

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 83796

DONTE JOHNSON,
Petitioner,

Electronically Filed
May 31 2022 07:44 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

v.

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

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

APPELLANT'S APPENDIX

Volume 12 of 50

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

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

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

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

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CERTIFICATE OF SERVICE

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

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

/s/ Celina Moore

Celina Moore

An employee of the Federal
Public Defender's Office

BRYANT - DIRECT

1 Q And 60th and Normandy's also located in L.A.?
2 A Yes.
3 Q Was it a violent neighborhood?
4 A Yes.
5 Q Describe the violence you saw at 60th and Normandy.
6 A It was pretty much the same as 43rd and Ascot. It
7 was just a different neighborhood and different gangs.
8 Q Did John White, Senior -- Did John move with you,
9 John White, Junior, move with you?
10 A Yes.
11 Q Did John White, Senior ever come by and drop off a
12 check or money?
13 A I don't think I ever saw him on 60th and Normandy.
14 Q He never came by and dropped off any money?
15 A No.
16 Q And never taking care of his children?
17 A I never saw him.
18 Q What about Eunice, where was Eunice? Did Eunice
19 live with you at 60th and Normandy?
20 A She was barely seen, barely seen.
21 Q She was doing drugs at that time?
22 A Yes.
23 Q And it was increasing?
24 A Yes.
25 Q And your mother, Pam, was doing it too?

BRYANT - DIRECT

1 A Yes.

2 Q Why did you move to 60th and Normandy?

3 A They sold the house on 43rd and Ascot, so our
4 grandmother had to find another place for us to stay.

5 Q So the landlord who owned the house on 43rd and
6 Ascot sold it and your mother had to -- grandmother had to
7 move?

8 A Yes.

9 Q There were a lot of gangs out there on 60th and
10 Normandy?

11 A Yes.

12 Q There was a particular gang out there and a gang
13 member named Sonny, am I right?

14 A Yes.

15 Q Explain to the judges about Sonny.

16 A Sonny was the one who initiated John into the gang.

17 Q And Sonny had a certain affection for you, didn't
18 he?

19 A Yes.

20 Q Explain to the judges about that.

21 A He used to kind of like harass me all the time.
22 Like when I walked to the store, to and from the store, he'd
23 chase me up and down the street, hit me on my butt and stuff
24 like that.

25 Q Did he ever taunt you for sex?

BRYANT - DIRECT

1 A Yes.

2 Q And ask you -- sometimes try to force you?

3 A Yes.

4 Q There was a time that somebody had broken into your
5 house when --

6 A Yes.

7 Q -- you were sleeping?

8 A Yes.

9 Q Was that at 60th and Normandy?

10 A That was at 43rd and Ascot.

11 Q Okay, I'm sorry, I forgot about that. Explain to
12 the judges about that.

13 A 43rd and Ascot?

14 Q About the time somebody broke into your house.

15 A One night we were all asleep, it was about probably
16 2:00 or 3:00 in the morning, and somebody came in through the
17 window and I was laying like between our beds on the floor, we
18 were watching TV, so we fell asleep with the TV on and so I
19 guess he could see in through the window so, when he came in,
20 he came in and he kind of like touched me in my private area.

21 Q Okay. And John was there at this time?

22 A Yes.

23 Q And what happened next?

24 A We all got up and went in the living room and slept
25 in the living room and my grandmother went out to see if she

BRYANT - DIRECT

1 could find the person who did it.

2 Q You jumped up startled, screaming, 'cause this guy
3 had just grabbed you --

4 A Yes.

5 Q -- and touched you?

6 A Yes.

7 Q And John was there and he woke up?

8 A Yes. I woke everybody in the house up 'cause I was
9 screaming.

10 Q And John later on met that man that came into your
11 house?

12 A Yes.

13 Q And what happened?

14 A He was riding on a bike and he rode past my -- he
15 rode past John and he told him, "You almost had me, but you
16 all didn't get me."

17 Q So he told John, "I broke into your house and
18 fondled your cousin," right?

19 A He basically admitted it.

20 Q And during the years growing up did you and John
21 have a close relationship?

22 A Yes.

23 Q And you grew very close?

24 A Yes.

25 Q 'Cause you were the oldest and he was the oldest

BRYANT - DIRECT

1 boy, were you guys in charge of taking care of these children?

2 A Yes.

3 Q Let's get back to 60th and Normandy. This boy,
4 Sonny, this gang member who taunted you for sex all the time,
5 there came a time that he made a proposition to John, is that
6 right?

7 A Yes.

8 Q What was that proposition?

9 A He told John that if he didn't -- if he didn't join
10 the gang that he would rape me.

11 Q He told John if he didn't join the gang, that being
12 John, that he would rape you?

13 A Yes.

14 Q Is Sonny a violent man?

15 A Yes.

16 Q Did you ever see Sonny with guns and knives?

17 A Not too often, maybe like once or twice.

18 Q But you feared Sonny?

19 A Yes.

20 Q So Sonny went up to John and said, "Join the gang or
21 otherwise I'm going to rape your cousin."

22 A Your cousin.

23 Q After he joined the gang, what happened next?

24 A Well, --

25 Q Let me stop you there. Let me show you what's been

BRYANT - DIRECT

1 marked as Exhibit H. Do you recognize this photograph?

2 A Yes.

3 Q And what's that a photograph of?

4 A That's a photo of our apartment on 60th and
5 Normandy.

6 Q And these bars were not there at the time you lived
7 there?

8 A No.

9 Q And how big was this room?

10 A The apartment was -- it was a five-bedroom, two
11 bath.

12 Q Five bedrooms, two baths?

13 A Yes.

14 Q Let me show you what's been marked as Defense
15 Exhibit E. Do you recognize this?

16 A That's 43rd and Ascot.

17 Q And there's a fence around here and a little yard.

18 A Uh-huh.

19 Q Okay, so 43rd and Ascot is where you lived. Were
20 you allowed to go outside of that yard?

21 A No.

22 Q And why not?

23 A Because of all the violence that occurred in the
24 neighborhood, my grandmother wanted us to stay inside the
25 gate.

BRYANT - DIRECT

1 Q So how many people actually lived in this house?

2 A About 14 or 15.

3 Q 14 or 15.

4 And most of them young children?

5 A Yes.

6 Q Defense Exhibit D, do you recognize this?

7 A Yes.

8 Q Who is that?

9 A That's a picture of John and my sister Kannita.

10 Q Your sister.

11 Okay, how old is John at that time?

12 A He was about eight years old.

13 Q About eight years old?

14 After John agreed with Sonny to enter the gang, what
15 was his relationship then with the family?

16 A We saw very little of him.

17 Q What was your relationship, though, in the
18 neighborhood in general? Were you protected now?

19 A As long as he was in the gang, they stayed away from
20 the house.

21 Q So by entering the gang he protected you guys?

22 A Yes.

23 Q That being you and the other children?

24 A Yes.

25 Q And he stopped you from possibly being raped?

BRYANT - DIRECT

1 A Yes.

2 Q And after this you started seeing less and less of
3 John?

4 A Yes.

5 Q And then you moved again after 60th and Normandy?

6 A I moved out 'cause it was just kind of like
7 overcrowded.

8 Q Now these children that are living there, Jane
9 Edwards made a decision about one of those children's
10 education, is that right?

11 A Yes.

12 Q What decision did she make?

13 A She sent me to private school.

14 Q She sends you to private school?

15 A Yes.

16 Q Why didn't she send the rest of the children to
17 private school?

18 A The tuition was too high.

19 Q So why did she choose you?

20 A I guess because I was the oldest.

21 Q So you went to a private school and you received a
22 very good education?

23 A Yes.

24 Q What about the rest of the children, where did they
25 go?

BRYANT - CROSS

1 A They stayed in public schools.

2 Q Was the public school a violent place?

3 A I never really attended it, but, from their stories,
4 they always told me how they were scared to go to school
5 because they were being picked on.

6 Q So you were the one person that was allowed to go to
7 the private school and gain that good education?

8 A Yes.

9 Q But nobody else could make that?

10 A No.

11 Q They couldn't afford it?

12 A No.

13 (Pause in the proceedings)

14 MR. SCISCENTO: I have no further questions, Your
15 Honor.

16 JUDGE SOBEL: Any cross of this witness?

17 MR. DASKAS: Very briefly, Judge.

18 CROSS-EXAMINATION

19 BY MR. DASKAS:

20 Q I'm sorry, ma'am, I can't see you.

21 You mentioned the shack and were showed a photograph
22 of the garage. Do you recall that?

23 A Uh-huh.

24 Q Is that a yes?

25 A Yes.

BRYANT - CROSS

1 Q And I think you mentioned that you and John and some
2 other of your cousins stayed in there for about two weeks?

3 A No, that was McClaren Hall.

4 Q Okay. You mentioned that John, though, stayed in
5 the shack, I guess, was it two months?

6 A Well, it was a couple of months.

7 Q Couple of months, okay.

8 A Yes.

9 Q About 60 days you think?

10 A Yes, and maybe more.

11 Q And then in McClaren Hall, when you were all taken
12 away and stayed in McClaren Hall, John was there for about two
13 months you said -- I'm sorry, two weeks?

14 A Two to three weeks.

15 Q Two weeks, okay.

16 And did I hear you correctly, the apartment that you
17 stayed in at one point was a five-bedroom apartment?

18 A 60th and Normandy, yes.

19 Q And that had five bedrooms?

20 A Yes.

21 MR. DASKAS: Nothing else.

22 JUDGE SOBEL: Anything further, Joe?

23 MR. SCISCENTO: Nothing further, Your Honor.

24 JUDGE SOBEL: Thank you, ma'am, for your testimony.

25 Call your next witness, please.

WHITE - DIRECT

1 MR. SCISCENTO: The next witness is Johnnisha White.

2 MR. GUYMON: Judge, if I might inquire, is it the
3 Court's desire to have the witnesses sit here next to the
4 witness stand?

5 JUDGE SOBEL: Yeah. One of the judges didn't really
6 have a good line of sight to some of the witnesses.

7 MR. GUYMON: Okay.

8 (Pause in the proceedings)

9 JOHNNISHA WHITE, DEFENDANT'S WITNESS, IS SWORN

10 THE CLERK: Please have a seat.

11 State your full name and spell your last name for
12 the record.

13 THE WITNESS: Johnnisha White, W-H-I-T-E.

14 DIRECT EXAMINATION

15 BY MR. SCISCENTO:

16 Q Ms. White, do you recognize somebody in court that
17 you're related to?

18 A Yes.

19 Q Who is that?

20 A My brother, John.

21 Q This is your brother, John?

22 A Yes.

23 Q Can you please describe for the Court --

24 JUDGE SOBEL: Let's just skip that. We know that
25 they're sister and brother. Thanks.

WHITE - DIRECT

1 BY MR. SCISCENTO:

2 Q How old are you, Johnnisha?

3 A 21.

4 Q 21.

5 Tell me a little -- We spoke with your cousin,

6 Kannisha [sic]. No, I said that wrong, Keonna.

7 A Keonna.

8 Q And we spoke to your mother, Eunice.

9 A Uh-huh.

10 Q And that is your natural mother, Eunice?

11 A Yes.

12 Q Okay. And your father, do you know your father?

13 A Yes.

14 Q What's his name?

15 A John White.

16 Q John White, Senior?

17 A Uh-huh.

18 Q When was the last time you saw John White, Senior?

19 A I ain't seen in some years.

20 Q You haven't seen him in years.

21 Do you remember Keonna brought us -- told us about

22 growing up on 43rd and Ascot. Do you remember that

23 neighborhood?

24 A Yes.

25 Q Okay, what did you see in that neighborhood?

WHITE - DIRECT

1 Describe that neighborhood to us.

2 A 43rd and Ascot we used to always see gangs hanging
3 out and one time we seen this man get killed in an attic. He
4 was running from the police and --

5 Q Let me ask you -- Keonna covered that pretty much.

6 A Uh-huh.

7 Q Let me ask you about your mother.

8 A Uh-huh.

9 Q You know that she uses drugs?

10 A Yes.

11 Q How long has your mother been using drugs?

12 A Since we was born.

13 Q As long as you can remember?

14 A Yeah.

15 Q You saw her -- And physically she has some
16 deformities?

17 A Uh-huh.

18 Q Do you know how she lost her teeth?

19 A My daddy knocked 'em out.

20 Q Okay. Did you ever witness the violence of your
21 father against your mother?

22 A Yes.

23 Q How many times?

24 A Like no more than three times.

25 Q Okay. And finally John White, Senior just left?

WHITE - DIRECT

1 A Yes.

2 Q Did he ever come by and drop off money on a weekly

3 basis?

4 A No.

5 Q Did he ever come by with his paycheck and drop it

6 off to your mother?

7 A No.

8 Q And if your mother would have received any money,

9 most likely what would she have done?

10 A Buy drugs or beer.

11 Q Did you ever see her take money that she had for the

12 family and use it for drugs?

13 A Yes.

14 Q While you were going to school, children used to

15 make fun of your mother?

16 A Uh-huh.

17 Q What did they call her?

18 A Leprechaun.

19 Q And why would they call her the leprechaun?

20 A 'Cause of the way her mouth and stuff is.

21 Q Because of the deformities that she has.

22 Was that a term of endearment? Was that a nice term

23 to call her?

24 A No.

25 Q And it was meant to what?

WHITE - DIRECT

1 A To insult her.
2 Q To insult her.
3 And what else would they call her? Do you remember?
4 A Basehead.
5 Q I'm sorry?
6 A Basehead. A basehead is somebody --
7 Q Basehead?
8 A Yeah.
9 Q And basehead is what?
10 A Someone that uses drugs and don't take care
11 theirself.
12 Q She was on drugs?
13 A Yeah.
14 Q So somebody who doesn't take care of herself and
15 uses drugs is a basehead?
16 A Uh-huh.
17 Q If you were walking to court -- to school with John,
18 what would the children chant to you?
19 A They would throw rocks at us, chase us and talk
20 about my mamma.
21 Q And what would they say?
22 A "Your mamma a basehead, your mamma look like a
23 leprechaun."
24 Q So every day walking to school you endured this kind
25 of abuse?

WHITE - DIRECT

1 A Yes.

2 Q And John was with you the entire time?

3 A Yes.

4 Q Okay. There came a time that you lived in what

5 Keonna described as a shack.

6 A Uh-huh.

7 Q Do you recognize this?

8 A Yes.

9 Q What is that?

10 A Well, what they called the house, but it wasn't no

11 house. It was a shack.

12 Q Was it a garage?

13 A Yes.

14 Q Was there running water?

15 A No.

16 Q Electricity?

17 A No.

18 Q Toilets?

19 A No.

20 Q Was anybody there to give you guidance?

21 A No.

22 Q Who was there to take care of you?

23 A Basically, nobody. It was just the kids, just us.

24 Q And this was -- This was in the middle of the city

25 of Los Angeles?

WHITE - DIRECT

1 A Yes.

2 Q You guys were removed from there?

3 A Yes.

4 Q From that shack and you were brought to McClaren
5 Hall?

6 A Yes.

7 Q Describe your experiences in McClaren Hall.

8 A My nose used to bleed every day. I had ringworms.

9 JUDGE SOBEL: Johnnisha, you have a very soft voice.

10 Would you keep it up a little, because this air vent is old
11 and it's making a lot of noise. Thanks.

12 THE WITNESS: Okay.

13 My nose used to bleed every night, I had ringworms
14 and I used to cry all the time and we didn't get to see John.
15 We was all separated.

16 BY MR. SCISCENTO:

17 Q And why didn't you get to see John?

18 A We didn't.

19 Q Why didn't you?

20 A Because he was on another side from us.

21 Q We've already been through most of it with Keonna
22 and so I won't belabor the point, but do you recognize Defense
23 Exhibit G?

24 A Yes.

25 Q What is this?

WHITE - DIRECT

1 A That's the corner of 43rd and Ascot.

2 Q 43rd and Ascot where you lived with how many
3 children?

4 A Like -- It was like 16 of us.

5 Q Describe -- Well, you know what, why don't we
6 describe a little about this nice neighborhood at 43rd and
7 Ascot. Did you see a lot of violence occur around here?

8 A Yes.

9 Q Tell the judges what kind of violence would occur --
10 or you'd see almost on a daily basis.

11 A Right there in that --

12 MR. GUYMON: Same objection as to whether John White
13 didn't see.

14 JUDGE SOBEL: Yeah. And for the same reason I
15 overruled those kinds of objections at the original trial,
16 without showing each thing was known to him I think, in terms
17 of, (a), any mitigator and, (b) the opportunity to show the
18 general area that he grew up in being the identical area she
19 grew up in, in the interest of going to things -- letting
20 those sort of things at least be heard, it's overruled.

21 BY MR. SCISCENTO:

22 Q Johnnisha, there's some stories with each of these
23 houses or buildings, right?

24 A Yes.

25 Q Would you explain to the judges some of the various

WHITE - DIRECT

1 stories of violence that you witnessed when you were growing
2 up in L.A.

3 A In that abandoned auto shop the police --

4 Q Why don't you stand up --

5 A Right here?

6 Q -- and point it out.

7 A Right there, that's where the police had found this
8 lady dead in there and she was naked and had a pole shoved up
9 her privacy.

10 Q So she was dead and had a pole shoved up her?

11 A Yes.

12 Q And the police found her?

13 A Yes.

14 Q How far away from your house was that?

15 A Our house is right there on the corner. There's
16 some apartments right there. Our house was the next one on
17 the other side of the apartments.

18 Q Describe a little more about the violence you saw on
19 this street.

20 A In the other house over there, that's where gangs
21 hung out at. Then, on the other side of the street, is where
22 they found that heavysset man they had killed up in the attic.

23 Q Did you ever see gang members riding their bikes up
24 and down here?

25 A Yes.

WHITE - DIRECT

1 Q And driving their cars?

2 A Yes.

3 Q Explain that. There was one time you saw somebody
4 driving or riding a bicycle --

5 MR. GUYMON: Judge, I'm gonna object to the leading
6 nature. She can explain it.

7 JUDGE SOBEL: Overruled.

8 BY MR. SCISCENTO:

9 Q Explain any violence you saw or use of guns or
10 anything like that, if you recall.

11 A They used to drive by and shoot and my grandmother
12 used to make us go in the house and get down on the floor.

13 Q So you'd hear shooting and you'd go down --

14 A On the floor.

15 Q How many times a year would you hear this?

16 A Constantly.

17 Q How many times a month?

18 A Constantly.

19 Q How many times a week?

20 A Constantly.

21 Q Almost on a daily basis?

22 A Yes.

23 Q Did you see gang members driving up and down the
24 street?

25 A Yes.

WHITE - DIRECT

1 Q Describe that, please.

2 A They'd just drive by, do all the gang signs up and
3 that's it.

4 Q You witnessed a lot of violence on this street?

5 A Yes.

6 Q As a matter of fact, you were the victim of
7 violence.

8 A Yes.

9 Q Explain to the judges the violence as it occurred to
10 you.

11 A One day I was going to the store and I got shot in
12 my leg.

13 Q Why did you get shot?

14 A Just a drive-by.

15 Q Was it a stray bullet?

16 A Yes.

17 Q You were in the wrong place at the wrong time?

18 A Yes.

19 Q So, in other words, walking down the street to go to
20 the store in your neighborhood in the middle of the day --

21 A Uh-huh.

22 Q -- is the wrong place at the wrong time?

23 A Yes. And then another time I was walking and I got
24 stabbed in the head.

25 Q They stabbed you in the head? Why were you stabbed

WHITE - DIRECT

1 in the head?

2 A I don't know. I was just walking and this girl and
3 these other two guys came up and did it.

4 Q Did they take any money from you?

5 A No.

6 Q What did they do? Why would they come up and stab
7 you?

8 A I never had no idea why.

9 Q Did you tell the police about this?

10 A Yes.

11 Q And did they come and -- What did the police do?

12 A They made a report and everything and rode around
13 and looked for 'em, but they didn't ever find 'em.

14 Q Did you have to go to the hospital for that?

15 A Yes.

16 Q Did the police come and patrol this area all the
17 time?

18 A No.

19 Q What was the racial makeup of this neighborhood?

20 A It was both.

21 Q Both? Both what?

22 A Hispanics, blacks.

23 Q It was black and --

24 A Hispanics.

25 Q Hispanics and blacks, so there were both?

WHITE - DIRECT

1 A Yes.

2 Q Okay. And there wasn't any -- a lot of white people
3 growing up there?

4 A None.

5 Q You know, you said something earlier about wrong
6 place at the wrong time walking down the street and getting
7 shot. Where was the right place to be at the right time in
8 that neighborhood?

9 A In the house.

10 Q In the house.

11 This is a picture of Defense Exhibit F. Do you
12 recognize this?

13 A Yes.

14 Q And what is this?

15 A That's the yard where we played at.

16 Q And on what street?

17 A On 43rd and Ascot.

18 Q Were you allowed to go outside of this chain-link
19 fence?

20 A No.

21 Q And why is that?

22 A 'Cause there was too much stuff going on.

23 Q There was too much what?

24 A Too much -- Too many bad things going on and she
25 didn't want us out the gate.

WHITE - DIRECT

1 Q Too many bad things going on.
2 You knew about a guy named Sonny on -- I'm gonna
3 move quickly to 60th and Normandy.
4 A Yes.
5 Q You knew about a guy named Sonny?
6 A Yes.
7 Q Who was Sonny?
8 A A person that always bullied John and said that if
9 he didn't join the gang what he would do to my cousin.
10 Q He was gonna what?
11 A What he would do to my cousin.
12 Q What was he, Sonny, gonna do to your cousin to make
13 -- And when we say cousin, it's Keonna?
14 A Keonna.
15 He told her that he -- that he was gonna rape her if
16 he didn't join the gang.
17 Q Do you think Sonny was bluffing?
18 A No.
19 Q Why not?
20 A 'Cause that's the type of person he was.
21 Q So what did John do in response?
22 A One day they jumped him on.
23 Q They jumped him on. You mean they brought him into
24 the gang?
25 A Yes.

WHITE - DIRECT

1 Q In a violent way?
2 A Yes.
3 Q They beat him?
4 A Yes.
5 Q He came home and you saw the bruises?
6 A Yes.
7 Q After that, what was your life like with the gang
8 members?
9 A It was --
10 Q I mean, were you left alone by them?
11 A Yes.
12 Q And why do you think that is?
13 A 'Cause they got what they wanted.
14 Q 'Cause what?
15 A They got what they wanted, John.
16 Q They got what they wanted, John.
17 Growing up, we've heard from Keonna about all these
18 different places that you lived and the number of people
19 living with you. At one time it was six and sometimes it
20 would be up to 15?
21 A Uh-huh.
22 Q 15 children?
23 A Yes.
24 Q In one room?
25 A Yes.

WHITE - DIRECT

1 Q Was there a male figure there to give guidance?

2 A No.

3 Q Was there anybody from the State who would come in
4 and protect you, do something for you?

5 A No.

6 Q Was there any kind of -- Was there somebody you
7 could turn to to ask for help?

8 A No.

9 Q Your dreams and aspirations, what kind of dreams and
10 aspirations would you have growing up in this neighborhood?

11 A None.

12 Q And why is that?

13 A 'Cause there ain't nobody to look up to and nobody
14 to guide you to go the right way and to do the right things.

15 Q When you see your brother John here today, do you
16 love him?

17 A Yes.

18 Q Do you wish the best for him?

19 A Yes.

20 Q Your grandmother, Jane Edwards, --

21 A Uh-huh.

22 Q -- she basically raised you?

23 A Yes.

24 Q She raised you and how many other people?

25 A Like 16 of us.

WHITE - CROSS

1 Q And she allowed Keonna to go to a private school?

2 A Yes.

3 Q Did anybody else go to private school?

4 A No.

5 Q Where are you living at now?

6 A On 11th Ave. and Florence.

7 Q Did you ever make it out of L.A.?

8 A No.

9 Q If there's one thing you want to say to these judges
10 now about this proceeding, what would you want to say?

11 A That don't give my brother the death penalty.

12 MR. SCISCENTO: Nothing further, Your Honor.

13 JUDGE SOBEL: Any cross?

14 CROSS-EXAMINATION

15 BY MR. DASKAS:

16 Q Ma'am, you mentioned that at one point there were
17 about 16 of you and your cousins living in this area of South
18 Central L.A., is that true?

19 A Yes.

20 Q And I'm assuming that you and John and all your
21 cousins were exposed to the violence that we saw, is that
22 true?

23 A Yes.

24 Q And of you and John and all your 16 cousins who were
25 all exposed to the same violence, how many of those cousins

WHITE - CROSS

1 have been convicted of a quadruple murder?

2 MR. SCISCENTO: Object, Your Honor.

3 JUDGE SOBEL: Sustained. Why don't you --

4 THE WITNESS: There's another one, if you want to
5 know.

6 MR. SCISCENTO: Object.

7 JUDGE SOBEL: That's all right.

8 Why don't you just talk about those things, if you
9 think it's appropriate, in argument, which will be fairly
10 soon.

11 MR. DASKAS: Very well, Judge. Nothing else.

12 JUDGE SOBEL: Anything else, Joe?

13 MR. SCISCENTO: Nothing, Your Honor.

14 JUDGE SOBEL: Thank you, ma'am. You're excused.

15 Call your next witness, please.

16 (Pause in the proceedings)

17 MR. SCISCENTO: I'm gonna see if Ms. Hunterton's out
18 there.

19 (Colloquy between Judge Sobel and Clerk)

20 MR. FIGLER: Ready, Your Honor?

21 JUDGE SOBEL: Yeah.

22 MR. FIGLER: The defense will call Nancy Hunterton
23 to the stand.

24 NANCY HUNTERTON, DEFENDANT'S WITNESS, IS SWORN

25 THE CLERK: Please have a seat.

HUNTERTON - DIRECT

1 State your full name and spell your last name for
2 the record.

3 THE WITNESS: My name is Nancy Sergeant Hunterton,
4 H-U-N-T-E-R-T-O-N.

5 DIRECT EXAMINATION

6 BY MR. FIGLER:

7 Q Good afternoon, Ms. Hunterton.

8 Can you please tell the judges here what you do for
9 a living?

10 A I am a Certified Reality Therapist and I do, among
11 other things, groups in jail, one of which is a 40 session/2
12 hour session life skills course which is about changing
13 attitudes.

14 Q Okay. And do you administer these programs in the
15 Clark County Detention Center?

16 A Yes, I do.

17 Q Okay. And that's just right down the street, right?

18 A Right.

19 Q And that's the place where they house people
20 awaiting trial and that sort of thing?

21 A Yes.

22 Q Okay. And how long have you been doing that over
23 there?

24 A Three and a half years.

25 Q Okay. Now can you get into a little bit more of

HUNTERTON - DIRECT

1 what it is that you do and the programs that you administer at
2 the Detention Center, give a little more specificity?

3 A Okay, I'm gonna speak particularly about the life
4 skills program, which is designed to get people to notice that
5 they either, because of ignorance or programming, don't think
6 for themselves and don't think clearly and independently,
7 morally, properly, so it's to really help them learn to
8 examine their own thinking.

9 Q So it's one of those programs that are typically
10 referred to as helping people help themselves, that sort of
11 thing?

12 A Right, it's a psycho-educational program.

13 Q Okay. And this is done in a group setting?

14 A Yes, it is. There are 25 students from the
15 facility.

16 Q Okay. And at this time the students are all
17 interacting with each other and with you?

18 A Yes.

19 Q That's the nature of the program?

20 A Yes.

21 Q And do you recognize someone in the courtroom today
22 as being a participant in one of your programs?

23 A Yes.

24 Q And who is that?

25 A The gentleman I know as Donte Johnson.

HUNTERTON - DIRECT

1 Q Okay. And when Donte Johnson was in your program,
2 you had the opportunity to, well, first of all, observe him?

3 A Yes.

4 Q Observe his participation in this program?

5 A Right.

6 Q Observe his interaction with other people and
7 yourself?

8 A Yes.

9 Q Okay. Now is the life skills program required for
10 everyone that's in the Clark County Detention Center to take?

11 A No, it's voluntary and an inmate is admitted by a
12 paper request called a "KITE" which is submitted to the
13 Director of Programs within the facility.

14 Q Okay. So now John here was admitted into your
15 program and he participated in the life skills program?

16 A Correct.

17 Q Now can you give me your observations of him as an
18 individual in your program?

19 A In the program he was quiet, listened well, did
20 react, respond in appropriate ways, was sensitive to other
21 people in pain and facing things that they were responsible
22 for, things that had gone on in their families, family
23 problems they might be facing, say someone with children
24 outside of the facility that they were obviously not taking
25 care for -- taking care of. I'm sorry.

HUNTERTON - DIRECT

1 Q Okay, any other reflections on his participation in
2 the program?

3 A He was --

4 Q Well, how did he --

5 A He was respectful and appropriate in all senses.

6 Q And how did he interact with the other people who
7 were there for the life skills benefit?

8 A He was, again, appropriate, respectful, insightful
9 at times in responding to things that they said, would ask
10 thoughtful questions. He was very present and appropriate
11 with them, missed when he was not there and very much
12 appreciated when he was present.

13 Q Okay. Is there a desire that you see in some of
14 your students to essentially turn their lives around?

15 A Yes.

16 Q Okay. And part of that process is this interaction
17 with each other, is that correct?

18 A Absolutely. They are often more effective, in that
19 respect, than I am of them.

20 Q Okay. And was this person, who's sitting next to
21 me, was he helpful to the other parties in that life skills
22 program in getting to their goals?

23 A Yes, he was.

24 Q Okay. And what do you think it is about him that
25 made him helpful to the other people in that setting?

HUNTERTON - DIRECT

1 A Well, I think a couple of things. I think one is
2 the reflection he was going through because of the severity of
3 what he faced and he was open about that immediately in the
4 class. I asked, during the first couple of sessions, what
5 people are really there for and he was quite honest about
6 knowing that he was facing the death penalty and wanting to
7 come to terms with what that meant. So that would be the
8 first piece. I think he had one of the most severe issues to
9 deal with of anybody in the group.

10 Beyond that, he is a listener. He's quiet and he's
11 a thoughtful listener and so he would hear someone's whole
12 story and then be able to ask succinct and thoughtful
13 questions that really would help someone get to the essence of
14 what they were saying.

15 Q And there are, of course, other students that you've
16 had that don't exhibit those qualities, isn't that correct?

17 A Absolutely.

18 Q Okay. And you know that he is also facing a
19 possibility of life in jail --

20 A Right, right.

21 Q -- for the rest of his life?

22 A Right.

23 Q And those are issues you deal with as well in your
24 course?

25 A Exactly, exactly.

HUNTERTON - DIRECT

1 Q Okay. Now do you come and testify in every one of
2 your students' cases?

3 A No, no.

4 Q Is it a regular thing or is it somewhat irregular?

5 A It's somewhat irregular. I've only done it a few
6 times.

7 Q Okay. Now there came a time when John or Donte
8 wasn't in your program after having gone to numerous sessions
9 and programs, is that correct?

10 A Correct.

11 Q Now you found out why he was no longer in the
12 program?

13 A My understanding was that he had accumulated a
14 number of minor infractions within the jail system, which
15 meant that he was not allowed. I did have a chance to see the
16 reports, the summary of them, and they were extremely minor.
17 They were primarily things like having jello in his cell, I
18 mean, things that, in a place where understandably the
19 officers need to maintain complete control or issues, but
20 they're not the larger issues that we often deal with with
21 inmates.

22 Q Did you see if he had any acts of physical violence
23 on anyone?

24 A None.

25 Q Okay. Any acts of physical violence on any other

HUNTERTON - DIRECT

1 inmates?

2 A No.

3 Q Okay. Did he ever act in a physically violent way
4 within your class, under your observation?

5 A No, never physically, never verbally. There were no
6 threats of any sort.

7 Q Okay. Did you ever feel intimidated --

8 A No.

9 Q -- when John or Donte was in your setting?

10 A No.

11 Q Okay. So is it your position then that because of
12 the accumulation of the minor infractions he was punished not
13 only -- Well, do you know how he was punished?

14 A He was removed from the class and he was "cabbed,"
15 which means put in a more isolated section of the jail and not
16 allowed the same number of privileges, like recreation and
17 things like that, that the general population is allowed.

18 Q And they consider this program, where people can
19 turn their lives around, to be a privilege?

20 A That is not for all people, but for the majority of
21 people in the facility, yes. To the people and the officers,
22 that does seem to be the attitude there.

23 Q When they're cabbed, is there a place -- is there a
24 name for the place where they put them?

25 A They call it "the hole."

HUNTERTON - DIRECT

1 Q The hole.

2 Now I would imagine that you get asked this question
3 quite a bit. People who are accused of and convicted of very
4 serious offenses, murders, multiple murders, these type of
5 things, they're eligible for your programs, is that correct?

6 A Yes, that is true.

7 Q Why do we even want to have programs for these
8 people if they've done such bad things outside of the jail or
9 prison facility?

10 A Well, I think the question you just asked, whether
11 it's a privilege, is exactly the right question to ask, but
12 the philosophy behind it is that it's never too late to give
13 someone the opportunity to become who they really could
14 become, as opposed to -- I used the term "programmed" before,
15 assuming a role they were kind of programmed for.

16 We never, in life skills, or in any of these
17 programs, take responsibility away from the person. They are
18 truly responsible for what they've done, but they are also
19 given the opportunity to become responsible for being
20 different, which is powerful no matter what their future will
21 be.

22 Q You get paid by the County presumably. Why should
23 the people of the State of Nevada pay for people like you to
24 help people like this?

25 A Actually, to be accurate, I am paid by the inmates.

HUNTERTON - DIRECT

1 There is an inmate account, which is what I am paid for. The
2 decision is made by the County.

3 Q And it's administered by the County?

4 A It is administered by the County, correct.

5 Q Okay.

6 A But the funds do come from the inmates.

7 Q And my question?

8 A And your question then --

9 Q Why should we waste money on people like this.

10 A Okay, why should the inmate money be wasted on that?

11 Q Sure.

12 A Okay, because it does produce different results.

13 People who spend their life in prison do different things than
14 they would have done without going into the program. I get
15 letters on a regular basis from people who are getting more
16 education, who are writing teenagers and saying, "Don't go
17 where I've gone," who are taking roles in their families as
18 parents, as friends, or just doing things that they would not
19 have done. They are choosing to have a life under very
20 restricted circumstances, but they're choosing to have a life,
21 a productive life.

22 Q You personally observed John, had conversations with
23 John, seen him in this setting that's in this jail or prison
24 world. Do you think, based on your experiences, your
25 training, your observations, that there is worth to him, that

HUNTERTON - DIRECT

1 he can, in fact, some day perhaps turn his life around?

2 A Yes, I do. I said the last time I was here that I
3 think he has the ability, because of his intelligence and
4 because of his self-awareness, actually to help understand and
5 provide methods for -- more methods for change for people who
6 have gone exactly the course he's gone.

7 Q Now you understand he has been convicted --

8 A Yes.

9 Q -- of a role regarding the death of four young men,
10 correct? Does any of that, these crimes that he has
11 committed, does that change your observations or opinion of
12 the value of his life and his worth?

13 A It intensifies my belief that, if he really chooses
14 to, he can do something that -- nothing erases or discounts
15 that, but that pulls some value from that and I think he is of
16 the character where he could do that, yes.

17 Q Are there other people who you don't think have the
18 same abilities that John has in your observations? Have you
19 seen people who just don't have that same potential that you
20 see in John?

21 A Yes.

22 MR. FIGLER: I have no further questions, Your
23 Honor.

24 JUDGE SOBEL: Any cross?

25 (Pause in the proceedings)

HUNTERTON - CROSS

CROSS-EXAMINATION

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BY MR. DASKAS:

Q Good morning, ma'am.

You mentioned a few moments ago that you considered John to be intelligent, is that true?

A Yes, sir.

Q All right. And you say that if he chooses to do so, John could actually turn his life around while he's in prison?

A Yes, sir.

Q Is that a yes?

A Yes.

Q Okay. You would acknowledge that he has the ability to make choices then, is that true?

A Yes, sir.

Q All right. I think you mentioned that people who come to your program often do so for that very reason, that is to turn their lives around. Would you agree with that?

A Yes.

Q You would also agree that individuals who enroll in your program may be motivated by different reasons, four different reasons, is that true?

A Yes, sir.

Q If, in fact, Mr. White joined your program to turn his life around, it was obviously after he was incarcerated, is that true?

HUNTERTON - CROSS

1 A Well, he chose to join my program after he was
2 incarcerated, yes.

3 Q Do you have any information to suggest that while
4 John White was out on the street, say some time after May 4th,
5 1998, that he self-enrolled in a program to turn his life
6 around?

7 A No, sir, obviously.

8 Q All right. There's been testimony in this hearing
9 that on May 4th, 1998 John White shot somebody in the face.
10 Do you have any information to believe that John White said to
11 himself at that point, "Gee, I should really turn my life
12 around," and so he enrolled in a program?

13 MR. SCISCENTO: Your Honor, I'll object to that. It
14 calls for ridiculous speculation on the part of what Mr. White
15 was thinking at the time.

16 JUDGE SOBEL: Yeah, I think it's very argumentative,
17 Robert, and in just a few minutes you're gonna get a chance to
18 argue this case.

19 MR. DASKAS: I understand.

20 BY MR. DASKAS:

21 Q You mentioned that Mr. White was kicked out of your
22 program because he had incurred a number of minor infractions.
23 Is that your word, minor infractions?

24 A Yes. He was not kicked out of the program. He was
25 put in this other status which prevented his coming.

HUNTERTON - CROSS

1 Q Okay.

2 A Just to be clear.

3 Q And those infractions, you personally considered
4 those to be minor infractions?

5 A Well, I think I just said they're necessary in a
6 facility where control is essential, but they are certainly
7 minor if you look at the level of infractions that people do
8 within the facility.

9 Q And would you agree that to a corrections officer,
10 perhaps, some of the infractions that Mr. White had might not
11 seem minor, to a corrections officer?

12 A I know it would be difficult. I'm not a corrections
13 officer, but I know that corrections officers, like me, take
14 violence much more seriously than they do jello.

15 Q You also understand that of the violations of the
16 infractions that Mr. White had, in some cases he was already
17 in the hole, to use your expression, and then incurred other
18 violations while he was already in the hole. Are you aware of
19 that?

20 A No.

21 Q All right. Is it at least a possibility, ma'am,
22 that Mr. White would have enrolled in your class because he
23 thought it might help the outcome of this penalty hearing?

24 MR. SCISCENTO: I'm gonna object to that again, Your
25 Honor. That calls for speculation.

HUNTERTON - CROSS

1 JUDGE SOBEL: Overruled.

2 BY MR. DASKAS:

3 Q Would you acknowledge that's, at least, a
4 possibility?

5 A Sure, it's a possibility, yeah.

6 MR. DASKAS: I have nothing else, Judge.

7 JUDGE SOBEL: Anything further, Dayvid?

8 MR. FIGLER: No, Judge.

9 JUDGE SOBEL: Thank you, ma'am. You're excused.
10 Call your next witness.

11 MR. SCISCENTO: The defense calls Jane Edwards, Your
12 Honor.

13 JUDGE SOBEL: I don't recall how long it took with
14 her. She was a very brief witness, wasn't she?

15 MR. SCISCENTO: Very brief.

16 JUDGE SOBEL: How many more people are you going to
17 want us to hear from after this witness, John?

18 MR. SCISCENTO: How many more will it take?

19 JUDGE SOBEL: What?

20 MR. SCISCENTO: I think this is it, Your Honor.

21 MR. GUYMON: How many more? I'm sorry?

22 MR. SCISCENTO: I think this is it.

23 JANE EDWARDS, DEFENDANT'S WITNESS, IS SWORN

24 THE CLERK: Please have a seat and state your full
25 name and spell your last name for the record, please.

EDWARDS - DIRECT

1 THE WITNESS: My name is Jane Edwards and my last
2 name is Edwards, E-D-W-A-R-D-S.

3 DIRECT EXAMINATION

4 BY MR. SCISCENTO:

5 Q Ms. Edwards, do you recognize somebody in court that
6 you're related to?

7 A Yes.

8 Q Who's that?

9 A My grandson.

10 Q Your --

11 A My grandson.

12 Q Okay.

13 JUDGE SOBEL: The record will reflect the
14 relationship.

15 BY MR. SCISCENTO:

16 Q And you know him as what? How do you know him, by
17 what name?

18 A Oh, John White.

19 Q John White, okay.

20 You, at one point, were taking care of quite a
21 number of children.

22 A Yes.

23 Q Okay, how many children did you take care of?

24 A Ten.

25 Q Ten?

EDWARDS - DIRECT

1 A Uh-huh.

2 Q And they weren't your children per se. They were
3 your grandchildren?

4 A Yes.

5 Q Your children, who would be Eunice and Faye, had
6 some problems?

7 A Yes.

8 Q With drugs?

9 A Yes.

10 Q And they still have problems with drugs?

11 A Yes.

12 Q Okay. Nevertheless, do you still love your
13 children?

14 A Yes.

15 Q Eunice and everybody?

16 A Yes.

17 Q Okay. While growing up -- While John was growing
18 up, did you witness any violence against your daughter Eunice
19 by her husband, John White, Senior?

