

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 83796

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

DONTE JOHNSON,
Petitioner,

v.

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

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

APPELLANT'S APPENDIX

Volume 16 of 50

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

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

Counsel for Petitioner
Donte Johnson

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DOCUMENT	DATE	VOLUME	PAGE(S)
District Court, Clark County, Nevada Case No. C153154, June 5, 2005			
210. Post –Evidentiary Hearing Supplemental Points and Authorities, Exhibit B: Affidavit of Wilfredo Mercado, <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154, June 22, 2005	02/13/2019	46	11578–11579
211. Genogram of Johnson Family Tree	02/13/2019	46	11580–11581
212. Motion in Limine Regarding Referring to Victims as “Boys”, <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154	02/13/2019	46	11582–11585
213. Declaration of Schaumetta Minor, (Dec. 18, 2018)	02/13/2019	46	11586–11589
214. Declaration of Alzora Jackson (Feb. 11, 2019)	02/13/2019	46	11590–11593
Exhibits in Support of Petitioner’s Motion for Leave to Conduct Discovery	12/13/2019	49	12197–12199
1. <i>Holloway v. Baldonado</i> , No. A498609, Plaintiff’s Opposition to Motion for Summary Judgment, District Court of Clark County, Nevada, filed Aug. 1, 2007	12/13/2019	49	12200–12227
2. Handwritten letter from Charla Severs, dated Sep. 27, 1998	12/13/2019	49	12228–12229

DOCUMENT	DATE	VOLUME	PAGE(S)
Exhibits in Support of Reply to State's Response to Petition for Writ of Habeas Corpus	12/13/2019	47	11837–11839
215. <i>Holloway v. Baldonado</i> , No. A498609, Plaintiff's Opposition to Motion for Summary Judgment, District Court of Clark County, Aug. 1, 2007	12/13/2019	47–48	11840–11867
216. <i>Holloway v. Baldonado</i> , No. A498609, Opposition to Motion for Summary Judgment Filed by Defendants Stewart Bell, David Roger, and Clark County, District Court of Clark County, filed Jan. 16, 2008	12/13/2019	48–49	11868–12111
217. Letter from Charla Severs, dated Sep. 27, 1998	12/13/2019	49	12112–12113
218. Decision and Order, <i>State of Nevada v. Johnson</i> , Case No. C153154, District Court of Clark County, filed Apr. 18, 2000	12/13/2019	49	12114–12120
219. State's Motion to Disqualify the Honorable Lee Gates, <i>State of Nevada v. Johnson</i> , Case No. C153154, District Court of Clark County, filed Apr. 4, 2005	12/13/2019	49	12121–12135
220. Affidavit of the Honorable Lee A. Gates, <i>State of Nevada v. Johnson</i> , Case No. C153154, District	12/13/2019	49	12136–12138

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

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

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

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

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

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

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

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

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

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

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

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

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

CERTIFICATE OF SERVICE

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

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

/s/ Celina Moore

Celina Moore

An employee of the Federal
Public Defender's Office

1 be able to consider four possible punishments and
2 then pick the best one or not the best one but the
3 appropriate one based on the facts and circumstances
4 of the case. The four possible sentences are the
5 death penalty, life imprisonment without the
6 possibility of parole, life imprisonment with the
7 possibility of parole and a definite term of 50
8 years with the possibility of parole after 20 years,
9 and of course, those terms are doubled because a
10 deadly weapon was used. So, the definite term would
11 be actually -- would actually be 100 years with
12 parole after 40 years, and the life imprisonment
13 with the possibility of parole would be a possible
14 life sentence with parole eligibility after 40
15 years, and of course, this would apply to each count
16 or each charge.

17 Do you understand that?

18 **PROSPECTIVE JUROR:** Yes.

19 **THE COURT:** Now, in your questionnaire,
20 you said you generally oppose the death penalty, but
21 you said you would consider it if the defendant had
22 demonstrated no remorse, no conscience, I guess.

23 **PROSPECTIVE JUROR:** Conscientiousness.

24 **THE COURT:** Is there a word such as
25 "conscientiousness"?

1 **MR. WHIPPLE:** It works for me.
2 **PROSPECTIVE JUROR:** Thank you.
3 **THE COURT:** I understand what you're
4 saying.
5 Your point is that you could consider it
6 in some circumstances?
7 **PROSPECTIVE JUROR:** Yes.
8 **THE COURT:** Depending on the gravity and
9 the severity of the crime; is that correct?
10 **PROSPECTIVE JUROR:** Correct.
11 **THE COURT:** And you could consider life in
12 prison with or without parole --
13 **PROSPECTIVE JUROR:** Yes.
14 **THE COURT:** -- as well as a hundred years
15 with parole after 40 if you thought it was
16 appropriate?
17 **PROSPECTIVE JUROR:** Yes.
18 **THE COURT:** So, you're open to all of
19 them?
20 **PROSPECTIVE JUROR:** Yes.
21 **THE COURT:** Is that correct?
22 **PROSPECTIVE JUROR:** Yes, sir.
23 **THE COURT:** Can you be fair and impartial
24 in this case?
25 **PROSPECTIVE JUROR:** Yes, sir.

1 **THE COURT:** Can you follow the Court's
2 instructions on the law?
3 **PROSPECTIVE JUROR:** Yes, sir.
4 **THE COURT:** Can you wait until you've
5 heard all the evidence before you make up your mind?
6 **PROSPECTIVE JUROR:** Yes.
7 **THE COURT:** State.
8 **MR. STANTON:** Thank you, your Honor.
9
10 EXAMINATION BY THE STATE
11 **BY MR. STANTON:**
12 Q Good morning.
13 A Good morning.
14 Q Your son -- your oldest son, is his name
15 Ryan?
16 A Yes.
17 Q Was he prosecuted by the Clark County
18 D.A.'s office?
19 A Yes.
20 Q As a result of that, do you harbor any
21 resentment towards the Clark County D.A.'s office?
22 A No. They asked me what I wanted to do,
23 and I said that he needed to be punished.
24 Q Okay.
25 Do you believe that the District

1 Attorney's office handled your son's case fairly?

2 A Yes.

3 Q And the fact that he's incarcerated now
4 you think is part of the just nature of his conduct?

5 A Yes.

6 Q You indicated on your questionnaire some
7 familiarity with the case, but it was only the
8 defendant's name only.

9 A It's not on the questionnaire. Well,
10 yeah, I have heard his name, but today when you told
11 me about the case, I remember it. I lived close by,
12 and one of the victims involved had a younger
13 brother that was a friend of my son Travis, and I
14 remember that child not coming to school that day
15 and Travis asking. I just remember some things
16 about it.

17 Q Is there anything about the nature of what
18 you know about the case that causes you a problem
19 with being fair and impartial if you were selected
20 as a juror in this case?

21 A I think I can be fair and impartial. I
22 don't know what kind of things would come up in the
23 sentencing end of it.

24 Do you go over the case itself, what
25 happened?

1 Q That's a fair question. Let me just give
2 you a brief overview. There will be presentation,
3 summarization to some extent by a homicide detective
4 about the underlying murder itself. There will be
5 testimony from individuals, actual individual
6 witnesses at the original trial that will come in
7 and discuss testimony highlighting certain aspects
8 of the murders and the defendants involved in those
9 murders.

10 Does that cause you any difficulty?

11 A No. Any knowledge I have would be similar
12 to what would be stated before we would decide on
13 sentencing.

14 Q Part of that testimony and facts and
15 evidence would be photographs of the crime scene,
16 and I'll represent to you that a fair statement of
17 that is that they are violent photographs in what
18 they depict, and there, most reasonable
19 compassionate people would consider them to be
20 somewhat difficult to look at.

21 In the context of a jury proceeding in
22 this hearing, that evidence would be presented to
23 you as evidence.

24 Can you look at evidence like that or
25 verbal testimony as well as photographs and look at

1 them for what they are, evidence in this case, as
2 opposed to being overwhelmed by the emotional
3 aspect?

4 A I don't know. I've never seen pictures
5 like that or evidence like that, so this would be
6 the first time I've ever seen anything.

7 Q That's a fair statement.

8 You presume that never having seen a
9 photograph of a violent crime scene?

10 A No.

11 Q These photographs would be of the crime
12 scene itself, four young men murdered in a home, and
13 what would be commonly referred to as "execution
14 style."

15 Is that something that you think you could
16 look at and keep your role as a juror in perspective
17 after having looked at that evidence?

18 A I don't know.

19 Q I appreciate that; unfortunately, now is
20 the time that we have to have some sort of
21 definitive answer from you.

22 A I know me, and I tend to be emotional, so
23 I don't know if I can look at that and not become
24 emotional.

25 Q I think that's a fair assessment. The

1 question here then becomes -- and I think that's
2 probably human nature to have some sort of a motor
3 response to that.

4 The question then is can you consider your
5 role as a juror and go past the emotion at some
6 point after seeing it and go back to your role as a
7 juror and focus on it as evidence?

8 A I believe so, yes.

9 Q Thank you.

10 I'd like to talk to you briefly about some
11 comments you made about the death penalty in the
12 questionnaire and the questions you answered to
13 Judge Gates' question. You said you're generally
14 opposed to the death penalty, and you mentioned in
15 another section that you have religious beliefs in
16 that regard.

17 Could you explain your feelings about
18 that?

19 A I'm a Christian, and I think it's playing
20 God sentencing somebody else to death, although I
21 did state on the emotional that if something
22 happened to my own child, I wouldn't want the death
23 penalty for the person that killed my own child, so,
24 you know, never being put in that position, I don't
25 know how I would react.

1 Q I would like to break down your response
2 in just a couple of areas. The first one is the
3 religious beliefs. The Judge asked specifically
4 about whether or not your religious beliefs would
5 inhibit you to perform your function of what you now
6 know it would be.

7 Your answer would be no?

8 A I don't think it would inhibit.

9 Q The instructions of law and anybody that
10 would be sitting and selected as a juror in this
11 case must, as a matter of law, be able to consider
12 all four sentencing options, obviously one of those
13 being the death penalty.

14 A Right.

15 Q You could consider that, and, in fact,
16 impose it if you felt it was appropriate?

17 A Yes.

18 Q And your religious beliefs would not
19 violate any legal instruction to you in that regard?

20 A No.

21 Q Now, relative to the second part of your
22 statement beyond the religious aspect, could you
23 tell me more about the emotional, I think is what
24 you told me, about your feelings and about your own
25 child being a victim? Obviously, that's not the

1 situation here. You're not sitting in judgment of
2 someone that has murdered any of your children.

3 A Right.

4 Q In this case, there are four victims, and
5 the punishment that needs to be allocated by the
6 jury in this process is the just punishment for each
7 one of those victims.

8 Do you understand that concept and are you
9 comfortable with it?

10 A Yes.

11 Q Your verdict may be -- I'm not saying it
12 will be or should be, but it may be that the
13 punishment may be different for each victim.

14 Could you see and are you comfortable with
15 that type of situation?

16 A Yes.

17 Q The discussion about your feelings about
18 the death penalty both on the questionnaire and
19 probably here in court today have been all generally
20 philosophical in nature. My last question to you,
21 ma'am, is the reality of that situation as you find
22 yourself here potentially very closely and sitting
23 on this jury.

24 My question to you, ma'am, is this: In
25 the process of jury deliberations, the jury picks

1 someone to be the foreperson, and there's very
2 little instructions of law on how that person is
3 selected. It's collectively up to the jury who that
4 foreperson is.

5 If you're selected as the foreperson in
6 this case and after careful deliberation of all the
7 facts and evidence in this case, you and your fellow
8 jurors feel that the appropriate and just verdict in
9 this case is death, would you, as the foreperson,
10 affix your signature to that verdict form that puts
11 that man, Donte Johnson, to death?

12 A Yes.

13 **MR. STANTON:** One moment, your Honor.

14 **BY MR. STANTON:**

15 Q You indicated some knowledge through your
16 sons of one of the victim's brothers in this case?

17 A Right.

18 Q Do you know that person's name?

19 A No.

20 Q Would the name Nick Gorringer ring a bell
21 with you?

22 A No. It was a while ago.

23 Q I'm sorry?

24 A It was a while ago. My son may remember.

25 Q If that is, indeed, a person that comes in

1 here and testifies in this proceeding --

2 A I may recognize him.

3 Q -- would that be a problem to you?

4 A Probably.

5 Q In what way?

6 A Just bringing it more personal. I mean,

7 the person that didn't make it to school that day my

8 son had a relationship with, and I would bring him

9 home, and we drove by the house, and it was taped

10 off, so maybe at that point I could recognize him.

11 I don't know. I don't know.

12 Q And let's say that indeed you recognized

13 him, would you have the ability or would it concern

14 you when you deliberate, the fact that some day you

15 might encounter that person and have to discuss your

16 verdict in this case and that you would be

17 prejudiced by those feelings?

18 A That's a good point. That's a

19 possibility, yes.

20 Q And do you think that fairly and honestly

21 as you look at yourself that might affect your

22 deliberations in this case?

23 A Thinking that I may have to speak to them

24 again, yes, it may.

25 **MR. STANTON:** I appreciate your honesty,

1 ma'am.

2 Court's indulgence one moment.

3 Your Honor, may counsel approach?

4 **THE COURT:** Yes.

5 (Sidebar conference outside the presence
6 of the court reporter.)

7 **THE COURT:** Ma'am, do you know the
8 brother's name? Are you sure it's this case?

9 **PROSPECTIVE JUROR 309:** Yes, but no, I
10 don't know the brother's name.

11 **THE COURT:** All right.

12 Would that affect -- you said that it
13 might affect you. How so?

14 **PROSPECTIVE JUROR:** Well, obviously -- not
15 obviously -- I don't know how the family thinks or
16 feels or the victims think or feel towards them
17 but -- I don't know. I've never been a juror. I've
18 never been on a case like this.

19 **THE COURT:** This is the first time for
20 most people.

21 What I want to know is is that going to
22 prevent you from being impartial?

23 **PROSPECTIVE JUROR:** I don't think so.
24 Emotional, yes, impartial, no.

25 **THE COURT:** A lot of times this is

1 emotional because these kind of cases involve people
2 and individuals and just the very nature of the
3 case.

4 **PROSPECTIVE JUROR:** Right.

5 **THE COURT:** It's going to be emotional and
6 probably for everybody involved, but we want to
7 know -- we want people to make reasonable decisions
8 that are not based on bias or anything like that but
9 just based on the facts and the law and the
10 circumstances of the case.

11 **PROSPECTIVE JUROR:** Right.

12 **THE COURT:** So far it appears that you're
13 a pretty reasonable, impartial and unbiased person
14 and can be fair, but at the last there, you were
15 stating that your son may have known the brother of
16 one of the victims. It's not like you're related to
17 them or anything like that.

18 **PROSPECTIVE JUROR:** No.

19 **THE COURT:** What we want to know is
20 basically, because of that connection there, would
21 you be inclined to be biased towards the State
22 because they represent the victims -- they represent
23 the State but they're going to have the victims as
24 the witnesses? Are you going to be biased towards
25 the State and do what they want because of that?

1 **PROSPECTIVE JUROR:** I think I can be fair.
2 I think I most likely would be emotional, but I
3 think I can be fair.

4 **THE COURT:** That's all we want.
5 All right.

6
7 EXAMINATION BY THE DEFENSE

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

9 **BY MR. WHIPPLE:**

10 Q I guess it's good afternoon.

11 I realize you're a very busy individual,
12 and thank you for your time.

13 Miss Knight, I appreciate you being fair,
14 and that's what this all comes down to. This is an
15 unusual circumstance. This is not like TV where my
16 client is presumed innocent. It's not like TV where
17 they have to prove his guilt beyond a reasonable
18 doubt. Mr. Johnson took the life of four young
19 adults, and we're not here to ever try to suggest
20 there was an excuse or justification or that they
21 somehow deserve it or anything to that range. It's
22 a terrible, terrible thing. We just want
23 individuals who can be fair, and what we ask, before
24 you provide sentence, is you be willing to listen to
25 us.

1 At some point, you'll hear instructions
2 from the Court that the death penalty is never
3 required. In fact, there are reasons to give life
4 sentences, and we'll discuss some of those reasons.
5 Basically, we describe those reasons, Miss Jackson
6 and I -- Miss Jackson, of course, is my
7 co-counsel -- as mitigating reasons, mitigating
8 experiences or mitigating information, and
9 essentially, we wrap all that information into one
10 short word sentence, and that is, "A reason to give
11 life."

12 Now, I note that the Court asked you if
13 you would be willing to consider a defendant's
14 background mitigating circumstances such as
15 defendant's health, mental status, age, childhood
16 experience, education, and it asked, "Do you feel
17 you would consider those types of factors?" and you
18 put, "Very much." In fact, there was an option
19 here, "Not at all."

20 Why did you strike the "Very much" option?

21 A Wait.

22 Q Let me just show you. It's No. 38.

23 A I need my glasses.

24 Q It's the last page, Question No. 38.

25 A Are you saying it was inconsistent?

1 Q I'm just curious as to why you said "Very
2 much." Why is that important to you?

3 A I just believe that -- like I said before,
4 if this was a crime that was committed of hatred and
5 no remorse, no conscientiousness -- if that's a
6 word --

7 Q It is now.

8 A -- that should be taken into consideration
9 for punishment.

10 Q How about possibly a person's background,
11 their life experiences, the differences
12 including the lifestyles, would you be willing to
13 consider that type of information as well?

14 A Yes.

15 Q Now, if there comes a situation where you
16 feel that a particular sentence is appropriate,
17 either a life sentence or maybe not even a life
18 sentence but you found other individuals that
19 differed from yourself, how would you resolve it
20 when other people have differences of opinion with
21 regard to yours?

22 **PROSPECTIVE JUROR:** I don't know. Are we
23 allowed to look at any other cases where maybe
24 certain sentences were applied in certain cases? Is
25 that anything?

1 Q Actually, what will happen -- and I am
2 giving you information in a vacuum, but what will
3 happen is you will be given a lot of information
4 from both sides, and the Court will give you
5 instructions, and those instructions are what you
6 can use to apply the information that we give to
7 you, but clearly a mitigating circumstance or
8 mitigating information, sometimes it's just a gut
9 feeling. Sometimes it's just merely mercy that you
10 listen to our client's mother and listen to a call
11 for a plea for her life and you believed in that and
12 maybe other people didn't. Are you a person that
13 can stand by their guns and stick with an opinion
14 that you might have?

15 A Yes.

16 Q Why do you say that?

17 A I'm just an opinionated person, and I'm
18 able to speak what's on my mind and verbalize what
19 my convictions are.

20 Q Are you able to respect other people's
21 opinions even if they differ from your own?

22 A Sure.

23 Q And again, why is that?

24 A Well, everyone is entitled to their
25 opinion, and maybe they have convictions that enter

1 theirs too.

2 Q And if their opinions differ from yours,
3 would you expect them to respect your opinion?

4 A Yes.

5 Q I note that you're a superintendent of a
6 construction site. Obviously, you're very much in a
7 leadership position out there.

8 A Yes.

9 Q Do you consider yourself a leader?

10 A I hope so. I guess it depends upon if
11 anyone is following me.

12 Q That's fair enough.

13 **MR. WHIPPLE:** I thank you very much for
14 your time, Miss Knight.

15 Pass for cause, your Honor.

16 **THE COURT:** Ma'am, wait outside, would you
17 please?

18 **PROSPECTIVE JUROR 309:** Sure.

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

21 **THE COURT:** At this time, the defense can
22 exercise their one and only peremptory of the
23 alternates.

24 **MS. JACKSON:** Mr. Branton, No. 0296, your
25 Honor.

1 **THE COURT:** All right. He's excused.
2 Who's next?
3 **MR. STANTON:** Mr. Mercado, 311.
4
5 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 311
6 **THE COURT:** Mr. Mercado?
7 **PROSPECTIVE JUROR 311:** Yes.
8 **THE COURT:** Good afternoon there.
9 **PROSPECTIVE JUROR:** Good afternoon.
10 **THE COURT:** You're from the Bronx in
11 New York, originally; is that right?
12 **PROSPECTIVE JUROR:** Yes, I am.
13 **THE COURT:** Do you speak Spanish?
14 **PROSPECTIVE JUROR:** I do.
15 **THE COURT:** You've been here approximately
16 a little over six years; is that right?
17 **PROSPECTIVE JUROR:** A little over six
18 years.
19 **THE COURT:** Are you married?
20 **PROSPECTIVE JUROR:** No, I'm not.
21 **THE COURT:** What kind of work do you do?
22 **PROSPECTIVE JUROR:** I'm a realtor.
23 **THE COURT:** Have you ever served on a jury
24 before?
25 **PROSPECTIVE JUROR:** No, I haven't.

1 **THE COURT:** Have you or anyone in your
2 family ever been charged with a crime before?
3 **PROSPECTIVE JUROR:** Yes, they have.
4 **THE COURT:** Who was that?
5 **PROSPECTIVE JUROR:** Various cousins.
6 **THE COURT:** Are any of them charged with
7 murder, assault, anything like that -- violent
8 crimes?
9 **PROSPECTIVE JUROR:** No.
10 **THE COURT:** Would the fact that some of
11 your cousins have been charged with crimes, would
12 that affect your ability to be fair and impartial
13 here?
14 **PROSPECTIVE JUROR:** No.
15 **THE COURT:** Do you have any animosity
16 towards prosecutors or Deputy District Attorneys or
17 police officers because they prosecute cases?
18 **PROSPECTIVE JUROR:** No, I don't.
19 **THE COURT:** Now, you were in the Coast
20 Guard for four years?
21 **PROSPECTIVE JUROR:** Four years.
22 **THE COURT:** And you were -- what was your
23 job in the Coast Guard?
24 **PROSPECTIVE JUROR:** I was a cook.
25 **THE COURT:** Have you had any friends or

1 relatives who have been the victim of a crime?

2 **PROSPECTIVE JUROR:** Yes.

3 **THE COURT:** Who was that?

4 **PROSPECTIVE JUROR:** Well, besides myself,
5 various family members.

6 **THE COURT:** Specifically, you. What kind
7 of crime was perpetrated against you?

8 **PROSPECTIVE JUROR:** I was beaten in
9 New York a couple of times and robbed quite often.

10 **THE COURT:** Quite often?

11 **PROSPECTIVE JUROR:** Quite often.

12 **THE COURT:** Armed robberies or just
13 handguns, knives, what?

14 **PROSPECTIVE JUROR:** Both.

15 **THE COURT:** Both.

16 **PROSPECTIVE JUROR:** Hands and weapons.

17 **THE COURT:** Would that affect your ability
18 to be fair and impartial in this case?

19 **PROSPECTIVE JUROR:** I don't think so.

20 **THE COURT:** Now, you understand that in
21 this case, we are picking a jury to decide the
22 penalty for the defendant.

23 Do you understand that?

24 **PROSPECTIVE JUROR:** I do.

25 **THE COURT:** He's already been convicted of

1 four counts of first-degree murder, and according to
2 the laws of the State of Nevada, the jury that
3 sentences him will have to look at four possible
4 punishments and pick the most appropriate one.

5 Do you understand that?

6 **PROSPECTIVE JUROR:** I do.

7 **THE COURT:** The four forms of punishment
8 are the death penalty, life in prison without the
9 possibility of parole, life in prison with the
10 possibility of parole or for a definite term of 50
11 years with the possibility of parole after 20 years,
12 and of course, that term is doubled if a deadly
13 weapon is used. So, in actuality, the definite term
14 would be a hundred years with parole after 40 years
15 and life in imprisonment with the possibility of
16 parole would be a possible life sentence on the
17 maximum end with parole eligibility after 40 years
18 had been served.

19 Do you understand that?

20 **PROSPECTIVE JUROR:** I do.

21 **THE COURT:** Now, could you consider all
22 four forms of punishment?

23 **PROSPECTIVE JUROR:** I would honestly say
24 that before -- earlier when we were all sworn in, I
25 did not have a problem with any one of them, but now

1 knowing that the defendant has children, because I'm
2 a father myself, I might have a problem with the
3 death penalty.

4 **THE COURT:** Tell me this here: Are there
5 any circumstances under which you could impose it?
6 Given the fact that he has kids, can you envision
7 some circumstances under which you can impose the
8 death penalty?

9 **PROSPECTIVE JUROR:** Oh, definitely.

10 **THE COURT:** So, you're saying -- you're
11 not ruling it out, but you're saying it would be
12 difficult?

13 **PROSPECTIVE JUROR:** Right.

14 **THE COURT:** Wouldn't you want to listen to
15 the facts of the case and the circumstances and the
16 people involve and everything before you make your
17 decision?

18 **PROSPECTIVE JUROR:** Definitely.

19 **THE COURT:** Even after that, if you found
20 that it was appropriate, you could impose it?

21 **PROSPECTIVE JUROR:** I definitely could.

22 **THE COURT:** The law doesn't require that
23 you give any particular sentences; you have to
24 listen to the facts, the background, the parties
25 involved, the law, listen to the witnesses, the

1 evidence and the facts surrounding the case, then
2 you are to pick the most appropriate sentence.

3 Do you understand that?

4 **PROSPECTIVE JUROR:** Right, I do.

5 **THE COURT:** You don't have a lot of
6 information to work with now, so we'll give you a
7 lot more information and then you will be in a
8 better position.

9 Do you understand that?

10 **PROSPECTIVE JUROR:** I do.

11 **THE COURT:** Are you married?

12 **PROSPECTIVE JUROR:** I'm not.

13 **THE COURT:** You're not married.

14 How many kids do you have?

15 **PROSPECTIVE JUROR:** Two.

16 **THE COURT:** Do they live here in Nevada or
17 New York?

18 **PROSPECTIVE JUROR:** They live in Virginia.

19 **THE COURT:** Virginia. Okay.

20 How old are they?

21 **PROSPECTIVE JUROR:** My daughter is 16, and
22 my son is seven.

23 **THE COURT:** State, you may examine.

24 **MR. STANTON:** Thank you, your Honor.
25

1 EXAMINATION BY THE STATE

2 **BY MR. STANTON:**

3 Q Good afternoon, Mr. Mercado.

4 A Good afternoon.

5 Q I'd like to start off with some questions
6 regarding your experiences in New York which I
7 gather from your questionnaire and from your
8 statements here today may not have always been
9 positive experiences.

10 Is that a fair statement?

11 A Right.

12 Q Is that one of the reasons that caused you
13 to move to Las Vegas?

14 A Not particularly. I was in the military,
15 and after the military just came to Vegas.

16 Q So, the military kind of broke that up.
17 You weren't fleeing from New York because
18 you had been beaten or robbed on numerous times?

19 A No. I was very young when that happened.

20 Q What was the ethnicity of the people that
21 attacked you in these events?

22 A I would say it was a mixture. It wasn't
23 just one ethnicity.

24 Q What ethnicity was it a mixture of, all
25 types?

1 A Blacks, whites, Hispanics.

2 Q You made mention of a situation with the
3 defendant having children when you heard that today?

4 A Um-hmm.

5 Q And that it was harder for you to consider
6 the death penalty.

7 Is that a fair assessment?

8 A That would be definitely something I would
9 have to weigh.

10 Q Why does that make a difference to you?

11 A Because I'm a father and I lost my father,
12 and I know what it's like for a child to lose a
13 parent.

14 Q Knowing that the defendant has fathered
15 children, you answered Judge Gates' question, even
16 knowing that, you still would consider the death
17 penalty.

18 A Like the Judge said, I haven't heard all
19 the circumstances, so....

20 Q Precisely.

21 But as you sit here today not knowing all
22 the facts and circumstances, would there be
23 situations where a person that has fathered
24 children, you could impose the death penalty if you
25 heard certain facts and circumstances?

1 A Definitely.

2 Q Give me some examples of facts and
3 circumstances that you would consider in imposing,
4 somebody who had fathered children but yet deserved,
5 the death penalty?

6 A One that comes directly to mind, and I
7 have a strong conviction against, rape.

8 Q Okay.

9 A So, if a father, regardless if he has
10 children -- a man, regardless if he has children or
11 not, raped another person, I would not -- the fact
12 that they have children doesn't justify -- I don't
13 know. I'm having a hard time explaining it.

14 Q I understand that.

15 A That's something I have strong feelings
16 about.

17 Q Okay.

18 Any other factors that you would consider
19 in giving somebody who had fathered children the
20 death penalty?

21 A Well -- reasons. People commit crimes all
22 the time, but the reasons behind the crime would
23 definitely be something to consider.

24 Q You would want to know that?

25 A Definitely.

1 Q As we sit here as the State, you've
2 indicated that you have strong feelings about the
3 death penalty with somebody who has fathered
4 children; you would keep an open mind and be fair to
5 the State in this case?

6 A That statement you just said is not what I
7 said.

8 Q Okay. I'm sorry. Correct me then. What
9 am I misstating?

10 A The fact that he has children is something
11 that I would have to definitely weigh; I can't just
12 say give him death.

13 Q Okay. I understand that, and that's not
14 what the State's position in this case is.

15 Clearly what I'm trying to inquire about
16 is whether or not the fact that he has fathered
17 children -- and you have to consider all the facts
18 and evidence in this case -- could you be fair to
19 the State's position in this case?

