

1 body still inside?

2 A. No, the crime scene had been protected. The
3 victim remained inside the living room.

4 Q. When you talked about the notes that you
5 found, would you say there were several notes, a few notes?

6 A. There were, I would say, five to ten, I
7 believe. I have many photocopies of those notes.

8 Q. And would it be fair to say in any of those
9 notes, other than things you already talked about, that
10 there were, part of the notes, the person who wrote the
11 notes, indicated his concern about Deborah Panos, wanting to
12 take care of Deborah Panos.

13 A. You know, it's difficult for me to answer
14 because when you read the entire note you form an opinion.
15 I guess the best way to answer it would be that the notes
16 were like a roller coaster. He would sound as though he
17 cared at a certain point and then he would sound very bitter
18 and condescending and rude to her in other parts of the
19 notes, so you have to take them, I think, in their entirety.

20 Q. Okay. When you came in contact at the store
21 with a person that was believed possibly to be involved in
22 this, the items that you've talked about, were they still on
23 a tray when you got there, in terms of the keys and those
24 kinds of things that had been taken from the suspect?

25 A. You know, I don't recall. When I first saw

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1 the keys they were laying on this piece of paper on this
2 cart. I know that that was not where they were found.

3 Q. Right, but I mean, that's where they were when
4 you got there?

5 A. Right, when I got to the keys and saw them.

6 Q. Okay. Just in terms of the time frame, from
7 the time that you became aware of the incident to the time
8 you went there and became aware of the key, how much time
9 would you estimate passed until a car was found that you
10 thought might match the key?

11 A. I know we spent 30 minutes or 45 minutes at
12 the Lucky Store, shortly after arriving at noon. That would
13 probably have put me close to 1:00, 1:00 p.m. leaving the
14 Lucky Store. And then I believe I searched for probably 30
15 minutes or so in that immediate area. Probably found the
16 car, then I remember I waited an extremely long time for the
17 crime seen analyst to show up, so I completed a tow sheet
18 while I was there. Total time, a couple of hours.

19 Q. Do you recall whether, in fact, there was
20 anyone who had helped you search for the car?

21 A. No one helped me search for the car. It was
22 me. I was in my unit by myself, and actually the vehicles
23 description had been broadcast; however, the uniformed
24 officers that were looking around the area had not been able
25 to find the vehicle.

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1 MR. BASSETT: Okay. I have no further
2 questions, your Honor.

3 MR. HARMON: No redirect, your Honor.

4 THE COURT: Thank you. Is the detective
5 excused?

6 MR. HARMON: Yes, your Honor.

7 THE COURT: You are excused. Please don't
8 discuss your testimony with anybody other than the attorneys
9 for the respective parties until this hearing is all over.
10 Thank you.

11 THE WITNESS: Thank you.

12 MR. HARMON: Your Honor, the State has no
13 additional witnesses that it intends to present at
14 preliminary hearing, but before the State rests I would like
15 to address the Criminal Complaint.

16 THE COURT: I thought you might, Mr. Harmon.

17 MR. HARMON: There are several changes that we
18 would like permission to make, if we could do this by
19 interlineation to conform with the evidence adduced at the
20 preliminary hearing.

21 First, as to Count I, we're going to
22 concede that as to the burglary charge there's not any
23 evidence that entry was made with possession of a deadly
24 weapon. Instead, the testimony from Lisa Duran, the good
25 friend of the victim, is that she recognized it as a steak

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1 knife, which in all probability was used as a steak knife
2 that was kept by the victim in the kitchen. So we move to
3 strike the deadly weapon allegation from line 16 which is
4 the heading of Count I, and also in line 18, any of the
5 references in the Count I, burglary with use of a deadly
6 weapon.

7 THE COURT: That will be the order.

8 MR. HARMON: We'd like to delete as to Count
9 II, your Honor, at line 25 of Count II, after the word "to
10 wit," we would ask permission to insert by interlineation
11 "social security cards and/or keys," so that it should read,
12 "to wit: Social security cards and/or" -- well, it would
13 read, "lawful money of the United State's," at line 26,
14 "and/or keys and/or a motor vehicle."

15 THE COURT: Before you go any further --

16 Mr. Bassett, what's your position on the
17 motion regarding Count II?

18 MR. BASSETT: In terms of Count II, your
19 Honor, in terms of what we heard in court today, I think in
20 terms of that being added, I don't have any objection. I
21 would, however, ask that we strike right after "to wit:
22 Lawful money of the United States." I don't recall any
23 evidence about any money being taken.

24 THE COURT: Mr. Harmon, I'm going to grant
25 your motion to amend to add by interlineation, "social

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1 security card and/or keys and/or motor vehicle," any of
2 which individually, and certainly in the aggregate, would
3 form the corpus delicti of the crime of robbery.

4 I know the evidence that needs to be
5 adduced at a preliminary hearing is a mere inference, but I
6 really don't even think we're there on the issue of money.
7 There wasn't any testimony about a thorough search of the
8 premises to see whether there was any money there at all by
9 any of the law enforcement people. I don't get a picture of
10 how they looked for money, and I don't believe I can assume
11 that money was taken because an officer didn't see money
12 there.

13 MR. HARMON: I understand what the Court is
14 saying. The only question which was addressed to this area
15 at all was to Vaccaro, and my question of him was did, as I
16 recall, and I'd have to rely, of course, upon the Court's
17 record at the Court's recollection as well, but I thought I
18 had asked him if he had, in fact, conducted a search of the
19 residence for the presence of money or valuables.

20 THE COURT: We could have this question read
21 back. I don't recall it being phrased exactly that bluntly.

22 Could you find that? Mr. Harmon asked
23 Detective Vaccaro a question about whether after he got to
24 the residence and he determined the point of entry and the
25 means of entry and so forth and went in and saw the body, he

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1 saw the notes he read the notes and so forth, then
2 Mr. Harmon asked him a question about whether he looked
3 around for any money.

4 (The court reporter read back the question as follows:

5 "Question: Did you have occasion to look
6 in the residence of Ms. Panos at 839 North Lamb Boulevard,
7 Space 125 to determine whether there was a purse
8 or money or valuables at the residence?

9 "Answer: I did go through the residence.
10 I don't recall finding a purse.")

11 THE COURT: Knowing full well that only an
12 inference is required for probable cause, I still don't find
13 the inference from the way that question was phrased and
14 answered. If there had been other information, I might draw
15 another inference, if there was ample evidence to support
16 that.

17 So I'm going to strike the word "lawful
18 money in the United States," so that Count II will read:
19 "Property, to wit: Social security cards and/or keys and/or
20 motor vehicle from a person," and so forth. Anything else
21 Mr. Harmon?

22 MR. HARMON: Only as to Count III, your Honor.
23 Line 10, it's our preference in connection with the felony
24 murder allegation that in terms of burglary it read "and/or"
25 instead of just "robbery or burglary" or "burglary or

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1 robbery."

2 THE COURT: Okay. Mr. Bassett, any objection?

3 MR. BASSETT: No, your Honor.

4 THE COURT: Okay. The motion to amend in that
5 regard with regard to Count III is granted.

6 Anything else, Mr. Harmon?

7 MR. HARMON: No, your Honor.

8 THE COURT: Mr. Bassett, does Mr. Chappell
9 wish to testify himself?

10 MR. BASSETT: Your Honor, I've had a chance to
11 speak with him and told him that he had a right to testify.
12 I believe that today he would waive that and would not
13 testify.

14 THE COURT: Do you have any other evidence to
15 present?

16 MR. BASSETT: No, your Honor.

17 MR. HARMON: No, your Honor, we'd submit it.

18 THE COURT: Do you have any argument?

19 MR. BASSETT: We'd submit it.

20 MR. HARMON: We'd also submit it, your Honor.

21 THE COURT: Appearing to me from the evidence
22 adduced at the preliminary hearing that crimes have been
23 committed, to wit: Burglary, as is more fully set forth in
24 Count I of the Complaint as amended; robbery with use of a
25 deadly weapon, as is more fully set forth in Count II of the

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1 Complaint as amended; and murder with use of a deadly weapon
2 as is more fully set forth in Count III of the Complaint,
3 and it appearing to me that there is extremely strong
4 probable cause to believe that the defendant committed said
5 charges, the defendant is held to answer said charges in the
6 Eighth Judicial District Court in and for the State of
7 Nevada, County of Clark.

8 Now, with regard to bail, there is no
9 bail set on count III, and I'm going to hold that order in
10 effect. I'm going to set bail at \$25,000 cash or surety on
11 the burglary charge and \$50,000 cash or surety on the
12 robbery with deadly weapon charge.

13 The defendant's next court date is going to
14 be --

15 THE CLERK: October 18th, 9:00 a.m., District
16 Court VII.

17 THE COURT: Thank you.

18 MR. HARMON: Thank you, your Honor.

19

20

* * * * *

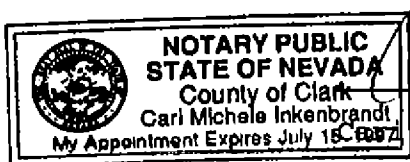
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22 Attest: Full, true, accurate transcript of proceedings.

23

24

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Carl Michele Inkenbrandt
M. Inkenbrandt, CCR #428, RPR

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Las Vegas, Nevada (702)382-5015

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Loretta Sherman
CLERKDISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA

Plaintiff,

vs.

JAMES CHAPPELL

Defendant.

Case No. C13141
Dept. No. 7
Docket No.

C131341

MEDIA REQUEST

CHERI ROBERTSON, of KLAS-TV CHANNEL 8

herby requests permission to broadcast, record, photograph or
televise proceedings in the above-entitled case in the courtroom
of Department 7, Judge MAUPIN, commencing
on the 3 day of JUNE, 1996.

I certify that I am familiar with the contents of
Nevada Standards of Conduct and Technology ADKT 26.

I also understand that this form must be submitted
to the Court at least seventy-two (72) hours before the proceeding
commences unless good cause can be shown.

DATED this 28 day of DECEMBER, 1995.

CHERI ROBERTSON

MEDIA REPRESENTATIVE

792-1489

MEDIA PHONE NUMBER

3228 CHANNEL 8 dr. 89109

MEDIA ADDRESS

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DISTRICT COURT
CLARK COUNTY, NEVADA*Joetta Druman*
CLERK

STATE OF NEVADA

Plaintiff,

vs.

JAMES CHAPPELL
Defendant.Case No. C131341
Dept. No. 7
Cocket No.

ORDER GRANTING PERMISSION OF MEDIA ENTRY

Upon written request of CHERI ROBERTSON, of
KLAS-TV CHANNEL 8 for written permission to broadcast,
 record, photograph, or televise proceedings in the above-entitled
 case, in the courtroom of Department 7, and being satisfied that
 approval of this request would not distract participants, impair
 the dignity of the proceedings or otherwise materially interfere
 with the achievement of a fair trial or hearing herein.

IT IS HEREBY ORDERED that permission is granted as requested
 for each and every hearing on the above-entitled case unless
 otherwise notified. The Media Request is in accordance with
 Nevada Standards of Conduct and Technology ADXT 26.

IT IS FURTHER ORDERED that this entry shall be made a
 part of the record of the proceedings in this case.

DATED this 2d day of January, 1996.

A. Weikman
 DISTRICT JUDGE

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13

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Loretta L. Luman
CLERK

MORGAN D. HARRIS
PUBLIC DEFENDER
NEVADA BAR #1879
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
(702)455-4685
Attorney for the Defendant
Public Defender File No. F-95-5254

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)	
)	
Plaintiff,)	CASE NO. C131341x
)	
v.)	DEPT. NO. VII
)	
JAMES MONTELL CHAPPELL,)	
)	
<u>Defendant.</u>)	

STIPULATION REGARDING BRIEFING SCHEDULE AND ORDER

It is hereby stipulated by and between Defendant James Montell Chappell, represented by Deputy Public Defender Howard S. Brooks, and the State of Nevada, represented by Chief Deputy District Attorney Melvyn T. Harmon, that the deadline for the filing of the Defendant's motions shall be extended from April 1, 1996, to April 10, 1996; that the deadline for the filing of the State's oppositions or responses to Defendant's motions shall be extended from May 6, 1996, to May 15, 1996; and arguments in this matter shall be moved from May 13, 1996, to May 22, 1996.

The Calendar Call date of May 29, 1996, and the trial date of June 3, 1996, shall remain unchanged and are not affected

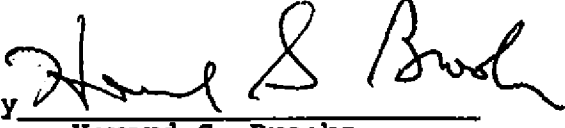
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1 by this stipulation.

2 DATED this 25th day of March, 1996.

3 CLARK COUNTY PUBLIC DEFENDER

CLARK COUNTY DISTRICT ATTORNEY

4
5 By 

6 Howard S. Brooks
7 Deputy Public Defender
8 Nevada Bar No. 3374

By 

9 Melvyn T. Harmon
10 Deputy District Attorney

11 IT IS SO ORDERED.

3-25-96

12 
13 DISTRICT COURT JUDGE

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0027
 MORGAN D. HARRIS
 PUBLIC DEFENDER
 NEVADA BAR #1879
 309 South Third Street, Suite 226
 Las Vegas, Nevada 89155
 (702)455-4685
 Attorney for the Defendant
 Public Defender File No. F-95-5254

Patricia L. Lamm
 CLERK

DISTRICT COURT
 CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

 Plaintiff,

 v.

 JAMES MONTELL CHAPPELL,

 Defendant.

CASE NO. C131341x

DEPT. NO. VII

Date of Hearing: 4-24-96
 Time of Hearing: 9:00 A.M.

DEFENDANT'S MOTION TO VACATE JUNE 3, 1996, TRIAL DATE
AND CONTINUE TRIAL UNTIL SEPTEMBER

COMES NOW, the Defendant James Montell Chappell, by and through his attorney, Deputy Public Defender Howard S. Brooks, and moves that this Honorable Court grant an order vacating the trial currently set for June 3, 1996, and reset the trial for either September or October, 1996.

This motion based on the attached Declaration of Howard S. Brooks.

DATED this 23rd day of April, 1996.

CLARK COUNTY PUBLIC DEFENDER

By

Howard S. Brooks

HOWARD S. BROOKS #3374
 DEPUTY PUBLIC DEFENDER

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MEMORANDUM OF POINTS AND AUTHORITIES
DECLARATION

HOWARD S. BROOKS, makes the following declaration:

1. That I am an attorney duly licensed to practice law in the State of Nevada; that I am the Deputy Public Defender assigned to represent the Defendant in the instant matter; and that I am familiar with the alleged facts and circumstances of this case.

2. The trial in this matter is currently set for June 3, 1996. This is the first trial setting in this case.

3. The State filed a Notice of Intent to Seek the Death Penalty on November 15, 1995.

4. On November 15, 1995, the Court established the following briefing schedule: Defendant to file motions by April 1, 1996; the State to respond by April 28, 1996; arguments to be heard May 13, 1996.

5. The State and Defense stipulated, and the Court ordered, that this briefing schedule be changed as follows: Defendant's motions to be filed by April 10, 1996; the State's opposition or responses to be filed by May 15, 1996; and arguments to be heard on May 22, 1996.

6. The Defense is moving in this motion for a vacation of the June 3, 1996, trial date because:

a. Defense counsel has not complied with the briefing schedule set by the Court and is unable to comply with said briefing schedule.

b. The investigation of this case is not complete, nor will it be complete by June 3, 1996.

c. The psychiatric investigation of the case will

1 not be complete before June 3, 1996.

2 d. Deputy District Attorney Abbi Silver has
3 informed counsel that the State has additional discovery in this
4 case including information regarding prior acts of domestic
5 battery by the defendant against the victim in this case. The
6 defense has not had an opportunity to review this discovery as
7 yet, and has not had the opportunity to investigate these
8 additional occurrences.

9 7. The reasons underlying the failure of the defense
10 to adequately prepare this case for the June 3, 1996, trial date,
11 follows. As the lawyer that handles the Public Defender murder
12 cases on this track, my case load has been heavy since May 1,
13 1995. I have tried, generally with success, to control this
14 caseload. Since January 1, 1996, I have announced ready on five
15 murder trials in the last three months: the Augustine Bentsen
16 trial set for January 29, 1996 (negotiated prior to picking a
17 jury); the Henry Foggy trial set for January 29, 1996 (private
18 defense counsel substituted in one week before trial); the Robert
19 Smith trial set for February 12, 1996 (case proceeded to trial and
20 defendant convicted of second degree murder with use of a deadly
21 weapon); the Taniko Smith trial set for March 25, 1996 (counsel
22 recused after selection of jury because of conflict); furthermore,
23 counsel will be announcing ready on May 1, 1996, to proceed to
24 trial in the Michael Keeves matter on May 6, 1996, in a murder
25 case wherein the defendant has invoked his right to a speedy
26 trial.

27 8. While Defense counsel has generally been successful
28 in juggling these cases, Defense counsel has made significant

1 miscalculations regarding the necessity of the preparation for the
2 June 3 murder trial in the James Chappell matter.

3 9. My first mistake was under estimating the number
4 and complexity of motions needed to be filed on April 10 pursuant
5 to the briefing schedule. I had originally anticipated filing
6 three or four motions on this date, and I still believed I would
7 be able to fulfill this schedule as late as April 5, 1996, but my
8 investigation of the case in early April persuaded me that I
9 cannot complete the filing of these motions until more
10 investigation is completed in this case.

11 10. Because the State is seeking the death penalty in
12 this case, extensive investigation is required of Mr. Chappell's
13 past in preparation for a possible penalty phase. In this case,
14 it is alleged that Mr. Chappell was involved in an allegedly
15 abusive relationship with the victim for a period of approximately
16 ten years. Complete investigation of this case will require a
17 trip back to Michigan and possibly a trip to other states.
18 Because another client of mine unexpectedly invoked his right to
19 a speedy trial when he appeared in District Court VII on March 25,
20 1996, for his initial arraignment, and because of necessary
21 preparation time for that case, which is currently set to go on
22 May 6, 1996, I am unable to complete the necessary investigation
23 on the Chappell case in April. Furthermore, if the investigation
24 is completed between May 13 and May 31 for the Chappell case, I
25 will not have adequate time to incorporate information learned
26 from that investigation in my pretrial motions, nor will our
27 psychiatrist have the opportunity to incorporate the information
28 we learn in talking Mr. Chappell's relatives in the psychiatrist's

1 opinion and analysis.

2 11. Preparation for this case has also been impeded by
3 back problems that I have experienced. I was out of the office
4 and incapacitated from April 15 through April 22, 1996, for
5 problems relating to facet joint syndrome. This has delayed
6 preparation of the case.

7 12. If the Court will vacate the June 3 trial date and
8 reset the trial for some time in September or October, then the
9 necessary investigation can be completed in May and June, the
10 motions can be filed in July, the State can respond to those
11 motions in August, and the case can proceed to trial in September
12 or October.

13 13. I am requesting a September or October trial date
14 because I have two murder cases set for trial in July and one
15 murder case set for trial in late August.

16 14. This motion is made in good faith and not merely
17 for the purposes of delay.

18 15. I have discussed this matter with Mr. Chappell, and
19 he agrees to the continuance of this matter.

20 16. I have also discussed this matter with Chief Deputy
21 District Attorney Mel Harmon on April 10, 1996, and he indicated
22 the State will oppose the motion for a continuance.

23 I declare under penalty of perjury that the foregoing is
24 true and correct. (NRS 53.045).

25 EXECUTED ON April 23, 1996.

26

27

28


HOWARD S. BROOKS #3374

1 RECEIPT OF COPY of the above and foregoing Motion to Vacate
2 and Continue Trial is hereby acknowledged this 23rd day of
3 April, 1996.

4 CLARK COUNTY DISTRICT ATTORNEY

5
6 By Teresa Schnell

7
8 (Mot\Chappell.Vacate)
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Jonathan L. ...
CLERK

1 OTTE
2 MORGAN D. HARRIS
3 PUBLIC DEFENDER
4 NEVADA BAR #1879
5 309 South Third Street, Suite 226
6 Las Vegas, Nevada 89115
7 (702)455-4685
8 Attorney for the Defendant
9 Public Defender File No. F-95-5254

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,)
10 Plaintiff,) CASE NO. C131341x
11 v.) DEPT. NO. VII
12 JAMES MONTELL CHAPPELL,)
13 Defendant.)

ORDER TO TRANSPORT

15 This matter having come before the Court upon the Ex
16 Parte application of the Clark County Public Defender's Office,
17 and good cause appearing therefor,

18 IT IS HEREBY ORDERED that the Clark County Detention
19 Center transport the Defendant, James Montell Chappell, to the
20 office of Dr. Lewis M. Etcoff, Suite 1060, 3885 South Decatur, Las
21 Vegas, Nevada, on June 11, 1996, at the convenience of the jail,
22 for the purpose of a psychiatric examination.

23 DATED this 24 day of April, 1996.

24
25 *[Signature]*
DISTRICT JUDGE

26 SUBMITTED BY:

27 CLARK COUNTY PUBLIC DEFENDER

28 By *[Signature]*
HOWARD S. BROOKS #3374
DEPUTY PUBLIC DEFENDER

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ORIGINAL**FILED**

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Patricia L. Lawrence

CLERK

0332
 STEWART L. BELL
 DISTRICT ATTORNEY
 Nevada Bar #000477
 200 S. Third Street
 Las Vegas, Nevada 89155
 (702) 455-4711
 Attorney for Plaintiff

DISTRICT COURT
 CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JAMES MONTELL CHAPPELL,
 #1212860

Defendant.

Case No. C131341
 Dept. No. VII
 Docket P

NOTICE OF MOTION AND MOTION TO
 ADMIT EVIDENCE OF OTHER CRIMES, WRONGS OR BAD ACTS

DATE OF HEARING: 5-22-96
 TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through ABBI SILVER, Deputy District Attorney, and files this Notice of Motion and Motion to Admit Evidence of Other Crimes, Wrongs or Bad Acts.

This Motion is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

///

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1 **NOTICE OF HEARING**

2 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring
3 the foregoing motion on for setting before the above entitled Court, in Department VII thereof, on
4 Wednesday, the 22nd day of May, 1996, at the hour of 9:00 o'clock a.m., or as soon thereafter as counsel
5 may be heard.

6 DATED this 21st day of May, 1996.

7 STEWART L. BELL
8 DISTRICT ATTORNEY
9 Nevada Bar #000477

10 BY Abbi Silver
11 ABBI SILVER
12 Deputy District Attorney
13 Nevada Bar #003813

14 **STATEMENT OF FACTS**

15 Lisa Duran testified that she was Debra Panos' (the 26 year old victim) friend through their
16 employment at GE Capitol. (PHT 38,39). Duran testified that Debra lived in Las Vegas for
17 approximately a year prior to her demise. (PHT 39) Duran was aware that the victim and the Defendant
18 had an "on again, off again" boyfriend-girlfriend relationship for a period of ten (10) years prior to the
19 victim's murder. (PHT 39) However, prior to Debra's murder, the victim had broken up with the
20 Defendant for good. (PHT 39) The Defendant and the victim had three children together, and on August
21 31, 1995, they were approximately three (3), five (5) and seven (7) years old, respectively. (PHT 43)

22 Prior to her demise, Debra had told Duran that her relationship with the Defendant was over, she
23 no longer wanted him in her life, and after he was released from jail, she wanted to send him back to his
24 home in Mississippi. (PHT 76)

25 Duran described the physical abuse the victim sustained by the Defendant in the year prior to her
26 murder. Specifically, several weeks before Christmas of 1994, Duran observed both the Defendant and
27 the victim in a car. (PHT 40) The Defendant was yelling at Debra and she was crying. (PHT 41) The
28 Defendant continued to yell at Debra and then he hit Debra in her face with an open hand. (PHT 41)

Additionally, around Christmas of 1994, Debra came into work with a broken nose. (PHT 42)

1 Although Duran did not have personal knowledge of what caused Debra's injuries, University Medical
2 Center Records confirm that on January 9, 1995, Debra Panos was seen in the emergency room at
3 University Medical Center after being transported via Mercy Ambulance. Debra complained of pain to
4 her head and face after an assault. Specifically, Debra stated that she was punched in the face and nose
5 several times by her boyfriend. Debra told doctors that her boyfriend often beats her, but never like this.
6 Debra sustained injuries such as a fractured nose and several lacerations on the right eyebrow and nose.
7 The Defendant was arrested for the battery on January 9, 1995.

8 Duran testified that she met the Defendant at the end of May of 1995 during Memorial Day
9 weekend. (PHT 42) Also, that Debra and the children stayed with her at her apartment until the
10 Defendant called for Debra and she returned home. (PHT 45) Duran recounted that she received
11 approximately seven (7) telephone calls where the Defendant called her or Debra's residence. (PHT 46)
12 Specifically, on one occasion, Duran was watching the children and the Defendant called from jail
13 adamantly requesting to know where Debra was. (PHT 47) The Defendant said, "I want to know what
14 other nigger she's laying underneath." (PHT 47) The Defendant warned Duran, "You tell Debbie, when
15 she gets home that I called and that when I get out, she's not going to have any friends." (PHT 48)

16 Another time, the Defendant called and was upset because Debra had not gone to visit him at jail,
17 she was not writing him letters, and she was not accepting his calls. (PHT 48) The Defendant told Duran,
18 "If he couldn't have Debra, that nobody else could, and when he got out, she wasn't going to have any
19 friends; she wouldn't be able to go anywhere, and he'd make sure of that." (PHT 48)

20 Duran testified that on the afternoon of August 31, 1995, she was driving over to Debra's house
21 to retrieve some of her belongings since she had stayed with Debra the week before. (PHT 49,50) At
22 approximately 1:30 to 1:45 p.m. she entered Debra's trailer park and as she was driving towards Debra's
23 residence, she saw the Defendant driving Debra's car, with a bicycle hanging out the back of the trunk.
24 (PHT 51,52) Duran was aware that the Defendant used a bicycle for transportation. (PHT 52)

25 When Duran went to Debra's residence, nobody answered, but Duran could hear the TV and air
26 conditioner running. (PHT 54) After several attempts to locate Debra, Duran noticed the back bedroom
27 window was off track and became concerned for Debra's safety. (PHT 56). As a result, Duran contacted
28 the police. Ultimately, the police made entry into Debra's trailer through the bedroom window and found

1 Debra's body in a pool of blood, lying by a knife, and her home was ransacked. (PHT 58).

2 Significantly, Duran did not notice any bruises or lacerations to Debra's face and body on August
3 31, 1995 at 8:00 a.m., just hours before the Defendant was seen driving her vehicle from her residence
4 and prior to her body being discovered by the police. (PHT 63).

5 Bill Duffy testified that on August 31, 1995, he was a Unit Manager supervising probationers at
6 the Department of Parole and Probation. (PHT 27). On that date, Duffy received a call from City
7 Detention that the Defendant was being released from City Jail. (PHT 28). As a result, Duffy had two
8 officers go to pick the Defendant up and bring him back to his office, since he was on probation for a
9 gross misdemeanor. (PHT 28,29). Duffy personally interviewed the Defendant at 10:00 a.m. on August
10 31, 1995. (PHT 30).

11 At the conclusion of the interview, Duffy agreed to release the Defendant so that he could go to
12 a drug program and enroll. (PHT 31). The Defendant was to report back to Duffy's office within three
13 (3) hours, at approximately 1:00 p.m. (PHT 31). The Defendant never did return.

14 Dr. Green, the pathologist, testified that he conducted an autopsy on the body of Debra Panos
15 on September 1, 1995. (PHT 6). Dr. Green's external significant findings consisted of distinguishing
16 thirteen (13) different penetrating stab wounds to Debra's body, along with multiple, recent-appearing
17 bruises or contusions. (PHT 7). Specifically, the stab wounds which did the most damage consisted of:
18 one (1) stab wound penetrating the jugular vein on the right side of the neck; one (1) stab wound
19 puncturing the carotid artery in the neck; and one (1) stab wound into the lung, rib and back. (PHT 8).
20 Four (4) of the wounds in the neck actually hit the spine and penetrated into the bone of the spinal
21 column. (PHT 9).

22 Most significant to this motion, Dr. Green found Debra's face was covered with contusions
23 (bruises) and abrasions (scrapes). (PHT 9). These bruises covered her forehead, cheekbones, jaw, as
24 well as on the shoulders, right hand and wrist. Dr. Green testified that all of these bruises were "recent",
25 meaning less than a day old prior to her demise. (PHT 10). Thus, these bruises and contusions on
26 Debra's body were placed there on the day of her death, and after Duran saw the victim that morning at
27 approximately 8:00 a.m.. (PHT 11).

28 Dr. Green testified that these injuries would have been caused by blunt trauma consistent with a

1 fist hitting Debra in the face. (PHT 11).

2 Finally, Dr. Green opined that the manner of death to Debra Panos was a homicide and that the
3 cause of death was the result of multiple stab wounds of the neck and chest. (PHT 18).

4 Las Vegas Metropolitan Police Department reports show that on June 1, 1995, JUST THREE
5 (3) MONTHS PRIOR TO HER MURDER, Debra Panos reported to police the Defendant had battered
6 her during a domestic dispute. Specifically, Debra told police that the Defendant was yelling at her after
7 he found a piece of paper with a strange phone number on it, as he was jealous. The Defendant pushed
8 Debra down on the bed in their trailer, and pinned her down using his knees on her arms. The Defendant
9 thereafter pulled out a knife and began threatening her with the knife until a friend knocked on the door.

10 Significantly, this battery resulted in the Defendant's conviction and incarceration at the City Jail,
11 until the day the Defendant was released. Within two hours of the Defendant's release from jail for
12 battering Debra, the Defendant murdered Debra.

13 On February 23, 1994, while living together in Tucson, Arizona, Debra Panos reported to the
14 police she had been a victim of domestic violence at the hands of this Defendant. Debra told the police
15 that the Defendant knocked her to the floor after he saw Debra crying because the Defendant had sold
16 the children's furniture. Debra stated that when she tried to get up from the floor, the Defendant began
17 kicking her in the legs. Debra was able to get herself and her children into the car and immediately
18 contacted police. The Defendant was then taken into custody and booked for domestic assault.
19 Currently, there is no disposition to this case, as the Defendant failed to appear, a bench warrant for his
20 arrest is currently in effect.

21 Currently, the State moves this Honorable Court for an order permitting the State to introduce
22 evidence of prior crimes, wrongs, or bad acts in its Case in Chief, specifically:

- 23 1. Lisa Duran's observations of the Defendant beating Debra Panos in the face while yelling
24 at her.
- 25 2. University Medical Center records and testimony of Debra Panos' broken nose of January
26 9, 1995, as a result of the Defendant battering Debra Panos.
- 27 3. Domestic battery of June 1, 1995 where the Defendant threatened Debra with a knife,
28 which resulted in his conviction, incarceration and release within two (2) hours of her

1 murder.

2 4. Domestic battery of February 23, 1994 in Tucson, Arizona.

3 **LAW**

4 **I.**

5 **THE STATE SHOULD BE ALLOWED TO PRESENT EVIDENCE OF**
6 **OTHER BAD ACTS IN ITS CASE-IN-CHIEF**

7 NRS 48.045(2) provides:

8 Evidence of other crimes, wrongs or acts is not
9 admissible to prove the character of a person in order to
10 show that he acted in conformity therewith. It may,
11 however, be admissible for other purposes, such as
12 proof of motive, opportunity, intent, preparation, plan,
13 knowledge, identity, or absence of mistake or accident.

12 The decision to admit or exclude evidence, lies within the discretion of the court. And such a
13 decision will not be reversed absent manifest error. *Kazahyn v. State*, 108 Nev. 67, 825 P.2d 578 (1992);
14 *Halbower v. State*, 93 Nev. 212, 562 P.2d 485 (1977).

