

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 83796

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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 46 of 50

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

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

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210. Post –Evidentiary Hearing Supplemental Points and Authorities, Exhibit B: Affidavit of Wilfredo Mercado, <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154, June 22, 2005	02/13/2019	46	11578–11579
211. Genogram of Johnson Family Tree	02/13/2019	46	11580–11581
212. Motion in Limine Regarding Referring to Victims as “Boys”, <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154	02/13/2019	46	11582–11585
213. Declaration of Schaumetta Minor, (Dec. 18, 2018)	02/13/2019	46	11586–11589
214. Declaration of Alzora Jackson (Feb. 11, 2019)	02/13/2019	46	11590–11593
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1. <i>Holloway v. Baldonado</i> , No. A498609, Plaintiff’s Opposition to Motion for Summary Judgment, District Court of Clark County, Nevada, filed Aug. 1, 2007	12/13/2019	49	12200–12227
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216. <i>Holloway v. Baldonado</i> , No. A498609, Opposition to Motion for Summary Judgment Filed by Defendants Stewart Bell, David Roger, and Clark County, District Court of Clark County, filed Jan. 16, 2008	12/13/2019	48–49	11868–12111
217. Letter from Charla Severs, dated Sep. 27, 1998	12/13/2019	49	12112–12113
218. Decision and Order, <i>State of Nevada v. Johnson</i> , Case No. C153154, District Court of Clark County, filed Apr. 18, 2000	12/13/2019	49	12114–12120
219. State's Motion to Disqualify the Honorable Lee Gates, <i>State of Nevada v. Johnson</i> , Case No. C153154, District Court of Clark County, filed Apr. 4, 2005	12/13/2019	49	12121–12135
220. Affidavit of the Honorable Lee A. Gates, <i>State of Nevada v. Johnson</i> , Case No. C153154, District	12/13/2019	49	12136–12138

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

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CERTIFICATE OF SERVICE

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

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

/s/ Celina Moore

Celina Moore

An employee of the Federal
Public Defender's Office

does not supply suppression of the relevant clinical responses to noxious stimuli; one can be sedated but still consciously experiencing one's surroundings, including painful and horrific stimuli such as air hunger, even if the sedated person appears to the lay person as being unaware of the surroundings.

12. Air hunger is being unable to satisfy the physiologic and psychologic urge to breathe. Patients describe it as similar to the sensation of suffocation. Simple examples are the feelings you get when the air is knocked out of you, or when at the swimming pool a "friend" pushes and holds your head down underwater. While these experiences can be scary, and the sensation of breathing is met with palpable relief, you nonetheless essentially know or believe you will be able to breathe again. This knowledge ameliorates the experience of air hunger. This knowledge is not present when a person is being executed.

13. For Mr. Dozier, the experience of air hunger, if the diazepam and fentanyl sedate him enough to put him in that situation, is likely, because of the smaller doses that are being used under Nevada's protocol. The highest dose of fentanyl, 1000 mcg, is roughly equal to 15-20 mg of hydromorphone, which is half of what Mr. McGuire received during his botched execution. See Equivalent opioid calculator; see clincalc.com/opioids/. Benzodiazepine conversions are more problematic, particularly between intravenous benzodiazepines. But 10 mg of midazolam is much stronger than 15 mg diazepam, which is a much weaker drug.

14. More severe sensations of air hunger are described in patients who do not know if they will be able to breathe again. This brings about feelings such as that described by the following patient who experienced being paralyzed yet aware:

"I have never been so panicked, scared and horrified in my life. I was suffocating. I would have done anything even to take a small breath. I was scratching, clawing and flailing about. When the medication finally worked [to allow her to breathe], I never felt so relieved."

15. In general, the sensation of air hunger becomes intense with a relatively small rise of carbon dioxide (CO₂). We normally breathe out CO₂, the waste from our body. Not being able to do so creates panic. Brain imaging data suggest that increases in CO₂ and associated feelings of air hunger cause widespread increases in brain activity, including brain regions associated with stress and anxiety (amygdala, prefrontal cortex) and pain (periaqueductal gray). Liotti M., Brain responses associated with consciousness of breathlessness (air hunger), PNAS 2001;98:2035-40.; O'Mara S., Torturing the brain: On the folk psychology and folk neurobiology motivating 'enhanced and coercive interrogation techniques', Trends in Cognitive Science. 2009; 13 (12):497-540.

16. The high-dose fentanyl used in Nevada's new protocol is reminiscent of the quickly discredited high dose fentanyl technique proposed for heart surgery in 1978. As more experience was gained with this technique, concerns about awareness grew. The following examples explicate this problem. Note that these references are older, because this technique was discredited 30-35 years ago, although I do include a major textbook's note to show that the modern consensus is the same: *Fentanyl does not produce unconsciousness*. Fukuda K., Opioids, In: Miller R.D., Miller's Anesthesia, Philadelphia, PA: Elsevier; 2010; 777. Note that medicine also works by

case reports - physicians reporting events. Case reports are often the tip of the iceberg in terms of frequency of events.

- a. In 1980, it was reported that a woman having redo heart surgery was responding to verbal commands until receiving 1600 mcg (24 mcg/kg) of fentanyl. Prior to incision, she received 4250 mcg (64 mg/kg) of fentanyl. The patient recalled the conversations between the surgeon and anesthesiologist during the opening of the chest. Mummaneni N., Awareness and recall under high-dose fentanyl-oxygen anesthesia, *Anesth Analg.* 1980;59:948-9.
- b. In 1981, it was reported that a woman having open heart surgery reported intraoperative awareness. She received before surgery 10 mg of morphine sulfate and 0.4 mg scopolamine. Scopolamine is an anticholinergic drug that provides amnesia. It is often used in emergency cases when the patient does not have sufficient blood pressure to tolerate a proper anesthetic. She received a total of approximately 5040 mcg (reported as 90 mcg/kg) prior to surgical incision. She reported statements made by medical personnel prior to cutting the chest bone, an early part of the procedure. Hilgenberg J.C., Intraoperative awareness during high-dose fentanyl-oxygen anesthesia, *Anesthesiology*, 1981;54:341-3.
- c. In 1983, a man having open heart surgery had intraoperative awareness and distress after 8000 mcg (96 mcg/kg) of fentanyl,

23 mg (0.28 mg/kg) of diazepam, 0.4 mg scopolamine and 10 mg of morphine, and scopolamine. 6. Again, it is worth noting that scopolamine and diazepam in combination was supposed to be a potent combination. Frumin M.J., Herekar V.R., Jarvik M.E., Amnestic actions of diazepam and scopolamine in man, Anesthesiology 1976;45:406-12. That the patient had awareness with diazepam and scopolamine (a stronger combination than diazepam alone) indicates the foolishness in relying on diazepam as a drug to block awareness. The patient reported hearing voices discussing an operating room event (his rising blood pressure) and his attempts to communicate that he was awake.

- d. These events prompted KC Wong in 1983 to declare in an editorial that fentanyl does not prevent awareness. Wong K.C., Narcotics are not expected to produce unconsciousness and amnesia, Anesth Analg 1983;62:625-26.
- e. In 1988, there were further investigations into the effects of high-dose fentanyl in patients having open heart surgery. In an extraordinary study, 10 patients received an intramuscular injection of 0.15 mg/kg of morphine and 0.3-0.4 mg/kg of scopolamine, and 60 minutes later received a total of 100 mcg/kg of fentanyl over 15 minutes. During this time, patients had headphones stating verbal messages at 25 mcg/kg, 50 mcg/kg, 75 mcg/kg and 100 mcg/kg of fentanyl. The left arm was isolated from the muscle

relaxant, allowing for patient response at these levels. This table from the paper indicates that at 25 mcg/kg of fentanyl, 80% (8/10) of patients were responsive, and at 100 mcg/kg, 60% (6/10) of patients were responsive to the verbal suggestions on the headphones. In addition, and most importantly, while the patients were sufficiently awake to respond to commands, none of them remembered it, indicating that the rates of being aware but not recalling being aware under high-dose fentanyl is significantly higher than the rate of reported awareness after high-dose fentanyl. Watanabe A., Wakefulness during the induction with high-dose fentanyl and oxygen anesthesia, J Anesth 2: 165-169, 1988.

Table 2. Results

Patient No	Dosage of fentanyl ($\mu\text{g/kg}$)				Complications
	25	50	75	100	
1	+	+	+	+	
2	+	+	+	+	
3	+	+	+	+	Rigidity Tachycardia
4	+	+	+	+	Rigidity
5	+	+	+	+	Tachycardia
6	-	-	-	-	
7	+	+	-	-	
8	-	-	-	-	Tachycardia
9	+	+	-	-	
10	+	+	+	+	Rigidity Tachycardia

+ = response to verbal commands, - = no response to verbal commands

- iii. Although the 6/10 patients who were aware after receiving 100 mcg/kg of fentanyl did not remember being aware, that is irrelevant to the condemned inmate. What is relevant is the experience in the moment.
- iv. Because these patients did not remember their demonstrated awareness, it is presumed that many other patients experienced awareness without recall, likely putting the risk to Mr. Dozier closer to Watanabe's results.

17. Nevada's execution protocol does not provide for an adequate assessment of consciousness. If Mr. Dozier stops breathing during the 90 seconds after the fentanyl is given, the cisatracurium may then be given. But given how opioids such as fentanyl can slow respiratory rates, or even pause breathing for a period, it does not mean that Mr. Dozier is unaware. This is in addition to the risk of chest wall rigidity.

18. Even if Mr. Dozier stops breathing, that does not indicate lack of awareness. The drive to breathe is due to carbon dioxide in the blood. Opioids, like fentanyl, require higher carbon dioxide levels to initiate breathing and attenuate increases in breathing than if you did not receive fentanyl. After receiving opioids, the normal increased breathing response to increased carbon dioxide occurs later (at a high carbon dioxide level) and more slowly. In other words, if you have received fentanyl, you need a higher carbon dioxide level to breathe, and even then, when you

he could be well aware after the cisatracurium is given, leading to the purgatory of awareness while paralyzed.

21. Information in Nevada's execution protocol regarding experience and training standards for executioners in general and the quality of the specific executioners is missing. There needs to be a better sense of their experience and training in general and in particular, such as the frequency with which they insert intravenous catheters, their ability to assess adequate intravenous line flow, and their ability to assess respiratory function and rate. Experienced clinicians are not always good at assessing respirations, particularly slow and shallow respirations, by looking at the patient. There is no information about experience and training in assessing consciousness under high-dose fentanyl.

22. I have been asked to discuss other ways of monitoring consciousness. In hospital settings, there are various brain-function or neural monitors which are used to assess anesthetic depth. One such monitor, more commonly used in surgical operations at high risk for awareness, is the FDA-approved bispectral index (BIS) monitor. Trained and appropriately knowledgeable anesthesiologists use the BIS monitor to reduce the likelihood of patient awareness during an operation. The BIS monitor processes a single frontal lobe electroencephalographic signal to calculate a dimensionless number that provides a measure of the patient's level of consciousness. BIS values range from 100 to 0, reflecting the awake state and absence of brain activity. While a host of variables may affect the significance of the values produced by the BIS monitor, scores between 40 and 60 indicate adequate

general anesthesia for surgery. Avidan M.S., Anesthesia Awareness and the Bispectral Index, New Engl J Med 2008; 358:1097-1108.

23. The protocol does not supply information regarding team training and rehearsals on set up, preparing drugs, preparing intravenous lines, responses to unexpected events, contingency plans and so forth. Team training over time is essential for a smooth running procedure. How many rehearsals are necessary is a function of progress during rehearsals. Based on clinical experiences, it is my opinion that 3 rehearsals over a 2 month period prior to the scheduled execution would be the bare minimum required. Of course, this also requires a rehearsal protocol that includes practice responding to a list of unexpected events.

24. In the end, there is a substantial risk that Mr. Dozier will experience hellish airway obstruction and hunger after the diazepam and fentanyl over a long period of time, and that he will be aware after he is paralyzed by the administration of the cisatracurium, and will thus suffer substantial harm from being awake while paralyzed while being put to death, because of 1) the use of a discredited technique which is known to fail to prevent awareness; 2) the use of an older drug that has not been used to induce unconsciousness for decades, and, to my knowledge, has not been used in lethal injections, with unclear dosing when far better drugs can be used to decrease the risk; 3) the going forward with unclear credentials of the executioners in all areas, particularly in assessing unconsciousness produced by the drugs in this protocol, and without indication that proper training and rehearsals have taken place; and 4) the use of a paralytic agent which will hide issues of

movement related to awareness, preventing proper actions to ensure a humane execution.

25. I have been asked to opine about whether a readily available alternative to Nevada's execution protocol could be used to minimize the substantial risk of harm that its present protocol causes. As explained above, I do not believe the proposed drugs can eliminate the substantial risk that Mr. Dozier will be aware during his execution, particularly at the low dosages provided in the protocol. In light of the expert literature discussed above, I do not believe that any amount of fentanyl will be sufficient to guarantee that Mr. Dozier will be unaware during his execution.

26. I am board certified with the American Board of Anesthesiology ("ABA"). The ABA is the preeminent organization for anesthesiologists whose mission is to advance the highest standards of practice in anesthesiology. For this reason, the ABA proscribes the participation of its members in lethal injections. (American Board of Anesthesiology, Commentary (May 2014) (available at <http://www.theaba.org/PDFs/BOI/CapitalPunishmentCommentary>.) (incorporating American Medical Association Code of Medical Ethics, Opinion E-2.06 – Capital Punishment (June 2000)). The penalty for violating the ABA's rules is permanent loss of membership in the organization. I interpret the ABA's rules as preventing me from advocating an alternative form of execution. I do not believe that I can take any position that a reasonable person could interpret as advocating for a particular method of execution.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and that this declaration was executed on this 4th day of October 2017, at Boston, Massachusetts.

A handwritten signature in black ink, appearing to read 'David B. Waisel', written in a cursive style.

David B. Waisel

EXHIBIT 195

EXHIBIT 195

Declaration of Hans Weding

I, Hans Weding, hereby declare as follows:

1. I am fifty four years old. I currently reside in Clarke County, Nevada.

② I served as a juror in the 2000 Dante Johnson case.

③ I recall one particular male juror who I would describe as "creepy" and just weird.

Throughout deliberations he was adamant about imposing the death penalty.

④ The day prior to final deliberations I witnessed an incident involving this juror. He, myself and a few of the other jurors entered the elevator to the parking lot. Two unknown African American males were also present in the elevator. As we exited the elevator and he remained and went to another floor with these two males. I thought this was weird because we all parked in the same place.

(5) The next day, the final day of deliberations this same male juror changed his mind about imposing the death penalty. This was a complete reversal in his attitude.

(6) I recall talking about this with other jurors however I am unsure if court personnel were told about this incident.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, and that this declaration was executed in

Clatsop County, Nevada, on December 18, 2018.

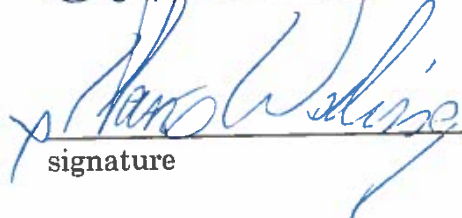

signature

EXHIBIT 196

EXHIBIT 196

ORIGINAL

DISTRICT COURT

CLARK COUNTY, NEVADA

FILED IN OPEN COURT

June 21 19 *99*

SHIRLEY B. PARRAQUIRRE, CLERK

BY *Linda Skinned*

LINDA SKINNED DEPUTY

THE STATE OF NEVADA,
Plaintiff,
vs.
SIKIA L. SMITH,
Defendant.

Case No. C153624
Dept. No. III
Docket No. "E"

BEFORE THE HONORABLE JOSEPH PAVLIKOWSKI, DISTRICT JUDGE
JUNE 18, 1999, 9:30 A.M.

REPORTER'S TRANSCRIPT OF TRIAL PROCEEDINGS - VOLUME IX

APPEARANCES:

For the Plaintiff: R. DASKAS, ESQ.
DEPUTY DISTRICT ATTORNEY

For the Defendant: P. CHRISTIANSEN, ESQ.
and
A. SGRO, ESQ.

CE23

REPORTED BY: JAMES A. HELLESO, C.C.R. NO. 15

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1 LAS VEGAS, NEVADA, JUNE 18, 1999, 9:30 A.M.

2 * * * * *

3 THE COURT: This is a continuation of the matter
4 State of Nevada v. Sikia Smith, C153624.

5 The record will indicate the presence
6 of the same parties in court at the time we recessed.

7 Miss Clerk, call the roll of the
8 jurors, please.

9 (The Clerk called the roll
10 of the jury).

11 THE COURT: The record will show the presence of
12 the regular jurors and also the four alternates.

13 Call your next witness, Mr. Guymon.

14 MR. GUYMON: Ed Guenther.

15 THE COURT: Mr. Guenther, up here, please. Remain
16 standing, raise your right hand and be sworn by the clerk.

17 EDWARD GUENTHER,
18 having been first duly sworn on oath to tell the truth, the
19 whole truth and nothing but the truth, testified and said
20 as follows:

21 THE COURT: Be seated. Give us your full name,
22 spell your last name, your business address and your
23 occupation.

24 THE WITNESS: My name is Edward Guenther and I am
25 employed by the Las Vegas Metropolitan Police Department.

1 The spelling on my last name is G-u-e-n-t-h-e-r.

2 And I am assigned to the latent print
3 unit of the police department, crime laboratory.

4 THE COURT: How long have you been employed with
5 Metro?

6 THE WITNESS: Just a little over a year.

7 THE COURT: And where were you employed prior to
8 that time?

9 THE WITNESS: I was employed by the State of
10 Florida for eighteen years prior to that.

11 THE COURT: And what type of background or
12 education have you had to testify as a fingerprint expert?

13 THE WITNESS: Well, my training in latent print
14 began back in 1975 I was employed by the Federal Bureau of
15 Investigation in Washington, D.C. That is where I received
16 my basic training in fingerprints.

17 In 1977 I entered into the latent
18 fingerprint training program in the State of Ohio.

19 I completed that training program, did
20 routine case work in Ohio until taking a job in Florida
21 where I stayed until coming to Las Vegas last year.

22 So I have a bachelor's degree in
23 criminal justice and I am a certified latent fingerprint
24 examiner by the International Association for Identifica-
25 tion.

1 THE COURT: What is a latent fingerprint, Mr.
2 Guenther?

3 THE WITNESS: Well, a latent fingerprint is a
4 chance impression. The word latent means hidden.

5 When an individual touches an item, he
6 can leave a deposit on that item of perspiration and a host
7 of other chemicals.

8 And in the laboratory and the crime
9 scene we utilize different techniques and processes to
10 develop those latent fingerprints and make them visible so
11 that they can be compared against known standards of
12 individuals.

13 THE COURT: Have you testified in the course of
14 Nevada as an expert in the field of latent fingerprint
15 examination?

16 THE WITNESS: I have testified in grand jury
17 proceedings only so far.

18 THE COURT: Mr. Sgro, any questions?

19 MR. SGRO: No, your Honor.

20 THE COURT: He is qualified.

21 MR. GUYMON: Thank you.

22 DIRECT EXAMINATION

23 BY MR. GUYMON:

24 Q You indicate that you testified in
25 grand jury proceedings only thus far here in the State of

1 Nevada?

2 A Yes.

3 Q How long have you been working in the
4 State of Nevada, sir?

5 A Since May of 1998.

6 Q And prior to May of 1998 had you
7 testified in other courtrooms and in other states?

8 A Oh, yes, sir.

9 Q What courtrooms and states and approxi-
10 mately how many times as an expert?

11 A Well, both in federal court and in
12 state courts in Ohio and in Florida. I qualified as an
13 expert witness in fingerprint identification well over a
14 hundred times.

15 Q Now, then, you have told the jury what
16 a latent fingerprint is.

17 Can you tell us what the process is by
18 which latent fingerprints are obtained or lifted.

19 A Well, there is two basic kinds of
20 surfaces in latent fingerprint work. There is a porous
21 surface and a non-porous surface.

22 In a porous surface such as papers and
23 so forth we normally employ a chemical process such as
24 enhydren (phonetic) and other chemicals.

25 Hard surfaces, the non-porous surfaces,

1 normally at crime scenes we use what's just a powder
2 technique.

3 There are some other chemicals that can
4 be employed before the powdering technique but basically
5 it's a powder technique.

6 And what happens is the individual will
7 powder the area with a fine -- with a brush and a fine
8 fingerprint powder.

9 The powder will literally adhere to the
10 ridge detail which is then lifted using a special lifting
11 tape and it is placed on a card. And that's what we would
12 receive in a laboratory from a crime scene person or if we
13 were processing that exhibit in the laboratory it's a
14 technique I would go through myself.

15 Q What effects one's ability to actually
16 lift a latent print?

17 A Well, there is a number of factors that
18 effect whether or not a latent fingerprint will be able to
19 be usable as far as an identification purpose.

20 First and probably the most important
21 is pressure. If too much pressure is applied to a surface,
22 usually we end up with a smear or blob. And it is -- well,
23 you might have an outline of a finger. It's really no
24 detail there that can be used to make a comparison.

25 Also have environmental factors like

1 when, rain, those type of factors.

2 The surface that is touched generally
3 speaking the smoother the surface the more likely it is to
4 have a fingerprint left on it.

5 The skin conditions some people
6 perspire more than others or they may or may not be likely
7 to leave a latent on items.

8 And, of course, time is an important
9 factor from the time a latent is left on a surface it will
10 slowly deteriorate and eventually at some point it will
11 reach a place where it cannot be developed to a usable
12 fashion.

13 Can you tell me if you have training in
14 actually lifting latent prints.

15 A Oh, yes. That's part of any latent
16 fingerprint examiner's training program is to actually
17 being taught how to utilize the techniques of powder
18 processing and chemical processing and then the preserva-
19 tion technique of lifting and photography of those.

20 So, I received that training many years
21 ago and use it on a daily basis.

22 Q Can you tell us how many fingerprints
23 you have lifted in your career as an expert?

24 A Oh, thousands.

25 Q And have you had training in comparison

1 of actual latent fingerprints to known fingerprints?

2 A Yes. That's the original training was
3 done back in 1977 with the State of Ohio. And I have been
4 doing that for twenty-two years now.

5 Q Approximately how many comparisons have
6 you made in your career?

7 A By now probably in the hundreds of
8 thousands by now.

9 Q When you talk about comparisons, you
10 have explained what a latent print is. What do we call a
11 known print?

12 A Well, a known print is or a standard is
13 the second part of the comparison equation.

14 We have to have something to compare
15 this latent print to from the scene. And here the stan-
16 dards are generated normally from two sources: They come
17 either from work cards or they come from arrest records
18 that are kept by the Metropolitan Police Department.

19 Q Now, then, is a known print called an
20 exemplar or inked print?

21 A Yes, sir.

22 Q By that is that for instance when a
23 person actually rolls out their fingers on a card and
24 prints their palm on a card?

25 A Yes. Yes. The standards are normally

1 taken you know the fingers -- the fingers are inked and
2 then they are rolled onto a receiving medium. And by doing
3 that we get an exact replica of the structure of that ridge
4 that -- that ridge structure on that particular finger-
5 print, palm or sole.

6 Q In this particular case, the case
7 involved the quadruple homicide at Terra Linda, were you
8 involved in the actual lifting of any print -- in the
9 actual lifting of any print in that case and comparison
10 associated with that case?

11 A Yes, I was.

12 Q How was it you become involved in a
13 particular investigation?

14 A Well, in this particular investigation
15 this particular case was assigned to me by our supervisor.

16 And then I called up evidence from the
17 vault.

18 And there also were numerous latent
19 lifts that were submitted to the laboratory for comparison
20 purposes.

21 So, that was my first involvement in
22 the case was calling up evidence from the vault and
23 acquiring the latent packet from our crime scene detail.

24 Q I take it that request comes by way of
25 a written request from either the homicide detectives or

1 the sergeant associated with this case?

2 A Yes. It came from Detective Buczek in
3 this instance.

4 Q Now, did you receive any latent prints
5 from the scene that you attempted to make comparisons with?

6 A Yes, I did.

7 Q Those came from the evidence vault?

8 A Those were retrieved from the secured
9 locker facility in the crime scene bureau.

10 Q Do you have names of persons associated
11 with the scene or potential suspects?

12 A Yes.

13 Q What names did you have actually to try
14 to match prints to?

15 A Well, the names provided to me through
16 the investigation for comparison were a Donte Johnson,
17 Terrell C. Young, Sikia Smith.

18 I compared Todd Allen Armstrong, and I
19 also compared numerous elimination prints of both the
20 victims and other individuals who had legitimate access tot
21 the property.

22 Q Elimination of the prints, the person
23 that had access to the Terra Linda scene, did that include
24 Tracey Gorringe?

25 A Yes, Tracey Gorringe.

1 Q Matt Mowen?
2 A Yes, sir.
3 Q Jeffrey Biddle?
4 A Yes.
5 Q Peter Talamentez?
6 A Yes.
7 Q Now, were you able to make any identi-
8 fication in this particular case?
9 A Yes, I was.
10 Q Let me ask you: What value is a latent
11 print and the comparison of a latent print? What value
12 does it have to criminal cases?
13 A Well, the purposes of fingerprint
14 comparison is that it is a positive identification; that
15 the premises -- and it's been established throughout the
16 years that no two individuals have ever been found to have
17 the exact same fingerprint.
18 The arrangement of individual charac-
19 teristics on a fingerprint is unique to you and you alone
20 and that those -- that uniqueness is formed by birth and
21 remains with you throughout your entire life.
22 Q Because of the uniqueness, can we
23 obtain an exact identification?
24 A Yes, we can.
25 Q With what percent of accuracy?

1 A A hundred percent.

2 Q Now, showing you what has previously

3 been marked as State's Proposed Exhibit 96. What -- and do

4 you see there a Black and Mild cigar box?

5 A Yes, I do.

6 Q Are you familiar with the Black and Mil

7 cigar box?

8 A Not directly, sir.

9 Q All right. Do you also see however the

10 processing using tape to lift a print from the Black and

11 Mild box?

12 A Yes, I do.

13 Q Was a print lifted from the Black and

14 Mild box?

15 A Yes. What I received in the laboratory

16 was a fingerprint -- was what we call a latent lift card

17 where the person processing this item would have lifted

18 this tape off of the Black and Mild box, placed it onto a

19 receiving -- that receiving medium which is a card and then

20 that was what was actually submitted into the laboratory

21 for me to look at.

22 Q So you actually get the card that has

23 the print that was once on that Black and Mild box and I

24 take it you began now to look at that latent print and make

25 a comparison?

1 A Yes.

2 Q Did you make a comparison?

3 A With this particular latent?

4 Q Yes.

5 A Yes, sir, I did.

6 Q Were you able to identify the print or

7 the person that left the print on the Black and Mild cigar

8 box?

9 A Yes, I was.

10 Q Whose print was on that Black and Mild

11 cigar box?

12 A I identified that particular latent

13 print with Donte Johnson.

14 Q With what degree of certainty are you

15 able to identify Donte Johnson to that print on the Black

16 and Mild cigar box?

17 A One hundred percent.

18 Q Now, then, did you also receive a VCR

19 as part of the evidence in this particular case?

20 A Yes, sir, I did.

21 Q Did you do an analysis of the VCR?

22 A Yes. This particular VCR was submitted

23 to the laboratory for laboratory processing as opposed to

24 the crime scene individuals doing it. Items sometimes are

25 brought to the laboratory and requested for actual testing

1 by latent print unit.

2 Q Does your signature, Specialist
3 Guenther, appear on Exhibit 153?

4 A Yes, it does. It is in the chain of
5 custody of my P number 5891, my signature and the date.

6 Q Why would your signature be on this
7 particular chain of custody and piece of evidence?

8 A Because after the processing technique,
9 the item is resealed and that is a requirement of our
10 laboratory to keep the chain of custody intact.

11 I signed that and then the evidence is
12 picked up by the vault and returned to the central vault of
13 the police department.

14 Q After you sign it do you also put a
15 piece of evidence tape over the seal that you had to open
16 in order to get into the evidence?

17 A No, not normally. I cut mine into
18 separate areas and trying to maintain the initial --
19 integrity of the initial scene by the person who initially
20 packaged it.

21 Q Do you see other seals anywhere on this
22 particular --

23 A They should be these blue ones here in
24 the laboratory we use blue. This was my exterior seal and
25 has my P number and so forth on the seal.

1 Q I am going to remove what is contained
2 in 153. And I am going to ask you, does the second bag
3 also have your blue seal?

4 A Yes, it does.

5 Q Do you seal up the items to preserve
6 their integrity?

7 A Yes.

8 Q Now, then, I am going to show you
9 what's been marked as State's Exhibit 153. Hold that.

10 A Yes, I will.

11 Q Do you recognize 153?

12 A Yes, I do. I recognize it as a VCR
13 that was submitted or that I called up to the laboratory
14 and was collected by Mark Washington.

15 And it was submitted into the labora-
16 tory for latent fingerprint processing.

17 Q Now, how is it you know you have
18 actually seen this particular VCR?

19 A Well, it has the laboratory case
20 number, has my initials and my Metro identification number
21 and also has the date that I processed it.

22 Q Now, when you received it what pre-
23 caution did you take so as not to disturb any evidence that
24 might be on this particular VCR?

25 A Well, we always handle items with

1 gloves on prior to processing so we don't leave our own
2 latents on a particular item.

3 And also we are very careful on how we
4 pick up items. We try to pick them up by the coroners and
5 so forth and areas that people would not likely handle a
6 particular item.

7 The first process is the visual
8 examination. We just look at the item under a light to try
9 to see if we can see any latents. So sometimes you can
10 actually see a latent just with a strong light across the
11 surface.

12 If I would have seen any in this
13 particular case that particular latent would have been
14 photographed prior to any additional processing.

15 I did not visualize any latent finger-
16 prints using that technique so I used next what the next
17 step is in this particular type of examination on one of
18 these -- on this type of hard evidence would be to expose
19 the item to the super glue processing.

20 And what the -- the super glue, the
21 item is placed into a tank and there is super glue -- super
22 glue is introduced into the sealed container -- chamber and
23 it is heated and the fumes will literally attach -- earlier
24 I talked a little bit about moisture if fingerprints --
25 well, the super glue will literally attached themselves to

1 the moisture of the ridge detail that's been secreted
2 through your fingers so what that does it fixes the latent
3 fingerprint permanently on that item.

4 Q Now you previously indicated that over
5 time you are going to lose your ability to lift a print.
6 Is that correct?

7 A Yes.

8 Q Can you tell us how long moisture will
9 stay on an item, moisture from a print, I should say.

10 A Well, it could stay a matter of seconds
11 in a thunderstorm and it could last years and years on a
12 paper item, particularly on a paper item where the moisture
13 and stuff has the chance to soak and be absorbed by the
14 fibers.

15 Q Using the expertise and expertise you
16 have is there any way to date a particular print?

17 A No, there is not.

18 Q Now, then, once this particular VCR is
19 put into the tank and the super glue process is used, how
20 long does that process take?

21 A Normally ten to fifteen minutes is
22 pretty much the standard exposure time for an item.

23 Q Can you tell us what happened after ten
24 or fifteen minutes of exposure in this particular tank with
25 the super glue?

1 A Well, I removed the VCR and did another
2 visual examination and saw the back what appeared to be
3 some ridge detail that had value for comparison.

4 And to provide it I decided that to
5 make for ease of comparison I would then apply a powder to
6 that white outline on there and then make a lift of that
7 particular latent that was on there just to aid myself in
8 the examination so I wouldn't have to hunch over the VCR
9 while I was making my comparison.