20 A Oh, I think so.

21 Q You haven't closed your mind to any
22 possibilities in this case?

23 A My mind is never closed.

24 Q Where were you stationed when you were in
25 the Coast Guard?

1 A Virginia and Massachusetts, Boston.
2 Q Was that Norfolk?
3 A Portsmouth.
4 **THE COURT:** I have a question. Let me
5 interrupt.
6 You said that you lost your father. How
7 did you lose your father?
8 **PROSPECTIVE JUROR:** I did not lose him to
9 crime; I lost him to diabetes.
10 **THE COURT:** He died?
11 **PROSPECTIVE JUROR:** I just lost him right
12 before I came out to Vegas, actually.
13 **THE COURT:** Okay.
14 **PROSPECTIVE JUROR:** And just going through
15 that experience, that's not something I can do.
16 **THE COURT:** I see what you're saying. All
17 right.
18 **BY MR. STANTON:**
19 Q Sir, you indicated some family members, I
20 believe you said cousins had been involved in some
21 criminal activity?
22 A Yes.
23 Q Did you think they were treated fairly?
24 A Yes.
25 Q Where, physically, as far as a city and a

1 state, did those crimes that your cousins were
2 charged with occur?

3 A Most of them in Puerto Rico.

4 Q And were they -- were any of your cousins
5 convicted as a result of those charges?

6 A Yes, they were.

7 Q Were any of them incarcerated?

8 A Yes, they were.

9 Q Are any of them still incarcerated?

10 A No, they're not.

11 Q As a result of that experience and your
12 relationship with them, is there anything that would
13 cause you a problem in sitting as a juror in this
14 case?

15 A No.

16 Q If you came back with a verdict, whatever
17 it might be in this case, there's no problem with
18 you discussing that with your cousins and saying,
19 "This is what I did and this is my verdict"? You
20 would have no problem there?

21 A Not at all.

22 Q In this case, a prior jury has found the
23 defendant guilty beyond a reasonable doubt of four
24 counts of first-degree murder.

25 Do you have a problem accepting that

1 jury's verdict in your deliberations in this case,
2 because you'll be required as a matter of law to
3 indeed accept their verdict.

4 Any problem with that?

5 A No.

6 Q Now, you're going to hear some evidence of
7 the murders, the underlying quadruple homicide that
8 occurred in this case. There is no part of this
9 function that deals with you reviewing guilt or
10 innocence.

11 Are you comfortable with that?

12 A Yes.

13 Q Even comfortable in determining a life or
14 death decision in this case?

15 A Yes.

16 Q Comfortable?

17 A Um-hmm.

18 Q Now, we've talked about the death penalty
19 in kind of philosophical terms here, and I guess as
20 you sit there now answering all these questions and
21 waiting out in the hallway thinking about this, it's
22 more of a realistic situation to you.

23 I want to ask you this final question,
24 sir. If you're selected on this jury and during the
25 course of this matter being presented to you, you go

1 back in your deliberative process, the jury selects
2 you as the foreperson, and after all the facts and
3 evidence in front of you, you along with the rest of
4 the 11 jurors that comprise this jury collectively
5 believe that the true and just punishment in this
6 case is the death penalty, you as the juror would
7 have to sign the verdict form.

8 If you believe that with your fellow
9 jurors, sir, could you affix your signature to that
10 verdict form that puts that defendant, Donte
11 Johnson, to death?

12 A Definitely.

13 **MR. STANTON:** Thank you.

14 Pass the prospective juror.

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

16

17 EXAMINATION BY THE DEFENSE

18 **BY MR. WHIPPLE:**

19 Q Mr. Mercado, you have to forgive our
20 little chuckle over here talking about getting
21 robbed in New York. I think one of your
22 predecessors mentioned that she had grew up in
23 New York and mentioned that she had got robbed a
24 couple of times, so we had a little chuckle.

25 A It's not uncommon.

1 Q Did you grow up in the Bronx, South Bronx?
2 A In the Bronx.
3 Q Were you in the Coast Guard?
4 A Yes.
5 Q Did you go to any school or did you just
6 go directly into the Coast Guard from high school?
7 A Actually, I was in college before I went
8 to the Coast Guard.
9 Q Did you enjoy the Coast Guard?
10 A Very much.
11 Q I guess you served in Virginia and
12 Massachusetts?
13 A Um-hmm.
14 Q How is it that you came to Nevada from --
15 including your time in the Coast Guard?
16 A My girlfriend at the time, we met in the
17 Coast Guard, and she has family here, so she had
18 already decided to move out here, and a couple
19 months later, I came out to see what it was like and
20 haven't left, and I'm not planning to.
21 Q That's great.
22 You're aware that this is simply a penalty
23 phase as Mr. Johnson is convicted of killing four
24 individuals. I want to make you aware that
25 Miss Jackson and I are not here to offer an excuse

1 or justification for those behaviors.
2 Do you understand that?
3 A Um-hmm, I do.
4 Q We're here in good conscience to ask for a
5 life sentence. That's all.
6 **MR. WHIPPLE:** Thank you for your time.
7 Your Honor, pass for cause.
8 **THE COURT:** This is what the Court is
9 going to do. We're going to pick one more
10 alternate; I'm going to give you each one peremptory
11 challenge.
12 You can wait outside, sir.
13 **MR. WHIPPLE:** Judge, I just want to
14 clarify the preempt. Is that just for one upcoming
15 person?
16 **THE COURT:** Right, for the additional
17 alternate we're going to pick.
18 **MR. WHIPPLE:** Thank you.
19 **THE COURT:** That's in case one of the
20 other jurors don't show up so we'll have enough.
21 What was his number?
22 **MR. STANTON:** His number, your Honor, was
23 0311.
24 **THE COURT:** Who's next?
25 /////

1 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 314
2 **THE COURT:** Mr. Martinez?
3 **PROSPECTIVE JUROR 314:** Yes.
4 **THE COURT:** How are you doing this
5 afternoon?
6 **PROSPECTIVE JUROR:** Fine.
7 **THE COURT:** Pardon me?
8 **PROSPECTIVE JUROR:** I'm fine.
9 **THE COURT:** Mr. Martinez, how long have
10 you lived in Nevada?
11 **PROSPECTIVE JUROR:** How long?
12 **THE COURT:** Right.
13 **PROSPECTIVE JUROR:** Three years.
14 **THE COURT:** Three years?
15 **PROSPECTIVE JUROR:** Yes.
16 **THE COURT:** Where did you live before
17 that?
18 **PROSPECTIVE JUROR:** In Chicago.
19 **THE COURT:** Chicago?
20 **PROSPECTIVE JUROR:** Chicago.
21 **THE COURT:** Mr. Martinez, how far did you
22 go in school, sir?
23 **PROSPECTIVE JUROR:** About six years.
24 **THE COURT:** You went six years.
25 Did you go here or in Mexico?

1 **PROSPECTIVE JUROR:** Yes, sir.

2 **THE COURT:** A lot of these -- some of

3 these questions you didn't fill out.

4 Is there a reason why? You did not

5 understand?

6 **PROSPECTIVE JUROR:** I don't know how to

7 write good English, and I don't speak very well.

8 **THE COURT:** Your English is not very good?

9 **PROSPECTIVE JUROR:** No.

10 **THE COURT:** You guys.

11 **MR. DASKAS:** We would not oppose and

12 excuse him, your Honor.

13 **MS. JACKSON:** That would be our --

14 **THE COURT:** You stipulate too?

15 **MS. JACKSON:** Yes, sir.

16 **THE COURT:** We're going to excuse you,

17 sir.

18 **PROSPECTIVE JUROR:** Pardon me?

19 **THE COURT:** You can go. Thank you.

20 **MR. STANTON:** Your Honor, the next juror

21 is 0315, Miss Kelly, who has expressed rather strong

22 feelings about race and the death penalty, just to

23 highlight the Court.

24 **THE COURT:** Not only that, she said

25 something about some kind of medical or something.

1 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 315

2 **THE COURT:** You said you're opposed to the
3 death penalty under any circumstance?

4 **PROSPECTIVE JUROR 315:** Yes, sir.

5 **THE COURT:** All right. You're excused,
6 ma'am.

7 **PROSPECTIVE JUROR:** Thank you.

8 **THE BAILIFF:** Miss Martel did not show up
9 today either.

10 **THE COURT:** Order to show cause will issue
11 for her.

12 Alfred Melton.

13

14 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 320

15 **THE COURT:** Was Mr. Melton in here when we
16 swore them in?

17 **MR. STANTON:** No, he was not.

18 **THE COURT:** How many are out there now?

19 **THE BAILIFF:** About ten.

20 **THE COURT:** Bring in about four.

21 Have a seat, Mr. Melton.

22 Go get four more.

23 **MR. STANTON:** Your Honor, based upon the
24 number, shall we bring all ten in?

25 (Recess taken.)

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

(A.M. session was adjourned at 12:54 p.m.)


* * * * *

REPORTER'S CERTIFICATE

STATE OF NEVADA)
:SS
COUNTY OF CLARK)

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

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


SONIA L. RILEY, CCR 727

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

523

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

DISTRICT COURT
CLARK COUNTY, NEVADA

FILED

2005 APR 26 A 9:41

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

REPORTER'S AMENDED COVER PAGE TRANSCRIPT

OF

TRIAL BY JURY

(VOLUME IV - A.M.)

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

DATED FRIDAY, APRIL 22, 2005

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

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

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

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

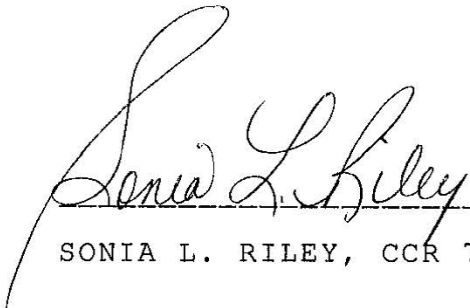
RECEIVED
APR 26 2005
COUNTY CLERK

1 REPORTER'S CERTIFICATE

2 STATE OF NEVADA)
3 :SS
4 COUNTY OF CLARK)
5

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

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

19
20
21
22
23
24
25

SONIA L. RILEY, CCR 727

THE STATE OF NEVADA v. JOHNSON

DISTRICT COURT
CLARK COUNTY, NEVADA

2005 APR 25 A 8:56

ORIGINAL

THE STATE OF NEVADA,)

Plaintiff,)

-vs-)

DANTE JOHNSON,)

Defendant.)

Case No. C153154

Dept No. VIII

Docket H

VOLUME IV-B

PENALTY PHASE

BEFORE THE HONORABLE LEE A. GATES

FRIDAY, APRIL 22, 2005, 1:08 P.M.

APPEARANCES:

For the State:

ROBERT J. DASKAS, ESQ.

DAVID STANTON, ESQ.

Deputies District Attorney

For the Defendant:

ALZORA JACKSON, ESQ.

BRETT WHIPPLE, ESQ.

Deputies Public Defender

REPORTER: KRISTINE MOORE, CCR 273

COUNTY CLERK

APR 22 2005

RECEIVED

SS

THE STATE OF NEVADA v. JOHNSON

I N D E X

* * * * *

VOIR DIRE EXAMINATION

NO.	PROSPECTIVE JUROR	COURT	STATE	DEFENSE
0347	MR. PERRY	9	14	17

* * * * *

CHALLENGES FOR CAUSE

NO.	PROSPECTIVE JUROR	PARTY	PAGE
-----	-------------------	-------	------

* * * * *

PEREMPTORY CHALLENGES

PARTY	NO.	BADGE NO.	NAME	SEAT	PAGE
-------	-----	-----------	------	------	------

THE STATE OF NEVADA v. JOHNSON

1 LAS VEGAS, NEVADA, FRIDAY, APRIL 22, 2005, 1:08 P.M.

2 * * * * *

3 THE COURT: All right. Bring in the last
4 juror.

5 Mr. Milton, No. 320, he was sitting
6 in here. The Defendant wanted to use the restroom. The
7 guards put him in handcuffs and shackles in front of Mr.
8 Milton. We didn't want him to be seen in that condition.

9 We are excusing Mr. Milton since he
10 saw him in that condition. All right?

11 MS. JACKSON: Yes, your Honor.

12 THE COURT: Bring them in so we can swear
13 them in. I thought that's what we were going to do.

14 THE COURT: Miss Clerk, swear in the panel.

15 (WHEREUPON, THE VENIRE WAS

16 SWORN BY THE CLERK.)

17 THE COURT: All right. Folks, we have to
18 pick a couple more jurors. This process we are about to
19 engage in, we refer to as, voir dire. It's an
20 opportunity for the lawyers to ask questions to ascertain
21 if you can be fair and impartial in this case.

22 We don't know you. We will try and
23 find out about you by asking you some questions. All of
24 the questioning is done under oath. We want you to be
25 perfectly honest and open in your answers.

THE STATE OF NEVADA v. JOHNSON

1 The reason is, if you withhold
2 information from us or make misrepresentations, then the
3 verdict will be thrown out. We have to have a new trial.
4 It's time consuming and costly. I will have the Deputy
5 District Attorneys introduce themselves and tell you the
6 names of the witnesses and people involved in this case,
7 and after that the Defense attorneys will introduce
8 themselves to you and give you the name of the people
9 involved, and after that, we will have a few questions,
10 pertaining to your questionnaire, and make a decision.
11 All right.

12 MR. DASKAS: Thank you, Judge. Good
13 afternoon, everyone. This is David Stanton. I am Robert
14 Daskas. We are Deputy D.A.'s with the Clark County DA's
15 Office. We are assigned the prosecution of the case
16 against Donte Johnson.

17 As you gathered from the
18 questionnaire, you are not here to decide if he is guilty
19 that has been decided by another jury. He has been found
20 guilty of First Degree Murder, with use of a deadly
21 weapon. Your role is in deciding his penalty as it
22 relates to that conviction.

23 I will mention some facts of the
24 case. The case received some publicity, when it happened
25 back in '98. If you recognize the facts of the case or

THE STATE OF NEVADA v. JOHNSON

1 the names I mentioned, let the Judge know. He will have
2 additional questions for you.

3 The quadruple homicide happened on
4 August 13th, 1998, on a street called, Terra Linda, a
5 single family home, just off Tropicana in Las Vegas.

6 There were four victims. Their names
7 are Tracy Gorringer, Matthew Mowen, Jeffrey Biddle, and
8 Peter Talamentez. They were 19, 20 years old. The
9 youngest victim was 17 years old.

10 There were two other Defendants in
11 this case, originally, other than Donte Johnson. There
12 names are Terrell Young and Sikia Smith. If you are
13 selected to hear this case, we will call a detective who
14 was assigned to the case to highlight the testimony from
15 the first trial and explain the evidence against Donte
16 Johnson.

17 That detective is Tom Thowsan from
18 the Metropolitan Police Department. Some of the names he
19 will mention during his testimony will be Justin Perkins,
20 Charla Severs, Bryan Johnson, Todd Armstrong, Ace Hart.
21 Sergeant Robert Honea, NHP. Ed Guenther is a fingerprint
22 examiner with Metro, as well as, Tom Wahl, W-A-H-L. Dr.
23 Robert Bucklin performed the autopsies in this case. He
24 has since passed away.

25 You will hear from crime scene

THE STATE OF NEVADA v. JOHNSON

1 analysts, Shawn Fletcher, Las Vegas Metropolitan Police
2 Department. Also a couple witnesses from the Detention
3 Center, corrections officers will testify, Ian Ritchie
4 and Alex Gonzalez.

5 A lieutenant from the Los Angeles
6 Police Department, Lieutenant Grayson will testify. You
7 will hear from a couple probation officers, Robert
8 Haufman, Craig Clark and two other witnesses from Los
9 Angeles Police Department, including Grace Garcia and
10 Steve Bursiatti (phonetic).

11 If you recognize this case or the
12 witnesses, let the Judge know. I appreciate your time
13 very much.

14 MS. JACKSON: Your Honor, may I?

15 THE COURT: Yes.

16 MS. JACKSON: Good morning, ladies and
17 gentlemen. My name is Alzora Jackson. I work for the
18 Clark County Special Public Defender's Office here in Las
19 Vegas. I am working with Mr. Brett Whipple on the case.

20 MR. WHIPPLE: Good morning.

21 MS. JACKSON: Our client is Donte Johnson.

22 THE DEFENDANT: Good afternoon.

23 MS. JACKSON: We will present reasons for
24 giving Mr. Johnson life. We will do that through
25 witnesses. We will call them from the LA South Central

THE STATE OF NEVADA v. JOHNSON

1 area, mostly his family members, his grandmother, Jane
2 Edwards; his mother, Eunice Cain; sister, Johnnisha White
3 her husband, Moises Zamura; Eunisha White, John White;
4 another sister, Eunisha White, another sister.

5 Mr. Johnson has two minor children,
6 Anijah and Alan White, and you will hear from them. You
7 will hear from his aunt, Wanda Fay Johnson, and possibly
8 from a young man working in the area, Craig Clark.

9 You may also here from a group of
10 individuals we call experts, depending how the first part
11 of the proceedings go, a local psychologist, Dr. Thomas
12 Kinsora may talk to you. An individual, a professor at
13 University of Cal Berkley, Martin Jankowski may come in,
14 have a few things to say to you, and Mr. James Esten.
15 These are people termed as experts.

16 You will probably here from Ms.
17 Navarro, a local attorney in town. She works with the
18 civil division of the Clark County District Attorney's
19 Office.

20 You will hear from another group of
21 witnesses, correctional officers from the detention
22 center, Johnson and Perez. Nancy Hunterton, I don't know
23 if she still does, she administrated the life skills
24 program at the facility.

25 The final body of witnesses you may

THE STATE OF NEVADA v. JOHNSON

1 hear from would include Reginald Johnson, no relation to
2 my client; Jose Vigoa; George Day; Jermaine Lytle; and
3 possibly Sikia Smith.

4 That will be the extent. I mentioned
5 Mr. Clark. That will be the extent of the witnesses you
6 may hear from on behalf of Mr. Johnson.

7 Thank you for your time and
8 attention.

9 THE COURT: Do any of you know the District
10 Attorneys, Mr. Stanton and Mr. Daskas? Raise your hand.

11 (NO RESPONSE FROM THE VENIRE.)

12 THE COURT: Do any of you know the Defense
13 lawyers, Ms. Jackson and Mr. Whipple?

14 (NO RESPONSE FROM THE VENIRE.)

15 THE COURT: Do any of you know the
16 Defendant?

17 (NO RESPONSE FROM THE VENIRE.)

18 THE COURT: Do any of you recognize the
19 names of the people involved in this case, especially the
20 victims or the victim's family?

21 (NO RESPONSE FROM THE VENIRE.)

22 THE COURT: Do you recognize the people,
23 know them from any place?

24 (NO RESPONSE FROM THE VENIRE.)

25 THE COURT: Let me know by raising your

THE STATE OF NEVADA v. JOHNSON

1 hands.

2 PROSPECTIVE JUROR NO. 347: Excuse me, your
3 Honor. Would that exclude hearing of the case when that
4 happened?

5 THE COURT: We will discuss that with you.
6 We will ask the rest of you to wait outside. Mr. Perry
7 is next.

8 Everyone else remain outside, except
9 for Mr. Perry.

10
11 VOIR DIRE EXAMINATION (Resumed)

12
13 VOIR DIRE EXAMINATION OF PROSPECTIVE ALTERNATE JUROR NO. 3

14 THE COURT: Mr. Perry, you said you are a
15 truck driver?

16 PROSPECTIVE ALTERNATE JUROR NO. 3: I am.

17 THE COURT: Does your wife work?

18 PROSPECTIVE ALTERNATE JUROR NO. 3: She is
19 a school teacher for Clark County.

20 THE COURT: You said you drive to Phoenix
21 and back twice a week; is that right?

22 PROSPECTIVE ALTERNATE JUROR NO. 3: I do.

23 THE COURT: You said, serving on the jury
24 would be a hardship for you; is that correct?

25 PROSPECTIVE ALTERNATE JUROR NO. 3: It

THE STATE OF NEVADA v. JOHNSON

1 would be -- I am not sure. They have never told me. I
2 have not read the contract to see what they pay, how they
3 compensate for jury duty. It would be interesting, but
4 we will get by it.

5 THE COURT: You have been in Las Vegas 18
6 years?

7 PROSPECTIVE ALTERNATE JUROR NO. 3: Yes.

8 THE COURT: You are from Salt Lake City,
9 originally?

10 PROSPECTIVE ALTERNATE JUROR NO. 3: Born
11 and raised.

12 THE COURT: Did you move from Utah to Las
13 Vegas?

14 PROSPECTIVE ALTERNATE JUROR NO. 3: No. I
15 went from Utah to Wyoming, six years Wyoming, nine months
16 in Montana, before moving down here.

17 THE COURT: Okay. Your wife teaches
18 special-ed?

19 PROSPECTIVE ALTERNATE JUROR NO. 3: She has
20 a class of pre-school autistic kids. She has four or
21 five kids she teaches.

22 THE COURT: You have five kids of your own?

23 PROSPECTIVE ALTERNATE JUROR NO. 3: I do.

24 THE COURT: Are they all grown?

25 PROSPECTIVE ALTERNATE JUROR NO. 3: My

THE STATE OF NEVADA v. JOHNSON

1 youngest is 17.

2 THE COURT: You said you had a nephew

3 convicted of a crime?

4 PROSPECTIVE ALTERNATE JUROR NO. 3: Yes.

5 THE COURT: Doing 20 years in Utah State

6 Prison.

7 PROSPECTIVE ALTERNATE JUROR NO. 3: Yes.

8 THE COURT: What crime did he commit?

9 PROSPECTIVE ALTERNATE JUROR NO. 3: He has

10 been committed 20 years for rape with a weapon.

11 THE COURT: With a weapon?

12 PROSPECTIVE ALTERNATE JUROR NO. 3: That's

13 why they threw away the key.

14 THE COURT: You said one of your daughters

15 had been raped; is that right?

16 PROSPECTIVE ALTERNATE JUROR NO. 3: My

17 eldest daughter. It wasn't a violent rape.

18 THE COURT: All of it is violent and

19 against the will. Where did it happen?

20 PROSPECTIVE ALTERNATE JUROR NO. 3: Near

21 Las Vegas.

22 THE COURT: The person was not prosecuted?

23 PROSPECTIVE ALTERNATE JUROR NO. 3: No.

24 THE COURT: Did she file charges against

25 him, report it to the police?

THE STATE OF NEVADA v. JOHNSON

1 PROSPECTIVE ALTERNATE JUROR NO. 3: It got
2 lost in the shuffle. She didn't pursue it. We didn't
3 push it. She ended up giving the child up for adoption.

4 THE COURT: Was this a person you knew?

5 PROSPECTIVE ALTERNATE JUROR NO. 3: I
6 didn't like the kid, but yes, I knew him. I guess, part
7 of the reason it wasn't prosecuted, we didn't push it, to
8 some extent, she was a willing participant.

9 THE COURT: Sort of like a date rape kind
10 of deal?

11 PROSPECTIVE ALTERNATE JUROR NO. 3: Yes.

12 THE COURT: You understand we are picking a
13 jury to decide punishment for the Defendant. He has been
14 convicted of four Counts of First Degree Murder?

15 PROSPECTIVE ALTERNATE JUROR NO. 3: Yes.

16 THE COURT: Jury will have four penalties
17 to choose from: Death penalty; life imprisonment with
18 the possibility of parole; life imprisonment without the
19 possibility of parole; or 50 years imprisonment, fixed,
20 eligible for parole after 20 years.

21 It's doubled because a deadly weapon
22 was used. In actuality, it would be doubled. It would
23 be 100 years, parole eligibility after 40 years,
24 consecutive to another life -- I got that wrong.

25 It is life imprisonment with the

THE STATE OF NEVADA v. JOHNSON

1 possibility of parole after 20 years, plus a consecutive
2 life sentence, parole after 20 years, possibility after
3 20 years. Minimum he would have to do is 40 years up to
4 life; and then, of course, life without the possibility
5 of parole, which means, no parole; and then the death
6 penalty.

7 According to that, one has to be able
8 to consider all four forms punishment. Can you do that?

9 PROSPECTIVE ALTERNATE JUROR NO. 3: Yes.

10 THE COURT: Will you listen to the
11 evidence, facts and circumstances of the case, pick out
12 the appropriate sentence? Do you think you can do that?

13 PROSPECTIVE ALTERNATE JUROR NO. 3: Yes, I
14 do.

15 THE COURT: Now, you are L.D.S.; is that
16 correct?

17 PROSPECTIVE ALTERNATE JUROR NO. 3: I am.

18 THE COURT: I got that impression from No.
19 35, that murder is the only sin a person can't be
20 forgiven for is murder. If one forfeits his own life, he
21 can receive, at best, some kind of redemption. Is that
22 the word?

23 PROSPECTIVE ALTERNATE JUROR NO. 3: Yes.

24 THE COURT: Can you be fair to both sides?

25 PROSPECTIVE ALTERNATE JUROR NO. 3: I

THE STATE OF NEVADA v. JOHNSON

1 believe I can.

2 THE COURT: Can you follow the Court's
3 instructions on the law?

4 PROSPECTIVE ALTERNATE JUROR NO. 3: I
5 believe I can.

6 THE COURT: State.

7
8 EXAMINATION BY THE STATE

9 BY MR. STANTON:

10 Q Good afternoon, Mr. Perry. I want to begin
11 with your comments about knowing Judge Cory. You have
12 not seen him for years?

13 A We went to church together when we first
14 moved to the City. I have not had dealings with him for
15 about 12 years. I put it on there.

16 Q You indicated that sometime, approximately
17 four, five years ago, you were an alternate juror for the
18 Clark County Grand Jury?

19 A Yes.

20 Q Did you sit and hear cases?

21 A No. I went through the field trip, up to
22 the forensic laboratory, and so forth and went through
23 the process in the courtroom of being selected as being
24 alternate, but was never called to sit.

25 Q Nothing about the experience that would

THE STATE OF NEVADA v. JOHNSON

1 cause you not to be fair and impartial in this case?

2 A No.

3 Q The nephew you mentioned, the Judge asked

4 you questions about, do you believe he was treated

5 fairly?

6 A I do.

7 Q You paused a little bit thinking about

8 that.

9 A I would have locked him up a lot sooner.

10 Q If you had known about it?

11 A Yes. It was a fair sentence for him.

12 Q Fair to say that nothing about the

13 experience carries over into this case, your potential

14 role as a juror in this case that would cause you to be

15 anything but fair and impartial, both to the State and

16 Mr. Johnson; is that a fair statement?

17 A I would say so.

18 Q Ultimately, what we are looking for, sir,

19 is someone who will keep an open mind to the sentencing

20 alternatives that Judge Gates mentioned to you, an open

21 mind, not prejudging what you might sentence someone to

22 based upon the facts, you know, or a selected group of

23 facts presented to you, but you will keep an open mind

24 until all the evidence is given to you, and you are

25 formally given the case, and told as a matter of law, you

THE STATE OF NEVADA v. JOHNSON

1 can deliberate on the case.

2 Are you that type of person who can
3 sit as a juror and keep an open mind to all sentencing
4 options, until it is presented to you?

5 A I believe I could.

6 Q You indicated on the questionnaire about
7 whether or not you would automatically vote for the death
8 penalty or automatically not vote for the death penalty.
9 Do you remember those questions?

10 A Yes.

11 Q Your answer to the questions about you
12 would automatically vote for the death penalty, knowing
13 now what the circumstances are, and your role as a juror,
14 do you have a different opinion about that or understand
15 it a little better?

16 A I guess I was copping an attitude when I
17 was filling out the questionnaire. I think I can be fair
18 about it.

19 Q You indicated that considering all forms of
20 punishment, would you reserve ruling until all the
21 evidence was presented, you said, yes, but it would be a
22 hard sell.

23 Is that still what you are talking
24 about, when you filled out the questionnaire, you feel a
25 little different now, the way things are explained to you

THE STATE OF NEVADA v. JOHNSON

1 now.

2 A Yes.

3 Q You understand, I am certain you do, that
4 the decision the jury will make in this case is an
5 important and very grave, serious decision?

6 A It is.

7 Q You appreciate the importance of that?

8 A Yes.

9 Q The least Mr. Johnson faces is 40 years in
10 prison before he is eligible for parole. You consider
11 that a severe punishment, don't you?

12 A Yes, I will.

13 Q Sir, there is a requirement by the law that
14 you keep an open mind and consider all options until the
15 evidence is presented to you, you stated you feel
16 comfortable doing that and you would abide by the
17 instructions; is that correct?

18 A I think I could.

19 MR. STANTON: Thank you. I pass the
20 prospective juror.

21

22 EXAMINATION BY THE DEFENSE

23 BY MR. WHIPPLE:

24 Q I want to follow-up on questions in the
25 questionnaire. Some of the questions Mr. Stanton had, I

THE STATE OF NEVADA v. JOHNSON

1 want to make you are aware, I know you understand there
2 is no right or wrong answers right now. This is a very
3 unique type of situation.

4 We are asking these questions. This
5 job is not for everybody. We have already excused a lot
6 of people who said they couldn't consider the death
7 penalty in any circumstances and excused a lot of people
8 who said they are automatically giving the death penalty
9 if somebody takes a life.

10 There is all kinds of bodies of law,
11 the United States Supreme Court law is you can't be
12 substantially impaired by your belief in the death
13 penalty, or you don't believe it should be applied. In
14 other words, we want fair people.

15 A All right.

16 Q There is nobody I have ever talked to that
17 considers themselves unfair. It's a relative thing.
18 Only you know what's inside yourself, only you, and when
19 I see comments on here, I would automatically apply the
20 death penalty, I am, of course, concerned. Mr. Stanton
21 brought that out with you.

22 What is your opinion on the death
23 penalty?

24 A There are times that the death penalty is
25 the right approach to take when a life has been taken.

THE STATE OF NEVADA v. JOHNSON

1 There are times that it may not be. It depends on the
2 circumstances. It depends on several different avenues.
3 It's not something to be taken lightly.

4 My questionnaire, the first half of
5 the questionnaire wouldn't indicate that, but when I got
6 further into it, I started to dig a little deeper in
7 myself. There is times that it may not be appropriate.

8 Q I appreciate that. I know as the father of
9 children, nobody is perfect. People do make mistakes.
10 In this situation I want to give you some information.
11 You are going to learn this was a quadruple homicide,
12 four innocent individuals were killed.