15 The Nevada Supreme Court has held that prior bad acts are admissible under NRS 48.045(2) in
16 DOMESTIC MURDER cases. In *Hogan v. State*, 103 Nev. 23 (1987), the Supreme Court of Nevada
17 upheld a District Court's granting of a motion for other bad acts. In *Hogan*, the defendant shot and killed
18 his girlfriend. The defendant was convicted of Murder With Use of a Deadly Weapon and sentenced to
19 DEATH.

20 In *Hogan*, the District Court allowed the State to present evidence that the defendant, several
21 days before the murder, had thrown his girlfriend to the ground. The Nevada Supreme Court held that
22 "this evidence was evidence of 'other acts,' admissible under NRS 48.045(2) to demonstrate ill-will as
23 a motive for the crime." *Id.* Further, the Court found that threats made by the defendant to the victim
24 prior to the murder were also properly admitted under the "Excited Utterance" exception to the Hearsay
25 Rule under NRS 51.095. *Id.*

26 California has also recognized the value of a defendant's prior domestic violence against a murder
27 victim in DOMESTIC HOMICIDE cases. In *People v. Linkenaugher*, 32 Cal.App.4th 1603, 38
28 Cal.Rptr. 868 (1995), the prosecution's theory was that the defendant premeditated murder by torturing

1 and strangling his wife which was the culmination of marital discord, jealousy, and domestic violence.

2 The prosecution sought to admit four (4) types of evidence of marital discord and assaults as they
3 were relevant as to the defendant's intent, motive and identity. First, two friends of the victim testified
4 that they saw bruises on the victim's face, neck, and arms in 1990, 1991, and 1992, prior to her death
5 in 1993. Second, two witnesses at a restaurant testified that the defendant battered the victim at a
6 Denny's restaurant sometime prior to the murder, and the victim's doctor testified that the victim
7 sustained injuries to her hip, back, and neck as a result of the assault. Third, two or three weeks before
8 the murder, the defendant had accused the victim of having an affair with a man while at a restaurant.
9 Finally, evidence that the victim obtained DOMESTIC VIOLENCE RESTRAINING ORDERS in 1990
10 and 1992, ordering the defendant "not attack, strike, threaten, batter or disturb the peace" of the victim,
11 was admitted.

12 The defendant argued to the California Court of Appeals that this evidence of prior misconduct
13 was inadmissible. The Court disagreed, and held that "a plea of not guilty puts into issue all of the
14 elements of the charged offense, including intent." *Id.* at 872, 1609. (Citations omitted).

15 The Court followed the general rule enunciated by the California Supreme Court in its decisions
16 stating:

17 Evidence tending to establish prior quarrels between a
18 defendant and decedent and the making of threats by the
19 former is properly admitted. . . to show the motive and
state of mind of the defendant.

20 *Id.* (Citations omitted).

21 The Court also held that the rule requiring a great degree of similarity for uncharged misconduct
22 to prove identity, i.e., the "signature" test is not controlling in these types of violent crimes. *Id.* at 874,
23 1612. The Court reasoned that no one can kill the same victim twice in a distinctive or "signature"
24 fashion. *Id.* The Court found that evidence of prior acts of abuse by the killer may be presented to show
25 motive, intent, and identity where the prior misconduct and the charged murder involves the
26 IDENTICAL PERPETRATOR AND THE VICTIM. *Id.*

27 In *People v. De Moss*, 4 Cal.2d 469, 50 P.2d 1031 (1935), the California Supreme Court held that
28 prior acts of quarrels, threats, and acts of abuse by the defendant/husband against the victim/wife in a

1 murder case were properly admitted to establish motive for the killing.

2 Analogous to the Nevada Supreme Court, the California Supreme Court has recognized that
3 evidence of prior verbal and physical abuse in a Domestic Homicide case tends to show malice, motive,
4 and ill-will on the part of a defendant/husband. *People v. Chaves*, 122 Cal. 134, 54 P. 596 (1898).

5 Application of this rule also impinges on the issue of IDENTITY of the person who committed
6 the charged offense. Evidence of motive may "... solve a doubt, ... 'as to the identity of the slayer,...'
7 and is admissible against a defendant, however discredibly it may reflect on him and even where it may
8 show him guilty of other crimes." *Linkenauer, supra*.

9 In yet another Domestic Murder case where the prosecution presented evidence of the
10 defendant's prior assaults upon his wife, *People v. Daniels*, 16 Cal.App.3d 36, 93 Cal.Rptr. 628 (1971),
11 the California Supreme Court held that "EVIDENCE OF MOTIVE OR BEHAVIOR PATTERN to
12 commit an offense is evidence of the identity of the offender." *Id.* at 46, 628.

13 One of the Landmark cases in California is *People v. Zack*, 184 Cal.App.3rd 409, 229 Cal.Rptr.
14 317 (1986). In *Zack*, the defendant and his girlfriend/victim were involved in an abusive relationship for
15 a period of two years, including prior batteries on the victim. When the victim finally "moved out" while
16 trying to sever the relationship, the defendant threatened to kill her. Thereafter, the defendant beat and
17 strangled her.

18 The California Supreme Court enunciated the general rule regarding the admissibility of prior bad
19 acts as:

20 Where a defendant is charged with a violent crime and
21 has or had a previous relationship with a victim, prior
22 assaults upon the same victim, when offered on disputed
23 issues, e.g., identity, intent, motive, etc., are admissible
based solely upon the consideration of identical
perpetrator and victim without resort to a "distinctive
modus operandi" analysis of other factors.

24 *Id.* at 415, 317.

25 Additionally, in *Linkenauer, supra*, the Court found prior acts of domestic violence upon a
26 murder victim was properly admitted as more probative than prejudicial. The Court disregarded the
27 defendant's argument that this evidence was cumulative and may have induced the jury to convict him
28 for prior uncharged acts of domestic violence. The Court held that the evidence was not cumulative as

1 a matter of law, and that the evidence was no stronger and no more inflammatory than the testimony
2 concerning the charged offense of murder. *Id.*

3 The Nevada Supreme Court has held evidence of prior misconduct is admissible in other types
4 of murder cases as well. In *Petrocelli v. State*, 101 Nev. 46, 692 P.2d 503 (1985), Petrocelli was charged
5 with shooting a car salesman in the head with a .22 caliber handgun. Petrocelli claimed that the shooting
6 was done during an argument with the car dealer and that it was an accident. The trial court allowed
7 evidence that Petrocelli had previously become embroiled in an argument with a female. He drug her out
8 of her place of employment and shot and killed her with a .22 caliber handgun. The Nevada Supreme
9 Court upheld the trial court's decision to allow such evidence to establish the absence of mistake or
10 accident.

11 Similarly, in *Gallego v. State*, 101 Nev. 782, 711 P.2d 856 (1985), Gallego was charged with
12 killing two young females with a hammer. The two women were kidnapped by Gallegos and his wife and
13 transported to their fatal destination as part of the Gallego's "sex slave " fantasy. The trial court allowed
14 evidence that Gallegos had previously kidnapped two young women from a shopping mall and thereafter
15 shot and killed them. The high court affirmed the lower court's ruling and allowed such evidence for the
16 purposes of establishing common plan, intent, identity and motive. *Id.* 101 Nev. at 788.

17 Pursuant to the wealth of authority cited by the State, this Court should grant the State's motion
18 to introduce the Defendant's past acts of domestic abuse upon the same victim, here, the murder victim,
19 as this evidence is relevant to show motive, pattern of behavior, and ill-will towards the victim, Debra
20 Panos.

21 This Defendant was arrested for Battery - Domestic Violence after he threw the victim down and
22 threatened her with a knife. As a result, the Defendant was convicted and incarcerated. During his
23 incarceration, Debra was not returning his calls or responding to his letters as she was trying to break off
24 the violent relationship. The Defendant's violence escalated and when he was released on that charge,
25 within two (2) hours, the Defendant brutally stabbed and beat Debra Panos.

26 This evidence also is relevant to show identity of the killer, as Lisa Duran testified the victim did
27 not have any bruises on her face and body just hours before her murder. Yet, Dr. Green testified that
28 Debra's body showed she had been battered with bruises and scratches all over her face and body, as well

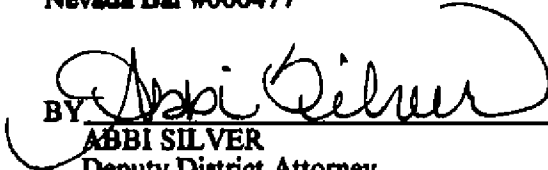
1 as being stabbed. Again, consistent with the case law cited, acts of prior domestic violence toward the
2 murdered victim is extremely relevant to show identity of the murderer.

3 **CONCLUSION**

4 Accordingly, for the foregoing reasons, the State respectfully requests this Court grant its Motion
5 to Admit Evidence of Other Crimes, Wrongs, or Bad Acts in its case-in-chief.

6 DATED this 3rd day of May, 1996.

7 STEWART L. BELL
8 DISTRICT ATTORNEY
9 Nevada Bar #000477

10 BY 
11 ABBI SILVER
12 Deputy District Attorney
13 Nevada Bar #003813
14

15 **RECEIPT OF COPY**

16 RECEIPT OF COPY of the above and foregoing NOTICE OF MOTION AND MOTION TO
17 ADMIT EVIDENCE OF OTHER CRIMES, WRONGS OR BAD ACTS is hereby acknowledged this
18 8th day of April, 1996.

19 PUBLIC DEFENDER'S OFFICE
20 ATTORNEY FOR DEFENDANT

21 BY 
22 309 S. Third Street #226
23 Las Vegas, Nevada 89155
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ORIGINAL

DISTRICT COURT
CLARK COUNTY, NEVADA

FILED
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THE STATE OF NEVADA,

Plaintiff,

vs.

JAMES MONTELL CHAPPELL,

Defendant.

Freddie L. Lamm
CLERK

CASE NO. C131341

DEPT. NO. VII

DOCKET NO. "p"

BEFORE THE HONORABLE GENE T. PORTER, DISTRICT JUDGE

WEDNESDAY, MAY 1, 1996; 9:00 A.M.

RECORDER'S TRANSCRIPT RE:
TRIAL SETTING

APPEARANCES:

For the State:

DAVE BARKER, ESQ.
Deputy District Attorney

For the Defendant:

HOWARD BROOKS, ESQ.
Deputy Public Defender



Recorded by: JANICE R. LISTON, Court Recorder

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WEDNESDAY, MAY 1, 1996; 9:00 A.M.

THE COURT: Case No. C131341, State of Nevada versus James Montell Chappell.

The record will reflect the presence of the defendant in custody.

MR. BROOKS: Howard Brooks on behalf of Mr. Chappell, your Honor.

THE COURT: Thank you, Mr. Brooks.

MR. BROOKS: I believe that the State would probably not oppose my making representations on their behalf. Everything is set here with the court clerk regarding a new schedule. Ms. Logue was here. She apparently just left. But we discussed it extensively.

THE COURT: The notes I have on the calendar is calendar call October 7th, jury trial October -- 10/2 and 10/7.

MR. BROOKS: 10/2 and 10/7, that is correct, your Honor. Ms. Logue and Mr. Harmon and I also have discussed a briefing schedule. We've not discussed that with the Court, but I believe it will be acceptable with everybody involved. Ms. Logue agreed with it. And that would be our motions, defense motions would be due July 1st; State's opposition on August 5th; our replies on August 26th; argument on September 11th and a status check regarding jury selection on September 25th.

THE COURT: All right. Thank you, Mr. Brooks.

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MR. BROOKS: Thank you, Judge.

* * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the sound recording of the proceedings in the above-entitled case.


JANICE R. LISTON
Court Recorder

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Patricia Roseman

CLERK

1 0209
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 JAMES MONTELL CHAPPELL,
12 #1212860

13 Defendant(s).
14

Case No. C131341
Dept. No. VII
Docket P

15
16 **MOTION AND NOTICE OF MOTION**
17 **TO ENDORSE NAMES ON INFORMATION**

18 DATE OF HEARING: 7-15-96
19 TIME OF HEARING: 9:00 A.M.

20 TO: Defendant(s) above named, and

21 TO: Your Counsel of Record: PUBLIC DEFENDER,

22 YOU, AND EACH OF YOU WILL PLEASE TAKE NOTICE that, on Monday, the 15th day
23 of July, 1996, at the hour of 9:00 o'clock, a.m., or as soon thereafter as Counsel can be heard, in the
24 Courthouse, Las Vegas, Clark County, Nevada, the STATE OF NEVADA will move the Court for leave
25 to endorse upon Information heretofore filed herein the names of the following witnesses:

26 ///

27 ///

28 ///

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CE31

1 NAME

 ADDRESS

2 YATES, PAULA

CELLMARK DIAGNOSTICS
20271 GOLDENROD LANE
GERMANTOWN, MD 20876

4 FORMAN, LISA

CELLMARK DIAGNOSTICS
20271 GOLDENROD LANE
GERMANTOWN, MD 20876

6 DATED this 27th day of July, 1996.

7 STEWART L. BELL
8 DISTRICT ATTORNEY
9 Nevada Bar #000477

10 BY Melvyn T. Harmon
11 MELVYN T. HARMON
12 Chief Deputy District Attorney
13 Nevada Bar #000862

13 AFFIDAVIT IN SUPPORT OF MOTION

14 STATE OF NEVADA

15 COUNTY OF CLARK

} ss:

16 MELVYN T. HARMON, being first duly sworn, deposes and says:

17 The Affiant is a Chief Deputy District Attorney for Clark County, Nevada; that an Information
18 has heretofore been filed in the within action; that since the filing of said Information Affiant has learned
19 that the testimony of the person or persons named in the Motion to Endorse Names on Information,
20 which the Affidavit supports, is necessary and material to the prosecution of the within criminal action;
21 that such facts were unknown to Affiant at the time of filing Information herein.

22 WHEREFORE, Affiant prays that the Court enter an Order for endorsement of names on the
23 Information, in accordance with NRS 173.045.

24 "I declare under penalty of perjury that the foregoing is true and correct."

25 Executed this 27th day of July, 1996.

26 Melvyn T. Harmon
27 MELVYN T. HARMON
28

POINTS AND AUTHORITIES IN SUPPORT OF MOTION
TO ENDORSE NAMES ON INFORMATION

1. After filing the Information the District Attorney shall endorse thereon the names of such other witnesses which shall become known to him before the trial as the Court prescribes. Such amendment may be made at any time after Defendant pleads when it can be done without prejudice to the substantial rights of the Defendant. NRS 173.045.

2. The granting on the morning of trial of a motion to add names of witnesses to a first degree murder Information was not error where the Defendant's attorney learned the names of such witnesses three (3) days before trial, this being a reasonable time to prepare for the defense. State v. Teeter, 65 Nev. 584, 612 (1948); Dalby v. State, 81 Nev. 517, 1965).

3. Any prejudice resulting to Defendant because the District Attorney was permitted to add names on the Information after the jury had been sworn, he having known these names before trial, was cured by the Court's granting Defendant a continuance (three days) to prepare to meet the testimony of these witnesses. State v. Monahan, 50 Nev. 27, 35 (1926); Gallegos v. State, 84 Nev. 608 (1968).

4. Failure to endorse a name does not preclude calling any witness whose name or materiality of testimony is first learned at the time of trial NRS 173.045.

5. Defects or imperfections of form are immaterial. NRS 173.100. Minor defects in an Information, including typographical errors, may be disregarded where the intent is clear and the rights of the Defendant are not prejudiced. 22 CJS 955, Sec. 377.

DATED this 24th day of July, 1996.

STEWART L. BELL
DISTRICT ATTORNEY
Nevada Bar #000477

BY Melwyn T. Harmon
MELVYN T. HARMON
Chief Deputy District Attorney
Nevada Bar #000862

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RECEIPT OF COPY

RECEIPT of a copy of the above and forgoing Motion, Notice of Motion, Affidavit and
Points and Authorities is hereby acknowledged this 9 day of July, 1996.

PUBLIC DEFENDERS OFFICE
ATTORNEY FOR DEFENDANT

BY 
309 S. Third St., #226
Las Vegas, Nevada 89101

28

ORIGINAL

1 OEND
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for: Plaintiff

FILED IN OPEN COURT
JUL 15 1996 19
LORETTA BOWMAN, CLERK
BY Lina Hurd
Deputy

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,
9 Plaintiff,
10 -vs-
11 JAMES MONTELL CHAPPELL,
12 #1212860
13 Defendant(s).
14

Case No. C131341
Dept. No. VII
Docket P

15
16 **ORDER**

17 **TO ENDORSE NAMES ON INFORMATION**

18 Upon Motion of the STATE OF NEVADA, Plaintiff, by and through the Clark County
19 District Attorney, and Notice to Defendant(s) above named by and through Defendant's Counsel,
20 PUBLIC DEFENDER, and good cause appearing therefore,

21 IT IS HEREBY ORDERED that the Motion is granted and the Clerk of the above entitled
22 Court is hereby directed to endorse upon the Information on file herein the following names:

23	<u>NAME</u>	<u>ADDRESS</u>
24	YATES, PAULA	CELLMARK DIAGNOSTICS
25		20271 GOLDENROD LANE
		GERMANTOWN, MD 20876

26 ///

27 ///

28 ///

CE31

1 FORMAN, LISA

CELLMARK DIAGNOSTICS
20271 GOLDENROD LANE
GERMANTOWN, MD 20876

3 as prospective witnesses in the prosecution of the within matter.

4 DATED this 15th day of July, 1996.

5 
6
7 DISTRICT JUDGE

8 STEWART L. BELL
9 DISTRICT ATTORNEY
Nevada Bar #000477

10 BY 
11 MELVYN T. HARMON
12 Chief Deputy District Attorney
Nevada Bar #000862

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Loretta D. ...

CLERK

1 0020
2 MORGAN D. HARRIS
3 PUBLIC DEFENDER
4 Nevada Bar #1879
5 309 S. Third Street
6 Las Vegas, NV 89155
7 (702) 455-4685
8 Attorney for Defendant

9
10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12 THE STATE OF NEVADA,
13
14 Plaintiff,

15 vs.

16 JAMES MONTELL CHAPPELL,
17
18 Defendant.

CASE NO. C131341

DEPT. NO. VII

DATE OF HEARING: 9/11/96
TIME OF HEARING: 9 A.M.

19 **DEFENDANT'S MOTION TO STRIKE STATE'S**
20 **NOTICE OF INTENT TO SEEK DEATH PENALTY BECAUSE**
21 **THE PROCEDURE IN THIS CASE IS UNCONSTITUTIONAL**

22 COMES NOW, Defendant, JAMES MONTELL CHAPPELL, by and
23 through his attorney, Deputy Public Defender HOWARD S. BROOKS, and does hereby
24 move this Honorable Court to strike the State's Notice of Intent to Seek Death Penalty filed
25 November 8, 1995.

26 This Motion is made and based on the Fifth and Fourteenth Amendments to
27 the United States Constitution, Article I, Sections 5 and 8, of the Nevada Constitution, the
28 statutory and common law of the State of Nevada, the attached Memorandum of Points and
Authorities, the attached Declaration of Counsel, all papers and pleadings on file in this

...

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1 case, and argument of counsel, if deemed necessary by the Court, at the hearing of this
2 Motion.

3 DATED this 23 day of July, 1996.

4 Respectfully submitted,

5 CLARK COUNTY PUBLIC DEFENDER

6 By Howard S. Brooks

7 Howard S. Brooks
8 Deputy Public Defender
9 Nevada Bar #3374
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **STATEMENT OF FACTS**

3 The State of Nevada filed a Criminal Complaint September 8, 1995 alleging
4 that Defendant James Montell Chappell committed the crimes of Burglary While in
5 Possession of a Deadly Weapon, Robbery With Use of a Deadly Weapon, and Murder With
6 Use of a Deadly Weapon.

7 At a preliminary hearing on October 3, 1995 before the Honorable Tom Leen
8 in Justice Court, Department 3, Las Vegas Township, the Court dismissed the deadly
9 weapon allegation in Count I, and held Mr. Chappell to answer to the charges of burglary
10 in Count I, Robbery With Use of a Deadly Weapon in Count II, and Murder With Use of a
11 Deadly Weapon in Count III.

12 It may be noted that the State's Criminal Complaint filed in Justice Court
13 alleged no aggravating factors as described in NRS 200.033, the Nevada statute describing
14 the factors to be considered by a jury considering the penalty for a person convicted of first
15 degree murder. Furthermore, the State did not request the Justice Court magistrate to make
16 any finding that probable cause supported the existence of any aggravating factors.

17 The State filed an Information on October 11, 1995, and Mr. Chappell
18 appeared in District Court, Department 7, on October 18, 1995, and pled not guilty to all
19 charges.

20 On November 8, 1995, the State filed a Notice of Intent to Seek the Death
21 Penalty. This Notice of Intent alleged the following aggravating circumstances:

- 22 1. The murder was committed while the person was engaged
23 in the commission of or an attempt to commit a robbery.
24 2. The murder was committed while the person was engaged
25 in the commission of or an attempt to commit any burglary
26 and/or home invasion.

27 ...

28 ...

- 1 3. The murder was committed while the person was engaged
2 in the commission of or an attempt to commit any sexual
3 assault.
4 4. The murder involved torture or depravity of mind.

5
6 **SUMMARY OF ARGUMENT**

7 The State's filing of the Notice of Intent to Seek the Death Penalty in the
8 absence of any probable cause hearing violates Mr. Chappell's due process and equal
9 protection rights guaranteed by the United States and Nevada Constitutions. The filing of
10 the Notice changes the nature of a criminal murder case, prejudicing the Defendant during
11 jury selection, trial, and sentencing. Though Nevada statutory law is silent regarding the
12 proper procedure for alleging aggravating factors and seeking the death penalty, Nevada
13 courts customarily allow the State to proceed as the State has proceeded in this case:
14 without any preliminary burden on the State before trial to present some evidence the
15 aggravating factors exist. The procedure in this case allows the State to unilaterally amend
16 the charging documents, thereby making unnecessary an essential and complete description
17 of the charges in the original Information. Since the allegation of aggravating factors
18 requires the same procedural protections as the allegation of essential elements of a crime,
19 the customs and rules that allow the State to file the Notice of Intent without a probable
20 cause hearing violate Mr. Chappell's due process rights and deny him the same protections
21 accorded other criminal defendants. Because current procedure denies Mr. Chappell a
22 pretrial hearing, the Defendant's rights to seek relief by way of a writ of habeas corpus are
23 also abrogated, thereby violating his Nevada constitutional rights. Therefore, the State's act
24 in filing the Notice of Intent to Seek the Death Penalty is unconstitutional, and the Notice
25 should be dismissed.

26 ...
27 ...
28 ...
 ...

1 **THE FILING OF A NOTICE OF INTENT TO SEEK**
2 **THE DEATH PENALTY BY THE STATE PREJUDICES**
3 **THE DEFENSE DURING JURY SELECTION, TRIAL, AND SENTENCING**

4 The filing of a Notice of Intent to Seek the Death Penalty by the State
5 changes the nature of a murder case. When the Notice is filed, the stakes involved for the
6 Defendant cannot be higher.

7 When the State files the Notice, the questioning of potential juries during the
8 voir dire incorporates the "death qualification" process. "Death qualification" occurs when
9 the State may question prospective jurors prior to the guilt phase of the trial regarding the
10 prospective jurors' views on the death penalty. The Court must excuse for cause those
11 jurors whose opposition to capital punishment would prevent or substantially impair the
12 performance of their duty as jurors during the sentencing phase of trial. See Lockhart v.
13 McCree, 476 U.S. 162, 90 L.Ed.2d 137, 106 S. Ct. 1758 (1986). While Lockhart held
14 that the "death qualification" process is not per se unconstitutional, many courts, including
15 the United States Supreme Court, have assumed for the purposes of argument that
16 substantial social science research supports the claim that a death qualified jury is more
17 likely to convict a defendant in the guilt phase of a trial than a jury that has not been death
18 qualified. Id. at 168-73, 90 L.Ed.2d at 147-48, 106 S. Ct. at 1761-65.

19 Furthermore, by informing the jury prior to the trial phase that the State is
20 seeking the death penalty, a strong message is sent to the jury that the defendant is not
21 merely someone accused of murder, but someone so bad that the State is seeking a murder
22 conviction and the ultimate punishment. The prejudice to the Defense could hardly be
23 more.

24 **THE PROCEDURE FOLLOWED IN THIS CASE**
25 **IS CONSISTENT WITH THE PREVAILING CUSTOM IN NEVADA COURTS**

26 As attested in the attached Declaration of Howard S. Brooks, the relevant
27 procedure in this case did not depart from the standard procedure in other "death penalty"
28 murder cases. By relevant procedure, the Defense refers to the State's failure to allege
 aggravating circumstances in the Criminal Complaint, the State's failure to request or obtain

1 a finding by the Justice of the Peace that probable cause supported the alleged aggravating
2 circumstances, and the State's failure to allege aggravating circumstances and the intent to
3 seek the death penalty in the original Information filed in District Court.

4 Nevada statutory law provides no guidance regarding the appropriate way to
5 allege aggravating circumstances and inform the Defense the State is seeking the death
6 penalty. The statutes in Chapter 171 of the Nevada Revised Statutes governing the filing
7 of a Criminal Complaint, the conduct of a preliminary hearing in Justice Court, the
8 necessity of preparing a transcript of the proceedings, the procedure for challenging a
9 probable cause determination: none of these statutes address whether or how allegations
10 relating to the death penalty should be handled.

11 The failure to address capital litigation concerns can be explained by the
12 timing of the adoption of the laws. The Legislature enacted most of Chapter 171 in 1967.
13 The statute governing aggravating and mitigating factors was enacted ten years later, in
14 1977.

15 The District Court procedure followed in this case is also similar to the
16 customary procedure in "death penalty" cases handled in Clark County. See Declaration of
17 Howard S. Brooks. Again, the standard statutory law in Chapters 173 and 174, governing
18 the initial charging documents filed in district court and the procedure of entering a plea,
19 are silent regarding death penalty cases and the alleging of aggravating factors. These
20 chapters were generally enacted in 1967 or earlier. Therefore, it is no surprise that the
21 charging document in this case, the Information filed October 11, 1995, alleges no
22 aggravating circumstances and does not notify the Defendant the State is seeking the Death
23 Penalty.

24 Other statutes address other areas of death penalty jurisprudence, but no
25 statutes specifically authorize the procedures found in this case. In Chapter 175, NRS
26 175.552 provides guidance regarding how to conduct a penalty hearing in a capital case;
27 NRS 175.554, NRS 175.556, NRS 175.558, and NRS 175.562 mandate certain procedural
28 . . .

1 aspects of a penalty hearing, but these statutes are silent regarding any necessity to test
2 alleged aggravating circumstances before trial.

3 The origin of the Notice of Intent to Seek Death Penalty can be found in
4 Supreme Court Rule 250, which establishes certain procedures for capital cases. Rule 250
5 specifies the content of the Notice and imposes certain time requirements on the filing of
6 the document. The Notice of Intent filed in this case complies with Rule 250.

7 In summary, the filing of the Notice of Intent to Seek Death Penalty in this
8 case, and the associated failures by the State to seek any probable cause finding prior to
9 trial that the aggravating factors alleged by the State warrant a death penalty prosecution,
10 are neither consistent nor inconsistent with current statutory law because Nevada's statutes
11 did not contemplate such a process. These procedures are consistent, however, with
12 customary procedures in Clark County courts and with Rule 250 of the Nevada Supreme
13 Court Rules. And the Defense contends, as will be argued later in this Motion, that the
14 procedure in this case, the customs in these types of cases, and any rules or statutes that are
15 construed to endorse the procedure in this case, are unconstitutional.

16 **THE PROCEDURE IN THIS CASE IS UNCONSTITUTIONAL BECAUSE THE**
17 **NOTICE OF INTENT CONSTITUTES AN AMENDMENT OF THE INFORMATION,**
18 **AND THE INFORMATION MUST REFLECT A FINDING OF PROBABLE CAUSE**

19 The Fifth Amendment to the United States Constitution and Article 1, Section
20 8, of the Nevada Constitution provide that no person shall be held to answer to criminal
21 charges without a finding of probable cause by a grand jury. The United States Supreme
22 Court long ago endorsed a probable cause finding by a neutral magistrate by way of a
23 preliminary hearing as a legal alternative to a grand jury indictment. See *Hurtado v.*
24 *California*, 110 U.S. 516, 28 L.Ed. 232, 4 S. Ct. 111 (1984) (upholding California's
25 preliminary hearing process against a due process challenge).

26 The preliminary hearing process in Nevada requires the State to present legal
27 evidence to a Court that a crime has occurred, and that the Defendant committed the
28 crime. If the State can meet that burden, the defendant is held to answer to the charges in
district court. If the State fails to meet the burden, the case must be dismissed. NRS

1 171.206. The purpose of requiring a probable cause finding is to ensure that a defendant
2 has the benefit of a pretrial review of the sufficiency of the evidence before having to
3 confront the same charges at an actual trial. Issues can be narrowed, charges and
4 allegations having no basis in fact can be eliminated. The probable cause hearing process
5 has been characterized as a "shielding function" whereby individuals are protected from
6 vindictive prosecution by private enemies, political partisans, or vindictive governmental
7 officials. See Hurtado v. California, 110 U.S. 516, 555, 4 S.Ct. 292, 28 L.Ed. 232 (1884)
8 (J. Harlan, dissenting).

9 Subsequently, the State must file an Information in District Court alleging the
10 charge or charges to which the Justice of the Peace held the Defendant to answer after
11 hearing evidence at the preliminary hearing. The Information is the first pleading filed in
12 district court, and must contain a plain, concise and definite written statement of the
13 essential facts constituting the offense charged. Sheriff v. Levinson, 95 Nev. 436, 596
14 P.2d 232 (1979). See also NRS 173.075. In cases where the allegations go beyond alleging
15 a simple crime, and allege instead a crime or set of facts to which different statutes apply,
16 the key inquiry is to determine which facts or allegations must ultimately be proven by a
17 jury beyond a reasonable doubt. For example, the allegation of "robbery with use of a
18 deadly weapon" must be alleged in the Information and both the "robbery" and the "use of
19 a deadly weapon" must ultimately pass muster before a jury for the State to obtain a
20 conviction. See, e.g., Bartle v. Sheriff, 92 Nev. 459, 552 P.2d 1099 (1976) (Magistrate
21 was required to find some evidence supporting enhancement as well as underlying crime,
22 and Information must reflect both allegations). The same is not true where the allegation
23 need not be proven to a jury beyond a reasonable doubt. In cases where the habitual
24 criminal enhancement applies, the jury need not hear the habitual criminal allegation in the
25 Information, and the Information need not include that allegation.

26 In the present case, the State filed a Notice of Intent to Seek Death Penalty
27 almost a month after the original Information was filed. The State relies on Supreme Court
28 Rule 250 for authorization to file the Notice.

1 In fact, the Notice is not authorized by Nevada statutory law, and is in reality
2 an amendment of the Information. The Aggravating Factors identified in NRS 200.033 are
3 "essential facts" or allegations constituting the offense charged. They must ultimately be
4 proven beyond a reasonable doubt to a jury for a conviction to be sustained. Considering
5 the stakes involved in a death penalty case, the allegation of aggravating factors are the
6 most essential part of the pleading document.

7 Supreme Court Rule 250 and the custom in Nevada courts merely allows the
8 District Attorney to make an end run around the requirement that charges be supported by a
9 finding of probable cause. The allegations of Aggravating Factors must ultimately be
10 proven beyond a reasonable doubt, the same standard applied to elements of the underlying
11 crime, the same standard applied to other statutory enhancements that must be proved
12 beyond a reasonable doubt to a jury.

