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

JUL 0 7 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

APPELLANT'S REPLY BRIEF ON APPEAL AND ANSWERING BRIEF ON CROSS-APPEAL

STATE'S APPEAL FROM GRANTING OF PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION) AS TO A NEW PENALTY HEARING AND CHAPPELL'S CROSS-APPEAL AS TO FAILURE TO GRANT A NEW TRIAL AND FOR NOT GRANTING RELIEF ON THE OTHER GROUNDS RAISED CHALLENGING THE PENALTY HEARING IN THE EIGHTH JUDICIAL DISTRICT COURT

DAVID M. SCHIECK
SPECIAL PUBLIC DEFENDER
Nevada Bar No. 0824
333 S. Third Street, 2nd Floor
Las Vegas NV 89155-2316

ATTORNEY FOR APPELLANT

DAVID ROGER
DISTRICT ATTORNEY
Nevada Bar No. 2781
200 S. Third Street
Las Vegas NV 89155-2212

BRIAN SANDOVAL
NEVADA ATTORNEY GENERAL
Nevada Bar No. 3805
100 N. CARSON STREET
CARSON CITY, NV 89701
(702)684-1265

ATTORNEYS FOR RESPONDENT

05-13489

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

APPELLANT'S REPLY BRIEF ON APPEAL
AND ANSWERING BRIEF ON CROSS-APPEAL

STATE'S APPEAL FROM GRANTING OF PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION) AS TO A NEW PENALTY HEARING AND CHAPPELL'S CROSS-APPEAL AS TO FAILURE TO GRANT A NEW TRIAL AND FOR NOT GRANTING RELIEF ON THE OTHER GROUNDS RAISED CHALLENGING THE PENALTY HEARING IN THE EIGHTH JUDICIAL DISTRICT COURT

DAVID M. SCHIECK
SPECIAL PUBLIC DEFENDER
Nevada Bar No. 0824
333 S. Third Street, 2nd Floor
Las Vegas NV 89155-2316

ATTORNEY FOR APPELLANT

DAVID ROGER
DISTRICT ATTORNEY
Nevada Bar No. 2781
200 S. Third Street
Las Vegas NV 89155-2212

BRIAN SANDOVAL
NEVADA ATTORNEY GENERAL
Nevada Bar No. 3805
100 N. CARSON STREET
CARSON CITY, NV 89701
(702)684-1265

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

PRELIMINARY STATEMENT

The State apparently has a hard time understanding the rulings of this Court and insists on criticizing the Court and defense counsel on procedural rulings. See, e.g. McConnell v. State, 112 nEV.aD.oP. 5 (2005) Denial of Rehearing. The District Court herein granted CHAPPELL a new penalty hearing based on the failure of trial counsel to investigate and call relevant and crucial witnesses at the penalty hearing. The State elected to appeal the reasoned and rational determination of District Court Judge Douglas (now Justice Douglas) which forced CHAPPELL to file a cross-appeal. If CHAPPELL failed to file a cross-appeal or otherwise challenge the denial of his other claims, no doubt exists that the prosecution would later claim that the issues were procedurally barred or waived in subsequent proceedings.

This Court needs to look beyond the procedural rhetoric of the prosecution who seeks to avoid any decision on the merits of the case as opposed to basing a decision on illogical and unfounded procedural bars. CHAPPELL has fully and properly preserved each of his issues and the complaints of the prosecution are little more than attempts to avoid discussion of meritorious issues.

The State is the party that chose to appeal the decision of the District Court granting relief to CHAPPELL. The Court decided that CHAPPELL would be designated as the Appellant, although the State instigated the appellate process. The State should not be heard to complain that issues not decided by the District Court are not properly before this Court, unless they are willing to stipulate that the issues are preserved and can be raised after the new penalty hearing. Obviously the prosecutor would be unwilling to do so prefers

to complain that CHAPPELL has not preserved his issues. Of course, if CHAPPELL had not filed a cross-appeal to protect his rights, the prosecutor would later argues that he had waived his rights.