13 Ms. Jackson and myself are never
14 going to stand up here and say there was any excuse or
15 justification or reason to do something like that.
16 Conviction of first degree murder means, there is no
17 excuse or justification.

18 But in this situation we had these
19 four -- three were Caucasian, one Hispanic -- young
20 adults, same age as my client, and your youngest child --
21 bound with duct tape behind their back, arms and feet,
22 laid down on the floor. At some point a gun was taken
23 and a bullet was shot through each of their heads, one by
24 one.

25 I know you know, no facts or

THE STATE OF NEVADA v. JOHNSON

1 circumstances about Mr. Johnson. It is a fact those
2 people were killed with their face in the carpet and
3 their hands duct taped behind their back. Only you know
4 what you are thinking.

5 Could you consider the possibility of
6 a life sentence with just the facts I have given you?

7 MR. STANTON: I will interpose an
8 objection. It's improper. It doesn't aggregately state
9 the process, the juror would deliberate the evidence in
10 the case.

11 THE COURT: Overruled.

12 THE WITNESS: Just the evidence or just
13 what you told me here, I would have to really think hard.
14 Depending on the evidence that has not been presented
15 yet, I would have to consider it. It was just that
16 little bit you told me, it would be very hard to call it
17 a life sentence.

18 BY MR. WHIPPLE:

19 Q I understand that and appreciate your
20 honesty. The law will require you to consider life with
21 the possibility of parole, something even less than what
22 you are leaning to now. That's where we need jurors to
23 consider, all four.

24 Mr. Stanton made a good point. You
25 gave him a black and white situation, no mitigation. You

THE STATE OF NEVADA v. JOHNSON

1 will hear mitigation about Mr. Johnson, if you are chosen
2 to serve on this jury, you will learn that Mr. Johnson
3 was raised very poor, no father, mother on drugs,
4 abandoned, very distraught, very, very, very, poor
5 background.

6 Will that make a difference?

7 A It might, but I don't think so.

8 Q Why?

9 A Just the process of growing up, learning
10 and being part of the community, fitting in with a
11 community. Now, if there was, if the circumstances were
12 such that it became a game amongst the four, however many
13 Defendants were there, that would be something I would
14 have to look at, too, I would have to think about.

15 Q You will hear that drugs were part of it.
16 Seems like they always are. There was a bit of a drug
17 culture that involved all the individuals, the victims
18 and Mr. Johnson.

19 Would that affect your opinion, cause
20 you to lean one way or another.

21 A Not being involved in the drug culture, to
22 be honest, probably it would be a strike against them.

23 Q My client, the victims, or both?

24 A Against the whole situation. Probably your
25 client. That's the direction I would have to lean, where

THE STATE OF NEVADA v. JOHNSON

1 I right now would be leaning.

2 Q I understand. How do you feel about the
3 things I said? How do you feel being in judgement of
4 another human being with these things contemplated by
5 you?

6 A I would have to dig real deep, but I think
7 I could look at it from all sides, be fair about it. I
8 am not looking forward to it, but I think I can handle
9 it.

10 Q Do you want to be on the jury? Would you
11 like to be in contemplation of another human being's
12 life?

13 A I have done some thinking since, in the
14 last four visits down here, back and forth. I don't know
15 what my feelings are there. There are times I would like
16 to be in the jury box, and as far as being in the jury
17 box to determine someone's life, I would if I am asked to
18 do it. I will sit in the box and try to be fair about
19 it, but it's not something I have grown up looking at as
20 being a goal in life.

21 Q This is where we are at, sir, only you,
22 again, know where you are coming from, what your view
23 point is.

24 If you feel as though you are
25 substantially impaired or impaired with your favoritism

THE STATE OF NEVADA v. JOHNSON

1 towards the death penalty, now is the time to tell me,
2 and I am going to come up, as well, with the issue of
3 mitigation.

4 The issue of mitigation, the law will
5 require you consider mitigation, and I am not even sure
6 what you put here. There is a question that asked you if
7 you could consider mitigation, like, Defendant's health,
8 mental status, age, childhood experience, education.

9 The law requires you to consider that
10 type of background when you determine a person's fate.
11 Do you feel you would be fair, and, again, do you think
12 you are the appropriate person for what we are asking you
13 to do?

14 A I don't think my prejudice would get in the
15 way. By prejudice, I mean, my background, not race,
16 creed, or anything. That's not the prejudice I am
17 referencing. As far as looking forward to the process, I
18 wouldn't be looking forward to it. I think I could look
19 at it from both sides and be fair about it.

20 Q That's all I will ask, and I thank you.

21 MR. WHIPPLE: Pass for cause, your Honor.

22 THE COURT: Wait outside.

23 State can exercise their one and only
24 peremptory challenge.

25 MS. JACKSON: Your Honor, we have only voir

THE STATE OF NEVADA v. JOHNSON

1 dired one person since you said we were going to get the
2 extra one.

3 THE COURT: How many did you think you can
4 voir dire?

5 MR. DASKAS: I guess our question is, it's
6 a bit unorthodox here. Technically, there are three
7 alternates seated. You were gracious enough to give us
8 one more because of our concern. My question is, if we
9 exercise this peremptory challenge, can we exercise
10 against any of the jurors the peremptory challenge.

11 That's the fair thing to do.

12 THE COURT: I don't know if that's what I
13 was doing. I thought we accepted those.

14 MS. JACKSON: That's our understanding.

15 MR. WHIPPLE: Yes, your Honor.

16 THE COURT: I was giving you one additional
17 alternate.

18 MS. JACKSON: Since that time there is one
19 person to choose from.

20 (DISCUSSION AT BENCH.)

21 THE COURT: State, what do you want to do?

22 MR. DASKAS: The question is, Judge,
23 whether we are bringing in another alternate. Both sides
24 can see what we have to choose from to exercise the
25 challenge. That gives the Defense the advantage of

THE STATE OF NEVADA v. JOHNSON

1 striking this person with their challenge.

2 THE COURT: I gave you guys an extra one.

3 All right. So we had closed it. Everyone was picked. I
4 decided to give you an additional one. Why would I bring
5 up the other ones. This is how we strike the ones.

6 You are saying I should bring up
7 three jurors and let you strike two of them?

8 MR. DASKAS: No, no. What I am suggesting
9 and what the Defense suggested, maybe I heard them wrong,
10 is we bring in another potential alternate right now,
11 both sides do what we do.

12 MS. JACKSON: Right now we have one.

13 THE COURT: All we need is one.

14 If nobody objects to him, we keep
15 him.

16 MR. DASKAS: When we waive it --

17 THE COURT: Fine. We won't pick another
18 one. I was trying to be generous. We have two. We will
19 keep it at two. Fine. What do you want to do?

20 I am going to bring in the jurors.
21 Bring them in.

22 MR. DASKAS: What about Mr. Perry?

23 THE COURT: We will keep him here. Right.

24 MR. STANTON: Is there a status on Ms.
25 Batts, your Honor?

THE STATE OF NEVADA v. JOHNSON

1 THE COURT: I don't know where she is.

2 (BREAK IN PROCEEDINGS

3 1:45 TO 2:01 P.M.)

4 THE COURT: Folks, be seated. You are the
5 folks that will be impaneled to hear this case. We have
6 some pre-trial motions to do today, but we will start up
7 on Monday, 10:30 in the morning. When we come in, they
8 will be allowed to make their opening statements and
9 start the evidence, and we will get the thing started and
10 try to get through it.

11 Hopefully, they will finish in a
12 week. I don't want you to do any investigation on your
13 own. I don't want you to go to the scene. Don't discuss
14 the case with anyone. Don't talk to anyone about the
15 case. Don't do any of that.

16 What we will do is we will give you
17 further detailed instructions when you come back Monday
18 morning. I don't want you to read any newspaper articles
19 about the case. Don't listen to any television reports
20 or internet reports about the case or do anything, and we
21 will see you Monday morning.

22 PROSPECTIVE JUROR NO. 309: We come here or
23 jury services?

24 THE COURT: Jury services.

25 MS. JACKSON: Your Honor, you had given us

THE STATE OF NEVADA v. JOHNSON

1 permission for the Regent thing Monday morning, if you
2 recall that.

3 THE COURT: I don't remember that. 10:30.

4 THE BAILIFF: All rise.

5 THE COURT: Let me tell you guys something,
6 we spend a whole week picking the jury. We are going
7 ahead and moving on with the case now. I have given you
8 all the time in the world and you still -- we are going
9 through the case and get started. I am not going to be
10 fooling around anymore. Whatever this is you want to do,
11 you got the rest of the afternoon to get together, see
12 how to do it. If you can't resolve it, how you will
13 handle it, let me know your proposals, and I will decide.
14 I expect you to spend the next few hours doing it. Be in
15 recess.

16 * * * * *

17 (END OF PROCEEDINGS 2:05 P.M.)

18
19 ATTEST: FULL, TRUE, AND ACCURATE TRANSCRIPT OF
20 PROCEEDINGS.

21 

22 KRIS MOORE, CCR 273
23
24
25

524

THE STATE OF NEVADA v. JOHNSON

DISTRICT COURT
CLARK COUNTY, NEVADA

ORIGINAL

2005 APR 26 A 8:09

[Handwritten signature]

THE STATE OF NEVADA,)
)
Plaintiff,)
)
-vs-)
)
DANTE JOHNSON,)
)
Defendant.)

Case No. C153154
Dept No. VIII
Docket H

VOLUME V-A

PENALTY PHASE

BEFORE THE HONORABLE LEE A. GATES

MONDAY, APRIL 25, 2005, 11:15 A.M.

APPEARANCES:

For the State: ROBERT J. DASKAS, ESQ.
DAVID STANTON, ESQ.
Deputies District Attorney
For the Defendant: ALZORA JACKSON, ESQ.
Deputy Public Defender

BRETT WHIPPLE, ESQ.

REPORTER: KRISTINE MOORE, CCR 273

COUNTY CLERK

APR 25 2005

RECEIVED

Laurie Webb & Associates
Phone: 702-386-9322

Fax: 702-386-9825

4-26-2005
www.lauriewebb.com
82ad4a82-1ddf-466c-87ee-3fbb93c1622d

SS

AA03819

THE STATE OF NEVADA v. JOHNSON

1 LAS VEGAS, NEVADA, MONDAY, APRIL 25, 2005, 11:15 A.M.

2 * * * * *

3 THE COURT: Call the Jury.

4 THE CLERK: Shelita Oliver, Rachel Ritchie,
5 Michael Krispli, Jamie Carpenter, Theresa Thurston, Linda
6 Suckow, David Larson, Kenneth Clark, Twila Morgan, Karen
7 Batts, Matthew Taylor, Jeremy Summers, Theresa Knight,
8 Wilfredo Mercado.

9 Thank you. All are present, your
10 Honor.

11 THE COURT: All right. Let the record
12 reflect presence of all the members of the Jury Panel.
13 This is the case entitled, State of Nevada versus Donte
14 Johnson.

15 Let the record reflect presence of
16 all the Parties, all the Attorneys.

17 At this time, Miss Clerk, swear in
18 the jury.

19 THE CLERK: Everybody, except Ms. Knight
20 and Mr. Mercado, please stand, raise your right hands.

21 (WHEREUPON, THE JURY WAS SWORN

22 BY THE CLERK OF THE COURT.)

23 THE CLERK: Ms. Knight, Mr. Mercado, please
24 stand.

25 (WHEREUPON THE ALTERNATE JURORS WERE

THE STATE OF NEVADA v. JOHNSON

1 SWORN BY THE CLERK OF THE COURT.)

2 THE COURT: Couple things I want to go over
3 with you, the first part of the trial will entail the
4 parties making opening statements. Opening statements
5 are not evidence. They are what the parties anticipate
6 the evidence will be.

7 After the parties present their
8 opening statements, then they will present their
9 evidence. At the conclusion of the evidence, they will
10 make their closing arguments, and you will go and decide
11 upon your verdict.

12 The evidence which you are to
13 consider are the testimony of the witnesses and any
14 Exhibits admitted into evidence. The term witness means,
15 anyone who testifies in person or by deposition,
16 including the parties.

17 From time to time it may be my duty,
18 as Judge, to rule upon objections made by a lawyer. You
19 must not concern yourself with the objections or the
20 Court's reasons for the rulings. You must not consider
21 testimony or exhibits to which an objection was sustained
22 or which has been ordered stricken.

23 Furthermore, you must not consider
24 anything which you may have seen or heard when the court
25 is not in session, even if what you see or hear is said

THE STATE OF NEVADA v. JOHNSON

1 or done about one of the parties or one of the witnesses.

2 Now, the way the courthouse is
3 configured, we don't have separate facilities for the
4 jurors, witnesses, and parties. Sometimes during the
5 breaks, you will see witnesses or parties outside. If
6 you do, get yourselves away from them.

7 The lawyers will not talk to you or
8 be solicitous about your comfort. Don't try to talk to
9 them try, to chitchat with them. By law they can't have
10 contact with you or be solicitous of your comfort or try
11 to help you out in any way. They are not being rude.

12 Also, sometimes the witnesses are
13 talking, if you are in the bathroom or someplace and they
14 start talking about the case, try to leave the area,
15 immediately. Also, if someone should try and discuss the
16 case with you, report it immediately to me by contacting
17 the Bailiff.

18 If you have any questions, anything
19 you need done, ask the Bailiff, he will get the
20 information for you and have the answer for you.

21 I want you to remember that until
22 this case is submitted to you, do not talk to each other
23 about it or anyone about it until the end of the case and
24 you have been discharged as jurors. You may tell family
25 members you are a juror. Don't go into any details or

THE STATE OF NEVADA v. JOHNSON

1 discuss the case with them until after you are
2 discharged.

3 Do not let anyone talk to you about
4 the case or about anyone who has anything to do with
5 anything with the case. If someone should try to talk to
6 you, please report it immediately to the Bailiff. Do not
7 read news stories, television reports, news, radio
8 commentaries, or talk to anyone about anything to do with
9 the case.

10 Do not do any research on your own
11 about the case. Make no investigations or inquiries
12 about the case.

13 With that, the State may proceed.

14 MR. DASKAS: Thank you, Judge. Back in the
15 summer of 1998, Justin Perkins, a young man living in Las
16 Vegas, would often visit his buddies at their home on
17 Terra Linda Avenue. That's a little street off Tropicana
18 Avenue in East Las Vegas. Three of Justin's friends
19 lived in the home. They were Matthew Mowen, Jeff Biddle,
20 and Tracey Gorringer.

21 Three of the young men were about the
22 same age as Justin. He was 20 years old in the summer of
23 '98. There was another young man, spending lots of time
24 at the Terra Linda home. He was Peter Talamentez. He
25 was a little younger. He was 17 years old.

THE STATE OF NEVADA v. JOHNSON

1 Peter, like Justin, was a friend of
2 the occupants of the Terra Linda home, who would stop by
3 and visit, just like Justin Perkins would. The Terra
4 Linda home was just like other homes occupied by three
5 teenage men. Friends stop by often, play video games,
6 watch videos. They had visitors at all hours, as you can
7 imagine, and they would have parties. They would come
8 by, drink beer, and yes, on occasion they did drugs.

9 August 14, 1998, started off like any
10 other day for Justin Perkins. He woke up late, ran
11 errands. At six o'clock in the evening he stopped by his
12 friends house on Terra Linda.

13 He had been at the house one day
14 earlier on the 13th of August, to show off the tattoo he
15 had gotten to his friends. They had drank some beer. He
16 was coming back on the 14th, because he owed Matthew
17 Mowen beer money, 20 bucks.

18 Justin pulled up to the front of the
19 house, the Terra Linda home, at about six o'clock on the
20 14th. He noticed something unusual. There was a gate
21 that surrounded the perimeter of the Terra Linda home,
22 and that gate was partially open.

23 It was unusual because the young men
24 that lived in that home had a couple of pit bull puppies.
25 It was unusual for them to leave that gate open because

THE STATE OF NEVADA v. JOHNSON

1 the puppies would run out in the street.

2 Justin didn't think twice about it.
3 He walked up to the front door of his buddies's home. He
4 noticed something else unusual. The front door was
5 cracked open just a little bit. This was unusual
6 because, as I said, they had puppies. They certainly
7 wouldn't leave the front door open and the gate.

8 Justin peered inside the front door
9 of his friend's home. Justin Perkins will be here to
10 testify. He will try to remember what he has tried to
11 forget for the past seven years. Undoubtedly, what he
12 saw will be etched into his memory for the remainder of
13 his life.

14 As he looked in the front door, he
15 saw his three best friends, Matt, Tracey, and Jeff, face
16 down, faces in the carpet, hands behind their backs,
17 fingers interlaced and thoroughly restrained with duct
18 tape. Their ankles were restrained with duct tape, as
19 well. Justin saw blood everywhere.

20 In fact, he will explain, the puppies
21 he was concerned with were pawing at them, and they had
22 blood on their paws. You can see the bloody paw prints
23 on the carpet of the home.

24 Eventually, Justin's instincts took
25 over, and he ran for help. He went to one neighbor and

THE STATE OF NEVADA v. JOHNSON

1 another neighbor and pleaded with someone to call 911,
2 pleaded with someone to call paramedics.

3 Justin didn't realize that paramedics
4 couldn't do anything for his friends. They had each been
5 shot in the back of the head at close range with a .380
6 caliber semi-automatic handgun. There was nothing
7 anybody could do for Justin's friends.

8 Eventually, he returned to the home
9 and waited for paramedics to arrive. They did eventually
10 arrive. Justin watched as they entered the house and
11 quickly exited. Justin was confused. Why aren't you
12 helping my friends. It was the paramedics, complete
13 strangers, who told Justin his three friends were dead.

14 If things weren't bad enough, he was
15 also told that a fourth body was inside the house. What
16 Justin didn't realize, because he never stepped foot in
17 the home, was that Peter Talamentez was dead in the
18 dining room.

19 He too had been duct taped at the
20 wrists, ankles, laid face down and shot at close range in
21 the back of the head with the same semi-automatic handgun
22 that killed his three friends.

23 Donte Johnson, the Defendant in this
24 courtroom, has been convicted of the First Degree Murders
25 of all four of these young men. Back in 2000, 12 members

THE STATE OF NEVADA v. JOHNSON

1 of the community, not unlike yourselves, listened to the
2 evidence against the Defendant, deliberated and agreed,
3 unanimously, that he was responsible for the First Degree
4 Murders of each of these four young men.

5 On June 9, 2000, the jury convicted
6 the Defendant of the murder of Peter Talamentez, a 18
7 year old by holding the .380 semi-automatic handgun just
8 inches from his head and squeezing the trigger.

9 The jury convicted Donte Johnson of
10 the First Degree Murder of 19 year old Jeffrey Biddle,
11 holding the same gun inches away from Jeff's skull and
12 squeezing the trigger.

13 The Jury convicted Donte Johnson of
14 the First Degree Murder of 19 year old Matthew Mowen,
15 again, of holding a gun inches from his skull and
16 squeezing the trigger.

17 They convicted Defendant of the First
18 Degree Murder of Tracey Gorringer. Tracey was the eldest
19 of the victims in the case. He was 20 years old. The
20 jury convicted Donte Johnson of aiming a semi-automatic
21 handgun, inches from his skull, and squeezing the trigger
22 and killing him.

23 What you will see are the Verdict
24 Forms, actually signed by the foreperson, back in that
25 trial. I show you those because they become very

THE STATE OF NEVADA v. JOHNSON

1 important in this initial phase of the penalty hearing

2 It is our burden to prove to you that
3 an aggravator is present in this case. What you will
4 learn when Judge Gates instructs you at the end of the
5 case is not every murderer is eligible for the death
6 penalty, not even First Degree Murderers. There has to
7 be aggravating circumstances present.

8 You will learn one such aggravator in
9 Nevada is, if you kill more than one person, if you are
10 convicted of more than one offense of First or Second
11 Degree Murder, you are eligible for the death penalty.
12 It doesn't mean you automatically get it.

13 You know now in this case based on
14 these Verdict Forms that this Defendant was convicted of
15 four murders, and they are all First Degree Murder
16 convictions. Before he is eligible for the death
17 penalty, you have to agree we have established the
18 aggravator beyond a reasonable doubt. I submit to you,
19 it is established, by the forms I have shown you.

20 Our only burden at this stage of the
21 proceeding is to present to you this aggravator exists.
22 We will present more evidence to you, because it wouldn't
23 be fair to you when you are about to make a decision of
24 this magnitude to just rely on that evidence.

25 In fact, you told us during voir

THE STATE OF NEVADA v. JOHNSON

1 dire, you wanted to know more about the homicides
2 themselves. We will present evidence of the homicides to
3 you. Instead of calling every witness from the trial --
4 as I said, he has been convicted -- we will call
5 Detective Tom Thowsen to summarize the testimony of the
6 trial witnesses in the case.

7 He will explain to you that the
8 witness testimony he summarizes; the witnesses took the
9 stand, took an oath to tell the truth; they testified and
10 were subject to cross-examination; and a jury convicted
11 the Defendant based on their testimony and the evidence
12 presented.

13 What Detective Thowsen will summarize
14 for you is the following: Evidence he learned based on
15 his investigation. I mentioned that the victims lived at
16 a house on Terra Linda Avenue. What you will learn is
17 that there was another group of men who lived across
18 Tropicana Avenue on a street called Everman.

19 The Everman house was just across
20 Tropicana Avenue from the Terra Linda home, where the
21 victims lived. There were three young men who lived in
22 the Everman house, Tod Armstrong, Brian Armstrong, and
23 Ace Hart.

24 The three young men on the Everman
25 home were involved rather heavily in using cocaine.

THE STATE OF NEVADA v. JOHNSON

1 Cocaine was their drug of choice. In early August '98,
2 Defendant Donte Johnson was staying in the Everman home
3 off Tropicana Avenue, just across from where the victims
4 lived on Terra Linda. In fact, Donte Johnson was paying
5 cocaine to Tod Armstrong in lieu of rent.

6 Donte Johnson's girlfriend, Charla
7 Severs, also stayed in the home. You will hear about her
8 testimony in the case. Donte Johnson's friend, Terrell
9 Young, Red is his nickname, also stayed in the home with
10 Donte Johnson, and Donte Johnson's girlfriend, Charla
11 Severs.

12 There was a connection between the
13 Everman home, where the Defendants stayed, and the Terra
14 Linda home, where the victims lived. The connection was
15 that, Matt Mowen, one of the victims in this case, knew
16 Tod Armstrong, who lived at Everman. Just a few days
17 before the murders happened, Matt Mowen paid a visit to
18 Tod Armstrong at the home on Everman. Donte Johnson was
19 there, when Matthew Mowen showed up.

20 There was a suggestion during the
21 trial that Matthew Mowen was there to purchase cocaine
22 from Donte Johnson. What we know for certain is that no
23 drug transaction took place. But as I said, there was
24 that suggestion.

25 What we also know for certain is

THE STATE OF NEVADA v. JOHNSON

1 there was a conversation between Matthew Mowen and Tod
2 Armstrong that cost Matthew Mowen and his friends their
3 lives.

4 Mat mentioned to Tod Armstrong in the
5 presence of Donte Johnson that he had been on tour with a
6 rock band, like the Grateful Dead band has dead-heads,
7 there is a rock band named Fish that has a similar
8 following. In the summer of '98, Matt and his buddies
9 had followed the band Fish to their concerts and sold
10 pizzas and probably drugs to make money. Matt mentioned
11 this to Tod and the Defendant overheard it.

12 At the conclusion of the
13 conversation, it was Defendant's belief that Matthew
14 Mowen and his friends in the Terra Linda home had
15 thousands of dollars and a large stash of drugs. After
16 Matthew Mowen left, the Defendant insisted on knowing
17 where Matt and his friends lived. The seed had been
18 planted in Donte Johnson's mind, this was an easy score.

19 Donte Johnson formulated a plan to
20 rob the young men and murder the young men living in the
21 Terra Linda home. This plan was executed on the night of
22 August 13th, and into the early morning hours of August
23 14, 1998.

24 Donte recruited two of his partners,
25 Terrell Young, and another young man, Sikia Smith, or

THE STATE OF NEVADA v. JOHNSON

1 Tiny Bug, as he was called. Late at night on the 13th,
2 they were at the Everman house. They loaded up a tote
3 bag, duffel bag, and loaded it up with guns, duct tape,
4 and gloves, and set out to execute their plan.

5 I shall mention the guns you see in
6 evidence that were in this tote bag were Donte Johnson's
7 guns. They were brought to the Everman home in that bag
8 by the Defendant, Donte Johnson. They were his guns.

9 Charla Severs, Defendant's
10 girlfriend, was at the home on Everman when Donte Johnson
11 and his partners left to commit the robbery. You will
12 hear about the testimony, how they left with the guns,
13 gloves and duct tape. None of them were wearing
14 disguises.

15 What's significant is Donte Johnson
16 was wearing a pair of black jeans when he left that night
17 to commit the robberies and the murders. The evidence,
18 the testimony established, that when Donte and his
19 partners showed up at the Terra Linda home, Matthew Mowen
20 and Terrell Young were outside, watering the lawn, late
21 at night. Defendant ordered them into the house at gun
22 point.

23 The victims cooperated. They walked
24 into the home. They were laid down, as you saw in the
25 photograph, and duct taped thoroughly, fingers

THE STATE OF NEVADA v. JOHNSON

1 interlaced, wrists and ankles both bound together. The
2 two laid helplessly on the ground for hours, while Donte
3 Johnson and his partners thoroughly searched the Terra
4 Linda home, looking for drugs and money Donte Johnson
5 expected to find. They found nothing.

6 Eventually, a third victim, Jeffrey
7 Biddle, arrives at the home. He too is ordered into the
8 house at gun point. He too is laid face down and duct
9 taped, as you saw in the photograph.

10 The search continues. The sofa
11 cushions are over turned, drawers emptied, the victims's
12 pockets rifled through, wallets emptied, Donte and his
13 partners searching desperately for drugs and money, and
14 they found neither.

15 Finally, the fourth young man
16 arrives, Peter Talamentez, 17 years old. He too was
17 ordered into the house at gun point. He too is duct
18 taped and laid face down, his pockets searched like the
19 other three. But Peter Talamentez made the grave mistake
20 of disrespecting Donte Johnson, of mouthing off, to use
21 Defendant's words, to Donte Johnson.

22 Defendant would later tell his
23 girlfriend, Charla Severs, Peter Talamentez was, "Talking
24 mess." So Donte Johnson and his partners carried Peter
25 Talamentez to the dining room you saw in the photograph.

THE STATE OF NEVADA v. JOHNSON

1 Donte Johnson pistol whipped him on the head, kicked him.
2 You will see the injuries to his face. Then Donte
3 Johnson calmly turned up the music on the radio so
4 passers-by wouldn't hear what he was about to do.

5 Then Donte Johnson did the
6 unspeakable. He took a semi-automatic .380 caliber
7 handgun, held it inches from Peter's head, as he lay face
8 down and fired a shot into his skull.

9 He killed him for two reasons, the
10 evidence showed, and you will hear, number one, because
11 Peter Talamendez disrespected him; number two, using
12 Donte Johnson words, he didn't like Mexicans, anyway.

13 Keep in mind, Jeffrey Biddle, Tracey
14 Gorringer, and Matthew Mowen were face down, defenseless,
15 when they heard their friend get shot in the head in the
16 next room. They knew what was about to come to them.

17 Sure enough, as Donte Johnson left
18 the house, he systematically, methodically, fired a shot
19 into the back of each of the young men's heads, one at a
20 time.

21 Somebody once said, it's a blessing
22 to die for a cause, because you can so easily die for
23 nothing. The question is: Why did Donte Johnson do
24 this? Was this for the thousands of dollars he expected
25 to find, or the big stash of drugs he hoped to get?

THE STATE OF NEVADA v. JOHNSON

1 MR. WHIPPLE: This is argument, not an
2 opening.

3 MR. DASKAS: That's what the testimony will
4 elicit.

5 THE COURT: Sustained.

6 MR. DASKAS: The answer is that he got
7 neither. What you will learn is that Donte Johnson
8 killed these four young men for a VCR, a video game, and
9 a couple hundred dollars. Those were the proceeds from
10 the robbery.

11 You will see the entertainment center
12 in the living room where the Play Station video game, I
13 mentioned was, and the VCR sat. That's why these four
14 young men were executed.

15 I should mention, Peter Talamentez
16 had a pager on his waistband. That too was taken during
17 this robbery and the murders, as well.

18 Donte Johnson returned to the Everman
19 home with his partners, about 3:00 a.m., early morning
20 hours, August 14, 1998. Charla Severs, Defendant's
21 girlfriend was asleep in the master bedroom. Tod
22 Armstrong was asleep on the couch.

23 Charla Severs testified, you will
24 hear, that Donte Johnson came in the master bedroom,
25 kissed her on the cheek, and woke her up. He told her at

THE STATE OF NEVADA v. JOHNSON

1 some point, "You have to go to sleep after you kill
2 somebody."

3 Ultimately, Donte Johnson described
4 the entire crime spree for Charla Severs. You will hear
5 about the description. She in turn relayed the
6 conversation to the members of the first jury that heard
7 the evidence.

8 Police officers, detectives, crime
9 scene analysts showed up to the Terra Linda home shortly
10 after Justin Perkins called 911. You will hear the
11 analysts spent countless hours processing the murder
12 scene for evidence. You will learn that their
13 investigation produced evidence.

14 Donte and his partners wore gloves to
15 the crime scene, but Donte Johnson made a crucial
16 mistake. He brought with him a pack of Black & Mild
17 cigars, something he was fond of smoking. During the
18 commission of this crime, that pack of cigars fell out at
19 Donte Johnson's pocket at the feet of Tracey Gorringer.