13 By allowing the State to unilaterally file a Notice of Intent to Seek Death
14 Penalty without any probable cause showing, the custom in Nevada allows the Information
15 or Indictment to be changed or amended at the whim of the State, thereby allowing the
16 charging document to become the Information or Indictment of the State, not of the Justice
17 Court or the Grand Jury.

18 The United States Supreme Court has reversed criminal convictions where a
19 charging document alleges facts or theories beyond that which the probable cause hearing
20 found supported by the preliminary evidence. Russell v. United States, 369 U.S. 749, 82
21 S.Ct. 1038, 8 L.Ed.2d 240 (1962) (charging documents exceeded finding of grand jury).
22 The policy endorsed in Russell is "effectuated by preventing the prosecution from
23 modifying the theory and evidence upon which the indictment is based." United States v.
24 Silverman, 430 F.2d 106, 110 (2nd Cir. 1970).

25 In summary, the Notice of Intent to Seek Death Penalty is not authorized by
26 Nevada statutory law, and is merely the creation of the Nevada Supreme Court and custom.
27 The effect of the filing of the document is to amend the Information or Indictment without
28 the necessary showing of probable cause. Therefore, the procedure in this case, and the

1 laws, rules, and customs that sanction this procedure are unconstitutional because they
2 violate the Nevada and United States Constitutions.

3
4 **THE PROCEDURE IN THIS CASE IS UNCONSTITUTIONAL BECAUSE**
5 **THE NOTICE OF INTENT MUST WITHSTAND A PROBABLE CAUSE**
6 **DETERMINATION AND THE REMEDIES AVAILABLE TO CHALLENGE**
7 **THAT DETERMINATION**

8 The Fifth and Fourteenth Amendments to the United States Constitution and
9 Article 1, Section 8, of the Nevada Constitution guarantee a criminal defendant the right to
10 due process in the criminal proceedings against that defendant.

11 To satisfy the Due Process requirements of the Fourteenth Amendment, a
12 procedure must "comport with the deepest notions of what is fair and right and just."
13 Solesbee v. Balkcom, 339 U.S. 9, 16, 70 S.Ct. 457, 460, 94 L.Ed. 604 (1950). Due
14 Process considers whether treatment of an individual or group is fundamentally fair,
15 without comparing such treatment to the treatment of others. Riley v. Nevada Sup. Ct.,
16 763 F. Supp. 446 (D. Nev. 1991).

17 The United States Supreme Court has repeatedly "stressed that because the
18 death penalty is qualitatively different from any other criminal punishment, 'there is a
19 corresponding difference in the need for reliability in the determination that death is the
20 appropriate punishment in a specific case.'" Williams v. Lynaugh, 484 U.S. 935, 108 S.
21 Ct. 311, 313, 98 L.Ed.2d 270 (1987)(quoting Woodson v. North Carolina, 428 U.S. 280,
22 305, 96 S.Ct. 2978, 2991, 49 L.Ed.2d 944 (1976).

23 In the present case, the Defense contends that the allegation of aggravating
24 factors constitutes an essential part of the allegation, a part of the allegation that must
25 ultimately be proved beyond a reasonable doubt to a jury. Therefore, it is only fair and
26 right and just that such allegations be subject to the same procedural protections as are
27 necessary with an allegation of the elements of the crime or any other matter which must
28 ultimately be proved beyond a reasonable doubt to a jury.

...

1 Requiring the State to present some preliminary evidence, at a preliminary
2 hearing or to a grand jury, supporting the aggravating factors would allow the Defense to
3 receive transcripts of the relevant testimony and challenge the sufficiency of that evidence
4 by way of a petition for a writ of habeas corpus. The current procedure does not allow use
5 of the writ to challenge the sufficiency of evidence of aggravating factors. This is an
6 important remedy, and it is not available to the defense because the current process is
7 flawed.

8 Because the current procedure allows the District Attorney to make an end-
9 run around a probable cause hearing concerning the aggravating factors, which are essential
10 elements of the State's allegations, the current procedure is unconstitutional and the State's
11 Notice of Intent should be dismissed.

12 **THE PROCEDURE IN THIS CASE IS UNCONSTITUTIONAL**
13 **BECAUSE DEFENDANTS IN CAPITAL CASES ARE DENIED**
14 **EQUAL PROTECTION OF THE LAW**

15 The Fourteenth Amendment to the United States Constitution guarantees all
16 criminal defendants equal protection of the law. The custom in Nevada courts, and Rule
17 250 of the Nevada Supreme Court Rules deny individuals charged with capital crimes equal
18 protection of the laws by allowing the State to prosecute the Aggravating Factors alleged in
19 the Notice of Intent without a probable cause determination, though all other persons
20 charged with acts or crimes which must be proven beyond a reasonable doubt are entitled to
21 such a determination. This discrimination occurs without any rational basis, and is
22 therefore unconstitutional.

23 While the Equal Protection Clause permits the States some discretion in
24 enacting laws which affect some groups of citizens differently than others, a statute or
25 practice is unconstitutional if the "classification rests on grounds wholly irrelevant to the
26 achievement of the State's objective." McGowan v. Maryland, 366 U.S. 420, 425-26, 81
27 S. Ct. 1101, 1104-05, 6 L.Ed.2d 393 (1961). The burden on the State is to show some
28 . . .

1 rational reason why people facing a death penalty should be treated differently than other
2 criminal defendants.

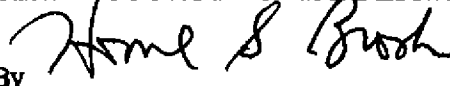
3 As argued above in this Motion, the allegation of aggravating factors is an
4 essential allegation just as the "use of a deadly weapon" allegation is an essential allegation.
5 Rule 250 allows the State unfettered discretion to file the "death penalty notice" without
6 any showing of probable cause, a privilege the State does not enjoy in prosecuting essential
7 elements of other crimes or penalty enhancements (such as "Use of a Deadly Weapon" or
8 "Victim Over 65 Years of Age"). The purpose of Rule 250 is to ensure that death penalty
9 appeals are handled efficiently. The Defense contends that the need for efficiency does not
10 rationally explain the necessity of denying Mr. Chappell and other defendants the right to
11 confront charges at trial only after a showing of probable cause. The evidence supporting
12 the aggravators could easily be introduced at the same grand jury proceeding or preliminary
13 hearing where the evidence supporting the underlying crime is presented. Any challenge
14 to the sufficiency of that evidence could then occur through the petition for a writ of habeas
15 corpus. This procedure will allow aggravating factors not supported by real evidence to be
16 dismissed, thereby making the system more efficient, not less so.

17 Because Rule 250 treats defendants charged with a capital crime differently
18 than other defendants, without any rational basis for doing so, Rule 250 is unconstitutional
19 when it allows defendants to face aggravating factor allegations without any pretrial proof
20 of such factors by the State. The State's Notice of Intent should therefore be dismissed.

21 DATED this 23 day of July, 1996.

22 Respectfully submitted,

23 CLARK COUNTY PUBLIC DEFENDER

24 

25 By _____
26 Howard S. Brooks
27 Deputy Public Defender
28 Nevada Bar #3374

DECLARATION OF HOWARD S. BROOKS

I am an attorney licensed to practice law in the State of Nevada; I am the deputy public defender assigned to represent James Montell Chappell in this case; and I am familiar with the procedural history of this case as well as the allegations made by the State of Nevada.

I have practiced law in this State for eight years, and have served in the Clark County Office of the Public Defender for six years, during which time I have represented approximately 1300 individuals accused of felony crimes. During these six years, I have also become familiar with the procedures followed by the Justice Courts and District Courts in capital cases.

It is the accepted procedure or custom in this jurisdiction for the State of Nevada to not allege aggravating factors in the Criminal Complaint filed in Justice Court nor in the Information filed in District Court. It is also the accepted procedure for the State of Nevada to not submit allegations of aggravating factors to any pretrial probable cause test such as could be found in a preliminary hearing or grand jury hearing.

Furthermore, the accepted procedure is for the State of Nevada to follow Rule 250 of the Nevada Supreme Court Rules and file a Notice of Intent to Seek Death Penalty wherein the Defense is informed of alleged Aggravating Factors.

The Defense considers the current procedure, though authorized by Supreme Court Rule, to be unconstitutional.

I declare under penalty of perjury that the foregoing is true and correct.
(NRS 53.045).

EXECUTED this 23 day of July, 1996.


Howard S. Brooks

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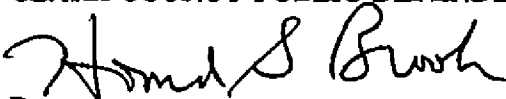
NOTICE OF MOTION

TO: CLARK COUNTY DISTRICT ATTORNEY

YOU WILL PLEASE TAKE NOTICE that the Clark County Public Defender has set the foregoing DEFENDANT'S MOTION TO STRIKE STATE'S NOTICE OF INTENT TO SEEK DEATH PENALTY BECAUSE THE PROCEDURE IN THIS CASE IS UNCONSTITUTIONAL for hearing on Wednesday, September 11, 1996, at 9 a.m., in Department VII of District Court.

DATED this 23 day of July, 1996

CLARK COUNTY PUBLIC DEFENDER



By _____
Howard S. Brooks
Deputy Public Defender
Nevada Bar #3374

Receipt of copy of the foregoing DEFENDANT'S MOTION TO STRIKE STATE'S NOTICE OF INTENT TO SEEK DEATH PENALTY BECAUSE THE PROCEDURE IN THIS CASE IS UNCONSTITUTIONAL is acknowledged this 23 day of July, 1996.

CLARK COUNTY DISTRICT ATTORNEY

By Tanel Schneider

Chappell.51

ORIGINAL

FILED

0020
MORGAN D. HARRIS
PUBLIC DEFENDER
NEVADA BAR #1879
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
(702)455-4685
Attorney for the Defendant
Public Defender File No. F-95-5254

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CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)	
)	
Plaintiff,)	CASE NO. C131341x
)	
v.)	DEPT. NO. VII
)	
JAMES MONTELL CHAPPELL,)	Date of Hearing: 9-11-96
)	Time of Hearing: 9:00 A.M.
Defendant.)	

DEFENDANT'S MOTION TO STRIKE ALLEGATIONS OF
CERTAIN AGGRAVATING CIRCUMSTANCES ALLEGED IN
STATE'S NOTICE OF INTENT TO SEEK DEATH PENALTY

Defendant James Montell Chappell, by and through his attorney, Deputy Public Defender Howard S. Brooks, does hereby move this Honorable Court to strike certain allegations in the State's Notice of Intent to Seek Death Penalty filed November 8, 1995.

This motion is made and based on the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, Article One, Section Eight, of the Nevada Constitution, the statutory and common law of the State of Nevada, the attached Memorandum of Points and Authorities, all papers and ...



CE11

CE37

1 pleadings on file herein and upon argument of counsel, if deemed
2 necessary by the Court, at the hearing of this motion.

3 DATED this 30 day of July, 1996.

4 CLARK COUNTY PUBLIC DEFENDER

5
6 By Howard S. Brooks

7 HOWARD S. BROOKS #3374
8 DEPUTY PUBLIC DEFENDER
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MEMORANDUM OF POINTS AND AUTHORITIES

PROCEDURAL HISTORY

The State of Nevada filed a Criminal Complaint on September 8, 1995, alleging that Defendant James Montell Chappell committed the crime of Burglary While in Possession of a Deadly Weapon, Robbery With Use of a Deadly Weapon, and Murder With Use of a Deadly Weapon.

A preliminary hearing was held on October 3, 1995, before the Honorable Tom Leen, in Justice Court, Department 3, Las Vegas Township, and the Court held Mr. Chappell to answer to the following charges: Burglary in Count I; Robbery With Use of a Deadly Weapon in Count II; and Murder With Use of a Deadly Weapon in Count III. The Court dismissed the deadly weapon allegation in Count I.

The State filed an Information dated October 11, 1995, and Mr. Chappell appeared in District Court, Department VII, on October 18, 1995, and pled not guilty to all charges.

On November 8, 1995, the State filed a Notice of Intent to Seek Death Penalty. This Notice of Intent alleged the following aggravating circumstances pursuant to NRS 175.552 and NRS 200.033:

1. The murder was committed while the person was engaged in the commission of or an attempt to commit a robbery.
2. The murder was committed while the person was engaged in the commission of or an attempt to commit any burglary and/or home invasion.
3. The murder was committed while the person was engaged in the commission of or an attempt to commit any sexual assault.
4. The murder involved torture or depravity of mind.

1 SUMMARY OF EVIDENCE PRESENTED BY THE STATE
2 AT THE PRELIMINARY HEARING

3 At a preliminary hearing on October 3, 1995, before the
4 Honorable Tom Leen, in Justice Court 3, Las Vegas Township, the
5 State presented the testimony of seven individuals.

6 The first to testify was Sheldon Green, the Chief
7 Medical Examiner for Clark County. He testified Debra Panos died
8 as a result of multiple stab wounds in the neck and chest; he
9 testified her death was a homicide, a death caused by someone
10 else.

11 William Duffy, a Probation Officer with the State of
12 Nevada, testified that James Chappell was released from jail on
13 August 31, 1995, and was on probation for the gross misdemeanor of
14 Possession of Burglary Tools.

15 Lisa Duran testified that she was a friend of Debra Ann
16 Panos, and knew that Mr. Chappell was her boyfriend for ten years
17 and was the father of her three children. Duran testified she
18 visited Panos' trailer the afternoon of August 31, and saw James
19 Chappell leaving the trailer court with Panos' car, a Toyota
20 Corolla. She testified that she later contacted the police, and
21 was present when the police entered the trailer and found Ms.
22 Panos dead on the floor in her trailer.

23 Las Vegas Metropolitan Police Officer Russell Lee
24 testified he visited the trailer where Debra Panos lived at the
25 request of Lisa Duran. He discovered the dead body inside the
26 trailer.

27 Kimberly Sempson, an employee of Lucky Supermarket,
28 testified she was present on September 1, 1995, when James
 Chappell was arrested for shoplifting at Lucky's. She testified

1 that she watched Mr. Chappell while he was being detained, and saw
2 him try to hide some identification cards that later appeared to
3 belong to a Debra Panos.

4 Las Vegas Metropolitan Police Officer Osuch testified he
5 was present when Mr. Chappell was arrested at Lucky's, and he saw
6 Mr. Chappell with the identification cards belonging to Debra
7 Panos.

8 Las Vegas Metropolitan Police Detective James Vacarro
9 testified that he took the keys to the Toyota from James Chappell
10 and found the vehicle a few blocks away.

11 PREFACE TO ARGUMENT

12 It is the position of the Defense, as argued in a
13 companion motion in this case, that the procedure whereby the
14 State may file in District Court a Notice of Intent to Seek Death
15 Penalty and allege aggravating circumstances without any probable
16 cause showing represents a violation of the Defendant's due
17 process and equal protection rights.

18 This motion represents an alternative to that argument.
19 Should the procedure in this case not be found unconstitutional,
20 then it is the position of the Defense that the State had an
21 obligation to present evidence at the preliminary hearing
22 supporting the existence of aggravating factors. And it is also
23 our position that if the State did not present evidence at a
24 preliminary hearing supporting the existence of aggravating
25 factors, then the Court has the discretion and the obligation to
26 dismiss those aggravating factors not supported by legal evidence
27 at the preliminary hearing.

28 ...

1 THIS COURT HAS THE INHERENT AUTHORITY
2 TO STRIKE ALLEGED AGGRAVATING CIRCUMSTANCES
3 NOT SUPPORTED BY THE EVIDENCE

4 The Nevada Supreme Court has not the addressed the issue
5 of whether a trial court has the authority to strike an
6 aggravating factor alleged by the State in a Notice of Intent to
7 Seek the Death Penalty.

8 Nevada's high court has, however, stated that the
9 judiciary has the inherent power to administer its affairs and
10 those affairs include any incidental power that is reasonable and
11 necessary to carry out judicial duties. Goldberg v. Eighth
12 Judicial District, 93 Nev. 614, 572 P.2d 521 (1977). In State v.
13 Watson, 310 N.C. 384, 312 S.E.2d 448 (1984), the reviewing court
14 commended the trial court for holding a pretrial hearing to
15 determine the adequacy of evidence to support an aggravating
16 factor in a death penalty case. The appellate court pointed to
17 the judicial economy and administrative efficiency of such a move.

18 The New Jersey Supreme Court also endorsed a pretrial
19 review of aggravating circumstances:

20 ...

21 The notice of aggravating factors is the
22 turn-key to a capital prosecution. Implicit
23 in both is the notion that the allegations
24 derived from some verifiable source. The
25 need to assure such a source exists compels
26 some preliminary review to satisfy the
27 interest of the public and the defendant that
28 such charges not proceed to trial without a
factual mooring. Important to note ... is
the fact this limited review is engaged at
the initial stages of the proceedings ...

26 State v. McCrary, 97 N.J. 132, 478 A.2d 339, 344-45 (1984).

27 It is the contention of the Defense that this pretrial
28 review should ideally be conducted by the magistrate in justice

1 court; but in the absence of that review, the Defense asks this
2 Honorable Court to consider the sufficiency of the evidence to
3 support the allegation of the aggravators alleged by the State in
4 the Notice of Intent. The Defense contends this Court has the
5 inherent power to conduct such a review in the name of judicial
6 and administrative efficiency.

7 THE STATE PRESENTED NO EVIDENCE AT THE
8 PRELIMINARY HEARING TO SUPPORT AN ALLEGATION
9 THAT THE MURDER WAS COMMITTED WHILE THE
DEFENDANT WAS ENGAGED IN THE COMMISSION
OF A SEXUAL ASSAULT

10 The State's Notice of Intent filed November 8, 1995,
11 alleges that "the murder was committed while the person was
12 engaged in the commission of or an attempt to commit a sexual
13 assault. This alleged aggravating circumstance is derived from
14 NRS 200.033.

15 The crime of sexual assault is not alleged by the State
16 in the Criminal Complaint or the Information filed in this case.

17 The State presented the testimony of seven witnesses at
18 the preliminary hearing on October 3, 1995. None of these
19 witnesses provided any testimony concerning an alleged sexual
20 assault.

21 Consequently, the absence of any legal evidence
22 introduced on the record to support an allegation that James
23 Chappell sexually assaulted the mother of his three children, the
24 allegation is completely without foundation, and it represents a
25 violation of James Chappell's due process rights that he be
26 brought before a jury and must face these allegations when the
27 State has made no showing whatsoever that the allegation has a
28 basis in fact.

1 THE STATE INTRODUCED NO EVIDENCE AT THE
2 PRELIMINARY HEARING SUPPORTING AN ALLEGATION
3 THAT THE MURDER INVOLVED TORTURE OR
4 DEPRAVITY OF MIND

5 The Notice of Intent also alleges that the murder
6 involved torture or depravity of mind. This is an aggravating
7 circumstance pursuant to NRS 200.033.

8 Among the seven witnesses who testified at the
9 preliminary hearing on October 3, 1995, only Sheldon Green, the
10 Chief Medical Examiner for Clark County, testified about how Debra
11 Panos died. The State presented no eye-witness testimony
12 regarding the actual events that occurred when Debra Panos died.
13 Their only evidence is evidence from the crime scene with regards
14 to what injuries were sustained by Debra Panos.

15 Dr. Green testified he conducted an autopsy on the body
16 of Debra Panos, and found "thirteen separate penetrating stab
17 wounds" and "multiple recent-appearing bruises or contusions."

18 Dr. Green testified that the bruises on the body were
19 consistent with a fist hitting the decedent.

20 The actual language in NRS 200.033(8) regarding this
21 aggravating circumstance is as follows:

22 The murder involved torture, depravity of
23 mind or the mutilation of the victim.

24 "Torture" and "depravity of mind" are two entirely
25 separate allegations. Torture has been defined as the pitiless
26 infliction of unnecessary pain on the victim. It can also be
27 defined as serious physical, sexual, or psychological abuse of the
28 victim before death. See, e.g., Whittington v. State, 252 Ga.
168, 313 S.E.2d 73 (1984). The concept of "cruelty" focuses on
the suffering experienced by the victim.

1 Depravity, however, focuses on the murder's state of
2 mind. See, e.g., State v. Ortiz, 131 Ariz. 195, _____, 639 P.2d
3 1020, 1031 (1981). It may be also noted that while the Nevada
4 Supreme Court acknowledges that torture, depravity of mind, or
5 mutilation are three separate allegations, the existence of one or
6 more of these factors can constitute the basis for only one
7 aggravating circumstance. Jimenez v. State, 106 Nev. 769, 801
8 P.2d 1366 (1990).

9 In this case, the circumstances alleged by the State do
10 not rise to a level necessary to establish "torture or depravity
11 of mind."

12 The Nevada Supreme Court has held that the aggravating
13 circumstance specified in NRS 200.033(8) requires torture,
14 mutilation or other serious and depraved physical abuse beyond the
15 act of killing itself, as a qualifying requirement to an
16 aggravating circumstance based in part upon depravity of mind.
17 Robins v. State, 106 Nev. 611, 798 P.2d 558, 570 (1990). The
18 court also held that if an aggravating circumstance is "based upon
19 depravity of mind, it must include torture, mutilation or some
20 other serious and depraved physical abuse beyond the act of
21 killing itself." Jimenez v. State, 106 Nev. 769, 801 P.2d 1366
22 (1990), citing Robins v. State, 106 Nev. 611, 798 P.2d 558, 570
23 (1990).

24 In Beets v. State, 107 Nev. 957, 821 P.2d 1044 (1991),
25 the defendant committed a crime which was far more heinous than
26 the crime committed in the present case, but it did not rise to
27 the level of torture, mutilation or depravity of mind necessary to
28 justify a finding of the aggravating circumstance in NRS

1 200.033(8). In Beets, the defendant entered the home of an ex-
2 girlfriend in the early morning hours, beat the ex-girlfriend with
3 a hammer, tied her up in the bathroom, sexually assaulted her,
4 found the ex-girlfriend's mother and beat the mother to death with
5 a hammer, then sexually assaulted the ex-girlfriend's daughter.
6 Despite the extreme violence and heinous of this series of crimes,
7 the Nevada Supreme Court ruled that:

8 Since no factual predicate for a finding of
9 torture, mutilation or depraved physical
10 abuse existed beyond the killing of the
11 victim by a blow with a hammer, we are forced
12 to conclude the aggravating circumstance
13 based upon depravity of mind must fail.

14 It may be noted that the "depravity of mind" allegation
15 concentrates again on the state of mind of the defendant. In
16 Beets, the defendant beat two people with a hammer, and one of
17 those people died. He sexually assaulted two people, and one of
18 these sexual assaults was committed with a hammer. He also tied
19 up his ex-girlfriend and left her bound and gagged while he killed
20 the ex-girlfriend's mother and sexually assaulted the ex-
21 girlfriend's daughter but the Nevada Supreme Court did not find
22 that this exhibited depravity of mind, and this series of acts was
23 far worse than anything that occurred in the instant case.

24 In Cavanagh v. State, 102 Nev. 478, 729 P.2d 481 (1986),
25 the defendant shot an acquaintance in the face, cut out his vocal
26 cords before he died, shot the man two more times in the head,
27 then cut the victim's hands and feet off with an electric saw, and
28 attempted to remove the head as well. He also used acid in an
29 attempt to remove the prints from the victim's fingers, then
30 disposed of the remains in several different locations. The
31 Nevada Supreme Court ruled that the mutilation of the body prior

1 to death and the dismemberment of the body after death both
2 supported the depravity of mind aggravator. Nothing in the
3 present case rises to the level of depravity exhibited in
4 Cavanagh.

5 The aggravating circumstance of depravity of mind was
6 found not to exist in Moran v. State, 103 Nev. 138, 734 P.2d 712
7 (1987). In that case, the defendant shot two people in a bar, and
8 shot them several times each with his pistol. He was convicted
9 and sentenced to death after the jury found the aggravating
10 circumstance of "depravity of mind." The Nevada Supreme Court
11 rejected that aggravator, stating:

12 There is no indication of torture or sadistic
13 acts performed by Moran. [One victim]
14 appears to have died instantly with no
disturbance occurring to her body other than
the gun shot wounds.

15 In the present case, taking the known evidence in the
16 light most favorable to the State, it would appear that Mr.
17 Chappell entered the trailer where the mother of his three
18 children lived, beat the woman, and stabbed her thirteen times.
19 There is no indication the woman was bound and gagged. There is
20 no allegation or evidence that the defendant mutilated her body.
21 There is no evidence or allegation that the defendant did anything
22 other than hit the woman and kill her. There is also no showing
23 by the State that the defendant did anything to force the victim
24 to suffer for a long period of time. Therefore, if there was
25 suffering, and there surely was, by the victim, then the suffering
26 did not last a long extended period of time. Therefore, focusing
27 on the experience of the victim, the victim did not suffer the
28 type of injury over a period of time that would have been

1 necessary to establish the "torture" aggravator. Furthermore,
2 there is no evidence of sadistic or mutilating acts by the
3 defendant such as would show "depravity of mind." Therefore,
4 because the facts introduced by the State at the preliminary
5 hearing do not support an allegation that torture or depravity of
6 mind existed, and because it would be unfair to Mr. Chappell to go
7 before a jury with that allegation lodged against him with no
8 preliminary showing by the State of that allegation, this
9 aggravator should be dismissed.

10
11 DATED this 30 day of July, 1996.

12 CLARK COUNTY PUBLIC DEFENDER

13 *Howard S. Brooks*
14 By _____
15 HOWARD S. BROOKS #3374
16 DEPUTY PUBLIC DEFENDER
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NOTICE OF MOTION

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the foregoing Defendant's Motion to Strike Allegations of Certain Aggravating Circumstances Alleged in State's Notice of Intent to Seek Death Penalty will be heard on September 11, 1996, at 9:00 A.M. in Department No. VII of the District Court.

DATED this 30 of July, 1996.

CLARK COUNTY PUBLIC DEFENDER

By Howard S. Brooks
HOWARD S. BROOKS #3374
DEPUTY PUBLIC DEFENDER

RECEIPT OF COPY of the above and foregoing Motion to Strike Allegations of Certain Aggravating Circumstances Alleged in State's Notice of Intent to Seek Death Penalty is hereby acknowledged this 30th day of July, 1996.

CLARK COUNTY DISTRICT ATTORNEY

By W.D. Lusk

(Mot/Chappell, Alter/san)

1 that you wouldn't be exposed to what was inside that you saw
2 Debbie's feet and you knew they were her feet. Was there
3 something distinct about them that you knew they were
4 Debbie's feet?

5 A. We spent so much time together. I mean, you
6 get to know somebody.

7 MR. BASSETT: I have no further questions,
8 your Honor.

9 THE COURT: Mr. Harmon?

10 MR. HARMON: I have a few questions on
11 redirect, your Honor. Thank you.

12

13 **REDIRECT EXAMINATION**

14 **BY MR. HARMON:**

15 Q. Miss Duran, as of August the 31st, 1995, do
16 you know what the relationship was between Debbie Panos and
17 the defendant?

18 A. As far as I knew, the relationship was over.

19 Q. What do you mean the relationship was over?

20 A. She had expressed to me that she wanted him to
21 go back home as soon as he was released. She no longer
22 wanted him in her life. And she also tried to make an
23 attempt to send him back home.

24 Q. Did you know where back home was?

25 A. In Mississippi.

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1 Q. Did Debbie Panos have any other vehicle
2 besides the 1983 Toyota that you have referred to and, in
3 fact, that you identified as being depicted in Proposed
4 Exhibits 28 through 31?

5 A. No, sir, no other vehicles.

6 Q. Did you consider it unusual that the defendant
7 would be driving Debbie's car on August the 31st, 1995?

8 A. No, only because in the past he would just --
9 he would take the car without permission. He would just
10 take the keys and leave and be gone for days at a time.

11 Q. So you knew that he had used the car on prior
12 occasions?

13 A. Yes, sir, many times.

14 Q. On that date specifically, knowing what you
15 knew about Debbie's intentions concerning the relationship,
16 in your opinion, would she have given permission to the
17 defendant to drive her car?

18 A. No, sir.

19 Q. Are you familiar with Debbie's handwriting?

20 A. Yes, sir.

21 Q. Did she have social security cards?

22 A. Yes, sir.

23 Q. For herself and for the three children?

24 A. Yes, sir.

25 Q. I'm showing you Proposed Exhibit 33. It

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1 appears to be a copy. It's a two-page document of the front
2 and back of four social security cards. Do you recognize
3 whose cards they are?

4 A. Yes, sir, I do.

5 Q. How can you make that identification?

6 A. I know Debbie's handwriting. I've seen all
7 four of these cards before in her possession?

8 Q. Where did Debbie Panos keep the social
9 security cards?

10 A. Debbie had a black folder, like a day minder,
11 that she kept with her all the time where she kept these
12 cards and other important papers.

13 Q. Is there any doubt in your mind that the
14 documents of which are portrayed in Proposed Exhibit 33 are
15 the social security cards of Deborah Panos and her three
16 children?

17 A. They are hers. I recognize her handwriting.

18 Q. Would she have given permission to the
19 defendant, Mr. Chappell, to have had these social security
20 cards?

21 A. No, sir.

22 MR. HARMON: That's all on Redirect.

23 THE COURT: Recross-examination?

24 MR. BASSETT: Just briefly.

25 / / /

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RECROSS-EXAMINATION

BY MR. BASSETT:

Q. In terms of those cards and the car --

A. Yes, sir.

Q. -- your answers are based on your opinion; is that correct? I mean, you don't have any way of knowing for sure; it's just based on your opinion, based on your experience with Debbie?

A. Based on my experience and recognizing her handwriting. I know that those social security cards are hers.

Q. No, but I mean in terms of her ever giving permission to him to use the car that day, those are based on your opinion, knowing this?

A. And from what she had told me, yes.

MR. BASSETT: I have nothing further.

THE COURT: I've got a question. You were asked some time ago by Mr. Harmon about the time when you were going first to the trailer on August 31st at between one 1:30 or 1:45 in the afternoon and saw the '83 four-door, dark silver Toyota coming toward you.

THE WITNESS: Yes, sir.

THE COURT: You were asked questions about that. You were asked who was driving the car, and your testimony was that it was the defendant; is that correct?

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1 THE WITNESS: Yes, sir.

2 THE COURT: Is that because you saw him at
3 that time?

4 THE WITNESS: The first time when I had gone
5 to the trailer and I had seen the car and I had seen the man
6 in it, at that time I didn't think it was James because I
7 was not aware that he had been let out, that he was
8 released.

9 THE COURT: That's what I was getting at,
10 because you said in response to some questions later on that
11 it was when you went to the day care center --

12 THE WITNESS: It was when I went to Mike
13 Pollard's house and Mike had told me that James was let out.

14 THE COURT: Okay. Mike's house.

15 THE WITNESS: Then it came back in my mind,
16 your Honor, and it kind of flashed back to me, and that's
17 when I got scared and went back to the trailer.

18 THE COURT: What is the basis for your saying
19 that you saw the defendant driving the Toyota as it was
20 leaving the trailer park?

21 THE WITNESS: Because the three times that I
22 had seen him before this incident, and it flashed back in my
23 mind, him driving the car past me. When it came back to me,
24 that's when I realized it.

25 THE COURT: Okay. Any other questions by

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1 counsel?

2 MR. HARMON: I have just one question.

3

4

FURTHER REDIRECT

5 **BY MR. HARMON:**

6 Q. You're saying that you reflected upon what you
7 had seen after you spoke with Mike Pollard?

8 A. Yes, sir.

9 Q. After you had done that reflection, was there
10 any doubt in your mind about who you had actually seen
11 driving Debbie Panos' car?

