDANT NOT GUILTY.

☐ COURT FINDS DEFENDANT GUILTY AS CHARGED TO SECTION(S) \_\_\_\_\_ IN COUNT(S) \_\_\_\_\_ ☐ LESSER INCLUDED/RELATED OFFENSE.

☒ PRE-TRIAL CONFERENCE/TRIAL SETTING HELD/OFF CALENDAR/CONTINUED TO \_\_\_\_\_ AT \_\_\_\_\_ DEPT. \_\_\_\_\_

☐ ☐ THE DEFENDANT ☐ THE PEOPLE ANNOUNCE(S) READY FOR TRIAL

☐ ON PEOPLE'S/DEFENDANT'S/COURT'S MOTION, TRIAL/MOTION(S) IS SET/CONTINUED TO/REMAINS/TRAILED TO \_\_\_\_\_ AT \_\_\_\_\_ A.M. IN DEPT. \_\_\_\_\_ REASON: \_\_\_\_\_ AS \_\_\_\_\_ OF \_\_\_\_\_

☐ FURTHER CONTINUANCES WILL NOT BE GRANTED. ☐ TRIAL DATE OF \_\_\_\_\_ ADVANCED AND VACATED.

☐ DEFENDANT PERSONALLY AND ALL COUNSEL WAIVE TIME FOR TRIAL. PLUS \_\_\_\_\_ DAYS

☐ CAUSE TRANSFERRED TO DEPT. \_\_\_\_\_ ☐ FORTHWITH ☐ ON \_\_\_\_\_ AT \_\_\_\_\_ A.M. FOR \_\_\_\_\_

☐ DEFENDANT/WITNESS(ES) ORDERED TO RETURN ON ABOVE DATE: \_\_\_\_\_

☒ DEFENDANT PERSONALLY WITHDRAWS PLEA OF NOT GUILTY TO COUNT(S) one REARRAIGNED.

☒ PLEADS GUILTY/NOLO CONTENDERE, WITH CONSENT OF DISTRICT ATTORNEY AND APPROVAL OF COURT TO VIOLATION OF SECTION(S) 211 Penal Code second degree IN COUNT(S) one ☐ LESSER INCLUDED/RELATED OFFENSE.

☐ DEFENDANT REFERRED TO PROBATION DEPARTMENT FOR PRE-PELA REPORT PURSUANT TO 131.3 CCP.

☐ PROBATION AND SENTENCE HEARING SET \_\_\_\_\_ AT \_\_\_\_\_ IN DEPARTMENT \_\_\_\_\_ INCLUDING ☐ DISPOSITION OF REMAINING COUNT(S) \_\_\_\_\_ ☐ DETERMINATION OF ALLEGATIONS REMAINING

☐ DEFENDANT WAIVES TIME FOR SENTENCE ☐ REQUESTS IMMEDIATE SENTENCE (SEE BELOW/ATTACHED SHEET)

☐ DEFENDANT REFERRED TO PROBATION DEPARTMENT ☐ DEFENDANT WAIVES PROBATION REFERRAL

☐ PURSUANT TO STIPULATION, COURT CONSIDERS PRE-PELA REPORT.

☐ FURTHER ORDER AS FOLLOWS: Defendant admits allegation under 12022(a)(1) penal code

☐ THE SHERIFF IS ORDERED TO ALLOW THE DEFENDANT \_\_\_\_\_ TELEPHONE CALLS AT DEFENDANT'S OWN EXPENSE.

☐ DEFENDANT FAILS TO APPEAR WITH/WITHOUT SUFFICIENT EXCUSE.

☐ BAIL, IF POSTED, FORFEITED/O.R. REVOKED. BENCH WARRANT ORDERED ISSUED/REISSUED/AND HELD UNTIL \_\_\_\_\_

☐ ☐ NO BAIL ☐ BAIL FIXED AT \$ \_\_\_\_\_ ( ) WARRANT FILED

☐ DEFENDANT APPEARING. BENCH WARRANT ORDERED RECALLED/QUASHED ( ) RECALL NO. \_\_\_\_\_ WRITTEN ( ) ABSTRACT FILED

☐ UPON PAYMENT OF \$ \_\_\_\_\_ COSTS BEFORE \_\_\_\_\_ AND FILING OF REASSUMPTION, ORDER OF \_\_\_\_\_ FORFEITING BAIL IS/IS TO BE VACATED AND BAIL REINSTATED. ☐ CERTIFICATE OF MAILING EXECUTED AND FILED/NOTICE WAIVED

☐ REASSUMPTION FILED/COSTS PAID (RECEIPT NO. \_\_\_\_\_) ORDER OF \_\_\_\_\_ FORFEITING BAIL VACATED. BAIL REINSTATED.

☐ DEFENDANT'S MOTION FOR RELEASE ON O.R./REDUCTION OF BAIL IS GRANTED/DENIED/SET/CONTINUED TO/ \_\_\_\_\_ REASON: \_\_\_\_\_

☐ BAIL RESET AT \$ \_\_\_\_\_

☐ REMANDED ☐ BAIL ☐ BAIL EXONERATED ☐ BOND NO. \_\_\_\_\_

☐ RELEASED ☐ O.R. ☐ O.R. DISCHARGED ☐ IN CUSTODY OTHER MATTER \_\_\_\_\_

☐ MINUTE ORDER ☐ BENCH WARRANT

770 011 01 0212-03 PAGE 1 OF 2 MINUTE ORDER

MINUTES ENTERED 2 TRL MOT

3 P & S  
Date 9-17-93  
HONORABLE

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DEPT. WEB

M

Richard Nudort  
R. Chaffin

JUDGE  
Deputy Sheriff

J. C. C. C.  
L. J. C. C.

Deputy Clerk  
Reporter

E NO. SAC 14380-01  
PEOPLE OF THE STATE OF CALIFORNIA

(Parties and counsel checked if present)

Counsel for People:  
DEPUTY DISTRICT ATTY:

F. Lebrun  
F. Lebrun

Counsel for Defendant:

R. Levine, ADC

ARGE

01 White, John Lee  
211 01 CT

X

(BOX CHECKED IF ORDER APPLICABLE)

URE OF PROCEEDINGS

P.S.

REM

8-9-93

☐ IS SWORN AS THE ENGLISH/ INTERPRETER. ☐ OATH FILED PER 88580 G.C.  
☐ DUE TO CONFLICT OF INTERESTS, PUBLIC DEFENDER RELIEVED. PURSUANT TO PENAL CODE SECTION 987.2/GOVERNMENT CODE SECTION 31000  
CODE ALTERNATE DEFENSE COUNSEL. IS APPOINTED.

CRIMINAL PROCEEDINGS ADJOURNED/REMAIN ADJOURNED/RESUMED.

☐ DEFENDANT ORDERED DELIVERED TO DEPARTMENT OF CORRECTIONS PURSUANT TO PENAL CODE SECTION 1203.03.

☐ DEFENDANT ORDERED DELIVERED TO CYA FOR A DIAGNOSTIC STUDY PURSUANT TO SECTION 707.2 W.C.

ON Court MOTION, PROBATION AND SENTENCE HEARING/FURTHER PROCEEDINGS CONTINUED TO 1-5-94  
AT 8:30 A.M. IN DEPT. WEB

☐ DEFENDANT PERSONALLY AND ALL COUNSEL WAIVE TIME FOR SENTENCING. ☐ NON-APPEARANCE CALENDAR.

☐ SUPPLEMENTAL PROBATION REPORT/PROGRESS REPORT ORDERED RE.

☐ PROBATION DENIED/PROCEEDINGS SUSPENDED/SENTENCE IMPOSED AS FOLLOWS:

☐ IMPRISONED IN STATE PRISON FOR ☐ TERM PRESCRIBED BY LAW ☐ TOTAL OF \_\_\_\_\_ YEARS \_\_\_\_\_ MONTHS  
☐ PLUS \_\_\_\_\_ YEARS/MONTHS PURSUANT TO SECTION \_\_\_\_\_ OF THE \_\_\_\_\_ CODE.  
☐ PLUS \_\_\_\_\_ AS INDICATED BELOW.

☐ TO BE HOUSED AT CALIFORNIA YOUTH AUTHORITY PURSUANT TO SECTION 1731.5(C) W.C.

☐ COMMITTED TO CALIFORNIA YOUTH AUTHORITY. THE TERM OF IMPRISONMENT TO WHICH THE DEFENDANT WOULD HAVE BEEN  
SENTENCED PURSUANT TO SECTION 1170 PENAL CODE IS \_\_\_\_\_ YEARS.

☐ IMPRISONED IN LOS ANGELES COUNTY JAIL FOR TERM OF \_\_\_\_\_ AS TO COUNT(S) \_\_\_\_\_

☐ PAY \$ \_\_\_\_\_ FINE TO SUPERIOR COURT, PLUS PENALTY ASSESSMENT AND SURCHARGE.

☐ PAY \$ \_\_\_\_\_ RESTITUTION FINE PURSUANT TO SECTION 13967 (A) G.C. TO THE STATE VICTIMS RESTITUTION FUND.

☐ SENTENCE IS SUSPENDED

☐ IMPOSITION OF SENTENCE IS SUSPENDED. PROBATION GRANTED FOR A PERIOD OF \_\_\_\_\_ YEARS. ☐ PROBATION TO BE WITHOUT FORMAL SUPERVISION.

☐ DIVERSION GRANTED PER PENAL CODE SECTION 1000.2 FOR PERIOD OF \_\_\_\_\_ YEARS/MONTHS.

☐ DEFENDANT PERSONALLY AND ALL COUNSEL WAIVE TIME FOR TRIAL.

1 ☐ SPEND FIRST \_\_\_\_\_ DAYS/MONTHS IN COUNTY JAIL ☐ NOT TO BE ELIGIBLE FOR COUNTY PAROLE

☐ WORK FURLOUGH PROGRAM RECOMMENDED.

2 ☐ PAY A FINE OF \$ \_\_\_\_\_ PLUS PENALTY ASSESSMENT (1484 P.C. & 78000 G.C.) THROUGH THE PROBATION OFFICER.

☐ PAY \$ \_\_\_\_\_ LAB FEE PURSUANT TO 11372.5 H&S CODE (\$50 FOR EACH H&S VIOLATION) THROUGH THE PROBATION OFFICER.

3 ☐ PAY RESTITUTION TO THE VICTIM(S) PURSUANT TO 1203.04 P.C. IN AMOUNT OF \$ \_\_\_\_\_ /IN AMOUNT AND MANNER AS INSTRUCTED BY  
THE PROBATION OFFICER, INCLUDING A SERVICE CHARGE PER 1203.1 P.C. MINIMUM PAYMENT OF RESTITUTION TO BE \$ \_\_\_\_\_.

4 ☐ PAY \$ \_\_\_\_\_ RESTITUTION FINE PURSUANT TO SECTION 13967 (A) G.C. THROUGH THE PROBATION OFFICER.

☐ STAYED WHILE DEFENDANT PAYS RESTITUTION AND IF RESTITUTION IS PAID IN FULL, STAY SHALL BE PERMANENT.

5 ☐ NOT DRINK OR POSSESS ANY ALCOHOLIC BEVERAGE AND STAY OUT OF PLACES WHERE THEY ARE THE CHIEF ITEM OF SALE.

6 ☐ NOT USE OR POSSESS ANY NARCOTICS, DANGEROUS OR RESTRICTED DRUGS OR ASSOCIATED PARAPHERNALIA, EXCEPT WITH VALID  
PRESCRIPTION, AND STAY AWAY FROM PLACES WHERE USERS, BUYERS OR SELLERS CONGREGATE.

7 ☐ NOT ASSOCIATE WITH PERSONS KNOWN BY YOU TO BE NARCOTIC OR DRUG USERS OR SELLERS.

8 ☐ SUBMIT TO PERIODIC ANTI-NARCOTIC TESTS/ALCOHOL TESTS AS DIRECTED BY THE PROBATION OFFICER OR ANY OTHER PEACE OFFICER.

9 ☐ HAVE NO BLANK CHECKS IN POSSESSION; NOT WRITE ANY PORTION OF ANY CHECKS; AND, NOT HAVE BANK ACCOUNT UPON WHICH YOU MAY DRAW  
CHECKS. NOT USE OR POSSESS OR APPLY FOR ANY CREDIT OR ATM CARD.

10 ☐ NOT ASSOCIATE WITH / STAY AWAY FROM \_\_\_\_\_

11 ☐ COOPERATE WITH PROBATION OFFICER IN A PLAN FOR \_\_\_\_\_

12 ☐ SUPPORT DEPENDENTS AS DIRECTED BY PROBATION OFFICER.

13 ☐ SEEK AND MAINTAIN TRAINING, SCHOOLING OR EMPLOYMENT AS APPROVED BY PROBATION OFFICER.

14 ☐ KEEP PROBATION OFFICER ADVISED OF YOUR RESIDENCE AT ALL TIMES.

15 ☐ SURRENDER DRIVER'S LICENSE TO CLERK OF COURT TO BE RETURNED TO DEPARTMENT OF MOTOR VEHICLES.

16 ☐ NOT DRIVE A MOTOR VEHICLE UNLESS LAWFULLY LICENSED AND INSURED.

17 ☐ NOT OWN, USE OR POSSESS ANY DANGEROUS OR DEADLY WEAPONS.

18 ☐ SUBMIT YOUR PERSON AND PROPERTY UNDER YOUR CONTROL TO SEARCH OR SEIZURE AT ANY TIME OF THE DAY OR NIGHT BY ANY  
PROBATION OFFICER OR OTHER PEACE OFFICER WITH OR WITHOUT A WARRANT, OR PROBABLE CAUSE.

19 ☐ OBEY ALL LAWS. OBEY ALL ORDERS, RULES AND REGULATIONS OF THE PROBATION DEPARTMENT AND OF THE COURT.

20 ☐ USE ONLY YOUR TRUE NAME, STATED TO BE \_\_\_\_\_

21 ☐ REPORT TO PROBATION OFFICER UPON RELEASE FROM CUSTODY/WITHIN \_\_\_\_\_

22 ☐ IF YOU LEAVE THE COUNTRY, YOU SHALL NOT REENTER THE UNITED STATES ILLEGALLY. IF YOU DO RETURN, REPORT TO THE PROBATION OFFICER WITHIN  
\_\_\_\_\_ AND PRESENT DOCUMENTATION WHICH PROVES YOU ARE IN THE UNITED STATES LEGALLY.

☐ DEFENDANT GIVEN TOTAL CREDIT FOR \_\_\_\_\_ DAYS IN CUSTODY ( \_\_\_\_\_ DAYS ACTUAL CUSTODY AND \_\_\_\_\_ DAYS GOOD TIME/WORK TIME).

☐ SENTENCE/COUNTS TO RUN CONSECUTIVELY TO/CONCURRENTLY WITH \_\_\_\_\_ GRANTED TO \_\_\_\_\_

☐ ON MOTION OF PEOPLE, COUNTS/ENHANCEMENTS REMAINING ARE DISMISSED IN FURTHERANCE OF JUSTICE.

☐ COURT ADVISES DEFENDANT OF HIS APPEAL/PAROLE RIGHTS. ☐ NOTICE OF APPEAL IS RECEIVED.

☐ "NOTICE RE CERTIFICATE OF REHABILITATION AND PARDON" GIVEN TO DEFENDANT.

☐ DEFENDANT TO PAY COSTS OF PROBATION SERVICES IN AMOUNT OF \$ \_\_\_\_\_ /AMOUNT TO BE DETERMINED BY PROBATION OFFICER

☐ COURT FINDS DEFENDANT DOES NOT HAVE PRESENT ABILITY TO PAY COSTS OF INCARCERATION/LEGAL SERVICES/PROBATION SERVICES RENDERED

☐ DEFENDANT IS REFERRED TO THE TREASURER/TAX COLLECTOR FOR FINANCIAL EVALUATION.

☐ PROBATION OFFICER IS ORDERED TO REGISTER THE DEFENDANT WITH C.I.I. AND REPORT ANY NEW ARREST TO THE COURT.

☐ FURTHER ORDER AS FOLLOWS/ADDITIONAL CONDITIONS OF PROBATION \_\_\_\_\_

Jane Edwards mother, and Johnnie White, sister  
are permitted to visit defendant

not select the term of years for the bail term as to count

☐ SHERIFF IS ORDERED TO ALLOW DEFENDANT \_\_\_\_\_ PHONE CALLS AT DEFENDANT'S OWN EXPENSE.

☐ DEFENDANT FAILS TO APPEAR WITH/WITHOUT SUFFICIENT EXCUSE

☐ BAIL, IF POSTED, FORFEITED/O.R. REVOKED. BENCH WARRANT ORDERED ISSUED/REISSUED/AND HELD UNTIL \_\_\_\_\_

☐ NO BAIL

☐ DEFENDANT APPEARING, BENCH WARRANT ORDERED RECALLED/QUASHED. ☐ RECALL NO. \_\_\_\_\_ ISSUED. ☐ ABSTRACT FILED.

☐ REMAND

☐ RELEASE

☐ BAIL

☐ O.R.

☐ BAIL EXON.

☐ O.R. DISCHARGED

☐ BOND NO. \_\_\_\_\_

☐ ON PROBATION

☐ IN CUSTODY OTHER MATTER

MINUTES ENTERED

9-17-93

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff

v.

01 JOHN LEE WHITE,  
aka DEKO, and  
02 MICHAEL WALTON,  
aka LIL ROCK

Defendant(s)

Case No. SA014380

INFORMATION

Arraignment Date:  
Department: W

**FILED**

AUG 9 1993

FRANK S. ZOLIN, COUNTY CLERK  
BY 11 RZ DEPUTY

INFORMATION  
SUMMARY

Ct. No.	Charge	Charge Range	Defendant	Special Allegation	Alleg. Effect
1	PC211	2-3-5	WHITE, JOHN LEE WALTON, MICHAEL	PC12022(a)(1) PC12022.5(a)	+1 YR +3-4-5 MSP

The District Attorney of the County of Los Angeles, by this Information alleges that:

COUNT 1

On or about June 8, 1993, in the County of Los Angeles, the crime of 2ND DEGREE ROBBERY, in violation of PENAL CODE SECTION 211, a Felony, was committed by JOHN LEE WHITE and MICHAEL WALTON, who did willfully, unlawfully, and by means of force and fear take personal property from the person, possession, and immediate presence of Cen-Fed Bank. It is further alleged that the above offense is a serious felony within the meaning of Penal Code Section 1192.7(c)(19).





05  
**COURT COPY**

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES  
PROBATION OFFICER'S REPORT

DEFENDANT'S NAME(S)				COURT	JUDGE	REPORT SEQUENCE NO	COURT CASE NO
JOHN WHITE AKA: DEKO				WEST-B	NEIDORF		SA014380
ADDRESS (SEE RELEASE)				HEARING DATE	DEFENSE ATTY	PROSECUTOR	
L.A., CAL. 90044				(THURS) 8-26-93			
BIRTHDATE	AGE	SEX	RACE	DPO	AREA OFFICE	PHONE NO.	
	16	MALE	BLACK	S. THOMPSON	SM--A02	(310) 458-5488	
CITIZENSHIP STATUS		DRIVER'S LICENSE/EXP. DATE		TYPE REPORT			
U.S.				<input type="checkbox"/> Probation and sentence <input checked="" type="checkbox"/> Pre-Conviction (131.3 CCP) <input type="checkbox"/> Post sentence <input type="checkbox"/> Diversion (Specify) _____			
PROBATION NO	CII NO	BOOKING NO					
X- 1515667	A10014785	3565610					
DAYS IN JAIL THIS CASE		CUSTODY STATUS/RELEASE DATE					
<input checked="" type="checkbox"/> ESTIMATED 80 <input type="checkbox"/> VERIFIED		REMANDED					

**PRESENT OFFENSE: LEGAL HISTORY**

CHARGED with the crimes of (INCLUDE PRIORS, ENHANCEMENTS OR SPECIAL CIRCUMSTANCES)

COUNT 1: 211 PC (2ND DEGREE ROBBERY) + SPECIAL ALLEGATION OF 12022(A)(1) PC.

CONVICTED of the crimes of (INCLUDE PRIORS, ENHANCEMENTS OR SPECIAL CIRCUMSTANCES)

PRE-PLEA INVESTIGATION.

CONVICTED BY	DATE OF CONVICTION/REFERRAL	COUNT(S) CONTINUED TO P & S FOR DISPOSITION
	8-9-93	NONE
PROPOSED PLEA AGREEMENT		SOURCES OF INFORMATION
NONE		PROBATION REFERRAL
DATE(S) OF OFFENSE		TIME(S)
6-8-93		1:40 P.M.
DEFENDANT: (SEE PRIOR RECORD SECTION)	<input type="checkbox"/> (JUVENILE) <input type="checkbox"/> SENTENCED TO STATE PRISON/COUNTY JAIL ON CASE <input checked="" type="checkbox"/> ON PROBATION <input type="checkbox"/> PENDING PROBATION VIOLATION <input type="checkbox"/> PENDING NEW CASE <input type="checkbox"/> ON PAROLE-REMAINING TIME _____	HOLD/WARRANT <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO

**RECOMMENDATION:**

PROBATION ☐ DENIAL ☒ DIAGNOSTIC STUDY ☐ CYA ☐ OTHER \_\_\_\_\_  
☐ COUNTY JAIL ☒ 707 2 WIC  
☐ STATE PRISON ☐ 1203 03 PC

PRESENT OFFENSE:  
(CONTINUED)

SOURCES OF INFORMATION (INR L-9)

(ARREST REPORT NOT PROVIDED W/PROBATION REFERRAL)

ARREST DATE	TIME	BOOKED AS	OFFENSE	LOCATION OF ARREST	ARRESTING AGENCY

CO-DEFENDANT(S)	CASE NO.	DISPOSITION
MICHAEL WALTON	SA014380	PENDING.
MALCOLM [REDACTED]	(JUVENILE COURT)	--
MELVIN [REDACTED]	(JUVENILE COURT)	--

ELEMENTS AND RELEVANT CIRCUMSTANCES OF THE OFFENSE:

THE DEFENDANT AND THREE ACCOMPLICES ENTERED CEN-FED BANK AND COMMITTED AN ARMED ROBBERY.

ON JUNE 8TH, 1993, AT APPROXIMATELY 1:40 P.M., FOUR MALES ([REDACTED], WHITE, WALTON, AND [REDACTED]) ENTERED CEN-FED BANK. [REDACTED], ARMED WITH A SEMI-AUTOMATIC HANDGUN, STATED, "THIS IS A ROBBERY. EVERYONE GET DOWN!" [REDACTED] AND WHITE ADVANCED OVER THE TELLER COUNTER. THEY ATTEMPTED TO OPEN THE LOCKED TELLER DRAWERS. [REDACTED], TELLER, GAVE JONES HER TELLER KEYS. JONES REMOVED \$1,212. IN MISCELLANEOUS CURRENCY / BAIT MONEY.

WALTON AND [REDACTED] REMAINED IN THE LOBBY AREA. WALTON MAINTAINED THEIR POSITION WITH THE USE OF A SAWED-OFF SHOTGUN. HE ORDERED, "EVERYONE GET DOWN ON THE FLOOR!"

THEREAFTER, ALL FOUR SUBJECTS FLED IN A RYDER MOVING VAN. OFFICERS WERE PROVIDED WITH A DESCRIPTION OF THE VEHICLE. OFFICERS OBSERVED THE SUSPECTS' VEHICLE TRAVELING EAST-BOUND ON THE 10 FREEWAY AT WASHINGTON BOULEVARD. OFFICERS ATTEMPTED

-2- (WHITE)

1 TO MAKE A VEHICLE STOP. WHITE, THE DRIVER OF THE VAN, REFUSED TO  
2 COMPLY. A VEHICLE PURSUIT ENSUED. WHITE STOPPED THE VAN IN THE  
3 VICINITY OF LA BREA AND COLISEUM. WALTON AND [REDACTED] FLED ON  
4 FOOT. OFFICERS BINDER AND LEWIS TOOK [REDACTED] AND WHITE INTO CUSTODY.  
5 OFFICERS SEARCHED THE IMMEDIATE AREA. WALTON AND [REDACTED] WERE  
6 LOCATED AND TAKEN INTO CUSTODY. DURING THE PRE-BOOKING SEARCH,  
7 DETECTIVE GRAYSON RECOVERED \$1,212. FROM [REDACTED] PANTS POCKET.  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

-3- (WHITE)

78C692G - PROB. 5A 1/82

1 VICTIM:

SOURCES OF INFORMATION (1994 Page)

2

3

NAME

COUNT(S)

4

CEN-FED BANK

COUNT 1.

5

INJURY: PROPERTY LOSS (TYPE / COST / ETC.)

6

\$1,212. (RECOVERED)

7

INSURANCE COVERAGE

8

NO.

9

LOSS: ☐ YES ☒ NO

ESTIMATED LOSS

NONE

RESTITUTION ALREADY MADE

APPLIED FOR VICTIM RESTITUTION FUND

☐ UNK ☐ YES ☐ NO

10

VICTIM STATEMENT:

11

ON AUGUST 19TH, 1993, PROBATION OFFICER SPOKE

12

WITH [REDACTED] ASSISTANT MANAGER, CEN-FED BANK. THE

13

TWO PRIMARY EMPLOYEES IMPACTED BY THE INSTANT MATTER WERE

14

[REDACTED] AND [REDACTED] WAS UNABLE TO WORK

15

FOR ONE WEEK. COUNSELING WAS PROVIDED BY CEN-FED BANK.

16

[REDACTED] DESCRIBES THE ORDEAL AS VERY TRAUMATIC.

17

AT THE TIME OF THE ROBBERY, SHE HID UNDER HER DESK. SHE WAS

18

OBSERVED BY ONE OF THE SUSPECTS. AT GUNPOINT, HE ORDERED HER

19

TO COME FROM UNDER HER DESK. SHE TRIED TO REMAIN CALM. YET,

20

SHE WAS FRIGHTENED THAT HE WOULD BECOME AGITATED AND SHOOT

21

HER. AFTER THE SUSPECTS LEFT THE BANK, SHE SOBBED

22

UNCONTROLLABLY. (CONTINUED PAGE 5)

23

24

"VICTIM NOTIFIED PURSUANT TO SECTION 1191.3(B) PENAL CODE."

25

RESTITUTION

TOTAL NUMBER OF VICTIMS

1

ESTIMATED LOSS TO ALL VICTIMS

NONE

VICTIM(S) NOTIFIED OF P&amp;S HEARING

☒ YES ☐ NO

26

DOES DEFENDANT HAVE INSURANCE  
TO COVER RESTITUTION:

27

☐ YES ☒ NO

INSURANCE COMPANY NAME/ADDRESS/TELEPHONE NO.

28

N/A.

-4- (WHITE)

VICTIM LIST CONTINUES NEXT PAGE

1 VICTIM STATEMENT (CON'T.):

2 IT WAS EXTREMELY DIFFICULT TO TESTIFY AT THE  
3 PRELIMINARY HEARING. THE MERE SIGHT OF THE DEFENDANTS REKINDLED  
4 HER FEAR. SHE WAS OVERCOME BY EMOTION AND INITIALLY, SHE WAS  
5 UNABLE TO TESTIFY.

6 SHE ALSO MET WITH THE THERAPIST PROVIDED BY THE  
7 BANK. FOR A WEEK AND A HALF, THE THERAPIST ASSISTED HER WITH  
8 MANAGING HER FEELINGS. ALTHOUGH SHE WAS FUNCTIONING, SHE WAS  
9 VERY DEPRESSED. SIMPLY DRIVING IN THE AREA WHERE THE DEFENDANTS  
10 WERE APPREHENDED, MAKES HER NERVOUS.  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

-5- (WHITE)

76C692G - PROB. 5A 1/82

1 PRIOR RECORD:

SOURCES OF INFORMATION (LHM)

JUVENILE PROBATION RECORD (8-19-93),  
AND CLETS (8-13-93).

3 AKA'S:

JOHN LEE WHITE

4 JUVENILE HISTORY:

5 2-16-92

LAPD - 211 PC (ROBBERY: ARMED WITH DANGEROUS OR  
DEADLY WEAPON), & 10851 VC (TAKING VEHICLE WITHOUT  
OWNER'S CONSENT / VEHICLE THEFT) - DETAINED  
PETITION. 2-19-92 PETITION SUSTAINED, CAMP-  
COMMUNITY PLACEMENT.

8 1-4-93

LAPD - 12021(D) PC (HAVING HANDGUN ON PROBATION),  
& 626.1(A) PC (POSSESS WEAPON / ETC. AT SCHOOL);  
NON-DETAINED PETITION. 3-22-93, FOUND UNFIT.

10 4-10-93

LAPD - 23103 VC (RECKLESS DRIVING), & 10851(A) VC  
(TAKING A VEHICLE W/OUT OWNER'S CONSENT); NON-  
DETAINED PETITION - NO DISPOSITION.

12 (THIS ARREST WAS INCLUDED TO SHOW A PATTERN OF CRIMINALITY.)

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

-6- (WHITE)

1 PERSONAL HISTORY:

SOURCES OF INFORMATION (this page)

2 DEFENDANT.

3 SUBSTANCE ABUSE:

4 No record, indication, or admission of alcohol or controlled substance abuse.

5 X Occasional social or experimental use of ALCOHOL acknowledged.

6 X See below: Indication / admission of significant substance abuse problem.

7 Referred to Narcotic Evaluator ☐ Yes ☐ No Narcotic Evaluator's report attached

8 Additional Information

9 AT AGE 15, DEFENDANT BEGAN SMOKING MARIJUANA.

10 HE SMOKES MARIJUANA APPROXIMATELY FOUR TIMES A WEEK.

11 PHYSICAL / MENTAL / EMOTIONAL HEALTH:

12 No indication or claim of significant physical / mental / emotional health problem.

13 X See below: Indication / claim of significant physical / mental / emotional health problem.

14 Additional Information

15 DEFENDANT SUFFERS WITH ASTHMA. ALSO, HE HAS

16 LINGERING AFFECTS FROM A BROKEN ANKLE THAT HE SUFFERED ABOUT

17 FIVE YEARS AGO.

18 -7- (WHITE)



1 PERSONAL HISTORY:  
2 (CONTINUED)

SOURCES OF INFORMATION (this page)

DEFENDANT.

3 RESIDENCE	4 TYPE RESIDENCE APARTMENT	5 LENGTH OF OCCUPANCY 2 YEARS	6 <del>NO</del> / <del>MO</del> / <del>RENT</del> -0-	7 RESIDES WITH/RELATIONSHIP GRANDMOTHER
8 RESIDENTIAL STABILITY LAST FIVE YEARS GOOD		9 CAME TO STATE / FROM NATIVE		10 CAME TO COUNTY / FROM NATIVE.

Additional information

14 MARRIAGE / PARENTHOOD	15 MARITAL STATUS SINGLE / NO CHILDREN	16 NAME OF SPOUSE / PRESENT COHABITANT
17 LENGTH OF UNION	18 NO. OF CHILDREN THIS UNION	19 SUPPORTED BY
20 NO. PRIOR MARRIAGES / COHABITATIONS	21 NO. OF CHILDREN THESE UNIONS	22 SUPPORTED BY
23 NO. OF OTHER CHILDREN	24 SUPPORTED BY	

Additional information

25 FORMAL EDUCATION:	26 DEFENDANT COMPLETED THE 9TH GRADE. DEFENDANT
27 PURPORTS THAT HE ATTENDS THE YOUTH INTERVENTION PROGRAM.	28 HOWEVER, PROBATION OFFICER WAS INFORMED (CONTINUED PAGE 9)

-8- (WHITE)



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

FORMAL EDUCATION (CON'T.):

THAT THE DEFENDANT HAS NEVER BEEN ENROLLED IN THIS PROGRAM.  
ADDITIONALLY, THE DEFENDANT'S GRANDMOTHER ACKNOWLEDGED THAT  
THE DEFENDANT WAS NOT ATTENDING SCHOOL.

~~9~~ (WHITE)

76C892G - PROB. 5A 1/82



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

GANG ACTIVITY (CON'T.):

AT AGE 14, DEFENDANT BECAME A MEMBER OF 62 BRIM  
(BLOODS). HIS MONIKER IS "DEKO."

-11- (WHITE)

76C492G - PROB. 5A 1/82

1     DEFENDANT'S STATEMENT:

2             IN AS MUCH AS THIS IS A PRE-PLEA REPORT, DEFENDANT  
3     WAS NOT INTERVIEWED REGARDING THE FACTS OF THE PRESENT OFFENSE.

4     INTERESTED PARTIES:

5             ON AUGUST 17TH, 1993, PROBATION OFFICER CONTACTED  
6     INVESTIGATING OFFICER LICATA, (213) 485-0780. DURING THE JUVENILE  
7     PROCEEDINGS, THE DEFENDANTS WERE JOKING AND PLAYING AROUND.  
8     THE COURT HAD TO ADMONISH THEM. THEY HAVE BEEN MORE SUBDUED  
9     FOR THE ADULT PROCEEDINGS. NEVERTHELESS, THEY HAVE NOT DISPLAYED  
10    ANY REMORSE. THE VICTIMS HAVE BEEN EXTREMELY TRAUMATIZED.  
11    TWO EMPLOYEES REQUIRED COUNSELING. WHILE TESTIFYING IN COURT,  
12    ONE EMPLOYEE BEGAN TO CRY.

13            THE DEFENDANT IS A GANG MEMBER. OLDER GANG MEMBERS  
14    RECRUIT YOUNGER GANG MEMBERS TO COMMIT CRIMES. IT IS WITH THE  
15    BELIEF THAT THE COURT WILL BE MORE LENIENT ON A JUVENILE. HOWEVER,  
16    DUE TO THE DEFENDANT'S CRIMINAL SOPHISTICATION AND THE SERIOUSNESS  
17    OF THE OFFENSE, THE DEFENDANT SHOULD BE ORDERED TO STATE PRISON.

18            JANE EDWARDS, THE DEFENDANT'S GRANDMOTHER, WAS  
19    INTERVIEWED IN REGARD TO THE INSTANT MATTER. SHE DID NOT KNOW  
20    ANY OF THE PARTICULARS REGARDING THE OFFENSE.

21            SINCE 1984, THE DEFENDANT HAS LIVED WITH HER.  
22    SHE DOES NOT HAVE ANY CONTROL OVER HIM. HE IS DIFFICULT AND  
23    UNCOOPERATIVE AT HOME. HE WILL NOT ATTEND SCHOOL. ALTHOUGH

      -12- (WHITE)

1 SHE IS AWARE THAT THE DEFENDANT IS A GANG MEMBER, SHE CANNOT  
2 CONFIRM OR DENY THAT HE USES NARCOTICS.

3 CONDUCT UNDER SUPERVISION:

4 ACCORDING TO THE SUPERVISION OFFICER OF RECORD  
5 ON FEBRUARY 28TH, 1992, THE DEFENDANT RECEIVED CAMP-COMMUNITY  
6 PLACEMENT. IN AUGUST OF 1992, THE DEFENDANT WAS RELEASED FROM  
7 CAMP KILPATRICK. THE DEFENDANT PERFORMED SATISFACTORILY IN  
8 CAMP. PRIOR TO THE DEFENDANT'S CONFINEMENT IN CAMP, HIS  
9 PERFORMANCE UNDER PROBATION SUPERVISION WAS MARGINAL TO UNSATIS-  
10 FACTORY. THE DEFENDANT WAS NOT ATTENDING SCHOOL. HE CONTINUED  
11 TO HAVE ADVERSE CONTACT WITH LAW ENFORCEMENT AND HE WAS  
12 UNCONTROLLABLE AT HOME.

13 THE DEFENDANT APPEARS TO BE IN VIOLATION OF  
14 CONDITIONS OF PROBATION. HE WAS ORDERED TO OBEY ALL LAWS AND  
15 OBEY PARENTS, PROBATION OFFICER, SCHOOL OFFICIALS AND CAMP STAFF.  
16 HE WAS FURTHER ORDERED NOT TO ENGAGE IN ANY TYPE OF DELINQUENT  
17 BEHAVIOR. DEFENDANT WAS NOT TO ASSOCIATE WITH ANYONE DISAPPROVED  
18 OF BY HIS PARENT OR PROBATION OFFICER. HE WAS FURTHER ORDERED  
19 NOT TO PARTICIPATE IN ANY TYPE OF GANG ACTIVITY.

20 EVALUATION:

21 THE DEFENDANT'S CRIMINAL SOPHISTICATION HAS  
22 ESCALATED. ALSO, THE FREQUENCY OF CRIMINAL ACTIVITY HAS INCREASED.  
23 HE DOES NOT HAVE ANY RESPECT FOR AUTHORITY AND/OR ADULTS.

-13- (WHITE)

76C892G - PROB. 5A 1/92

1 REHABILITATIVE EFFORTS HAVE FAILED. CAMP-COMMUNITY PLACEMENT  
2 AND HOME ON PROBATION HAVE PROVEN INEFFECTIVE IN MODIFYING HIS  
3 DEVIANT BEHAVIOR. HE IS DEFINITELY CONSIDERED A THREAT TO SOCIETY.  
4 THERE IS NOT ANY INDICATION THAT HE IS REMORSEFUL. FOR THE  
5 SAFETY AND WELFARE OF THE COMMUNITY, PROBATION IS NOT CONSIDERED  
6 APPROPRIATE IN THE INSTANT MATTER.

7 IF THE DEFENDANT IS FOUND GUILTY, IT APPEARS THAT  
8 HE IS INELIGIBLE FOR COMMITMENT TO THE CALIFORNIA YOUTH AUTHORITY.  
9 HOWEVER, IT IS MANDATED THAT HE BE DIAGNOSED BY THE CALIFORNIA  
10 YOUTH AUTHORITY PURSUANT TO SECTION 707.2 WELFARE & INSTITUTIONS  
11 CODE. , IF THE DEFENDANT IS FOUND INELIGIBLE FOR COMMITMENT, DUE  
12 TO HIS AGE, THE COURT MAY WISH TO CONSIDER HOUSING THE DEFENDANT  
13 AT THE CALIFORNIA YOUTH AUTHORITY UNDER A STATE PRISON COMMITMENT.

14 SENTENCING CONSIDERATIONS:

15 THE DEFENDANT IS INELIGIBLE FOR PROBATION PURSUANT  
16 TO SECTION 1203(E)(2) PENAL CODE, UNLESS THE COURT DETERMINES  
17 THIS IS AN UNUSUAL CASE.

18 CIRCUMSTANCES IN AGGRAVATION:

- 19 1. THE CRIME INVOLVED GREAT VIOLENCE, GREAT BODILY  
20 HARM, THREAT OF GREAT BODILY HARM, OR OTHER  
21 ACTS DISCLOSING A HIGH DEGREE OF CRUELTY,  
22 VICIOUSNESS OR CALLOUSNESS.  
23 2. THE PLANNING, SOPHISTICATION OR PROFESSIONALISM  
WITH WHICH THE CRIME WAS CARRIED OUT, OR OTHER  
FACTS, INDICATE PREMEDITATION.

-14- (WHITE)

76C692G - PROB. 5A 1/82

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

- 3. THE DEFENDANT'S PRIOR ADJUDICATIONS OF COMMISSION OF CRIMES AS A JUVENILE ARE NUMEROUS OR OF INCREASING SERIOUSNESS.
- 4. THE DEFENDANT WAS ON PROBATION WHEN HE COMMITTED THE CRIME.
- 5. THE DEFENDANT'S PRIOR PERFORMANCE ON PROBATION WAS UNSATISFACTORY.

CIRCUMSTANCES IN MITIGATION:

NONE.

WITH THE PRESENCE OF ONLY AGGRAVATING CIRCUMSTANCES IN THIS MATTER, AND IF THE DEFENDANT IS SENTENCED TO STATE PRISON, THE HIGH-BASE TERM SHOULD BE IMPOSED.