20 Crime scene analysts processed the
21 little box for fingerprints, and sure enough, they
22 developed a fingerprint on that cigar box, and it was
23 compared to known prints of Donte Johnson's, and it was
24 Donte Johnson's fingerprints on the cigar box. As I am
25 sure you know, no two persons have the same fingerprints.

THE STATE OF NEVADA v. JOHNSON

1 Donte Johnson was in that house.

2 Crime scene analysts impounded
3 cigarette butts that were found at the house. There were
4 a total of 12 cigarette butts, and the analysts submitted
5 every single one and submitted them to the DNA lab for
6 testing. They were painstakingly analyzed for the
7 presence of biological fluids.

8 The scientists found saliva on one of
9 the cigarette butts. A DNA profile was established on
10 the saliva, and as you can imagine, it was the saliva of
11 the Defendant, Donte Johnson. No two persons have the
12 same DNA profile. It was Donte Johnson's saliva on the
13 cigarette butts in the victims's home.

14 There were cartridge cases that were
15 found and impounded from the crime scene. Some of you
16 know better than I, when a semi-automatic gun is fired, a
17 bullet is expelled through the barrel, and the cartridge
18 case that once housed the bullet, is ejected out the side
19 of the gun.

20 A firearm's expert took each one of
21 the four cartridge cases, one for each victim, and
22 microscopically compared those cartridge cases, and he
23 testified all four cartridge cases were ejected from the
24 same gun, a single gun, a .380 semi-automatic. In other
25 words, there was one shooter in this case; one gun was

THE STATE OF NEVADA v. JOHNSON

1 used; and it was Donte Johnson.

2 Donte Johnson was arrested a few days
3 later, on August 18, at the home on Everman, just across
4 the street from the victims's home. That house was
5 processed by crime scene analysts, just like the Terry
6 Linda home.

7 I mentioned a few minutes ago, his
8 girlfriend testified Donte Johnson wore black jeans when
9 he left to commit these crimes on August 14th. Those
10 pants were found in the master bedroom of the Everman
11 home, where Donte Johnson stayed.

12 What crime scene analysts noticed on
13 the pant leg, at the very bottom portion of the pant leg
14 was there were blood droppings or spatter on the very
15 bottom pant leg of Donte Johnson's pants.

16 Those blood samples were submitted to
17 the DNA lab, and a profile was established. It was
18 determined the blood on the Defendant's pants was the
19 blood of Tracey Gorringer, one of the victims in this
20 case.

21 As I told you, Defendant's girlfriend
22 testified those were his pants. The detectives wanted to
23 be as thorough as possible in this case. They wanted to
24 confirm they were his pants. Sometimes the truth is
25 stranger than fiction.

THE STATE OF NEVADA v. JOHNSON

1 The scientists found a white crusty
2 substance on the zipper area of the jeans. Yes, it was
3 semen found on the pants, and a DNA profile was
4 established on the semen. It was Donte Johnson's semen
5 on the jeans that had Tracey Gorringer's blood on them.
6 Those were Donte Johnson's jeans, and they were on him at
7 the house when Tracey Gorringer was murdered.

8 I talked about the proceeds from the
9 robbery: Video game, VCR, and pager. Crime scene
10 analysts unearthed a portion of the back yard at the
11 house where Donte Johnson stayed. They found a pager.
12 The pager was sent to Motorola and the subscriber
13 information was received, and it was Peter Talamendez's
14 pager in this Defendant's backyard.

15 In the family room or living room
16 area where Donte Johnson stayed, there was a VCR and Sony
17 Play Station. Matthew Moen's father, David Mowen told
18 detectives he had given his son a VCR to use in his home,
19 and David explained he kept the remote control to the
20 VCR.

21 The detective got the remote control,
22 and they pushed the power button, and it worked. They
23 impounded it, and David Moen's remote control operated
24 the VCR found in Donte Johnson's home. No doubt it was
25 the VCR taken from the house.

THE STATE OF NEVADA v. JOHNSON

1 In the master bedroom where Donte
2 Johnson stayed, police found the tote bag and green and
3 brown duffel bag, containing the gun and duct tape used
4 to commit the crimes. Some of the guns were recovered.

5 In the master bedroom where Donte
6 Johnson stayed, you see a photograph of a rifle with a
7 folding stock, a very unique gun you will see in evidence
8 in this case.

9 As you can see, the evidence
10 presented to the first jury was overwhelming. It
11 stripped the Defendant --

12 MR. WHIPPLE: Judge -- I withdraw.

13 THE COURT: All right.

14 MR. DASKAS: It stripped Donte Johnson of
15 the presumption of innocence and lead 12 members of this
16 community to find he is guilty beyond a reasonable doubt:

17 In addition to the forensic evidence,
18 I just described, witnesses testified about Donte Johnson
19 bragging he was the trigger man in this case.

20 You will hear that testimony through
21 Detective Thowsen, how Defendant told his girlfriend,
22 Charla Severs, he killed all four of the young men. He
23 killed Peter Talamentez because he was talking mess, and
24 he didn't like Mexicans, anyway.

25 He told his girlfriend he had to kill

THE STATE OF NEVADA v. JOHNSON

1 the other three because they were witnesses, they knew
2 who he was. Keep in mind that he met Matt Mowen days
3 earlier and when he left to commit these crimes, he was
4 wearing no disguise.

5 In fact, you will learn that Donte
6 Johnson laughed about the murders. He described for his
7 friends the grunting noises these victims made when he
8 executed all four of them, and he described how the blood
9 squirted out of their heads like Niagara Falls, and he
10 thought it was funny.

11 You will learn there was an article
12 about the quadruple homicide in the newspaper one day
13 later. There were no suspects mentioned in the article.
14 They didn't know who did the crime. Donte Johnson saw
15 the article and announced to his friends, "Look, we made
16 the front page."

17 He was proud of the fact. He was
18 excited to see that he and his friends made the front
19 page for the crimes they committed. As I told you
20 earlier, our only burden in this phase is to prove to you
21 that an aggravator has been established beyond a
22 reasonable doubt.

23 The Verdict Forms you will see
24 clearly establish the presence of the aggravator.
25 Defense will present what they believe are mitigating

THE STATE OF NEVADA v. JOHNSON

1 circumstances and your only goal, your only task at this
2 phase of the hearing is to weigh the aggravators against
3 the mitigators to see what outweighs what.

4 If you believe quadruple homicide
5 outweighs his upbringing, whatever, you will have four
6 potential sentencing options to consider, one of which
7 includes the death penalty.

8 If you believe, however, that his
9 upbringing is more tragic than a quadruple homicide,
10 death will not be an option for your consideration.

11 I submit to you that no matter how
12 tragic or how poverty stricken his upbringing, nothing
13 can outweigh the devastation, destruction he caused on
14 August 13th, 1998.

15 During the second phase of this
16 hearing, we will have the opportunity to present
17 additional evidence about Donte Johnson's upbringing.
18 That will be in the second phase of the proceeding.

19 We simply ask you at the conclusion
20 of the first phase to conclude the aggravator of the
21 quadruple homicide outweighs his upbringing, and to keep
22 your options open.

23 Thank you.

24 MR. WHIPPLE: Your Honor, with the Court's,
25 permission we will take a few minutes and set up our

THE STATE OF NEVADA v. JOHNSON

1 presentation.

2 First of all, thank you for your
3 patience, and thank you for your patience over the last
4 few days. I know you have other places to be. You have
5 had to wait out in the hall for a number of hours. I
6 want to thank you for your time. Without your presence
7 here, the whole judicial system would dry up. It's
8 important you do take the time, and I thank you.

9 Let's get something straight here.
10 First thing, right off the bat, there is no excuse; there
11 is no justification; I will never ask for any excuse; I
12 will never ask for any justification for what occurred on
13 August 14, 1998.

14 Why we are here is to determine the
15 future of Mr. Johnson. It was a terrible tragic
16 incident. It should never have happened. We will never
17 try to suggest there is some reason it happened, or it is
18 anything other than a terrible wrong.

19 You find yourself in a unique
20 situation. That is because most of the work, much of the
21 work has already been done, as Mr. Daskas explained to
22 you, you have had a jury sit and find Donte Johnson
23 guilty of First Degree Murder.

24 He has been held accountable.
25 Society has been protected. Society is safe. There is

THE STATE OF NEVADA v. JOHNSON

1 no lenient sentencing options available at this time.

2 You have heard this Court ask you several times, if you
3 can consider the four possible punishments.

4 That's why you are here, to evaluate
5 the punishments, not why it happened, not to explain some
6 justification or excuse, but to determine what the future
7 of Mr. Johnson entails.

8 There is not a lenient option up
9 there. Each First Degree Murder, at a minimum would be
10 40 years in prison, each of them at a minimum. Of
11 course, they could go all the way to life without the
12 possibility of parole, but each individual murder, he
13 gets 40 years in custody.

14 We are not here to say that he should
15 be back on the street or that he did was right. It was
16 terrible, tragic. All the punishments reflect that.
17 There is not a lenient option available. He has been
18 held accountable.

19 Now, Mr. Daskas spent his opening
20 discussing the cases. He gave you multiple slides. I
21 gave you one. The rest of my presentation is about
22 punishment. I have one slide about the facts of this
23 case. The reason I did that is because so many of you I
24 talked to said you want to know what the facts and
25 circumstances of the case are.

THE STATE OF NEVADA v. JOHNSON

1 Mr. Daskas is right. My client
2 committed First Degree Murder. We may differ with regard
3 to his involvement. You will have an opportunity
4 over the rest of today and tomorrow to see what happened
5 out there at Terra Linda.

6 We are not disagreeing with them. We
7 are not somehow saying our client didn't commit First
8 Degree Murder.

9 We are saying you will have an
10 opportunity to evaluate the facts and circumstances, what
11 lead up to the occasion, over today and probably
12 tomorrow.

13 You will learn there are similarities
14 that run between the house on Terra Linda and at Everman.
15 In fact, they are very close together. If we drive
16 towards Boulder City, get off at the Tropicana exit, go
17 back to the left under the freeway, you will find the
18 house, where these homicides occurred, on the right hand
19 side.

20 If you continue walking distance on
21 the left-hand side, you will see where Mr. Johnson was
22 living. They were right together in the same proximity.
23 They were right together.

24 You will see they knew each other, as
25 Mr. Daskas explained to you, the two individuals living

THE STATE OF NEVADA v. JOHNSON

1 in the homes. Some knew each other, some didn't. There
2 are similarities.

3 They were involved in a drug culture,
4 not just Mr. Johnson, but clearly the people who lived
5 where the homicides occurred, they were involved in a
6 drug culture, as well. There was another common theme,
7 the distance between the two houses, Mr. Johnson and the
8 victims, they are all very, very young.

9 Now, why are you here? It's already
10 been proven. It's already been accepted. Mr. Johnson
11 has been held accountable. Society is already safe. Why
12 are you here? You are here during this first phase to
13 simply do a weighing process. That's all your job is for
14 the next few days, that is, to weigh.

15 As Mr. Daskas explained to you, they
16 have one aggravator. I will tell you right now, folks,
17 it exists. I will not waste your time. That aggravation
18 of four First Degree Murders exists. Now, my job is to
19 provide you mitigation. Because, as Mr. Daskas explained
20 to you, you will be asked to weigh the mitigation and
21 aggravation.

22 If you find that the mitigation
23 outweighs the aggravation, the only options available to
24 you in the second phase are the life sentences: Life
25 without the possibility of the parole; life with the

THE STATE OF NEVADA v. JOHNSON

1 possibility of parole after 40 years, and 100 years with
2 the possibility of parole after 40 years. That's why
3 you are here. It's a weighing process. It's a two-step
4 process. This is the first step.

5 Now, the easiest way for me to
6 explain it to you is to capsulize what your requirement
7 is. There are three different areas. I don't want it to
8 get blurred in, mixed together. I will show you one step
9 at a time what your job is over the next few days.

10 Room one is a place where you
11 determine whether an aggravating circumstance has been
12 proven. That's room one. That's what you have the
13 option of doing over the next day and a half, however
14 long it takes the State to present the facts and
15 circumstances as to the homicides.

16 Again, I will not waste your time.
17 They will prove them. They have proven them. Another
18 jury found Mr. Johnson guilty of First Degree Murder.
19 They have already proven that aggravation exists.

20 Step two is a list of the mitigating
21 circumstances. I think I spoke with many of you during
22 voir dire about mitigating circumstances. Another way of
23 explaining it is, what would happen if you were in a room
24 with a loved one, you did something you wouldn't expect
25 you normally would do, yell at a loved one, be violent,

THE STATE OF NEVADA v. JOHNSON

1 maybe physical. Stranger walked into the room at the
2 exact same time. That person you didn't know saw you do
3 the act you are not proud of.

4 Before they formed an opinion about
5 you, before they made a decision, isn't there other
6 things you would want the person to know about you?
7 That's a little bit what mitigation is, knowing a little
8 more about Mr. Johnson other than what happened on August
9 14, 1998.

10 Because you are not here to find
11 guilt or innocence. You are not here to hold him
12 accountable. You are not here to protect society. Those
13 things have been done.

14 Why you are here is to determine the
15 future of Mr. Johnson, his future, the rest of his life.
16 When you have something so important, so serious, so
17 heavily weighted, it's important you evaluate all the
18 facts and circumstances.

19 That's what you told me, when I asked
20 you what information you want, you said you not only want
21 the facts and circumstances of what happened out there,
22 but about Mr. Johnson, as well.

23 You will get these mitigators, these
24 facts and circumstances about Mr. Johnson. That's what
25 we will do when we have the opportunity to offer you the

THE STATE OF NEVADA v. JOHNSON

1 information.

2 I want to take a minute and talk
3 about what a mitigating circumstance is. What I can do
4 is I can contrast it with an aggravator. Their
5 aggravator is more than one homicide. They have to have
6 all of you agree upon what an aggravator is. Twelve of
7 you must agree together that, yes, the State proved it
8 beyond a reasonable doubt that it exists.

9 It's 180 degrees different when it
10 comes to a mitigator. A mitigator, when you determine
11 the future of a person, what the rest of their life will
12 entail, the Court says it's so important, we allow each
13 person individualized treatment, individualized
14 understanding and individualized plans, as to what the
15 person will do the rest of their life.

16 What is mitigation, it's a reason to
17 choose a life sentence. What may be appropriate for one
18 person, is not a mitigator for another person. That's
19 the way the system is set up. One person's reason to
20 choose life is okay. Nobody else has to agree with it.
21 It's individualized and personalized, each of you can or
22 cannot agree with it, because Mr. Johnson is an
23 individual, as well.

24 You will have an opportunity to
25 evaluate all the facts and circumstances, as individuals,

THE STATE OF NEVADA v. JOHNSON

1 and what is appropriate for you to choose, life.

2 What I have outlined here is a
3 majority is not required. You don't even have to have
4 two people to agree on mitigation. One person is enough
5 to determine what is a reason for mitigation. That is
6 mitigation.

7 If one person holds it and believes
8 it, it's enough. That is what you will do in the second
9 room. Now, our legislature has suggested some mitigating
10 circumstances. I have two up here, two suggestions for
11 mitigating circumstances from our legislature is a person
12 acted under extreme mental or emotional distress or their
13 youth.

14 Those are things you can weigh and
15 evaluate as you hear information over the next few days.
16 I will suggest there is other mitigating circumstances,
17 reasons to choose life, other reasons near and dear to
18 our heart.

19 First thing is family. You will
20 learn that Mr. Johnson has value to other people, that he
21 does have a family that love and care about him, that he
22 is important to other people, that he is loved and has
23 value to them. You will learn about his upbringing.

24 This is his sister Jonisha. You will
25 hear from her, when it's important. You will hear about

THE STATE OF NEVADA v. JOHNSON

1 the relationship he has with the sister, some of the
2 trying times they went through together.

3 You will learn how much value Mr.
4 Johnson has for other people, that he is loved and
5 accepted for who he is. You will hear about the tough
6 times these two siblings went through together.

7 This is a letter Jonisha sent to our
8 office.

9 Growing up for me and John was very
10 hard. At the age of four, John was five, mom and dad
11 left us in a garage for an hour. Within that hour,
12 someone called the police. While the police was placing
13 us in the patrol car, my parents arrived.

14 The police did not return us to our
15 parents. So they placed us in a foster home. One day my
16 grandmother finally came and got us. We found out my mom
17 and dad were drug addicts and were not fit to keep us.
18 They said they would stop for our sake. It never
19 happened.

20 You will hear, also, he has kids,
21 children of his own. Alan was here in the courtroom a
22 minute ago. He is loved and has value to his own
23 children. They communicate with him. There is a reason
24 for them to choose life.

25 They love him. They value him, and

THE STATE OF NEVADA v. JOHNSON

1 they want the relationship they have with him to
2 continue, though, it is only through the mail, though it
3 is through hope and desire and an occasional opportunity
4 to speak face to face.

5 You will hear these people, members
6 of our society love, value, cherish Donte Johnson. You
7 will hear about the letter, the correspondence taking
8 place between my client and his son, that he is loved,
9 that he is loved.

10 There is emotion and love between the
11 two of them. You will have the opportunity to hear lots
12 of mitigating circumstances. Some may ring a bell for
13 you; some may not. That's the way it's supposed to be.

14 It's when you get to the third room
15 you do a weighing process. That's in room three.

16 Room one, again, is just choose an
17 aggravator. To save your time, I will tell you it
18 exists.

19 Room two, you list the mitigators
20 after you hear the information.

21 Then room three, you talk and weigh
22 between the aggravator, and the mitigators, all the
23 circumstances, you really shouldn't be talking about the
24 death penalty at this portion, because all this first
25 phase is, is a narrowing, to determine if that's an

THE STATE OF NEVADA v. JOHNSON

1 option to take place. Later, during this phase you will
2 be focusing on mitigation, a determination of weight,
3 comparable value of the issues presented to you.

4 Now, we will step back for a second
5 and talk a little bit about some of the family
6 information you will hear, as well. Not only is Mr.
7 Johnson loved by other family members of his family, not
8 only does he have value to them, you will hear about the
9 upbringing of Donte Johnson.

10 There is no way I will tell you now
11 or suggest that, I will suggest there was an excuse or
12 justification or somehow lessened culpability, somehow
13 takes away accountability, somehow takes away from
14 protection of the society.

15 I just want to show you a little bit
16 about where Donte Johnson came from. He was product of a
17 broken home, never had a father, there was tremendous
18 abuse. What's devastating is the drug addiction.

19 There were 12 of them taken in by the
20 grandmother, because the whole generation of parents were
21 unfit to raise the kids. Some aunts died from drug
22 overdose. I am not justifying it. I am giving you an
23 opportunity to visit the footsteps of Donte Johnson when
24 he was growing up.

25 He had a grandmother, who tried to

THE STATE OF NEVADA v. JOHNSON

1 take care of him. If she had longer arms, maybe she
2 could have done more, but she had so many children, 12,
3 13, 14 at times, taking care of them.

4 As long as her arms were, her arms
5 were not long enough. She was not able to get hold of
6 Donte Johnson. He slipped through the cracks of the
7 family. You will hear from his sisters, cousins, other
8 family members.

9 It's not for excuse or justification.
10 It's an opportunity for you to visit the footsteps of Mr.
11 Johnson and determine if there is something there
12 important to you.

13 Let's talk about room three. It's
14 more than just family upbringing. Mr. Daskas said you
15 will have the opportunity to look at the four killings
16 and compare those four people's death to his bad
17 childhood and decide right then whether you are going to
18 the second phase or not.

19 It's so much more than that. It's so
20 much more than that. This phase is individualized for
21 each, as an individual, not as a group, as individuals,
22 what is important to you.

23 What expectations do we have in
24 society? You know what, just as his family upbringing is
25 important, so is mercy. I say it is just as important as

THE STATE OF NEVADA v. JOHNSON

1 his family upbringing, is the capacity my client has to
2 affect other people in society, children, siblings.
3 That's information you deserve to have.

4 It is not black and white. It is not
5 simply comparing four dead people, as terrible, as
6 horrible this is alleged abuse. Excuse me. That's not
7 what I am asking of you. I am asking you to look at the
8 full picture in your heart and decide what's important to
9 you, as an individual, not as a jury.

10 Each and every one of you, as an
11 individual, have a right to choose life. That is your
12 right, you as an individual, not as a jury, as an
13 individual, you have a right to choose life verdicts in
14 prison. That is your right. As an individual you have a
15 right --

16 MR. DASKAS: I apologize. Whether he is
17 eligible for life, this is improper argument. They are
18 not selecting punishment at this point.

19 THE COURT: Approach the bench, both of
20 you.

21 (DISCUSSION AT BENCH.)

22 MR. WHIPPLE: Mr. Daskas is right.
23 Punishment is phase two, options that are available in
24 the second phase. It's still the same issue in the first
25 phase. You have a right to accept your individualized

THE STATE OF NEVADA v. JOHNSON

1 opinion and mitigation.

2 You have a right to have it accepted
3 when you compare it against aggravation. Each one will
4 differ from one another. You have the right to have your
5 own individualized reasons for leniency or mitigation, to
6 put whatever weight you want to mitigation.

7 You will hear reasons to choose life
8 sentence. You have a right to choose your own reason,
9 individualized. You have a right to give mercy and not
10 to have to explain your personal feelings to other
11 members of the jury.

12 Individualized decision, each one of
13 you will have to make and most importantly you have a
14 right to have your opinion respected by the other members
15 of the jury.

16 Now, the best way to explain this, as
17 you go forward, as we go forward, make that determination
18 what options we have in the second phase, each one of you
19 individually, as a person, can make the determination
20 that death will never be an option.

21 Each one of you, individually, has
22 the right and will be required to weigh aggravation and
23 mitigation. You will determine what the punishment will
24 be, but that definitely doesn't mean you have to make it
25 to the second phase, if just one of you, individually,

THE STATE OF NEVADA v. JOHNSON

1 makes the determination that the mitigation outweighs the
2 aggravation. Each of you has your own individual reasons
3 and weight for that mitigation.

4 The best way I can explain is, it is,
5 before you I go into the second phase, you each carry a
6 key. What happens in the second phase determines what
7 your key is. If your key is you believe mitigation
8 outweighs aggravation, the death penalty will never, ever
9 be an option discussed.

10 If you have a key and believe
11 aggravation outweighs the mitigation, then the death
12 penalty will be an issue, again. It's not unanimous.
13 Each of you, individually, has a right to make the
14 determination that the second step of the process
15 involves only life.

16 I thank you for your time. You will
17 hear lots of information over the next few days. Thank
18 you, very much.

19 THE COURT: We will call a lunch recess.
20 Come back in an hour. Jury is admonished not to converse
21 among yourselves or with anyone else on any subject
22 connected with this trial or to read, watch or listen to
23 any report of or commentary on the trial by any person
24 connected with the case or by any medium of information
25 including without limitation newspapers, television,

THE STATE OF NEVADA v. JOHNSON

1 internet or radio.

2 You are directed you are not to form
3 or express an opinion on this case until it is finally
4 submitted to you by the Court.

5 * * * * *

6 (END OF MORNING PROCEEDINGS 12:20 P.M.)

7
8 ATTEST: FULL, TRUE, AND ACCURATE TRANSCRIPT OF
9 PROCEEDINGS.

10



11

KRIS MOORE, CCR 273

12

13

14

15

16

17

18

19

20

21

22

23

24

25

DISTRICT COURT
CLARK COUNTY, NEVADA

ORIGINAL

FILED

2005 APR 26 A 8 56

THE STATE OF NEVADA,

PLAINTIFF,

VS.

DONTE JOHNSON,

DEFENDANT.

CASE NO.: C153154

REPORTER'S TRANSCRIPT

OF

TRIAL BY JURY

(VOLUME V - P.M.)

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

DATED MONDAY, APRIL 25, 2005

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

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

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

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

RECEIVED

APR 26 2005

CLERK

1 APPEARANCES:

2 FOR THE PLAINTIFF:

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

9 FOR THE DEFENDANT:

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

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

21 * * * * *

22
23
24
25

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

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

I N D E X

PAGE

STATE'S CASE-IN-CHIEF

4

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

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

W I T N E S S E S

<u>STATE</u>	<u>PAGE</u>
<u>JUSTIN PERKINS</u>	
DIRECT EXAMINATION	7
CROSS-EXAMINATION	19
<u>THOMAS THOWSEN</u>	
DIRECT EXAMINATION	21

* * * * *

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

E X H I B I T S

<u>EXHIBIT</u>	<u>DESCRIPTION</u>	<u>MKD.</u>	<u>ADM.</u>
246	Poster board diagram of crime scene	25	26

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

P R O C E E D I N G S

* * * * *

THE BAILIFF: All rise. Court is again in session. Be seated and come to order.

Let the record reflect the presence of all the parties, all the attorneys and all members of the jury.

Call your first witness.

MR. DASKAS: Judge, the State calls Justin Perkins, please.

STATE'S CASE IN CHIEF

THE BAILIFF: Remain standing and face the clerk.

THE CLERK: Raise your right hand.

(Oath administered.)

THE WITNESS: I do.

THE CLERK: Please be seated. When you're seated, state your name and then spell your name for the record.

THE WITNESS: My name is Justin Perkins,
J-U-S-T-I-N, P-E-R-K-I-N-S.

/////

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

JUSTIN PERKINS,

being called as a witness on behalf of the
State, was first duly sworn and testified as
follows:

DIRECT EXAMINATION

BY MR. DASKAS:

Q Justin, I want to direct your attention
back to the summer of 1998.

How old were you back then?

A I was 20.

Q You lived here in Las Vegas?

A Yes.

Q You had some friends that lived at 4825
Terra Linda; is that correct?

A Yes, I did.

Q That address is in Las Vegas, Clark
County, Nevada?

A Yes.

Q Give us the general description or
location of where that house is located.

A It's located behind some apartment
buildings right off of Tropicana Road.

Q Who was it that you knew who lived in that
home on Terra Linda?

1 A I knew Tracey Gorringer, Jeff Biddle, Matt
2 Mowen and Tracey brother's Nick Gorringer.

3 Q Tracey's brother also lived in the house?

4 A Yes, he did.

5 Q All of you were roughly the same age back
6 in the summer of '98?

7 A We were all roughly the same age. Tracey
8 was a little older.

9 Q Did you also know a man named Peter
10 Talamentez?

11 A Yes, I did.

12 Q How is it that you knew Peter?

13 A I knew him from school, but I actually
14 became acquainted with him when I met him at the
15 house.

16 Q He was a couple of years younger than you
17 and your friends?

18 A Yes, he was.

19 Q I want to direct your attention
20 specifically to August 13th of 1998.

21 Can you tell us if you went to the Terra
22 Linda home on that day?

23 A Yes. I had just recently gotten a tattoo
24 on my arm, and I wanted to show it off to my
25 friends; so, I had gone over there that night.

1 Q What time do you think it was when you
2 showed up on August 13th to the Terra Linda home?

3 A I would say it was around
4 7:30/8:00 o'clock.

5 Q In the evening time?

6 A In the evening, yes.

7 Q Did you go alone or with other people?

8 A I had two friends with me.

9 Q Do you recall who those two friends were?

10 A Eric and Joe.

11 Q When you arrived at the Terra Linda home
12 on the 13th, who was there?

13 A It was Matt Mowen, Tracey Gorringer and
14 Jeff Biddle.

15 Q What was everyone doing when you were at
16 the house on the 13th?

17 A They were just hanging out. They had a
18 video game -- a new video game they were playing,
19 just lounging around, nothing special.

20 Q Was that typical when you would go visit
21 your friends at the Terra Linda home?

22 A Yeah, usually. I mean, we would just hang
23 out there, you know, and have fun, play video games,
24 watch movies.

25 Q In the living room or family room where

1 you spent the time playing video games, can you
2 describe what was in that room?

3 A Just the entertainment center, VCR, TV,
4 their PlayStation, you know, their couches, the
5 plant in the corner.

6 Q The components you mentioned -- the
7 stereo, the TV, the VCR, the PlayStation, those were
8 inside the entertainment center?

9 A Yes, they were.

10 Q What was the condition of the inside of
11 the home like when you were there on the 13th?

12 A It was a little messy. You know, they
13 were all a bunch of bachelors -- wrappers here and
14 there, maybe a couple of beer cans, but nothing bad.

15 Q How long did you stay at the house on the
16 13th?

17 A I know I didn't stay long. I didn't feel
18 very good after my tattoo, but I hung out for a
19 while, and I just -- you know, I didn't feel very
20 good, and I wanted to leave, so -- my friends had to
21 be at another friend's house before 9:00 o'clock, so
22 I know we left before 9:00.

23 Q You mentioned that you had just gotten a
24 tattoo.

25 Did you take some pills while you were at

1 the Terra Linda home on the 13th?

2 A Yeah. Matt had a zip-lock bag of muscle
3 relaxers and he offered me some and I had taken two.

4 Q What did those muscle relaxers look like?

5 A They were just white round pills in a
6 zip-lock baggie.

7 Q You said you left around 9:00 o'clock.

8 Did the two friends that you arrived with
9 leave with you?

10 A Yes, they did.

11 Q Who was remaining at the Terra Linda home
12 when you left on the night of the 13th?

13 A It was Matt Mowen, Jeff Biddle and Tracey
14 Gorringer.

15 Q Did you ever see Tracey's brother Nick
16 there that night on the 13th?

17 A No, I did not.

18 Q And what did your friends plan on doing
19 once you left on the night of the 13th?

20 A They said they were going to clean up,
21 start cleaning up the cans and whatnot, straighten
22 up.

23 Q I want to jump ahead now to the following
24 day, August 14th of 1998. Tell me what you did that
25 day.

1 A That day I had slept in. I was staying
2 with my girlfriend at the time, and I knew I had to
3 go to the bank because I slept in so late I knew my
4 bank closed around 6:00, so I went to the bank and I
5 had to get a new ATM card and I left roughly before
6 6:00 o'clock.