20 A Yes.

21 Q What kind of violence did you see?

22 A He was, you know, he was just mean sometimes, but
23 you couldn't hardly tell.

24 Q Let me show you what has been marked as Defense
25 Exhibit I. Do you recognize this?

EDWARDS - DIRECT

1 A Yes.

2 Q What is that?

3 A That's the children in usher uniforms.

4 Q Usher uniforms?

5 A Uh-huh.

6 Q Okay. And is somebody in there -- John's in there?

7 A Yes.

8 Q Where's he at?

9 A He's right here.

10 Q Okay. And Keonna is in there?

11 A Yes.

12 Q And where's she at?

13 A She's right there.

14 Q And Gannisha [sic]?

15 A Johnnisha, right there.

16 Q And these are the kids --

17 JUDGE SOBEL: Let me see it, would you, Joe?

18 MR. SCISCENTO: I could produce the rest of them for

19 you, Judge.

20 JUDGE SOBEL: Yeah, just some I saw at trial and

21 some were just sort of -- I didn't.

22 BY MR. SCISCENTO:

23 Q And those are the children that you helped raise?

24 A Yes.

25 Q And the neighborhood that you raised them in, would

EDWARDS - DIRECT

1 it have been a violent neighborhood?

2 A Some would, yeah.

3 Q I'm gonna show you Defense Exhibit J. Do you
4 recognize this?

5 A Yeah.

6 Q And who is that?

7 A That's John.

8 Q And where is this taken?

9 A It was taken at my house.

10 Q At your house?

11 A Yes.

12 Q How old was John there?

13 A He was about, what, seven.

14 JUDGE SOBEL: Ms. Edwards, you have a very soft
15 voice and we have this vent right above us.

16 THE WITNESS: Oh, okay.

17 JUDGE SOBEL: Would you just keep it up a little?

18 THE WITNESS: Okay.

19 JUDGE SOBEL: Thanks.

20 THE WITNESS: Thank you.

21 He was about seven, I guess.

22 BY MR. SCISCENTO:

23 Q Seven years old?

24 A Maybe.

25 Q And last time we were here we showed you a videotape

EDWARDS - DIRECT

1 of John that was taken while he was in church.

2 A Yes.

3 Q Do you remember that?

4 A Yes.

5 Q That's Defendant's N and I moved that into
6 admission.

7 You cared about all your children?

8 A Yes.

9 Q And all the grandchildren you took care of?

10 A Yes.

11 Q Did you do the best you could?

12 A Yes.

13 Q And you tried to love them all?

14 A Yes. I still do.

15 Q Do you know why we're here today?

16 A Yes.

17 Q The reason is is the State is asking to put John
18 White, your grandson, to death.

19 A Yes.

20 Q And you know the crime that he's been charged with
21 and was found guilty of?

22 A I didn't know if he was found guilty, but --

23 Q Well, you know he's been found guilty here.

24 A Yes.

25 Q And the proceeding in here today is whether or not

EDWARDS - DIRECT

1 he's to die. You understand that?

2 A Yeah.

3 Q Do you have anything to tell the judges about that
4 decision?

5 A I can't tell the judges. All I can say is I'm sorry
6 for what happened and I don't want 'em to do nothing to him,
7 like kill him, not put him to death.

8 MR. SCISCENTO: We have nothing further, Judge.

9 JUDGE SOBEL: Any cross?

10 MR. GUYMON: No, Your Honor.

11 JUDGE SOBEL: Thank you, ma'am. You're excused.

12 Any other sworn or unsworn witnesses?

13 MR. FIGLER: At this time, Your Honor, we'll take --
14 we'd ask for a break, Your Honor. We have possibly one more
15 witness at this time.

16 JUDGE SOBEL: Okay, let's take a ten-minute recess
17 'til ten minutes of 10:00.

18 (Court recessed at 9:40 a.m., until 9:52 a.m.)

19 (Off-record colloquy)

20 JUDGE SOBEL: Anything further, Mr. Figler, Mr.
21 Sciscento?

22 MR. FIGLER: Your Honor, at this time, the defense
23 has no further live witness testimony, however, there are a
24 couple of things we'd like to introduce into the record.

25 Mr. White had made an allocution at the last penalty

1 hearing, and speaking with Mr. White about it, he wants that
2 to be given to all the Judges so they could see his thoughts
3 and his expressions on that.

4 JUDGE SOBEL: Yeah, because I didn't remember him
5 doing it. Thanks.

6 MR. FIGLER: Additionally, Your Honor -- I'll let
7 you read that.

8 (Pause in the proceedings)

9 MR. FIGLER: Additionally, Your Honors, we'd ask
10 that this Court take judicial notice that there was an entry
11 of life without sentence in the case of Sikia Smith and
12 Terrell Young as well.

13 JUDGE SOBEL: That's interesting.

14 MR. GUYMON: Judge, do you have --

15 JUDGE SOBEL: Didn't you make a -- didn't you make a
16 motion that was, I don't recall how it was ultimately
17 resolved, but I had thought that I was inclined to grant it
18 and then for some reason it was withdrawn.

19 What's your position on that, Mr. Guymon?

20 MR. GUYMON: Well, Judge, their motion was is that
21 -- was for the jury not know --

22 JUDGE SOBEL: Right. That's what I'm saying.

23 MR. GUYMON: -- that those two parties did it, and
24 we said we would stipulate. We presented the Court with some
25 case law that said it was a discretionary matter, but we

1 stipulated to their motion.

2 JUDGE SOBEL: Well, let me exercise my discretion in
3 favor of that because I don't know that it's fair, for
4 whatever weight it be given, that I know, because I live here,
5 what the conclusion was in the other cases, and two of us,
6 unless I tell them in deliberations, wouldn't know. Let's
7 take judicial notice of what is readily capable of
8 verification under the statute and without question, and that
9 is that both of the other defendants received life without the
10 possibility of parole.

11 MR. FIGLER: Thank you, Judge. Finally, there was
12 one document which is lengthy, and which is being copied as we
13 speak, which I wanted to introduce into the record. That
14 document is known in capital circles now as the Leadman
15 [phonetic] report. The Leadman report was a thorough analysis
16 which was commissioned by Columbia University with regard to
17 the status of the death penalty, the application of the death
18 penalty, and a breakdown by state, including Nevada, with
19 regard to the death penalty as it exists in the country today.
20 It involved initially, a review of the habeas --

21 JUDGE SOBEL: I'm sure we all know what it is. Why
22 do you think that's relevant to our decision?

23 MR. FIGLER: Well, if the Leadman report is correct
24 in that the imposition of the death penalty is fraught with
25 error and that each state has, and especially Nevada, has

1 certain limitations with regard to the appropriate sentencing
2 of individuals to death in this country as we sit today, then
3 certainly that would be a mitigating factor with regard to the
4 very difficult decision to put another human being to death.
5 It's a very well thought out, very well documented, very well
6 footnoted report and study, and we'd like that to be part of
7 this record and part of your consideration with regard to not
8 only mitigation as it exists, but with regard to any decisions
9 to actually impose the death penalty in Nevada in the year
10 2000.

11 JUDGE SOBEL: Well, I don't -- I can't speak for the
12 other two Judges and what weight they would give to it. I
13 know, frankly, what weight I think that report is in
14 establishing the proper sentence here, but be as we're not
15 dealing with a jury and we're dealing with Judges, we will
16 allow it to come in as an exhibit for whatever weight it is
17 given.

18 Anything else, Dayvid?

19 MR. FIGLER: No. At this time, Your Honor --

20 JUDGE SOBEL: When is this very length document
21 going to be ready? It came out months ago.

22 MR. FIGLER: It's three hundred pages, Your Honor.
23 We're making a copy of it. I believe it should be here, I'm
24 hoping it will be here within the next thirty minutes, if not,
25 sooner.

1 JUDGE SOBEL: All right. Okay. Anything else?
2 MR. FIGLER: There were some videotapes, Your Honor,
3 that were admitted the first time. What is a --
4 JUDGE SOBEL: Trip through LA and the other one
5 shows him singing in church.
6 MR. FIGLER: That's correct, Your Honor. We'd like
7 those to be considered as part of this record as well.
8 In addition, there was a report regarding young John
9 White and his family that was prepared some years back, that
10 we attempted to introduce at the last hearing. It was marked
11 as an exhibit. I'm not sure if it actually came in, but we
12 ask that that be considered part of this record as well.
13 JUDGE SOBEL: What -- for the letter -- for the
14 record, what is it? I mean, what number was it?
15 MR. FIGLER: It was Defense Exhibit M.
16
17 THE CLERK: It was admitted.
18 JUDGE SOBEL: It was admitted? Fine.
19 MR. FIGLER: It was not --
20 MR. SCISCENTO: No, it was initially objected to,
21 the Court took a recess, came back and admitted it.
22 JUDGE SOBEL: It'll be admitted here for whatever
23 weight it has.
24 MR. FIGLER: Thank you, Judge.
25 JUDGE SOBEL: Anything else, Mr. Figler?

1 MR. FIGLER: No. At this time, the defense would
2 rest their penalty phase presentation.

3 JUDGE SOBEL: Thank you. Who will argue for the
4 State?

5 MR. DASKAS: Judge, I'll argue first. And if I
6 might have a couple of moments, I need to see if we have the
7 charts that we used last time.

8 MR. SCISCENTO: Your Honor, we would address the
9 issue, too, as we did in the first case. Mr. Figler and I
10 broke up the arguments, again we wanted to do the same thing,
11 unless there's no problem with this and we'd argue --
12 procedure in this forum.

13 (Off-record colloquy)

14 MR. FIGLER: Before the counsel presents the closing
15 argument, I understand it's different in front of a jury, and
16 certainly the three of you know the law better than all of us
17 combined, so.

18 JUDGE SOBEL: That's unusual to hear you say
19 something like that, Dayvid. You don't have to say that just
20 because we're in open court.

21 MR. FIGLER: I think -- certainly, Judge, with
22 regard to any improper argument that may exist, I know that
23 Your Honors are going to be able to disregard that and not
24 apply that. So, at this point, really, I don't want to
25 interrupt the prosecution in making their argument, so, I'm

1 probably not going to and just defer to the three judge panel
2 with regard to --

3 JUDGE SOBEL: That's up to you, how that --

4 MR. FIGLER: Well, that is our position.

5 JUDGE SOBEL: How that will be viewed, I have no
6 idea.

7 MR. FIGLER: I understand, Your Honor, but --

8 JUDGE SOBEL: Does that mean we're not going to hear
9 about the rooms, Dayvid?

10 MR. FIGLER: Yes, Your Honor.

11 JUDGE SOBEL: Oh, excellent. Good.

12 (Off-record colloquy)

13 MR. DASKAS: May I proceed, Judge?

14 JUDGE SOBEL: Sure.

15 PLAINTIFF'S CLOSING ARGUMENT

16 MR. DASKAS: It was the great philosopher Aristotle
17 who said, "What is justice but that every man get his due,"
18 and that really is the question before the three of you that
19 we pose today. What justice is due Donte Johnson for the
20 nightmare that he created on August 14th, 1998?

21 And I ask each of you, is life in prison sufficient
22 for the man who created this nightmare, or is something more
23 required in this case? What punishment is due Donte Johnson
24 in the destruction that he left at this home on August 14th?

25 And I ask you to keep that in mind. That is, what

1 is the punishment due for his conduct on August 14th, because
2 when Mr. Figler said in opening that this prosecution is
3 somehow driven by the color of Donte Johnson's skin, it was
4 offensive. It was offensive when he said it weeks ago, and it
5 was offensive when he said it on Monday, that the punishment
6 we seek is somehow based on the color of Donte Johnson's skin.

7 We ask you not to punish him for the color of his
8 skin, but for his conduct on August 14th and for the content
9 of his character, not the color of his skin.

10 And as offensive and as horrific as this nightmare
11 is from the Terra Linda home, you, as Judges, certainly
12 understand that that does not automatically entitle us to seek
13 the death penalty against Donte Johnson because we all know
14 that something more is required. That there must be the
15 existence of at least one aggravating circumstance before the
16 death penalty can even be considered as an option. And I
17 don't mean to belabor the point, but I would like to briefly
18 touch on the aggravators in this case.

19 The State has alleged three aggravators: the first
20 one is that murder was committed while the person, that is,
21 Donte Johnson, was engaged, either alone or with his
22 companions, in the commission of a robbery, a burglary or a
23 first degree kidnapping. And you certainly understand that
24 when the jury returned its verdicts of first degree
25 kidnapping, of robbery with use of a deadly weapon, and of

1 burglary while in possession of a firearm, that this
2 aggravator was established.

3 And the aggravator goes on, that the person charged,
4 that is, Donte Johnson, either killed or attempted to kill the
5 person murdered or at least that he knew or had reason to know
6 that life would be taken or lethal force would be used.

7 You, by now, have all reviewed the transcripts from
8 the trial in this case and certainly the evidence was
9 overwhelming that it was Donte Johnson himself who pulled the
10 trigger four times and took the lives of those four young men.
11 And it is that testimony, coupled with the verdicts returned
12 by the jury, that establishes aggravator number one, beyond a
13 reasonable doubt.

14 And there's a second aggravator: that the murder
15 was committed to avoid or prevent a lawful arrest or to effect
16 an escape from custody.

17 I'd ask you to recall the testimony of two witnesses
18 in this case that you heard from on the witness stand and in
19 the transcript, and the first was Tod Armstrong. On June 6th
20 of 2000, he testified, and it's reflected in Volume II of the
21 transcripts, and he was referring to Donte Johnson when Tod
22 testified that he, Donte Johnson, said that since he killed
23 one, he had to kill everybody else.

24 And Tod was referring to Peter Talamantez because
25 Peter was the first victim in this case, taken to a back room,

1 by himself, duct taped, lay face down, defenseless, and shot
2 in the back of the head by Donte Johnson. And Donte Johnson
3 understood that the other three victims in this case would
4 have been witnesses to a murder and to a robbery and to a
5 kidnapping. And so Donte Johnson executed the other three
6 victims in this case because he knew he had to avoid the
7 potential of being arrested, so, he eliminated all the
8 witnesses in this case.

9 It also came from the mouth of Charla Severs, the
10 defendant's ex-girlfriend. On June 7th, 2000, in front of a
11 jury, she testified that Donte Johnson had to kill the other
12 people because they knew who we were. Donte Johnson's words.
13 Donte Johnson understood that he couldn't leave any witnesses
14 alive, and so he killed those people to avoid a lawful arrest.
15 That's aggravator number two.

16 And finally, the third aggravator alleged by the
17 State, the defendant has, in this proceeding, been convicted
18 of more than one offense of murder in the first or second
19 degree. And certainly you, as Judges, understand and
20 appreciate that when the jury in this case returned four
21 guilty verdicts of first degree murder with use of a deadly
22 weapon, that that aggravator also was established beyond a
23 reasonable doubt.

24 Three aggravators in this case, and you appreciate
25 that the process doesn't end there. That the next step is to

1 consider any mitigating circumstances that were offered by the
2 defendant in this case, and those two are outlined in an
3 instruction, and I'll briefly discuss those. Obviously, those
4 are for your consideration, and it's not my position to tell
5 you whether you believe those mitigators have any impact in
6 this case.

7 They suggest that the murder was committed while
8 Donte Johnson was under the influence of extreme mental or
9 emotional disturbance. And I think most people would agree
10 that in looking at this crime scene, it's difficult to
11 understand the mentality of a person who's capable of doing
12 something like that. But that's different from suggesting he
13 was under the influence of emotional distress or disturbance.

14 You have heard absolutely no evidence to suggest
15 that he was under the influence of distress when he committed
16 this crime. No evidence whatsoever.

17 The second mitigating circumstance that could
18 possibly lessen his culpability in this case, the defendant
19 was an accomplice in a murder committed by somebody else and
20 his participation, that is, Donte Johnson's was relatively
21 minor. And again, you've reviewed the transcripts and you
22 understand that the overwhelming evidence in this case is that
23 it was Donte Johnson, himself, who pulled the trigger four
24 times on August 14th. Certainly his participation in this
25 case was not minor, although he did have two accomplices.

1 Mitigator number three, the defendant acted under
2 the duress or domination of another person. Again, no
3 evidence whatsoever, proffered by anybody, that Donte Johnson
4 acted at somebody else's request or under somebody else's
5 dominion and control. It was Donte Johnson who pulled the
6 trigger each time.

7 Mitigator number four, the youth of the defendant at
8 the time of the crime. Donte Johnson was born in 1977 and was
9 twenty-one years old at the time this crime was committed.
10 From where most of us sit or stand, twenty-one years old is a
11 young man, but I think we all appreciate that even a twenty-
12 one year old understands the consequences of pointing a gun
13 one inch to the back of the head of another human being and
14 pulling the trigger. Certainly his age does not mitigate his
15 conduct in this case.

16 And you, of course, as Judges, understand and
17 appreciate that you can consider any other mitigating
18 circumstance that you think is appropriate. Things like mercy
19 and compassion, and the fact that he grew up in South Central
20 LA. And I don't minimize that that was probably a difficult
21 childhood, and that's not a childhood that anybody should have
22 to endure, but common sense tells us that not everybody who
23 grew up in South Central LA finds themselves convicted of
24 quadruple murder. Not everybody who grew up in South Central
25 LA has killed five people like Donte Johnson has. And not

1 everybody who grew up in South Central LA has the capacity and
2 the character to hold a gun inches from the face of another
3 human being and pulling the trigger. And you saw the
4 devastation of that when Derrick Simpson testified from a
5 wheelchair in this courtroom. It's not a childhood any of us
6 would want, but it doesn't excuse Donte Johnson's criminal
7 conduct in this case.

8 And, of course, your goal at that point, your job
9 and your duty is to weigh those mitigators against these
10 aggravators that we've established beyond a reasonable doubt.
11 And it's not my position to tell you the weight you should
12 give each of those aggravators or each of those mitigators.
13 But I would simply point out that even if you accept each of
14 their mitigators as being established, none of those
15 mitigators, not even all those mitigators collectively
16 outweigh the fact that this man has been convicted of a
17 quadruple killing in this proceeding.

18 And so, the only remaining question is should you --
19 should you impose the death penalty in this case? We
20 understand that this is an appropriate case for death penalty
21 consideration, but should you impose the death penalty? It's
22 probably been said too many times that the worst possible
23 crime deserves the worst possible punishment, but there's some
24 truth to that statement, and this is certainly the worst
25 possible crime.

1 And I ask you, is life in prison sufficient for
2 Donte Johnson who created this nightmare for these young men
3 or is something more required in this case? Does this crime
4 speak out for the death penalty, or do we allow Donte Johnson
5 to continue to live in prison, to continue to wake up each
6 morning, be provided with three meals a day, continue to visit
7 his friends and family, write letters and read magazines?
8 We heard from David Mowen yesterday, the father of
9 Matt, who tried to explain to us and articulate for us what it
10 is like for a father to lose his only son and how he must
11 visit his son each morning at the grave site. Is life in
12 prison sufficient for Donte Johnson or is something more
13 required in this case?
14 Mr. Figler suggested in his opening statement
15 yesterday that these four young men are not the victims. He
16 told you they're not victims because they're drug users,
17 they're drug sellers and their gun toters, to use his labels.
18 And I'm certain that you, as Judges, who sit on the bench
19 every single day and hear from victims and witnesses --
20 JUDGE SOBEL: Hold on one minute, Robert, would you?
21 (Pause in the proceedings)
22 JUDGE SOBEL: Go on, Bob -- Robert.
23 MR. DASKAS: Certainly you understand, as Judges,
24 that victims of crimes come in all shapes and sizes. They're
25 represented by all races. They are varying degrees of age,

1 and they come from various backgrounds. Victims are victims
2 regardless of the choices they make, choices that perhaps you
3 and I don't agree with. And I find it somewhat contradictory
4 that Mr. Figler suggests that because these four boys had
5 drugs in their system at the morgue, that you should punish
6 them and view them not as victims, yet, on the other hand, Mr.
7 Figler wants you to excuse Donte Johnson's conduct. And you
8 heard testimony about the fact that he sold drugs. You're
9 supposed to excuse that conduct because of the fact that he
10 grew up in South Central LA, and I find that somewhat
11 contradictory.

12 Certainly, these boys made bad choices when they
13 decided to use drugs, but it doesn't make them any less the
14 victims in this case.

15 I wonder if Peter Talamantez felt like a victim when
16 he was accosted by those three men, Donte and his companions,
17 when he knocked on the door on August 14th? I wonder if Peter
18 felt like a victim when he was duct taped, ankles together,
19 wrists behind his back and laid face down on the carpet? I
20 wonder if Peter felt like a victim when he had the barrel of
21 the gun placed an inch from the back of his skull? I'm
22 certain that he felt victimized.

23 And I wonder if Matt when he, too, was laid face
24 down in the carpet in his own home, as Donte and his
25 companions ransacked that home? I wonder if Matt Mowen felt

1 like a victim as Matt heard the gunshots that killed his
2 friends? And I wonder if Matt felt like a victim as he
3 wondered when would his turn come?

4 The fact that these boys had drugs in their system
5 on August 14th is of no consequence. They are no less victims
6 in this case.

7 Donte Johnson deserves to die because Peter
8 Talamantez deserved to live. And Donte Johnson deserves to
9 die because Matt Mowen deserved to live. And Donte Johnson
10 deserves to die because Jeff Biddle and Tracey Gorringer
11 deserved to live.

12 But there's more than just this case. There's much,
13 much more than just the crime of August 14th, 1998. We now
14 know that Donte Johnson's criminal history dates back nearly
15 ten years. We understand now that August 14th was not just a
16 bad night for Donte Johnson, it was simply the culmination of
17 a criminal career that dates back nearly ten years.

18 You heard testimony and you'll read the transcripts
19 about an armed bank robbery that occurred back in 1993. Donte
20 Johnson's sixteen years old, he and his companions were in a
21 Ryder van, and in the middle of the day, like something out of
22 a movie, armed themselves with a shotgun and a handgun and
23 take over the Cen-Fed Bank in Marina del Rey, as Donte Johnson
24 jumps on the counter and orders the teller to give him all the
25 money. And at was Donte Johnson who was caught as the driver

1 of the getaway van with twelve hundred dollars (\$1200), all
2 the proceeds from the bank robbery in his pocket.

3 August 14th, 1998, was not just a bad night, it was
4 a consistent night for Donte Johnson. And you saw Derrick
5 Simpson come and testify. May 4th, 1998, he places a gun
6 inches from the face of Derrick Simpson and pulls the trigger.
7 And you saw the devastation in Derrick Simpson, a man who is
8 now confined to a wheelchair for the rest of his life because
9 of the person seated in this courtroom.

10 It was Donte Johnson who, after Derrick Simpson fell
11 to the ground face down, stepped over Derrick Simpson just
12 like he stepped over Peter Talamantez, Jeff Biddle, Matt
13 Mowen, Tracey Gorringer, and it was Donte Johnson who fired
14 another shot into the back of Derrick Simpson just like he
15 fired gunshots into the boys in this case.

16 And I ask you to punish Donte Johnson not for the
17 color of his skin, but for the content of his character, a
18 character that enables him to do the acts that he's committed
19 that date back nearly ten years.

20 And I wonder if Derrick Simpson felt like a victim
21 because we've heard that Derrick Simpson used drugs, and I
22 wonder if he feels like a victim now, confined to a wheelchair
23 for the rest of his life? Or do we accept what Mr. Figler
24 said is true and conclude that Derrick is no victim simply
25 because he made bad choices?

1 Darnell Johnson, August 4th, 1998, you now know that
2 not only was August 14th, 1998, the first crime Donte Johnson
3 committed, it wasn't even the first murder that this man
4 committed, as he and his companions, Terrell Young, the co-
5 defendant in this very case, go to the Thunderbird Motel to
6 seek revenge from Darnell Johnson who stole two hundred
7 dollars (\$200) worth of crack cocaine as they choke him to
8 death with a bed sheet and place his body in the trunk of his
9 own car and dump him somewhere near the Speedway. And I
10 wonder if Darnell Johnson felt like a victim because we know
11 that he, too, used drugs.

12 And do we discount that crime, according to Mr.
13 Figler, simply because Darnell Johnson chose to use drugs, or
14 do we punish Donte Johnson for his criminal conduct despite
15 the fact that his victims used drugs?

16 And we understand, as we looked at his criminal
17 history, that his conduct continues to escalate from a bank
18 robbery to an attempt murder to a murder. And ultimately,
19 until we get to August 14th, 1998, when he commits a quadruple
20 homicide. And I ask you, is life in prison sufficient for
21 Donte Johnson or is something more required when we understand
22 the crimes he's committed throughout his life?

23 On behalf of the State of Nevada, I call upon your
24 good judgment, as Judges who have been selected, chosen by
25 members of this community and by the citizens of this state,

1 chosen to administer laws and dispense punishment every single
2 day, and we call upon you to punish Donte Johnson, not based
3 on the color of his skin, but based on the content of his
4 character and for the crimes that he has chosen to commit that
5 date back nearly ten years.

6 What is justice but that every man get his due, and
7 what is due Donte Johnson? And I submit to you that Donte
8 Johnson is due the death penalty, not for the color of his
9 skin, but for the crimes he's committed since 1993, and for
10 the crime he committed on August 14th, 1998.

11 Thank you.

12 JUDGE SOBEL: Thank you, Robert.

13 Dayvid, when you're ready.

14 DEFENDANT'S CLOSING ARGUMENT

15 MR. FIGLER: Your Honors, during the opening
16 statement I said some regrettable things about the four
17 victims in this case. There are four victims in this case. I
18 tried to apologize to the families of these young men, but I
19 guess it wasn't the right time to do that.

20 I said some regrettable things about four young men
21 that I know precious little about, except that, which I've
22 read I've reports and testimony that doesn't reflect the
23 character of these four men, I'm sure, and in some respects, I
24 guess it's my job, as a defense attorney, to pour through
25 records, to find those things about individuals that do, in

1 fact, distinguish them from purely random, and for lack of a
2 better word, innocent parties, and I found some things in that
3 record to try to convince you that this is not a death penalty
4 case. And in the process, I realize that my actions added to
5 the suffering of these young men's families. A suffering that
6 should never be. A suffering that I certainly wish wasn't
7 there or that could be gone.

8 About a year and a half ago, I was in a nightclub
9 here in Las Vegas and some people who I met indicated that
10 they knew some of the victims in this case. And what they
11 told me was that they were great guys. That these people I
12 met were deeply saddened by the deaths of these young men.
13 They didn't talk about the things that I referenced in my
14 opening statement. Why would they? Why should they?

15 These people in the nightclub asked me if I was
16 representing the people who were accused of the killing, and I
17 said, no, because at that time I wasn't, not yet. They said,
18 good. The conversation moved on. And at that time, I didn't
19 know John White. I said, good, too. Now I know John White.
20 I've talked at length with John White, and I think, as much as
21 human being can, I've begun to understand the limitations on
22 his ability to grow or know how to turn his life around to
23 this point. And now I know that it is good that I represent
24 him, for despite the terror that he has been a part of, there
25 is a person there to be saved.

1 There's another case in our office, in the office of
2 the special public defender, where I know -- knew the victim.
3 I had many conversations with that individual, that victim.
4 Ran into him a couple of days after the birth of his child and
5 we have many friends in common, and because of that
6 connection, I am walled off in my office from his case. I
7 don't have to represent that person accused of murder. It's a
8 capital case. And if that case goes to trial, it, too, will
9 be a full courtroom, and if I choose to watch, which I
10 probably will, I will witness my colleagues, most likely get
11 into a discourse on probable other suspects, likely based on
12 the lifestyle of my friend. And while I'm sure most of what
13 they'll say is true, I certainly don't want that individual
14 remembered for the negative things in his life.

15 As has been stated in this courtroom, we all have
16 done negative things in our life, but I will probably be in
17 the minority in that courtroom, in that audience. I'll be
18 asking for a conviction if the evidence supports it, but also
19 fully understand that what is being done is only being done in
20 the name of justice for that defendant, because the death
21 penalty is as loaded as any gun is. That the seeking of the
22 death penalty by a state that allegedly represents all
23 citizens of the state, forces a debate of philosophy, of
24 religion, of morality and law. That the imposition of death,
25 from one human being to another, in the name of the citizens

1 is fraught with the same vulnerabilities and flaws that each
2 of us as humans are created with. And until we can show that
3 we are infallible in judgment, we must not engage in a course
4 of conduct where our bad judgment results in a human being's
5 life. Results in death.

6 I don't know, Your Honors, why any young person
7 would inject themselves into this crazy world of drugs and
8 violence, especially if those young people would have all this
9 love and support from their families? All this respect. Why
10 would they?

11 I wish that this crazy world of drugs and guns and
12 violence did not exist. I wish that world doesn't impact my
13 world where I'm safe in my apartment far away from it all. I
14 wish that world wouldn't affect my friends. I wish that John
15 White never met these boys. I wish that these families could
16 take their children into their arms and take them away from
17 all this, to bring them back, that John's family had the
18 skills and the resources and the chance to do the same.

19 I wish that Jane Edwards, who you saw here, had
20 twenty arms to hug all her children, but she only had two. I
21 wish that none of these people that we've been talking about
22 was introduced to that crazy world.

23 If I had to represent a boy who was accused of
24 selling drugs, whatever they be, to another boy who overdosed
25 or died as a result of using those drugs, I'd do whatever I

1 could to ensure that a fair penalty was imposed, no matter
2 what the clamor for the maximum sentence was. And I'm sure
3 that my client's family would appreciate that, to ensure that
4 the crazy world of drugs does not take another casualty. And
5 I may be saying regrettable things, and I may have said
6 regrettable things, but I will never advocate my important
7 role in this process.

8 After listening to Carla Severs testify, after
9 seeing a seemingly clean-cut lad like Bryan Johnson talk about
10 his ascent into this crazy world, I think we were all sickened
11 by the prospect. I think we weep for all of our children.
12 And then it goes too far, and the plot and plans, not of three
13 boys, but of five boys, Sikia Smith, Terrell Young, John
14 White, Tod Armstrong, and Ace Hart. These plans go horribly
15 awry and young men with potential become casualties.

16 And I think we all want this suffering to end. We
17 want the suffering to end for the victims' families. At the
18 same time, we don't want to impose suffering on John's family,
19 and there is one way to do that today. The way to end the
20 suffering from everyone is to give John a life sentence.
21 Simply stated, a life sentence ends it. No more hearings, no
22 more waiting, no more torture, no more killing and no more
23 death.

24 You may or may not find aggravators in this case. I
25 suggest that you will find a multitude of mitigating factors.

1 I'm sure you'll analyze these factors in accordance with the
2 law, but the law says you don't have to give death even if you
3 found a hundred aggravator. Even if you found no mitigators.

4 The prosecutors say that not everyone who has had
5 the life that John White has, have gone out and committed
6 multiple homicides. I suggest to you that many have. I
7 suggest to you that if you were to pluck an individual out of
8 South Central LA, who had the same limitations and life
9 experiences as John White had and put them in that situation
10 -- this situation, that the results would most likely be the
11 same.

12 Should he have been in that situation? Should he
13 have done those things? Of course not. No one is condoning
14 that behavior. But is he distinguished from those other
15 individuals? I'd suggest common sense says, no.

16 The District Attorney of Clark County, Nevada,
17 himself, in this very courtroom, seven days ago asked for the
18 death penalty, and he got it. He said that that defendant
19 deserved the death penalty because it wasn't a dope deal gone
20 bad or a robbery gone violent. He distinguished, himself,
21 death cases, from those that are not death cases. And his co-
22 counsel, the chief deputy of the major violators, of the
23 murder team in Clark County, argued that that defendant didn't
24 have real mitigation, mitigation that the chief deputy listed,
25 poverty, mother on drugs, father in prison, no chance at real

1 life. The State therefore concedes that cases where that type
2 of mitigation exists distinguishes the imposition of the death
3 penalty. They concede that mitigation in this case exists
4 overwhelmingly.

5 The prosecutors are calling for death, but are they
6 really thinking of justice? Well, just last week in another
7 courtroom in this courthouse, Mr. Daskas and his co-counsel,
8 Stacy Collins, called the defendant in that case --

9 MR. GUYMON: Judge, I'm going to object to facts
10 that are not in evidence. We're not going to try --

11 JUDGE SOBEL: Well, you know, this is a little
12 different. There are no rules for it. It's not like arguing
13 in front of a jury, and it's the sort of things that we hear
14 all the time in sentencing. Go ahead.

15 MR. FIGLER: They called that defendant the worst of
16 the worst.

17 MR. DASKAS: I'm going to object, Judge, because
18 that is not what happened. That is mischaracterizing the
19 argument in that case.

20 MR. SCISCENTO: It was stated in the RJ, Your Honor,
21 in the caption.

22 JUDGE SOBEL: Oh, boy, now there is an infallible
23 source.

24 MR. SCISCENTO: That's what they tell me.

25 JUDGE SOBEL: Why don't you have Gary address it.

1 As I said, it's not -- you know, although this is called a
2 penalty hearing and we are now taking the place of a jury, it
3 is still the sentencing proceeding. And in front of judges,
4 we hear all sorts of things that a jury might not hear.

5 Go ahead, make your arguments and they can rebut it.

6 MR. FIGLER: Your Honor, the point is that the
7 prosecutors in Clark County have lost their credibility. They
8 gave a well educated, upper class white man who raped and
9 killed an innocent eight year old black girl the chance at a
10 life sentence, but not John White. They have already received
11 the accountability that they have sought by way of jury
12 verdict. John White will be severely punished. If they want
13 swift justice as they proclaim, they should be advocating for
14 the very serious and very real punishment of life in prison.

15 And the same goes for this three judge panel. The
16 moral buck, it stops here. If you want justice to be imposed
17 now, then now you must impose life. Start the real sentence
18 for this man.

19 It has been suggested to me that there may be a
20 thought that what you, as a three judge panel do today is
21 meaningless, that the constitutionality of even this three
22 judge panel is tenuous, that it may all be called back some
23 day, but for the sake of the families and for the sake of the
24 families of John White, don't make everyone go through this
25 yet another time. I pray that that is not a thought amongst

1 this three judge panel, that you end this now with the
2 appropriate sentence. And there is no way you can say death
3 is the only appropriate sentence.

4 If you think that this process that we're doing
5 right now, is in any way unconstitutional, you have a duty to
6 impose a sentence other than death.

7 Justice Harry Blackman, who is a long time supporter
8 of the death penalty, in 1994 had an epiphany. He said:

9 "From this day forward, I shall no longer tinker
10 with the machinery of death. I feel morally and
11 intellectually obligated to simply concede that the
12 death penalty experiment has failed. It is
13 virtually self-evident to me now that no combination
14 of procedural rules or substantive regulations can
15 ever save the death penalty from its inherent
16 constitutional deficiencies."

17 Good Judges, if you in any way think that this
18 procedure we're doing today may some day be considered
19 unconstitutional, please do not tinker with John White's life.
20 Do not tinker with these families life with the hope that a
21 reversal of the law someday will cross the finish line before
22 John White is executed. If any of you think that you should
23 not be doing even this procedure, then stop the potential
24 killing machine now.

25 I suggest that if one person comes forward saying,

1 do not kill John, you must give that position credence. You
2 had a succession of people, related, not related, people who
3 work in the prison. You had a jury, and that jury was in the
4 position to give death or not, and we know there was voice in
5 that jury room that said, death is not the only appropriate
6 sentence. There was a jury of peers, of community members in
7 there, who failed to reach to required unanimity of thought
8 that death is the only appropriate sentence. That voice of an
9 alternative must be given credence by this panel. That voice
10 of death penalty opponents must be given credence. That voice
11 of morality and mercy and the world of theology must be given
12 credence that death is not appropriate.

13 Judge Sobel, I have been in this courtroom when
14 others facing the death penalty have been combative with you,
15 have shown disrespect to you, have shown disrespect to the
16 authority of this courtroom, of the law inside this courtroom.
17 That's not John White. You've observed John White. You've
18 observed John White and can compare him to the others that you
19 have seen, as they behaved, as they respect in the courtroom.
20 John White did not attempt to attack this Judge and jury
21 during the trial.

22 John White has never physically touched a
23 corrections officer, let alone choke one. John White has not
24 pulled a gun on an officer. You heard testimony that Terrell
25 Young did. Terrell Wright [sic] has not struck his attorneys,

1 he has shown respect for everyone in this process at this
2 point. John White did not have to be equipped with a stun
3 belt, and that stun belt did not have to be engaged.

4 The state talks about John being the shooter, but
5 I'd submit to you that if the prosecutors were so confident
6 that they could prove, beyond a reasonable doubt to a jury,
7 that John White was the shooter and sole shooter, that they
8 could have charged him in a way that would have removed all
9 ambiguity from a jury's verdict. He could have been charged
10 as the sole shooter. And if they felt so confident they could
11 have proved it, they should have, but they didn't. For
12 whatever reason, they did not, and now therefore, they cannot
13 say that he was the shooter.

14 Terrell Young did not get the death penalty. Sikia
15 Smith did not get the death penalty. Tod Armstrong and Ace
16 Hart have not even been charged in this case. John White may
17 be eligible for numerous punishments, but if something other
18 than death can fit, then that must be imposed.

19 The prosecutors have introduced evidence that has
20 nothing to do with aggravators or mitigators. Bad character
21 evidence, most of which has not been charged. How fair is
22 that in our system of justice?

23 Additionally, two of those acts allegedly involved
24 Terrell Young. And apart from the bank robbery there, when he
25 was sixteen years old, and the State concedes it did not have

1 the weapon, the one thing that this whole Snoop affair, if
2 believed, and Derrick Simpson has is, yes, indeed, it involved
3 that crazy world of drugs and violence. And if John is
4 charged or convicted of any of these offenses, I'm sure he
5 will be punished and punished appropriately. But to punish
6 him twice?

7 There's been discourse in the public that a majority
8 of Americans support the death penalty. I've heard the
9 statistic range from 60 percent to two-third of the
10 population. I read yesterday in the paper that Nevada's
11 population is up to 2 million already. I guess that means
12 that about six hundred to eight hundred thousand people in
13 Nevada don't think that John White should be killed. I
14 suggest that if one person says that they recognize the
15 precious gift that God has given John White, that to kill that
16 human being is not the right thing to do.

17 Now there are tales of God extinguishing entire
18 cities when three good men could not be found. Three men
19 willing to uphold his law, to uphold his commandments. And I
20 stand now before three men telling you that I know the man
21 whose life you can extinguish is a power that only God should
22 have.

23 I stand before you three men and I know that you
24 will not succumb to the pressures of the majority and kill, to
25 show that killing is wrong, that you will dig deep into your

1 core values and recognize that even the consideration of the
2 death penalty is clear evidence that we have lost our struggle
3 with violence, that we have been seduced by violence, that our
4 culture is so thoroughly saturated with violence, that even as
5 we all suffer from it, consider ourselves victims of it and
6 hate it. That we nonetheless believe that it is redemptive,
7 that it can make bad situations better, that it can achieve
8 the goals we desire. Violence is so persuasive that we are
9 blind to any other alternative.

10 Judges, are we somehow convinced that the evil that
11 is destroying us is the very power that can somehow save us?
12 Violence is a lie. Violence is an idol that cannot create, it
13 can only destroy. It feeds on itself and produces only more
14 violence. When we are violent, all we touch with it is
15 injured. There is no healing when the cycle of violence is
16 perpetuated. Nothing is restored to the way it was. When we
17 are violent, whether as individuals or as a society, our very
18 souls are assaulted, poisoned and wounded.

19 You are now asked to pull the lever on John White's
20 life. And I ask you to ask yourselves, would the people that
21 you respect in the world, whoever they be, your clergy, the
22 great leaders in history, Gandhi, Mahatma Gandhi, Martin
23 Luther King, Jesus, would they sign the death warrant? Would
24 they vote for death?

25 John White deserves to be punished, there's no doubt

1 about that. John White also deserves the ability to repent,
2 to turn his life around, to be a better person than he was,
3 and if that must be done in the confines of a maximum security
4 prison for the rest of his natural life, so be it. That's why
5 we have maximum security prisons.

6 We need to pray for the healing of the victims'
7 families in this case. And we need to pray for John's family.
8 And instead of vengeance, instead of another life sacrificed,
9 we need to pray for John's redemption, and that would be for
10 the redemption of us all.

11 JUDGE SOBEL: Thank you, Dayvid.

12 Joseph, what would you like to add.

13 MR. SCISCENTO: Some heat to the room.

14 JUDGE SOBEL: What?

15 MR. SCISCENTO: Some heat to the room.

16 (Off-record colloquy)

17 JUDGE SOBEL: Joe, why don't you just wait a minute
18 or two and see how long the facilities takes to get here and
19 play around with our aging systems.

20 (Pause in the proceedings)

21 DEFENDANT'S CLOSING ARGUMENT

22 JUDGE SOBEL: Go ahead.

23 MR. SCISCENTO: May it please this Court, opposing
24 counsel. Your Honors, we're here today -- reality is one of
25 you has made a decision to kill John White, one of you is

1 afraid to make that decision and one of you has an open mind
2 and a compassionate heart. Without any notes, I will speak to
3 that person.

4 The reality of this, killing a man will end the
5 suffering. Killing a man will bring back our loved ones.
6 Killing a man will end the violence of this world, I submit to
7 you, kill me because I can think of no greater cause to die
8 for than peace on this earth. I speak no more truth than I've
9 spoken this very moment, and that cause I'd be glad to go for.

10 I know what it's like to be angry. 90 percent of my
11 life was consumed by anger and hatred. And many a times I
12 wanted to pull a trigger. No matter what I achieved in my
13 life, anger consumed me.

14 The statement I made about killing me may seem
15 absurd, but it is no more absurd than to think by killing him
16 something will change. The absurdity of teaching somebody
17 that killing is wrong by killing them. It's irrelevant, it's
18 apparent right there. It doesn't change anything. It never
19 has. Twenty-five years ago we implemented the death penalty
20 and nothing has changed.