RECOMMENDATION:

IF CONVICTED, IT IS RECOMMENDED THAT THE DEFENDANT BE COMMITTED TO THE CALIFORNIA YOUTH AUTHORITY FOR DIAGNOSIS AND RECOMMENDATION PURSUANT TO SECTION 707.2 OF THE WELFARE AND

1 INSTITUTIONS CODE.

2 RESPECTFULLY SUBMITTED,

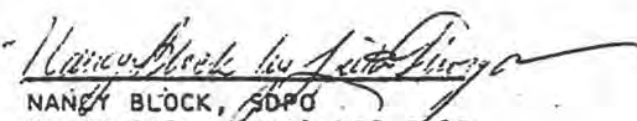
3 BARRY J. NIDORF,  
4 PROBATION OFFICER

5 BY 

6 SHARON THOMPSON, DEPUTY  
7 SANTA MONICA AREA OFFICE  
8 TELEPHONE (310) 458-5488

9 READ AND APPROVED:

I HAVE READ AND CONSIDERED  
THE FOREGOING REPORT OF THE  
PROBATION OFFICER.

10   
11 NANCY BLOCK, SDPO

12 TELEPHONE: (310) 458-5465

JUDGE OF THE SUPERIOR COURT

13 (SUBMITTED 8-19-93)  
14 (TYPED 8-24-93)  
15 ST:LJN (8)

16 IF PROBATION IS GRANTED, IT IS RECOMMENDED  
17 THAT THE COURT DETERMINES THE DEFENDANT'S ABILITY TO PAY COST OF  
18 PROBATION SERVICES PURSUANT TO SECTION 1203.1(B) PENAL CODE.  
19 COST OF PRE-SENTENCE INVESTIGATION & PRE-SENTENCE REPORT: \$401.00.  
20 COST OF SUPERVISION: \$27.00.

21 SHOULD PROBATION BE GRANTED IN THIS MATTER,  
22 THE CASE WILL BE ASSIGNED TO THE CENTINELA AREA OFFICE.  
23

-16- (WHITE)

76C892G - PROB. 5A 1/82



NAME LAST-FIRST-MIDDLE

WHITE, JOHN

PROB NO

X- 1515667

COURT DATE

8-26-93

COURT NO

SA014380

RECOMMENDED TERMS AND CONDITIONS OF PROBATION/TERMS OF DIVERSION

- 1 ☒ SPEND FIRST 365 DAYS/MONTHS IN COUNTY JAIL. ☐ NOT TO BE ELIGIBLE FOR COUNTY PAROLE  
☐ WORK FULFROUGH PROGRAM RECOMMENDED
- 2 ☐ PAY A FINE OF \$ \_\_\_\_\_ PLUS PENALTY ASSESSMENT (1464 P.C. & 76000 P.C.) THROUGH THE PROBATION OFFICER  
☐ PAY \$ \_\_\_\_\_ LAB FEE PURSUANT TO 11372 S H&S CODE (550 FOR EACH H&S VIOLATION) THROUGH THE PROBATION OFFICE
- 3 ☐ PAY RESTITUTION TO THE VICTIM(S) PURSUANT TO 1203.04 P.C. IN AMOUNT OF \$ \_\_\_\_\_ IN AMOUNT AND MANNER AS INSTRUCTED BY THE PROBATION OFFICER, INCLUDING A SERVICE CHARGE PER 1203.1 P.C. MINIMUM PAYMENT OF RESTITUTION TO BE \$ \_\_\_\_\_ PAY \$ \_\_\_\_\_ TO THE RESTITUTION FUND PER 1203.04 P.C. IN AMOUNT AND MANNER AS INSTRUCTED BY THE PROBATION OFFICER.
- 4 ☒ PAY \$ 200. \_\_\_\_\_ RESTITUTION FEE PURSUANT TO 1203.04 P.C. TO THE PROBATION OFFICER.  
☐ STATED THAT IF DEFENDANT PAYS RESTITUTION AND IF RESTITUTION IS PAID IN FULL, IT SHALL BE PERMANENT TOTAL AMOUNT TO INCLUDE A SERVICE CHARGE IN THE AMOUNT OF \$ \_\_\_\_\_ PER SECTION 11967(D) P.C.
- 5 ☐ NOT DRINK OR POSSESS ANY ALCOHOLIC BEVERAGE AND STAY OUT OF PLACES WHERE THEY ARE THE CHIEF ITEM OF SALE
- 6 ☐ NOT USE OR POSSESS ANY NARCOTICS, DANGEROUS OR RESTRICTED DRUGS OR ASSOCIATED PARAPHERNALIA, EXCEPT WITH VALID PRESCRIPTION, AND STAY AWAY FROM PLACES WHERE USERS, BUYERS OR SELLERS CONGREGATE.
- 7 ☐ NOT ASSOCIATE WITH PERSONS KNOWN BY YOU TO BE NARCOTIC OR DRUG USERS OR SELLERS.
- 8 ☐ SUBMIT TO PERIODIC ANTI-NARCOTIC TESTS/ALCOHOL TESTS AS DIRECTED BY THE PROBATION OFFICER OR ANY OTHER PEACE OFFICER
- 9 ☐ HAVE NO BANK CHECKS IN POSSESSION. NOT WRITE ANY PORTION OF ANY CHECKS, AND, NOT HAVE BANK ACCOUNT UPON WHIC YOU MAY DRAW CHECKS. NOT USE OR POSSESS OR APPLY FOR ANY CREDIT OR ATM CARD
- 10 ☒ NOT ASSOCIATE WITH: STAY AWAY FROM KNOWN GANG MEMBERS.
- 11 ☒ COOPERATE WITH PROBATION OFFICER IN A PLAN FOR COUNSELING.
- 12 ☐ SUPPORT DEPENDENTS AS DIRECTED BY PROBATION OFFICER
- 13 ☒ SEEK AND MAINTAIN TRAINING, SCHOOLING OR EMPLOYMENT AS APPROVED BY PROBATION OFFICER
- 14 ☒ KEEP PROBATION OFFICER ADVISED OF YOUR RESIDENCE AT ALL TIMES
- 15 ☐ SURRENDER DRIVER'S LICENSE TO CLERK OF COURT TO BE RETURNED TO DEPARTMENT OF MOTOR VEHICLES
- 16 ☐ NOT DRIVE A MOTOR VEHICLE UNLESS LAWFULLY LICENSED AND INSURED
- 17 ☐ NOT OWN, USE OR POSSESS ANY DANGEROUS OR DEADLY WEAPONS.
- 18 ☒ SUBMIT YOUR PERSON AND PROPERTY UNDER YOUR CONTROL TO SEARCH OR SEIZURE AT ANY TIME OF THE DAY OR NIGHT BY ANY PROBATION OFFICER OR OTHER PEACE OFFICER WITH OR WITHOUT A WARRANT OR PROBABLE CAUSE
- 19 ☒ OBEY ALL LAWS. OBEY ALL ORDERS, RULES AND REGULATIONS OF THE PROBATION DEPARTMENT AND OF THE COURT
- 20 ☐ USE ONLY YOUR TRUE NAME, STATED TO BE \_\_\_\_\_
- 21 ☒ REPORT TO PROBATION OFFICER UPON RELEASE FROM CUSTODY/WITHIN 24 HOURS.
- 22 ☐ IF YOU LEAVE THE COUNTRY, YOU SHALL NOT REENTER THE UNITED STATES ILLEGALLY IF YOU DO RETURN, REPORT TO THE PROBATION OFFICER WITHIN \_\_\_\_\_ AND PRESENT DOCUMENTATION WHICH PROVIDES YOU ARE IN THE UNITED STATES LEGALLY



ADDITIONAL CONDITIONS OF PROBATION: \_\_\_\_\_

RECOMMENDATION OTHER THAN TERMS AND CONDITIONS OF PROBATION

COST OF PROBATION SERVICES: IF PROBATION IS GRANTED, IT IS RECOMMENDED THAT THE COURT DETERMINE DEFENDANT'S ABILITY TO PAY COST OF PROBATION SERVICES PURSUANT TO SECTION 1203.16 PENAL CODE.



COST OF INCARCERATION: IF PROBATION IS GRANTED, IT IS RECOMMENDED THAT THE COURT DETERMINE DEFENDANT'S ABILITY TO PAY COST OF INCARCERATION PURSUANT TO SECTION 1203.14 PENAL CODE

COURT COPY

13

PET FILED 6-11-93  
211/120222(1)  
AMMD  
CON FRO BANK

ATTORNEY'S NAME (FIRST & LAST)	TYPE
A. SCHULTZ	PD
ADDRESS	
PHONE #	

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES  
JUVENILE COURT

DEPT.	DATE	APP. FROM APP.
264	7/1/93	APP.

IN THE MATTER OF:

NAME (LAST, FIRST, MIDDLE)			
WHITE, JOHN			
AKA:			
"BABY DEKO", "DKO"			
POJ #	USUALLY LIVES WITH	AREA	DPO
0926577		CE	855
CURRENT STATUS		CURRENT WHEREABOUTS	
CCP		LPJH	
D.P.O. RECOMMENDATION			CODE
unfit			

COURT NO. TJ02273

JAIN: 1142727  
PROBATION OFFICER'S REPORT

PERSONAL & FAMILY DATA:

SEX	AGE	VERIFIED BIRTHDATE	RACE ORIGIN	RELIGION	LEGAL CUSTODY	NATURAL PARENTS MARITAL STATUS	GRADE	ATTENDANCE	STATUS
M	16		BLACK	CHRISTIAN	GRANDMOTHER	NEV/MARRIED		UNSAT.	
PATRON LAST, FIRST, MIDDLE				ADDRESS	PHONE	SCHOOL		AGE	
WHITE, JOHNNY SR.				UNK		Y.I.P.			
MOTHER									
CAIN, ENUICE				L.A., CA 90011	N/P	560-3580		33	
STEP FATHER									
STEP MOTHER									
XXXXXXXXX GRANDMOTHER									
EDWARDS, JANE								55	

REFERRAL INFORMATION & RECENT COURT ACTION:

REFERRED BY	DATE REFERRED	DATE RECEIVED	ALLEGATIONS
LAPP	4/10/93	5/11/93	PET. 3/22/93 CT. I. 32103 VC; CT. II: 12021(D) PC
DET. HEARING DATE	ORDER DETAINED	CAL. DAYS DET.	PET. 5/11/93 - CT. I: 10851 VC; CT. II: 23103 VC; CT. III: 2800.2 VC;
6/8/93	YES	23	CT. IV: 12500(A)VC
COL. HEARING DATE	HEARD BY	SUSTAINED BY	AMENDED?
X	X	X	

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

**ALLEGATIONS CONTINUED:**

**REASON FOR HEARING:**

☐ DISPOSITION    ☒ FITNESS    ☐ 654 SUITABILITY    ☐ OTHER

**PRESENT OFFENSE:**

**SOURCES OF INFORMATION**

☒ Referral Document    ☐ Minor    ☐ Victims    ☐ Witnesses

<input type="checkbox"/> COMPANION(S) NAME	ALLEGATIONS	COURT NO.	DISPOSITION

**ELEMENTS AND RELEVANT CIRCUMSTANCES OF THE OFFENSE:**

REGARDING THE PETITION DATED MARCH 22, 1993:

ACCORDING TO THE LOS ANGELES POLICE DEPARTMENT REPORT DATED DECEMBER 14, 1992: ON DECEMBER 14, 1992 AT 8:00, OFFICERS RECEIVED A RADIO CALL FROM THE MAIN OFFICE AT JOHN MUIR JUNIOR HIGH SCHOOL TO INVESTIGATE A POSSIBLE WEAPON ON CAMPUS. UPON OFFICERS' ARRIVAL, THEY MET WITH THE PRINCIPAL, [REDACTED] AND INTERVIEWED SEVERAL OF THE WITNESSES. POLICE OFFICERS WERE TOLD BY WITNESSES AND SCHOOL OFFICIALS THAT A FEMALE STUDENT WAS IN THE SCHOOL AUDITORIUM AT JOHN MUIR FOR CHEER LEADING PRACTICE WITH A GROUP OF OTHER STUDENTS. THE MINOR AND FOUR COMPANIONS ENTERED THE AUDITORIUM THROUGH A SIDE DOOR. THE MINOR AND HIS COMPANIONS BEGAN TO HARASS

1 THE STUDENTS WHO WERE PRACTICING BY ASKING SILLY QUESTIONS.  
2 MINOR'S COMPANION ASKED ONE OF THE YOUNG LADIES WHOSE RADIO WAS  
3 THAT THAT THEY WERE LISTENING TO AND THE WITNESS REPLIED THAT IT  
4 WAS NONE OF HIS BUSINESS. THE MINOR'S COMPANION THEN GOT MAD  
5 AND TOLD THE YOUNG LADY THAT HE SHOULD SHOOT HER. AT THAT POINT,  
6 MINOR WHITE HANDED HIS COMPANION A SMALL CALIBER SEMI-AUTOMATIC  
7 GUN. IT SHOULD BE NOTED THAT THE GUN WAS POINTED DOWN AT THE  
8 SIDE AND NEVER AT THE WITNESS, HOWEVER, SHE WAS STILL AFRAID.  
9 THE OTHER THREE MINORS THAT WERE PRESENT DURING THE INCIDENT  
10 DID NOT PARTICIPATE ACTIVELY.

11 AFTER POLICE TOOK THE STATEMENTS, THEY SHOWED  
12 THE WITNESSES MINOR WHITE AND HIS COMPANION WATE'S PICTURE IN  
13 THE YEARBOOK OF JOHN MUIR JUNIOR HIGH SCHOOL.

14 THE MINOR WAS ARRESTED AND BOOKED FOR  
15 POSSESSION OF A GUN ON CAMPUS AND RELEASED TO HIS GUARDIAN.

16 IN REGARD TO THE PETITION DATED MAY 11, 1993:  
17 ACCORDING TO THE LOS ANGELES POLICE DEPARTMENT (LAPD) REPORT  
18 DATED APRIL 10, 1993, OFFICERS WERE ON VEHICLE PATROL DRIVING  
19 WESTBOUND ON DENKER AND OBSERVED THE MINOR DRIVING EASTBOUND  
20 ON DENKER IN A 19990 CHEVY BERETTA. THE MINOR ALSO SAW THE POLICE  
21 VEHICLE AND QUICKLY TURNED INTO AN ALLEY AND ACCELERATED HIS  
22 VEHICLE FROM 45 TO 50 TOWARD THE MAIN STREET. A VEHICLE PURSUIT  
23 ENSUED AS OFFICERS ATTEMPTED TO CATCH THE MINOR. AT ONE POINT,

-3- (WHITE)

78C892Q - PROB. SA 1/91

1 THE MINOR EXITED THE CAR AND POLICE OFFICERS HAD TO SET UP A  
2 PERIMETER BOUNDARY SEARCH FOR THE MINOR. AS THE PERIMETER WAS  
3 BEING ESTABLISHED, OFFICERS OBSERVED AN INDIVIDUAL WEARING ALL  
4 DARK CLOTHING EXIT THE FRONT YARD OF [REDACTED] THE  
5 MINOR WAS WALKING WESTBOUND ON THE SIDEWALK WITH HIS HANDS UP.  
6 OFFICERS DIRECTED THE MINOR TO THEIR VEHICLE AND DETAINED THE MINOR  
7 FOR INVESTIGATION. THE MINOR WAS TAKEN INTO CUSTODY WITHOUT  
8 INCIDENT.  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

-4- (WHITE)

76C8920 - PROB. 5A 1.91



VICTIM:

SOURCES OF INFORMATION (this page)

REFERRAL DOCUMENT

NAME [REDACTED]		SUSTAINED ALLEGATIONS (COUNT(S)) CTS. I THRU IV	
INJURY; PROPERTY LOSS (TYPE/COST/ETC)			
INSURANCE COVERAGE			
LOSS: <input type="checkbox"/> YES <input type="checkbox"/> NO	ESTIMATED LOSS	RESTITUTION ALREADY MADE	APPLIED FOR VICTIM RESTITUTION FUND <input type="checkbox"/> UNK <input type="checkbox"/> YES <input type="checkbox"/> NO

VICTIM STATEMENT: (If unable to contact, state reason(s) in this section.)

THIS VICTIM IS IN REGARD TO THE PETITION DATED MAY 11, 1993. AT THE TIME OF DICTATION, THE VICTIM WAS UNAVAILABLE FOR STATEMENT. PROBATION OFFICER HAVE LET TWO MESSAGES ON THE VICTIM'S ANSWERING MACHINE INSTRUCTING THE VICTIM TO CONTACT THE PROBATION DEPARTMENT REGARDING THE PRESENT MATTER. IF ANY INFORMATION IS RECEIVED FROM THE VICTIM PRIOR TO THE COURT DATE, IT WILL BE FORWARDED TO THE COURT.

RESTITUTION SUMMARY	TOTAL NUMBER OF VICTIMS	ESTIMATED LOSS TO ALL VICTIMS
IS THERE INSURANCE TO COVER RESTITUTION: <input type="checkbox"/> YES <input type="checkbox"/> NO	INSURANCE COMPANY NAME / ADDRESS / TELEPHONE NO	
PAYMENT PLAN		

VICTIM LIST CONTINUES NEXT PAGE

-5- (WHITE)

76J969 - Prod 1264 - (Rev. 12 92)

## PRIOR RECORD:

## SOURCES OF INFORMATION

<input type="checkbox"/> Juvenile Court Records	<input type="checkbox"/> Minor	<input checked="" type="checkbox"/> JAI
<input type="checkbox"/> Other (Specify)	<input type="checkbox"/> Police	<input checked="" type="checkbox"/> Probation Records

AKA'S:

AGE 14            2/20/92 - LAPD/77TH - COUNT I: 211 PC/12022.5  
PC (ARMED ROBBERY WITH A HANDGUN). PETITION  
REQUESTED AND FILED 2/20/92; SUSTAINED.  
DISPOSITION: CAMP-COMMUNITY PLACEMENT.

AGE 15            1/4/93 - LAPD - COUNT I: 626.9 PC (FIREARM ON  
SCHOOL CAMPUS), COUNT II: 12021(D) PC (POSSESSION  
OF A HANDGUN). PETITION REQUESTED AND FILED  
3/3/93. DISPOSITION: PENDING.

(THIS PERTAINS TO THE PRESENT MATTER.)

AGE 15            4/2/93 - LAPD/77TH - COUNT I: 10851 VC (DRIVING  
WITHOUT OWNER'S CONSENT), COUNT II: 23103 VC.  
PETITION REQUESTED AND FILED 5/11/93. DISPOSITION:  
PENDING.

(THIS PERTAINS TO THE PRESENT MATTER.)

-6- (WHITE)

761969 Prob 1264 (Rev 12 92)

**PERSONAL HISTORY:**

SOURCES OF INFORMATION (this page)  
GRANDMOTHER, PROBATION RECORDS

RESIDENCE	TYPE RESIDENCE APARTMENT	LENGTH OF OCCUPANCY 3 YEARS	MONTHLY RENT \$13 A MONTH	
OCCUPANTS OF THE HOME GRANDPARENTS, MINOR, FOUR AUNTS, TWO COUSINS				
EMPLOYMENT STATUS	Father:	<input type="checkbox"/> EMPLOYED	OCCUPATION	GROSS MONTHLY WAGE
	GRAND	<input type="checkbox"/> UNEMPLOYED	SECURITY GUARD	\$1,000
	Mother:	<input type="checkbox"/> EMPLOYED	OCCUPATION	GROSS MONTHLY WAGE
	<input checked="" type="checkbox"/> UNEMPLOYED	SOCIAL SECURITY	UNK	
Minor:	<input type="checkbox"/> EMPLOYED	OCCUPATION	GROSS MONTHLY WAGE	
<input checked="" type="checkbox"/> UNEMPLOYED				
MINOR'S PRESENT/LAST EMPLOYER/ADDRESS			OTHER FAMILY INCOME SOURCE/AMOUNT	
			SEE BELOW	

### Additional information

THE GRANDMOTHER RECEIVES \$2,000 A MONTH IN AID  
TO FAMILIES WITH DEPENDENT CHILDREN (AFDC).

THE MINOR'S MOTHER IS CURRENTLY USING (CONT. PG 8)

**PHYSICAL/MENTAL/EMOTIONAL HEALTH:**HEALTH: ☐ GOOD ☒ FAIR ☐ POOR

           No indication or claim of significant mental/emotional health problem.

See below: Indication/claim of significant physical/mental/emotional health problem.

**Additional Information (Duration / Frequency / Severity of problem)**

MINOR HAS A MILD CASE OF ASTHMA.

**SUBSTANCE ABUSE:**

No record, indication, or admission of alcohol or controlled substance abuse.

X Occasional or experimental use of ALCOHOL acknowledged

See below      Indication/admission of significant substance abuse problem.

### Additional Information

-7- (WHITE)



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

EMPLOYMENT STATUS: CONT.

ROCK COCAINE AND HAS LOST CUSTODY OF HER SON DUE TO HER DRUG  
USAGE.

-8- (WHITE)  
78C699G - PROB. 5A 1/92

**PERSONAL HISTORY:  
(CONTINUED)**

SOURCES OF INFORMATION (this page)

MINOR, GRANDMOTHER, PROBATION RECORDS,  
SCHOOL

GANG ACTIVITY	<input checked="" type="checkbox"/> YES	Name of Gang 62ND STREET BRIMS
	<input type="checkbox"/> NO	

Additional information

BEHAVIOR IN SCHOOL	<input type="checkbox"/> Good	<input type="checkbox"/> Fair	<input checked="" type="checkbox"/> Poor
SUSPENSION(S) <input type="checkbox"/> YES <input type="checkbox"/> NO	DATE(S)	LENGTH(S)	
REASON			

Additional information

THE MINOR STATED DURING HIS PROBATION INTERVIEW THAT HE ATTENDED THE YOUTH INTERVENTION PROGRAM, HOWEVER, THE PROBATION OFFICER WAS INFORMED THAT THE MINOR HAS NEVER BEEN ENROLLED IN THIS PROGRAM. ADDITIONALLY, THE MINOR'S GRANDMOTHER ACKNOWLEDGES THE FACT THAT THE MINOR WILL NOT ATTEND SCHOOL.

-9- (WHITE)

761969-Prob. 1264- (Rev. 12/92)

MINOR'S STATEMENT:

AS PER LEGAL COUNSEL, THE PROBATION OFFICER WAS NOT TO INTERVIEW THE MINOR REGARDING THE FACTS OF ANY POLICE CONTACTS.

THE MINOR STATED THAT HE IS INVOLVED IN THE 62ND STREET BRIMS GANG AND DENIES ANY DRUG USAGE. THE MINOR STATES THAT HE IS PERFORMING WELL AT HOME. LASTLY, THE MINOR FEELS THAT HE SHOULD BE TRIED ON THE JUVENILE LEVEL.

PARENTS' STATEMENT:

THE MINOR'S GRANDMOTHER, JANE EDWARDS WAS INTERVIEWED IN REGARD TO THE PRESENT MATTER. SHE STATED SHE DID NOT KNOW THE PARTICULARS OF THE PRESENT OFFENSE. SHE STATED THAT SHE HAS HAD HER GRANDSON SINCE 1984 AND HAS NO CONTROL OVER HIM. SHE STATES THAT HE IS DIFFICULT, UNCOOPERATIVE IN THE HOME AND WILL NOT GO TO SCHOOL. SHE STATED THAT THE MINOR HAD A WARRANT ISSUED FOR HIS ARREST DUE TO THE FACT THAT HE DID NOT RETURN HOME TO GO TO COURT.

THE MINOR'S GRANDMOTHER ACKNOWLEDGES THAT HE IS A GANG MEMBER BUT IS NOT SURE WHETHER HE USES DRUGS OR NOT.

LASTLY, THE MINOR'S GRANDMOTHER STATED THAT THE MINOR IS ACTING LIKE AN ADULT SO HE SHOULD BE TRIED AS ADULT.

CONDUCT UNDER SUPERVISION:

ACCORDING TO THE SUPERVISION OFFICER OF RECORD ON FEBRUARY 28, 1992, THE MINOR RECEIVED CAMP-COMMUNITY PLACEMENT.

-10- (WHITE)

76C692G - PROB. 5A 1/82

1 IN AUGUST OF 1992, THE MINOR WAS RELEASED FROM CAMP KILPATRICK.  
2 THE MINOR PERFORMED SATISFACTORILY IN CAMP. SUBSEQUENT TO THAT  
3 DAY, THE MINOR'S PERFORMANCE UNDER PROBATION SUPERVISION HAS  
4 BEEN MARGINAL TO UNSATISFACTORY. IN THAT, THE MINOR IS NOT  
5 ATTENDING SCHOOL. THE MINOR IS CONTINUING TO HAVE CONTACT WITH  
6 POLICE AND IS UNCONTROLLABLE IN THE HOME.

7 LASTLY, THE MINOR IN VIOLATION OF CONDITIONS  
8 1, 2, 6, 15 AND 15A AS IT RELATES TO THE CURRENT MATTER.

9 BEHAVIORAL EVALUATION:

10 SECTION 707(C) OF THE WELFARE AND INSTITUTIONS  
11 CODE (WIC) MANDATES A CONSIDERATION OF THE MINOR'S AMENABILITY  
12 AS TO THE FIVE PRESCRIBED CRITERIA:

13 1. CRIMINAL SOPHISTICATION:

14 THE MERE FACT THAT THE MINOR WAS ARMED AT  
15 SCHOOL INDICATES A DEGREE OF SOPHISTICATION  
16 AND GANG PARTICIPATION. THE MINOR'S  
17 OVERALL BEHAVIOR APPEARS TO BE INCREASING  
18 IN SOPHISTICATION, IN THAT, THE MINOR USES  
19 WEAPONS TO CONFRONT HIS ENEMIES EVEN A  
20 VERBAL CONFRONTATION. THE MINOR'S CRIMINAL  
21 ACTIVITIES APPEARS TO BE ESCALATING IN FREQUENCY  
22 AS WELL AS SERIOUSNESS. THE MINOR'S OVERALL  
23 MENTAL Demeanor APPEARS TO BE THAT OF AN  
INDIVIDUAL WITH NO RESPECT FOR AUTHORITY  
AND/OR ADULTS AS IF HE WERE ACTUALLY AN ADULT  
HIMSELF. THEREFORE, THE MINOR IS DEEMED  
UNFIT AS TO THIS CATEGORY.

2. EXPIRATION OF COURT'S JURISDICTION:

THE MINOR IS 16 YEARS OF AGE AND THE POSSIBILITY  
REHABILITATING THE MINOR PRIOR TO THE EXPIRATION

1 OF THE JUVENILE COURT'S JURISDICTION SEEMS  
2 LIKELY. ALTHOUGH THE MINOR HAS BEEN PHYSICALLY  
3 PLACED IN CAMP, HE STILL HAS THE OPTION  
4 OF THE CALIFORNIA YOUTH AUTHORITY (CYA)  
5 AVAILABLE TO HIM. THEREFORE, THE MINOR IS  
6 DEEMED AMENABLE AS TO THIS CATEGORY.

UNFIT

7 3. PREVIOUS DELINQUENT HISTORY:

8 THE MINOR HAS HAD THREE CONTACTS WITH LAW  
9 ENFORCEMENT TO DATE. THOSE ARRESTS INCLUDE  
10 VEHICLE CHARGES, GUN CHARGES AND ROBBERY.  
11 ALTHOUGH THE MINOR'S CRIMINAL HISTORY IS  
12 AN EXTREMELY LONG, THE NATURE OF THE MINOR'S  
13 CRIMES ARE EQUIVALENT TO THAT OF A VERY INVOLVED  
14 DELINQUENT CRIMINAL HISTORY. THEREFORE,  
15 THE MINOR IS DEEMED UNFIT AS TO THIS CATEGORY.

16 4. PREVIOUS ATTEMPTS TO REHABILITATE THE MINOR:

17 THE MINOR HAS THE BENEFIT OF CAMP-COMMUNITY  
18 PLACEMENT AND HOME ON PROBATION WHICH BOTH  
19 HAVE PROVEN TO BE INEFFECTIVE IN REHABILITATING  
20 THE MINOR. HOWEVER, A CONSIDERABLE AMOUNT  
21 OF CONFINEMENT TIME IN CYA IS A FEASIBLE  
22 OPTION IN REGARDS TO REHABILITATING THIS  
23 MINOR. THEREFORE, THE MINOR IS AMENABLE  
AS TO THIS CATEGORY.

UNFIT

5. CIRCUMSTANCES AND GRAVITY OF THE OFFENSE:

THE CIRCUMSTANCES AND GRAVITY OF THE OFFENSES  
IS THE PARAMOUNT REASON THAT THE MINOR WOULD  
BE UNFIT FOR JURISDICTION, CARE AND TREATMENT  
OF PROGRAMS AVAILABLE TO THE MINOR AND THE  
JUVENILE COURT SYSTEM. THE MINOR'S BEHAVIOR  
HAS SHOWN A CALLOUS DISREGARD FOR HUMAN LIFE,  
IN THAT, THE MINOR WAS IN POSSESSION OF A  
HANDGUN ON SCHOOL PREMISES. FURTHERMORE,  
THE MINOR'S ACTIONS OF ATTEMPTING TO EVADE  
THE POLICE AND DRIVING A STOLEN CAR COULD  
HAVE RESULTED IN THE FATAL INJURY OF THE  
MINOR, HIS COMPANIONS OR INNOCENT BYSTANDERS.  
FURTHERMORE, THE MINOR'S GANG ACTIVITY PROMPTED

HIM TO BRING A WEAPON IN A PUBLIC PLACE AND IT IS DOUBTFUL THAT THE MINOR WAS IN FEAR OF HIS LIFE. AGAIN, DEMONSTRATING THAT HE HAS NO RESPECT FOR OTHERS OR AUTHORITY, AS WELL AS THE RULES AND REGULATIONS OF THE COURT AND THAT OF THE SCHOOL SYSTEM. THEREFORE, THE MINOR IS UNFIT AS TO THIS CATEGORY.

RECOMMENDATION:

IT IS RECOMMENDED THAT THE MINOR BE FOUND UNFIT FOR CONSIDERATION PROVISIONS OF THE JUVENILE COURT LAW; THAT THE COURT DIRECT THE PROSECUTING ATTORNEY TO FILE AN

-13- (WHITE)


76C892G - PROB. 5A 1.92

1 ACCUSATORY PLEA AGAINST THE MINOR IN COURT OF CRIMINAL JURISDICTION;  
2 THAT THE ORDER FOR DETENTION REFLECT THAT THE MINOR BE RELEASED  
3 TO THE CUSTODY OF LAW ENFORCEMENT PERSONNEL FOR TRANSPORTATION  
4 TO AND FROM ADULT PROCEEDINGS; THAT THE MINOR REMAIN DETAINED  
5 IN JUVENILE HALL; THAT THE PETITION BE DISMISSED WITHOUT PREJUDICE.  
6 RESPECTFULLY SUBMITTED,

7 BARRY J. NIDORF,  
8 PROBATION OFFICER

9 BY   
10 RHONDA MAYBERRY, DEPUTY  
11 CENTINELA AREA OFFICE  
12 (213) 418-3166

13 READ AND APPROVED:

14   
15 BILLY PUGH, SDPO  
16 (213) 418-3134

17 SUBMITTED: 6/24/93  
18 TYPED: 6/25/93  
19 RM:CJ (8)  
20  
21  
22  
23

- 14 - (WHITE)

78C692G - PROB. 5A 1.92



## OFFENSE HISTORY

### Prior Convictions (Sustained Petitions)

<u>Date</u>	<u>Offense</u>	<u>Disposition</u>
02/16/92	Armed Robbery; Unlawful Taking Of A Motor Vehicle	Petition sustained on 02/19/92; Camp community placement.
03/22/93	Possession Of A Weapon On School Grounds	Inmate found unfit.

### MOST RECENT OFFENSE

John Lee White is a sixteen year-old Black male convicted in Los Angeles County Superior Court on charges of second degree robbery/principal armed with a firearm (shotgun). Conviction is the result of a guilty plea. Confinement time for the above-listed offense has been established at four years. Three years of parole time has been assessed. John has been given credit for three hundred and eighteen days of time served in custody.

According to the probation/police report, the circumstances surrounding the most recent offense are as follows:

On June 8, 1993 at approximately 1:40 p.m., four Black males (John Lee White [the inmate] and co-offenders Michael Walton, Malcolm [redacted], and Melvin [redacted]) entered the Sanfed Bank. Melvin [redacted], armed with a semi-automatic handgun, stated, "This is a robbery. Everyone get down!" Melvin [redacted] and John advanced over the teller counter. They attempted to open the locked teller drawers. One of the tellers gave Melvin [redacted] her keys. Melvin [redacted] then removed \$1,212 in miscellaneous currency from the teller drawers.

Michael Walton and Malcolm [redacted] remained in the lobby area of the bank. Michael Walton maintained their position with the use of a sawed-off shotgun. He ordered, "Everyone down on the floor!"

Thereafter, all four suspects fled from the bank in a Rider moving van. Police officers were provided with a description of the vehicle. Police officers then observed the suspects' vehicle traveling eastbound on the Santa Monica Freeway (10 Freeway) at Washington Blvd. The police officers attempted to make a stop of the suspects' vehicle. John (the driver of the van) refused to comply with the police officers' orders to stop and a vehicle pursuit ensued. John stopped the van in the vicinity of La Brea Avenue and Coliseum Street. Michael Walton and Malcolm [redacted] fled from the scene on foot. The police officers then took Melvin [redacted] and John into custody. The police officers searched the immediate area. Malcolm [redacted] and Michael Walton were

WHITE, John Lee

MA400

SRCC

OFFENSE HISTORY



subsequently located and taken into custody. During the pre-arrest search, detectives recovered \$1,212 from Melvin Jones' pants pockets.

#### CO-OFFENDERS

<u>Name</u>	<u>Age</u>	<u>Disposition</u>
Michael Walton	Unknown	This co-offender was referred to the California Youth Authority for an amenability determination study; however, the final disposition of his case is not shown.
Melvin [REDACTED]	Unknown	This co-offender was handled as a juvenile, with the final disposition of his case being unknown.
Malcolm [REDACTED]	Unknown	This co-offender was handled as a juvenile, with the final disposition of his case being unknown.

#### VICTIM OR NEXT OF KIN IMPACT STATEMENT

According to the probation report, the tellers involved in the bank robbery were extremely traumatized. One of the tellers was unable to work for one week. Counseling was provided by the bank. The teller described the ordeal as very traumatic and stated that, at the time of the robbery, she hid underneath her desk. She was observed by one of the suspects who ordered her to come out from under her desk at gunpoint. She tried to remain calm; yet she was frightened that the suspect would become agitated and shoot her. After the suspects left the bank, she sobbed uncontrollably. At the preliminary hearing, the mere sight of the suspects rekindled her fear. She was overcome by emotion and, initially, she was unable to testify. Although she has been seen in therapy, she has remained depressed. According to the victim, simply driving in the area where the suspects were apprehended makes her nervous.

WHITE, John Lee

MA400

SRCC

OFFENSE HISTORY

OFFENDER'S VERSION

John has previously pled guilty to the above-listed offense. He essentially agreed with the details provided by the probation report. He admitted he was the driver of the getaway vehicle.

CORRECTIONAL EXPERIENCE

John was initially arrested on February 20, 1992 by the Los Angeles Police Department on charges of armed robbery. The petition was sustained on February 20, 1992 and John was ordered to the probation department's camp community placement program. According to John, he spent seven months in Camp Kilpatrick. Probation records indicate that John performed satisfactorily in the camp community placement program. However, once he was released back into the community, John was not attending school; he continued to have contacts with law enforcement; he continued to associate with gang members; and he continued to defy his grandparents' efforts to supervise him.

On January 4, 1993, John was arrested by the Los Angeles Police Department and charged with being in possession of a weapon on school grounds. John claimed this was a case of mistaken identity and that he was not in possession of a weapon.

On April 10, 1993, John was arrested and charged with reckless driving and unlawful taking of a motor vehicle. John's story is that a friend of his let him drive a stolen car. John denied he knew the vehicle was stolen.

From the records, it appears that John's criminal activity is increasing in frequency and severity. Camp community placement and home on probation have proven ineffective in modifying his behavior. The instant offense is extremely serious. The victims were severely traumatized and it is a matter of pure luck that no one was injured. John does not appear to have any guilt, concern, or remorse regarding his behavior. In fact, he claimed that, although he knew robbing banks was wrong, he did not consider it serious.

OUTSTANDING WARRANTS/PENDING CHARGES

None known.

WHITE, John Lee

MA400

SRCC

OFFENSE HISTORY

INTRODUCTION

John Lee White is a sixteen year-old African-American male convicted in Los Angeles County Superior Court of charges of second degree robbery/principal armed with a shotgun. John is an unfit juvenile. He has been referred to the California Youth Authority for a diagnostic evaluation to determine his amenability to training and treatment services offered by the California Youth Authority.

According to the accompanying probation report, John and three co-offenders entered the Sanfed Bank and committed an armed robbery.

John has a prior record of arrests for armed robbery, possession of a weapon on school grounds, and unlawful taking of a motor vehicle. He has had the benefit of probation supervision in the community and one previous commitment to junior probation camp. John is an admitted gang member (62 Brim Bloods Gang). John became a gang member at age fourteen. His moniker is "Deko." John's gang activity has interfered with his ability to attend school on a regular basis. He has become increasingly dependent on his gang for most of his social activities. According to John, the bank robbery was arranged by an older fellow gang member who supplied the boys with a rented getaway vehicle and a weapon. John stated he committed the bank robbery even though he knew it was wrong because he did not want to get a "jacket" as a coward with the other gang members. Her also stated that, if he had declined to go along with the plan to rob the bank, he would have been punished by his fellow gang members.

John's previous performance on a grant of juvenile probation was considered marginal to unsatisfactory, noting that he was not attending school, continued to have contact with law enforcement, and was out of control at home.

John does not appear to have benefited from efforts on his behalf by the courts and the probation department.

SOCIAL HISTORYFAMILY BACKGROUND

John is one of three children born to his mother. John's natural parents were never married and John's natural father, Michael Walton, is deceased. John stated he last saw his natural father when he was six years old. John and his two sisters (ages fourteen and nine) have resided with his maternal grandmother and grandfather for most of their lives. According to John, his mother is a cocaine addict who cannot care for herself or her children and

WHITE, John Lee

MA400

SRCC

SOCIAL HISTORY

who has a history of arrests. John's grandmother has stated that she cannot control John at home, noting that he is difficult and uncooperative and that he will not attend school. John's grandmother is aware that John is a gang member, although she cannot confirm or deny that he used narcotics. (John admitted that he used marijuana on a daily basis.) John denied a history of abuse or neglect in his grandparents' home. He believes his grandmother will allow him to return to her home when he is referred to parole. However, John stated that his grandparents are not visiting him during the time he is incarcerated and he doubts he will have any contact with them throughout his custody time.

#### PEER ASSOCIATES

John has admitted to membership in the "62 Brims (Bloods) Gang." He has been a gang member since age fourteen. John is heavily dependent upon his gang. His gang has become a sort of extended family. John's loyalty to his gang exceeds his obligation to obey the law or to abide by his grandparents' efforts to supervise or structure his behavior. In the instant offense, John would rather have risked death or jail than to have appeared cowardly to his fellow gang members.

#### COMMUNITY BACKGROUND

Records reflect that John was born and raised in Los Angeles, California. His grandparents live in an inner-city neighborhood noted for high rates of crime, gang activity, and drug trafficking.

#### ACADEMIC EDUCATION

Probation records indicate that John last completed the ninth grade. John admitted to chronic truancy. He claimed that pressure from rival gang members have interfered with his ability to attend school on a regular basis. John's grandmother has indicated that John refused to attend school.