10 So, I processed it with that powder
11 technique, the same one the crime scene people use, and I
12 made a lift of that particular area and placed it on a card
13 which I then used for my comparison.

14 Q Let me ask you, is it the powder and
15 super glue process you have spoken about, are these
16 processes that are commonly accepted among your peers and
17 in other laboratories across America?

18 A Yes. The super glue process has
19 probably been used for approximately twenty years now and
20 the fingerprint powder has been used since the beginning of
21 forensic latent fingerprint work probably back in the early
22 1930's -- early part of the century.

23 Q Same process that for instance the FBI
24 would use?

25 A Yes.

1 Q Now, then, you say you were actually
2 able to lift a print and put it on a card?

3 A Yes, I was.

4 Q Did you bring that card with you today?

5 A Yes, I did.

6 Q Can I have that card, please?

7 A Yes, sir.

8 Q The record should reflect he has handed
9 me what appears to be a fingerprint card. It is black and
10 white in color.

11 THE COURT: The record will so show.

12 Q (By Mr. Guymon) Now, who is it that
13 actually prepared this card?

14 A That was a card that was prepared by
15 me.

16 Q Is there writing on the card?

17 A Yes.

18 Q And whose writing would be on the card?

19 A Mine.

20 Q Now, can you show us on the actual VCR
21 itself where this super glue process and where the powder-
22 ing process was applied to?

23 A Yes, I can.

24 Q And how was it you can show us?

25 A Well, the back of the VCR when I

1 process an item, what I do after I make a lift is I cover
2 this area in this case with tape and then I put my little
3 Xes on it so you know no one has tampered with it.

4 After I have sealed it or covered the
5 area over then I put my initials and the date that I made
6 the lift.

7 And this is the area that I lifted the
8 latent card that Mr. Guymon is holding.

9 Q Can I have him come down and show the
10 jury that?

11 THE COURT: Yes.

12 MR. GUYMON: Thank you.

13 THE WITNESS: This is the area right here that I
14 made the lift there from. You can see over there.

15 Q (By Mr. Guymon) Let the record reflect
16 he is pointing to the back side of the VCR of State's
17 Exhibit 153-A, I believe, Judge.

18 THE COURT: Yes.

19 Q (By Mr. Guymon) The front bottom
20 portion sort of right to center, am I right?

21 A Yes, sir.

22 Q Now, why put a piece of tape over that?

23 A Well, that's a preservation technique
24 and it's a reminder technique. It preserves the area
25 underneath and also helps to remind me exactly where this

1 latent print was made from so other individuals like
2 yourself can see this is what -- actually what I did on
3 that particular piece of evidence.

4 Q If we were to remove the tape what
5 would we find here?

6 A Well, if you removed it and re-powdered
7 it you might be able to develop the latent print again or
8 you may not.

9 Q Why would that be?

10 A Just because I may have already -- in
11 the super glue process and the prior processing I may have
12 removed all of the material that's there that could
13 possibly be identified.

14 Q Now, then, showing you what's been
15 marked as State's Exhibit 171. You might want to put that
16 down wherever you are comfortable. Do you recognize 171?

17 A Yes, sir, I do.

18 Q How do you recognize it?

19 A Well, it has our laboratory number, my
20 initials and my Metro identification number and it has the
21 date that I lifted it.

22 And on the back it has the identifi-
23 cation serial number from the RCA/VCR on the back and the
24 lift number that I gave it at the laboratory.

25 Q Is this the actual print that you

1 lifted from 153-A?

2 A Yes, it is.

3 Q Is it in the same condition today as
4 you lifted it?

5 A Yes, sir, it is.

6 Q What date did you lift that particular
7 print, sir?

8 A The 22nd of August, 1998.

9 Q Is it in the same condition today as it
10 was, say, on the 22nd of August, 1998?

11 A Yes, sir.

12 Q Judge, I move for the admission of 171.

13 THE COURT: Any objection?

14 MR. SGRO: No objection.

15 THE COURT: 171 is admitted.

16 Q (By Mr. Guymon) Now, then, once you had
17 obtained a latent print from that VCR, what did you do with
18 now the latent print?

19 A Well, at this point I had -- by this --
20 I believe a week or so later I was provided the name of
21 Sikia Smith to make a comparison in this case.

22 And I got his standards from our secure
23 repository for standards and I proceeded to make an
24 evaluation of the latent prints which I determined it was
25 a value for comparison.

1 I then proceeded to make a comparison
2 with the standards that I -- were supplied to me of Sikia
3 Smith.

4 Q Did you bring the standard or the known
5 prints of Sikia Smith with you to court today?

6 A I brought a -- brought a certified copy
7 of those prints.

8 Q Where are the certified copies of
9 prints kept?

10 A The certified copy is maintained in the
11 case file which is kept at the laboratory.

12 Q Can I have the certified copy of the
13 known print of Sikia Smith.

14 A Yes, sir.

15 Q Now, does the certified copy of the
16 known prints of Sikia Smith bear both his fingers and
17 palms?

18 A Yes, sir.

19 Q Are each person -- each human being's
20 palm prints or palms unique with regard to prints as our
21 fingers?

22 A Yes, they are.

23 Q Do they have the same type of ridges on
24 our palms as we do on our fingers?

25 A Yes, we do.

1 Q Can we obtain the same identification
2 with exactness in a palm print that we can a fingerprint?

3 A Yes.

4 Q Is there any other part of our body
5 that we can obtain a print from that allows us to identify
6 a person?

7 A The soles of your feet.

8 Q Judge, I would move for the admission
9 of State's Proposed Exhibit 172 as the known print.

10 THE COURT: Any objection?

11 MR. SGRO: No, your Honor.

12 THE COURT: 172 is admitted.

13 Q (By Mr. Guymon) Can you tell me just so
14 we all understand the actual process when fingerprints are
15 obtained is the person asked to sign those prints?

16 A Yes, they are.

17 Q In this particular case, is there a
18 signature on the card which is titled Sikia L. Smith?

19 A Yes, on the signature line the card has
20 been signed and the name does read Sikia Smith.

21 Q Are you able to tell us when that
22 particular -- those particular prints were actually placed
23 on the card?

24 A They are dated September 8, 1998.

25 Q So sometime after September 8, 1998 you

1 now have a known print of Sikia Smith. Is that correct?

2 A Yes.

3 Q And what did you do with now the known
4 print as compared and they are in 172 as compared to the
5 lifted print of 171?

6 A Well, I proceeded to go through our
7 process of making comparisons, and in doing that we what --
8 we look for the grouping, a grouping of unique charac-
9 teristics.

10 Your fingerprints are not just -- the
11 ridges are not just circuits that go around your fingers.
12 They are divided first into three groups of basic patterns.

13 And then each one of those pattern
14 types is unique in itself and what the ridges do within
15 that pattern type.

16 Sometimes the ridge will end. We call
17 that an ending ridge. The terminology is very simple. It
18 is called an ending ridge.

19 Sometimes the ridge will split. We
20 call this a forking ridge or bifurcation.

21 And sometimes ridges are very short.
22 We call these short ridges or sometimes a ridge will split
23 and traverse a distance and then rejoin itself. And this
24 we call an island.

25 And these are the four main charac-

1 teristics that are used. There is variations of these.

2 And we use these, we find a grouping of
3 these on latent fingerprints, try to find the same location
4 on the inked fingerprint and make a comparison between
5 those two.

6 And when in the examiner's mind a
7 sufficient of these characteristics and the same type of
8 characteristics and same location can be located and
9 corresponded between the inked -- the latent fingerprint
10 and the inked fingerprint, then the examiner is able to
11 make a positive identification and then state that the
12 latent fingerprint and inked fingerprints were made by the
13 same individual.

14 Q Now, then, Expert Guenther, do you make
15 this comparison with the naked eye or other instruments?

16 A No. We have used -- our primary
17 instrument is just a small magnifying loop. It is about a
18 five-power loop.

19 And, in fact, I brought my loop with me
20 today because I can show it to the jury.

21 Q Will you please, with the Court's
22 permission?

23 THE COURT: Yes.

24 THE WITNESS: This is what we use for our primar-
25 ily -- and it's simply placed over the latent. You usually

1 use two. We have one on the latent fingerprint and one on
2 the inked fingerprint.

3 And under a light we are making a
4 comparison looking for that grouping of characteristics
5 between this latent and that inked.

6 Q And the record should reflect he has
7 shown the jury, what, a fingerprint loop? Looks like by
8 actually holding up his loop in front of the jury.

9 THE COURT: The record will so show.

10 Q (By Mr. Guymon) Now, with the Court's
11 permission, can you come down here and show the jury 171
12 and 172 what we are actually looking at --

13 THE COURT: They will get a chance to see them.
14 It is in evidence.

15 MR. GUYMON: Okay.

16 Q Are you able to show the jury using
17 153-A how the hand would have been placed on the VCR in
18 order to leave the print there?

19 A Yes, I can. Because in the card there
20 is a white line that runs through it, there is also a white
21 circle.

22 Those when laid over will correspond
23 with an indentation in the bottom plate or the bottom of
24 the VCR.

25 And then there is this I guess warning

1 information that's on the plate that's glued to the bottom.
2 And you can see the outline of that also.

3 And you can see when you -- it would
4 lay on -- I will just put it on the left -- to your right
5 side and you can see where the lift actually corresponds
6 with the area I taped.

7 Q (By Mr. Guymon) For demonstrative
8 purposes have you actually made an enlargement of the
9 latent print, that being 171, and brought it to court with
10 you today?

11 A Yes, I did.

12 Q Is the enlargement a fair and accurate
13 copy of 171 enlarged with identification points?

14 A Yes, it is.

15 Q Who prepared that particular card or
16 diagram?

17 A Those were prepared by myself. Excuse
18 me. Those were prepared by myself.

19 Q If I could have it.

20 A Here.

21 Q Showing you what's been marked as 173.
22 Is this the actual card that you enlarged and then identi-
23 fied certain points of comparison?

24 A Yes, it is.

25 Q Is it a true and accurate copy of 171?

1 A Yes, it is.

2 Q Judge, I would move for its admission.

3 THE COURT: Any objection?

4 MR. SGRO: No, your Honor.

5 THE COURT: It will be received.

6 Q (By Mr. Guymon) I would ask I be able

7 to publish a copy of each one of the jurors as he now

8 indicates what he is doing.

9 THE COURT: You may do so.

10 MR. GUYMON: Thank you.

11 Q Now, then, in this particular case were

12 you able to make a comparison of the latent prints from the

13 VCR?

14 A Yes, sir, I was.

15 Q And so to what degree of certainty are

16 you certain on that comparison?

17 A One hundred percent.

18 Q Let me ask you then whose print is it?

19 A My results of my comparison and

20 conclusion are that the latent palm print that was devel-

21 oped by myself on State's Exhibit 153-A was made by the

22 right palm print of Sikia Smith.

23 Q Was he the only person based on your

24 expertise that could have made that print there?

25 A Yes.

1 Q Now, then, this particular exhibit,
2 173, can you use it to help demonstrate to the jury what
3 points of comparison you used in order to tell them with a
4 hundred percent certainty that this is Sikia Smith's palm
5 print?

6 A Yes, I can.

7 Q If you would, please.

8 A Ladies and gentlemen, what you have in
9 front of you is what we call a demonstrative chart of the
10 identification.

11 And if you look on the back page, what
12 on the second page what you will see is a scanned image
13 into our digital system at work. And it's been printed up.

14 And the red box indicates the area from
15 the inked finger -- the inked palm print that the identifi-
16 cation was made from.

17 I show you that so that you can have a
18 relationship when you flip it over to the first page so it
19 doesn't just jump like a bunch of jumbo to you.

20 So this is the area with that red box
21 around it that shows where the part of the palm print I
22 have made the identification with.

23 When you flip over to the first page
24 what you will see is an enlargement, a one-to-one repre-
25 sentation of a small portion of that area within that red

1 box on the right side showing us the inked print and what
2 you have on the left side is a one-to-one image of State's
3 Exhibit 153, the latent lift from the VCR.

4 And those items are placed on -- on
5 there and copied and then the letters indicate the actual
6 points of identification that I used in making my compari-
7 son.

8 And sometimes they may be a little
9 easier to see on the inked prints than they are on the
10 latent.

11 But at point A there what we have --
12 what I have described earlier as an ending ridge.

13 And if you look over on the left side
14 of the latent print you can see where the end of the arrow
15 is pointing to an ending ridge.

16 And then if you count down two ridges
17 from that you come to point B which is also an ending ridge
18 going in the opposite direction of A.

19 And then if you count down addition-
20 ally, one, two, three, four points, four points, four
21 ridges, you come to the third point which is also an ending
22 ridge.

23 This is the process an examiner goes
24 through in making his or her denomination of whether or not
25 two prints were made by the same person.

1 For the purpose of this chart here I
2 only marked what the ten characteristics that are shown bu
3 the latent itself had in excess of forty individual
4 characteristics that I could have chosen to chart.

5 So I tried to pick out the most clear
6 ones to help you understand the identification process.

7 Q Is forty points of comparison, is that
8 a lot, a little from your perspective as an expert?

9 A From an expert's point of view that's
10 a tremendous amount.

11 Normally latents can be made with may
12 less than forty points.

13 Usually anywhere in the five to seven
14 range is the minimum depending on the clarity of the latent
15 fingerprint and experience of the latent examiner.

16 Q Lastly, can you tell me if the Las
17 Vegas Metropolitan Police Department has a procedure after
18 you analyze the particular latent print to a known stan-
19 dard? What is the policy of the Las Vegas Metropolitan
20 Police Department?

21 A Well, we have established in our
22 laboratory a verification process. There are no identifi-
23 cations which leave the laboratory that have not been
24 examined, re-examined by a second qualified examiner and
25 signed off on.

1 And I believe on the back of State's
2 Exhibit 153 in the corner you can actually where the person
3 who also looked at this particular latent fingerprint or
4 latent palm print made his marks to verify it.

5 So we have two sets of eyes looking at
6 every identification that leaves the Metropolitan Police
7 Department laboratory.

8 Q Did the second set of eye agree, in
9 your opinion, that is that this is Sikia Smith's palm
10 print?

11 A Yes, he did.

12 Q And who was that person and how many
13 years of experience did he have?

14 A Oh, it was Joel Galler. And I am
15 estimating that Joel has close probably to twenty years of
16 experience in the latent fingerprint business.

17 Q One last question. Can you put your
18 right palm on the VCR in the same way Sikia Smith had to
19 put his right palm on this VCR in order to demonstrate to
20 the jury.

21 A Yes.

22 Q The portion that we are talking about.

23 A Okay. On the -- on the part -- when
24 you get the card in your jury room you will see I have a
25 marking on here and this marking with little brackets with

1 a PP shows the palm print and shows the direction of the
2 base of what would be the base of the palm showing it going
3 forward.

4 So, I can lay this on here like this
5 and it is a right palm print.

6 So it would indicate that his hands
7 would have been on the bottom of the VCR in this fashion.

8 Q The record should reflect the palm is
9 at the top or front of the VCR and the finger pointed to
10 the back of the VCR?

11 A Yes.

12 THE COURT: The record will so show.

13 MR. GUYMON: I pass the witness, your Honor.

14 THE COURT: Mr. Sgro?

15 MR. SGRO: Thank you.

16 CROSS-EXAMINATION

17 BY MR. SGRO:

18 Q Mr. Guenther, you were asked some
19 questions about whether or not you can date a fingerprint.
20 Do you remember that?

21 A Yes, sir.

22 Q It's true, is it not, there is no
23 scientific way to date backwards in time as to when a
24 fingerprint was placed on an object, correct?

25 A No, there is not.

1 Q And you cannot tell the jury if that is
2 Sikia Smith's fingerprint when in fact it was made?

3 A No, I cannot.

4 Q Similarly, there is -- with regard to
5 fingerprints, would you agree that sometimes you look at
6 moveable objects and sometimes you look at immoveable
7 objects?

8 A Would you rephrase that question.

9 Q The VCR is something that is -- can be
10 transported from one location to another. Is that correct?

11 A Yes.

12 Q That's different than let's say the
13 wall behind the jurors?

14 A Yes.

15 Q The wall behind the jurors is not
16 moveable. Is that correct?

17 A Correct.

18 Q As opposed to the VCR, correct?

19 A Yes, sir.

20 Q If you had to look at a wall of a house
21 and you retrieved the latent fingerprint from that wall,
22 you would be able to determine someone actually had to be
23 at that wall to make the print, correct?

24 A Yes.

25 Q You would be able to tell us the

1 location of where the print was made, correct?

2 A Yes.

3 Q Now, contrasting that to a VCR, you
4 cannot tell the jury where if that's Sikia Smith's finger-
5 print where Sikia Smith was when he made the fingerprint?

6 A No, I cannot.

7 Q You can't tell us when he made it or
8 where he made it?

9 A No, I cannot.

10 Q Nothing further.

11 THE COURT: Anything further?

12 MR. GUYMON: Nothing further, Judge.

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

16 We will need these exhibits. What do
17 you have here?

18 THE WITNESS: I have this and I have this. And
19 this is the chart.

20 THE COURT: And the other --

21 THE WITNESS: Yes, this.

22 THE COURT: Thank you.

23 THE WITNESS: Thank you.

24 THE COURT: Now, do you have another witness?

25 MR. GUYMON: No, I do not but we have a couple of

1 stipulations.

2 THE COURT: Okay. We have a stipulation to enter
3 into the evidence, ladies and gentlemen. You will be
4 instructed as to what a stipulation is.

5 Mr. Guymon?

6 MR. GUYMON: Your Honor, the parties have agreed
7 and stipulated to the following: Richard G. Good, Sr. is a
8 forensic laboratory manager of comparative analysis
9 performing firearm and tool mark examination as part of his
10 regular duties for the Las Vegas Metropolitan Police
11 Department. He has qualified in the Eighth Judicial
12 District Court in Las Vegas, Clark County, Nevada as an
13 expert witness regarding firearms and tool mark examination
14 and comparisons.

15 He analyzed the four cartridge cases
16 that were impounded at the crime scene at Terra Linda and
17 concluded they were .380 caliber automatic casings.

18 All four of the cartridge cases were
19 fired from the same unknown firearm.

20 Expert Good further analyzed all of the
21 bullet fragments obtained from the autopsy and submitted in
22 this case and concluded they were either lead or aluminum
23 fragments all of which were consistent with Winchester
24 silver-tipped ammunition.

25 MR. SGRO: That's correct, your Honor.

1 MR. GUYMON: There is one additional stipulation,
2 and that is that Sheree Norman, a crime scene analyst with
3 the Las Vegas Metropolitan Police Department attended the
4 autopsy that Dr. Bucklin performed and that Dr. Green had
5 testified to that she is the individual that took the
6 photographs that have now been admitted and used by Dr.
7 Green; that she went through all of the kids' clothing,
8 whatever clothing they had on and whatever wallets were
9 still attached to their bodies, she processed those
10 clothing -- items of clothing and those wallets and found
11 no cash currency whatsoever on any of the victims.

12 And she further removed a firearm from
13 the -- from Peter Talamendez' waistband. And it is a .45
14 caliber semi-automatic handgun, serial number LFA350.

15 THE COURT: Are we going to offer that into
16 evidence?

17 MR. SGRO: I think so, your Honor. That was part
18 of the stipulation.

19 MR. GUYMON: We will have it marked.

20 THE COURT: It will be marked next in line, 174.
21 Do you have any objection I admit it?

22 MR. SGRO: No, your Honor.

23 THE COURT: 174, the firearm as described by Mr.
24 Guymon, will be admitted into evidence.

25 Anything else?

1 MR. GUYMON: Judge, we will mark there is one
2 typographical error of Richard Good I can correct the
3 typographical error we would mark it, have it admitted as
4 well.

5 MR. SGRO: That's fine and actually something that
6 we would ask of the State come in to our case for timing,
7 your Honor.

8 THE COURT: Well, we will mark it as 175 and we
9 will substitute 175 with the corrected one. Agreeable?

10 MR. SGRO: Yes.

11 THE COURT: And you will show it to Mr. Sgro
12 before we give it to the jury.

13 MR. GUYMON: Absolutely.

14 THE COURT: Do you have any objection it be
15 admitted, Mr. Sgro, after it's correct?

16 MR. SGRO: No, your Honor.

17 THE COURT: Anything further?

18 MR. GUYMON: No, your Honor.

19 THE COURT: The State rests?

20 MR. GUYMON: Yes, your Honor. I have not looked
21 at the actual exhibit list but with the understanding that
22 all of the pieces of evidence has been admitted, we rest.

23 THE COURT: I am going to excuse the jury for a
24 minute and then you can check with the clerk and if there
25 is any exhibits that have not been admitted, you can move

1 to admit them, open your case for that purpose.

2 MR. GUYMON: Thank you, Judge.

3 THE COURT: We will take a short recess, ladies
4 and gentlemen. There is a problem I have to take care of
5 outside the presence of the jury.

6 Once again I want to admonish you you
7 must not discuss any of the facts of this case amongst
8 yourselves or with any other person, read, watch, or listen
9 to any news communicate about this trial whether it be
10 television, radio or newspaper or form any opinion about
11 the outcome until the matter is submitted to you for your
12 deliberation in the jury room.

13 We will be in recess about ten minutes.
14 You may leave at this time.

15 (The jury left the courtroom
16 at this time at approxi-
17 mately 10:05 a.m.).

18 THE COURT: I am advised by the clerk, Mr. Sgro
19 and Mr. Guymon, that in Exhibit 174 which was the firearm
20 as described by you, Mr. Guymon, there are other articles
21 in there -- shells -- live ammunition and a clip. Would
22 that be marked as contents?

23 MR. GUYMON: That's fine, Judge.

24 THE COURT: It will be just one exhibit.

25 And I have put on the record what's in

1 there, three extra packages. Is that correct? Shells,
2 live ammunition and a clip.

3 MR. SGRO: And, your Honor, I am sure the Court
4 has its own way of doing it but we have no objection of the
5 Court not sending the live ammunition to the jury.

6 THE COURT: Oh, no, it will not go to the jury.

7 MR. GUYMON: What we can actually do is to send
8 the package, the outside package lists the ammunition as
9 well as and the clip.

10 THE COURT: Well, we may not even send the
11 firearm. I don't know. I don't think it is necessary.

12 Harry, we will not send Exhibit Number
13 174 with the jury.

14 MR. SGRO: Is that similar to the other firearm
15 also that has been introduced?

16 THE COURT: No, they are going to go. They can
17 have them. The clip on them has made them inoperable.
18 There is no ammunition for those firearms anyway.

19 Okay. Mr. Smith, please stand.

20 Mr. Smith, I must advise you that in a
21 -- a defendant in a criminal matter is not compelled to
22 take the witness stand and testify in his behalf. Do you
23 understand me?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: You have to speak up.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: If you do not take the witness stand
3 and testify in your behalf the State cannot comment on that
4 refusal. Do you understand?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And then if you do not take the
7 witness stand and testify, you may request an instruction
8 be given to the jury that a defendant in a criminal
9 proceeding is not compelled to take the witness stand. If
10 he refuses to take the witness stand the State cannot
11 comment on that refusal and the jury can draw no inference
12 from that. Do you understand?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Have you discussed that testimony with
15 your attorney?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: We will be in recess about five more
18 minutes.

19 How long are you going to take now?

20 MR. CHRISTIANSEN: Three or four hours.

21 (A short recess was taken).

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

24 The record will indicate the presence
25 of the same parties in court at the time we recessed. The

1 jury is not present.

2 What is happening?

3 MR. GUYMON: Judge, there has been a motion by the
4 defense for us to disclose any and all enticements we have
5 offered to any of the witnesses.

6 I will tell the Court as I have told
7 counsel previously and I now want to put it on the record
8 that we learned of LaShaun Wright (phonetic) as a witness
9 in this particular case when the defense served us notice
10 from their witness list.

11 I immediately asked my investigator to
12 contact LaShaun Wright and she, in fact, made contact with
13 LaShaun Wright in the city jail, then phoned me and asked
14 me to come over.

15 I spoke with LaShaun Wright about her
16 anticipated testimony.

17 I indicated if LaShaun Wright wanted to
18 assist the State because of information she was not
19 disclosing both about Sikia and Todd Armstrong and the
20 other defendants, that I would accept her cooperation and,
21 more importantly, I inquired if there was anything I could
22 do for her.

23 She indicated to me she had safety
24 concerns at which time I indicated to her that our victim
25 witness program has the ability to relocate witnesses.

1 She told me that she was not interested
2 in that type of assistance because she refused to leave her
3 mother and her mother lives in town.

4 I then asked her if she had any
5 criminal cases and what the criminal case was she was in
6 the city jail on and she told me she did have a criminal
7 case involving PCS, possession of a controlled substance;
8 that she was due to be sentenced in front of Judge
9 Hardcastle but that she didn't need "shit from me because
10 she was getting probation." And that was the end of the
11 quote.

12 I explained to her that I could in fact
13 ask the court to give her leniency in that probation or I
14 could even ask the court to give her what I referred to her
15 as a subsection 5 treatment meaning 45333623 wherein if she
16 got the probation that she believed she was getting anyways
17 if she stayed clean throughout the course of the probation
18 perhaps this would not be on her permanent record and she
19 would not have a permanent felony.

20 But for in order for me to do that for
21 her she needed to come to my office and cooperate.

22 Since that time she has failed to keep
23 her appointments with me. She has failed to come on a
24 number of occasions.

25 I have spoken to her on occasion when

1 she has come to the office, but at this point in time her
2 case is still pending over at Judge Hardcastle's courtroom.

3 I am not sure what her sentencing date
4 is. I believe it is somewhere later in this month. She
5 has not been formally sentenced.

6 I believe a PSI is already done.

7 THE COURT: Have you talked to Judge Hardcastle
8 about this person?

9 MR. GUYMON: No, I have not.

10 THE COURT: Mr. Christiansen?

11 MR. GUYMON: I should tell the transcript and the
12 Court this person is represented by Charlie Waterman.

13 I called Charles Waterman, her defense
14 attorney, told Charles that I wanted his client's assis-
15 tance and asked if I could work with his client. And he
16 said "not a problem. I would like for you to assist her in
17 any way you can."

18 And that has been the conclusion of my
19 involvement both with Charles Waterman and in this
20 particular case.

21 MR. CHRISTIANSEN: I accept those representations.
22 Mr. Guymon and I have talked about this previously.

23 THE COURT: All right. Then ready to proceed?

24 MR. CHRISTIANSEN: Yes, your Honor.

25 THE COURT: Bring in the jury.

1 (A short recess was taken).
2 THE COURT: This is a continuation of the matter
3 State of Nevada v. Sikia Smith.
4 The record will indicate the presence
5 of the same parties in court at the time we recessed.
6 Will counsel stipulate to the presence
7 of the jury and the four alternates?
8 MR. SGRO: Yes.
9 MR. GUYMON: Yes.
10 THE COURT: Mr. Guymon, have you reviewed with the
11 Court the exhibits and are you satisfied everything is
12 admitted into evidence?
13 MR. GUYMON: Yes, your Honor.
14 THE COURT: With that understanding the State is
15 resting its case?
16 MR. GUYMON: Yes, your Honor.
17 THE COURT: Mr. Christiansen, are you ready to
18 present the defendant's case in chief?
19 MR. CHRISTIANSEN: Yes, Judge.
20 THE COURT: You may do so.
21 Call your first witness.
22 MR. CHRISTIANSEN: LaShaun Wright.
23 THE COURT: Ms. Wright, up here, please. Remain
24 standing, raise your right hand and be sworn by the clerk.
25 Ms. Wright, over here, please.

1 LASHAUN WRIGHT,
2 having been first duly sworn on oath to tell the truth, the
3 whole truth and nothing but the truth, testified and said
4 as follows:

5 THE COURT: Be seated. You have to speak loud and
6 clear. Give us your full name.

7 THE WITNESS: LaShaun Denise Wright.

8 THE COURT: Spell your last name for the record.

9 THE WITNESS: W-r-i-g-h-t.

10 THE COURT: How long have you lived in Clark
11 County, Ms. Wright?

12 THE WITNESS: Fourteen years.

13 THE COURT: Mr. Christiansen?

14 DIRECT EXAMINATION

15 BY MR. CHRISTIANSEN:

16 Q How old are you, Ms. Wright?

17 A Twenty-two.

18 Q You have to speak up so everybody can
19 hear you.

20 A Twenty-two.

21 Q Where did you live in August of 1998?

22 A In the Fremont Apartments.

23 Q And who did you live with?

24 A Sikia.

25 Q Sikia Smith?

1 A Yes.

2 Q The young man that's seated right here

3 at the defense table?

4 A Yes.

5 Q Okay. And how long had you been living

6 with Sikia at the Fremont Apartments in August of 1998?

7 A Three months.

8 Q Did there come a time where you were

9 incarcerated in August of 1998?

10 A Yes. I was incarcerated in July.

11 Q For what?

12 A For probation of drug court.

13 Q Violation of drug court?

14 A Yes.

15 Q Yes?

16 A Yes. I am nervous.

17 Q Do you remember what day in August you

18 were released?

19 A August 12.

20 Q Where did you go August 12 when you got

21 out?

22 A I went home.

23 Q The next would have been August 13. Is

24 that correct?

25 A Yes.

1 Q Were you with Sikia all day on August
2 the 13th?
3 A Yes.
4 Q Did you see Sikia ingest any controlled
5 substance on August the 13th of 1998?
6 A Yes.
7 Q What time or what controlled substance
8 did you see him ingest?
9 A Marijuana and PCP.
10 Q Marijuana -- how did he ingest the
11 marijuana? Did he smoke it?
12 A Yes.
13 Q And how about the PCP?
14 A He smoked it.
15 Q How do you smoke PCP, if you know.
16 A It is like -- it's a cigarette dipped
17 in PCP.
18 Q Was that what Sikia was doing that day,
19 August the 13th, 1998?
20 A Yes.
21 Q What time did he start smoking the
22 marijuana?
23 A It was like they started at like 1:00.
24 Q What time did he finish smoking the
25 marijuana?

1 A They stopped at 5:00 and they started
2 back at 7:00. They stopped at 11:00.

3 Q Interspersed with the marijuana were
4 they also smoking PCP or sherm sticks?

5 A Yes.

6 Q A sherm stick is what you call a
7 cigarette dipped in PCP?

8 A Yes.

9 Q Okay. How much PCP did you observe
10 Sikia smoke that day stopping at 11:00 p.m.?

11 A About half a pack of cigarettes, so
12 there was like from anywhere from four to six.

13 Q Four to six sherm sticks?

14 A Yes.

15 Q Okay. And after Sikia ingested or
16 smoked the sherm sticks, did he act differently than he did
17 before he ingested the sherm sticks?

18 A Yeah, but -- yeah, but I was used to
19 it, though. To me he probably wouldn't have act that much
20 different. But, yeah.

21 Q How did he act afterwards?

22 A Slow.

23 Q Okay. Can you explain what slow means.

24 A Slow. It is like sitting, do nothing,
25 and talking funny.

1 Q Is he quiet? More quiet than normal?
2 A Yes.
3 Q At 11:00 o'clock did Sikia leave the
4 house?
5 A Yeah.
6 Q Is that the last time you saw him on
7 August the 13th, 1998?
8 A Yes.
9 Q Thank you. Nothing further.
10 THE COURT: Mr. Guymon?
11 CROSS-EXAMINATION
12 BY MR. GUYMON:
13 Q Good morning, Ms. Smith.
14 THE COURT: Mr. Wright.
15 MR. GUYMON: Ms. Wright. I'm sorry.
16 Q You indicated that you lived with Sikia
17 for how many months prior to August 13?
18 A Three.
19 Q And what was your relationship with
20 him?
21 A His girlfriend.
22 Q The two of you had been going together
23 for three months then?
24 A Yes.
25 Q Did you know him before you started

1 dating him?