21 I say hate consumes and Mr. Figler mentioned it. I
22 know about the hatred. There was one point when I forgave
23 three years ago and my life has changed and I know that. And
24 I only speak of Spain as the most beautiful place in the
25 world, it's because that's when I finally learned to forgive

1 and finally felt love and peace. And I sit here and tell you
2 what I felt must be felt by all. It has to, because it frees
3 you, it changes you, and I know that, and I'm here to beg for
4 a man's life. I'm here to ask you, please do not kill and
5 that one of you is going to help me.

6 We're here to talk about mitigators, I'll get back
7 on the subject on that. You know about aggravators and
8 mitigators. Did we really think, having him born in a life
9 that he had that anything different was gonna happen. I mean
10 for God's sake, he lived in a shack with twelve people. No
11 running water, no electricity. I thought I had a tough life,
12 and we all think we have tough lives, but that's got to be a
13 mitigator. It's not excusing, you know this. It's not
14 excusing the deaths or his guilt. It doesn't excuse that.

15 The jury has spoken and found him guilty. The jury
16 has spoken and said that these four victims are worth
17 something. The decision today is whether or not he is to die.
18 That's all it is. And there are many mitigators to look at.

19 He was forced to join a gang because the one cousin
20 that he looked up to, that helped him raise his siblings, was
21 going to be raped. Now that may seem absurd to you, but none
22 of you have ever been down to 101 Street, 101st Street and
23 Central Avenue, 96th and Watts, Figueroa and 98th Street,
24 maybe even 28th and Stewart. We're trying to put our minds
25 into the mind that he grew up in. The place that he grew up

1 and we can't.

2 There's no way in the world that we can understand
3 that, but it happens. The reality is that he -- where he was
4 born, where he grew up, there's a hundred more like that.

5 And we dress ourselves up in suits and black robes
6 and uniforms and we meet him at the end of the line and we
7 say, for the good of society, we kill him. The good of
8 society? Maybe if we started back here. Maybe if we'd of
9 started back here, he's not going to be the president of the
10 world back here, there's no doubt. Maybe if we'd of started
11 back here, we could have stopped this. I don't want to see
12 anymore killings. I don't want to live here because I don't
13 like the killings. I've seen what I want to be. I don't want
14 to see any more killings.

15 I would stand on any corner, anywhere in this world
16 and say, stop the killing, and that is what I'm doing here
17 today. I don't want death anywhere. That may be a pipe
18 dream, it might just be a dream that's out there in some fairy
19 tale, but change something, please.

20 I'm going to be here next week, next year and the
21 year after that, so will you, and so will they and so will the
22 detectives and so will the marshals. I'm going to doing the
23 same thing over and over and over and over.

24 The mitigations he had, Detective Buczek got up on
25 the stand and talked about being remorseful, remember that?

1 That slipped everybody's mind, and I wrote it down because it
2 slipped my mind in the first trial. He said Mr. Johnson was
3 remorseful. He felt bad. That he was high on drugs. I'd
4 submit to you that's a mitigator. It doesn't do away with the
5 killing.

6 Let's look at his life. The totality of his life.
7 There was other people involved and I know Mr. Figler and I
8 maybe get upset, we may call it a racist thing, but if you
9 would have seen, if you would have heard the testimony of Tod
10 Armstrong when he was here earlier, about this big six foot,
11 middle class white kid who ran to his mom in Hawaii after the
12 situation went off.

13 In the transcripts, Severs, Carla Severs says, he
14 expected cocaine and money from his transactions, but he's not
15 being charged, and that just upsets us. It's not right. The
16 world we live in and the world we come from is different.
17 It's not the world that they see.

18 I go down there and we take pictures and I see the
19 family, I talk to the family. You want to know an amazing
20 thing? I went down there to talk to Ms. Edwards and Eunice,
21 Eunice didn't even show up the two times I went down there
22 because she was busy getting crack cocaine. And I was at this
23 apartment and I was talking to the family and asking them
24 about the life of John, and next door were people playing
25 music loud. And I went up there and knocked on the door and

1 showed them my badge and said, listen, I'm talking to these
2 people, I'm trying to save their son from the death, he's
3 going in on a trial in a death penalty. Fourteen year old
4 girl, you know what she said to me? "Fuck him, the nigger
5 probably did it." I can't comprehend that. As bad as we can
6 think our lives are, we don't live in that life.

7 If we want to ask for forgiveness, we must give
8 forgiveness first. Forgive our trespasses as those who
9 trespass against us. I felt that. We all say we're gonna be
10 tough on crime and that's a very important thing, right?
11 We're gonna be tough on crime. It's easy to be tough on
12 crime. It's easy to hate, I assure you. There are times that
13 I could hate for the rest of my life.

14 It's easy to be angry. That's the easiest thing in
15 the world. The hardest thing is to forgive and to move on. I
16 assure you it was not easy when I had asked forgiveness. When
17 I had to tell somebody who I wanted to kill, that I forgave
18 him. That's not easy. But it was worth it. You want to be
19 tough? Stand up and say, it's time to end the killing and
20 show forgiveness.

21 Back on the mitigators, Ace Hart, another kid,
22 another white class driving BMW, driving white kid, who's not
23 sitting here at the defense table and never will. He's the
24 one that drove them by this house and showed them where the
25 drugs were. And that upsets us, too, because this is not

1 getting down to the end. There are people who are never going
2 to face the death penalty, people who are never going to even
3 face a trial, and you want to blame it all on John White. I
4 mean, there are so many people involved, and it's so easy to
5 hate him.

6 Ace Hart knew everybody. I mean, the transcripts
7 show that out. And I ask you, please, a man's life is at
8 stake. I can't ask any more than this. I can't. I mean,
9 this is so surrealistic to me, a blue bunting around the
10 table. The reality is, I'm asking you not to kill and every
11 couple of minutes it floods my mind. I'm here to say stop to
12 the killing. I'm here to say don't -- please don't kill.

13 I would have stood at the Terra Linda house and
14 begged 'em not to kill. I will stand anywhere and ask someone
15 not to kill because it's not right, no matter what
16 circumstances, no matter how much we sterilize the situation,
17 no matter how much we tell those that this is the intellectual
18 thing to do. We hand down the verdicts and we wash our hands
19 of it and move on. It doesn't make it right.

20 Not until you can say you tried to do everything to
21 stop it. Not until you say we went in there at the cradle and
22 tried to stop it. I defy everybody in this courtroom to find
23 somebody who needs help at an early age to try to save them.
24 Maybe that's the thing to do.

25 I'm going to get back on the mitigators. Charla

1 Severs had motivations, complete motivations herself. We
2 talked about the DNA stuff and how a vaginal cream was found,
3 a vaginal semen was found on the outside of the pants and it
4 contained more than the semen contained. And that was
5 significant because they're saying that the blood that was
6 found on the pants came from the victim, but the blood was on
7 the back of the pants. And the doctor said he shot up close
8 from an inch away. It is significant because it cannot tell
9 you, beyond a reasonable doubt, who the shooter was, which
10 acts as a mitigator, because we know three other people were
11 there.

12 The DNA evidence that was there is very important,
13 and I'd ask you to please review it, it was the last testimony
14 given, it was by Mr. Wahl. And you'll see the significance,
15 and you as lawyers and now as judges have had to argue issues,
16 and so, it makes it easier. So, I'm asking you, don't rush to
17 judgment. Don't rush to judgment on this.

18 Does it matter if you wait long, another day to
19 review the transcripts and to argue it out as attorneys would?
20 That's all I'm asking you.

21 Ms. Hunterton got up here and she testified. She
22 said how well he did when he was in this program. Also on
23 evidence that we submitted, Mr. White did well in custody. In
24 a structured environment, he did right, he did well. And they
25 took him away from that, that program in prison because he had

1 too much Jello or he gave Kool-Aid to somebody else. The
2 infractions he had was he called a guard a dirty name or
3 something to that effect. There's no violence there, and
4 that's important.

5 At twenty-one, I acted and thought as a child, at
6 thirty-five, I put away those childish things and started
7 thinking like a man and taking responsibility. And I'm paying
8 for the past mistakes, but to think that we can place him in
9 the death penalty and hold him to the high standard that you
10 hold everybody else to is ridiculous because we're all to
11 blame for things like this. It may sound absurd, society is
12 to blame for him? Until you take a step to correct it, until
13 you do everything you can to stop it, we have no right to
14 condemn.

15 I stand before you after rambling -- closing
16 argument I think you know about. It would be easier to read
17 off a paper. This is coming from the heart. I don't want the
18 killing to continue. I cannot say that enough. And when I
19 sit down, the district attorney gets up and he makes a
20 statement. And I go back and the verdict comes down. There's
21 one of you amongst the three who knows killing is wrong. Who
22 knows it's not going to change anything. I'm asking you to
23 act in the present, there are mitigations and mitigations.
24 I've been sent here to save a man's life and so have you. You
25 know who you are and why we're here. Please, please do not

1 kill. Please.

2 JUDGE SOBEL: Thank you, Joe.

3 Gary?

4 MR. GUYMON: Thank you.

5 PLAINTIFF'S REBUTTAL ARGUMENT

6 MR. GUYMON: Let me begin in addressing Mr. Dayvid
7 Figler's comments as well as Joe Sciscento's comments on the
8 charging document, the indictment in this case. It is
9 certainly true that when this case was presented to the grand
10 jury, that there were a number of theories of criminal
11 culpability that were charged against Donte Johnson. He was
12 charged with premeditated and deliberate murder of these four
13 boys, he was charged as a co-conspirator as well. He was
14 charged with being an aider and abettor. Under three theories
15 of liability he was charged.

16 But at no time has the state proceeded with any
17 other theory, other than the fact that Donte Johnson is the
18 killer. It is plain and simple. At no time in the case of
19 Terrell Young or in Sikia Smith did the state allege that
20 Sikia Smith or Terrell Young were the killer.

21 At no time in the proceedings of the guilt phase was
22 it suggested that anyone other than Donte Johnson was the
23 killer in this case. Whether or not we charge the defendant
24 with three theories of criminal culpability should have no
25 consequence in your mind because it is the testimony and the

1 evidence that establishes that Donte Johnson was the killer,
2 and I renew my request for each of you to consider the
3 testimony of the four lay witnesses. You've now read it, and
4 what you now know is the quotes that appear on this board are
5 the very quotes that came into evidence before the jury.
6 Donte Johnson is the killer in this case. He is the sole
7 person who used that single .380 weapon and who stood over
8 those boys and lodged a bullet in their head as they lie there
9 helplessly. Pow. Pow. Pow. Pow.

10 And for a moment, we begin to understand how real
11 the crime was, and you know from the evidence who the killer
12 was, and it should be of no consequence that there is blood on
13 the back of Donte's pants versus the front of Donte's pants,
14 because if you reason through the evidence and you see the
15 diagram, what you know is that the door to the house is behind
16 Donte Johnson. So, if Donte Johnson walks out of the house as
17 he shoots one, two, three, four, he never turns his back on a
18 person that would be bleeding.

19 But if you use your common sense, what you realize
20 is the door is now behind us and the first boy's shot and the
21 second boy's shot, and to get to the door, you need to talk
22 behind the dead person, the person that you've now shot and
23 killed. And so, Donte Johnson had to shoot, turn his back on
24 Tracey Gorringer to get to the door unless he walks out
25 backwards. But to navigate that walk over bodies, he's got to

1 face the door. And when he turns his back on the man he's
2 killed, he gets blood on his pants. On no one else's pants,
3 not on Terrell Young's pants, not on Sikia Smith's pants was
4 blood found, the blood of Tracey Gorringer, but on the
5 defendant's pants because he is the man who stood over those
6 boys and shot and killed them.

7 None of the evidence suggests that anyone other than
8 Donte Johnson is the killer in this case. And while we hear
9 at great lengths that killing is wrong, what we also know, as
10 in the state of Nevada, there is a death penalty. And each
11 you have taken an oath that you will uphold the law. And the
12 law permits you to consider the death penalty because of the
13 aggravators that are present, and I would suggest to you that
14 all three of those aggravators are present as established by
15 the evidence in this case. And so, so long as it is the law
16 that you can consider, we ask you to consider it, and we call
17 upon your oath to consider it.

18 Each of you know something about proportionality and
19 we've heard a lot about other people that have gotten it,
20 we've heard about people that haven't got it. I want to talk
21 about proportionality just for a minute because, as each of
22 you know, somehow there's got to be meaning in the sentences
23 you hand down, and you do it everyday. That some people that
24 stand before you deserve the maximum punishment, whether
25 that's a term of years and how long that term of years is, is

1 what the statute provides.

2 And each of you have got to fix, in your mind, who
3 should get the maximum punishment, which offenders. For
4 instance, for a burglary should get a four to ten year
5 sentence, and which that do a burglary should only get a one
6 to four year sentence or whatever the range might be. And I
7 ask you, has Donte Johnson earned the maximum sentence because
8 of his conduct?

9 If Terrell Young, from a jury, received life without
10 the possibility of parole times four, for his participation as
11 he searched that house, what should the killer get? Should
12 the killer get something more than Terrell Young got? Or
13 should the actual shooter be rewarded with the same thing that
14 the person who searched the house did?

15 If Sikia Smith got life without the possibility of
16 parole times four, for his participation as he searched the
17 bedrooms, shouldn't the killer receive something more?
18 Shouldn't the very man that stood over those boys and from
19 close range chose to fire that weapon, chose to kill them,
20 shouldn't that man get something more if we're going to be
21 just and fair in the administration of punishment? I suggest
22 we should. I suggest the killer should get something more
23 than those who didn't shoot and kill.

24 And I would submit to you that that is why there is
25 a range in punishments, and we call upon your judgment to

1 apply that range and what Donte Johnson should receive for his
2 participation.

3 I would submit to you that quadruple homicides are
4 not all that common here in Clark County. And I understand
5 the Court, Judge Sobel, has sat through a number of quadruple
6 homicide cases. Visha [phonetic], who the Court is very
7 familiar with, did not receive the death penalty for a
8 quadruple homicide, but the death penalty was not the law at
9 the time, we didn't have the death penalty in our state at the
10 time that Visha was tried for a quadruple homicide.

11 The Smith case, which was tried in this Court, was a
12 quadruple homicide, I believe, and Mr. Smith received the
13 death penalty.

14 JUDGE SOBEL: It was only three, Gary.

15 MR. GUYMON: I stand corrected. He still received
16 the death penalty.

17 I know for certain that part -- or the Evans and
18 Parnell [sic] case, is it Parnell Evans? Or Evans was a
19 quadruple homicide tried in this courtroom, he received the
20 death penalty. Floyd tried in this courtroom, quadruple
21 homicide, received the death penalty. Those are the only
22 quadruple homicide cases that I'm familiar with in Clark
23 County, Nevada. Donte Johnson now has the distinction, along
24 with the others, of being responsible, being the actual killer
25 in a quadruple homicide, and I would submit to you, when you

1 apply a proportionality, that Donte Johnson deserves the same
2 punishment as the others that have gone forth who committed a
3 quadruple homicide.

4 There is a continuum that one must apply in order to
5 pick the sentence that fits, and I would submit that Donte
6 Johnson has truly earned the distinction that permits the
7 maximum sentence. This was not an isolated incident, this was
8 not a moment in time where Donte Johnson just did something
9 that was inconsistent with his conduct, but rather, it is the
10 culmination of his conduct that brings him in front of you,
11 accountable for the homicides and worthy of the death penalty,
12 truly worthy for shooting and killing those boys.

13 And I submit to you it is painfully unfair for
14 Terrell Young and Sikia Smith to receive -- or for Donte
15 Johnson to receive the same punishments that they got when
16 they weren't the shooters, and so, I ask for a just sentence
17 and proportionally applying the punishments here.

18 Much has been made about the fact that Tod Armstrong
19 and Ace Hart haven't been charged nor have they, however,
20 received any immunity. And if there is sufficient evidence
21 that would truly bring about a conviction for either one of
22 them, they, too, will be charged and they will be accountable
23 for their conduct. And a jury will have to make a
24 determination as to whether or not their conduct gives rise to
25 their guilt or their innocence.

1 But I would submit to you that Tod Armstrong, by --
2 there is no evidence nor is there any account of the fact that
3 Tod Armstrong was there that night. You've read the
4 transcript and you realize that Charla Severs, who once said,
5 hey, Donte was there, but Tod Armstrong was there, too, she
6 testified to that in front of the grand jury the second time
7 she appeared in front of the grand jury, but ultimately, she
8 recanted and said, no, that's not true. I'm just upset that
9 Tod Armstrong is not being punished, because after all, he was
10 in on the planning of this.

11 Tod Armstrong, by his own admission, says, I went by
12 the house and the house was pointed out at that point in time.
13 Is that sufficient evidence to merit a criminal conviction? I
14 don't know that it is.

15 Is Ace -- Ace Hart's participation, the fact that
16 Tod Armstrong says that he was in the car and that Ace Hart
17 pointed out the house, is that sufficient to bring about a
18 criminal conviction for four homicides, kidnapping, robbery
19 and burglary? And I don't know that it is.

20 Well, what we do know is that Ace Hart and Tod
21 Armstrong were not in the house on the night in question.
22 They were not the searchers, they were not the persons who
23 took the property out of the house and they certainly weren't
24 the killer. They were not the sole person who shot and killed
25 those boys and sent them into eternity.

1 Something was said about my partner's last
2 prosecution, Fernando Hernandez. Again, using a continuum of
3 proportionality, some of you who are not from our jurisdiction
4 should know that -- or do not know but may know now, after I
5 tell you, that Fernando Hernandez was a person who had no
6 criminal background, there was one victim, his ex-wife, and he
7 got the death penalty.

8 And in that case, I attended the closing arguments,
9 and Mr. Daskas did not say that Fernando Hernandez was the
10 worst of the worst. He said that his conduct was the worst of
11 the worst as he displayed a picture of the ex-wife, the
12 victim, who now had a butter knife lodged up inside of her
13 vagina on the 8th -- the day of their 8th anniversary. That
14 conduct would be among the worst of the worst, but at no time
15 did Mr. Daskas indicate that that defendant was the worst of
16 the worst because he had no criminal background.

17 That is very unlike Donte Johnson, however. Donte
18 Johnson's criminal career, and perhaps the day of August 14th,
19 1998, was forecast in the presentence investigation report you
20 people have now received. You will read in the presentence
21 investigation reports, as a result of his federal bank robbery
22 at page 12, the writer of that report indicated that Donte
23 Johnson displayed no remorse for his criminal conduct. At
24 page 13, that he had no respect for authority. At page 14,
25 that the rehabilitation efforts of the state of California

1 have failed. That his grandmother couldn't control him at
2 page 12. Nor could the criminal justice system control him,
3 at page 12, 13 and 14.

4 And perhaps in 1993, there was a forecasting or a
5 prediction that Donte Johnson would sit in this courtroom or
6 in a courtroom for yet greater criminal offenses.

7 And while Mrs. Hunterton would like to change Donte
8 Johnson's conduct, there is no promise that she or anyone else
9 can change his conduct, and I would submit to you that the
10 testimony that was submitted to you by Agent Clark certainly
11 makes that clear as does the defendant's prior presentence
12 investigation report, because the state of California
13 attempted, in every way, when they sent him to the youth
14 camps, when they sent him to the California Youth Authority,
15 they attempted to re-program him, to have him engage in
16 courses that would rehabilitate him, and he thumbed his nose
17 at them.

18 The first time, he elected, while on probation and
19 while receiving that programming, he elected to bring a
20 handgun to a school and re-violates. And yet while on
21 probation, he elects to join his partners and go into a bank
22 and do a federal bank takeover. He's placed into custody in
23 an incarceration position for twenty-six months, and he's
24 released, and then for four months, while he continues his
25 programming, he does well, but thumbs his nose at that --

1 those rehabilitation efforts when he ultimately becomes a
2 parolee at large and tells his parole officer, you'll never
3 find me.

4 Well, the criminal justice system found Donte
5 Johnson. Donte Johnson found Peter Talamantez, he found Matt
6 Mowen, he found Tracey Gorringer, and he found Jeffrey Biddle.
7 A jury has found that he is guilty of those crimes, and the
8 evidence establishes him and only him as the killer in the
9 case.

10 What is justice but that every man get his due. I
11 submit to you that it is painfully unfair for the non-shooters
12 to receive the same penalty as the shooter. The shooter in
13 this case has earned the dubious honor of the maximum penalty,
14 the harshest penalty that the state of Nevada has, and while
15 some may not like the fact that in this state we have the
16 death penalty, the truth is, we do.

17 And I would submit to you that the harshest penalty,
18 the most severe penalty, is due the defendant for a horrific
19 offense, an offense wherein boys were held helplessly in their
20 own home, where they were shot and killed for as little as two
21 hundred and forty dollars (\$240). The transcript reads, as
22 much as two hundred and fifty dollars (\$250) at times by Bryan
23 Johnson, a VCR and a PlayStation.

24 While the defense would have you believe that
25 somehow Donte Johnson had some remorse when he said, I felt

1 bad about killing Tracey Gorringer because Tracey Gorringer was
2 cooperating. The truth is, he laughed about these killings as
3 he talked about how these boys bled like Niagara Falls or
4 blood squirted out of their head like Niagara Falls; as he was
5 excited to have made the front page, thrilled by the killings.

6 I submit to you, that very man, Donte Johnson,
7 deserves the harshest penalty, and we ask you to impose it.

8 JUDGE SOBEL: Thank you. Anything more to come
9 before the Court before we recess for deliberations?

10 MR. FIGLER: I have those copies as promised, Your
11 Honor.

12 JUDGE SOBEL: Thank you.

13 MR. FIGLER: I'd like to mark it.

14 JUDGE SOBEL: Okay. We're going to be in recess.
15 By the way, guys, make sure that Carol knows where you are.
16 We have sort of tentative plans for the rest of the time, but
17 make sure we know where to reach you in case we decide to go
18 through the lunch hour. Okay.

19 MR. FIGLER: I give you these --

20 THE COURT: Carol, bring us those when you're -- are
21 they ready?

22 (At 11:25 a.m., the Judges retire to deliberate)

23 * * * * *

24 (At 1:21 p.m., the Judges returned with their verdict)

25 (Off-record colloquy)

1 JUDGE SOBEL: Okay. Everybody can remain seated.
2 This isn't like the return of a jury verdict. There's a lot
3 of people in the room with very strong emotions, please
4 maintain for the few minutes we're going to be here,
5 appropriate decorum.

6 As I said, this isn't a jury verdict, I'm not going
7 to have it read in the usual dramatic fashion that jury
8 verdicts with multiple decisions are usually read.

9 To start out with, the verdict in each case is
10 death.

11 I'm going to read one of those verdicts.

12 "The jury in the above entitled case, having found
13 the defendant, Donte Johnson, guilty of Count Eleven, murder
14 in the first degree with use of a deadly weapon, and we, the
15 three judge panel, having found that the aggravating
16 circumstance or circumstances outweigh any mitigating
17 circumstance or circumstances, impose a sentence of death."

18 In each of the other counts, twelve, thirteen and
19 fourteen, there's the identical findings and the identical
20 penalty.

21 In terms of the special verdicts, the special
22 verdicts are each identical to each other, in that they both
23 find in terms of an aggravating circumstance; the first and
24 third aggravating circumstances, the panel did not find,
25 beyond a reasonable doubt, the finding -- a second aggravator.

1 They did find that the murder was committed while the person
2 was engaged, alone or with others in the commission of or an
3 attempt to commit or flight after committing or attempting to
4 commit any robbery, arson in the first degree, burglary,
5 invasion in the home or kidnapping in the first degree, and
6 the person charged, killed or attempted to kill the person
7 murdered or knew or had reason to know that life would be
8 taken or lethal force used. And the third, the defendant has
9 in the immediate proceeding been convicted of more than one
10 offense of murder in the first or second degree.

11 Each of those special verdicts, as I said, were
12 identical to the other.

13 In terms of mitigators, the panel found and checked
14 the youth of the defendant at the time of the crime and as any
15 other mitigating circumstances as to each count, also checked
16 his horrible childhood.

17 That's the verdict of the three judge panel. Each
18 of the verdicts is appropriately signed by the Judges and will
19 be lodged with the clerk of the court.

20 Would you set the sentencing date for formal
21 sentencing on these counts and the others of which the jury
22 convicted Mr. Johnson or Mr. White.

23 THE CLERK: Sentencing date will be September 7 at
24 9:00 a.m.

25 JUDGE SOBEL: Mr. Figler, Mr. Sciscento, anything

1 else that must come before the Court now?

2 MR. FIGLER: We'd like to poll each Judge to say

3 that, in fact, was their verdict in this particular case,

4 Judge.

5 JUDGE SOBEL: I don't know if there's any precedent

6 for that, I have no problem with it.

7 Judge Elliott, is that your verdicts as read?

8 JUDGE ELLIOTT: Yes.

9 JUDGE SOBEL: Judge Griffith, are those your

10 verdicts as read?

11 JUDGE GRIFFITH: Yes, sir.

12 JUDGE SOBEL: And they are my verdicts as read.

13 Anything else, Dayvid?

14 MR. FIGLER: No. Just that the record was noted

15 that we believe that this three judge panel is completely

16 unconstitutional and we're not surprised by the verdict.

17 JUDGE SOBEL: Well, your lack of surprise is noted,

18 Mr. Figler.

19 We are in recess.

20 PROCEEDINGS CONCLUDED AT 1:25 A.M.

21 * * * * *

22

23

24

25

INDEX

NAME	DIRECT	CROSS	REDIRECT	RECROSS	VOIR DIRE
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PLAINTIFF'S WITNESSES

None

DEFENDANT'S WITNESSES

Eunice Cain	3	16	--	--	--
Keonna Bryant	17	46	--	--	--
Johnnisha White	48	64	--	--	--
Nancy Hunterton	66	76	--	--	--
Jane Edwards	80	--	--	--	--

EXHIBITS

DESCRIPTION	ADMITTED
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PLAINTIFF'S EXHIBITS

None

DEFENDANT'S EXHIBITS

None

CERTIFICATION

I (WE) CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM
THE ELECTRONIC SOUND RECORDING OF THE PROCEEDINGS IN THE
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322
1 VER

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

FILED IN OPEN COURT

JUL 26 2000 11:25 AM '00

SHIRLEY B. PARRAGUIRRE, CLERK

BY Carole D'Aloia

CAROLE D'ALOIA

DEPUTY

4 THE STATE OF NEVADA,

5 Plaintiff,

6 -vs-

7 DONTE JOHNSON

8 Defendant.
9
10

Case No. C153154
Dept. No. V
Docket H

11 VERDICT

12 The Jury in the above entitled case, having found the Defendant, DONTE JOHNSON,
13 Guilty of COUNT XI - MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY
14 WEAPON, and we, the Three-Judge Panel, having found that the aggravating circumstance or
15 circumstances outweigh any mitigating circumstance or circumstances impose a sentence of,

16 _____ A definite term of 100 years imprisonment, with eligibility for parole beginning
17 when a minimum of 40 years has served,

18 _____ Life in Nevada State Prison With the Possibility of Parole.

19 ☒ Life in Nevada State Prison Without the Possibility of Parole.

20 ☒ Death.
21

22 DATED at Las Vegas, Nevada, this 26th day of July, 2000

23
24 [Signature]
25
26 [Signature]
27
28 Michael R. Smith

CE52

AA02854

323
1 VER

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

FILED IN OPEN COURT

JUL 26 2000 11:25 AM 20

SHIRLEY B. PARRAGUIRRE, CLERK

BY Carole D'Aloia
CAROLE D'ALOIA DEPUTY

4 THE STATE OF NEVADA,
5 Plaintiff,

6 -vs-

7 DONTE JOHNSON

8 Defendant.
9
10

Case No. C153154
Dept. No. V
Docket H

11 VERDICT

12 The Jury in the above entitled case, having found the Defendant, DONTE JOHNSON,
13 Guilty of COUNT XII - MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY
14 WEAPON, and we, the Three-Judge Panel, having found that the aggravating circumstance or
15 circumstances outweigh any mitigating circumstance or circumstances impose a sentence of,

16 _____ A definite term of 100 years imprisonment, with eligibility for parole beginning
17 when a minimum of 40 years has served,

18 _____ Life in Nevada State Prison With the Possibility of Parole.

19 _____ Life in Nevada State Prison Without the Possibility of Parole.

20 ☒ Death.
21

22 DATED at Las Vegas, Nevada, this 26th day of July, 2000

23 [Signature]

24 [Signature]

25 [Signature]
26
27
28

CE52

AA02855

324

1 VER

DISTRICT COURT
CLARK COUNTY, NEVADA

FILED IN OPEN COURT
JUL 26 2000 01:25 PM
20

SHIRLEY B. PARRAGUIRRE, CLERK
BY Carole D'Aloia
CAROLE D'ALOIA DEPUTY

THE STATE OF NEVADA,
Plaintiff,

-vs-

DONTE JOHNSON

Defendant.

Case No. C153154
Dept. No. V
Docket H

VERDICT

The Jury in the above entitled case, having found the Defendant, DONTE JOHNSON, Guilty of COUNT XIII - MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY WEAPON and we, the Three-Judge Panel, having found that the aggravating circumstance or circumstances outweigh any mitigating circumstance or circumstances impose a sentence of,

- ☐ A definite term of 100 years imprisonment, with eligibility for parole beginning when a minimum of 40 years has served,
- ☐ Life in Nevada State Prison With the Possibility of Parole.
- ☒ Life in Nevada State Prison Without the Possibility of Parole.
- ☒ Death.

DATED at Las Vegas, Nevada, this 26th day of July, 2000

[Signature]
[Signature]
Michael R. Smith

CE52

325

1 VER

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

FILED IN OPEN COURT
JUL 26 2000 11:25 AM 20

SHIRLEY B. PARRAGUIRRE, CLERK

BY Carole D'Aloia
CAROLE D'ALOIA DEPUTY

4 THE STATE OF NEVADA,

5 Plaintiff,

6 -vs-

7 DONTÉ JOHNSON

8 Defendant.
9
10

Case No. C153154
Dept. No. V
Docket H

11 VERDICT

12 The Jury in the above entitled case, having found the Defendant, DONTÉ JOHNSON,
13 Guilty of COUNT XIV - MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY
14 WEAPON, and we, the Three-Judge Panel, having found that the aggravating circumstance or
15 circumstances outweigh any mitigating circumstance or circumstances impose a sentence of,

16 _____ A definite term of 100 years imprisonment, with eligibility for parole beginning
17 when a minimum of 40 years has served,

18 _____ Life in Nevada State Prison With the Possibility of Parole.

19 _____ Life in Nevada State Prison Without the Possibility of Parole.

20 ☒ Death.
21

22 DATED at Las Vegas, Nevada, this 26th day of July, 2000

23 [Signature]
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27 [Signature]
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326
1 VER

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

FILED IN OPEN COURT
JUL 26 2000 11:25 AM 20

4 THE STATE OF NEVADA,

5 Plaintiff,

6 -vs-

7 DONTÉ JOHNSON

8 Defendant.
9
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11

SHIRLEY B. PARRAGUIRRE, CLERK

BY *Carole D'Aloia*

CAROLE D'ALOIA

DEPUTY

Case No. C153154

Dept. No. V

Docket H

12 SPECIAL
13 VERDICT

14 The Jury in the above entitled case, having found the Defendant, DONTÉ JOHNSON,
15 Guilty of COUNT XI - MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY
16 WEAPON, and we, the Three-Judge Panel, designate that the aggravating circumstance or
17 circumstances which have been checked below have been established beyond a reasonable
18 doubt.

19 ☒ The murder was committed while the person was engaged, alone or with
20 others, in the commission of or an attempt to commit or flight after
21 committing or attempting to commit, any robbery, arson in the first degree,
22 burglary, invasion of the home or kidnaping in the first degree, and the
23 person charged:

24 (a) Killed or attempted to kill the person murdered;

25 (b) Knew or had reason to know that life would be taken or lethal force
26 used.

27 ☐ The murder was committed to avoid or prevent a lawful arrest or to effect
28 an escape from custody.

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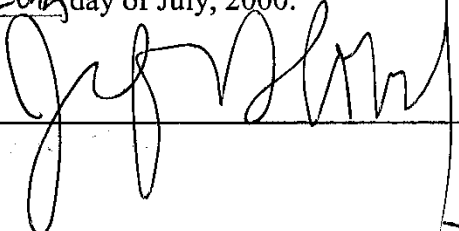
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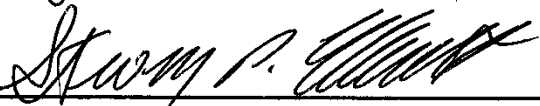
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✓

The defendant has, in the immediate proceeding, been convicted of more than one offense of murder in the first or second degree. For the purposes of this subsection, a person shall be deemed to have been convicted of a murder at the time the jury verdict of guilt is rendered or upon pronouncement of guilt by a judge or judges sitting without a jury.

DATED at Las Vegas, Nevada, this 26th day of July, 2000.







327

1 VER

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

FILED IN OPEN COURT

JUL 26 2000 12:55 PM

SHIRLEY B. PARRAGUIRRE, CLERK

BY Carole D'Aloia

CAROLE D'ALOIA

DEPUTY

5 THE STATE OF NEVADA,

6 Plaintiff,

7 -vs-

8 DONTÉ JOHNSON

10 Defendant.

Case No. C153154

Dept. No. V

Docket H

11
12 SPECIAL
VERDICT

13 The Jury in the above entitled case, having found the Defendant, DONTÉ JOHNSON,
14 Guilty of COUNT XII - MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY
15 WEAPON, and we, the Three-Judge Panel, designate that the mitigating circumstance or
16 circumstances which have been checked below have been established.

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

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

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

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

23 ☒ Any other mitigating circumstances horrible childhood

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25
26 DATED at Las Vegas, Nevada, this 26th day of July, 2000.

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28 [Signature]

[Signature]
Michael R. [Signature]

CE52

AA02860

308

1 VER

DISTRICT COURT
CLARK COUNTY, NEVADA

FILED IN OPEN COURT

JUL 26 2000 1:25 PM '00

SHIRLEY B. PARRAGUIRRE, CLERK

BY Carole D'Aloia

CAROLE D'ALOIA DEPUTY

5 THE STATE OF NEVADA,

6 Plaintiff,

7 -vs-

8 DONTÉ JOHNSON

10 Defendant.

Case No. C153154
Dept. No. V
Docket H

11
12 SPECIAL
VERDICT

13 The Jury in the above entitled case, having found the Defendant, DONTÉ JOHNSON,
14 Guilty of COUNT XIII - MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY
15 WEAPON, and we, the Three-Judge Panel, designate that the mitigating circumstance or
16 circumstances which have been checked below have been established.

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

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

21 ☒ The Defendant acted under duress or under the domination of another person.

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

23 ☒ Any other mitigating circumstances horrible childhood

26 DATED at Las Vegas, Nevada, this 26 day of July, 2000.

27
28 [Signature] [Signature]
Michael R. Sullivan

CE52

329

1 VER

DISTRICT COURT
CLARK COUNTY, NEVADA

FILED IN OPEN COURT

JUL 26 2000 2:12 PM '00

SHIRLEY B. PARRAGUIRRE, CLERK

BY

Carole D'Aloia

CAROLE D'ALOIA

DEPUTY

THE STATE OF NEVADA,

Plaintiff,

-vs-

DONTE JOHNSON

Defendant.

Case No. C153154
Dept. No. V
Docket H

SPECIAL
VERDICT

The Jury in the above entitled case, having found the Defendant, DONTE JOHNSON, Guilty of COUNT XIV - MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY WEAPON, and we, the Three-Judge Panel, designate that the aggravating circumstance or circumstances which have been checked below have been established beyond a reasonable doubt.

✓
The murder was committed while the person was engaged, alone or with others, in the commission of or an attempt to commit or flight after committing or attempting to commit, any robbery, arson in the first degree, burglary, invasion of the home or kidnapping in the first degree, and the person charged:

(a) Killed or attempted to kill the person murdered;

(b) Knew or had reason to know that life would be taken or lethal force used.

_____ The murder was committed to avoid or prevent a lawful arrest or to effect an escape from custody.

CE52

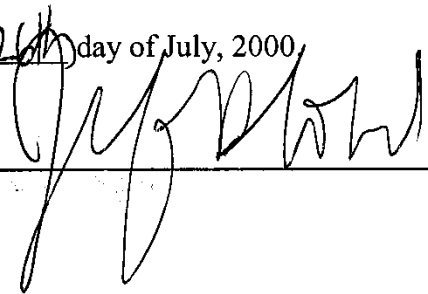
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✓

The defendant has, in the immediate proceeding, been convicted of more than one offense of murder in the first or second degree. For the purposes of this subsection, a person shall be deemed to have been convicted of a murder at the time the jury verdict of guilt is rendered or upon pronouncement of guilt by a judge or judges sitting without a jury.

DATED at Las Vegas, Nevada, this 26th day of July, 2000.







330

1 VER

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

FILED IN OPEN COURT
JUL 26 2000 11:25AM '00

SHIRLEY B. PARRAGUIRRE, CLERK

4
5 BY Carole D'Alloia
CAROLE D'ALOIA DEPUTY

6 THE STATE OF NEVADA,

Plaintiff,

7 -vs-

8 DONTÉ JOHNSON

9
10 Defendant.

Case No. C153154
Dept. No. V
Docket H

11
12 SPECIAL
VERDICT

13 The Jury in the above entitled case, having found the Defendant, DONTÉ JOHNSON,
14 Guilty of COUNT XI - MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY
15 WEAPON, and we, the Three-Judge Panel, designate that the mitigating circumstance or
16 circumstances which have been checked below have been established.

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

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

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

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

23 ☒ Any other mitigating circumstances horrible childhood.

24
25
26 DATED at Las Vegas, Nevada, this 26th day of July, 2000.

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28 [Signature]

[Signature]
Michael R. Smith

CE52

AA02864

331

1 VER

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

FILED IN OPEN COURT
JUL 26 2000 11:25 AM 20
SHIRLEY B. PARRAGUIRRE, CLERK
BY Carole D'Alon
CAROLE D'ALOIA DEPUTY

4 THE STATE OF NEVADA,
5 Plaintiff,

6 -vs-

7 DONTE JOHNSON

8 Defendant.
9
10

11 SPECIAL
12 VERDICT

13 The Jury in the above entitled case, having found the Defendant, DONTE JOHNSON,
14 Guilty of COUNT XII - MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY
15 WEAPON, and we, the Three-Judge Panel, designate that the aggravating circumstance or
16 circumstances which have been checked below have been established beyond a reasonable
17 doubt.

18 ☒

19 The murder was committed while the person was engaged, alone or with
20 others, in the commission of or an attempt to commit or flight after
21 committing or attempting to commit, any robbery, arson in the first degree,
22 burglary, invasion of the home or kidnaping in the first degree, and the
23 person charged:

24 (a) Killed or attempted to kill the person murdered;

25 (b) Knew or had reason to know that life would be taken or lethal force
26 used.

27 ☐

28 The murder was committed to avoid or prevent a lawful arrest or to effect
an escape from custody.

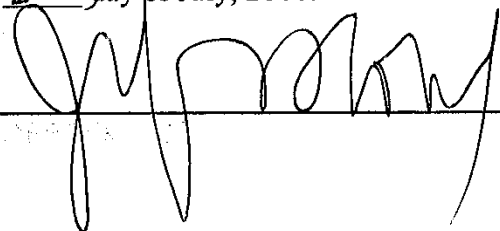
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✓

The defendant has, in the immediate proceeding, been convicted of more than one offense of murder in the first or second degree. For the purposes of this subsection, a person shall be deemed to have been convicted of a murder at the time the jury verdict of guilt is rendered or upon pronouncement of guilt by a judge or judges sitting without a jury.

DATED at Las Vegas, Nevada, this 26th day of July, 2000.







332

1 VER

DISTRICT COURT
CLARK COUNTY, NEVADA

FILED IN OPEN COURT
JUL 26 2000 11:25 AM '00

SHIRLEY B. PARRAGUIRRE, CLERK

BY Carole D'Aloia
CAROLE D'ALOIA DEPUTY

2
3
4 THE STATE OF NEVADA,

5 Plaintiff,

6 -vs-

7 DONTE JOHNSON

8 Defendant.
9
10

Case No. C153154
Dept. No. V
Docket H

11 SPECIAL
12 VERDICT

13 The Jury in the above entitled case, having found the Defendant, DONTE JOHNSON,
14 Guilty of COUNT XIII - MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY
15 WEAPON, and we, the Three-Judge Panel, designate that the aggravating circumstance or
16 circumstances which have been checked below have been established beyond a reasonable
17 doubt.

18 ✓ The murder was committed while the person was engaged, alone or with
19 others, in the commission of or an attempt to commit or flight after
20 committing or attempting to commit, any robbery, arson in the first degree,
21 burglary, invasion of the home or kidnaping in the first degree, and the
22 person charged:

23 (a) Killed or attempted to kill the person murdered;

24 (b) Knew or had reason to know that life would be taken or lethal force
25 used.

26 _____ The murder was committed to avoid or prevent a lawful arrest or to effect
27 an escape from custody.
28

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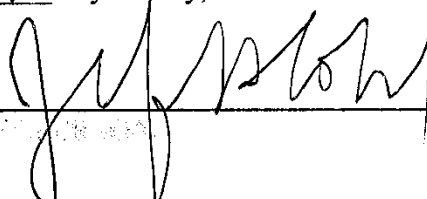
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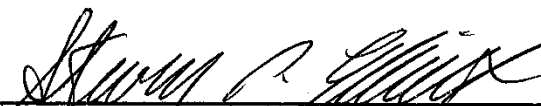
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✓

The defendant has, in the immediate proceeding, been convicted of more than one offense of murder in the first or second degree. For the purposes of this subsection, a person shall be deemed to have been convicted of a murder at the time the jury verdict of guilt is rendered or upon pronouncement of guilt by a judge or judges sitting without a jury.