Academic testing at the Southern Reception Center and Clinic reveals that John is reading at the 6.4 grade-level, performing math at the 4.7 grade-level, and understanding language at the 3.3 grade-level, for an overall total battery for basic academic skills equivalent to a 4.9 grade-level.

John denied he has ever been a special education student. Apparently, his poor academic showing is the result of infrequent attendance in a regular school program.

WHITE, John Lee

MA400

SRCC

SOCIAL HISTORY

VOCATIONAL EDUCATION/WORK EXPERIENCE

John's only work experience has been selling candy. He has yet to set vocational goals for himself. His response to the vocational interest and aptitude assessment reveals an interest in mechanics. In whatever program John is eventually placed, he would benefit from participation in work experience/vocational training and employability skills training.

ALCOHOL/DRUG USE AND ABUSE

John admitted to the use of marijuana on a daily basis. Probation records also indicate that John drank alcohol occasionally. John stated he believes he was able to conceal his drug use from his grandmother by using eye drops so she would not observe his eyes being red. He denied he was under the influence of drugs or alcohol when he committed the instant offense.

SELF PERCEPTIONS

John does not regard himself as a danger to the community. He does not believe he is as seriously delinquent as his record would indicate. According to John, he did not believe participating in a bank robbery was a "serious" crime and, furthermore, he believed he and his co-offenders would be successful in getting away. He related that he went along with the robbery because he did not want the other gang members to think he was a coward. He acknowledged that he gave no thought to the possibility that the victims might be injured or traumatized or that he himself may have been injured during the arrest procedure. John believes that an appropriate disposition in his case would be commitment to the California Youth Authority. He believes he would benefit from participation in a California Youth Authority program of continuing education, counseling, and work experience or vocational training. John believes that what he needs most to turn his life around is to be given "another chance."

CLINICAL IMPRESSIONS

In the clinical interview, John Lee White was polite, cooperative, and respectful. He is a thin, small young man who appears to be even younger than his stated chronological age of sixteen. John is an inarticulate, quiet, and shy-appearing individual who demonstrates marked immaturity. John does not impress as highly sophisticated or hardcore in a criminal sense. Rather, he impresses as a careless, naive, passive, and easily led young man. Needless to say, John's judgment is extremely poor. John's immaturity, poor judgment, and dependence upon his gang have combined to make him a dangerous individual in the community. He does not appear to understand or appreciate the serious nature of

WHITE, John Lee

MA400

SRCC

SOCIAL HISTORY



the charges against him. John acknowledges that he knew what he was doing was wrong, but that he went along anyway because he did not want to disappoint his co-offenders.

John's pattern of behavior is common to many delinquent youths. Coinciding with the onset of adolescence, John joined a youth gang, began to ditch school and defy authority, and involved himself in repeated violations of the rights and property of others. Probation supervision in the community and referral to the probation department's camp community placement program have proved ineffective. John appears to be content to drift aimlessly through life in a hedonistic fashion seizing whatever opportunity comes up, including criminal activity, with no thought of the consequences. He has made little to no effort to obtain job skills or to prepare himself to live independently as an adult. John's immaturity and need for approval from older gang members have led directly to his involvement in the instant offense.

John does not appear to be an appropriate candidate for commitment to state prison. He is, after all, only sixteen years old. There have been minimal prior rehabilitative efforts. John's small stature, immaturity, and passive nature would make him a vulnerable target for older, more hardcore inmates in a state prison setting.

Given the current Superior Court charges, California Youth Authority jurisdiction over John's case would extend to age twenty-five. John appears to be capable of materially benefiting from California Youth Authority programs of continuing education, counseling, and participation in work experience/vocational training. Commitment to the California Youth Authority, as opposed to housing in the California Youth Authority pursuant to Section 1731.5(c) WIC, would require John to appear before the Youthful Offender Parole Board on an annual basis to assess his progress in program and to assess his readiness for parole. Sufficient time remains in the jurisdiction and confinement time available to effect needed attitudinal and behavioral changes.

#### RISK ASSESSMENT

John denies suicidal ideation or intent. There is no indication that he is assaultive or aggressive toward others. John is extremely small-statured and quite slender. He could easily become a victim of larger more predatory inmates. It is also noted that he suffers from asthma.

There is no history of escape from an institutional setting. John is quite unsophisticated in a criminal sense.

WHITE, John Lee

MA400

SRCC

SOCIAL HISTORY

BEST CORE PROGRAM

Juvenile/Adult

Swing: Importance Rating 1

Work/Academic/Vocational

Elementary/High School: Importance Rating 2

Treatment/Management

Regular/General: Importance Rating 3

Custody/Security

Moderate: Importance Rating 4

Age/Maturity

Late Adolescence: Importance Rating 5

RECOMMENDED ALTERNATIVE AVAILABLE PROGRAMS

Priority: 1 Number: 10 Title: Nelles-Regular Urgency Rating B

Priority: 2 Number: 35 Title: Paso Robles Urgency Rating B

It should be noted that John is extremely small physically and institutionally unsophisticated. He could easily be victimized if placed with older, more mature, or physically aggressive wards.

RECOMMENDED LONG-RANGE PLAN

John is expected to return to the home of his grandmother upon referral to parole. He should be encouraged to continue his education and obtain some type of trade or vocational training.

Date: March 2, 1994

Approved Joe Kraics Prepared Diane Lubeck  
By: Joe Kraics, LCSW, By: Diane Lubeck, LCSW  
Supv. Casework Specialist I Parole Agent I

jar/Typed: March 24, 1994

WHITE, John Lee

MA400

SRCC

BEST CORE PROGRAM

PSYCHIATRIC EVALUATION

REASON FOR REFERRAL

This evaluation is part of a court-ordered 90-day diagnostic study. Defendant was informed of my identity and the purpose of the interview. He was, furthermore, told that the information he provided me might be used in the report, and could have significant bearing on the disposition of his case.

PRIOR PSYCHIATRIC/PSYCHOLOGICAL EVALUATIONS

No prior psychiatric evaluation was recorded in the file.

METHOD OF EVALUATION

One-hour clinical interview with the defendant and review of records in file, including the Probation Officer's Report.

BACKGROUND INFORMATION

Family and background information are detailed in the social history (q.v.). Briefly, according to the defendant, he was born and raised in the Los Angeles area. He is the oldest of three children. He has two younger sisters, ages 11 and 14. The defendant stated that his parents separated when he was 7 years old. He said that presently he has no contact with his mother or father, and does not know where they are living. According to the referral documents, his mother lost custody of the minor, due to her drug usage (rock cocaine).

At the time of his arrest, he said that he was living with his grandmother, grandfather, and two younger siblings. He said that his grandfather is a retired security guard. When asked about conflicts with his grandparents, he said that problems at home relate to his not going to school, and staying out with gang members from 24 hours up to three days. His grandmother had stated that she "does not have any control over him. He is difficult and uncooperative at home. He will not attend school." She had also stated that she was aware that the defendant is a gang member.

According to the defendant, he completed the 9th grade while in camp. He said that he was not attending school at the time of his arrest "because I had too many enemies (gang related)." He said that he had been expelled from school in the 8th grade for truancy. He was not employed and has no work history. Medical history is unremarkable, except for bronchial asthma since early childhood for which he is taking Theodor, and some residual effects of a fractured ankle sustained when he was 9 or 10 years old.

When asked about the use of drugs or alcohol, he stated that he "tried beer last year—didn't like it. Was using marijuana for 6 or 7 months, about 3 times a week." According to the information in the Fitness Report, he had told

WHITE, John

MM400

SRCC

PSYCHIATRIC EVALUATION



11  
the Probation Officer that he began smoking marijuana when he was 15 years old and uses marijuana approximately 4 times a week. When asked about gang-related activity, he stated that he was in a "Bloods gang" for two years prior to his arrest, adding that he was "jumped in," when he was 14 years old. He described it as a "very big gang." When asked about gang activities, he replied, "Don't know." He said that his gang moniker is "Deko." When asked what his moniker means, he also replied, "I don't know."

When asked about prior offenses, the minor said that he had only one prior offense, when he was 15 years old, for robbery, for which he went to camp for several months. According to his juvenile record, the minor has had three prior offenses. He was arrested when he was 14 years old for armed robbery, (vehicle theft) for which he was ordered to CCP. When he was 15 years old, he was again arrested for having a handgun on probation and possession of a weapon at school for which he was also ordered to CCP. About 3 months later (about 4 months prior to the instant offense), he was arrested for reckless driving and taking a vehicle without owner's consent.

The current offense occurred when the defendant was 16 years old. He was charged with armed robbery involving the use of a shotgun. According to the Probation Officer's Report submitted 8-19-93, the defendant and three accomplices entered Cen-Fed Bank. Armed with a semi-automatic handgun and a sawed-off shotgun at about 1:40 p.m., and announced: "This is a robbery. Everyone get down!" When asked about the circumstances of the bank robbery, he replied that it was not gang related, stating, "I robbed a bank—don't want to talk about it because I want to forget about it."

#### MENTAL STATUS EXAMINATION

The defendant is a 16-year-old Black male of short stature and slight build. He is about 5 feet, 6 inches tall, and weighs approximately 125 pounds. He has no noticeable tattoos. He was dressed in institutional garb, neatly groomed, and appeared to maintain good personal hygiene. He showed no unusual mannerisms or expressions. His attitude toward the interviewer was passively compliant and courteous. Throughout the interview, he was calm, pleasant, and attentive. However, he declined to discuss matters pertaining to himself, gang-involved activities, or the present offense. He appeared to be in no apparent distress. He was alert and fully oriented for time, place, and person. There was no evidence of memory impairment or other signs of organicity. His speech was clear, and verbal responses were coherent and relevant to the subject matter. Cognitively, he appeared to be functioning within the low-average intellectual range, based upon vocabulary and verbal responses. Thought content was negative for psychotic or delusional material. Thought processes were organized and goal-directed. He had sufficient insight into his present personal and legal problems. He demonstrated a correct understanding of the sentencing process, as well as the purpose of the 90-day evaluation, stating that he "took a deal because

WHITE, John MA400

SRCC

PSYCHIATRIC EVALUATION

it was a good deal for 4 years, instead of a lot more time. Discrepancies between information elicited from the defendant and that in the referral documents, suggested his responses may be of questionable validity.

#### FINDINGS AND CONCLUSIONS

There are no signs of psychosis or impaired mental functioning on mental status examination.

The minor was on probation for robbery at the time of his present arrest. He had been released from camp about 11 months prior to the instant offense. He had been a member of a criminal street gang since 14 years of age. His juvenile record indicates a pattern of criminal behavior, starting at age 14, to the time of the instant offense. He had been ordered to CCP for two prior offenses. Performance under probation supervision was described as marginal to unsatisfactory, and he continued to have adverse contact with law enforcement, and continued to participate in gang activity. In the present offense, the investigating officer stated that the minor "had not displayed any remorse." According to the Probation Officer's Fitness Report evaluation: "Criminal behavior has continued to escalate in seriousness. (Defendant) does not have any respect for authority and/or adults, and rehabilitative efforts, CCP, and HOP have been ineffective."

#### DIAGNOSIS (PER DSM-III-R CRITERIA)

Axis I: 1) 312.20 Conduct disorder, group type  
Severity: severe, with strong antisocial traits  
2) 305.20 Cannabis abuse, in incarceration remission

Axis II: Developing antisocial personality disorder

Axis III: No contributing Axis III diagnosis

#### RECOMMENDATIONS

At the present time, the minor states that he is "going to stop gangbanging because of the trouble you get into with people you know." He states that he hopes that he can continue school while incarcerated at CYA, and then continue with college after he is released. He said that he hopes to become a lawyer or a probation officer "because it's easy money."

In summary, although the minor's past history is inconsistent with interest in educational or vocational pursuits, he may, at this time, benefit from education and vocational programs at the Youth Authority, as well as avoiding the negative influence of older, hardcore criminals in an alternate facility at this juncture.

WHITE, John

MA400

SRCC

PSYCHIATRIC EVALUATION

Date Dictated: December 28, 1993

Date Typed: December 28, 1993

Dictated by: Harold H. Kates  
Harold H. Kates, M.D., Staff Psychiatrist  
Diplomate, American Board of Psychiatry & Neurology

Reviewed by: Sharon Rose Blosl  
Sharon Rose Blosl, LCSW,  
Supervising Casework Specialist II

(562) 868-9979

5906t

WHITE, John

MM/00

SRCC

PSYCHIATRIC EVALUATION

STATE OF CALIFORNIA  
DEPARTMENT OF THE YOUTH AUTHORITY  
SUBSTANCE ABUSE PROFILE  
YA 1.626 (3/88)

Ward Name: WHITE JOHN LEE  
(last name, first, middle)

YA # 1-2-3-4-5-6-7  
26-30

INSTRUCTIONS: See separate instructions for a detailed guideline on how to complete this form. When this form is completed at a clinic, attach it to the Clinic Summary, immediately following the Social History or the Psychological/Psychiatric Report.

PART I Substance Use Consequences and History

1. Legal Consequences of Substance Use

Enter the number of arrests that were related, either directly or indirectly, to substance use. Total arrests, then multiply.

- 31 - 32 ☒ Crimes Against Persons  
33 - 34 ☒ Property Crimes  
35 - 36 ☒ Dealing Drugs  
37 - 38 ☒ Possession or Under the Influence  
39 - 40 ☒ Driving / Traffic

41 - 42 1 Total "Use" Related Arrests x 3 = POINT TOTAL 3

2. Relationship of Substance Use to Present YA

Commitment Enter an "X" by the item that corresponds to the present YA commitment.

- 43 ☐ Directly Related: part of present commitment offense . . . (10)  
44 ☐ Indirectly Related: contributing element to the present commitment offense, (e.g., intoxicated during a crime, crime to support drug dependency, etc.) . . . (5)  
45 ☒ Unrelated . . . (0)

3. Substance(s) Used

Enter a "3" for the primary/preferred drug (if any), used at least 3 months. Only one drug may be marked with a "3". If the ward has more than one primary/preferred drug, enter a "3" for the higher weighted drug. Enter a "1" for any substance used on a more than experimental basis (at least 5 times). Multiply the numbers entered times the drug weights, then total.

- |    |  | weights          |
|----|--|------------------|
| 46 | <input type="checkbox"/> Opiates (heroin, morphine, . . .)     | x (3) =          |
| 47 | <input type="checkbox"/> Cocaine / CRACK . . .                 | x (3) =          |
| 48 | <input type="checkbox"/> PCP . . .                             | x (3) =          |
| 49 | <input type="checkbox"/> Designer Drugs . . .                  | x (2) =          |
| 50 | <input type="checkbox"/> Hallucinogens . . .                   | x (2) =          |
| 51 | <input checked="" type="checkbox"/> Marijuana . . .            | x (2) = <u>4</u> |
| 52 | <input type="checkbox"/> Downers / Depressants . . .           | x (1) =          |
| 53 | <input checked="" type="checkbox"/> Alcohol . . .              | x (1) =          |
| 54 | <input type="checkbox"/> Uppers / Stimulants . . .             | x (1) = <u>7</u> |
| 55 | <input type="checkbox"/> Inhalants (volatile substances) . . . | x (1) =          |
| 56 | <input type="checkbox"/> None . . .                            | x (0) =          |

POINT TOTAL 10

4. Other Consequences of Substance Use

Rate the severity of problems related to substance use in each area.

Enter a "0" for no significant problem, a "1" for minor problems, a "3" for moderate problems, or a "5" for major problems. Total scores.

- 57 1 Medical problems (illness, withdrawal symptoms, overdoses, memory loss, etc.)  
58 3 Social problems (fight/violence, family problems, etc.)  
59 0 Employment problems (absent, poor performance, fired, etc.)  
60 3 School problems (suspended, kicked out, etc.)

POINT TOTAL 4

5. Duration of Use

Enter an "X" by the longest duration.

- 61 ☐ 4 or more years . . . (5)  
62 ☐ 2 - 4 years . . . (3)  
63 ☒ 1 - 2 years . . . (4)  
64 ☐ 6 - 12 months . . . (2)  
65 ☐ Less than 6 months . . . (1)  
66 ☐ No use . . . (0)

6. Frequency of Use

Enter the frequency for the highest scoring drug.

- 67 ☐ Frequent binges . . . (5)  
68 ☒ Daily . . . (5)  
69 ☐ 5 - 6 times / week . . . (3)  
70 ☐ 3 - 4 times / week . . . (2)  
71 ☐ 1 - 2 times / week or less . . . (1)  
72 ☐ No use . . . (0)

7. Circumstances of Substance Use

Enter an "X" by the typical circumstances of drug use.

- 73 ☐ Frequently alone . . . (5)  
74 ☒ Occasionally alone . . . (3)  
75 ☐ Seldom alone . . . (1)  
76 ☐ Rarely alone . . . (1)  
77 ☐ Does not use . . . (0)

TOTAL SCORE . . . . . 033  
Circle the points earned for all seven items, then total.

78 - 80

PART II Recommended Program

Enter an "X" next to the indicated program.

- Formalized Substance Abuse Program . . . . . 43 and above 81  
Regular Program (with substance abuse counseling in the context of regular program goal setting) . . . . . 11 - 42 X 82  
Regular Program (no special substance abuse counseling indicated) . . . . . 0 - 10 83  
Override recommendation for indicated programming (check yes or no) . . . . . YES (1) NO X (2) 84

If yes, indicate recommendation: Formal Program (1)  
Regular (w/S.A. counseling) (2) Regular (no special S.A. counseling) (3) 85

Comments (Justification for override, or unusual aspects of the ward's substance use history that should be taken into consideration in treatment decision making. Attach another piece of paper if needed.):

Date Completed: (mm-dd-yy) 11-21-93 86 - 91

Completed By (print): DIANE LUBACK Location Code: 0124 92 - 94

M A 4 0 0

YA or M #  
(1-5)

W H I T E

J L

Offender's Last Name,  
(6-19)

First Initial

Years (rounded) of confinement time or maximum confinement time for M #'s (from court order):

One to three 0  
Four to six 1  
Seven or more 3

1 (20)

Number of incidents involving assault or weapons in non-YA placements:

None 0  
One 1  
Two or more 2

0 (21)

Age at first sustained petition/conviction:

Fifteen or under 1  
Sixteen or older 0

1 (22)

Number of documented runaways/escapes from home, group or foster home, non-secure county ranches/camps:

None 0  
One 1  
Two or more 2

0 (23)

Number of documented escapes, conspiracies to escape from prior secure facilities or any YA facility (including camps) during this or previous stays:

None 0  
One 1  
Two or more 3

0 (24)

Gang activity or identification/association as indicated on Gang Information Sheet (Form YA 8.430):

None 0  
Yes 1

1 (25)

Number of YA Level "B" DDMS true findings:

None 0  
One 3  
Two or more 5

0 (26)

Number of YA Level "B" DDMS true findings involving assault, battery (including sexual attack), or weapons:

None 0  
One 1  
Two or more 2

0 (27)

SUBTOTAL A

(Add scores from items 1 - 8):

0 3 (28-29)

For reclassification only: One point for every two consecutive months offender has participated in program with no serious problems reported (offenders earn one point for each such month in camp):

0 0 (30-31)

SUBTOTAL B

(Subtract points from item 9 from Subtotal A) - if 9 is greater than Subtotal A, enter "00":

0 3 (32-33)

Offender is a Board Category I or II; has 3 or more escapes and/or runaways or any history of arson or sex offenses:

NOTE: A "yes" on item 10 permanently excludes offender from camp consideration.

No A  
Yes B

A (34)

Offender meets one or more additional camp exclusionary criteria as defined in the I&C Program Catalogue:

No A  
Yes B

A (35)

TOTAL Add five points to SUBTOTAL B if "yes" was indicated on either item 10 or 11 and enter total here:

0 3 (36-37)

NOTE: If "yes" was indicated on both, add only a total of five points.

INDICATED PROGRAMMING

Limited 0 - 4 A  
Moderate 5 - 10 B  
Medium 11 - HI C

A (38)

Custody/Security Override If reviewer believes that total score does not accurately match Custody/Security Level appropriate for offender, indicate appropriate level below. What Custody/Security Level is appropriate? Does offender need "Close" Custody/Security? If so, fully document on reverse.

Limited A  
Moderate B  
Medium C  
Close D

B (39)

Diane Lubch

Prepared by

SRCC

Facility

Approval

03-02-94  
Mo. Day Yr  
(40-45)

Reason completed:

Clinic 1  
Annual 2  
Transfer 3  
Parole Violator/ 4  
Recommendations

1 (46)



WHITE JOHN  
DATE: 5-27-77  
MA 400  
SRCC

WARD'S NAME: \_\_\_\_\_ YA NUMBER: \_\_\_\_\_

DATE OF BIRTH: \_\_\_\_\_ AGE: \_\_\_\_\_ DATE OF MOST RECENT ADMISSION: 11-3-93

### HEALTH/MEDICAL INFORMATION

**VISION** ☒ Standard ☐ Wears Glasses ☐ Needs Glasses  
**HEARING** ☒ Standard ☐ Wears Hearing Aid ☐ Needs Hearing Aid  
**MEDICATION** ☒ None ☐ Yes - No Need For Concern ☐ Yes - May Affect Behavior

☐ Health problems or physical handicaps which may affect program decisions have been identified. Consultation with medical staff is advised.

Problem identified: \_\_\_\_\_

Medical section completed by: (Initial) NGV S 1977

### LANGUAGE SURVEY

1. First language learned: English ☒ Spanish ☐ Other \_\_\_\_\_  
2. Language used most at home: English ☒ Spanish ☐ Other \_\_\_\_\_  
3. Language used with parents: English ☒ Spanish ☐ Other \_\_\_\_\_  
4. Language used most by adults at home: English ☒ Spanish ☐ Other \_\_\_\_\_  
\* If any answers other than English, administer Language Assessment Scale to determine English proficiency.

#### Speech and Language Screening Test

☐ Passed  
☐ Failed - See education file for results of full evaluation  
☒ Screening test not administered

### EDUCATIONAL BACKGROUND (As reported by ward. Verify when transcripts are received.)

LAST SCHOOL ATTENDED: Doesn't know the Name CITY: Los Angeles GRADE: 10

TYPE OF SCHOOL LAST ATTENDED: \_\_\_\_\_ HAS PREVIOUSLY BEEN PLACED IN SPECIAL EDUCATION. ☐

REGULAR HIGH OR JUNIOR HIGH ☐ ADULT OR COMMUNITY SCHOOL ☐ COM./JR. COLLEGE ☐  
CONTINUATION SCHOOL ☒ TRADE OR VOCATIONAL SCHOOL ☐ COURT SCHOOL ☐

HOW LONG SINCE LAST ATTENDED: \_\_\_\_\_ yrs. 2 mos. (If can't say how long, give age or date last attended.)

WAS ATTENDING SCHOOL WHEN ARRESTED OR VIOLATED: ☐ WAS NOT ATTENDING SCHOOL: ☒

#### REASON NOT ATTENDING:

PASSED GED ☐ GRADUATED ☐ SUMMER VACATION ☐ EXPELLED OR SUSPENDED ☒ QUIT OR DROPPED OUT ☐

### OBSERVATIONS DURING TESTING

☐ THE WARD'S BEHAVIOR DURING TESTING WAS APPROPRIATE

#### OBSERVATIONS APPLY TO:

THE FOLLOWING BEHAVIORS WERE OBSERVED AND SHOULD BE CONSIDERED IN ASSESSING THE VALIDITY OF THE TEST RESULTS.

☒ ACADEMIC TESTING  
☒ VOCATIONAL TESTING

☐ Random marking of the academic tests  
☐ Random marking of the vocational assessments  
☐ Did not make an effort  
☐ Disruptive behavior

☐ Had difficulty concentrating on tasks  
☐ Did not pay attention (e.g. daydreaming)  
☐ Frequently complained about being tested  
☐ Gave up easily

WARD'S PHYSICAL CONDITION  
306 (7/82)

Check one:

☒ This person ~~does not~~ have a physical condition which limits capacity to participate in correctional program.

☒ This person has a physical condition which limits capacity to participate in a correctional program

WRITE THE LIMITING CONDITION AND IMPACT IT HAS ON PROGRAM PLACEMENT.

*This person has asthma*

NAME H. T. Wilson	TITLE CDO 1WA	DATE NOV 5 1993
----------------------	------------------	--------------------

DENTAL STATUS REPORT

KIND OF ONGOING DENTAL CARE DOES THIS WARD REQUIRE, IF ANY?

TREATMENT COMPLETED ( )

TREATMENT IN PROGRESS:

- ☐ May be completed at another institution
- ☐ Complete before camp
- ☐ Will be on dental hold approximately \_\_\_\_\_ days.
- ☐ Will need to return for treatment at later date.

TREATMENT INDICATED BUT NOT PROVIDED DUE TO:

- ☐ Patient ( ) Patient unavailable for RX
- ☐ Medical complications ( ) Low treatment priority

NAME H.T. Wilson	TITLE WHITE JOHN CDO [REDACTED]	DATE NOV 08 1993
WARD'S NUMBER	WARD'S PHYSICAL CONC	

REFERRAL DOCUMENT

VERBZA - Y. A. 1.411 (8-78)

Hon. Robert Thomas (u)  
FOR Y.A. USE ONLY

Please type. (IF ADDITIONAL SPACE IS REQUIRED ATTACH SEPARATE SHEET.)

NAME (LAST - FIRST - MIDDLE) <b>White, John Lee</b>		OTHER NAME(S) (ALIASES) <b>Deko DKO</b>	BIRTHDATE [REDACTED]	YA NUMBER <b>MA400</b>
LAST ADDRESS (NUMBER - STREET - CITY - STATE) [REDACTED]		BIRTHPLACE <b>Los Angeles, Ca</b>	SEX <input checked="" type="checkbox"/> M <input type="checkbox"/> F	CII NUMBER <b>A10014785</b>
ETHNIC IDENTIFICATION <input type="checkbox"/> WHITE <input type="checkbox"/> SPANISH SPEAKING/ SURNAMED <input checked="" type="checkbox"/> BLACK <input type="checkbox"/> ASIAN <input type="checkbox"/> NATIVE AMERICAN <input type="checkbox"/> FILIPINO <input type="checkbox"/> OTHER		U.S. CITIZEN <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	COMMITMENT DATE <b>1-5-94</b>	
COURT (CHECK ONE) <input type="checkbox"/> JUVENILE <input type="checkbox"/> MUNICIPAL/ JUSTICE <input checked="" type="checkbox"/> COUNTY		COUNTY OF REFERRAL <b>Los Angeles</b>	COURT NUMBER <b>SA0143803</b>	
PERSON HAS COMMUNICABLE/CHRONIC DISEASE/PHYSICAL HANDICAP <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES (SUBMIT MEDICAL REPORTS) ( <b>Asthma</b> )		IS FEMALE PREGNANT? <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO. OF MONTHS	MARITAL STATUS <b>Single</b>	
SCHOOL LAST ATTENDED <b>CDC</b>	ADDRESS OF SCHOOL	GRADE <b>9th</b>	DATE LAST ATTENDED <b>6/92</b>	
FOR FURTHER INFORMATION FROM COUNTY, CONTACT (NAME): <b>C. Menniefree</b>			TELEPHONE <b>(213) 226-8223</b>	

FAMILY RELATIONSHIPS (INCLUDE SIGNIFICANT RELATIONSHIPS-SIBLINGS-CHILDREN-LEGAL GUARDIAN(S))				
RELATION	AGE	NAME (LAST - FIRST - MIDDLE)	ADDRESS (NUMBER-STREET-CITY-STATE-ZIP CODE)	TELEPHONE NUMBER
FATHER		<b>White John Sr</b>		
MOTHER		<b>Cain, Eunice</b>	<b>LA, CA 90011</b>	
SPOUSE				
SIBLINGS				
<input checked="" type="checkbox"/> Gmo		<b>Edwards, Jane</b>	<b>same as inmate</b>	[REDACTED]

CO-OFFENDERS (MOST RECENT OFFENSE)		
NAME (LAST - FIRST - MIDDLE)	AGE	DISPOSITION
<b>Walton, Michael</b>	<b>1-20-77</b>	<b>CYA 707.2 Discharged 12-29-93 D4798</b>
<b>[REDACTED] Melvin</b>		
<b>[REDACTED] Malcom</b>		

FOR YOUTH AUTHORITY USE ONLY

DATA PROCESSOR'S CODE		REFERRAL OFFENSE <b>PC 211/12022(a)(1) Robbery, 2nd°/Principal Armed With Firearm - <del>Shot</del> Gun</b>		TENTATIVE BOARD HEARING CATEGORY <b>RE</b>
DELIVER TO <input type="checkbox"/> NRCC <input checked="" type="checkbox"/> SRCC <input type="checkbox"/> VRCC <input type="checkbox"/> YTS <input type="checkbox"/> OTHER (SPECIFY)		REGISTRATION REQUIRED <input type="checkbox"/> DRUG <input type="checkbox"/> 11580 HAS <input type="checkbox"/> SEC 260 WC <input type="checkbox"/> ARSON		
STATUS <input type="checkbox"/> NEW COMMITMENT <input type="checkbox"/> ADDITIONAL COMMITMENT <input type="checkbox"/> RE-COMMITMENT <input type="checkbox"/> DIAGNOSTIC		ACTION <input checked="" type="checkbox"/> OTHER <b>0315/10/94</b> <input type="checkbox"/> ACCEPT <input type="checkbox"/> REJECT		
PAROLE OFFICE TO COMPLETE INITIAL HOME VISIT REPORT <b>CDC III / Watt</b>		NAME OF CLASSIFICATION SPECIALIST <b>Patricia A. Monahan (u)</b>		DATE OF ACTION <b>1-18-94</b>
PROTESTANT		RECEPTION CENTER AND CLINIC USE ONLY <b>John [REDACTED]</b>		
DATE EXP. BY AGE	DATE EXP. BY OFFENSE	AVAILABLE CONFINEMENT TIME	PAROLE REVOLATION <input type="checkbox"/> YES <input type="checkbox"/> NO	
IDENTIFYING MARKS <b>LT H1 small scar (2nd°)</b>				
HEIGHT <b>5'4</b>	WEIGHT <b>124</b>	EYES <b>BRN</b>	HAIR <b>BLK</b>	COMPLEXION <b>MEDIUM</b>
DATE RECEIVED <b>1-18-94</b>				ALIAS I.E. NUMBER <b>VA</b>



STATE OF CALIFORNIA  
DEPARTMENT OF THE YOUTH AUTHORITY  
SUBSTANCE ABUSE PROFILE  
YA 1.626 (3/88)

Ward Name: WHITE JOHN LEE  
(last name, first, middle)

YA # 184787  
26-30

INSTRUCTIONS: See separate instructions for a detailed guideline on how to complete this form. When this form is completed at a clinic, attach it to the Clinic Summary, immediately following the Social History or the Psychological/Psychiatric Report.

**PART I. Substance Use Consequences and History**

**1. Legal Consequences of Substance Use**

Enter the number of arrests that were related, either directly or indirectly, to substance use. Total arrests, then multiply.

- 31 - 32 ☒ Crimes Against Persons  
33 - 34 ☒ Property Crimes  
35 - 36 ☒ Dealing Drugs  
37 - 38 ☒ Possession or Under the Influence  
39 - 40 ☒ Driving / Traffic

41 - 42 0 Total "Use" Related Arrests x 3 = POINT TOTAL 0

**2. Relationship of Substance Use to Present YA Commitment**

Enter an "x" by the item that corresponds to the present YA commitment.

- 43 ☐ Directly Related: part of present commitment offense . . . (10)  
44 ☐ Indirectly Related: contributing element to the present commitment offense, (e.g., intoxicated during a crime, crime to support drug dependency, etc.) . . . (5)  
45 ☒ Unrelated . . . (0)

**3. Substance(s) Used**

Enter a "3" for the primary/preferred drug (if any), used at least 3 months. Only one drug may be marked with a "3". If the ward has more than one primary/preferred drug, enter a "3" for the higher weighted drug. Enter a "1" for any substance used on a more than experimental basis (at least 5 times). Multiply the numbers entered times the drug weights, then total.

- 46 ☐ Opiums (heroin, morphine, . . .) . . . x (3) =       
47 ☐ Cocaine / CRACK . . . x (3) =       
48 ☐ PCP . . . x (3) =       
49 ☐ Designer Drugs . . . x (2) =       
50 ☐ Hallucinogens . . . x (2) =       
51 ☒ Marijuana . . . x (2) = 4  
52 ☐ Downers / Depressants . . . x (1) =       
53 ☒ Alcohol . . . x (1) = 1  
54 ☐ Uppers / Stimulants . . . x (1) = 7  
55 ☐ Inhalants (volatile substances) . . . x (1) =       
56 ☐ None . . . x (0) =

POINT TOTAL 10

**4. Other Consequences of Substance Use**

Rate the severity of problems related to substance use in each area.

Enter a "0" for no significant problem, a "1" for minor problems, a "2" for moderate problems, or a "3" for major problems. Total scores.

- 57 1 Medical problems (illness, withdrawal symptoms, overdoses, memory loss, etc.)  
58 3 Social problems (fights/violence, family problems, etc.)  
59 0 Employment problems (absent, poor performance, fired, etc.)  
60 3 School problems (suspended, kicked out, etc.)

POINT TOTAL 6

**5. Duration of Use**

Enter an "x" by the longest duration.

- 61 ☐ 4 or more years . . . (8)  
62 ☐ 2 - 4 years . . . (6)  
63 ☒ 1 - 2 years . . . (4)  
64 ☐ 6 - 12 months . . . (2)  
65 ☐ Less than 6 months . . . (1)  
66 ☐ No use . . . (0)

**6. Frequency of Use**

Enter the frequency for the highest scoring drug.

- 67 ☐ Frequent binges . . . (8)  
68 ☒ Daily . . . (6)  
69 ☐ 5 - 6 times / week . . . (6)  
70 ☐ 3 - 4 times / week . . . (3)  
71 ☐ 1 - 2 times / week or less . . . (1)  
72 ☐ No use . . . (0)

**7. Circumstances of Substance Use**

Enter an "x" by the typical circumstances of drug use.

- 73 ☐ Frequently alone . . . (8)  
74 ☒ Occasionally alone . . . (5)  
75 ☐ Seldom alone . . . (3)  
76 ☐ Rarely alone . . . (1)  
77 ☐ Does not use . . . (0)

TOTAL SCORE . . . 033  
Circle the points earned for all seven items, then total.

78 - 80

**PART II. Recommended Program**

Enter an "x" next to the indicated program.

- Formalized Substance Abuse Program . . . 43 and above      81  
Regular Program (with substance abuse counseling in the context of regular program goal setting) . . . 11 - 42 ☒ 82  
Regular Program (no special substance abuse counseling indicated) . . . 0 - 10      83  
Override recommendation for indicated programming (check yes or no) . . . YES      (1) NO ☒ (2) 84

If yes, indicate recommendation: Formal Program      (1)  
Regular (w/SA counseling)      (2) Regular (no special S.A. counseling)      (3) 85

Comments (Justification for override, or unusual aspects of the ward's substance use history that should be taken into consideration in treatment decision making. Attach another piece of paper if needed.):

Date Completed: (mm-dd-yy) 11-23-91 86 - 91

Completed By (print): DIANE LUBACK Location Code: 0112 92 - 94

M A 4 0 0

YA or M #  
(1-5)

W H I T E J L

Offender's Last Name, First Initial  
(6-19)

4. Years (rounded) of confinement time or maximum confinement time for M #'s (from court order):

One to three 0

Four to six 1

Seven or more 3

1 (20)

5. Number of incidents involving assault or weapons in non-YA placements:

None 0

One 1

Two or more 2

0 (21)

6. Age at first sustained petition/conviction:

Fifteen or under 1

Sixteen or older 0

1 (22)

7. Number of documented runaways/escapes from home, group or foster home, non-secure county ranches/camps:

None 0

One 1

Two or more 2

0 (23)

8. Number of documented escapes, conspiracies to escape from prior secure facilities or any YA facility (including camps) during this or previous stays:

None 0

One 1

Two or more 3

0 (24)

9. Gang activity or identification/association as indicated on Gang Information Sheet (Form YA 8.430):

None 0

Yes 1

1 (25)

10. Number of YA Level "B" DDMS true findings:

None 0

One 3

Two or more 5

0 (26)

11. Number of YA Level "B" DDMS true findings involving assault, battery (including sexual attack), or weapons:

None 0

One 1

Two or more 2

0 (27)

**SUBTOTAL A**

(Add scores from items 1 - 8):

0 3 (28-29)

9. For reclassification only: One point for every two consecutive months offender has participated in program with no serious problems reported (offenders earn one point for each such month in camp):

0 0 (30-31)

**SUBTOTAL B**

(Subtract points from item 9 from Subtotal A) - if 9 is greater than Subtotal A, enter "00":

0 3 (32-33)

10. Offender is a Board Category I or II; has 3 or more escapes and/or runaways or any history of arson or sex offenses:

NOTE: A "yes" on item 10 permanently excludes offender from camp consideration.

No A

Yes B

A (34)

11. Offender meets one or more additional camp exclusionary criteria as defined in the I&C Program Catalogue:

No A

Yes B

A (35)

**TOTAL** Add five points to SUBTOTAL B if "yes" was indicated on either item 10 or 11 and enter total here:

0 3 (36-37)

NOTE: If "yes" was indicated on both, add only a total of five points.

**INDICATED PROGRAMMING**

Limited 0 - 4

Moderate 5 - 10

Medium 11 - HI

A

B

C

A (38)

**Custody/Security Override** If reviewer believes that total score does not accurately match Custody/Security Level appropriate for offender, indicate appropriate level below. What Custody/Security Level is appropriate? Does offender need "Close" Custody/Security? If so, fully document on reverse.

Limited

Moderate

Medium

Close

A

B

C

D

B (39)

*Diane Lubeck*

Prepared by

SRCC

Facility

Approval

03-02-94

Mo, Day Yr

(40-45)

Reason completed:

Clinic

Annual

Transfer

Parole Violator/

Recommitments

1

2

3

4

1 (46)

WHITE JOHN

MA 400

SRCC

WARD'S NAME: \_\_\_\_\_

YA NUMBER: \_\_\_\_\_

DATE OF BIRTH: \_\_\_\_\_ AGE: \_\_\_\_\_ DATE OF MOST RECENT ADMISSION: 11-3-93

### HEALTH/MEDICAL INFORMATION

**VISION** ☒ Standard  
☐ Wears Glasses  
☐ Needs Glasses

**HEARING** ☐ Standard  
☐ Wears Hearing Aid  
☐ Needs Hearing Aid

**MEDICATION** ☐ None  
☐ Yes - No Need  
For Concern  
☐ Yes - May Affect  
Behavior

☐ Health problems or physical handicaps which may affect program decisions have been identified.  
Consultation with medical staff is advised.

Problem identified: \_\_\_\_\_

Medical section completed by: (Initial) NOV 5 1993

### LANGUAGE SURVEY

1. First language learned: English ☒ Spanish ☐ Other \_\_\_\_\_  
2. Language used most at home: English ☒ Spanish ☐ Other \_\_\_\_\_  
3. Language used with parents: English ☒ Spanish ☐ Other \_\_\_\_\_  
4. Language used most by adults at home: English ☒ Spanish ☐ Other \_\_\_\_\_  
\* If any answers other than English, administer Language Assessment Scale to determine English proficiency.