2 A No.

3 Q So you didn't know him three months
4 earlier?

5 A No.

6 Q Did you -- during the three months of
7 your relationship did you get to know some of his friends?

8 A Yes.

9 Q Can you name some of his friends?

10 A Shall I name some of them?

11 Q Yes.

12 A Deko, Horse -- how many?

13 Q Let's start with Deko. Did you know
14 how long he had known Deko for?

15 MR. CHRISTIANSEN: Objection. Beyond the scope.

16 THE COURT: Overruled.

17 Q (By Mr. Guymon) How long had Sikia
18 known Deko?

19 A I really don't know.

20 Q Did you in the course of your relation-
21 ship with Sikia learn how long he had lived in Las Vegas?

22 A Sikia?

23 Q Yes.

24 A How long he lived here?

25 Q Yes.

1 A Those three months.
2 Q Okay. Did you know where Sikia had come
3 from?
4 A Yes.
5 Q And where did he come from?
6 A L.A.
7 Q Did you know where Deko was from?
8 A Yes.
9 Q Where was Deko from?
10 A L.A.
11 Q And did you know where Red was from?
12 A Yeah.
13 Q How long had Sikia known Red, if you
14 know?
15 A Around the same time that I had known
16 him. I met them in like right before I went to jail in
17 July.
18 Q Would you say that Sikia and Deko were
19 good friends?
20 A Yeah.
21 Q Partners?
22 A No.
23 Q They ran together on the street?
24 A Not all the time.
25 Q They kick it together?

A Yes.

Q Did he come over and visit with Sikia?

MR. CHRISTIANSEN: Objection. Beyond the scope
now, Judge.

THE COURT: Overruled.

THE WITNESS: Not all the time.

Q (By Mr. Guymon) Some of the time?

A Yes.

Q Would Sikia go over and hang with where
Deko was staying some of the time?

A He did a couple of times.

Q Did you know Deko was staying over with
Todd Armstrong?

A Yes.

Q Did you get to know Todd Armstrong?

A I know him before he did.

Q You knew Todd before Sikia did?

A I knew him before all of them did.

Q And how about Ace Hart? Did you know
Ace Hart?

A Yes.

Q Did Sikia know Ace Hart?

A Through me.

Q Tell me, who was bigger, Sikia or
Donte? Who is taller?

1 A Who is taller?

2 Q Yes.

3 A Sikia.

4 Q Describe Deko for me if you could.

5 A He is about the same height I am. He

6 is buff. A little buff.

7 Q That means muscular?

8 A Yes.

9 Q Okay. How tall are you, ma'am?

10 A Five three.

11 Q And how tall is Sikia, if you know?

12 A Like five seven, five eight.

13 Q Can you describe Red's size?

14 A Red, he's about five seven.

15 Q And did Sikia and Deko like one

16 another? Did they get along on the street?

17 A Yes.

18 Q Friends with each other?

19 A Yes.

20 MR. SGRO: Asked and answered.

21 Q (By Mr. Guymon) Did they respect one

22 another?

23 A Yeah.

24 Q Describe Sikia's relationship with Red.

25 Was it a friendly relationship?

1 A I didn't too much know him. I can't
2 say.
3 Q All right. And all I want is what you
4 know.
5 Do you know if Sikia liked Red?
6 A He wasn't around him that much to know
7 that.
8 Q Do you know if Sikia ever went over to
9 Todd's house?
10 A Once at a party.
11 Q Do you know who was at the party? Were
12 you at the party?
13 A No.
14 Q Did Sikia tell you he had gone over to
15 a party at Todd's house?
16 A I called there.
17 Q Was Red at the party?
18 A Yes.
19 Q Was Deko at the party?
20 A Yes.
21 Q How about Horse? Was Horse at the
22 party?
23 A No.
24 Q Now, you talked a little bit about --
25 let me ask you this: Your relationship with Sikia, you

1 still have feelings for him at this point, don't you?

2 A Yeah.

3 Q You would like to help him if you
4 could?

5 A Yeah.

6 Q And tell me when -- how long had you
7 seen Sikia Smith been using drugs that you know? Was
8 August 13 the first time you had smoked sherm?

9 A No.

10 Q Had he smoked it before?

11 A Yeah.

12 Q About how long had Sikia Smith been
13 using drugs during his lifetime?

14 A I met him in May. If -- he was doing
15 it then but I wasn't around him when he was doing it,
16 though.

17 Q So once you got to know him you knew he
18 was doing drugs during your three-month relationship?

19 A Yes.

20 Q All right. And when we talk about
21 doing drugs during those three months are we talking about
22 doing sherm?

23 A They always -- when I met them they was
24 always talking about getting some wet so they could have
25 been.

1 Q Wick is sherm?
2 A Yeah, it is --
3 Q Wet?
4 A Yeah. It is called wet.
5 Q W-e-t?
6 A Yes.
7 Q And it's wet because you take a
8 cigarette and you dip it in the sherm?
9 A Yes.
10 Q Sherm is a liquid? Pull the cigarette
11 out and now you can smoke it. Is that right?
12 A Yeah.
13 Q And you say they were always talking
14 about getting sherm. Are we talking about Red and Deko?
15 A No.
16 Q Who is "they," then, ma'am?
17 A Who I met him through this girl named
18 Brandy.
19 Q Now, when you first met him were you
20 able to with him? Did he speak to you?
21 A Yes.
22 Q Did you speak to him?
23 A Yes.
24 Q When he spoke to you did you understand
25 him? When he speaks to you?

1 A Yes.

2 Q Can you communicate?

3 A Yeah.

4 Q Did he speak in English?

5 A Yes.

6 Q Do you know if he writes? Can he write

7 sentences?

8 A He can't write too good.

9 Q Okay. Does that mean his spelling is

10 not good?

11 A Yes.

12 Q Will he write you letters in your

13 relationship?

14 A Yeah.

15 Q Okay. And did you write him letters?

16 A Yes.

17 Q Can he read?

18 A To my knowledge.

19 Q Okay. How is his street smarts? Ms.

20 Wright, does he have pretty good street smarts?

21 A Yeah.

22 Q I am going to take it by your earlier

23 answer he doesn't have the best book smarts?

24 A I really don't -- I have known before

25 -- all this time I only known him for three months so --

1 Q Do you know if he graduated from high
2 school?

3 A I think so. I really don't know.

4 Q Did he graduate from high school?

5 A No.

6 Q I'm going to talk about street smarts
7 for a little bit. When we talk about street smarts could
8 he get along pretty good on the street?

9 A Yes.

10 Q Could he protect himself on the street?

11 A Yeah.

12 Q Did he -- well, was he able to, say,
13 avoid problems on the street?

14 A When I was around.

15 Q Okay.

16 Let me ask you this: Before yo met
17 Sikia did you have another boyfriend in your life?

18 A Yeah.

19 Q Did that boyfriend, the earlier
20 boyfriend, like Sikia Smith?

21 MR. SGRO: Objection. Relevance.

22 THE COURT: What is the relevancy?

23 MR. GUYMON: I am going to get to the protection
24 issue, Judge. Could they know, for instance, not to hook
25 up with this particular --

1 MR. SGRO: That's really stretching it.
2 THE COURT: Sustain the objection. You are going
3 too far.
4 Q (By Mr. Guymon) You say could get along
5 on the streets, though, for himself. Is that true?
6 A Yes.
7 Q Function day to day pretty well?
8 A I don't know.
9 Q Did he know his enemies, who his
10 friends were?
11 A Yes.
12 Q Did he recognize his friends?
13 A Yes.
14 Q And did he smoke sherm with his
15 friends?
16 A Yes.
17 Q Smoke marijuana with his friends?
18 A Uh-huh.
19 Q You say that he would act slow or slow
20 when he would smoke sherm or marijuana. Is that true?
21 A Yes.
22 Q He would mellow out, true?
23 A Yes.
24 Q Be mellow?
25 A Mellow. He would mellow out when he

1 smoked marijuana.

2 Q And he mellowed out when he smoked
3 marijuana. What did he do when he smoked sherm?

4 A Like -- it's like it paralyzes you. We
5 just -- we call it stuck.

6 Q Stuck? Okay.

7 A Yes.

8 Q Explain.

9 A It's like you just slow.

10 Q Do you move slow?

11 A Yeah, you move slow.

12 Q Do you walk slow?

13 A Yes.

14 Q Do you speak slow?

15 A Yeah.

16 Q All right. Now, when he was using the
17 sherm and be stuck or be slow, did he still recognize who
18 you were?

19 A Yes.

20 Q Did he still recognize who his friends
21 were?

22 A Yeah.

23 Q Would he -- did he ever, say, hurt you
24 when he was slow?

25 MR. CHRISTIANSEN: Objection. Relevancy.

1 MR. GUYMON: Judge, I have the burden to show that
2 he knows who was his enemies and who his friends were when
3 he is slow. They are putting PCP at issue. I have the
4 right to understand now what his understanding is when he's
5 slow.

6 MR. CHRISTIANSEN: Can we approach the bench?

7 THE COURT: Yes.

8 (An off-the-record discus-
9 sion was held between Court
10 and counsel at the bench out
11 of the hearing of the jury).

12 THE COURT: Overruled.

13 Q (By Mr. Guymon) Prior to August 13 had
14 you been around him when he was smoking sherm? The answer
15 is "yes"?

16 A Yes.

17 Q And he had never hurt you when he was
18 on sherm, had he?

19 A No.

20 Q Hadn't hurt his friends on sherm, had
21 he?

22 A No.

23 Q Never tied up people when he was high
24 on sherm?

25 A No.

1 Q But he had been around Deko and he
2 never tied up Deko when he was on sherm?
3 A Yeah.
4 Q And he never tied up Red when he was
5 high on sherm?
6 A No.
7 Q Never tied up Horse?
8 A No.
9 Q Never pulled a gun on them?
10 A No.
11 Q They were his friends?
12 A Yes.
13 Q Okay. And likewise he had never put gun
14 on Deko, Red or Horse or tied them up when he was using
15 marijuana?
16 MR. CHRISTIANSEN: Objection. Asked and answered.
17 MR. GUYMON: Marijuana?
18 THE COURT: Okay.
19 Q (By Mr. Guymon) Correct?
20 THE COURT: Overruled.
21 THE WITNESS: No.
22 Q (By Mr. Guymon) Is that right?
23 A Yes.
24 Q So even though he was high on sherm or
25 marijuana he still knew who his enemies were and who his

1 friends were?

2 A Yes.

3 Q And on alcohol he could still recognize
4 his friends, correct?

5 A Yeah.

6 Q And he might act a little differently
7 on alcohol but still didn't hurt his friends, did he?

8 A No.

9 Q Now, then, you said that that day at
10 the house they were smoking sherm. Who is "they"?

11 A Red and Deko.

12 Q And they started smoking the sherm and
13 the marijuana at about 1:00 o'clock?

14 A Yes.

15 Q And there was a total of four to six
16 cigarettes that were dipped in sherm. Is that correct?

17 A Yes.

18 MR. CHRISTIANSEN: Objection. Mischaracteri-
19 zation. Half a package of Camels.

20 MR. GUYMON: Four to six.

21 MR. CHRISTIANSEN: That was Mr. Sikia.

22 THE COURT: Sikia four to six.

23 MR. GUYMON: Let me ask it.

24 Q In total how many sherm sticks did they
25 use together.

1 A Like four to six, a half a pack.

2 Q So the three of them had a total four

3 to six sherm sticks that they shared?

4 A Yes.

5 Q So if there was four they each had one

6 and a half sherm sticks and if there was six they each had

7 about two. Is that right?

8 A Yes.

9 Q Is that -- well, had you ever seen them

10 smoke, say, one and a half sherm sticks in a day before

11 Sikia Smith?

12 A No.

13 Q Okay. How many sherm sticks had you

14 seen him smoke before that day?

15 A One.

16 Q In addition?

17 A Yeah.

18 Q One was normal?

19 A Yes.

20 Q Is it possible he could smoke more than

21 one in a day that you wouldn't know about on another day?

22 MR. CHRISTIANSEN: Calls for speculation.

23 THE COURT: Sustained.

24 MR. GUYMON: I will withdraw it.

25 Q Now, then, over the course of from 1:00

1 o'clock to 11:0 o'clock Sikia may have smoked a total of at
2 most two sherm sticks according to your testimony, correct?

3 A Yes.

4 Q How much joints or how many joints did
5 he smoke?

6 A Ain't no telling.

7 Q Ain't no telling? How many joints did
8 he smoke in a day usually?

9 A He was a whole half. That's like --
10 it's like four blunts.

11 Q Four blunts. So he is used to smoking
12 four blunts in a day?

13 A Yes.

14 Q That's not unusual for him, is it?

15 A No.

16 Q Had he been drinking that day around
17 you?

18 A Probably. I don't know if they were
19 when I left.

20 Q Okay. Well, you say when they left or
21 when you left.

22 A When I left.

23 Q Okay. When you came back could you
24 tell if they had been drinking at all?

25 A No.

1 Q Did he drink on days, too, during your
2 relationship?
3 A Yeah.
4 Q Was he used to drinking alcohol?
5 A Not really.
6 Q Okay. And he left the house at about I
7 think you said 11:00. Who did he leave with?
8 A Red and Deko.
9 Q And when he left was he stumbling on
10 himself?
11 A He wasn't really acting like -- he
12 wasn't stumbling but he wasn't -- he wasn't sober, either,
13 but --
14 Q Okay. Did he kiss you goodbye?
15 A Yes.
16 Q Did you talk with him before he left?
17 A Yes.
18 Q Was he able to speak to you?
19 A Yes.
20 Q Were you able to speak to him?
21 A Yeah.
22 Q And did you guys have a dialogue that
23 he understood and that you understood? You two understand
24 each other?
25 A Yes.

1 Q Could he still answer your questions?
2 A Yes.
3 Q Okay. And did you answer his questions
4 before he left?
5 A Yeah.
6 Q Okay. And isn't it true you gave him
7 -- you gave him your pager?
8 A Yeah.
9 Q And said "where are you going?" And he
10 said "I'll be back in a little while," right?
11 A Yeah.
12 Q And when the three of them left did any
13 of the boys have anything with them?
14 A No.
15 Q Okay. Let me ask you: Had you ever
16 seen Sikia -- excuse me -- Donte Johnson and Deko with a
17 gun prior to August 13?
18 A Yeah.
19 Q Had you ever seen Red with a gun?
20 A Yeah.
21 Q And isn't it true that Sikia carried a
22 gun in August?
23 A After.
24 Q You said after. When?
25 A After the 13th.

1 Q Okay.

2 Now, when they all left -- well, let me

3 ask you: As they left did Sikia do anything to hurt you,

4 Deko or Red?

5 MR. CHRISTIANSEN: Asked and answered.

6 THE COURT: Not at that time. Go ahead. After

7 they left.

8 Q (By Mr. Guymon) As Deko was leaving was

9 he -- excuse me -- as Sikia was leaving, was he done

10 smoking the sherm? They put away the sherm and joints?

11 A Yes.

12 Q Okay. And as they left did Sikia hurt

13 any of those boys that he was with?

14 A No.

15 Q Did he still recognize you and his

16 friends?

17 A Yes.

18 Q And they left together? Is that true?

19 A Yeah.

20 Q Now, during the night did you try

21 paging him?

22 A Yes.

23 Q Did he call you back?

24 A No.

25 Q Did you get mad at him for that?

1 A Yeah.

2 Q And when he came back the next day what

3 time was it?

4 A Like 1:00.

5 Q In the afternoon?

6 A Yeah.

7 Q So they left at 11:00 at night and he

8 was gone until 1:00 the next day?

9 A Yeah.

10 Q Okay. You didn't see him all through

11 the night, did you?

12 A No.

13 Q You didn't know where he was at, did

14 you?

15 A No.

16 Q When they left did you know where the

17 boys ere going?

18 A No.

19 Q Did they tell you where they were

20 going?

21 A No.

22 Q When he came back what did he come back

23 with at 1:00 o'clock now?

24 MR. CHRISTIANSEN: Objection. Relevance.

25 THE COURT: Overruled.

1 Q (By Mr. Guymon) Did he have anything
2 with him?
3 A Yeah.
4 Q What did he have?
5 A A VCR and Nintendo.
6 Q Had you ever seen him with a VCR before
7 like that?
8 A No.
9 Q How about a Nintendo?
10 A No.
11 Q Do you know what he did with the VCR?
12 A Yeah.
13 Q What did he do with it?
14 A He gave it to Deko.
15 Q Did he get anything in return for it?
16 MR. SGRO: Objection. Foundation. She is beyond
17 the day. This is hearsay if it is --
18 THE COURT: No, it isn't.
19 MR. SGRO: Could we get at least a foundation.
20 THE COURT: When the conversation took place. I
21 agree with you on that.
22 Q (By Mr. Guymon) When he came back who
23 was he with?
24 A Himself.
25 Q And he had the VCR and the Nintendo?

1 A Yes.

2 Q And did he come back into the apart-

3 ment?

4 A Yeah.

5 Q Were you there?

6 A Yeah.

7 Q And he was there?

8 A Yeah.

9 Q Did you say anything to him?

10 THE COURT: You mean Mr. Smith?

11 Q (By Mr. Guymon) Yes, Mr. Smith was

12 there. Is that right?

13 A Yeah.

14 Q And did you talk to him, say anything

15 to him?

16 A I asked him where he had been.

17 Q And did he tell you?

18 A No.

19 Q Did you ask him a second time?

20 A Yeah.

21 Q Did he tell you he had been with Deko

22 and Red?

23 A Yeah.

24 Q Did he tell you he would tell you later

25 what happened?

1 A Yeah.

2 Q Did you want to know what happened?

3 A Yeah.

4 Q Now, in a couple of minutes after Sikia

5 walks in, do you see Deko and Red again?

6 A Yes.

7 Q And where is Deko and Red now?

8 A In my house.

9 Q In your house?

10 A Yes.

11 Q And what is -- does Sikia say anything

12 to Deko and Red then?

13 A If he said something right then and

14 there, I really can't remember it.

15 But they talked about -- I really don't

16 remember what was said and what went on.

17 Q You weren't part of the conversation

18 then; the three of them were talking amongst themselves?

19 A I could have been part of the conver-

20 sation. I was just kind of mad.

21 Q Still mad at Sikia for staying out all

22 night?

23 A Yes.

24 Q Okay. And is that when Sikia gave the

25 VCR to Deko?

1 A Yes.

2 Q And what did Sikia get in exchange?

3 A \$20.00.

4 Q And what did Sikia do with the

5 Nintendo?

6 A Kept it.

7 Q You kept it at your house?

8 A Yes.

9 Q Did it stay at your apartment or did it

10 go somewhere out a couple days later?

11 A I don't remember.

12 Q Okay. You are not sure?

13 A Uh-uh.

14 Q Court's indulgence.

15 Pass the witness.

16 REDIRECT EXAMINATION

17 BY MR. CHRISTIANSEN:

18 Q Mr. Guymon asked questions about Deko.

19 Do you remember those questions?

20 A Yes.

21 Q You knew Deko?

22 A Yes.

23 Q What kind of guy was Deko?

24 A He was, you know --

25 THE COURT: Keep your voice up.

1 THE WITNESS: He was -- he was kind of like -- I
2 don't know. He was kind of like -- he was kind of scary.

3 Q (By Mr. Christiansen) A scary guy?

4 A Yes.

5 Q Unpredictable guy?

6 A Yeah.

7 Q Carried a gun you told Mr. Guymon. Is
8 that right?

9 A Yeah.

10 Q You also told Mr. Guymon and the jury
11 that when you were around, Sikia could stay out of trouble.
12 Do you remember saying that?

13 A Yes.

14 Q What did you mean by "when you were
15 around"?

16 A It is like -- I guess he was kind of
17 dependent on me.

18 Q Was Sikia smart, in your opinion?

19 A Yeah.

20 Q Sikia was smart?

21 MR. GUYMON: Asked and answered, Judge.

22 THE COURT: Yes.

23 Q (By Mr. Christiansen) Did you tell me
24 Sikia was slow?

25 A Yes.

1 Q Is that a true statement?
2 A Yeah.
3 Q Did you and Sikia ever go eat together?
4 A Yes.
5 Q Could Sikia figure out how much money
6 to leave in a tip?
7 A I left the tip all the time.
8 Q Did you take care of Sikia?
9 A Yeah.
10 Q And he stayed out of trouble when he
11 was with you?
12 MR. GUYMON: Objection. Leading. Asked and
13 answered.
14 THE COURT: Sustained. She already answered the
15 question.
16 Q (By Mr. Christiansen) You have kids,
17 right?
18 A Yes.
19 Q Mr. Guymon asked you if you could
20 communicate with Sikia, correct?
21 A Yes.
22 Q How old are your kids?
23 A Five, three and four months.
24 Q Do you communicate with your five-year-
25 old?

1 A Yes.

2 Q To use his language, does he speak in

3 English?

4 A Yes.

5 Q And your five-year-old seems to

6 understand what you are saying, right?

7 A Yes.

8 Q You understand what he says?

9 A Yes.

10 Q And that's communication?

11 A Yes.

12 Q And she's dependent on you as well?

13 A Yes.

14 Q How would you characterize or -- was

15 Donte a leader?

16 A Yes.

17 Q A scary leader?

18 A Yes.

19 Q An unpredictable leader that carried a

20 gun?

21 MR. GUYMON: Objection. Leading.

22 THE COURT: Sustained.

23 Q (By Mr. Christiansen) Was Sikia a

24 boisterous, loud, talkative guy?

25 A No.

1 Q Was he quiet?
2 A Yes.
3 Q Was he a loner?
4 MR. GUYMON: Objection. Leading.
5 THE COURT: Overruled.
6 Q (By Mr. Christiansen) Was he a loner?
7 Was he by himself mostly?
8 A With me, me and him.
9 MR. CHRISTIANSEN: Nothing further. Thank you.
10 MR. GUYMON: Very briefly, your Honor.
11 RECROSS-EXAMINATION
12 BY MR. GUYMON:
13 Q Could Sikia go and buy food without
14 you?
15 A Yeah.
16 Q Okay. He could do things without you,
17 couldn't he?
18 A Yeah.
19 Q And when he would go out without you,
20 he wouldn't get in trouble, would he? He could still come
21 back home, not get in trouble, not get hurt, not get
22 arrested, those kinds of things, right?
23 A Yeah.
24 Q And your five-year-old -- you have
25 taught your five-year-old right from wrong, correct?

1 A Yes.

2 Q Does your five-year-old know what

3 happens when your five-year-old does wrong?

4 A Yes.

5 Q Okay. You have taught her the rules?

6 A Yeah.

7 Q Does Sikia know right from wrong?

8 MR. CHRISTIANSEN: Objection. Speculation.

9 THE COURT: Sustained. Sustained.

10 Q (By Mr. Guymon) Let me ask you: Could

11 Sikia make his own choices without you making choices for

12 him?

13 A Not the right choices.

14 Q Okay. You say "not the right choices."

15 He would do some wrong things?

16 A Yes.

17 Q Okay. He could choose what to wear in

18 the morning?

19 A Yes.

20 MR. CHRISTIANSEN: Objection. Relevance.

21 THE COURT: Goes to his mind. Overruled.

22 Q (By Mr. Guymon) He could choose what to

23 do in a day, right?

24 A Yes.

25 Q And he had gotten along during his

1 lifetime without you up until three months when you met?

2 MR. CHRISTIANSEN: Objection. No foundation.

3 THE COURT: Sustained.

4 Q (By Mr. Guymon) You indicated you had
5 children. Is that correct?

6 A Yeah.

7 Q Does Sikia have children?

8 A Yes.

9 Q How many kids does Sikia have?

10 A Two.

11 Q And you would like to help Sikia,
12 wouldn't you? You still have feelings for him?

13 THE COURT: Asked and answered.

14 MR. CHRISTIANSEN: Asked and answered.

15 Q (By Mr. Guymon) Well, did you tell me
16 you really didn't want to have to get in this and testify
17 against Sikia when we first met?

18 A Yes.

19 Q You don't want to be here?

20 A No.

21 Q And you told me when I first introduced
22 myself and met you not to put you in this stuff, right?

23 A Yes.

24 Q And that you knew Sikia was in on this?

25 MR. SGRO: Objection, your Honor.

1 THE COURT: Sustained.

2 Q (By Mr. Guymon) That you didn't want to
3 say or do anything that would hurt Sikia because you still
4 loved him?

5 MR. SGRO: Asked and answered.

6 MR. GUYMON: I am talking about a conversation.

7 THE COURT: Overruled.

8 THE WITNESS: The conversation we had I told you
9 I knew he was there. I knew he -- he didn't do anything.
10 That's the conversation we had.

11 Q (By Mr. Guymon) Well, now, Ms. Wright,
12 isn't it true you told me you knew he was there and that he
13 searched through the house? He told you he found some
14 pills in a hamper?

15 A Yes.

16 Q And that he tore up the place looking
17 for this?

18 A I told you that.

19 Q And that he had told you that while he
20 was tearing up the place Red was standing over the boys
21 with a gun?

22 A Yes.

23 Q And that Deko was helping him search?

24 A I told you that.

25 Q And that they were all searching the

1 place together?

2 A Yes.

3 Q That you knew all them boys had done
4 wrong?

5 A Yes.

6 Q That Deko had shot and killed three
7 people when Sikia was there?

8 A Yes.

9 Q And that Sikia made those choices.

10 MR. SGRO: Objection, your Honor.

11 THE COURT: Sustained.

12 MR. GUYMON: I have no other questions.

13 REDIRECT EXAMINATION

14 BY MR. CHRISTIANSEN:

15 Q Mr. Guymon asked you if you wanted to
16 help Sikia.

17 A Yes.

18 Q Do you think everything you just
19 testified to helped Sikia?

20 A No.

21 Q Are you in here telling the truth?

22 A Yes.

23 Q And you are up here before these people
24 lying?

25 A No.

1 Q Was Sikia high that night?
2 A Yes.
3 Q Was Sikia a leader?
4 A No.
5 Q Was Deko a scary leader?
6 A Yes.
7 MR. GUYMON: Objection. Asked and answered.
8 THE COURT: Overruled.
9 MR. CHRISTIANSEN: That's all.
10 THE COURT: Ms. Wright, you are excused. You are
11 admonished not to discuss your testimony with anyone until
12 we complete the case. You are free to go.
13 Call your next witness.
14 MR. CHRISTIANSEN: Dr. Kinsora. Thomas Kinsora.
15 THE COURT: Counsel approach the bench, please.
16 (An off-the-record discus-
17 sion was held between Court
18 and counsel at the bench out
19 of the hearing of the jury).
20 THE COURT: Raise your right hand and be sworn by
21 the clerk.
22 THOMAS KINSORA,
23 having been first duly sworn on oath to tell the truth, the
24 whole truth and nothing but the truth, testified and said
25 as follows:

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

4 THE WITNESS: My name is Thomas Kinsora, K-i-n-s-
5 o-r-a.

6 My address is 6013 -- I'm sorry -- my
7 business address is 820 Shadow Lane, Suite 302, Las Vegas,
8 Nevada 89106.

9 THE COURT: What do you do at that address, Dr.
10 Kinsora?

11 THE WITNESS: I am a clinical neuropsychologist.

12 THE COURT: What is a clinical neuropsychologist?

13 THE WITNESS: A clinical neuropsychologist I would
14 suppose the easiest way of stating that is a specialist in
15 brain functioning and assessing brain functioning.

16 THE COURT: What is your background and education
17 and training?

18 THE WITNESS: I have a Ph.D. in clinical psychol-
19 ogy with a specialty and special training in clinical
20 neurology. I am licensed in the state as a clinical
21 psychologist. There is no separate degree for a separate
22 license for neuropsychology.

23 THE COURT: Do you have any questions, Mr. Guymon?

24 MR. GUYMON: No, your Honor. I am familiar with
25 Dr. Kinsora.

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THE COURT: You may testify.

DIRECT EXAMINATION

BY MR. CHRISTIANSEN:

Q Good morning, Dr. Kinsora.

A Yes.

Q Dr. Kinsora, where did you go to school or just if you could -- why don't you go through your formal training for the jury.

A Sure.

I did my undergraduate work at Wayne State University in Detroit, Michigan.

I then went to the California school for my graduate training in Fresno, California.

And there I received special training in clinical neuropsychology as well as general clinical psychology assessment.

I then went to a variety for internships while there in California. I did my pre-doctoral internship at the Veterans Administration and Medical Center in Allen Park, Michigan which is right next to Detroit. Actually it is Detroit's medical veterans administration medical center.

And I did my post-doctoral supervision training hours at the Rehabilitation Institute in Detroit, Michigan.

1 Q When did you get out of your -- the
2 last thing you did was your post-doctorate in Michigan.
3 When did you graduate?

4 A I graduated in 1991. Although my last
5 classes were in '87, I spent several years doing research
6 on memory functioning.

7 Q Okay. And since the time you have
8 graduated have you had to do continuing medical education,
9 something of that nature?

10 A Yes, I have.

11 Q What is it that you have to do every
12 year to stay licensed?

13 A To stay licensed we have to -- it is
14 actually on an every other year basis that the license is
15 renewed, but we have to get approximately thirty hours of
16 training in those two-year periods in a variety of differ-
17 ent areas.

18 And I typically do much more than that.

19 And in addition to that in order to
20 stay in the field and keep abreast of the field, you really
21 need to constantly read journals, scientific articles on
22 different areas and kind of keep up with the current
23 thought on a variety of different areas of brain function-
24 ing and in this case substance abuse.

25 Q You mentioned that you did a lot of

1 clinical work. Explain what clinical is so everybody
2 understands.

3 A Clinical work is essentially the type
4 of work where you are interacting with a patient and with
5 people whether it be to assess or therapy of some type.

6 Q You are a neuropsychologist?

7 A Correct.

8 Q Start off with psychologist for me.
9 What is a psychologist?

10 A A psychologist is trained essentially
11 in the assessment and treatment of mental disorders.

12 And in this state you have to have a
13 Ph.D. You go through a Ph.D. program and do some research
14 in the area before you can be licensed as a clinical
15 psychologist. It differs from a neuropsychologist --

16 Q That's my next question. How do you
17 get your "neuro" in front of psychologist?

18 A The "neuropsychology" is a slightly
19 different track. There is much more emphasis in neurology
20 and brain functioning.

21 I had to do my research on some aspect
22 of brain functioning.

23 And your pre-doctoral and post-doctoral
24 experience needs to be in some area of neuropsychology or
25 brain functioning.

1 And I did my pre-doctoral at the
2 Veterans Administration on a neurology ward where it was a
3 wide variety of neurological patients where patients had
4 neurological insult or neurological diseases and problems,
5 and again my post-graduate work was at the Rehab Institute
6 of Michigan which was basically working for several years
7 with traumatic brain injury patients, stroke patients, a
8 variety of others.

9 Q During the course of your studies and
10 clinical training did you develop a special interest for
11 the effects of phencyclidine or PCP on the brain?

12 A Yes, I did. It was in '85 I was hired
13 at a place -- and this was partly an internship and partly
14 a job at that point. It was called Hand's Downtown School
15 which was later turned into Fresno Treatment Center.

16 But I spent two years there working
17 with adolescents, the majority of whom were former gang
18 members or currently gang members at the time.

