

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES MONTELL CHAPPELL,  
Appellant/Cross-  
Respondent.

vs.

THE STATE OF NEVADA,  
Respondent/Cross-  
Appellant.

Case No. 43493

FILED

FEB 14 2005

JINETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

OPPOSITION TO MOTION TO STRIKE PORTIONS  
OF APPELLANT'S OPENING BRIEF AND  
HOLD BRIEFING SCHEDULE IN ABEYANCE

COMES NOW, Appellant JAMES CHAPPELL, by and through his attorney  
DAVID M. SCHIECK, Special Public Defender, and for his Opposition to  
the State's Motion to Strike Appellant's Opening Briefs and Hold  
Briefing Schedule in Abeyance, states as follows:

ARGUMENT

JAMES CHAPPELL was sentenced to death and thereafter granted a  
new Penalty hearing by the District Court. The State filed an appeal  
and CHAPPELL cross-appealed on the basis that the District Court  
should have granted a new trial and that other grounds existed for  
setting aside the penalty imposed.

Even through CHAPPELL was the prevailing party in District Court  
and the State filed the Notice of Appeal this Court designated  
CHAPPELL as the Appellant and ordered CHAPPELL to file an Opening  
Brief. No restrictions were placed on the issues that could be raised  
by CHAPPELL. CHAPPELL raised all colorable issues to avoid being  
faced with a procedural bar should the Court reverse the decision of  
the District Court granting a new penalty hearing. All of the issues  
raised in the Opening Brief could have been raised in the cross-appeal

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1 and the State would have had to file an Answering Cross-Appeal Brief.

2 It would appear that the State is more interested in avoiding the  
3 issues than timely processing the appeal. CHAPPELL will abide by  
4 whatever procedural guidelines this Court imposes, but sees no basis  
5 to strike the Opening Brief and requests that the State be ordered to  
6 file an Answering Brief.

7 CONCLUSION

8 Appellant requests this Court deny the State's Motion to Strike  
9 Portions of Appellant's Opening Brief and Hold Briefing Schedule in  
10 Abeyance. Appellant further requests this Court order the State to  
11 file its Answering Brief.

12 DATED this 9<sup>th</sup> day of February, 2005.

13 Respectfully submitted,

14 SPECIAL PUBLIC DEFENDER

15  
16 By: 

17 DAVID M. SCHIECK, ESQ.  
18 Nevada Bar No. 0824  
19 333 S. Third St., 2<sup>nd</sup> Floor  
20 Las Vegas, Nevada 89101  
21 Attorney for Appellant  
22  
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1 AFFIDAVIT OF COUNSEL

2 STATE OF NEVADA)  
3 ) ss:  
4 COUNTY OF CLARK)

5 DAVID M. SCHIECK, ESQ., being first duly sworn, deposes and says

6 That Affiant is an attorney duly licensed to practice law in the  
7 State of Nevada and as the Special Public Defender is appointed to  
8 represent JAMES CHAPPELL on his cross-appeal from denial of new trial  
9 but granting of new penalty hearing.

10 That on February 8, 2005 Affiant filed the Opening Brief on  
11 January 11, 2005 and the State served on Appellant a Motion to Strike  
12 Portions of Appellant's Opening Brief and Hold Briefing Schedule in  
13 Abeyance.

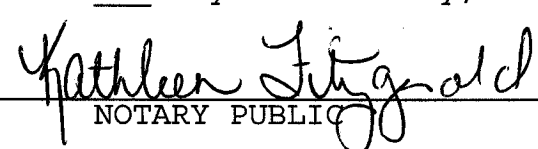
14 That the issues raised in the Opening Brief were done so in order  
15 to prevent Appellant from being procedurally barred should the Court  
16 reverse the decision of the District Court granting a new penalty  
17 hearing.

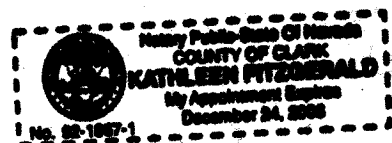
18 That Affiant requests this Court deny the Motion to Strike the  
19 Opening Brief and requests that the State be ordered to file an  
20 Answering Brief.

21 Further Affiant sayeth naught.

22   
23 DAVID M. SCHIECK

24 SUBSCRIBED AND SWORN to before me  
25 this 9 day of February, 2005.

26   
27 NOTARY PUBLIC

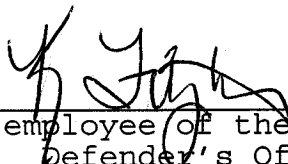


1 CERTIFICATE OF MAILING

2 The undersigned does hereby certify that on the 9 day of  
3 February, 2005, I deposited in the United States Post Office at Las  
4 Vegas, Nevada, a copy of the Opposition to Motion to Strike Portions  
5 of Appellant's Opening brief and Hold Briefing Schedule in Abeyance,  
6 postage prepaid, addressed to the following:

7 District Attorney's Office  
8 200 S. Third Street  
9 Las Vegas NV 89155

10 Nevada Attorney General  
11 100 N. Carson  
12 Carson City, NV 89701-4717

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15 An employee of the Special Public  
16 Defender's Office  
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