### Speech and Language Screening Test

- ☐ Passed  
☐ Failed - See education file for results  
of full evaluation  
☒ Screening test not administered

### EDUCATIONAL BACKGROUND (As reported by ward. Verify when transcripts are received.)

LAST SCHOOL ATTENDED: Doesn't know the Name CITY: Los Angeles GRADE: 10

TYPE OF SCHOOL LAST ATTENDED:

HAS PREVIOUSLY BEEN PLACED IN SPECIAL EDUCATION. ☐

REGULAR HIGH OR  
JUNIOR HIGH  
CONTINUATION  
SCHOOL ☐

ADULT OR COMMUNITY  
SCHOOL  
TRADE OR VOCATIONAL  
SCHOOL ☐

COM./JR. COLLEGE ☐  
COURT SCHOOL ☐

HOW LONG SINCE LAST ATTENDED: \_\_\_\_\_ yrs. 2 mos. (If can't say how long, give age or date last attended. \_\_\_\_\_)

WAS ATTENDING SCHOOL WHEN ARRESTED OR VIOLATED: ☐ WAS NOT ATTENDING SCHOOL: ☒

REASON NOT ATTENDING:

PASSED GED

☐

GRADUATED

☐

SUMMER  
VACATION

☐

EXPELLED OR  
SUSPENDED

☒

QUIT OR  
DROPPED OUT

☐

### OBSERVATIONS DURING TESTING

OBSERVATIONS APPLY TO:

☐ THE WARD'S BEHAVIOR DURING TESTING WAS APPROPRIATE

THE FOLLOWING BEHAVIORS WERE OBSERVED AND SHOULD BE  
CONSIDERED IN ASSESSING THE VALIDITY OF THE TEST RESULTS.

☒ ACADEMIC TESTING

☒ VOCATIONAL TESTING

- ☐ Random marking of the academic tests  
☐ Random marking of the vocational assessments  
☐ Did not make an effort  
☐ Disruptive behavior

- ☐ Had difficulty concentrating on tasks  
☐ Did not pay attention (e.g. daydreaming)  
☐ Frequently complained about being tested  
☐ Gave up easily

INDIVIDUAL TEST and OBJECTIVES PERFORMANCE REPORT  
 REPORT DATE: 15 Nov 93

EXAMINEE NAME: ID: WHITE J DE4787 INSTITUTION: S.R.C.D.  
 EXAMINER: YANCEY SITE: NORWALK  
 GROUP: BACC SPECIAL CODES: .....

CONTENT AREA	NUMBER CORRECT	SCALE SCORE	SEM	GRADE EQUIV	XILE	II PERCENTILE GROUP:
TEST						II Adult Basic Education
Reading - D/5 - 08 Nov 93						II Predicted* GED
Vocabulary	14	720	15	5.9	43	II GED Range Score
Comprehension	24	740	6	7.1	42	II
Total		730		6.4	43	II
Mathematics - E/5 - 08 Nov 93						II Writing: 35-45
Computation	38	720	13	5.0	16	II Math:
Concepts/App.	29	682	14	4.2	22	II Science: 39-49
Total		701		4.7	18	II Reading: 38-48
Language - D/5 - 08 Nov 93						II Soc-Stud: 37-47
Mechanics	7	628	32	2.5	12	II
Expression	25	701	13	5.3	46	II Predicted
Total		655		3.8	24	II Average:
Total Battery		699		4.5	27	II
Spelling - D/5 - 08 Nov 93						II *60% chance of scoring
	17	719		5.5	35	II within this range

OBJECTIVES PERFORMANCE

OBJECTIVE	# CORRECT	PERCENTILE	OBJECTIVE	# CORRECT	PERCENTILE
Reading Vocabulary			Math Concepts & Applications		
Synonyms	6/7	+	Numeration	5/5	-
Antonyms	1/4	+	Number Sentences	4/5	-
Homonyms	1/4	+	Number Theory	4/5	-
Idioms	3/4	+	Problem Solving	5/11	-
Words in Context	3/11		Measurement	3/5	-
Reading Comprehension			Geometry	2/4	-
Passage Details	4/9		Language Mechanics		
Character Analysis	3/4	+	Pronoun I, Nouns, Adject.	2/4	-
Central Thought	4/9		Beginning words, Titles	1/4	-
Interpreting Events	6/6	+	Period, Question, Excl. Pt	3/4	-
Writing Techniques	5/7		Comma, Colon, Semi, Quot.	0/10	-
Math Computation			Proofreading	1/8	-
Add Whole Numbers	8/8	+	Language Expression		
Add Decimals	3/4	+	Pronouns	3/4	+
Add Fractions	0/4		Verbs	5/5	+
Subtract Whole Numbers	8/8	+	Adjectives, Adverbs	4/5	+
Subtract Decimals	4/4	+	Sentence Recognition	6/6	+
Subtract Fractions	2/4		Sentence Combining	7/9	+
Multiply Whole Numbers	6/8	+	Topic Sentence	3/10	-
Divide Whole Numbers	5/8		Sentence Sequence	1/6	-
			Spelling		
			Vowel Sounds	7/12	-
			Consonant Sounds	5/5	-
			Structural units	5/11	-



### A. FURTHER RESEARCH

.....

1. SAGESTATE
2. MEDRI
3. PLUMBER

[illegible]

	250	300	400	500	600	700	750
Case							
Altitude	BELOW		LOW	HIGH	ABOVE		
	AVERAGE		AVERAGE	AVERAGE	AVERAGE		

1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 26

REASON FOR LEAVING:

WARD'S PHYSICAL CONDITION  
306 (7/82)

Check one:

☐ This person ~~does not~~ have a physical condition which limits capacity to participate in correctional program.

☒ This person has a physical condition which limits capacity to participate in a correctional program.

Describe the limiting condition and impact it has on program placement.

*This person has asthma*

Name <i>Howie M.D.</i>	Title <i>CNO</i>	Date <i>NOV 5 1993</i>
---------------------------	---------------------	---------------------------

DENTAL STATUS REPORT

KIND OF ONGOING DENTAL CARE DOES THIS WARD REQUIRE, IF ANY?

TREATMENT COMPLETED ( )

TREATMENT IN PROGRESS:

- ☐ May be completed at another institution
- ☐ Complete before camp
- ☐ Will be on dental hold approximately \_\_\_\_\_ days.
- ☐ Will need to return for treatment at later date.

TREATMENT INDICATED BUT NOT PROVIDED DUE TO:

- ☐ Patient ( ) Patient unavailable for RX
- ☐ Medical complications ( ) Low treatment priority

Name <i>H.T. Wilson</i>	Title <i>WHITE JOHN</i> <i>CDO 04787</i> <i>5-27-77</i>	Date <i>NOV 08 1993</i>
Room Number	Ward Number <i>SR</i>	Ward's Physical Condition

# EXHIBIT 67

# EXHIBIT 67

1 INST

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

FILED IN OPEN COURT

JUN 09 2000

2 4:10 PM 20

SHIRLEY B. PARRAGUIRRE, CLERK

BY

CAROLE D'ALOIA

DEPUTY

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DONTÉ JOHNSON,

Defendant.

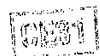
Case No. C153154  
Dept. No. V  
Docket H

## INSTRUCTIONS TO THE JURY (INSTRUCTION NO. 1)

## MEMBERS OF THE JURY:

It is now my duty as judge to instruct you in the law that applies to this case. It is your duty as jurors to follow these instructions and to apply the rules of law to the facts as you find them from the evidence.

You must not be concerned with the wisdom of any rule of law stated in these instructions. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your oath to base a verdict upon any other view of the law than that given in the instructions of the Court.





INSTRUCTION NO. 2

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

The order in which the instructions are given has no significance as to their relative importance.

An Indictment is but a formal method of accusing a person of a crime and is not of itself any evidence of his guilt.

In this case, it is charged in an Indictment that on or about the 14th day of August, 1998, the Defendant committed the offenses as follows:

COUNT I - BURGLARY WHILE IN POSSESSION OF A FIREARM

did, together with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH, then and there wilfully, unlawfully, and feloniously enter, while in possession of a firearm, with intent to commit larceny and/or robbery and/or murder, that certain building occupied by MATHEW MOWEN and TRACEY GORRINGE and JEFFREY BIDDLE, located at 4825 Terra Linda Avenue, Las Vegas, Clark County, Nevada; the Defendant aiding or abetting TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH by counsel and encouragement and by entering into a course of conduct whereby the said Defendant arrived at 4825 Terra Linda Avenue with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH; the said Defendant entering the residence with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH while Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH were in possession of a firearm or firearms; Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH binding MATHEW MOWEN and TRACEY GORRINGE and JEFFREY BIDDLE and PETER TALAMENTEZ and placing them on the floor of the residence; then Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH shooting at and into the body of the said MATHEW MOWEN and TRACEY GORRINGE and JEFFREY BIDDLE and PETER TALAMENTEZ with a firearm.

COUNT II - CONSPIRACY TO COMMIT ROBBERY AND/OR KIDNAPPING AND/OR MURDER

did then and there meet with TERRELL COCHISE YOUNG, SIKIA LAFAYETTE SMITH and/or another unknown individual, and between themselves, and each of them with the other, wilfully, unlawfully, and feloniously conspire to commit a crime, to wit: robbery

1 and/or kidnaping and/or murder, and in furtherance of said conspiracy, Defendant did commit  
2 the acts as alleged in Counts III thru XIV of this indictment, together with TERRELL COCHISE  
3 YOUNG and/or SIKIA LAFAYETTE SMITH, which acts are incorporated herein by this  
4 reference as though fully set forth.

5 COUNT III - ROBBERY WITH USE OF A DEADLY WEAPON

6 did, together with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH,  
7 then and there wilfully, unlawfully, and feloniously, take personal property, to wit: lawful money  
8 of the United States, from the person of JEFFREY BIDDLE, or in his presence or company, by  
9 means of force or violence, or fear of injury to, and without the consent and against the will of  
10 the said JEFFREY BIDDLE, said Defendant using a deadly weapon, to wit: a firearm, during  
11 the commission of said crime; the Defendant aiding or abetting TERRELL COCHISE YOUNG  
12 and/or SIKIA LAFAYETTE SMITH by counsel and encouragement and by entering into a  
13 course of conduct whereby the said Defendant arrived at 4825 Terra Linda Avenue with  
14 TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH; the said Defendant  
15 entering the residence with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE  
16 SMITH while Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE  
17 SMITH were in possession of a firearm or firearms; Defendant and/or TERRELL COCHISE  
18 YOUNG and/or SIKIA LAFAYETTE SMITH binding the said JEFFREY BIDDLE and placing  
19 him on the floor of the residence; then Defendant and/or TERRELL COCHISE YOUNG and/or  
20 SIKIA LAFAYETTE SMITH taking lawful money of the United States from the person of  
21 JEFFREY BIDDLE and/or other persons in his presence or company; then Defendant and/or  
22 TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH shooting at and into the  
23 body of the said JEFFREY BIDDLE with a firearm.

24 COUNT IV - ROBBERY WITH USE OF A DEADLY WEAPON

25 did, together with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH,  
26 then and there wilfully, unlawfully, and feloniously, take personal property, to wit: lawful money  
27 of the United States, from the person of TRACEY GORRINGE, or in his presence or company,  
28 by means of force or violence, or fear of injury to, and without the consent and against the will

1 of the said TRACEY GORRINGE, said Defendant using a deadly weapon, to wit: a firearm,  
2 during the commission of said crime; the Defendant aiding or abetting TERRELL COCHISE  
3 YOUNG and/or SIKIA LAFAYETTE SMITH by counsel and encouragement and by entering  
4 into a course of conduct whereby the said Defendant arrived at 4825 Terra Linda Avenue with  
5 TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH; the said Defendant  
6 entering the residence with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE  
7 SMITH while Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE  
8 SMITH were in possession of a firearm or firearms; Defendant and/or TERRELL COCHISE  
9 YOUNG and/or SIKIA LAFAYETTE SMITH binding the said TRACEY GORRINGE and  
10 placing him on the floor of the residence; then Defendant and/or TERRELL COCHISE YOUNG  
11 and/or SIKIA LAFAYETTE SMITH taking lawful money of the United States from the person  
12 of TRACEY GORRINGE and/or other persons in his presence or company; then Defendant  
13 and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH shooting at and into  
14 the body of the said TRACEY GORRINGE with a firearm.

15 COUNT V - ROBBERY WITH USE OF A DEADLY WEAPON

16 did, together with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH  
17 then and there wilfully, unlawfully, and feloniously, take personal property, to wit: lawful money  
18 of the United States, from the person of MATHEW MOWEN, or in his presence or company,  
19 by means of force or violence, or fear of injury to, and without the consent and against the will  
20 of the said MATHEW MOWEN, said Defendant using a deadly weapon, to wit: a firearm,  
21 during the commission of said crime; the Defendant aiding or abetting TERRELL COCHISE  
22 YOUNG and/or SIKIA LAFAYETTE SMITH by counsel and encouragement and by entering  
23 into a course of conduct whereby the said Defendant arrived at 4825 Terra Linda Avenue with  
24 TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH; the said Defendant  
25 entering the residence with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE  
26 SMITH while Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE  
27 SMITH were in possession of a firearm or firearms; Defendant and/or TERRELL COCHISE  
28 YOUNG and/or SIKIA LAFAYETTE SMITH binding the said MATHEW MOWEN and

1 placing him on the floor of the residence; then Defendant and/or TERRELL COCHISE YOUNG  
2 and/or SIKIA LAFAYETTE SMITH taking lawful money of the United States from the person  
3 of MATHEW MOWEN and/or other persons in his presence or company; then Defendant and/or  
4 TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH shooting at and into the  
5 body of the said MATHEW MOWEN with a firearm.

6 COUNT VI - ROBBERY WITH USE OF A DEADLY WEAPON

7 did, together with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH  
8 then and there wilfully, unlawfully, and feloniously, take personal property, to wit: lawful money  
9 of the United States, from the person of PETER TALAMENTEZ, or in his presence or company,  
10 by means of force or violence, or fear of injury to, and without the consent and against the will  
11 of the said PETER TALAMENTEZ, said Defendant using a deadly weapon, to wit: a firearm,  
12 during the commission of said crime; the Defendant aiding or abetting TERRELL COCHISE  
13 YOUNG and/or SIKIA LAFAYETTE SMITH by counsel and encouragement and by entering  
14 into a course of conduct whereby the said Defendant arrived at 4825 Terra Linda Avenue with  
15 TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH; the said Defendant  
16 entering the residence with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE  
17 SMITH while Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE  
18 SMITH were in possession of a firearm or firearms; Defendant and/or TERRELL COCHISE  
19 YOUNG and/or SIKIA LAFAYETTE SMITH binding the said PETER TALAMENTEZ and  
20 placing him on the floor of the residence; then Defendant and/or TERRELL COCHISE YOUNG  
21 and/or SIKIA LAFAYETTE SMITH taking lawful money of the United States from the person  
22 of PETER TALAMENTEZ and/or other persons in his presence or company; then Defendant  
23 and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH shooting at and into  
24 the body of the said PETER TALAMENTEZ with a firearm.

25 COUNT VII - FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON

26 did, together with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH  
27 wilfully, unlawfully, feloniously, and without authority of law, seize, confine, inveigle, entice,  
28 decoy, abduct, conceal, kidnap, or carry away JEFFREY BIDDLE, a human being, with the

1 intent to hold or detain the said JEFFREY BIDDLE, against his will, and without his consent,  
2 for the purpose of committing robbery and/or murder, said Defendant and/or TERRELL  
3 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH using a deadly weapon, to wit: a  
4 firearm during the commission of said crime; the Defendant aiding or abetting TERRELL  
5 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH by counsel and encouragement and  
6 by entering into a course of conduct whereby the said Defendant arrived at 4825 Terra Linda  
7 Avenue with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH; the said  
8 Defendant entering the residence with TERRELL COCHISE YOUNG and/or SIKIA  
9 LAFAYETTE SMITH while Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA  
10 LAFAYETTE SMITH were in possession of a firearm or firearms; Defendant and/or TERRELL  
11 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH binding the said JEFFREY BIDDLE  
12 and placing him on the floor of the residence for the purpose of committing robbery and/or  
13 murder; then Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE  
14 SMITH shooting at and into the body of the said JEFFREY BIDDLE with a firearm.

15 COUNT VIII - FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON

16 did, together with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH,  
17 wilfully, unlawfully, feloniously, and without authority of law, seize, confine, inveigle, entice,  
18 decoy, abduct, conceal, kidnap, or carry away MATHEW MOWEN, a human being, with the  
19 intent to hold or detain the said MATHEW MOWEN, against his will, and without his consent,  
20 for the purpose of committing robbery and/or murder, said Defendant and/or TERRELL  
21 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH using a deadly weapon, to wit: a  
22 firearm during the commission of said crime; the Defendant aiding or abetting TERRELL  
23 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH by counsel and encouragement and  
24 by entering into a course of conduct whereby the said Defendant arrived at 4825 Terra Linda  
25 Avenue with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH; the said  
26 Defendant entering the residence with TERRELL COCHISE YOUNG and/or SIKIA  
27 LAFAYETTE SMITH while Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA  
28 LAFAYETTE SMITH were in possession of a firearm or firearms; Defendant and/or TERRELL

1 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH binding the said MATHEW MOWEN  
2 and placing him on the floor of the residence for the purpose of committing robbery and/or  
3 murder; then Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE  
4 SMITH shooting at and into the body of the said MATHEW MOWEN with a firearm.

5 COUNT IX - FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON

6 did, together with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH,  
7 wilfully, unlawfully, feloniously, and without authority of law, seize, confine, inveigle, entice,  
8 decoy, abduct, conceal, kidnap, or carry away TRACEY GORRINGE, a human being, with the  
9 intent to hold or detain the said TRACEY GORRINGE, against his will, and without his consent,  
10 for the purpose of committing robbery and/or murder, said Defendant and/or TERRELL  
11 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH using a deadly weapon, to wit: a  
12 firearm during the commission of said crime; the Defendant aiding or abetting TERRELL  
13 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH by counsel and encouragement and  
14 by entering into a course of conduct whereby the said Defendant arrived at 4825 Terra Linda  
15 Avenue with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH; the said  
16 Defendant entering the residence with TERRELL COCHISE YOUNG and/or SIKIA  
17 LAFAYETTE SMITH while Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA  
18 LAFAYETTE SMITH were in possession of a firearm or firearms; Defendant and/or TERRELL  
19 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH binding the said TRACEY  
20 GORRINGE and placing him on the floor of the residence for the purpose of committing  
21 robbery and/or murder; then Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA  
22 LAFAYETTE SMITH shooting at and into the body of the said TRACEY GORRINGE with a  
23 firearm.

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

25 did, together with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH,  
26 wilfully, unlawfully, feloniously, and without authority of law, seize, confine, inveigle, entice,  
27 decoy, abduct, conceal, kidnap, or carry away PETER TALAMENTEZ, a human being, with the  
28 intent to hold or detain the said PETER TALAMENTEZ, against his will, and without his

1 consent, for the purpose of committing robbery and/or murder, said Defendant and/or TERRELL  
2 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH using a deadly weapon, to wit: a  
3 firearm during the commission of said crime; the Defendant aiding or abetting TERRELL  
4 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH by counsel and encouragement and  
5 by entering into a course of conduct whereby the said Defendant arrived at 4825 Terra Linda  
6 Avenue with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH; the said  
7 Defendant entering the residence with TERRELL COCHISE YOUNG and/or SIKIA  
8 LAFAYETTE SMITH while Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA  
9 LAFAYETTE SMITH were in possession of a firearm or firearms; Defendant and/or TERRELL  
10 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH binding the said PETER  
11 TALAMENTEZ and placing him on the floor of the residence for the purpose of committing  
12 robbery and/or murder; then Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA  
13 LAFAYETTE SMITH shooting at and into the body of the said PETER TALAMENTEZ with  
14 a firearm.

15 COUNT XI - MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER)

16 did, together with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH,  
17 then and there wilfully, feloniously, without authority of law, and with premeditation and  
18 deliberation, and with malice aforethought, kill JEFFREY BIDDLE, a human being, by shooting  
19 at and into the body of said JEFFREY BIDDLE, with a deadly weapon, to wit: a firearm, the said  
20 Defendants being responsible under the following theories of criminal liability, to wit: 1)  
21 Premeditation and Deliberation; 2) Felony Murder, Defendant and/or TERRELL COCHISE  
22 YOUNG and/or SIKIA LAFAYETTE SMITH committing the murder in the perpetration or  
23 attempted perpetration of kidnapping and/or robbery; 3) Aiding or Abetting, the Defendant aiding  
24 or abetting TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH by counsel and  
25 encouragement and by entering into a course of conduct whereby the said Defendant arrived at  
26 4825 Terra Linda Avenue with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE  
27 SMITH; the said Defendant entering the residence with TERRELL COCHISE YOUNG and/or  
28 SIKIA LAFAYETTE SMITH while Defendant and/or TERRELL COCHISE YOUNG and/or



1 SIKIA LAFAYETTE SMITH were in possession of a firearm; Defendant and/or TERRELL  
2 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH binding the victim and placing him  
3 on the floor of the residence; Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA  
4 LAFAYETTE SMITH shooting at and into the body of the said JEFFREY BIDDLE with a  
5 firearm; 4) Conspiracy, by the said Defendant acting pursuant to a conspiracy to commit robbery  
6 and/or kidnaping and/or murder with TERRELL COCHISE YOUNG and/or SIKIA  
7 LAFAYETTE SMITH, whereby the said Defendant entered the residence with TERRELL  
8 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH while Defendant and/or TERRELL  
9 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH were in possession of a firearm or  
10 firearms; Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE  
11 SMITH binding the said JEFFREY BIDDLE and placing him on the floor of the residence; then  
12 Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH shooting  
13 at and into the body of the said JEFFREY BIDDLE with the firearm or firearms.

14 COUNT XII - MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER)

15 did, together with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH,  
16 then and there wilfully, feloniously, without authority of law, and with premeditation and  
17 deliberation, and with malice aforethought, kill TRACEY GORRINGE, a human being, by  
18 shooting at and into the body of said TRACEY GORRINGE, with a deadly weapon, to wit: a  
19 firearm, the said Defendant being responsible under the following theories of criminal liability,  
20 to wit: 1) Premeditation and Deliberation; 2) Felony Murder, Defendant and/or TERRELL  
21 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH committing the murder in the  
22 perpetration or attempted perpetration of robbery and/or kidnaping; 3) Aiding or Abetting, the  
23 Defendant aiding or abetting TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE  
24 SMITH by counsel and encouragement and by entering into a course of conduct whereby the  
25 said Defendant arrived at 4825 Terra Linda Avenue with TERRELL COCHISE YOUNG and/or  
26 SIKIA LAFAYETTE SMITH; the said Defendant entering the residence with TERRELL  
27 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH while Defendant and/or TERRELL  
28 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH were in possession of a firearm;

1 Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH binding  
2 the victim and placing him on the floor of the residence; Defendant and/or TERRELL COCHISE  
3 YOUNG and/or SIKIA LAFAYETTE SMITH shooting at and into the body of the said  
4 TRACEY GORRINGE with a firearm; 4) Conspiracy, by the said Defendant acting pursuant to  
5 a conspiracy to commit robbery and/or kidnaping and/or murder with TERRELL COCHISE  
6 YOUNG and/or SIKIA LAFAYETTE SMITH, whereby the said Defendant entered the  
7 residence with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH while  
8 Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH were  
9 in possession of a firearm or firearms; Defendant and/or TERRELL COCHISE YOUNG and/or  
10 SIKIA LAFAYETTE SMITH binding the said TRACEY GORRINGE and placing him on the  
11 floor of the residence; then Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA  
12 LAFAYETTE SMITH shooting at and into the body of the said TRACEY GORRINGE with the  
13 firearm or firearms.

14 COUNT XIII - MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER)

15 did, together with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH,  
16 then and there wilfully, feloniously, without authority of law, and with premeditation and  
17 deliberation, and with malice aforethought, kill MATHEW MOWEN, a human being, by  
18 shooting at and into the body of said MATHEW MOWEN, with a deadly weapon, to wit: a  
19 firearm, the said Defendant being responsible under the following theories of criminal liability,  
20 to wit: 1) Premeditation and Deliberation; 2) Felony Murder, Defendant and/or TERRELL  
21 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH committing the murder in the  
22 perpetration or attempted perpetration of kidnaping and/or robbery; 3) Aiding or Abetting, the  
23 Defendant aiding or abetting TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE  
24 SMITH by counsel and encouragement and by entering into a course of conduct whereby the  
25 said Defendant arrived at 4825 Terra Linda Avenue with TERRELL COCHISE YOUNG and/or  
26 SIKIA LAFAYETTE SMITH; the said Defendant entering the residence with TERRELL  
27 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH while Defendant and/or TERRELL  
28 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH were in possession of a firearm;

1 Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH binding  
2 the victim and placing him on the floor of the residence; Defendant and/or TERRELL COCHISE  
3 YOUNG and/or SIKIA LAFAYETTE SMITH shooting at and into the body of the said  
4 MATHEW MOWEN with a firearm; 4) Conspiracy, by the said Defendant acting pursuant to  
5 a conspiracy to commit robbery and/or kidnaping and/or murder with TERRELL COCHISE  
6 YOUNG and/or SIKIA LAFAYETTE SMITH, whereby the said Defendant entered the  
7 residence with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH while  
8 Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH were  
9 in possession of a firearm or firearms; Defendant and/or TERRELL COCHISE YOUNG and/or  
10 SIKIA LAFAYETTE SMITH binding the said MATHEW MOWEN and placing him on the  
11 floor of the residence; then Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA  
12 LAFAYETTE SMITH shooting at and into the body of the said MATHEW MOWEN with the  
13 firearm or firearms.

14 COUNT XIV - MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER)

15 did, together with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH,  
16 then and there wilfully, feloniously, without authority of law, and with premeditation and  
17 deliberation, and with malice aforethought, kill PETER TALAMENTEZ, a human being, by  
18 shooting at and into the body of said PETER TALAMENTEZ, with a deadly weapon, to wit: a  
19 firearm, the said Defendant being responsible under the following theories of criminal liability,  
20 to wit: 1) Premeditation and Deliberation; 2) Felony Murder, Defendant and/or TERRELL  
21 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH committing the murder in the  
22 perpetration or attempted perpetration of robbery and/or kidnaping; 3) Aiding or Abetting, the  
23 Defendant aiding or abetting TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE  
24 SMITH by counsel and encouragement and by entering into a course of conduct whereby the  
25 said Defendant arrived at 4825 Terra Linda Avenue with TERRELL COCHISE YOUNG and/or  
26 SIKIA LAFAYETTE SMITH; the said Defendant entering the residence with TERRELL  
27 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH while Defendant and/or TERRELL  
28 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH were in possession of a firearm;

1 Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH binding  
2 the victim and placing him on the floor of the residence; Defendant and/or TERRELL COCHISE  
3 YOUNG and/or SIKIA LAFAYETTE SMITH shooting at and into the body of the said PETER  
4 TALAMENTEZ with a firearm; 4) Conspiracy, by the said Defendant acting pursuant to a  
5 conspiracy to commit robbery and/or kidnaping and/or murder with TERRELL COCHISE  
6 YOUNG and/or SIKIA LAFAYETTE SMITH, whereby the said Defendant entered the  
7 residence with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH while  
8 Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH were  
9 in possession of a firearm or firearms; Defendant and/or TERRELL COCHISE YOUNG and/or  
10 SIKIA LAFAYETTE SMITH binding the said PETER TALAMENTEZ and placing him on the  
11 floor of the residence; then Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA  
12 LAFAYETTE SMITH shooting at and into the body of the said PETER TALAMENTEZ with  
13 the firearm or firearms.

14 It is the duty of the jury to apply the rules of law contained in these instructions to the  
15 facts of the case and determine whether or not the Defendant is guilty of one or more of the  
16 offenses charged.

17 Each charge and the evidence pertaining to it should be considered separately. The fact  
18 that you may find the defendant guilty or not guilty as to one of the offenses charged should not  
19 control your verdict as to any other offense charged.

20

21

22

23

24

25

26

27

28

INSTRUCTION NO.   c  /  

To constitute the crime charged, there must exist a union or joint operation of an act forbidden by law and an intent to do the act.

The intent with which an act is done is shown by the facts and circumstances surrounding the case.

Do not confuse intent with motive. Motive is what prompts a person to act. Intent refers only to the state of mind with which the act is done.

Motive is not an element of the crime charged and the State is not required to prove a motive on the part of the Defendant in order to convict. However, you may consider evidence of motive or lack of motive as a circumstance in the case.

INSTRUCTION NO. 5

The Defendant is presumed innocent unless the contrary is proved. This presumption places upon the State the burden of proving beyond a reasonable doubt every material element of the crime charged and that the Defendant is the person who committed the offense.

A reasonable doubt is one based on reason. It is not mere possible doubt but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or speculation.

If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a verdict of not guilty.

INSTRUCTION NO. 5A

It is a constitutional right of a defendant in a criminal trial that he may not be compelled to testify. Thus the decision as to whether he should testify is left to the defendant on the advice and counsel of his attorney. You must not draw any inference of guilt from the fact that he does not testify, nor should this fact be discussed by you or enter into your deliberations in any way.

INSTRUCTION NO. 56

If the evidence in this case is subject to two constructions of interpretation, each of which appears to you to be reasonable, and one of which points to the guilt of the defendant, and the other to innocence, it is your duty, to adopt the interpretation which will admit of the defendant's innocence, and reject that which points to guilt.

You will notice the rule applies only when both of the two possible opposing conclusions appear to you to be reasonable. If, on the other hand, one of the possible conclusions should appear to you to be reasonable and the other to be unreasonable, it would be your duty to adhere to the reasonable deduction and to reject the unreasonable, bearing in mind, however, even if the reasonable deduction points to defendant's guilt, the entire proof must be beyond a reasonable doubt to support a verdict of guilty.



INSTRUCTION NO. 6

You are here to determine the guilt or innocence of the Defendant from the evidence in the case. You are not called upon to return a verdict as to the guilt or innocence of any other person. So, if the evidence in the case convinces you beyond a reasonable doubt of the guilt of the Defendant, you should so find, even though you may believe one or more persons are also guilty.

The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted or agreed to by counsel.

There are two types of evidence; direct and circumstantial. Direct evidence is the testimony of a person who claims to have personal knowledge of the commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a chain of facts and circumstances which tend to show whether the Defendant is guilty or not guilty. The law makes no distinction between the weight to be given either direct or circumstantial evidence. Therefore, all of the evidence in the case, including the circumstantial evidence, should be considered by you in arriving at your verdict.

Statements, arguments and opinions of counsel are not evidence in the case. However, if the attorneys stipulate to the existence of a fact, you must accept the stipulation as evidence and regard that fact as proved.

You must not speculate to be true any insinuations suggested by a question asked a witness. A question is not evidence and may be considered only as it supplies meaning to the answer.

You must disregard any evidence to which an objection was sustained by the court and any evidence ordered stricken by the court.

Anything you may have seen or heard outside the courtroom is not evidence and must also be disregarded.

INSTRUCTION NO. 8

Every person who, either by day or by night, enters any house, apartment or other building with the intent to commit larceny, assault or battery, or any felony, therein is guilty of "Burglary."

Larceny is defined as the stealing, taking and carrying away of personal goods or property of another with specific intent to permanently deprive the owner thereof.

Assault is defined as an unlawful attempt, coupled with a present ability to commit a violent injury on a person.

Battery is any willful and unlawful use of force or violence upon a person.

The person who unlawfully enters into the aforementioned may reasonably be inferred to have entered with the intent to commit larceny, assault or battery, or any felony, unless the unlawful entry is explained by evidence satisfactory to the jury to have been made without criminal intent.

INSTRUCTION NO. 9

Every person who, in the commission of a burglary, commits any other crime, may be prosecuted for each crime separately.

INSTRUCTION NO. 10

To prove an entry in establishing the crime of Burglary, the prosecution need only show an entry without the consent of the possessor of the house, room or apartment. Force or a "breaking", as such, is not a necessary element of the crime.

INSTRUCTION NO. 11

A conspiracy is an agreement or mutual understanding between two or more persons to commit a crime. To be guilty of conspiracy, a defendant must intend to commit, or to aid in the commission of, the specific crime agreed to. The crime is the agreement to do something unlawful; it does not matter whether it was successful or not.

INSTRUCTION NO. 12

Where two or more individuals join together in a common design to commit any unlawful act, each is criminally responsible for the acts of his confederates committed in furtherance of the common design. In contemplation of law, the act of one is the act of all. Every conspirator is legally responsible for an act of a co-conspirator that follows as one of the probable and natural consequences of the object of the conspiracy even if it was not intended as part of the original plan and even if he was not present at the time of the commission of such act.



INSTRUCTION NO. 13

Where the purpose of the conspiracy is to commit a dangerous felony, each member runs the risk of having the venture end in homicide, even if he has forbidden the others to make use of deadly force. Hence, each is guilty of murder if one of them commits homicide in the perpetration of an agreed-upon robbery or attempted perpetration of said offense.

INSTRUCTION NO. 14/

It is not necessary in proving a conspiracy to show a meeting of the alleged conspirators or the making of an express or formal agreement. The formation and existence of a conspiracy may be inferred from all circumstances tending to show the common intent and may be proved in the same way as any other fact may be proved, either by direct testimony of the fact or by circumstantial evidence, or by both direct and circumstantial evidence.

INSTRUCTION NO. 15

Whenever there is slight evidence that a conspiracy existed, and that the defendant was one of the members of the conspiracy, then the statements and the acts by any member of the conspiracy may be considered by the jury as evidence in the case as to the defendant. This is true even though the statements and acts may have occurred in the absence and without the knowledge of the defendant, provided such statements and acts were knowingly made and done during the continuance of such conspiracy, and in furtherance of some object or purpose of the conspiracy.

INSTRUCTION NO. 16

Once a person joins a conspiracy, that person remains a member until he withdraws from it. A person can withdraw from a conspiracy by taking some positive action which disavowed or defeated the purpose of the conspiracy. It is not enough if the evidence shows that the defendant merely ceased his own activities in furtherance of the conspiracy.

Where two or more persons are accused of committing a crime together, their guilt may be established without proof that each personally did every act constituting the offense charged.

All persons concerned in the commission of a crime who either directly or actively commit the act constituting the offense or who knowingly and with criminal intent aid and abet in its commission or, whether present or not, who advise and encourage its commission, are regarded by the law as principals in the crime thus committed and are equally guilty thereof.

To aid and abet is to assist or support the efforts of another in the commission of a crime.

A person aids and abets the commission of a crime if he knowingly and with criminal intent aids, promotes, encourages or instigates by act or advice, or by act and advice, the commission of such crime.

The state is not required to prove precisely which defendant actually committed the crime and which defendant aided and abetted.

INSTRUCTION NO. 18

The presence of one at the commission of a crime of another is evidence which can be considered in determining whether or not he is guilty of aiding or abetting, as well as the defendant's presence, companionship, and conduct before, during and after the participation in the criminal act.

INSTRUCTION NO. 19

Mere presence at the scene of the crime and knowledge that a crime is being committed are not sufficient to establish that the defendant aided and abetted the crime, unless you find beyond a reasonable doubt that the defendant is a participant and not merely a knowing spectator.

INSTRUCTION NO. 20

Evidence that a person was in the company or associated with one or more other persons alleged or proven to have been members of a conspiracy is not, in itself, sufficient to prove that such person was a member of the alleged conspiracy.



INSTRUCTION NO. 2/

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Robbery is the unlawful taking of personal property from the person of another, or in his presence, against his will, by means of force or violence or fear of injury, immediate or future, to his person or property. Such force or fear must be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking, in either of which cases the degree of force is immaterial.

The value of property or money taken is not an element of the crime of Robbery, and it is only necessary that the State prove the taking of some property or money.

INSTRUCTION NO. 22

If you find the defendant guilty of robbery, you must also determine whether or not a deadly weapon was used in the commission of this crime.

INSTRUCTION NO 23

A deadly weapon is any instrument which, if used in the ordinary manner contemplated by its design and construction, will or is likely to cause substantial bodily harm or death; or any weapon or device, instrument, material or substance which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing substantial bodily harm or death.

You are instructed that a firearm is a deadly weapon.

INSTRUCTION NO. 24/

If more than one person commits a robbery, and one of them uses a deadly weapon in the commission of that robbery, each may be convicted of Robbery With Use of a Deadly Weapon, even though he did not personally himself use the weapon.

INSTRUCTION NO. 25

If you find beyond a reasonable doubt that the defendant committed Robbery With the Use of a Deadly Weapon, then you are instructed that the verdict of Robbery With the Use of a Deadly Weapon is the appropriate verdict.

If, however, you find that a deadly weapon was not used in the commission of the Robbery, but you do find that a Robbery was committed, then you are instructed that the verdict of Robbery Without the Use of a Deadly Weapon is the appropriate verdict.

You are instructed that you cannot return a verdict of both Robbery With the Use of a Deadly Weapon and Robbery Without the Use of a Deadly Weapon.

Kidnapping is of two degrees-First Degree Kidnapping and Second Degree Kidnapping. Second Degree Kidnapping is a lesser included offense of First Degree Kidnapping.

Every person who willfully seizes, confines, inveigles, entices, decoys, abducts, conceals, kidnaps or carries away any person by any means whatsoever with the intent to hold or detain, or who holds or detains, the person for:

- 1) ransom, or reward; or
- 2) the purpose of committing sexual assault, extortion or robbery upon or from the person; or
- 3) the purpose of killing the person or inflicting substantial bodily harm upon him; or
- 4) to exact from relatives, friends, or any other person any money or valuable thing for the return or disposition of the kidnaped person is guilty of Kidnapping in the First Degree.

Every person who wilfully and without authority of law seizes, inveigles, takes, carries away or kidnaps another person with the intent to keep the person secretly imprisoned within the state, or for the purpose of conveying the person out of the state without authority of law, or in any manner held to service or detained against his will, is guilty of kidnapping in the second degree.

It is the fact, not the distance of forcible movement of the victim that constitutes kidnapping. However, a charge of kidnapping and an associated offense will lie only where movement of the victim is over and above that required to complete the associated crime charged.

When associated with a charge of robbery, kidnapping does not occur if the movement is incidental to the robbery and does not increase the risk of harm over and above that necessarily present in the commission of such offense.

INSTRUCTION NO. 27

The crime of Kidnapping in the First Degree, as charged in this case, is a specific intent crime. A specific intent, as the term implies, means more than the general intent to commit the act. To establish specific intent the state must prove that the defendant knowingly did the act which the law forbids, purposely intending to violate that law.

An act is "knowingly" done if done voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

The intention or purpose for which the victim was held against his will is a question of fact to be determined by your consideration of the evidence. The intention may be inferred from the defendant's conduct or the conduct of the defendant's co-conspirators and all other circumstances.

INSTRUCTION NO. 28

In order to find the defendant guilty of Kidnaping, the evidence of kidnaping must include either:

(1) an element of movement; or

(2) physical restraint; or

(3) restraint which increases the risk of harm to the victim or has an independant purpose and significance.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

INSTRUCTION NO. 296

If the movement of the victim appears to have been incidental to the robbery and without an increase in danger to them; if their detention was only for the short period of time necessary to consummate the robbery, no kidnaping will have occurred.

INSTRUCTION NO. B029

If you find the defendant guilty of Kidnapping, you must also determine whether he is guilty of First or Second Degree and whether or not a deadly weapon was used in the commission of this crime.

INSTRUCTION NO. 30

You are instructed that you cannot return a verdict of both First Degree Kidnapping with the use of a Deadly Weapon and First Degree Kidnapping without the use of a Deadly Weapon.

The same instruction applies to Second Degree Kidnapping.

INSTRUCTION NO. 37

In this case the defendant is accused in an Indictment alleging an open charge of murder. This charge includes and encompasses murder of the first degree, murder of the second degree, and voluntary manslaughter.

The jury must decide if the defendant is guilty of any offense and, if so, of which offense.

INSTRUCTION NO. 32

Murder of the first degree is murder which is perpetrated by means of any kind of willful, deliberate, and premeditated killing. All three elements--willfulness, deliberation, and premeditation--must be proven beyond a reasonable doubt before an accused can be convicted of first-degree murder.

INSTRUCTION NO. 32

Willfulness is the intent to kill. There need be no appreciable space of time between formation of the intent to kill and the act of killing.