19 Almost all of them had had experience
20 with phencyclidine or PCP as well as a variety of other
21 drugs.

22 I took special interest with that
23 particular population because the very bizarre stories I
24 started hearing about people on PCP.

25 This was back in '85. There was a much

1 higher use than there is now. It has actually gone down
2 over the years.

3 But there were a variety of stories in
4 the paper also of very bizarre things happening.

5 MR. GUYMON: Judge, I am going to object to the
6 stories.

7 THE COURT: Sustained. That will be stricken from
8 the record and the jury is admonished to disregard it.

9 THE WITNESS: I then began work as an internship
10 at California Mens Colony that was San Luis Obispo,
11 California. I spent a year there in training and there I
12 did individual psycho therapy as well as group substance
13 abuse therapy.

14 And there once again since I was
15 working at both places at the same time at one point I
16 became fascinated with the strange things that were
17 happening with people on PCP and the reports that people
18 were giving me about what was occurring while on PCP.

19 Q (By Mr. Christiansen) So you were
20 clinically both at the Fresno Rehab Center and at the Mens
21 College -- what is the mens college

22 A California Mens Colony is a prison for
23 -- it was original for protective custody inmates as well
24 as psychiatric care of patients.

25 Q So at those two places you clinically

1 had a chance to observe firsthand patients that had
2 ingested PCP. Is that accurate?

3 A Correct.

4 And beyond that I have had numerous
5 referrals over the year as a clinical neuropsychologist
6 doing assessment of brain functioning which means measuring
7 attention concentration and processing speed and reaction
8 time and memory, and just a whole gambit of how we think,
9 how we judge.

10 And I have been struck by the effects
11 of long-term use of PCP and kind of a special interest to
12 me.

13 Q Have you been previously qualified as
14 an expert to testify in the field that I have talked to you
15 about?

16 A Yes, I have.

17 Q Is that here in the Eighth Judicial
18 District Court?

19 A Yes.

20 Q About how many times?

21 A Gosh, probably somewhere in the order
22 between eight and twelve. I don't know exactly.

23 Q And for purposes of expediting the
24 process, you have testified as an expert in psychology,
25 neuropsychology and the effects of PCP on the human brain?

1 A Correct.

2 Q Judge, I would offer the doctor as an

3 expert in those three areas.

4 THE COURT: Mr. Guymon?

5 MR. GUYMON: No objection.

6 THE COURT: All right. You may testify.

7 Q (By Mr. Christiansen) Dr. Kinsora, can

8 you tell the jury what PCP is. And I know you have brought

9 some visual aids. If you would like to use those --

10 A Sure. If I could get an easel.

11 MR. GUYMON: Judge, may we approach?

12 (An off-the-record discus-

13 sion was held between Court

14 and counsel at the bench out

15 of the hearing of the jury).

16 MR. CHRISTIANSEN: Court's indulgence.

17 MR. GUYMON: Judge, may we approach again?

18 THE COURT: Yes.

19 (An off-the-record discus-

20 sion was held between Court

21 and counsel at the bench out

22 of the hearing of the jury).

23 THE COURT: All right, let's go.

24 Q (By Mr. Christiansen) Doctor, the

25 question was, can you explain what PCP is? Go ahead and do

1 that with the jury while I get this marked. We can get
2 started.

3 A Okay. PCP was originally used and was
4 originally developed back in the 50's as an anesthetic
5 which means it was originally used to put people under so
6 they could perform operative procedures, basically.

7 It is a very unique medication or drug
8 as it is being used now.

9 However -- can I go ahead and use
10 those?

11 Q Sure. Come down.

12 A Different point I would like to
13 highlight here.

14 Q He's showing so the record is clear the
15 jury what has been marked for identification as defense
16 exhibit D.

17 A This is basically going to highlight
18 what I am talking about here.

19 Originally developed in the 50's.
20 Unlike other anesthetics it didn't put people completely
21 out. All right. It left people kind of conscious.

22 And there were some advantages to that
23 because anesthesia that puts people completely out can
24 cause a variety of problems.

25 One of the main -- one of the main

1 symptoms that you see was when someone was on high levels
2 of it when they were using it with an operation you would
3 see kind of a blank stare, mouth kind of open, you have a
4 rigid posture what we call waxy flexibility which basically
5 means if somebody was sitting there you could put up their
6 arm and their arm would just kind of stay up there, you
7 would mold them kind of staring blankly.

8 Now, I don't want to get -- now, the
9 thing is the patients were conscious but disassociated from
10 their environment and from their body.

11 And without getting overly graphic,
12 what could be done then is a person --

13 MR. GUYMON: Objection of what could be done.

14 THE COURT: Okay.

15 Q (By Mr. Christiansen) Explain what
16 disassociative means.

17 Q Disassociative means removed from
18 awareness of one's body, of one's emotions, of one's
19 judgment and of one's environment, that's in the ultimate
20 state.

21 Operative procedures were performed
22 with the person basically --

23 MR. GUYMON: Objection. Goes beyond the scope of
24 the question.

25 THE COURT: All right.

1 MR. CHRISTIANSEN: Just a moment. Do you want
2 narrative or do you want a question.

3 MR. GUYMON: I prefer questions, Judge.

4 THE COURT: Let's go. In the essence of time
5 let's move this, Mr. Christiansen.

6 Q (By Mr. Christiansen) I think you were
7 getting ready to explain clinically things that were done
8 in regard to disassociative drugs.

9 A Yes.

10 Q Is this particular to PCP?

11 A This is particular to PCP and it is
12 particularly important because a reason why it was stopped
13 being used in the early 60's.

14 MR. GUYMON: Judge, I am going to object to the
15 clinical -- we are not talking about clinical use of PCP in
16 this case so the question is "clinically" and I am not sure
17 clinical has any bearing.

18 THE COURT: You may be right.

19 MR. CHRISTIANSEN: I will change the question.

20 THE COURT: Sustained.

21 Q (By Mr. Christiansen) You are reciting
22 the history of PCP. Is that accurate?

23 A And the problems inherent with it.

24 Q Will you explain the inherent problems
25 of phencyclidine.

1 A Yes. As patients emerged from his
2 state, the problems they were running into were extreme
3 violence and psychotic behavior.

4 Sometimes this was occurring during the
5 operative procedure and the operative procedure had to be
6 stopped.

7 So, this drug was abandoned for use
8 with humans and it was then used with animals.

9 If I could get that article quickly.
10 Can I read some of that article or not?

11 Q Just -- I have to ask you questions.

12 A Sure.

13 In any case, the disassociatives unlike
14 any other drug is I can -- or PCP is unlike any other drug
15 because we have clear evidence through research of extreme
16 aggressive behavior with the use of it.

17 Typically in this anesthetic point. It
18 is with smaller doses. Okay.

19 It causes a disconnection between brain
20 areas. People tell me that --

21 MR. GUYMON: Objection to what people tell him.

22 THE COURT: Sustained. Only what you know.

23 THE WITNESS: Okay.

24 I know from research that the subjective
25 experience is that time slows down, people feel

1 distance from one's own body, they feel distant from the
2 environment.

3 You hear consistent statements like
4 they feel everything around them is unreal like as if they
5 are in a play.

6 You hear frequent statements of "I knew
7 what was happening but it didn't affect me."

8 What is happening there is a brain area
9 related to emotion and judgement are becoming separated
10 from consciousness.

11 And it is very difficult to conceptual-
12 ize this, but these are the things that occur.

13 And one can witness an act, then,
14 without any judgment. So to certain extent judgement
15 becomes suspended with this drug which makes this drug
16 extremely dangerous.

17 It is unlike any other drug that I know
18 of out there.

19 Q (By Mr. Christiansen) So the record is
20 clear, Doctor, you are referring now to what's been
21 previously marked as defense exhibit E for identification
22 purposes. What --

23 MR. GUYMON: Your Honor, I am going to object. Now
24 we are getting into frontal lobes and the like and again I
25 think it is clear to clinical --

1 MR. CHRISTIANSEN: Judge, I am going to ask him a
2 question.

3 THE COURT: We need the question first, Mr.
4 Guymon.

5 Q (By Mr. Christiansen) What is the
6 actual effect of PCP has on the brain, and if you have a
7 brain you can show it.

8 A I do have a little model of the brain.
9 I don't know if it would help or not but I could bring that
10 out.

11 MR. GUYMON: The same objection I had earlier at
12 the bench.

13 MR. CHRISTIANSEN: Can I show him the brain first?

14 THE COURT: He's probably right.

15 MR. CHRISTIANSEN: If you don't want him to show
16 the jury what the brain looks like --

17 THE COURT: He didn't get this in discovery.

18 MR. GUYMON: Just so the record is clear the
19 objection was on what we call discovery and the rules of
20 discovery where we give them our materials and they give us
21 their materials.

22 THE COURT: I understand that. He is objecting to
23 the discovery.

24 MR. CHRISTIANSEN: Is it the Court's position I
25 was supposed to produce a model of a brain to the State?

1 THE COURT: Well, if you are going to use it. He
2 has to know about it.

3 MR. CHRISTIANSEN: So we will have those same
4 rules when their doctor testifies?

5 THE COURT: The rules are the same no matter who
6 is testifying.

7 Q (By Mr. Christiansen) You can go ahead
8 and explain.

9 A I don't know if it would be particu-
10 larly helpful anyway.

11 There is an area of the brain called
12 the singular cortex and it is connected both to the limbic
13 system as well as the frontal lobe of the limbic system is
14 one that controls emotions.

15 We know from much research if you
16 damage or you actually put in probes and you stimulate the
17 limbic system, you can produce a variety of emotions
18 including rage.

19 If you completely disconnect or play
20 with it in other ways you can elicit a complete removal
21 from emotion to where the person has no emotion over what
22 is going on.

23 That's why it was helpful in anesthe-
24 sia. The person could be awake and watch themselves being
25 cut off and have no emotional response, no judgement to it.

1 Most people would be extremely
2 frightened. There is no fright because they are almost
3 away from their body and have no emotional judgement
4 regrading what it is happening to themselves much less
5 other things.

6 The frontal lobes control judgement,
7 problem-solving, attention and the ability to regulate your
8 behavior. In other words, the ability to stop doing
9 something when another part of you tells you you shouldn't
10 do it.

11 It is the thing that stops you from
12 hitting someone when you would like to.

13 It is the thing that stops you from
14 saying something inappropriate in public when you know it
15 might be taken the wrong way by other people.

16 Q Doctor, just so I am clear, are you
17 saying that PCP damages or interferes with that area of the
18 brain which controls one's judgement?

19 A Yeah. It not only interferes with it
20 on a temporary basis when taking the drug but we know from
21 research and there is things unequivocal there is no doubt
22 here, it clearly causes permanent brain damage. Chronic
23 use of PCP you have brain damage.

24 And when you do your neurological
25 studies on these people you see a general intellectual

1 skill drop. You see memory problems, you see attention
2 concentration problems, you see the inability to form
3 abstract thoughts, have great deal of difficulty with such
4 things as proverbs or understanding metaphors.

5 And self-regulatory becomes damaged.
6 They have more difficulty inhibiting responses. They have
7 more difficulty regulating their behavior compared to where
8 they were before.

9 Q Is the problem the brain damage
10 increases with the use of the drug?

11 A Yes, it does. It appears to be
12 permanent.

13 Unlike many other drugs which are
14 fairly reversible once the drug is stopped -- and this is
15 in my experience in testing them as well as research,
16 clearly the dangerous drugs out there, chronic use of
17 alcohol and chronic use of PCP are very dangerous for the
18 brain.

19 And in this case you know the chronic
20 use of PCP from my understanding --

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

22 MR. CHRISTIANSEN: I will move on.

23 THE COURT: Sustained.

24 Q (By Mr. Christiansen) Sit back down,
25 Dr. Kinsora.

1 Do you have any experience dealing with
2 individuals who have a low I.Q. in your clinical experi-
3 ence?

4 A Yes. I mean, that's --

5 MR. GUYMON: I am going to object unless it is
6 specific to the person's I.Q. we are here to talk about.

7 THE COURT: Sustained.

8 MR. CHRISTIANSEN: I am looking to ask the doctor
9 based on his experience and expertise which he's already
10 been qualified as an expert. He's dealt with people with
11 limited intellectual abilities. And if he has what are the
12 effects of PCP on those individuals. He clearly can
13 testify to that. He's an expert in the area.

14 MR. GUYMON: My objection is relevance to the mind
15 that we are here to study.

16 THE COURT: I am going to let him testify, Mr.
17 Guymon.

18 Q (By Mr. Christiansen) Do you remember
19 the question?

20 A Yes, I do have experience of testing
21 people with limited I.Q. and with lower than average I.Q.

22 Q Do those people process thoughts like
23 an individual of average I.Q.?

24 A No.

25 Q What do you mean by that?

1 A Depending on the particular difficulty
2 -- and again, there is a variety of things we go into what
3 we call I.Q., but predominantly people with what we call
4 generalized lowering of I.Q. where a lot of different areas
5 of intellectual functioning are lower, and what we find is
6 people have more difficulty reasoning, more difficulty
7 problem-solving.

8 And clearly, in research with lower
9 than average I.Q. have a higher propensity of getting
10 themselves in legal problems, a higher propensity of
11 getting themselves involved in substance use and they have
12 a higher propensity of getting themselves in relationships
13 that are detrimental to them.

14 Q Just so we are clear: Is this your
15 experience or --

16 A This is research.

17 Q Established --

18 A This is established by research. It is
19 very clear, yes.

20 Q Is it fair to characterize people with
21 lower I.Q.s as followers?

22 MR. GUYMON: Objection, Judge. Who are we talking
23 about now?

24 THE COURT: I don't know. I don't know what low
25 I.Q. we are talking about, either.

1 MR. CHRISTIANSEN: It is somebody that --
2 THE COURT: Is it thirty, twenty, a hundred,
3 hundred fifty?
4 MR. CHRISTIANSEN: I will clarify, Judge.
5 Q What would you classify the I.Q. of
6 seventy as?
7 A In terms of following or not following,
8 are you saying?
9 Q Just in terms, is it a low I.Q., a high
10 I.Q. or what?
11 A Seventy clearly is on the borderline
12 range. Some people with I.Q.s of seventy cannot live out
13 in society alone. Some people with seventy seem to do
14 fairly well keeping a job. Typically they move from job to
15 job or have difficulty keeping jobs.
16 But, you know, it really varies with
17 the particular person.
18 Seventy in and of itself doesn't tell
19 me everything.
20 Q Borderline to what?
21 A Borderline to mildly mentally retarded.
22 Q You said in these people research
23 established --
24 MR. GUYMON: Objection.
25 THE COURT: Already answered it.

1 Q (By Mr. Christiansen) Has research
2 established that these people are particularly vulnerable
3 to problems?

4 A Yes.

5 Q What type of problems?

6 MR. GUYMON: Asked and answered, Judge.

7 MR. CHRISTIANSEN: I don't think I have asked him
8 that question.

9 THE COURT: Overruled.

10 Q (By Mr. Christiansen) What type of
11 problems, Doctor?

12 A Okay. Again, people with I.Q.s in the
13 seventies for example have more difficulty reasoning and
14 judging. They have more difficulty understanding social
15 situations.

16 They tend to get themselves -- and this
17 is again looking at groups of them -- they tend to get
18 themselves in legal trouble more often, they tend to get
19 themselves involved in substance abuse and alcohol abuse.

20 They tend to have more difficulty in
21 relationships with other people and often end up involved
22 in things that -- that show very little forethought in
23 terms of who they choose as friends and what they choose to
24 do.

25 Q I want to focus on that right there.

1 You said those individuals with I.Q.s in the seventies have
2 very little or show very little forethought. Is that
3 accurate?

4 A As a group it is lower but there are
5 many individuals -- there is many individual variations
6 within that.

7 Q Fair enough.

8 I am sure Mr. Guymon will get into
9 that, those aspects with you.

10 I also thought I heard you say indivi-
11 duals under the influence of PCP don't think about things
12 the same way as a sober person?

13 A Oh, definitely. Definitely.

14 Q What happens when an individual with an
15 I.Q. of seventy ingests PCP, if you know.

16 MR. GUYMON: Judge, again I am going to object.
17 What person are we talking about?

18 THE COURT: I don't know who has -- I don't know
19 who has an I.Q. of seventy. I don't know any of that
20 stuff. I don't know whether --

21 MR. CHRISTIANSEN: I can ask an expert hypo-
22 theticals.

23 THE COURT: But to ask hypotheticals you have to
24 have evidence.

25 MR. SGRO: Your Honor, we don't always call

1 witnesses in the order we would like to.

2 THE COURT: I am not presenting your case. I am
3 here to rule and try to be fair.

4 MR. SGRO: I understand that, but that's the
5 context of a hypothetical. And if it turns out we never
6 present any hypothetical --

7 THE COURT: Then it is already before the jury.

8 MR. SGRO: But it wouldn't mean anything.

9 THE COURT: Sustained.

10 Q (By Mr. Christiansen) Does PCP inhibit
11 a person's -- any person's ability to think as they would
12 when they are sober?

13 A There is no doubt about it.

14 Q Is it therefore logical to conclude
15 that it would inhibit an individual of low mental capacity
16 to think as that person does when he or she is sober?

17 A It is logical to conclude that as you
18 go down on the scale of your ability to reason you will
19 encounter more and more problems on PCP.

20 But, I do want to say that in the
21 research -- and that's why I wish I would have read the
22 article -- in the research that's been done, it is very
23 clear that even low doses of -- low doses of PCP with
24 college students produced I over half of them psychotic
25 reactions and in some cases severe aggressiveness that was

1 way out of line with their character and an inability to
2 reason, to form an abstract thought. It is almost as if
3 the question of I.Q. isn't even as important with this
4 particular drug because with anybody it can cause severe
5 problems.

6 Q Has research established that people
7 who do things under the influence of PCP they would not
8 normally do?

9 A Yes, very definitely.

10 Q That has nothing to do with a lack of
11 ability to process thoughts in the normal fashion?

12 MR. GUYMON: Objection.

13 THE COURT: Overruled.

14 THE WITNESS: It has to do with the inability or
15 the separation between one's emotional judgement and one's
16 consciousness and one's ability to form abstract thought
17 and problem solve and the separation of that from one's
18 consciousness.

19 Q (By Mr. Christiansen) Could that
20 particular aspect include people doing violent things when
21 they normally would not be prone to violence?

22 A Oh, definitely. And that's been shown
23 in research very clear. People will do things way out of
24 character.

25 And that is part of the reason even --

1 that's part of the reason why PCP was ceased to be used as
2 an anaesthetic because of what it was doing when people
3 were coming off the drug and the violence that the staff
4 was encountering in hospitals when they were in post-
5 operative what we call emergence when they are coming down
6 from it.

7 Q Doctor, have you had an opportunity to
8 interview Mr. Smith briefly? Is that accurate?

9 A Very briefly, yes.

10 Q I haven't asked you any questions
11 specific as to Mr. Smith, correct?

12 A That's correct.

13 Q And you didn't perform a whole battery
14 of tests, psychological tests on Mr. Smith. Is that
15 accurate?

16 A Correct.

17 Q And are you just simply giving -- from
18 your research and your expertise your opinions about the
19 effects of PCP?

20 A Yes, sir.

21 Q Thank you.

22 Pass the witness.

23 THE COURT: Mr. Guymon?

24

25

CROSS-EXAMINATION

BY MR. GUYMON:

Q Good morning, Doctor.

A Good morning.

Q You and I have never met but we have spoken on the phone twice?

A Uh-huh.

THE COURT: Is that a "yes"?

THE WITNESS: Yes.

THE COURT: Thank you.

Q (By Mr. Guymon) And you are a neuro-psychiatrist?

A Psychologist.

Q And you do tests of brain functioning?

A Yes, correct.

Q And in this case you didn't administer a single test to Sikia Smith. Is that correct?

A That's correct.

Q And in this case you can't tell us how his brain or mind functions on PCP, can you?

A I can only speak in terms of the human brain.

Q But for him and how his mind processes PCP you can't?

A Correct, his unique way of processing.

1 Q And you have no idea what his tolerance
2 level is for PCP is, do you? Yes or no, Doctor.

3 MR. CHRISTIANSEN: If it can be answered with a
4 yes or no.

5 Q (By Mr. Guymon) Didn't you tell me in
6 our first conversation on June 8, 1999 that you didn't know
7 what his tolerance level was for PCP?

8 A Correct. I don't know that that's even
9 possible.

10 MR. SGRO: Your Honor, I am going to ask that the
11 witness be allowed to finish his answer.

12 THE COURT: He answered it. "I don't think it is
13 possible."

14 MR. CHRISTIANSEN: "I don't think it is possible,"
15 but then Mr. Guymon waves his finger in the air --

16 THE COURT: Can you finish that answer, Doctor?

17 THE WITNESS: I think it is finished enough.

18 Q (By Mr. Guymon) Doctor, it is true that
19 the concentration level of PCP would be important to you in
20 making a statement as to a specific person's mental state?
21 Isn't that what you told me on the 8th?

22 A On a gross level, yes.

23 Q All right. And other than tolerance
24 and concentration, you said the way in which it was
25 ingested would be important?

1 A Yes.

2 Q The timing of the ingestion would be
3 important?

4 A Yes.

5 Q And that in fact there are actually
6 tests that could be administered that would tell you his
7 brain functioning?

8 A Would tell me his blood level of the
9 PCP.

10 Q And in this case, in fact, you told me
11 the blood level would be helpful, didn't you?

12 A It would be very helpful.

13 Q But that you really had no data or no
14 reliable data to make an opinion as to his specific mind on
15 the night in question?

16 A Correct.

17 Q And in fact, isn't it true you spoke to
18 him -- in time you spoke to him about an hour and a half in
19 duration?

20 A Right.

21 Q And it was just you and he?

22 A Correct.

23 Q And he told you he had smoked some PCP?

24 A Yes.

25 Q But not a lot? Isn't that what you

1 told me, Doctor?

2 MR. SGRO: What is the question? What the doctor
3 told Mr. Guymon or what Mr. Smith told the doctor?

4 THE COURT: Mr. Smith told the doctor and the
5 doctor in turn told Mr. Guymon.

6 MR. SGRO: Can we break it up a little bit, your
7 Honor?

8 THE WITNESS: He minimized the amount of drug use
9 he had in one respect and in another respect he also told
10 me he was extra high that day.

11 Q (By Mr. Guymon) but isn't it true when
12 you inquired as to how much PCP he smoked he said "no more
13 than usual"?

14 A I believe he did say that.

15 Q That he felt as though he was in
16 control?

17 A Correct.

18 Q That he was high like any other time?

19 A Well, I don't know if he said like any
20 other time. I don't know if those were his words. But he
21 gave me the impression that his intoxication was as many
22 other of his PCP intoxications were. And again, my -- the
23 report to me was that he was using it on a daily basis.

24 Q And that he didn't think that this day
25 was any different than any other day in his use?

1 A No.

2 Q Isn't that what you told me?

3 A I believe that -- other than the fact

4 that he was extra high that day.

5 Q And I will get to that. In fairness to

6 our whole conversation at one point you said he believed it

7 was no different than any other day?

8 A Correct.

9 Q And that subsequently in your conver-

10 sation he said he may have been higher that day than

11 others?

12 A I am not sure which order that came in.

13 Q But, nonetheless, that was part of your

14 conversation with him?

15 A Yes.

16 Q He didn't think his PCP use was a big

17 deal?

18 MR. SGRO: Asked and answered.

19 THE COURT: Overruled.

20 Q (By Mr. Guymon) As it related to these

21 facts?

22 A Correct.

23 Q And he told you those things?

24 A He told me those things. He was very

25 defensive, however. I need to qualify that.

1 Q And you told me that you had no
2 impression as to whether or not he knew right from wrong;
3 you couldn't talk about that; you weren't going to talk
4 about that?

5 A Right. I cannot comment on whether he
6 knew -- whether he definitely knew right from wrong on the
7 night in question because I don't have blood samples. I
8 don't have an idea of exactly how much he had in him.

9 Q And you can't tell us how much control
10 the PCP had over his mind that night?

11 A No. I can only go by research.

12 Q Okay. But again, I want -- we will get
13 back to the research.

14 But specific to him, because that's who
15 we are here to talk about.

16 A Correct.

17 Q You can't tell these people, can you?

18 A Correct.

19 Q You can't tell them what the concentra-
20 tion of the PCP was?

21 MR. SGRO: Asked and answered.

22 THE COURT: Overruled.

23 Q (By Mr. Guymon) Whether or not it
24 controlled him, whether or not it affected him and if so
25 how? Him specifically?

1 A Him specifically I cannot say because
2 I don't know exactly how much he had in him, correct.

3 Q And we didn't administer any tests to
4 him specifically, did we?

5 A No, we did not.

6 Q And despite the fact they are avail-
7 able?

8 A No.

9 Q And you told me that you can't say what
10 his state of mind was that night? Is that correct?

11 A I cannot state with a hundred percent
12 certainty.

13 MR. CHRISTIANSEN: Objection. Mr. Guymon asks and
14 answers his own questions.

15 THE COURT: Is that what you told me you can't
16 tell me what his state of mind was? Let him answer.

17 THE WITNESS: Again, as I had stated, I cannot
18 comment on his exact state of mind without more data and
19 without probably witnesses.

20 Q (By Mr. Guymon) Okay. And actually
21 when we had that conversation we talked about a continuum
22 in it was your words that what we were talking about PCP is
23 a continuum? We are talking about on one end of the
24 continuum. You have little effect on a person's mind and
25 on the other side you have total disassociation, correct?

1 A Correct.

2 Q Okay. And here you did not -- did you

3 have an opinion as to where he was at on the continuum?

4 A I can only presume by the amount that

5 -- from my understanding and from the reports of how much

6 he's used and how long before he had used it.

7 Q And you told me that people acted out

8 when on PCP?

9 A Very often.

10 Q That if they had an aggressive behavior

11 this would exaggerate the aggressive behavior?

12 A Correct.

13 Q That if they had an anger control

14 problem, without it it was going to increase their anger

15 control?

16 A Correct.

17 Q Doctor, in this particular case have

18 you read any of the reports, the police reports?

19 A No, sir, I haven't.

20 Q Have you read the defendant's voluntary

21 statement to the police?

22 A No.

23 Q About the incident on the night in

24 question?

25 A No.

1 Q You have, however, read Dr. Bicker's
2 report associated with this case, have you not?

3 A Correct.

4 Q And you said that you did not doubt Dr.
5 Bicker's report. Is that correct?

6 A I believe what I stated was that it
7 seemed to be a plausible report, but I didn't have any
8 information on the other report that he referred to. So, it
9 was hard for me to comment on whether he was accurate with
10 his disagreement with some of the findings on the other
11 report.

12 Q And, Doctor, now the men that you work
13 with at the Mens -- was it the Mens --

14 A Right, California Mens Colony.

15 Q Individuals who had been criminally
16 punished?

17 A Correct.

18 Q That had been held accountable despite
19 their use of PCP?

20 A In most cases --

21 MR. CHRISTIANSEN: Objection. Speculation. How
22 can he testify?

23 THE COURT: He said he worked there. Lay a
24 foundation.

25 MR. CHRISTIANSEN: Correct.

1 MR. SGRO: To hold him there accountable was he
2 there during --

3 THE COURT: I don't know. We are going to lay a
4 foundation. Just a minute.

5 Q (By Mr. Guymon) Let me ask you this:
6 You and I had a conversation about accountability of
7 individuals while on PCP, did we not?

8 A Correct.

9 Q And you told me in all candor that --

10 MR. SGRO: Objection. Relevance as to whether or
11 not anyone Mr. Guymon especially believes someone to be
12 accountable even though they use PCP.

13 MR. GUYMON: That's the ultimate question for this
14 jury.

15 MR. SGRO: Accountability is a factual determina-
16 tion --

17 THE COURT: Overruled. They will make a factual
18 determination from the evidence presented to them and this
19 is necessary. Overruled.

20 Q (By Mr. Guymon) Did you and I speak
21 last night and did you indicate to me that despite the
22 voluntary PCP use you believed a person should be held
23 accountable?

24 MR. SGRO: Objection. Relevance.

25 MR. CHRISTIANSEN: That is the ultimate issue of

1 fact in this case.

2 THE COURT: That is.

3 Q (By Mr. Guymon) Do you have an opinion
4 as to relevance?

5 MR. SGRO: Relevance?

6 THE COURT: I don't know what the question is.

7 Q (By Mr. Guymon) Do you have an opinion
8 as to one's accountability while on PCP?

9 MR. SGRO: Relevancy.

10 MR. GUYMON: Judge, they are --

11 THE COURT: That's up to the jury. That's enough
12 for the jury, Mr. Guymon. Sustained. With the law given to
13 them by the Court.

14 Q (By Mr. Guymon) In this case, Doctor,
15 did the defendant tell you that he chose that night to go
16 with two of his friends over to someone's house and rob
17 them?

18 A I don't know that -- if we got into
19 exactly what was going on prior to that. Most of the
20 questions I asked were regarding his reaction afterwards.

21 Q Did he tell you that he knew at least
22 two or three people would be home?

23 A No, sir, I don't believe he told me
24 that.

25 Q Did he tell you that he knew that he

1 and his buddies were going over there to rob these kids?

2 MR. SGRO: Asked and answered.

3 THE WITNESS: No, sir.

4 THE COURT: No, he didn't answer that.

5 Q (By Mr. Guymon) Did he tell you that
6 his companions brought guns in a tote bag?

7 A No, sir.

8 Q Did he tell you that his companions
9 brought duct tape?

10 A No, sir.

11 Q Did he tell you that he and his
12 companions held these kids at gunpoint?

13 MR. CHRISTIANSEN: Objection. It assumes facts
14 not in evidence. Hasn't been presented by anybody in this
15 courtroom, Judge.

16 THE COURT: Sustained. Rephrase it.

17 Q (By Mr. Guymon) Did he tell you his
18 companions ordered the kids down to the floor?

19 A No, sir.

20 Q Face down?

21 A No, sir.

22 Q Did he tell you that he while his
23 companions were holding somebody duct taped on the ground
24 that he searched the house for money?

25 MR. SGRO: Your Honor, I object. Didn't get into

1 any facts. If he wants to go through the whole --

2 THE COURT: In the essence of time he didn't.

3 MR. SGRO: Didn't go into the facts at all.

4 THE COURT: Sustained.

5 Q (By Mr. Guymon) Would all of the
6 information in this case assist you in telling this jury
7 about specifically PCP and the effect on this man's mind on
8 the night in question?

9 A I suppose if I had several months to
10 really look through everything and do all of the
11 evaluations it would probably help me form a specific
12 opinion on his condition that night.

13 Q And you would agree that the more
14 information you have the more accurate your opinion would
15 be?

16 A The more accurate my opinion with
17 regard to what his -- where his mind was at at that exact
18 night. But not with regard to my opinion of research and
19 what I already have done.

20 Q And specifically to his mind, you
21 cannot address it, can you?

22 MR. SGRO: Asked and answered.

23 THE COURT: Overruled.

24 THE WITNESS: Specifically with his mind I can
25 only tell you what -- I can presume from the amount that I

1 have been told he probably consumed.

2 Q (By Mr. Guymon) Now, when you spoke to
3 him did he communicate to you in English?

4 A Yes, he did.

5 Q Did he answer your questions and the
6 questions put to him by --

7 A Very reluctantly. He didn't know where
8 I came from. He didn't know why I was there.

9 Q Nonetheless, despite his reluctance did
10 you understand his answers?

11 A Yes.

12 Q And information you cannot address his
13 mind that night --

14 THE COURT: Asked and answered. Sustained.

15 MR. GUYMON: That's all.

16 REDIRECT EXAMINATION

17 BY MR. CHRISTIANSEN:

18 Q Before you came and testified today you
19 reviewed Dr. Colosomo's (phonetic) report. Is that
20 accurate?

21 A Actually I did no see that. I didn't
22 receive fax.

23 Q Mr. Guymon referred to Dr. Bicker's
24 report and asked if you adopted that report. Do you
25 remember that question?