The State does not respond to the specific issues raised by CHAPPELL or even attempt to follow the format of the Opening Brief, but rather in a hodgepodge fashion addresses some of the issues in a cursory fashion. CHAPPELL, in keeping with proper appellate practice will Reply to the State's Answering Brief on cross-appeal and then Answer Issue Number III which purports to be the State's Opening Brief claim although not designated as such to delineate same from the Answering Brief arguments.

REPLY BRIEF ON CHAPPELL'S DIRECT APPEAL

ARGUMENT

I.

CHAPPELL WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL AT THE TRIAL PHASE AND THE DISTRICT COURT SHOULD HAVE ORDERED A NEW TRIAL

While the State correctly cites to the appropriate standard to be applied where there is a claim of ineffective assistance of trial counsel, (Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984), the State fails to comprehend that the defense theory at trial mandated that witnesses be called on CHAPPELL'S behalf to explain the relationship between CHAPPELL and Panos and the reason for CHAPPELL'S reaction to the perceived infidelity of Ms. Panos.

The State does not bother to address the testimony at the evidentiary hearing of trial attorney Howard Brooks (Brooks) that the focus of the trial became the history of the relationship between CHAPPELL and Panos. Brooks ignored CHAPPELL'S request to call a number of witnesses to testify about their relationship. (11 APP 2560) It speaks volumes about the weakness of the State's position that State refuses anywhere in their Answering Brief to reference the testimony that was presented at the evidentiary hearing from trial counsel. Likewise this testimony was not seriously challenged at the hearing itself.

If this Court does nothing more than consider the defense "strategy" and failure to investigate and present witnesses to support the defense, the result will be obvious; the District Court should have granted CHAPPELL a new trial based on ineffective assistance of counsel.

The State, as shown by the Answering Brief seems not to

understand two salient, indisputable points. First, premeditation is only one element of first degree murder as defined in Byford v. State, 16 Nev. 215, 994 P.2d 700 (2000). Second, testimony that Panos would consent to CHAPPELL'S presence in the residence would negate the element of felony murder for the finding of first degree murder as opposed to a lesser offense. Both of these crucial points could have been addressed by the witnesses that were not located, and obviously not called to testify at trial.

While the trial court recognized the importance of the witnesses at the penalty phase, it fails to grasp the impact these witnesses would have had during the trial. Trial counsel developed and pursued a strategy at trial, but then failed to present the evidence available to convince the jury that it was not first degree murder. The Court erred in this respect and should have granted CHAPPELL a new trial.

II.

THE DISTRICT COURT ERRED IN NOT REVERSING CHAPPELL'S CONVICTION AND SENTENCE UNDER THE STATE AND FEDERAL CONSTITUTIONAL GUARANTEES OF DUE PROCESS, EQUAL PROTECTION, IMPARTIAL JURY FROM CROSS-SECTION OF THE COMMUNITY, AND RELIABLE DETERMINATION DUE TO THE TRIAL, CONVICTION AND SENTENCE BEING IMPOSED BY A JURY FROM WHICH AFRICAN-AMERICANS AND OTHER MINORITIES WERE SYSTEMATICALLY EXCLUDED AND UNDER REPRESENTED

Most recently the United States Supreme Court was called upon to examine the jury selection process in State Courts and the recurring problem of exclusion of minorities from jury services. In Johnson v. California, 545 U.S. ___ (2005) the Court was compelled to remind the criminal justice system that:

> "Undoubtedly, the overriding interest in eradicating discrimination from our civic institutions suffers whenever an individual is excluded from making a significant contribution to governance on account of his race. Yet the 'harm from discriminatory jury selection extends beyond that inflicted on the defendant and the excluded juror to touch the entire community. Selection procedures that purposefully exclude black persons from juries undermine public confidence in the fairness of our system of justice.' *Batson*, 476 U.S., at 87; see also *Smith v. Texas*, 311 U.S. 128, 130 (1940)"

Johnson, 545 U.S. at p. 9.