INSTRUCTION NO. BB 34

Deliberation is the process of determining upon a course of action to kill as a result of thought, including weighing the reasons for and against the action and considering the consequences of the action.

INSTRUCTION NO. 3435

A deliberate determination may be arrived at in a short period of time. But in all cases the determination must not be formed in passion, or if formed in passion, it must be carried out after there has been time for the passion to subside and deliberation to occur. A mere unconsidered and rash impulse is not deliberate, even though it includes the intent to kill.



INSTRUCTION NO. 36

Premeditation is a design, a determination to kill, distinctly formed in the mind by the time of the killing.

INSTRUCTION NO. 37

Premeditation need not be for a day, an hour, or even a minute. It may be as instantaneous as successive thoughts of the mind. For if the jury believes from the evidence that the act constituting the killing has been preceded by and has been the result of premeditation, no matter how rapidly the act follows the premeditation, it is premeditated.

INSTRUCTION NO. 38

The law does not undertake to measure in units of time the length of the period during which the thought must be pondered before it can ripen into an intent to kill which is truly deliberate and premeditated. The time will vary with different individuals and under varying circumstances.

INSTRUCTION NO. 39

The true test is not the duration of time, but rather the extent of the reflection. A cold, calculated judgment and decision may be arrived at in a short period of time, but a mere unconsidered and rash impulse, even though it includes an intent to kill, is not deliberation and premeditation as will fix an unlawful killing as murder of the first degree.

INSTRUCTION NO. 40

There is a kind of murder which carries with it conclusive evidence of premeditation and malice aforethought. This class of murder is murder committed in the perpetration, or attempted perpetration, of robbery and/or kidnapping. Therefore, a killing which is committed in the perpetration, or attempted perpetration, of robbery and/or kidnapping is deemed to be murder of the first degree, whether the killing was intentional or unintentional or accidental. This is called the Felony-Murder rule.

1  
2 Under the Felony Murder rule, in determining whether the killing was committed during  
3 the perpetration or attempted perpetration of a robbery and/or kidnapping a test of causation is  
4 applied.

5 Such causation requires that the killing be linked to or part of the series of incidents so  
6 as to be one continuous transaction.

7 The robbery begins the moment the defendant(s) by force or violence or fear of injury  
8 places the victim(s) under his fearful domination in an effort to obtain money or property of the  
9 victim(s). The robbery continues so long as the victim(s) is subjected to the force or violence  
10 or fear of injury originally applied.

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

INSTRUCTION NO. 42

All verdicts returned in this case must be unanimous. In considering the offense of Murder of the First Degree, however, you need not be unanimous in finding that the murder was premeditated and deliberate, or that it was perpetrated in the course and furtherance of the perpetration of or attempted perpetration of robbery and/or kidnapping with or without a deadly weapon. It is sufficient that each of you finds, beyond a reasonable doubt, that the murder, under either theory, was murder of the first degree.

A Murder which is not Murder in the First Degree is Murder of the Second Degree.

The distinguishing feature between first and second degree murder is the presence or absence of premeditation and deliberation. If the unlawful killing is done with malice, but without deliberation and premeditation, that is, without the wilful, deliberate and premeditated intent to take life which is an essential element of First Degree Murder, then the offense is Murder of the Second Degree.

In practical application this means that the unlawful killing of a human being with malice aforethought, but without a deliberately formed and premeditated intent to kill, is Murder of the Second Degree.

If you believe from the evidence beyond a reasonable doubt that the defendant is guilty of Murder, and there is in your minds a reasonable doubt as to which of the two degrees he is guilty, he must be convicted of the lesser offense which is Murder of the Second Degree.

Should you find that the defendant did not commit Murder of either the First or Second degree but believe beyond a reasonable doubt that he is responsible for the homicide, you must determine if that killing was manslaughter.



Voluntary Manslaughter is the unlawful killing of a human being, without malice aforethought and without deliberation or premeditation. It is a killing upon a sudden quarrel or heat of passion, caused by a provocation sufficient to make the passion irresistible.

The provocation required for Voluntary Manslaughter must either consist of a serious and highly provoking injury inflicted upon the person killing, sufficient to excite an irresistible passion in a reasonable person, or an attempt by the person killed to commit a serious personal injury on the person killing.

For the sudden, violent impulse of passion to be irresistible resulting in a killing, which is Voluntary Manslaughter, there must not have been an interval between the assault or provocation and the killing sufficient for the voice of reason and humanity to be heard; for, if there should appear to have been sufficient time for a cool head to prevail and the voice of reason to be heard, the killing shall be attributed to deliberate revenge and determined by you to be murder. The law assigns no fixed period of time for such an interval but leaves its determination to the jury under the facts and circumstances of the case.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

The heat of passion which will reduce a homicide to Voluntary Manslaughter must be such an irresistible passion as naturally would be aroused in the mind of an ordinarily reasonable person in the same circumstances. A defendant is not permitted to set up his own standard of conduct and to justify or excuse himself because his passions were aroused unless the circumstances in which he was placed and the facts that confronted him were such as also would have aroused the irresistible passion of the ordinarily reasonable man if likewise situated. The basic inquiry is whether or not, at the time of the killing, the reason of the accused was obscured or disturbed by passion to such an extent as would cause the ordinarily reasonable person of average disposition to act rashly and without deliberation and reflection and from such passion rather than from judgment.

INSTRUCTION NO. 46

If you find the defendant guilty of Murder or Manslaughter you must also determine whether or not a deadly weapon was used in the commission of that crime.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

If you find beyond a reasonable doubt that a defendant committed Murder of the First Degree with the Use of a Deadly Weapon, then you are instructed that the verdict of Murder of the First Degree with the Use of a Deadly Weapon is the appropriate verdict.

If, however, you find that a deadly weapon was not used in the commission of the Murder, but you do find that a murder was committed, then you are instructed that the verdict of Murder of the First Degree without the Use of a Deadly Weapon is the appropriate verdict.

You are instructed that you cannot return a verdict of both Murder of the First Degree with the Use of a Deadly Weapon and Murder of the First Degree without the Use of a Deadly Weapon.

The same instruction applies to Murder of the Second Degree and Manslaughter.

INSTRUCTION NO. 48

The credibility or believability of a witness should be determined by his manner upon the stand, his relationship to the parties, his fears, motives, interests or feelings, his opportunity to have observed the matter to which he testified, the reasonableness of his statements and the strength or weakness of his recollections.

If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of his testimony which is not proved by other evidence.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

A witness who has special knowledge, skill, experience, training or education in a particular science, profession or occupation is an expert witness. An expert witness may give his opinion as to any matter in which he is skilled.

You should consider such expert opinion and weigh the reasons, if any, given for it. You are not bound, however, by such an opinion. Give it the weight to which you deem it entitled, whether that be great or slight, and you may reject it, if, in your judgment, the reasons given for it are unsound.

INSTRUCTION NO. 56

Although you are to consider only the evidence in the case in reaching a verdict, you must bring to the consideration of the evidence your everyday common sense and judgment as reasonable men and women. Thus, you are not limited solely to what you see and hear as the witnesses testify. You may draw reasonable inferences from the evidence which you feel are justified in the light of common experience, keeping in mind that such inferences should not be based on speculation or guess.

A verdict may never be influenced by sympathy, prejudice or public opinion. Your decision should be the product of sincere judgment and sound discretion in accordance with these rules of law.

INSTRUCTION NO. 51

In your deliberation you may not discuss or consider the subject of punishment. Your duty now is confined to the determination of whether the Defendant is guilty or not guilty.



INSTRUCTION NO. 52

When you retire to consider your verdict, you must select one of your number to act as foreperson who will preside over your deliberation and will be your spokesperson here in court.

During your deliberation, you will have all the exhibits which were admitted into evidence, these written instructions and forms of verdict which have been prepared for your convenience.

Your verdict must be unanimous. As soon as you have agreed upon a verdict, have it signed and dated by your foreperson and then return with it to this room.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

If, during your deliberation, you should desire to be further informed on any point of law or hear again portions of the testimony, you must reduce your request to writing signed by the foreperson. The officer will then return you to court where the information sought will be given you in the presence of, and after notice to, the district attorney and the Defendant and his/her counsel.

Playbacks of testimony are time-consuming and are not encouraged unless you deem it a necessity. Should you require a playback, you must carefully describe the testimony to be played back so that the court recorder can arrange her notes. Remember, the court is not at liberty to supplement the evidence.

*Given this 8<sup>th</sup> day of June, 2010,  
Judge Jeffrey M. Brown*

# EXHIBIT 68

# EXHIBIT 68

273  
1 VER

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

FILED IN OPEN COURT

JUN 09 2000 @ 4:10 PM

5 THE STATE OF NEVADA,

6 Plaintiff,

7 -vs-

8 DONTE JOHNSON,

9  
10 Defendant.  
11

SHIRLEY B. PARRAGUIRRE, CLERK

BY Carole D'Aloia  
CAROLE D'ALOIA DEPUTY

Case No. C153154

Dept. No. V

Docket H

12  
13 VERDICT

14 We, the jury in the above entitled case, find the defendant DONTE JOHNSON, as  
15 follows:

16 COUNT I - Burglary While in Possession of a Firearm

17 *(please check the appropriate box, select only one)*

18 ☒ Guilty of Burglary While in Possession of a Firearm

19 ☐ Guilty of Burglary

20 ☐ Not Guilty  
21

22 We, the jury in the above entitled case, find the defendant DONTE JOHNSON, as  
23 follows:

24 COUNT II - Conspiracy to Commit Robbery and/or Kidnapping and/or Murder

25 *(please check the appropriate box, select only one)*

26 ☒ Guilty of Conspiracy to Commit Robbery and/or Kidnapping and/or Murder

27 ☐ Not Guilty  
28



1 We, the jury in the above entitled case, find the defendant DONTE JOHNSON, as  
2 follows:

3 **COUNT III** - Robbery With Use of a Deadly Weapon

4 *(please check the appropriate box, select only one)*

- 5 ☒ Guilty of Robbery With Use of a Deadly Weapon  
6 ☐ Guilty of Robbery  
7 ☐ Not Guilty  
8

9 We, the jury in the above entitled case, find the defendant DONTE JOHNSON, as  
10 follows:

11 **COUNT IV** - Robbery With Use of a Deadly Weapon

12 *(please check the appropriate box, select only one)*

- 13 ☒ Guilty of Robbery With Use of a Deadly Weapon  
14 ☐ Guilty of Robbery  
15 ☐ Not Guilty  
16

17 We, the jury in the above entitled case, find the defendant DONTE JOHNSON, as  
18 follows:

19 **COUNT V** - Robbery With Use of a Deadly Weapon

20 *(please check the appropriate box, select only one)*

- 21 ☒ Guilty of Robbery With Use of a Deadly Weapon  
22 ☐ Guilty of Robbery  
23 ☐ Not Guilty  
24  
25  
26  
27  
28

1 We, the jury in the above entitled case, find the defendant DONTE JOHNSON, as  
2 follows:

3 **COUNT VI** - Robbery With Use of a Deadly Weapon

4 *(please check the appropriate box, select only one)*

- 5 ☒ Guilty of Robbery With Use of a Deadly Weapon  
6 ☐ Guilty of Robbery  
7 ☐ Not Guilty  
8

9 We, the jury in the above entitled case, find the defendant DONTE JOHNSON, as  
10 follows:

11 **COUNT VII** - First Degree Kidnapping With Use of a Deadly Weapon (Jeffrey Biddle)

12 *(please check the appropriate box, select only one)*

- 13 ☒ Guilty of First Degree Kidnapping with Use of a Deadly Weapon  
14 ☐ Guilty of First Degree Kidnapping  
15 ☐ Guilty of Second Degree Kidnapping with Use of a Deadly Weapon  
16 ☐ Guilty of Second Degree Kidnapping  
17 ☐ Not Guilty  
18

19 We, the jury in the above entitled case, find the defendant DONTE JOHNSON, as  
20 follows:

21 **COUNT VIII** - First Degree Kidnapping With Use of a Deadly Weapon (Mathew Mowen)

22 *(please check the appropriate box, select only one)*

- 23 ☒ Guilty of First Degree Kidnapping with Use of a Deadly Weapon  
24 ☐ Guilty of First Degree Kidnapping  
25 ☐ Guilty of Second Degree Kidnapping with Use of a Deadly Weapon  
26 ☐ Guilty of Second Degree Kidnapping  
27 ☐ Not Guilty  
28

1 We, the jury in the above entitled case, find the defendant DONTE JOHNSON, as  
2 follows:

3 **COUNT IX** - First Degree Kidnapping With Use of a Deadly Weapon (Tracey Gorringer)

4 *(please check the appropriate box, select only one)*

- 5 ☒ Guilty of First Degree Kidnapping with Use of a Deadly Weapon  
6 ☐ Guilty of First Degree Kidnapping  
7 ☐ Guilty of Second Degree Kidnapping with Use of a Deadly Weapon  
8 ☐ Guilty of Second Degree Kidnapping  
9 ☐ Not Guilty

10  
11 We, the jury in the above entitled case, find the defendant DONTE JOHNSON, as  
12 follows:

13 **COUNT X** - First Degree Kidnapping With Use of a Deadly Weapon (Peter Talamentez)

14 *(please check the appropriate box, select only one)*

- 15 ☒ Guilty of First Degree Kidnapping with Use of a Deadly Weapon  
16 ☐ Guilty of First Degree Kidnapping  
17 ☐ Guilty of Second Degree Kidnapping with Use of a Deadly Weapon  
18 ☐ Guilty of Second Degree Kidnapping  
19 ☐ Not Guilty

20  
21 We, the jury in the above entitled case, find the defendant DONTE JOHNSON, as  
22 follows:

23 **COUNT XI** - Murder With Use of a Deadly Weapon (Jeffrey Biddle)

24 *(please check the appropriate box, select only one)*

- 25 ☒ Guilty of Murder of the First Degree with Use of a Deadly Weapon  
26 ☐ Guilty of Murder of the First Degree  
27 ☐ Guilty of Murder of the Second Degree with Use of a Deadly Weapon  
28 ☐ Guilty of Murder of the Second Degree

- 1        ☐ Guilty of Voluntary Manslaughter With Use of a Deadly Weapon  
2        ☐ Guilty of Voluntary Manslaughter  
3        ☐ Not Guilty  
4

5        We, the jury in the above entitled case, find the defendant DONTE JOHNSON, as  
6 follows:

7 **COUNT XII** - Murder With Use of a Deadly Weapon (Tracey Gorringer)

8        *(please check the appropriate box, select only one)*

- 9        ☒ Guilty of Murder of the First Degree with Use of a Deadly Weapon  
10       ☐ Guilty of Murder of the First Degree  
11       ☐ Guilty of Murder of the Second Degree with Use of a Deadly Weapon  
12       ☐ Guilty of Murder of the Second Degree  
13       ☐ Guilty of Voluntary Manslaughter With Use of a Deadly Weapon  
14       ☐ Guilty of Voluntary Manslaughter  
15       ☐ Not Guilty  
16

17       We, the jury in the above entitled case, find the defendant DONTE JOHNSON, as  
18 follows:

19 **COUNT XIII** - Murder With Use of a Deadly Weapon (Mathew Mowen)

20       *(please check the appropriate box, select only one)*

- 21       ☒ Guilty of Murder of the First Degree with Use of a Deadly Weapon  
22       ☐ Guilty of Murder of the First Degree  
23       ☐ Guilty of Murder of the Second Degree with Use of a Deadly Weapon  
24       ☐ Guilty of Murder of the Second Degree  
25       ☐ Guilty of Voluntary Manslaughter With Use of a Deadly Weapon  
26       ☐ Guilty of Voluntary Manslaughter  
27       ☐ Not Guilty  
28



1 We, the jury in the above entitled case, find the defendant DONTE JOHNSON, as  
2 follows:

3 **COUNT XIV** - Murder With Use of a Deadly Weapon (Peter Talamentez)

4 *(please check the appropriate box, select only one)*

- 5 ☒ Guilty of Murder of the First Degree with Use of a Deadly Weapon  
6 ☐ Guilty of Murder of the First Degree  
7 ☐ Guilty of Murder of the Second Degree with Use of a Deadly Weapon  
8 ☐ Guilty of Murder of the Second Degree  
9 ☐ Guilty of Voluntary Manslaughter With Use of a Deadly Weapon  
10 ☐ Guilty of Voluntary Manslaughter  
11 ☐ Not Guilty

12  
13 DATED this 9 day of JUNE, 2000.

14  
15   
16 FOREPERSON  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# EXHIBIT 69

# EXHIBIT 69

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DONTE JOHNSON,

Defendant.

Case No. C153154  
Dept. No. V  
Docket H

SPECIAL  
VERDICT

We, the Jury in the above entitled case, having found the Defendant, DONTE JOHNSON, Guilty of COUNT XIII- MURDER OF THE FIRST DEGREE, designate that one or more jurors have found that the mitigating circumstance or circumstances checked and/or written below have been established.

☒ The murder was committed while the Defendant was under the influence of extreme mental or emotional disturbance.

☐ The Defendant was an accomplice in a murder committed by another person and his participation in the murder was relatively minor.

☐ The Defendant acted under duress or under the dominion of another person.

☒ The youth of the Defendant at the time of the crime.

☒ Any other mitigating circumstances witness to father's physical &

emotional abuse of mother

witness to drug abuse of parents and close relatives

abandonment by parents

DATED at Las Vegas, Nevada, this 15 day of June, 2000.

John C. Young  
FOREPERSON

- poor living conditions while at great grandmother's
- turned into police by great grandmother
- crowded living conditions while at grandmother's house
- very violent neighborhood
  - witness to various acts of violence in neighborhood
  - had to live a guarded life
  - grandmother's second house even more crowded
  - no way to avoid gangs at second house
  - gang intimidation
  - could not comply with parole conditions - other gang territories
  - indications he may have wanted to return to parole school
  - lack of positive male role model
  - lifestyle of victims
  - no eyewitness to identity of shooter
  - killings happened in a relatively short period of time - more isolated incident than pattern
    - no indication of any violence while in jail
    - appears to excel in structured environment of jail
    - joined gang to protect family

# EXHIBIT 70

# EXHIBIT 70

**AFFIDAVIT OF KRISTINA M. WILDEVELD**

STATE OF NEVADA     )  
                              )     ss.  
COUNTY OF CLARK    )

KRISTINA M. WILDEVELD, being first duly sworn according to law, deposes and states as follows:

1.     I am an attorney duly licensed to practice law in the State of Nevada and am a Deputy Special Public Defender with the Office of the Special Public Defender. I make this Affidavit based upon my own personal knowledge except as to those matters stated upon information and belief, and as to those matters I believe them to be true.

2.     That on June 16, 2000, I was present immediately after the jury in the Donte Johnson trial was discharged and was present when the jury spoke with counsel regarding the deliberations on both penalty and guilt phase.

3.     That I was present in the Courtroom when Juror Kathleen Bruce indicated that she had a fear of an African-American in an elevator during the course of the trial.

4.     That I noted that the same Juror, Kathleen Bruce, had asked both the State and the Defense attorneys if the media was referring to her on last night's news account when it was related that a "hold-out" juror was a woman.

5.     That I watched the evening news the night before and in fact there was an account that the jury was hung and that the "hold-out" was a woman juror.

6.     That Juror Bruce brought this fact out on her own without any prompting or previous discussion from anyone in the room.

7. That upon asking the question, Mr. Dayvid Figler, counsel for Donte Johnson, inquired how she would know what was on television regarding this matter, and that Juror Bruce nervously responded that she had discussed the matter with her husband, however, it appeared to me that she had full and complete personal knowledge of the entirety of the news account. Juror Bruce also indicated that she felt that she was being singled out by the media as the "hold out."

8. At that time, another female juror, number 11, Connie Patterson, indicated "Really, I heard everyone thought it was me since I was emotional during the return of the verdict."

Further Affiant sayeth naught.



KRISTINA M. WILDEVELD

SUBSCRIBED AND SWORN to before me

this 3rd day of June, 2000.



NOTARY PUBLIC, in and for the  
County of Clark, State of Nevada



PATRICIA S. FLOOD  
Notary Public - Nevada  
My appt. exp. Sep. 1, 2000  
No. 92-37894

# EXHIBIT 71

# EXHIBIT 71



ORIGINAL

FILED

MAR 18 2 54 PM '04

*Shirley S. Rungius*  
CLERK

1 **NISD**  
 2 **DAVID ROGER**  
 3 Clark County District Attorney  
 4 Nevada Bar #002781  
 5 **GARY L. GUYMON**  
 6 Chief Deputy District Attorney  
 7 Nevada Bar #003726  
 8 200 South Third Street  
 9 Las Vegas, Nevada 89155-2211  
 10 (702) 455-4711  
 11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,

13 Plaintiff,

14 -vs-

15 **DONTE JOHNSON,**  
 16 #1586283

17 Defendant.

Case No. C153154

Dept No. V

**AMENDED NOTICE OF EVIDENCE IN SUPPORT OF  
AGGRAVATING CIRCUMSTANCES**

COMES NOW, the State of Nevada, through DAVID ROGER, Clark County District Attorney, by and through GARY L. GUYMON, Chief Deputy District Attorney, pursuant to Supreme Court Rule 250, NRS 175.552 and NRS 200.033, and declares its intention to present the following evidence in support of aggravating circumstance at a penalty hearing:

1. The statements of TERRELL YOUNG that were given on September 2, 1998, to Detectives J. Buczek, T. Thowsen, R. Chandler and K. Hardy of the Las Vegas Metropolitan Police Department. TERRELL YOUNG'S statements, which will be offered through the testimony of the Detectives, will establish that the murders were committed by Donte Johnson and/or Terrell Young and/or Sikia Smith, who knowingly created a great risk of death to more than one person by means of a weapon (.380 caliber pistol and/or rifle(s) and/or shotgun(s)) or course of action (shooting a person or persons in the midst of several

COUNTY CLERK

MAR 18 2004

RECEIVED

55

1 other persons who were present in the residence at 4825 Terra Linda) which would normally  
2 be hazardous to the lives of more than one person. The statements will also establish that  
3 Donte Johnson was the individual who fired the shots that killed Matthew Mowen, Jeffrey  
4 Biddle, Tracey Gorringer, and Peter Talamantez. Additionally, the statements will offered to  
5 establish Donte Johnson's involvement in a shooting that occurred at the Super 8 Motel  
6 located at 5288 Boulder Highway, Las Vegas, Nevada on or about August 11, 1998. The  
7 Las Vegas Metropolitan Police Department event number associated with the case is  
8 980811-0995. The statements will also be offered to establish Donte Johnson's involvement  
9 in a homicide in which Darnell Lamont Johnson was murdered at the Thunderbird Hotel in  
10 Las Vegas, Nevada on or about the 4th day of August, 1998. The Las Vegas Metropolitan  
11 Police Department event number associated with the homicide is 980805-1240.

12 The statements of TERRELL YOUNG have been provided to defense counsel in  
13 discovery.

14 2. The statements of SIKIA SMITH that were given on August 26, 1998 and  
15 September 8, 1998, to Detectives James Buczek and Thomas Thowsen of the Las Vegas  
16 Metropolitan Police Department. SIKIA SMITH'S statements, which will be offered  
17 through the testimony of Detectives Buczek and Thowsen, will establish that the murders  
18 were committed by Donte Johnson and/or Terrell Young and/or Sikia Smith, who knowingly  
19 created a great risk of death to more than one person by means of a weapon (.380 caliber  
20 pistol and/or rifle(s) and/or shotgun(s)) or course of action (shooting a person or persons in  
21 the midst of several other persons who were present in the residence at 4825 Terra Linda)  
22 which would normally be hazardous to the lives of more than one person. The statements  
23 will also establish that Donte Johnson was the individual who fired the shots that killed  
24 Matthew Mowen, Jeffrey Biddle, Tracey Gorringer, and Peter Talamantez. Additionally,  
25 the statements will offered to establish Donte Johnson's involvement in a shooting that  
26 occurred at the Super 8 Motel located at 5288 Boulder Highway, Las Vegas, Nevada on or  
27 about August 11, 1998. The Las Vegas Metropolitan Police Department event number  
28 associated with the case is 980811-0995.

1 The statements of SIKIA SMITH have been provided to defense counsel in discovery.

2 3. The State may rely on the testimony of Sikia Smith and/or Terrell Young.  
3 This testimony will establish that the murders were committed by Donte Johnson and/or  
4 Terrell Young and/or Sikia Smith, who knowingly created a great risk of death to more than  
5 one person by means of a weapon (.380 caliber pistol and/or rifle(s) and/or shotgun(s)) or  
6 course of action (shooting a person or persons in the midst of several other persons who were  
7 present in the residence at 4825 Terra Linda) which would normally be hazardous to the  
8 lives of more than one person.

9 The statements given by Sikia Smith and Terrell Young have been provided to  
10 defense counsel in discovery.

11 4. The testimony of Crime Scene Analyst Shawn Fletcher who recovered certain  
12 items of evidence from the residence at 4825 Terra Linda, including, but not limited to, four  
13 (4) .380 caliber cartridge cases and bullet fragments. CSA Fletcher's testimony will  
14 establish that the murders were committed in a manner that created a great risk of death to  
15 more than one person by means of a weapon (.380 caliber pistol and/or rifle(s) and/or  
16 shotgun(s)) or course of action (shooting a person or persons in the midst of several other  
17 persons who were present in the residence at 4825 Terra Linda) which would normally be  
18 hazardous to the lives of more than one person.

19 Any report(s) generated by CSA Fletcher has been provided to defense counsel in  
20 discovery.

21 5. The testimony of Crime Scene Analyst Sheree Norman, who attended the  
22 autopsies of the four (4) victims in this case and recovered bullet fragments from the  
23 victims' bodies. CSA Norman's testimony will establish that the murders were committed in  
24 a manner that created a great risk of death to more than one person by means of a weapon  
25 (.380 caliber pistol and/or rifle(s) and/or shotgun(s)) or course of action (shooting a person  
26 or persons in the midst of several other persons who were present in the residence at 4825  
27 Terra Linda) which would normally be hazardous to the lives of more than one person.

28 Any report(s) generated by CSA Norman has been provided to defense counsel in

1 discovery.

2 6. The testimony of Crime Scene Analyst David Horn, who will describe the  
3 residence at 4825 Terra Linda and the location of the victims. CSA Horn's testimony will  
4 establish that the murders were committed in a manner that created a great risk of death to  
5 more than one person by means of a weapon (.380 caliber pistol and/or rifle(s) and/or  
6 shotgun(s)) or course of action (shooting a person or persons in the midst of several other  
7 persons who were present in the residence at 4825 Terra Linda) which would normally be  
8 hazardous to the lives of more than one person.

9 Any report(s) generated by CSA Horn has been provided to defense counsel in  
10 discovery.

11 7. The victim impact testimony of the parents and/or siblings of Tracey Gorringer,  
12 Mathew Mowen, Peter Talamentez and Jeffrey Biddle.

13 8. The testimony of Detective James Buczek, Detective Thomas Thowsen, Charla  
14 Severs, Ace Hart, Bryan Johnson, Tod Armstrong, Lashawya Wright, Sikia Smith, and  
15 Terrell Young who, collectively, will testify that Donte Johnson went to 4825 Terra Linda  
16 with Terrell Young and/or Sikia Smith with the intention of stealing drugs and/or money  
17 and/or personal property from the occupants of the residence.

18 Reports and/or statements of these witnesses have been provided to defense counsel  
19 in discovery.

20 9. The testimony of Charla Severs, Ace Hart, Bryan Johnson, Tod Armstrong,  
21 Lashwya Wright, Sikia Smith, and Terrell Young who, collectively, will testify that the  
22 victims were murdered, at least in part, because some or all of the victims recognized Sikia  
23 Smith and/or Donte Johnson and/or Terrell Young.

24 Statements of these witnesses have been provided to defense counsel in discovery.

25 10. The State anticipates relying on the verdict(s) and/or verdict forms that were  
26 returned by the jury in the instant case to establish that the Defendant has, in the immediate  
27 proceeding, been convicted of more than one offense of murder in the first or second degree.

28 11. The juvenile records of DONTE JOHNSON.

1 A copy of DONTE JOHNSON's juvenile criminal history has been provided to  
2 defense counsel in discovery; however, in light of confidentiality concerns, a copy has not  
3 been attached to his Notice. Rather, the State of Nevada requests an *in camera* inspection of  
4 such records to determine their admissibility.

5 12. Evidence regarding Las Vegas Justice Court case number 98F02775X in which  
6 Donte Johnson is charged with one count of Possession of a Controlled Substance With  
7 Intent to Sell. The Las Vegas Metropolitan Police Department event number associated with  
8 the case is 980225-2093.

9 Copies of any and all witness statements and reports associated with the above-  
10 referenced event have been provided to defense counsel.

11 13. Evidence of a shooting that occurred at the Super 8 Motel located at 5288  
12 Boulder Highway, Las Vegas, Nevada on or about August 11, 1998. The Las Vegas  
13 Metropolitan Police Department event number associated with the case is 980811-0995. The  
14 participants in the shooting included TERRELL YOUNG, DONTE JOHNSON and SIKIA  
15 SMITH. The evidence will be introduced through the testimony of witnesses listed in the  
16 discovery associated with event number 980811-0995.

17 Copies of any and all witness statements and reports associated with the above-  
18 referenced event have been provided to defense counsel.

19 14. Evidence regarding a homicide in which Darnell Lamont Johnson was  
20 murdered at the Thunderbird Hotel in Las Vegas, Nevada on or about the 4th day of August,  
21 1998. The Las Vegas Metropolitan Police Department event number associated with the  
22 homicide is 980805-1240. The evidence will be introduced through the testimony of  
23 witnesses listed in the discovery associated with event number 980805-1240.

24 Copies of any and all witness statements and reports associated with the above-  
25 referenced event have been provided to defense counsel.

26 15. Testimony and records of Corrections Officers/Jail Personnel/Prison Personnel  
27 from the Clark County Detention Center and Nevada State Prison pertaining to Donte  
28 Johnson's conduct while incarcerated at the Clark County Detention Center.

1 Copies of any and all records obtained to date from the Clark County Detention  
2 Center have been provided to defense counsel. The records indicate the names of the  
3 Corrections Officers/Jail Personnel the State intends to call as witnesses at the penalty  
4 hearing.

5 16. Testimony of Dante Tromba (or designee), a Gang Intelligence Officer  
6 employed by the Las Vegas Metropolitan Police Department, who will provide testimony  
7 concerning the activities and purposes of the "Six Deuce Brims" gang. The State will also  
8 introduce evidence to establish that Donte Johnson is a member of the "Six Deuce Brims"  
9 gang.

10 17. Evidence regarding Las Vegas Justice Court case number 98F06789X in which  
11 Donte Johnson is charged with one count of Attempted Murder With Use of a Deadly  
12 Weapon and one count of Battery With Substantial Bodily Harm. The Las Vegas  
13 Metropolitan Police Department event number associated with the case is 980504-0265. The  
14 victim in the case is Derrick Simpson.

15 Copies of any and all witness statements and reports associated with the above-  
16 referenced event have been provided to defense counsel.

17 DATED this 17<sup>th</sup> day of March, 2004.

18 Respectfully submitted,

19 DAVID ROGER  
20 Clark County District Attorney  
21 Nevada Bar #002781

22  
23 BY

24 GARY L. GUYMON  
25 Chief Deputy District Attorney  
26 Nevada Bar #003726

27 ///


28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of Amended Notice Of Evidence In Support Of Aggravating Cricumstance, was made this 18<sup>th</sup> day of March, 2004, by facsimile transmission to:

SPECIAL PUBLIC DEFENDER'S OFFICE  
FAX #455-6273

  
Secretary for the District Attorney's  
Office

\*\*\*\*\*  
\*\*\* TX REPORT \*\*\*  
\*\*\*\*\*

TRANSMISSION OK

TX/RX NO 3225  
CONNECTION TEL 4556273  
CONNECTION ID  
ST. TIME 03/18 07:04  
USAGE T 02'19  
PGS. SENT 7  
RESULT OK

1 NISD  
2 DAVID ROGER  
3 Clark County District Attorney  
4 Nevada Bar #002781  
5 GARY L. GUYMON  
6 Chief Deputy District Attorney  
7 Nevada Bar #003726  
8 200 South Third Street  
9 Las Vegas, Nevada 89155-2211  
10 (702) 455-4711  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA, )

11 Plaintiff, )

Case No. C153154

12 -vs- )

Dept No. V

13 DONTE JOHNSON,  
14 #1586283 )

15 Defendant. )

16 AMENDED NOTICE OF EVIDENCE IN SUPPORT OF  
17 AGGRAVATING CIRCUMSTANCES

18 COMES NOW, the State of Nevada, through DAVID ROGER, Clark County District  
19 Attorney, by and through GARY L. GUYMON, Chief Deputy District Attorney, pursuant to  
20 Supreme Court Rule 250, NRS 175.552 and NRS 200.033, and declares its intention to  
21 present the following evidence in support of aggravating circumstance at a penalty hearing:



# EXHIBIT 72

# EXHIBIT 72

ORIGINAL

1 **NISD**  
 2 DAVID ROGER  
 3 Clark County District Attorney  
 Nevada Bar #002781  
 4 GARY L. GUYMON  
 Chief Deputy District Attorney  
 Nevada Bar #003726  
 5 200 South Third Street  
 Las Vegas, Nevada 89155-2211  
 (702) 455-4711  
 6 Attorney for Plaintiff

FILED

APR 7 2 14 PM '04

*Shirley D. Guymon*  
 CLERK

DISTRICT COURT  
 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA, )

11 Plaintiff, )

12 -vs- )

13 DONTÉ JOHNSON,  
 14 #1586283 )

15 Defendant. )

Case No. C153154

Dept No. V

16 **SECOND AMENDED NOTICE OF EVIDENCE IN SUPPORT OF**  
 17 **AGGRAVATING CIRCUMSTANCES**

18 COMES NOW, the State of Nevada, through DAVID ROGER, Clark County District  
 19 Attorney, by and through GARY L. GUYMON, Chief Deputy District Attorney, pursuant to  
 20 Supreme Court Rule 250, NRS 175.552 and NRS 200.033, and declares its intention to  
 21 present the following evidence in support of aggravating circumstance at a penalty hearing:

22 1. The statements of TERRELL YOUNG that were given on September 2, 1998,  
 23 to Detectives J. Buczek, T. Thowsen, R. Chandler and K. Hardy of the Las Vegas  
 24 Metropolitan Police Department. TERRELL YOUNG'S statements, which will be offered  
 25 through the testimony of the Detectives, will establish that the murders were committed by  
 26 Donte Johnson and/or Terrell Young and/or Sikia Smith, who knowingly created a great risk  
 of death to more than one person by means of a weapon (.380 caliber pistol and/or rifle(s)  
 and/or shotgun(s)) or course of action (shooting a person or persons in the midst of several

S8

RECEIVED

APR 07 2004

COUNTY CLERK

AA08520

1 other persons who were present in the residence at 4825 Terra Linda) which would normally  
2 be hazardous to the lives of more than one person. The statements will also establish that  
3 Donte Johnson was the individual who fired the shots that killed Matthew Mowen, Jeffrey  
4 Biddle, Tracey Gorringer, and Peter Talamantez. Additionally, the statements will offered to  
5 establish Donte Johnson's involvement in a shooting that occurred at the Super 8 Motel  
6 located at 5288 Boulder Highway, Las Vegas, Nevada on or about August 11, 1998. The  
7 Las Vegas Metropolitan Police Department event number associated with the case is  
8 980811-0995. The statements will also be offered to establish Donte Johnson's involvement  
9 in a homicide in which Darnell Lamont Johnson was murdered at the Thunderbird Hotel in  
10 Las Vegas, Nevada on or about the 4th day of August, 1998. The Las Vegas Metropolitan  
11 Police Department event number associated with the homicide is 980805-1240.

12 The statements of TERRELL YOUNG have been provided to defense counsel in  
13 discovery.

14 2. The statements of SIKIA SMITH that were given on August 26, 1998 and  
15 September 8, 1998, to Detectives James Buczek and Thomas Thowsen of the Las Vegas  
16 Metropolitan Police Department. SIKIA SMITH'S statements, which will be offered  
17 through the testimony of Detectives Buczek and Thowsen, will establish that the murders  
18 were committed by Donte Johnson and/or Terrell Young and/or Sikia Smith, who knowingly  
19 created a great risk of death to more than one person by means of a weapon (.380 caliber  
20 pistol and/or rifle(s) and/or shotgun(s)) or course of action (shooting a person or persons in  
21 the midst of several other persons who were present in the residence at 4825 Terra Linda)  
22 which would normally be hazardous to the lives of more than one person. The statements  
23 will also establish that Donte Johnson was the individual who fired the shots that killed  
24 Matthew Mowen, Jeffrey Biddle, Tracey Gorringer, and Peter Talamantez. Additionally,  
25 the statements will be offered to establish Donte Johnson's involvement in a shooting that  
26 occurred at the Super 8 Motel located at 5288 Boulder Highway, Las Vegas, Nevada on or  
27 about August 11, 1998. The Las Vegas Metropolitan Police Department event number  
28 associated with the case is 980811-0995.

1 The statements of SIKIA SMITH have been provided to defense counsel in discovery.

2 3. The State may rely on the testimony of Sikia Smith and/or Terrell Young.  
3 This testimony will establish that the murders were committed by Donte Johnson and/or  
4 Terrell Young and/or Sikia Smith, who knowingly created a great risk of death to more than  
5 one person by means of a weapon (.380 caliber pistol and/or rifle(s) and/or shotgun(s)) or  
6 course of action (shooting a person or persons in the midst of several other persons who were  
7 present in the residence at 4825 Terra Linda) which would normally be hazardous to the  
8 lives of more than one person.

9 The statements given by Sikia Smith and Terrell Young have been provided to  
10 defense counsel in discovery.

11 4. The testimony of Crime Scene Analyst Shawn Fletcher who recovered certain  
12 items of evidence from the residence at 4825 Terra Linda, including, but not limited to, four  
13 (4) .380 caliber cartridge cases and bullet fragments. CSA Fletcher's testimony will  
14 establish that the murders were committed in a manner that created a great risk of death to  
15 more than one person by means of a weapon (.380 caliber pistol and/or rifle(s) and/or  
16 shotgun(s)) or course of action (shooting a person or persons in the midst of several other  
17 persons who were present in the residence at 4825 Terra Linda) which would normally be  
18 hazardous to the lives of more than one person.

19 Any report(s) generated by CSA Fletcher has been provided to defense counsel in  
20 discovery.

21 5. The testimony of Crime Scene Analyst Sheree Norman, who attended the  
22 autopsies of the four (4) victims in this case and recovered bullet fragments from the  
23 victims' bodies. CSA Norman's testimony will establish that the murders were committed in  
24 a manner that created a great risk of death to more than one person by means of a weapon  
25 (.380 caliber pistol and/or rifle(s) and/or shotgun(s)) or course of action (shooting a person  
26 or persons in the midst of several other persons who were present in the residence at 4825  
27 Terra Linda) which would normally be hazardous to the lives of more than one person.

28 Any report(s) generated by CSA Norman has been provided to defense counsel in

1 discovery.

2 6. The testimony of Crime Scene Analyst David Horn, who will describe the  
3 residence at 4825 Terra Linda and the location of the victims. CSA Horn's testimony will  
4 establish that the murders were committed in a manner that created a great risk of death to  
5 more than one person by means of a weapon (.380 caliber pistol and/or rifle(s) and/or  
6 shotgun(s)) or course of action (shooting a person or persons in the midst of several other  
7 persons who were present in the residence at 4825 Terra Linda) which would normally be  
8 hazardous to the lives of more than one person.

9 Any report(s) generated by CSA Horn has been provided to defense counsel in  
10 discovery.

11 7. The victim impact testimony of the parents and/or siblings of Tracey Gorringer,  
12 Mathew Mowen, Peter Talamentez and Jeffrey Biddle.