1 A Right. Right.

2 Q Do you adopt Dr. Bicker's report?

3 A No. I don't have enough information to

4 say whether it is accurate or inaccurate.

5 Q Did anything you heard here today

6 change your opinions about the effect of PCP on people's

7 mind?

8 A No, sir.

9 Q How about the effect of PCP on indivi-

10 duals who have low I.Q.?

11 A No, sir.

12 Q This test that Mr. Guymon kept talking

13 about that you would like to have, okay, that was a blood

14 test, right? To test the amount of blood in Mr. Smith's

15 system?

16 A Correct. And even if I had the amount

17 of blood, that isn't going to necessarily tell me a lot.

18 That would only prove in fact he did smoke but if it is

19 reasonable -- you know, if there is enough -- if it is

20 reasonable to assume he probably did and he behaved in a

21 certain way, his reactions were consistent with PCP after

22 the crime.

23 Q When would you have needed to get the

24 blood?

25 A Probably needed to get it immediately

1 after the crime.

2 Q That wasn't available, correct?

3 A Correct.

4 Q Talking to Mr. Guymon, how many times
5 did you talk to Mr. Guymon?

6 A Twice.

7 Q Couple times?

8 A Yes.

9 Q Made yourself available to the State?

10 A Yes.

11 Q Talked to them on the phone after
12 hours?

13 A Yes, that's correct.

14 Q Gave candid and full responses to him
15 that he is now questioning you about?

16 A Correct.

17 Q And after all that did anything change?

18 A No, sir.

19 Q And after all of that is it still your
20 opinion that when people are on PCP they do things that
21 they do not normally do?

22 A Yes, it is my opinion that PCP is
23 unlike any other drug that I think we have out there. It is
24 responsible probably for more violent behavior per use
25 probably than any other drug that I know of out there.

1 Q Referring to what's been marked for
2 identification as defense exhibit D, is PCP still a
3 disassociate?

4 MR. GUYMON: Judge, asked and answered.

5 THE COURT: Asked and answered on direct exami-
6 nation.

7 Q (By Mr. Christiansen) I guess the State
8 is conceding that then.

9 THE COURT: They are not conceding anything. What
10 they are doing -- that will be stricken from the record.
11 He has already testified to that. I don't know why you are
12 going into it.

13 Q (By Mr. Christiansen) Nothing Mr.
14 Guymon asked you today changed your mind?

15 A No, sir.

16 THE COURT: Thank you.

17 THE COURT: Mr. Guymon?

18 MR. GUYMON: Just one question.

19 RE CROSS-EXAMINATION

20 BY MR. GUYMON:

21 Q On eight to twelve times you have
22 testified previously and they have been for the defense,
23 have they not?

24 A That's correct.

25 Q In fact, you worked with this defense

1 team before, Mr. Sgro in the Daniels case?

2 A I believe I did.

3 Q I have no other questions.

4 THE COURT: Anything further?

5 MR. CHRISTIANSEN: No, your Honor.

6 THE COURT: Doctor, you are excused. You are
7 admonished not to discuss your discuss your testimony with
8 anyone until we complete the case.

9 Do you want to offer those?

10 MR. CHRISTIANSEN: Please, Judge.

11 THE COURT: Any objection?

12 MR. GUYMON: No.

13 THE COURT: All right. Those will be marked D and
14 E. They are hereby admitted into evidence.

15 Let's take our weekend recess, ladies
16 and gentlemen. Mr. Belt, I am going to ask you to come
17 back Monday morning at 9:15. Let's make it 9:15. If all
18 members of the regular panel and the three alternates are
19 present, my bailiff will excuse you at that time with the
20 thanks of the Court. Do you understand? But I want you to
21 come back to be sure we have everybody here.

22 Once again I want to admonish you you
23 must not discuss any of the facts of this case amongst
24 yourselves or with any other person, read, watch, or listen
25 to any news communicate about this trial whether it be

1 television, radio or newspaper or form any opinion about
2 the outcome until the matter is submitted to you for your
3 deliberation in the jury room.

4 You are excused until Monday morning at
5 9:15. You will have to leave your notebooks. When you do
6 come back report to the jury lounge and remain there until
7 the bailiff comes to get you.

8 Mr. Belt, I am telling you that so you
9 will know ahead of time. Okay.

10 (The weekend recess was
11 taken).

12 * * * * *

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

14 
15 JAMES A. HELLESO, CCR NO. 15
16 OFFICIAL COURT REPORTER
17
18
19
20
21
22
23
24
25

EXHIBIT 197

EXHIBIT 197

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENTEvent #
980814-1600

THIS PORTION TO BE COMPLETED BY OFFICER		
Crime MURDER W/DW	Date Occurred 081498	Time Occurred 18:02
Location of Occurrence 4825 TERRA LINDA		<input type="checkbox"/> City <input checked="" type="checkbox"/> County

Your Name (Last / First / Middle) CABRERA LUIS AMADO				Date of Birth / [REDACTED]		Social Security # NA		
Race HISPANIC	Sex MALE	Height 5.6	Weight 225	Hair BROWN	Eyes BROWN	Work Schd. (Hours) [REDACTED]	(Days Off) [REDACTED]	Business / School 1
Residence [REDACTED]		Bldg./Apt. # 15433		City LAS VEGAS	State NV	Zip Code 89121	Res. Phone: [REDACTED] Bus. Phone: [REDACTED]	
Address (Number & Street) [REDACTED]		Bldg./Apt. #		City	State	Zip Code	Occupation	Depart Date (if visitor)
Best place to contact you during the day HOME				Best time to contact you during the day				Can You Identify the Suspect? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

DETAILS

THERE WAS A GUY 'SKINHEAD' HE WAS STANDING RIGHT IN FRONT OF THE DOOR HE HAD A CAR PARKED IN THE DRIVEWAY IT HAPPENED IN BETWEEN 1:30 OR 2:00 O'CLOCK HE WAS WEARING A WHITE T SHIRT. WHITE MALE I CAN'T REALLY DESCRIBE THE KIND OF CAR OR COLOUR

JOSE FERNANDEZ I WROTE THIS STATEMENT
FOR LUIS CABRERA

I HAVE READ THIS STATEMENT AND I AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED HEREIN. THIS STATEMENT WAS
COMPLETED AT (LOCATION) **4801 E TROPICANA 33**
ON **14** DAY OF **AUG** AT **1920** (AM / PM), 19 **98**

Witness/Officer: [Signature]
(SIGNATURE)Witness/Officer: **D KRAUSE 4176**
(PRINTED)

LVMPD 85. (REV. 1-94)

SIGNATURE OF PERSON GIVING STATEMENT

023CORA002146

AA11507

EXHIBIT 198

EXHIBIT 198

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT CONTINUATION

Page 2 of 2

Event #: 980814-1600

At the house mostly white they drink
in & outside on the street.

the car I saw was a newer car
very clean no tinted window it was parked
with its right wheels to the curb. the guy
I saw in the door way was looked at
me and then looked back into the house.

The car I saw had a sporty front end
like a newer Grand-AM. I was gone about 45 min.
and the car was gone.

Witness:

James J. Buehl

[Signature]

SIGNATURE OF PERSON GIVING STATEMENT

006CORA000750

AA11510

EXHIBIT 199

EXHIBIT 199

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 1

EVENT: 980814-1600

SPECIFIC CRIME: MURDER WITH A DEADLY WEAPON, TIMES 4

DATE OCCURRED:

TIME OCCURRED:

LOCATION OF OCCURRENCE:

CITY OF LAS VEGAS

CLARK COUNTY

NAME OF PERSON GIVING STATEMENT: BATES, JEFF LYNN

DOB:

SOCIAL SECURITY #:

RACE: AMERICAN INDIAN

SEX: MALE

HEIGHT:

WEIGHT:

HAIR:

EYES:

WORK SCHEDULE:

DAYS OFF:

HOME ADDRESS:

HOME PHONE: 898-9670

LAS VEGAS, NV 89120

WORK ADDRESS:

WORK PHONE:

BEST PLACE TO CONTACT:

BEST TIME TO CONTACT:

The following is the transcription of a tape-recorded interview conducted by DETECTIVE J. BUCZEK, P#3702, LVMPD Homicide Section, on 08/14/98. Persons present are DETECTIVE BUCZEK and JEFF BATES.

Q. Jeff, what's your date of birth?

A. [REDACTED]

Q. Okay, and your social security number?

A. [REDACTED]

Q. Okay. And your race?

A. American Indian.

006CORA000751
AA11512

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 2

EVENT: 980814-1600
BATES, JEFF LYNN

- Q. Okay. And he's a male. Uh, adult, right?
- A. Yeah.
- Q. Okay. And, uh, his address is [REDACTED] Las Vegas, Nevada 89120.
Telephone number is [REDACTED]. Are you working anywhere currently?
- A. No, I'm not.
- Q. Okay. Are you aware that this is being taped?
- A. Yes.
- Q. Okay. And, on today's date, uh, you were driving down the street, is that correct?
- A. Well I was being driven down the street.
- Q. Being driven down the street, okay. Who was driving you?
- A. Uh, my girlfriend's brother.
- Q. O—
- A. Brian Patterson.
- Q. Okay. And, uh, were you driving towards your home or...?
- A. Away from my home.
- Q. Okay.
- A. Down this way.
- Q. So you were heading eastbound on Terra Linda?
- A. Yes, I was.
- Q. Okay. And, could you tell me what you saw.

006CORA000752
AA11513

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 3

EVENT: 980814-1600
BATES, JEFF LYNN

- A. I saw a white car parked in front of the house.
- Q. Okay. And the house is the one that has the crime scene tape around it right now?
- A. Yes, it is.
- Q. Okay.
- A. Car was facing westbound, the right tires to the curb.
- Q. Okay, so it was actually parked on the wrong side of the street?
- A. Yeah.
- Q. Okay.
- A. And I saw a white male standing in the doorway. Had a blue baseball cap, a white t-shirt and some baggy jeans.
- Q. Okay.
- A. And saw another person, I thought was a girl, standing more inside the house with her back turned. With, uh... it looked like a tan or a light dress. She had darker hair. Like dark brown.
- Q. Mm-hmm (affirmative).
- A. And then beyond her, just... I thought I seen someone movin', like inside the place.
- Q. Okay.
- A. And that's about all I saw.
- Q. Okay. Now the... the car, did you see if there was anyone in the car?
- A. No.

006CORA000753
AA11514

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 4

EVENT: 980814-1600
BATES, JEFF LYNN

- Q. You didn't see or--
- A. Uh, I didn't see anybody in the car.
- Q. Okay. And, uh, could you describe the car a little bit better?
- A. Um, it was a white car, four door. Had a trunk. And it was small, you know, like a smaller... it was a newer car.
- Q. Okay.
- A. It was pretty clean. The front end looked kinda like a Pontiac. Thought it was a... like a Pontiac Grand Am.
- Q. Okay.
- A. You know, 'cause it had, like, those pointy front ends.
- Q. Yeah.
- A. That's about it.
- Q. Okay. Did you notice anything, uh, about the wheels?
- A. Uh, no, I didn't.
- Q. So it--
- A. It didn't have tinted windows.
- Q. Okay. It didn't have--
- A. No.
- Q. --tinted windows. Okay. Did you notice, uh, what color interior?
- A. No, I didn't.

006CORA000754
AA11515

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 5

EVENT: 980814-1600
BATES, JEFF LYNN

- Q. Did you notice if it had a vinyl top or any... or a different color top?
- A. It was just solid white.
- Q. Solid white all over.
- A. Yeah.
- Q. Okay.
- A. Or gray or light.
- Q. Okay.
- A. I keep thinkin' it's white 'cause that's what color keeps...
- Q. Okay.
- A. ...comin' in but it could'a been, like, a light... some other color.
- Q. All right. And, uh, how about, uh, did you take notice to see if it... it had any dents on it or anything?
- A. Uh, no, I didn't notice any dents.
- Q. Okay.
- A. I didn't really, you know, examine the car that much.
- Q. Okay. Did you recognize the people at all?
- A. No, I didn't.
- Q. All right. Is there anything else that you may be able to remember that may be able to help me in my investigation?
- A. Not that I can think of. That's... I told you everything I saw.

006CORA000755
AA11516

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 6**

**EVENT: 980814-1600
BATES, JEFF LYNN**

Q. All right. Okay, that'll be the end. It's, uh, currently 2222 hours. Thank you very much.

I HAVE READ THIS STATEMENT CONSISTING OF 6 PAGES AND AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED HEREIN. THIS VOLUNTARY STATEMENT WAS COMPLETED AT 4745 TERRA LINDA ON THE 14TH DAY OF AUGUST, 1998 AT 2222 HOURS.

WITNESS: _____

WITNESS: _____

SIGNATURE OF PERSON GIVING STATEMENT

JB:alf
982921

006CORA000756
AA11517

EXHIBIT 200

EXHIBIT 200

DISTRICT OFFICES

1301 CORDONE AVENUE
RENO, NEVADA 89502 ☐
(775) 686-1000

A. A. CAMPOS BUILDING
215 E. BONANZA ROAD
LAS VEGAS, NEVADA 89158 ☐
(702) 486-3001

3920 E. IDAHO STREET
ELKO, NEVADA 89801 ☐
(775) 738-4088

119 E. LONG STREET
CARSON CITY, NEVADA 89701 ☐
(775) 687-5045

STATE OF NEVADA



DEPARTMENT OF
MOTOR VEHICLES AND PUBLIC SAFETY
DIVISION OF PAROLE AND PROBATION

KENNY C. GUINN
GOVERNOR

JOHN DREW
DIRECTOR

CARLOS C. CONCHA
CHIEF

☐ 1445 HOT SPRINGS ROAD, No. 104
CARSON CITY, NEVADA 89706
(775) 687-5040

September 15, 1999

Stewart Bell
District Attorney
Clark County
Las Vegas, Nevada

Dear Mr. Bell;

Please find attached copies of the pre-sentence investigation report, amended pre-sentence investigation report and Regimental Discipline letter pertaining to Terrell Cochise Young in criminal case no. C147393, Attempt Larceny From the Person. These documents are true and correct from our active files, and are copies of the originals which were submitted to Judge Joseph Bonaventure.

Sincerely,

John H. Springgate
Unit Manager
District IV, Las Vegas, Nevada

Approved:

Amy H. Wright
District Administrator
District IV, Las Vegas, Nevada

JHS/bgn

C153461
MARKED FOR IDENTIFICATION
STATE'S PROPOSED EXHIBIT

236



MARKED FOR IDENTIFICATION
State's Proposed Exhibit 236



(O) 2018

DISTRICT OFFICES

1301 CORDONE AVENUE
RENO, NEVADA 89502
(702) 688-1000

A. A. CAMPOS BUILDING
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STATE OF NEVADA



DEPARTMENT OF
MOTOR VEHICLES AND PUBLIC SAFETY
DIVISION OF PAROLE AND PROBATION

BOB MILLER
GOVERNOR

DONALD L. BROWN
JAMES H. WELLS
DIRECTOR

RICHARD E. WYETT, CHIEF
1445 HOT SPRINGS ROAD, NO. 104
CARSON CITY, NEVADA 89711
(702) 687-5040

AMENDED PRE-SENTENCE INVESTIGATION REPORT

NAME: TERRELL COCHISE YOUNG

DATE: 6-10-98

SS#: [REDACTED]

R/NR: R

CC#: C147393

SENTENCE DATE: 6-22-98

THE HON: JOSEPH T. BONAVENTURE

OFSE DATE: 11-21-97

J/DIS: 8TH DEPT: VI COUNTY: CLARK

ARREST DATE: 11-21-97

COUNSEL: DONN M. IANUZI, RETAINED

INFORMATION DATE: SECOND
AMENDED 02-05-98

DIST ATTY: STACY KOLLINS, DDA

CONVICTED: 02-05-98, BY
GUILTY PLEA

CO-DEF: NONE

OFFENSE/NRS: ATTEMPT LARCENY FROM THE PERSON (CATEGORY D FELONY/GM); NRS 193.330, 205.270: By imprisonment in the Nevada Department of Prisons for a minimum term of not less than one year and to a maximum term of not more than four years, and may be further punished by a fine of not more than \$5,000. Or, if treated as a gross misdemeanor, by a term of not more than one year in the county jail or by a fine of not more than \$2,000 or by both fine and imprisonment.

PLEA NEGO: The defendant agrees to plead guilty as to felony treatment, and after entry of plea the defendant will enter Boot Camp. If the defendant is successful he may withdraw his guilty plea as to felony treatment and be given gross misdemeanor treatment, with the State affirmatively recommending probation. If the defendant is not successful, felony treatment stands, and the State retains the right to argue at rendition of sentence.

ADD: [REDACTED]
Las Vegas, Nevada

FBI#: None listed

DOB: [REDACTED]

AGE: 18

SID#: None listed

LVMPD#: 1509343

PCN#: Pending

POB: Riverside, California

RACE/SEX: BMA

HT/WT: 5'9"/205

HAIR/EYES: Brown/Brown

ALIEN: N/A

RELEASED TO: [REDACTED]
ST. OF NEV. DIV. OF PAROLE & PROBATION

(O)-2018 (Rev. 7-96)

PRE-SENTENCE REPORT
TERRELL COCHISE YOUNG
CC# C147393

PAGE 2

TATTOOS/SCARS: None known

ILLEGAL: N/A

REG#: N/A

COUNTRY: N/A

CUSTODY STATUS: Out On Bond

AKA's: YOUNG, Terrell; WARREN, Terrell; WARREN, Cochise; YOUNG, Cochise;
YOUNG, Cochise Terrell

JAIL CREDIT: Total 128 DAYS 11-21-97 to 12-18-97 (CCDC) 27 days
REMAND: 12-18-97 to 02-16-98 (CCDC) 60 days
REMAND: 04-09-98 to 05-04-98 (Boot Camp) 25 days
05-04-98 to 05-20-98 (CCDC) 16 days

PRIOR RECORD AS DETERMINED BY DIVISION OF PAROLE AND PROBATION

ARRESTS: 1

OUTSTANDING WARRANTS: 0

STATES: N/A

CONVICTIONS:

FEL: 0

MISD: 0

JAIL: 0

PRISON: 0

PROBATION:

COMPL: 0

FAIL: 0

ACTIVE: 0

PAROLES:

COMPL: 0

FAIL: 0

ACTIVE: 0

CRIMINAL HISTORY:

Records of the Las Vegas Metropolitan Police Department, the Clark County Juvenile Probation Department, the Nevada Criminal Justice Information System and the Federal Bureau of Investigation reflect the following information:

JUVENILE:

ARREST DATE

OFFENSE

DISPOSITION

09-23-96
(LVMPD)

1. Battery With
Substantial Bodily Harm
2. Battery With
Substantial Bodily Harm
(See Supplemental
Information)

1. 10-03-96: dismissed.
2. 10-03-96: formal
probation, community
service.

11-04-96
(LVMPD)

Grand Larceny Auto

03-11-97: guilty Taking
Vehicle Without Owner's
Consent; formal
probation, restitution.

12-01-96
(LVMPD)

1. Intimidating a
Witness/Police Officer
2. Trespassing

1. 03-11-97: dismissed.
2. 03-11-97: dismissed.

**PRE-SENTENCE REPORT
TERRELL COCHISE YOUNG
CC# C147393**

PAGE 3

01-29-97 (CCSD)	School Disturbance (See Supplemental Information)	02-27-97: referred to probation.
03-06-97 (LVMPD)	1. Bench Warrant served. 2. False Info to Police (See Supplemental Information)	1. No further action. 2. 03-11-97: formal probation, community service work, restitution.
05-08-97 (LVMPD)	1. Obstructing a Police Officer 2. Resisting Arrest (See Supplemental Information)	05-0-97: referred to Intake.

Additionally, the defendant was arrested for the following offenses between September 23, 1996 and September 10, 1997 for which dispositions are unknown or no action was taken: Destitution; Arrest Warrant Served (2).

Mr. Young's juvenile arrest record also shows a September 23, 1996 arrest for Accessory to Auto Burglary. A search of the juvenile microfilm indicates that this is a clerical error and no such arrest occurred.

SUPPLEMENTAL INFORMATION: Supplemental information for arrest date September 23, 1996: Officers of the Las Vegas Metropolitan Police Department were dispatched to the Albertson's store at 2545 South Eastern Avenue on a 911 disconnect. Upon their arrival they made contact with two victims, one of which was bleeding from gashes on his head and back, and the other who was being transported by Mercy Ambulance for a suspected broken arm and internal injuries.

Witnesses to the incident stated that Terrell Young and another subject had been attempting to question two female juveniles at the bus stop in front of Albertson's as to their names and phone numbers when the two victims arrived on the bus to meet the girls. As the victims and the two girls left the bus stop to enter Albertson's they were confronted by the defendant and another subject who asked if they "had a problem". The victims stated "no" and continued towards the store. Prior to reaching the entrance the victims were again confronted by the defendant and six to eight friends who tried to start a fight threatening the victims with a broken bottle. The victims were able to enter the store followed by Young and his associates. The defendant and his associates then went to the pharmacy where they took walking canes from a display before returning to the entrance to the store. As the victims attempted to exit the store Young and his associates assaulted the victims with the canes beating them to the ground. The defendant continued to beat the victims until store personnel advised they were calling the police. When the defendant was arrested the next day he stated that the victims had a gun and a knife and he "couldn't let them get away with that".

Supplemental information for arrest date January 29, 1997: Officers of the Clark County School District were dispatched to Chaparral High School on a

**PRE-SENTENCE REPORT
TERRELL COCHISE YOUNG
CC# C147393**

PAGE 4

report of a disturbance. Upon arrival they observed a fight involving the defendant and four other subjects. The fight continued after the arrival of the police and all subjects had to be physically restrained.

Supplemental information for arrest date March 6, 1997: Officers of the Las Vegas Metropolitan Police Department were dispatched to 2700 Elm on a report of suspects from a fight the previous night. Upon the officers' arrival the subjects had left but were located at a convenience store 4 blocks away. When questioned by officers, the defendant lied about his identity. When the officers learned his correct identity they found juvenile warrants for Grand Larceny Auto and Trespassing. During the defendant's arrest he became belligerent, challenging the officers to a fight.

Supplemental information for arrest date May 8, 1997: Officers were dispatched to an apartment complex on a report of a disturbance over a vehicle tow. Upon their arrival the officers were informed by apartment employees that the defendant and another subject had an altercation with the tow truck driver and Mr. Young was seen standing on the driver's chest. When the officers attempted to take Mr. Young into custody the defendant fought the officers.

ADULT:

ARREST DATE	OFFENSE	DISPOSITION
09-18-97 (LVMPD)	REMAND: Probation Violation (Juvenile)	09-18-97: sentenced to 30 days; transferred to Clark County Detention Center as the defendant was 18 years old. 10-08-97: released; time served.
11-21-97 (LVMPD)	1. Burglary (F) 2. Robbery (F) REMAND: 12-18-97	CC# C147393, instant offense. Pled guilty to Attempt Larceny From the Person (F/GM). Rendition of sentence 04-09-98 in Dept. VI.

PROBATION ADJUSTMENT JUVENILE: Records of the Clark County Juvenile Probation Department indicate that the defendant was placed on formal probation on three occasions. Petitions for probation violation were filed on two occasions. In both cases the violation reports indicate that Mr. Young failed to report for several months, failed to pay restitution, and failed to complete community service work.

OFFENSE REPORT: Records of the Las Vegas Metropolitan Police Department and the Clark County District Attorney's Office reflect that the instant offense occurred substantially as follows:

Officers of the Las Vegas Metropolitan Police Department were dispatched to the Ross Dress-for-Less store located on South Decatur on a report that a

loss prevention officer was in foot pursuit of theft subjects after a physical altercation. One of the suspects, Terrell Young, was located a short distance away and transported back to the business.

Employees at the store stated that they observed Mr. Young and another suspect remove the sensor tag from a pair of Nike shoes and attempt to leave the store without paying for them. A loss prevention officer identified himself to the subjects as they were leaving the store whereupon Mr. Young told the other suspect to run. As the loss prevention officer grabbed the other suspect, Mr. Young told the officer "You better get off him". Mr. Young then attempted to physically free the other suspect from the officer's grip. The store manager then attempted to assist his employee and a struggle ensued where Mr. Young told both store employees that he was going to begin punching them if they did not let go. Mr. Young then began striking both the manager and the officer with his fists stating "Punk ass, I'm gonna fuck you up".

Terrell Young and the other suspect then ran out of the store followed by the officer. When the officer caught up to the two suspects Mr. Young told his accomplice to "keep running, get out of here". Terrell Young then came at the officer and attempted to strike him with his fist before running off in a different direction and hopping a wall where the officer lost contact. Las Vegas Metropolitan Police Dispatch was contacted with Mr. Young's description which was broadcast resulting in his arrest. Terrell Young was transported to the Clark County Detention Center where he was booked on the charges of Burglary and Robbery.

DEFENDANT STATEMENT: The defendant was interviewed at the Parole and Probation offices and submitted the attached written statement for the Court's consideration. The defendant states that during the instant offense he was not aware that his friend had stolen any shoes. Mr. Young went on to state that when he found out the shoes were stolen, that he offered to pay for them but the store refused and had him leave.

VICTIM INFORMATION: The store manager for Ross Dress for Less was contacted and stated that the store suffered no loss in this incident as the shoes were recovered. The manager went on to state that Mr. Young appeared to him to be a violent person with no respect for police or authority. The manager feels that the defendant should be incarcerated.

SOCIAL HISTORY

The following social history is as related by the defendant and is unverified unless otherwise noted:

Significant Family Information: (Yes) The defendant states that he was abused both physically and mentally by various relatives when he resided in California.

Marital Status: (Single)

Number of Children: None

PRE-SENTENCE REPORT
TERRELL COCHISE YOUNG
CC# C147393

PAGE 6

Child Support: (No) Amount: N/A Current: N/A

Significant Health Information: (No)

Significant Mental Health Information: (No)

Alcohol Abuse: (Yes) Mr. Young states that he only drinks on an infrequent basis approximately three times each year. When the defendant does drink, however, he drinks until he is drunk.

Controlled Substance Use: (No)

Education: The defendant states that he completed the 11th grade at Valley High School. Terrell Young also states that he attended adult education classes prior to going to Boot Camp.

Military: (No) **Branch/Discharge: N/A**

Residential: (UNSTABLE) **Time in Community: 2 years.**

Present Employer: (UNEMPLOYED)

Previous Employment: Mr. Young states that his only employment has been for one week selling candy through the Student Work Program at Valley High School.

Income: None

Additional Sources: The defendant is supported by his mother.

Financial Assets: None **Debts:** None

Community Supervision Plan: If granted probation in this case, the defendant states that he plans on continuing to reside with his mother at [REDACTED], Las Vegas, Nevada and complete high school.

EVALUATION: Before the Court for rendition of sentence is the defendant, TERRELL COCHISE YOUNG, who has entered a plea of guilty to the information charging: Attempt Larceny From the Person, a felony or gross misdemeanor.

Terrell Young is an eighteen year old first time adult offender with an extensive juvenile arrest history. As a juvenile Mr. Young has been arrested for Grand Larceny Auto, Trespassing, False Information to a Police Officer, Intimidating a Police Officer, Obstructing a Police Officer, Resisting Arrest, School Disturbance, and Battery With Substantial Bodily Harm. In most of these arrests the defendant was either involved in a fight or assault or became violent when arrested.

In the instant offense Mr. Young demonstrates a propensity for violence assaulting store employees on several separate instances as he attempted to steal a pair of Nike shoes. Records of the Clark County Juvenile Probation Department indicate that probation violation petitions were filed twice. In both cases the petitions allege failure to report and failure to complete mandated programs.

PRE-SENTENCE REPORT
TERRELL COCHISE YOUNG
CC# C147393

PAGE 7

Terrell Young moved to the State of Nevada in 1996 from California. Mr. Young states that he suffered both physical and mental abuse from relatives until he left California to relocate to Nevada. The defendant has completed the 11th grade in high school and states he is interested in completing his education. The defendant's employment history is virtually non-existent. Terrell Young has never married nor has he fathered any children. The defendant denies the abuse of alcohol or the use of any controlled substances. Mr. Young does admit that when he drinks he drinks to get drunk.

In view of the defendant's history of violence and his lack of cooperation with both juvenile probation and this Division, the Division of Parole and Probation would consider Terrell Young as an unsuitable candidate for community supervision. Mr. Young's history of assaultive behavior constitutes a danger to any innocent person in this community. Therefore, the following recommendation is respectfully submitted for the Court's consideration.

PRE-SENTENCE REPORT
TERRELL COCHISE YOUNG
CC# C147393

PAGE 8

RECOMMENDATION:

IF TREATED AS A FELONY: In addition to the \$25 Administrative Assessment fee, it is the recommendation of the Division of Parole and Probation that the defendant, TERRELL COCHISE YOUNG, be sentenced to a maximum term of THIRTY FOUR (34) MONTHS with the minimum parole eligibility of TWELVE (12) MONTHS in the Nevada Department of Prisons.

IF TREATED AS A GROSS MISDEMEANOR: In addition to the \$25 Administrative Assessment fee, it is recommended by the Division of Parole and Probation that the defendant, TERRELL COCHISE YOUNG, be sentenced to a term of ONE (1) YEAR in the Clark County Detention Center.

Susp. 3 yrs

Respectfully submitted,

CARLOS CONCHA, CHIEF

By Cleveland L. Huerfano
Jeffrey S. Lindsay, Officer
Division of Parole and Probation
District IV, Las Vegas, Nevada

APPROVED:

John H. Springgate
John H. Springgate, Unit Manager
Court Services Unit III

JSL/eg
FY98-3731A

Search
educ.
40 C.S. - period
any other cond.
as deemed

Statement of Terrell Young 701 110007 11/21/99

DEFENDANT'S STATEMENT

Write in your own words the circumstances of your offense. Why you committed the offense, your present feelings about your situation and why you may be suitable for probation. A copy of this statement will be sent to the judge. Write or print clearly. If using a pencil, please write as dark as possible.

We were at Ross and my friend got
we went shopping some shoes and we was
walking out the store but my girlfriend
and I was coming out the store first and
he was behind us I did not know he was
stealing so then one of the workers grab
him and I thought someone was trying to
hurt him cause the man was an underwear.
At the time I found out what was
going on I already lost my temper so
when I found out it was about some
shoes I offered to pay for them, and they
said no, they told us just to leave. and I
when I was walking home the police picked
me up and brought me back to Ross and
I got arrested I served 3 months in jail
and got bailed out to serve 6 months in
Bo Camp and when I turned myself in
I spend 1 week in jail till I went to
Bo Camp when I got there they reported
me cause my crime was violent so now
I'm on bail again till my court date on
June 22, my feelings about this situation now
is that I shouldn't jump in my friends
situation cause now I'm paying the price for
his faults. I think I would be suitable
for probation cause I done enough time for
something I didn't do.