DATED at Las Vegas, Nevada, this 26 day of July, 2000.







333

1 VER

DISTRICT COURT
CLARK COUNTY, NEVADA

FILED IN OPEN COURT

JUL 26 2000 1:25 PM '00

SHIRLEY B. PARRAGUIRRE, CLERK

BY Carole D'Aloia

CAROLE D'ALOIA

DEPUTY

5 THE STATE OF NEVADA,

6 Plaintiff,

7 -vs-

8 DONTÉ JOHNSON

9
10 Defendant.

Case No. C153154
Dept. No. V
Docket H

11
12 SPECIAL
VERDICT

13 The Jury in the above entitled case, having found the Defendant, DONTÉ JOHNSON,
14 Guilty of COUNT XIV - MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY
15 WEAPON, and we, the Three-Judge Panel, designate that the mitigating circumstance or
16 circumstances which have been checked below have been established.

- 17 ☐ The murder was committed while the Defendant was under the influence of
18 extreme mental or emotional disturbance.
- 19 ☐ The Defendant was an accomplice in a murder committed by another person and
20 his participation in the murder was relatively minor.
- 21 ☐ The Defendant acted under duress or under the domination of another person.
- 22 ☒ The youth of the Defendant at the time of the crime.
- 23 ☒ Any other mitigating circumstances Horrible childhood

24
25
26 DATED at Las Vegas, Nevada, this 26 day of July, 2000.

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28 [Signature]

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CE52

CASE NO. C153154
DEPT. NO. 8

DISTRICT COURT
CLARK COUNTY, NEVADA

MAY 7 3 11 PM '04

-ooo-

ORIGINAL

THE STATE OF NEVADA,

Plaintiff,

vs.

DONTE JOHNSON,
#1586283,

Defendant.

REPORTER'S TRANSCRIPT

OF

ARGUMENTS

BEFORE THE HON. LEE A. GATES, DISTRICT JUDGE
Wednesday, April 28, 2004
9:45 a.m.

APPEARANCES:

For the Plaintiff: GARY GUYMON, ESQ.
Chief Deputy District
Attorney
DAVID M. STANTON, ESQ.
Deputy District Attorney

For the Defendant: ALZORA B. JACKSON, ESQ.
Deputy Special Public
Defender
BRET O. WHIPPLE, ESQ.
Deputy Special Public
Defender

Reported by: CHERYL GARDNER, RMR-RPR
CCR No. 230

CHERYL GARDNER, RPR-RMR, CCR 230
(702) 258-0517 babyboy1@lvcm.com

RECEIVED

MAY - 7 2004

COUNTY CLERK

1 LAS VEGAS, CLARK COUNTY, NV, WED., APRIL 28, 2004

2 9:45 a.m.

3 -oOo-

4 P R O C E E D I N G S

5 THE COURT: Ms. Jackson.

6 MS. JACKSON: Good morning. We're
7 here on the Johnson matter. We're prepared to go
8 forward.

9 THE COURT: All right.

10 MS. JACKSON: Mr. Bret Whipple from
11 our office is co-counsel. He's present. May
12 Mr. Johnson come down, Your Honor?

13 THE COURT: Fine. All right.
14 Proceed.

15 MS. JACKSON: Your Honor, if I may
16 suggest to the Court if we could argue each
17 proposed aggravator in the same manner and fashion
18 as the State set them forth, would that be
19 appropriate?

20 THE COURT: That's fine. However you
21 want to do it.

22 MS. JACKSON: All right. As to the
23 first item the State sets forth the statements
24 basically 1 and 2 are the same, the two
25 codefendants in this case Terrell Young and Sikia

1 Smith. It appears that we're on the same page in
2 reviewing their response.

3 They concede that unless these
4 individuals were to take the stand and testify,
5 that their statements would not come in except for
6 impeachment purposes and that would be the law
7 pursuant to Bruton versus -- the Bruton versus
8 United States 391 U.S. 123, 1968 and as well as
9 Lord versus State, 107 Nevada 28, so I don't think
10 we have a real issue as to 1 and 2, Your Honor.

11 THE COURT: Is that correct?

12 MR. STANTON: That's correct, Your
13 Honor. David Stanton on behalf of the State. I
14 would just add one additional thing because it is
15 relevant to some of the other arguments down the
16 road that is that we are specifically and formally
17 withdrawing the State's pursuing the enumerated
18 aggravator of 200.033, that is that the defendant
19 committed these four murders knowingly creating a
20 great risk of death to more than one person.

21 THE COURT: All right. That's fine.
22 And the other issue before -- I'll grant the motion
23 on that. All right?

24 All right. What's the next one?

25 MS. JACKSON: No. 3 we've already

1 talked about Sikia Smith and Terrell Young and
2 essentially that No. 3 talks about the testimony.
3 I don't know that there was any prior testimony so
4 our response would be the same. They set that one
5 out separately so I addressed it separately.

6 MR. STANTON: That's correct, Your
7 Honor. Once again the State's in essence in
8 agreement, and to clarify the State's position, we
9 will not seek to use the prior statements of
10 Mr. Young or Mr. Smith absent their testimony for
11 purposes of impeachment.

12 THE COURT: Okay. That will be the
13 order. The next one.

14 MS. JACKSON: No. 4, Your Honor, again
15 they concede and Mr. Stanton has put on the record
16 this morning that the aggravator as far as creating
17 a great risk of death to more than one person has
18 been stricken or never actually was filed in their
19 amended notice and then my question is because of
20 that being the case, why then would they still want
21 to put her on?

22 THE COURT: Who?

23 MS. JACKSON: Ms. Fletcher.

24 THE COURT: Actually you have
25 Ms. Fletcher, you have Ms. Norman and Mr. Horn.

1 MS. JACKSON: That's right.

2 THE COURT: I suspect they could
3 testify to the things at the crime scene. That's
4 what's normally testified to except to you
5 objecting to them testifying to it because it would
6 show it was presenting a risk of harm to more than
7 one person.

8 MS. JACKSON: Yeah, and they've
9 already conceded that.

10 MR. STANTON: Correct. Items 4, 5,
11 and 6 regarding crime scene analysts once again we
12 would not be pursuing 200.033(3) as an enumerated
13 aggravator, however as the Court has indicated,
14 those three witnesses have direct relevant
15 testimony to issues.

16 THE COURT: Right.

17 MR. STANTON: That's certainly at
18 issue.

19 MS. JACKSON: Your Honor, we've
20 already -- the State has already moved and the
21 Court has ordered that in order for this jury to be
22 made aware of the first phase proceedings that
23 we're going to read into the record what happened
24 in the first phase. I know that these three
25 technicians testified at the trial. They will have

1 heard that testimony. They'd simply get up in the
2 penalty phase and repeat it.

3 THE COURT: I don't know what they're
4 going to say. I'm not going to rule on that
5 because I don't know. They're not going to talk
6 about greater risk of harm. That's not in there
7 and what else I don't know so that's not something
8 I'll rule on. All right. What's the next one?

9 MS. JACKSON: That takes care of 4, 5,
10 and 6. The next area, Your Honor, is the victim
11 impact. Your Honor, and just before we begin
12 argument on that -- well, actually this is
13 argument, one of the things that I set forth in my
14 opposition -- and I gave the Court a copy of the
15 transcript -- Judge Sobel ruled on this issue
16 before.

17 So this is a court of equal
18 jurisdiction, however I think that under the
19 Doctrine of stare decisis which I cited in my brief
20 according to Black's Law Dictionary is a deliberate
21 or solemn decision of Court made after argument on
22 the question of law fairly arising in the case and
23 necessary to a determination is an authority or
24 binding precedent in this same court order or in
25 other courts of equal or lower rank in subsequent

1 cases where the very point is again in
2 controversy.

3 I think that that needs --

4 THE COURT: What you're saying if he
5 was wrong, I have to be wrong too.

6 MS. JACKSON: No. That's why I only
7 quote stare decisis on this particular instance
8 because there are many other issues where
9 Judge Sobel, for example, allowed testimony that
10 I'm asking this Court to ignore because in fact
11 Judge Sobel was mistaken.

12 THE COURT: What are you asking for,
13 the victims' statements? What are you asking?

14 MS. JACKSON: I'm asking this Court to
15 follow the limits set by Judge Sobel after I
16 briefed the Gardner versus Florida case. Your
17 Honor, we have a situation with four young men my
18 client has been convicted of murdering.

19 THE COURT: So what are you asking the
20 Court?

21 MS. JACKSON: They're asking for a
22 wide open range to bring in as many parents it says
23 here siblings, parents and/or siblings of these
24 individuals and that could go on up to 20 to 30
25 people. What Judge Sobel did and I would suggest

1 to the Court this is a very delicate issue, but I
2 think that to limit each victim to one parent is
3 appropriate in this case.

4 THE COURT: No, I'm not doing that.
5 Both parents -- they're parents, aren't they? The
6 statute allows it so both of them can speak if they
7 want to.

8 MR. STANTON: It's also beyond that,
9 Your Honor, it's relations to the victims. It's
10 not just parents.

11 MS. JACKSON: So, Your Honor --

12 THE COURT: Wait. What now?

13 MR. STANTON: It's not just limited to
14 parents.

15 THE COURT: I'm just talking about she
16 just brought the parents. Now we'll go to the next
17 one. She asked that one parent be allowed to
18 speak. I denied that. All right. Now, who else
19 are they going to bring that you object to?

20 MS. JACKSON: I object to anyone
21 beyond one parent. Now he's saying they're going
22 to bring in -- there have been and again this case
23 is so voluminous I cannot say on the record --

24 THE COURT: Who else did you want to
25 bring in?

1 MR. STANTON: Siblings of each of the
2 victims.

3 THE COURT: How many siblings?

4 MR. STANTON: One to two per victim.

5 THE COURT: Why do you need to do
6 that? You already have two parents.

7 MR. STANTON: I understand that, Your
8 Honor, but I think the appropriate victim impact
9 time is what effect the murder of their family
10 member has is different as a parent than it is a
11 sister or brother.

12 THE COURT: Yeah, well, I'm not going
13 to have 30 people in here.

14 MR. STANTON: We're not talking about
15 30 people.

16 THE COURT: You're talking about four
17 times four is 16. I mean two apiece, right?

18 MR. STANTON: If they desire to
19 testify. I'm not sure.

20 THE COURT: How many murder victims
21 was there?

22 MS. JACKSON: Four.

23 THE COURT: Okay. Eight. That's
24 eight there.

25 MR. GUYMON: Judge, could I interject

1 and let the Court know that on three different
2 occasions -- actually four different occasions we
3 had penalty hearings and actually all eight parents
4 have not testified in those. Some of them have
5 elected not to so I think really we're talking
6 about two parents on behalf of Matthew Mowen, one
7 parent on behalf of Tracey Gorringer, and one parent
8 most likely on behalf of Jeffrey Biddle.

9 What you have is a total of five
10 parents that will probably speak but each one had a
11 sibling and in the other hearings with the
12 exception of one Judge Sobel ruled on we had a
13 sibling speak. I think we're really talking about
14 eight total.

15 THE COURT: How many did in front of
16 Judge Sobel?

17 MR. GUYMON: Judge Sobel limited us to
18 one parent per victim.

19 THE COURT: All right. What about the
20 siblings?

21 MR. GUYMON: I only had one
22 representative and that is, Judge, our position as
23 Mr. Stanton indicated. For instance, the loss to a
24 sister or a brother may be different than the loss
25 to a parent and that's why we're asking that the

1 Court allow us to have a sibling speak on behalf of
2 the decedent as well.

3 MR. STANTON: May I interject one
4 thing that I think is kind of being overlooked
5 here, and that is you're counting up the number of
6 people. It's not because of the State's position
7 of offering this much victim/impact witness time.
8 The defendant has been convicted of murdering four
9 people so it's not -- I mean it's the defendant's
10 own doing as far as this.

11 THE COURT: I know that.

12 MS. JACKSON: Your Honor, may I be
13 heard because this is not just a matter of adding
14 up the numbers. If I may make a record, the law in
15 this case is very clear. Payne versus Tennessee,
16 501 U.S. 808 specifically limits the State's victim
17 impact time to giving the jury some idea of the
18 uniqueness of the individual's life as an
19 individual human being.

20 We have no quarrel with that. Your
21 Honor, I think that we have to keep in mind one of
22 the things that Judge Sobel said. When you have a
23 case where -- we all know why we're here. We have
24 four young men who are deceased. What our job is
25 to -- under Gardner versus Florida it was

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1 different. It says that a death penalty should be
2 based on reason rather than caprice or emotion.

3 These jurors are human beings. I
4 think there has to be some recognition, if you
5 will, of the impact that witness after witness
6 after witness will have upon them.

7 THE COURT: That's why it's called a
8 victim impact.

9 MS. JACKSON: Yes, Your Honor. Also
10 the State cites in their brief --

11 THE COURT: Like I told you, two
12 parents can testify and the ones where two parents
13 aren't going to testify, a sibling can. All
14 right. So if you have one parent, you can have a
15 sibling. If you have two parents, no siblings.
16 All right. That's the Court's order. What's next?

17 MS. JACKSON: Your Honor, may I please
18 make a record.

19 THE COURT: You already made your
20 record. What's next?

21 MS. JACKSON: Your Honor, I want to
22 put on the record the Wiggins case, the case that
23 came out in 2000 which talks about what my client's
24 rights are and there is no concomitant right with
25 respect to the victim. Your Honor, with all due

1 respective to make a record --

2 THE COURT: You made your record.
3 What's next?

4 MS. JACKSON: So the State's going to
5 be allowed --

6 THE COURT: I just told you what I'm
7 allowing. What's next? Get the record, get it
8 from the reporter.

9 MS. JACKSON: Your Honor, No. 8 the
10 codefendants -- we've already talked about that.
11 And, again, I would set forth the same objection as
12 I did to the technicians.

13 THE COURT: Now which one is this
14 now?

15 MS. JACKSON: We're on No. 8, Your
16 Honor. They set forth Detective James Buczek,
17 Thomas Thowsen, Charla Severs, Ace Hart, Brian
18 Johnson, Todd Armstrong, Lashaway Wright. These
19 are the people who are not codefendants. It would
20 be our position that their testimony certainly will
21 have come in pursuant to the Court's order in the
22 first portion of these proceedings whereby they
23 will be reading their transcripts. They will have
24 Detective Thowsen who will read as well as
25 summarize.

1 THE COURT: Wait a minute. I'm lost
2 here. My 8 is not the same 8 that you have. All
3 right.

4 MS. JACKSON: It goes to the intent of
5 going to the residence, Your Honor.

6 THE COURT: I'm trying to figure
7 out -- who are the witnesses?

8 MS. JACKSON: These are what I refer
9 to as referred space witnesses Detective Thowsen,
10 everybody but the codefendants -- James Buczek,
11 Detective Thowsen, Charla Severs, Ace Hart, Brian
12 Johnson, Todd Armstrong, and Lashaway Wright.
13 These people's testimony will have already come in
14 when they establish their, if you will, guilty
15 facts.

16 We've already covered how the jury was
17 made aware in the first phase and the Court has
18 agreed that they can have the entire transcript of
19 the jury trial as well as Detective Thowsen I
20 believe it will be will be reading certain portions
21 and we'll have a right to cross him pursuant to the
22 transcript, but I don't see the point of them
23 having this read into the record, Your Honor, to
24 the jury then have a cope of it and then they're
25 bringing in the third time in the penalty phase. I

1 think it becomes cumulative, prejudicial, and a
2 denial of due process on behalf of my client.

3 MR. STANTON: Your Honor, if I
4 understand the objection is that in the response to
5 the State that we don't want to be handcuffed in
6 how we present this penalty phase to the jury. We
7 want to call a live witness to testify regarding
8 materials that have previously been given in this,
9 in what was the previous guilty phase.

10 I believe it's appropriate that that's
11 the State's option to do this, to try this case by
12 using live testimony or reading in prior
13 testimony. If there is then an objection that
14 we're getting to an area that's cumulative, counsel
15 can make that for the Court to rule on but as a
16 pretrial hearing from preventing the State from
17 presenting its penalty phase.

18 THE COURT: That's going to be
19 denied. If it's cumulative, you can make an
20 objection then I'll review both of them. I'm not
21 going to have live testimony then read the same in,
22 something else, I mean the same testimony also.

23 MS. JACKSON: Okay. That will be the
24 same on No. 9. Your Honor, it's the same type of
25 request and our objection would be the same, and I

1 assume the Court's order would be the same.

2 THE COURT: Counsel.

3 MR. STANTON: Yeah, it's the same
4 argument, Your Honor. It's broken down into two
5 categories. No. 9 is for the purpose -- these are
6 actually to outline the alternate enumerated
7 aggravators that the State has noticed in this case
8 for the death penalty and the first No. 9 is the
9 purpose of why the defendant and his codefendants
10 went to the home where the murders occurred. The
11 second one was the motive for the actual killing.

12 THE COURT: Anyway you can object at
13 that time. All right.

14 MS. JACKSON: Very well, Your Honor.
15 No. 10, we would simply submit. That is the prior
16 verdict forms.

17 THE COURT: What's the problem?

18 MS. JACKSON: The State anticipates
19 relying upon the verdict forms that were returned.
20 We submit it. We have no position.

21 THE COURT: All right. That's fine.

22 MS. JACKSON: As to No. 11, we object
23 on the statutory basis of juvenile record being
24 sealed as to Donte Johnson's juvenile record coming
25 in for this penalty phase fully recognizing that

1 other case law in this regard allows it. We still
2 would like the record to reflect that we object.

3 MR. STANTON: Your Honor, I think the
4 law is clear that the Nevada Supreme Court has on
5 more than one occasion specifically approved the
6 use of the facts and circumstances of a juvenile
7 record in death penalty as well as noncapital
8 proceedings.

9 THE COURT: I don't agree with that.
10 I think it's more prejudicial. The Court is going
11 to exclude that, the juvenile record.

12 MR. STANTON: I'm sorry, Your Honor.
13 The Court's going to exclude it?

14 THE COURT: Yes. I find it more
15 prejudicial than probative.

16 All right. What's the next one?

17 MS. JACKSON: I think as to No. 12 the
18 State withdrew its offer to use that evidence so we
19 don't need to address that.

20 THE COURT: Which one is that?

21 MR. STANTON: No. 12. His is a prior
22 possession with intent to sell narcotics case. The
23 State will not be presenting any evidence.

24 THE COURT: All right. What's the
25 next?

1 MS. JACKSON: Your Honor, on page 10
2 of my brief -- I want to keep the record
3 straight -- I do reference at the top of that
4 page, the top of page 10 I indicate the action was
5 dismissed on the Court's motion. It should say see
6 Exhibit 3 and I don't have that in there. I just
7 want the pleading to be clear, Your Honor. It's
8 not relevant to the Court's ruling but I did want
9 to put that on the record.

10 The next one, Your Honor --

11 MR. STANTON: If I may, can I go back
12 to the juvenile records.

13 THE COURT: No. I already made my
14 ruling. All right.

15 MR. STANTON: Judge, the defendant was
16 convicted of a strong armed robbery.

17 THE COURT: What did I tell you, sir.
18 If you don't like my ruling, appeal it. I'm not
19 going to skip arguing going back. Come on. Let's
20 go. What's the next one?

21 MS. JACKSON: No. 13, Your Honor. A
22 shooting at the Super 8 Motel. We object to that
23 evidence on the basis that Mr. Johnson was never
24 charged or prosecuted. We certainly understand the
25 standard under the case law that it has to be,

1 doesn't have to be prosecuted however it cannot be
2 impalpable or highly suspect.

3 THE COURT: Now, State, what evidence
4 do you have that he committed this crime?

5 MR. STANTON: Well, we have several
6 eye witnesses at the hotel.

7 THE COURT: That saw the shooting?

8 MR. STANTON: That saw three
9 individuals matching the description. Whether or
10 not they can positively identify the defendant I'm
11 not certain, but in addition to that, we have
12 statements that the defendant has made post the
13 shooting to several different individuals. All the
14 names have previously been discussed and have been
15 the subject of previous testimony that not as to in
16 the original trial obviously because this was an
17 unrelated matter but the same individuals that the
18 Court's probably familiar with by name.

19 These are friends and associates at
20 this time in 1999 of the defendant, and the
21 defendant has made statements directly implicating
22 himself and one of his codefendants in that
23 shooting and once again that shooting was three
24 days before the quadruple homicide of this penalty
25 phase so it's -- once again I think it's not a

1 question of admissability but it's the weight that
2 the jury then --

3 THE COURT: Well, I know, but you
4 bring in something where there is hardly any
5 evidence other than some statements from some other
6 people that he made --

7 MS. JACKSON: See, Judge, that's my
8 problem.

9 THE COURT: I'm going to exclude
10 that. What else do you have?

11 MS. JACKSON: Your Honor, moving on to
12 No. 14, this is each of the alleged homicides of
13 Darnell Johnson which they would like to put on.

14 THE COURT: Do you have any evidence
15 that he committed the crime?

16 MR. STANTON: Yes, Your Honor, as an
17 offer of proof I would like to regarding -- this is
18 an affidavit for the underlying arrest warrant from
19 Metro homicide detectives and I think that's a
20 concise straightforward articulation of the
21 evidence proving the defendant's involvement in
22 this murder --

23 THE COURT: Was he ever tried for this
24 or what happened?

25 MR. STANTON: Well, Your Honor, if I

1 can put this into some context. No. 1, the motion
2 concedes the predicate analysis doesn't require a
3 conviction.

4 THE COURT: I mean I'm just asking for
5 my own information. I want to know.

6 MR. STANTON: No. He was not
7 convicted of it. It was not prosecuted. This case
8 came into the District Attorney's office after the
9 quadruple homicide did. It hung out there
10 basically awaiting disposition of this case and it
11 was ultimately determined by the District
12 Attorney's office for what I think are probably
13 obvious reasons that the case never proceeded any
14 further since the defendant was convicted and under
15 four death sentences at this time the decision was
16 made not to proceed in this case.

17 MS. JACKSON: Your Honor, may I speak.

18 THE COURT: No. Let me read this.

19 MS. JACKSON: Okay.

20 THE COURT: I can't go through all of
21 this now. All right. What else were you going to
22 say, ma'am?

23 MS. JACKSON: Your Honor, the problem
24 that we have with this particular item of evidence,
25 Your Honor, is that -- okay. You're not going to

1 allow it in.

2 THE COURT: No, I didn't say that.

3 There's about ten pages here single type.

4 MS. JACKSON: When the Court has a
5 chance to study that further, you will see that
6 basically what you have is a lot of hearsay. I
7 cited the D'Agostino versus State case, a 1991 case
8 wherein the Supreme Court in a penalty phase
9 capital case they wanted credible evidence
10 especially when you have a quadruple homicide.
11 They want to bring in another homicide that he has
12 not been charged with or prosecuted for.

13 Your Honor, at some point I think the
14 Court, it's discretionary with the Court at what
15 point is enough enough and I think when you look at
16 the tenuous nature of the allegations in this
17 affidavit, the fact that, Your Honor, I -- this
18 Court is aware that if they do have sufficient
19 evidence, they do prosecute any murder regardless
20 of the defendant's current legal posture so I think
21 that basically you do have a lot of hearsay
22 so-called admissions and things of that nature but
23 nothing else, Your Honor, and most importantly in
24 that case you have a coroner going in doing an
25 autopsy initially and not really finding any cause

1 of death to be of a homicidal nature and then the
2 detectives or D.A. or somebody, perhaps some
3 combination of that, go and talk to the coroner
4 and say, hey, we talked to these witnesses and
5 they say that Donte did this, this, and this so go
6 back and check again.

7 The coroner goes back and checks and
8 says, oh, yeah, that's right. He was strangled. I
9 think that makes it tenuous and therefore
10 inadmissible pursuant to the Homick versus State of
11 Nevada 108 Nevada 127.

12 MR. STANTON: Counsel relies on
13 D'Agostino. If the Court is not familiar with that
14 case, what concerned the Court there, as I think it
15 would any court, was the presentation of evidence
16 of a jailhouse witness who gave very little and
17 inconsistent detail regarding a homicide that the
18 defendant allegedly confessed to him and further
19 that this witness was awaiting sentencing.

20 That the Court said was the type of
21 evidence that's highly suspect and improper in a
22 capital penalty phase. That's not the intended
23 facts, the quality and the nature of the facts in
24 this case. Counsel has already conceded yet she
25 wants to argue the flipside of it now that you

1 don't need a conviction in order for this evidence
2 to come in in a capital penalty phase either as an
3 enumerated aggravator or in all relevant acted
4 pursuant to the penalty phase so the defendant's
5 lack of conviction.

6 THE COURT: I understand that you want
7 me to -- you don't just want any kind of stuff
8 coming in not even that's so suspect.

9 MR. STANTON: Correct, Your Honor.
10 And we fully intend to comply with the rules of
11 evidence relative to the presentation of this
12 evidence regarding hearsay, regarding any other
13 evidentiary objection that could be lodged
14 regarding the presentation of the evidence.

15 MS. JACKSON: Your Honor, one request,
16 if the Court is considering this, Mr. Johnson at
17 page 12 of his moving papers asks the Court to at
18 least determine beforehand that there is some
19 indicia of reliability before we have a jury
20 impaneled and we're having me to stand up in front
21 of a jury and object after the cow is out of the
22 barn 'cause I read the transcript on this, Judge,
23 and I'm telling you the coroner didn't even know it
24 was a homicide at first.

25 It was only after they provided these

1 hearsay statements, well, we think this is what
2 happened based upon what Charla Severs said. These
3 other individuals, the coroner, we will go back and
4 do it again is what they said then he comes back
5 and says, oh, yeah, it's a homicide.

6 MR. STANTON: Well, Your Honor,
7 Mr. Johnson was found wrapped up in a sheet dumped
8 off of an embankment off of I-15. I doubt under
9 the circumstances that he committed suicide or it
10 was an accidental death. Certainly the
11 circumstances surrounding someone's death is
12 appropriate for a coroner to establish the cause of
13 death, and that's what he did in this case.

14 The body had decomposed to an extent
15 that the method of killing here, strangulation by
16 the defendant's own words bragging about it to
17 several of his friends that they did strangle him
18 with a sheet and a telephone cord, that the
19 strangulation and the bruising of the throat and
20 thoracic region is going to dissipate when the body
21 decomposes.

22 That in and of itself doesn't result
23 or have a medical examiner or pathologist then
24 determine that he can't conclude that it's a
25 homicide. One of the things they determined in the

1 case is the circumstances of discovering the body.
2 This person isn't sleeping one night and wakes up
3 or doesn't wake up and they're dead. They're
4 dumped out in the remote area of northern Clark
5 County and under circumstances that are highly
6 suspicious. That coupled with his microscopic
7 examination of tissue conclude to the doctor and
8 not by any pressure by homicide detectives or the
9 District Attorney's office that he ultimately
10 conclude that indeed it was a homicide then in
11 conjunction with that the defendant's own
12 statements corroborate the nature of the body,
13 where it's found, how it's wrapped up and the
14 method and manner of death so the defendant's own
15 statements to his friend and associates corroborate
16 it.

17 THE COURT: I want to read over the
18 materials, then I'll let you guys know.

19 MS. JACKSON: I would like to have a
20 bench ruling because I would like to know the
21 coroner when they found that body in the desert in
22 a sheet why he couldn't conclude the first time it
23 wasn't a homicide. I would request an evidentiary
24 hearing before the Court rules.

25 Your Honor, finally No. 15 the State

1 wants to introduce evidence of my client's
2 incarceration records. Certainly that is always
3 appropriate. We would introduce them ourself.
4 They want to introduce an incident that occurred
5 February 24th of 2001 where my client was alleged
6 along with Reginald Johnson to have thrown another
7 inmate over a bannister.

8 Your Honor, what is outrageous about
9 this request is that I have attached to my brief
10 Exhibit 4 dated July 18, 2001. Donte Johnson and
11 John White were in the courtroom ready to go to
12 trial. Mr. Johnson and the State of Nevada enters
13 into a binding contract. Mr. Johnson, Reginald
14 Johnson says I won't go to trial if you do not
15 proceed against this person. They agree.

16 They put in the record and I quote,
17 the case against Mr. Johnson is dismissed with
18 Donte Johnson dismissed with prejudice and
19 Mr. Reginald Johnson accepts these negotiations.
20 The State in fact complies, Reginald Johnson gets
21 nothing in return.

22 What he does is create a contract
23 whereby my client is the third party beneficiary.
24 It is unconscionable for them to come in here today
25 and argue that, well, we never agreed to use that

1 against Donte. Why else would Reginald Johnson do
2 that?

3 I wanted to get my brief filed so I
4 did not cite these cases for the Court. Your
5 Honor, this is a pure and simple contract case. I
6 didn't site in my brief Santabello versus New York
7 404 U.S. 257. This is a 1971 case. This is the
8 leading U.S. supreme court case that speaks to when
9 does a prosecutor have to keep his or her word and
10 that in fact the plea agreement is a contract.

11 It states at page 499, when a plea
12 agreement is a significant degree on a promise or
13 agreement of a prosecutor so that it can be said to
14 be part of the inducement or consideration, such
15 promise must be fulfilled. Not can be, must be and
16 of course the case of Crockett v. State, a Nevada
17 case, 110 Nevada, 8 -- well, strike that, Your
18 Honor. I'm not going to recite that case. A Ninth
19 Circuit case U.S. versus Read, R-E-A-D, 77 US2d
20 1437, 1985 case and this case talks about when a
21 plea rests in a significant degree on a promise or
22 agreement of the prosecutor so that it can be said
23 that the inducement or consideration of such
24 promise must be fulfilled and it quotes the
25 Santabello case.

1 Although the plea bargain is a matter
2 of criminal jurisprudence, a plea bargain is
3 contractual in nature and measured by contract law
4 standards. He was a third party beneficiary. The
5 only thing Reginald Johnson got was their
6 agreement, their word not to pursue against this
7 man.

8 They forego the trial against Reginald
9 Johnson, even file the habitual charge against him,
10 get that and come back and say, oh, by the way we
11 can breach our agreement we can get two for one.
12 We put you away for a thousand years even though
13 you did this because your friend was being unjustly
14 accused. Your Honor, they agreed to this. How
15 dare they come in here now and say that wasn't the
16 deal. It's in black and white.

17 THE COURT: State.

18 MR. STANTON: Certainly, Your Honor.
19 First of all, I'd like to direct the Court
20 specifically to the plea bargain agreement in the
21 underlying case. In the underlying case once again
22 the defendant's name is Johnson as the instant
23 defendant. His charge or he pled to attempted
24 murder of an inmate that he had thrown over the
25 second story tier.

1 The negotiations as stated were that
2 he would plead guilty to this case and the State
3 would dismiss the charges against Donte Johnson in
4 this case. There was no agreement whatsoever as
5 there couldn't be that the State would not be
6 permitted to use the evidence of that event
7 sometime in the future regarding Donte Johnson.

8 What they negotiated was is that he
9 would not suffer a conviction because if he had
10 suffered a conviction, then he would have another
11 enumerated aggravating factor that the State could
12 have sought seeking the death penalty. But you
13 cannot and could not have bound the State from not
14 using the evidence as in this case the other
15 relevant act about the defendant's conduct of who
16 he is and what's the appropriate punishment for an
17 individual that conducts themselves in that manner.
18 That's what was negotiated away.

19 You can't have Donte Johnson now
20 claiming that pursuant to a plea bargain of another
21 person now counsel citing to contract law of a
22 third party beneficiary, he got the benefit of his
23 bargain, to-wit that the charges were dismissed and
24 therefore could not be used as an aggravating
25 factor and I have prepared today to call the

1 prosecutor that handled this case on behalf of the
2 State and what the specific negotiations were and
3 that will be L.J. O'Neil and he's available should
4 the Court permit his testimony to flesh out and
5 present to this Court precisely what the
6 negotiations were beyond as counsel says what's in
7 black and white and certainly it is in black and
8 white.

9 A guilty plea agreement specifically
10 states the State will dismiss the charges against
11 Donte Johnson. At the time Donte Johnson was under
12 sentence of death. So there was no agreement --
13 imagine this, Your Honor. The argument is for a
14 plea bargain that for time in perpetuity that you
15 can no longer present any evidence regarding that
16 act. The benefit of the bargain was he wasn't
17 suffered a conviction that could be used as an
18 aggravating factor. At the time he was under
19 sentence of death and he was hopeful as I
20 understand it that the matter would come back and
21 he would have potentially a new penalty phase
22 sometime in the future.

23 MS. JACKSON: Your Honor, I also have
24 if I may lodge with the Court --

25 THE COURT: Wasn't this used in the

1 last penalty hearing?

2 MS. JACKSON: Absolutely not. Your
3 Honor, I have an affidavit of Gloria Navarro who
4 was the attorney for Mr. Donte Johnson.

5 THE COURT: You know what, folks.
6 This is taking far too long. I have the rest of
7 the calendar. Let's continue until Monday
8 morning.

9 MS. JACKSON: Your Honor, there also
10 are other motions which I filed yesterday.

11 THE COURT: I know. We're going to
12 continue all of these till Friday at 9:00.

13 MR. WHIPPLE: Your Honor, I won't be
14 here Friday.

15 MS. JACKSON: I'll be here.

16 MR. WHIPPLE: The Court is aware there
17 will be only one attorney.

18 THE COURT: Do both of you guys have
19 to --

20 MR. WHIPPLE: I think in all capital
21 proceedings you're supposed to have two. That's my
22 reading of the law.

23 THE COURT: Well, fine, if you guys
24 don't want to be here, I don't know what to tell
25 you. Why can't you be here, sir?

1 MR. WHIPPLE: I'll be out of state.

2 THE COURT: When do you guys want to
3 continue it to?

4 MS. JACKSON: Your Honor, if I may
5 make a suggestion to the Court. I discussed with
6 Mr. Guymon -- not Mr. Stanton, Mr. Guymon --
7 beforehand that there are a couple of motions that
8 I filed yesterday, two I have to file today and
9 they would like a chance to respond. We could just
10 kind of maybe set it out about a week that would
11 give them a chance to respond.

12 MR. STANTON: The problem with it,
13 Your Honor, the resolution of this motion has a
14 significant impact upon the State's preparation for
15 the penalty hearings and that puts it pretty close
16 especially as I'm sure the Court can appreciate
17 this case based upon a motion that there are
18 difficult witnesses.

19 THE COURT: We'll just continue this
20 over till Monday at 9:00 -- not 9:00.

21 THE CLERK: May 3rd at 1:00 o'clock.

22 MS. JACKSON: Your Honor, for the
23 record I have subpoenaed Mr. Reginald Johnson to
24 testify at an evidentiary hearing prior to this
25 matter being submitted to a jury. And he's being

1 transferred.

2 THE COURT: Approach the bench,
3 counsel.

4 (Whereupon, counsel approached
5 the bench, and had a
6 discussion outside the hearing
7 of the court reporter.)

8 (Whereupon the proceedings
9 adjourned at 10:24 a.m.)

10 -oOo-

11 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF
12 PROCEEDINGS.

13
14
15 *Cheryl Gardner*
16 CHERYL GARDNER, RPR, RMR
17 CCR No. 230
18
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20
21
22
23
24
25

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1 CASE NO. C153154

2 DEPT. NO. XIII

MAY 05 2004

3
4 DISTRICT COURT
5 CLARK COUNTY, NEVADASHIRLEY B. PARRAGUIRE, CLERK
BY Jane V. Michaels DEPUTY
TERESA TRINER

6 -oOo-

7 ORIGINAL

8 THE STATE OF NEVADA,)

9 Plaintiff,)

REPORTER'S TRANSCRIPT

10 vs.)

OF

11 DONTÉ JOHNSON,)

ARGUMENT TO ADMIT

12 Defendant.)

EVIDENCE OF AGGRAVATING
CIRCUMSTANCES13
14
15 BEFORE THE HON. LEE A. GATES, DISTRICT COURT JUDGE

16 MONDAY, MAY 3, 2004

17 1:38 P.M.

18 APPEARANCES:

19 For the State:

DAVID STANTON, ESQ.

20 GARY L. GUYMON, ESQ.

Chief Deputy District Attorney

21 For the Defendant:

ALZORA B. JACKSON, ESQ.

22 BRET O. WHIPPLE, ESQ.

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23
24 Reported by:

Jane V. Michaels, RPR

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AA02904

1 LAS VEGAS, CLARK COUNTY, NV., MONDAY, MAY 3, 2004

2 1:38 P.M.

3 -oOo-

4 P R O C E E D I N G S

5 THE COURT: Let's start off where we left
6 off at the last time. We have a little bit more
7 time.

8 MR. STANTON: Your Honor, I believe the
9 last time, as the Court may recall, we have noticed
10 the Defense's opposition and our ultimate reply
11 essentially in number with a series of items.

12 My notes reflect that the last item that
13 was concluded by the Court was Item Number 13. That
14 was a shooting at the Super 8/Long Horn Casino. The
15 Court ruled that it was going to exclude that
16 evidence.

17 THE COURT: Right. I think the next one we
18 argued was the one where there was a plea agreement,
19 and she said that he was a third-party beneficiary.

20 MR. STANTON: I think the next one we did
21 was Number 14. You took that under submission. And
22 there was an affidavit as an offer of proof that I had
23 submitted to the Court. I would like to have that if
24 I could, your Honor, with the assistance of the Court
25 marked as State's next in order. It was a nine-page

1 affidavit that I think summarizes the State's offer of
2 proof.

3 THE COURT: Yes.

4 THE CLERK: I don't have it.

5 MR. STANTON: It was given to the Court.
6 It might be in the Court's file the last time.

7 THE CLERK: If she marked it, it's in the
8 vault.

9 MR. STANTON: It wasn't marked in the last
10 proceeding.

11 THE COURT: Who did the affidavit?

12 MR. STANTON: The affidavit was prepared
13 by --

14 THE COURT: Are you talking about the
15 declaration of summons?

16 MR. STANTON: Yes.

17 THE COURT: This one here?

18 MR. STANTON: Yes. If I could have that
19 marked as State's next in order.

20 MS. JACKSON: And that one was taken under
21 submission by the Court. And the next one we were
22 talking about was Item Number 15. And it was
23 generally categorized "CCDC jail and prison record."
24 So we're talking about the defendant's conduct in both
25 the Clark County Detention Center and the Nevada

1 Department of Corrections.

2 And we did get to the issue of whether or
3 not the State, as the Defense I believe argued was
4 precluded from admitting evidence regarding an
5 incident where the Defendant and another inmate threw
6 another inmate off a second tier railing or floor.
7 They were charged with attempted murder. And the
8 codefendant, not this defendant, whose name also was
9 Johnson, pled guilty to attempted murder and was duly
10 sentenced off that offense. I think that's where we
11 last left off.

12 THE COURT: Right.

13 MS. JACKSON: Your Honor, are we going to
14 go back to 14?

15 THE COURT: Which one is 14?

16 MS. JACKSON: The one the Court took under
17 advisement, the affidavit. Before the Court rules on
18 that, now that the Court has had a chance to review
19 that, I would like a chance to address some issues I
20 see in that document. So I would like some direction
21 from the Court.

22 MR. STANTON: Your Honor, you took it under
23 submission. I think it sets forth what the State's
24 offer of proof is. And, once again, relying on the
25 law regarding what evidence is permissible and proper

1 in this case, I would submit that there's three things
2 that are offered in a capital penalty phase. There's
3 evidence of aggravating factors. This is not being
4 offered for that. The Defendant was not convicted or
5 charged with this offense because it was a case that
6 was pending, the litigation of the underlying murder
7 case before the Court right now.

8 And as a matter of expediency and
9 judicial -- at least from the district attorney's
10 office' discretion of pursuing a circumstantial burden
11 case with a gentleman that had been convicted of four
12 counts of manslaughter and at the time sentenced to
13 death, the State did not pursue formal litigation
14 against the defendant in this case. The State is
15 offering it for the other relevant acts evidence that
16 is permissible in a capital penalty proceeding.

17 And specifically the issue before this jury
18 is what is the proper punishment that the Defendant
19 should be sentenced to in this case. Part of that is
20 knowing what this Defendant has done prior to the
21 murders that occurred in this case and he's been
22 convicted of and obviously subsequent from that time.

23 This speaks to a time period that I think
24 is very important for the Court to assess in this so
25 that it is temporally related to the underlying

1 murders as occurring in the time frame, the same
2 month; as a matter of fact, a matter of days, if not
3 weeks, from the date of the murder that he stands
4 before the Court submitted in this case.

5 The relevance and the evidence adduced is
6 not speculative. It's not impalpable as counsel
7 relies on the DeAugustino case in assessing what the
8 State Supreme Court has found to be evidence that it
9 doesn't like in a capital penalty phase.

10 Once again, if you compare the facts of
11 DeAugustino to what is related in the affidavit as a
12 form of offer of proof, they're on opposite ends of
13 the spectrum as far as the quality of proof and the
14 nature and type of the evidence that the State can
15 expect to prove the Defendant's direct involvement in
16 this particular murder.

17 And so I would submit that this is entirely
18 relevant. The quality of the evidence to be presented
19 to tie the Defendant is not speculative and it is
20 proper for it to be admitted and for the jury to
21 consider it.