7 Q When you left the bank on the 14th, where
8 did you plan on going?

9 A To Matt and Jeff and Tracey's house.

10 Q Were you alone or with your friends?

11 A I was by myself.

12 Q You say you stopped at the bank.

13 Was there any particular reason you
14 stopped at the bank first?

15 A I owed Matt 20 bucks for a beer debt. He
16 spotted me, I spotted him.

17 Q This was typical?

18 A As friends do. We always did that for
19 each other.

20 Q What time do you think it was when you
21 pulled up to the Terra Linda home on the 14th?

22 A Roughly around 6:00 o'clock.

23 Q In the evening?

24 A In the evening, yes.

25 Q Did you notice anything unusual when you

1 parked near the home on the 14th?

2 A They had a gate that wrapped around their
3 yard, and the gate closed over their driveway, and I
4 noticed that the gate was open.

5 Q Why was that unusual?

6 A They -- usually, it's never open, but they
7 also have dogs, little puppies, and they just
8 guarded them and didn't want them to run away,
9 especially -- someone could take them, especially
10 that young; so, they would always have the gate
11 closed.

12 Q Did you see any vehicles in the driveway
13 of the Terra Linda home?

14 A Yeah. Tracey's car was in the driveway.

15 Q Do you recall where it was parked?

16 A Yeah. It was underneath the carport.

17 Q Was there anything unusual about that?

18 A Yeah. He never parks his car under the
19 carport. He likes to park just in front of the door
20 so he can jump out of his truck and walk to the door
21 and go inside.

22 Q Despite those two unusual things that you
23 noticed, did you get out and approach the front
24 door?

25 A Yes, I did.

1 Q Did you notice anything unusual when you
2 approached the front door of the Terra Linda home?

3 A When I got near the door, I noticed the
4 door was cracked open a little bit, and I thought
5 that was really odd because of the puppies inside
6 and the front gate down below open -- it just
7 didn't -- it was just weird.

8 Q Despite those unusual things, did you
9 either enter the house or at least look inside the
10 front door?

11 A Yeah, I did.

12 Q I want you to tell me what you saw.

13 A I walked up, and I pushed the door up, and
14 right when I pushed the door open, I found Jeff
15 laying face first tied up with blood all around his
16 head, and as I looked in more, I saw Tracey laying
17 face down tied up in front of the couch, and then as
18 I looked in, I seen Matt Mowen laying down face
19 first, also tied up. I noticed Matt Mowen, because
20 it said "Mowen" tattoo on his back, on his lower
21 back.

22 Q Matt wasn't wearing a shirt?

23 A No, he wasn't.

24 Q You say they were tied up.

25 What did you see that led you to conclude

1 they were tied up?

2 A They were duct taped with their hands
3 behind their backs.

4 Q Describe where you saw the duct tape.

5 A I saw the duct tape on their wrists and on
6 their ankles.

7 Q Were they all face down?

8 A Yes, they were.

9 Q You mention you saw blood around --

10 A All of their heads.

11 Q Did you see blood anywhere else?

12 A There was blood that the dogs had tracked
13 everywhere. The dogs had tracked it all over the
14 carpet; they had tracked it on the couches. The
15 inside of the house was tore apart. The cushions
16 were off the couches; the plant was ripped out of
17 the planter. There were just papers and cards
18 and -- it was just trashed.

19 Q Let me ask what might seem like an obvious
20 question.

21 Was the home in that condition when you
22 were there one day earlier?

23 A No, not even close.

24 Q What did you do when you saw your friends
25 in the condition you just described?

1 A I ran to the house next door, and I banged
2 on the door, and no one was home, so I went to the
3 next house to the other side, and I banged on the
4 door, and I told the people please call the police,
5 that my friends had been robbed.

6 Q You mention your friends had been robbed.
7 I need you to answer out loud. I'm sorry.

8 A Yes.

9 Q What did you do after that?

10 A I went back over to the doorway, and I had
11 stood in the doorway and I tried to call the dogs
12 outside. As the dogs came towards me, they were
13 just covered in blood. I got it on me and outside,
14 and I started calling my friends' names, and they
15 didn't answer. The neighbors came back outside, and
16 I told them to call an ambulance, that I think my
17 friends are dead.

18 Q You say you called your friends' names.
19 Did you call out loud each one of their names?

20 A Yes, I did. I looked to see if they were
21 breathing, but I didn't see anything, no movement,
22 no nothing.

23 Q Did you ever actually enter the house on
24 the 14th?

25 A Yeah. When I went back, I had walked

1 inside a few steps, at least three steps inside. I
2 looked around, and I became scared.

3 Q What do you mean you "became scared"?

4 A I didn't know if somebody was still
5 inside. I had no idea what was going on; I was just
6 terrified, and I came back out and I just stood
7 there in the doorway. I had stared at them until
8 the ambulance came.

9 Q Once the ambulance showed up, did you see
10 the paramedics enter the house?

11 A Yeah. The paramedics came, and I flagged
12 them down. They came over, and they all walked
13 inside, and I started to follow them in, and that's
14 when they all just turned around and grabbed a hold
15 of me and pushed me back out of the door, and we all
16 walked out to the sidewalk. I asked them what was
17 going on, why aren't they helping my friends, and he
18 had told me that they were all dead.

19 Q Now, you describe how you saw three of
20 your friends in the living room at some point on the
21 14th.

22 Did you learn that there was another
23 person in the house?

24 A Yeah, I did.

25 Q Tell me how you learned that.

1 A One of the police officers that was there
2 on the scene asked me if I knew who another female
3 was inside the house, and I didn't know what he was
4 talking about. I said no. And then later on, he
5 informed me that there was another guy inside in the
6 kitchen.

7 Q Did you fill out a voluntary statement
8 that night, that is, the 14th, while the police were
9 there?

10 A I did immediately afterwards.

11 Q Where did you go once you left the home?

12 A I went to my mother's house. I wanted to
13 tell her what had happened, and I just wanted to
14 give her a hug -- just happy to still be here.

15 Q Did you see anyone else before you left to
16 go to your mom's house?

17 A Yeah, I did.

18 Q Who did you see?

19 A When I was walking to my car, I saw Matt
20 Mowen's dad, and he didn't know what was going on,
21 and he had asked me if his son was inside, and I had
22 to tell him that his son was dead.

23 Q You mentioned earlier that it wasn't
24 unusual for the occupants and visitors of the Terra
25 Linda home to have beer.

1 Would you also see drugs there on
2 occasion?

3 A The only times drugs would really be there
4 would be at parties when a large amount of people
5 were there. I mean, it was their house, you know.
6 We were kids.

7 **MR. DASKAS:** Thank you, Justin.
8 We'll pass the witness, Judge.
9 Cross.

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

11

12 CROSS-EXAMINATION

13 **BY MR. WHIPPLE:**

14 Q Mr. Perkins, you had made mention about
15 some muscle relaxers.

16 Do you recall that?

17 A Yes, sir.

18 Q Do you now recall what kind of muscle
19 relaxers they were?

20 A No, sir, I don't.

21 Q Do you know if there was a prescription
22 for those muscle relaxers?

23 A No, I don't.

24 Q You don't know if they were Percocets?

25 A That would be my guess, but -- I would

1 call them Percocets, but I really don't know the
2 brand.

3 Q Do you remember testifying about Percocets
4 at a prior hearing?

5 A Yes, I do.

6 Q Is it fair to say you testified that they
7 were transported from Tijuana, Mexico?

8 A Yes.

9 Q Who had brought the Percocets up from
10 Mexico?

11 A Matt Mowen had them.

12 Q You were asked in a prior hearing what
13 kind of drugs did they normally do at that
14 residence.

15 Do you remember that question?

16 A Yes, sir.

17 Q You had answered "beer mostly" --

18 A Yes, sir.

19 Q -- "and also cocaine."

20 Do you remember that?

21 A Yes, I remember that. Cocaine wasn't, --
22 it wasn't like beer; it wasn't an everyday thing.
23 At parties, that would be when it was around,
24 otherwise, that really wasn't the drug of choice, it
25 was alcohol.

1 **MR. WHIPPLE:** Court's indulgence.
2 Nothing further, your Honor.
3 Anything else?
4 **MR. DASKAS:** No, sir.
5 All right.
6 You're excused, sir. Thank you very much.
7 Call your next witness.
8 **MR. STANTON:** The State would
9 call Detective Tom Thowsen, your Honor.
10 May I use the lecturn?
11 Yes.
12 **THE BAILIFF:** Remain standing and face the
13 clerk.
14 **THE CLERK:** Raise your right hand.
15 (Oath administered.)
16 **THE WITNESS:** I do.
17 **THE CLERK:** Please be seated. When you're
18 seated, state your name and then spell your name.
19 **THE WITNESS:** It's Thomas D. Thowsen, T,
20 as in Tom, H-O-W-S-E-N.
21
22 DIRECT EXAMINATION
23 **BY MR. STANTON:**
24 Q Detective, how are you employed?
25 A I'm a homicide detective with the

1 Las Vegas Metropolitan Police Department.

2 Q How long have you been in that form of
3 employment?

4 A I've been in homicide for about -- a
5 little over 13 years, and I've been with Metro for
6 about 27-and-a-half years.

7 Q And did you have any duty assignments
8 prior to being a detective with the homicide
9 division?

10 A Yes.

11 Q What kind of duty assignments have you had
12 here in Las Vegas as an officer of Metro?

13 A I began as a patrol officer assigned to
14 the Patrol Division. From there, I went to the
15 Canine Section for several years. From the Canine
16 Section, I transferred to the training staff of the
17 Police Academy. I worked there for approximately
18 three years. From the Police Academy, I went to the
19 Detective Bureau working a year in the Investigative
20 Surveillance Unit, about three years in the Robbery
21 Section, and the remainder in the Homicide Section.

22 Q In your tenure, Detective Thowsen, as a
23 homicide detective, approximately how many death
24 scenes have you been involved in either as the
25 primary case detective or as an assistant capacity

1 with other detectives?

2 A It would have to be somewhere -- 500 to
3 800, I would guess. I don't keep an accurate track.

4 Q And during your time as homicide
5 detective, you work as a team?

6 A That's correct.

7 Q And could you explain how that process
8 works?

9 A There is normally two of the detectives
10 that work as a team. One of the detectives would be
11 assigned to be in charge of witnesses or suspect
12 interviews; the other detective would be working
13 with the crime scene analyst to examine the crime
14 scene itself and make sure that all the proper
15 things are being gathered and kind of touching base
16 back and forth with your partner as new information
17 is learned. For example, as you're searching a
18 scene, you may find something -- a piece of evidence
19 that you need to inform your partner so they can
20 direct their interviews towards a certain aspect of
21 that evidence that's been located or vice versa.

22 Q Would it be fair to say that homicide
23 scenes are never the same?

24 A That would be fair to say.

25 Q In the course of your tenure, do you work

1 active in what's commonly referred to as "cold
2 cases"?

3 A Yes. Because I've been there for 13
4 years, some of my older cases would be considered
5 "cold cases." Occasionally, you'll have --
6 something will come up on a case that's ten years
7 old that you would activate and start working on
8 again. Other than that, I'm a detective that's
9 on-call to be called out at the time of a homicide
10 or an officer-involved shooting based on a rotation
11 that we have.

12 Q In this case back in August 1998,
13 specifically on the 14th of August, who was assigned
14 to what ultimately became a quadruple murder at 4825
15 Terra Linda?

16 A On that particular date, I was working
17 with my partner at the time, Detective James Buczek.
18 Detective Buczek was assigned to interview witnesses
19 and/or suspects, and I was responsible for the crime
20 scene.

21 Q And would you and Detective Buczek have
22 been responsible for the investigation of this case
23 from its inception when Metro was notified on the
24 14th of August 1998 until today's date?

25 A Yes.

1 Q Detective, I want to go back to that day
2 in August.

3 Based upon your previous testimony, you
4 physically responded to the Terra Linda residence?

5 A Yes.

6 Q And besides the initial scene, were
7 witnesses or people that detectives wanted to talk
8 to in the neighborhood the first people that were
9 interviewed?

10 A Yes.

11 Q Does the name "Nicholas DeLucia" ring a
12 bell?

13 A Yes, it does.

14 Q Who is he in this investigation?

15 A Nicholas DeLucia was the next-door
16 neighbor of the victims.

17 **MR. STANTON:** Your Honor, I have a blown
18 up exhibit that I've shown to defense counsel. It
19 was not admitted in the first trial. I'd asked if
20 we can mark that next in order.

21 **THE CLERK:** Exhibit 246.

22 (State's Exhibit 246 was marked for
23 identification.

24 **MR. STANTON:** May I approach, your Honor?

25 Yes.

1 **MR. STANTON:** Your Honor, may I
2 approach Detective Thowsen?

3 Yes.

4 **BY MR. STANTON:**

5 Q Showing you what's been marked as
6 Exhibit 246 and ask you to look at that and tell me
7 if you're familiar with what's contained in that
8 exhibit.

9 A Yes, I am.

10 Q Does it truly and accurately depict those
11 various geographic locations here in Clark County?

12 A Yes, it does.

13 **MR. STANTON:** I'd move for 246 into
14 evidence.

15 **MR. WHIPPLE:** No objection, your Honor.
16 Admitted.

17 (State's Exhibit 246 was admitted into
18 evidence.)

19 **BY MR. STANTON:**

20 Q Detective, if you could just hold that up
21 there for me for my next series of questions.

22 Pursuant to your investigation -- initial
23 investigation, 4825 Terra Linda was the address
24 where four victims were found?

25 A That's correct.

1 Q Skipping ahead sometime chronologically
2 about how things developed, you were also, several
3 days later, advised that 4815 Everman was a place of
4 interest in this investigation.

5 Would that be accurate?

6 A That's correct.

7 Q Thank you.

8 Those are located and fairly and
9 accurately depicted on that photograph as far as
10 their distance?

11 A Yes.

12 Q It looks like it's close on that aerial
13 photograph.

14 What would be the driving time by vehicle
15 from the Terra Linda address to the Everman home?

16 A I believe it's about two to three minutes.
17 It's eight-tenths of a mile according to MapQuest.

18 Q Thank you, Detective. You could just put
19 that down next to you someplace convenient.

20 Mr. DeLucia lived next door to Terra
21 Linda?

22 A Yes.

23 Q In August 1998, how was he employed, do
24 you remember?

25 A I believe he was an electrician.

1 Q And he had somewhat of an unusual work
2 schedule, did he not?

3 A Yes.

4 Q What was the shift that he would be
5 working during August of 1998?

6 A It was a graveyard shift. If I remember
7 correctly, it would have been from 2:00 o'clock in
8 the morning until 10:30 in the morning.

9 Q During his interview and as he testified
10 in the jury trial back in 2000, did he go to work on
11 the evening of August -- I guess it would be the
12 morning of August 14th?

13 A Yes. I'm not sure if it would actually be
14 the 13th into the 14th.

15 Q Okay.

16 He indicated that he got up at 12:30 in
17 the morning. I guess that would be just after
18 midnight and technically into the 14th.

19 A Correct.

20 Q He started work at 2:00 a.m.; is that
21 about right?

22 A That sounds correct, yes.

23 Q When he went to work in the early morning
24 hours, 12:30 a.m., he would, by his route to work,
25 go near or by -- directly by the 4825 Terra Linda

1 address?

2 A Yes, he would.

3 Q And was there anything that he told you
4 and fellow detectives about what he observed that
5 morning, late that night when he went to work?

6 A Yes. He mentioned that as he was driving
7 by, he noticed someone with a hose washing off the
8 driveway.

9 Q And did he describe him generally as a
10 white male adult?

11 A Yes.

12 Q Was he very knowledgeable about who lived
13 next door and what their names were?

14 A Not as I recall.

15 Q You indicated that he worked until 10:30.
16 Did he return home after working his shift
17 that day?

18 A Yes, he did.

19 Q And was there anything that he observed
20 unusual when he drove by 4825 Terra Linda the next
21 morning approximately 11:00 a.m.?

22 A No, there was not.

23 Q At approximately 6:00 o'clock, what did
24 Mr. DeLucia tell you and other detectives occurred
25 that was unusual at 6:00 p.m. the evening of

1 August 14th?

2 A He said that Justin had come by and was
3 extremely upset indicating that his friends next
4 door had been robbed and tied up.

5 Q And Mr. DeLucia had a girlfriend that also
6 lived with him?

7 A Yes.

8 Q And as a result of Mr. Perkins coming over
9 there in that state of mind, what did he and his
10 girlfriend do?

11 A They contacted 911 to phone the call in to
12 the police.

13 Q And Detective, would that have been the
14 first formal notification of this event to Metro
15 police?

16 A Yes.

17 Q Did Justin then leave Mr. DeLucia's home
18 or his property and then come back later?

19 A Yes, he did.

20 Q What did he do and say to Mr. DeLucia when
21 he came back the second time?

22 A He was apparently very upset and asked
23 that they also contact the paramedics because of the
24 bleeding and non-response, I believe.

25 Q Now, at this point, police officers --

1 Metro units are responding pursuant to the 911 call
2 to the Terra Linda location?

3 A Yes.

4 Q Are you familiar with a Sergeant Randy
5 Sutton and an Officer David West as it involves
6 their interaction with Terra Linda on August 14th?

7 A Yes, I am.

8 Q Who were they?

9 A Officer West is one of the officers that
10 had responded to the scene; Sergeant Sutton was the
11 first supervisor that responded to the scene, and
12 the two of them together cleared the residence to
13 make sure there were no suspects inside or any other
14 wounded individuals.

15 Q Now, when a police officer comes to the
16 scene and observes what ultimately was inside the
17 Terra Linda home, you indicated that there was a
18 process of clearing a home?

19 A Yes.

20 Q Is that a term that police officers
21 commonly use as far as their police duties and as it
22 relates to officer safety?

23 A Yes, it is.

24 Q Now, the officers that first arrived on
25 the scene, specifically Sergeant Sutton, how long

1 had he been a Metro officer, do you know?

2 A He had, I believe at that time, a total of
3 about 24 years total combined police experience with
4 probably about 18 years with Metro.

5 Q As Sergeant Sutton and Officer West
6 arrived on the scene, they're in a little bit of a
7 difficult situation. Would that be a fair statement
8 as far as what they want to do inside the home and
9 what they don't want to do?

10 A That's correct.

11 Q Could you describe that conflict that
12 exists with them and any officer that arrives on the
13 scene such as this?

14 A Based on what they can see immediately
15 upon reaching the front doorway, it's a major crime
16 scene with people that are apparently dead which
17 would indicate to them that it's going to be a
18 homicide scene. They want to make sure they don't
19 destroy any evidence whatsoever, but they also have
20 a duty that they have to make sure there's not
21 someone still alive that could be resuscitated if
22 they had immediate help or if there was a suspect
23 still on the property.

24 Q Now, relative to Officer West and Sergeant
25 Sutton's performance of the duties as you just

1 described it, did they clear the home?

2 A Yes, they did.

3 Q And as a result of them clearing the home,
4 what did they find out about two things -- one,
5 whether or not anybody was still alive in the home,
6 and number two, were there any suspects in the home?

7 A They did not find anyone else alive. They
8 found a total of four individuals that were dead and
9 did not locate any suspects.

10 MR. STANTON: Miss Clerk, if I could have
11 Exhibits 8 and 11 through 19.

12 BY MR. STANTON:

13 Q Detective, while those exhibits are being
14 pulled, I'd like to ask you the next series of
15 questions regarding the Terra Linda home.

16 When you and other officers arrived at the
17 scene, you have a discussion with Sergeant Sutton
18 and Officer West about what they did inside the home
19 and what they observed?

20 A Yes.

21 Q Why is it important for you to know what
22 the officers did, with precision, inside that home?

23 A We want to make sure that they haven't
24 touched or disturbed anything, or if they have, how
25 it was before they disturbed it. If a person's body

1 was moved, if a piece of evidence or a weapon is
2 moved, we need to know about that right away and/or
3 if they touched something.

4 Q And as a result of your interaction with
5 Sergeant Sutton and Officer West, what were you able
6 to ascertain about the integrity of the crime scene
7 at Terra Linda?

8 A That they maintain the integrity of the
9 crime scene without disturbing anything other than
10 physically walking through it, basically.

11 Q Detective, I'm going to put a series of
12 photographs up on the overhead here.

13 Can you see that screen fine from there?

14 A Yes, I can.

15 **MR. STANTON:** For the record, Exhibit
16 No. 8.

17 **BY MR. STANTON:**

18 Q Would you describe what we're seeing in
19 Exhibit No. 8?

20 A This would be the mailbox at 4825 Terra
21 Linda.

22 Q These photographs were all taken by crime
23 scene analysts?

24 A That's correct.

25 Q State's Exhibit 11.

1 A This is a view of the front of the
2 residence if you were standing from the street and
3 looking up the driveway; part of the driveway goes
4 straight, part of it curves to the right to where
5 you see the vehicle parked under the carport. The
6 front door is going to be in the left side of the
7 picture.

8 Q And all these photographs in this series
9 all fairly and accurately depict how the home
10 generally looked when you were at the scene and when
11 officers originally arrived at the scene?

12 A Yes, they do.

13 Q State's Exhibit 12.

14 A This, again, is a view looking from the
15 street, looking up the driveway. You can see a
16 little bit more to the left than the first picture
17 showed you with the fence separating the two houses,
18 some trash cans out front, and that's the front door
19 that is open (indicating) that you can see there on
20 the wall.

21 Q State's Exhibit 13.

22 A This photograph is showing the front door
23 of that same residence after it has been closed. It
24 had a seal placed on it by the crime scene analyst
25 and what's referred to as a "lockout" on the

1 doorknob that would keep somebody from turning the
2 knob to open it.

3 Q Could you describe why that is done in a
4 crime scene such as this, both the taping and the
5 lockout?

6 A Many times, especially with very involved
7 crime scenes, it takes many, many hours, if not many
8 days to process the scene. Sometimes it's not
9 always possible for the crime scene analyst to stay
10 there around the clock to continue working.
11 Sometimes it's advantageous to have them work for
12 several hours and seal the crime scene where the
13 doors and windows are secured. Tape is placed
14 across them where you could tell someone would break
15 the tape by opening the door. And additional
16 information is learned at a later time, such as from
17 the autopsy, then the crime scene analyst would
18 return at that later date and reenter the structure
19 and be able to tell that it was intact.

20 Q Now, the distinction between the condition
21 of the door in that photograph and the next one,
22 State's Exhibit 14, there appears to be a series of
23 levels of charcoal striations across the door.

24 This, once again, is the front door of the
25 Terra Linda home?

1 A Yes, it is.

2 Q What is the difference that has occurred
3 between that front door from the previous photograph
4 to this photograph?

5 A You can see the residue of fingerprint
6 powder where the crime scene analyst has applied
7 fingerprint powder to the exterior part of the door
8 to see if they can locate fingerprints that might be
9 there.

10 Q Is that typical based upon the nature of
11 this scene?

12 A Yes, it is.

13 Q Detective, inside the Terra Linda home,
14 how many bodies were ultimately found deceased?

15 A A total of four.

16 Q Based upon your training and experience
17 and the experience of Las Vegas Metro homicide as an
18 entire unit, is a quadruple homicide unusual?

19 **MR. WHIPPLE:** Judge, I'm going to object.
20 It's relevance at this point.

21 **MR. STANTON:** The relevance, your Honor,
22 is based upon what the officer or the detective is
23 going to testify as to what they do next and the
24 nature of the investigation -- what they were going
25 to do both at the crime scene as well as following

1 up with additional suspects.

2 **MR. WHIPPLE:** And I'll respond, I don't
3 think it matters if it's one or two or three or
4 four. It's the same investigation.

5 Sustained.

6 **MR. STANTON:** Thank you.

7 Can he testify to what he did without
8 having to....

9 **BY MR. STANTON:**

10 Q Relative to the interior of the Terra
11 Linda home, what was the primary focus once officers
12 from Homicide Division arrived at Terra Linda?

13 A What we want to do is make sure that
14 plenty of time is taken, and as carefully as
15 possible, everything is documented and evidence is
16 collected.

17 Q There were a series of a number of items
18 that were seized at the scene; would that be a fair
19 estimate or statement?

20 A Yes.

21 Q At the time that you impound items, do you
22 know, to some extent, what evidentiary value those
23 items have or do you sometimes not know?

24 A Sometimes you know right away, and
25 sometimes you have something that is important that

1 you don't realize it's important until later.

2 Q Can you give me an example at this scene
3 those items that were immediately apparent to you
4 that were relevant evidence at the crime scene
5 versus those items that you did not know but
6 ultimately became quite important?

7 A An example of evidence at a scene like
8 this and at this particular scene that was important
9 right from the beginning were the shell casings.
10 There were four shell casings or cartridge casings
11 located in the residence. We were able to tell
12 looking at the victims' bodies that they have what
13 appear to be gunshot wounds; and we find shell
14 casings next to the bodies, that would indicate it's
15 probably going to be connected and very important.

16 Q And, in the fact that you saw shell
17 casings in the generalized area of each of the
18 victims; is that fair to say?

19 A Yes.

20 Q The nature of the shell casings themselves
21 gave rise to you to have some indication of what
22 type of weapon was used or potentially used, at
23 least initially, in your assessment in the execution
24 murder of each one of these victims --
25 semi-automatic versus a revolver.

1 What did that mean to you and how did you
2 have some generalized idea that it was probably a
3 semi-automatic?

4 A With a semi-automatic, when the weapon is
5 fired, the empty shell casing is ejected from the
6 weapon. With a revolver, when the weapon is fired,
7 the cylinder rotates and the shell casing remains
8 inside the revolver unless a person physically opens
9 up the cylinder, dumps out the empty casings
10 themselves.

11 Q Once again, Detective, I'm going to show
12 you a series of photographs which were previously
13 admitted in the trial in 2000 regarding the interior
14 of the Terra Linda home. Exhibit 21 -- if you could
15 describe with each one of these photographs what
16 we're looking at.

17 A This would be in the dining room area,
18 looking across a table at the wall and the open
19 pantry.

20 Q Exhibit 22.

21 A This would be looking from the direction
22 of the dining room, looking back towards the front
23 door of the residence. That would be the same front
24 door from the inside view that we've seen the
25 outside view of.

1 Q The one that I'm pointing to right here
2 (indicating)?

3 A That's correct.

4 Q Was there any sign of forced entry to that
5 door?

6 A No, there was not.

7 Q Twenty-three.

8 A I believe that one is sideways.

9 Q Pardon me?

10 A This appears to be a view looking down the
11 hallway, I believe, from the living room.

12 Q Twenty-four.

13 A This would be the living room couch. You
14 can see the back cushions, and you can see that the
15 bottom cushions have been removed, and there are
16 items spread out that normally wouldn't be laying on
17 somebody's couch.

18 Q There was a portion of the crime scene
19 assessment that involved a series or a number of
20 cigarette butts at the crime scene. Were they
21 important to you as far as the crime scene
22 homicide detective, and if so, why?

23 A Cigarette butts are often very important
24 to us, because many times we're able to extract DNA
25 from the remaining cigarette butt that someone has

1 smoked and discarded.

2 Q These photographs depict a number of
3 cigarette butts that were in the home starting with
4 25 and then here in 26 (indicating).

5 A Yes.

6 Q All of these were impounded for DNA
7 analysis?

8 A That is correct.

9 Q State's Exhibit 27 -- what are we looking
10 at in that photograph?

11 A This is a container for a plant that was
12 sitting in the corner of the living room. You can
13 see it has some dirt in it, and off to the left of
14 the picture, you can see a portion of the plant
15 where somebody has taken the plant and completely
16 ripped it out of the dirt in their effort to ransack
17 this house looking for items.

18 Q And ultimately, you were able to
19 determine, through your investigation, that one of
20 the motives for the defendant and the two other
21 co-defendants in this case, Sikia Smith and Terrell
22 Young, to go to this home was to find money and
23 drugs?

24 A That's correct.

25 Q And would the searching of the potted

1 plant be consistent with that based upon your
2 training and experience?

3 A That was someone that was very motivated
4 in looking everywhere.

5 Q For narcotics and money?

6 A Yes.

7 Q Exhibit 28.

8 A This is a photograph of one of the
9 bedrooms. You can see the drawers had been pulled
10 out and dumped everywhere.

11 Q Twenty-nine.

12 A Again, I'd say this is one of the bedroom
13 floors with items just pulled out and dumped on top
14 of each other.

15 Q Thirty.

16 A This is the same room, larger view where
17 you can see more of the ransacking and items
18 overturned.

19 Q Would it be fair to say that the home had
20 been thoroughly ransacked in each and every room?

21 A Yes.

22 Q Exhibit 32, specifically right by the
23 cone, that black item, that item pointing to right
24 here, Detective (indicating), do you recognize
25 what's contained in that? I can bring the actual

1 photograph to you, if it would help.

2 A You may need to. I can see some black
3 items.

4 **MR. STANTON:** May I approach, your Honor?
5 Yes.

6 (Approached the witness.)

7 **THE WITNESS:** This (indicating) item is
8 one of the wallets recovered.

9 **BY MR. STANTON:**

10 Q In the Terra Linda home?

11 A In the Terra Linda home.

12 Q And item 33.

13 A It's another one of the wallets recovered
14 in the home completely void of any cash.

15 Q Would it be fair to say after your entire
16 crime scene analysis of the interior of that home
17 whether or not there was one dollar of U.S. currency
18 found in that home?