12 A. No, sir, because several hours after we had
13 found her, Detective Ramos showed me a picture of James.

14 Q. Did you recognize the person in that picture?

15 A. Yes, sir, I did.

16 Q. Was that the same person who was driving the
17 car?

18 A. Yes, it was.

19 MR. HARMON: That's all, your Honor.

20

21

FURTHER RECROSS-EXAMINATION

22 **BY MR. BASSETT:**

23 Q. Just so I understand, I know part of your
24 answer to the Judge, it's after you go and talk to Mike and
25 became aware that James was out of custody that you become

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1 concerned that then you reflected back and made the
2 connection of --

3 A. Yes, I was in shock because no one had any
4 idea that he was being let out. We were all under the
5 assumption that a bed was being waited on so that he could
6 go through rehabilitation.

7 Q. Okay.

8 A. So I was in shock.

9 Q. In terms of this shock, that's after you have
10 a chance to talk to my Mike and Mike informs you that James
11 is not in custody?

12 A. Yes.

13 THE COURT: We appreciate your cooperation and
14 testimony.

15 Is she excused for the rest of the
16 preliminary hearing?

17 MR. HARMON: Yes, she is, your Honor.

18 MR. BASSETT: Yes, your Honor.

19 THE COURT: You are excused. Please don't
20 discuss your testimony with anybody other than the attorneys
21 to this case. Okay?

22 THE WITNESS: Thank you.

23 THE COURT: Mr. Harmon, I'm going to take a 45
24 minute or less lunch break today. Would you like to call
25 another witness now and do it in the front end or do you

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1 want to recess now and go in the back end?

2 MR. HARMON: If the Court is willing to do it,
3 I'd like to call one more witness on the front end. That
4 would be Officer Russell Lee. He should be quite short.

5 THE COURT: Lest's do that.

6

7 RUSSELL LEE,
8 having been first duly sworn, was
9 examined and testified as follows:

10

11 THE CLERK: Please be seated. State your full
12 name and spell your last name please.

13 THE WITNESS: Russell Lee, L-E-E.

14 THE CLERK: Thank you.

15

16 DIRECT EXAMINATION

17 BY MR. HARMON:

18 Q. Is it Officer Russell Lee?

19 A. Yes.

20 Q. Officer Lee, where are you employed?

21 A. Las Vegas Metropolitan Police Department.

22 Q. How long have you worked with the Las Vegas
23 Metropolitan Police Department?

24 A. A little over eight and a half years.

25 Q. Were you employed with that department on

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1 Thursday, August the 31st, 1995?

2 A. Yes, sir, I was.

3 Q. Did you have occasion during the afternoon
4 hours of that date to go to the Ballerina Sunrise Mobile
5 Home Park, specifically to 839 North Lamb, Space 125?

6 A. Yes, I did.

7 Q. Is that located in Las Vegas, Clark County,
8 State of Nevada?

9 A. Yes, it is.

10 Q. What prompted you to go to Space 125 at the
11 Ballerina Mobile Home Park on that day?

12 A. I was listening to my radio in my patrol car
13 and I heard Officer Heiner say he was being stopped by a
14 person. I advised dispatch that he had been stopped by a
15 person who wanted him to go check out a trailer, that
16 someone thought something might be wrong there, somebody was
17 supposed to be there and wasn't there.

18 Q. Is Officer Heiner also employed by the police
19 department?

20 A. Yes.

21 Q. Will you spell Heiner for the record.

22 A. H-E-I-N-E-R.

23 Q. As a result of the broadcast information you
24 overheard, did you go to the location?

25 A. Yeah, I advised the dispatcher I'd go with him

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1 as a backup unit.

2 Q. What happened when you got there?

3 A. I followed him into the mobile home park. We
4 got down to Space 125. We followed a pickup truck into the
5 area. We got to Space 125. A female got out of the pickup
6 truck and spoke with Officer Heiner. I don't know what she
7 said to him.

8 Q. Have you since learned the name of the female?

9 A. I have, but I don't remember what it is.

10 Q. Was she the witness who just testified before
11 you in this hearing?

12 A. Yes, she was.

13 Q. Was there a time when you gained entrance into
14 839 North Lamb Boulevard, Space 125?

15 A. Yes, sir.

16 Q. How did you accomplish that?

17 A. On the front of the trailer that faces the
18 street, there are two windows, one on the left side and one
19 on the right side. The one on the right side was open maybe
20 a quarter of an inch. I took my patrol car and parked under
21 the window. I started lifting the window up. As I was
22 raising it up, it fell out of the track, and I set it
23 outside on the ground. Then Officer Heiner boosted me in
24 through the window.

25 Q. Did you, from that point, go into the room?

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1 A. I went into it.

2 Q. What room did you enter into?

3 A. It appeared to be a bedroom. There was a bed
4 there and a bathroom.

5 Q. Did you see any screen inside the bedroom?

6 A. There was a screen underneath the night stand.
7 I tried to move it out of the way. I thought it was sitting
8 on the ground. I tried to move it out of the way. I
9 couldn't because I was on the night stand also. The screen
10 was underneath the night stand that was next to the bed.

11 Q. Did you see any evidence of ransacking inside
12 the bedroom?

13 A. The bedroom was disheveled. There was clothes
14 everywhere. It was just, like, a mess.

15 Q. What happened then, sir?

16 A. I looked into the bathroom which is to the
17 left of me. I went in looking for who might be injured.
18 That's the call that I understood, that there might be a
19 person injured inside the mobile home.

20 I remember looking inside the bathroom.
21 No one was there. I opened up the door to the bedroom and
22 walked into what appeared to be a living room and looked
23 over towards the front door and saw a white female laying on
24 her back. I walked over towards her. I saw a lot of blood
25 by her head area, and her eyes were slightly open. She

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1 appeared to be off color, whitish, whiter than normal.

2 Q. Did you form an opinion that she, in all
3 probability, was deceased?

4 A. She appeared to be to me.

5 Q. As a result of that discovery, what did you
6 do?

7 A. I opened the front door which was near her
8 legs. I unlocked the door, stepped out front, advised
9 officer Heiner and Sergeant Yada what I had seen right by
10 the door and closed the door after I walked out.

11 Q. Did you allow anybody else inside?

12 A. No.

13 MR. HARMON: May I approach this witness, your
14 Honor.

15 THE COURT: Yes.

16 BY MR. HARMON:

17 Q. Officer Lee, I'm showing you Proposed Exhibits
18 1 through 6. Are you able to recognize what is shown in the
19 photographs? If you'll just hurry through all six of the
20 pictures, sir.

21 (The witness complied.)

22 A. Yes, this is the bedroom where I entered.

23 Q. Did you actually see the bedroom window that
24 you entered?

25 A. Yes, I did.

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1 Q. Is that shown in Proposed Exhibit 1 and 2?

2 A. Yes.

3 Q. Would you display the window to the Court,
4 please.

5 A. It's this window here is the one that I went
6 into. The screen is inside the window there.

7 Q. Do each of those photographs in the series,
8 Proposed Exhibits 1 through 6, portray the window after you
9 had gone through it and the bedroom area into which you
10 entered substantially the same as you remember it looking
11 that afternoon, August the 31st, 1995?

12 A. Yes, it is.

13 Q. You mentioned you discovered a woman lying on
14 the floor in what appeared to be a living room area?

15 A. Yes.

16 Q. I'm showing you Proposed Exhibits 7 through
17 12. Will you look at those photographs and tell us if they
18 portray the female that you observed lying on the floor
19 inside the residence at 839 North Lamb Boulevard, Space 125?

20 A. Yes, they do.

21 Q. Do the photographs depict the condition of the
22 living room and the location and condition of the victim
23 substantially as you remember it from August the 31st, 1995?

24 A. It appears exactly as I remember it.

25 Q. Thank you. Finally, besides removing the

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1 window and setting that down outside the bedroom, did you
2 remove any other screens, or would you have changed the
3 condition of any of the other windows at that residence?

4 A. Before trying this window, I went to what was
5 a back door which is in the carport area. The window there
6 was open slightly. I raised that up also, but it only went
7 up a couple inches. I couldn't reach my hand in. I was
8 thinking I could unlock that door from the other side. I
9 didn't touch any other window.

10 Q. I'm showing you Proposed Exhibits 13 and 14.
11 Will you look at those pictures.

12 (The witness Complied.)

13 Q. Does it appear to be the same trailer, 839
14 North Lamb Boulevard, Space 125?

15 A. Yes, it does.

16 Q. Did you move or cause anyone else to move the
17 screen from that window and place it on the ground outside
18 of the trailer?

19 A. No.

20 MR. HARMON: Your Honor, at this time the
21 State moves for the admission of Proposed Exhibits 1 through
22 14.

23 MR. BASSETT: I have no objection, your Honor.

24 THE COURT: There being no objection, State's
25 1 through 14 inclusive are admitted.

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1 MR. HARMON: May we have the Court's
2 indulgence?

3 (There was a consultation between
4 Mr. Harmon and Ms. Logue.)

5 MR. HARMON: That concludes Direct, your
6 Honor.

7 THE COURT: Mr. Bassett?

8
9 CROSS-EXAMINATION

10 BY MR. BASSETT:

11 Q. Officer, just a few questions. When you first
12 got there, you say that you went into the carport area and
13 tried to lift something up that was near the back door and
14 you couldn't get it lifted up?

15 A. It's a window in the back door.

16 Q. And when you went around and went through the
17 window, as you tried to lift the window up is when it fell
18 out?

19 A. Yeah, I was lifting it up and it just kind of
20 fell in toward the trailer.

21 Q. Fell pretty easily in?

22 A. Yes.

23 Q. In terms of the screen, just so I'm clear on
24 that, too, you say this was under the night stand?

25 A. Yeah, partially tucked under the night stand.

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1 The night stand you can see in the picture. When I tried to
2 get in, I felt it was a little bit in my way. I was on the
3 night stand. I tried to pull on it, and it wouldn't move
4 because I was on it.

5 Q. Would it have to be placed in that position or
6 fell out?

7 A. If it fell out, it wouldn't have fell
8 underneath it.

9 Q. Just so I'm clear, too, when you went to the
10 front door and got it opened, had it been locked?

11 A. Yes. We tried that before.

12 Q. You tried, you mean you tried the doors and
13 the only place you could find to get in was the one window?

14 A. Yes, sir.

15 MR. BASSETT: I have nothing further, your
16 Honor.

17 THE COURT: Is Officer Lee going to be excused
18 by both sides?

19 MR. HARMON: Yes, your Honor.

20 MR. BASSETT: Yes, your Honor.

21 THE COURT: You may leave the courthouse, but
22 please don't discuss your testimony with anybody other than
23 the attorneys to this case.

24 Mr. Harmon, do you have any other brief
25 witnesses, or would you like to take a recess now?

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1 MR. HARMON: I think this would, perhaps, be
2 an appropriate time to take the recess. But with the
3 Court's permission, may we have the witnesses brought in,
4 and will the Court please admonish them?

5 THE COURT: I'll be happy to. While we're
6 waiting to do that, I can tell you it's a quarter past right
7 now. We are going to take a 45 minute recess. We've got
8 another case backing this up in custody as well.

9 The record will reflect that additional
10 witnesses have come into the courtroom.

11 Folks, it's now quarter past 1'.

12 MR. HARMON: May we identify them for the
13 record?

14 THE COURT: Would you do that Mr. Harmon?

15 MR. HARMON: Donna Jackson?

16 MS. JACKSON: Yes.

17 MR. HARMON: Kimberly Sempson?

18 MS. SEMPSON: Yes.

19 MR. HARMON: Paul Osuch?

20 MR. OSUCH: Yes.

21 MR. HARMON: Jimmy Vaccaro?

22 MR. VACCARO: Right.

23 MR. HARMON: And Mark Washington?

24 MR. WASHINGTON: That's correct.

25 THE COURT: Thank you.

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1 Folks, we are going to take a 45-minute
2 recess. It's now quarter past 1'. We're going to be in
3 recess until 1:00 at which time we'll resume this
4 preliminary hearing. I am going to order and direct all of
5 you to come back here at 1:00 this afternoon. That's in 45
6 minutes. In the meantime, please remember the rule that's
7 in effect, which is that you are not to discuss your
8 testimony or facts or information about this case amongst
9 yourselves or with each other. You're only to discuss such
10 things with the attorneys who are parties to this case.

11 We will be in recess in this case until
12 1:00.

13 MR. HARMON: Thank you, Judge.

14 (A lunch recess was taken.)

15 THE COURT: This is the continuation of case
16 95F8114, State versus James Montell Chappell. The defendant
17 is present in custody with counsel Mr. Bassett, Mr. Harmon
18 and Ms. Logue for the State and all officers of the Court.

19 Call your next witness, Mr. Harmon.

20 MR. HARMON: Kimberly Sempson.

21
22 KIMBERLY SEMPSON,
23 having been first duly sworn, was
24 examined and testified as follows:

25 / / /

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1 THE CLERK: Please be seated. State your full
2 name and spell your last name, please.

3 THE WITNESS: Kimberly Sempson, S-E-M-P-S-O-N.
4

5 DIRECT EXAMINATION

6 BY MR. HARMON:

7 Q. Is it Miss or Mrs. Sempson?

8 A. Miss.

9 Q. Miss Sempson, what is your business or
10 occupation?

11 A. I work in loss prevention for Lucky Stores.

12 Q. How long have you worked with Lucky Stores?

13 A. Five years.

14 Q. Could you elaborate a little bit more on what
15 exactly your duties are with Lucky Stores?

16 A. I go to different stores and work shop loss
17 detail and also any type of shoplift detail, any type of
18 loss through employees, you know, customers and so forth,
19 basic security for the store.

20 Q. Do you work out of the central office of the
21 Lucky Stores?

22 A. Yes.

23 Q. Where is that located.

24 A. Garden Park, California.

25 Q. I want to direct your attention to September

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1 the 1st, 1995, Friday. On that date, were you and a
2 co-worker involved in security present at the Lucky's
3 Supermarket in Las Vegas located at 4420 East Bonanza
4 Boulevard?

5 A. Yes.

6 Q. What was your purpose in being at that Lucky's
7 Store in Las Vegas on September 1st, 1995?

8 A. We were there basically working shoplift
9 detail.

10 Q. You've indicated "we," who were the other
11 persons or the other person you were involved with?

12 A. My partner, Larry Martinez.

13 Q. Would you spell Martinez.

14 A. M-A-R-T-I-N-E-Z.

15 Q. On September 1st, 1995, to your knowledge, did
16 your partner Mr. Martinez take someone into custody?

17 A. Yes.

18 Q. Explain when you became involved in that
19 situation?

20 A. I became involved -- I was in the back office,
21 and my partner Larry came into the back room with someone in
22 custody.

23 Q. At that time, did you learn what the detention
24 was for?

25 A. Yes.

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1 Q. What was it for?

2 A. They had taken something.

3 Q. Something from the store?

4 A. Right.

5 Q. You had a chance to see the person that Larry
6 Martinez was detaining that day, September the 1st, 1995?

7 A. Yes.

8 Q. About what time of the day was it?

9 A. It was probably around 11:30ish, 11'.

10 Q. Late morning?

11 A. Yeah, late morning.

12 Q. Where was the person being detained when you
13 first saw them?

14 A. I saw Larry walk him into the back room. They
15 had paged me to the back room, which I was already back
16 there, so I knew something was up. And when they paged me,
17 I looked up and Larry came walking through the back door.

18 Q. From that point, for a period of time, did you
19 have personal contact with the person being detained?

20 A. Do you mean like -- what do you mean?

21 Q. Could you see that individual?

22 A. Yes.

23 Q. In the same room or area you were in?

24 A. Yes.

25 Q. Do you see the individual in court this

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1 afternoon that your partner Larry Martinez had detained on
2 September the 1st, 1995?

3 A. Yes, I do.

4 Q. Would you point to him and describe how he's
5 dressed in court.

6 A. He's sitting at that table over there
7 (indicating). He's wearing a dark blue outfit.

8 MR. HARMON: Your Honor, may the record show
9 that the witness has identified the defendant, Mr. Chappell?

10 THE COURT: The record will so reflect.

11 MR. HARMON: Thank you.

12 BY MR. HARMON:

13 Q. Was the police department notified in
14 connection with the situation at the Lucky's Store on
15 September the 1st?

16 A. Yes.

17 Q. Did there come a time when you saw that your
18 partner Larry Martinez patted the defendant down?

19 A. Yes.

20 Q. Where did that occur?

21 A. That occurred right outside the back office.

22 Q. Was that soon after you saw the defendant?

23 A. Yes.

24 Q. Tell us what you saw Larry Martinez do.

25 A. He walked him into the back room, and he

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1 patted him down. And he had some stuff in his pockets that
2 we didn't know what it was so my partner took it out, you
3 know, just in case it was some type of weapons. And some
4 keys, he took out some keys.

5 Q. You actually saw Larry Martinez take some keys
6 from the defendant?

7 A. Right.

8 Q. Do you remember where your partner obtained
9 the keys?

10 A. Yeah, it was from the front pocket, but I
11 don't remember which pocket it was.

12 Q. You don't remember whether it was left or
13 right?

14 A. No.

15 Q. You're saying that you saw that that object
16 was some keys?

17 A. Right.

18 Q. Is there any doubt in your mind that the keys
19 came from the defendant, Mr. Chappell?

20 A. No doubt in my mind.

21 Q. Were those keys later turned over to law
22 enforcement, to your knowledge?

23 A. Yes.

24 Q. Some representative of the Las Vegas
25 Metropolitan Police Department?

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1 A. Yes.

2 Q. Later on. Was there a time when you saw the
3 defendant do something else that you considered unusual?

4 A. Yes.

5 Q. Tell us what you observed.

6 A. Well, the defendant was in the office, and the
7 officer had stepped out to talk to my partner who was
8 finishing up his paperwork.

9 Q. You're referring to the officer who had
10 responded from the police department?

11 A. Yes.

12 Q. So how many people were there in the room at
13 that point?

14 A. After the officer left, it was just me and the
15 defendant.

16 Q. What happened then?

17 A. The defendant started to fidget.

18 Q. Was he handcuffed?

19 A. Yes, he was handcuffed behind his back, and I
20 was paying attention to him because I've had people before
21 dump stuff on us, like drugs or other merchandise that we
22 didn't see them take.

23 Q. Was the defendant looking up at you?

24 A. No.

25 Q. Do you know whether he realized you were still

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1 in the room?

2 A. He might have. I don't know. The whole time
3 he was back there, he just kind of sat with his head down.

4 Q. You said that he began to fidget; was that
5 your testimony?

6 A. Yes.

7 Q. What do you mean?

8 A. Moving around. He had his hand behind his
9 back, and he started just kind of moving his arms. And he
10 scooted -- he was in a chair that had rollers on it, and he
11 rolled closer to a little cart that we use for -- the store
12 people use to put boxes on, and there was a box underneath
13 it. And as he rolled closer over to the box, he took his
14 arms from behind his back and leaned over and was trying to
15 put something inside the box, but the box was taped shut
16 with clear tape.

17 Q. What did you do at that point?

18 A. Well, I was just watching what he was doing,
19 then I noticed he had some type of clear little container,
20 like a bag or little flat clear thing with something in it,
21 cards, and he was trying to put it in the box. It wouldn't
22 go in. I said, "Hey, what are you doing?" And he kind of
23 pulled away, and the little plastic thing fell to the
24 ground.

25 Q. When the little plastic thing fell to the

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1 ground, I assume you're talking about just to the floor?

2 A. Right, to the floor.

3 Q. Did the defendant do anything else in
4 connection with the plastic item once it fell to the floor?

5 A. Yes, when I was bending down to pick it up, he
6 put his foot over it.

7 Q. Put his foot over it?

8 A. Yes.

9 Q. Were you able to eventually pick it up?

10 A. Yes.

11 Q. Did you look at it?

12 A. Yes, I did.

13 Q. Was there anything inside the plastic
14 container?

15 A. Yes, it was -- the top thing that was
16 noticeable was a social security card, and it looked like
17 there was other social security cards underneath it.

18 Q. Did you have a chance, in connection with the
19 card which was on top, to notice any of the names that were
20 on the card?

21 A. Yes, it was a lady with the last name of
22 Panos.

23 Q. P-A-N-O-S?

24 A. Yes.

25 Q. Did you bring these cards and the plastic

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1 container to the attention of your partner and the police
2 officer who was there?

3 A. Yeah -- well, they had heard me, you know, say
4 "What are you doing? Move away." And they had heard me say
5 that, and he came over to see what was going on. And I had
6 already picked up the thing and looked at it. And at that
7 point I handed it over to the officer.

8 MR. HARMON: May I approach the witness, your
9 Honor?

10 THE COURT: Yes.

11 BY MR. HARMON:

12 Q. Miss Sempson, I'm showing you State's Proposed
13 Exhibit 27. I want you to examine the items which are
14 depicted in the photograph. But let's start with the keys
15 that your partner Larry Martinez removed from one of the
16 pockets of the defendant. Are those the keys depicted in
17 the photograph of Proposed Exhibit No. 27?

18 A. Yes.

19 Q. To your knowledge, did your partner just
20 recover one set of keys from the defendant that day,
21 September the 1st, 1995?

22 A. Yes, to my knowledge it was one set.

23 Q. Do you also see the plastic container and the
24 credit card -- the social security card that you have
25 explained that you saw the defendant drop to the floor?

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1 A. Yes.

2 Q. They are depicted also in Proposed Exhibit 27?

3 A. Yes.

4 Q. Do these photographs appear to truly and
5 accurately depict the property recovered from the defendant,
6 Mr. Chappell, that day, September the 1st, 1995, at the
7 Lucky's Super Store?

8 A. Yes.

9 MR. HARMON: Your Honor, the State offers
10 introduction of Exhibit 27.

11 THE COURT: Mr. Bassett?

12 MR. BASSETT: I have no objection.

13 THE COURT: It will be admitted as 27.

14 MR. HARMON: Thank you.

15 BY MR. HARMON:

16 Q. I'm showing you also Proposed Exhibit 33,
17 which appears to be a copy of four social security cards.
18 Do you recognize the name that appears on the cards?

19 A. I recognize the top one.

20 Q. Is that consistent with the social security
21 card which was on top inside this plastic container that the
22 defendant had dropped?

23 A. Yes.

24 Q. Thank you.

25 MR. HARMON: May we have the Court's

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1 indulgence?

2 THE COURT: Yes.

3 (There was a consultation between
4 Mr. Harmon and Ms. Logue.)

5 BY MR. HARMON:

6 Q. Are you able to tell us approximately what
7 time it was that you saw the defendant begin to fidget and
8 he ended up dropping the social security card?

9 A. It was around 12:30.

10 Q. Was this an hour after you had first
11 encountered him with your partner Larry Martinez?

12 A. Yes.

13 Q. To your knowledge, was the defendant asked to
14 identify himself when he was first brought by Martinez back
15 to the office?

16 A. Yes.

17 Q. Did he use the name James Chappell?

18 A. No. At that point he didn't say anything. He
19 wasn't even talking.

20 Q. Did he have any type of identification on his
21 person?

22 A. Not that I know of, no.

23 Q. Was there some point during the detention that
24 the defendant either gave another name other than Chappell
25 or provide you identification?

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1 A. Yes, the officer that responded asked him what
2 his name was.

3 Q. The police officer?

4 A. Yes.

5 Q. Was this in your presence?

6 A. Yes.

7 Q. What name did he defendant give?

8 A. Ivri Marrell.

9 Q. To your memory, will you spell the word that
10 you're talking about for the record.

11 A. The spelling of Ivri was, like, I-V-R-I or E,
12 something like that. It was very uncommon. And Marrell was
13 like M-A-R-R-E-L-L.

14 Q. While you were in the presence of the
15 defendant, did he ever say that his name wasn't Ivri
16 Marrell, that in fact it was James Chappell?

17 A. No.

18 MR. HARMON: That's all on Direct, your Honor.

19 THE COURT: Mr. Bassett?

20 MR. BASSETT: Yes, your Honor. Thank you.

21

22 **CROSS-EXAMINATION**

23 **BY MR. BASSETT:**

24 Q. On that day, September 1st, was there anyone
25 at the store that was working in security besides you and

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1 your partner?

2 A. No.

3 Q. Okay. And just so I'm clear, at the time that
4 your partner brought this person back into the room, you had
5 previous to that been back in this room?

6 A. Yes, I was finishing another report.

7 Q. So there had been an incident earlier that you
8 were doing a report on?

9 A. Right.

10 Q. How long had you been in the back room?

11 A. About 15 minutes, 20 minutes.

12 Q. So you don't have any information about what
13 had happened in terms of the incident that you became aware
14 of when your partner brought him back?

15 A. Right.

16 Q. At what point do the police get called about
17 this person?

18 A. Well, my partner walked him in the back and
19 recovered the property that he had seen him take.

20 Q. Okay.

21 A. Then he notified the PD while he was doing his
22 paperwork.

23 Q. Can you describe this room for me that you're
24 in?

25 A. The little office?

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1 Q. Yes.

2 A. It's very small. It's, like, probably, I'd
3 say six by six.

4 Q. Okay. Is there a desk, table?

5 A. Yeah, there's, like, on the outer wall there's
6 a desk that sticks out from the wall.

7 Q. By the time this person gets brought back in
8 the room they are in cuffs?

9 A. Yes.

10 Q. Are they sat down or do they stand up?

11 A. Sat down in a chair -- well, when he first
12 brought him back, he had him standing while he was patting
13 him down, then sat him down after he recovered the
14 merchandise and the items out of his pocket.

15 Q. So you saw the pat down?

16 A. Yes.

17 Q. Right?

18 A. Yes.

19 Q. At this point there's just the three of you
20 back in the room?

21 A. Right.

22 Q. And what's the purpose of the pat down?

23 A. To make sure he doesn't have any weapons on
24 him.

25 Q. So anything that was found in the pockets

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1 would have been taken out?

2 A. Anything that felt not, you know, normal or
3 that could be a weird object.

4 Q. So he's pat down, then he gets put in the
5 chair?

6 A. Right.

7 Q. And then you called the police?

8 A. Right.

9 Q. Do you have an estimate of how long it was
10 before the police responded?

11 A. I think the officer got there around a little
12 after 12'.

13 Q. Okay. Do you remember who the officer was?

14 A. Yes.

15 Q. What was the Officer's name?

16 A. Osuch.

17 Q. Can you spell that?

18 A. O-S-U-C-H.

19 Q. Is he by himself or does he have a partner
20 when he came?

21 A. He was by himself.

22 Q. What does he do when he gets there?

23 A. He came in and started talking to the
24 defendant.

25 Q. At that time there's four of you in the room?

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1 A. Yeah -- well, my partner was outside of the
2 room finishing up his paperwork.

3 Q. When you say "outside of the room," just
4 outside the door?

5 A. Yeah, a few feet away.

6 Q. Was the door open?

7 A. Yes.

8 Q. Does the door open into like a hallway?

9 A. No, it's just like a separate little office
10 right by the receiving door.

11 Q. Okay. And then at some point the officer also
12 leaves the office; is that right?

13 A. Yeah.

14 Q. So then at that point, there's just you and
15 the person who's been brought back in?

16 A. Right.

17 Q. That's when you start to see the person slide
18 across the floor in the chair?

19 A. Uh-huh.

20 Q. Can you describe the chair for me? Is it like
21 a wood kind with a back on it?

22 A. It was like an office chair and it had the
23 wheels and the back was -- there was a back on it.

24 Q. Okay. In terms of the back, then, I mean, is
25 it two separate pieces or are they one piece?

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1 A. I think it's that kind that has the little
2 thing that comes up with the thing on it. You know what I
3 am saying, the metal thing that comes out of the seat that
4 sticks up. I think that was the type that it was.

5 Q. Okay. At this point, so I'm clear, how long
6 has the person been in the office?

7 A. Well, from 11:30 up until the point -- it was
8 probably about an hour.

9 Q. Is there anyone who has had any contact with
10 this person besides your partner and the officer?

11 A. No.

12 Q. You saw him slide across the floor?

13 A. Well, he didn't slide across the floor. He
14 moved his chair over.

15 Q. About a foot?

16 A. About a foot is how far I'd estimate, but up
17 to that point he hadn't moved at all.

18 Q. Okay. In terms of the box that you talked
19 about being on this cart, how big was the box?

20 A. I'd say probably about ten inches high and
21 probably about a couple feet long.

22 Q. It was a cardboard box?

23 A. Yes, cardboard.

24 Q. Did it look like a box that would have produce
25 in it or something?

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1 A. No, it was a -- this was a general merchandise
2 office which was the non-foods office.

3 Q. Okay. Did you see where this person took the
4 clear plastic thing from?

5 A. I didn't see exactly where, but it came from
6 behind.

7 Q. Okay. And that's where his hands were kept;
8 they were in the back as opposed to being in the front?

9 A. Right.

10 Q. And then you see this person trying to put
11 this thing in the box?

12 A. Right.

13 Q. About the plastic, can you describe for me the
14 size of this plastic thing that you're talking about?

15 A. About, like, this big (indicating).

16 Q. Okay. Can you --

17 A. It was, like, inch and a half by three and a
18 half.

19 Q. Okay. And just so I'm clear, you didn't see
20 it being taken out of his back pocket or anything like that?

21 A. Right.

22 Q. I mean, it didn't cause you any kind of
23 concern that the thing he was taking out was a weapon or
24 anything like that?

25 A. I was watching him just because of that. He

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1 started moving around, and from my experience, when people
2 start moving around like that, they are trying to dump
3 something, whether it be other merchandise, whatever.

4 Q. Okay. And then, just so I'm clear, at some
5 point, then, you have possession of that plastic, right?

6 A. Yes.

7 Q. Okay. Then, just so I'm clear, too, you had
8 made the comment about when you saw him move and saw that he
9 dropped something, you said, "Hey what are you doing?" You
10 were heard by your partner and this other officer?

11 A. Right.

12 Q. So they were just outside the door? I mean,
13 the door was open still; they could hear that?

14 A. Yeah, the door was -- I was standing in the
15 door.

16 Q. As far as you know, you were aware, they
17 couldn't see inside the room, could they? Or could they?

18 A. I don't think so, no. I was standing in the
19 doorway, and it's a very small office.

20 Q. Okay. So you were standing in the doorway.
21 So you would have been between them and this person?

22 A. Right.

23 Q. Okay. What did you do with the plastic thing
24 once you have it in your possession?

25 A. I pick it up, look down and see that the top

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1 was visible. It was a social security card, and it looked
2 like there was other social security cards underneath that
3 one.

4 Q. Okay. So did you turn it over to the officer?
5 What did you do to it?

6 A. I looked at it, and at that point while I was
7 looking at it, the officer came in. And I said, "He just
8 tried to dump this." And at that point, I just thought that
9 it was probably cards with his name on it, something was in
10 there somewhere with his real name or something; that's why
11 he was trying to dump it.

12 MR. BASSETT: I have nothing further, your
13 Honor.

14 MR. HARMON: No redirect, your Honor.

15 THE COURT: Okay. Is she excused for the rest
16 of the day?

17 MR. HARMON: Yes, she is excused.

18 THE COURT: You are excused for the rest of
19 the day. And I'm going to admonish you so you can leave the
20 courthouse, if you wish. Do not discuss your testimony in
21 this case with anybody else, any other witnesses or anybody
22 else except for the attorneys for one side or the other.

23 THE WITNESS: Okay.

24 THE COURT: Thank you very much.

25 Mr. Bassett, Mr. Harmon, Ms. Logue, I'm

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1 going to have to take a five minute recess. I'll tell you
2 why. This week this department is assigned to be what they
3 call the signing judge. Judge Philip Pro's order with
4 regard to the 48-hour reviews is in full force and effect,
5 with teeth, I might add, and I need to meet with
6 Mr. Phillips from intake services and make final reviews of
7 some cases. I just have to do that. So we'll be in recess
8 for about five minutes. As soon as I get done we will pick
9 up again.

10 (A recess was taken.)

11 THE COURT: Back on the record on 95F8114
12 after a brief recess. The record will reflect the presence
13 of the defendant, James Montell Chappell, with his attorney
14 Mr. Bassett, Mr. Harmon and Ms. Logue for the State and all
15 officers of the Court.