13 8. The testimony of Detective James Buczek, Detective Thomas Thowsen, Charla  
14 Severs, Ace Hart, Bryan Johnson, Tod Armstrong, Lashawya Wright, Sikia Smith, and  
15 Terrell Young who, collectively, will testify that Donte Johnson went to 4825 Terra Linda  
16 with Terrell Young and/or Sikia Smith with the intention of stealing drugs and/or money  
17 and/or personal property from the occupants of the residence.

18 Reports and/or statements of these witnesses have been provided to defense counsel  
19 in discovery.

20 9. The testimony of Charla Severs, Ace Hart, Bryan Johnson, Tod Armstrong,  
21 Lashwya Wright, Sikia Smith, and Terrell Young who, collectively, will testify that the  
22 victims were murdered, at least in part, because some or all of the victims recognized Sikia  
23 Smith and/or Donte Johnson and/or Terrell Young.

24 Statements of these witnesses have been provided to defense counsel in discovery.

25 10. The State anticipates relying on the verdict(s) and/or verdict forms that were  
26 returned by the jury in the instant case to establish that the Defendant has, in the immediate  
27 proceeding, been convicted of more than one offense of murder in the first or second degree.

28 11. The juvenile records of DONTE JOHNSON.

1  
2 A copy of DONTE JOHNSON's juvenile criminal history has been provided to  
3 defense counsel in discovery; however, in light of confidentiality concerns, a copy has not  
4 been attached to this Notice. Rather, the State of Nevada previously requested an *in camera*  
5 inspection of such records to determine their admissibility. This evidence includes juvenile  
6 convictions involving a bank robbery with use of a deadly weapon and carrying a concealed  
7 weapon on campus, and the criminal penalties that defendant received.

8 12. Evidence regarding Las Vegas Justice Court case number 98F02775X in which  
9 Donte Johnson is charged with one count of Possession of a Controlled Substance With  
10 Intent to Sell. The Las Vegas Metropolitan Police Department event number associated with  
11 the case is 980225-2093.

12 Copies of any and all witness statements and reports associated with the above-  
13 referenced event have been provided to defense counsel.

14 13. Evidence of a shooting that occurred at the Super 8 Motel located at 5288  
15 Boulder Highway, Las Vegas, Nevada on or about August 11, 1998. The Las Vegas  
16 Metropolitan Police Department event number associated with the case is 980811-0995. The  
17 participants in the shooting included TERRELL YOUNG, DONTE JOHNSON and SIKIA  
18 SMITH. The evidence will be introduced through the testimony of witnesses listed in the  
19 discovery associated with event number 980811-0995.

20 Copies of any and all witness statements and reports associated with the above-  
21 referenced event have been provided to defense counsel.

22 14. Evidence regarding a homicide in which Darnell Lamont Johnson was  
23 murdered at the Thunderbird Hotel in Las Vegas, Nevada on or about the 4th day of August,  
24 1998. The Las Vegas Metropolitan Police Department event number associated with the  
25 homicide is 980805-1240. The evidence will be introduced through the testimony of  
26 witnesses listed in the discovery associated with event number 980805-1240.

27 Copies of any and all witness statements and reports associated with the above-  
28 referenced event have been provided to defense counsel.

1           15. Testimony and records of Corrections Officers/Jail Personnel/Prison Personnel  
2 from the Clark County Detention Center and Nevada State Prison pertaining to Donte  
3 Johnson's conduct while incarcerated at the Clark County Detention Center and within the  
4 Nevada Department of Corrections. This evidence will include, but is not limited to an  
5 incident that occurred on February 24, 2001, wherein defendant along with another inmate  
6 threw OSCAR IRIA over a railing with the Clark County Detention Center.

7           Copies of any and all records obtained to date from the Clark County Detention  
8 Center have been provided to defense counsel. The records indicate the names of the  
9 Corrections Officers/Jail Personnel the State intends to call as witnesses at the penalty  
10 hearing.

11           16. Testimony of Dante Tromba (or designee), a Gang Intelligence Officer  
12 employed by the Las Vegas Metropolitan Police Department and/or gang intelligence officer  
13 employed with the Los Angeles Police Department, who will provide testimony concerning  
14 the activities and purposes of the "Six Deuce Brims" gang. The State will also introduce  
15 evidence to establish that Donte Johnson is a member of the "Six Deuce Brims" gang.

16           17. Evidence regarding Las Vegas Justice Court case number 98F06789X in which  
17 Donte Johnson was charged with one count of Attempted Murder With Use of a Deadly  
18 Weapon and one count of Battery With Substantial Bodily Harm. The Las Vegas  
19 Metropolitan Police Department event number associated with the case is 980504-0265. The  
20 victim in the case is Derrick Simpson, who has died as a result of the injuries he sustained.  
21 Donte Johnson plead guilty to Battery With Use Of A Deadly Weapon in Case No.  
22 98F06789X.

23           18. Letters and/or correspondence of Donte Johnson to Sikia Smith, Terrell Young  
24 and Charla Severs.

25           Copies of the letters have been provided to defense counsel.

26       ///

27       ///

28       ///

1 Copies of any and all witness statements and reports associated with the above-  
2 referenced event have been provided to defense counsel.

3 DATED this 6 day of April, 2004.

4 Respectfully submitted,

5 DAVID ROGER  
6 Clark County District Attorney  
7 Nevada Bar #002781

8  
9 BY

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

13 CERTIFICATE OF FACSIMILE TRANSMISSION

14 I hereby certify that service of Amended Notice Of Evidence In Support Of  
15 Aggravating Circumstance, was made this 6th day of April, 2004, by facsimile  
16 transmission to:

17 SPECIAL PUBLIC DEFENDER'S OFFICE  
18 FAX #455-6273

19 N. M. C. D.  
20 Secretary for the District Attorney's  
21 Office

22  
23  
24  
25  
26  
27  
28 GLG/ddm



\*\*\*\*\*  
\*\*\* TX REPORT \*\*\*  
\*\*\*\*\*

TRANSMISSION OK

TX/RX NO	3428	
CONNECTION TEL		4556273
CONNECTION ID		
ST. TIME	04/07 09:00	
USAGE T	02'25	
PGS. SENT	7	
RESULT	OK	

1 NISD  
2 DAVID ROGER  
3 Clark County District Attorney  
4 Nevada Bar #002781  
5 GARY L. GUYMON  
6 Chief Deputy District Attorney  
7 Nevada Bar #003726  
8 200 South Third Street  
9 Las Vegas, Nevada 89155-2211  
10 (702) 455-4711  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,  
11 Plaintiff,

Case No. C153154

12 -vs-

Dept No. V

13 DONTE JOHNSON,  
14 #1586283

15 Defendant.

16 SECOND AMENDED NOTICE OF EVIDENCE IN SUPPORT OF  
17 AGGRAVATING CIRCUMSTANCES

18 COMES NOW, the State of Nevada, through DAVID ROGER, Clark County District  
19 Attorney, by and through GARY L. GUYMON, Chief Deputy District Attorney, pursuant to  
20 Supreme Court Rule 250, NRS 175.552 and NRS 200.033, and declares its intention to  
21 present the following evidence in support of aggravating circumstance at a penalty hearing:

AA08527

# EXHIBIT 73

# EXHIBIT 73

**OPPS**

ALZORA B. JACKSON  
Deputy Special Public Defender  
Nevada Bar No. 2255  
BRET O. WHIPPLE  
Deputy Special Public Defender  
Nevada Bar No. 6168  
333 South Third Street, 2nd Floor  
Las Vegas, NV 89155-2316  
(702) 455-6265  
Attorneys for Defendant

*Shirley B. Pangloss*

APR 20 3 15 PM '04

**FILED**

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DONTE JOHNSON,

Defendant.

CASE NO. C153154

DEPT. NO. VIII

DATE OF HEARING:  
TIME OF HEARING:

**DEFENDANT'S OPPOSITION TO THE STATE'S SECOND AMENDED  
NOTICE OF EVIDENCE IN SUPPORT OF AGGRAVATING CIRCUMSTANCES**

COMES NOW, the Defendant, DONTE JOHNSON, by and through his attorneys,  
ALZORA B. JACKSON, Deputy Special Public Defender and BRET O. WHIPPLE, Deputy  
Special Public Defender and hereby submits the following Response and Opposition to  
State's Second Amended Notice of Evidence in Support of Aggravating Circumstances.

...

...

...

...

...

...

**COUNTY CLERK**

APR 20 2004

**RECEIVED**


SPECIAL PUBLIC  
DEFENDER

CLARK COUNTY  
NEVADA

1 For the sake of simplicity the Defendant's opposition papers will follow the same  
2 format numerically as that used by the State in its Second Amended Notice.

3 This Response and Opposition is made and based upon the attached Points and  
4 Authorities, all papers on file herein, and on oral argument, if any, at the time of the  
5 hearing of said notice.

6 DATED this 20 day of April, 2004.

7   
8 ALZORA B. JACKSON  
9 Nevada Bar No. 2255  
10 333 S. Third Street, 2nd Floor  
11 Las Vegas, NV 89155  
12 Attorney for Defendant

12 **POINTS AND AUTHORITIES**

13 1. The statements of TERRELL YOUNG that were given on September 2, 1998,  
14 to Detectives J. Buczek, T. Thowsen, R. Chandler and K. Hardy of the Las Vegas  
15 Metropolitan Police Department. TERRELL YOUNG'S statements, which will be offered  
16 through the testimony of the Detectives, will establish that the murders were committed  
17 by Donte Johnson and/or Terrell Young and/or Sikia Smith, who knowingly created a  
18 great risk of death to more than one person by means of a weapon (.380 caliber pistol  
19 and/or rifle(s) and/or shotgun(s) or course of action (shooting a person or persons in the  
20 midst of several other persons who were present in the residence at 4825 Terra Linda)  
21 which would normally be hazardous to the lives of more than one person. The  
22 statements will also establish that Donte Johnson was the individual who fired the shots  
23 that killed Matthew Mowen, Jeffrey Biddle, Tracey Gorringer and Peter Talamantez.  
24 Additionally, the statements will be offered to establish Donte Johnson's involvement in  
25 a shooting that occurred at the Super 8 Motel located at 5288 Boulder Highway, Las  
26 Vegas, Nevada on or about August 11, 1998. The Las Vegas Metropolitan Police  
27 Department event number associated with the case is 980811-0995. The statements  
28 will also be offered to establish Donte Johnson's involvement in a homicide in which

1 Darnell Lamont Johnson was murdered at the Thunderbird Hotel in Las Vegas, Nevada  
2 on or about the 4th day of August, 1998. The Las Vegas Metropolitan Police Department  
3 event number associated with the homicide is 980805-1240.

4 ***DEFENDANT'S RESPONSE***

5 Defendant Donte Johnson objects to any statements of his Co-Defendant Terrell  
6 Young coming into these proceedings. The basis of Defendant's objection is that it has  
7 long been the law in the State of Nevada that absence some hearsay exception, admitting  
8 a non-testifying Co-Defendant's confession against another Co-Defendant generally  
9 violates the Sixth Amendment right to confrontation. Bruton v. United States, 391 U.S.  
10 123, 137 (1968). The Bruton rule has been applied to the penalty phase of a capital case  
11 as well. See, Lord v. State, 107 Nev. 28; 806 P.2d 548 (1991). In holding Bruton  
12 standards to the penalty phase in capital proceedings, our Supreme Court stated:

13 The need for cross examination to test the fundamental reliability of co-  
14 defendants often suspect statements is not less great in the penalty phase  
15 than in the guilt phase. In accord with the California Supreme Court, we  
16 conclude that the right of cross-examination and the need for accuracy are  
as important, indeed more important, in the penalty phase than in the guilt  
phase. We recognize that at least one court has suggested that Bruton does  
not apply in the penalty phase, but this position is not persuasive.

17 Id., at pg. 44.

18 2. The statement of SIKIA SMITH that were given on August 26, 1998 and  
19 September 8, 1998, to Detectives James Buczek and Thomas Thowsen of the Las Vegas  
20 Metropolitan Police Department. SIKIA SMITH'S statements, which will be offered  
21 through the testimony of Detectives Buczek and Thowsen, will establish that the murders  
22 were committed by Donte Johnson and/or Terrell Young and/or Sikia Smith, who  
23 knowingly created a great risk of death to more than one person by means of a weapon  
24 (.380 caliber pistol and/or rifle(s) and/or shotgun(s)) or course of action (shooting a person  
25 or persons in the midst of several other persons who were present in the residence at  
26 4825 Terra Linda which would normally be hazardous to the lives of more than one  
27 person. The statements will also establish that Donte Johnson was the individual who  
28 fired the shots that killed Matthew Mowen, Jeffrey Biddle, Tracey Gorringer and Peter

1 Talamantez. Additionally, the statements will be offered to establish Donte Johnson's  
2 involvement in a shooting that occurred at the Super 8 Motel located at 5288 Boulder  
3 Highway, Las Vegas, Nevada on or about August 11, 1998. The Las Vegas Metropolitan  
4 Police Department event number associated with the case is 980811-0995.

5 ***DEFENDANT'S RESPONSE***

6 Defendant Donte Johnson objects to the introduction of these statements for the  
7 exact same reasons set forth in number 1 and they shall be incorporated herein as though  
8 fully set forth.

9 3. The State may rely on the testimony of Sikia Smith and/or Terrell Young.  
10 This testimony will establish that the murders were committed by Donte Johnson and/or  
11 Terrell Young and/or Sikia Smith, who knowingly created a great risk of death to more  
12 than one person by means of a weapon (.380 caliber pistol and/or rifle(s) and/or  
13 shotgun(s)) or course of action (shooting a person or persons in the midst of several other  
14 persons who were present in the residence at 4825 Terra Linda) which would normally  
15 be hazardous to the lives of more than one person.

16 ***DEFENDANT'S RESPONSE***

17 Item No. 3 as expressed by the State is somewhat ambiguous. In line 1 of number  
18 3 it refers to "the testimony" of Sikia Smith and/or Terrell Young. However, the last  
19 paragraph of number 3 refers to statements by Sikia Smith and Terrell Young. To the  
20 extent that the State is referring to the statements of these two Co-Defendants, again,  
21 refer to Defendant's response in item number 1 and it is incorporated herein as though  
22 fully set forth.

23 To the extent that the State intends to use prior sworn testimony of these two Co-  
24 Defendants from any previous proceedings, counsel would object to the use of such  
25 testimony on the same basis as set forth in number 1 above. To the extent that any such  
26 testimony exists, it would not have been subject to the cross-examination of Donte  
27 Johnson's attorneys and would have the same confrontation clause issues and Bruton  
28 issues as the statements and therefore inadmissible.

1           4.     The testimony of Crime Scene Analyst Shawn Fletcher who recovered  
2 certain items of evidence from the residence at 4825 Terra Linda, including, but not  
3 limited to, four (4) .380 caliber cartridge cases and bullet fragments. CSA Fletcher's  
4 testimony will establish that the murders were committed in a manner that created a  
5 great risk of death to more than one person by means of a weapon (.380 caliber pistol  
6 and/or rifle(s) and/or shotgun(s)) or course of action (shooting a person or persons in the  
7 midst of several other persons who were present in the residence at 4825 Terra Linda)  
8 which would normally be hazardous to the lives of more than one person.

9                                   **DEFENDANT'S RESPONSE**

10           Defense realizes that the State certainly is allowed to put on testimony of Crime  
11 Scene Analyst Shawn Fletcher regarding the evidence that was recovered from the  
12 residence at 4825 Terra Linda including caliber cases and bullet fragments. However, the  
13 State's intention to use this testimony to establish that the murders were committed in  
14 a manner that created a great risk of death to more than one person, one of the statutory  
15 aggravators is improper. As indicated by attached Exhibit "1", in the State's amended  
16 Notice of Intent to Seek Death Penalty they have not alleged that the murder was  
17 committed by a person who normally created a great risk of death to more than one  
18 person by means of a weapon, etc. Therefore, this type of testimony by Crime Scene  
19 Fletcher would be irrelevant and extremely prejudicial. It is interesting to note that this  
20 particular aggravator which is number 3 under NRS 200.033 which sets forth the  
21 circumstances which would aggravate First Degree Murder, in the previous penalty  
22 hearing before the jury was stricken by Judge Sobel. Judge Sobel found that all the  
23 evidence in this case was that the victims were killed by bullets at close range coming  
24 out of the gun. "I think to speculate that there was risk of death to co-defendants is  
25 awfully tenuous . Number 3 will be stricken and the others will stand." (See attached  
26 Exhibit "2", transcript from penalty phase Day One before Donte Johnson jury trial, page  
27 27). Additionally, Judge Sobel found that aggravator number 3 should also be stricken  
28 because it was duplicative of aggravator number 12 which is that the Defendant has, in

1 the immediate proceedings been convicted of more than one offense of murder in the  
2 First or Second Degree. Therefore, under all of the applicable law relating to relevance  
3 and the balancing of probative versus prejudicial testimony in a penalty phase, Crime  
4 Scene Analyst Shawn Fletcher should not be allowed to speculate and provide testimony  
5 that goes to an aggravator that has not been alleged. See, Hogan v. Warden, 109 Nev.  
6 952, 860 P.2d 1710 (1993). Moreover, under the Doctrine of stare decisis, this Court  
7 should abide the formal ruling by Judge Sobel. According to Black's Law Dictionary,  
8 under the Doctrine of stare decisis a deliberate or solemn decision of Court made after  
9 argument on the question of law fairly arising in the case, and necessary to its  
10 determination, is an authority, or binding precedent in this same Court or in other Courts  
11 of equal or lower rank in subsequent cases where the very point is again in controversy.  
12 (Black's Law Dictionary 4th Edition West Publishing Company (1951)).

13 5. The testimony of Crime Scene Analyst Sheree Norman, who attended the  
14 autopsies of the four (4) victims in this case and recovered bullet fragments from the  
15 victims' bodies. CSA Norman's testimony will establish that the murders were committed  
16 in a manner that created a great risk of death to more than one person by means of a  
17 weapon (.380 caliber pistol and/or rifle(s) and/or shotgun(s) or course of action (shooting  
18 a person or persons in the midst of several other persons who were present in the  
19 residence at 4815 Terra Linda) which would normally be hazardous to the lives of more  
20 than one person.

#### 21 ***DEFENDANT'S RESPONSE***

22 The Defendant Donte Johnson objects to any testimony coming in from Crime  
23 Scene Analyst Norman which seeks to establish that the murders were committed in a  
24 manner that created a great risk of death to more than one person by means of a  
25 weapon. The reasons for the Defendant's objection are set forth in number 4 above and  
26 are incorporated by reference herein just as though fully set forth herein.

27 6. The testimony of Crime Scene Analyst David Horn, who will describe the  
28 residence at 4825 Terra Linda and the location of the victims. CSA Horn's testimony will



1 establish that the murders were committed in a manner that created a great risk of death  
2 to more than one person by means of a weapon (.380 caliber pistol and/or rifle(s) and/or  
3 shotgun(s)) or course of action (shooting a person or persons in the midst of several other  
4 persons who were present in the residence at 4825 Terra Linda) which would normally  
5 be hazardous to the lives of more than one person.

6 **DEFENDANT'S RESPONSE**

7 See response to number 4 which is incorporated by reference as though fully set  
8 forth herein.

9 7. The victim impact testimony of the parents and/or siblings of Tracey  
10 Gorringer, Matthew Mowen, Peter Talamantez and Jeffrey Biddle.

11 **DEFENDANT'S RESPONSE**

12 Defendant Donte Johnson objects to victim impact testimony of an excessive  
13 nature. The State is certainly allowed to present to the jury each victim's uniqueness as  
14 an individual human being. Further, they are allowed to elicit brief testimony regarding  
15 the impact of the victim's death on the family. Payne v. Tennessee, 501 U.S. 808; 111  
16 S.Ct. 2597; 115 L.Ed. 2d 720; (1991).

17 "Victim impact testimony is permitted at a capital penalty proceeding under  
18 NRS 175.552(3) and under federal due process standards, but it must be  
19 excluded if it renders *the proceeding fundamentally unfair*. The United  
20 States Supreme Court has stated that victim impact evidence during a  
21 capital penalty hearing is relevant to show each victim's uniqueness as an  
22 individual human being. Admissibility of testimony during the penalty phase  
23 of a capital trial is a question within the district court's discretion, and this  
24 court reviews only for abuse of discretion.

25 Floyd v. State, 118 Nev. Adv.Rptr. pg. 17; 42 P.3d 249, 261 (2002)

26 It has long been the law in the United States of America in cases where a  
27 Defendant is fighting for his very life, that a death penalty should be based on reason  
28 rather than caprice or emotion. See, Gardner v. Florida, 430 U.S. 349; 97 S.Ct. 1197;  
51 L.Ed 2d 393 (1977).

In the instant case, admittedly you have four young men who have been the victim  
of a terrible homicide. Nevertheless, there has to be some limit on a long parade of family

1 members including parents, siblings, etc. before this jury otherwise the Defendant will be  
2 denied a fair hearing. Judge Sobel addressed this very issue back in June of 2000.  
3 Judge Sobel limited the victim impact testimony to one (1) parent per victim. (See  
4 transcript pg. 15). The Judge in that proceeding pointed out that whichever parent did  
5 not testify at the penalty hearing would of course have a chance to address the Court at  
6 the formal sentencing. Therefore, he limited the victim impact to one (1) parent for each  
7 of the victims. Additionally, in an effort to balance the fairness in the proceedings, the  
8 Judge in that case also provided some guidelines as far as the length of time that each  
9 parent were to testify as well as what type of visual aids the State would be using. The  
10 agreed upon amount of time previously was fifteen (15) minutes and it appears from the  
11 record that the State was limited to one (1) or two (2) photographs of each of the  
12 victims. Under the Federal Constitution Sixth, Eighth, Fifth and Fourteenth Amendment  
13 and anything else that has to do with due process and a fair trial, any more than this  
14 would violate Donte Johnson's rights. See, Payne, *supra* and Floyd, *supra*.

15 8. The testimony of Detective James Buczek, Detective Thomas Thowsen,  
16 Charla Severs, Ace Hart, Bryan Johnson, Tod Armstrong, Lashawya Wright, Sikia Smith,  
17 and Terrell Young who, collectively, will testify that Donte Johnson went to 4825 Terra  
18 Linda with Terrell Young and/or Sikia Smith with the intention of stealing drugs and/or  
19 money and/or personal property from the occupants of the residence.

20 ***DEFENDANT'S RESPONSE***

21 Regarding the testimony of Terrell Young and/or Sikia Smith, Defendant Donte  
22 Johnson reaffirms the same arguments as set forth in number one. As to the testimony  
23 of Detective James Buczek, Detective Thomas Thowsen, Charla Severs, Ace Hart, Bryan  
24 Johnson, Tod Armstrong and Lashaway Wright the Defendant objects to any testimony  
25 coming in that is not directly authorized by statute and/or case law.

26 9. The testimony of Charla Severs, Ace Hart, Bryan Johnson, Tod Armstrong,  
27 Lashawya Wright, Sikia Smith, and Terrell Young, who, collectively, will testify that the  
28 victims were murdered, at least in part, because some or all of the victims recognized

1 Sikia Smith and/or Donte Johnson and/or Terrell Young.

2 ***DEFENDANT'S RESPONSE***

3 As to the testimony of Co-Defendants Sikia Smith and Terrell Young, Defendant  
4 Donte Johnson reasserts the argument set forth in number one as set forth herein. As  
5 to the testimony of Charla Severs, Ace Hart, Bryan Johnson, Tod Armstrong, and  
6 Lashaway Wright, the Defendant objects to any testimony that is not directly authorized  
7 by Nevada Revised Statute or Nevada case law.

8 10. The State anticipates relying on the verdict(s) and/or verdict forms that were  
9 returned by the jury in the instant case to establish that the Defendant has, in the  
10 immediate proceeding, been convicted of more than one offense of murder in the first or  
11 second degree.

12 ***DEFENDANT'S RESPONSE***

13 Defendant Donte Johnson will submit this matter to the Court based upon the  
14 record.

15 11. The juvenile records of DONTÉ JOHNSON.

16 ***DEFENDANT'S RESPONSE***

17 Defendant Donte Johnson objects to the admission of his juvenile records as being  
18 inadmissible for any purposes pursuant to NRS Chapter 62 eq. seq.

19 12. Evidence regarding Las Vegas Justice Court case number 98F02775X in  
20 which Donte Johnson is charged with one count of Possession of a Controlled Substance  
21 With Intent to Sell. The Las Vegas Metropolitan Police Department event number  
22 associated with the case is 980225-2093.

23 ***DEFENDANT'S RESPONSE***

24 Defendant Donte Johnson objects to the introduction of this evidence on the basis  
25 of number one, relevance, and number two it is far too dubious and tenuous for  
26 admission.

27 According to Blackstone, the Defendant was arrested for this offense on or about  
28 February 25, 1998. Apparently a complaint was filed on April 10, 1998. Thereafter, on

1 August 7, 2000, the action was dismissed on the Court's motion. A trial court should  
2 not admit evidence which is impalpable or highly suspect in a penalty phase. Young v.  
3 State, 103 Nev. 233, 237, 737 P.2d 512, 515 (1987). Also, the trial judge may not  
4 admit evidence that is dubious or tenuous. Allen v. State, 99 Nev. 485, 488, 665 P.2d  
5 238, 240 (1983). There must be a showing by the State before this type of evidence  
6 is allowed in that Donte Johnson in fact committed this offense. Thereafter, there must  
7 be a showing that its probative value is not outweighed by prejudice. See, D'Agostino  
8 v. State, 107 Nev. 1001; 823 P.2d 283 (1991). Putting aside the fact that this evidence  
9 is irrelevant, the State cannot clear these two hurdles in getting this evidence admitted.  
10 Therefore, this evidence should not be allowed.

11 13. Evidence of a shooting that occurred at the Super 8 Motel located at 5288  
12 Boulder Highway, Las Vegas, Nevada on or about August 11, 1998. The Las Vegas  
13 Metropolitan Police Department event number associated with the case is 980811-0995.  
14 The participants in the shooting included TERRELL YOUNG, DONTE JOHNSON, and SIKIA  
15 SMITH. The evidence will be introduced through the testimony of witnesses listed in the  
16 discovery associated with event number 980811-0995.

17 ***DEFENDANT'S RESPONSE***

18 Defendant's Donte Johnson objects to the admission of any evidence regarding a  
19 shooting that allegedly occurred at the Super 8 Motel. Donte Johnson was never charged  
20 with this offense or prosecuted for it. The spurious nature of the allegations themselves  
21 are not supported by the type of credible evidence that would allow their admission.  
22 Under NRS 175.552, evidence which may or may not ordinarily be admissible under the  
23 rule of evidence may be admitted in the penalty phase of a capital trial as long as the  
24 questioned evidence is not supported solely by impalpable or highly suspect evidence.  
25 This includes alleged crimes for which the Defendant has not been convicted. However,  
26 this evidence is not admitted to establish the existence of any aggravating circumstance  
27 but rather as "other matter" which the Court deems relevant to sentence. The  
28 determination of whether to admit or exclude such evidence is left to the sound discretion

1 of the trial Court. Homick v. State, 108 Nev. 127, 138, 825 P.2d 600 (1992).

2 14. Evidence regarding a homicide in which Darnell Lamont Johnson was  
3 murdered at the Thunderbird Hotel in Las Vegas, Nevada on or about the 4th day of  
4 August, 1998. The Las Vegas Metropolitan Police Department event number associated  
5 with the homicide is 980805-1240. The evidence will be introduced through the  
6 testimony of witnesses listed in the discovery associated with event number 980805-  
7 1240.

8 ***DEFENDANT'S RESPONSE***

9 Defendant Donte Johnson objects to the admission of this evidence. This is a  
10 homicide allegedly occurring on or about August 5, 1998. Donte Johnson has never been  
11 formally charged with this offense despite his having been in custody since on or about  
12 August 17, 1998. One also has to appreciate and be reminded that in the instant case  
13 before this Court, Donte Johnson has been convicted of the murder of four (4) young  
14 men. Given the foregoing, this Court has to be very careful with whatever else under the  
15 "other matter" evidence it allows in pursuant to its sound discretion. One has to be  
16 reminded that:

17 "death is a different kind of punishment from any other which may be  
18 imposed in this country". Gregg v. Georgia, 428 U.S. 153, 181-188;  
Furman v. Georgia, 408 U.S. at 286-291.

19 From the point of view of the Defendant it is different in both its severity  
20 and finality. From the point of view of society, the action of the sovereign  
21 in taking the life of one of its citizens also differs dramatically from any  
22 other legitimate state action. It is of vital importance to the Defendant and  
23 to the community that any decision to impose the death sentence, be, and  
24 appear to be, based on reason rather than caprice or emotion. Gardner v.  
Florida, 430 U.S. 349, 357-358; 97 S.Ct. 1197; 51 L.Ed.2d 393; (1977).

25 It is because of these considerations that this Honorable Court has to determine  
26 whether or not introducing an unrelated, uncharged homicide into this case is a violation  
27 of Defendant's right to a fair trial.

28 The Court must be very careful in deciding to admit an uncharged, unrelated  
homicide in this already highly emotionally charged case. As noted in D'Agostino v.  
State, 107 Nev. 1001;823 P.2d 283 (1991), the Court stated as follows:

1 In death cases the proof of other crimes is intended not to show the guilt of  
2 the accused but, rather to display the character of the convict and to show  
3 culpability and just desserts on the party of the homicidal convict. Past  
4 criminal activity is one of the most critical factors in the process of  
5 assessing punishment for whatever purpose punishment might be inflicted.  
6 Past misconduct relates to the criminal's blame worthiness for the charged  
7 homicide and relates, as well to whether the jury deems it necessary for  
8 public safety to impose a revocable, permanent quarantine upon the  
9 murderer. The point is that past homicidal conduct of the subject of a death  
10 penalty hearing goes to the very heart of the jury's decision making process.  
11 Property admitted evidence of past criminal conduct is even more damaging  
12 in apparent penalty hearing than it is in a guilt determining proceeding  
13 because the past conduct goes to the substance of whether the murder  
14 should or should not be punished by death....while past murders are  
15 relevant, even vital to the penalty hearing when properly called to the jury's  
16 attention, unreliability (sic) demonstrated past killings are harmful in the  
17 extreme and simply cannot be overlooked by a reviewing court.

18 Based on the foregoing considerations we now hold that testimony in a  
19 penalty hearing related to supposed admissions by the convict as to past  
20 homicidal criminal conduct may not be heard by the jury unless the trial  
21 judge first determines that the details of the admissions supply a sufficient  
22 indetia of reliability or there is some credible evidence other than the  
23 admission itself to justify the conclusion that the convict committed the  
24 crimes which are the subject of the admission. Id., at pg.1004

25 In the instant case, it is submitted that the proffered evidence does not meet the  
26 standard as set forth in D'Augustino. In any event, Mr. Johnson would assert his right  
27 for the Judge to first determine that the proffered evidence has some indicia of reliability  
28 before admitting this very damaging testimony.

15. Testimony and records of Corrections Officers/Jail Personnel/Prison  
Personnel from the Clark County Detention Center and Nevada State Prison pertaining to  
Donte Johnson's conduct while incarcerated at the Clark County Detention Center and  
within the Nevada Department of Corrections. This evidence will include, but is not  
limited to an incident that occurred on February 24, 2001, where defendant along with  
another inmate threw OSCAR IRIA over a railing within the Clark County Detention  
Center.

#### ***DEFENDANT'S RESPONSE***

Defendant Donte Johnson would submit to the Court's discretion whether or not  
to admit testimony and records of Correction Officers and jail personnel from the Clark

1 County Detention Center and the Nevada State Prison in general. However, Donte  
2 Johnson takes very strong exception and objects to any evidence that would reference  
3 in any manner an incident that occurred on February 24, 2001, wherein Defendant along  
4 with another inmate allegedly threw Oscar Irias over a railing at the Clark County  
5 Detention Center. The basis of this objection is that first of all it is extremely prejudicial  
6 and lacks any probative value. The record herein will reflect that Donte Johnson did not  
7 have any responsibility for this act.

8 As a matter of fact, on July 18, 2001, another inmate who was charged along  
9 with Donte Johnson, aka John White plead guilty to both counts in Case No. C174692.  
10 The other inmate, Reginald Johnson, entered into a plea agreement on the express  
11 condition that the case be dismissed with prejudice against his Co-Defendant White. See,  
12 attached Exhibit "3", a copy of the District Court minutes from that matter).

13 Moreover, this case was worked up extensively for trial by the then defense  
14 attorney Gloria Navarro. Although the matter was bound over from preliminary hearing  
15 there was ample evidence to believe that a not guilty plea would have been obtained  
16 against both defendants if the matter had proceeded to trial. The defense investigation  
17 of this case revealed that the victim, Oscar Irias, was in custody on charges of First  
18 Degree Kidnapping and Sexual Assault on a Minor under the age of Fourteen, both of  
19 which carry penalties of a life sentence in the Nevada State Prison. Even though Mr. Irias  
20 did not want to press charges, the State offered to assist him if he pursued prosecution  
21 of this matter. As a matter of fact, Oscar Irias was the recipient of a very favorable plea  
22 agreement which allowed him to plead to coercion, a crime which carries a penalty of one  
23 to six years with the possibility of probation.

24 More importantly, based upon the investigation of the defense attorney in this  
25 matter, it was determined that the corrections officers who were testifying in this  
26 incident could not have possibly witnessed the events that they claim. As a matter of  
27 fact, counsel is in possession of a video tape which would show that the officers vantage  
28 point was obstructed in this regard.

1           Essentially, what Mr. Johnson has suggested to the Court is that this incident is  
2 so crucial and critical to whether or not he lives or dies in this penalty phase because it  
3 is the only incident involving violence he has suffered since being arrested in 1998. This  
4 incident standing alone, if lodged falsely against Mr. Johnson could be sufficient to  
5 convince a penalty phase jury that he cannot be safely housed and that he must be put  
6 to death. Therefore, this issue must be litigated before this Court makes such a  
7 determination. See, Gardner v. Florida, supra; D'Agostino v. State, supra; and Parker v.  
8 State, 109 Nev. 383; 849 P.2d 1062 (1993). Attached hereto as Exhibit "5" is a Waiver  
9 of Conflict submitted by Mr. Reginald Johnson. In that Waiver of Conflict, Mr. Johnson  
10 acknowledges that his former attorney Gloria Navarro is now employed with the office  
11 which represents Donte Johnson, aka John White. He further acknowledges that Ms.  
12 Navarro has information which would be helpful in representing Mr. Johnson in these  
13 proceedings. More importantly, Mr. Johnson agrees that if the State seeks to introduce  
14 any testimony against Mr. Donte Johnson involving the alleged attempt murder upon  
15 Oscar Irias, that he would be called as a witness to testify on behalf of Mr. Johnson that  
16 he did not participate in this incident.

17           This is critical to Mr. Johnson's case. Therefore, a decision as to the reliability and  
18 credibility of this evidence has to be made in advance of these proceedings and outside  
19 the presence of a jury. Given the immense amount of evidence the defense has to show  
20 that Donte Johnson was not involved, the only determination this Court could make is  
21 that this evidence is impalpable and very highly suspect and therefore, has no place in  
22 this penalty phase. Id at pg. 390.

23           16. Testimony of Dante Tromba (or designee), a Gang Intelligence Officer  
24 employed by the Las Vegas Metropolitan Police Department and/or gang intelligence  
25 officer employed with the Los Angeles Police Department, who will provide testimony  
26 concerning the activities and purposes of the "Six Deuce Brims" gang. The State will  
27 also introduce evidence to establish that Donte Johnson is a member of the "Six Deuce  
28 Brims" gang.



1 **DEFENDANT'S RESPONSE**

2 Defendant Donte Johnson objects to any testimony of a so-called gang intelligence  
3 officer employed by the Las Vegas Metropolitan Police Department regarding the activities  
4 of the "Six Deuce Brims". There is absolutely no evidence in the discovery provided to  
5 counsel since August of 1998 which would suggest that Donte Johnson was operating  
6 as a "Six Deuce Brims" gang member here in Clark County, Nevada. Moreover, all of the  
7 evidence in this case was overwhelming to show that Donte Johnson was recruited and  
8 an active member of the "Six Deuce Brims" in Los Angeles, California only. Therefore,  
9 this evidence as to this Metro office would be irrelevant and extremely prejudicial and  
10 therefore should be excluded.

11 17. Evidence regarding Las Vegas Justice Court case number 98F06789X in  
12 which Donte Johnson was charged with one count of Attempted Murder With Use of a  
13 Deadly Weapon and one count of Battery With Substantial Bodily Harm. The Las Vegas  
14 Metropolitan Police Department event number associated with the case is 980504-0265.  
15 The victim in the case is Derrick Simpson, who has died as a result of the injuries he  
16 sustained. Donte Johnson plead guilty to Battery With Use of a Deadly Weapon in Case  
17 No. 98F06789X.

18 **DEFENDANT'S RESPONSE**

19 Defendant Donte Johnson plead guilty pursuant to Alford to a reduced charge of  
20 Battery with use of a Deadly Weapon in reference to the injuries sustained by Derrick  
21 Simpson. Derrick Simpson was alive and testified at Donte Johnson's previous penalty  
22 hearings. As a matter of fact, the State has been granted permission in its Notice of  
23 Motion and Motion to Admit Former Testimony to use the preliminary hearing testimony  
24 of Derrick Simpson which was videotaped and where the prior penalty phase transcribed  
25 testimony of Derrick Simpson. The record will reflect that the defense attorney did not  
26 object to the use of this former sworn testimony inasmuch as the witness is clearly  
27 unavailable.

28 There can, however, be no mention whatsoever of the fact that Derrick Simpson

1 has since died. First of all, there has been no showing whatsoever that Derrick Simpson  
2 died as a result of any actions on the part of Donte Johnson. The record in this case will  
3 reflect that Derrick Simpson was a practicing crack head in his 40's at the time when he  
4 was allegedly shot by Donte Johnson. There has been no showing whatsoever that Mr.  
5 Simpson did not die of circumstances surrounding his lifestyle. Another very good reason  
6 why this jury should not be informed about Derrick Simpson's death is that the State  
7 itself could not have prosecuted Donte Johnson for the murder of Derrick Simpson.  
8 Derrick Simpson was allegedly shot by Donte Johnson on or about May 4, 1998. While  
9 counsel does not know the exact date of Mr. Simpson's demise, he clearly was alive and  
10 well in June of 2000. Under the state of the law as it existed at the time of this crime,  
11 Donte Johnson could not have been prosecuted for the death of Derrick Simpson because  
12 death did not occur within a year and a day of the shooting which was the law at that  
13 time. (See attached Exhibits "7" attached hereto, the Criminal Complaint charging Donte  
14 Johnson with the Attempt Murder of Derrick Simpson and Exhibit ("8") NRS 200.100).

15       The law in this area does not necessarily require a conviction or a prosecutable  
16 offense in order for the Court to allow the admission of this type of evidence under the  
17 "other matter" which the Court deems relevant to sentence. See, Homick, supra.  
18 Nevertheless, the determination of whether to admit or exclude such evidence is left to  
19 the Court's sound discretion. We would submit that in a situation like this where Donte  
20 Johnson's third penalty hearing which is being held four (4) years after the first, should  
21 not prejudice him in any way. The record herein will reflect that Donte Johnson moved  
22 for and did his best to obtain a second jury penalty hearing back in June of 2000 after  
23 the first jury trial was declared a mistrial. It would therefore violate procedural due  
24 process as well as fundamental fairness to punish Donte Johnson for the delay in these  
25 proceedings by allowing this jury to know that Derrick Simpson has since expired.  
26 Therefore, this information must be kept away from this jury to avoid tainting it with any  
27 unfair and prejudicial information.