The Court then went on to state:

> "The disagreements among the state-court judges who reviewed the record in this case illustrate the imprecision of relying on judicial speculation to resolve plausible claims of discrimination. In this case the inference of discrimination was sufficient to invoke a comment by the trial judge 'that 'we are very close',' and on review, the California Supreme acknowledged that 'it certainly looks suspicious that all three African-American prospective jurors were removed from the jury.' 30 Cal. 4th, at 1307, 1326, 71 P.2d, at 273, 286. Those inferences that discrimination may have occurred were sufficient to establish a prima facie case under *Batson*."

Id. at p. 10.

The decision of this Court in Chappell v. State, 114 Nev. 1404,

1411, 972 P.2d 843 (1998) concerning the peremptory challenges of the two African-Americans is strongly at issue given the Johnson v. California, supra, decision. No longer can the State come up with bogus, yet arguably race-neutral reasons for peremptory strikes of minorities. "[I]t does not matter that the prosecutor might have had good reasons...[w]hat matters is the real reason they were stricken." Paulino v. Castro, 371 F.3d 1083, 1090 (9th Cir. 2004).

It is not insignificant to note that the cumulation of errors and the re-examination of previous decisions seriously calls into question the validity of the District Court's decision not to grant CHAPPELL a new trial as well as vacating his sentence of death.

III.

CHAPPELL'S CONVICTION AND SENTENCE ARE INVALID UNDER THE STATE AND FEDERAL CONSTITUTIONAL GUARANTEE OF DUE PROCESS, EQUAL PROTECTION OF THE LAWS, EFFECTIVE ASSISTANCE OF COUNSEL AND RELIABLE SENTENCE BECAUSE CHAPPELL WAS NOT AFFORDED EFFECTIVE ASSISTANCE OF COUNSEL ON DIRECT APPEAL

The State does not contest that there was a failure of contemporaneous objection to five (5) separate jury instruction listed in the Opening brief, instead choosing to argue that the instructions given were proper. The State, thus concedes that counsel would be deficient in performance if any of the instructions were improper and the failure to object prevented appellate review or resulted in a procedural bar in post conviction proceedings.

CHAPPELL will not re-argue the merits of each of the instructions, but will rather rely upon the authorities and argument raised in the Opening Brief. By doing so, CHAPPELL has preserved the issues raised and established that the jury was improperly instructed at both the trial and penalty hearing without proper objection from trial counsel.

The State has elected to address all of the penalty hearing issues in Argument III which apparently serves as partially the Answering Brief to the Cross-Appeal and it's Opening Brief on the appeal filed by the State from the Order granting CHAPPELL a new penalty hearing. CHAPPELL will address the penalty hearing issues likewise, although labeling same as Answering Brief to State's direct appeal. The District Court did not grant relief on many of these issues, however, CHAPPELL respectfully urges that if would have been proper to do so.

IV.

CHAPPELL'S CONVICTION AND SENTENCE ARE INVALID UNDER THE STATE AND FEDERAL CONSTITUTIONAL GUARANTEE OF DUE PROCESS, EQUAL PROTECTION OF THE LAWS, EFFECTIVE ASSISTANCE OF COUNSEL AND RELIABLE SENTENCE BECAUSE A NUMBER OF JURY INSTRUCTIONS GIVEN AT TRIAL WERE FAULTY AND WERE NOT THE SUBJECT OF CONTEMPORANEOUS OBJECTION BY TRIAL COUNSEL, AND NOT RAISED ON DIRECT APPEAL BY APPELLATE COUNSEL

These issues were addressed above with respect to the failure of trial counsel to object to the improper instruction. The merits of the issues are apparent from the arguments and authorities already asserted herein and in the Opening brief. CHAPPELL respectfully relies upon same as having established his entitlement to relief.

V.