16 Call your next witness, State.

17 MS. LOGUE: The State would call Officer
18 Osuch.

19
20 MICHAEL OSUCH,
21 having been first duly sworn, was
22 examined and testified as follows:

23
24 THE CLERK: Please be seated. State your name
25 and spell your last name, please.

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1 THE WITNESS: Michael Osuch, O-S-U-C-H.

2
3 DIRECT EXAMINATION

4 BY MS. LOGUE:

5 Q. Sir, what is your occupation and assignment?

6 A. I have been a patrol officer with Las Vegas
7 Metro for fifteen and a half years now.

8 Q. And were you on duty as a patrol officer on
9 September 1st of 1995, at approximately 12:15 p.m.?

10 A. Yes, ma'am.

11 Q. And what is your regular shift? What time do
12 you begin?

13 A. I start at 6:45 in the morning and I end at
14 4:45 in the afternoon, Tuesday through Friday.

15 Q. Now, at 6:45 that morning of September 1st of
16 1995, when you began your shift, had you been briefed about
17 a homicide that occurred the day prior on August 31st of
18 1995?

19 A. That's correct. In fact, my sergeant,
20 Sergeant Bill Yada, was one of the primary units the day
21 before that. Our squad had a little bit more common
22 knowledge as to what happened as to maybe the rest of
23 station or maybe the rest of the department.

24 Q. And did they have a suspect in mind at that
25 time?

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1 A. Yes, they did, a black male. Physical
2 description, I got everything down except the name, and that
3 came later on into play.

4 Q. So you didn't have a name, then, later that
5 day?

6 A. Personally I didn't, no. We had a gist of
7 what happened at the Ballerina Mobile Home Park.

8 Q. Did you have an occasion to talk with other
9 officers about who that suspect was in relationship to the
10 victim?

11 A. There was a conversation with some graveyard
12 officers, I don't have the names at this point, stating that
13 they had been to that mobile home park, that space number,
14 previously before.

15 Q. On what kind of calls?

16 A. Domestic violence calls. And that the male
17 that was there was very -- what word am I looking for --
18 when the officers were there, he didn't, like, pay attention
19 to them. It was just like they weren't there. They were at
20 his house. They weren't going to talk to him. They weren't
21 there. That was some of the talk and scuttlebutt going on
22 amongst those guys.

23 Q. So would it be fair to say that the
24 information you had as you began your shift for that day on
25 September 1st of 1995, was that the suspect to this murder

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1 was a black male adult?

2 A. Yes, ma'am.

3 Q. Someone who had had prior domestic violence
4 incidents with the victim?

5 A. Yes, ma'am.

6 Q. Now, at approximately 12:15 p.m., later in
7 your shift that afternoon, were you dispatched to 4420 East
8 Bonanza?

9 A. Yes, it's a Lucky Store, market.

10 Q. That's here in Las Vegas, Clark County,
11 Nevada?

12 A. Yes, ma'am.

13 Q. And why were you dispatched to that location?

14 A. They had a routine petty larceny shoplifter in
15 custody waiting for my arrival.

16 Q. When you arrived at the Lucky's Store, who did
17 you come into contact with?

18 A. One loss prevention agent Martinez and one
19 loss prevention agent Sempson, who were in town from LA
20 doing loss prevention at that Lucky Store, and they had one
21 black male in custody, had him handcuffed in a little office
22 with no shoes on.

23 Q. Do you see that black male who you saw that
24 day in custody here in court today?

25 A. Yes, ma'am. He's over here to my right, next

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1 to his attorney.

2 MS. LOGUE: Your Honor, may the record reflect
3 this witness has identified the defendant?

4 THE COURT: Yes, it may.

5 MS. LOGUE: Thank you, your Honor.

6 BY MS. LOGUE:

7 Q. Did you receive information from one of the
8 officers regarding this shoplift?

9 A. I'm sorry?

10 Q. Did you receive information from one of the
11 officers regarding --

12 A. The loss prevention agents.

13 Q. -- regarding the circumstances of why you were
14 there?

15 A. Yes, he had some little box cutter and taken
16 off the little alarm labels that they have set up at Lucky's
17 so he wouldn't trip the alarm.

18 Q. Who had the box cutter?

19 A. The defendant, ma'am.

20 Q. That is the information you received from who?

21 A. From the loss prevention agents.

22 Q. Do you remember which one that was?

23 A. Agent Martinez seemed to be the primary one,
24 as it was his apprehension, catch or apprehension.

25 Q. Did he also tell you whether or not he had

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1 conducted a pat-down search for his safety prior to your
2 arrival?

3 And let me just caution you, if you could
4 just take a moment in between my questions, because I note
5 that we're going over each other on questions and answers.

6 A. Okay.

7 Q. Okay. Did he tell you whether or not he had
8 conducted a pat-down search for his safety prior to your
9 arrival?

10 A. Yes, he did. When I arrived, the defendant
11 was handcuffed. His shoes were off, and on a shopping cart
12 on this piece of wood there was all sorts of miscellaneous
13 items that he removed from the suspect.

14 I did ask them why were his shoes off.
15 Down in LA, they said, less people tend to run if they don't
16 have their shoes on. That's why the shoes were outside of
17 where the other property was at.

18 Q. Where was this shopping cart located in
19 relationship to where you saw the defendant handcuffed?

20 A. No more than ten, fifteen foot away.

21 Q. Was it in the same room with the defendant?

22 A. No, the security office that they use is a
23 very small room, so the cart is on the outside of the door.

24 Q. And what items did you notice on the cart at
25 that time?

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1 A. Okay. There was a lighter.

2 Q. Would it refresh your memory to look at your
3 report?

4 A. If I could, yes. There was a little cylinder
5 tube. I don't know if it was metal or plastic.

6 Q. What's the significance of that tube?

7 A. If I can go back a few years or so, I worked
8 on the bike patrol downtown for about a year and a half.
9 And it became common practice that when we stopped
10 individuals down in the area of Eighth and Freemont, Ninth
11 and Freemont, a lot of them that ingested crack cocaine had
12 these tubes or little hollow metal rods or some pens, like a
13 BIC pen, that they use to ingest their cocaine.

14 Q. So when you saw this metal-like tube, what
15 significance, then, did it have to you, knowing your
16 experience on bike patrol and the downtown area with
17 narcotics?

18 A. The subject probably, at one time, probably
19 ingested some cocaine, probably through that item. Also he
20 had part of a broken coat hanger, which, again, could be
21 used to shove or clean out the cylinder part of the pipe.

22 Q. Would it refresh your memory, Officer Osuch,
23 to look at your report and see what other items were on the
24 cart?

25 A. Give me a moment to find it, please.

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1 (The witness reviewed records.)

2 A. Okay.

3 Q. Is your memory refreshed, Officer, as to what
4 the other items were?

5 A. Yes, ma'am. Also, there was some bubble gum
6 and a key chain with a Toyota emblem on this key and some
7 other keys on it.

8 Q. And was there also a poker, pusher?

9 A. Yeah, that, again, it could be the same thing
10 that they use to clean out, like a pipe cleaner for the
11 tube.

12 Q. And when you say that you saw some keys with a
13 Toyota emblem, it was a Toyota key?

14 A. Yes, there was a Toyota key on it with the
15 Toyota emblem. Some other keys might have been a house key,
16 mail box key, some other things, keys that I wouldn't know.

17 Q. And also the defendant's shoes?

18 A. And the shoes, yes, ma'am.

19 Q. And all of those items were located on that
20 shopping cart?

21 A. Everything except his shoes, which were off,
22 like, down on the floor near the cart.

23 Q. When you approached the defendant, did you ask
24 him to identify himself?

25 A. Yes, I did. I went in there handling it just

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1 like a basic shoplifting routine. They did have him
2 handcuffed prior to my arrival. He verbally stated his
3 name, birth and social security number.

4 Q. What name did he identify himself as?

5 A. As an Ivri Marrell or Irvin Marrell.

6 Q. Can you spell the name that he gave you?

7 A. The way I have it is I-V-R-I and M-A-R-R-E-L-L
8 as the last name.

9 Q. Were you actually writing up a citation as he
10 was talking to you?

11 A. Yes, ma'am.

12 Q. So you were getting this information down,
13 recording it onto a regional misdemeanor citation form,
14 complaint?

15 A. Yes.

16 Q. Is that standard procedure when you go and
17 respond to a shoplifting case?

18 A. Usually. Some of them have some form of
19 identification where you just take it off an ID card, work
20 card, driver's license; however, in this case, I didn't have
21 that, so I had to do a lot of it by verbal.

22 Q. What date of birth did he give you?

23 A. Can I look on my report?

24 (The witness reviewed records.)

25 A. 12/27/69 and the social security number is

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1 373-28-9000.

2 Q. Once he gave you that information, did you
3 then follow it up to confirm whether or not this was true?

4 A. Yes. I wasn't in my car. I used a phone. I
5 called our record department and gave that -- entered that
6 information and came back with nothing, no local record, no
7 NCIC.

8 Again, going back to my bike days and
9 dealing with this situation with the crack pipes and such, a
10 lot of times people down there didn't have ID cards, and it
11 was all by name and you kind of, like, tended to believe
12 them.

13 Q. What were you planning on doing with him --
14 let me finish. What were you planning on doing with him as
15 a result of your not being able to confirm his identity?

16 A. I state in my officer's report, not trying to
17 call him a liar, but I really didn't believe him. I was
18 going to issue him a citation for petty larceny on the name
19 he gave me then go down to the city jail and book him for a
20 paraphernalia charge.

21 Q. Now, at that time, as you were getting ready
22 to write that petty larceny citation, did you have any idea
23 at all that this defendant was actually a person by the name
24 of James Chappell or involved in the murder from the day
25 prior?

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1 A. No idea as to a name. Basically the physical
2 matched, and I just, out of a whim, went and threw out a
3 comment like, "Can you tell me what happened at the
4 Ballerina Park the other night?" And at that time the
5 defendant became very -- I don't want to use the word
6 agitated, but fidgety.

7 The defendant could never look at me,
8 even when I talked to him. I stood him up once to look at
9 his hands. With the crack, I was looking for burn marks on
10 the fingers. I looked at his tongue to see if he had the
11 white coating, and he could never look at me face-to-face,
12 and he was always -- his face was averted or down to the
13 floor or off to the side.

14 Q. When you say fidgety, can you explain in more
15 detail what you mean?

16 A. All right. Well, most of the time he was
17 sitting down when I was there just with his hand behind his
18 back, and the chair was able to move around just, you know,
19 just moving around, acting fidgety.

20 Q. Back and forth in the chair? Moving about in
21 the chair?

22 A. Yes.

23 Q. How did the defendant respond to you when you
24 asked him if he knew what happened in the Ballerina Park?

25 A. I didn't get an answer. Again, he just

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1 couldn't look at me in the eye. He did get a little upset
2 when I told him I was going to take him to jail for
3 paraphernalia when I issued him the citation for petty
4 larceny.

5 Q. What did he say?

6 A. He says, "Come on, give me a break," quote, in
7 my officer's report. I just stated, "No, no breaks." I got
8 tired of giving people breaks throughout my career. I
9 didn't know who he was. I didn't believe that was his name.
10 The only way I was able to check it was just to get him to
11 the city jail and let them do a print check on him.

12 Q. And did you, at that point, begin to complete
13 your paperwork for the petty larceny?

14 A. Fortunately, most of the businesses that have
15 loss prevention, most of the reports are done even prior to
16 our arrival. The only thing basically I had to do at that
17 location was fill out a ticket and make sure the crime
18 report was completed to my satisfaction because it had to
19 have my name on it. I didn't want my sergeant to come back
20 on me. When we were there, I didn't know the total price,
21 because on the citation you have to put the total price
22 down.

23 Q. Price of what?

24 A. The items that he took.

25 Q. What items were there?

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1 A. There was a liquor bottle. I don't remember
2 what kind.

3 Q. Would it help you, would it refresh your
4 memory --

5 A. To see the ticket.

6 Q. -- on your regional misdemeanor citation
7 complaint as to what the items were?

8 A. Yes. I know there was a Baby Ruth candy bar;
9 a caramel type bar, but I can't remember the name; a can of
10 Budweiser; then, I want to say rum or scotch, but I'm not
11 sure.

12 Q. Why don't you take a look at that and tell me
13 if your memory is refreshed.

14 (The witness reviewed records.)

15 A. Johnny Walker, Baccardi rum, Baby Ruth,
16 a Cadbury, for a total of \$30.51.

17 Q. So you were finishing the paperwork on that
18 citation?

19 A. Yes, ma'am.

20 Q. And as you were doing this, did something get
21 your attention?

22 A. As I was talking to Agent Martinez, his
23 partner, Agent Sempson, happened to glance up. I saw her
24 run into a little office cubicle area, approach the
25 defendant. I went right in behind to make sure she's all

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1 right. I don't know if the guy got out of his handcuffs or
2 whether she was bent over and picking something up. She
3 says, "Here, this is for you." And I thought maybe he was
4 trying to dump some dope. It was a plastic envelope.

5 Q. Who said --

6 A. Agent Sempson -- I'm sorry -- thought maybe he
7 was trying to dump some dope. It ended up being four social
8 security cards.

9 Q. And did you receive these cards from Agent
10 Sempson?

11 A. Yes, I did.

12 Q. And how long, what time frame are we talking
13 about from the time you saw her bend down and recover the
14 items until the time she gave them to you?

15 A. The time it would take to hand something from
16 picking it up to give it to me. I was right behind her.

17 Q. Did you see the defendant place those items
18 anywhere?

19 A. No, it was given to me by Agent Sempson, and
20 she later on explained to me how she found them and what was
21 going on.

22 Q. Did you follow her into that room when you saw
23 her going into the room?

24 A. Not at first, but when it sounded like there
25 was some sort of -- I don't want to use the word scuffle --

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1 but something caught our attention. I went running in there
2 to make sure nothing was going to happen to her.

3 Q. Where were those cards contained? Were those
4 four cards contained in something?

5 A. Yes, ma'am. For lack of a better term, it
6 looked like a plastic sheaf, kind of like -- I don't want to
7 say picture holder -- but it was covered in plastic with one
8 opening and three sides sealed.

9 Q. At the time you received those social security
10 cards from Agent Sempson, had you known the name of the
11 victim of the murder which occurred on August 31st of
12 1995?

13 A. No, ma'am. Like earlier during briefing and
14 with the squad, I must have missed that or was asking
15 somebody else something not even pertaining to that
16 situation, and at that time just to play on my feelings now,
17 I called my sergeant who was at lunch, got him on his cell
18 phone, and just asked for the name of the victim again. I
19 did not know even up to that point.

20 And when he stated it was Panos, and I
21 had four social security cards with Panos on each one of
22 them, I then told him that I believed I had our suspect in
23 the homicide and made the proper notification the Detective
24 Bureau.

25 Q. And did you also notify homicide or did your

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1 sergeant?

2 A. My sergeant did.

3 Q. Okay. And did you then wait for homicide or
4 someone such as your sergeant to arrive at that location?

5 A. Yes, I did. At that point my sergeant just
6 advised me just to make sure, reiterate, says okay, just
7 hold it --

8 Q. Well, not what your sergeant said, but did you
9 then stay with the defendant until someone else arrived?

10 A. Yes, I did.

11 Q. And took over the investigation?

12 A. Yes, I did.

13 Q. And did you also keep in your possession items
14 on the shopping cart, the items that you've described for
15 us?

16 A. Yes, they were in control even though they
17 were on a table.

18 Q. I'd like to show you what's been marked as
19 State's Proposed Exhibit No. 27 and ask you to identify
20 what's depicted in this picture.

21 A. Okay. This was a little box cutter knife, the
22 top part of the picture, that he was using to, according to
23 loss prevention, to flip up the alarm tab; and the social
24 security cards in the plastic sheaf that the loss agent
25 Sempson handed to me.

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1 Q. And let me ask you, regarding these social
2 security cards, if you could look very closely, can you tell
3 what is the top name of the card?

4 A. I know the last name is Panos, but it looks
5 like Desi or Desere or Delores. Looks like 364-14-1 blank
6 56. I can't make out that middle number.

7 Q. And what are the other items?

8 A. The third item down is the little poker that
9 they use to clean your pipe, cigarette lighter, the little
10 tube that I was mentioning that looks like a pen and a
11 battery. I can't tell from the -- what that might be, then,
12 there is a set of car keys.

13 Q. And besides the plastic card that Agent
14 Sempson gave to you, all of these other items were on this
15 cart, the shopping cart when you arrived?

16 A. Yes.

17 Q. And you maintained care and custody of these
18 items until homicide arrived?

19 A. Yes.

20 Q. And they stayed on that cart as well?

21 A. Uh-huh.

22 Q. Is that yes?

23 A. Yes, ma'am.

24 Q. This would be a fair and accurate depiction of
25 how they appeared once you placed the social security card

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1 from Agent Sempson on the cart?

2 A. Yes, ma'am.

3 MS. LOGUE: Your Honor, at this time I'd move
4 to admit State's Proposed No. 27.

5 THE COURT: Mr. Bassett?

6 MR. BASSETT: No objection.

7 THE COURT: It will be admitted as 27.

8 BY MS. LOGUE:

9 Q. I want to show you what's been marked State's
10 Proposed Exhibit No. 33 and ask you if you can identify this
11 as being a duplicate or a copy of the four social security
12 cards that you recovered from Agent Sempson?

13 A. Yes, ma'am.

14 Q. And on the top card, what's the name there?

15 A. This one is little more easier to read:
16 Deborah Ann Panos.

17 Q. Was it more difficult to read because of the
18 distance in that photograph of State's Exhibit No. 27?

19 A. Yes, ma'am.

20 Q. And this would be a fair and accurate
21 depiction of a copy of those cards, would they not?

22 A. Yes.

23 Q. Let me ask you, also, State's Proposed Exhibit
24 No. 33 is two pages; is that right?

25 A. Yes, ma'am.

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1 Q. On the second page, does this appear to be the
2 backs of those social security cards?

3 A. Yes, ma'am.

4 MS. LOGUE: Your Honor, at this time I'd move
5 to admit State's Proposed Exhibit No. 33.

6 THE COURT: Mr. Bassett?

7 MR. BASSETT: No objection, your Honor.

8 THE COURT: It will be admitted as 33.

9 BY MS. LOGUE:

10 Q. Showing you what's been marked State's
11 Proposed Exhibit 32, does it appear to be the citation that
12 refreshed your memory?

13 A. Yes, ma'am, that's my handwriting.

14 Q. In fact, it's your signature here?

15 A. Yes.

16 Q. At the bottom of the citation?

17 A. Yes, ma'am.

18 Q. And who did you issue this citation for?

19 A. Okay. The original that was given to Marrell,
20 M-A-R-R-E-L-L, and first name of I-V-R-I, Ivri.

21 Q. At any time did the defendant identify himself
22 to you as James Chappell?

23 A. No, he didn't.

24 Q. Would this be a fair and accurate depiction of
25 a copy of the original citation that you wrote out for the

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1 defendant on September 1st of 1995?

2 A. Yes, it is.

3 MS. LOGUE: Your Honor, at this time I'd move
4 to admit State's Proposed Exhibit No. 32.

5 THE COURT: Mr. Bassett?

6 MR. BASSETT: No objection.

7 THE COURT: It will be admitted as 32.

8 MS. LOGUE: Could I have the Court's
9 indulgence?

10 (There was a consultation between
11 Ms. Logue and Mr. Harmon.)

12 BY MS. LOGUE:

13 Q. Officer Osuch, do you recall noticing any
14 injuries to the defendant at all?

15 A. While he was being detained for homicide?

16 Q. Yes.

17 A. Again, like I stated early, when he stood up
18 so I could look at the back of his hand and before that to
19 stick out his tongue to see if he had that white coating,
20 that's a trademark of crack use, I did notice some sort of
21 wound to a finger on the right hand. I didn't think much
22 about it then at that time. But as the big picture started
23 to get more clear, I figured that, you know, we had possibly
24 the man.

25 Q. And when you say a wound, what type of wound

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1 are you describing?

2 A. Like a cut, wound.

3 Q. Okay. That would be to one of his fingers?

4 A. Yes, ma'am.

5 Q. Do you recall exactly which finger right now?

6 A. Probably the middle.

7 Q. Well, let me ask you this, do you recall
8 specifically which one, or are you guessing or speculating?

9 A. I thought it would be the index finger because
10 I had him with his handcuffs behind him. Again, I didn't
11 really think nothing of it at that time.

12 MS. LOGUE: Court's indulgence.

13 (There was a consultation between

14 Ms. Logue and Mr. Harmon.)

15 MS. LOGUE: That would conclude my Direct
16 Examination, your Honor.

17 THE COURT: Thank you, Ms. Logue.

18 Mr. Bassett?

19 MR. BASSETT: Yes, your Honor. Thank you.

20

21 CROSS-EXAMINATION

22 BY MR. BASSETT:

23 Q. Officer, in terms of the information that you
24 had about the murder and about someone that might be a
25 suspect, from the things you have said, would it be fair to

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1 say that that information was conveyed to you during the
2 meeting where there were other officers present?

3 A. During our briefing session, yes.

4 Q. Okay. Can you recall for me, please, as much
5 as you can, what you remember about the description. I
6 mean, you have, I know, indicated that it was a male, a
7 black male. Can you be more specific about what you know?

8 A. It came down as a black male, about 6'1", 180
9 pounds.

10 Q. Okay.

11 A. And the original call from the day before, a
12 vehicle was broadcast as an unlicensed, possibly four-door,
13 Toyota?

14 Q. So you were aware of there being a possible
15 vehicle then?

16 A. Yes, sir.

17 Q. Just so I'm clear, then, you don't recall what
18 the name of the suspect might have been?

19 A. No, sir.

20 Q. Okay. And then am I also correct that you
21 didn't know the name of who the person killed was, then,
22 either?

23 A. No, sir.

24 Q. In terms of the wound that you saw on the
25 hand, there is just the one wound you saw on the hand?

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1 A. That I can recall, sir, yes.

2 Q. Okay. But the hands were something that you
3 looked at because you were trying to find whether or not
4 there were burn marks?

5 A. Yes.

6 Q. Based on the other things you found?

7 A. Yes, sir.

8 Q. When you talk about the things you found, that
9 would indicate that this person may have smoked crack. Did
10 this person appear high to you?

11 A. He might have. His eyes were glassy. Didn't
12 smell no alcohol about his person, but I remember one
13 distinctive thing: He was chewing the most sweet-smelling
14 green gum I have ever had occasion of having the smell in
15 such close proximity. It was a sickening smell. And,
16 again, with that and the items that he had, he may have been
17 coming down, wanted a sugar rush to get pumped up and booze
18 to chase it.

19 Q. Did any of his behavior when you were talking
20 to him, did he appear to be, you know, nervous and fidgety?

21 A. Yes.

22 Q. I assume when you talk about being on the bike
23 patrol that you have done reports and charged people with
24 being under the influence of controlled substance?

25 A. At times, yes.

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1 Q. And isn't that one of the characteristics that
2 shows up on a police report is that a person is fidgety?

3 A. Most of the people that I've ever come in
4 contact with I think were fidgety because of police
5 presence.

6 Q. Okay. In terms of the cards, and, you know,
7 you becoming aware of where it may or may not have come
8 from, that was information you received from the officer
9 that was an employee of the store that had found the cards;
10 is that correct?

11 A. Are we talking about the social security
12 cards?

13 Q. Social security cards.

14 A. Would you repeat your question.

15 Q. In terms of you knowing where that was found
16 or where it came from, that was because of information given
17 to you by Agent, I believe, Sempson?

18 A. Yes, sir.

19 MR. BASSETT: I have nothing further, your
20 Honor.

21 THE COURT: Redirect.

22 MS. LOGUE: Briefly, your Honor.

23 / / /

24 / / /

25 / / /

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REDIRECT EXAMINATION

BY MS. LOGUE:

Q. Would it be fair to say that the defendant became fidgety after you asked him whether or not he had any knowledge of the murder -- or excuse me, the killing at the Ballerina Mobile Home Park?

A. That would be a fair statement, ma'am.

Q. Prior to that, was he was fidgety in his seat?

A. He was sitting down, kind of like kick back. It wasn't a chair -- well a little bit more ability to go back than in the chair I'm sitting in now.

Q. So your observation, then, would be that he did not become fidgety until after you asked that question?

A. Yes.

MS. LOGUE: That would conclude my Redirect, your Honor.

THE COURT: Mr. Bassett?

MR. BASSETT: Nothing further.

THE COURT: Is this officer excused today?

MR. HARMON: Yes.

THE COURT: We won't be needing you anymore in the preliminary hearing, so you can go back about your normal police duties or home or whatever place you have to go. Please don't discuss your testimony in this case with anybody else other than the attorneys to this case until the

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1 proceedings conclude.

2 THE WITNESS: Thank you, your Honor.

3 THE COURT: Next witness?

4 MR. HARMON: Jimmy Vaccaro.

5

6 JIMMY VACCARO,

7 having been first duly sworn, was

8 examined and testified as follows:

9

10 THE CLERK: Please be seated. State your full
11 name and spell your last name, please.

12 THE WITNESS: James Charles Vaccaro,
13 V-A-C-C-A-R-O.

14 THE CLERK: Thank you.

15

16 DIRECT EXAMINATION

17 BY MR. HARMON:

18 Q. Is it Detective Vaccaro?

19 A. Yes, sir.

20 Q. Detective Vaccaro, where are you employed?

21 A. At the Las Vegas Metropolitan Police
22 Department, currently assigned to the homicide detail.

23 Q. How long have you been a homicide detective?

24 A. Just about a year now.

25 Q. How long have you worked with the Las Vegas

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1 Metropolitan Police Department?

2 A. Starting my 19th year.

3 Q. I want to direct your attention to August the
4 31st, 1995. On that date did you have occasion to respond
5 to the Ballerina Sunrise Mobile Home Park at 839 North Lamb
6 Boulevard, specifically to Space 125?

7 A. Yes, I did.

8 Q. About what time did you get there?

9 A. I believe it was close to 4:30 p.m.

10 Q. Were you investigating the circumstances of
11 the remains of a young female being found inside Space 125?

12 A. Yes, I was.

13 Q. Did you have an interest in determining a
14 point of entry utilized by an assailant or assailants?

15 A. Yes, I did.

16 Q. Did you locate an area which, in your opinion,
17 was the point of entry?

18 A. Yes, I did.

19 Q. What was the point of entry, in your opinion?

20 A. My opinion it was a window on the south side
21 or the front of the mobile home which faces the street in
22 front of the mobile home.

23 Q. Did that window lead into a certain room?

24 A. Yes, it did, into the master bedroom.

25 Q. Did you look inside the master bedroom?

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1 A. Yes, I did.

2 Q. Did you observe any evidence of ransacking?

3 A. Yes, I did.

4 Q. Why did you conclude that there was
5 ransacking?

6 A. It appeared to me as though someone had been
7 looking for something, and there were also numerous
8 handwritten letters of a personal nature strewn about the
9 room. And the room was the pretty much disheveled. It
10 appeared to be the scene of a fight.

11 Q. Did you have an opportunity to examine any of
12 these handwritten notes that were strewn about the bedroom?

13 A. Yes, I did.

14 Q. Did you notice whether any of the notes had
15 been signed by a particular individual?

16 A. Yes.

17 Q. What was the signature?

18 A. They were signed, many of them were signed, by
19 James Chappell.

20 Q. Had you learned at this point the identity of
21 the victim in the case?

22 A. Yes.

23 Q. What was the name of the victim?

24 A. The victim's name is Deborah Ann Panos.

25 Q. In connection with these personal notes as

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1 signed by James Chappell, were they directed to any person
2 in particular?

3 A. Yes, the handwritten notes were directed to
4 Deborah Ann Panos.

5 Q. Was she characterized in anyway in these notes
6 that you observed?

7 A. Yes, she was.

8 Q. In what way, sir?

9 A. They appeared to me to be notes that
10 characterized her -- when I read the notes, it was my
11 understanding that James Chappell, the author of the notes,
12 considered her someone he loved but yet had problems with
13 her and was concerned about her and their relationship. And
14 they were degrading notes, and he wrote degrading things in
15 foul language, things about her having sexual relations with
16 himself and other people. And they were degrading in nature
17 to me.

18 Q. In any of the notes, did the author use the
19 word "slut" in referring to Deborah Panos?

20 A. Yes, he did.

21 Q. Did he, at various times, ask her in the notes
22 if she was easy?

23 A. Yes.

24 Q. Suggesting easy in the sexual sense?

25 A. Yes.

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1 Q. Based upon your experience as an investigating
2 officer with the police department, did you form any
3 opinion, as a result of these personal notes, whether the
4 author James Chappell was manifesting jealousy or
5 possessiveness towards Deborah Panos?

6 A. Yes, I did form an opinion.

7 Q. And it was similar to what you just stated,
8 that he was a bitter, jealous person about his relationship
9 with Deborah Panos?

10 A. Yes.

11 Q. Did you have occasion to look in the residence
12 of Ms. Panos at 839 North Lamb Boulevard, Space 125 to
13 determine whether there was a purse or money or valuables at
14 the residence?

15 A. I did go through the residence. I don't
16 recall finding a purse.

17 Q. Or any valuables in the master bedroom area?

18 A. There appeared to be some paperwork in Deborah
19 Panos' name; however, I didn't find any identification
20 there.

21 Q. Did you have information that Ms. Panos was
22 the owner of a Toyota vehicle?

23 A. Yes, I did.

24 Q. Was that anywhere parked in close proximity to
25 the crime scene while you were there?

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1 A. No, it wasn't.

2 Q. Did you locate any keys to the vehicle at the
3 residence?

4 A. No.

5 Q. The following day, September the 1st 1995, did
6 you have occasion to respond to Lucky's Food Store located
7 at 4420 East Bonanza Boulevard in Las Vegas?

8 A. Yes, I did.

9 Q. What occasion were you going to that location?

10 A. I was contacted by my pager from Metro
11 dispatch, and I learned that an individual matching the
12 description of our suspect from the murder case of Deborah
13 Panos was in custody for petty larceny at the Lucky Store.

14 Q. About what time did you arrive at the Lucky
15 Store on East Bonanza?

16 A. I believe it was around noon that day, on the
17 1st of September.

18 Q. Did you make contact with an officer of the
19 police department and several security officers who had
20 detained the subject identified as James Chappell?

21 A. Yes, I did.

22 Q. Did you have personal contact with
23 Mr. Chappell on that date?

24 A. Yes, I did.

25 Q. Did you learn whether he was using Chappell or

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1 some other name?

2 A. I learned that he was using a different name.
3 I believe he was using the name Ivri, I-V-R-I, Marrell,
4 M-A-R-R-E-L-L.

5 Q. Do you see the person in court that you know
6 now to be James Chappell?

7 A. Yes, I do.

8 Q. Would you point to him and describe something
9 he's wearing today in court.

10 A. Yes, sir. He's seated at the defense counsel
11 table. He has navy blue jail clothing and orange socks.

12 MR. HARMON: May the record show the witness
13 has identified the defendant, your Honor?

14 THE COURT: Yes, it will.

15 MR. HARMON: Thank you, your Honor.

16 BY MR. HARMON:

17 Q. Detective Vaccaro, did you also learn that,
18 responding to the Lucky's Store, that a set of keys had been
19 recovered by a security officer from Mr. Chappell, the
20 defendant?

21 A. Yes, I did.

22 Q. Were you looking for a particular vehicle?

23 A. Yes, I was.

24 Q. Describe the vehicle that you were looking
25 for.

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1 A. I was looking for a 1983 or 1984 Toyota
2 Corola. And I knew about this vehicle because of a
3 photograph I found while inside the crime scene. And I knew
4 this vehicle to belong to Deborah Ann Panos and that it was
5 not at the crime scene and missing.