19 A Not in cash, only some coins.

20 Q Exhibit 37 -- I'll approach with it --
21 next to the cone.

22 Do you recognize that?

23 A I'm not sure specifically which item next
24 to the cone.

25 Q I'll use the crime scene diagram for that.

1 A Okay. Thank you.

2 Q State's Exhibit 40, what appears to be an
3 office area, was that the condition that you found
4 this portion of the home in?

5 A Yes. Again, you can see all the drawers
6 are pulled out. Everything is ransacked and dumped
7 over.

8 Q Exhibit 38.

9 A This would be the bathroom area with
10 items, once again, pulled open and everything dumped
11 out.

12 Q Exhibit 43 in reference to this bedroom
13 and the bed depicted in there, what gave you an
14 impression from looking at that scene that that
15 bedroom and specifically the mattress area was
16 tossed?

17 A You can see that the sheets had been
18 completely pulled free from the mattress itself so
19 that someone could check under the sheets, between
20 the mattresses and pretty much any place you would
21 be able to hide something there.

22 Q State's Exhibit 49.

23 A This is showing the floor with just
24 numerous items and clothing and baseball cards just
25 dumped out.

1 Q This is from the closet area of one of the
2 bedrooms?

3 A I would say yes, that would be correct.

4 Q State's Exhibit 54. I apologize. What
5 are we looking at there, Detective?

6 A This is the entertainment center in the
7 living room. If you look on the large bottom shelf,
8 you can see the television set has been turned
9 completely sideways. There's some wires coming out
10 and a few extra wires that aren't hooked up to
11 anything, and a big empty place next door to the
12 television to the left.

13 Q Ultimately, as you were there observing
14 this portion of the scene, what interest did you
15 have in this area and why?

16 A We could see that somebody had clearly
17 removed something. Commonly when you have something
18 removed in an area like this, it would be something
19 involving like a television set, a VCR, a record
20 player, PlayStations -- items like that. That is
21 important to us, because oftentimes a suspect will
22 keep that item for themselves, and we can locate it
23 at a later time and reconnect it back to the scene.

24 Q The next exhibit up there, 59, is a closer
25 view of that section of the home.

1 Was this an area that was of high
2 concentration regarding forensic testing by crime
3 scene analysts?

4 A Yes.

5 Q Could you explain what a crime scene
6 analyst is and how many were involved in this case?

7 A There were several. There's normally
8 several crime scene analysts as well as a crime
9 scene supervisor. These are all civilian employees
10 that are highly trained in documenting,
11 photographing, collecting and preserving evidence.
12 They're the ones that come and actually, physically
13 look for the evidence that use special equipment and
14 tools and follow certain protocols to make sure that
15 they have the greatest chance of preserving the
16 evidence without causing any harm to it.

17 Q And is there a sequence or an order in
18 which this crime scene is processed as far as what
19 areas to go to first and how is the scene
20 memorialized?

21 A With a complex scene such as this one
22 here, especially where there is a body or numerous
23 bodies involved, the first thing that is done is
24 photographs are taken so they can see exactly how
25 everything is before anything gets picked up, moved

1 or changed as it's collected as evidence. They will
2 try to do as much as they can without disturbing the
3 actual body so that when it's time to remove the
4 body, that no evidence will be lost by the actual
5 removal of the body.

6 Q State's Exhibit 70, specifically what's in
7 that photograph right there (indicating) as a
8 relationship to the victim.

9 A That is the empty wallet that has no money
10 in it.

11 Q And 69 is a close-up of the same
12 photograph?

13 A That's correct.

14 Q Same area.

15 State's Exhibit 65, is that what you
16 observed when you were at the scene as part of
17 preserving the integrity of the interior of Terra
18 Linda?

19 A Yes, it is.

20 Q And does the items depicted in there, as
21 far as the debris surrounding these victims' bodies,
22 accurately indicate those items that you observed
23 there and that were ultimately, at least some of
24 them, taken by forensic analysts?

25 A Yes.

1 Q State's Exhibit 66, specifically we
2 reference this wallet here to the bottom portion of
3 66, Detective Thowsen. I'd now like to direct your
4 attention to this item by the feet.

5 Do you see this item?

6 A Yes, I do.

7 Q Are you familiar with what that item was
8 there at the scene and what it ultimately became in
9 this case?

10 A Yes.

11 Q What was that?

12 A That item right next to the body was a
13 Black and Mild cigar box.

14 Q Is it depicted in a closer view here on
15 No. 67?

16 A Yes, it is.

17 Q On approximately August 18th, did there
18 become a significant development in this case?

19 A Yes.

20 Q What was that?

21 A We made contact with several individuals
22 that had some information about who had done this
23 and where those people were.

24 Q And would those have been three young
25 males?

1 A Yes.

2 Q And would there names have been Todd
3 Armstrong, Bryan Johnson and Ace Hart?

4 A That's correct.

5 Q Do you know the circumstances of how they
6 came initially to homicide and police officers'
7 attention?

8 A Yes.

9 Q And what was that?

10 A Initially, the police were called to the
11 home of Bryan Johnson over a matter, and when the
12 police began talking with him, he explained that he
13 had some information concerning this. At that
14 point, the patrol officers immediately separated all
15 three of these young men to be spoken with
16 separately and determined that they had information
17 on a homicide and took them directly to the homicide
18 office.

19 Q Can you explain why it's a procedure
20 that's utilized by officers, and particularly
21 homicide detectives, that when a situation that you
22 just described occurred, that separating these
23 parties would be a critical and important thing to
24 do?

25 A It's extremely critical. If you're

1 talking to numerous witnesses, you wouldn't want to
2 speak with them in front of each other, because you
3 want to find out exactly what each individual knows
4 on their own without picking something up from
5 another person. If you were to try to talk to them
6 all together and one person tells you a story, then
7 you go to another witness and that person tells you
8 the same story, you don't really know at that point
9 whether or not the information came from the person
10 that you're speaking with or they got it from the
11 first person that they heard talk.

12 Q The interaction that Metro arrived on was
13 something that had occurred between one of these
14 three individuals and their mother in a commonly
15 referred to as "domestic dispute"?

16 A That's correct.

17 Q As a result of that incident, did you and
18 homicide detectives contact and interview Todd
19 Armstrong?

20 A Yes.

21 Q And Todd Armstrong testified in June of
22 2000 in this case?

23 A That's correct.

24 Q At my request, Detective, did you bring
25 the transcripts of the testimony of various

1 individuals in the trial in this case in June of
2 2000?

3 A I did. I have them in these two binders
4 right here (indicating).

5 Q If at any time you need to refer to the
6 actual transcript, if you could just let me know.

7 A Thank you.

8 Q I'd like to summarize the testimony of
9 Mr. Armstrong.

10 In the summer of 1998, where did he live?

11 A He lived at the address on Everman that
12 was located on the same exhibit that we looked at
13 previously here.

14 Q Okay.

15 And that would be 4815 Everman?

16 A That's correct.

17 Q Who was the legal owner of that home?

18 A That would be Todd Armstrong's mother.

19 Q And who else did he live with at Everman?

20 A With Ace Hart at that point.

21 Q And it would be fair to say that during
22 this time period, Ace Hart, Bryan Johnson and Todd
23 Armstrong were all friends?

24 A Yes.

25 Q Did there come a time where Mr. Armstrong

1 testified that a bunch of or several other people
2 moved into his mother's home in early August of
3 1998?

4 A Yes.

5 Q And who were those individuals?

6 A Those individuals were Donte Johnson, a
7 person known as "Red," who is Terrell Young, and a
8 person known as La-La who is Charla Severs, the
9 girlfriend of Donte Johnson.

10 Q And did Donte Johnson, other than that
11 name, also go by any other names that you're aware
12 of?

13 A By the nickname of Deko and by the name of
14 John White.

15 Q So, in early August, Red -- Terrell Young;
16 Deko, the defendant; and La-La, his girlfriend
17 Charla Severs were living at the Everman home?

18 A That's correct.

19 Q Now, during this interview where you find
20 out what Todd Armstrong, Bryan Johnson and Ace Hart
21 ultimately tell you and other detectives, you then,
22 as part of your investigation, do what at the
23 Everman home?

24 A We obtain a consent to search the Everman
25 home from Todd Armstrong. We then go to the Everman

1 home to see if we can locate these other
2 individuals, and we have SWAT go there because of
3 the high probability that we'll contact some armed
4 suspects.

5 Q At that point, can you describe how
6 Everman, as a crime scene, as far as processing
7 goes, is viewed by you and homicide detectives in
8 contrast to Terra Linda? Is it as important?

9 A It's important, but because the actual
10 crime didn't occur there, you wouldn't normally
11 expect to find as much physical evidence at that
12 scene.

13 Q Is it processed in the same or similar
14 fashion as you previously described?

15 A Yes, it is.

16 Q Did Mr. Johnson tell you how he knew the
17 defendant -- how he first got to know him?

18 A Mr. Armstrong?

19 Q Yes.

20 A He met through Ace.

21 Q Ace Hart?

22 A Yes.

23 Q And how did it come about that the
24 defendant ended up living at the Everman residence?

25 A I believe he explained that Ace Hart

1 brought them there and pretty much just brought them
2 in.

3 Q And how long did Mr. Johnson tell them he
4 was going to stay; do you recall?

5 A Mr. Johnson?

6 Q Yes. How long did he tell Ace Hart and
7 Todd Armstrong he was going to stay at the Everman
8 home when he first asked to reside there; do you
9 recall?

10 A I don't recall exactly, only that it was a
11 brief period.

12 Q Okay.

13 If you could, Detective, for me, go to the
14 first volume before you, and I want to go to Volume
15 No. 2, page 148. At the bottom, you'll be
16 referenced by the Roman Numeral No. II-148. It
17 should be at the rear of that book.

18 A I'm in Volume II, 148.

19 Q Yes.

20 If you could reference the question and
21 answer on lines 18 through 20.

22 How long did the defendant say he wanted
23 to stay at the Everman home?

24 A Two or three days.

25 Q And the living arrangements at that

1 home -- do you recall what Todd Armstrong said where
2 each of the individuals that were living there lived
3 inside Everman?

4 A I believe so.

5 Q Okay.

6 Could you describe each person and where
7 they resided in the Everman home?

8 A Donte Johnson and Charla Severs were
9 occupying the master bedroom. Todd Armstrong was
10 occupying a different bedroom, apparently because it
11 had a waterbed that was in that room that he wanted
12 to utilize and didn't want to actually move the bed.
13 Ace Hart was in a bedroom, and Red or Terrell Young
14 was in the living room.

15 Q After four or five days after the
16 defendant had moved in, did Mr. Armstrong see any
17 firearms with the defendant and Terrell Young?

18 A Yes, he did.

19 Q And could you describe what Mr. Armstrong
20 testified as to the weapons that he saw and what
21 type of weapons they were?

22 Referring to pages starting at 152 -- let
23 me see if I can do this, Detective.

24 **MR. STANTON:** It's between pages 152 and
25 157, Counsel.

1 **BY MR. STANTON:**

2 Q Did he ultimately identify three guns that
3 he had seen with the defendant?

4 A Yes, he did.

5 Q They were a .380 -- .380 caliber pistol,
6 black in color with gold diamonds on it; a revolver,
7 medium-sized, appeared to be a six-shot revolver;
8 and a .22 caliber rifle that was new, looked like a
9 sawed-off shotgun with a folding stock and a banana
10 clip?

11 A That's correct.

12 Q Did Mr. Armstrong indicate where he had
13 seen the defendant keep those guns?

14 A In a duffel bag.

15 Q And that would be a black and green duffel
16 bag?

17 A Yes, it would.

18 Q Was that ultimately found at the Everman
19 home during that search?

20 A Yes, it was.

21 Q Mr. Armstrong indicated what ultimately
22 became three important pieces of evidence that was
23 not found at the Terra Linda home that you
24 detectives knew that was possible stolen merchandise
25 from that home; is that a fair statement?

1 A Yes, it is.

2 Q A VCR and a PlayStation.

3 You previously had described and testified
4 to the condition of the Terra Linda home what
5 appeared to be removal of electronic equipment.

6 Were you able to identify that VCR at the
7 Everman location?

8 A Yes.

9 Q How were you able to determine that the
10 VCR at Everman was indeed Matthew Mowen's VCR?

11 A We had the remote control for Matthew
12 Mowen's VCR and was able to control that VCR with
13 the remote.

14 Q That was provided to you by Matthew
15 Mowen's father?

16 A Yes.

17 Q The PlayStation that had been identified
18 as being at the Terra Linda home, was that found at
19 Everman?

20 A Yes.

21 Q There was a blue pager.

22 Do you recall this (indicating)?

23 A Yes.

24 Q Where was the -- strike that.

25 When the Everman home was ultimately

1 processed and investigated, was there something
2 unusual about the condition of the backyard that
3 gave you and other homicide detectives some
4 suspicion that something was in the backyard?

5 A Yes.

6 Q What was that?

7 A Some of the soil had been disturbed.

8 Q What did that mean to you when you were
9 processing that scene?

10 A That something could be buried there.

11 Q Did you and other detectives retrieve
12 those items?

13 A Yes, we did.

14 Q What were those items that you retrieved?

15 A There were two keys to the Thunderbird
16 Motel and a blue pager.

17 Q This is buried in the backyard?

18 A Buried in the backyard.

19 Q Did it appear, from it's physical
20 condition, at least, the burial site to be something
21 of a recent vintage that it had been buried
22 recently?

23 A Yes.

24 Q The pager that was found there, did that
25 ultimately become of interest to you?

1 A It did.

2 Q Why is that?

3 A By checking the number that was related to
4 that pager, we were able to determine that that was
5 the number that Peter Talamentez's friends to call
6 to page him on to have him contact them.

7 Q And that was done through the pager
8 company and the manufacturer once you return it?

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

10 Your Honor, I recognize that we're doing
11 summaries here, but I would object to the form. I
12 think that Counsel has to ask the detective the
13 question and have him answer rather than Counsel
14 giving testimony and having the witness say that
15 that's correct; so, my objection would be as to
16 form, your Honor.

17 **MR. STANTON:** I apologize. I'll -- in an
18 attempt to try and summarize, I'll try and not do
19 that anymore.

20 All right.

21 **BY MR. STANTON:**

22 Q Based upon the investigation itself of the
23 pager itself, whose pager was that?

24 A Peter Talamentez.

25 Q Did Todd Armstrong tell you anything about

1 what the defendant smoked, if anything?

2 A Yes, he did.

3 Q What did he tell you?

4 A Black and Mild cigars.

5 Q Did he mention to you with what degree of

6 frequency he smoked Black and Milds?

7 A I know it was often. I don't remember the

8 exact.

9 Q Okay.

10 If you would turn, Detective, to page 160.

11 If you would review Mr. Armstrong's testimony

12 beginning on line 14 and ending on line 17.

13 (Witness reviewing document.)

14 **BY MR. STANTON:**

15 Q What was his response?

16 A "All the time."

17 Q I'd like to direct your attention to

18 page 165 of the trial transcript. I'd like you to

19 read, Detective, Mr. Armstrong's testimony, question

20 and answers, regarding -- starting at line 11 and

21 concluding at line 17. Read that to yourself.

22 A I'm sorry. To myself?

23 Q Yeah, just to yourself.

24 (Witness reviewing document.)

25 **THE WITNESS:** Okay.

1 **BY MR. STANTON:**

2 Q Initially, pursuant to Mr. Armstrong's
3 statement and trial testimony an indication that his
4 mother owned the home, but that through Ace Hart,
5 the defendant, Donte Johnson, had asked to come and
6 stay at the home and, in fact, did. The permission
7 was for two to three days.

8 How long did Todd Armstrong say they
9 ultimately stayed? Was it past the two to three
10 days?

11 A It was past the two to three days.

12 Q Up until the time of the murder when you
13 effectuated the services on it pursuant to a SWAT
14 entrance on the 18th of August?

15 A Yes.

16 Q Did there come an explanation about why
17 Todd Armstrong did not want -- was not able to get
18 them out of the home beyond two to three days?

19 A Yes.

20 Q What was that?

21 A He said that he was scared of them.

22 Q Scared of them?

23 A Yes.

24 Q Did there come a time -- page 166 to
25 167 -- where Mr. Armstrong had made up or had made a

1 statement to the defendant in an attempt to get him
2 out of the home?

3 If you could read the bottom of page 166
4 to the top of 167.

5 **THE COURT:** Let's call a short recess for
6 about five minutes.

7 The jury is admonished not to discuss this
8 case among themselves or with anyone else, listen to
9 any radio reports or television or commentary about
10 the case or newspapers, and don't express any
11 opinion about the case or about anyone who has
12 anything to do with it.

13 **THE BAILIFF:** All rise.

14 (Recess taken.)

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

17 **THE COURT:** All right.

18 Let the record reflect the presence of all
19 the parties, all the attorneys and all the members
20 of the jury.

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

22 **BY MR. STANTON:**

23 Q Detective Thowsen, at the time we last
24 broke, I was asking you a series of questions
25 regarding what Todd Armstrong said and testified at

1 trial regarding the presence of the defendant and
2 Mr. Young at his home.

3 I want to go to a portion of
4 Mr. Armstrong's testimony where he made up a story
5 about his mother.

6 Do you recall that?

7 A Yes, I do.

8 Q What did Todd Armstrong testify to about
9 getting the defendant out of his house regarding
10 this story?

11 A He told the defendant that he was going to
12 have to leave the home because Mr. Armstrong's
13 mother was returning from Hawaii to the house.

14 Q And Mr. Armstrong made up that story for
15 what reason?

16 A So that the defendant would leave.

17 Q And did he?

18 A No, he did not.

19 Q And that was not a true story, according
20 to Mr. Armstrong?

21 A That was not a true story.

22 Q Did Mr. Armstrong testify as to how the
23 defendant got into the home, as far as when he
24 wasn't there?

25 A Mr. Armstrong had the only key to the

1 residence. However, there was a broken bathroom
2 window that the defendant would be able to climb
3 through to get into the house.

4 Q Okay.

5 Detective, I'd like to direct your
6 attention to page 169 of Mr. Armstrong's testimony,
7 and specifically, Mr. Armstrong's testimony as it
8 relates to a day when Matt Mowen came to the Everman
9 home.

10 Do you see that portion?

11 A Yes.

12 Q What time did Todd Armstrong say Matt
13 Mowen came over to his residence at Everman?

14 A Somewhere between the 7th and the 10th of
15 August.

16 Q There was a conversation or statement made
17 by Matt Mowen in that time period in front of
18 several people; is that correct?

19 A That's correct.

20 Q Who was present when Matt Mowen came over
21 and made the statement?

22 A I believe it was Mr. Armstrong, the
23 defendant, Red and La-La.

24 Q What did Matt say when he was over at the
25 Everman home and in the presence of those

1 individuals?

2 A He made mention that he had been following
3 the Fish Tour, which is a musical group, and that he
4 had made a lot of money selling acid.

5 Q And according to Mr. Armstrong, at the
6 Everman home right after that statement was made --
7 if you could refer to page 173 -- actually, at the
8 bottom of page 172 -- my apologies, Detective -- the
9 question at line 25, the bottom of 172 going over to
10 Mr. Armstrong's answer at the top of 173, what did
11 he say occurred after Matt Mowen made that
12 statement?

13 A He said that the defendant looked around
14 at Red, Ace and Mr. Armstrong, and he looked at them
15 like he had an idea.

16 **MR. WHIPPLE:** Judge, I'm going to object.
17 There's an objection here in the transcript.

18 **THE COURT:** So?

19 **MR. STANTON:** The objection, your Honor, I
20 believe went to the latter portion of the answer by
21 Mr. Armstrong. I'd have no objection to that being
22 stricken, but the first part of the answer I believe
23 was not that portion that was objected to or
24 sustained by the trial court.

25 **MR. WHIPPLE:** That's fine.

1 **THE COURT:** All right.

2 **MR. STANTON:** If I could have just a
3 little leeway, your Honor.

4 **THE COURT:** All right.

5 **BY MR. STANTON:**

6 Q The answer by Mr. Armstrong that "He,"
7 being Donte Johnson, "kind of like looked around,
8 like, at Red, Ace and I."

9 Is that what Mr. Armstrong testified?

10 A That's correct.

11 Q Then there came a time -- if you could go
12 to when -- Matt Mowen left the home after making
13 that statement, correct?

14 A Yes, he did.

15 Q On page 174, Detective, going towards the
16 bottom beginning at lines 18 -- and if you would
17 read to line 23 just to yourself.

18 (Witness reviewing document.)

19 **BY MR. STANTON:**

20 Q After Matt Mowen had made this statement
21 and within the next several days after making that
22 statement, how many times did the defendant, Donte
23 Johnson, ask Todd Armstrong where Matt Mowen had
24 lived?

25 A Probably a dozen times.

1 Q Showing you State's Exhibit 181 at trial,
2 did Todd Armstrong identify each one of those
3 individuals depicted in that poster board by the
4 names that's listed underneath?

5 A Yes, he did.

6 Q And when we reference Donte Johnson and
7 Terrell Johnson as "Red" living in the Everman home,
8 that's these two people in the center and on the
9 right of this poster board?

10 A That's correct.

11 Q Page 175 of the testimony -- did Todd
12 Armstrong know where Matt Mowen lived?

13 A No, he did not.

14 Q And did Todd Armstrong testify as to a
15 circumstance, specifically an event involving an
16 automobile where Matt Mowen lived was pointed out to
17 the defendant?

18 Do you recall that?

19 A Yes.

20 Q Can you describe what occurred in this
21 incident in an automobile?

22 A Basically, there was a point where
23 Mr. Armstrong was in an automobile with Ace Hart and
24 the defendant, and Ace Hart pointed out where the
25 residence of Mr. Mowen was.

1 Q The Terra Linda home?

2 A The Terra Linda home.

3 Q And this occurred on August 10th to the

4 12th, sometime in there, according to Mr. Armstrong?

5 A That's correct.

6 Q We've been describing a residence as the

7 Everham (sic) residence. I'm going to put a series

8 of photographs up on the viewer here, Detective, and

9 if you could describe what we're looking at with

10 each photograph --

11 A Okay.

12 Q -- beginning with State's Exhibit 98.

13 A This will be the front door of the 4815

14 Everman residence.

15 Q And the time that this took place about

16 processing Everman by the police, what day was that,

17 do you recall?

18 A I believe it was still on the 18th, if not

19 the early morning of the 19th.

20 Q Okay.

21 This is after Todd Armstrong, Ace Hart and

22 Bryan Johnson had been interviewed?

23 A Yes.

24 Q What was the procedure utilized by Metro

25 police and homicide detectives to contact 4815, and

1 what precautions were taken?

2 A We contacted the Metro SWAT Unit to have
3 them make entrance, if necessary, into the home.
4 What they did in this particular case is made a
5 secure perimeter so no one would be able to go in or
6 out of the residence, and then rather on, say,
7 "storming," for a better word, the residence, they
8 would call into the house on a bullhorn advising any
9 occupants inside to come out now prior to SWAT
10 having to make a forced entry of the home.

11 Q And there were several people that were
12 physically inside Everman when SWAT made that
13 announcement?

14 A Yes.

15 Q Ultimately, the interior of Everham (sic)
16 was processed pursuant to your previous testimony;
17 is that correct?

18 A Yes, it was.

19 Q I want to show you State's Exhibit 101 and
20 also 99.

21 What is it that we're looking at and where
22 is this?

23 A This is inside one of the rooms of the
24 Everman home, and we're looking at a PlayStation
25 down in the lower portion right here.

1 Q Right there (indicating)?
2 A Yes.
3 Q The lower central portion of that?
4 A Yes.
5 Q And the same or similar photograph in
6 Exhibit 99?
7 A Yes, that's correct.
8 Q Specifically in the bedroom, the master
9 bedroom of Everman -- showing you State's Exhibit
10 104, do you recognize the contents of that
11 photograph?
12 A Yes.
13 Q And what's contained in there that
14 highlighted a specific item of evidentiary value to
15 you as a homicide detective?
16 A In looking at the bag that's opened in the
17 middle of the picture, you can see a roll of duct
18 tape. That is duct tape as was used on the victims.
19 Q Is that right here that I'm pointing at in
20 the center of the photograph (indicating)?
21 A Yes.
22 Q Showing you State's Exhibit 107, once
23 again, is this the master bedroom at Everman?
24 A Yes, it is.
25 Q And what items of evidentiary value are

1 depicted there in that photograph?

2 A There is a .22 caliber rifle at the lower
3 portion (indicating). The barrel is pointing up and
4 to the left. It has a folding stock on it, as well
5 as some black jeans that are present there.

6 Q We'll get to the jeans in just a moment.

7 That .22 caliber folding stock rifle that
8 I'm pointing at here (indicating) in the center of
9 that photograph, was that impounded as evidence?

10 A Yes, it was.

11 **MR. STANTON:** Your Honor, I've requested,
12 with permission of your bailiff, to display this
13 weapon to the detective and also to the jury and ask
14 that he could make the weapon safe for purposes in
15 the courtroom.

16 **THE COURT:** All right.

17 **BY MR. STANTON:**

18 Q Detective, if you could reference the
19 exhibit number on the tag that's on the weapon
20 before you.

21 A 168c.

22 Q Is that the weapon that we see in this
23 photograph that we just discussed?

24 A Yes, it is.

25 Q In addition, 16a, do you recognize that

1 item?

2 A Yes, I do.

3 Q What is that?

4 A This is the magazine containing ammunition
5 that was located in the weapon.

6 Q Okay.

7 That clip that you're holding in your
8 hand, is this clip in the photograph that was in the
9 weapon at the time that you and the officers from
10 SWAT made entry?

11 A That's correct.

12 Q So, the condition of that weapon is more
13 precisely reflected in the photograph than obviously
14 here in court as it was originally found?

15 A Yes.

16 Q What caliber weapon is that?

17 A Twenty-two long rifle.

18 Q Is there any caliber that indicates that
19 any of the victims were shot with that type of
20 weapon at the Terra Linda home?

21 A No.

22 Q Thank you, Detective.

23 A You're welcome.

24 Q Exhibit 104 that you previously
25 testified, Detective, I ask you to look into the

1 contents of State's Exhibit 155 and ask you if you
2 recognize and/or are familiar with the contents of
3 that bag?

4 A Yes.

5 Q And what is 155?

6 A This is the roll of duct tape that was
7 recovered in the bag seen here in this photograph at
8 4815 Everman.

9 Q Detective, previously we've testified or
10 you've testified regarding the exterior backyard of
11 4815 Everham (sic).

12 You were indicating about some freshly dug
13 portion of the earth?

14 A Yes.

15 Q In this Photograph 108, what are we
16 looking at in that photograph?

17 A It appears to be the keys right here
18 (indicating) and I can't see from this distance the
19 other items.

20 Q If I hand that to you -- directly to
21 you -- is that photograph consistent with the
22 overall area of what you previously testified as
23 freshly dug portion of the earth?

24 A Yes.

25 Q State's Exhibit 109, is that a closer

1 photograph of what's the center of the photograph
2 you just reviewed?

3 A Yes.

4 Q One ten -- what are we looking at in that
5 photograph?

6 A In this photograph here, we can see the
7 two motel keys and the blue pager right here
8 (indicating).

9 Q And briefly, 111 is a close-up of the
10 keys?

11 A Yes.

12 Q And 112 -- what's the new item in there?

13 A The blue pager.

14 Q Okay.

15 Do you actually have the pager with
16 you, Detective?

17 A I have it contained in this bag.

18 Q Could you refer to the exhibit numbers on
19 each one of those items?

20 A The pager itself is 154b, as in "boy," and
21 the pager case is 154a, as in "Adam."

22 Q And that's Peter Talamendez's pager that
23 was dug up behind the Everman home?

24 A That's correct.

25 Q I'd like to go to the testimony of Todd

1 Armstrong and his statement where he indicated what
2 occurred as he witnessed events after the murder on
3 the evening of August 13th into the morning of
4 August 14th. Okay, Detective?

5 A Yes.

6 Q Beginning on page 178 of his trial
7 testimony, I want to lay a foundation about where
8 certain people were in the home.

9 Who resided or stayed in the Everman home
10 when the defendant and Terrell or Red left the home
11 earlier that evening?

12 A La-La was there.

13 Q And Todd Armstrong?

14 A And Todd Armstrong.

15 Q Where was La-La or Charla Severs staying
16 while the defendants had left the home that night;
17 do you recall?

18 A In the master bedroom.

19 Q And Todd Armstrong awoke early in the
20 morning when who came home into the residence?

21 A Donte Johnson.

22 Q And he was accompanied by...?

23 A Red -- Terrell Young.

24 Q What did Todd Armstrong see, if anything,
25 that both the defendant, Donte Johnson, and Terrell

1 Young were carrying when they came back into the
2 Everman home that morning?

3 A He saw they were carrying duffel bags.

4 Q And who -- was he ultimately able to see
5 what was in each duffel bag as far as each
6 individual -- what they were carrying?

7 A Yes.

8 Q And what was that?

9 A Mr. Johnson was carrying a duffel bag
10 containing the guns and duct tape, and Red or
11 Terrell Young was carrying a duffel bag that had a
12 VCR and a PlayStation in it.

13 Q And according to Mr. Armstrong, did it
14 appear that the bag that he had previously seen guns
15 in it that the defendant was carrying was empty or
16 full?

17 A Full.

18 Q After Mr. Johnson -- Donte Johnson came
19 into the home, where did he go immediately after
20 coming into the home?

21 A He went into the bedroom, the master
22 bedroom.

23 Q Where Miss Severs was sleeping?

24 A Yes.

25 Q After he went in there, how much time

1 elapsed until he came back out of the room,
2 approximately?

3 A A short time.

4 Q And did he come out of the room with
5 Miss Severs?

6 A Yes.

7 Q Detective, I want to go to page 185 of
8 Mr. Armstrong's testimony. I would like you to look
9 at -- I'm sorry, page 183. My apologies.