28

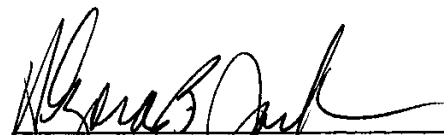
1 18. Letters and/or correspondence of Donte Johnson to Sikia Smith, Terrell  
2 Young and Charla Severs.

3 **DEFENDANT'S RESPONSE**

4 Once again, Defendant Donte Johnson objects to the introduction of any of these  
5 letters. This issue was addressed thoroughly by Judge Sobel in the first penalty phase  
6 at page 16. The Court indicated that it found the letters to be "consistently profane,  
7 almost rap type letters between Mr. Johnson and his Co-Defendant. They're filled with  
8 profanity. They are filled with racial epithets. They show, it seems, a fairly intelligent,  
9 cocky young man who is still enjoying his life in jail, who may be doesn't particularly even  
10 care if he gets the death penalty. Seems that the more I thought about it, it might very  
11 well affect the proper consideration of the jury in terms of what they should be focusing  
12 on.... I read them as nothing more than profanity laden communications between these  
13 co-conspirators, something that you couldn't take out all the references to nigger and all  
14 the profanity and I just don't particularly see any probative value that could outweigh the  
15 possible prejudice." (Transcript pgs. 16-17). Therefore, the previous Court ruled that the  
16 letters could not come in inasmuch as they would interfere with a reasoned and rational  
17 decision to impose the death sentence rather than one based upon caprice and emotion.

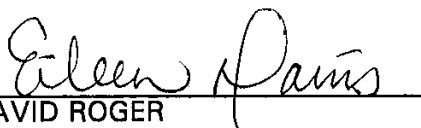
18 See, Gardner, supra. *h*

19 DATED this 20 day of April, 2004.

20  
21   
22 ALZORA B. JACKSON  
23 Deputy Special Public Defender  
24 Nevada Bar No. 2255  
25 333 South Third Street, 2nd Floor  
26 Las Vegas, NV 89155-2316  
27 (702) 455-6265  
28 Attorney for Defendant

**RECEIPT OF COPY**

RECEIPT OF COPY of the foregoing **DEFENDANT'S OPPOSITION TO THE STATE'S  
SECOND AMENDED NOTICE OF EVIDENCE IN SUPPORT OF AGGRAVATING  
CIRCUMSTANCES** is hereby acknowledged this 20 day of April, 2004.

  
DAVID ROGER  
District Attorney  
200 S. Third Street  
Las Vegas, NV 89155  
Attorney for Plaintiff

SPECIAL PUBLIC  
DEFENDER

CLARK COUNTY  
NEVADA

***EXHIBIT "1"***

1 NISD

2 DAVID ROGER

3 Clark County District Attorney

4 Nevada Bar #002781

5 GARY L. GUYMON

6 Chief Deputy District Attorney

7 Nevada Bar #003726

8 200 South Third Street

9 Las Vegas, Nevada 89155-2211

10 (702) 455-4711

11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,

13 Plaintiff,

14 -VS-

15 DONTE JOHNSON,  
16 #1586283

17 Defendant.

CASE NO: C153154

DEPT NO: V

18 AMENDED NOTICE OF INTENT TO SEEK DEATH PENALTY

19 COMES NOW, the State of Nevada, through DAVID ROGER, Clark County District  
20 Attorney, by and through GARY L. GUYMON, Chief Deputy District Attorney, pursuant to  
21 NRS 175.552 and NRS 200.033 and declares its intention to seek the death penalty at a  
22 penalty hearing. Furthermore, the State of Nevada discloses that it will present evidence of  
23 the following aggravating circumstances:

24 4. The murder was committed while the person was engaged, alone or with others, in the  
25 commission of or an attempt to commit or flight after committing or attempting to commit,  
26 any robbery, arson in the first degree, burglary, invasion of the home or kidnapping in the  
27 first degree, and the person charged:

28 (a) Killed or attempted to kill the person murdered;

5. The murder was committed to avoid or prevent a lawful arrest or to effect an escape  
from custody.

12. The defendant has, in the immediate proceeding, been convicted of more than one

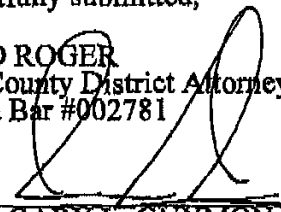
1 offense of murder in the first or second degree. For the purposes of this subsection, a person  
2 shall be deemed to have been convicted of a murder at the time the jury verdict of guilt is  
3 rendered or upon pronouncement of guilt by a judge or judges sitting without a jury.

4 DATED this 17<sup>th</sup> day of March, 2004.

5 Respectfully submitted,

6 DAVID ROGER  
7 Clark County District Attorney  
8 Nevada Bar #002781

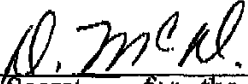
9 BY

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

13 CERTIFICATE OF FACSIMILE TRANSMISSION

14 I hereby certify that service of Amended Notice Of Intent To Seek Death Penalty, was  
15 made this 18<sup>th</sup> day of March, 2004, by facsimile transmission to:

16 SPECIAL PUBLIC DEFENDER'S OFFICE  
17 FAX #455-6273

18   
19 Secretary for the District Attorney's  
20 Office

21  
22  
23  
24  
25  
26  
27 GLG/ddm  
28

**EXHIBIT "2"**



COPY

FILED IN OPEN COURT

JUN 14 2000 20

DISTRICT COURT  
CLARK COUNTY, NEVADA

SHIRLEY B. PARRAGUIRRE, CLERK

\* \* \* \* \*

BY

CAROLE D'ALOIA

DEPUTY

STATE OF NEVADA

Plaintiff

vs.

DONTE JOHNSON,  
aka John Lee White

Defendant

CASE NO. C153154

DEPT. V  
DOCKET "H"

Transcript of  
Proceedings

BEFORE THE HONORABLE JEFFREY D. SOBEL, DISTRICT COURT JUDGE

JURY TRIAL - PENALTY PHASE - DAY 1 - A.M. SESSION  
TUESDAY, JUNE 13, 2000  
VOLUME I

APPEARANCES:

FOR THE PLAINTIFF:

GARY L. GUYMON  
Chief Deputy District Attorney  
ROBERT J. DASKAS  
Deputy District Attorney

FOR THE DEFENDANT:

DAYVID J. FIGLER  
Deputy Special Public Defender  
JOSEPH S. SCISCENTO

COURT REPORTER:

SHIRLEE PRAWALSKY  
District Court

TRANSCRIPTION BY:

NORTHWEST TRANSCRIPTS, INC.  
Las Vegas Division  
P.O. Box 35257  
Las Vegas, Nevada 89133-5257  
(702) 658-9626

Proceedings recorded by electronic sound recording, transcript  
produced by transcription service.

AA08551

1 LAS VEGAS, NEVADA, TUESDAY, JUNE 13, 2000

2 (Jury is not present)

3 THE COURT: .....to make a record.

4 Relative to the penalty phase, first of all, the  
5 motion to sever the -- or bifurcate the penalty hearing has  
6 been renewed, in the sense that it is referred to in the one-  
7 page summary of points and authority that Mr. Figler tendered  
8 by fax over the weekend, is denied. I don't think it's in  
9 accord with current Nevada case law.

10 As I see it, we're dealing with four categories of  
11 evidence in this penalty phase. For the record, we briefly  
12 discussed it with all counsel Friday afternoon after the guilt  
13 phase was over and over the weekend Mr. Figler favored us with  
14 that fax and, in addition, presented us with a Supreme Court  
15 case yesterday about 3:00 in the afternoon from the State of  
16 Washington, Bartholomew. The four areas, as I see it, are,  
17 first of all, evidence of prior crimes. I have indicated  
18 tentatively that the possession of stolen vehicle arrest,  
19 which to me has no relevance and is prejudicial in terms of  
20 the jury's assessment of whether or not Mr. Donte Johnson  
21 should receive the death penalty, life with or life without,  
22 is going to be excluded.

23 The major bone of contention, I would take it,  
24 relative to the prior crimes, is referred to on the witness  
25 list penalty phase as the murder of Darnell Johnson. It is

1 the contention of the State that the decedent, Darnell  
2 Johnson, was strangled to death. They, or Mr. Figler, in  
3 arguing against the introduction of it, tendered an autopsy  
4 report where the manner of death was not certain, but was  
5 deemed to be probably homicidal and probably due to  
6 strangulation.

7           The State has indicated, in my recollection, that  
8 relative to Darnell Johnson's murder two of the same witnesses  
9 who testified as to admissions at trial, Charla Severs, the  
10 girlfriend of Mr. Johnson, and the friend of Mr. Johnson, or  
11 at least acquaintance, Bryan Johnson, would testify as to  
12 details confessed -- or alleged details confessed by Mr.  
13 Johnson, including strangulation.

14           Is that about the state of the offer relative to the  
15 details pursuant to D'Agostino, Mr. Guymon?

16           MR. GUYMON: Yes, Your Honor, with a couple of extra  
17 additional details and that is that both Charla Severs and  
18 Bryan Johnson will indicate that that strangulation happened  
19 at the Thunderbird Hotel. We will -- We've already introduced  
20 into evidence keys of the Thunderbird Hotel where Charla  
21 Severs has already told this jury that Donte Johnson was  
22 staying, so we believe the location is --

23           THE COURT: And those keys, of course, evidence of  
24 the guilt phase showed were buried in the backyard with the  
25 pager and the evidence was, at least the State's evidence,

1 that Donte Johnson, inferentially, was the one that had buried  
2 them there.

3 MR. GUYMON: That is correct. And so we believe  
4 that the keys are also important in the case because they  
5 corroborate it.

6 THE COURT: And what is Detective Chandler gonna  
7 testify to?

8 MR. GUYMON: Detective Chandler will corroborate, if  
9 you will, the confessions of Donte Johnson through Charla  
10 Severs and Bryan Johnson because Roy Chandler, Detective  
11 Chandler, will indicate that he, in fact, was in charge of the  
12 investigation of Darnell Johnson, that Roy Chandler called  
13 over to the Thunderbird Hotel at the start of his  
14 investigation of the Snoop homicide and that he found Snoop's,  
15 who I refer to as Darnell Johnson, body wrapped up in a sheet,  
16 consistent with what Charla Severs will tell us and consistent  
17 with what Bryan Johnson will tell us, that Roy Chandler made a  
18 discovery consistent with the confessions of Donte Johnson of  
19 Darnell Johnson's body very near the speedway, which is where  
20 the defendant indicated he took Darnell Johnson and disposed  
21 of the body.

22 Roy Chandler will, in short, tell the jury of his  
23 investigation and in fact establish that Darnell Johnson was,  
24 in fact, strangled, pursuant to his investigation, and  
25 disposed of.

1           THE COURT: Okay. Now I take it, as to this, you  
2 say, in this one-page summary of Nevada law primarily, or  
3 maybe it's exclusively Nevada law that you faxed over the  
4 weekend, Dayvid, that the defendant intends to raise, on  
5 constitutional grounds, that all character evidence submitted  
6 by the State violates his right to a fair trial. I guess,  
7 then, all of the criminal activity that is being alleged by  
8 the State you feel falls under violations to a fair trial,  
9 including his conviction for bank robbery and things such as  
10 that?

11           MR. FIGLER: Your Honor, none of the proffered, 1,  
12 2, now there's one thing that's left, 4, 5, items go to any of  
13 the aggravate six, go to any of the aggravators. I think we  
14 could all agree on that, that this is merely character  
15 evidence. As such, yes, that would be our position.

16           At some point I also want to further discuss the  
17 details regarding the D'Agostino determination with regard to  
18 the other murder, alleged murder.

19           THE COURT: Okay. And, of course, D'Agostino I  
20 think is instructive in several ways. The court there says  
21 that past homicidal conduct goes to the very heart of the  
22 jury's decision-making process, at page 1004 of our Nevada  
23 Reporters, and further observes that past murders are  
24 relevant, even vital. Now, of course, the facts of D'Agostino  
25 were a cell mate, not a lover, comes in and says that Mr.

1 D'Agostino cut a woman's throat and threw her off a cruise  
2 ship. The details in corroboration that were obviously  
3 missing in D'Agostino do not appear, to the Court, to be  
4 missing here.

5 Now the headnotes loosely say that there has to be a  
6 hearing prior to the admission of it. As I read the opinion  
7 itself, there needs to be a prior determination, not  
8 necessarily a hearing, on the details of the admission, here  
9 the strangulation, the autopsy report, the confirmation of  
10 Detective Chandler as to it and credible -- or credible  
11 evidence as to the admissions. I certainly heard Charla and  
12 Bryan at the trial and find that to be credible evidence.

13 You have some additional procedural request with  
14 reference to that?

15 MR. FIGLER: Yes, Your Honor. Underlying all of the  
16 determination of character evidence, which is treated  
17 differently in death cases than evidence which would be  
18 offered in support of the aggravating evidence, is a  
19 determination of reliability, a weighing of prejudice, a  
20 heightened weighing of prejudice under Nevada rules, but,  
21 additionally, Your Honor, what we're suggesting -- And I think  
22 that the Bartholomew case really does a good job of explaining  
23 the tension between bringing in this type of character  
24 evidence that doesn't go toward any of the aggravators with  
25 regard to the type of concerns that the United State's

1 Constitution and the various state constitutions require the  
2 Court to engage in before this type of extraordinarily  
3 prejudicial information is presented to the jury when it  
4 doesn't support any of the aggravators. In other words, --

5 THE COURT: Now clearly our Court doesn't follow the  
6 Bartholomew standard.

7 MR. FIGLER: Well, you know, no one has had the  
8 foresight, at least none of the Nevada cases, have taken it to  
9 the next level, as the Supreme Court of Washington has, in an  
10 actual challenge of the statute which allows all evidence to  
11 come in, including hearsay, or at least gives the discretion  
12 to the Court to allow otherwise inadmissible evidence to come  
13 into the court. No one has analyzed that in terms of that  
14 particular provision being in comport with not only the United  
15 State's Constitution, Eighth and Fourteenth Amendments, but  
16 any particular state constitution.

17 Now just like Washington, --

18 THE COURT: They've had 16 years to adopt the  
19 reasoning of this case. And I've read all the cases you  
20 cited, and many others, and it's clear to me that the Supreme  
21 Court of the State of Nevada is never going to take the  
22 position that uncharged or unconvicted -- clearly they're  
23 going to let those in, assuming that the evidence is not  
24 impalpable or speculative and --

25 MR. FIGLER: Or dubious or tenuous or unreliable.

1           THE COURT: What is dubious or tenuous about the  
2 word of his girlfriend?

3           MR. FIGLER: Well, Your Honor, I think it's the  
4 dubiousness and tentativeness -- tenuousness of an  
5 individual's proclamation, because we can't get into the  
6 mindset of exactly what is going through their mind when  
7 they're saying that. What we do have though is the hard data,  
8 which is the autopsy report, and I would submit to Your Honor  
9 that this autopsy report needs to be made part of the record.

10          THE COURT: Fine.

11          MR. FIGLER: Because if Your Honor's going to allow  
12 this evidence to come in, this character evidence, I think you  
13 need to be aware of the fact that, not unlike the Binion case,  
14 the Coroner initially found no strangulation, no homicide  
15 whatsoever. Only after this alleged statement came to the  
16 attention of the Coroner did he go and reexamine the body  
17 trying to find evidence of strangulation and, quite honestly,  
18 he said, "Well, there was some reaction to maybe some iron  
19 near his neck, but I can't say that this is strangulation at  
20 all. I can't say that this occurred from strangulation or  
21 occurred from other causes."

22          Quite frankly, this individual had 4,274 nanograms  
23 per milliliter of cocaine in his body when he died, which is  
24 clearly, according to our expert, enough to cause an overdose,  
25 but when they had this information the Coroner goes back in --



1 THE COURT: But now would that speak to the cause of  
2 death or --  
3 MR. FIGLER: That's correct, Your Honor.  
4 THE COURT: -- the fact that he was strangled?  
5 MR. FIGLER: Both.  
6 THE COURT: I mean, maybe Mr. Johnson did not cause  
7 the death, even though he thought he did, because he was  
8 strangling him.  
9 MR. FIGLER: Well, Your Honor, then he didn't cause  
10 another death and it's a prior crime and it's tenuous.  
11 THE COURT: Well, in that --  
12 MR. FIGLER: Or Mr. Johnson might have been there --  
13 THE COURT: Well, I think the act of strangling him,  
14 whether or not it resulted in his death, would be significant  
15 to the jury.  
16 MR. FIGLER: But it's gonna be presented as a result  
17 in his death when the Coroner can't even say that.  
18 THE COURT: But that's something you could cross-  
19 examine or call the Coroner for.  
20 MR. FIGLER: Well, that's what falls into the  
21 category of dubious and tenuous, is that if they're allowed to  
22 argue that Donte Johnson caused another person's death, when  
23 the Coroner in the State of Nevada said that he can't say that  
24 this person was even killed, is of the character -- of this  
25 type of character evidence.

1           Now if we're in a different case, you know, who  
2 knows, but when you're in a death penalty case, when you have  
3 the obligation to not only make these determinations of  
4 reliability of the evidence that's gonna be presented as  
5 character evidence against an individual, but you also have  
6 the obligation to apply a higher degree of scrutiny with  
7 regard to the prejudice of character evidence in a particular  
8 case, then you really run at risk of violating not only the  
9 United State's Constitution, but the Nevada Constitution.

10           And as I was gonna say before, as the State of  
11 Washington, Nevada has traditionally given more constitutional  
12 rights, within its own constitution, than the federal  
13 government and I think that everyone would agree with that  
14 interpretation of Nevada constitutional law. No one has  
15 brought it to the attention yet.

16           THE COURT: It depends on the time and the  
17 composition of the courts.

18           MR. FIGLER: No one has brought it to the attention  
19 yet, that this particular provision, this type of evidence  
20 which is coming in, is a violation of not only the Federal  
21 Constitution, but the Nevada State Constitution with regard to  
22 our version of a fair trial, our version in the Nevada State  
23 Constitution of due process and our idea of cruel and unusual  
24 punishment with regard to this type of evidence coming into  
25 the case.

1           And that, quite frankly, applies to all of the  
2 evidence that's been presented, but more so with the type of  
3 uncharged -- And this has gone uncharged for over two years.  
4 And quite frankly, Your Honor, I don't think that an offer of  
5 proof could be made under D'Agostino that this case could make  
6 it pass probable cause at a hearing, because they haven't  
7 proved that a crime has occurred.

8           THE COURT: Oh, there's no doubt in my mind it could  
9 make it pass probably cause, Mr. Figler.

10          MR. FIGLER: Well, I think we need to bring in the  
11 Coroner, Judge, and we need to cross-examine him.

12          THE COURT: What I'm saying is --

13          MR. FIGLER: I think that we need to bring in --

14          THE COURT: -- if you do a lot of preliminary  
15 hearings, and I don't know whether the Special Defender does a  
16 lot of preliminary hearings, there's no doubt in my mind you  
17 could get this over to District Court.

18          MR. FIGLER: Well, you know, Judge, I've never had a  
19 preliminary --

20          THE COURT: You do have this marked as an exhibit.

21          MR. FIGLER: Thank you, Judge, and the toxicology  
22 report as well.

23                I've never had a preliminary hearing where the  
24 Coroner said that he doesn't know if there was a homicide and  
25 that went forward as a homicide.

1 testimony, if there's gonna be some other supplemental  
2 evidentiary introductions through these witnesses. What I  
3 would like to do is for Your Honor to --

4 THE COURT: What do you -- What do you have in mind  
5 there?

6 MR. FIGLER: Well, you know, I've seen cases where  
7 the State has brought in those big screens again and run  
8 things in slow motion with pictures of the individual -- some  
9 other things. It's not a quid pro quo. There are certain  
10 restrictions on the prosecutors in these death penalty cases  
11 that don't exist on the defendant and that is the wisdom of  
12 Furman and its progeny, that that's the way that it has to be.

13 In this particular case, I don't know what they're  
14 gonna bring in, if there's, you know, a photo montage or  
15 exposition or something like that. I think that that might  
16 very well run afoul of Payne in talking about a brief glimpse.  
17 We have four victims here, understood. They want to bring in  
18 five witnesses, which might be one too many. I don't know how  
19 long these witnesses are gonna go and what they're gonna  
20 attempt to do, but I would ask that the Court keep those  
21 guidelines and restrictions in mind.

22 And I would prefer not to have to object again to  
23 it, but, again, I don't know what they're gonna be presenting.

24 THE COURT: You know, of course, Gardner, in  
25 addition to the brief glimpse that Payne authorizes, after a

1 tortured history of litigation over the victim impact  
2 statements, Gardner, also from the U.S. Supreme Court, says  
3 that a death penalty should appear to be based on reason  
4 rather than either caprice or emotion.

5           You, Mr. Guymon and Mr. Daskas, have a benefit that  
6 the Court doesn't, and Mr. Figler and Sciscento don't, of  
7 having seen these witnesses before. You had indicated, when  
8 the Court was just reviewing these things informally Friday  
9 afternoon, that these individuals, the parents, I take it, of  
10 the four dead boys, have been through it before and you've had  
11 some discussions with them that might address the concerns Mr.  
12 Figler just articulated.

13           MR. DASKAS: Judge, we've been through this, as you  
14 know, twice before. Each time we've admonished the relatives  
15 to address the Court, that their testimony is limited to the  
16 victim's character, the nature and impact of the crime  
17 committed and the loss of the victim to the victim's family  
18 and society, they've all complied with that admonition, Judge.

19           It's not our intention to put on a photo montage, as  
20 Mr. Figler addressed.

21           THE COURT: Well, he had two concerns, at least,  
22 that I heard. One was length.

23           MR. DASKAS: Right.

24           Judge, they have been limited to those areas I just  
25 mentioned. I can't tell you how long they were each on the

1 stand. It was probably no more than 15 minutes per family  
2 member and we don't expect it to last longer in this courtroom  
3 than it did in the other two trials.

4 THE COURT: And the other thing that he said he had  
5 a concern about was props. Are there any that are being used  
6 by these folks?

7 MR. DASKAS: Only photographs that they might want  
8 to show the jury, with the Court's permission, but there is no  
9 monitor, computer monitor, or television montage, simply  
10 photographs they wish to show the jury of their sons in life  
11 and I think they're entitled to do that.

12 THE COURT: All right, I had tentatively indicated,  
13 if the defense objected, and they do, to having more than one  
14 parent per child. Payne, as I said, is the first U.S. Supreme  
15 Court case at least that reverses a long string of cases that  
16 didn't allow for victim impact statements in front of a jury,  
17 because it was thought that who died wasn't the important  
18 concern in a death penalty decision, and Payne overruled it,  
19 but it did, in the terms that Mr. Figler says, a brief  
20 glimpse.

21 To have two parents -- I'm going to, of course, hear  
22 the sentencing, regardless of the jury's decision, on  
23 everything else and whichever Mowen decides not to testify  
24 today, under the Court's ruling, of course, will have an  
25 opportunity to speak at a later time, but I will limit it to

1 four parents, one for each of the dead boys.

2           Next is the letters. The letters, to me, as a  
3 group, and there's a whole bunch of them, could, depending on  
4 where the defense is coming from, be viewed as perhaps helpful  
5 to the defense in some instances. What's the defense's  
6 position relative to the letters as a group?

7           MR. SCISCENTO: Yeah, we object to the letters. I  
8 reviewed the letters that Mr. Guymon says he's going to  
9 present and I don't see anything that goes with the  
10 aggravation or prior harm to the community. I'd ask that Mr.  
11 Guymon at least make an offer of proof as to what section he's  
12 gonna focus on and maybe there's a difference between the  
13 language and understanding -- what's in the letters and our  
14 understanding of the language.

15           THE COURT: Yeah, I read the letters Saturday,  
16 before I had again reviewed all of the law in the matter, and  
17 I must say that before I read the law I probably would have  
18 been inclined to allow the letters in and when reading the law  
19 I increasingly became doubtful about it. The letters, as a  
20 group, strike me as the -- almost consistently profane, almost  
21 rap-type letters between Mr. Johnson and his co-defendant.  
22 They're filled with profanity. They are filled with racial  
23 epithets. They show, it seems, a fairly intelligent, cocky  
24 young man who is still enjoying his life in jail, who maybe  
25 doesn't particularly even care if he gets the death penalty,

1 things that the more I thought about it might very well affect  
2 the proper consideration of the jury in terms of what they  
3 should be focusing on.

4 I believe there was some discussion up in the  
5 office, in the presence of all counsel, last Friday that these  
6 were indicative of his leadership of the others. I know that  
7 some of them are signed General Deco, but some of them, or one  
8 of them, is also signed Dick Tracy. I read these as nothing  
9 more than profanity-laden communications between three co-  
10 conspirators, something that you couldn't take out all the  
11 references to "nigger" and all the profanity, and I just don't  
12 particularly see any probative value that could outweigh the  
13 possible prejudice.

14 Mr. Guymon, are they, as a group, something that you  
15 want in or any particular ones where you would disagree with  
16 my ruling and want to point something out to me?

17 MR. GUYMON: Judge, with all due respect, I do  
18 disagree with your ruling. I understand your concerns,  
19 however, the letters clearly speak to one of the mitigators  
20 under 200.035, Subsection 5, and that is the defendant acted  
21 under the duress or under the dominion of another person.

22 I can tell you that I have now interviewed Agent  
23 Clark, who is the parole officer of the defendant's, and he  
24 indicated to me that he had told the defense, because they  
25 were keenly interested in whether or not Donte Johnson was a



1 follower or a leader, for starters, Judge, I offer the letters  
2 because the letters clearly -- And, by the way, it was Agent  
3 Clark's opinion that Donte Johnson is a follower and not a  
4 leader.

5 THE COURT: And, by the way, is that testimony  
6 that's going to come out, as far as you expect, during your  
7 phase?

8 MR. SCISCENTO: I'm not sure. I did speak with  
9 Officer Clark. I don't know if that's the position that we're  
10 gonna be taking. I don't think it is. I don't think that's  
11 the mitigated that we're looking at.

12 THE COURT: By the way, I did not have a chance, and  
13 it occurred to me over the weekend, and I never had time to  
14 look at it, in the death penalty hearings we've had in the  
15 last ten years there was never an issue of rebuttal. Is  
16 there, in your mind, a right to the State to have rebuttal  
17 after?

18 MR. GUYMON: Yes, Your Honor.

19 THE COURT: Okay, so if -- And do you disagree with  
20 this, Mr. Figler or Mr. Sciscento? Does the State have the  
21 right to rebut things that you put forth in your case, because  
22 that can make some difference to how I would rule, obviously,  
23 because they are asserting that this would be relative to  
24 certain mitigators, which you may never even get to.

25 MR. SCISCENTO: Well, that's the problem that we

1 have, Your Honor. I mean, in some cases they do have rebuttal  
2 and in some they don't.

3 MR. FIGLER: But not in Nevada.

4 THE COURT: So you don't -- you don't challenge the  
5 fact that they have a right to rebuttal, fair rebuttal, of  
6 what you put on?

7 MR. FIGLER: I don't know that the statutes provide  
8 for that in the State of Nevada with regard to a death penalty  
9 hearing. I think that if there was --

10 THE COURT: That's the thing I did not look at. Do  
11 we have a statute -- I mean, we have an order of trial that  
12 specifically sets these things forth.

13 MR. FIGLER: But I think that the --

14 THE COURT: Does anybody know if we have an order of  
15 penalty hearing that also sets this up?

16 MR. GUYMON: Judge, I can have some research done in  
17 about an hour, while I'm still here I'll have someone do it  
18 for me, but it's always been my belief that in fact we can --

19 THE COURT: Okay, well, let's assume, for the sake  
20 of your argument, that you have a right to rebuttal and put it  
21 in that context, because it strikes me that if they go certain  
22 places, and it did over the weekend, these letters might have  
23 more relevance than I see them as having now. Let's take it  
24 in the context that you may have the right to use them in  
25 rebuttal.

1 THE COURT: Okay. And he refers, in one of the  
2 letters, to don't worry about the three boys, that must --  
3 being Bryan Johnson, Armstrong and the other guy, he's taken  
4 care of them. Well, obviously, he hadn't. I mean, there's a  
5 lot of young man boasting here that I don't think is important  
6 to a jury's determination of whether he lives or dies.

7 Go ahead.

8 MR. GUYMON: Okay. I think they address violence  
9 and I think violence clearly is a character trait that this  
10 jury can know about. I think, number two, --

11 THE COURT: Oh, I think they know about it by  
12 rulings that I've already made. They're gonna hear about an  
13 allegation of murder, attempted murder, a bank robbery, plus  
14 they've got four murders in the original case.

15 MR. GUYMON: Okay. I think they also talk to  
16 leadership, which I've already addressed. It is clear that he  
17 is giving instructions to Terrell Young and to Sikia Smith as  
18 to what he wants them to do. I think that's clearly what a  
19 leader does.

20 More importantly, he indicates that --

21 THE COURT: Yeah, but I don't see why it's relevant,  
22 absent their making this a bone of contention, to whether he  
23 lives or dies, that he's a leader or a follower.

24 MR. GUYMON: He also talks about living or dying and  
25 indicates that he doesn't care because he is now a legend.

1 THE COURT: Right.

2 MR. GUYMON: I think clearly the fact that he's a  
3 legend, "whether breathing or dead," and that's a direct  
4 quote, is something this jury should know, because it is his  
5 legendary status that he boasts of because of what he did. I  
6 think that is a -- something that this jury should be entitled  
7 to know.

8 THE COURT: I think that's absolutely, extremely  
9 prejudicial with having very little probative effect on  
10 whether he should live or die.

11 MR. GUYMON: And, lastly, the letters talk about the  
12 death of Snoop wherein he talks about taking Snoop -- or he  
13 doesn't say Snoop, but he says taking that other guy for a  
14 ride and he mentions that in --

15 THE COURT: Yeah. Now which of -- That's the one  
16 thing that struck me as possibly corroborative of something  
17 else I'm letting in.

18 MR. GUYMON: There are --

19 THE COURT: Which letter is that?

20 MR. GUYMON: Well, Judge, I'd have to go through  
21 them to get the date, but there are two letters, actually.  
22 One is to Terrell Young wherein he was talking about --

23 THE COURT: Well, these are all to Terrell or Sikia.

24 MR. GUYMON: That's correct. Would you like --  
25 Judge, if you'd give me a minute, I'll find it for you.

1 (Pause in the proceedings)

2 MR. GUYMON: All right, Judge, in the letter dated

3 January 25th, 1999 --

4 THE COURT: Is that one where you can actually read

5 the postmark?

6 MR. GUYMON: The postmark is upside down on that

7 particular letter. At the top of that letter is a 1996

8 Atlanta Para-Olympic Games.

9 That's correct. Is your stamp upside down, Judge,

10 post stamp?

11 THE COURT: I guess. It's virtually not visible.

12 Is this the one that says, "What's up with you?"

13 MR. GUYMON: It's what's up with -- "What's up,

14 Dog?" It's about the fourth page --

15 THE COURT: No, no.

16 MR. GUYMON: Third page deep.

17 THE COURT: That's not it then.

18 MR. GUYMON: Judge, may I approach and get it for

19 you?

20 THE COURT: Sure.

21 MR. GUYMON: It looks exactly like this. I think

22 you actually have one, Judge. That's the letter, Judge.

23 THE COURT: Oh, this is the way this one starts,

24 "What's up with you?"

25 MR. GUYMON: Well, the third page deep, Judge, page

1 3, if it's in the same order that I have it, Judge.

2 THE COURT: Where it says, "I first off want to  
3 start"?

4 MR. GUYMON: "I first off want to start." Judge, if  
5 you'll come to the second paragraph, fourth line of the second  
6 paragraph, and I quote, "But don't worry because he's as good  
7 as dropped off. Remember how we" -- and this is -- he's  
8 speaking to Terrell, "took a long ride one night and dropped  
9 off that one" -- or, excuse me, "dropped that one nigger off,"  
10 and I quote.

11 THE COURT: Yeah, you can get it out through other  
12 witnesses without going through nigger, nigger, nigger,  
13 nigger, which sounds like a rap song, and, as I said,  
14 introduces to me the problems that you've got.

15 Anything else on the record on this, Mr. Guymon?

16 MR. GUYMON: That would cover the areas in the  
17 letter that I think are --

18 THE COURT: Okay, the letters, except for the  
19 possibility of rebuttal, will not come in.

20 Now the fourth thing that I wanted to discuss,  
21 before we get just to the clean-up category, is gang  
22 references. Now essentially what Mr. Guymon has been  
23 representing is he would be very careful to avoid gang  
24 references, except he believes it's not going to be an issue  
25 because you're gonna bring it up anyway.

1 First of all, is he factually correct as to that  
2 assumption?

3 MR. SCISCENTO: Yes, Your Honor.

4 THE COURT: So do you care if people that he has  
5 refer to the gang membership of Mr. Johnson?

6 MR. SCISCENTO: My understanding is that the  
7 information that Mr. Guymon's gonna bring through PSI reports,  
8 or pre-sentencing investigations, any reports of probation,  
9 are going to reference the gang. We have no objection as to  
10 that.

11 THE COURT: Okay. The fifth thing is a catchall.  
12 Is there anything I haven't covered, Mr. Figler or Mr.  
13 Sciscento, so far that you want to make a record of?

14 MR. FIGLER: Yes, Your Honor, but of course.

15 THE COURT: But of course.

16 MR. FIGLER: In reviewing the State's case, what has  
17 now been presented to us, is what penalty information they're  
18 gonna bring. At the onset I would note that, if it wasn't  
19 already captured in our voluminous pretrial motion, that a  
20 close inspection of the aggravating circumstances which the  
21 State intends to prove do create somewhat of a constitutional  
22 dilemma. More specifically, Aggravator Number 3, which is the  
23 knowingly creating a great risk of death to more than one  
24 person, and Aggravator 12, has, in the immediate proceeding,  
25 been convicted of more than one offense of murder, I think

1 that there is a definite conflict between those two with  
2 regard to the cumulative repetitiveness of the particular  
3 aggravators.

4           There was no one else present at the Terra Linda  
5 residence but for the victims, who were all killed, and would  
6 provide for Aggravator Number 12. There was no one else that  
7 was there. To say that --

8           THE COURT: Could I see those again, Dave?

9           MR. FIGLER: Sure.

10          THE COURT: They're buried in one of the early  
11 files.

12          MR. FIGLER: What I'm showing to you right now is  
13 the notice of intent to seek the death penalty submitted by  
14 the District Attorney's Office.

15          THE COURT: What about that argument that you strike  
16 and it would probably be striking 3 and leaving 12?

17          MR. DASKAS: Judge, in the statute the aggravator  
18 makes no distinction between whether it's a victim or whether  
19 it's a co-defendant who was also present in that home when  
20 bullets are being shot. Certainly, when Donte Johnson pulled  
21 the trigger four times, he created a risk of death to the co-  
22 defendants as well. Arguably, bullets could have ricocheted  
23 off the cement floors, they could have gone through walls and  
24 people outside the home could have been injured. Certainly  
25 that aggravator is satisfied and that's a separate and



1 distinct aggravator from the last aggravator, that he's  
2 convicted of more than one offense of murder.

3 THE COURT: Okay. 12 was added long after 3 and I'm  
4 not sure they ever thought of this kind of a situation. I  
5 think that the danger of doubling up here is real and I'll  
6 strike Aggravator 3.

7 In addition, in a situation like this, where all the  
8 evidence was that these boys were killed by bullets at close  
9 range coming out of this gun, I think to speculate that there  
10 was risk of death to co-defendants is awfully tenuous.

11 3 will be stricken and the others will stand.

12 Anything else, Mr. Figler?

13 MR. FIGLER: One other concern, Judge, and I only  
14 bring it to the Court's attention 'cause the Court brought it  
15 to our attention. I'm quite familiar with the case holding in  
16 Vernell Evans and I understand Your Honor's position. And I  
17 think that we all can agree that this is highly emotional for  
18 everyone. It's a horrific result here with these four young  
19 men. It's also horrific with this young man and what he's  
20 facing.

21 I know Your Honor had indicated to us off the record  
22 before that you are human, as everyone else, and that you  
23 can't avoid the emotion sometimes and I know that it has been  
24 made issue before in front of the Nevada Supreme Court. I  
25 would ask that Your Honor -- Well, I don't know. If Your

1 Honor could represent to us that that won't happen in this  
2 case, then certainly we don't have an issue. I only raise it  
3 because Your Honor had indicated to us that you were  
4 compelled, by a lot of the facts in this case, and that this  
5 might be a very real possibility in the case, that you might  
6 be emotional in front of the jury as well.

7 And so my concern is --

8 THE COURT: Yeah. And what you're talking about,  
9 because it's sort of not clear from this record, Vernell Evans  
10 was also a quadruple murder and we had four family members up  
11 here and I did everything in the world to try to avoid any  
12 show of emotion and after we had not one, not two, not three,  
13 but four parents testify, from a distance from me of about  
14 four or five feet, and not because I would have necessarily  
15 imposed the death penalty, but because I was very much moved,  
16 as a human being, by what befell these parents and what loss  
17 they suffered, despite doing all the mathematical equations I  
18 could do in my head and all the pinching of my thighs and  
19 biting of my cheek, two things happened. One, when the last  
20 mother testified, a single tear came down my face, which was  
21 litigated later, and my voice shook while I read the  
22 admonition.

23 And I told you about a week ago I'm gonna do  
24 everything I can, because I don't want the jury to feel one  
25 way or the other, it's their decision not mine, nor does my

1 show of emotion -- nor should it indicate to them what I would  
2 do, if that's important to them, because it's not my decision,  
3 nor does my emotion indicate what I would do if I were sitting  
4 in judgment on this case. That's a judgment I hope I don't  
5 have to make, but it's still possible in this case. And what  
6 I said to you at that point was in that case they moved for a  
7 mistrial. I had indicated to them I would give them all sorts  
8 of cautionary instructions. Do you have something that, in  
9 case, and I'm hoping it's not gonna happen, will do it?

10 Now one thing, of course, is this is gonna be the  
11 last part of the case for them. If I feel that I'm not gonna  
12 be able to read the admonition, which is the next thing, is  
13 there any objection to my Clerk reading the admonition?

14 At the end of the day, when the jury is dismissed  
15 after deliberations, when I'm not around, he reads them the  
16 admonition. Do you care if the Clerk reads the admonition?

17 MR. FIGLER: I think Your Honor can appreciate our  
18 position and our concern in this particular case.

19 THE COURT: I want you to suggest something that  
20 will minimize the prejudice that you perceive will happen if  
21 it happens.

22 MR. GUYMON: Can I have a moment?

23 (Pause in the proceedings)

24 MR. FIGLER: Mr. Guymon has made a suggestion that  
25 if we see Your Honor getting overwrought with any type of

1 emotion that maybe we could approach the bench and give you a  
2 little time to compose.

3 THE COURT: The only problem with that is you  
4 probably won't see it.

5 MR. FIGLER: And I would hope not, that we don't  
6 have to be in that position. Obviously, I mean, that sounds  
7 like a good idea now. We'll have to be in whatever position  
8 we are at that time and have to deal with it in the way that  
9 we feel best protects the due process rights.

10 THE COURT: There's no prejudice if the Clerk reads  
11 that admonition anyway, is there?

12 MR. FIGLER: It's something inconsistent and it  
13 draws attention to the situation perhaps.

14 THE COURT: But that's what I'm saying. When Stony  
15 sent them home on Thursday night he read them the admonition,  
16 as he always does when a jury's leaving outside of hours, so  
17 it means nothing to the jury that I'm not reading it then and  
18 it's just a way that may avoid my voice shaking. And,  
19 hopefully, the Clerk's will not.

20 MR. GUYMON: Judge, if we don't want to bring  
21 attention to it on this one occasion, do you want to begin  
22 having your Clerk read it each and every time now as the  
23 penalty starts? Would that satisfy the defense?