6 When I was at the Lucky Store I observed
7 the set of keys on a rolling cart near the security area
8 where James Chappell was located. I noticed a bunch of
9 keys. There was a Toyota type key, and I took possession of
10 the key.

11 Q. Did you also observe four social security
12 cards that had been recovered from the defendant?

13 A. Yes, I did.

14 Q. Were they also in the name of Panos?

15 A. Yes.

16 Q. One specifically being in the name of the
17 homicide victim, Deborah Ann Panos?

18 A. That's correct.

19 Q. As a result of the recovery of the keys from
20 the defendant, did you have occasion to look in that
21 neighborhood for the vehicle of Deborah Ann Panos?

22 A. Yes, I did.

23 Q. Was it located after some effort?

24 A. Yes, I did locate it.

25 Q. Where was it found?

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1 A. The vehicle was located in the 500 block of
2 North Bonanza. It would be the Vera Johnson -- or rather
3 500 block of North Lamb. I'm sorry. It would be the Vera
4 Johnson something housing projects. I can't remember the
5 last name. Maybe it was Vera Johnson Lamb. And this is a
6 government subsidized housing project on the west side of
7 Lamb just south of Bonanza, which is just west of the
8 Lucky's store where James Chappell was being detained for
9 petty larceny.

10 MR. HARMON: May I approach the witness, your
11 Honor.

12 THE COURT: Yes, you may.

13 BY MR. HARMON:

14 Q. Detective Vacarro, I'm showing you Proposed
15 Exhibits 28 through 31. Will you examine the photographs,
16 focusing on the vehicle, and will you tell us if this is the
17 vehicle that was located in close proximity to the Lucky's
18 Store on East Bonanza Road September the 1st, 1995?

19 A. Yes, this is the vehicle, and I was present
20 when these photographs were taken at that location.

21 Q. Who took the photographs?

22 A. A crime scene analyst for Metro by the name of
23 Mark Washington.

24 Q. Did Analyst Washington respond to this
25 location at your request?

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1 A. Yes, he did.

2 Q. Did those photographs show the vehicle exactly
3 where you observed it on May the 1st, 1995?

4 A. Yes.

5 Q. Is this vehicle consistent with the photograph
6 of a Toyota vehicle which you saw at the crime scene?

7 A. Yes.

8 Q. Did you learn that this was the vehicle
9 belonging to Deborah Ann Panos?

10 A. Yes, I did learn that, and the vehicle does
11 appear to be the one in the photograph that I found at the
12 crime scene.

13 Q. Thank you. At some point did you turn the
14 keys that you had recovered at the Lucky's Store over to
15 crime scene Analyst Washington?

16 A. Yes, I did.

17 Q. Were you still there when he attempted to use
18 them with the vehicle shown in Proposed Exhibits 28 through
19 31 and transport the vehicle to the crime lab garage for
20 further processing?

21 A. Well, I was present, and I recommended that he
22 drive the vehicle from its location out to the parking lot
23 where a tow truck was waiting to take it to the lab. So the
24 vehicle was actually transported to the crime lab on a
25 flatbed tow truck. I recommended that Washington drive the

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1 vehicle from its location behind the housing project unit
2 because it was on the grass hidden in an area that was not a
3 parking lot. We were concerned about getting the tow truck
4 on the grass and breaking all the sprinkler pipes in there,
5 so we elected to drive the small car out of the grassy area
6 to the parking lot.

7 Q. But your personal knowledge, then, is that the
8 keys recovered from the defendant work on the ignition of
9 the Toyota vehicle depicted in Proposed Exhibits 28 through
10 31?

11 A. Yes, they operated the doors.

12 Q. Belonging to Ms. Panos?

13 A. Yes, the keys did operate the door to unlock
14 the driver's door and did start the car and allow Washington
15 to drive it out of that area.

16 MR. HARMON: Your Honor, at this time the
17 State offers Proposed Exhibits 28 through 31.

18 MR. BASSETT: I have no objection, your Honor.

19 THE COURT: They will be received 28 through
20 31 inclusive.

21 MR. HARMON: That concludes Direct
22 Examination.

23 THE COURT: Mr. Bassett?

24 MR. BASSETT: Yes, your Honor. Thank you.

25 / / /

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CROSS EXAMINATION**BY MR. BASSETT:**

Q. Detective, at the time that you arrived at the trailer, could you tell me what was the information that you had and what you expected to find when you got there?

A. Well, the information that I had received upon arriving was from uniformed officers that were already present. And you will have to bear with me because I'm trying to tell you what I received early on. My collective memory is for the entire issue. But early on, I think, I believe I learned that uniformed officers had responded to that trailer after being asked to go there by a woman named Lisa Duran, a friend of the victim, Deborah Panos.

I understood that uniformed officers were requested to go there to check her welfare, that is Deborah Panos' welfare, because this Lisa Duran had hailed the uniformed police officer at Lamb and Bonanza. I then learned that the uniformed officers did make entry into the mobile home and found Deborah Ann Panos deceased in the living room. And because of their finding, my homicide detail was notified, and I was assigned by my supervisor along with my partner, Phil Ramos.

Q. Were you told that information by the uniformed officers when you got to the trailer or had you been given that information prior to arriving at the

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1 trailer?

2 A. You know, prior to arrival, we received a very
3 thumbnail sketch of the information, and I again received
4 that same information from the uniformed officers and again
5 from one of the uniformed supervisors, I believe but --

6 Q. Do you recall who was there present at the
7 trailer at that time that you arrived?

8 A. The best I can, without referring to my
9 report, yes, there was an officer named Lee. His last name
10 was Lee. There was an Officer Heiner. I believe it's
11 H-E-I-N-E-R. Both of those officers were in uniform. I
12 believe there was Sergeant Yada. There was a uniformed
13 sergeant and a lieutenant by the name of Mattson. Those
14 were the uniformed officers that were present. I believe
15 there was an ambulance in the street still. However, I
16 don't know if -- I should have their names in my report. I
17 don't remember if they were standing outside or not. And
18 Lisa Duran was also present along with her brother John.

19 Q. Okay. How about her mom, was her mom there;
20 do you remember?

21 A. Deborah Panos', no.

22 Q. No, Lisa Duran's.

23 A. No, I don't know if she was there or not.

24 Q. At the time that you got to the trailer and
25 went inside, had they already taken the body out or was the

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Las Vegas, Nevada (702)382-5015

FILED

OCT 10 10 08 AM '95

Justice Court, Las Vegas Township

CLERK

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

—vs—

JAMES MONTELL CHAPPELL

Defendant.

District Court Case No.

C 131341

Justice Court Case No.


95F08114X

VII
P

10-18

I, hereby certify the foregoing to be a full, true and correct copy of the proceedings as the same appear in the above case.

WITNESS my hand this 9th day of OCTOBER, 19 95.



Justice of the Peace of Las Vegas Township

Justice Court, Las Vegas Township

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

—vs—

JAMES MONTELL CHAPPELL

Defendant.

Case No. 95F08114X

COMMITMENT and ORDER TO APPEAR

An Order having been made this day by me, that

JAMES MONTELL CHAPPELL

be held to answer upon the charge of **AS AMENDED**

COUNT I - BURGLARY

COUNT II - ROBBERY WITH USE OF A DEADLY WEAPON

COUNT III - MURDER (OPEN) WITH USE OF A DEADLY WEAPON

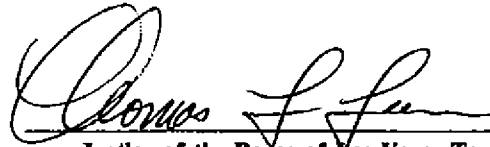
Committed in said Township and County, on or about the 31st day of AUGUST, 19 95.

IT IS FURTHER ORDERED that the Sheriff of the County of Clark is hereby commanded to receive _____

HIM into custody, and detain HIM until HE be legally discharged, and
COUNT I - \$25,000/50,000
that HE be admitted to bail in the sum of COUNT II - \$50,000/100,000 Dollars, and be
COUNT III - NO BAIL
committed to the custody of the Sheriff of said County, until such bail is given; and

IT IS FURTHER ORDERED that said Defendant _____ is/are commanded to appear in
Department 7 of the Eighth Judicial District Court, Clark County Courthouse, Las Vegas, Nevada, at 9:00 A.M., on
the 18th day of OCTOBER, 19 95, for arraignment and further proceedings on the within charge S.

DATED this 9th day of OCTOBER, 19 95.



Justice of the Peace of Las Vegas Township

Justice Court, Las Vegas Township

CASE NO. 95F08114X
PAGE THREE

STATE VS. CHAPPELL, JAMES MONTELL

CHARGE COUNT I - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

COUNT II - ROBBERY WITH USE OF A DEADLY WEAPON

BAIL COUNT III - MURDER (OPEN) WITH USE OF A DEADLY WEAPON

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES -- HEARING

CONTINUED TO:

	<p>CONTINUED FROM PAGE TWO</p> <p>MOTION BY STATE TO AMEND COUNT I BY STRIKING ALLEGATION OF "WHILE IN POSSESSION OF A DEADLY WEAPON" IN HEADING AND LINE 18 - MOTION GRANTED</p> <p>MOTION BY STATE TO AMEND COUNT II BY INSERTING THE LANGUAGE OF "SOCIAL SECURITY CARDS AND/OR KEYS" - MOTION GRANTED</p> <p>MOTION BY DEFENSE TO STRIKE LANGUAGE OF "LAWFUL MONEY OF THE UNITED STATES" - MOTION GRANTED</p>	10-18-95 9 AM #7 DISTRICT COURT
	<p>MOTION BY STATE TO AMEND COUNT III BY INSERTING THE LANGUAGE OF "AND/OR" ON LINE 10 - MOTION GRANTED</p> <p>STATE'S EXHIBITS</p> <p>1 THROUGH 31 - PHOTOGRAPHS - OFFERED - ALL ADMITTED</p> <p>32 - COPY OF CITATION 1-01152307A - OFFERED - ADMITTED</p> <p>33 - COPY OF SOCIAL SECURITY CARDS - OFFERED - ADMITTED</p> <p>STATE RESTS</p> <p>DEFENDANT WAIVES RIGHT TO MAKE SWORN OR UNSWORN STATEMENT OR CALL WITNESSES ON HIS BEHALF</p>	
	<p>DEFENSE RESTS</p> <p>SUBMITTED WITHOUT ARGUMENT</p> <p>DEFENDANT BOUND OVER AS CHARGED IN AMENDED COMPLAINT TO DISTRICT COURT</p> <p>APPEARANCE DATE SET</p> <p>COURT ORDERED DEFT REMANDED TO THE CUSTODY OF THE SHERIFF AS TO COUNTS I & II</p> <p>BAIL RESET - \$25,000/50,000 - COUNT I</p> <p>\$50,000/100,000 - COUNT II</p>	
	<p>NO BAIL STANDS AS TO COUNT III</p> <p>DEFENDANT REMANDED TO THE CUSTODY OF THE SHERIFF</p>	mm

Justice Court, Las Vegas Township

CASE NO. 95F08114X
PAGE TWO

STATE VS. CHAPPELL, JAMES MONTELL

CHARGE	COUNT I - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON
	COUNT II - ROBBERY WITH USE OF A DEADLY WEAPON

BAIL	COUNT III - MURDER (OPEN) WITH USE OF A DEADLY WEAPON
-------------	--

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES — HEARING

CONTINUED TO:

9-26-95	MOTION AND NOTICE OF MOTION FILED	mb
9-26-95	MEDIA REQUEST AND ORDER ALLOWING CAMERAS IN THE COURTROOM FILED (2)	mb
SEPTEMBER 28, 1995 T. LEEN for #3 M. HARMON, DA H. BROOKS, PD B. KULISH, CR M. McCREARY, CLK	DEFENDANT PRESENT IN COURT - *IN CUSTODY* (COUNT III) MOTION BY STATE TO COMPEL PRODUCTION OF BLOOD, SALIVA, HEAD AND PUBLIC HAIR SAMPLE - OBJECTION BY DEFENSE AS TO PUBLIC HAIR SAMPLE - MOTION GRANTED PRELIMINARY HEARING DATE STANDS DEFENDANT REMANDED TO CUSTODY OF THE SHERIFF (COUNT III) NO BAIL POSTED (COUNTS I & II)	10-3-95 9:00 #3 mb
OCTOBER 2, 1995	ORDER TO COMPEL PRODUCTION OF BLOOD, SALIVA, HEAD AND PUBLIC HAIR SAMPLES FILED	mm
OCTOBER 3, 1995 T. LEEN FOR DEPT 3 M. HARMON, DA AND A. LOGUE, DA K. BASSETT, PD C. INKENBRANDT, CR M. MCCREARY, CLK	TIME SET FOR PRELIMINARY HEARING DEFENDANT PRESENT IN COURT IN CUSTODY AS TO COUNT III STATE'S PROPOSED EXHIBITS 1 THROUGH 33 MARKED PRIOR TO HEARING JOINT MOTION MADE FOR THE EXCLUSIONARY RULE STATE'S WITNESSES GILES SHELDON GREEN WILLIAM DUFFEY - WITNESS IDENTIFIES DEFT LISA ANN DURAN - WITNESS IDENTIFIES DEFT	
	RUSSELL LEE STATE'S PROPOSED EXHIBITS 15 THROUGH 26 - OFFERED - ALL ADMITTED COURT ORDERED A 45 MINUTE RECESS AT TIME TIME ALL REMAINING WITNESSES WERE ADMONISHED BY THE COURT AS TO THE EXCLUSIONARY RULE KIMBERLY ANN SEMPSON - WITNESS IDENTIFIES DEFT PAUL OSUCH - WITNESS IDENTIFIES DEFT JAMES VACCARO - WITNESS IDENTIFIES DEFT	CONTINUED ---

Justice Court, Las Vegas Township

CASE NO. 95F08114X

STATE VS. CHAPPELL, JAMES MONTELL

CHARGE	<u>COUNT I - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON</u>
	<u>COUNT II - ROBBERY WITH USE OF A DEADLY WEAPON</u>
BAIL	<u>COUNT III - MURDER (OPEN) WITH USE OF A DEADLY WEAPON</u>
	<u>NO BAIL POSTED (COUNTS I & II)</u>

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES — HEARING

CONTINUED TO:

<p>SEPTEMBER 5, 1995 D. SMITH C. LALLI, DA M. LEONARD, CR M.E. RYAN, CLK</p>	<p>TIME SET FOR BAIL HEARING DEFENDANT PRESENT IN COURT *IN CUSTODY* COURT SET BAIL; MURDER - NO BAIL GRAND LARCENY - 100,000/200,000</p> <p>DEFENDANT REMANDED TO CUSTODY OF THE SHERIFF</p>	mb
<p>9-7-95</p>	<p>MEDIA REQUEST & ORDER ALLOWING CAMERAS IN THE COURTROOM FILED</p>	mb
<p>SEPTEMBER 8, 1995 D. AHLSTROM D. HERNDON, DA S. DICKINSON, PD R. SUROWIEC, CR M. McCREARY, CLK</p>	<p>INITIAL ARRAIGNMENT DEFENDANT PRESENT IN COURT *IN CUSTODY* (COUNT III) DEFENDANT ADVISED OF CHARGES/WAIVES READING OF COMPLAINT PRELIMINARY HEARING DATE SET COURT APPOINTED THE PUBLIC DEFENDER TO REPRESENT THE DEFT</p> <p>NO BAIL POSTED (COUNTS I & II) DEFENDANT REMANDED TO CUSTODY OF THE SHERIFF (COUNT III)</p>	<p>9-21-95 9:00 #3</p> <p style="text-align: right;">mb</p>
<p>9-12-95</p>	<p>MOTION TO CONTINUE PRELIMINARY HEARING FILED</p>	mb
<p>9-12-95</p>	<p>MEDIA REQUEST & ORDER ALLOWING CAMERAS IN THE COURTROOM FILED</p>	mb
<p>SEPTEMBER 14, 1995 T. LEEN for #3 A. CHRYSANTHIS, DA H. BROOKS, PD B. KULISH, CR M. McCREARY, CLK</p>	<p>DEFENDANT PRESENT IN COURT *IN CUSTODY* (COUNT III) MOTION BY DEFENSE TO VACATE & RESET PRELIMINARY HEARING DATE OF 9-21-95 - MOTION GRANTED PRELIMINARY HEARING DATE RESET DEFT WAIVES RIGHT TO 15 DAY RULE DEPUTY DISTRICT ATTORNEY TO NOTIFY MAJOR VIOLATOR UNIT DEFENDANT REMANDED TO CUSTODY OF THE SHERIFF (COUNT III) NO BAIL POSTED (COUNTS I & II)</p>	<p>10-3-95 9:00 #3</p> <p style="text-align: right;">mb</p>

1 JUSTICE COURT, LAS VEGAS TOWNSHIP

2 CLARK COUNTY, NEVADA

3 THE STATE OF NEVADA,)

4 Plaintiff,)

CASE NO. 95F08114X

5 -vs-)

6 JAMES MONTELL CHAPPELL, #1212860,)

CRIMINAL COMPLAINT

7 Defendant.)

8
9 The Defendant above named has committed the crimes of BURGLARY
10 WHILE IN POSSESSION OF A DEADLY WEAPON (Felony - NRS 205.060);
11 ROBBERY WITH USE OF A DEADLY WEAPON (Felony - NRS 200.380,
12 193.165); and MURDER (OPEN) WITH USE OF A DEADLY WEAPON (Felony -
13 NRS 200.010, 200.030, 193.165), in the manner following, to-wit:
14 That the said Defendant, on or about the 31st day of August, 1995,
15 at and within the County of Clark, State of Nevada, 10/3/95

16 COUNT I - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON *QR*

17 did then and there wilfully, unlawfully, and feloniously
18 enter, ~~while in possession of a deadly weapon, to-wit: a knife,~~
19 with intent to commit larceny and/or assault and/or battery and/or
20 robbery and/or murder, that certain building located at 839 North
21 Lamb Boulevard, Las Vegas, Clark County, Nevada, Space No. 125
22 thereof, occupied by DEBORAH PANOS.

23 COUNT II - ROBBERY WITH USE OF A DEADLY WEAPON 10/3/95

24 did then and there wilfully, unlawfully, and feloniously take
25 personal property, to-wit: *social security cards and/or keys* ~~lawful money of the United States~~
26 and/or a motor vehicle, from the person of DEBORAH PANOS, or in her
27 presence, by means of force or violence, or fear of injury to, and
28 without the consent and against the will of the said DEBORAH PANOS,

3B

NC

1 said Defendant using a deadly weapon, to-wit: a knife, during the
2 commission of said crime.

3 COUNT III - MURDER (OPEN) WITH USE OF A DEADLY WEAPON

4 did then and there, without authority of law and with malice
5 aforethought, wilfully and feloniously kill DEBORAH PANOS, a human
6 being, by stabbing at and into the body of the said DEBORAH PANOS
7 with a deadly weapon, to-wit; a knife, during the commission of
8 said crime; defendant committing said act with premeditation and
9 deliberation and/or committing said act during the perpetration of
10 a burglary ^{and} or robbery.

11 All of which is contrary to the form, force and effect of
12 Statutes in such cases made and provided and against the peace and
13 dignity of the State of Nevada. Said Complainant makes this
14 declaration subject to the penalty of perjury.

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16 
17 9/8/95
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26 95F08114X/sz
27 LVMPD EV#9508311351
28 Burg;Robb;Murder;UDW - F
TK3

214

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
TEMPORARY CUSTODY RECORD

Page 1 of 1

DATE OF ARREST: 9-1-95 TIME OF ARREST: 1300

I.D. #: 1212860 Event #: 950831-1351

LAST NAME (WA, ALIAS, ETC.): LAST FIRST MIDDLE

ADDRESS: CHAPPELL James Middle

DATE OF BIRTH: 12-27-69 RACE: AL SEX: M HEIGHT: 5-11 WEIGHT: 180 HAIR: BLK EYES: BRN BLOOD TYPE: A3

LOCATION OF CRIME (S - Street - City - State - Zip): 839 Alhambra #125 LV 323-80-2907 1400 E Bonanza

CHARGE: BKG. CODE: 2 WEAPON, 200.010

ARREST TYPE: PC - PROBABLE CAUSE BS - BONDSMAN SURRENDER BW - BENCH WARRANT WA - WARRANT RM - REMAND GI - GRAND JURY IND.

ARREST TYPE	PC - PROBABLE CAUSE	BS - BONDSMAN SURRENDER	BW - BENCH WARRANT	WA - WARRANT	RM - REMAND	GI - GRAND JURY IND.
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ARRESTING OFFICER'S SIGNATURE: [Signature] P # 1799 Agency 12000

TRANSPORTING OFFICER'S SIGNATURE: [Signature] (Print Name) P # Agency

APPROVAL, CONTROL & FOR ADDITIONAL CHARGES:

Police Stamp at BOOKING

FOR PROBABLE CAUSE/NCIC HIT ARREST SEE PAGE TWO FOR DETAILS. FIRST APPEARANCE: DATE: 9-3-95 TIME: 09:50

BENCH WARRANT SERVED ON: AGAEN SVOBA SVT 200001015000

WARRANT SERVED ON: 56, HW 4th 8 2 JES

GRAND JURY INDICTMENT SERVED ON: TYPE OF I.D. FOR VERIFICATION: JUDGE: [Signature]

I.D. #: 1212860

3 VEGAS METROPOLITAN POLICE DEPARTMENT

DECLARATION OF ARREST

Page 1 of 2True Name: CHAPPELL, JAMES MONTELL Date of Arrest: 9-1-95 Time of Arrest: 1300

OTHER CHARGES RECOMMENDED FOR CONSIDERATION:

THE UNDERSIGNED MAKES THE FOLLOWING DECLARATIONS SUBJECT TO THE PENALTY FOR PERJURY AND SAYS: That I am a peace officer with LUMPD (Department), Clark County, Nevada, being so employed for a period of 21 years (months). That I learned the following facts and circumstances which lead me to believe that the above named subject committed (or was committing) the offense of MURDER, 6LA at the location of 839 N. LAMB #125 and that the offense occurred at approximately 1400 hours on the 31 day of AUG, 1995.

DETAILS FOR PROBABLE CAUSE:

THAT ON 8-31-95 AT APPROX. 1230 HRS, JAMES CHAPPELL WAS SEEN LEAVING THE LOCATION OF 839 N. LAMB #125 BY LISA DURAN, A FRIEND AND ROOMMATE OF DEBORAH PANOS. LISA DURAN SAW CHAPPELL DRIVING AWAY IN DEBORAH'S SILVER COLORED TOYOTA CORONA, NO LIC. PLATE. LISA WAS IMMEDIATELY CONCERNED FOR DEBORAH'S WELFARE DUE TO THE EXTREME VIOLENCE SHE SUFFERED FROM CHAPPELL. LISA KNOCKED ON DEBORAH'S TRAILER DOOR AND GOT NO RESPONSE.

DEBORAH LISA BECAME MORE CONCERNED AND WENT AND FOUND LUMPD PATROL OFFICER RUSSELL LEE AND APPRAISED LEE OF THE CONCERNS FOR DEBORAH'S SAFETY.

OFFICER LEE RESPONDED TO THE TRAILER AND ALSO RECEIVED NO RESPONSE. OFFICER LEE FOUND AND OPEN WINDOW AND ENTERED THE TRAILER. OFFICER LEE IMMEDIATELY LOCATED THE BODY OF DEBORAH PANOS LYING ON THE LIVING ROOM FLOOR, SHE WAS DEAD FROM MULTIPLE STAR WOUNDS TO THE CHEST. A KITCHEN KNIFE, COVERED IN BLOOD WAS ON THE FLOOR NEXT TO HER BODY.

THAT EARLIER IN THE DAY, THE DECEASED DEBORAH PANOS, HAD A PHONE CONVERSATION WITH LATRONA SMITH. LATRONA IS THE SUPERVISOR AT ANGEL DAY CARE, 4300 E. BONANZA. LATRONA STATED THAT AT 1215 HRS ON 8-31, DEBORAH CALLED THE DAY CARE CENTER CRYING AND AFRAID. LATRONA ASKED DEBORAH WHAT

Wherefore, Declarant prays that a finding be made by a magistrate that probable cause exists to hold said person for preliminary hearing (if charges are a felony or gross misdemeanor) or for trial (if charges are a misdemeanor).

Declarant must sign second page with original signature.

[Signature] P#

LA VEGAS METROPOLITAN POLICE DEPARTMENT VT
DECLARATION OF ARREST CONTINUATION PAGE

Page 2 of 2

SEP 1 11:17 PM ID #: 1212860

WAS WRONG, AND DEBRIAN STATED THAT "HE" IS
HERE AND SHE WAS AFRAID TO LEAVE TO PICK
UP HER CHILDREN FROM DAY CARE.

THAT A RECORDS CHECK OF CHAPPELL REVEALED
TWO(2) PREVIOUS DOMESTIC VIOLENCE CHARGES AGAINST
HIM LISTING RANDO AS THE VICTIM. A T.P.D. WAS
ALSO ISSUED AGAINST HIM.

THAT ON 9-1-95 AT APPROX. 1115 HRS, CHAPPELL
WAS DETAINED BY SECURITY FROM LUCKS AT 4420 E.
BONANZA AFTER HE WAS OBSERVED ATTEMPTING TO SHOPLIFT
LIQUOR FROM THE STORE. LUMPD OFFICER P. OSUCH RESPONDED
AND BEGAN ISSUING A PETIT LARCENY CITATION TO CHAPPELL.
CHAPPELL GAVE FALSE VERBAL IDENTITY TO OFF. OSUCH
AND OFF. OSUCH OBSERVED CHAPPELL BEING DECEPTIVE.

CHAPPELL THEN ATTEMPTED TO DISCARD A KANGAROO
BAGGIE FROM HIS PANTS. THE BAGGIE WAS RECOVERED
AND FOUND TO CONTAIN THE SOCIAL SECURITY CARDS
OF THE VICTIM DEBRIAN RANDO AND HER THREE CHILDREN.
OFF. OSUCH THEN REQUESTED HOMICIDE DETECTIVES RESPOND
TO THE STORE.

DET. RANDO; VAMORO ARRIVED AND RECOGNIZED CHAPPELL
FROM LUMPD I.D. PHOTOS AS WELL AS PHOTOS FROM
THE CRIME SCENE.

CHAPPELL WAS THEN CHARGED WITH MURDER; 1ST DEGREE AND
BOOKED AT CODC.

Wherefore, Declarant prays that a finding be made by a magistrate that probable cause exists to hold said person for preliminary hearing (if charges are a felony or gross misdemeanor) or for trial (if charges are a misdemeanor).

Declarant must sign second page with original signature.

LVMPD 22-B (3-91)

(1) ORIGINAL - COURT

Declarant's Signature

Print Declarant's Name

P #

CLARK COUNTY INTAKE QUESTIONNAIRE AND FINANCIAL AFFIDAVIT

Defendant: CHAPPELL JAMES MONTELL	
Arrest Date: 09-01-95	Arraign. Date: 09-11-95
S.S.N.: 373-80-2907	I.D.: 1212860
D.R. #: FBI# 284 918 JA6 DER	D.O.B. 12-22-69
M J Charge: MURDER	Bail: S.I.C.
M J Charge: G.L.A.	Bail: 3,000
M J Charge:	Bail:
M J Charge:	Bail:
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M J Charge:	Bail:

BASED ON _____ VERIFIED POINTS THIS DEFENDANT HAS RECEIVED, AND THE INFORMATION GATHERED BY INTAKE SERVICES, THE FOLLOWING RECOMMENDATION IS MADE:

_____ Supervised Release with Conditions as Directed by Intake Services: _____

_____ Bail Reduction To: _____

_____ Not Recommended for an O/R Release or Bail Reduction Because: _____

Release Granted: _____ Date: _____

Bail Reduction To: _____

Release Denied: _____ Date: _____

RESIDENCY

Defendant: Chappell James 1212860

Present Address: <u>NONE</u>	Apt. #: <u>-</u>	Phone #: <u>-</u>
How Long: <u>1W2</u>	Living With: <u>-</u>	Relationship: <u>-</u>
Prior Address: <u>839 N. LAMB</u>	Apt. #: <u>125</u>	Phone #: <u>-</u>
How Long: <u>9mos</u>	Living With: <u>DEADY</u>	Relationship: <u>Friend</u>
Clark County Resident: <u>9</u> Weeks <u>0</u> Months <u>0</u> Years	Visiting: <input type="checkbox"/> Yes <input type="checkbox"/> No	How Long: <u>-</u>
State of Residency (address) If Less Than 5 Years: <u>NEV (9mos) ARIZ (prior 4 yrs) Mich (Prior LSC)</u>		
Marital Status: <u>Single</u>	Married Divorced Separated	# of Children: <u>3 AND</u> Education: <u>11</u>

EMPLOYMENT

Are You Employed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No. If no, means of support: <u>-</u>	How Much: <u>-</u>
Cash on hand or in bank (including spouse): <u>0</u>	Spouse's Income: <u>N/A</u>
Property (including spouse): <u>0</u>	
Rent: <u>0</u>	Mortgage: <u>0</u> Other Debts: <u>0</u>
Total Monthly Payments: <u>0</u>	

Present Employer: <u>UNEMPLOYED</u>	Address: <u>-</u>
How Long: <u>5mos</u>	Occupation: <u>-</u> Phone: <u>-</u>
Supervisor: <u>-</u>	Net Income: \$ <u>-</u> <input type="checkbox"/> Shift <input type="checkbox"/> Weekly <input type="checkbox"/> Monthly
Prior Employer: <u>ETHEL "M" COCKOLATA</u>	Address: <u>HENDERSON</u>
How Long: <u>3mos</u>	Occupation: <u>LINE WORKER</u> Phone: <u>-</u>
Supervisor: <u>-</u>	Reason for Leaving: <u>TERMINATED</u>

BACKGROUND

Family Not Living With Defendant:

Name/Relationship: <u>CLARA AXMAN</u> <u>Q-MOTHER</u>	Address: <u>MICIT</u>	Phone: <u>Work: Res (517) 882-5524</u>
Name/Relationship: <u>-</u>	Address: <u>-</u>	Phone: <u>Work: Res: -</u>

Character References: NONE

Name: <u>-</u>	Address: <u>-</u>	Phone: <u>Work: Res: -</u>
Name: <u>-</u>	Address: <u>-</u>	Phone: <u>Work: Res: -</u>

List all prior convictions/pending charges other than in Clark County: NONE

Charge	Conviction Date	Where	Disposition
1. <u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
2. <u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>

I the undersigned defendant, under penalty of perjury, declare that the above facts are true and correct.

James Chappell
Defendant

Subscribed and sworn to before me this 1 day of SEPT, 19 95.

[Signature]
Notary Public

Circle One: P.D. N.A. P.A. Name: - Interview Date: 9/2/95 Time: 9:14 AM

Justice Court, Las Vegas Township

INTAKE SERVICES INFORMATION SHEET

Case No. 95F08114X

NAME: CHAPPELL, JAMES I.D. #: 1212860

CHARGE(S): MURDER ROBB W/WPN BURGLARY W/WPN

CURRENT BAIL: NO BAIL - ct 3 NOT IN CUSTODY THESE CHARGES

VERIFIED Local Address NONE 1 WK 1 Year Or More Less Than 1 Year
Out Of State Address:

VERIFIED State Of Residency: LV, NV 9 MO'S PRIOR AZ 4 YRS

VERIFIED Employment 1 Year Or More Less Than 1 Year

Unemployed 1 Year Or More Less Than 1 Year 5MO'S

VERIFIED Relatives: Local Not Local

Felony Convictions NONE PRE More Than 1

Misdemeanor Convictions More Than 1

Failures To Appear 1

Traffic XXX Misdemeanor XXX Felony XXX

Pending Charges / Holds: DEET IS ALSO I/C ON PROBATION VIOLATION.