22 MS. JACKSON: Your Honor, if I may. The
23 DeAugustino case, which is 107 Nevada 1001, that's a
24 1991 case. That case dealt with a gentleman who was
25 facing the death penalty. And his cell mate did come

1 in and said, Oh, Mr. DeAugustino, he's bragged to me
2 about some old man he killed in New York, some woman
3 he killed someplace else, that type of thing.

4 At first blush this case may not appear to
5 be of that nature. However, upon a closer
6 examination, your Honor, it is exactly like that. For
7 example, the State's evidence, this affidavit
8 submitted by Detective Chandler, there was a reason
9 why they didn't prosecute this case. Item Number 6
10 says that Dr. Sheldon Green performed an autopsy on
11 the victim and listed the cause of death as, quote,
12 undetermined and the manner as undetermined pending
13 the police investigation.

14 I would also draw the Court's attention to
15 paragraph Number 14, page 4, of that document. The
16 detective says that on 8/11/98 he was contacted by a
17 confidential source of information who wishes to
18 remain anonymous, and they advised the following:
19 that a subject named Duane Anderson, Skill, said they
20 went with the victim to Odyssey Records and the
21 suspect Deko, real name John Wayne.

22 My client's name is John White. So now,
23 your Honor, we're getting into this kind of specious
24 information. And this is the detective's warrant of
25 arrest. We don't know who that is. And someone named

1 Skill, who gives the name of John Wayne. I don't know
2 who John Wayne is.

3 Paragraph 21, your Honor, the same person
4 named Skill. The detective says, "I talked to
5 Skill." And by the way, Skill and all these guys,
6 they're all jailbirds just like the informant in the
7 DeAugustino case. They're in jail more than they're
8 out.

9 He says that he gave a taped statement.
10 The detective says at paragraph 21, Number 8, that he
11 indicates that he had lied in the statement and he
12 would tell investigators what really happened but he
13 would not put it on tape.

14 Then this fellow Skill goes on to say he
15 was present at the Thunderbird Hotel on a certain date
16 and there was a confrontation between Deko, Red, and
17 Lamont. The person who was killed was struck on the
18 side of the head by Red and Deko, and they placed a
19 pillow over his head and the person was killed.

20 Later on we have another codefendant in
21 this same affidavit who gives a competing story. At
22 paragraph 27 Detective Hardy says he interviewed and
23 the same detective here, Chandler, says they
24 interviewed this person named Red.

25 And bear in mind, Judge, the other

1 paragraph says that Red and Deko did it, paragraph
2 21. At paragraph 27 they now claim that they talked
3 to Red, and Red said that he showed up after Snoop was
4 killed and that he was asked to help get rid of the
5 body, basically is what he's saying. So you have a
6 bunch of codefendants giving conflicting statements if
7 they had prosecuted this case.

8 And more importantly, your Honor, at
9 paragraph 25 the detective goes back to the coroner,
10 and the coroner does another examination of the body,
11 the remains, if you will. And Dr. Green says -- this
12 is now his second opinion -- that Darnell Lamont
13 Johnson came to his death as a result of undetermined
14 cause, parentheses, possible strangulation.

15 Now, we don't know if the detective put
16 this in here or the coroner because I've never seen an
17 autopsy report. But this is the detective putting
18 this in here.

19 Then he says "probable homicide." Well, I
20 don't know what that means. I don't think any
21 reasonable attorney would know what that means, your
22 Honor. That is exactly the kind of specious and
23 impalpable suspect --

24 THE COURT: What did Judge Sobel rule on
25 this?

1 MR. STANTON: This case was never
2 brought --

3 MR. GUYMON: Judge Sobel ruled that it was
4 admissible. I tried the case.

5 THE COURT: It was or was not?

6 MR. GUYMON: It was admissible. And we
7 admitted it through Detective Chandler, and then three
8 other witnesses came in.

9 MS. JACKSON: I would request that.

10 THE COURT: Did Judge Sobel let it in?

11 MS. JACKSON: I reviewed the transcript and
12 he did, much to my amazement.

13 THE COURT: Did it go to the Supreme Court,
14 and did they say anything was wrong with it?

15 MS. JACKSON: This particular issue was not
16 raised.

17 MR. STANTON: It went on direct appeal.
18 Two important points that the Court has brought up.
19 It was not brought up on direct appeal. And, number
20 two, the Court did not review sua sponte, as they
21 require in all capital cases.

22 MS. JACKSON: I don't think that's
23 necessarily the law.

24 THE COURT: What's not the law?

25 MS. JACKSON: That the Supreme Court had to

1 rule on this particular issue to affirm the lower
2 holding. They find all the time that there's error,
3 but at that it was, quote, harmless error. Certainly
4 no court wants to commit error, whether it's harmless
5 or not.

6 THE COURT: You are right. Some of these
7 guys are codefendants.

8 MS. JACKSON: They're giving different
9 statements.

10 THE COURT: Contrary to popular belief, a
11 coroner's job is part medical examiner and part
12 detective and investigator. Not only do they look at
13 the body to determine the cause of death, but they
14 look at the surrounding facts and circumstances. They
15 can always tell you they'll look and see what
16 happened, but the statements from the witnesses,
17 they'll take that into consideration when they're
18 examining the body. If they waited for information
19 from the detectives, I don't think that's fatal to
20 their determination as to cause of death. These
21 people seem to know, but codefendants' statements are
22 suspect to --

23 MR. STANTON: Several of these people are
24 not codefendants. At least the statements that were
25 made by Ace Hart. And they're certainly the same

1 witnesses that are involved in this case and testified
2 previously in this case. Todd Armstrong, Ace Hart,
3 and Brian Johnson are all witnesses that were never
4 implicated in any way, shape, or form regarding the
5 underlying murder of what his nickname was, Snoop, and
6 commonly referred to in this declaration and in
7 previous proceedings by witnesses' testimony.

8 THE COURT: The problem is that this guy
9 hasn't been convicted of this. We haven't had a
10 chance to test the credibility of these people.

11 MS. JACKSON: Or the cause of death, your
12 Honor.

13 THE COURT: Or probable cause to get it
14 bound over. Do you have a copy of the autopsy
15 report?

16 MR. STANTON: I don't have it with me here
17 in court today, your Honor, but I can get it
18 relatively easily.

19 THE COURT: Well, get that to me and submit
20 it to me.

21 MS. JACKSON: Your Honor, may I also have a
22 copy of that? And they may at some point have
23 provided a copy. We've gone over this several times.
24 I have about 22 boxes relevant to this case, and I
25 cannot swear under oath that I've read everything in

1 each box. It just takes time to go through each box.
2 I don't believe I've seen an autopsy report on this
3 gentleman. I don't believe our office was ever
4 provided one.

5 THE COURT: I'll mull this over some more.
6 I was just mentioning some of the issues that I see
7 arising in this.

8 All right. Let's go back to the juvenile
9 records. The Court has said we do get juvenile
10 records. Normally it's not in an adult's case, but
11 the trier of fact and the sentencing judge routinely
12 look at the juvenile records of defendants when
13 they're doing sentencing.

14 It's not something that I am particularly
15 fond of because I think a person changes for the most
16 part from when they're a juvenile, and they haven't
17 fully developed as a juvenile. That's why we have a
18 law to keep their records sealed automatically until
19 the age of 24.

20 However, I have to follow the law. The
21 Supreme Court says you can use them. So I'm going to
22 reverse my decision on that. It can come in.

23 All right. Now back to the thing over at
24 the jail. Anything you want to add to that?

25 MS. JACKSON: There's a lot I want to add,

1 your Honor. I was able to find the records from Oscar
2 Irias, who, by the way, went all the way from a
3 first-degree kidnapping and a sexual assault, which
4 both carries life. In order for him to pursue this
5 case, which he did not want to pursue, he was given a
6 lewdness, and he wound up with a 12 to 30, which is
7 basically a walk.

8 Here's what happened at his sentencing.
9 This is Oscar's sentencing on April 30 of 2001. The
10 State represented by Mr. William Kephart there before
11 Judge McGroarty and the district attorney. I have the
12 transcript. I'm at page 15.

13 The district attorney says to the Court,
14 "And we're not here today because of what Reginald
15 has done to him." Let me start at the beginning.

16 Mr. Kephart says, "He has spent a year and
17 two months in jail at this point, I guess, and
18 unfortunately he's become the victim of a guy,
19 singular there, that I think you know about.
20 Mr. Johnson. You had him in here." And the Court
21 says, "Donte Johnson?" The corrections officer says,
22 "Reginald Johnson." The Court says, "I thought it
23 was Donte."

24 And Mr. Kephart says, "Reginald. The only
25 thing I had in mind about him -- and maybe the

1 transport officer can explain this better. But
2 typically we don't see individuals in jail having this
3 happen to them more than once unless there is some
4 conflict directly between the two. And I don't know
5 if it's because of this case that made Reginald become
6 so crazy about him, but I know he's actually hunted
7 him out to the point where he's got him twice. And I
8 ask the Court not to consider that with regards to the
9 crime that he has committed. And that's what we're
10 here for today. Not because of what Reginald has done
11 to him. That's another issue at another time. But
12 what we're here for now is to consider what he has
13 done himself." And it goes on to talk about that.

14 Your Honor, this particular incident is
15 huge. After years of Donte Johnson being
16 incarcerated, this is the only incident the State can
17 tell a jury he cannot be safely housed.

18 Oh, he has write-ups for having too many
19 magazines going into his cell. He did not do this.
20 And, your Honor, this is the only incident. They knew
21 it themselves at Oscar's sentencing.

22 THE COURT: He didn't do what?

23 MS. JACKSON: He didn't participate in
24 Oscar's attack.

25 THE COURT: Where is the victim?

1 MR. STANTON: I have no idea.

2 MS. JACKSON: He's out free.

3 THE COURT: I thought he was on the
4 balcony.

5 MR. STANTON: He was. The State is not
6 going to proceed in calling him as a witness.

7 THE COURT: She said he didn't do it. How
8 do you know this guy did it?

9 MR. STANTON: Because I have two
10 corrections officers that are eyewitnesses to both the
11 inmates, including the Defendant Donte Johnson,
12 punching Mr. Irias before they both threw him over the
13 railing.

14 MS. JACKSON: Your Honor, if you're going
15 to call the CO's, I'm going to have to ask for a new
16 hearing. I have an affidavit that Gloria prepared.
17 She was prepared to prove that those officers could
18 not have seen what they claim they saw.

19 THE COURT: What do you have?

20 MS. JACKSON: I've already ordered Reginald
21 Johnson's transporter. We're going to have Reginald
22 Johnson. And Oscar, I want him here too. I want the
23 whole thing litigated, Judge.

24 THE COURT: We can do that. When can we do
25 it?

1 MR. STANTON: Whenever is convenient for
2 the Court. I've attached to my motion a transcript of
3 the interview of one of the correctional officers.

4 THE COURT: Who are we going to have here
5 to testify?

6 MS. JACKSON: Your Honor, it's the only
7 violence they can pin on him.

8 THE COURT: If he did it, it's coming in.
9 If he didn't do it, it won't come in.

10 MS. JACKSON: That's exactly my point, your
11 Honor, because this is the one item that will cause a
12 capital jury to say, "Can we safely house this man?"

13 MR. STANTON: That's not an entirely
14 correct statement.

15 THE COURT: It may not be, but that's what
16 we're going to see. Bring the folks in here. She's
17 claiming it's a different person. She's reading from
18 transcripts that it's someone else. Let's see.

19 MS. JACKSON: This is a court transcript.

20 THE COURT: Like I said, I'm inclined to
21 let it in now, but if you want to have the hearing,
22 let's have the hearing.

23 MS. JACKSON: We're planning on calling
24 Mr. Kephart.

25 THE COURT: When can you do it?

1 MS. JACKSON: I believe the transport order
2 for Reginald is in motion. I think we can be ready to
3 go in a week.

4 THE COURT: When is this trial?

5 MS. JACKSON: In a week.

6 THE COURT: We can do it in a week.

7 MS. JACKSON: Very well, your Honor.

8 THE COURT: Give us a date.

9 THE CLERK: May 10th, 1:30. And what is
10 this for?

11 THE COURT: Hearing a motion. All right.
12 What else do we have?

13 MS. JACKSON: The only other items we have
14 are two huge ones.

15 THE COURT: Everything is huge. So go on.

16 MS. JACKSON: They want to bring in, from
17 what I understand from clarification by counsel, a
18 gang officer from L.A. to talk about Donte's gang
19 affiliation when we don't think it's relevant. This
20 is not a gang killing. It's not alleged to be a gang
21 killing. This is in Las Vegas, Nevada. The gang that
22 he is alleged to have been a member of is in L.A. The
23 individuals involved --

24 THE COURT: What was the prior court order
25 on this?

1 MR. STANTON: We never really addressed
2 this issue, your Honor.

3 THE COURT: All right. It's new.

4 MR. STANTON: Your Honor, if I can put this
5 in some sort of context for the Court and maybe focus
6 our argument as to what may or may not be
7 objectionable.

8 Out of abundance of caution, we listed this
9 item as kind of an assessment where the two prior
10 penalty hearings have gone in this case.

11 In the prior penalty hearings, Defense
12 counsel has argued and presented substantial
13 mitigating evidence regarding this Defendant having no
14 choices when he was growing up and when he was a young
15 man going into his adolescent and teenage years.

16 And part of the testimony was directed at
17 the Defendant had to join a gang because there was an
18 allegation that a family member of his or associate
19 was going to be raped if he didn't join a gang.

20 There was also a claim that when he went
21 from his home to his school, he had to cross several
22 different sets, gang territory, and that for his own
23 personal safety and for a young man his age and in
24 that location joining a gang was the only alternative
25 in life.

1 As a result of our investigation with the
2 L.A. gang detectives that specifically work with the
3 gang that he claimed affiliation both at the time in
4 Los Angeles when he lived there and at the time of the
5 litigation of the underlying murder and as far as we
6 can tell as of today's date, he still claims
7 affiliation with that gang. We are offering this to
8 specifically rebut any and all assertions along those
9 lines. That's number one.

10 Number two is the gang testimony would
11 be -- dovetails with interpreting and giving some
12 layperson understanding to letters which is referred
13 to as the last item in this motion, letters written by
14 the Defendant during the pendency of his and his
15 codefendants' litigation back in 1998 and 1999. There
16 are terms used. There are phrases used. There are
17 slang that's used. And we are going to use these gang
18 experts to translate that language and conduct for a
19 jury to understand as to its intent and meaning.

20 MS. JACKSON: Your Honor, if the Court does
21 not let the letters in, then they will not need the
22 gang expert because we have not gotten to those
23 letters yet. And that's essentially what he's
24 saying. And those letters have no business in a
25 courtroom.

1 THE COURT: As I understand, Judge Sobel
2 did not permit these letters.

3 MS. JACKSON: He found them to be vulgar.
4 They're offensive. He found it to be rap-type
5 material. Your Honor, I've read them. I have them
6 here. You can't clean those letters up.

7 THE COURT: Just tell me, did Judge Sobel
8 keep them out?

9 MR. STANTON: He did, your Honor. But I
10 think there's two things that need to be reviewed
11 regarding Judge Sobel's ruling. Number one was they
12 were not offered to rebut the testimony regarding the
13 Defendant's choices in life. That is not what they
14 were sought for. So I think that's entirely different
15 from what Judge Sobel ruled. That's number one.

16 Number two is the method that they were
17 offered. They were offered in a rather large
18 quantity.

19 THE COURT: Well, tell me this. The way
20 this is going to proceed is the State is going to put
21 on their evidence?

22 MR. STANTON: Correct. Well, your Honor,
23 if I could just have the Court's indulgence for one
24 moment. I previously asked your court clerk with her
25 assistance to mark these letters. And I've provided a

1 copy to Defense counsel and highlighted the important
2 and relevant issues.

3 For example, in what should be marked as
4 Exhibit 1 there is a letter authored by the Defendant
5 to his codefendant, Rale Young. Highlighted on the
6 first page is a series of comments that is prevalent
7 to approximately six or seven letters here that the
8 Defendant is directing his codefendants about what to
9 do so that they can get off this case, so that they
10 can beat this case.

11 Once again, there was a considerable amount
12 of argument and presentation of mitigating evidence
13 that the Defendant was a follower.

14 MS. JACKSON: Your Honor, that is not
15 true. That was never used.

16 THE COURT: Let him finish, ma'am.

17 MR. STANTON: And that he had no choices in
18 life. Part of the issue in this case is -- I think
19 probably one of the most contested aspects of this
20 penalty hearing is whether or not the Defendant was
21 the shooter.

22 On the second page of this letter,
23 highlighted, is the following statement written by the
24 Defendant. "And about the three little white boys, we
25 ain't got to worry about them or they testimony."

1 And, Miss Reporter, "they testimony" is a grammatical
2 error written in the original. "I took care of
3 that."

4 Now, I don't think this Court misses the
5 point that the two other defendants in this case
6 convicted of the same offenses received life without.
7 Clearly there is an assessment that this penalty phase
8 is going to focus between death and life without. And
9 the critical issue that's going to be argued by both
10 sides before this Court and before this jury is
11 whether or not the Defendant was the shooter. This is
12 his own words, from his own hand.

13 THE COURT: What did you just say?

14 MR. STANTON: This is from the Defendant's
15 own hand, from his own mouth, saying that he took care
16 of that regarding the three white boy victims, the
17 three Caucasian men in this case.

18 The rest of the letters that I've
19 highlighted all speak for themselves and are
20 self-evident in their relevancy to issues directly
21 before this penalty jury. And that is, what role did
22 the Defendant have in relationship to his other
23 codefendants? And they speak volumes to that. The
24 Defendant is clearly the leader of these three men.

25 MS. JACKSON: Your Honor, that is a blatant

1 attempt to mislead this Court. I attached to my
2 opposition a transcript from the former jury penalty
3 phase. That letter, when he says he took care of the
4 three white boys, he's referring to the white boys who
5 testified.

6 And Judge Sobel said this, quote, And he
7 refers in one of the letters to don't worry about the
8 three boys. That must be Brian Johnson, Todd
9 Armstrong, and Terrell Young. He's talking about Ace
10 Hart. And Judge Sobel says, "He's taking care of
11 them. Obviously, he hadn't. There's a lot of young
12 men boasting in here." He was talking about the
13 witnesses.

14 And I know that is in the same transcript
15 that they have to mislead this Court. And to have
16 this Court think that he's referring to the victim in
17 this case is just not true. That's already been
18 litigated.

19 In other words, one of the reasons why
20 Judge Sobel was compelled to keep this out is that
21 these letters contain young men bragging, "Yeah, I'll
22 take care of the witnesses." And Judge Sobel says,
23 "They came in here and testified." That's what this
24 refers to.

25 First of all, we need to understand that if

1 the letters come in, they're coming in in their
2 entirety. Every other word being "nigger" this,
3 "nigger" that, and all of this vulgarity which was so
4 offensive to any kind of -- the determination in a
5 death case should be a reasoned and rational
6 decision. And I think that this Court has recognized
7 correctly that this type of language -- the other
8 District Court found that it raises prejudices. He
9 talks about all kinds of subjects that are just not
10 proper for a death penalty case, Judge. That's why
11 they were kept out before with very good reason. You
12 cannot clean these up.

13 I will not and I don't think the Court will
14 allow the State to highlight certain portions and get
15 them in. The rules of evidence say if you get a part
16 in, you'll get the whole thing in. And I will
17 certainly not stipulate to a part of the letter coming
18 in. The whole thing will come in.

19 THE COURT: Well, it's his language. He
20 used it. No one told him to use it.

21 MS. JACKSON: Your Honor, the law is that a
22 death sentence case should be based upon a reasoned
23 response. It's just young men bragging. He talks
24 about having them taken care of.

25 THE COURT: This is not bragging. I don't

1 know what he's doing. He's trying to get his boys
2 together.

3 MS. JACKSON: Your Honor, have you read all
4 of the letters?

5 THE COURT: I read the ones before me.

6 MS. JACKSON: There's a lot of them, your
7 Honor.

8 THE COURT: He's not bragging. He's using
9 these words. That's his language. That's what he's
10 talking about doing. He's talking about fixing the
11 case. I don't think it's bragging.

12 MS. JACKSON: It's puffing, your Honor.
13 He's saying he can do things that he can't do.

14 THE COURT: I don't think it's puffing. I
15 think he's telling them he's a bad dude and he'll do
16 it.

17 MS. JACKSON: Your Honor, they testified.
18 He says, "I'll make it that they won't come to court
19 and testify." And the judge says they already
20 testified.

21 THE COURT: What's your response to that?

22 MR. STANTON: In reference to the letter
23 about the three white boys, that's the judge's
24 assessment. I think he completely missed the point
25 because the context of the entire letter is he's

1 talking about -- if you go to the paragraph before
2 that statement, he's talking about that his two
3 codefendants, Terrell Young and Sikia Smith, gave
4 statements to the police.

5 And through these letters you can clearly
6 see that one letter says he now is aware through
7 discovery of an article in the newspaper that his
8 codefendants gave statements and that those statements
9 implicated him.

10 THE COURT: My only problem, though, is I
11 don't know if it's going to be inflammatory or not
12 getting two or three bites of the apple when one judge
13 has already ruled. And you bring up the same thing
14 about the next judge. That's what both of you are
15 doing. I don't want anybody to get the benefit from
16 the judge being switched. I like to keep it
17 consistent.

18 MR. STANTON: I understand that, your
19 Honor. But I think if you look at Judge Sobel's
20 ruling and what was presented to him at that time, I
21 think we're much more focused as to the nature of the
22 letters, the number of the letters, and what we're
23 seeking to admit them for.

24 MS. JACKSON: If they let in one letter,
25 I'm going to admit them all because the rules say if

1 you admit a part, I get to admit the whole because
2 there are things in these letters that he talks
3 about.

4 MR. STANTON: We have no objection.

5 MS. JACKSON: Well, your Honor, Mr. Stanton
6 argues --

7 THE COURT: Mr. Stanton, why do you want to
8 offer these?

9 MR. STANTON: Well, several reasons. First
10 of all, your Honor, the Defendant signs these letters
11 "General Deko." We are prepared to admit testimony
12 through gang experts about what that means within a
13 gang in general.

14 THE COURT: What does it mean?

15 MR. STANTON: That this person is now a
16 leader of the gang and that you get to general status
17 by committing criminal acts and furthering yourself in
18 the gang, both whether you're in Los Angeles or in
19 another city, and indeed the reference to "General
20 Deko," which the Defendant signs all his letters that
21 way.

22 MS. JACKSON: That's not true. He signs
23 some "Dick Tracy."

24 Your Honor, he also says in this one
25 letter -- this is a letter to Terrell Young -- "and I

1 told you we ain't soldiers no more. We graduated from
2 mother fuckin' generals."

3 So he says they're all generals. That's
4 the problem with these letters. One minute he's the
5 general. The next minute they're all generals. And
6 the next minute he's Dick Tracy.

7 MR. STANTON: At least two of these letters
8 are directly asking him to fall on the sword so that
9 he can get off the case, then take the fall for the
10 murders, and then he would do whatever he can for the
11 rest of his life to try to get them out of prison.

12 MS. JACKSON: And the relevance of that,
13 your Honor, he sits here convicted of four homicides.

14 THE COURT: Ms. Jackson, you keep
15 interrupting. You won't even give me a chance to
16 converse with other counsel. I'll give you your
17 chance.

18 MS. JACKSON: Very well, your Honor.

19 THE COURT: Thank you.

20 MR. STANTON: So the relevance again, your
21 Honor, is I think one of the critical inquiries in
22 this penalty proceeding is to determine and for this
23 jury to weigh the respective evidence as it reflects
24 on all three defendants that were involved in all four
25 murders. This is direct evidence from the Defendant

1 himself speaking to issues that I think are entirely
2 relevant to the jury assessing the respective roles of
3 all three defendants.

4 Understanding that those gentlemen have
5 already been convicted under separate penalty
6 provisions under a separate jury, I simply ask, is it
7 a relevant inquiry for the jury in this case to
8 consider the respective roles of the other
9 codefendants? Clearly the Defense, if I were
10 defending this case, would offer, as they could
11 easily, evidence to show what sentence befell
12 Mr. Smith and Mr. Young.

13 And so the State is in the position of
14 presenting the evidence for the jury to evaluate each
15 of the defendant's roles, and this speaks directly to
16 that.

17 THE COURT: I don't think that's
18 necessarily true from reading these letters. It
19 sounds like to me someone who's trying to get the
20 codefendants not to talk and kind of like stay
21 together with their story.

22 But, moreover, it's very inflammatory. If
23 you got any black people on this jury, they'll
24 probably be offended. Every word in here is
25 "nigger." At least 500 times he uses "nigger." He

1 uses "white boy" one time.

2 Anyway, Judge Sobel has already kept it
3 out. So I'm going to make the same ruling. All
4 right. What else?

5 MS. JACKSON: Having ruled in that fashion,
6 then it would appear to counsel that we have no need
7 for a gang expert. The gang expert, according to
8 counsel, was to explain the letters. And that was my
9 thinking as well. There is no indication --

10 THE COURT: Is he still in a gang.

11 MR. STANTON: I believe so, your Honor.
12 But, once again, counsel is misrepresenting my
13 comments regarding our seeking to admit evidence
14 regarding gang affiliation. It was twofold. You've
15 ruled on the letters. That's one prong of why we were
16 offering gang evidence.

17 The second one is to address -- and maybe
18 the Court will limit us to rebutting any evidence in
19 this regard. But, once again, in the two prior
20 penalty hearings they offered evidence about the
21 defendant's life as an adolescent and preadolescent in
22 Los Angeles and his necessity for joining a gang.

23 If indeed they go down that road in any
24 way, shape, or form, we want the opportunity to have a
25 gang expert say, Young men in his neighborhood

1 involved in the Six-Duced Brooms, which was his gang,
2 have a lot of other options than just joining this
3 gang.

4 THE COURT: That sounds fair to me.
5 Ms. Jackson?

6 MS. JACKSON: Again, your Honor, if that's
7 a rebuttal witness that they're offering.

8 THE COURT: If you bring up anything about
9 what he just mentioned, that he didn't have any other
10 alternative but to join a gang, they've got the right
11 to show that he did and rebut anything you say about
12 his gang membership and that it contributed to his
13 problem. I think they can bring in the gang folks to
14 talk about it, why he joined in the neighborhood he's
15 in that gang.

16 MS. JACKSON: As I understand their motion,
17 they want to put this gang officer on in their case in
18 chief. That I object to, but I have no quarrel
19 with --

20 THE COURT: If he's been in a gang, I never
21 heard a word that was irrelevant.

22 MS. JACKSON: Your Honor, as I set forth in
23 our opposition, we would object to it on the basis of
24 relevance. I've read the transcripts in all three
25 cases, and I don't see any allegation that this was a

1 gang-related homicide.

2 THE COURT: It doesn't have to be gang
3 related, does it?

4 MS. JACKSON: Usually that's what they use
5 it for, your Honor.

6 THE COURT: If you guys bring it up, I
7 think he should be able to use it. I think that's a
8 good compromise.

9 MS. JACKSON: I never had a problem with
10 that, your Honor.

11 THE COURT: That's the Court's ruling on
12 that. What else do we have?

13 MS. JACKSON: Your Honor, we have a final
14 issue, which is again a very large issue which has not
15 occurred yet. Judge Sobel did not have the task of
16 dealing with that.

17 Since the last proceeding, Derrick Simpson
18 is deceased. He was shot by Donte Johnson. Donte
19 Johnson pled guilty to attempted murder in that case.
20 There was a preliminary hearing. That's on
21 videotape. Mr. Simpson testified previously at both
22 penalty hearings. This court has actually granted a
23 motion for the State to use that testimony.

24 And as I set forth in my opposition, they
25 attached an autopsy report to their response, which is

1 the first time I've had a chance to see it. This is
2 my first issue. There is no way I could have an
3 expert look at this autopsy report and to tell me the
4 cause of death for Derrick Simpson. From
5 Mr. Simpson's own mouth, we know he was in his 40s and
6 that he was a longtime crack addict. This is from his
7 own mouth.

8 THE COURT: What's your point? What are
9 you objecting to if I've already admitted it?

10 MS. JACKSON: They want to tell the jury
11 that he's dead. Your Honor, at some point there has
12 to be a limit in a quadruple homicide as to how many
13 deaths you can tell this jury about, things that they
14 have not had to prove.

15 THE COURT: First of all, he shot the guy,
16 he confessed to shooting the guy, and the guy died
17 prematurely. What did the autopsy say?

18 MR. STANTON: Cause of death was homicide
19 related to his previous gunshot wounds that the
20 Defendant has been --

21 THE COURT: What do you want to do, ma'am?

22 MS. JACKSON: Your Honor, the guy also had
23 three or four infections.

24 THE COURT: Was he paralyzed in a chair?

25 MS. JACKSON: Yes, your Honor.

1 THE COURT: That's what happens when you
2 get shot and get paralyzed. You get all kinds of
3 infections. Even I know that.

4 MS. JACKSON: We now have the jury hearing
5 four, possibly five -- I think you ordered five
6 homicides. Before this Court brings in its sixth, I
7 would like the chance to have an expert -- and I got
8 this report last week -- look at this autopsy report.

9 THE COURT: Who are you going to get?

10 MS. JACKSON: I'll get whoever I can, your
11 Honor. We've got ten days, fifteen days.

12 Your Honor, I am very serious about this.
13 If this jury is told that Derrick Simpson died as a
14 result of anything that Donte Johnson did, I believe
15 it's going to be reversible error, and here's why.

16 THE COURT: That's the Supreme Court's job.

17 MS. JACKSON: Your Honor, I try to comply
18 with the law and the rules, and here's what it says.
19 One of the issues that's currently before the U.S.
20 Supreme Court right now in Summerlin is whether or not
21 Donte Johnson, who asked for a new jury trial in 2000,
22 is going to be prejudiced by us, being the system,
23 saying, "No, we're going to have judges kill you."
24 Are we going to be prejudiced by that?

25 THE COURT: What does that have to do with

1 this issue here?

2 MS. JACKSON: Your Honor, Derrick Simpson
3 was not dead in 2000. As I set forth in my points and
4 authorities, Donte Johnson asked for a new jury back
5 in 2000. That denies him -- this man has since
6 expired.

7 Part of the problem with these types of
8 cases under the Summerlin case now before the U.S.
9 Supreme Court is that you're going to punish him
10 because he was not given what he was due back in
11 2000.

12 The way to keep this clean and to keep this
13 legal is to not have him be in any worse opposition.
14 That is what due process requires, your Honor. That's
15 what the fundamental due process requires. If Derrick
16 Simpson had died and Donte Johnson did not have a
17 penalty phase, they couldn't even prosecute him.

18 Your Honor, I attached to my opposition --

19 THE COURT: All right. I understand your
20 point, Ms. Jackson. We'll leave it to the smarter
21 people to take care of in the Nevada Supreme Court.
22 How much time do you need to get your examiner?

23 MS. JACKSON: Your Honor, you're inclined
24 to allow this in?

25 THE COURT: Yes.

1 MS. JACKSON: Your Honor, I'm going to need
2 at least two weeks to have an expert. I want to run
3 some tests on Derrick Simpson's body. The man had all
4 kinds of infections, a crack head, and everything
5 else. I'm not prepared to do this on the 18th.

6 THE COURT: Why do you have to run tests on
7 his body? How are you going to get his body up?

8 MS. JACKSON: That's their problem.

9 THE COURT: You don't need to run tests.

10 MS. JACKSON: Your Honor, we have to have
11 tissue samples. This is my client's life, Judge.

12 THE COURT: Anyway, like I said, how long?

13 MS. JACKSON: Two weeks.

14 THE COURT: You can have two weeks.

15 MS. JACKSON: And, your Honor, that's when
16 we set the trial date.

17 THE COURT: That's all you need.

18 MS. JACKSON: The record will reflect that
19 I cannot have this done in two weeks and be prepared
20 to go to trial in two weeks. I will be ineffective.

21 MR. STANTON: Would the Court entertain
22 bumping the current date from the 17th to two weeks?

23 THE COURT: I can do that.

24 THE CLERK: May 17th.

25 THE COURT: We can bump it two weeks.

1 THE CLERK: What are we bumping in two
2 weeks?

3 MR. STANTON: The start of the penalty
4 phase.

5 THE CLERK: That's set for the 18th.

6 THE COURT: A month. It shouldn't take you
7 that long to have somebody examine -- I don't know
8 what you're trying to do. I'm sure they kept tissue
9 samples if they did an autopsy.

10 MS. JACKSON: I hope so, Judge, because I
11 want to have him reexamined.

12 THE COURT: That's fine. I don't think
13 he's going anywhere.

14 MS. JACKSON: Right, your Honor. And that
15 would be my desire, including not to the death room.

16 THE CLERK: We're resetting the penalty
17 hearing.

18 THE COURT: I can give you a status check
19 in two weeks to see if you have the examination done.

20 MS. JACKSON: Very well, your Honor.

21 MR. WHIPPLE: Your Honor, I appreciate
22 your -- I do have another capital case starting
23 June 1st. My client in this case is not going
24 anywhere either, but I need to make sure that the
25 Court can move that case.

1 THE COURT: On what date did we set to have
2 those witnesses show?

3 MS. JACKSON: A week from today, your
4 Honor. May 10th.

5 THE CLERK: There's another motion set on
6 that day too.

7 THE COURT: What date?

8 THE CLERK: May 10th.

9 THE COURT: Why don't we kick those over
10 two weeks, and that will give her enough time to --

11 THE CLERK: All the stuff set for May 10th
12 already kicked everything to May 17th.

13 MR. WHIPPLE: My thought, your Honor, is
14 because Mr. Johnson is not going anywhere, maybe we
15 can kick it further than a month. That will give us
16 time to do my capital case in June.

17 THE COURT: Which ones are unresolved?

18 MS. JACKSON: We have I think four
19 unresolved motions, your Honor, and there's one that's
20 being typed this afternoon.

21 THE COURT: Let's recap everything.

22 MR. STANTON: Yeah. 1 through 6 have all
23 been resolved. The State has withdrawn seeking as an
24 enumerated aggravator the death of --

25 THE COURT: All right. I need the State to

1 prepare the order for those, the ones we resolved.

2 MR. STANTON: I'll prepare an order
3 relative to the Court's ruling relative to all the
4 issues.

5 THE COURT: Yes.

6 MS. JACKSON: And I would like a chance to
7 review and sign off on any orders.

8 MR. STANTON: Absolutely.

9 MS. JACKSON: Thank you, your Honor. And I
10 also thought the Court was asking about other motions
11 I've filed. I think we can resolve all of those in
12 two weeks because the last one is being typed today,
13 your Honor.

14 THE COURT: All right.

15 MS. JACKSON: Thank you, Judge.

16 THE COURT: And you guys need to get all
17 your motions heard.

18 MR. GUYMON: Judge, have we officially
19 vacated the hearing for the 18th?

20 THE CLERK: That will have to be on
21 June 1st, is what I was looking at.

22 MR. WHIPPLE: I have a capital case
23 starting on the 1st.

24 THE COURT: How long will it take to finish
25 it up?

1 MR. WHIPPLE: Two weeks. And I have a very
2 crowded calendar. So if we can get together to
3 discuss an appropriate time to get together for this
4 matter.

5 THE CLERK: Our criminal calendar stack
6 starts on the 6th.

7 MR. WHIPPLE: If we can return in two weeks
8 at a convenient time.

9 THE COURT: I want to keep this thing
10 moving. How old is this case?

11 MR. GUYMON: The murder occurred in '98.
12 The conviction occurred in 2000. And the penalty
13 phase.

14 THE COURT: Six years. Let's get this
15 thing moving. We're going to set the hearing date on
16 the 17th or so.

17 MR. GUYMON: And you want to hear the
18 motions on the 17th?

19 THE CLERK: 1:30.

20 THE COURT: We can do that. And hopefully
21 we'll have all the motions done and we can set a
22 hearing date at some time later. All you need to do
23 is subpoena your witnesses. Right? So we'll set it
24 at a convenient time on the 17th. Is that okay with
25 everyone?

1 MR. WHIPPLE: Yes, your Honor.

2 THE COURT: In the meantime, get that order
3 typed up and send it over to sign off on it.

4 MR. STANTON: I'll send it to Ms. Jackson
5 today.

6 THE COURT: I thought we only had two.

7 MR. GUYMON: Judge, they have a motion
8 right now to have us not refer to the kids as boys.
9 And we were going to agree to the motion for the
10 questionnaire. We've virtually agreed to that. And
11 they have a motion to bifurcate.

12 THE COURT: Hold on. How old were they?

13 MR. GUYMON: We don't object.

14 THE COURT: Okay. That's granted.

15 MS. JACKSON: But I'm going to amend my
16 motion to include kids because we have one
17 17-year-old. Everybody else was an adult.

18 MR. GUYMON: Judge, we will refer to them
19 as young men.

20 THE COURT: Okay. That will be the order.
21 What else?

22 MR. GUYMON: They had a motion for a
23 questionnaire, which we met with them on last Thursday
24 or Friday, made some changes to the questionnaire. We
25 have one very small objection to the questionnaire.

1 THE COURT: What's the objection? I can do
2 it now.

3 MR. GUYMON: In the synopsis, Judge, it
4 refers to the race of the victims and the race of the
5 Defendant. Our position is that we don't believe that
6 the race has anything to do with the synopsis of the
7 case. And that is our only objection. Questions 33
8 through 36 deal with race, Judge, and we felt like
9 that was sufficient.

10 THE COURT: What question was it?

11 MS. JACKSON: The synopsis, your Honor. I
12 have attended some of the best death penalty colleges
13 in this country, and they all tell me that the race of
14 my client and the race of the victims is the most
15 important factor that juries consider when they
16 determine whether or not to kill a defendant. I think
17 they have to be told that early and often.

18 THE COURT: Well, I don't know about
19 often.

20 MS. JACKSON: Your Honor, that goes to the
21 very heart of whether or not a jury can be fair.

22 THE COURT: I don't need you to lecture
23 me. That's not even an issue.

24 MR. GUYMON: Judge, we indicated that
25 Questions 33 through 36 address race.

1 MS. JACKSON: Your Honor, the questions
2 don't dictate who is of what race.

3 THE COURT: I agree. I don't think it
4 should be in -- you can put it in around 36 or 37.
5 You can put what race they are.

6 MR. GUYMON: Okay, Judge.

7 MS. JACKSON: Very well, your Honor.

8 THE COURT: You can put those questions
9 somewhere else. But to start off like that, I don't
10 think -- you could make that a question and list all
11 the races down with the rest of it where you talk
12 about race. What else is there?

13 MR. GUYMON: There was a motion to
14 bifurcate the penalty hearing. And, in short, what
15 the Defense was asking is that we not get into
16 character evidence unless we have proven an
17 aggravator. We have provided our opposition.

18 In short, Judge, the rules don't require a
19 bifurcation of the hearing. And, in fact, they raise
20 this very issue in the appeal in the Donte Johnson
21 case, and the Court denied that as being incorrect.

22 THE COURT: Well, it is not incorrect, but
23 it's not required. But, anyway, I'm not going to have
24 two hearings. So we'll just do one. I'm not going to
25 bifurcate it.

1 MR. GUYMON: I would also submit, Judge,
2 that one of the aggravators is death to one or more
3 persons. By the very verdict we have death to four
4 people. So we've met an aggravator.

5 Another aggravator would be the aggravators
6 during the commission of a robbery. And, of course,
7 they found robbery times four. So the aggravators
8 were proved by the very verdicts.

9 MS. JACKSON: Before the Court denies my
10 motion, can I make a record?

11 THE COURT: Yeah. That's a good idea.

12 MS. JACKSON: We would ask the Court to
13 bifurcate the penalty phase into two portions for the
14 following reason: The jury is not permitted to
15 determine whether or not anyone is death eligible
16 until they find an aggravator beyond all reasonable
17 doubt. That has always been the law.

18 And the State has recently cited a case,
19 28.3rd.498 of 2001, Nevada Supreme Court case. And
20 it's stated at page 515 of that case. "In deciding
21 whether or not to return a death sentence, the jury
22 can consider such evidence only after" -- and they're
23 referring to the other matter evidence -- "they have
24 found aggravators or mitigators."

25 This other party stuff or bad act stuff

1 that the State has insisted upon bringing into this
2 penalty hearing can consider such evidence only after
3 finding the Defendant death eligible, after it has
4 found unanimously at least one enumerated aggravator
5 and each juror has found that each mitigator does not
6 outweigh the aggravators. Of course, if the jury
7 finds that death is appropriate, they can consider the
8 other matter.

9 And that's the problem we have with these
10 other alleged murders, this Snoop homicide and this
11 other stuff. Because as human beings we find it
12 impossible for a jury to find -- we are going to be
13 objective and find that the State has proved an
14 aggravator beyond all reasonable doubt, but I'm going
15 to block out of my mind the fact that this man, who is
16 convicted of killing four people, has killed 15 others
17 they say. I mean, that's ridiculous.

18 And that's basically what we ask this jury
19 to do when they find this evidence before they find
20 him death eligible. Therefore, we think it's
21 unconstitutional and cannot occur fairly without a
22 bifurcation until people can somehow stop being human,
23 which they certainly cannot do. Thank you, your
24 Honor.

25 THE COURT: State, is there anything you

1 want to add?

2 MR. GUYMON: No, Judge, other than the fact
3 that what I've said previously.

4 And, in fact, the instructions that you
5 instructed the jury will tell them the method by which
6 they can consider the character evidence. They cannot
7 consider the character evidence until we've proven an
8 aggravator. So they'll be instructed on the three
9 prongs.