THE INSTRUCTIONS GIVEN AT THE PENALTY HEARING FAILED TO APPRAISE THE JURY OF THE PROPER USE OF CHARACTER EVIDENCE AND AS SUCH THE IMPOSITION OF THE DEATH PENALTY WAS ARBITRARY AND NOT BASED ON VALID WEIGHING OF AGGRAVATING AND MITIGATING CIRCUMSTANCES IN VIOLATION OF THE EIGHTH AMENDMENT TO THE CONSTITUTION

Once again the State argues that this issue is not properly before the Court as the issue is barred because it was not raised on direct appeal, or raised by trial counsel. By making this argument the State, once again, concedes that CHAPPELL received ineffective assistance of trial and appellate counsel. It is the failure of trial and appellate counsel that caused any procedural bars. If this is a meritorious issue there must be a finding of a Sixth Amendment violation.

The State in it's Answering Brief asserts that jury instruction seven and eight adequately "made it clear that the jury could not sentence Defendant to death based on character evidence presented during the penalty hearing." (Ans. Br. p. 26) The State, however, only selectively cites to portions of the two instructions in making this argument and then totally ignores the holding in Evans v. State, 117 Nev. 609, 28 P.3d 498 (2001) that the jury can only consider "character" evidence after the weighing process is complete.

Support for the requirement of proper instruction is also found in a decision by the United States Supreme Court. In Buchanan v. Angelone, 522 U.S. 269, 118 S.Ct. 757, 760, 139 L.Ed.2d 702 (1998), the Court explained as follows:

> "Petitioner initially recognizes, as he must, that our cases have distinguished between two different aspects of the capital sentencing process, the eligibility phase and the selection phase. *Tuilaepa v. California*, 512 U.S. 967, 971, 114 S.Ct. 2630, 2634, 129 L.Ed.2d 750 (1995). In the

> eligibility phase the jury narrows the class of defendants eligible for the death penalty, often through consideration of aggravating circumstances. Id. at 971, 114 S.Ct., at 2634. In the selection phase, the jury determines whether to impose a death sentence upon an eligible defendant. Id. at 972, 114 S.Ct. at 2634-2635.

The failure to properly instruct the jury violated CHAPPELL'S rights under the Eighth and Fourteenth Amendments. Failure of trial and appellate counsel to protect these constitutional rights was ineffective assistance of counsel. Under either theory CHAPPELL is entitled to relief.

VI.

CHAPPELL'S DEATH SENTENCE IS INVALID UNDER THE FEDERAL CONSTITUTIONAL GUARANTEES OF DUE PROCESS, EQUAL PROTECTION, AND A RELIABLE SENTENCE BECAUSE THE NEVADA CAPITAL PUNISHMENT SYSTEM OPERATES IN AN ARBITRARY AND CAPRICIOUS MANNER AND DOES NOT NARROW THE CLASS ELIGIBLE TO RECEIVE THE DEATH PENALTY

CHAPPELL is fully aware that this Court in the past has upheld the constitutionality of the death penalty scheme in Nevada in numerous case. It is, however, uncontroverted that the Court is continually reviewing the statutory and procedural mechanism by which the decision is made to terminate the life of a fellow human being. this Court has stated that

> "Furthermore, we observe that this court's examination of this state's death penalty scheme does not stand alone. The United States Supreme Court itself has in recent years reexamined its own precedent and redirected the national debate over the death penalty, placing this field of jurisprudence in transition in many respects." McConnell v. State, 121 Nev.Ad.Op. 5, p. 6-7 (2005)

One only need reference this Court's opinion denying rehearing in McConnell v. State, 120 Nev.Ad.Op. 105 (2004); McConnell v. State, 121 Nev.Ad.Op. 5 (2005) to determine that there is no constitutionally required narrowing in the Nevada statutory scheme as enacted and as applied by the District Attorney. In McConnell the Court made the following observation:

> "Thus, we asked 'is Nevada's definition of capital felony murder narrow enough that no further narrowing of death eligibility is necessary once the defendant is convicted?' The answer is no, as we concluded." (footnote omitted)

McConnell, 121 Nev.Ad.Op. 5 at p. 10-11.