10-26-95 9:30 AC 15

RECOMMENDATION: Release On Recognizance _____

Intensive Supervision _____

Bail Reduction _____

VERIFIED Indigent Non-Indigent PD Recommended

[Signature]
INTAKE SERVICES

9-14-95

DATE

Justice Court, Las Vegas Township

INTAKE SERVICES INFORMATION SHEET

Case No. 95F08114X

NAME: CHAPPELL, JAMES I.D. #: 1212860

CHARGE(S): MURDER ROBB W/WPN BURGLARY W/WPN

CURRENT BAIL: NO BAIL BOOKED GLA

100,000

NOT IN CUSTODY THIS CHARGE

VERIFIED Local Address NONE 1 WK 1 Year Or More Less Than 1 Year

Out Of State Address:

VERIFIED State Of Residency: LV, NV 9 MO'S PRIOR AZ 4 YRS

VERIFIED Employment 1 Year Or More Less Than 1 Year

Unemployed 1 Year Or More Less Than 1 Year 5MO'S

VERIFIED Relatives: Local Not Local

Felony Convictions 100% PPT More Than 1

Misdemeanor Convictions More Than 1

Failures To Appear -2-

~~Traffic~~ XXX

Misdemeanor XXX

Felony XXX

Pending Charges / Holds: DEFT IS ALSO I/C ON PROBATION VIOLATION. DEFT
HAS PENDING CASE 95F03944X ITS DRUGS 9-8-95 8AM JC-3.

RECOMMENDATION: Release On Recognizance NO. DUE TO NATURE OF THE CHARGES AND PROBATION VIOLATION
AND ETAS

Intensive Supervision _____

Bail Reduction _____

VERIFIED Indigent Non-Indigent

PD Recommended

INTAKE SERVICES

9-8-95

DATE

9C 21C
Event #: 1600

~~Page: 16~~

NM-CHAPPELL JAMES MONTELL SID-02863793 000 3-373802907
 CS-1212860 BD-122769 AC-N SX-M HT-511 WT-180 HR-BLK EY-BRO
 AK-CHAPPEL JAMES M SID-02863793 002
 F1-16 0 31 W 100 16 SPC
 F2- I 27 W IID
 BP-LANSING, MI FB-284 918 JA6 SI-NV01780406 01- 02-
 A1-839 N LAMB #135, LVN 89110 061195

PI255 MPD**AFIS**011095

AR214 NPP 013 090295	PROB VIOL PBT	950218-1601	MPD
		RBK MPD DKT-C126882	
AR215 MPD 028 090195	GLA	950831-1351	MPD
AR216 MPD 027 090195	MURDER	950831-1351	MPD
AR217 LVC 026 082195 FTA	DRIV W/O LIC		MPD
		LVC WA-1-1095910-B	
AR218 LVC 025 082195 FTA	OPERATE UNREGISTERED VEH		MPD
		LVC WA-1-1095910-A	
AR219 LVC 024 082195 FTA	FL T/USE SEAT BELT		MPD
		LVC WA-1-1129292-B	
AR220 LVC 023 082195 FTA	DRIV W/O LIC		MPD
		LVC WA-1-1129292-A	
AR221 LVC 022 082195 FTA	NO PROOF OF INSURANCE		MPD
		LVC WA-1-1129291-B	

THIS DISPLAY CONTINUED ON NEXT PAGE

SID-02863793

AR222 LVC 021 082195 FTA	OPERATE UNREGISTERED VEH		MPD
		LVC WA-1-1129291-A	
AR223 LVC 016 082195 FTA	PL	950529-1741	MPD
		LVC BW-C264625-A	
AR224 LVC 017 082195 FTA	POSS NARCO PARAPHERNALIA	950529-1741	MPD
		LVC BW-C264625-B	
AR225 LVC 019 082195 FTA	PL	950611-0705	MPD
		LVC BW-C265996-A	
AR226 LVC 018 082195 FTA	BATT DOMESTIC VIOL	950601-2402	MPD
		LVC BW-C264242-A	
AR227 LVC 020 082195 FTA	PL	950626-1434	MPD
		LVC BW-C267095-A	
AR229 NPP 013 062795 FTC	PROB VIOL-POSS BURG TOOLS	950218-1601	RLVJ082195MPD
		RBK MPD DKT-C126882X	
AR228 MPD 020 062695 CIT	PL	950626-1434F	MPD
AR230 MPD 012 062695 FTA	U/INFLU CONT SUB	950218-1601	MPD
AD230 MPD 012 071195	ITS DRUGS		MPD BW-95F03944X
95F03944X	FIN AMD MISD / \$500 FINE		
AR231 MPD 019 061195 CIT	PL	950611-0705F	MPD
AR232 MPD 018 060195	BATT DOMESTIC VIOL	950601-2402	MPD
AD232 MPD 018 060795	BATT DOMESTIC VIOL		
C-264242	CON RDR		

THIS DISPLAY CONTINUED ON NEXT PAGE

SID-02863793

AR233 MPD 017 052995 CIT	POSS NARCO PARAPHERNALIA	950529-1741F	MPD
AR234 MPD 016 052995 CIT	PL	950529-1741F	MPD
AR235 MPD 006 050295 FTA	FL T/USE SEAT BELT		MPD
		RBK MPD BW-1-987824B	
AR236 MPD 009 050295 FTA	OPERATE UNREGISTERED VEH		MPD
		RBK MPD BW-1-987823A	
AR237 MPD 007 050295 FTA	NONRESIDENT PRIVILEG SUSP		MPD
		RBK MPD BW-1-987824A	
AR238 MPD 008 050295 FTA	INSURANCE REQUIRED		MPD
		RBK MPD BW-1-987823B	
AR239 MPD 013 022795 RMD	POSS BURG TOOLS		MPD
		RBK MPD DKT-95F01672X	
AR240 MPD 011 022795 RMD	BURG		

AR241 MPD 001 022495 FTA U// U/ INFLU CONT SUB RBK MPD DKT-95F01672X
 941114-0120 MPD
 AR242 MPD 010 022495 FTA PL RBK MPD L F011073X
 950120-0229 MPD
 AD242 MPD 010 022795 PL RBK MPD BW94M01081X
 95M01081X FIN 5 DYS CCDC
 AR243 MPD 013 021895 POSS BURG TOOLS 950218-1601 MPD
 AD243 MPD 013 022695 POSS BURG TOOLS
 0000 CON PCN 06791668 // PAD

***THIS DISPLAY CONTINUED ON NEXT PAGE**

SID-02863793

AR244 MPD 012 021895 U//INFLU CONT SUB 950218-1601 MPD
 AD244 MPD 012 071195 ITS DRUGS
 95F03944X FIN PCN 06791668 / AMD MISD / \$500 FINE
 AR245 MPD 011 021895 BURG 950218-1601 MPD
 AD245 MPD 011 022695 POSS BURG TOOLS
 0000 CON PCN 06791668 // PAD
 AR246 MPD 010 012095 CIT PL 950120-0229F MPD
 AD246 MPD 010 022795 PL
 95M01081X FIN 5 DYS CCDC
 AR247 MPD 009 012095 FTA OPERATE UNREGISTERED VEH ROR 012095MPD
 MPD BW-1-987823A
 AR248 MPD 008 012095 FTA INSURANCE REQUIRED ROR 012095MPD
 MPD BW-987823B
 AR249 MPD 007 012095 FTA NONRESIDENT PRIVILEG SUSP ROR 012095MPD
 MPD BW-1-987824A
 AR250 MPD 006 012095 FTA FL T/USE SEAT BELT ROR 012095MPD
 MPD BW-1-987824B
 AR251 MPD 005 010995 BATT DOMESTIC VIOL 950109-0013 MPD
 AD251 MPD 005 011095 BATT DOMESTIC VIOL
 0000 CON ROR

***THIS DISPLAY CONTINUED ON NEXT PAGE**

SID-02863793

AR252 MPD 004 010295 FTA OPERATE UNREGISTERED VEH ROR 010395MPD
 LVC BW-1-969174-A
 AR253 MPD 003 010295 FTA CIT-NON RES DRIV SUSP LIC ROR 010395MPD
 LVC WA-1-969174-B
 AR254 MPD 002 010295 FTA NO PROOF OF INSURANCE ROR 010395MPD
 LVC WA-1-969175-A
 AR255 MPD 001 111494 U//INFLU CONT SUB 941114-0120 MPD
 AD255 MPD 001 111794 U//INFLU CONT SUB
 0000 CON PCN 06485512 // RAP

1 MORGAN D. HARRIS
2 PUBLIC DEFENDER
3 NEVADA BAR #1879
4 309 South Third Street, Suite 226
5 Las Vegas, Nevada 89155
6 (702)455-4685
7 Attorney for the Defendant
8 Public Defender File No. F-95-5254

FILED

SEP 12 10 15 AM '95

BY

9
10 JUSTICE COURT
11 CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,
13 Plaintiff,
14 v.
15 JAMES MONTELL CHAPPELL,
16 Defendant.

CASE NO. 95F08114x

DEPT. NO. 3

Date of Hearing: 9-14-95

Time of Hearing: 8:00 A.M.

17 MOTION TO CONTINUE PRELIMINARY HEARING

18 COMES NOW, Defendant James Montell Chappell, by and
19 through his attorney, Deputy Public Defender Howard S. Brooks, and
20 moves that this Honorable Court vacate the preliminary hearing
21 currently set for September 21, 1995, and reset the preliminary
22 hearing sometime during the week commencing October 2 or October
23 9, 1995. This request for a continuance is based on the attached
24 affidavit of counsel.

25 DATED this 11th day of September, 1995.

26 CLARK COUNTY PUBLIC DEFENDER

27 By

28 HOWARD S. BROOKS #3374
DEPUTY PUBLIC DEFENDER

AFFIDAVIT

THE STATE OF NEVADA)
THE COUNTY OF CLARK) ss:

HOWARD S. BROOKS, being first duly sworn, deposes and says upon information and belief:

1. That I am an attorney duly licensed to practice law in the State of Nevada; that I am the Deputy Public Defender assigned to represent the Defendant in the instant matter, and that I am familiar with the facts and circumstances of this case.

2. Mr. Chappell appeared in Justice Court 3 on September 8, 1995, and the Court set a preliminary hearing date for September 21, 1995.

3. I received the file in this case on September 8, 1995. I met with Mr. Chappell in a contact visit at the Clark County Detention Center on September 10, 1995.

4. As the attorney assigned to represent Mr. Chappell in this case, I am concerned about a conflict that I have in that I have a death penalty trial commencing September 18, 1995, in the case of State v. William Christopher Shoels, case number C115759, in District Court III. It is anticipated that the Shoels matter will be completed by September 28, 1995, at the latest.

5. Since this is a murder case and there is a potential that the State will file a Notice of Intent to Seek the Death Penalty in this case, I would like the opportunity to prepare for this case without the additional burden of also being in a murder trial at the same time. Also, I have found that we generally receive additional reports, especially concerning the autopsy and toxicology reports, if the preliminary hearing is held

roughly a month after the initial arraignment in Justice Court.

6. Therefore, the defense would respectfully request that the current preliminary hearing date of September 21, 1995, be vacated and the preliminary hearing be reset in the week commencing October 2 or the week commencing October 9, 1995.

7. I ask for those two weeks because I will be out of the jurisdiction commencing October 16 through October 31, 1995.

8. I have discussed this matter with Mr. Chappell, and Mr. Chappell does not oppose a continuance of this matter.

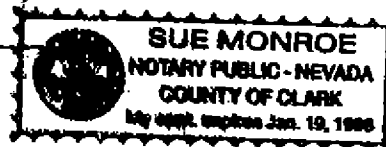
9. This motion is made in good faith and not merely for the purpose of delay.

Home & Brook

HOWARD S. BROOKS

SUBSCRIBED AND SWORN to before me
this 14th day of September, 1995.

NOTARY PUBLIC in and for said
County and State.




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YOU WILL PLEASE TAKE NOTICE that the foregoing Motion to Continue Preliminary Hearing will be heard on the 14th of September, 1995, at 9:00 A.M. in Department No. 3 of the Justice Court.

CLARK COUNTY PUBLIC DEFENDER

RECEIPT OF COPY of the above and foregoing Motion to Continue Preliminary Hearing is hereby acknowledged this 12 day of September, 1995.


CLARK COUNTY DISTRICT ATTORNEY

By 

(Mot \ Chappell)

FILED

SEP 26 5 16 PM '95

JUDGE
LAS VEGAS
BY 
CLERK

1 STEWART L. BELL
2 DISTRICT ATTORNEY
3 Nevada Bar #000477
4 200 S. Third Street
5 Las Vegas, Nevada 89155
6 (702) 455-4711
7 Attorney for Plaintiff
8 THE STATE OF NEVADA
9

7 JUSTICE COURT, LAS VEGAS TOWNSHIP

8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

CASE NO. 95F08114X

10 Plaintiff,

DEPT. NO. #3

11 -VS-

12 JAMES MONTELL CHAPPELL,
13 #1212860

14 Defendant.
15

16 MOTION AND NOTICE OF MOTION

17 TO COMPEL PRODUCTION OF BLOOD, SALIVA, HEAD AND PUBIC HAIR
18 SAMPLES

19 DATE OF HEARING: 9-28-95
20 TIME OF HEARING: 8:00 A.M.

21 TO: JAMES MONTELL CHAPPELL Defendant, and

22 TO: Your Attorney of Record: PUBLIC DEFENDER,

23 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the State
24 respectfully moves this Court to order Defendant, JAMES MONTELL
25 CHAPPELL, to give to a representative of the Las Vegas Metropolitan
26 Police Department samples of his blood, saliva, head and pubic
27 hairs.

28 / / /

/ / /

1 This Motion is being made so that a comparison can be made
2 between samples obtained and the evidence recovered by the Las
3 Vegas Metropolitan Police Department and is based upon the
4 pleadings and records on file, the points and authorities attached
5 hereto and any argument of counsel required by the Court.

6 Said Motion will be heard in the above-entitled Court on
7 ~~Wednesday~~ ^{Thursday} the ~~27th~~ ^{28th} day of September, 1995, at 9:00 o'clock a.m.,
8 or as soon thereafter as counsel can be heard.

9 DATED this 25th day of September, 1995.

10 STEWART L. BELL
11 District Attorney
Nevada Bar#000477

12
13 By Melvyn T. Harmon
14 MELVYN T. HARMON
15 Chief Deputy District Attorney
16 Nevada Bar #000862
17
18

19 POINTS AND AUTHORITIES

20 JAMES MONTELL CHAPPELL is accused of murdering Deborah Panos.
21 The Defendant and the victim have had a rather tumultuous
22 relationship for a number of years which includes instances of
23 domestic battery. The Defendant ostensibly is the father of the
24 victim's three children. Ms. Panos was stabbed numerous times in
25 the neck, upper chest, abdominal and pubic areas of her body.
26 Consequently, there were substantial amounts of blood spots and
27 spattering at the crime scene. The victim was also battered and
28 probably attempted to defend herself from her assailant.

1 Substantial amounts of blood were observed on the victim's clothing
2 at the time of the autopsy examination. Further, a blood-like
3 substance was recovered from the interior rear lower trunk frame
4 near the right rear brake light of the victim's 1984 Toyota
5 Corolla. A close friend of the victim saw the Defendant driving
6 the victim's Toyota from the crime scene. The clothing of the
7 Defendant worn at the time of his arrest was recovered by police
8 and it will be carefully examined for the presence of blood or
9 other forensic evidence. Additionally, at the time of his arrest
10 police observed that the Defendant had two stab wounds on the palm
11 side of one of his fingers which were consistent with the
12 approximately twelve stab wounds to the victim's body. Thus, law
13 enforcement has concluded that Chappell may have wounded himself
14 during the attack upon Deborah Panos. The victim's fingernails
15 were scraped and the tips of the Defendant's left hand and right
16 hand fingernails were clipped and fingernail scrapings were
17 obtained from the Defendant's right thumb.

18 Accordingly, it is imperative that law enforcement obtain
19 serology samples to include blood, saliva, head and pubic hair
20 samples. Only by this process can representatives of the police
21 department crime lab identify the presence of the Defendant's and
22 the victim's blood in connection with evidence impounded in the
23 case and determine whether any sexual activity preceded the murder
24 and whether the Defendant deposited any of this hairs on the victim
25 or in her vehicle in connection with the perpetration of these
26 crimes.

27 The following authorities stand for the proposition that all
28 real or physical evidence is not protected by the Fifth Amendment.

1 McCray v. State, 85 Nev. 597, 460 P.2d 160 (1969). The Court, in
2 Schmerber v. California, 384 US. 757, 86 S.Ct. 1826, 16 L.Ed 2d 908
3 (1966), was called to decide whether the withdrawal of blood and
4 admission in evidence of the analysis violated a Defendant's
5 privilege under the Fifth Amendment.

6 "We hold that the privilege protects an
7 accused only from being compelled to testify
8 against himself, or otherwise provide the
9 State with evidence of a testimonial or
10 communications nature, and that the withdrawal
of blood and use of the analysis in question
in this case did not involve compulsion to
these ends."

11 In United States v. Wade, 388 U.S. 218 (1967), the Court said:

12 "We held in Schmerber, supra, 384 U.S. at 761,
13 86 S.Ct. at 1830, that the distinction to be
14 drawn under the Fifth Amendment privilege
against self-incrimination is one between an
15 accused's communications in whatever form,
vocal or physical, and compulsion which makes
16 physical evidence. Schmerber, supra, at 764,
86 S.Ct. at 1832. We recognized that both
Federal and State courts have usually held
17 that . . . (the privilege) offers no
protection against compulsion to submit to
18 fingerprinting, or photography, or
measurements, to write or speak for
19 identification, to appear in Court, to stand,
to assume a stance, to walk or to make a
particular gesture." Id., at 764, 86 S.Ct. at
20 1832, 388 U.S. 223.

21 The Court held that the extraction and chemical analysis of a
22 blood sample involved no "shadow of testimonial compulsion upon or
23 enforced communication by the accused." Id., at 765, 86 S.Ct. at
24 1832.

25 These cases led the Supreme Court to conclude in Gilbert v.
26 California, 388 U.S. 263, 87 S.Ct., 1951, (1967), that handwriting
27 exemplars were not protected by the privilege against compulsory
28 self-incrimination. While (o)ne's voice and handwriting are, of

1 course, means of communications, "we held that a mere handwriting
2 exemplar, in contrast to the content of what is written, like the
3 voice or body itself, is an identifying physical characteristic
4 outside its protection." Id., at 266-267, 87 S.Ct. at 1953. And
5 similarly, in United States v. Wade, 388 U.S. 218, 87 S.Ct. 1926,
6 18 L.Ed. 2d 1149, we found no error in compelling a defendant
7 accused of bank robbery to utter in a lineup words that had
8 allegedly been spoken by the robber. The accused there was
9 "required to use his voice as an identifying physical
10 characteristic, not to speak his guilt." Id., at 222-223, 87
11 St.Ct. at 1930.

12 Finally, United States v. Dionisio, 410 U.S. 1, 93 S.Ct. 764
13 (1973) and United States v. Mara, 410 U.S. 19, 93 S.Ct. 774 (1973)
14 further support the State's position. In Dionisio, supra, the
15 Court held that a subpoena to compel a person to appear before a
16 grand jury does not constitute a "seizure" within the Fourth
17 Amendment interest. The Court reasoned that the Fourth Amendment
18 provides no protection for what a person exposes to the public.

19 Adopting Dionisio, supra, United States v. Mara, supra, held
20 that a specific and narrowly drawn directive requiring a witness
21 furnish a handwriting sample to a grand jury, to be used as a
22 standard of comparison with a certain writing, violated no Fourth
23 Amendment interest.

24 The State believes that the overriding function of the Fourth
25 Amendment is to protect personal privacy and dignity against
26 unwarranted intrusion by the State. The instant case does not
27 reflect such unwarranted intrusion.

28 / / /

1 CONCLUSION

2 Based upon the above Points and Authorities and any argument
3 of counsel, the State respectfully requests an Order Compelling the
4 Production of Blood, Saliva, Head and Pubic Hair Samples from the
5 Defendant, JAMES MONTELL CHAPPELL.

6 DATED this 25th day of September, 1995.

7 STEWART L. BELL
8 District Attorney
9 Nevada Bar#000477

10 By Melvyn T. Harmon

11 MELVYN T. HARMON
12 Chief Deputy District Attorney
13 Nevada Bar #000862
14

15 RECEIPT OF COPY

16 RECEIPT OF COPY of the above and foregoing MOTION AND NOTICE
17 OF MOTION TO COMPEL PRODUCTION OF BLOOD, SALIVA, HEAD AND PUBIC
18 HAIR SAMPLES is hereby acknowledged this 26th day of
19 September, 1995.

20 PUBLIC DEFENDER'S OFFICE

21 By [Signature]

22 309 S. Third St., #226
23 Las Vegas, Nevada 89101
24
25
26
27
28

FILED

OCT 2 10 04 AM '95

BY CLERK

1 STEWART L. BELL
DISTRICT ATTORNEY
2 Nevada Bar #000477
200 S. Third Street
3 Las Vegas, Nevada 89155
(702) 455-4711
4 Attorney for Plaintiff
THE STATE OF NEVADA
5
6
7

JUSTICE COURT, LAS VEGAS TOWNSHIP

CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

CASE NO. 95F08114X

10 Plaintiff,

DEPT. NO. #3

11 -vs-

12 JAMES MONTELL CHAPPEL,
#1212860

14 Defendant.

ORDER TO COMPEL PRODUCTION

OF BLOOD, SALIVA, HEAD AND PUBIC HAIR SAMPLES

18 DATE OF HEARING: 9-28-95
19 TIME OF HEARING: 9:00 A.M.

20 THIS MATTER having come on for hearing before the above
21 entitled Court on the 27th day of September, 1995, the Defendant
22 being present, represented by PUBLIC DEFENDER, the Plaintiff being
23 represented by STEWART L. BELL, District Attorney, through MELVYN
24 T. HARMON, Deputy District Attorney, and the Court having heard the
25 arguments of counsel and good cause appearing therefore,


26 IT IS HEREBY ORDERED that the Motion and Notice of Motion to
27 Compel Production of Blood, Saliva, Head and Pubic Hair Samples,
28 shall be, and is hereby granted.

1 IT IS FURTHER ORDERED that the Defendant above-named give to
2 representatives of the Las Vegas Metropolitan Police Department
3 and/or the Clark County Detention Center's nursing staff samples of
4 his blood, saliva, head and pubic hair and that said
5 representatives do thereafter submit the samples obtained to the
6 Crime Lab of the Las Vegas Metropolitan Police Department
7 requesting their analysis.

8 DATED this 28th day of September, 1995.

9
10 
11 JUSTICE OF THE PEACE

12 STEWART L. BELL
13 District Attorney
14 Nevada Bar #000477

15 By 
16 MELVYN T. HARMON
17 Chief Deputy District Attorney
18 Nevada Bar #000862
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Justice Court, Las Vegas Township

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

James Chappel

Defendant.

CASE NO. 95F08114X

**MEDIA REQUEST & ORDER
ALLOWING CAMERAS IN THE
COURTROOM**

Deborah Clayton of KTNV-TV hereby
requests permission to VIDEOTAPE proceedings on the above entitled case, in
Courtroom No. 3, Judge Ahlstrom presiding, on the 8th day of
September, 19 95, at the hour of 8 a.m.

I certify that I am familiar with the Supreme Court Rules 229-247 (inclusive) on
Cameras and Electronic Media Coverage in the Courts. I also understand that this request must
be submitted to the Court at least seventy-two (72) hours before the proceedings commence
unless good cause can be shown.

It is further understood any pooling arrangements necessitated among the media shall
be the sole responsibility of the media and must be arranged prior to coverage, without calling
upon the Court to mediate any disputes.

DATED this 6th day of September, 19 95

Norbert C. [Signature] 3355 S. VALLEY VIEW 876-6798
Media Representative, Address and Telephone Number

IT IS HEREBY ORDERED by this Honorable Court that _____
be permitted to _____ in accordance with Supreme Court
Rules 229-247 (inclusive) and that this entry shall be made a part of the record of the
proceedings in this case.

DATED this 8th day of September, 19 95

Pooling required

[Signature]
JUSTICE COURT JUDGE

Plaintiff Atty. Noticed _____ date _____
Defendant Atty. Noticed _____ date _____
Media Noticed _____ date _____

Justice Court, Las Vegas Township

CLARK COUNTY, NEVADA

FILED

THE STATE OF NEVADA,

Plaintiff,

-vs-

James Chappel

Defendant.

CASE NO. 95F08114X

JUDGE COURT
LAS VEGAS NEVADABY
**MEDIA REQUEST & ORDER
ALLOWING CAMERAS IN THE
COURTROOM**

DEPUTY

Debra Curran of KTNV-TV hereby
requests permission to VIDEOTAPE proceedings on the above entitled case, in
Courtroom No. 3, Judge Ahlstrom presiding, on the 8 day of
September, 19 95, at the hour of 8:00a .m.

I certify that I am familiar with the Supreme Court Rules 229-247 (inclusive) on
Cameras and Electronic Media Coverage in the Courts. I also understand that this request must
be submitted to the Court at least seventy-two (72) hours before the proceedings commence
unless good cause can be shown.

It is further understood any pooling arrangements necessitated among the media shall
be the sole responsibility of the media and must be arranged prior to coverage, without calling
upon the Court to mediate any disputes.

DATED this 7 day of September, 19 95.

Debra Curran 3355 S. VALLEY VIEW 876-6798
Media Representative, Address and Telephone Number

IT IS HEREBY ORDERED by this Honorable Court that _____
be permitted to _____ in accordance with Supreme Court
Rules 229-247 (inclusive) and that this entry shall be made a part of the record of the
proceedings in this case.

DATED this 8th day of September, 19 95.

Pooling Required

[Signature]
JUSTICE COURT JUDGE

Plaintiff Atty. Noticed _____ date _____

Defendant Atty. Noticed _____ date _____

Media Noticed _____ date _____

FILED

SEP 7 2 54 PM '95

JUSTICE COURT
LAS VEGAS NEVADA
BY [Signature]
DEPUTY

JUST THE FAX

FROM THE DESK OF...

Debbie Cusumano
KTNV 13
3355 South Valley View
Las Vegas, NV 89102

Fax #: (702) 876-2237

THIS FAX IS FOR...

Fax #: 455-4529

Number of pages including cover sheet: 3

Date: 9/7/95 **Time:** _____

Please direct this message to: Admin/gst-3

Message: _____

Please call (702) 876-6021 if you experience any transmission difficulties.



KTNV13
LAS VEGAS

Justice Court, Las Vegas Township

CLARK COUNTY, NEVADA

FILED

SEP 12 5 34 PM '95

THE STATE OF NEVADA,

-VS- Plaintiff,

James Chapel Defendant.

CASE NO. 95F08114X JUSTICE COURT

BY

LAS VEGAS, NEVADA

MEDIA REQUEST & ORDER
ALLOWING CAMERAS IN THE
COURTROOM

DEPUTY

Debra Curran of KTNV-TV hereby
requests permission to VIDEOTAPE proceedings on the above entitled case, in
Courtroom No. 3, Judge Ahlstrom presiding, on the 21 day of
September, 1995, at the hour of 9:00a .m.

I certify that I am familiar with the Supreme Court Rules 229-247 (inclusive) on
Cameras and Electronic Media Coverage in the Courts. I also understand that this request must
be submitted to the Court at least seventy-two (72) hours before the proceedings commence
unless good cause can be shown.

It is further understood any pooling arrangements necessitated among the media shall
be the sole responsibility of the media and must be arranged prior to coverage, without calling
upon the Court to mediate any disputes.

DATED this 12 day of September, 1995.

Debra Curran
Media Representative, Address and Telephone Number 3355 S. VALLEY VIEW 876-6798

IT IS HEREBY ORDERED by this Honorable Court that _____
be permitted to _____ in accordance with Supreme Court
Rules 229-247 (inclusive) and that this entry shall be made a part of the record of the
proceedings in this case.

DATED this 13th day of September, 1995.

Pooling required

OK
JUSTICE COURT JUDGE

Plaintiff Atty. Noted cmf date 9-13-95
Defendant Atty. Noted cmf date 9-13-95
Media Noted cmf date 9-13-95

FILED

JUST THE FAX

SEP 12 5 34 PM '95

FROM THE DESK OF...

JUSTICE COURT
LAS VEGAS NEVADA
BY [Signature]
DEPUTY

[Signature: Debbie Curran]
KTNV 13
3355 South Valley View
Las Vegas, NV 89102

Fax #: (702) 876-2237

THIS FAX IS FOR...

Fax #: 455-4529

Number of pages including cover sheet: 2

Date: 9/12/95

Time: _____

Please direct this message to: Admin Dept. 3

Message: _____

Please call (702) 876-6021 if you experience any transmission difficulties.



KTNV13
LAS VEGAS

Justice Court, Las Vegas Township

CLARK COUNTY, NEVADA

SEP 26 5 32 PM '95

SEP 22 5 53 PM '95

THE STATE OF NEVADA,

JUS
LAS VEGASJUS
LAS VEGAS

Plaintiff,

CASE NO. 95F08114X

-vs-

JAMES CHAPPELL
Defendant.**MEDIA REQUEST & ORDER
ALLOWING CAMERAS IN THE
COURTROOM**

CHERI ROBERTSON

of KLAS-TV CHANNEL 8

hereby

requests permission to VIDEOTAPE proceedings on the above entitled case, in
Courtroom No. 3, Judge AHLSTROM presiding, on the 3 day of
OCTOBER, 19 95, at the hour of 8:00 9:00 a.m.

I certify that I am familiar with the Supreme Court Rules 229-247 (inclusive) on
Cameras and Electronic Media Coverage in the Courts. I also understand that this request must
be submitted to the Court at least seventy-two (72) hours before the proceedings commence
unless good cause can be shown.

It is further understood any pooling arrangements necessitated among the media shall
be the sole responsibility of the media and must be arranged prior to coverage, without calling
upon the Court to mediate any disputes.

DATED this 22 day of SEPTEMBER, 19 95.

CHERI ROBERTSON 3228 CHANNEL 8 DR LAS VEGAS, NV 89109 792-1489
Media Representative, Address and Telephone Number

IT IS HEREBY ORDERED by this Honorable Court that _____
be permitted to _____ in accordance with Supreme Court
Rules 229-247 (inclusive) and that this entry shall be made a part of the record of the
proceedings in this case.

DATED this 26th day of September, 19 95.

POOLING Required

Cherry L. L...
JUSTICE COURT JUDGE

Plaintiff Atty. Noticed any date 9-26-95

Defendant Atty. Noticed any date 9-26-95

Media Noticed any date 9-26-95

JC-100-100
Rev. 1/95

Justice Court, Las Vegas Township

CLARK COUNTY, NEVADA

FILED FILED

THE STATE OF NEVADA,

Plaintiff,

-VS-

James Chappel

Defendant.

SEP 26 5 30 PM '95

CASE NO. 95-08114X

**MEDIA REQUEST & ORDER
ALLOWING CAMERAS IN THE
COURTROOM**

Debra Curran of KTNV-TV hereby
requests permission to VIDEOTAPE proceedings on the above entitled case, in
Courtroom No. 3, Judge Ahlstrom presiding, on the 3 day of
October, 19 95, at the hour of 9:00a .m.

I certify that I am familiar with the Supreme Court Rules 229-247 (inclusive) on
Cameras and Electronic Media Coverage in the Courts. I also understand that this request must
be submitted to the Court at least seventy-two (72) hours before the proceedings commence
unless good cause can be shown.

It is further understood any pooling arrangements necessitated among the media shall
be the sole responsibility of the media and must be arranged prior to coverage, without calling
upon the Court to mediate any disputes.