10 THE COURT: How much of a difference is
11 this going to make in terms of time? It wouldn't be
12 very long anyway just to say, "If you find the
13 aggravator that four people were killed or more than
14 one person was killed." And the other one was a
15 robbery?

16 MR. GUYMON: By the very verdicts, Judge.

17 THE COURT: But how long will that take?

18 MR. GUYMON: I guess they would hear the
19 summary of the case from the detective and some of the
20 other witnesses that will establish the facts that
21 support the guilty verdicts. I can't really tell you
22 how long it would take.

23 THE COURT: But I don't think it's
24 necessary, though, given the fact that he's already
25 been convicted of killing four people. In a situation

1 where the facts were different, it might be
2 beneficial, but they already killed four people by the
3 verdict itself. The aggravator has already been
4 proven.

5 MR. GUYMON: The aggravators are death to
6 more than one person, a death occurring during the
7 commission of a robbery or kidnapping. We have
8 kidnapping times four and robbery times four.

9 And then the last aggravator, Judge, is to
10 avoid apprehension or to facilitate escape. That's
11 the one aggravator that they don't necessarily have to
12 find pursuant to the verdicts. But by the very
13 verdicts, Judge, two of the aggravators are found and
14 are, for lack of a better word, already established.

15 MS. JACKSON: But, your Honor, these are
16 not these juries' verdicts.

17 THE COURT: What's your main objection to
18 doing it that way?

19 MR. GUYMON: On the bifurcation?

20 THE COURT: Yeah.

21 MR. GUYMON: I guess, Judge, just by
22 procedure because there is no procedure, number one.

23 And, number two, this very issue was argued
24 in the appeal previously, and they indicated that that
25 was not what was to happen, that the procedure was as

1 established by law.

2 THE COURT: All right. Anyway, it's
3 denied. So what's next?

4 MR. GUYMON: The next was that the defense
5 was asking to allow the defense to argue last in the
6 penalty phase.

7 MS. JACKSON: Your Honor, if it's my
8 motion, I get to speak first and last, I believe.

9 MR. GUYMON: I'm sorry.

10 THE COURT: What does our legislature say
11 about that?

12 MS. JACKSON: At least as far as I'm the
13 moving party. So he doesn't get to present my
14 motion. I do.

15 THE COURT: That's not what we're talking
16 about.

17 MS. JACKSON: Yeah. But my motion is to
18 argue last in the penalty phase, which I probably
19 won't get to do. But at least I should get to argue
20 first today.

21 THE COURT: What does our legislature say
22 about that? Have they changed that law?

23 MS. JACKSON: Not to my knowledge.

24 THE COURT: Wasn't it proposed?

25 MS. JACKSON: From my understanding, it was

1 proposed and rejected. But, your Honor, that's the
2 kind of thinking if legislature would not recognize
3 what the Supreme Court did in ring. So the Supreme
4 Court legislature isn't always right.

5 THE COURT: But if you're a judge, you have
6 to follow the law.

7 MS. JACKSON: Judge, you have discretion in
8 this matter. I cite for the Court a case which
9 clearly gives this Court discretion. State versus
10 Jenkins, 15 Ohio State 3rd, 164, 1984, the Ohio
11 Supreme Court. Actually, there is legal precedent for
12 this, your Honor.

13 Moreover, I think if you parallel this with
14 what the burden is in the penalty phase, they don't
15 have the burden in the penalty phase. If they put on
16 their case and we don't bring forth any mitigators,
17 our client automatically will receive the death
18 penalty. We have as much as or equal burden in this
19 phase.

20 THE COURT: Not automatically. The jury
21 never has to follow what the State recommends or
22 anybody else. They have complete, total, unfettered
23 discretion.

24 As to what they do once -- even after they
25 find that the aggravators outweigh the mitigators,

1 they still don't have to give a death penalty. They
2 can do whatever they want. But with that being said,
3 go on.

4 MS. JACKSON: In those same lines, I have
5 Gardner versus Florida, 430 U.S. 349, 1977. And that
6 is a different case. However, it also states that
7 there is a higher standard of due process required in
8 death cases because of the severity and the finality
9 of the punishment. And the Supreme Court in that
10 case --

11 THE COURT: So what do you propose?

12 MS. JACKSON: I'm proposing that this Court
13 will allow me to address the jury last. That is what
14 my motion is, your Honor.

15 THE COURT: So the State will go first.
16 Right?

17 MS. JACKSON: Then we would go, and that
18 would be it.

19 THE COURT: Don't they get a rebuttal?

20 MS. JACKSON: No, not if you grant my
21 motion, Judge.

22 THE COURT: But don't they normally get a
23 rebuttal, or do they not?

24 MS. JACKSON: We'll take a surrebuttal.

25 THE COURT: A surrebuttal?

1 MS. JACKSON: Yes. They go, we go, they
2 go, and we go.

3 THE COURT: That could be done. That's how
4 normally I would do it. If we do an examination, the
5 State would go, the defense would go, the State would
6 rebut, and then we would have a surrebuttal.

7 MS. JACKSON: That's what we would propose,
8 your Honor.

9 MR. GUYMON: And, Judge, if I could
10 approach. We filed this electronically. The Defense
11 made this argument in the Johnson appeal, Judge, that
12 they were to go last.

13 THE COURT: I know it's not the law,
14 Counsel, but I don't see -- what's the harm? After
15 all, they're trying to save their client's life.

16 MR. GUYMON: I understand that. And the
17 argument has been brought between Williams versus
18 State, Snow versus State, and, of course, the Johnson
19 case. NRS 175.141(5) says, "When the evidence is
20 concluded, the District Attorney must open and must
21 conclude the argument."

22 Judge, the law is very, very clear that the
23 State opens and rebuts the Defense both in the guilty
24 phase and in the penalty phase. There is no statutory
25 provision or no law which permits the Defense to go

1 last or have surrebuttal in argument.

2 THE COURT: That is true.

3 MS. JACKSON: Even the statute, the last
4 time I checked, was ambiguous as to penalty phases.

5 THE COURT: I think the Supreme Court has
6 stated that we have no authority. Let me see here.

7 MS. JACKSON: Your Honor, may I approach
8 your court reporter and ask a question about the
9 transcript?

10 THE COURT: Yes. Anyway, Ms. Jackson, even
11 though I don't see anything wrong with it, it's
12 probably a perfect system in these kinds of cases, the
13 Supreme Court states in all these cases that the
14 State, the prosecution, must be allowed to close last.

15 So I think that is something the Supreme
16 Court is going to have to change or the legislature.
17 I don't agree with it, but I'm restrained to follow
18 their direction.

19 What else do we have?

20 MS. JACKSON: I believe that's all of the
21 motions. There is one more, as I indicated, that is
22 being typed today. We will file it tomorrow, and I
23 think that will give the State ample opportunity to
24 address it and respond to it.

25 THE CLERK: I think all those motions we

1 had set for the 10th except for your one motion.

2 I have Defendant's motion to argue last,
3 denied. Defendant's motion to bifurcate, denied. I
4 have Defendant's motion for jury questionnaire and an
5 amended motion for jury questionnaire.

6 THE COURT: The questionnaire was granted
7 provided that the synopsis would be placed down where
8 the others are.

9 MS. JACKSON: And the amended motion
10 superseded the original motion, Ms. Clerk. So the
11 original motion would be withdrawn, if that's cleaner
12 for the record.

13 THE COURT: What else do you have?

14 MS. JACKSON: Your Honor, that's it as far
15 as what's pending now. As I stated, I will put on the
16 record that I will have the other motion filed
17 tomorrow, and that should give counsel enough time to
18 respond. And we would like to have the evidentiary
19 hearing on the Oscar Irias incident.

20 THE COURT: We already have a date on that.

21 MR. GUYMON: May 17th at 1:30.

22 MR. STANTON: And I'll include it in the
23 Court's order.

24 (Thereupon, the proceedings
25 concluded at 3:17 p.m.)

-oOo-

ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF
PROCEEDINGS.

Jane Michaels

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1 DISTRICT COURT
2 CLARK COUNTY, NEVADA
3 *****
4
5
6 THE STATE OF NEVADA,)
7 PLAINTIFF,)
8 VS.) CASE NO.: C153154
9 DONTÉ JOHNSON,)
10 DEFENDANT.)
11
12 REPORTER'S TRANSCRIPT
13 OF
14 EVIDENTIARY HEARING
15
16 BEFORE THE HONORABLE JUDGE LEE A. GATES
17 DISTRICT COURT JUDGE
18 DEPARTMENT VIII
19
20 DATED MONDAY, MAY 17, 2004
21
22 FOR THE PLAINTIFF: DAVID STANTON, ESQ.
23 FOR THE DEFENDANT: ALZORA B. JACKSON, ESQ.
24 BRET O. WHIPPLE, ESQ.
25 REPORTED BY: SONIA L. RILEY, CCR NO. 727

May 18 8 31 AM '04
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SONIA L. RILEY, CCR NO. 727 (702) 455-3610

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

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6

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* * * * *

SONIA L. RILEY, CCR NO. 727

(702) 455-3610

7

LAS VEGAS, NEVADA; MONDAY, MAY 17, 2004

P R O C E E D I N G S

* * * * *

(Defense Exhibits A, B and C were marked for identification.)

THE COURT: Proceed.

STATE'S CASE

MR. STANTON: Your Honor, in Case C153154 when we last were before your Honor, we requested and the Court declared today's time and date for a continuation of a series of motions and hearings that involved evidence to be presented at the defendant's penalty phase. One of the items that was presented to the Court regarding the State's proffer was an incident that gave rise to charges being filed against this defendant and a co-defendant regarding throwing another inmate off of a railing at the Clark County Detention Center.

I have one witness to present regarding -- to meet the State's evidentiary burden, and he's present in court, and I believe based on the nature of how we proceed, if I can call that witness.

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8

THE COURT: All right.

MR. STANTON: Officer Gonzalez.

ALEXANDER GONZALEZ,

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

THE CLERK: Please be seated. State your name and then spell your last name.

THE WITNESS: Alexander Gonzalez, A-L-E-X-A-N-D-E-R, Gonzalez, G-O-N-Z-A-L-E-Z.

DIRECT EXAMINATION

BY MR. STANTON:

Q Officer, I want to direct your attention back to the date of February 24th, 2001. Did you have, on that date, sir, occasion to be employed with the Clark County Detention Center as being a Metro officer?

A That's correct.

Q What was your assignment on that day, sir?

A I was relieving for training in Post 50.

I was working the 5C/D module.

Q What was the name of the module again?

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1 A Post 5C.
 2 Q What type of module was that, as far as
 3 the nature of the inmates that were housed in 5C?
 4 A It's a disciplinary unit.
 5 Q Were you familiar with the defendant Donte
 6 Johnson on that day?
 7 A Yes, I was.
 8 Q You knew him from previous occasions and
 9 knew him so that you would recognize him mentally
 10 and visually?
 11 A Yes.
 12 Q On that day, did you see Donte Johnson be
 13 involved with other inmates in unusual activity that
 14 you focused your attention on?
 15 A That's correct.
 16 Q Could you tell the Judge what you
 17 observed, where you were, and what was the first
 18 thing that brought your attention to Mr. Johnson and
 19 other inmates?
 20 A I was in the module office. I think it
 21 was the first time as I arrived to relieve the other
 22 officers while they went to go train, and they were
 23 all doing their free time. Usually during that time
 24 they get -- they shave, take a shower, whatever it
 25 may be. Well, I observed Donte Johnson and an

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1 inmate Reginald Johnson --
 2 **THE COURT:** Reginald Johnson?
 3 **THE WITNESS:** Yes, sir -- walk up the
 4 stairs and begin -- a fight started between them two
 5 and another inmate by the name of Oscar Irias. And
 6 at that time, they began a physical confrontation on
 7 the upper tier, and inmate Oscar Irias was thrown
 8 from the upper balcony down to the third floor.
 9 **THE COURT:** Who threw him down?
 10 **THE WITNESS:** Both of them, Reginald
 11 Johnson and Donte Johnson.
 12 **THE COURT:** You saw the defendant there
 13 grab him and pick him up and throw him over along
 14 with the other guy?
 15 **THE WITNESS:** Yes, sir.
 16 **THE COURT:** No doubt about it?
 17 **THE WITNESS:** No doubt about it.
 18 I was positioned in the module office.
 19 It's a wooden door with a glass, and I observed it
 20 from the module office.
 21 **BY MR. STANTON:**
 22 Q Do you know a correctional officer by the
 23 name of Hugh Hardy?
 24 A That's correct.
 25 Q Was he working with you or in the same

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1 area as you were?
 2 A Yes.
 3 Q After this incident, did you then run up
 4 to -- why don't you describe to the Court what you
 5 did relative to Donte Johnson and Reginald Johnson
 6 after you saw them throw that inmate over the
 7 railing.
 8 A First, I called a Code Red 416, which is a
 9 fight, when they began exchanging blows. Donte
 10 Johnson and Reginald were hitting Oscar. At that
 11 time, I called 416 and ran out. As I called Code, I
 12 ran out after Officer Hardy. As we ran out,
 13 probably halfway in between the day room, that's
 14 where I saw Oscar getting thrown over the balcony,
 15 and that's where I called Code Red 444, and that's
 16 when Oscar landed down. We ran in, and both Donte
 17 Johnson and Reginald Johnson walked down the stairs
 18 with their hands in the air, and they were prone
 19 down.
 20 Q And based upon your initial reaction of
 21 how you saw this other inmate, the distance that he
 22 fell and how he was propelled over the railing, what
 23 did you think initially was going to be his
 24 condition after the landing?
 25 **MR. WHIPPLE:** Objection, speculation.

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1 **MS. JACKSON:** Objection. Speculation and
 2 relevance.
 3 **MR. STANTON:** I think it's certainly
 4 relevant as to the proceedings.
 5 **THE COURT:** Did he walk over and see his
 6 condition?
 7 **MR. STANTON:** He did. I'm just asking him
 8 based upon what he saw when he first observed the
 9 inmate, not necessarily what occurred afterwards.
 10 **MR. WHIPPLE:** How is that relevant?
 11 **THE COURT:** How is it relevant?
 12 **MR. STANTON:** It's relevant to what the
 13 officer perceived the defendant had done.
 14 **THE COURT:** He saw what he done. He threw
 15 him -- he was on the second floor?
 16 **THE WITNESS:** Yes, sir.
 17 **THE COURT:** Sustained.
 18 **MR. STANTON:** If the Court doesn't believe
 19 any further inquiry is relevant --
 20 **THE COURT:** That's not what I said. I
 21 just asked him what he thinks happened to the guy.
 22 All he had to do was go over and look at him and say
 23 what happened to him.
 24 **BY MR. STANTON:**
 25 Q Once the defendant and Reginald Johnson

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1 were prone down, they were taken into custody?
 2 A They were restrained.
 3 Q Restrained.
 4 **MR. STANTON:** I have no further questions
 5 of this witness.
 6 **THE COURT:** What was the condition of the
 7 person that got thrown over the balcony?
 8 **THE WITNESS:** I thought he was seriously
 9 hurt, if not dead when he landed. He landed pretty
 10 hard. I'm not exactly sure what happened to him,
 11 but they took him to the hospital.
 12 **THE COURT:** It was off the second floor?
 13 **THE WITNESS:** Yes, sir.
 14 **THE COURT:** What did he land, on -- the
 15 concrete below?
 16 **THE WITNESS:** Yes.
 17 **THE COURT:** Go on.
 18
 19 CROSS-EXAMINATION
 20 **BY MR. WHIPPLE:**
 21 Q Officer Gonzalez, in fact, Mr. Irias
 22 received a cut to his knee; is that correct?
 23 A I'm not sure, sir.
 24 Q You're not sure where he was hurt?
 25 A He was bleeding, but I would be lying to

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1 you if I told you from exactly where.
 2 Q No broken bones, right?
 3 A That I can recall, no, sir.
 4 Q I want to go back and talk briefly about
 5 some of the information that occurred with regard to
 6 that incident.
 7 You gave a statement to some detectives,
 8 correct?
 9 A Yes, sir.
 10 Q And there was an officer's report that was
 11 filed, correct?
 12 A I think a voluntary -- maybe officer's
 13 report. I'm not sure.
 14 Q Did you prepare a voluntary statement?
 15 A I didn't prepare it. I was interviewed by
 16 the detectives, and they prepared it.
 17 Q Now, did you do an actual -- were you part
 18 of an investigation that took place after -- an
 19 internal investigation with the Clark County
 20 Detention Center?
 21 A No, I wasn't.
 22 Q So, you're not sure if there were any
 23 reports that were generated internally?
 24 A If they were, it was never brought to my
 25 attention.

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1 Q Now, I do have what's a CAD report, I
 2 believe.
 3 **MR. WHIPPLE:** If I may approach, your
 4 Honor?
 5 **THE COURT:** Yes.
 6 **BY MR. WHIPPLE:**
 7 Q Would you take a look at that?
 8 **MR. WHIPPLE:** I have not marked that, and
 9 I don't know if the District Attorney has a copy of
 10 it. I'll provide it to you.
 11 **BY MR. WHIPPLE:**
 12 Q Officer Gonzalez, what I'm trying to do is
 13 determine what information out there exists with
 14 regard to this incident.
 15 Have you seen this before?
 16 A Not in a long time. It's been several
 17 years, but I wrote it.
 18 Q So, there was an internal investigation
 19 that took place?
 20 A I mean, when you say "internal
 21 investigation," regarding myself or regarding the
 22 inmates --
 23 Q To the incident.
 24 A Yes, they were formally CAD for fighting,
 25 I believe.

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1 Q And, in fact --
 2 **MR. WHIPPLE:** I'll mark this for the
 3 Court, your Honor, what we're talking about. This
 4 will be Defense Exhibit D.
 5 (Defense Exhibit D was marked for
 6 identification.)
 7 **BY MR. WHIPPLE:**
 8 Q With regard to Defense Exhibit D, is that
 9 the entire investigation that you put together
 10 following this incident?
 11 A It's not an investigation. Basically,
 12 it's just a formal -- they violated some type of
 13 formal rule that we have in the facility, and they
 14 got written up for it.
 15 Q Is that the entirety of your write-up with
 16 regard to this incident?
 17 A I believe so, yes. I CAD them both as far
 18 as I believe, and that's as far as I can go -- yeah.
 19 Q And then there was the taped statement to
 20 Detective Velasco, correct?
 21 A I didn't do that. They were in charge of
 22 that.
 23 Q There was a police report that was
 24 eventually filed, correct?
 25 A Yes.

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1 Q And a preliminary hearing transcript.
 2 You testified at the preliminary hearing?
 3 A Correct.
 4 Q Is that everything with regard to this
 5 incident that you're aware of?
 6 A That I'm aware of, yes.
 7 Q I want to go back to February 24th, 2001
 8 when this incident occurred.
 9 You were obviously an officer with the
 10 Clark County Detention Center on that day, correct?
 11 A Correct.
 12 Q What was your age back in 2001?
 13 A Two thousand one, three years ago, I was
 14 28.
 15 Q And how long had you been working for the
 16 Clark County Detention Center?
 17 A Two years, approximately.
 18 Q Had you graduated from the Police Academy?
 19 **MR. STANTON:** Your Honor, I'm going to
 20 object as to relevance.
 21 **MR. WHIPPLE:** Foundation, your Honor.
 22 **MR. STANTON:** Foundation for what?
 23 **MR. WHIPPLE:** Foundation for this
 24 incident.
 25 **MR. STANTON:** Your Honor, he's an

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1 eyewitness to an event.
 2 **THE COURT:** He's asking background.
 3 **BY MR. WHIPPLE:**
 4 Q Police Academy?
 5 A Corrections Academy.
 6 Q What time line had you graduated prior to
 7 this incident?
 8 A I graduated 7/14 of '99.
 9 Q Now, on February 24th, what was your
 10 position?
 11 A Excuse me. I started 7/14/99; I graduated
 12 a couple months after that. I'm not sure of the
 13 exact date, August maybe.
 14 Q Of 1999?
 15 A Of '99.
 16 Q Back on 2/24, what was your position?
 17 What was your title?
 18 A Corrections officer.
 19 Q Was this your standard employment working
 20 at this particular post?
 21 A No, it wasn't.
 22 Q Let's talk about that post for a second.
 23 That was Module 5, correct?
 24 A Post 50, Module 5C, yes.
 25 Q What were you supposed to be doing there

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1 that day?
 2 A The guys -- the CERT guys usually train
 3 that day. My sergeant said, "I need you to go
 4 relieve a gentleman training;" I said okay. They
 5 provided me a list of individuals to exercise in
 6 whatever order they wanted, because they were
 7 familiar with these individuals, and at this time, I
 8 just followed, basically what they told me to do.
 9 Q Okay.
 10 Now, when you said CERT guys are normally
 11 on post, that means other people normally have that
 12 description, are doing that job?
 13 A Yeah.
 14 Q So, you were filling in that day?
 15 A Yeah. I was just breaking them for a
 16 couple of hours while they trained.
 17 Q Who are the CERT guys? Are they
 18 specialized individuals?
 19 A They train in different things, I guess.
 20 Q And they're normally doing that type of
 21 work that you were doing that day?
 22 A You don't have to be a CERT officer to
 23 work that module. It happens, I guess, that the
 24 guys that were working that day, they were CERT
 25 officers.

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1 Q Had you worked that module before?
 2 A Yes.
 3 Q And approximately how many times did you
 4 work that module?
 5 A Several times.
 6 Q In two years, how many times,
 7 approximately, two times, three times?
 8 A I think it was one of my assignments for a
 9 three-month period; so, whatever amount that adds up
 10 to.
 11 Q I'm sorry?
 12 A For three months for four days one week,
 13 three days another week.
 14 Q Let me stop you right there. I got two
 15 understandings. You said you had been there a
 16 couple times before, you worked there two times, a
 17 couple times, and then you said I had a three-month
 18 obligation; so, I need to clarify. As of
 19 February 24th, 2001, how many times did you work at
 20 that post?
 21 A I don't know, a lot.
 22 Q More than two?
 23 A Yes.
 24 Q More than five?
 25 A Yes.

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1 Q More than ten?
 2 A Yes.
 3 Q So, your initial statement of a couple
 4 times is incorrect?
 5 A I don't know. I don't remember me saying
 6 a couple times, but a lot of times, yeah.
 7 Q Now, that particular post was a
 8 disciplinary unit. You already said that, correct?
 9 A Yes.
 10 Q And it was segregated, right? The
 11 individuals who were housed were segregated from
 12 other individuals; is that correct?
 13 A It was not segregated, all the
 14 individuals. There's rooms. It's a disciplinary
 15 housing unit, and they're released an hour per
 16 inmate to do their free time.
 17 Q It's segregated from the general
 18 population?
 19 A Yeah, every module.
 20 Q Those individuals that are housed, each
 21 one of them have their own unit?
 22 A Their own room?
 23 Q Yeah.
 24 A Not every individual -- there's some where
 25 they have roommates, and there are some that are in

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1 a room by themselves.
 2 Q So, there are some people -- I want to
 3 clarify.
 4 In that module on that day, there were
 5 some that had people that were double bunked to that
 6 room?
 7 A I don't know about that specific day. It
 8 changes. Administration says we're going to try 5
 9 David, we're going to do cellies. Five Charlie
 10 might be single room individuals; so, I would be
 11 lying to you if I said that day it was 5 Charlie was
 12 having just specific one room man.
 13 Q All right.
 14 Officer Gonzalez, the day you were working
 15 there, do you or do you not recall if those rooms
 16 were individuals or were they double bunked?
 17 A I don't recall.
 18 Q Now, what time did you come on to that
 19 post?
 20 A I'm not sure. It was at the beginning of
 21 the shift, but I'm not sure exactly what time.
 22 Q Do you recall if it was morning, before
 23 noon or after noon?
 24 A No, it was in the afternoon, because I
 25 worked swing shift or D platoon, which is night

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1 shift.
 2 Q Approximately how many hours had you been
 3 on duty when this incident occurred?
 4 A Probably not many.
 5 Q Do you recall?
 6 A I started at 6:00 p.m.; so, I can't --
 7 what time did it happen?
 8 Q Now, you were told that you had some
 9 duties to take care of when you took that post,
 10 correct?
 11 A Not duties.
 12 Q You said that you were given a list of
 13 things to do, correct?
 14 A A list of individuals to exercise.
 15 Q Were you given any other obligations or
 16 duties to do other than to exercise these
 17 individuals?
 18 A You have obligations. As soon as you walk
 19 into a module, you got to do a little routine.
 20 Q What's that little routine?
 21 A You check for janitorial supplies, you
 22 make sure of the lock downs, individuals are locked
 23 down. These guys can be exercised. The officers
 24 are going to brief you of things, because that
 25 wasn't my regular module; so, this is what you need

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1 to do, these are the guys you're going to exercise,
 2 and I said "okay."
 3 Q And how many people were to be exercised
 4 that day?
 5 A I'm not sure.
 6 Q Now, tell me about this exercising. How
 7 do they normally exercise on that post?
 8 **MR. STANION:** Your Honor, I'm going to
 9 object, once again; relevance.
 10 **MR. WHIPPLE:** Foundation. We have an
 11 incident that occurred, it was during the free time.
 12 I need to know some background as to the free time.
 13 **THE COURT:** Go on. Continue.
 14 **BY MR. WHIPPLE:**
 15 Q Would you just give me an explanation of
 16 how you normally give individuals free time on that
 17 post?
 18 A Every individual in the housing unit have
 19 free time, one hour a day, unless for whatever
 20 reason they lost it. So, there's a list of
 21 individuals, of every inmate in the module, and they
 22 said, "Okay." There's no specific order, nothing;
 23 it's just routine. We'll exercise Mr. Johnson at
 24 6:00 and Jackson at 7:00, whatever, there's just no
 25 specific rule.

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1 Q And how long does each one have free time?
 2 A One hour.
 3 Q So, you said one inmate had it at 6:00,
 4 one inmate had it at 7:00, correct?
 5 A Usually, that's how it happens. It
 6 doesn't have to be like that, but it's one hour. As
 7 long as they get their hour, then they're fine.
 8 Q You said "usually," correct?
 9 A Yeah. It can go from 6:15 to 7:15 to 8:15
 10 or whatever.
 11 Q Usually, is there one inmate out at a
 12 time?
 13 A What do you mean?
 14 Q Is there one inmate taking free time
 15 individually or do you usually have a number of them
 16 taking free time on that post?
 17 A It depends. If they're falling behind
 18 schedule, the guys that are working that unit, they
 19 will exercise more than one guy at a time to make
 20 sure everyone gets their free time.
 21 Q So, what you're saying is usually it
 22 doesn't matter, you can have individuals out there
 23 one at a time or you can have a group of
 24 individuals?
 25 A Usually, they won't do more than two or

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1 three at a time.
 2 Q Now, explain to me what a blue card is?
 3 A That's a locator card with their face and
 4 their charges.
 5 Q What value does a blue card have to you?
 6 A That tells you everyone that's in the
 7 unit.
 8 Q And what other information does this give
 9 you?
 10 A Their charges -- it tells you their
 11 charges, their picture and -- excuse me, sometimes
 12 it tells you who -- it says, "Do not house with" so
 13 and so.
 14 Q Now, I want to take you back to this
 15 incident. Again, it was on February 24th, 2001.
 16 You said you had been on duty for a short
 17 period of time, correct?
 18 A Yes.
 19 Q And you said you were housed or you --
 20 where were you exactly when you saw this?
 21 A In the module office.
 22 Q The module office is the command post, it
 23 would be fair to say?
 24 A Yeah. It's a little office with glass
 25 windows in the middle, and that's where all officers

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1 work out of.
 2 Q Inmates don't go in there, correct?
 3 A Correct.
 4 Q You were in there. Was there another
 5 officer in there with you at the time?
 6 A There were several.
 7 Q What other officers were there?
 8 A I can recall Officer Hardy, and that's all
 9 I can recall.
 10 Q You were in charge of C and D block at
 11 that time?
 12 A Although, there's usually Officer Hardy --
 13 there's usually two officers per C and D, plus an
 14 officer working the DRC, the control. They open the
 15 doors and stuff.
 16 Q On this particular day, there were only
 17 two instead of three?
 18 A No, there's always three, because one
 19 works the doors, because you can't get in without
 20 them popping you in the door; so, it was Officer
 21 Hardy and myself and Post 50.
 22 Q When this incident took place, how many
 23 officers were in that command post?
 24 A I'm going to guess three on my side, but
 25 there's more working the 5E/F side.

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1 Q Now, what inmates were on free time when
 2 you saw this incident take place?
 3 A Donte Johnson, Reginald Johnson, Oscar
 4 Irias on the C side.
 5 Q Where were they housed, first floor or
 6 second floor?
 7 A I'm not sure. I know Oscar was housed on
 8 the bottom floor. That's all I can recall. I don't
 9 recall where they were housed at.
 10 Q How long had Mr. Irias -- how long had he
 11 had free time when this incident occurred?
 12 A I can't recall exactly.
 13 Q What about the two Mr. Johnsons, Donte and
 14 Reginald, how long had they had free time?
 15 A I can't recall. They were let out
 16 together.
 17 Q All three of them?
 18 A Yes, sir.
 19 Q And how long had they been let out, do you
 20 recall, before this incident took place?
 21 A No.
 22 Q Were they the only ones out?
 23 A In the C side, yeah.
 24 Q So, those three individuals could
 25 physically touch each other?

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1 A Yes.
 2 Q Were there any other inmates out there who
 3 could come into physical contact with them?
 4 A No, not at that time; no.
 5 Q And Mr. Irias went up to the second floor
 6 at some point?
 7 A Yes.
 8 Q Was he supposed to be up on the second
 9 floor?
 10 A No.
 11 Q He's not supposed to be on the second
 12 floor because he's located on the first floor,
 13 right?
 14 A Yeah.
 15 Q Did you try to stop him from going to the
 16 second floor?
 17 A No. I was just watching him. I thought
 18 he was going to go grab something; so, I didn't stop
 19 him.
 20 Q He was clearly breaking one of your
 21 regulations, correct?
 22 A Yeah.
 23 Q You didn't try to stop him?
 24 A No.
 25 Q He proceeded to the second floor, correct?

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1 A Yes.
 2 Q And then you saw what you said is Reginald
 3 and Donte followed him, correct?
 4 A Well, Oscar was up there, I think,
 5 grabbing a Bible or religious book and a spray
 6 bottle to clean his room.
 7 Q How long had he been there?
 8 A I'm not sure.
 9 Q Two minutes, three minutes, five minutes?
 10 A No, it wasn't that long. It was rather
 11 quick. I'm not sure. I will be lying to you. I
 12 don't know the specific time.
 13 Q You don't know if it was less than or more
 14 than two minutes? I'm not trying to put words in
 15 your mouth.
 16 A No.
 17 Q You can't remember as you sit here today
 18 whether it was less than or more than two minutes?
 19 A No, sir.
 20 Q At no time after he was visiting up there
 21 with a book did you tell him to come down?
 22 A I can't recall if he said, "I'm going to
 23 go grab something." Usually, they will say, "I'm
 24 going to go grab something." I will be lying to
 25 you, but I did not try to stop him.

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1 Q Did you see him signal to you?
 2 A I can't remember, but he went upstairs.
 3 That's what I do recall.
 4 Q You stated that you saw the two
 5 Mr. Johnsons follow him up, correct?
 6 A Yeah. He ran upstairs, I mean walked
 7 upstairs -- Oscar did; and a few minutes later the
 8 two gentlemen followed him up, Donte Johnson and
 9 Reginald Johnson.
 10 Q So, he had been up there a couple minutes?
 11 A A few seconds, it wasn't like immediately
 12 after.
 13 Q Do you know how long it was?
 14 A No.
 15 Q At some point you saw these two
 16 individuals go up to the second floor?
 17 A After them, yes.
 18 Q Did they go up together up the same
 19 stairwell?
 20 A Yes.
 21 Q Were they supposed to be up there?
 22 A No.
 23 Q Did you order them down?
 24 A No.
 25 Q Now, you were again back in the command

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1 post, correct?
 2 A Correct.
 3 **MR. WHIPPLE:** And if I may approach, your
 4 Honor, I need to grab a photograph.
 5 **THE COURT:** Yes.
 6 **MR. WHIPPLE:** Your Honor, if I may
 7 approach.
 8 **BY MR. WHIPPLE:**
 9 Q Officer Gonzalez, I'm showing you Defense
 10 Exhibit C. What is that?
 11 A That's a picture of the module or part of
 12 the module.
 13 Q Would it be fair to say that that
 14 photograph was taken -- will be taken from inside
 15 your post?
 16 A That's in front of the little control
 17 board, the DRC.
 18 Q Would it be fair to say, again, that --
 19 A That's not where I was standing at,
 20 though.
 21 Q Okay. One thing at a time. Okay?
 22 A Yeah.
 23 Q Would it be fair to say that photograph
 24 was taken from the command post in which you were
 25 seated?

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1 A Yeah, where we work out of; yeah.
 2 **MR. WHIPPLE:** I move to admit Defense
 3 Exhibit C at this time.
 4 **MR. SIMON:** No objection.
 5 **THE COURT:** All right. That will be
 6 admitted.
 7 (Defense Exhibit C was admitted into
 8 evidence.)
 9 **BY MR. WHIPPLE:**
 10 Q Now, you stated that's not where you were
 11 at?
 12 A Yeah.
 13 Q So, you know where that photograph was
 14 taken from?
 15 A Yeah.
 16 Q Would you explain to me exactly where that
 17 photograph was taken from?
 18 A From in front of the DRC manual.
 19 Q In layman's terms, where is that?
 20 A That's where the Post 50 officer operates
 21 the doors from.
 22 Q Now, is that in front of the door or is
 23 that --
 24 A That's like in the middle of the office.
 25 Q If you could just kind of paint a picture

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1 of what, exactly, is in that post, okay? You got a
 2 door, you got this panel, and what else do you have
 3 in there?
 4 A It's a bubble. It's a square. You have
 5 the DRC in the middle, and then you have another DRC
 6 that operates the other side. You have a door, a
 7 wooden door behind you, one here (indicating), and
 8 then you have another door here (indicating). You
 9 can get in there three ways. I was by the wood door
 10 that has access to 5C and 5D.
 11 Q So, you were next to the door that led you
 12 into that rec room or into the hall that could go to
 13 where those individuals were located?
 14 A Into the module?
 15 Q Correct.
 16 A Yeah.
 17 Q Were you looking through the door or were
 18 you looking through the regular window?
 19 A The door was a glass -- a square glass.
 20 Q So, you were looking through the door?
 21 A Yeah, through a glass.
 22 Q Looking through the glass pane in the
 23 door, correct?
 24 A Yeah.
 25 Q Could you look -- first of all, this is

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1 the second floor that they went up to, correct?
 2 A Um-hmm.
 3 Q And it's fair to say you would have to
 4 lower yourself?
 5 A No.
 6 Q You're standing -- how tall are you?
 7 A Six four.
 8 Q You're 6'4, and you're standing looking
 9 through the glass window in the door, and it's your
 10 testimony that you could see those individuals on
 11 the second floor?
 12 A Yeah. I was just watching out the door.
 13 Q Now, is that where your normal station
 14 would be is at the door?
 15 A No. You can go anywhere. There's no
 16 rules. You're in the bubble, you can go wherever.
 17 Q In fact, there's a computer there,
 18 correct?
 19 A Where?
 20 Q In that same command module.
 21 A Yes.
 22 Q And oftentimes you spend time in front of
 23 the computer?
 24 A Yes, if you're writing a report; yes.
 25 Q But this particular time you're standing

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1 up, correct?
 2 A Yes.
 3 Q Why were you standing at that door?
 4 A Because I'm watching those guys on free
 5 time. You always got to watch them.
 6 Q And you saw them all go up the same
 7 stairwell, correct?
 8 A Correct.
 9 Q Now, there are some obstructions in your
 10 way, correct?
 11 A Not from where I was at.
 12 Q Would it be fair to say there are some
 13 posts out there in that module, correct?
 14 A Yeah, there are several posts.
 15 **MR. WHIPPLE:** Your Honor, if I can take
 16 that picture back, please.
 17 **THE COURT:** Yes.
 18 **BY MR. WHIPPLE:**
 19 Q First of all, let's establish where this
 20 incident occurred on the second floor.
 21 Do you know what room number it was in
 22 front of, approximately?
 23 A Approximately, I think, around 22.
 24 Q Twenty-two.
 25 In this photograph, where would 22 be

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1 located?

2 A I think that's 22 (indicating). That's 22
3 (indicating). The wooden door is that way
4 (indicating); the DRC is this way (indicating).

5 Q So, these posts -- there are some posts
6 out there, correct?

7 A Correct.

8 Q When this incident took place, how far
9 were the posts from obstructing your viewpoint?

10 **MR. STANTON:** First of all, it's a
11 misstatement of the officer's testimony. The
12 officer just testified that nothing was obstructing
13 his view.

14 **THE COURT:** Sustained.

15 **BY MR. WHIPPLE:**

16 Q The direct line of sight -- first of all,
17 how far was the distance from where this incident
18 took place to where you were standing, do you know?

19 A To be exact, I don't know.

20 Q Do you have an estimate?

21 A No.

22 **MS. JACKSON:** Court's indulgence.

23 **MR. WHIPPLE:** Court's indulgence, your
24 Honor.

25 If I may approach to get another exhibit

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1 marked, your Honor.

2 (Defense Exhibit E was marked for
3 identification.)

5 **BY MR. WHIPPLE:**

6 Q Officer Gonzalez, I'm directing you to
7 Defense Exhibit E. It's a six-pack, a photo that
8 was taken from the command post. What I would say
9 would be the lowest left-hand corner photograph
10 shows a door and a window in a door?

11 A Um-hmm.

12 Q You have to answer "yes" for the record.

13 A Yes.

14 Q Is that the door that you're referring to?

15 A If that's 5C, yes.

16 Q That's where you were standing when you
17 observed this incident?

18 A Yes.

19 **MR. STANTON:** Your Honor, for the record,
20 there are references to the six photographs. If
21 counsel can refer to the number of the JPEG photo, I
22 think that would help correct the record.

23 **MR. WHIPPLE:** That's JPEG 17. Again
24 there's JPEG Nos. 13 through 18. They're all
25 photographs from the command post. I move to admit

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1 the entire six-pack.

2 **MR. STANTON:** Once again, I don't know if
3 a foundation has been laid. The officer has stated
4 if this is Module 5C, and Counsel has represented
5 that it is. I don't know if Counsel is laying the
6 foundation for his own photograph.

7 **THE COURT:** You don't recognize what
8 module that is?

9 **THE WITNESS:** I can see 5 Charlie right
10 here, sir, but he's asking me about this one right
11 here (indicating). I can just see rooms. I'm not
12 sure if that's 5C or not. There's a door just like
13 that on 5 Charlie.

14 **MR. WHIPPLE:** If there's an issue, we
15 have -- Navarro was there when these photographs
16 were taken.

17 **THE COURT:** All right. You can do that.
18 Go on.

19 **BY MR. WHIPPLE:**

20 Q Officer Gonzalez, I'm drawing your
21 attention to Exhibit E, JPEG No. 17, that was the
22 door with the window that you were looking through,
23 correct?

24 A There's no 5C or D or nothing around.
25 There's a door just like that, yes.

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1 Q Let's -- just for the record -- we'll tie
2 it up later -- if that were the module that you were
3 stationed in?

4 A Correct.

5 Q And there's no reason to believe it
6 wouldn't be, correct?

7 A If that's it, go ahead.

8 Q With regard to this photograph, where did
9 you see the incident take place?

10 A From right there, inside the office
11 (indicating).

12 Q It was on the second floor?

13 A Um-hmm.

14 Q Can you see through the window right now
15 where that incident took place?

16 A You can see through the window, and you
17 can see the stairs and stuff like that.

18 Q With regard to the stairs that you see in
19 JPEG No. 17, where did the incident take place?

20 A Upstairs.

21 Q Right above the stairs?

22 A Yes -- well, not -- I can't see it from
23 here from this picture, but if you go over there and
24 you stand right in front of this door (indicating),
25 you can see out clearly. This picture doesn't do it

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1 justice, because if you went over there personally,
 2 you could see.
 3 Q Now, you said you saw the two Johnsons
 4 follow Mr. Irias up the stairs, correct?
 5 A Yes.
 6 Q Who grabbed who?
 7 A I believe Reginald grabbed him and
 8 Mr. Johnson -- Donte -- started hitting him.
 9 Q That's what you saw?
 10 A Yes.
 11 Q And you're sure about it?
 12 A Yes.
 13 Q How long did this incident take place?
 14 A It's hard to say. At this point you have
 15 a fight, your blood is pumping and you're trying to
 16 stop it; so, I'm not sure how long, exactly, it took
 17 place.
 18 Q Now, when you were stationed inside that
 19 module inside that base or that module --
 20 A Module office.
 21 Q -- did they come into physical contact
 22 while you were there?
 23 A Yes. Well, as soon as I seen them walk up
 24 and one grabbed, I wasn't sure if they were joking
 25 or what, but I said, "I'm going to call Code Red"

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1 just in case.
 2 Q So, you didn't wait at all; you
 3 immediately called Code Red as soon as one person
 4 made contact with Mr. Irias?
 5 A As soon as they grabbed him, possibly
 6 three or four seconds later I called Code Red 416.
 7 Q Again, you saw it was Reginald Johnson
 8 that grabbed Mr. Irias?
 9 A Yes.
 10 Q What did you see Donte Johnson doing?
 11 A Hitting him.
 12 Q What was he hitting him with?
 13 A With his hands all over.
 14 Q Where was he hitting Mr. Irias?
 15 A I don't know exactly where, but I guess
 16 wherever the punches were going to land. He was
 17 throwing punches.
 18 Q And you saw this all from inside the
 19 module?
 20 A Yes.
 21 Q And then?
 22 A It happened so quick; it happened, you
 23 call Code, you tell your partner we got a Code Red
 24 in 416 and you run out. When we run out, that's
 25 when I seen them throw him over.