Further the Court chastisized the State for it's misinterpretation of the requirement for a real narrowing function:

> "Amicus is correct that a defendant in Nevada becomes death eligible only after two steps: a finding that at least one aggravator exists and a finding that the mitigating evidence does not outweigh any aggravator or aggravators. McConnell did not discuss the second step, and therefore amicus says this court failed to discern that the capital sentencing scheme as a whole sufficiently narrows death eligibility. The potential effect of mitigating evidence does not provide the required narrowing. In effect, amicus advances the novel and unsound argument that an aggravator that fails to constitutionally narrow death eligibility is of no concern because of the possibility that a jury may not return a death sentence due to mitigating circumstances."

Id., at p. 13.

The facts of the instant case establish that there was no constitutionally adequate narrowing of the death eligibility of CHAPPELL. Irrespective of the other claims raised in this case CHAPPELL is entitled to a new penalty hearing under a system that provides an actual narrowing.

CROSS-RESPONDENT CHAPPELL'S ANSWERING BRIEF ON CROSS-APPEAL OF THE STATE

PRELIMINARY STATEMENT

The State's Brief does not delineate any of the headings as it's Opening Brief on cross-appeal, however, it appears that heading III(A) consisting of pages 22-25 challenge the findings of the District Court granting a new penalty hearing to CHAPPELL. All other issues that were argued pertain to the numerous other valid and meritorious claims that were raised by CHAPPELL in his Writ of Habeas Corpus. The District Court having found that CHAPPELL was entitled to a new penalty hearing based on ineffective assistance of counsel in locating and calling witnesses had no need to address the remainder of the claims, but CHAPPELL respectfully urges the other issues warranted relief as argued in the Opening Brief herein.

(A) **Trial Counsel's Inability to Locate Witnesses Warranted Reversal of the Death Penalty**

The thrust of the State's argument is that the witnesses that trial counsel failed to locate and use at the penalty hearing would have been cumulative to CHAPPELL'S trial testimony, and would have "directly contradicted the defendant's sworn [trial] testimony". (State Opening Brief on Cross-Appeal p. 25) The State fails to specify in what respects the testimony from the witnesses would have contradicted CHAPPELL. In fact a review of the Affidavits show that the testimony would have corroborated CHAPPELL.

The State ignores the testimony from the evidentiary hearing of trial counsel Howard Brooks. Brooks testified that the focus of the trial became the long history of the relationship between CHAPPELL and Panos and that he had failed to investigate the relationship. (11 APP 2560)

Even though CHAPPELL had given him a list of witnesses he only went to Michigan for one day and made a token effort to contact the witnesses. (11 APP 2568) He did not go to Arizona at all even though incidents were introduced from Arizona at trial. (11 APP 2562) The State further ignores that the State proceeded on a theory that Panos had moved to Arizona from Michigan to get away from CHAPPELL and that he had followed her. Evidence was readily available to show that Panos urged CHAPPELL to come to Arizona to be with her and paid for his airline ticket. (11 APP 2676-78) This evidence would have destroyed much of the image the State inaccurately presented to the jury.

CHAPPELL set forth a complete summary of the testimony of Brooks and witness affidavits in the Opening Brief at pages 8-16 and respectfully refers the Court to said summary.

The State also complains in a footnote that present counsel for CHAPPELL could not locate David Green or Earnestine Harvey for purposes of the Writ of Habeas Corpus. (Opening Cross-Appeal page 23) It should be noted that the investigation for trial would have been conducted many years ago in 1995 or 1996. The Supplemental Petition was filed in 2002. It is only logical that it would have been much easier to find witnesses with a contemporaneous investigation instead of years later. This further bolsters that the ineffectiveness of trial counsel prejudiced CHAPPELL'S defense, not only at trial and on appeal but on Habeas Corpus.

The State is incorrect that David Green was not located. The Affidavit of Investigator Reefer shows that he was able to locate and interview Mr. Green and the contents of that interview are set forth in the Reefer Affidavit. (11 APP 2672-2673) Green provided

employment information on CHAPPELL as well as describing the relationship in Arizona between CHAPPELL and Panos. (11 APP 2672-73) It was only later when the Affidavit was sent to Green to sign that Green could not be located.