10 **MR. WHIPPLE:** I'm sorry?

11 **MR. STANTON:** One eighty-three, Counsel,
12 line five through line ten.

13 **BY MR. STANTON:**

14 Q Detective, there is a question that begins
15 on line five, and the answer goes to line ten. I'd
16 like you to read out loud and verbatim the question
17 and answer reflected on those lines of the
18 transcript.

19 A "Question: Tell me what happens
20 once Donte and La-La -- do they sit
21 down in the living room?

22 "Answer: I'm not sure if they
23 sat down. It was pretty much just
24 everybody was in the living room.
25 They just told me that they went to

1 Matt's house and that they ended up
2 killing four out of the four people."
3 Q And same page, line 16 through 21. Could
4 you read out loud and verbatim the question and
5 answer reflected in the transcript?
6 A "Question: Okay. Tell me what
7 you recall Deko saying that night
8 about where he had been.
9 "Answer: Just that they were
10 over there, and that he ended up
11 killing one of the guys because he
12 was, like, mouthing off or didn't,
13 like, listen to him or something. He
14 was just being obnoxious."
15 Q And the next question there and the
16 answer.
17 A "And did -- that was Deko saying
18 that?
19 "Answer: Yes."
20 Q On the next page, page 184, if you could
21 read the question beginning at line two, and after
22 that question, if you could just read the answer
23 portions through line nine.
24 A "Question: Who did Deko say
25 killed the person that mouthed off?

1 "Answer: Oh, he said that he
2 killed the person -- Deko. He said he
3 shot him in the head."
4 Q And that last answer (sic) was -- "Did
5 Deko say how he killed the person?" And the answer
6 was, "He had shot him in the head"?
7 A Yes.
8 Q Once again on page 184, if you could look
9 at the question and answer from lines 15 through 17.
10 What did Donte Johnson say the morning
11 after coming back from the murder that the person
12 they had first encountered at the Terra Linda home
13 was doing?
14 A He said they were watering the lawn.
15 Q And after he arrived while this person was
16 watering the lawn, what did the defendant do to that
17 person?
18 A I know that he forced him into the house.
19 Q Okay.
20 When you say "he forced him," how did he
21 force that person into the home?
22 A Can you tell me what line you're referring
23 to?
24 Q Certainly.
25 It's a little bit later in the transcript.

1 I'll have to come back to it in just a second.

2 There was an indication that they had made
3 the person go inside the home; is that correct?

4 A Yes, that's correct.

5 Q What happened, according to Mr. Johnson,
6 after these persons were forced inside the home
7 according to the defendant the following morning?

8 Do you recall?

9 A I'm not sure, specifically.

10 Q Okay.

11 If you could go to page 185.

12 Let me go to this portion of
13 Mr. Armstrong's testimony at lines four through
14 seven of his testimony.

15 This part -- the question is posed to
16 Mr. Armstrong about who was doing the talking at the
17 Everman home about what had occurred at Terra Linda,
18 and what was Mr. Johnson's statement between the
19 defendant Donte Johnson and Terrell Young as to who
20 was making the comments?

21 A Deko.

22 Q And he says it's pretty much all Deko
23 that's doing the talking?

24 A Yes.

25 Q And what did the defendant say they were

1 looking for inside the Terra Linda home?

2 I direct you to lines 13 through 14.

3 A Money.

4 Q On lines -- once again, same page, lines
5 18 through 22, according to the defendant, what
6 transpired after they had forcibly made the person
7 watering the lawn go inside the home?

8 A After they had that person inside the
9 home, another two individuals eventually showed up.

10 Q According to Mr. Armstrong, these two
11 people didn't show up at the same time, did they?
12 They arrived at separate times?

13 A Correct.

14 Q Directing your attention to
15 page 186, Detective, what I'd like you to do here is
16 from line 22 on page 186, I'd like you to read the
17 question and the answer verbatim to the bottom of
18 that page, then on page 187, the entirety of that
19 page save and except for the extracurricular matters
20 outside the testimony that's reflected on lines 21
21 through 23 and then picking up with the last line on
22 that page, line 24 and then reading to page 188 all
23 the way down to the answer on line six verbatim,
24 question and answer, please.

25 A "Question: As a result of that

1 person thinking it was a joke, what
2 did Deko then tell you he did?

3 "Answer. He said he took him,
4 to, like, a back room somewhere, and
5 shot him in the head.

6 "Question: After Deko told you
7 he shot that person, what did Deko say
8 he did next?

9 "Answer. "He said that since he
10 killed one, that he had to kill
11 everybody else, but he didn't want to
12 kill Tracey because he was, like,
13 really nice, and like, cooperating,
14 and just everything he said. But he
15 said he forgot which one he was cause
16 he was, like, high; so, he just shot
17 them all.

18 "Question: So, in total, how
19 many people did Deko say he shot that
20 night?

21 "Answer: Four.

22 "Question: Did Deko describe
23 what, if anything, happened to the
24 kids as he shot them?

25 "Answer: He said that one of

1 them made, like, a noise, like a
2 grunt, I guess.
3 "Question: Did he describe or
4 make a noise like a grunt?
5 "Answer: Yeah, like an --
6 like -- unh, I guess, just unh, just
7 like --
8 "Question: Now, can you tell me
9 what Donte's demeanor was like, how he
10 was acting as he was telling you these
11 things?
12 "Answer: Laughing. He was
13 laughing -- thought it was funny.
14 "Question: Did you think it was
15 funny?
16 "Answer: No.
17 "Question: Now, with him
18 laughing, did you believe it was true
19 since he was laughing?
20 "Answer: Yes."
21 Q Showing you State's Exhibit 81, Detective,
22 in the testimony that we just were involved in from
23 Todd Armstrong, there was an indication that the
24 last person in the house had mouthed off or had said
25 something to the defendant.

1 Who is this in this photograph
2 (indicating)?

3 A This is a photograph of Peter Talamentez.

4 Q And he was located separate and apart from
5 the three other victims in this case?

6 A Yes, he was.

7 Q And what ethnic background was
8 Mr. Talamentez?

9 A Hispanic.

10 Q The pair of black pants that were in the
11 photograph along with the .22 caliber firearm, were
12 those pants impounded?

13 A Yes, they were.

14 Q And were those items requested by homicide
15 detectives to be forensically examined for DNA?

16 A Yes.

17 Q How does that process work regarding DNA
18 testing in a homicide case, just generally?

19 A In general, if we have an article, say,
20 pants like this that we have impounded and we want
21 it checked for DNA, the item will be called up by
22 the scientist that actually works in the DNA
23 laboratory who will then take samples of anything
24 that he can locate that would appear -- that would
25 have DNA in it, such as more commonly blood or semen

1 or items like that that you can locate. Once he
2 locates an item, then he tries to break it down to
3 determine if it contains DNA in the first place. If
4 DNA is located, then we would then try to see if we
5 can match that DNA to a specific source.

6 Q In this case involving the three suspects
7 that we see in that poster board and the four
8 victims in this case, how was DNA reference samples
9 obtained from these seven individuals?

10 A I'm not sure I understand your question.

11 Q A reference sample is -- what does that
12 mean to you?

13 A A sample can be taken by actually cutting
14 a piece of clothing or material or by swabbing it.

15 Q And in the cases of the victims, how,
16 normally, is DNA taken for reference samples to use
17 to determine the victim's DNA that may be at various
18 different scenes?

19 A With victims, if it's a case of a
20 homicide, normally, we draw blood and we often will
21 do a buccal swab that you can get DNA from as well.

22 Q And that's done at a medical procedure
23 commonly referred to as an "autopsy"?

24 A That's correct.

25 Q Was that done in this case as it relates

1 to the four victims you previously testified to?

2 A Yes, it was.

3 Q And the same question, Detective, are
4 reference samples obtained or were they obtained in
5 this case involving those three individuals
6 reflected on State's 181?

7 A Yes.

8 Q I'd like to refer now to the testimony of
9 Bryan Johnson.

10 Who was Bryan Johnson, as far as your
11 knowledge, and how did his name come to light in the
12 investigation?

13 A Ryan Johnson?

14 Q Bryan Johnson.

15 A Bryan Johnson was a friend of Ace Hart and
16 Todd Armstrong.

17 Q If you could refer, Detective, to the next
18 volume of transcripts.

19 **MR. STANTON:** Counsel, this would be
20 Volume III.

21 **BY MR. STANTON:**

22 Q Mr. Johnson, along with Todd Armstrong and
23 Ace Hart, were involved or first came to light as a
24 result of this domestic violence incident that you
25 previously testified to; is that correct?

1 A A domestic dispute, yes.

2 Q Domestic dispute.

3 And after that, they were interviewed

4 separately and individually after the homicide?

5 A Yes.

6 Q He testified, Mr. Johnson did, in June of

7 2000 in this trial?

8 A Yes, he did.

9 Q If you could begin referencing on

10 page 134, line three.

11 At the time Bryan Johnson testified in

12 this matter -- actually, it's on page 133. I

13 apologize, Detective.

14 How old was Bryan Johnson?

15 A Twenty years old.

16 Q And did he have any connection, as far as

17 residence occurs, with the 4815 Everman home?

18 A He lived there for a brief time.

19 Q Who did he live there with when he did

20 live at Everman?

21 A With Todd Armstrong.

22 Q And Ace Hart?

23 A And Ace Hart.

24 **MS. JACKSON:** Excuse me. That's not what

25 he -- I'm sorry, Counsel.

1 According to my volume, he says he lived
2 there from October '97 through June '98 with Todd
3 Armstrong and Joel Valesquez, V-A-L-E-S-Q-U-E-Z, at
4 line 14.

5 **MR. STANTON:** I think it's at page 134.
6 What page are you quoting from?

7 **MS. JACKSON:** Page 134.

8 **THE COURT:** Line 14.

9 **MS. JACKSON:** At about line 13, 14.

10 "At the time he lived at that address, who
11 were your roommates?

12 "Answer: Todd Armstrong and Joel
13 Valesquez."

14 **MR. STANTON:** Court's indulgence one
15 moment.

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

17 **BY MR. STANTON:**

18 Q I'd like to direct your attention to when
19 he moved out -- Mr. Johnson, that is, Bryan Johnson,
20 when he moved out of the Everman home. Directing
21 your attention to page 134, lines seven through
22 eight.

23 When did Mr. Johnson move out of the
24 Everman home?

25 A I don't think our lines are the same

1 number.

2 Q Is there a question on line seven -- "Tell
3 me what month you lived in Everman?"

4 A Yes.

5 Q Let me just phrase it that way.

6 When did Mr. Johnson say he lived at the
7 Everman home from when he began living there to when
8 he stopped living there?

9 A Approximately October '97 to June '98.

10 Q After he left the home, moved out of the
11 Everman home in June of 1998 -- directing your
12 attention to page 135, line 18 through 20 -- what,
13 if anything, did Mr. Johnson's contact exist with
14 Everman after he moved out in June through August?

15 A He would continue to visit the home.

16 Q Mr. Johnson -- did he have any knowledge
17 of the defendant, Terrell Young and Charla Severs?

18 I direct your attention to page 136, lines
19 five through seven.

20 A Yes.

21 Q And did he know all three of those
22 individuals?

23 A Yes.

24 Q Page 138, lines two through six,
25 specifically, Detective, what Mr. Johnson's

1 knowledge and testimony was regarding where the
2 defendant, Donte Johnson, Terrell Young and Charla
3 Severs lived at in the Everman home and whether or
4 not they had any possessions in the home.

5 A Yes.

6 Q Where did they keep their belongings?

7 A In the master bedroom.

8 Q Pardon me?

9 A In the master bedroom.

10 Q Page 138, lines 14 through 16.

11 According to Mr. Bryan Johnson, how often
12 did he go to the Everman home?

13 A Three or four times a week.

14 Q And did he ever see the defendant, Donte
15 Johnson, smoke?

16 A Yes, he did.

17 Q And what did he smoke?

18 A Black and Mild cigars.

19 Q Did there come a time when there was a --
20 on Saturday, August 15th, 1998 -- referencing
21 page 139 -- when Bryan Johnson went to the Everman
22 home, and what purpose did he go to the Everman home
23 on that morning?

24 A He went to go to a job interview at the
25 Stallion Mountain Golf Course.

1 Q Who did he meet at the Everman home to
2 accomplish that task?
3 A Todd Armstrong and Ace Hart.
4 Q All three of them were going to go for an
5 interview?
6 A Yes.
7 Q Who was present? I'll reference you to
8 page 142 to 143.
9 Did there come a time that Bryan Johnson
10 heard statements about a crime?
11 A Yes.
12 Q And referencing to page 142, line ten --
13 actually, beginning at line six -- according to
14 Mr. Johnson, Bryan Johnson, who was present in the
15 Everman home when these statements were made?
16 A After Bryan Johnson, there was Ace, Todd,
17 Red and La-La.
18 Q Ace Hart, Todd Armstrong, Terrell Young,
19 Charla Severs and the defendant, Donte Johnson?
20 A And Donte Johnson, correct.
21 Q And did Donte Johnson make any statements
22 regarding what had occurred involving this crime?
23 A Yes, he did.
24 Q Beginning at page 142, I want to go
25 through the statements that Donte Johnson

1 specifically made in the presence of Bryan Johnson.

2 First of all, Detective, what did
3 Mr. Johnson say how they got to the Terra Linda
4 home? Line 21.

5 A They drove to the house.

6 Q And what did they say that they were
7 looking for at the home?

8 A For money and/or drugs.

9 Q Page 144, lines three through nine.
10 What did Mr. Johnson say they saw and did
11 when they first arrived at the Terra Linda home?

12 A They saw somebody outside drinking beer
13 and continued toward the person with guns and told
14 them to go inside. Once inside the house, they
15 found two other individuals and started to duct tape
16 them and asked where the money was. Someone knocked
17 on the door, and they brought him into the house and
18 duct taped him also.

19 Q Going down the same page, what did the
20 defendant, Donte Johnson, tell everybody in that
21 home on August 15th about how many victims he
22 brought into the house and how many he duct taped?

23 A Four.

24 Q On the bottom of page 144 beginning at
25 line 21, what did Bryan Johnson say, as far as who

1 had guns when they initially confronted the person
2 outside the Terra Linda home upon their initial
3 arrival?

4 A Deko and Red.

5 Q "Deko" being the nickname of Donte
6 Johnson; "Red" being the nickname of Terrell Young?

7 A Correct.

8 Q At line --

9 MR. STANTON: Page 145, Counsel, line five
10 through eight.

11 BY MR. STANTON:

12 Q At this point of Mr. Johnson's testimony,
13 he's describing what happened when one of the
14 victims showed up that might have had an attitude.

15 Could you read verbatim lines five through
16 eight beginning with the question on line five?

17 A "Question: Tell me what Deko
18 said.

19 "Answer: One of the victims was
20 getting smart with him or back
21 talking, and he -- excuse my
22 language -- he acted like it was -- he
23 said he acted like it was a fucking
24 joke."

25 Q Now, that's the person who Donte is saying

1 acted like it wasn't any big deal, the victim?
2 A Correct.
3 Q Next -- same page, question and answer,
4 lines 11 through 13.
5 A Aloud or --
6 Q Aloud. I'm sorry.
7 A "Question: All right. Did Deko
8 say anything about the race or
9 nationality of the person who was
10 acting like it was a joke?
11 "Answer: He said he was
12 Mexican."
13 Q And if you could read the next question
14 and answer out loud, lines 14 through 17.
15 A "Question. "And did Deko say
16 anything about what Deko did as a
17 result of the Mexican acting like it
18 was a joke?
19 "Answer: Yes, sir. He said he
20 took him in the back room and shot him
21 in the head."
22 Q Page 146, if you could read just to
23 yourself lines nine through 15.
24 (Witness reviewing document.)
25 / / / / /

1 **BY MR. STANTON:**
2 Q Did the defendant, Donte Johnson, make any
3 statement in front of these several individuals
4 regarding after he shot one or more than one of the
5 victims?
6 A Yes.
7 Q What was that?
8 A He said one of them made a loud noise.
9 Q Did Donte Johnson imitate that noise in
10 front of everybody?
11 A Yes.
12 Q If you could, Detective, on page 146, line
13 21 through 24, please read verbatim the question and
14 answer.
15 A I'm sorry. Page 146 still?
16 Q Page 146, lines 21 through 24.
17 A Was that verbatim, out loud?
18 Q Verbatim, out loud, yes, please.
19 A "Question: Did he say anything
20 else about the reaction or what
21 happened when these people were shot?
22 "Answer. He said, 'blood
23 squirted up. It looked like Niagara
24 Falls.'"
25 Q And on page 147, if you could read the

1 question and answer, lines three through four.

2 A "Question: Did you believe Deko
3 when he said these things?
4 "Answer: Yes, sir."

5 Q And could you read on line five through
6 eight the question and answer out loud and verbatim?

7 A "Question: Did Deko mention
8 anything on the morning of August 15th
9 about the clothes he was wearing when
10 he and Red committed these crimes?
11 "Answer: He mentioned that he
12 got some blood on his pants."

13 Q Meaning the defendant, Donte Johnson, said
14 that out loud?

15 A Yes.

16 Q Who is LaShawnya Wright?

17 A LaShawnya Wright is the girlfriend of
18 Sikia Smith also known as Tiny Bug.

19 Q And was she interviewed by homicide
20 detectives?

21 A Yes, she was.

22 Q And did she testify in this trial?

23 A Yes, she did.

24 **MR. STANTON:** Counsel, Volume II.

25 / / / / /

1 **BY MR. STANTON:**

2 Q Detective, if you could begin with
3 page 259.

4 A That's Roman Numeral II, 259?

5 Q Yes, Detective. I'd just like you to
6 generally refer to the bottom of 259 and the top of
7 260.

8 Detective, just as a foundational basis,
9 Miss Wright, the girlfriend of Sikia Smith, how long
10 were they boyfriend and girlfriend during the summer
11 of 1998?

12 A Three months.

13 Q That would have been during the
14 summertime, June, July and August?

15 A Correct.

16 Q I want to direct your attention to
17 page 261. In her testimony on those pages, 261 and
18 262, once again referring to the three individuals
19 depicted in State's Exhibit 181 -- Sikia Smith,
20 Donte Johnson, Terrell Young -- did Miss Wright know
21 each one of those individuals by their nicknames?

22 A Yes.

23 Q Page 264 to 265 represented on page 263 --
24 the question is referencing Miss Wright to
25 August 13th of 1998, and the question was whether or

1 not she had seen Deko and Terrell Young on that day.
2 Had she?
3 A Yes.
4 Q And what time of the day on the 13th did
5 Miss Wright see those two individuals?
6 A In the afternoon.
7 Q When the defendant, Donte Johnson, left
8 her apartment on that day, who did she leave with --
9 who did he leave with?
10 A With Red.
11 Q Terrell Young?
12 A Yes.
13 Q And what, if anything, did Miss Wright see
14 in the defendant, Donte Johnson's, hand when he was
15 leaving?
16 A He had a duffel bag, a dark colored duffel
17 bag.
18 Q And on page 265, lines eight and nine, the
19 question was posed to Miss Wright whether she knew
20 what was in that duffel bag.
21 What was her answer?
22 A A rifle, some duct tape and some Browning
23 gloves.
24 Q What does Browning gloves mean to you
25 based upon the nature of this case and what you

1 found at the various scenes?

2 A Something like cloth work gloves that a
3 gardener would use or in cases of criminal activity
4 sometimes people would use so they don't leave
5 fingerprints behind.

6 Q On page 271, for a frame of
7 reference, Detective, this point of Miss Wright's
8 testimony, the question is referencing the
9 defendant's and Terrell Young's presence at her
10 apartment on August 13th, 1998, and the question
11 posed at line ten was, "What, if anything, those two
12 individuals, Donte Johnson and Terrell Young were
13 talking about inside her apartment."

14 On line 12, what was the answer to that
15 question?

16 A They were talking about getting a lick.

17 Q Lick, L-I-C-K?

18 A L-I-C-K.

19 Q Have you ever heard that term before?

20 A Yes.

21 Q What is a "lick"?

22 A A "lick" is a slang term used for doing a
23 robbery.

24 Q And is that, indeed, what Miss Wright knew
25 it to be as well?

1 A Yes.

2 Q On page 275 -- frame of
3 reference, Detective -- in this portion of the
4 testimony, it's a question and answer regarding
5 Miss Wright's knowledge of events that occurred at
6 her apartment some 14 hours after she had last seen
7 her then boyfriend Sikia Smith. There was a
8 question on line two through three to Miss Wright
9 about how he appeared when she saw him 14 hours
10 later.

11 And the question at line ten, "How did he
12 appear? Was he still dressed the same?"

13 What was Miss Wright's response?

14 A That he was dressed the same.

15 Q And if you could read the question and
16 answer, lines 12 and 13.

17 A "He was scared."

18 Q Who was scared?

19 A Sikia Smith.

20 Q On page 275 at the bottom, there was a
21 question about Tiny Bug walking into the house
22 before Donte Johnson and Red, and the question was,
23 "Was he carrying anything?"

24 If you could read the answer and the
25 question on lines one through three.

1 A Aloud or to myself?

2 Q Out loud -- yes.

3 A "Question: What is Bug carrying?

4 "Answer: A Nintendo and a VCR."

5 Q If you could go to page 280.

6 Now, Detective, before I get to the content of
7 Miss Wright's testimony in this area, I'd like to
8 ask some general questions regarding the
9 investigation.

10 Based upon the results of the autopsy in
11 this case and the crime scene, did you have a
12 feeling or an opinion during this generalized time
13 period that you knew the caliber and the type of gun
14 that was the murder weapon in this case?

15 A Yes.

16 Q And what was that and how did you come to
17 that conclusion?

18 A We believe that the weapon used was a
19 .380 caliber semi-automatic handgun.

20 Q What was the primary basis for that both
21 at autopsy and at the scene?

22 A We found the four shell casings that were
23 all .380 caliber all from the same headstamp,
24 meaning the same manufacturer, and at the autopsy
25 the projectiles were similar as well and consistent

1 with .380.

2 Q So, the size, weight and general shape of
3 those weapons was consistent with a .380?

4 A Of the bullets, yes.

5 Q Is a .380 caliber same or similar to a
6 9-millimeter?

7 A Yes, it is.

8 Q Now, how important is it in a homicide
9 investigation to find, quote, unquote, "the murder
10 weapon"?

11 **MR. WHIPPLE:** Judge, I'm going to object
12 at this point. It's speculation. What's the
13 relevance?

14 **MR. STANTON:** The relevance is to add some
15 context to this investigation. I'm sure it's a
16 relevant inquiry to find out what happened and what
17 these detectives did to ascertain the whereabouts of
18 the murder weapon.

19 **THE COURT:** All you have to do is ask them
20 how to do it. I don't know how difficult it is.

21 Sustained.

22 **MR. WHIPPLE:** Thank you.

23 **BY MR. STANTON:**

24 Q Would it be fair to say you wanted to find
25 the murder weapon?

1 A Yes.

2 Q Directing your attention to Miss Wright's
3 testimony, Volume II, page 280, I'd ask you to read
4 lines six through 12 and also lines 16 through 18.

5 (Witness reviewing document.)

6 **BY MR. STANTON:**

7 Q According to Miss Wright, what happened to
8 a .380 caliber handgun as far as what was told to
9 her by Sikia Smith and Donte Johnson in her
10 apartment?

11 A It was sold by Bug on the 15th or the
12 16th.

13 Q Of August?

14 A Of August.

15 Q Nineteen ninety-eight?

16 A Nineteen ninety-eight.

17 **MR. STANTON:** Miss Clerk, if I could have
18 Exhibit 184.

19 **BY MR. STANTON:**

20 Q Detective, I'd like you to turn to
21 page 282. Specifically, if you could read out loud
22 lines two through six, the questions and the answers
23 verbatim.

24 A "Question: When Deko bought the
25 RJ" --

1 Q Let me just stop you there.
2 What does "RJ" mean?
3 A Review Journal, newspaper.
4 Q Okay.
5 A "Question: When Deko bought the
6 RJ, what, if anything, did Deko say
7 about the RJ?
8 "Answer: He said, quote, 'We
9 made front page,' end quote.
10 "Question: Who did he say,
11 quote, 'We made front page,' end
12 quote, to?
13 "Answer: Bug."
14 Q Showing you State's Exhibit 184, do you
15 recognize what that is?
16 A Yes, I do.
17 Q What is that?
18 A This is a reduced-in-size copy of the
19 Las Vegas Review Journal's newspaper dated Saturday,
20 August 15th, 1998.
21 Q Is that, indeed, the front page?
22 A Yes.
23 **MR. STANTON:** Your Honor, at this time,
24 I'd like to publish Exhibit 184 to the jury.
25 **MR. WHIPPLE:** No objection, your Honor.

1 **THE WITNESS:** All right. You may do so.

2 (Exhibit 184 published to the jury.)

3 **BY MR. STANTON:**

4 Q Detective, I'd like to refer to page 284
5 of Miss Wright's testimony. I'd like you to read
6 out loud on the question and answer beginning at
7 line ten and concluding at line 14.

8 A "Question. Can you tell me how
9 Donte was acting, what he did when he
10 looked at that paper and said that?
11 How did he act about that newspaper?

12 "Answer: He was excited."

13 Q This is a reference Miss Wright is making
14 to how she observed the defendant, Donte Johnson,
15 after reviewing that newspaper article?

16 A That is correct.

17 Q If you could turn to page 285. If you
18 could read verbatim, out loud the question and
19 answer, lines four through six and then 11 through
20 18, same page.

21 A "Question: What do you mean by
22 'excited'? You used the word
23 'excited.'

24 "Answer: 'Excited.'

25 "Question: Can you use another

1 word other than 'excited' to describe
2 Donte Johnson's reaction when he made
3 the statement about the paper?
4 "Thrilled."
5 Q And 17 and 18.
6 A "Question: The word was
7 'thrilled'?
8 "Answer: Yes."
9 Q Detective, I'd like to switch gears a
10 bit.
11 **MR. STANTON:** Counsel, going to Volume
12 III, the testimony of Shawn Fletcher.
13 **BY MR. STANTON:**
14 Q Who is Shawn Fletcher?
15 A Shawn Fletcher is a crime scene analyst
16 with the Las Vegas Metropolitan Police Department.
17 Q I believe you testified they're
18 specialized, trained individuals?
19 A Yes, they are.
20 Q Did Miss Fletcher have a role and
21 involvement with the Terra Linda home in the
22 homicide investigation?
23 A Yes, she does.
24 Q What was her responsibilities in a general
25 fashion at Terra Linda?

1 A A general fashion, her responsibility as a
2 crime scene analyst would be to photograph, document
3 and collect evidence.

4 Q There, I believe, is an exhibit to your
5 immediate right in a poster board that is
6 Exhibit 162.

7 Are you familiar with that exhibit?

8 A Yes, I am.

9 Q And what is that exhibit?

10 A This is what we would refer to as a crime
11 scene diagram.

12 Q And does it truly and accurately depict
13 key pieces of evidence found at the Terra Linda
14 home?

15 A Yes, it does.

16 Q If you could lift that up so members of
17 the jury can see, can you describe what we see
18 depicted in that crime scene diagram?

19 A You can see by the legend over here
20 (indicating) Item No. 1 is referring to Jeffrey
21 Biddle; No. 2 is Tracey Gorringer; No. 3 is Matthew
22 Mowen; No. 4 is Peter Talamentez; No. 5 is a
23 location of a cartridge case that's recovered; No. 6
24 is the location of a cartridge case recovered; No. 7
25 is a location of a cartridge case recovered; No. 8

1 is the location of a cartridge case recovered, and
2 No. 10 is the location of a cigar box recovered.

3 Q Who is Richard Goode, to your knowledge?

4 A Richard Goode is a firearms and tool mark
5 examiner now retired, at that time currently
6 employed for the Metro Police Department.

7 Q And does he specifically make analysis --
8 forensic analysis regarding firearms and casings?

9 A Yes, he does.

10 Q As it relates to his findings in this
11 case, what was his determination regarding the empty
12 casings found at Terra Linda as to whether or not
13 they were or were not fired from the same gun?

14 A Richard Goode, after testing the four
15 shell casings, made a determination that they were
16 all four fired from the same weapon.

17 Q And what markings on a shell casing can an
18 expert, such as Mr. Goode, make that determination?
19 Where, physically, on the casings would he look for
20 identifiers?

21 A He would look on the outer wall of the
22 casing. He would look on the face itself where the
23 headstamp would be. As the weapon is fired and the
24 case expands, it's causing friction between various
25 parts where a firearm that has a little burr here or

1 there or a misshape in part will impart a mark that
2 is consistent with each shell casing that goes
3 through it.

4 Q And in the case of a semi-automatic, is
5 there something called an "extractor arm" and what
6 kind of mark does that leave on the casing that
7 Mr. Goode can analyze?

8 A On the case of a semi-automatic, there is
9 an extractor and an ejector. An extractor is like a
10 little hand that would reach up along the rim, and
11 after the casing has been fired, it grabs that rim
12 and pulls it backwards out of the chamber. As it
13 does that, it can leave marks on the cartridge case
14 itself. It will also hit an ejector which is a
15 stationery object that the case bumps into, causing
16 it to flip out of the chamber.

17 Q And are those marks generally unique or
18 identifiable to one particular gun when you compare
19 a same caliber gun by different manufacturers or
20 even the same manufacturer?

21 A Yes, in general terms.

22 Q And that was done in this case by
23 Mr. Goode, as far as examining all four casings
24 found at the Terra Linda home?

25 A Yes.

1 Q I want to go through a couple summary
2 items of testimony by Shawn Fletcher regarding the
3 processing of the Terra Linda home.