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1 Q You were outside in the rec area when you
 2 saw Mr. Irias actually coming over the top of the
 3 railing?
 4 A No. I was already en route running
 5 towards him; that's when I paused, when I seen him
 6 get thrown over.
 7 Q Now, in between you and where they were
 8 located, there are still more windows, correct?
 9 A Yes.
 10 Q And there are frames around those windows?
 11 A Um-hmm.
 12 Q That's "yes"?
 13 A Yes.
 14 Q Did Mr. Irias hang on the banister or from
 15 the frame at all?
 16 A I can't remember.
 17 Q You just remember a body falling in front
 18 of you?
 19 A Yeah, I remember it falling; yeah.
 20 Q When you ran out, where were you looking?
 21 Were you looking up or were you looking at the
 22 stairwell?
 23 A I can't remember where, exactly, we were
 24 looking at.
 25 Q Clearly you were looking at the door to

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1 gain access to where they were at, correct?
 2 A I can't remember exactly, sir.
 3 Q This all happened in just a couple seconds
 4 of time; is that what you said?
 5 **MR. STANTON:** I believe the witness
 6 testified that he couldn't estimate the time.
 7 **BY MR. WHIPPLE:**
 8 Q Can you tell me how long did that whole
 9 incident take?
 10 A I'm not sure, to be honest with you. It
 11 felt like forever, but we ran out there as fast as
 12 we could.
 13 Q Now, did you speak with any of the other
 14 inmates about what occurred, what you had seen?
 15 A I spoke with a couple.
 16 Q Who did you speak with?
 17 A I can just remember I spoke with
 18 Mr. Vigoa, Jose Vigoa.
 19 **MR. VIGO:** You never spoke with me.
 20 **BY MR. WHIPPLE:**
 21 Q Who else did you speak with?
 22 A A couple guys. I can't remember anyone
 23 else, but off the top of my head, that's who I
 24 remember I spoke to.
 25 Q And you spoke with them specifically about

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1 this incident?
 2 A Yes.
 3 Q Now, you testified at the preliminary
 4 hearing, correct?
 5 A Correct.
 6 Q And you gave the same similar version of
 7 events at the preliminary hearing?
 8 A Correct, I think I did. I'm sure she
 9 asked me different questions.
 10 Q Now, you also know that Mr. Irias also
 11 testified, correct?
 12 A Yeah, I believe he did testify.
 13 Q In fact, he was the witness who testified
 14 just before you under oath?
 15 A I wasn't sure exactly what order, but I'm
 16 sure he testified.
 17 Q And he obviously was the victim of this
 18 crime, correct?
 19 A Yes.
 20 Q And you know that he gave a statement as
 21 to the events that occurred during that incident?
 22 A I don't know exactly what he talked about
 23 or whatever, but I'm sure he went in and testified.
 24 Q It would be fair to say that he would have
 25 a stronger recollection of what occurred to him than

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1 you would, correct?
 2 MR. STANTON: Objection; relevance and
 3 speculation.
 4 THE COURT: Sustained.
 5 BY MR. WHIPPLE:
 6 Q Would it surprise you that his events
 7 differ from yours?
 8 MR. STANTON: Objection, once again;
 9 relevance.
 10 MR. WHIPPLE: It goes to observation.
 11 THE COURT: I guess it does. It is
 12 relevant, of course. I don't know how much weight
 13 it carries.
 14 MR. STANTON: I guess, your Honor, I'm
 15 sure the Court is aware that the relevance of an
 16 inmate testifying at a preliminary hearing while
 17 he's still housed in the Clark County Detention
 18 Center --
 19 THE COURT: I understand that, Counsel,
 20 but that's what the argument is going to be. He can
 21 inquire about it. The Court is aware of all of
 22 that, but I think that's for argument. I'm sure
 23 that's what he's trying to use it for, or will.
 24 BY MR. WHIPPLE:
 25 Q Officer Gonzalez, would it surprise you

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1 that Mr. Irias's version of events were different
 2 from what you stated here today?
 3 A No, it would not surprise me.
 4 Q Would it surprise you if his version of
 5 events stated that the Mr. Johnsons did not go
 6 together up the stairwell?
 7 A That would not surprise me.
 8 Q Why wouldn't that surprise you?
 9 A Several reasons. One, he could have been
 10 intimidated testifying.
 11 Q He was the victim, correct?
 12 A Right.
 13 Q And at his preliminary hearing, he was
 14 asked how the two individuals got up to the second
 15 floor, and he said that the two Mr. Johnsons went
 16 from different stairwells; they took different
 17 stairwells?
 18 MR. STANTON: I'm going to object, your
 19 Honor. Is Counsel testifying? Is he going to admit
 20 Mr. Irias's testimony?
 21 MR. WHIPPLE: Hearsay is admissible in a
 22 penalty phase.
 23 THE COURT: You're asking him about
 24 another person's testimony?
 25 MR. WHIPPLE: I'm asking him if he would

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1 be surprised if the sequence of events was different
 2 from what he stated here today.
 3 MR. STANTON: And I think he answered the
 4 question "no," he's not, for several different
 5 reasons, and he explained those reasons. If Counsel
 6 wants to move to admit the testimony of Mr. Irias's
 7 testimony, then we can save this court's time by
 8 arguing this as Counsel has indicated it's argument
 9 for Counsel.
 10 THE COURT: Actually, it's arguing with
 11 the witness is what it sounds like to me.
 12 MR. WHIPPLE: I'll move to admit this
 13 statement as well.
 14 THE COURT: Miss Jackson, you can sit
 15 down, because you guys are not going to do this
 16 double team thing, if that's what you're thinking
 17 about. If he has the witness, he can do the
 18 objection.
 19 MS. JACKSON: Very well, your Honor.
 20 THE COURT: Are you admitting it?
 21 MR. WHIPPLE: I'm going to ask for a
 22 stipulation. I have the preliminary hearing
 23 transcript of Mr. Irias. It's pages one through 56.
 24 MR. STANTON: Based on Counsel's
 25 representation, I believe it's Exhibit F, that it's

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1 a full and complete transcribed testimony of
 2 Mr. Irias at the preliminary hearing. The State
 3 would have no objection.
 4 **MR. WHIPPLE:** There is a chance that there
 5 may be a page 57, but it would be where he was
 6 excused. That is the completion of his testimony.
 7 **THE COURT:** All right.
 8 (Defense's Exhibit F was marked and
 9 admitted into evidence.)
 10 **THE COURT:** Continue.
 11 **MR. WHIPPLE:** Thank you, your Honor.
 12 **BY MR. WHIPPLE:**
 13 Q Officer Gonzalez, would it surprise you
 14 that Mr. Irias stated that it was Reginald Johnson
 15 was the one that grabbed him and not Donte Johnson?
 16 A That wouldn't surprise me.
 17 Q Why is that?
 18 A Because in my personal opinion, I'm not a
 19 doctor or anything. Mr. Irias is a little -- he's
 20 different. He's a little slow. That's just my
 21 opinion. I'm not a doctor or anything. He was
 22 housed in the 2G, which is where other individuals
 23 are housed at, but that's just my opinion.
 24 Q Isn't it fair to say that the actual
 25 victim could have the sequence of the events right?

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1 **MR. STANTON:** Your Honor, it's arguing
 2 with this witness, and it's irrelevant.
 3 **THE COURT:** Sustained.
 4 **MR. WHIPPLE:** Your Honor, I'm looking for
 5 Defense Exhibit B. It should be the Rule 22 so that
 6 we can use that in conjunction with the other
 7 exhibits that have already been admitted.
 8 Miss Clerk, is there an extra photograph
 9 over there?
 10 **THE CLERK:** All I have is this one
 11 (indicating).
 12 **MR. WHIPPLE:** May I approach, your Honor?
 13 **THE COURT:** Yes.
 14 **BY MR. WHIPPLE:**
 15 Q I'm showing you Defense Exhibit B. Do you
 16 recognize that photograph?
 17 A Yes.
 18 Q Is that a fair and accurate representation
 19 of Room 22?
 20 A There's a lot of Room 22s in CCDC.
 21 Q Do you know, as you sit here today, what
 22 particular room that 22 is?
 23 A No.
 24 **MR. WHIPPLE:** Okay. I'll just reserve
 25 that.

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1 I have nothing further, your Honor.
 2 **MR. STANTON:** Redirect, your Honor?
 3 **THE COURT:** Yes. It will be fast?
 4 **MR. STANTON:** It will be fast.
 5
 6 REDIRECT EXAMINATION
 7 **BY MR. STANTON:**
 8 Q Referring to Counsel's Exhibit E, the JPEG
 9 photograph that was referenced as No. 17, do you
 10 remember that, officer?
 11 A Yeah, I believe so.
 12 Q That's the one that has the door that
 13 allegedly is the one that you were looking through
 14 when you saw this.
 15 That photograph that we see on Defense
 16 Exhibit E does not accurately depict your field of
 17 view as you were standing directly in front of the
 18 door, does it?
 19 A No.
 20 **MR. STANTON:** No further questions.
 21 **THE COURT:** Anything else, counsel?
 22 **MR. WHIPPLE:** Nothing, your Honor.
 23 **THE COURT:** Let's take a five-minute
 24 recess.
 25 **THE BAILIFF:** All rise.

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1 (Recess taken.)
 2 **THE COURT:** Who is your next witness?
 3 **MR. STANTON:** No further witnesses on
 4 behalf of the State.
 5 **THE COURT:** Miss Johnson.
 6 **MS. JACKSON:** Thank you, your Honor.
 7 Your Honor, the defense's first witness
 8 would be Mr. Jose Vigoa.
 9
 10 DEFENSE'S CASE
 11 JOSE VIGOA,
 12
 13 being called as a witness on behalf of
 14 Defendant, was first duly sworn and testified as
 15 follows:
 16
 17 **THE CLERK:** Please be seated. State your
 18 name and spell your name for the record.
 19 **THE WITNESS:** My name is Jose Vigoa.
 20 **MS. JACKSON:** I think you can be heard
 21 okay, Mr. Vigoa, without that.
 22 **MR. STANTON:** Can the witness spell his
 23 last name?
 24 **THE WITNESS:** V, as in Victor, I-G-O-A.
 25

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DIRECT EXAMINATION**BY MS. JACKSON:**

- Q Mr. Vigoa, you're currently housed in the Nevada Department of Corrections?
- A Yes.
- Q That's pursuant to a conviction?
- A Yes.
- Q What is that conviction for?
- A I got two first-degree murders, robberies, armed robberies, possession of weapons, things like that.
- Q Taking you back to February 24th of the year 2001, were you housed in 5C in the Clark County Detention Center?
- A Yes.
- Q And pursuant to your being housed there, we caused you to be served with a subpoena regarding an incident that occurred on 2/24 of '01.
- Are you familiar at all with this incident, sir?
- A Just part of it, seeing the police running, the paramedic. That was it.
- Q Do you know the man seated here to my left, Donte Johnson?
- A I know on the news and we've been in

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- housing and what they call segregation, you know, because I was a high profile case and same with him.
- Q Has Mr. Johnson ever approached you and offered you any kind of reward or any type of incentive --
- A No.
- Q -- to testify -- she wants me to finish, even though you know what I'm going to say -- to persuade you to testify one way or another in this matter?
- A No.
- Q Have you ever entered into any kind of agreement with Mr. Johnson or the other Mr. Johnson, Reginald Johnson --
- A No.
- Q -- concerning this matter?
- A No. We all housing in separate units; so, we don't have no contact with each other until now.
- Q Has Mr. Donte Johnson ever intimidated you or threatened you in any fashion in connection with this incident or period?
- A No.
- Q What about Mr. Reginald Johnson on Donte Johnson's behalf?
- A No.

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- Q Would it be fair to say that you are a man that can handle yourself?
- A Yeah, I can handle my business.
- Q You're not easily intimidated, are you?
- A I don't have to say that, but no.
- Q You heard Officer Gonzalez testify that you spoke to him about this incident?
- A Yes, I heard.
- Q Is that true?
- A Well, I saw a part of --
- Q Listen to my question.
- Did you, on or about 2/24 of '01, speak to Officer Gonzalez?
- A No.
- Q So, when he said that in his taped statement -- you're aware that he did tell Detective Velasco that in his taped statement?
- A He lie.
- Q He lied?
- A He lie.
- Q Can you see what happened on 2/24 of '01, Mr. Vigoa?
- A I was sleeping. At that time I was sleeping, but I heard commotion, 40 or 50 officers running in the yard, the concrete shaking and the

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- noise, the radio and all this stuff; so, by the time I got up and get to the doors to see what was going on, the only thing I saw in the whole module was C.O., correction officers and paramedic, and that was it. I didn't see nobody else, no inmate in that area.
- MS. JACKSON:** Thank you, sir.
No further questions, your Honor.
- CROSS-EXAMINATION
- MR. STANTON:** Sir, you were convicted with two counts of first degree murder. Was that with a deadly weapon?
- A Yes.
- Q What was your sentence with that?
- A I got four life without.
- Q Four lifes without?
- A Yes.
- Q And how many armed robbery convictions did you sustain?
- A I don't know, but I got 56 felonies, if that's what you want.
- Q A total of 56 felony convictions?
- A Yes.
- Q And it's safe to say that you believe that

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1 you're going to serve the rest of your natural life
 2 in prison?
 3 A Yes, I do.
 4 Q In what prison are you housed in, sir?
 5 A Right now in Ely -- maximum security, Ely
 6 State Prison.
 7 Q Prior to, say, the last two months, do you
 8 know where Donte Johnson has been housed?
 9 A To tell you the truth and be honest, I
 10 didn't even know why I was here. I don't have no
 11 contact with Donte Johnson.
 12 Q I understand that, Mr. Vigoa, but my
 13 question is a very precise one. Do you know where
 14 Donte Johnson is housed prior to the last couple
 15 months?
 16 A No.
 17 Q Would it surprise you to know that he's
 18 been housed at Ely State Prison?
 19 A It didn't really surprise me, because the
 20 natural incubation, but I have no idea if he was
 21 there or not. I had no contact with him. We are
 22 different -- completely different housing.
 23 Q How about Reginald Johnson; do you know
 24 where he's housed?
 25 A Reggie Johnson, I believe he was in Ely

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1 too, but I don't have no contact with him either.
 2 **MR. STANTON:** No further questions.
 3 **MS. JACKSON:** No redirect, your Honor.
 4 Thank you.
 5 **THE COURT:** Thank you.
 6 **MS. JACKSON:** Mr. Bishop.
 7 **THE CLERK:** Remain standing, raise your
 8 right hand.
 9
 10 **TOBY BISHOP,**
 11 being called as a witness on behalf of
 12 Defendant, was first duly sworn and testified as
 13 follows:
 14
 15 **THE CLERK:** Please be seated. State your
 16 name and spell your name.
 17 **THE WITNESS:** Toby Len Bishop,
 18 B-I-S-H-O-P.
 19 **MS. JACKSON:** May I proceed, your Honor?
 20 **THE COURT:** Yes.
 21
 22 **DIRECT EXAMINATION**
 23 **BY MS. JACKSON:**
 24 Q Mr. Bishop, you're currently housed at Ely
 25 State Prison?

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1 A No; I'm at Southern Desert.
 2 Q Southern Desert.
 3 How long have you been there?
 4 A Just two-and-a-half months.
 5 Q You're serving a sentence for a
 6 conviction?
 7 A Yes.
 8 Q What is that conviction, sir?
 9 A Voluntary manslaughter and solicitation to
 10 commit murder.
 11 Q And what is your sentence, sir?
 12 A Ten years four months to 26 years.
 13 Q Taking you -- is that pursuant to a guilty
 14 plea?
 15 A Yes, ma'am.
 16 Q Taking you back to February 24th of the
 17 year 2001, you were housed in the Clark County
 18 Detention Center?
 19 A Um-hmm.
 20 Q And you were in the Module 5C, the subject
 21 of this hearing?
 22 A Yes.
 23 Q Do you recall your room?
 24 A Yeah, No. 23.
 25 Q Now, there's been testimony that this

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1 incident occurred right in front of Room 22?
 2 A Yeah.
 3 Q Do you recall the incident?
 4 A Yes.
 5 Q Did you see what happened?
 6 A All of it, yeah.
 7 Q Tell the Judge what you saw.
 8 A From the very beginning, because I was out
 9 right before that on my hour, me and my next door
 10 neighbor.
 11 Q What's your next door neighbor's name?
 12 A All I know is his nickname, and that was
 13 Creeper.
 14 Q Creeper.
 15 You and Creeper were out. Then what
 16 happened?
 17 A Our hour was done. When you're out, you
 18 clean your room, take a shower. We left the spray
 19 bottle up on the rail.
 20 Q Now, let's talk about the spray bottle.
 21 The officer testified that inmate Oscar Irias may
 22 have gone on the second floor to get cleaning
 23 supplies. Cleaning supplies are not kept on the
 24 second floor, are they?
 25 A No.

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1 Q Where are they kept?
 2 A Down on the bottom.
 3 Q How long had you been on this unit, 5C?
 4 You spent a lot of time there?
 5 A Seven months.
 6 Q It's a disciplinary unit?
 7 A Yes.
 8 Q The rules are strict?
 9 A Oh, yeah.
 10 Q In your experience, would going up to the
 11 second floor on your free time cause you to be CAD?
 12 A I lived on the second floor, so I wouldn't
 13 be.
 14 Q Someone who does not live there?
 15 A Yes.
 16 Q That would be considered an infraction?
 17 A Yes.
 18 Q Every infraction when you're in 5C is a
 19 serious infraction, isn't it?
 20 A Pretty much, yeah.
 21 Q You heard the officer testify that he
 22 observed the inmate go up to 5C but that he didn't
 23 do anything even though it was an infraction. Is
 24 that the way things work on 5C?
 25 A No. They tell you to get down or they

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1 will come in the bubble and make you go to your room
 2 if you get an infraction.
 3 Q So, you're right in Room 23?
 4 A Yes.
 5 Q What happened, Toby?
 6 A I don't know his name, the Mexican guy,
 7 Irias. He came up the stairs, and he came over to
 8 Room 22. They were talking Spanish. He was there
 9 for, like, five/ten minutes. Reginald came up the
 10 left side of the unit where the stairs go up the
 11 wall; they're by the phones. Donte, he was down at
 12 the bottom, and he came up and he went to Room 24
 13 which is where Weatherspoon, and he was talking to
 14 Weatherspoon.
 15 Q When you say "he," you're referring to my
 16 client, Donte?
 17 A Donte.
 18 Q Then what happened?
 19 A Reginald came around on the second floor,
 20 and he came around and he grabbed the dude and threw
 21 him over the tier. That was it.
 22 Q Did the guy resist?
 23 A He tried to.
 24 Q Was Donte Johnson in your view during this
 25 time frame?

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1 A No. He was over by Room 24.
 2 Q Were you able to see -- what did you call
 3 the area where the officers are; you call it "the
 4 bubble"? Is that a term that we can use and be in
 5 agreement?
 6 A Yeah, the bubble.
 7 Q Were you able to see the bubble from your
 8 room?
 9 A Yes.
 10 Q Did you see the officers?
 11 A Yeah.
 12 **MS. JACKSON:** I'd like to have this next
 13 photograph marked as defendant's next in order.
 14 **THE CLERK:** That will be G.
 15 (Defense Exhibit G was marked for
 16 identification.)
 17 **MS. JACKSON:** I have shown it to the
 18 prosecutor, your Honor.
 19 **BY MS. JACKSON:**
 20 Q I'm going to show you what's been marked
 21 for identification, Mr. Bishop, as Defendant's
 22 Proposed G as in girl.
 23 Do you recognize this photograph?
 24 A Yes, ma'am.
 25 Q Does it accurately depict Module 5C as it

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1 appeared on or about 2/24 of '01?
 2 A Yes.
 3 Q In that regard, your Honor, I would move
 4 to admit Defense G, as in girl.
 5 **MR. STANTON:** No objection based on that
 6 foundation.
 7 **THE COURT:** Admitted.
 8 (Defense Exhibit G was admitted into
 9 evidence.)
 10 **BY MS. JACKSON:**
 11 Q You can see in Defense Exhibit G Room 23?
 12 A Yes, ma'am.
 13 Q And you were in --
 14 A Twenty-three.
 15 Q This is your room right here (indicating)?
 16 A Yes.
 17 Q From your room, do you have an
 18 unobstructed view of the bubble area?
 19 A Yes, ma'am.
 20 Q During this time frame, did you have
 21 occasion to look out and look over to the bubble to
 22 see if the guards were alert to this situation?
 23 A Yes.
 24 Q What did you observe, sir?
 25 A Them kicking back in the bubble.

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1 Q By "kicking back," what do you mean?
 2 A They were sitting down in their chairs.
 3 Q Who was present in the bubble?
 4 A There was, like, five officers in there at
 5 least, because they got two from where they work on
 6 E and F, and then they got the two that work on our
 7 side, C and D, and they always got a cop running the
 8 buttons, because you can't open your door from the
 9 outside, you got to do it from the inside.
 10 Q I see.
 11 At what point -- did you notice at some
 12 point that officers did come out of the bubble?
 13 A Way after the fact.
 14 Q How much after the fact, Mr. Bishop? What
 15 had occurred before you saw an officer come out of
 16 the bubble?
 17 A After Mr. Irias hit the floor, he ran to
 18 his room.
 19 Q Mr. Irias got up after he hit the floor?
 20 A Yeah.
 21 Q He was able to run?
 22 A Yeah. He ran straight in his cell, in his
 23 cell seven.
 24 Q Did he have any body parts hanging off?
 25 A No.

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1 Q What else did you see?
 2 A I would say at least two minutes or three
 3 minutes before they even thought about coming out of
 4 the bubble and when Donte -- he was already at the
 5 bottom of the stairs, because they knew they were
 6 coming, because anytime something happens, they're
 7 on it. They're going to come flying out if they see
 8 anything that's going on. When they came out, they
 9 told them to get on the ground. Rej was coming
 10 around the other side down the stairs, and when they
 11 got him on the ground, they just handcuffed them and
 12 took them out of there, and then -- I can't think of
 13 the cops -- the cop that was just testifying --
 14 Q Officer Gonzalez?
 15 A Yeah. He just came up to Room 22 and
 16 talked to Creeper in Spanish. That was it. That's
 17 all he did, and then he left after that.
 18 Q Could Creeper possibly be Celestine? Does
 19 that sound familiar?
 20 A I think so.
 21 Q Did you ever see Gonzalez talk to
 22 Mr. Vigoa?
 23 A No. He lived on the bottom floor in cell,
 24 what, 12. I think it was 12.
 25 Q He wasn't even on the same floor?

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1 A No.
 2 Q Did my client threaten you, intimidate you
 3 in any way, told you that you had to testify in a
 4 certain way in these proceedings?
 5 A I ain't seen him in three years.
 6 Q What about Reginald Johnson?
 7 A I ain't seen him in three years.
 8 Q And you're housed at?
 9 A Southern Desert.
 10 Q And you actually have -- compared to some
 11 of our guests, you have a very minimal sentence, ten
 12 to 26?
 13 A You can say minimal.
 14 Q Compared to Mr. Vigoa who is doing three
 15 lives.
 16 MR. VIGO: Four lives.
 17 BY MS. JACKSON:
 18 Q Four lives plus some. In other words, in
 19 ten years, you have a shot at going home?
 20 A Yes.
 21 Q Would you do anything to jeopardize that
 22 by coming to court and committing perjury?
 23 A No.
 24 MS. JACKSON: That's all I have, your
 25 Honor.

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1 THE COURT: All right.
 2
 3 CROSS-EXAMINATION
 4 BY MR. STANTON:
 5 Q Sir, I was a little confused about your
 6 answer to Miss Jackson's question. She asked you
 7 during this incident whether or not you had an
 8 unobstructed view of Donte Johnson, her client, and
 9 you said "no." I believe you meant to say yes. Am
 10 I correct in that?
 11 MS. JACKSON: Your Honor, I object. I did
 12 not ask that question. That was not a question that
 13 I asked.
 14 THE COURT: I guess he's asking it.
 15 MS. JACKSON: Let that be his question. I
 16 like to ask my own questions. That's not a question
 17 that I asked.
 18 THE COURT: I don't recall.
 19 BY MR. STANTON:
 20 Q Did you have an unobstructed view of Donte
 21 Johnson?
 22 A An unobstructed view?
 23 Q Unobstructed. Do you understand my
 24 question?
 25 A Yeah, nothing in the way.

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1 Q Right.
 2 A No.
 3 Q And you said that after this inmate struck
 4 the floor, it was two to three minutes after that
 5 that the officers exited the bubble and came up?
 6 A That's true.
 7 **MR. STANTON:** No further questions.
 8 **MS. JACKSON:** I have no further questions,
 9 your Honor, of Mr. Bishop.
 10 **THE COURT:** All right. Thank you, sir.
 11 Call your next witness.
 12 **MS. JACKSON:** Mr. George Ashton Cotton.
 13 **MR. STANTON:** Your Honor, I'm going to
 14 object. I'm assuming this whole litany of witnesses
 15 we see in the front row -- for the record, about
 16 three other inmates in blue uniform are going to
 17 testify in a same or similar fashion, and I believe
 18 at this juncture, it's irrelevant for this court
 19 proceeding. This is an issue for the jury to
 20 decide. I put on my prima facie case of an
 21 eyewitness regarding the event, and then I believe
 22 it's just a matter for the Court to decide whether
 23 or not this goes before a jury's eyes and ears. To
 24 continue calling one witness, five witnesses -- they
 25 can call the whole jail if they wanted to -- it's

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1 not going to change that fact.
 2 **THE COURT:** Counsel?
 3 **MS. JACKSON:** Your Honor, may I respond?
 4 **THE COURT:** Yes.
 5 **MS. JACKSON:** Your Honor, I don't believe
 6 that Mr. Stanton has pretried these witnesses. As
 7 a matter of fact, I know he hasn't, and their
 8 testimony, as the Court may already know, is very
 9 different. Mr. Vigoa saw nothing, the other man saw
 10 everything. They are totally so far very different,
 11 and based on my pretrial of these witnesses, each
 12 one brings something different to the table. While
 13 I certainly recognize that the State does not want
 14 to give this hearing much time, as I argued in my
 15 brief, your Honor, this is the one incident that
 16 they have from August.
 17 **THE COURT:** That has nothing to do with
 18 anything. Just go on. The Court has to make a
 19 decision; so, go on.
 20 **MS. JACKSON:** Very well, your Honor.
 21 Thank you.
 22
 23 **GEORGE ASHTON COTTON,**
 24 being called as a witness on behalf of
 25 Defendant, was first duly sworn and testified as

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1 follows:
 2
 3 **THE CLERK:** Please be seated. State your
 4 name and spell your name.
 5 **THE WITNESS:** George Cotton, G-E-O-R-G-E,
 6 Cotton, C-O-T-T-O-N.
 7
 8 **DIRECT EXAMINATION**
 9 **BY MS. JACKSON:**
 10 Q Mr. Cotton, you were transported here
 11 from the Nevada Department of Prisons?
 12 A Yes, ma'am.
 13 Q Where are you housed, sir?
 14 A Right now, I'm at Ely State Penitentiary,
 15 Housing Unit 8.
 16 Q What are you serving time for?
 17 A Armed robbery with use.
 18 Q And how much?
 19 A Robbery with use.
 20 Q How much time are you serving, sir?
 21 A Sixteen to 50.
 22 Q Taking you back to February 24th of 2001,
 23 were you housed in Unit 5C at the Clark County
 24 Detention Center?
 25 A Yes, I was.

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1 Q Were you -- if I may approach the witness,
 2 your Honor, I'm going to show you defendant's in
 3 evidence G, as in girl.
 4 Do you recall your room, your assignment?
 5 A My room would be right here (indicating)
 6 but you can't see it.
 7 Q What number, sir?
 8 A I'm in Room 15.
 9 Q Fifteen. Okay.
 10 Do you recall the incident that we've been
 11 discussing this afternoon where Oscar Irias was
 12 thrown over the railing?
 13 A Yes, I do.
 14 Q What did you see, if anything?
 15 A The first thing I hear was a bunch of
 16 rumbling, and I heard somebody holler "help." I got
 17 up and looked out, and the normal thing to do is
 18 look straight at the bubble and see where the guards
 19 is. I looked out the door; all the guards had their
 20 back turned to our unit. The man came, he was
 21 hanging like this from the post, he dropped, hit his
 22 feet, fell back on his butt, jumped up and ran back
 23 in his room. About two minutes later Gonzalez came
 24 out the bubble and a couple more guards came out the
 25 bubble; that's when he hollered "14" or whatever

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1 languages.

2 **THE COURT:** What is he going to do, get a
3 Ph.D. in that?

4 **PROSPECTIVE JUROR:** Actually, he's
5 planning to go work for the NSA.

6 **THE COURT:** The what now?

7 **PROSPECTIVE JUROR:** The National Security
8 Agency.

9 **THE COURT:** He wants to be a spy, huh?
10 Did he go to Utah State?

11 **PROSPECTIVE JUROR:** He did.

12 **THE COURT:** And he got his bachelor's in
13 what, computer science or something?

14 **PROSPECTIVE JUROR:** Actually, he didn't
15 finish his bachelor's, but he was studying computer
16 science, and he came to UNLV and he changed.

17 **THE COURT:** He's still working on his
18 bachelor's now?

19 **PROSPECTIVE JUROR:** Yes, he is.

20 **THE COURT:** Romantic language. Is he
21 taking Spanish or Latin?

22 **PROSPECTIVE JUROR:** He's taking Spanish,
23 Italian, French, Latin.

24 **THE COURT:** Did he ever go on a mission?

25 **PROSPECTIVE JUROR:** He did.

1 **THE COURT:** What country?
2 **PROSPECTIVE JUROR:** To Brazil.
3 **THE COURT:** He speaks Portuguese?
4 **PROSPECTIVE JUROR:** He does.
5 **THE COURT:** What foreign language do you
6 speak?
7 **PROSPECTIVE JUROR:** I know a little bit of
8 Spanish.
9 **THE COURT:** A little bit of Spanish?
10 **PROSPECTIVE JUROR:** Nothing fluent.
11 **THE COURT:** Okay.
12 You never had any courses in criminal
13 justice or anything like that?
14 **PROSPECTIVE JUROR:** No, I have not.
15 **THE COURT:** Now, on this Question No. 25,
16 you said you had family members who had been charged
17 with a crime.
18 **PROSPECTIVE JUROR:** Yes.
19 **THE COURT:** Who was that?
20 **PROSPECTIVE JUROR:** My uncle. He lives in
21 Idaho.
22 **THE COURT:** What was he charged with?
23 **PROSPECTIVE JUROR:** He robbed a church.
24 **THE COURT:** Robbed a church?
25 **PROSPECTIVE JUROR:** Yeah. He stole some

1 speakers and stereo equipment.

2 **THE COURT:** What kind of church was it?

3 It wasn't an LDS church, was it?

4 **PROSPECTIVE JUROR:** It was an LDS church.

5 **THE COURT:** Well, you know, that happens.

6 **PROSPECTIVE JUROR:** It does, it does.

7 **THE COURT:** And your house has been

8 burglarized; is that right?

9 **PROSPECTIVE JUROR:** Yes, it has.

10 **THE COURT:** Now, as you know from reading
11 the questionnaire, we're trying to pick a jury who
12 can hear this case and decide upon a penalty. Now,
13 the defendant has already been convicted of
14 first-degree murder with the use of a deadly weapon,
15 and you will have to decide the punishment according
16 to the laws of the State of Nevada, and the State of
17 Nevada law provides that you will decide from four
18 different forms, that is, the death penalty, life in
19 prison without the possibility of parole, life in
20 prison with the possibility of parole or for a
21 definite term of 50 years plus a consecutive term of
22 50 years for the use of a deadly weapon for a total
23 of a hundred years, and parole possible after 40
24 years has been served, and this applies for each
25 count.

1 Do you understand that so far?

2 **PROSPECTIVE JUROR:** Yes.

3 **THE COURT:** What I want to know is can you
4 consider all four forms of punishment?

5 **PROSPECTIVE JUROR:** Yes.

6 **THE COURT:** What I mean by that is -- like
7 some people, they only believe -- they believe in an
8 eye for an eye, and the only punishment that they
9 would consider would be the death penalty. Some
10 people don't believe that a person should ever be
11 sentenced to life without parole, because they said
12 it's cruel, plus, it cost the taxpayers a lot of
13 money. Some people say they could never consider
14 life with the possibility of parole.

15 Could you look at all four of them and
16 pick out the one that's most appropriate considering
17 the facts of the case, the background of the people
18 involved and the law and decide upon the most
19 appropriate one?

20 **PROSPECTIVE JUROR:** Yes, I could.

21 **THE COURT:** You never served on a jury
22 before?

23 **PROSPECTIVE JUROR:** No.

24 **THE COURT:** Do you have any relatives that
25 work in the legal profession or law enforcement?

1 **PROSPECTIVE JUROR:** No, I don't.
2 **THE COURT:** Can you be fair to both sides?
3 **PROSPECTIVE JUROR:** Yes.
4 **THE COURT:** Can you follow the Court's
5 instructions on the law?
6 **PROSPECTIVE JUROR:** Yes.
7 **THE COURT:** Can you be impartial and
8 unbiased?
9 **PROSPECTIVE JUROR:** Yes.
10 **THE COURT:** State.
11 **MR. STANTON:** Thank you, your Honor.
12
13 EXAMINATION BY THE STATE
14 **BY MR. STANTON:**
15 Q Good afternoon, Miss Ritchie.
16 A Good afternoon.
17 Q Thank you for your patience today.
18 A series of questions I'm going to ask you
19 this afternoon is your ability to be fair and
20 impartial in this case. Basically, what we're
21 looking for is jurors who come in with no
22 preconceived notions about what the punishment
23 should be and will wait until all the evidence comes
24 in in rendering a just and fair verdict in this
25 case.

1 The first of that deals with your role in
2 this case, and that is the penalty phase only.
3 There's nothing about this case or our role as a
4 potential juror in this case that deals with the
5 determination of guilt or innocence. That's
6 previously been done by another jury.

7 The defendant, Donte Johnson, has been
8 convicted of four counts of first-degree murder.
9 The Judge will instruct you that you have to abide
10 by that previous jury's verdict.

11 Can you do that?

12 A Yes.

13 Q Even looking at what your role would be in
14 determining punishment?

15 A Yes.

16 Q Part of what you will hear from the
17 State's presentation of the facts in this case is
18 some of the underlying facts and circumstances
19 regarding the underlying quadruple murder in this
20 case. As part of that evidence, that evidence is
21 rather graphic in nature, very brutal. Your role as
22 a juror, while emotional and probably for most
23 compassionate people is distasteful, it's important
24 that you view that evidence with an eye as a juror,
25 that is, you look at that and determine as evidence

1 ultimately the issue that's before you, the just
2 punishment.

3 I don't know anything about you, but based
4 upon your knowledge of your own character, can you
5 look at that type of information and abide by your
6 function as a juror in this case to review it as
7 evidence?

8 A Yes, I would.

9 Q In addition, there are four different
10 victims that were killed in this case, and that your
11 job as a juror would be to determine the appropriate
12 and just punishment as it relates to each one of
13 those victims. It may be that your decision as it
14 relates to each one is the same or it might be that
15 it's different.

16 Does that cause you any problems, that
17 process?

18 A No.

19 Q You indicated that your family member that
20 was involved in the criminal justice system -- as a
21 result of it, have you formed any opinion both
22 either positive or negative about the system? What
23 I mean by that is do you harbor any feelings of
24 resentment towards either the police or the
25 prosecution about how they handled your uncle's

1 case?

2 A No.

3 Q Do you think he was treated fairly?

4 A I think he was.

5 Q And that was not here in Las Vegas?

6 A No; that was in Idaho.

7 Q Have you had much discussion about that
8 case or what occurred and the punishment with your
9 family?

10 A No. I mean, we talked about it at the
11 time, which was several years ago, so this was when
12 I was young.

13 Q Was he incarcerated as a result of this?

14 A He was.

15 Q Is he still serving time?

16 A No.

17 Q Do you have much contact with that uncle?

18 A Not too much.

19 Q Would your participation in this
20 proceeding cause you any difficulty in looking your
21 uncle in the eye at some time and telling him about
22 this case and telling him that you were involved in
23 the jury? Would that cause you any discomfort?

24 A No.

25 Q The questions in your answers about the

1 death penalty in the questionnaire -- I believe you
2 filled it out approximately a week or so ago -- you
3 indicated that you would consider the death penalty
4 in certain circumstances --

5 A Um-hmm.

6 Q -- is that correct?

7 A Yes.

8 Q Is that a feeling that you've had for a
9 period of time about the death penalty? Have you
10 thought about it for a while?

11 A It's something that I've thought about
12 whenever you hear cases about whenever the death
13 penalty is imposed.

14 Q Knowing that in this particular case the
15 defendant has been convicted of four counts of
16 first-degree murder, while that fact alone is a
17 basis to aggravate a case and you can use it as a
18 basis, you would keep your mind open for other
19 sentencing options and to listen to all the evidence
20 until it was formally given to you for deliberation?

21 A Yes, I would.

22 **MR. STANTON:** No further questions, your
23 Honor.

24 **THE COURT:** All right.

25 **MR. STANTON:** Pass the prospective juror.

1 **THE COURT:** Defense Counsel.

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

3

4 EXAMINATION BY THE DEFENSE

5 **BY MR. WHIPPLE:**

6 Q Hi Miss Ritchie. How are you?

7 A I'm doing all right.

8 Q Thank you for your time.

9 Miss Ritchie, when you received this jury
10 questionnaire about a week ago and you read through
11 it, what thoughts passed through your mind?

12 A Well, obviously, I thought, wow, that's a
13 murder case, and since I've taken that, a lot of
14 thoughts about how I feel about murder and what
15 should happen, because I know that there were the
16 four in the questionnaire -- it talks about the four
17 different penalties that are applied to that and
18 just how I felt about those.

19 Q Take me, if you would, just a little
20 farther through your thought process. I'm very
21 impressed. This really seems to be the genesis of a
22 lot of your thoughts.

23 What have you been thinking about since
24 that time?

25 A I just felt like I don't really know much

1 about what happened, so I couldn't make a decision
2 which way, but I know that if I did hear what
3 happened, that I would be able to make a decision in
4 that direction, whichever way it should go.

5 Q How do you feel about sitting in judgment
6 of another human being?

7 A I think it's a big responsibility.

8 Q Have you ever been in a situation where
9 you've done that before?

10 A No.

11 Q Have you had an opportunity to talk to any
12 of the folks, other jurors out there in the hall
13 about this particular case or what to expect or some
14 of the things you might be expecting?

15 A Not really. I try to kind of stay out of
16 that.

17 Q Is it fair to say there's some talking
18 about what this case is and what's going on?

19 A I don't think anybody really knows, but
20 just talking about it, just speculation.

21 Q Sure.

22 It asks -- one of the questions is media.
23 You left it blank.

24 I assume you're not familiar with this
25 case at all?

1 A No. I haven't heard anything about it,
2 and I watch the news a lot, that's why I was
3 surprised.

4 Q How long have you been here in Las Vegas?

5 A I think I put 16 years. I've lived here
6 since I was in elementary school.

7 Q What school did you go to, which high
8 school?

9 A I went through Basic High School.

10 Q I'm kind of surprised, because this did
11 catch a lot of media when this occurred.

12 You don't remember anything about that?

13 A No, I don't.

14 **THE COURT:** I have a question for you.

15 Were you out at Basic when I gave a speech
16 out there one day?

17 **PROSPECTIVE JUROR:** I don't know. I don't
18 recall. Maybe I wasn't there.

19 **MR. DASKAS:** Maybe she ditched that day.

20 **MS. JACKSON:** They knew you were coming.

21 **BY MR. WHIPPLE:**

22 Q There were some questions on the jury
23 questionnaire, and you actually scribbled some out.

24 A Because I misread it. I misread the
25 question, and my answer didn't make sense, because I

1 filled out the questionnaire, and I wanted to make
2 sure my answers were legit and correct, and I went
3 through and it didn't answer the question, so I
4 wanted to make sure that it was correct.

5 Q So, you double-checked your work?

6 A Yes, I did.

7 Q We really appreciate that.

8 The death penalty -- you spoke about it
9 briefly.

10 Do you have a decision with regard to the
11 death penalty, if it's used too much or not enough,
12 do you have any type of opinions that way?

13 A My opinion is I'm not against the death
14 penalty, but in order to be for it, I think there
15 has to be compelling evidence.

16 Q How about the old adage, "An eye for an
17 eye" -- do you agree with that old adage? Do you
18 agree with that eye for an eye?

19 A No, I don't agree with an eye for an eye.

20 Q Why not?

21 A It's Mosaic. It's guess it's Mosaic law.
22 It's old.

23 Q This is not like one of those TV shows
24 where -- you know, Perry Mason. This is not a
25 trial. My client, Mr. Johnson, is a cold-blooded

1 killer, and you are going to be asked to determine
2 what will the future entail for my client, so I need
3 to ask you some questions about that.

4 If a person has been convicted of
5 first-degree, cold-blooded, premeditated, deliberate
6 murder, could you consider a potential life
7 sentence?