Signature

Terrell Young

Date

5/22/98

DISTRICT OFFICES

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(702) 688-1000

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CARSON CITY, NEVADA 89706
(702) 687-5045

STATE OF NEVADA



DEPARTMENT OF
MOTOR VEHICLES AND PUBLIC SAFETY
DIVISION OF PAROLE AND PROBATION

May 14, 1998

RECEIVED
DISTRICT ATTORNEY
FY98-3731
MAY 18 3 33 PM '98
BOB MILLER
GOVERNOR
DONALD L. DENISON
DIRECTOR

CARLOS C. CONCHA, CHIEF
1445 HOT SPRINGS ROAD, NO. 104
CARSON CITY, NEVADA 89706
(702) 687-6040

The Honorable Joseph T. Bonaventure
Department VI
Eighth Judicial District Court
Las Vegas, Nevada

REGIMENTAL DISCIPLINE - BOOT CAMP

Re: YOUNG, Terrell Cochise
CC#: C147393
Sentencing Date: May 21, 1998

Dear Judge Bonaventure:

On April 9, 1998, the defendant was referred to the Nevada Department of Prisons for completion of the Regimental Discipline Program (Boot Camp). He was returned to the Clark County Detention Center on May 4, 1998; his total evaluation period covered 25 days. Total in custody time on this case, inclusive of jail time, is 129 days.

The Division of Parole and Probation is in receipt of and has reviewed the Department of Prisons' evaluation report. They indicate that Terrell Young has been found ineligible for the program of Regimental Discipline as the instant offense involves an act of violence.

The defendant is viewed by the Division of Parole and Probation as an unsuitable candidate for community supervision. Therefore, the following recommendation is respectfully reaffirmed for the Court's consideration.

Re: YOUNG, Terrell Cochise
CC#: C147393

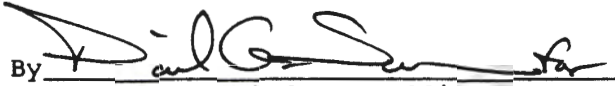
RECOMMENDATION: In addition to the \$25 Administrative Assessment fee, it is the recommendation of the Division of Parole and Probation that the defendant, TERRELL COCHISE YOUNG, be sentenced as follows:

IF TREATED AS A FELONY: To a maximum term of THIRTY-FOUR (34) months with the minimum parole eligibility of TWELVE (12) months in the Nevada Department of Prisons.

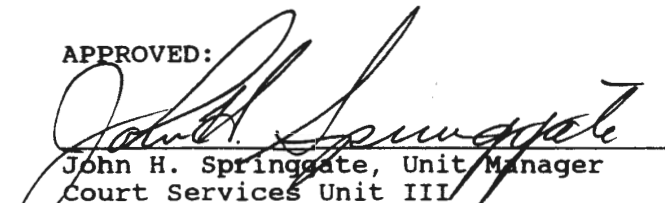
IF TREATED AS A GROSS MISDEMEANOR: To a term of ONE (1) year in the Clark County Detention Center.

Respectfully submitted,

CARLOS CONCHA, CHIEF

By 
Jeffrey S. Lindsay, Officer
Division of Parole and Probation
District IV, Las Vegas, Nevada

APPROVED:


John H. Springgate, Unit Manager
Court Services Unit III

JSL/clr



BOARD OF COMMISSIONERS
BOB MILLER
GOVERNOR
FRANKIE SUE DEL PAPA
ATTORNEY GENERAL
DEAN HELLER
SECRETARY OF STATE

**SOUTHERN DESERT
CORRECTIONAL CENTER
NEVADA BOOT CAMP**

ROBERT BAYER
DIRECTOR
SHERMAN HATCHER
WARDEN
LT. PETE SEAGRIF
SUPERVISOR

30 April 1998

THE HONORABLE JUDGE JOSEPH T. BONAVENTURE
EIGHTH JUDICIAL DISTRICT COURT
200 SOUTH THIRD STREET
LAS VEGAS, NEVADA 89155


RE: Young, Terrell Cochise
CASE#: C147393

Dear Judge Bonaventure,

Inmate Young was received at Southern Desert Correctional Center on 4-30-98, pursuant to your order that he be committed to the custody of the Director of Nevada Department of Prisons for not more than 190 days. An initial evaluation was conducted on 4-30-98, when he completed the reception process.

Inmate Young is being returned to the courts, having been found ineligible for participation in the Program of Regimental Discipline (Boot Camp). Per NRS 176.2248 an individual must have been convicted of a felony involving an act of violence. Inmate Young's instant offense does involve an act of violence.

The committee recommends, based on the above facts, that probation **NOT** be granted. Please do not hesitate to contact me if any additional information is needed at 702-879-3046.


LT PETE SEAGRIF, LEADER
NEVADA BOOT CAMP

PS/ps

cc: I-FILE
T-FILE
SDCC TRANSPORT

P.O. BOX 208
INDIAN SPRINGS, NEVADA 89018

EXHIBIT 201

EXHIBIT 201

DISTRICT OFFICES

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(702) 687-5045

STATE OF NEVADA



DEPARTMENT OF
MOTOR VEHICLES AND PUBLIC SAFETY
DIVISION OF PAROLE AND PROBATION

BOB MILLER
GOVERNOR

DONALD L. DENISON
XXXXXXXXXXXXXXXXXXXX
DIRECTOR

RICHARD E. WYETT, CHIEF
CAPITOL COMPLEX
1445 HOT SPRINGS ROAD, NO. 104
CARSON CITY, NEVADA 89710
(702) 687-5040

NAME: SIKIA SMITH

SS#: [REDACTED]

CC#: C152407

THE HON: JOHN S. MCGROARTY

J/DIS: 8TH DEPT: XVI COUNTY: CLARK

COUNSEL: P. BELLON, RETAINED

DIST ATTY: EDWARD R.J. KANE, DDA

DATE: 9-18-98

R/NR: R

SENTENCE DATE: 10-1-98

OFSE DATE: 5-21-98

ARREST DATE: 5-21-98

INFORMATION DATE: 8-6-98

CONVICTED: 8-13-98, BY
GUILTY PLEA

CO-DEF: NONE

OFFENSE/NRS: COUNT II - POSSESSION OF CONTROLLED SUBSTANCE (CATEGORY E FELONY); NRS 453.336: By imprisonment in the Nevada Department of Prisons for a minimum term of not less than one year and to a maximum term of not more than four years, and may be further punished by a fine of not more than \$5,000. The Court shall order probation.

POSSESSION OF CONTROLLED SUBSTANCE (F); NRS 453.3363 (1): The Court, without entering a judgment of conviction and with the consent of the defendant, may suspend further proceedings and place the defendant on probation pursuant to terms defined by Statute.

PLEA NEGOTIATION: The State has agreed to make no recommendation at sentencing and will not oppose treatment under NRS 453.3363.

ADD: [REDACTED]
Las Vegas, Nevada

FBI#: [REDACTED]

DOB: [REDACTED]
Also uses [REDACTED]

AGE: 18

SID#: None Listed

LVMPD#: 1594788

PCN#: 08352742

POB: Los Angeles, California

RACE/SEX: BMA

HT/WT: 5'8"/135 (Scope Reflects 5'10"/130)

HAIR/EYES: Black/Brown

ALIEN: (No)

THIS REPORT NOT TO BE REPRODUCED OR
RELEASED WITHOUT THE AUTHORIZATION OF
ST. OF NV. DEPT. OF PAROLE AND PROBATION
RELEASED TO:

C1530
MAILED FOR
State's Proposed



AA11533

PRE-SENTENCE REPORT
SIKIA SMITH
CC#C152407

PAGE 2

TATTOOS/SCARS: Unknown

ILLEGAL: (No)

REG#: N/A

COUNTRY: N/A

CUSTODY STATUS: Released on
Own Recognizance (In
custody CCDC on other case)

AKA's: None listed

JAIL CREDIT: 1 DAY 5-21-98 to 5-22-98 (CCDC)

PRIOR RECORD AS DETERMINED BY DIVISION OF PAROLE AND PROBATION

ARRESTS: 5

OUTSTANDING WARRANTS: 1

STATES: Nevada

CONVICTIONS:

FEL: 0

MISD: 0

JAIL: 0

PRISON: 0

PROBATION:

COMPL: 0

FAIL: 0

ACTIVE: 0

PAROLES:

COMPL: 0

FAIL: 0

ACTIVE: 0

CRIMINAL HISTORY:

Records of the Las Vegas Metropolitan Police Department, the California Youth Authority, and the National Crime Information Center reflect the following information:

JUVENILE:

ARREST DATE	OFFENSE	DISPOSITION
6-4-96 (Pasadena PD, California)	Possession Narcotic Substance	Detained juvenile hall.
7-20-96 (Los Angeles PD, California)	Possession Narcotic Controlled Substance	7-23-96 Petition requested.
5-29-97 (Los Angeles PD, California)	Possession Narcotic Controlled Substance	5-30-97 Petitioned and detained.

AA11534

PRE-SENTENCE REPORT
SIKIA SMITH
CC#C152407

PAGE 3

ADULT:

ARREST DATE	OFFENSE	DISPOSITION
5-21-98 (LVMPD)	Trafficking in Controlled Substance (Cocaine) (F)	CC#C15240 Instant Offense. On 8-13-98 pled guilty to Possession of Controlled Substance (Cocaine) (Category E Felony), Rendition of sentence is 10-1-98 in Department XVI.
9-8-98 (LVMPD)	Counts 1-4: Murder With a Deadly Weapon (F) Counts 5-8: Robbery With a Deadly Weapon (F) Counts 9-12: Kidnapping First Degree With a Deadly Weapon (F) Count 13: Burglary With a Deadly Weapon (F)	9-25-98, Preliminary Hearing in Justice Court.

Additionally, the defendant has been arrested for the following offenses which were either dismissed, denied, insufficient evidence was present, or the dispositions are unknown: Conspiracy to Sell Controlled Substance, Driving Without a License, and Possession of Narcotic Paraphernalia.

The defendant has a warrant out a Las Vegas Municipal Court for the offense of Failure to Appear: Driving Without a Valid Drivers License.

OFFENSE REPORT: Records of the Las Vegas Metropolitan Police Department and the Clark County District Attorney's Office reflect that the instant offense occurred substantially as follows:

On May 21, 1998, officers of the Las Vegas Metropolitan Police Department became aware of narcotic activities occurring at [REDACTED] [REDACTED] [REDACTED], Las Vegas, Nevada which is the Tivon Apartments.

On May 21, 1998, a confidential informant was used to conduct a controlled buy of narcotics. Two \$10 bills which were recorded were used in this narcotics buy.

AA11535

PRE-SENTENCE REPORT
SIKIA SMITH
CC#C152407

PAGE 4

Due to the above, a search warrant was obtained for the listed address and was executed on that day. Upon entering the residence, officers located four people: Douglas McGhee, Michael Finley, Sikia Smith, and Christopher Taylor. All four subjects were sitting inside the apartment at the kitchen table.

After securing the scene, a search was conducted of the residence. Found during the search was 34 grams of a green leafy substance which NIK tested for marijuana and 2.8 grams of an off-white rocklike substance which NIK tested positive for cocaine. These items were found on the kitchen table where the subjects were located. An additional 3.5 grams of an off-white rocklike substance was also found and NIK tested positive for cocaine. Also found in the residence was a silver hanging scale, owe sheets, two purple metal pipes, and the two \$10 bills which were used during the Las Vegas Metropolitan controlled buy. Officers retrieved approximately \$586 in U.S. currency and a .22 caliber handgun, serial number M078582.

All four subjects were arrested for Trafficking in Controlled Substance. All subjects were then transported to the Clark County Detention Center where they were booked accordingly.

SUPPLEMENTAL INFORMATION: The defendant is a confirmed member of the Brims Gang. The Las Vegas Metropolitan Police Department first had contact with the defendant in May of this year.

DEFENDANT'S STATEMENT: The defendant was interviewed at the Division of Parole and Probation on August 31, 1998. The defendant denied any involvement in using, possessing or selling any kind of drugs. The defendant indicated he had no idea that any drugs were in the residence when the police came. Attached is the defendant's written statement for the Court's consideration.

CO-OFFENDERS: Michael Tom Finley (#1514722) pled guilty to Possession of Controlled Substance with Intent to Sell, a Category D Felony on August 13, 1998. Sentencing is scheduled for October 1, 1998 in Department XVI.

Christopher Boyd Taylor (#1361739) pled guilty to Possession of Controlled Substance with Intent to Sell, a Category D Felony on August 13, 1998. Sentencing is scheduled for October 1, 1998 in Department XVI.

The charges against Douglas Dwain McGhee (#1816027) have been dismissed.

SOCIAL HISTORY:

The following social history is as related by the defendant and is unverified unless otherwise noted.

AA11536

PRE-SENTENCE REPORT
SIKIA SMITH
CC#C152407

PAGE 5

Significant Family Information: The defendant was born and raised in Los Angeles, California by his biological mother. He did not know his father due to the fact that his father was incarcerated for murder. He has one sibling.

Marital Status: (Single)

Number of Children: 0

Child Support: N/A **Amount:** N/A **Current:** N/A

Significant Health Information: The defendant suffers from asthma for which he utilizes an inhaler.

Significant Mental Health Information: (No)

Alcohol Abuse: (No)

Controlled Substance Use: The defendant admits to past usage of marijuana and cocaine. He indicated he began using marijuana at the age of 13 and cocaine at the age of 15. He states he stopped using all drugs six months ago. When he was using drugs he used one or two rocks of cocaine per day and a half ounce of marijuana per day. He stopped using drugs because he was, "tired of it".

Education: The defendant graduated from [REDACTED] located in Los Angeles, California in 1996. He has not furthered his education.

Military: No **Branch/Discharge:** N/A

Residential: (STABLE) **Time in Community:** 4 months

Present Employer: (UNEMPLOYED)

Previous Employment: The defendant has never been employed.

Income: 0 **Additional Sources:** Mother

Financial Assets: 0 **Debts:** 0

Community Supervision Plan: If granted the privilege of community supervision, the defendant plans to reside at [REDACTED] z, Las Vegas, Nevada. He will reside with his uncle [REDACTED]. He would like to obtain gainful employment.

EVALUATION: Before the Court for rendition of sentence is the defendant, SIKIA SMITH, who has entered a plea of guilty to the information charging Count II-Possession of Controlled Substance (Category E Felony).

AA11537

PRE-SENTENCE REPORT
SIKIA SMITH
CC#C152407

PAGE 6

The defendant has been arrested on five occasions. The instant offense will be defendant's first adult felony conviction. All of his arrests either juvenile or adult stem from narcotic use.

The defendant is an 18 year old who was raised by his biological mother in Los Angeles, California. He did not know his biological father due to the fact that his father was incarcerated in prison. The defendant has never been married nor has he fathered any children. His education is complete having graduated high school in 1996. He suffers from asthma and utilizes an inhaler. He does not suffer from any mental ailments. The defendant denies the use of alcohol, however, admits to past usage of cocaine and marijuana. His residential status is unstable. The defendant has resided in the Las Vegas area for only four months. He has never been employed nor has he ever served in the military. He indicates he is financially supported by his mother who gives him \$300 to \$400 per month.

The Division of Parole and Probation does not view the defendant as a viable candidate for community supervision. The defendant does not take responsibility for his actions in the instant offense. He indicates that he did not know that drugs were in the residence. Some of the narcotics found by police officers were found at the dining room table where all four subjects were sitting at the time the officers made entry into the residence. It is unexplainable how the defendant did not know the drugs were in the house. This officer confronted the defendant as to his possible inaccuracies as to his involvement, however, the defendant continued to deny any illegal actions.

The defendant was arrested on September 8, 1998 for four counts of Murder With a Deadly Weapon, four counts of Robbery With a Deadly Weapon, four counts of Kidnapping First Degree With a Weapon, and Burglary With a Deadly Weapon. These charges are pending.

The defendant is an admitted active member of the Brims Gang. It should be noted that the co-offenders involved in the instant offense are also associated with the Brims Gang. The offense which the defendant pled guilty to is a mandatory probation grant per statute. Therefore, the following recommendation is respectfully submitted for the court's consideration.

AA11538

PRE-SENTENCE REPORT
SIKIA SMITH
CC#C152407

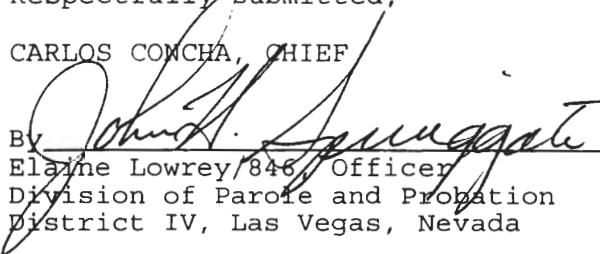
PAGE 7

RECOMMENDATION: In addition to the \$25 Administrative Assessment and \$60 Drug Analysis fees, it is the recommendation of the Division of Parole and Probation that the defendant, SIKAI SMITH, be sentenced to a maximum term of FORTY EIGHT (48) months with a minimum parole eligibility of TWELVE (12) months in the Nevada Department of Prisons; such sentence be suspended and the defendant placed on an indeterminate period of probation not to exceed FIVE (5) years under the following special conditions:


1. That the defendant submit to a search of person, residence, vehicle or any property under the defendant's control, at any time deemed necessary by any probation officer for the detection of controlled substances and weapons.
2. That the defendant enter and complete counseling for substance abuse, as deemed necessary by the Division of Parole and Probation.
3. That the defendant complete 16 hours of community service work each month of the term of probation not to exceed the provisions of NRS 176.087 if not fully employed.
4. The defendant shall not associate with any gang associates.
5. That pursuant to NRS 176.185, the defendant be supervised in the Nevada Division of Parole and Probation Intensive Supervision Program, to include electronic monitoring for a period deemed appropriate by the Division.
6. That the defendant submit to urinalysis as deemed appropriate by the Division of Parole and Probation.

Respectfully submitted,

CARLOS CONCHA, CHIEF

By 
Elaine Lowrey/846, Officer
Division of Parole and Probation
District IV, Las Vegas, Nevada

APPROVED:


David G. Sonner/470, Unit Manager
Court Services Unit I
EL/bm
FY99-0790

AA11539

PSI/c

DEFENDANT'S STATEMENT

Write in your own words the circumstances of your offense. Why you committed the offense, your present feelings about your situation and why you may be suitable for probation. A copy of this statement will be sent to the judge. Write or print clearly. If using a pencil, please write as dark as possible.

I was just here to visit my Brother in Law and I was staying with him at the time I was not aware of what was going on until the police came and tore up the place looking for drugs I did not know what they came for until I saw them finding drugs they took my money saying that it was drug money But it was not because I never had anything to do with drugs only in my past but it was not for sales only for my use I never had anything to do with this case I was never selling anything and I don't like being caught up in things like this because I make me look bad and I'm not a bad person make misjudged but not bad and I hope I can make the best of this and not go to jail for something I didn't do.

Signature

Adria Smith

Date

8-31-98

EXHIBIT 202

EXHIBIT 202

DFT T049781APR1999 9904 DFT (DISPLAY FULL TRANSCRIPT) BACK
 Action * ID# 088376 Sch 090 2 99
 Grd.Lvl SMITH SIKIA L Math Read Writing
 GPA : 1.00 Total Points: 45.00 Units Earn.: 35.00 Units Attem. 45.00
 Rank: 0 of 0 Gradu.:
 Sch Year Sem Yrs CourseSec Title Dept. Er.Unit Sem.Gr Sp
 090 96 1 10 01090/001 ENGLISH 1A EN 5.00 D-
 10 04246/001 GEN MATH 1A MA 5.00 F
 10 06334/001 PHYSICAL SCI A SH 5.00 F
 10 07127/001 ETHNIC STUDIES SS 5.00 D-
 090 97 1 10 01000/001 ENG 2A EN 5.00 D
 10 04246/001 GEN. MATH 1A MA 3.00 D
 10 05000/001 P.E. CREDIT PE 5.00 B
 10 06334/001 PHY SCI A SH 5.00 D
 10 07090/001 WLD HIST. A SS 5.00 D

(SP = 'X' indicates No GPA ; No Credits) @

09:39:30:42 INQUIRY REQUEST ENVMT 1
 ENVMT 1 FORM UP COL 11 ROW 2 PAGE
 Fri Apr 2, 1999 2:48 AM ENQ 1 2 RCV 1 2 [SYS]<BTE2>

This student has 35 units. All the records for this student was sent to the District to put on Micro film.

ROSE CITY HIGH, RECORDS OFFICE
 PASADENA UNIFIED SCHOOL DISTRICT
 ROSE CITY HIGH SCHOOL
 325 S. OAK KNOLL
 PASADENA, CA 92310
 (818) 798-0541
 FAX (818) 683-0308

H. L. Long
 4-19-99

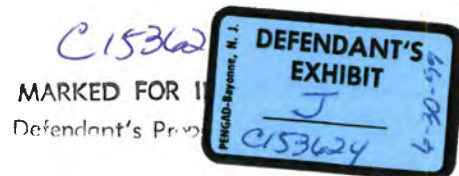


EXHIBIT 203

EXHIBIT 203

LAST NAME FIRST MIDDLE CHECK SEX
 SIKIA L. ☐ M ☒ F
 BIRTH DATE MONTH DAY YEAR PLACE OF BIRTH CITY STATE HOW VERIFIED
 10-9-91 10-9-91 LOS ANGELES CALIFORNIA S/R
 PRIOR SCHOOL SCHOOL NAME CITY STATE
 CLENDON STREET SCHOOL LOS ANGELES CALIF.



PHOTOGRAPHS

**CUMULATIVE RECORD
 JUNIOR AND SENIOR HIGH SCHOOLS**
 Los Angeles Unified School District
 Los Angeles, California

1. IDENTIFICATION DATA

2. JUNIOR HIGH SCHOOL RECORD

ALL SUBJECTS RECORDED IN THIS SECTION ARE GRADE LEVEL OF COLUMN IN WHICH POSTED, UNLESS OTHERWISE INDICATED.

SCHOOL	MT. VERNON	THANAL	PHANN	MANA	SANDERS	SAN DIEGO	COMPTON	SAN DIEGO	KOENIG	VERDO
DATE OF ENTRANCE	07/05/91	10-9-91	2-14-92		4-11-92				1-76-95	2-13-95
DATE OF LEAVING	10-08-91									5-4-95
LEFT TO	MANNA									Belmont HS
SEMESTER ENDING	12/20/91	12-20-92	SPRING 92	FALL 92	SPRING 94	FALL 94				

GENERAL SUBJECT FIELD	SPECIFIC SUBJECT TITLE	SEM. PER. CREDITS	MADE IN SUBJECTS	WORK HABITS	COOPERATION	SPECIFIC SUBJECT TITLE	SEM. PER. CREDITS	MADE IN SUBJECTS	WORK HABITS	COOPERATION	SPECIFIC SUBJECT TITLE	SEM. PER. CREDITS	MADE IN SUBJECTS	WORK HABITS	COOPERATION	CREDITS	TOTAL CREDITS
ENGLISH	ENG 7A	5.0	F	U		Eng 7	0	NC			Eng 8	0	FA				
SOCIAL STUDIES	LANDS PEOP A	0.0	F	U		US Hist 7	0	FA			US Hist 8	0	FA				
MATHEMATICS	MATH 7A	5.0	D	U		Math 7	0	NC			Adv Math	5	D				
SCIENCE	BIO SCI 7	5.0	D	U		Science 7	0	NC			Adv Sci	0	FA				
FOREIGN LANGUAGE	BEO PE A	0.0	F	U		Phys Ed 7	5	C			Comp 8	0	FA				
PRACTICAL ARTS	HOMEROOM 7	0.0	F	U		Advisory	0	NC			Eng 8	0	FA				
ART	ENG 7A	5.0	D			Grade 7 RPT					Eng 9A	0	FA				
MUSIC	MATH 7B	0	FA			MANNA MIDDLE SPR 92					Eng 10	5	D				
PHYSICAL EDUCATION	Eng 7A RPT					Eng 7D	5	D			Phys Ed 7	5	C				
	Eng 7A RPT					Math 7	0	FA			Phys Ed 8	5	C				
	Eng 7A RPT					Science 7	5	D			Phys Ed 9	0	FA				
	Eng 7A RPT					Eng 7B	5	D									
	Eng 7A RPT					Eng 7C	5	D									
	Eng 7A RPT					Eng 7D	5	D									
	Eng 7A RPT					Eng 7E	5	C									
	Eng 7A RPT					Eng 7F	5	C									

3. EXPLANATION OF MARKS AND ABBREVIATIONS

4. TRANSCRIPT RECORD

SUBJECT MARKS	WORK HABITS AND COOPERATION	SPECIAL CLASSES
A Markedly Superior	E Excellent	AP Advanced Placement
B Superior	S Satisfactory	E Academically Enriched
C Satisfactory	D Needs to Improve	H Honors
D Needs to Improve	F Little or no progress	ESL English Second Language
F Little or no progress	INC Incomplete	S Special Education
INC Incomplete	NM No Mark	R Remedial

DATE	TRANSCRIPT SENT TO:	DATE	TRANSCRIPT SENT TO:

5. SENIOR HIGH SCHOOL RECORD

SCHOOL	Adelphi		BELMONT	
DATE OF ENTRANCE	05-15-95		7-5-95	
DATE OF LEAVING			8-25-95	
LEFT TO			SAN DIEGO	
SEMESTER ENDING	12-20-95		12-23-95	
	FIRST SEMESTER		SECOND SEMESTER	
ENGLISH			FIRST SEMESTER	
			SECOND SEMESTER	
SOCIAL STUDIES			FIRST SEMESTER	
			SECOND SEMESTER	
SCIENCE			FIRST SEMESTER	
			SECOND SEMESTER	
MATHEMATICS			FIRST SEMESTER	
			SECOND SEMESTER	
FOREIGN LANGUAGE			FIRST SEMESTER	
			SECOND SEMESTER	
ART			FIRST SEMESTER	
			SECOND SEMESTER	
BUSINESS EDUCATION			FIRST SEMESTER	
			SECOND SEMESTER	
MUSIC			FIRST SEMESTER	
			SECOND SEMESTER	
HOMEMAKING			FIRST SEMESTER	
			SECOND SEMESTER	
WORK EXPERIENCE			FIRST SEMESTER	
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INDUSTRIAL ARTS			FIRST SEMESTER	
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PHYSICAL EDUCATION			FIRST SEMESTER	
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6. EXTRA SEMESTERS IN SENIOR HIGH SCHOOL

7. GRADUATION DATA

SCHOOL: DATE OF ENTRANCE: DATE OF LEAVING: DATE OF GRADUATION FROM SENIOR HIGH SCHOOL: MONTH DAY YEAR

CLASS RANK: NO. IN CLASS: GPA: EXPLANATION: A-4 B-3 C-2 D-1 FAIL-0

ACCREDITED BY WESTERN ASSOCIATION OF SCHOOLS AND COLLEGES

ACCREDITED BY WESTERN ASSOCIATION OF SCHOOLS AND COLLEGES

HIGH SCHOOL: BELMONT HIGH SCHOOL

CIS
 MARKED FOR
 Defendant's Pro
 DEFENDANT'S EXHIBIT
 K
 C153624

OFFICIAL TRANSCRIPT
 BELMONT HIGH SCHOOL

APR 20 1999

EXHIBIT 204

EXHIBIT 204

[illegible]

DEFENDANT'S
EXHIBIT
L
C153624
6-30-99

AA11546

EXHIBIT 205

EXHIBIT 205

Greg Harder, Psy.D.
Licensed Psychologist PY0338

1771 E. Flamingo Rd. Suite 112, Bldg. B

Las Vegas, NV 89119

Phone: (702) 641-2422 Fax: (702) 893-9655

May 3, 2006

Judge
Eighth Judicial District Court

RE: Terrell Young
Case #: C153461

Dear Judge:

Reason For Referral:

Mr. Young was referred for a court ordered competency evaluation by the judge in his case.

Competency Determination:

The Defendant refused to be evaluated, so no formal conclusion was made.

Review of Records:

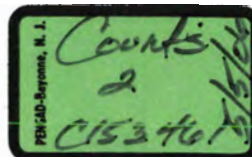
This examiner reviewed the Defendant's court file prior to evaluating the Defendant. The Defendant is accused of murdering four people in a robbery/murder.

News reports indicate the Defendant has a history of disruptive behavior in court, including throwing a chair at the jury and spitting on his attorney. Reportedly, his case was delayed in the past when the Supreme Court overturned his conviction due to the judge in his previous case not probing a dispute between himself and his attorney.

The Defendant reportedly told the court that his legal rights were being violated. He also apparently told the court he would refuse to be evaluated by mental health professionals and wanted his case to go to the Supreme Court. He apparently told the judge that he was competent and it was funny that his mental health was being questioned.

RECEIVED
SPECIALTY COURTS DIVISION

MAY 03 2006



Informed Consent:

Before interviewing the Defendant, I informed him that I was evaluating him to determine whether he is competent to stand trial. He refused to be evaluated.

Duskey Standard:

The Defendant was evaluated for competency to stand trial according to the Duskey Standard, which states "Whether he (the Defendant) has a rational as well as factual understanding of the proceedings against him" and "whether he (the Defendant) has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding."

This standard has been interpreted to mean the Defendant has an understanding of his charges, an understanding of the legal process and court proceedings, and is able to assist counsel in the defense of his case.

Interview of Defendant:

Prior to interviewing Mr. Young, the corrections officers on staff informed me that Mr. Young was violent in court yesterday. They informed me that he refused to sign some papers and also refused to leave the court, and had to be escorted out of court by the bailiff.

Staff at Post 10 at the jail also informed me that he was hitting his attorney in court and tried to lean over to get to the judge. They informed me that he has been sending letters to his cohorts trying to "Act crazy" so his case could be delayed longer.

When I attempted to interview Mr. Young, he was sitting in his cell on the 2C unit of the jail, where the most seriously disturbed inmates are housed, and those requiring disciplinary action. He looked alert and had normal affect. As soon as the correction's officer brought me into the cell to speak with him, he immediately hid under the blanket on his bed and refused to talk to me. He refused to acknowledge my presence or even tell me that he did not want to talk to me. He just lay there without moving, with his back to me, under the blanket.

It should be noted, that in Mr. Young's cell, there were literally dozens of law books strewn about his cell, and numerous papers in them.

Correction's officers on staff told me that he has also refused to talk to Dr. Essex, the jail psychiatrist.

Conclusion:

Due to Mr. Young's refusal to talk to me, it is difficult to be conclusive about whether he is competent to stand trial.

From his behavior in court and his interactions with legal staff, it would seem that Mr. Young has difficulty assisting counsel, and engaging in appropriate behavior in court, and potentially could be found incompetent to stand trial. However, it is less clear whether his outrageous behavior is due to mental illness or a manipulative ploy to delay his court proceedings. Mr. Young's alleged criminal history is suggestive of an antisocial personality disorder, and the possibility of malingering is very high.

Recommendations:

Mr. Young's refusal to participate in the competency evaluation indicates that his case may need to continue without his competency to stand trial being determined. If the court perceives that his case cannot continue, then a referral to Lakes Crossing for further observation and possible treatment may be necessary.

Respectfully,



Greg Harder, Psy.D.
Licensed Psychologist

Thank you for your referral. Please contact me if you have any questions or feedback concerning this report.