4 Do you know approximately how many hours
5 in total Miss Fletcher spent at Terra Linda
6 processing it from a forensic perspective?

7 A I believe she spent more than 80 hours
8 processing the scene.

9 Q Did one of the items that she collected
10 involve a cigarette butt that ultimately had DNA
11 that was sent out to an independent lab?

12 A Yes.

13 Q Was she able to find a VCR or PlayStation
14 at the Terra Linda home?

15 A No.

16 Q There was, in previous photographs shown
17 to this jury, a Black and Mild cigar box found at
18 the feet of Tracey Gorringer.

19 Do you recall that photograph?

20 A Yes.

21 Q Was that box processed for the presence of
22 prints?

23 A Yes, it was.

24 Q Who is Bradley Grover?

25 A Bradley Grover is another crime scene

1 analyst.

2 **MR. STANTON:** Miss Clerk, if I could have
3 Exhibit 96 and 188.

4 **BY MR. STANTON:**

5 Q Can you describe to this jury the process
6 of print examination and what a latent print -- how
7 it's lifted in general terms?

8 A What the crime scene analyst will do is
9 using one of many chemicals, sometimes it's the
10 powder, sometimes it's super glue, they will try to
11 activate portions of a latent fingerprint. If a
12 person touches something -- say this was glass
13 rather than foam like it is -- it will leave a
14 fingerprint there. They utilize this other material
15 to highlight the area of the fingerprint, then they
16 would take a piece of tape, clear tape and actually
17 lift it off of the object and place it on a piece of
18 cardboard or paper so it can be analyzed later.
19 From that point, the fingerprint recovered is
20 checked against known fingerprints of various
21 individuals until a comparison is made based on
22 locating several points.

23 Q And Bradley Grover is who, as far as his
24 involvement and expertise as a crime scene analyst?

25 A He is another individual that would

1 process, collect and recover document evidence.

2 Q In your hypothetical where you touched a
3 cup, once again assuming it's not Styrofoam but
4 another nonporous surface such as glass, what is the
5 print that's lifted off that glass called?

6 A A latent fingerprint.

7 Q And how is the comparison between that
8 latent print done with a known person?

9 A The known person would complete a
10 fingerprint card where the person's hand would be
11 inked and then applied to a piece of paper in
12 various directions so that they can get various
13 aspects of the fingerprints. Once those cards are
14 obtained, the person comparing the fingerprints will
15 look at the fingerprint of the latent print and
16 compare it with the knowns until they're able to
17 match up the same shape and actually be able to say
18 if this latent print was left by this individual.

19 Q And in the case of the Black and Mild box
20 at the Terra Linda home that was found at the foot
21 of Tracey Gorringer, was that compared by Mr. Grover
22 to a known print of the defendant, Donte Johnson?

23 A I don't recall if it was specifically that
24 individual that made the comparison.

25 Q Would Ed Guenther?

1 A Ed Guenther would be the person that would
2 make the comparison.

3 Q So, Bradley Grover would remove the
4 prints, and then he would present both the known
5 print and the latent print to Mr. Guenther?

6 A That's correct.

7 Q Let me show you State's Exhibit 188 and
8 ask if you recognize the two items contained in that
9 packet?

10 A Yes.

11 Q What are those items contained in that
12 packet?

13 A One of them appears to be a latent print
14 from Donte Johnson, and the other appears to be
15 Sikia Smith.

16 Q And is the known print from Donte Johnson
17 the one that was compared to the latent print lifted
18 off the Black and Mild box?

19 A I believe this is the latent print lifted
20 off the Black and Mild cigar box.

21 Q So, that's the actual print itself?

22 A That's the actual print itself.

23 Q And that tape -- how does that tape work
24 to get the magnetic dust there?

25 A The fingerprint powder would be applied to

1 the surface. Once they can see the actual
2 fingerprint that there's a fingerprint there, they
3 will take a roll of tape designed specifically for
4 this, break off a piece, apply it, lift it up, and
5 that fingerprint is now stuck to the adhesive side
6 of the tape. They then take that and apply it to
7 one of these special cards so that if somebody
8 touched the outside, it wouldn't alter what's on the
9 inside on the adhesive portion of it.

10 Q By using that tape, does it preserve the
11 print in its condition as it was actually lifted off
12 that Black and Mild box?

13 A Yes, it does.

14 **MR. STANTON:** Counsel, Volume III
15 beginning page 318.

16 **BY MR. STANTON:**

17 Q As it relates to this investigation, did
18 it come to your attention an incident involving a
19 Nevada Highway Patrol sergeant?

20 A Yes.

21 Q Does the name Sergeant Robert Honea --
22 Miss Reporter, H-O-N-E-A -- ring a bell?

23 A Yes, it does.

24 Q I'd like you to refer beginning
25 approximately page 317, the testimony at trial in

1 June of 2000 of Sergeant Honea.

2 On August 17th, 1998 --

3 **MS. JACKSON:** Your Honor -- excuse me,
4 Counsel.

5 Your Honor, may I approach? We need to
6 approach and ask a question that I'm not real sure
7 on.

8 (Sidebar conference outside the presence
9 of the court reporter.)

10 **THE COURT:** We're going to call our
11 evening recess.

12 During this recess, you're admonished not
13 to discuss this case among yourselves, and don't
14 read any newspaper articles, don't watch any
15 television reports, don't listen to any radio
16 reports, don't do any investigation on the case and
17 don't express an opinion about the case or about
18 anyone who has anything to do with it.

19 We're going to start up tomorrow morning
20 at about 9:30.

21 All right?

22 **THE BAILIFF:** Ladies and gentlemen, leave
23 your books in your seat and take your badge with
24 you; 9:30 downstairs.

25 All rise.

1 (Outside the presence of the jury.)

2 **THE COURT:** Proceed.

3 **MS. JACKSON:** Your Honor, my issue was
4 that Trooper, Sergeant Robert Honea -- H-O-N-E-A --
5 did testify at the original hearing that he
6 attempted to effectuate a traffic stop on a vehicle.
7 The date of that stop -- anyway, I think it was a
8 few days before the homicide. Judge, I apologize.

9 **THE COURT:** Was it before the homicide?

10 **MS. JACKSON:** August 17th of 1998 between
11 10:30 and 10:40 p.m. he attempted to do what we call
12 a routine traffic stop for speeding. He stopped the
13 driver of the vehicle. The person gave him a name
14 of Donte Fletch -- F-L-E-T-C-H. The person was
15 asked to get out of the car, did come up to the
16 front of the trooper vehicle and waited there. The
17 trooper could not find such an individual in his
18 computer, became concerned, and right about that
19 time, the other passenger in the car who was
20 identified by the driver as "Red," jumped out. He
21 said he saw a gun, and that both of the people ran.

22 It's our position that this certainly came
23 in in the first trial, but nowhere have I been able
24 to find was it ever subjected to any type of
25 pretrial scrutiny. We would contend that it was a

1 bad act; that it was error to let it in in the first
2 place, and the State contends that because there was
3 a weapon that was found in this vehicle that was
4 later to be determined to be connected to one of the
5 guns in the duffel bag, we would say that's
6 irrelevant. And had the original trial judge had a
7 Petrocelli hearing -- because it is clearly a prior
8 bad act, Judge, because this weapon -- it wasn't the
9 murder weapon. They said there's no argument, if
10 you will, that the murder weapon was a .380. This
11 is not the murder weapon, so we think that just to
12 bring this in -- it's just a felony to run from a
13 police officer and to possess a weapon and things of
14 that nature, but what its connection between that
15 and this case would be our issue, and we think just
16 because the other attorneys let it in -- of course,
17 you can't catch everything, but we think it would
18 compound the error to allow it to come into this
19 rehearing.

20 **THE COURT:** Of course, this is not a
21 trial, this is in terms of the guilt phase. This is
22 the penalty hearing. There's a little distinction
23 there.

24 **MS. JACKSON:** That's true, Judge, but I
25 just wanted to have the record reflect.

1 **THE COURT:** I don't know what the
2 relevance is if it had anything to do with this
3 murder case.

4 **MS. JACKSON:** But it's also other evidence
5 that this Court has previously ruled would come
6 in -- our other evidence is going to come in the
7 second part of our penalty hearing when --
8 essentially, this is a bad act that they're hearing
9 about in the guise of during the trial phase.

10 **THE COURT:** I think the key -- like I
11 said, this isn't the guilt phase. The damage coming
12 in here wouldn't be as great.

13 **MR. DASKAS:** Judge, may I?

14 **THE COURT:** I want to know what the
15 relevance is.

16 **MR. DASKAS:** The relevance is this: There
17 is a nexus between the sawed-off gun that the
18 trooper impounded -- which I'd like your bailiff to
19 hand me with the Court's permission, because I want
20 to provide a description from Charla Severs -- and I
21 want to show you the gun, Judge, if I might.

22 Judge, I'm referring to Charla Severs'
23 testimony from the trial itself in June of 2000,
24 pages 23 through 26, approximately. She's
25 describing -- that is the defendant's girlfriend --

1 guns kept in the duffel bag that were taken to the
2 murder scene, and she describes, quote, "a
3 sawed-off-looking gun." Later on she's describing a
4 curved part she says, quote, at page 24, line 13,
5 "the handle part," Judge, and I direct your
6 attention to State's Exhibit 189. She describes the
7 length of the gun -- "The handle part being maybe
8 like 6 inches" -- that's a quote, and "The barrel
9 part like 12 or 13 inches." That's a quote. She,
10 at some point, describes the gun as being wood or
11 wooden, and she makes a distinction, your Honor,
12 which is very important between this gun, No. 189
13 (indicating), and the rifle with a banana clip in it
14 which was already admitted. All three of these
15 guns, that is, the rifle with the banana clip, the
16 wooden gun I'm holding that's sawed off and the .380
17 murder weapon were taken in the duffel bag to the
18 murder scene, Judge. That's the relevance. There's
19 a nexus between this gun --

20 **THE COURT:** Did she ever identify this
21 gun?

22 **MR. DASKAS:** She describes the gun.

23 **THE COURT:** Did she identify it?

24 **MR. DASKAS:** She wasn't shown this gun,
25 nor was she shown in court the gun with the folding

1 stock, but that was admitted as well, Judge.

2 **THE COURT:** Anyway, I don't think it's
3 relevant to this portion. I think it's relevant to
4 the second portion; so, I'll sustain the objection.

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

6 **THE COURT:** It wasn't used in the murder,
7 and she never did identify it, and it was prior to
8 the murders when it was confiscated.

9 **MR. STANTON:** It was actually --

10 **MS. JACKSON:** After.

11 **MR. STANTON:** -- subsequent to the
12 murders, your Honor.

13 **MS. JACKSON:** This was the 17th, Judge.

14 **THE COURT:** You had said, Miss Jackson, it
15 was before -- a couple days before.

16 **MS. JACKSON:** I corrected myself, your
17 Honor. I beg the Court's pardon.

18 **THE COURT:** Anyway --

19 **MR. DASKAS:** The other point I would like
20 to make, for the record, there were three defendants
21 participating in this murder, and all three of the
22 defendants -- Donte Johnson, Terrell Young and Sikia
23 Smith -- had guns that were pointed at and used to
24 order the victims in the house, and it's our
25 position and it's been our position this was one of

1 those guns, and I believe there's a nexus and it is
2 relevant.

3 **THE COURT:** It's tenuous. Like I said,
4 you can bring it in in the second part. In this
5 part I don't agree.

6 I'll see you guys at 9:30 in the morning.

7 **MS. JACKSON:** Very well, your Honor.
8 Thank you.

9 (Evening recess taken at 4:44 p.m.)

10 * * * * *

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

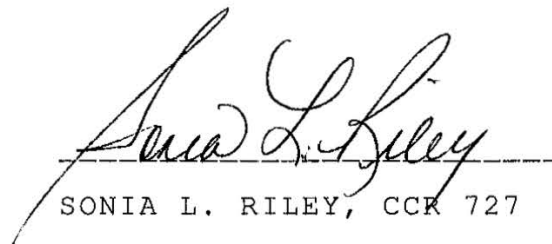
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REPORTER'S CERTIFICATE

STATE OF NEVADA)
:SS
COUNTY OF CLARK)

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

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


SONIA L. RILEY, CCR 727

533

7

Page 1

THE STATE OF NEVADA v. JOHNSON

FILED

DISTRICT COURT .
CLARK COUNTY, NEVADA

ORIGINAL 9:03

Shirley H. Morgan
CLERK

THE STATE OF NEVADA,)
)
 Plaintiff,)
)
 -vs-)
)
 DONTE JOHNSON,)
)
 Defendant.)

Case No. C153154
Dept No. VIII
Docket H

VOLUME VI-A

PENALTY PHASE

BEFORE THE HONORABLE LEE A. GATES

TUESDAY, APRIL 26, 2005, 10:15 A.M.

APPEARANCES:

For the State: ROBERT J. DASKAS, ESQ.
DAVID STANTON, ESQ.
Deputies District Attorney
For the Defendant: ALZORA JACKSON, ESQ.
Deputy Public Defender

BRETT WHIPPLE, ESQ.

REPORTER: KRISTINE MOORE, CCR 273

RECEIVED

APR 28 2005

COUNTY CLERK

S5

Laurie Webb & Associates
Phone: 702-386-9322

Fax: 702-386-9825

4-27-2005
www.lauriewebb.com

6fb6eb0d-843e-43c7-955b-b883a106ab86

AA03982

THE STATE OF NEVADA v. JOHNSON

1 LAS VEGAS, NEVADA, TUESDAY, APRIL 26, 2005, 10:15 A.M.

2 * * * * *

3 THE BAILIFF: Be seated. Come to order.
4 Court is again in session.

5 THE COURT: All right. Record show
6 presence of the parties, attorneys, all the
7 members of the jury. Where is the witness?

8 MR. STANTON: Out in the hall, your Honor.
9 State would briefly recall Detective Tom Thowsen.

10
11 DIRECT EXAMINATION (Resumed)

12 BY MR. STANTON:

13 Q Detective, I want to now progress to the
14 date of August 18, 1998, as it relates to homicides,
15 detectives, and SWAT. Going to 4815 Everman,
16 approximately what time did police and SWAT units
17 actually make entry into the Everman home?

18 A Sometime after three o'clock in the
19 morning.

20 Q Who was found inside the Everman home when
21 SWAT and homicide detectives, made entry?

22 A Charla Shevers, Donte Johnson, and Dwayne
23 Anderson, goes by the name of Scale.

24 Q Scale was a friend of the Defendant, yes?

25 A Yes.

THE STATE OF NEVADA v. JOHNSON

1 Q Pursuant to the totality of your
2 examination of this case, Scale had no involvement in the
3 underlying quadruple murders?

4 A That's correct.

5 Q My final question to you is: When the
6 Defendant was asked immediately after he came out of the
7 Everman home, whether or not he lived there, what was his
8 response?

9 A That he did not.

10 MR. STANTON: I pass the witness at this
11 time.

12 MR. WHIPPLE: Thank you, your Honor. With
13 the Court's permission, I will bring the podium over.

14 THE COURT: That's fine.

15

16 CROSS-EXAMINATION

17 BY MR. WHIPPLE:

18 Q Detective Thowsen, this is an unusual type
19 of testimony from you. It's fair to say?

20 A Yes, that's correct.

21 Q You are not testifying from your own
22 knowledge, but because of information provided through
23 trial transcripts?

24 A That's correct.

25 Q At the same time you are one of the lead

THE STATE OF NEVADA v. JOHNSON

1 detectives in the case; although, it's in the transcript;
2 it's information you are aware of, as well?

3 A Some of it, yes.

4 Q Is there information you are aware of in
5 the trial transcript, you were unaware of, you learned
6 for the first time?

7 A Yes.

8 Q There is a mix then?

9 A That's true.

10 Q You are lead detective, learned lots of
11 information at the crime scene?

12 A Yes.

13 Q Then asked to read the trial transcript by
14 prosecutors in the case?

15 A Correct.

16 Q You have basically done that, and you are
17 testifying to that today?

18 A That's correct.

19 Q You have summarized a number of potential
20 witnesses?

21 A Yes.

22 Q One of the first witnesses you summarized
23 was the next door neighbor?

24 A Yes.

25 Q That was Nicholas?

THE STATE OF NEVADA v. JOHNSON

1 A DeLuca, yeah.

2 Q He is the individual who had received

3 urgent knocking on his door at 6:00 p.m.; is that

4 correct?

5 A That's correct.

6 Q He and his girlfriend are the individuals

7 that called 911?

8 A Yes.

9 Q He was asked questions during the trial as

10 to general information with regard to that particular

11 home, correct?

12 A Yes.

13 Q That home, that was 4825 Terra Linda?

14 A Yes.

15 Q He said he only lived in that particular

16 house for about two months?

17 A After reading so many people's transcripts,

18 I would have to see a page.

19 Q There is no reason for you to disagree with

20 that?

21 A No, there is not.

22 Q He didn't know the individuals that lived

23 next door, personally?

24 A Correct.

25 Q He knew there were numerous parties that

THE STATE OF NEVADA v. JOHNSON

1 went on during the time he lived there?

2 A Again, I --

3 Q Let me get the transcript. It's volume

4 two. Turn to page 120. It will quickly summarized it.

5 A Yes, that's correct.

6 Q And I think it goes into the next page, as

7 well. This is the last question with regard to Nicholas.

8 People tend to come and go to the next door house at

9 different hours. Actually, it's the bottom of page 128?

10 A Okay. There was --

11 MR. STANTON: Twenty-three through

12 twenty-five.

13 BY MR. WHIPPLE:

14 Q You would see some people come at different

15 hours of the night. He answered, yes?

16 A Yes.

17 Q That's in the transcript?

18 A Yes, on that page, yes.

19 Q You next spoke of Officer Sutton. Do you

20 remember his testimony? He was the person that came and

21 secured the residence?

22 A That was Sergeant Sutton.

23 Q He explained he went from room to room to

24 make sure no perpetrators were in the location?

25 A Yes.

THE STATE OF NEVADA v. JOHNSON

1 Q He was the individual that discovered the
2 fourth individual, Peter?
3 A Talamentez.
4 Q Peter Talamentez had a weapon on his
5 person?
6 A Yes.
7 Q It was a loaded handgun on his person?
8 A Yes, that's correct.
9 Q If I can -- Court's indulgence. I will
10 grab the Exhibit with the location. This is Exhibit 246.
11 Why don't we set it here, if I can. What State's 246
12 does is show location of the perpetrators and victims?
13 A Yes.
14 Q They are in close proximity?
15 A Yes.
16 Q They are .6 of a mile away?
17 A They are 8-10ths.
18 Q You did an investigation. You had
19 opportunity to be at both locations?
20 A Were.
21 Q You became somewhat familiar with
22 individuals residing in both locations?
23 A Yes.
24 Q With regard to the -- start with the
25 victim's location, first. That's 4825 Terra Linda.

1 Who was primary resident of the
2 house?

3 A Matthew Mowen.

4 Q That was owned by his family?

5	A	Yes.
---	---	------

6 Q He had living with him, Tracey Gorringer and
7 also Jeffrey Biddle and Peter Talamentez?

8	A	Yes.
---	---	------

9 Q Jeffrey Biddle was staying there, as well?

10	A	Yes.
----	---	------

11 Q Peter Talamantez visited that location from
12 time to time?

13 A Yes.

14 Q The other location, 4825 Terra Linda,
15 primary resident was Tod Armstrong?

16 | A Yes.

17 Q His mother was owner of the house?

18	A	Yes.
----	---	------

19 Q She resided in Hawaii?

20 A That's correct.

21 Q He had different roommates living with him
22 in the preceding year?

23	A	Yes.
----	---	------

24 Q Ace Hart lived in the house up until the
25 month prior to the incident? I don't want to put words

THE STATE OF NEVADA v. JOHNSON

1 in your mouth.

2 A Yes.

3 Q Then Brian Johnson?

4 A Yes.

5 Q He had lived in that house on 4825 Everman
6 with Ace Hart and Brian Johnson?

7 A Yes.

8 Q It was within a month or two when the
9 homicides took place?

10 A Yes.

11 Q You spoke with all three individuals?

12 A Correct.

13 Q At some point within a month or so prior to
14 the homicides, Ace Hart, Brian Johnson moved out, and
15 Donte Johnson moved in?

16 A Correct.

17 Q I don't want to put words in your mouth.

18 A Yes, in general terms.

19 Q Again, with Donte, his girlfriend moved in
20 with him, Charla Severs?

21 A Yes.

22 Q Also known as La-La?

23 A Yes.

24 Q And Red, known as Terrell Young?

25 A Yes.

THE STATE OF NEVADA v. JOHNSON

1 Q Now, we have learned through your testimony
2 what was the connection between the people at Terra Linda
3 and the individuals at Everman Drive?

4 A The person that knew everyone?

5 Q Correct.

6 A It was Ace Hart.

7 Q It was Donte Johnson didn't know where 4825
8 Terra Linda was from anywhere else, correct?

9 A Depending on the date. Originally?

10 Q When he first moved in.

11 A Yes.

12 Q He was there a couple weeks?

13 A Yes.

14 Q He had no idea who was at 4825 Terra Linda
15 when he first moved in?

16 A Correct.

17 Q He learned that through the previous
18 residents at Evermana Drive?

19 A Yes.

20 Q Ace Hart had gone over there, and Matthew
21 Mowen has come over to Everman Drive?

22 A Yes.

23 Q And Matthew Mowen lived at 4825 Terra Linda
24 Drive?

25 A Yes.

THE STATE OF NEVADA v. JOHNSON

1 Q Reason Matt came over there was to buy
2 drugs?

3 A That's correct.

4 Q Ace knew Matt because of the drug culture
5 they were involved with?

6 A I don't know if they knew each other for
7 some other reason or just for that reason.

8 Q Okay. Now, you went through a number of
9 pictures. These jumped out at me, going through them.
10 These are photos taken from the victims's house?

11 MR. STANTON: I object to the form of the
12 question and Counsel's commentary and Counsel's reactions
13 to the Exhibits.

14 MR. WHIPPLE: I will rephrase it, your
15 Honor.

16 THE COURT: All right.

17 BY MR. WHIPPLE:

18 Q I have in my hand, State's Exhibit 53, and
19 52, if I may approach, your Honor. Detective, I show you
20 State's Exhibit 52 and 53 admitted in evidence. There is
21 white baggies there. What was located in the white
22 baggies, what was it?

23 A This, I believe was methamphetamine.

24 Q That was located in the victims's house?

25 A Correct.

THE STATE OF NEVADA v. JOHNSON

1 Q And is it methamphetamine in both baggies?

2 A I believe so.

3 Q I notice there is a butane burner there, as

4 well?

5 A Yes.

6 Q That's the type of butane burner similar to

7 the type a plumber would use when soldering copper pipes

8 together?

9 A Yes.

10 Q Okay.

11 A They call it a torch.

12 Q Tell me your understanding of that

13 particular item?

14 A In the photograph here, this tall item you

15 are referring to, is commonly referred to as a butane

16 torch that Sears or Walmart would have that many people

17 would have for soldering copper pipe, things like that.

18 Q Did you see any indication in the victims's

19 house that they had been soldering pipes together?

20 A I did not.

21 Q Is a butane torch something known in the

22 drug trade or drug culture?

23 A It can be.

24 Q Tell the folks how it can be used in the

25 drug culture?

THE STATE OF NEVADA v. JOHNSON

1 A Butane torch can be used in a drug culture
2 in order to heat or burn illicit drugs to ingest them.

3 Q Is it used in the potential creation
4 process of methamphetamine?

5 MR. STANTON: May Counsel approach?

6 (DISCUSSION AT BENCH.)

7 (DISCUSSION HELD IN CAMERA

8 OFF THE RECORD.)

9 BY MR. WHIPPLE:

10 Q Last question I asked you, we pointed out
11 the butane torch. I asked, could it be used in the drug
12 culture. I think your answer was: It could be used with
13 cocaine.

14 A I believe I said, illicit drugs. Cocaine
15 is one of the drugs.

16 Q I asked, could it be used in the creation
17 of methamphetamine, if you know?

18 A I really don't know, to tell you the truth,
19 if it would be used in the manufacture of
20 methamphetamine.

21 Q You are familiar with the testimony of, I
22 guess it was, Mr. Fletcher or --

23 A Shawn Fletcher, the crime scene analyst.

24 Q You had the opportunity to read his
25 transcript?

THE STATE OF NEVADA v. JOHNSON

1 A It's her, actually.

2 Q At some point, I don't know if you recall,
3 I will direct your attention to it. It's volume three,
4 page 232, just when you get there, just look up. I don't
5 want to talk while you are searching.

6 A Thank you. 232.

7 Q Read from lines one through six. "In this
8 situation --" You will answer as Mr. Fletcher did that
9 day.

10 "Do you have any idea why there
11 would be numerous bottles of antifreeze.

12 Answer was: "Well there could be
13 several reasons.

14 Next was: "What's the most common
15 reason."

16 What's the answer?

17 A "Methamphetamine labs."

18 Q Detective Thowsen, you have had an
19 opportunity to summarize a number of witnesses that came
20 before the original jury, and those included Tod
21 Armstrong?

22 A Yes.

23 Q And Brian Johnson?

24 A Yes.

25 Q Now, we have not touched on Charla Severs

THE STATE OF NEVADA v. JOHNSON

1 **yet?**

2 A Correct.

3 Q **That is Leila?**

4 A La-La.

5 Q **I will get it before we are done. You**

6 **didn't summarize Charla Severs's testimony, right?**

7 A No.

8 Q **You did interview her?**

9 A Yes.

10 Q **You spoke of LaShawna Wright?**

11 A Yes.

12 Q **LaShawna Wright is the girlfriend of Sikia**

13 **Smith?**

14 A Yes.

15 Q **That's the guy that goes by Tiny Bug?**

16 A That's his nickname.

17 Q **We know a horrible thing happened out there**

18 **at 4825 Terra Linda because we --**

19 MR. STANTON: Objection. That's not a

20 question. Counsel is testifying.

21 MR. WHIPPLE: No. It's a question.

22 MR. STANTON: May we approach?

23 THE COURT: I don't know. Get out the

24 question.

25 MR. WHIPPLE: -- because we found four

THE STATE OF NEVADA v. JOHNSON

1 bodies?

2 THE COURT: What's the question?

3 MR. WHIPPLE: That's the crime scene, your
4 Honor. I want to know how they knew what happened.
5 Clearly, there is four bodies.

6 THE COURT: Ask the question. Stop all the
7 other.

8 BY MR. WHIPPLE:

9 Q The victims were found at 4825 Terra Linda,
10 correct?

11 A Yes.

12 Q We had a lot of circumstantial evidence
13 found there, as well, you have summarized?

14 A Yes.

15 Q Like, fingerprints?

16 A Yes.

17 Q And the fingerprint found on the cigarette
18 box?

19 A The Black & Mild cigar box.

20 Q That was my client's fingerprint?

21 A Correct.

22 Q We found four gun shell casings?

23 A Yes.

24 Q Those were all .380 gun shell casings?

25 A That's correct.

THE STATE OF NEVADA v. JOHNSON

1 Q And you also found DNA?

2 A Yes.

3 Q DNA on the back of my client's pants?

4 A Are you talking at Terra Linda or in the

5 investigation?

6 Q In the investigation.

7 A In the investigation, yes.

8 Q Now, that circumstantial evidence was found

9 at the two scenes, correct?

10 A Yes.

11 Q For what happened with the victims, that

12 information came through Tod Armstrong, Charla Severs and

13 the witnesses you summarized?

14 A I don't follow your question.

15 Q There is no videotape of what happened out

16 at Terra Linda?

17 A There is no videotape, no.

18 Q There are no pictures of what happened out

19 at Terra Linda?

20 A No.

21 Q There are no eyewitnesses of what happened

22 out at Terra Linda?

23 MR. DASKAS: Judge, we need to approach on

24 the matter.

25 (DISCUSSION AT BENCH.)

THE STATE OF NEVADA v. JOHNSON

1 BY MR. WHIPPLE:

2 Q There is no movie going on out there; the
3 information we have is from the witnesses you summarized?

4 A Yes.

5 Q Tod Armstrong, Brian Johnson, La-La, these
6 are the witnesses you summarized?

7 A Yes.

8 Q Reason I am taking so long is there is
9 quite a bit of differences between what the individuals
10 stated, correct? Let me ask you, more specifically. You
11 had information as to how many perpetrators went out to
12 4825 Terra Linda, correct?

13 A Yes.

14 Q In fact, Tod Armstrong says there were two
15 perpetrators; is that correct?

16 A Be specific as to what you refer to.

17 Q Volume two, pages 183, line 12.

18 A What is the question again, please?

19 Q I will put it in context. These were
20 individuals that heard statements from my client?

21 A Correct.

22 Q This is like, secondhand statements you are
23 gaining information from them, as to what they allegedly
24 heard my client say?

25 A Yes.

THE STATE OF NEVADA v. JOHNSON

1 Q There is two steps there, if you get the
2 information?
3 A Your client told them something they are
4 telling me now.
5 Q Two steps, right?
6 MR. STANTON: Objection. Asked and
7 answered.
8 THE COURT: Overruled. Go on.
9 BY MR. WHIPPLE:
10 Q The source of all the information is my
11 client, correct?
12 A Much of the information.
13 Q Tod Armstrong said there were two
14 perpetrators that entered the house and were involved at
15 4825 Terra Linda?
16 A No. That's not what it says here.
17 Q Tell me --
18 A May I read the question above it?
19 Q Please.
20 A "Who is it that says they went to Matt's."
21 He answered "It was Deco and Matt
22 and Red." From that I gleaned that's who individually
23 told him he went there, not who was present.
24 Q He is giving you what he was told?
25 A By which people told him?