8 A Yes, I could.

9 Q And in this particular case, we have an
10 individual who has been convicted. We're not trying
11 to justify, we're not here to excuse. It was a
12 terrible, terrible thing. There would be nobody
13 that disagrees with that, but he had four innocent
14 individuals who were bound with tape on their hands,
15 and their feet were bound together, and they were
16 laid on the floor, and they were shot through the
17 back of the head one by one. Knowing nothing more,
18 is it possible that you could consider a life
19 sentence in that situation?

20 A Yes.

21 Q You're going to hear at some point from
22 this Court -- he will give you instructions, and
23 some of those instructions will give you the fact
24 that a death penalty is never required, and other
25 instructions will talk about mitigation, and I'm

1 sure the State will talk to you about aggravation;
2 we'll talk to you about mitigation. Mitigation is
3 essentially any reason to choose life over death.
4 We, in fact, had some questions that were put in
5 here about mitigation, and you answered that -- I'm
6 going to paraphrase it. It says, "In reaching a
7 verdict in this penalty phase, you must consider the
8 defendant's background."

9 A Correct.

10 Q It is a must. The Nevada law requires
11 people in the penalty phase -- not the trial phase
12 but in the penalty phase -- individuals are willing
13 to look at all the facts and circumstances, and it
14 says, "that is, mitigating circumstances such as
15 defendant's health, mental status, age, childhood
16 experience," et cetera. And then it asked, "Do you
17 feel you would consider those types of factors?" and
18 you struck, "Very much."

19 Why did you strike "very much"? There
20 were four different options there.

21 A Well, I think your background has a lot to
22 do with how you act and conduct yourself throughout
23 your life, so you would have to consider maybe what
24 drove you to do something, to commit a heinous
25 crime.

1 Q There's that term "abuse excuse."

2 A That their parents abused them so they
3 continue that abuse cycle.

4 Q That could be the term, but people try to
5 blame their problems on the past.

6 A Okay.

7 Q They're refusing to accept accountability,
8 and we accept full accountability, I want to make
9 clear, but the term "abuse excuse" exists, and I'm
10 just curious if you've heard about it and if you
11 have any comments on it?

12 A I guess the way you explained it more
13 generalized, I have heard that people with their
14 background, they would blame it on something else or
15 someone caused them to do something.

16 Q How do you feel about that?

17 A Well, I think you have to be responsible
18 for the things that you do.

19 Q We would all agree with that.

20 Miss Ritchie, if you found yourself in a
21 situation where your opinion was different from
22 other individuals, how would you handle that in
23 general? Before you answer that, I'm going to ask a
24 second question, so consider it a compound question.

25 Do you consider yourself a leader or

1 follower, so it kind of mesh together?

2 A I think it always depends on the
3 situation. If you feel that your opinion is valid
4 and important, then you should make sure that you're
5 a leader with your opinion, but sometimes someone
6 else will have a better opinion, and in that case,
7 you should be the follower.

8 Q How do you make the determination if you
9 should be a leader or follower?

10 A You just have to decide how strong your
11 opinion is.

12 Q And I understand that.

13 One of the things I anticipate you need to
14 do is -- mitigation does not always have to be
15 verbalized. Simple things like mercy or a gut
16 feeling of choosing life over death is a mitigator.
17 Maybe sometimes one wouldn't be able to verbalize a
18 reason why she chose life over death.

19 How do you feel about that?

20 A Well, I feel you should respect everyone's
21 opinion.

22 Q What if others had a different opinion
23 than you on that issue?

24 A On respecting others' opinions?

25 Q Yes.

1 A I just think that's how it is sometimes,
2 people just may not agree with you.

3 Q Could you stand your ground and hold your
4 opinion if you felt convinced?

5 A Definitely, I would stand my ground.

6 **MR. WHIPPLE:** Miss Ritchie, I thank you
7 for your time. I have no further questions, and I
8 pass for cause, your Honor.

9 **THE COURT:** Thank you very much, ma'am.
10 We're going to have you come back tomorrow morning
11 at 10:00 a.m., and we'll let you know.

12 **PROSPECTIVE JUROR 127:** Ten a.m.?

13 **THE COURT:** Yes, downstairs.

14 At this time the State may exercise their
15 sixth peremptory challenge.

16 **MR. STANTON:** Can we have the Court's
17 indulgence for just a moment?

18 **THE COURT:** Yeah, I'll give you a few
19 minutes.

20 (Recess taken.)

21 **THE BAILIFF:** Remain seated, come to
22 order. Court is again in session.

23 **THE COURT:** State, have you decided on
24 your sixth peremptory challenge?

25 **MR. DASKAS:** Judge, we have. We would

1 exercise our sixth peremptory challenge on Juror
2 No. 046, Miss Finn seated in position No. 11, Judge.

3 **THE COURT:** All right, Miss Finn.

4 Who is next?

5

6 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 132

7 **THE COURT:** Mr. Gray?

8 **PROSPECTIVE JUROR 132:** Yes, sir.

9 **THE COURT:** I think you said you know
10 Miss Jackson?

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

12 **THE COURT:** Where do you know Miss Jackson
13 from?

14 **PROSPECTIVE JUROR:** Out of the triple
15 three right down the street.

16 **THE COURT:** Out of the what?

17 **PROSPECTIVE JUROR:** The 333 building. We
18 have a maintenance office on the bottom, she's up on
19 top.

20 **THE COURT:** Okay. You're down there now?

21 **PROSPECTIVE JUROR:** No. I'm down at
22 juvenile now.

23 **THE COURT:** How long have you -- which one
24 is 333?

25 **MS. JACKSON:** That's our building, your

1 Honor. It's right on the corner.
2 **THE COURT:** Is it a County building?
3 **MS. JACKSON:** It is, your Honor.
4 **THE COURT:** You work for the County?
5 **PROSPECTIVE JUROR:** Yes.
6 **THE COURT:** You work for the County
7 maintenance?
8 **PROSPECTIVE JUROR:** Yes.
9 **THE COURT:** So, now you work at the
10 juvenile facility?
11 **PROSPECTIVE JUROR:** Yes.
12 **THE COURT:** Okay.
13 So, you would see Miss Jackson when you
14 were at work?
15 **PROSPECTIVE JUROR:** Yes.
16 **THE COURT:** Is that going to cause you to
17 be biased towards her or against her?
18 **PROSPECTIVE JUROR:** No.
19 **THE COURT:** Now, you've been in Las Vegas
20 how long?
21 **PROSPECTIVE JUROR:** Thirty-two years.
22 **THE COURT:** Thirty-two years. Okay.
23 You went to high school here?
24 **PROSPECTIVE JUROR:** Yes.
25 **THE COURT:** How long have you been

1 employed with the County?

2 **PROSPECTIVE JUROR:** Sixteen years.

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

4 **PROSPECTIVE JUROR:** Yes.

5 **THE COURT:** Does your wife work outside

6 the home?

7 **PROSPECTIVE JUROR:** Yes.

8 **THE COURT:** What kind of work does she do?

9 **PROSPECTIVE JUROR:** She's with a financial

10 company.

11 **THE COURT:** Now, I believe in Question

12 No. 21, you said you have a brother who works in law

13 enforcement.

14 **PROSPECTIVE JUROR:** Yes. He works for the

15 school district.

16 **THE COURT:** What does he do for them?

17 **PROSPECTIVE JUROR:** Police officer.

18 **THE COURT:** School district policeman.

19 Okay.

20 And you were a juror about a year ago?

21 **PROSPECTIVE JUROR:** It's been several

22 years ago.

23 **THE COURT:** What kind of case was it?

24 **PROSPECTIVE JUROR:** It's been so long, I

25 don't even remember.

1 **THE COURT:** Was it in this building or the
2 federal building?
3 **PROSPECTIVE JUROR:** It was in this
4 building.
5 **THE COURT:** You don't remember who the
6 Judge was?
7 **PROSPECTIVE JUROR:** No.
8 **THE COURT:** Do you know if it was a
9 criminal case or civil?
10 **PROSPECTIVE JUROR:** I think it was
11 criminal.
12 **THE COURT:** The guy committed some kind of
13 crime?
14 **PROSPECTIVE JUROR:** Yes.
15 **THE COURT:** You don't remember what the
16 crime was?
17 **PROSPECTIVE JUROR:** No.
18 **THE COURT:** Were you the foreman of the
19 jury?
20 **PROSPECTIVE JUROR:** No.
21 **THE COURT:** Without telling us what your
22 verdict was, did you all reach a verdict?
23 **PROSPECTIVE JUROR:** Yes, we did.
24 **THE COURT:** Here in Question No. 24, the
25 question is, "What are your opinions and feelings

1 about how the criminal justice system works?" and
2 you stated, "It's okay but needs a little more
3 work."

4 What kind of more work does it need?

5 **PROSPECTIVE JUROR:** Well, some people get
6 off with the same crime and some people don't get
7 off with it. I mean, if you should do something and
8 I do the same thing and you get off and I don't, how
9 fair can that be?

10 **THE COURT:** You think there's a
11 discrepancy in how some people are treated?

12 **PROSPECTIVE JUROR:** Yeah.

13 **THE COURT:** What do you think needs to be
14 done?

15 **PROSPECTIVE JUROR:** Everybody need to be
16 treated fairly, equal, straight across the board.

17 **THE COURT:** Why do you think that happens,
18 that some people get off, some get punished?

19 **PROSPECTIVE JUROR:** I don't know. I've
20 been asking myself that for a long time.

21 **THE COURT:** Have you had any family
22 members or close friends who have been charged with
23 a crime?

24 **PROSPECTIVE JUROR:** Yes, but he's
25 deceased.

1 **THE COURT:** Who is that?
2 **PROSPECTIVE JUROR:** He's deceased now.
3 **THE COURT:** What was he, a cousin or
4 something?
5 **PROSPECTIVE JUROR:** He was a cousin.
6 **THE COURT:** Cousin.
7 Did he die of natural causes or was he
8 killed or what?
9 **PROSPECTIVE JUROR:** Natural causes.
10 **THE COURT:** What kind of crime was he
11 charged with?
12 **PROSPECTIVE JUROR:** Drugs and bail bonds.
13 **THE COURT:** Bail bonds?
14 **PROSPECTIVE JUROR:** Yeah. He was a bail
15 bondsman.
16 **THE COURT:** Are you related to Mr. Gray,
17 the electrician?
18 **PROSPECTIVE JUROR:** Yes.
19 **THE COURT:** What's your relationship to
20 Mr. Gray?
21 **PROSPECTIVE JUROR:** That's my uncle.
22 **THE COURT:** Now, Mr. Gray's son, is he in
23 jail?
24 **PROSPECTIVE JUROR:** No, he's -- well, I'm
25 not for sure. He was, but I'm not sure if he's

1 still in there.

2 **THE COURT:** Now, the one -- what was the
3 one's name that was the bail bondsman?

4 **PROSPECTIVE JUROR:** Gregory Gray.

5 **THE COURT:** Gregory.

6 How did he die?

7 **PROSPECTIVE JUROR:** He had a heart attack.

8 **THE COURT:** Heart attack.

9 Had he moved back to Las Vegas?

10 **PROSPECTIVE JUROR:** Yeah.

11 **THE COURT:** Tell me this here: Now, you
12 understand that this trial will be to decide on the
13 punishment. The defendant has already been
14 convicted of four counts of first-degree murder.

15 Do you understand that?

16 **PROSPECTIVE JUROR:** Um-hmm.

17 **THE COURT:** Is that a "yes"?

18 **PROSPECTIVE JUROR:** Yes.

19 **THE COURT:** So, the jury will have to
20 decide on the punishment. They will have four
21 choices -- the death penalty, life in prison without
22 parole, life in prison with the possibility of
23 parole or for a definite term of 50 years and parole
24 after 20 years. Of course, those punishments are
25 doubled because a deadly weapon was used. So, it

1 would be 50 years plus an additional consecutive 50
2 years for a total of a hundred years, and you would
3 be eligible for parole after 40 years.

4 Do you understand that that's the way it
5 operates?

6 **PROSPECTIVE JUROR:** Yes.

7 **THE COURT:** Would you be able to consider
8 all four forms of punishment?

9 **PROSPECTIVE JUROR:** Yes.

10 **THE COURT:** Do you have any objections,
11 moral or otherwise, to the death penalty?

12 **PROSPECTIVE JUROR:** No.

13 **THE COURT:** Could you impose a sentence of
14 life in prison with the possibility of parole if you
15 thought it was appropriate after you heard the facts
16 and the law?

17 **PROSPECTIVE JUROR:** Yes.

18 **THE COURT:** So, you're open to all four of
19 them?

20 **PROSPECTIVE JUROR:** Yes.

21 **THE COURT:** Can you be fair to both sides?

22 **PROSPECTIVE JUROR:** Yes.

23 **THE COURT:** Can you be fair to the State?

24 **PROSPECTIVE JUROR:** Yes.

25 **THE COURT:** You can be fair to the

1 defense?

2 **PROSPECTIVE JUROR:** Yes.

3 **THE COURT:** State.

4 **MR. DASKAS:** Thank you, Judge.

5

6 EXAMINATION BY THE STATE

7 **BY MR. DASKAS:**

8 Q Mr. Gray, thank you for your patience,
9 number one.

10 Secondly, as the Judge just alluded to, a
11 jury has already convicted this defendant of four
12 counts of first-degree murder.

13 You realize that?

14 A Um-hmm.

15 Q Would you have any problems accepting the
16 fact that another jury found him guilty, that that
17 would not be your decision?

18 A No.

19 Q You would accept that verdict?

20 A Yes.

21 Q One of your answers, you wrote -- it's
22 asking about the different racial backgrounds of the
23 defendants and the victim. You wrote, "It doesn't
24 matter, committed the crime, do the time."

25 A Yes.

1 Q Tell me why you wrote that.

2 A That's what it is, if you do the crime,
3 you do the time.

4 Q Regardless of the color of your skin?

5 A It don't matter.

6 Q There was another question that asked
7 whether you would consider the mental status, the
8 mental state of the defendant, whether that's
9 important to you in deciding punishment, and you
10 wrote, "there shouldn't be."

11 You don't think that's important in a
12 criminal case?

13 A No.

14 Q What about in deciding?

15 **THE COURT:** You got to answer out loud,
16 sir, because she has to take down what you said.

17 **PROSPECTIVE JUROR:** Okay.

18 **MR. DASKAS:** I heard him say no.

19 **BY MR. DASKAS:**

20 Q Did you say no?

21 A No.

22 Q How about in deciding punishment? In this
23 case, we're talking about possibly imposing the
24 death penalty.

25 Do you think it might be important to

1 consider someone's mental status in deciding
2 punishment?

3 A No.

4 Q One of your other answers -- it asks you
5 in the questionnaire about the different forms of
6 punishment, and you wrote, "It depends on the case."

7 What I understand that to mean is any one
8 of those might be appropriate depending on what you
9 hear?

10 A Right.

11 Q Is that how you feel?

12 A Right.

13 Q Could you base your decision on punishment
14 on both the facts of the case -- because we're going
15 to talk to you about how he committed these four
16 homicides -- and could you also base your decision
17 on that man's background?

18 A Yes.

19 Q Or do you think it's even important to
20 consider his background?

21 A Yes and no.

22 Q Tell me what you mean by that.

23 A It depends on how much evidence there is
24 against him. He might have a good background, he
25 might not have a good background, so it could go

1 either way.

2 Q I don't want to put words in your mouth,
3 but is it more important for you to base your
4 decision on punishment on the facts of the quadruple
5 homicide or on this man's background?

6 A On the homicide.

7 Q You know that he's already been convicted
8 of that homicide. He's already been found guilty
9 four times, four first-degree murders.

10 Does that mean you would automatically
11 vote for death?

12 A No.

13 Q What else would you want to consider?

14 A I probably would have to hear a little bit
15 more about it.

16 Q About the case itself?

17 A About the case itself to make that
18 determination.

19 Q That's fair.

20 You volunteered on day one that you know
21 Miss Jackson.

22 How often do you see Alzora?

23 A I used to see her a lot when I worked down
24 there.

25 Q Almost every day?

1 A Pretty much, once or twice a week.

2 Q Did you and Miss Jackson ever talk about
3 her cases or her clients that she represented?

4 A No.

5 Q Let's say for the sake of our discussion
6 that you're selected as a juror, okay, and you
7 listen to all the evidence and you listen to all the
8 information about this defendant's background and
9 that you believe this is the appropriate case where
10 the death penalty should be handed down.

11 Can you actually impose that punishment?
12 Can you vote for it?

13 A Yes.

14 Q Kind of a follow-up question to that.
15 Let's say that the other members of the jury want
16 you to be the foreperson. Okay? You have the same
17 vote as everybody else. You all have to agree on
18 the punishment, but the one thing you would have to
19 do as the foreperson is sign the verdict form that
20 sentences the defendant to death.

21 Do you feel like if you believe that's the
22 punishment that he deserves, you can sign that form
23 and sentence him to death?

24 A Yes.

25 **MR. DASKAS:** I appreciate it. Thank you.

1 Judge, we'll pass this juror for cause.

2 **THE COURT:** All right.

3 Counsel.

4 **MS. JACKSON:** Thank you.

5

6 EXAMINATION BY THE DEFENSE

7 **BY MS. JACKSON:**

8 Q Good afternoon, Mr. Gray. As a matter of
9 fact, have we ever had a conversation except to say
10 good morning, how are you doing?

11 A No.

12 Q I don't remember one either.

13 A No.

14 Q Is it fair to say we were just people who
15 worked in the same building?

16 A That's it.

17 Q That wouldn't impact your decision one way
18 or another in this case?

19 A Right.

20 Q The only area that concerns me a little
21 bit, Mr. Gray -- maybe the question is somewhat
22 overbroad.

23 No. 33 -- "To what extent should the
24 mental status of a criminal defendant be considered
25 in a sentencing decision between life and death?"

1 You were very emphatic with Mr. Daskas, "Not at
2 all."

3 Question No. 38, "In reaching a verdict,
4 you must consider the defendant's background,
5 mitigating circumstances such as the defendant's
6 health, mental status, age, childhood experience,
7 education." And then it says, "Do you feel you
8 would consider those types of factors?" and you say,
9 "very much." So, I don't know where you -- Question
10 34 probably -- 33, excuse me, is probably not a very
11 good question. We'll probably delete that one next
12 time, but did you realize it's kind of asking you
13 almost the same thing? As a matter of fact, they
14 put in No. 38, one of the factors as mitigation
15 could be mental status.

16 A I probably didn't really understand it.

17 Q It's not the best question in the world.

18 You still believe, as you sit here today,
19 just like you wanted to know more about the case --
20 you told Mr. Daskas that --

21 A Yes.

22 Q -- if you're going to decide if someone
23 lives or dies, it would also be important to you,
24 sir, to know as much as you could about that
25 person --

1 A Right.

2 Q -- before you decide if they live or die?

3 The law says that you must consider
4 mitigation, and mitigation could be any reason under
5 the sun to give life. As Mr. Daskas said, we're
6 here because we know that four innocent lives were
7 taken, and that's an aggravator.

8 Have you ever heard the phrase the "abuse
9 excuse"?

10 A Um-hmm, yes.

11 Q What does that mean in your understanding?

12 A Somebody is being abused and taking
13 advantage of and harassed. I don't use it.

14 Q In my line of work sometimes when people
15 are convicted of doing things, they will come to
16 court and they will say, "Well, I was abused as a
17 child, so that may explain why we're here." That's
18 the context I was referring to.

19 Have you ever heard it used in that
20 context?

21 A Yes.

22 Q What do you think about that, Mr. Gray?

23 A It would depend on who is abusing who. If
24 it's an adult abusing a child or kid or whatever --
25 basically, anybody that's being abused for no

1 apparent reason, they're not right.

2 Q That could affect a person's upbringing,
3 especially a child?

4 A Yeah, it could.

5 Q You are willing to consider those types of
6 factors?

7 A Yes.

8 Q Your jury experience before was so long
9 ago you don't remember anything about it. I
10 imagine, though -- I've been told by some jurors
11 that it can get rough in a jury room sometimes, that
12 people sometimes may disagree.

13 Is there anything about that experience
14 that you can remember that was unpleasant?

15 A No. We had a -- I was with a, pretty
16 much, older group. I was kind of young at the time.

17 Q I see.

18 A I didn't have no problems with no adults.

19 Q All right. Okay.

20 This is a very serious matter, life and
21 death. It just doesn't get any more serious with
22 that.

23 Would you agree with me?

24 A Yes.

25 Q If you were in the jury room, Mr. Gray,

1 and you heard the State's case and you feel
2 comfortable enough that you know enough about what
3 happened and then you hear what we have to say about
4 Mr. Johnson's background and you deliberated with
5 your fellow jurors, they all want to kill my client,
6 and after due deliberation, you feel that you, as a
7 juror, can give life, because one juror can do
8 that -- you will be instructed at the right time
9 that death is never required -- what would you do if
10 they insisted on you explaining or justifying your
11 position to them?

12 A I think we would have a long discussion,
13 because -- I mean, like you say, it would depend on
14 the case.

15 Q In my hypothetical, you've already
16 deliberated, you've heard their side, you've heard
17 our side. You've spoken with your other jurors,
18 you've fulfilled your duty as a citizen, and now you
19 come to the place in your own heart and your own
20 mind where you are convinced after everything that
21 this is a case for life but everybody else wants
22 death, would you change your vote just to get a
23 verdict?

24 A No.

25 Q What if they painted you into a corner and

1 insisted that you justify your verdict?

2 A No.

3 Q What would you do?

4 A Once my mind is set, it's set. Nothing is
5 going to change it.

6 Q You probably don't have much trouble with
7 people trying to push you around anyway.

8 A No.

9 **MS. JACKSON:** Thank you, sir.

10 We pass Mr. Gray for cause, your Honor.

11 **THE COURT:** Mr. Gray, we'll let you know
12 tomorrow at 10:00 o'clock. Report downstairs in the
13 jury room.

14 **PROSPECTIVE JUROR 132:** All right.

15 **THE COURT:** Ten o'clock in the morning.

16 Laura Kaplan is in the military and has a
17 temporary duty assignment, I believe -- something
18 like that.

19 **MS. JACKSON:** She says she's TDY in
20 Oklahoma.

21 **THE COURT:** We'll excuse her.

22 Who is next, Jimerson?

23 **THE BAILIFF:** Jimerson.

24 **MR. STANTON:** Judge, did you want to
25 exercise a challenge before we go with the next one?

1 **THE COURT:** Getting ahead of myself.
2 The defense may exercise its sixth
3 peremptory challenge.
4 **MS. JACKSON:** That would be Juror 112,
5 Robin Nesbit, and her position is No. 12.
6 **THE COURT:** No. 12?
7 **MS. JACKSON:** Yes, sir.
8
9 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 135
10 **THE COURT:** Miss Jimerson, how long have
11 you lived in Las Vegas?
12 **PROSPECTIVE JUROR 135:** All my life.
13 **THE COURT:** You came here -- I thought you
14 were born in Monroe?
15 **PROSPECTIVE JUROR:** Yeah, well I was a
16 baby when I came here.
17 **THE COURT:** Oh, were you?
18 **PROSPECTIVE JUROR:** Yeah.
19 **THE COURT:** Are you married?
20 **PROSPECTIVE JUROR:** Um-hmm.
21 **THE COURT:** How is your husband employed?
22 **PROSPECTIVE JUROR:** City of Las Vegas.
23 **THE COURT:** What does he do for them?
24 **PROSPECTIVE JUROR:** Maintenance worker.
25 **THE COURT:** What kind of work do you do,

1 ma'am?

2 **PROSPECTIVE JUROR:** Houseman porter at the

3 Riviera.

4 **THE COURT:** And you have one daughter?

5 **PROSPECTIVE JUROR:** Yes.

6 **THE COURT:** She's 12?

7 **PROSPECTIVE JUROR:** She's what?

8 **THE COURT:** She's an adult?

9 **PROSPECTIVE JUROR:** Yeah, she's an adult.

10 **THE COURT:** Where does she work?

11 **PROSPECTIVE JUROR:** She works for Bank of

12 America.

13 **THE COURT:** You've never been on a jury

14 before?

15 **PROSPECTIVE JUROR:** Yes.

16 **THE COURT:** You have been?

17 **PROSPECTIVE JUROR:** Um-hmm.

18 **THE COURT:** You weren't supposed to put

19 the verdict down that you reached.

20 How long ago was this?

21 **PROSPECTIVE JUROR:** I think it was three

22 years ago.

23 **THE COURT:** What kind of case was it?

24 **PROSPECTIVE JUROR:** Murder.

25 **THE COURT:** A murder case?

1 **PROSPECTIVE JUROR:** Um-hmm.

2 **THE COURT:** Mr. Daskas and Mr. Stanton

3 didn't try the case, did they, those D.A.s?

4 **PROSPECTIVE JUROR:** No.

5 **THE COURT:** Was Miss Jackson or

6 Mr. Whipple on the case?

7 **PROSPECTIVE JUROR:** No.

8 **THE COURT:** Were you the foreman of the

9 jury?

10 **PROSPECTIVE JUROR:** No.

11 **THE COURT:** Tell me this here: Was that a

12 death penalty case?

13 **PROSPECTIVE JUROR:** I don't remember.

14 **THE COURT:** You don't remember.

15 Did the jury sentence the defendant?

16 **PROSPECTIVE JUROR:** Excuse me?

17 **THE COURT:** Did you guys pronounce

18 sentence?

19 **PROSPECTIVE JUROR:** Yes.

20 **THE COURT:** This is a -- I understand the

21 jury in this case has already convicted the

22 defendant of four counts of first-degree murder.

23 Do you understand that?

24 **PROSPECTIVE JUROR:** Um-hmm.

25 **THE COURT:** Is that a "Yes"? You have to

1 answer "Yes."

2 **PROSPECTIVE JUROR:** Oh, yes.

3 **THE COURT:** This jury's job is you're
4 going to need to decide punishment. You understand
5 that you have four choices, the death penalty, life
6 in prison without parole, life in prison with the
7 possibility of parole or for a definite term of 50
8 years with the possibility of parole after 20, and
9 because a deadly weapon was used, these sentences
10 are doubled, so it would be a hundred years and
11 parole after 40.

12 Do you understand that?

13 **PROSPECTIVE JUROR:** I don't quite
14 understand what you're saying.

15 **THE COURT:** Okay.

16 There are four possible punishments for
17 first-degree murder.

18 Do you understand is that?

19 **PROSPECTIVE JUROR:** Um-hmm, yes.

20 **THE COURT:** One of them is the death
21 penalty. The jury can sentence the defendant to
22 death. The jury can sentence him to life in prison
23 without parole or they can sentence him to prison
24 with the possibility of parole or they can sentence
25 him to a definite term of 50 years. Now, because a

1 deadly weapon was used, the penalty is doubled.

2 Do you understand that?

3 **PROSPECTIVE JUROR:** Yes.

4 **THE COURT:** So, it would be -- you can
5 sentence him to death, you can sentence him to life
6 in prison without parole, life in prison with the
7 possibility of parole or for a hundred years and
8 parole after 40 years.

9 Do you understand that?

10 **PROSPECTIVE JUROR:** Yes.

11 **THE COURT:** Now, what I want to know is,
12 do you have any objections, moral or religious or
13 otherwise to the death penalty?

14 **PROSPECTIVE JUROR:** No.

15 **THE COURT:** And could you consider in this
16 case the punishment of life in prison without
17 parole, life in prison with the possibility of
18 parole or for a definite term of a hundred years?

19 **PROSPECTIVE JUROR:** Yes.

20 **THE COURT:** You can consider that along
21 with the death penalty; is that right?

22 **PROSPECTIVE JUROR:** Yes.

23 **THE COURT:** You can listen to the
24 evidence, the facts of the case, listen to
25 background information about the people involved and

1 decide -- and of course, listen to the Court's
2 instructions on the law and decide on what's the
3 most appropriate punishment?

4 **PROSPECTIVE JUROR:** Yes.

5 **THE COURT:** You don't have any problems in
6 following the Court's instructions on the law?

7 **PROSPECTIVE JUROR:** No.

8 **THE COURT:** Are you biased or prejudiced
9 against either side for any reason?

10 **PROSPECTIVE JUROR:** No.

11 **THE COURT:** You could be fair and
12 impartial?

13 **PROSPECTIVE JUROR:** Yes.

14 **THE COURT:** Had you heard anything about
15 this case?

16 **PROSPECTIVE JUROR:** No.

17 **THE COURT:** State.

18 **MR. STANTON:** Thank you, your Honor.

19

20 EXAMINATION BY THE STATE

21 **BY MR. STANTON:**

22 Q Good afternoon, Miss Jimerson. Is it
23 correct to pronounce your name Jim-er-son
24 (phonetic)?

25 A Jim-er-son (phonetic).

1 Q Thank you for your patience today. I have
2 a couple of questions I'd like to ask you about the
3 questionnaire you filled out about a week ago.

4 A Yes.

5 Q There is a section in here or Question
6 No. 32 that said, "To what extent should the mental
7 status of a criminal defendant be considered in a
8 sentencing decision between life and death," and you
9 left that blank.

10 Can you give me an answer of what your
11 thoughts are to that question as you sit here today?

12 A No.

13 Q You don't know?

14 A Not really.

15 Q Do you consider -- would it be important
16 to you to know something about the mental status of
17 someone in determining punishment?

18 A Yes.

19 Q How important is that among the things
20 that you can think about as you sit here today? I
21 know you haven't heard the facts and you haven't
22 been instructed on the law, but how important is
23 that to you?

24 A It can be very important to the case.

25 Q Your answer about the death penalty is

1 that you've never thought about it?

2 A No, never thought about it.

3 Q You've never seen cases and didn't discuss
4 it, just never come up in conversation?

5 A No.

6 Q There was a Question No. 36, and it says,
7 "If you were convinced beyond a reasonable doubt
8 that the defendant was guilty of first-degree
9 murder, would you say that" -- and it gave you two
10 options or two questions underneath that. Your
11 first -- the first question was, "Your beliefs about
12 the death penalty are such that you would
13 automatically vote against the death penalty
14 regardless of the facts and circumstances of the
15 case," and you answered "Yes."

16 A Yes.

17 Q Is that your feeling as you sit here
18 today?

19 A Yes.

20 Q So, regardless of what was presented to
21 you, your vote would be against the death penalty?

22 A Yes.

23 Q And there's nothing that could change your
24 mind under any circumstances?

25 A No.

1 **MR. STANTON:** Your Honor.

2 **THE COURT:** Ma'am, I thought you just told
3 me that you weren't opposed to the death penalty?

4 **PROSPECTIVE JUROR:** I'm probably getting
5 confused.

6 **THE COURT:** What question was that,
7 counsel?

8 **MR. STANTON:** Your Honor, it was No. 36 on
9 page 7.

10 **THE COURT:** This is what I want to know
11 without regard to the question, because I can see
12 how you can get confused with that.

13 Are you against the death penalty?

14 **PROSPECTIVE JUROR:** Yes.

15 **THE COURT:** Are you against the death
16 penalty?

17 **PROSPECTIVE JUROR:** Yes.

18 **THE COURT:** So, you would not impose the
19 death penalty?

20 **PROSPECTIVE JUROR:** Yes -- well, no,
21 right? I'm so nervous.

22 **THE COURT:** There's nothing to being
23 nervous. I don't know. If you thought someone had
24 killed someone -- I can't put it like that.

25 Could you sentence someone to death?

1 **PROSPECTIVE JUROR:** No.
2 **THE COURT:** You could not?
3 **PROSPECTIVE JUROR:** No.
4 **THE COURT:** Under any circumstances?
5 **PROSPECTIVE JUROR:** No.
6 **THE COURT:** Counsel, you want to talk?
7 **MS. JACKSON:** Just a wee bit, if I may,
8 Judge.

9 **THE COURT:** Go on.

10

11 EXAMINATION BY THE DEFENSE

12 **BY MS. JACKSON:**

13 Q Hi, Miss Jimerson.

14 A Hello.

15 Q I know you're here, we're all looking at
16 you, you don't work here; we do. Just try to relax,
17 and there are no right or wrong answers, this really
18 is about how you feel, and all we need to know is
19 what you did on your questionnaire. You said that
20 if your beliefs are such that no matter what, that
21 you would always vote against the death penalty
22 which means that you cannot imagine no situation
23 that you could ever, ever, ever consider the death
24 penalty, but think about it, think about it.
25 Timothy McVeigh, he blew up all of those people in

1 Oklahoma, all of those babies, all of those innocent
2 people.

3 If you had been on that jury, wouldn't you
4 have voted along with those people to kill him?

5 A I don't know.

6 **MS. JACKSON:** I think that's my best shot,
7 your Honor.

8 **BY MS. JACKSON:**

9 Q You couldn't consider it?

10 **THE COURT:** You're excused. You can go.

11 **MS. JACKSON:** If she couldn't consider it
12 with Timmy, that's my best shot.

13 Thank you for coming in, ma'am.

14 **MR. STANTON:** Your Honor, for the record,
15 I believe it was the State's motion to excuse that
16 one.

17 **THE COURT:** Yes, it was.

18 Bring in the next one, Ana Lopez.

19 Issue an order to show cause.

20 **MR. WHIPPLE:** Judge, the next one, one of
21 the individuals -- Mr. Stam is one of those
22 individuals who was talking out in the hall about
23 the case. I don't know if there should be some
24 separate precautions or how this Court wants to
25 address it, but I was bringing it to your attention

1 that the one juror that spoke of people talking --
2 this was one of the individuals that was talking
3 about the case.

4 **THE COURT:** I thought he was one of the
5 ones that was doing the leading of the talking. He
6 said he was one of the ones who had heard about the
7 case.

8 **MR. WHIPPLE:** That's correct.

9 **THE COURT:** We'll bring him in and see.

10

11 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 164

12 **THE COURT:** Mr. Stam?

13 **PROSPECTIVE JUROR 164:** Yes.

14 **THE COURT:** A couple of things. Now, you
15 said that -- I understand that you had heard
16 something about this case?

17 **PROSPECTIVE JUROR:** That I had heard
18 something about it?

19 **THE COURT:** Yes.

20 **PROSPECTIVE JUROR:** Yes.

21 **THE COURT:** What did you hear about this
22 case?

23 **PROSPECTIVE JUROR:** Well, my chief was one
24 of the homicide detectives on this case when he was
25 on the Metro Police Department, and I can't remember

1 an exact date, but I had saw something on the news
2 about it, and I had asked him because I knew he was
3 on homicide -- asked him about it, and he kind of
4 summarized a little bit about it.

5 **THE COURT:** Okay.

6 I understand there were some people out
7 there who were talking about this case?

8 **PROSPECTIVE JUROR:** Yeah. One of -- I was
9 sitting with Larry Parry, I guess is his last
10 name -- one of the ladies across -- I don't know her
11 name -- I know her badge number -- she was talking
12 about what she saw on the news the night before or
13 something like that or the day of when we were
14 sitting there, and she kind of summarized what she
15 saw on the news, and I turned to Larry, and I told
16 him that she need to keep her fat mouth shut or
17 something to that effect, because we don't have this
18 kind of time to just sit here for nothing,
19 especially if we all get dismissed because of this.
20 Somebody else is going to have to do this all over
21 again. So, I think we got up and moved or something
22 like that.

23 **THE COURT:** Okay.

24 Now, I'm going to go down here to question
25 No. 30, and it states, "Donte Johnson is an

1 African-American male. Is there anything about that
2 fact that would affect your ability to be fair and
3 impartial in this case?" and you said, "Yes.
4 Statistically, more African-American males commit
5 hate crimes than any other race."

6 Where did you get that from?

7 **PROSPECTIVE JUROR:** Well, where I'm from,
8 more -- the amount of African-American males in the
9 town where I'm from, statistically in that area were
10 more hate crimes.

11 **THE COURT:** Where are you from?

12 **PROSPECTIVE JUROR:** Marcola, Oregon, just
13 outside of Eugene/Springfield area.

14 **THE COURT:** They don't have very many
15 blacks in Oregon, one of the smallest numbers in the
16 country. I guess all of the ones that are there --

17 **PROSPECTIVE JUROR:** From all the --

18 **THE COURT:** I guess all of the ones that
19 are there --

20 **PROSPECTIVE JUROR:** -- statistics that
21 I've read up on, that's what it came to.

22 **THE COURT:** Would you be interested to
23 know that African-Americans are the number one group
24 who are the victims of hate crimes in this country?

25 **PROSPECTIVE JUROR:** Yes.

1 **THE COURT:** It dwarfs everybody else --
2 Jews, Asians, Hispanics, so your suggestion is kind
3 of wrong there. They are the victims. Not only
4 that -- hold on a minute.

5 On Question No. 30 -- also, do you know
6 what the African-American population is in Oregon?

7 **PROSPECTIVE JUROR:** No, I don't know.

8 **THE COURT:** One point nine percent, not
9 even as many as Arizona. That's just an aside.

10 The other question to follow up on that
11 says, "If the evidence shows that the victims in
12 this case are of a different racial background than
13 Donte Johnson, would that affect your ability to be
14 fair and impartial?" You go, "Yes. Race plays a
15 very big part in most hate crimes."

16 How do you know this is a hate crime?

17 **PROSPECTIVE JUROR:** Well, from the
18 information that my chief gave me, it was, more or
19 less -- I kind of gathered that it was a hate crime.

20 **THE COURT:** Of course, I don't know that.
21 I haven't heard the facts of the case myself, so I
22 don't know.

23 Approach the bench, Counsel.

24 (Sidebar conference outside the presence
25 of the court reporter.)

1 **THE COURT:** Mr. Stam, since you have
2 information that you talked to the police officer
3 and you have information a lot of other people don't
4 have, we're going to excuse you, sir.

5 **PROSPECTIVE JUROR:** Okay.

6 **THE COURT:** Thank you very much.

7 **THE CLERK:** Carlos Villareal is not here.

8 **THE COURT:** I'm going to issue an order to
9 show cause.

10

11 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 166

12 **THE COURT:** Miyoshi.

13 **PROSPECTIVE JUROR:** Me-yosh-shi.

14 **THE COURT:** Honolulu, Hawaii.

15 How long have you been in Las Vegas?

16 **PROSPECTIVE JUROR:** About a year and a
17 half.

18 **THE COURT:** So, you have a master's degree
19 from the University of Hawaii?

20 **PROSPECTIVE JUROR:** Yes.

21 **THE COURT:** And a bachelor's from Hawaii
22 too?

23 **PROSPECTIVE JUROR:** Yes.

24 **THE COURT:** They're both in speech?

25 **PROSPECTIVE JUROR:** Yes.

1 **THE COURT:** What kind of work do you do?
2 **PROSPECTIVE JUROR:** I work for a church.
3 **THE COURT:** Church.
4 You give speech lessens at the church?
5 What do you do at the church?
6 **PROSPECTIVE JUROR:** I'm a secretary.
7 **THE COURT:** Secretary.
8 Have you ever worked in the schools as a
9 speech pathologist or anything?
10 **PROSPECTIVE JUROR:** No.
11 **THE COURT:** Why didn't you go into that
12 field? What were you planning on doing?
13 **PROSPECTIVE JUROR:** Speech communications.
14 **THE COURT:** What were you going to do with
15 it?
16 **PROSPECTIVE JUROR:** Eventually, I wanted
17 to be a lecturer in the university teaching speech
18 eventually as a lecturer.
19 **THE COURT:** Are you planning on getting
20 your Ph.D.?
21 **PROSPECTIVE JUROR:** No, not at this time.
22 **THE COURT:** Not at this time.
23 Your husband -- what kind of work does he
24 do?
25 **PROSPECTIVE JUROR:** He's a minister.

1 **THE COURT:** Is that the church that you're
2 the secretary in?

3 **PROSPECTIVE JUROR:** Yes.

4 **THE COURT:** What's the name of the church?

5 **PROSPECTIVE JUROR:** New Hope, Las Vegas.

6 **THE COURT:** What kind of church is it?

7 **PROSPECTIVE JUROR:** It's a Four Square
8 gospel church, Christian.

9 **THE COURT:** I've heard that name, "Four
10 Square."

11 What does that mean?

12 **PROSPECTIVE JUROR:** It's a denomination.

13 **THE COURT:** That's the denomination, Four
14 Square?

15 Where is it headquartered?

16 **PROSPECTIVE JUROR:** I think it's in
17 California.

18 **THE COURT:** Very good.

19 Your mother-in-law is a court clerk in the
20 courts there in Hawaii?

21 **PROSPECTIVE JUROR:** Yes. She just
22 retired.

23 **THE COURT:** Tell me this here, ma'am: You
24 made some interesting statements here on your
25 questionnaire.

1 How do you feel about lawyers? I know you
2 said you were discouraged that some people with
3 expensive lawyers and high status folks don't seem
4 to get their just desserts in the criminal justice
5 system; is that right?

6 **PROSPECTIVE JUROR:** Yeah, just by watching
7 certain cases.

8 **THE COURT:** Watching TV like O.J. Simpson?

9 **PROSPECTIVE JUROR:** Yeah, like that that
10 comes to mind.

11 **THE COURT:** And some of these other cases.
12 Did you watch that Robert Blake case?

13 **PROSPECTIVE JUROR:** Very little.

14 **THE COURT:** What do you think of lawyers?

15 **PROSPECTIVE JUROR:** I don't know anyone
16 personally who is a lawyer, but --

17 **THE COURT:** Your general opinion.

18 **PROSPECTIVE JUROR:** General opinion --
19 let's see.

20 **THE COURT:** These lawyers want to know
21 what you think about lawyers.

22 **PROSPECTIVE JUROR:** Well, just being part
23 of this case, I just see that they're hard working.
24 I think they have to do a lot of research on the
25 case and put a lot of time and energy, but I respect