EXHIBIT 206

EXHIBIT 206

03/04/2006 12:00 PM 102 000 1204 0.1111P 0010310 111.0 000/000

**C.Philip Colosimo, PhD
501 S. Rancho, Suite C-14
Las Vegas, Nevada, 89106
702-384-7433
Fax:: 366-1204**

Regarding: State Of Nevada

Plaintiff,

State of Nevada v. Terrell Young ID# 1509343

Defendant(s)

Referral Source: Eighth Judicial District Court
Justice court, Las Vegas Township
Specialty Courts Division
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

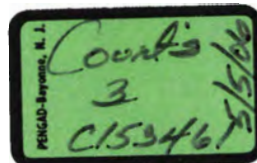
Date: 5-3-2006

COMPENTENCY TO STAND TRIAL EVALUATION

CIRCUMSTANCES OF REFERRAL: Terrell Young is a 27 year -old male with a history of violent behavior since incarceration He is presently under custody at Clark County Detention Center (CCDC) charged with MURDER WITH A DEADLY WEAPON, 4COUNTS, MRS200.030/ ROBBERY WITH DEADLY WEAPON,4 COUNTS, NRS 2000.380/ KINNAPING, 1ST DEGREE, WITH DEADLY WEAPON, 4 COUNTS, NRS. 200.840/BURGLARY WITH DEADLY WEAPON, NRS 206.060

Terrell Young was referred to the undersigned psychologist by Steven Grierson, Specialty Court Manager for the purpose of evaluating the defendant's procedural competency regarding his present criminal charges.

NOTIFICATIONS: the undersigned met with Mr. Young in jail during a contact visit lasting approximately 50 minutes on May 3,2006. The interview was conducted on Unit 2C at CCDC (lock down unit). Officers reported that the defendant was demanding and uncooperative. They also stated that he had been violent in the past. Prior to commencing with the evaluation, the undersigned reviewed with the defendant the medical-legal purpose of our meeting. Specifically, I informed the defendant that I am a clinical psychologist retained by the Public Defender's Office to evaluate his current procedural competency.



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SPECIALTY COURTS DIVISION
MAY 04 2006**

AA11552

Terrell Young Competency Examination**Page 2**

Mr. Young was also informed that any material he disclosed during the interview would be forwarded to his attorney and that a report would be issued. Mr. Young was additionally told that the undersigned would not be providing clinical treatment of any sort. Mr. Young was repeatedly reminded of his Fifth Amendment rights against self-incrimination and he was informed that he was not required to answer my questions without first consulting with his attorney. Mr. Young **did not** indicate a basic understanding of my notifications and he **DID NOT RESPOND** to proceed with the evaluation.

MATERIALS REVIEWED PRIOR TO ASSESSMENT: Discovery available for review prior to conducting this assessment was: Justice Court Proceedings and Documents on Justice Court Case No. 1509343. Included in these documents were The Declaration of Warrant/Summons Continuation.- Event: CCDC Arrest Warrant Abstract, Declaration of Arrest, Temporary Custody Record, warrant for Arrest, agenda for Appearances- Hearings, Criminal Complaint on case no: 1509343, Detention Service Division Intake Questionnaire, Inmate Observation Sheets., Domestic Battery Report, Comprehensive Nursing Examination.. Las Vegas Police Dept Voluntary Statement.

STANDARDS AND DEFINITIONS: In 1960 the U.S. Supreme court articulated the modern American standard for competency to stand trial (Dusky v. United States 1960). this standard depends on whether a criminal defendant "has sufficient ability to consult with his lawyer with a reasonable degree of rational understanding, and whether he has a rational as well as factual understanding of the proceedings against him."

A tripartite definition of competence applies in most jurisdictions: The defendant must have an understanding of the nature of the charges against him, the nature and purpose of court proceedings, and he must be able to aid and assist his attorney in his own defense.

A defendant may therefore be incompetent to stand trial if, because of a present mental disorder, any one of the following conditions are true:

1. The defendant is unable to understand the nature of the charges against him.
2. The defendant is unable to understand the nature and the purpose of the court proceedings.
3. The defendant is unable to cooperate, aid or assist counsel in the defense.

OPINIONS HELD WITHIN A REASONABLE DEGREE OF MEDICAL PROBABILITY:
Applying standardized clinical measures for the reliable and verifiable determination of a defendant's procedural capacity, Terrell Young's competency to stand trial could not be determined.

PRESENT MENTAL STATUS EXAMINATION: Terrell Young was interviewed on Unit 2C in a his cell block. Three officers stood by. He presented in his prison clothing lying down on his bed in no acute distress. His global appearance is of an tall height male who is rather thin. There was no attention to grooming, self-care or hygiene. (He did ask to take a shower during the interview). The defendant did not answer questions to having any hearing or speech problems and English is his native language. His orientation and sensorium were withholding and his attention and concentration was inadequate over the course of the interview. The defendant was uncooperative and never answering questions to the best of his ability. His affect was withdrawn and his mood was avoidant. Thought content was unclear.. He would not reply to questions of suicidal or homicidal ideations or harm to others.

Terrell Young Competency Examination
Page 3

Could not determine whether a thought disorder was present.. Though not formally assessed, the defendant's intellectual capacity could not be determined (intellectual functioning). This was obtained by observation of his fund of knowledge, verbal skills, vocabulary, and comprehension. .

ASSESSMENT OF CORE PROCEDURAL COMPETENCIES: In line with modern American standards for determining competency(Dusky v. United States), was administered a semi-structured interview, following an outline constructed by McGarry et al., designed to assess core procedural competencies. According to the Dusky Stand, a criminal defendant can be found competent for trial only if he "has sufficient ability to consult with his attorney with a reasonable degree of rational understanding, and has a rational as well as factual understanding of the proceedings against him." the McGarry scale attempts to operationalize the competence assessment by looking at 13 areas of functioning, including the defendant's:

1. Ability to appraise the legal defenses available
2. Level of unmanageable behavior
3. Quality of relating to his attorney
4. Ability to plan legal strategy
5. ability to appraise the roles of various participants in the courtroom proceedings
6. Understanding of court procedure
7. Appreciation of the charges
8. Appreciation of the range and nature of possible penalties
9. Ability to appraise the likely outcomes
10. Capacity to disclose to the attorney available pertinent facts surrounding the offense
11. Capacity to challenge the prosecution witnesses realistically
12. Capacity to testify relevantly
13. Manifestation of self-serving versus self-defeating motivation

FINDINGS: COULD NOT DETERMINE THE DEFENDENT'S COMPETENCY LEVEL AS HE WAS UNCOOPERATIVE.

DIAGNOSTIC IMPRESSIONS ACCORDING TO DSM IV-R

AXIS I: DEFERRED

AXIS II: SHOWS IMMATURE AND OPPOSITIONAL BEHAVIORS (PERSONALITY ISSUES

AXIS III: DEFERRED

AXIS IV: PSYCHOSOCIAL STRESSORS: COULD NOT BE DETERMINED

AXIS V: GAF: UNDETERMINED

**TERRELL YOUNG COMPETENCY EXAMINATION
PAGE 4**

**DISCUSSION AND CONCLUSIONS: THE DEFENDANT WAS UNCOOPERATIVE AND
DID NOT RESPOND TO THE UNDERSIGNED'S QUESTIONS-COULD NOT DETERMINE
COMPETENCY.**

Sincerely,

A handwritten signature in black ink, appearing to read "C. Colosimo PhD", written in a cursive style.

**Charles P Colosimo, PHD
Clinical Psychologist**

EXHIBIT 207

EXHIBIT 207

ORIGINAL

FILED

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Shirley A. King
CLERK

0001
PHILIP J. KOHN
Special Public Defender
Nevada Bar No: 0556
JOSEPH S. SCISCENTO
Deputy Special Public Defender
Nevada Bar No: 4380
DAYVID J. FIGLER
Deputy Special Public Defender
Nevada Bar No: 4264
309 South Third Street, Fourth Floor
Las Vegas, NV. 89155-2316
Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

DONTE JOHNSON aka
JOHN WHITE
ID# 1586283

Defendant.

CASE NO: C153154
DEPT NO: V

DATE OF HEARING: 10/21/99
TIME OF HEARING: 9:00 AM

MOTION AND NOTICE OF MOTION IN LIMINE TO PRECLUDE
EVIDENCE OF OTHER GUNS WEAPONS AND AMMUNITION
NOT USED IN THE CRIME

COMES NOW, the Defendant DONTE JOHNSON aka, JOHN WHITE, by and through his attorneys, PHILIPJ. KOHN, Special Public Defender, JOSEPH S. SCISCENTO, Deputy Special Public Defender and DAYVID FIGLER, Deputy Special Public Defender, and moves this Court for an order precluding the prosecution from presenting any evidence of guns, weapons and ammunition not used in the crime. This motion is based upon the

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SPECIAL PUBLIC
DEFENDER
CLARK COUNTY
NEVADA

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AA11557

1 attached Memorandum of Points and Authorities, all papers and pleadings on file herein,
2 and any argument that this court may hear is support of this motion

3 Dated this 19 day of October, 1999.

4 PHILIP J. KOHN, ESQ.
Special Public Defender

5
6
7
8 JOSEPH S. SCISCENTO
Deputy Special Public Defender
Nevada Bar No. 4380
309 South Third Street, Fourth Floor
Las Vegas, NV. 89155-2316
Attorney for Defendant

11

12 **NOTICE OF MOTION**

13 TO: STEWART BELL, ESQ., District Attorney for State;

14 TO: GARY GUYMON, ESQ., Deputy District Attorney

15 **YOU AND EACH OF YOU PLEASE TAKE NOTICE** that counsel for Defendant will
16 bring the above and foregoing on for hearing before the above-entitled Cour **MOTION AND**
17 **NOTICE OF MOTION IN LIMINE TO PRECLUDE EVIDENCE OF OTHER GUNS WEAPONS**
18 **AND AMMUNITION NOT USED IN THE CRIME** t on the 21 day of OCT, 1999
19 at the hour of 9a m., or as soon thereafter as counsel may be heard.

20 DATED this 19 day of October 1999.

21 PHILIP J. KOHN, ESQ.
Special Public Defender

22
23
24 JOSEPH S. SCISCENTO
Deputy Special Public Defender
Nevada Bar No. 4380
309 South Third Street, Fourth Floor
Las Vegas, NV. 89155-2316
Attorney for Defendant

27

28

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **STATEMENT OF FACTS**

3 Donte Johnson is being charged by way of Indictment with the following charges
4 of Murder, Robbery and Burglary. The alleged crimes took place on August 13, 1998.
5 The State is alleging that, on or about August 13, 1998, the Defendant along with other
6 Co-Defendants, entered into a residence, with the intent to rob the occupants of the
7 residence. The State further alleges that on August 13, 1998 Donte Johnson murdered
8 four individuals at the residence.

9 On or about August 17, 1998, a full four days after the alleged murders, Mr.
10 Johnson is alleged to be in possession of a White four-door Ford. When the vehicle was
11 pulled over the driver identified himself as "Donte Fleth". The driver and the passenger
12 subsequently fled from the vehicle and were not apprehended. The police recovered an
13 "enforcer" .30 caliber rifle from the vehicle.

14 On or about August 18, 1998, the police, pursuant to a consent to search card
15 signed by Todd Armstrong, searched the residences located at 4815 Everman. The police
16 learned from Tod Armstrong, that the residence was owned by his mother. At the
17 Everman residence the police recovered 2 firearms, a .22 Ruger rifle model 10/22 serial
18 No: 233-12826 and a .32 caliber automatic handgun, A VZOR .50 caliber pistol. The
19 guns recovered at the Everman residence were not the guns used in the alleged murders.
20 A ballistic report was performed by the Las Vegas Metropolitan Police Department, and
21 it was confirmed that the guns that the police recovered; to-wit: the .22 Ruger rifle, the
22 .32 handgun and the VZOR .50 Caliber, were not used in the murders. The forensic
23 report states that the murder weapon was a .38 caliber (See a copy of the report
24 attached hereto as Exhibit "1" and incorporated by reference). None of the above guns
25 recovered can fire the .38 caliber bullet.

26 The Defendant has not been found in possession of any weapons, which were
27 alleged to be used in the crime, and any weapons that were found in the vehicle and the
28 Everman residence were not used in the alleged murder.

1 To date the murder weapon has not been found.

2 **LEGAL ARGUMENT**

3 A prosecutor may use only evidence that is relevant to the crime being charged.

4 NRS 48.015 reads as follows:

5 **RELEVANT EVIDENCE defined** as used in this Chapter, "relevant evidence"
6 means evidence having a tendency to make the existence of any fact that
7 is of consequence to the determination of the action more or less probable
8 than it would be without the evidence.

9 "Murder" is the unlawful killing of a human being, with malice aforethought, either
10 expressed or implied. See, generally NRS 200.010. The introduction of the above guns
11 does not prove any element of the crime. The guns are not alleged to be used in the
12 murder. The guns do not show motive of the crime, intent, absence of mistake, modis
13 operandi, or any legitimate reason which would allow the guns being introduced.

14 The police found the guns located in a vehicle that allegedly the defendant was in.
15 Further, the police found additional guns in a residence that the defendant may have
16 resided in. The State is not alleging the guns to be the murder weapon and the ballistic
17 reports show unequivocally that the guns that the Police recovered were not the guns
18 used in the murders (See, a copy of the Ballistic report attached hereto as Exhibit "2 " and
19 incorporated by reference).

20 None of these guns are alleged to be the murder weapon, and they have no
21 evidentiary value as to the determination of guilt or innocence of the Defendant.

22 The victims were alleged to be shot by a .38 caliber automatic and neither of the
23 above-mentioned guns are of that caliber. Therefore, the evidentiary value of these guns
24 are non-existing. There is not reason for their introduction.

25 The Court has the sole discretion to disallow the evidence if it is not relevant, and
26 absent any abuse, the courts decision are rarely overturned. See, United States v. Pitts,
27 6 F.3d 1366 (9th Cir. 1993). However, in the case of Weakland v. State, 615 P.2d 252,
28 the Nevada Supreme Court overturned a perjury conviction when the court allowed the
jury to hear the perjury was based on statements of a murder that the Defendant had

1 committed. The Court in Weakland, stated:

2 "Contrary to respondent's contention, the repeated description of the murder
3 did more than provide a backdrop of reality against which the defendant's
4 false statements could be weighed. Instead, they impressed upon the jury
5 that the applanate Weakland was a cold-blooded killer- in addition to a liar.
6 In determining whether Weakland committed perjury at the LaPena and
7 Maxwell trials as the state charged, the jury may well have been influenced
8 by this reception of inadmissible evidence." Weakland at 701.

9 The problem that the Defendant has here is similar to the Weakland case, in that
10 the jury is going to hear additional information about guns that the defendant may have
11 had control of, and the jury is going to assume that the Defendant committed the crimes
12 charged because of other irrelevant acts.

13 The State needs to show how the admittance of other guns are relevant to show
14 the Defendant committed the crimes charged.

15 "We have held that the prosecution is entitled to present "a full and accurate
16 account" of the circumstances surrounding a crime. Dutton v State (cite
17 omitted) . Nevertheless, the evidence must be relevant and necessary in the
18 presentation of the case, especially when evidence implicates the defendant
19 in the commission of the crimes or **only tends to prove bad character.**"
20 Shults v. State, 96 Nev. 742, 616 P.2d 388, (1980). (emphasis added)

21 What else does the State intend to prove by bringing in the other guns that are not
22 the murder weapon. The State wants to show that Mr. Johnson is a bad guy and that
23 he carried guns around and that because of this he committed the crimes.

24 **EVEN IF THE EVIDENCE IS RELEVANT IT IS INADMISSABLE**
25 **AS BEING PREJUDICIAL, A CONFUSION OR A WASTE OF TIME**

26 NRS 48.035, reads in relevant part as follows:

27 "1. Although relevant, evidence is not admissible if its probative value is
28 substantially outweighed by the danger of unfair prejudice, of confusion of
the issues or of misleading the jury"

* * *

29 The Defendant does not concede the issue that the guns are relevant evidence, in
30 the alternative the defendant argues that if the Court determines that these guns are
31 relevant, then the Defendant argues that the introduction is prejudicial, a confusion to the
32 jury or a waste of time.

1 There is no need for the evidence of the guns, and the introduction of those guns
2 into the trial, will be highly prejudicial to the Defendant. The defense can assume that the
3 State will try to show that the defendant is a criminal because he is in possession of these
4 two guns, or that he is a bad guy because he owns these guns, or that he is a murderer
5 because he is in possession of these two guns.

6 Further the jury will be confused as to the issue of the guilt of the defendant. The
7 jury may assume that the guns were used in the murder or that possession of the two
8 guns is a crime or that the defendant committed this crime because he was in possession
9 of the two guns.

10 The jury will be misled into believing that these guns were used in the murder the
11 Defendant is on trial for. Attached hereto as Exhibit "3" is a recent newspaper article and
12 picture that shows Mr. GUYMON holding up two guns. The caption below reads:

13 "During closing arguments Monday in the murder trial of Terrell Young,
14 Deputy District Attorney Gary Guymon holds up weapons used in the Aug.
15 14, 1998, slaying that left four men dead."

16 The possibility of the mistake and confusion is evident with this picture. If Mr.
17 O'Connell, the Review-Journal writer who is a seasoned legal reporter, can be misled into
18 believing that the guns were used in the murder, then the jury, who may be sitting for the
19 first time as jury members, will almost certainly be misled into believing this non-fact.
20 The existence of the mistake and confusion is very apparent with this picture.

21 "Prosecutor may not introduce evidence of other criminal acts of accused
22 unless evidence is substantially relevant for some purpose other than to
23 show probability that the accused committed charged acts because of trait
24 of character.

* * *

25 [!]t may not be admitted if its prejudicial effect outweighs its probative value

26 In addition, the introduction of the two guns, not used in the murder, will be a
27 waste of time in that the defense will be forced to bring in additional witnesses to discuss
28 the ownership of the guns, who had control of the guns and other issues which do not
tend to establish if Mr. Johnson committed murder. This will cause undue delay.

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Dated this 19 day of October, 1999.

PHILIP J. KOHN.
SPECIAL PUBLIC DEFENDER



JOSEPH S. SCISCENTO
Deputy Special Public Defender
Nevada Bar No. 4380
309 South Third, Fourth Floor
Las Vegas, Nevada 89101

EXHIBIT "1"

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
FORENSIC LABORATORY REPORT OF EXAMINATION**

NAME: _____ CASE: 98 0607-2264
AGENCY: LVMPD
DATE: 9-26-98
BOOKED BY: See Below
INCIDENT: Homicide(s) REQUESTED BY: Homicide -
T. Thowsen

I, RICHARD G. GOOD, SR., do hereby declare:

OCT 21 1998

That I am the Forensic Laboratory Manager of Comparative Analyses performing firearms and toolmark examinations as part of my regular duties for the Las Vegas Metropolitan Police Department;

That on February 7, 1977, I first qualified in the Eighth Judicial Court of Clark County, Nevada, as an expert witness to testify regarding firearms and toolmark examinations and comparisons;

That I received evidence from the Evidence Vault in the above case and that I completed an examination of the following evidence:

RG1 One sealed evidence envelope booked by D. Brotherson #4931 on 6-7-98 from 3000 LVBS Rm #4911 containing Item #1 - one fired *Winchester* 380 Automatic cartridge case booked under EV# 98 0607-2264.

RG2 One sealed evidence envelope booked by S. Fletcher #5221 on 8-14-98 from 4825 Terra Linda containing Items #4 - #8 - four fired *Winchester* 380 Automatic cartridge cases and one bullet fragment booked under EV# 980814-1600.

That the results of the examination are as follow:

Cartridge Case Comparison - Negative. The fired cartridge cases listed above were fired from two different firearms.

See also Laboratory report under EV# 98 0814-1600.

I returned the evidence to the Evidence Vault.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on: Sept. 26, 1998

Richard G. Good, Sr.
RICHARD G. GOOD, SR. #806

Richard G. Good, Sr.
REVIEW

EXHIBIT "2"

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
FORENSIC LABORATORY REPORT OF EXAMINATION**

NAME: Biddle, Jeffrey (V)
Gorringe, Tracy (V)
Mowen, Mathew (V)
Talamanez, Peter (V)

INCIDENT: Homicides

CASE: 98 0814-1600
AGENCY: LVMPD
DATE: 9-26-98
BOOKED BY: See Below
REQUESTED BY: Homicide-
T. Thowsen

I, RICHARD G. GOOD, SR., do hereby declare:

OCT 21 1998

That I am the Forensic Laboratory Manager of Comparative Analyses performing firearms and toolmark examinations as part of my regular duties for the Las Vegas Metropolitan Police Department;

That on February 7, 1977, I first qualified in the Eighth Judicial Court of Clark County, Nevada, as an expert witness to testify regarding firearms and toolmark examinations and comparisons;

That I received evidence from the Evidence Vault in the above case and that I completed an examination of the following evidence:

RG1 One sealed envelope by S. Fletcher #5221 dated 8-14-98 from 4825 Terra Linda with Items #4 -# 8- four cartridge cases and one bullet fragment.

RG2 One sealed envelope by S. Norman #3110 dated 8-15-98 from "CCME" with Items #8 and #9 - bullet fragments.

RG3 One sealed envelope by S. Norman #3110 dated 8-15-98 from "CCME" with Item #20 - bullet fragments.

RG4 One sealed envelope by S. Norman #3110 dated 8-15-98 from "CCME" with Item #42 - bullet fragments.

RG5 One sealed envelope by S. Norman #3110 dated 8-15-98 from "CCME" with Item #29 - bullet fragments.

That the results of the examination are as follow:

Cartridge Case Examinations - All four of the above submitted cartridges cases (Items #4, #6, #7, and #8 by 5221) were made by *Winchester* and were of caliber 380 Automatic. All four of the cartridge cases were fired from the same, unknown firearm.

Bullet Examinations - All of the bullet fragments submitted (Items #5 by 5221 and Items #8, #9, #20, #29 and #42 by 3110) were either lead fragments or aluminum fragments all of which were consistent with *Winchester Silvertip* ammunition.

Firearms possessing characteristics similar to those found on the above items include, but are not limited to: *Accu-Tek, AMT, Colt, Davis, Llama and Smith & Wesson* pistols in 380 Automatic caliber.

I returned the evidence to the Evidence Vault.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on: Sept. 26, 1998

Richard G. Good, Sr.
RICHARD G. GOOD, SR. #806

P. J. Carrichett, Jr.
REVIEW

EXHIBIT "3"



Jeff Scheid/Review-Journal

During closing arguments Monday in the murder trial of Terrell Young, Deputy District Attorney Gary Guymon holds up weapons used in the Aug. 14, 1998, slaying that left four men dead.

Suspect's role at scene debated

Jury deliberations begin in robbery that turned deadly

By Peter O'Connell
Review-Journal

A District Court jury will return this morning to deliberate the case of a man accused of participating in a robbery that left four men dead.

In closing arguments late Monday afternoon, prosecutors and defense attorneys agreed that 20-year-old Terrell Young participated in the Aug. 14, 1998, robbery at 4825 Terra Linda Ave. Young said as much in his taped confession to police.

But defense attorneys said their client had no advance knowledge the victims at the house were to be killed to ensure their silence.

They pointed the finger at Donte Johnson, the alleged trigger-man in the killings, whom they have described as "the meanest SOB you will ever hear about in your life."

Defense attorney Lew Wolfbrandt

said Johnson made the decision that turned a robbery into a quadruple homicide. Moreover, Johnson was the one who implemented that decision by turning up the volume on a stereo and firing a bullet into the back of each victim's head, Wolfbrandt said.

Prosecutors disagreed, saying Young, Johnson and Sikia Smith all played indispensable roles in the incident.

They said the three men knew the probable result when they brought guns and duct tape — but no masks — to commit a robbery in the early morning hours at a house where they were known.

Deputy District Attorney Gary Guymon allowed that Johnson played the most critical role in the incident. "But they acted as a team, each playing an integral part," he said.

Under the law, Johnson, Young and Smith are responsible for the acts each

committed during the crime, Guymon told the jury.

Killed were Matthew Mowen, 19, Jeffrey Biddle, 19, Tracey Gorringer, 20, and Peter Talamantez, 17.

Smith was sentenced to four consecutive life terms in July. Johnson faces a capital murder trial next year.

Prosecutors offered Young a plea agreement in which he could avoid a possible death sentence. Wolfbrandt said this was conditional on Young testifying against a fourth man who has not been charged.

Young's sister, LaDonna Booker, testified Monday that her brother told her he did not expect anyone to die in the robbery. She said Young hoped to relocate.

Young continues to wear a stun-belt with which he was outfitted after twice disrupting jury selection. Prosecutors are seeking the death penalty.

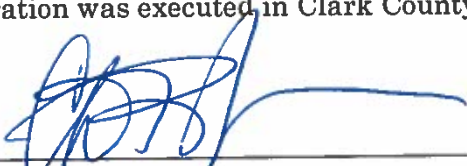
EXHIBIT 208

EXHIBIT 208

Declaration of Cassondrus Ragsdale

I, Cassondrus Ragsdale, hereby declare as follows:

1. I am an investigator in the Capital Habeas Unit of the Office of the Federal Public Defender, District of Nevada.
2. On Wednesday, December 19, 2018, I called Schaumetta Minor to confirm that she is returning her signed declaration.
3. Schaumetta told me she will be placing her paperwork in mail today once going to her doctor's appointment.
4. Schaumetta will ship her package via UPS Next Day Air service.
5. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, and that this declaration was executed in Clark County, Nevada, on December 19, 2018.



Cassondrus Ragsdale

Declaration of Schaumetta Minor

I, Schaumetta Minor, hereby declare as follows:

1. I am sixty-four years old. I currently reside in San Bernardino County, California. I am John White's (Donte Johnson) maternal aunt. His mother, Eunice, is my younger sister.
2. My parents are Jane Edwards and Finnis Cain. During a conversation with my mother, she stated five of her children were fathered by different men. My siblings Arthur, Eunice and Pam were given Cain's last name. When Eunice was around age thirty, Jane told Eunice that she was a product of rape.
3. Eunice was born with a breathing problem. She was monitored closely as an infant. It progressed as she aged. I always knew something was different about Eunice. She had a learning disability. Eunice had difficulty comprehending what was stated. As Eunice became older, she became very outspoken. It was a defense mechanism to compensate for her disabilities.
4. My mother was a promiscuous woman and had affairs throughout her marriage to my father. My grandmother, Nora West, wasn't home to care for my mother because she worked a lot. My mother was raped by my grandmother's brother-in-law. My mother grew up fast. Later she married Samuel Edwards and had two children, Deborah and Lolita.
5. When I was around age ten my mother left home to run errands and I was raped by a family member.

6. When I was around age seventeen, I was raped again and conceived a baby. I blamed my mother. She made me go out with a much older man. He was Samuel Edward's family member.
7. My mother showed no affection towards me. One time I asked my mother if I was adopted, because she made me feel like an outcast in the family. She showed favoritism amongst her children.
8. It was difficult for my mother to build a good relationship with her children. She and my grandmother, Nora West, did not have a good relationship.
9. Samuel Edwards did not say much in the household. My mother didn't allow him the opportunity to make decisions about the children.
10. When I was around age eighteen, I graduated from high school and I left home with my baby. I no longer wanted to reside at home because too many people lived in the house. My mother liked to take people in and help them although she wasn't able to properly care for them.
11. I remember when Eunice and John White married. It was an abusive relationship. One time John beat Eunice so bad that she went to White Memorial Hospital for services. They wired her mouth closed. Eunice was around age twenty-five.
12. Eunice had a bad drug addiction. I am not certain when or what influenced Eunice's drug use. I was not involved with Eunice when she was pregnant with John (Donte). I tried to stay away from my family as much as possible.

13. Cassie Ragsdale is the first person from John's defense team to ever contact me. If I had been asked to testify at John's original trial in 2000, or his resentencing in 2005, I would have agreed and told the jurors the things in this declaration.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, and that this declaration was executed in San Bernardino County, California, on December _____, 2018.

Schaumetta Minor

EXHIBIT 209

EXHIBIT 209

AFFIDAVIT OF THERESA KNIGHT

1 **STATE OF NEVADA**)
2)
3 **COUNTY OF CLARK**) ss.

4 THERESA KNIGHT, being first duly sworn according to law, deposes and states as follows:

- 5 1. That I was an alternate juror in the case of State of Nevada v. Donte Johnson.
- 6 2. That I was present throughout the penalty phase of Donte Johnson.
- 7 3. That I was not present when the jury returned a verdict of death.
- 8 4. That following the verdict I discussed with a family member certain issues that I was
9 concerned about during the penalty phase of State of Nevada v. Donte Johnson.
- 10 5. That I agreed that my family member would contact Attorney Bret Whipple to convey
11 my concerns.
- 12 6. That on May 10, 2005, my family member contacted Attorney Bret Whipple and that
13 he called me that same day.
- 14 7. That on May 11, 2005, I met with Attorney Bret Whipple and Mitigation Investigator
15 Maribel Rosales.
- 16 8. That Mr. Whipple inquired into jury conduct during the penalty phase in the case
17 State of Nevada v. Donte Johnson.
- 18 9. That during that penalty phase, juror number 262 Jamie Carpenter declared to me on a
19 daily basis, that she was writing a book on being a juror in the Donte Johnson case.
- 20 10. That juror number 262 Jamie Carpenter stated that different information that was
21 brought up during the penalty phase, would be used in her book.
- 22 11. That juror number 262 Jamie Carpenter also stated that at the end of the day, she
23 would go to her car, remember all witnesses that took the stand, including other
24 pertinent information and preserve her memories by writing down everything she
25 could remember about being a juror in the Donte Johnson penalty hearing.
- 26 12. That on Wednesday morning, prior to deliberations, juror number 262 Jamie
27 Carpenter stated that she felt sick to her stomach and could not eat because one of the
28 parties was going to be upset with her decision.

Further Affiant sayeth naught.


THERESA KNIGHT

SUBSCRIBED AND SWORN to before me
This 11th day of May, 2005.

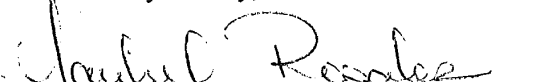

NOTARY PUBLIC, In and for the County of
Clark, State of Nevada.



EXHIBIT 210

EXHIBIT 210

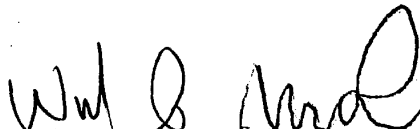
AFFIDAVIT OF WILFREDO MERCADO

STATE OF NEVADA)
COUNTY OF CLARK) ss.


WILFREDO MERCADO, being first duly sworn, deposes and states as follows:

1. That I was an alternate juror in the case of State of Nevada v. Donte Johnson.
2. That I was present throughout the penalty phase of Donte Johnson.
3. That I was not present when the jury returned a verdict of death.
4. That on May 24, 2005, I met Mitigation Investigator Maribel Rosales.
5. That Ms. Rosales inquired into jury conduct during the penalty phase in the case State of Nevada v. Donte Johnson.
6. That during that penalty phase, juror number 262 Ms. Carpenter declared to me on a daily basis, that she was writing a book on being a juror in the Donte Johnson case.
10. That juror number 262 Ms. Carpenter stated that different information that was brought up during the penalty phase, would be used in her book.
11. That juror number 262 Jamie Carpenter also stated that at the end of the day, she would go to her car, remember all witnesses that took the stand, including other pertinent information and preserve her memories by writing down everything she could remember about being a juror in the Donte Johnson penalty hearing.

Further Affiant sayeth naught.


WILFREDO MERCADO

SUBSCRIBED AND SWORN to before me
This 25th day of May, 2005.


NOTARY PUBLIC, In and for the County of
Clark, State of Nevada.