A district court's findings of fact, when considering a claim of ineffective assistance of counsel, are entitled to deference upon appellate review. Hill v. State, 114 Nev. 169, 175 953 P.2d 1077, 1082 (1998), *cert. denied*, 525 U.S. 1042, 119 S.Ct. 594 (1998), *citing* Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994), *cert. denied*, 514 U.S. 1052, 115 S.Ct. 1431 (1995). A claim of ineffective assistance of counsel is a mixed question of law and fact and may be subject to the Supreme Court's independent review. McNelton v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (2000). In order to assert a claim for ineffective assistance of counsel the defendant must prove that he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test of Strickland v. Washington, 466 U.S. 668, 686-7, 104 S.Ct. 2052, 2062-64 (1984); State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). Under this test, the defendant must show first that his counsel's representation fell below an objective standard of reasonableness, and second, that but for counsel's errors, there is a reasonable probability that the result of the proceedings would have been different. Strickland, 466 U.S. at 687-688 and 694, 104 S.Ct. at 2065 and 2068. Warden, Nevada State Prison v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting Strickland two-part test in Nevada). "Effective counsel does not mean errorless counsel, but rather counsel whose assistance is '[w]ithin the range of competence demanded of attorneys in criminal cases.'" Jackson v. Warden, Nevada State Prison, 91 Nev. 430, 432, 537 P.2d

473, 474 (1975) (quoting McMann v. Richardson, 397 U.S. 759, 771, 90 S.Ct. 1441, 1449 (1970)).

In considering whether trial counsel has met this standard, the court should first determine whether counsel made a "sufficient inquiry into the information that is pertinent to his client's case." Doleman v. State, 112 Nev. 843, 846, 921 P.2d 278, 280 (1996); citing Strickland, 466 U.S. at 690-691, 104 S.Ct. at 2066. Once such a reasonable inquiry has been made by counsel, the court should consider whether counsel made "a reasonable strategy decision on how to proceed with his client's case." Doleman, 112 Nev at 846, 921 P.2d at 280; citing, Strickland, 466 U.S. at 690-691, 104 S.Ct. at 2066. Finally, counsel's strategy decision is a "tactical" decision and will be "virtually unchallengeable absent extraordinary circumstances." Doleman, 112 Nev. at 846, 921 P.2d at 280; Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990); Strickland, 466 U.S. at 691, 104 S.Ct. at 2066.

In the instant case the District Court determined that trial counsel was ineffective and that CHAPPELL was prejudiced by the failures. The findings of the District Court are entitled to deference and should not be disturbed by this Court as the findings relate to granting a new penalty hearing. Trial counsel failed to make reasonable and sufficient inquiry into the known and available information that was pertinent to the defense of the case and to an adequate presentation at the penalty hearing. This Court, at the very least, should affirm the new penalty hearing order of the District Court.

CONCLUSION

Based on the arguments and authorities contained herein, and in the Opening Brief, it is respectfully requested that the Court affirm the granting of a new penalty hearing but also remand the case for a new trial.

DATED this 30 day of June, 2005.

RESPECTFULLY SUBMITTED
SPECIAL PUBLIC DEFENDER

BY _____
DAVID M. SCHIECK, ESQ.
Nevada Bar No. 0824
333 S. Third Street, 2nd Floor
Las Vegas, Nevada 89155
702-455-6265
Attorney for CHAPPELL

CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose, I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by appropriate references to the record on appeal. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED: June 30, 2005

BY _____
DAVID M. SCHIECK, ESQ.
Nevada Bar No. 0824
SPECIAL PUBLIC DEFENDER
333 S. Third Street, 2nd Floor
Las Vegas, Nevada 89155
702-455-6265

CERTIFICATE OF MAILING

I hereby certify that service of the Appellant's Reply Brief was made this 1 day of JULY, 2005, by depositing a copy in the U.S. Mail, postage prepaid, addressed to:

District Attorney's Office
200 S. Third Street
Las Vegas NV 89101

Nevada Attorney General
100 N. Carson Street
Carson City, NV 89701

an employee of THE SPECIAL PUBLIC DEFENDER