24 THE COURT: That's fine with me too.

25 MR. FIGLER: I think that what we're doing here is

1 trying to limit that and to that end I think that that's  
2 probably better.

3 THE COURT: Okay. And the other thing I have  
4 thought of is if Mr. Guymon or Mr. Daskas will call each  
5 succeeding parent without me saying, "Call your next witness."

6 Not only is there this history with the Evans' case,  
7 which to me was very minor, but, you know, I've been thinking  
8 about this for a year, I've talked to the other judges, I've  
9 talked to all of you folks and it's a very, very emotional  
10 thing and I guess some people can sit and be stoic more than  
11 others and I hope it doesn't happen today.

12 All right, anything else to come before the Court?

13 We'll take a five-minute recess and get started.

14 MR. FIGLER: I just want to make sure that our  
15 record is clear that with regard to this character evidence  
16 that's coming in that we not only object on the grounds that  
17 are set forth by the Nevada statutes in the memorandum which I  
18 was able to compose over the weekend, Your Honor, and which we  
19 might want to make part of the record, but, additionally,  
20 under federal and state constitutional grounds, specifically  
21 the Federal Constitution, Sixth, Eighth, Fifth and Fourteenth  
22 Amendment, and anything else that has to do with due process  
23 or a fair trial and the corresponding rights, which we believe  
24 are greater under the Nevada State Constitution.

25 THE COURT: All right, we will make -- You must have

1 a cleaner copy of this that you can make as part of the  
2 record.

3 MR. FIGLER: I could offer this one right now, Your  
4 Honor.

5 THE COURT: Yeah.

6 Are you gonna be the Clerk all day?

7 THE CLERK: I guess.

8 THE COURT: Okay.

9 MR. FIGLER: May I approach?

10 THE COURT: Yeah.

11 MR. FIGLER: Your Honor, before we go, there is  
12 going to be, I think, some issue with regard to instructions.  
13 I don't know when you want to deal with that.

14 THE COURT: We'll deal with that, at some point, off  
15 the record and then on the record after -- when it's  
16 convenient.

17 (Court recessed at 10:00 a.m. until 10:15 a.m.)

18 (Jury is present)

19 THE COURT: Who's going to make the opening for the  
20 State?

21 MR. GUYMON: I am, Your Honor.

22 THE COURT: Go ahead.

23 PLAINTIFF'S OPENING STATEMENT

24 MR. GUYMON: Good morning.

25 Some time ago we began this process and we indicated

***EXHIBIT "3"***

-----CASE-----

DEFN ID: 01586283 CASE NO: 98F02775X RELATED CASE:  
JURISDICTION: LVJC-WAREHOUSE CASE CATEGORY: NARCOTICS  
CASE TYPE: FELONY MULTI DEFN IND: X AGENCY: METRO POLICE  
JUDGE: TRACK-2 JUDGE SMITH PROSECUTOR: ERIC JORGENSON  
TRACK: 02 DEFENSE ATT: DARREN IMLAY  
DEFNSE ATTY TYPE: PUBLIC DEFENDER INTERPRETER:  
@PCN NUMBER: 0015724168 @SEND/GET: GET  
\*\*SUMMARY DATA\*\* STATUS: CLOSED ARRESTED: 02/25/1998  
SUBP REQ: 02/03/2000 DEFN NAME: WHITE, JOHN  
CHG TYPE: COMPLAINT SCHED DATE: PRO:  
JUDGE: SCREENING: 02/25/1998  
COMPLAINT: 04/10/1998 INFO/INDICT: ORIG TRACK: 02  
ORIG CASE #: 98F02775X CASE FINDING: 08/07/2000 GUILTY FINDING:  
SENT DECISION: ACTION: DISMISSED  
REASON: DISMISSED ON COURTS MOTION OFFICER ID:  
NAME: PUB DEF #: F-98-5682  
PUB DEF ATTY: PUBLIC DEFENDER APPEAL NOTICE:  
\*\* PRESS ENTER FOR NEXT PAGE \*\*

T I ■

»

□ 1, 2



***EXHIBIT "4"***

## District Case Inquiry - Minutes

Home	Case 01-C-174692-C	Just Ct. 01-F -03128	Status CLOSED
Summary	Case#		
Case Activity	Plaintiff State of Nevada	Attorney Bell, Stewart L.	
Calendar	Defendant White, John L	Attorney Sciscento, Joseph S.	
Continuance	Judge Saitta, Nancy M	Dept. 18	
Minutes			
Parties			
Def. Detail	Event 07/18/2001 at 01:30 PM	TRIAL BY JURY	
Next Co-Def.	Heard By Saitta, Nancy M		
Charges	Officers AMBER FARLEY, Court Clerk		
Sentencing	Kristine Cornelius, Reporter/Recorder		
Bail Bond	Parties 0000 -	State of Nevada	Yes
Judgments	S1		
District Case	000985	O'Neale, Lawrence J.	Yes
Party Search	0001 -	White, John L	Yes
Corp. Search	D1		
Atty. Search	004380	Sciscento, Joseph S.	Yes
Bar# Search	0002 - D	Johnson, Reginald A	Yes
ID Search	005434	Navarro, Gloria M.	Yes
Calendar Day			
Holidays	Colloquy regarding negotiations.		
Help			
Comments &	AS TO DEFENDANT JOHNSON: Defendant to plead guilty to both counts. The		
Feedback	State retains the right to argue. Further, Defendant is aware the State has		
Legal Notice	filed the habitual criminal allegations, and the State retains the right to		
	argue for such treatment at sentencing. Defendant is aware the Court may		
	sentence him under such guidelines. As a condition of this plea, the case		
	is to be dismissed against Defendant White. No plea agreement provided.		
	Court stated the State may file the plea agreement later. DEFENDANT JOHNSON		
	ARRAIGNED and PLED GUILTY to COUNT I - CONSPIRACY TO COMMIT MURDER (F) and		
	COUNT II - ATTEMPT MURDER (F). COURT ACCEPTED plea and ORDERED, matter		
	referred to the Division of Parole and Probation and set for sentencing.		
	Ms. Navarro requested Defendant be transported back to the High Desert		
	facility pending sentencing. COURT SO ORDERED.		
	AS TO DEFENDANT WHITE: Mr. O'Neale moved to DISMISS this case against		
	Defendant White. No objection thereto by Mr. Sciscento. COURT ORDERED,		
	Motion to Dismiss GRANTED with prejudice. Upon Mr. Sciscento's request,		
	Court's previous order of Defendant being housed at the Clark County		
	Detention Center is REVOKED and Defendant may be transported back to the		
	facility where he is housed.		
	2:10 p.m. Jury venire present. Court THANKED and EXCUSED the jury venire.		
	NIC (COC)		
	9/12/01 9:00 AM SENTENCING - JOHNSON		
Due to time restraints and individual case loads, the above case record may not reflect all			

***EXHIBIT "5"***

## WAIVER OF CONFLICT

I, REGINALD ANDRE JOHNSON, having been represented by Mrs. Gloria M. Navarro, when she was in private practice, do hereby knowingly, intelligently and voluntarily waive any conflict or attorney-client privilege that may exist in regards to her now being employed with the Special Public Defender's office.

I understand that the Special Public Defender currently represents my prior co-defendant, Donte Johnson, A.K.A., John White, and that the information disclosed to my attorney, Mrs. Navarro, may be helpful to the Special Public Defender's Office for their representation of Mr. Donte Johnson in his upcoming re-sentencing / Death Penalty hearing.

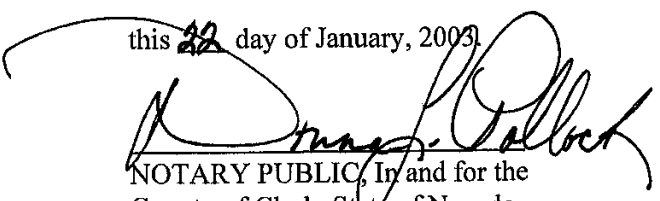
I further understand that if the State tries to introduce evidence that Mr. Donte Johnson committed the Attempt Murder upon Oscar Iscarias, I may be called as a witness on behalf of Mr. Donte Johnson to testify that he did not participate in this incident, and I knowingly, intelligently and voluntarily waive any conflict or attorney-client privilege which may exist in that regard.

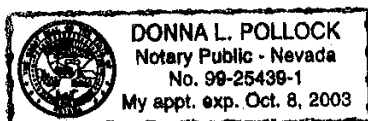
DATED this 22 day of January, 2003.

  
REGINALD ANDRE JOHNSON

SUBSCRIBED AND SWORN to before me

this 22 day of January, 2003.

  
NOTARY PUBLIC, In and for the  
County of Clark, State of Nevada



**EXHIBIT "6"**

## District Case Inquiry - Minutes

Home	Case 99-C-162401-C	Just Ct. 98-F -06789	Status CLOSED
Summary	Case#		
Case Activity	Plaintiff State of Nevada	Attorney Bell, Stewart L.	
Calendar	Defendant Johnson, Donte	Attorney Public Defender	
Continuance	Judge Mosley, Donald M.	Dept.	14
Minutes			
Parties			
Def. Detail	Event 08/30/2001 at 09:00 AM	ENTRY OF PLEA	
Next Co-Def.	Heard By Mosley, Donald M.		
Charges	Officers Linda Skinner, Court Clerk		
Sentencing	Maureen Schorn, Reporter/Recorder		
Bail Bond	Parties 0000 -	State of Nevada	Yes
Judgments	S1		
District Case	006381	Knapp, Gregory D.	Yes
Party Search	0001 -	Johnson, Donte	Yes
Corp. Search	D1		
Atty. Search	PUBDEF	Public Defender	Yes
Bar# Search	004380	Sciscento, Joseph S.	Yes
ID Search			
Calendar Day	There being no objection, Amended Information and Guilty Plea Agreement		
Holidays	FILED IN OPEN COURT. NEGOTIATIONS: State retains the right to argue at time		
Help	of sentencing and is not opposed to concurrent time with C153154. Mr. Knapp		
Comments &	concurrent. DEFENDANT JOHNSON ARRAIGNED AND PLED GUILTY PURSUANT TO		
Feedback	ALFORD		
Legal Notice	to BATTERY WITH DEADLY WEAPON (F). Statements by Mr. Knapp regarding		
	circumstances of crime. Court ACCEPTED plea; referred matter to the		
	Division of Parole and Probation for a Pre-sentence Investigation Report and		
	ORDERED, set for sentencing.		
	CUSTODY (COC-NDC)		
	10/8/01 9:00 AM SENTENCING		
	Due to time restraints and individual case loads, the above case record may not reflect all		
	information to date.		

Top Of Page

Generated on 4/20/2004 at 5:27:58 AM

***EXHIBIT "7"***

1 JUSTICE COURT, LAS VEGAS TOWNSHIP

2 CLARK COUNTY, NEVADA

3 THE STATE OF NEVADA,

4 Plaintiff,

CASE NO. 98F06789X

5 -vs-

6 DONTÉ JOHNSON, #1586283,

7 Defendant.

CRIMINAL COMPLAINT

8  
9 The Defendant above named having committed the crime of ATTEMPT MURDER  
10 WITH USE OF A DEADLY WEAPON (Felony - NRS 200.010, 200.030, 193.330, 193.165)  
11 in the manner following, to-wit: That the said Defendant, on or about the 4th day of May, 1998  
12 at and within the County of Clark, State of Nevada, did then and there, without authority of law  
13 and malice aforethought, wilfully and feloniously attempt to kill DERRICK SIMPSON, a human  
14 being, by shooting at and into the body of the said DERRICK SIMPSON, with a deadly weapon  
15 to-wit: a firearm.

16 All of which is contrary to the form, force and effect of Statutes in such cases made and  
17 provided and against the peace and dignity of the State of Nevada. Said Complainant makes this  
18 declaration subject to the penalty of perjury.

19  
20 \_\_\_\_\_  
21 5/14/98  
22  
23  
24  
25

26 98F06789X/jgw  
27 LVMPD EV#9805040265  
28 ATT MWDW - F  
(TK5)



***EXHIBIT "8"***

Source: Legal > States Legal - U.S. > Nevada > Statutes & Regulations > **NV - Nevada Revised Statutes Annotated, Constitution, Rules & ALS, Combined**

TOC: Nevada Revised Statutes Annotated > /.../ > HOMICIDE > **§ 200.100 Death must occur within a year and a day**

Terms: **200.100** (Edit Search)

*NRS § 200.100*

NEVADA REVISED STATUTES ANNOTATED  
Copyright © 2004 by Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS DOCUMENT IS CURRENT THROUGH ALL 2003 LEGISLATION \*\*\*  
\*\*\* ANNOTATIONS TO ALL CASELAW PUBLISHED ON LEXIS AS OF DECEMBER 19, 2003 \*\*\*

TITLE 15. CRIMES AND PUNISHMENTS  
CHAPTER 200. CRIMES AGAINST THE PERSON  
HOMICIDE

♦ **GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION**

**NRS § 200.100** (2004)

**§ 200.100** Death must occur within a year and a day

Repealed by Acts 1999, ch. 3, § 3, p. 3, effective March 10, 1999.

Source: Legal > States Legal - U.S. > Nevada > Statutes & Regulations > **NV - Nevada Revised Statutes Annotated, Constitution, Rules & ALS, Combined**

TOC: Nevada Revised Statutes Annotated > /.../ > HOMICIDE > **§ 200.100 Death must occur within a year and a day**

Terms: **200.100** (Edit Search)

View: Full

Date/Time: Monday, April 19, 2004 - 11:39 AM EDT

[About LexisNexis](#) | [Terms and Conditions](#)

Copyright © 2004 LexisNexis, a division of Reed Elsevier Inc. All rights reserved.

# EXHIBIT 74

# EXHIBIT 74

ORIGINAL

FILED

APR 26 2 25 PM '04

*Shirley D. Bingham*  
CLERK

RSPN  
DAVID ROGER  
Clark County District Attorney  
Nevada Bar #002781  
GARY L. GUYMON  
Chief Deputy District Attorney  
Nevada Bar #003726  
200 South Third Street  
Las Vegas, Nevada 89155-2212  
(702) 455-4711  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,

-vs-

DONTE JOHNSON,  
#1586283

Defendant.

CASE NO: C153154

DEPT NO: V

STATES REPLY TO DEFENDANT'S OPPOSITION TO THE STATES NOTICE OF  
EVIDENCE IN SUPPORT OF AGGRAVATING CIRCUMSTANCES

DATE OF HEARING: 04/28/04  
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through  
GARY L. GUYMON, Chief Deputy District Attorney, and hereby submits the attached  
Points and Authorities in Response to Defendant's Opposition To The State's Notice Of  
Evidence In Support Of Aggravating Circumstances.

This response 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.

///

///

///

1 POINTS AND AUTHORITIES

2 1. Statements of co-Defendant Terrell Young

3 The Nevada Supreme Court has specifically held that the rule of Bruton applies to a  
4 capital sentencing proceeding. "Nevertheless, the need for cross-examination to test the  
5 fundamental *reliability* of co- defendants' often suspect statements is no less great in the  
6 penalty phase than in the guilt phase. In accord with the California Supreme Court, we  
7 conclude that the right of cross-examination and the need for accuracy are as important,  
8 indeed more important, in the penalty phase than in the guilt phase." Lord v. State, 107 Nev.  
9 28, 44, 806 P.2d 548, 558 (1991).

10 The State reserves the right to utilize the statements of Terrell Young pursuant to the  
11 rules of evidence in Nevada. The State will not seek to admit the statement absent a proper  
12 evidentiary basis to do so.

13 2. Statements of co-Defendant Sikia Smith

14 Same response as #1 above.

15 3. Statements of Terrell Young and/or Sikia Smith

16 The State will not seek the admission of these statements pursuant to the dictates of  
17 Lord, supra. Further, the State does not intend to seek, as an enumerated aggravating factor,  
18 the "great risk of death to more than one person" pursuant to NRS 200.033(3).

19 4. Testimony of Shawn Fletcher

20 As set forth in #4 above, the State will not be seeking to prove as an enumerated  
21 aggravating factor, conduct to support NRS 200.033(3). As such, testimony of Shawn  
22 Fletcher would be relevant and proper for other enumerated aggravating factors and for  
23 "other relevant evidence". NRS 175.552(3) and Hollaway v. State, 116 Nev. 732, 745, 6  
24 P.3d 987, 996 (2000); Hernandez v. State, 50 P.3d 1100, 1109 (2002) (during a penalty  
25 phase, the State may properly present evidence for three purposes: "to prove an enumerated  
26 aggravator, to rebut specific mitigating evidence, or to aid the jury in determining the  
27 appropriate sentence after any enumerated aggravating circumstances have been weighed  
28 against any mitigating circumstances.").

1   5. Testimony of Sheree Norman

2       Same response as #4 above.

3   6. Testimony of David Horn

4       Same response as #4 above.

5   7. Victim Impact Testimony

6       The defense argument seeking to limit victim impact statements to a certain number  
7 of family members or to a particular length of time for their testimony, is without any legal  
8 support. In Homick v. State, 108 Nev. 127, 825 P.2d 600 (1992), this Court explicitly  
9 adopted the holding of the United State Supreme Court in Payne v. Tennessee, 501 U.S. 808,  
10 111 S.Ct 2597 (1991), and stated the following:

11           [T]he State has a legitimate interest in counteracting the  
12 mitigating evidence which the defendant is entitled to put in, by  
13 reminding the sentencer that just as the murderer should be  
14 considered as an individual, so too the victim is an individual  
15 whose death represents a unique loss to society and in particular  
16 to his family." *Booth* deprives the State of the full moral force of  
its evidence and may prevent the jury from having before it all  
the information necessary to determine the proper punishment  
for a first-degree murder. We applaud the decision in *Payne* as a  
positive contribution to capital sentencing, and conclude that it  
fully comports with the intentment of the Nevada Constitution.

17   Homick, 108 Nev. at 136, 825 P.2d at 606 (citations omitted).

18       The defense argument seeks to put limits on the presentation of victim impact  
19 testimony by the number of family members and/or time limits on their testimony. As stated  
20 previously, no support for such limitations exist in the law. In fact, the law speaks directly to  
21 an expansion of victim's rights in Nevada. In Wood v. State, 111 Nev. 428, 430, 892 P.2d  
22 944, 946 (1995), citing, Randell v. State, 109 Nev. 5, 7, 846 P.2d 278, 280 (1993), this Court  
23 stated that:

24           [Nevada's victim impact statute] is similar in scope to statutes  
25 enacted in Arizona and California. Courts in both states take  
26 expansive views of their victim impact statutes concluding that  
they are designed to grant victims expanded rights, rather than  
limit the rights of victims.

27   Id.

28       Additionally, the Court noted that "NRS 176.015 creates in certain defined 'victims'

1 the undeniable right to appear and express their views concerning the crime, the person  
2 responsible and the impact on the victim." Id.

3 Simply put, the fundamental fairness of the sentencing proceeding applies to the State  
4 as well as the Defendant. It would be unimaginable to put the same or similar restrictions on  
5 the Defendant in presenting mitigating evidence regarding.

6 Testimony of non-family members is permitted, so long as the evidence "provide[s]  
7 the jury with the individualized circumstances present in [the victims'] lives, and the specific  
8 harm caused by the crime charged, helping the jury make the individualized sentence  
9 required by the Eighth Amendment." Wesley v. State, 112 Nev. 503, 916 P.2d 793 (1996).  
10 In Wesley, three non-family members testified to proper relevant victim impact evidence and  
11 the Nevada Supreme Court held that such testimony was proper victim impact testimony  
12 under Payne.

13 In Rippo v. State, 113 Nev. 1239, 946 P.2d 1017 (1997), the Nevada Supreme Court  
14 concluded that five witnesses called by the State to present victim impact testimony was  
15 constitutionally appropriate. There should be no limits put on the State's presentation of  
16 victim impact testimony other than that outlined above as approved by the Nevada and  
17 United States Supreme Court. Fundamental fairness mandates that no such restriction would  
18 be remotely placed on the Defendant's presentation of mitigating evidence and none should  
19 be placed on the State as well.

20 8. Testimony Re: Purpose of Murders/Robbery

21 The State will seek the admission of evidence pursuant to the rules of evidence as set  
22 forth by the Nevada Revised Statutes. The State will not seek to admit the testimony of  
23 Terrell Young or Sikia Smith as outlined above.

24 9. Testimony Re: Motive for Murders/Robbery

25 Same response as #8 above.

26 10. Verdict Forms

27 The defense has submitted this matter to the discretion of the court.

28 11. Donte Johnson's Juvenile Records

1 The State seeks to admit the Defendant's conduct in a take-over robbery of a Cen-Fed  
2 bank in Los Angeles, California. The Defendant was arrested and ultimately pled guilty.  
3 The State will produce certified copies of the Defendant's judgment of conviction for that  
4 offense. The Defendant was incarcerated within the California Youth Authority (CYA) and  
5 ultimately received parole and the Defendant absconded from his parole status. While an  
6 absconder, the Defendant fled to Las Vegas.

7 The aforementioned evidence is relevant evidence for the jury to consider in the  
8 penalty phase. NRS 175.552(3) and Hollaway v. State, 116 Nev. 732, 745, 6 P.3d 987,  
9 996 (2000); Hernandez v. State, 50 P.3d 1100, 1109 (2002). Judge Sobel has previously  
10 ruled that the juvenile records of the Defendant are relevant and these matters have  
11 previously been presented in the two prior penalty proceedings.

12 The Nevada Supreme Court has previously held that juvenile records are relevant and  
13 permissible in a capital sentencing proceeding. Castillo v. State, 114 Nev 271, 276 (1998).

14 12. Evidence of case # 98F02775X

15 The State will not seek to admit evidence of the facts underlying this incident and  
16 memorialized in LVMPD event #980225-2093. The State would reserve the right to use any  
17 of the facts of this incident should they become relevant during the sentencing proceeding.

18 13. Evidence of Super 8 Motel -- LVMPD 980811-0995

19 The evidence regarding to this incident is being offered as relevant evidence pursuant  
20 to NRS 175.552(3) and Hollaway v. State, 116 Nev. 732, 745, 6 P.3d 987, 996 (2000);  
21 Hernandez v. State, 50 P.3d 1100, 1109 (2002). To a great extent the relevance of this  
22 testimony is largely self-evident. The Defendant, along with Terrell Young and Sikia Smith  
23 were involved in a "shoot-out" at the Super 8 Motel located at 5288 Boulder Highway on or  
24 about August 11, 1998. This event took place within a short period of time before the four  
25 murders that is the subject of the instant penalty phase proceeding.

26 Counsel objects to the admission of this event on the basis that the Defendant was  
27 never charged, nor convicted, of any crime related to this event. Unfortunately for the  
28 Defendant, that is not the test for admissibility in a penalty phase or, for that matter a non-



1 capital sentencing proceeding. *Rippo v. State*, 113 Nev. 1239, 1265, 946 P.2d 1017,  
2 1033 (1997) (the fact that Rippo was not charged with either burglary or kidnapping does not  
3 prevent them from being offered as aggravating factors).

4 The evidence primarily consists of testimony from friends/associates of the Defendant  
5 of statements made by the Defendant wherein he directly implicates himself in this shooting.

6 The Nevada Supreme Court has succinctly outlined the parameters for the admission  
7 of evidence at a capital sentencing proceeding as follows:

8 The trial court's determination regarding the admissibility of  
9 evidence during a sentencing hearing will not be disturbed on  
10 appeal absent an abuse of discretion. *Wesley v. State*, 112 Nev.  
11 503, 519, 916 P.2d 793, 804 (1996). Furthermore, during a  
12 penalty hearing, "evidence may be presented concerning  
13 aggravating and mitigating circumstances relative to the offense,  
14 defendant or victim and on any other matter which the court  
deems relevant to sentence, whether or not the evidence is  
ordinarily admissible." NRS 175.552(3); see also *Allen v. State*,  
99 Nev. 485, 488, 665 P.2d 238, 240 (1983). However, the  
district court may not admit evidence that is impalpable or highly  
suspect. *Young v. State*, 103 Nev. 233, 237, 737 P.2d 512, 515  
(1987).

15 *Sherman v. State*, 114 Nev. 998, 1012, 965 P.2d 903, 913 (1998).

16 The evidence presented to establish the Defendant's role in this incident will comport  
17 with the rules of evidence and will not be impalpable or highly suspect.

18 14. Murder of Darnell Lamont Johnson

19 The Defendant relies on *D'Agostino v. State*, 107 Nev. 1001, 823 P.2d 283 (1991) as  
20 a basis to exclude the admission of the evidence showing the Defendant, along with others,  
21 murdered Darnell Johnson. Careful review of the D'Agostino decision reflects the Nevada  
22 Supreme Court's concern with the use of jail-house witnesses that testify to statements  
23 allegedly made by an incarcerated inmate awaiting sentencing. Concluding that the trial  
24 court must make some threshold inquiry prior to the admission of such testimony, the court  
25 stated:

26 It is up to the trial judge to see that there are sufficient  
27 assurances of reliability prior to admitting the kind of amorphous  
28 testimony presented to keep this kind of unreliable evidence out  
of the hands of the jury, especially when the supposedly admitted  
crimes of the accused cannot be reasonably described in terms of

1 where, when, against whom (other than "some old man in New  
2 York") and the circumstances under which the crimes were 285  
3 committed. More and more frequently, it seems, we are  
4 confronted with cases in which a jailbird comes forward to  
testify that the accused admitted to him that he not only  
committed the crime that he is accused of but also several other  
assorted crimes. We think it is time that this practice is examined  
more carefully.

5 D'Agostino v. State, 107 Nev. 1001, 1003, 823 P.2d 283, 284 - 285 (1991).

6 Once again, the evidence will comport with the evidentiary rules of this State and will  
7 directly implicate the Defendant, along with others, in the murder of Darnell Lamont  
8 Johnson. This evidence includes, once again, statements made by the Defendant to friends  
9 and associates directly implicating him in this murder. Therefore, this evidence does not  
10 remotely fall within the concerns raised by D'Agostino.

11 15. Records and Evidence of Conduct of the Defendant while at CCDC and NDOC

12 Once again, the State seeks to introduce this evidence pursuant to the evidentiary rule  
13 of the State of Nevada. Specifically, the State will present testimony from a correctional  
14 officer that was a percipient witness to the Defendant, along with Reginald Johnson, threw  
15 an inmate off a second tier balcony, see attached Exhibit 1. While the defense may claim  
16 that the officer's vision of this incident was "obstructed" that does not render the evidence  
17 inadmissible, but is merely argument as to the weight that should be attached to such  
18 evidence. The proffered evidence is not highly suspect or impalpable. The evidence is  
19 relevant for establishing the appropriate punishment to be applied to the Defendant.  
20 Hernandez v. State, 50 P.3d 1100, 1109 (2002).

21 16. Gang Evidence

22 The State seeks to present evidence of the Defendant's association in a criminal gang  
23 called 6 Duece Brims. It is undisputed that the Defendant was a member of this gang while  
24 in California and prior to his moving to Las Vegas. In fact, the Defendant was an absconder  
25 from parole for Armed Robbery when he moved to Las Vegas. The State seeks to offer this  
26 evidence to establish and rebut any evidence that the Defendant was compelled to join a  
27 gang. Further, the Defendant's choice in joining 6 Deuce Brims was one made not of  
28 necessity but of rational choice. Previously, in the prior penalty hearings held in this matter,

1 “mitigating” evidence was presented by the Defendant to show that he was a “follower” and  
2 “had no choice” but to join a gang during his adolescent years in California.

3 Recently the Nevada Supreme Court has held that gang-affiliation evidence is  
4 relevant evidence in a murder prosecution and its prejudicial effect is not outweighed by its  
5 probative value. Lara v. State, 120 NevAdvOp 20, pg. 5 (April 14, 2004); Hernandez v.  
6 State, 50 P.3d 1100, 1109 (2002).

7 Expert testimony from LAPD gang officers familiar with the 6 Duece Brims will  
8 establish and rebut the mitigating evidence of the Defendant’s adolescent decision making  
9 process. The evidence is competent, relevant and appropriate for purposes of this  
10 proceeding.

11 17. Evidence of the Death of Derrick Simpson

12 The essential disagreement regarding this evidence is whether the State can properly  
13 present evidence the undisputed fact that Mr. Simpson, has, since the last proceeding in this  
14 case, has died. The State is prepared to present competent medical testimony that from a  
15 scientific degree of certainty, Mr. Simpson died as a result of the gunshot injuries inflicted  
16 by the Defendant. Specifically, Dr. Gary Telgenhoff performed an autopsy on August 1,  
17 2002 and concluded that, “the death of Derrick Simpson is due to pulmonary  
18 thromboembolism due to debilitated state and paraplegia, due to penetrating gunshot wound  
19 of the back.” He further concluded that his death was a “homicide.” Attached hereto as  
20 Exhibit 2 is a copy of the autopsy report. Consistent with that medical diagnosis, the State  
21 will supplant this evidence with medical testimony confirming what is in essence,  
22 commonsensical, that Mr. Simpson ultimately died from massive complications from the  
23 multiple gunshot wounds inflicted by the Defendant.

24 The evidence is relevant “other act” evidence that the jury in this case should be made  
25 aware of to determine the appropriate punishment for the Defendant.

26 18. Letters of the Defendant to Sikia Smith, Terrell Young and Charla Seevers

27 This evidence is offered to specifically rebut any assertion, as has been made in the  
28 past penalty hearings in this case, that the Defendant was a “follower” as it relates to the

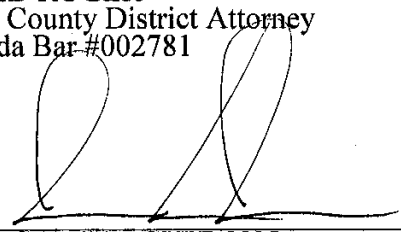
1 relationship between the co-Defendants Smith and Young. The Defendant signs these letters  
2 as "General Deko". It will be established that "General", within gang culture, of an  
3 individual with command authority over others. Further, the Defendant refers to Young and  
4 Smith as "soldiers". Additionally, the Defendant in one letter claims that he is a "legend  
5 whether breathing or dead." Once again, relevant evidence to establish the relationship  
6 between the various defendants and the character of the Defendant. Hernandez v. State, 50  
7 P.3d 1100, 1109 (2002).

8 DATED this 26 day of April, 2004.

9 Respectfully submitted,

10 DAVID ROGER  
11 Clark County District Attorney  
12 Nevada Bar #002781

13  
14 BY

  
15 GARY L. GUYMON  
16 Chief Deputy District Attorney  
17 Nevada Bar #003726

18 CERTIFICATE OF FACSIMILE TRANSMISSION

19 I hereby certify that service of **State's Response To Defendant's Opposition To**  
20 **State's Notice Of Evidence In Support Of Aggravating Circumstances**, was made this  
21 26th day of April, 2004, by facsimile transmission to:

22 SPECIAL PUBLIC DEFENDER  
23 FAX#455-6273

24  
25 BY   
26

27 Employee of the District Attorney's Office  
28

GLG/ddm

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

PAGE 1

EVENT #: 010224-2350

SPECIFIC CRIME: ATTEMPT MURDER (IN-CUSTODY)

DATE OCCURRED: 02/24/01

TIME OCCURRED:

LOCATION OF OCCURRENCE: 5TH FLOOR, CLARK CO. DETENTION CENTER

CITY OF LAS VEGAS

CLARK COUNTY

NAME OF PERSON GIVING STATEMENT: A. GONZALEZ, P#6188

DOB:

SOCIAL SECURITY #:

RACE:

SEX:

HEIGHT:

WEIGHT:

HAIR:

EYES:

WORK SCHEDULE:

DAYS OFF:

HOME ADDRESS:

HOME PHONE:

WORK ADDRESS: LVMPD

WORK PHONE: 229-3111

BEST PLACE TO CONTACT:

BEST TIME TO CONTACT:

The following is the transcription of a tape-recorded interview conducted by DETECTIVE K. BLASKO, P#2995, LVMPD General Assignment Section, on 02/24/01 at 2145 hours.

Q. Operator, this is Detective Keith Blasko, B-l-a-s-k-o, P number 2995, General Assignment, swing shift. Even... er, conducting a voluntary taped statement under Event number 010224-2350. Person giving statement is Corrections Officer A. Gonzalez, P number of 6188. Location of occurrence is 5th floor, Clark Co. Detention Center. Interview beginning at 2145 hours on 2/24 of '01. Officer Gonzalez, on this date were you, uh, working in capacity as a corrections officer?

A. Yes.

**EXHIBIT "1"**

AA08603

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

**VOLUNTARY STATEMENT**

PAGE 2

EVENT #: 010224-2350

STATEMENT OF: A. GONZALEZ

Q. And you're assigned to Module 5CD?

A. Yes.

Q. And, uh, tonight at around 1956 hours, did you observe, um, two inmates throw another inmate over the second, uh, story railing?

A. Yes.

Q. And that was within Module 5C?

A. Correct.

Q. Is Module 5C a maximum security module?

A. Correct.

Q. And, tell me in your own words, uh, what you saw.

A. As I was in the module office, I was observing two black male adults walk up the stairs, the right stairs, of 5C. As they're walkin' up, I'm observin' them walkin' up. As they're walkin' up, inmate Oscar Irias is talking to inmate Celestine (phonetic) in Room 5 Charlie 23. One of the inmates, Reginald Johnson, grabs inmate Oscar Irias and Donte Johnson starts to swing on him. Connectin' all over his body and head. At this time I called a Code Red 416 in 5 Charlie. As I walk out in the 5 Charlie day room, I observe both inmates liftin' Oscar Irias from the ground and throwin' him over the railings of the upper tier in 5 Charlie. And at this time I called a Code Red 444 in 5 Charlie.

AA08604

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

**VOLUNTARY STATEMENT**

PAGE 3

EVENT #: 010224-2350

STATEMENT OF: A. GONZALEZ

- Q. Okay. Did, uh... When Oscar fell to the ground in the day room, um, did you immediately, uh, enter the day room to, uh, give first aid or to try to quell the... the situation?
- A. As I... As I seen Oscar Irias hit the floor, I analyzed the... the whole scenario. I secured inmate Reginald Johnson as Officer... Correctional Officer Hardy secured Donte Johnson. As soon as we secured them, I ran to inmate Oscar Irias first aid to see what was wrong with him. And at this time, the nurses, uh, gave him first aid.
- Q. Okay. Um, when, uh... Before you went in, you analyzed the situation due to the fact that there were multiple inmates out within... or, two other inmates, Reginald Johnson and Donte Johnson, were still loose inside the 5 Charlie day... uh, in the day room itself, in the module itself.
- A. Yes.
- Q. So, you being a single officer by yourself, that's why you waited momentarily before your, uh, backup arrived, and then you guys could proceed safely into the module. And then, uh, uh, take corrective action in, uh, placing restraints on Reginald and Donte Johnson.
- A. Yes. It was Officer Hardy and myself, was just us two. And was two of them. So I analyzed it for officer safety reasons.
- Q. Very good. Um, d... When, uh... Did you see, uh, Oscar Irias, did he, uh, grab the top of the... the railing before he fell to the ground?

AA08605

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

**VOLUNTARY STATEMENT**

PAGE 4

EVENT #: 010224-2350

STATEMENT OF: A. GONZALEZ

A. He... He tr... attempted to hold onto Reginald Johnson's arm. And as he was holdin' on, inmate Reginald Johnson, like, picked him up and shoved him. Like, pushed him, well, over the railing.

Q. Okay. And Reginald Johnson, he would be the bigger of the--

A. He's--

Q. --the two?

A. He's the bigger of the two and the strongest out of the two.

Q. Okay. Have, um, you had any trouble with, uh... with Oscar Irias having any other problems within 5 Charlie?

A. This is not my regular module. So, I know him from past modules. And he's not a violent inmate by no means. He's, uh, not all there or a little slower. But, as far as being violent or being in any type of gang, not that I'm aware of. No tattoos. Nothing I could see.

Q. And we're... both you and I are not doctors, but when you saw slow, um, mentally-wise, he's just not up to speed.

A. No, not... he's not up to speed. I'm... I'm bilingual so I'll have to speak to him in Spanish and not even, uh, in our language of Spanish is he... I'm not a doctor or psychiatrist by no means, but he's... when talkin' to him, it's not...

Q. He's just slow.

A. He's a little slower.

AA08606



LAS VEGAS METROPOLITAN POLICE DEPARTMENT

**VOLUNTARY STATEMENT**

PAGE 5

EVENT #: 010224-2350

STATEMENT OF: A. GONZALEZ

Q. Okay. Um, how long have you been... This is not your r... regular assigned post. You're down here tonight because the regular people are in a-

A. Training.

Q. --training se... session tonight?

A. Correct.

Q. And, uh, is this just one night, just tonight you're at Post 5CD?

A. Correct.

Q. Okay. Did, uh, Donte Johnson or, uh, Reginald Johnson make any statements to you or Officer Hardy when you guys were taking them into custody?

A. No, they didn't.

Q. What did, uh... Uh, when you secured, uh, Donte Johnson, Officer Hardy secured, uh, Reginald Johnson.

A. Um, incorrect. It... it was the other way around. I secured Reginald Johnson and Officer Hardy secured Donte.

Q. Okay. When... When you secured those two... Or, when you and Officer Hardy secured the two, uh, Johnsons, did Oscar... was he kinda crawlin' back to his room or was he fightin' back or he...

A. By no means he was fightin'. He was runnin' for life. He crawled to his room and sat on his bunk. At this time I ran in his room. I put on my gloves. And asked him

AA08607

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

**VOLUNTARY STATEMENT**

PAGE 6

EVENT #: 010224-2350

STATEMENT OF: A. GONZALEZ

where did he have pain. And not to move, that we have medical attention coming to see him.

Q. Okay. Did, uh... Did he say anything to you either in English or Spanish of why these two gentle... or,--

A. He s--

Q. --not gentlemen, but, uh, people were t... to throw him over the edge?

A. In Spanish he said, all I was doin' is I went up to the upper tier to grab the spray bottle and to grab a little Bible from inmate Celestine in Room 5 Charlie 23. One grabbed me. And the other one grabbed me and started punchin' me. And I spoke to Celestine in Spanish. And the stories coincided.

Q. Okay. And then, uh, he crawl... he... he crawled back to his room and, uh, medical attention... uh, medical people arrived to give him first aid.

A. Our medical staff arrived, I would say maybe two, three minutes afterwards.

Q. Okay.

A. A... a minute, maybe. After that, then the AMR was called out.

Q. O--

A. Because whatever medical reasons, they felt that he needed to go out, 'cause it was a hard fall.

Q. Okay. I don't have anything else. Do... Can you think of anything else that would, uh, benefit this investigation?

AA08608

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

**VOLUNTARY STATEMENT**

PAGE 7

EVENT #: 010224-2350

STATEMENT OF: A. GONZALEZ

A. I feel that, um, inmate Vigoa (phonetic) could go into details if they had any other...

Q. And that's Jose Vigoa?

A. Correct.

Q. And what room is he housed in?

A. He's housed in 5 Charlie 12. And he spoke to me in Spanish and told me basically what was going on.

Q. And what did he... what did he state to you?

A. Inmate Vigoa stated that inmate Irias is not all... he's... he's a little slow and was talkin' stuff, smack or whatever you want, I don't know how to word it correctly, but he was talkin' behind the doors to them. And both the black inmates came out, both the Johnsons, and they, uh... they attacked, uh, inmate Irias.

Q. Okay. Very good. Uh, operator, this is end of dictation. And it's going to be 2/24 of '01, and the hour is 2200. Same persons present, Blasko and Corrections Officer Gonzalez. Thanks.

---

THIS VOLUNTARY STATEMENT WAS COMPLETED AT THE CLARK CO. DETENTION CENTER ON THE 24TH DAY OF FEBRUARY, 2001 AT 2200 HOURS.

KB:alf  
01-0603

AA08609