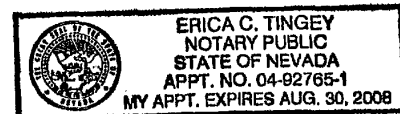


EXHIBIT 211

EXHIBIT 211

Donte Johnson Family Tree

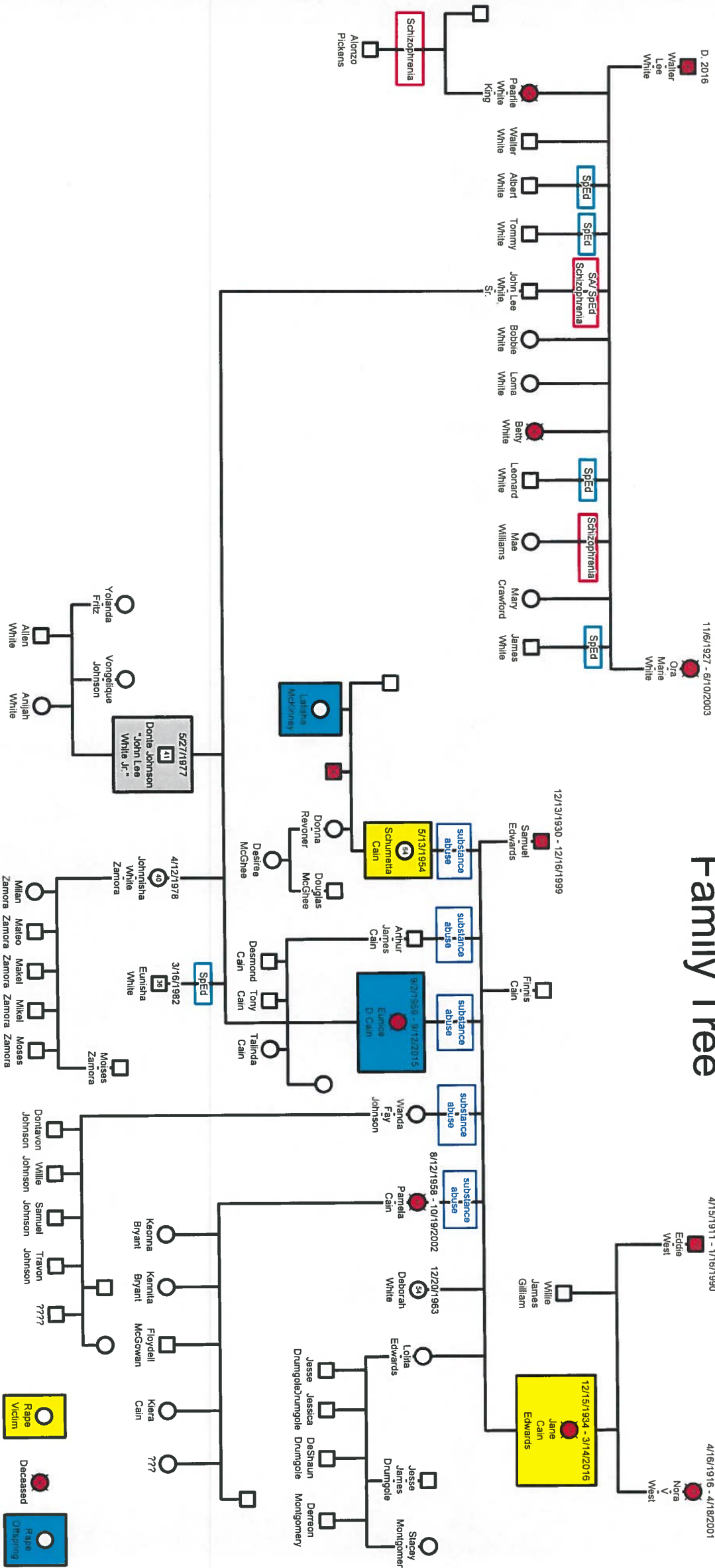


EXHIBIT 212

EXHIBIT 212

ORIGINAL

FILED

2004 APR 28 P 2:53

Shirley B. Pomaguer
CLERK

0001

DAREN B. RICHARDS
ACTING SPECIAL PUBLIC DEFENDER
Nevada Bar No. 5103
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

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

vs.

DONTE JOHNSON, aka
JOHN LEE WHITE

Defendant.

CASE NO. C153154

DEPT. NO. VIII

DATE OF HEARING:
TIME OF HEARING:

**MOTION IN LIMINE REGARDING REFERRING
TO VICTIMS AS "BOYS"**

COMES NOW, the Defendant, DONTE JOHNSON, aka JOHN LEE WHITE by and through his attorneys DAREN B. RICHARDS, Acting Special Public Defender, ALZORA B. JACKSON, Deputy Special Public Defender, and BRET O. WHIPPLE, Deputy Special Public Defender and respectfully requests that this Honorable Court enter an Order precluding the prosecutor from repeatedly referring to the victims in this case as boys.

...

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APR 7 8 2004

CLERK

SPECIAL PUBLIC
DEFENDER

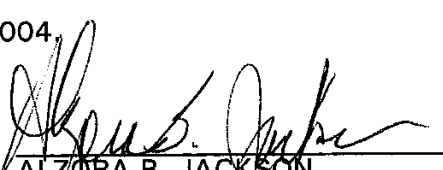
CLARK COUNTY
NEVADA

318

AA11583

1 This Motion is based upon the attached Points and Authorities, on all papers and
2 pleadings on file herein, and on any oral argument allowed at the time of the hearing on
3 this Motion.

4 DATED this 24 day of April, 2004.

5
6 
ALZORA B. JACKSON
Deputy Special Public Defender
Nevada Bar No. 2255
333 South Third Street, 2nd Floor
Las Vegas, NV 89155-2316
(702) 455-6265
Attorneys for Defendant

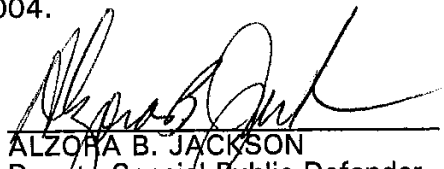
11 **NOTICE OF MOTION**

12 TO: STATE OF NEVADA, Plaintiff; and

13 TO: DAVID ROGER District Attorney, Attorney for Plaintiff

14 YOU WILL PLEASE TAKE NOTICE that the undersigned will bring on the above and
15 foregoing **MOTION IN LIMINE REGARDING REFERRING TO VICTIMS AS "BOYS"** on the
16 10 day of MAY, 2004, at the hour of 9:00 a.m., in Department No. VII of
17 the above-entitled Court, or as soon thereafter as counsel may be heard.

18 DATED this 27 day of April, 2004.

19
20 
ALZORA B. JACKSON
Deputy Special Public Defender
Nevada Bar No. 2255
333 South Third Street, 2nd Floor
Las Vegas, NV 89155-2316
(702) 455-6265
Attorneys for Defendant

21
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28
SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

1 **POINTS AND AUTHORITIES**

2 This is a new penalty hearing after the previous jury has made a finding of guilt as
3 to the murder of four (4) young men. At the two (2) previous penalty hearings, the
4 victims are repeatedly referred to as "boys". The facts of this case are that only one (1)
5 of the victims in this case was under the legal age of eighteen (18), that being Peter
6 Talamantez. Therefore, the remaining three (3) victims were not boys, they were in fact
7 young men. In viewing the transcript by counsel from the previous penalty hearing in
8 front of the jury. it reflects the prosecutor and the Judge referring to the victims in this
9 case as boys over twenty (20) times. The end result is that the use of the term "boys"
10 conjures up a ten (10) to twelve (12) year old child, playing basketball. Such is not the
11 case here. We have young men who were very close in age to the Defendant in this
12 case, who are involved in drug trafficking as well as drug use.

13 It is counsel's position that if this Court allowed the prosecutor use the word
14 "boys" as he has in the previous penalty hearings, that that word is used as a subtle
15 means to arise the jurors passions. It has been held that a prosecutor cannot use words
16 that are particularly designed to stir the jurors passion. See, e.g., Evans v. State, 28 P.3d
17 498; 117 Nev. Adv. Op. 50 (2001). Therefore, it is respectfully requested that this Court
18 admonish the prosecutor that he be limited to referring to the juvenile who was murdered
19 in this case as a boy and that otherwise he refer to the other victims as young men.

20 DATED this 27 day of April, 2004.

21 RESPECTFULLY SUBMITTED,

22 

23 ALZORA B. JACKSON
24 Deputy Special Public Defender
25 Nevada Bar No. 2255
26 333 South Third Street, 2nd Floor
27 Las Vegas, NV 89155-2316
28 (702) 455-6265
Attorneys for Defendant

EXHIBIT 213

EXHIBIT 213

Declaration of Schaumetta Minor

I, Schaumetta Minor, hereby declare as follows:

1. I am sixty-four years old. I currently reside in San Bernardino County, California. I am John White's (Donte Johnson) maternal aunt. His mother, Eunice, is my younger sister.
2. My parents are Jane Edwards and Finnis Cain. During a conversation with my mother, she stated five of her children were fathered by different men. My siblings Arthur, Eunice and Pam were given Cain's last name. When Eunice was around age thirty, Jane told Eunice that she was a product of rape.
3. Eunice was born with a breathing problem. She was monitored closely as an infant. It progressed as she aged. I always knew something was different about Eunice. She had a learning disability. Eunice had difficulty comprehending what was stated. As Eunice became older, she became very outspoken. It was a defense mechanism to compensate for her disabilities.
4. My mother was a promiscuous woman and had affairs throughout her marriage to my father. My grandmother, Nora West, wasn't home to care for my mother because she worked a lot. My mother was raped by my grandmother's brother-in-law. My mother grew up fast. Later she married Samuel Edwards and had two children, Deborah and Lolita.
5. When I was around age ten my mother left home to run errands and I was raped by a family member.

6. When I was around age seventeen, I was raped again and conceived a baby. I blamed my mother. She made me go out with a much older man. He was Samuel Edward's family member.
7. My mother showed no affection towards me. One time I asked my mother if I was adopted, because she made me feel like an outcast in the family. She showed favoritism amongst her children.
8. It was difficult for my mother to build a good relationship with her children. She and my grandmother, Nora West, did not have a good relationship.
9. Samuel Edwards did not say much in the household. My mother didn't allow him the opportunity to make decisions about the children.
10. When I was around age eighteen, I graduated from high school and I left home with my baby. I no longer wanted to reside at home because too many people lived in the house. My mother liked to take people in and help them although she wasn't able to properly care for them.
11. I remember when Eunice and John White married. It was an abusive relationship. One time John beat Eunice so bad that she went to White Memorial Hospital for services. They wired her mouth closed. Eunice was around age twenty-five.
12. Eunice had a bad drug addiction. I am not certain when or what influenced Eunice's drug use. I was not involved with Eunice when she was pregnant with John (Donte). I tried to stay away from my family as much as possible.

13. Cassie Ragsdale is the first person from John's defense team to ever contact me. If I had been asked to testify at John's original trial in 2000, or his resentencing in 2005, I would have agreed and told the jurors the things in this declaration.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, and that this declaration was executed in San Bernardino County, California, on December 19, 2018.

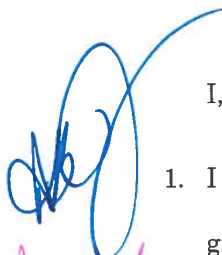
Schaumetta Minor
Schaumetta Minor

EXHIBIT 214

EXHIBIT 214

Declaration of Alzora Jackson

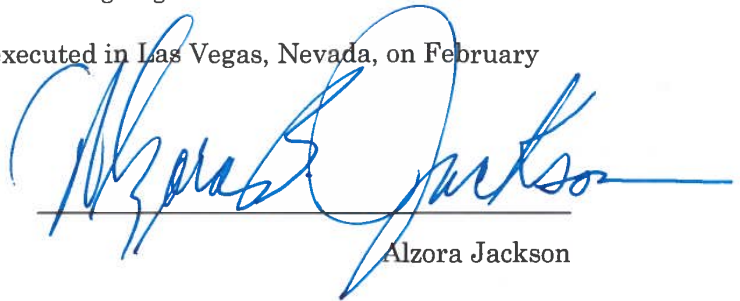
I, Alzora Jackson, hereby declare as follows:

- 
- Associate - in Law Instructor
1. I am an attorney at law. I graduated from the University of Florida in 1977; I graduated from Williamette University College of Law in 1981. My career began as a law professor at Berkeley Law. I then served as a deputy district attorney in Washoe County. I went into private practice in Reno doing criminal defense. In the early 1990s I moved to Las Vegas. Later, I began working at the Clark County Special Public Defender.
 2. After Donte Johnson's penalty was vacated by the Nevada Supreme Court in 2002, I, along with Bret Whipple, began representing Mr. Johnson in 2003.
 3. I do not recall reviewing a list of mitigating circumstances found by the first jury at any point before the 2005 penalty phase. I do not recall that one of the mitigating circumstances added by the first jury was "no eye witness to identity of shooter." I had no strategic reason for failing to acquire or review this document. Reviewing this document would have affected how I pursued the 2005 penalty phase.
 4. Additionally, I have reviewed the report written by Dr. Deborah Davis. The importance of the witness statements in this case—even during the penalty phase—cannot be overstated. There was no forensic evidence to indicate that Mr. Johnson himself pulled the trigger. Thus, undermining the credibility of the witness statements would serve as mitigation evidence by showing that Mr. Johnson was not the shooter. I had no strategic reason for failing to retain or present an expert on coercive interrogation tactics.

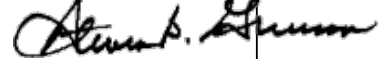
5. I have also reviewed the report of T. Paulette Sutton. The fact that the blood on the jeans does not prove Mr. Johnson was the shooter is a helpful fact that I would have presented during the penalty phase. I had no strategic reason for failing to retain or present an expert on blood spatter.
6. I have reviewed the allegations of error related to the guilt-phase jury instructions. Because of these errors, there was no legally sufficient basis for the jury to find the only aggravating circumstance in this case: that the defendant has, in the immediate proceeding, been convicted of more than one offense of murder in the first degree or second degree. I had no strategic reason for failing to challenge this aggravating circumstance.
7. I had no strategic reason for failing to argue that Johnson was ineligible for the death penalty because there was insufficient evidence that he killed, attempted to kill, or intended to kill the victims. I also did not have a strategic reason for failing to argue that there was insufficient evidence that Johnson was a major participant in a felony and displayed a reckless disregard for human life. Because these findings are requisites of a death sentence, the jury should have been instructed that these were elements it needed to find. I had no strategic reason for failing to request such an instruction.
8. Finally, I had no strategic reason for conceding that Johnson was a "cold blooded killer." This is especially so in light of the serious problems with the State's guilt-phase theories.

9. To the extent that there are other meritorious constitutional claims, I had no strategic reason for failing to raise them at trial.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and that this declaration was executed in Las Vegas, Nevada, on February 11, 2019.



Alzora Jackson



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 DONTE JOHNSON,
9 Plaintiff,

CASE#: A-19-789336-W
DEPT. VI

10 vs.

11 WILLIAM GITTERE,
12 Defendant.

13
14
15 BEFORE THE HONORABLE JAMES BIXLER,
16 SENIOR DISTRICT COURT JUDGE

17 MONDAY, FEBRUARY 25, 2019

18
19 **RECORDER'S TRANSCRIPT OF HEARING: DEFENDANT'S**
20 **MOTION FOR LEAVE TO FILE UNDER SEAL**

21 APPEARANCES:

22 For the Plaintiff:

RANDY FIEDLER, ESQ.
Federal Public Defender's Office
ELLESSE D. HENDERSON
Federal Public Defender's Office

23 For the Defendant:

STEVEN S. OWENS, ESQ.
Chief Deputy District Attorney

24
25 RECORDED BY: De'AWNA TAKAS, COURT RECORDER

1 Las Vegas, Nevada, Monday, February 25, 2019

2
3 [Hearing began at 8:53 a.m.]

4 THE COURT: State of Nevada -- oh boy. Okay counsel,
5 listen. First of all -- couple things here, you from the -- Federal Public
6 Defender's Office?

7 MR. FIEDLER: Correct, Your Honor.

8 THE COURT: I'm not quite sure where this directive has
9 come, that these writs should take the form of a civil case, but that's
10 wrong. I mean that's the law. I don't know how she's reading that.
11 These should be part of this criminal case, number one. That's my
12 standing.

13 THE RECORDER: Sorry.

14 THE MARSHAL: Mr. Berkley.

15 THE COURT: Oh.

16 THE MARSHAL: Counselor.

17 THE COURT: Yeah the microphones --

18 THE MARSHAL: Can't have you in the box.

19 THE COURT: The microphones over there pick up -- they
20 prevent us from being able to make a record because when you guys
21 are talking right next to the microphones we can't hear what's going on.

22 UNKNOWN MALE: Sorry about that, sir.

23 THE COURT: So I don't know exactly how we correct that,
24 but just so everybody knows this is actually part of the criminal case.
25 Just like a writ -- normal writ on a criminal case.

1 The defendant's on death row, is that correct?

2 MR. FIELDER: That's correct, Judge.

3 THE COURT: Is that what this whole writ's about?

4 MR. FIEDLER: Yes, Your Honor.

5 THE COURT: This is the writ?

6 MR. FIEDLER: Yes, Your Honor.

7 THE COURT: Thank God somebody else is going to be here.

8 The motion that's on calendar today is to file the deposition of a -- taken

9 1998, -- Charla Severs -- filed that deposition under seal. Technically --

10 did anybody read that deposition besides me? No, I didn't think so. If

11 you read the transcript, Judge Sobel didn't actually order that deposition

12 to be under seal. What he did was -- he said, the State shouldn't

13 release the video that was both recorded and it was videoed. And what

14 they were arguing about was the video. But what he said was the State

15 had an obligation not to release the video.

16 So what you guys want to do today is to set a briefing

17 schedule on this writ, is that correct?

18 MR. FIEDLER: Yeah. Well -- and the thing is the transcript,

19 although Your Honor's recollection of the -- transcript about whether to

20 seal it or not seal is correct, the transcript was actually filed under seal.

21 And so we felt --

22 THE COURT: But it's --

23 MR. FIEDLER: -- just to --

24 THE COURT: -- never been unsealed.

25 MR. FIEDLER: And it's never been unsealed.

1 THE COURT: Did Charla -- did she ever take the witness
2 stand?

3 Mr. FIELDER: Yes, Your Honor.

4 THE COURT: She did?

5 MS. HENDERSON: Yes.

6 THE COURT: And nobody every unsealed -- because she
7 had so many versions of what went on -- you guys aware of all that? I'm
8 sure you are. She had so many versions of what went on. Not only did
9 she write a letter to Channel 8, she wrote a letter to the defense, she
10 wrote umpteen letters to the defendant, and she had so many versions
11 of what transpired it's like wholly -- I can't believe that she got on the
12 witness stand and wasn't just hammered for having so many versions of
13 what transpired.

14 But what are we talking about -- a briefing schedule? Is that
15 what we're actually talking about? The transcript is still going to be
16 under seal, I mean, I have no issue or no problem with that it's been
17 under seal since 1998.

18 As to a briefing schedule, you want to write -- you killed a lot of
19 trees here, that's a 350 page long brief. What do you want six months?

20 MR. OWENS: I think we can have a response in about sixty
21 days.

22 THE COURT: All right.

23 MR. OWENS: It will be far shorter than 350 pages.

24 THE COURT: I would certainly hope so. That -- I assume
25 somebody's going to be appointed in Department 6 somewhere by, I

1 would guess, April sometime, so we won't have this -- I won't, or Judge
2 Bonaventure won't be seeing this writ.

3 But, and, exactly why is it here instead of where you guys are
4 working?

5 MR. FIEDLER: In order for Mr. Johnson to have all his claims
6 heard federally, he needs to raise them in state court first.

7 THE COURT: Has this case ever been, I mean, has it gone to
8 the Supreme Court yet?

9 MR. FIEDLER: It's been --

10 MR. OWENS: Oh, yeah.

11 MR. FIELDER: Yeah. It's been to the Nevada Supreme
12 Court.

13 THE COURT: Has it been the U.S. Supreme Court?

14 MR. FIELDER: He's filed petitions for writ -- or certiorari
15 before.

16 MR. OWENS: I think this is the fourth -- third or fourth State
17 habeas petition. So it goes round and round.

18 THE COURT: When was the last time anyone got executed in
19 Nevada?

20 MR. FIELDER: I believe it was 2006, Your Honor.

21 THE COURT: Oh really? More recent than I thought. Judge
22 Mosley told me one day -- I had my first capital case and he said, don't
23 get all worked-up over it. He said, I've had twelve of them and nobody's
24 been executed yet over the last 18 20 years when he was on the bench.

25 Sixty days for the State. How long do you want?

1 MR. FIELDER: If we could have sixty days, Your Honor.

2 THE COURT: Sixty days for a reply, by the defense, which
3 would be hundred twenty days, which would put us -- are we going to set
4 a date for argument right now?

5 MR. OWENS: Sure.

6 THE COURT: Go ahead.

7 THE CLERK: State's oppositions going to be due April 29th.
8 Defendant's reply June 28th, and the hearing will be July 15th at 8:30.

9 THE COURT: July 15th? Okay, everybody on the same
10 page?

11 MR. OWENS: Yes.

12 MR. FIELDER: Thank you, Your Honor.

13 MR. OWENS: Thanks, Judge.

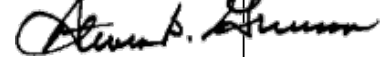
14 THE COURT: Thank you. Good luck.

15 [Hearing ended at 8:59 a.m.]

16 * * * * *

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20
21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
22 audio/video proceedings in the above-entitled case to the best of my
23 ability.

24 
25 De'Awna Takas
Court Recorder/Transcriber



MOT

Rene L. Valladares
Federal Public Defender
Nevada Bar No. 11479
Randolph M. Fiedler
Assistant Federal Public Defender
Nevada Bar No. 12577
Randolph_Fiedler@fd.org
Ellesse Henderson
Assistant Federal Public Defender
Nevada Bar No. 14674C
Ellesse_Henderson@fd.org
Jose A. German
Assistant Federal Public Defender
Nevada Bar No. 14676C
Jose_German@fd.org
411 E. Bonneville, Ste. 250
Las Vegas, Nevada 89101
(702) 388-6577

Attorneys for Donte Johnson

DISTRICT COURT
CLARK COUNTY, NEVADA

DONTE JOHNSON,

Petitioner,

v.

WILLIAM GITTERE, Warden of Ely State
Prison, and AARON FORD, Attorney
General of the State of Nevada,

Respondents.

Case No. A-19-789336-W
Dept. No. 6

**MOTION FOR LEAVE TO FILE
UNDER SEAL AND NOTICE OF
MOTION**

Date of Hearing: _____

Time of Hearing: _____

(Death Penalty Habeas Corpus Case)

Petitioner Donte Johnson, by and through his attorneys of record, moves this
court for leave to file under seal Exhibit 63, which is the Transcript of Video
Deposition of Charla. *See* EDCR 8.09(a)(1); *Howard v. State*, 128 Nev. 736,
///

1 745–46, 291 P.3d 137, 143 (2012). This transcript was sealed during Johnson’s trial
2 and has never been unsealed.

3 DATED this 15th day of February, 2019.

4 Respectfully submitted
5 Rene L. Valladares
6 Federal Public Defender

7 /s/ Randolph M. Fiedler
8 Assistant Federal Public Defender

9 /s/ Ellesse Henderson
10 Assistant Federal Public Defender

11 /s/ Jose German
12 Assistant Federal Public Defender

13 NOTICE OF MOTION

14 TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Respondents

15 PLEASE TAKE NOTICE that the “MOTION FOR LEAVE TO FILE
16 UNDER SEAL” filed February 15, 2019 will be heard on the 25 day of
17 February, at the hour of 8:30 a.m./p.m., in Department VI of the
18 District Court.

19 DATED this 15th day of February, 2019.

20 Respectfully submitted
21 Rene L. Valladares
22 Federal Public Defender

23 /s/ Randolph M. Fiedler
Assistant Federal Public Defender

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CERTIFICATE OF SERVICE

In accordance with EDCR 7.26(a)(1), the undersigned hereby certifies that on February 15, 2019, a true and correct copy of the foregoing **MOTION FOR LEAVE TO FILE UNDER SEAL AND NOTICE OF MOTION** was filed electronically with the Eighth Judicial District Court and served by Odyssey EFileNV, addressed as follows:

Steven S. Owens
Chief Deputy District Attorney
motions@clarkcountyda.com
Eileen.davis@clarkcountyda.com

/s/ Sara Jelinek
An Employee of the
Federal Public Defender,
District of Nevada

Donte Johnson #66858
Ely State Prison
P.O. Box 1489
Ely, Nevada 89301

FILED

APR 04 2019

CLERK OF COURT

CC-ADB

District Court
Clark County, Nevada

Donte Johnson
-v- Petitioner
State of Nevada

Case No. A-19-784336-W
Dept. NO. V1

REQUEST TO STRIKE PETITION (Death Penalty)

Petitioner, Donte Johnson acting on His own behalf in case number A-19-784336-W, gives notice through this action to the court that He has, and is, exercising His right to personally verify any petitions filed with this court. Petitioner did not, nor does he, consent to ~~assigned~~ counsels filing of the petition that is now before this Honorable court. And infact, Petitioner was not even made aware of the petitions existence until he was informed over a phone call to counsel on the morning of March 21st, 2019.

There was never given consent or verification by the petitioner to counsels filing of the petition For writ of Habeas Corpus (Post conviction) and notice of motion. By petitioners non-consent, the entitled petition is not properly before the court and should be stricken.

Petitioner is aware that, as He is represented by counsel, He cannot file a proper persons /or pro se, motion to the underlined request. And as well, Petitioner is also aware that He is protected under the 6th amendment, and has a right to His chosen defense through counsel, and that counsel does not get ^{to} dictate strategy.

CLERK OF THE COURT

RECEIVED
APR 04 2019

(page 1 of 3)

A-19-784336-W
REQ
Request
4828016



AA11603

(See Robert Leroy McCoy -V- Louisiana No. 16-8255, Decided May 14, 2018)
And (Rose -V- Lundy, 455 U.S. 509, 516, 71 L.Ed 2d 374 (1982))

It is my prerogative, not counsels, to decide on the objective of my defense. And my objective is to maintain my innocence claim throughout the appellate process. Be-it the challenging of guilt phase issues, or penalty phase mitigation, I absolutely oppose any defense that resorts to claims of "diminished capacity". Any such strategies are the summary to an admission of guilt. I am adamant in my opposition to those strategies.

I've expressed to counsel on numerous occasions, that I have absolutely zero interest in pursuing any mitigation claims, and especially ones representing a diminished capacity strategy. Such claims (in my opinion) would be /and is, deceptively false, and again, is tantamount to an admission of guilt.

I do not want to imply that the relationship between assigned counsel and I, is irretrievably broken, or damaged, because I do not believe that it is. I do, however, hope that my request through this action will be considered by this Honorable Court, and that a standard is enforced to prohibit counsel from engaging in silent tactics that would result in situations that are underlined herein. The petition by counsel should be stricken. And if my request will not be considered, would the court enter my objection to the petition that is filed by counsel into the record? The petition filed by counsel is not properly before the court.

Conclusion

Petitioner Did Not consent to or verify the petition Filed to this court by counsel.

Respectfully,

Signed this 27th day of March 2014

Donte Johnson

Donte Johnson #66858

(Page 2 of 3)

I, Donte Johnson, declare under penalty of perjury that, all of the statements and information written herein is true, accurate and complete.

Dated this 27th day of March 2019

Donte Johnson
Donte Johnson

Donte Johnson #66858
Ely State Prison
P.O. Box 1984
Ely, Nevada
89301

(Page 3 of 3)

AA11605

Donte Johnson #66858
P.O. Box 1984
Ely, Nevada 89301

27
FILED

APR 11 2019

CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
(DEPARTMENT SIX)

A-19-789336-W
REQT
Request
4828980



Donte Johnson

Petitioner

VS~
Improper/
Illegal Petition, ETC. AL.
Respondents

CASE NO. A-19-789336-W

Dept No. VI

Request for "petition to be
stricken as it is not properly
before the court.

Death Penalty Post Conviction Case

Petitioner, Donte Johnson, acts through and on behalf of himself, petitioner is aware that He cannot properly file motions, as He is represented by assigned counsel. However, petitioner hereby gives notice to the court that he has, and is exercising his right to personally consent to, and verify any petitions filed with this court on his behalf. Notice is further given that petitioner DID NOT verify or consent to the petition that has been filed before this honorable court. And infact, petitioner was not even made aware of the petitions existence, until the morning of March 21st, 2019 during a phone call with assigned counsel, well after it was filed. And even during that phone

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call, counsel did not inform petitioner that there was a scheduled hearing to be held on that date of April 1, 2014. During that call, petitioner was only (apologetically) offered to be sent a copy of the filed petition. That copy was received by petitioner on March 26th, 2014. The cover page of the petition provided the surprising information that a hearing was scheduled.

Counsel has taken it upon himself to file the existing petition before this honorable court without his clients consent or verification. The petition is not properly before the court, and it should be stricken. The improper petition was filed on February 13, 2014.

Clearly, counsel elects to dictate his desired strategy in this matter as if it is his prerogative to do so, when infact, it is not. As it's been established in the matter of McCoy v. Louisiana (2018 West Law 218 61 74), it is the defendants prerogative to decide his defense and not counsels. See also Rose v. Lundy (455 U.S. 504-510).

Petitioner has expressed to counsel on numerous occasions that he has absolutely no interest in pursuing any mitigation claims through his appeals (ESPECIALLY one's representing a "Diminished Capacity" strategy). Such claims (in petitioners opinion) are deceptively false, misleading, and tantamount to an admission of guilt. If the court would please allow the petitioners objection to those strategies, to ring as loud as his objective does to his innocence claim, then petitioners substantial rights will have a chance to survive. Counsels petition is not properly before the court and petitioner is requesting that it be stricken.

Petitioner does not, in any way wish to imply that the relationship between counsel and himself is irretrievably broken (because he doesn't believe that it is). Petitioner does, however, believe that the Federal Public Defenders office has a culture of dictating their

objectives, and that assigned counsel has slightly taken to habits of that culture.

If this honorable court does deny my request to strike the petition filed by counsel, would it please, then record petitioners objection to the petition, as it is not properly before the court?

Conclusion

Petitioner Did not and Does not consent to counsels filing of petition before this court and ask that it be stricken.

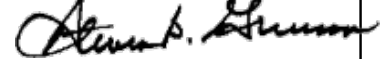
I, Donte Johnson, declare under penalty of perjury that all the above and foregoing is true, accurate, and correct to the very best of my knowledge.

Respectfully,

Donte Johnson

Donte Johnson #66858

Dated this 29th day of March 2019



MOT
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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DONTE JOHNSON,
#1586283

Defendant.

CASE NO: A-19-789336-W

DEPT NO: VI

**MOTION TO VACATE BRIEFING SCHEDULE
AND STRIKE HABEAS PETITION**

On February 13, 2019, the Federal Public Defender filed the instant 359-page habeas petition ostensibly on behalf of Donte Johnson by representing that he had personally authorized counsel to commence this habeas action. On February 25, 2019, counsel appeared in court and a briefing schedule was set. Thereafter, Donte Johnson filed motions to strike the petition on April 4 and April 11, 2019, representing that he did not verify or consent to federal counsel filing the petition. The State now moves to vacate the briefing schedule and to strike the unauthorized petition.

Without the client's consent, federal counsel has no authority to commence or continue a habeas proceeding in state court. NRS 34.730. In fact, without the client's consent the Federal Public Defender may not represent Donte Johnson in state court and certainly may not act contrary to his wishes. Because Donte Johnson has not sought counsel from this court per NRS 34.750 nor authorized the commencement of this proceeding on his behalf, the Federal