DATED this 22 day of September, 19 95

Debra Curran 3355 S. VALLEY VIEW 876-6798
Media Representative, Address and Telephone Number

IT IS HEREBY ORDERED by this Honorable Court that _____
be permitted to _____ in accordance with Supreme Court
Rules 229-247 (inclusive) and that this entry shall be made a part of the record of the
proceedings in this case.

DATED this 26th day of September, 19 95.

POOLING REQUIRED

Thomas F. L...
JUSTICE COURT JUDGE

Plaintiff Atty. Noticed umf date 9-26-95Defendant Atty. Noticed umf date 9-26-95Media Noticed umf date 9-26-95

JC-10(Criminal)
Rev. 3/94

FILED

OCT 11 1 46 PM '95

Letitia Bowman

CLERK

1 STEWART L. BELL
2 DISTRICT ATTORNEY
3 Nevada Bar #000477
4 200 S. Third Street
5 Las Vegas, Nevada 89155
6 (702) 455-4711
7 Attorney for Plaintiff
8 THE STATE OF NEVADA

9 I.A. 10-18-95
10 9:00 A.M.
11 PD

DISTRICT COURT

CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,

13 Plaintiff,

14 -VS-

15 JAMES MONTELL CHAPPELL,
16 #1212860

17 Defendant.

CASE NO.

DEPT. NO. VII

DOCKET NO. P

INFORMATION

18 STATE OF NEVADA)

19 COUNTY OF CLARK)

ss:

20 STEWART L. BELL, District Attorney within and for the County
21 of Clark, State of Nevada, in the name and by the authority of the
22 State of Nevada, informs the Court:

23 That JAMES MONTELL CHAPPELL, the Defendant, having committed
24 the crimes of BURGLARY (Felony - NRS 205.060); ROBBERY WITH USE OF
25 A DEADLY WEAPON (Felony - NRS 200.380, 193.165) and MURDER (OPEN)
26 WITH USE OF A DEADLY WEAPON (Felony - NRS 200.010, 200.030,
27 193.165), on or about the 31st day of August, 1995, at and within
28 the County of Clark, State of Nevada, contrary to the form, force
and effect of statutes in such cases made and provided, and against
the peace and dignity of the State of Nevada,

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1 COUNT I - BURGLARY

2 did then and there wilfully, unlawfully, and feloniously
3 enter, with intent to commit larceny and/or assault and/or battery
4 and/or robbery and/or murder, that certain building located at 839
5 North Lamb Boulevard, Las Vegas, Clark County, Nevada, Space No.
6 125 thereof, occupied by DEBORAH PANOS.

7 COUNT II - ROBBERY WITH USE OF A DEADLY WEAPON

8 did then and there wilfully, unlawfully, and feloniously take
9 personal property, to-wit: social security cards and/or keys
10 and/or a motor vehicle, from the person of DEBORAH PANOS, or in her
11 presence, by means of force or violence, or fear of injury to, and
12 without the consent and against the will of the said DEBORAH PANOS,
13 said Defendant using a deadly weapon, to-wit: a knife, during the
14 commission of said crime.

15 COUNT III - MURDER (OPEN) WITH USE OF A DEADLY WEAPON

16 did then and there, without authority of law and with malice
17 aforethought wilfully and feloniously kill DEBORAH PANOS, a human
18 being, by stabbing at and into the body of the said DEBORAH PANOS
19 with a deadly weapon, to-wit: a knife, during the commission of
20 said crime; defendant committing said act with premeditation and
21 deliberation and/or committing said act during the perpetration of
22 a burglary and/or robbery.

23 STEWART L. BELL
24 DISTRICT ATTORNEY
Nevada Bar #000477

25
26 BY 

27 MELVYN T. HARMON
28 Chief Deputy District Attorney
Nevada Bar #000862

1	The names of witnesses known to the District Attorney's Office	
2	at the time of filing this information are as follows:	
3	ADAMS, NORM	DUFFY, BILL
4	PAROLE & PROBATION	PAROLE & PROBATION
	LAS VEGAS, NV	LAS VEGAS, NV
5	ADKINS, K.	DURAN, JOHN
6	LVMPD #900	5143 EAST GREGG PLACE
	CRIME LAB	LAS VEGAS, NV
7	ARAVE, LARRY	DURAN, LISA
8	PAROLE & PROBATION	5143 EAST GREGG PLACE
	LAS VEGAS, NV	LAS VEGAS, NV
9	AYERS, LUANA DORENE	ERRICHETTO, LINDA
10	3070 S. NELLIS #3005	LVMPD #
	LAS VEGAS, NV	CRIME LAB
11	BERFIELD, LAURA	GRABOWSKI, C.
12	POLICE DEPT.	BUNKER BROTHERS
	TUCSON, AZ	LAS VEGAS, NV
13	BURTON, R.	GREEN, SHELDON
14	LVMPD #1149	1704 PINTO LN - CORONER
	CCDC	LAS VEGAS, NV
15	CABRALES, AL	HANNERS, A.
16	LVMPD #2045	LVMPD #4920
	CRIME LAB	FSD
17	CLAIRE (LNU)	HEINER, D.
18	PRICE RIGHT	LVMPD #2601
	LAS VEGAS, NV	FSD
19	COMPTON, MIKE	HENDERSON, ED
20	PAROLE & PROBATION	PAROLE & PROBATION
	LAS VEGAS, NV	LAS VEGAS, NV
21	CONNELL, DAN	JACKSON, LADONNA
22	LVMPD #	507 N. LAMB #6
	CRIME LAB	LAS VEGAS, NV
23	COOK, TERRY	JOLLEY, G.
24	LVMPD #2545	LVMPD #475
	CRIME LAB	HOMICIDE
25	CUSTODIAN OF RECORDS	KEETON, W.
26	TUCSON POLICE DEPT.	LVMPD #505
	TUCSON, AZ	HOMICIDE
27	DICKENS, C.	KERNS, E.
28	LVMPD #4008	LVMPD #4331
	FSD	FSD

1	LEAVER, BILL LVMPD #759	RAMOS, PHIL LVMPD #799
2	CRIME LAB	HOMICIDE
3	LEE, RUSSELL LVMPD #3290	REES, R. LVMPD #2332
4	FSD	CRIME LAB
5	MANCHO, MICHELLE G.E., 4440 E. TROPICANA	SEMPSON, KIMBERLY 2210 CARLISLE CIR.
6	LAS VEGAS, NV	LA HABRA, CA
7	MARTINEZ, LAWRENCE 12345 MONTE VISTA ST.	SHADLER, M. BUNKER BROTHERS
8	CHINO, CA	LAS VEGAS, NV
9	MASTON, M. LVMPD #2112	SMITH, LATRONA SHERELLE 3301 CIVIC CENTER #9B
10	FSD	NORTH LAS VEGAS, NV 89030
11	MORRIS, K. 1704 PINTO LN - CORONER	SMITH, CHARMAINE PAROLE & PROBATION
12	LAS VEGAS, NV	LAS VEGAS, NV
13	MUNSON, MAYNARD ADDRESS UNKNOWN	SPOOR, MONTE LVMPD #3856
14	TUCSON, AZ	CRIME LAB
15	ORTIZ, LV FIRE DEPT.	STALLINGS, JOHN 1704 PINTO LN - CORONER
16	RESCUE 8	LAS VEGAS, NV
17	OSUCH, PAUL LVMPD #2141	TOWNSEND, K. NV DIV OF INVESTIGATION #259
18	FSD	LAS VEGAS, NV
19	PANOS, JAMES 2041 S. DIAMOND BAR LN	TURNER, DEBORAH 507 N. LAMB #6
20	TUCSON, AZ	LAS VEGAS, NV
21	PENFIELD, NORMA 2041 S. DIAMOND BAR LN	VACCARO, JIMMY LVMPD #1480
22	TUCSON, AZ	HOMICIDE
23	PERKINS, M. LVMPD #4242	WASHINGTON, M. LVMPD #4725
24	CRIME LAB	CRIME LAB
25	PETERSON, D. LVMPD #4034	WILKINSON, WENDY COORDINATOR,
26	CRIME LAB	TEMPORARY PROTECTIVE ORDERS
27	POLLARD, MIKE G.E., 4440 E. TROPICANA	
28	LAS VEGAS, NV	

AMENDED BY ORDER OF THE COURT

LORETTA BOWMAN, CLERK

BY *Rori Brown*, Deputy

JUL 15 1986

AMENDED BY ORDER OF THE COURT

LORETTA BOWMAN, CLERK

BY *Deputy*

1 WILTZ, WILLIE
1245 PACIFIC TERRACE DR.
2 LAS VEGAS, NV

3 WINCHELL, CALVIN
PAROLE & PROBATION
4 LAS VEGAS, NV

5 YADA, W.
LVMPD #2612
6 FSD

7 YATES, PAULA
CELLMARK DIAGNOSTICS
8 20271 GOLDENROD LANE
GERMANTOWN, MD 20876

9 FORMAN, LISA
10 CELLMARK DIAGNOSTICS
20271 GOLDENROD LANE
11 GERMANTOWN, MD 20876

12 WILLIAMS, ALAN
LVMPD #4083

13 STANSBURY, DAVID
14 LVMPD #3515

15 SZELES, MICHAEL
LVMPD #3526

16 GIERSDORF, DANIEL
LVMPD #4521

17 HOBSON, TANYA
P.O. BOX 43264
18 LAS VEGAS, NV

19 McCOURT, JOHN M.D.
UNIVERSITY MEDICAL CENTER
20 LAS VEGAS, NV

21 FREEMAN, DINA
TUCSON POLICE DEPT.
22 TUCSON, AZ

23 KNAPP
24 LVMPD #
25 CCDC

26 DA#95F08114X/kjh
LVMPD DR#9508311351
27 BURG;ROBB W/WPN;
MURDER W/WPN - F
28 (TK3)

KLEIN, DOROTHY
LVMPD #3997

GROVE, W.
CITY INTAKE JAIL #253

McNITT, L.
TUCSON POLICE DEPT.
TUCSON, AZ

HAGGERTY
TUCSON POLICE DEPT.
TUCSON, AZ

EARNST, J.
TUCSON POLICE DEPT.
TUCSON, AZ

NEIDKOWSKI
TUCSON POLICE DEPT.
TUCSON, AZ

VERNON
TUCSON POLICE DEPT.
TUCSON, AZ

AUSSERNS
TUCSON POLICE DEPT.
TUCSON, AZ

STONER
TUCSON POLICE DEPT.
TUCSON, AZ

GAY, KENNETH
1705 S. WASHINGTON
LANSING, MI

WIDNER, PAUL
LANSING POLICE DEPT.
LANSING, MI

PRIEBE, JON
LANSING POLICE DEPT.
LANSING, MI

GRANGER, AL
ADDRESS UNKNOWN

AMENDED BY ORDER OF THE COURT

LORETTA BOWMAN, CLERK

BY *[Signature]*, Deputy

October 14, 19*96*

AMENDED BY ORDER OF THE COURT

LORETTA BOWMAN, CLERK

BY *[Signature]*, Deputy

September 4, 19*96*

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CUSTODIAN OF RECORDS
LVMPD

CUSTODIAN OF RECORDS
CCDC

COTTON, ROBIN
OR DESIGNEE
CELLMARK DIAGNOSTIC
20271 GOLDENROD LN
GERMANTOWN, MD

WAHL, THOMAS
LVMPD #5019 (LAB)

95F08114X

FILED

Nov 8 3 24 PM '95

Loretta Bowman
CLERK

1 STEWART L. BELL
2 DISTRICT ATTORNEY
3 Nevada Bar #000477
4 200 S. Third Street
5 Las Vegas, Nevada 89155
6 (702) 455-4711
7 Attorney for Plaintiff
8 THE STATE OF NEVADA

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DISTRICT COURT

CLARK COUNTY, NEVADA

9	THE STATE OF NEVADA,)	CASE NO.	C131341
10)		
11	Plaintiff,)	DEPT. NO.	VII
12)		
13	-vs-)	DOCKET NO.	P
14)		
15	JAMES MONTELL CHAPPELL,)		
16	#1212860)		
17)		
18)		
19	Defendant.)		
20)		
21)		
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NOTICE OF INTENT

TO SEEK DEATH PENALTY

COMES NOW the State of Nevada, through STEWART L. BELL, Clark County District Attorney, by and through MELVYN T. HARMON, Chief Deputy District Attorney, pursuant to NRS 175.552 and NRS 200.033 and declares its intention to seek the death penalty at a penalty hearing. Furthermore, the State of Nevada discloses that it will present evidence of the following aggravating circumstances:

1. The murder was committed while the person was engaged in the commission of or an attempt to commit any Robbery. [NRS 200.033(4)] The evidence of this aggravating circumstance will consist of testimony and physical evidence arising out of the aggravated nature of the offense itself.

1 2. The murder was committed while the person was engaged in
2 the commission of or an attempt to commit any Burglary and/or Home
3 Invasion. [NRS 200.033(4)] The evidence of this aggravating
4 circumstance will consist of testimony and physical evidence
5 arising out of the aggravated nature of the offense itself.

6 3. The murder was committed while the person was engaged in
7 the commission of or an attempt to commit any Sexual Assault. [NRS
8 200.033(4)] The evidence of this aggravating circumstance will
9 consist of testimony and physical evidence arising out of the
10 aggravated nature of the offense itself.

11 4. The murder involved torture or depravity of mind. [See
12 NRS 200.033(8)] The evidence of this aggravating circumstance will
13 consist of testimony and physical evidence arising out of the
14 aggravated nature of the offense itself.

15 DATED this 8th day of November, 1995.

16 STEWART L. BELL
17 DISTRICT ATTORNEY
18 Nevada Bar #000477

19 By Melvyn A. Harmon
20 MELVYN A. HARMON
21 Chief Deputy District Attorney
22 Nevada Bar #000862
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RECEIPT OF COPY

RECEIPT OF A COPY of the above and foregoing NOTICE OF INTENT
TO SEEK DEATH PENALTY is hereby acknowledged this 8th day of
November, 1995.

PUBLIC DEFENDER'S OFFICE

By 
309 S. Third Street #226
Las Vegas, Nevada 89101

ORIGINAL

FILED

CASE NO. C 131341

Nov 14 11 12 AM '95

IN THE JUSTICE'S COURT OF LAS VEGAS TOWNSHIP

COUNTY OF CLARK, STATE OF NEVADA

CLERK

STATE OF NEVADA,

Plaintiff,

CASE NO. 95F08114X

VS.

JAMES MONTELL CHAPPELL,

Defendant.

REPORTER'S TRANSCRIPT

OF

PRELIMINARY HEARING

BEFORE THE HONORABLE THOMAS L. LEEN, PRO TEMPORE
JUSTICE OF THE PEACE

TUESDAY, OCTOBER 3, 1995

APPEARANCES:

For the State:

MELVYN T. HARMON, ESQ.
Chief Deputy District Attorney
and
ABBI SILVER LOGUE, ESQ.
Deputy District Attorney

For the Defendant:

KEDRIC A. BASSETT, ESQ.
Deputy Public Defender

Reported by: Cari M. Inkenbrandt, CCR 428, RPR

CSR ASSOCIATES OF NEVADA
Las Vegas, Nevada (702)382-5015

CE12

I N D E XSTATES**GILES SHELDON GREEN**

	<u>DIR</u>	<u>CROSS</u>	<u>REDIR</u>	<u>RECROSS</u>
By Ms. Logue	5		23	
By Mr. Bassett		19		

WILLIAM DUFFEY

By Mr. Harmon	27			
By Mr. Bassett		33		

LISA DURAN

By Mr. Harmon	38		76	
By Mr. Bassett		64		79

RUSSELL LEE

By Mr. Harmon	83			
By Mr. Bassett		90		

KIMBERLY SEMPSON

By Mr. Harmon	94			
By Mr. Bassett		105		

MICHAEL OSUCH

By Ms. Logue	115		138	
By Mr. Bassett		134		

JIMMY VACCARO

By Mr. Harmon	139			
By Mr. Bassett		150		

CSR ASSOCIATES OF NEVADA
Las Vegas, Nevada (702)382-5015

E X H I B I T S

		<u>IDENTIFIED</u>	<u>ADMITTED</u>
1			
2			
3	<u>STATE'S</u>		
4	1 - Photograph	59	89
	2 - Photograph	59	89
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6	5 - Photograph	60	89
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17	27 - Photograph	102	131
	28 - Photograph	53	149
18	29 - Photograph	53	149
	30 - Photograph	53	149
19	31 - Photograph	53	149
	32 - Photograph	132	133
20	33 - Photograph	77	132
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CSR ASSOCIATES OF NEVADA
Las Vegas, Nevada (702)382-5015

1 LAS VEGAS, NEVADA, TUESDAY, OCTOBER 3, 1995, 9:00 A.M.

2 * * * * *

3 THE COURT: James Montell Chappell.

4 The record will reflect the presence of
5 the defendant in custody with his attorney Mr. Bassett from
6 the PD's office, Mr. Harmon for the State and all officers
7 of the Court.

8 Are you ready to go forward, Mr. Harmon?

9 MR. HARMON: Abbi Logue of the DA's office is
10 going to be working with the prosecution.

11 THE COURT: Okay. Mr. Harmon, when she comes
12 in, I'll try to remember to have the record reflect her
13 presence.

14 Mr. Chappell, why don't you go down there
15 and sit next to your attorney.

16 (The defendant complied.)

17 THE COURT: Does either side wish to have the
18 rule invoked pertaining to the exclusion of witnesses?

19 MR. BASSETT: We would, your Honor.

20 THE COURT: Mr. Harmon, do you want to join
21 that, just in case there's any defense witnesses?

22 MR. HARMON: Yes, the State joins.

23 THE COURT: The record will reflect that
24 Ms. Abbi Logue has joined the prosecution in this case and
25 is present in court.

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1 Folks, anybody who is going to be a
2 witness in this case, other than the witness that is about
3 to be called, will --

4 MR. HARMON: Dr. Sheldon Green would be the
5 witness.

6 THE COURT: -- will be asked to leave the
7 courtroom, and I'll admonish you not to discuss your
8 testimony in this case with anybody other than the attorneys
9 who are parties to this case.

10

11 GILES SHELDON GREEN, M.D.,
12 having been first duly sworn, was
13 examined and testified as follows:

14

15 THE CLERK: Please be seated. State your full
16 name and spell your last name, please.

17 THE WITNESS: Giles Sheldon Green, G-R-E-E-N.

18

19 DIRECT EXAMINATION

20 BY MS. LOGUE:

21 Q. Dr. Green, for whom you are employed?

22 A. I'm employed by Clark County, Nevada, as chief
23 medical examiner in the Coroner's Medical Examiner
24 Department.

25 Q. Are you licensed to practice medicine in any

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1 state?

2 A. In Nevada and California.

3 Q. And what's your area of speciality?

4 A. Forensic pathology.

5 Q. As part of your duties, do you conduct
6 autopsies?

7 A. I do.

8 Q. How many autopsies have you conducted in the
9 past?

10 A. I think we are pushing up toward 1100.

11 Q. And have you been qualified in both the
12 justice court and the district court as an expert in
13 pathology, forensic pathology?

14 A. Many times, yes.

15 MS. LOGUE: Your Honor, at this time I would
16 ask that you deem him to be an expert in the area of
17 forensic pathology.

18 THE COURT: Any voir dire, Mr. Bassett?

19 MR. BASSETT: No, your Honor.

20 THE COURT: Dr. Green is established as an
21 expert in the field of forensic pathology

22 BY MS. LOGUE:

23 Q. Doctor, on September 1st of 1995, did you have
24 occasion to perform an autopsy on a body identified to us as
25 Deborah Panos?

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Las Vegas, Nevada (702)382-5015

1 A. Yes, I did.

2 Q. I'd like to show you what's been marked as
3 State's Proposed Exhibit No. 15 and ask you to identify that
4 picture.

5 A. Okay. This is a photograph taken of the body
6 of a young lady who's identified to us as Deborah Panos, or
7 Deborah Ann Panos, taken on September 1st of this year in
8 the Clark County morgue.

9 Q. And, Doctor, in conducting your autopsy, did
10 you do an external examination?

11 A. Yes, I did.

12 Q. And did you make significant findings
13 regarding your external examination?

14 A. Yes.

15 Q. What were your findings?

16 A. Significant findings consisted of a couple of
17 different things. Number one, 13 separate penetrating stabs
18 wounds of the body; and, number two, multiple
19 recent-appearing bruises or contusions.

20 Q. How many total stab wounds did you find?

21 A. A total of 13.

22 Q. And how many of those were penetrating?

23 A. All of them.

24 Q. Were there four that you found to be
25 significant as to, perhaps, the cause of death?

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1 A. They were -- this gets into the internal
2 examination. If you want to combine the two, we can save
3 some time.

4 Q. That would be fine.

5 A. We have a cluster of ten stab wounds in the
6 area of the neck and left upper chest. One wound is just
7 below the left collar bone, one just above it toward the
8 midline and eight clusters around the front of the neck.
9 There's one additional one over in the left side of the neck
10 below the other. This is not a major wound. It gets into
11 some muscle. That's all it did.

12 The major damage is done by the wound in
13 the front of the neck and also the wound just below the left
14 collar bone. We found in the internal examination that we
15 had three -- first of all we had three wounds coming out the
16 right, just to the right of the midline. One of those came
17 in and punctured the internal jugular vein on the right.
18 Another of those three cut part way through the right
19 carotid artery. One cut the left common carotid artery.
20 Both of those are large vessels which are capable of
21 bleeding -- very, very profuse bleeding.

22 The wound just below the left collar bone
23 went into the chest through the left lung striking, I think,
24 the third rib toward the back; and that did, in fact,
25 produce somewhat more bleeding than one might have expected.

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1 The wound itself in the lung didn't look terribly bad but,
2 in fact, it did bleed quite heavily.

3 Q. Did any of those stab wounds penetrate to any
4 bone in the body?

5 A. Four of the wounds in the neck actually hit
6 the spine, and they definitely penetrated into the bone of
7 the spinal column, yes.

8 Q. What would that indicate, or what significance
9 does that have to you that this stab wound went into a bone?

10 A. Simply that they were inflicted rather
11 forcibly. It takes a certain amount of power to poke a
12 knife point into a bone.

13 Q. You also stated as part of your external
14 examination that you found multiple contusions and
15 abrasions.

16 A. Correct.

17 Q. What is a contusion, Doctor?

18 A. A bruise.

19 Q. What is an abrasion?

20 A. A scrape.

21 Q. And can you describe the areas in which you
22 saw contusions?

23 A. Primarily around the face. The left side of
24 the face had a large area of reddish coloration which is
25 indicative of a recent bruise. It extended up into an area

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1 on the forehead which also had some scraping or abrasion
2 wounds. We had bruises of the right side of the face over
3 the cheek bone. We had some down around the angle of the
4 right jaw with some scraping effect in there, also. There
5 was some other scattered, recent-appearing bruises about the
6 body. I think there's one in one of the shoulders, and I
7 don't know which one it was. Back of the right hand, the
8 right wrist had some very prominent bruises.

9 Q. Could you determine the age of these bruises
10 by looking at them?

11 A. The only thing that one can say about the age
12 of a bruise, in terms of its color, is to divide them into
13 recent, intermediate, and old injuries.

14 If they are red, as these were, we're
15 looking at something generally less than a day old.

16 If they are blue, purple with loss of the
17 red color, we call them intermediate, and there is no time
18 frame you can put on that. They would, a small one, may
19 disappear in a few days. A major one may take months.

20 Finally, the old bruise has fading
21 borders. We've all seen it. It has yellowish to tan,
22 sometimes greenish coloration. That penetrates farther and
23 farther in toward the center until finally it wipes out.

24 Q. And most of these bruises were new bruises?

25 A. These were all recent.

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1 Q. Can you tell how recent they are in
2 relationship to when this decedent received the stab wounds?

3 A. The best we can say is that they are on the
4 same day. We cannot say that they were minutes or hours or
5 anything like that. In terms of time frame, all we can say
6 is these are recent. They happened that day, the day of
7 death.

8 Q. Can you state what could have caused the
9 bruises on her face and her body?

10 A. These are all just basically blunt trauma
11 injuries.

12 Q. Would that be consistent with a fist hitting
13 the decedent?

14 A. Could be.

15 Q. I want to show you some other pictures,
16 Doctor. I want to ask you, on State's Proposed Exhibit No.
17 15, is that a fair and accurate depiction of how the
18 decedent looked prior to conducting the autopsy on September
19 1st of 1995?

20 A. Yes. This photograph was taken right after
21 the crash bag was opened up and nothing had been done to the
22 body.

23 MS. LOGUE: At this time I would move to admit
24 State's Proposed Exhibit No. 15.

25 THE COURT: Have you shown it to Mr. Bassett?

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Las Vegas, Nevada (702)382-5015

1 MS. LOGUE: Yes.

2 THE COURT: Do you have any objection?

3 MR. BASSETT: No, your Honor.

4 THE COURT: It will be admitted as 15.

5 MS. LOGUE: Thank you.

6 BY MS. LOGUE:

7 Q. I want to show you State's Proposed No 16.
8 What does this picture depict?

9 A. This is a left lateral or side-view of the
10 lady's head. It shows the bruised area on the left cheek,
11 almost the entire left cheek involved, essentially on the
12 area of cheek bone. It also shows some bruising and
13 scraping injuries or abrasions on the forehead. We see a
14 bruise on the left side of the neck. And we can see several
15 of the stab wounds that we've been talking about earlier.
16 Also there's a scrap or combination scrape and bruise right
17 under the point of the chin. I don't think I mentioned that
18 one early.

19 Q. That was a new injury as well?

20 A. This one probably is. It still has a red
21 border of bruising around the scrape.

22 Q. And that would also be consistent with blunt
23 trauma?

24 A. Yes.

25 Q. And this is a fair and accurate depiction as

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1 well?

2 A. Yes.

3 MS. LOGUE: At this time I would move to admit
4 State's Proposed Exhibit 16.

5 THE COURT: Mr. Bassett?

6 MR. BASSETT: No objection.

7 THE COURT: It will be admitted as 16.

8 BY MS. LOGUE:

9 Q. Showing you State's Proposed Exhibit 17, what
10 does this picture depict?

11 A. This picture is looking down primarily at the
12 forehead. We have scrapes, quite a bit of damage to the
13 skin there in several areas, and also some reddish bruising.
14 Also there's an L-shaped ruler in here which is marked up on
15 metric scales for size reference being held by somebody with
16 a rubber glove. That basically is all we see here.

17 Q. In this picture where you see the big, I guess
18 abrasion?

19 A. Yes.

20 Q. What could have caused this abrasion to the
21 forehead right there?

22 A. Virtually any solid object.

23 Q. So if someone fell into a wall or a table, it
24 could, perhaps, leave this type of abrasion?

25 A. All I can say about that is that something hit

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1 her or she hit something.

2 Q. Showing you State's Proposed Exhibit No. 18,
3 what is this a picture of?

4 A. Those are little penetrating stab wounds below
5 the left ear. It's down about three inches below the ear
6 canal. You will see a reddish line. Not a very large or
7 dramatic wound. Really didn't do a lot of damage.

8 Q. Showing you State's Proposed Exhibit 19, what
9 is this a picture of?

10 A. This shows the upper chest, neck and face,
11 shows that scrape on the point of the chin extremely well.
12 I think its primary purpose is to show some of the stab
13 wounds of the upper chest and neck.

14 Q. Showing you what's been marked as State's
15 Proposed Exhibit No. 20, what is that?

16 A. This is a lateral or side-view of the head,
17 neck and upper torso. In this one we can see a number of
18 stab wounds. We also see the bruises and abrasions around
19 the angle of the jaw. And I don't think I mentioned it
20 earlier, there's a lot of red bruising in the right ear,
21 very obvious.

22 Q. Also a newer bruise?

23 A. These are recent bruises.

24 Q. And that recent bruise, would your opinion be
25 that that could also be consistent as being caused by,

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1 perhaps, blunt trauma, such as a fist?

2 A. It certainly could be from blunt trauma
3 injury. A fist is a possibility. I can't tell you whether
4 or not it actually was.

5 Q. I'm showing you what's been marked as State's
6 Exhibit No. 21. What is this?

7 A. This shows the right arm, the right upper arm.
8 This was the bruises that I mentioned I couldn't remember
9 which arm it was on. It's on the right, obviously.

10 Q. Showing you State's Proposed Exhibit No. 22,
11 what is this?

12 A. This is the right forearm just below the
13 elbow. There's a fairly superficial scrape here, like an
14 inch and a half or two inches below the point of the elbow.

15 Q. Showing you what's been marked State's
16 Proposed No. 23, what is this a picture of?

17 A. Basically what we're looking at here is right
18 hand and wrist area. It's scraped up across the bone. See
19 the right wrist, there just above it. And we have a very
20 prominent set of bruises, one on the back of the hand and
21 one on the back of the wrist. Another one over on the side
22 of the wrist below the thumb. So it's quite a bruise
23 pattern there.

24 Q. This is showing the right hand?

25 A. That's correct.

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1 Q. Did you make some findings in regard to the
2 left hand of the decedent?

3 A. We did. It's a scratch on the left hand,
4 quarter of an inch long or so.

5 Q. In your report, did you make a note as to what
6 could have caused that scrape or --

7 A. Well, basically it's a scratch. I mentioned
8 that this might be a defensive injury of some kind. It may
9 not be, but certainly that's a possibility.

10 Q. Showing you what's been marked State's
11 Proposed Exhibit No. 24, what is this?

12 A. This is a small stab wound to the abdomen,
13 just to the right of the navel. This one penetrated into
14 the abdominal cavity, did not hit any vital structures, did
15 go through the mesentery or the supporting structure of the
16 small intestine, but it's not a major injury. It probably
17 would have healed up by itself without much intervention.

18 Q. Showing you what's been marked State's
19 Proposed Exhibit No. 25, what is that a picture of?

20 A. Here we're down around the lower abdomen and
21 pelvic area. High in the upper left corner you can see that
22 same stab wound to the umbilicus. This one basically is to
23 illustrate a stab wound right over the abdomen on the right,
24 pubic hair in the upper right area. This did penetrate a
25 couple of inches or so but didn't hit any main blood

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1 vessels, no significant bleeding from it.

2 Q. Finally, showing you State's Proposed Exhibit
3 No. 26, what is this a picture of?

4 A. That would certainly look like her left knee,
5 and it has some bruises, also.

6 Q. And those would also be recent bruises?

7 A. They look recent, yes.

8 Q. In fact, they are recent?

9 A. They are red.

10 Q. Doctor, after looking at State's Proposed
11 Exhibit No. 17 through 26, would these all be fair and
12 accurate depictions of how the decedent's body appeared on
13 the day that you conducted the autopsy?

14 A. Yes, they are quite accurate.

15 MS. LOGUE: Your Honor, at this time I would
16 move to admit State's Proposed Exhibits 17 through 26.

17 THE COURT: Mr. Bassett?

18 MR. BASSETT: No objection, your Honor.

19 THE COURT: They will be admitted as State's
20 Exhibits 17 through 26 inclusive.

21 MS. LOGUE: Thank you.

22 BY MS. LOGUE:

23 Q. Doctor, I want to show you what's been marked
24 as State's Proposed Exhibit 9, this appearing to be a
25 picture of a knife. Would this knife -- would this be an

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1 instrument consistent with what could have caused the
2 injuries, specifically the stab wounds to the victim in this
3 case?

4 A. It looks like a fairly conventional steak
5 knife type of object. There's nothing in here to give us
6 any size reference, but assuming that it is a fairly
7 conventional steak knife, then it could be used to make
8 these injuries.

9 Q. And, Doctor, do you have an opinion as to the
10 cause of death in this case?

11 A. Yes, I do.

12 Q. And what is that opinion?

13 A. This was the result of multiple stab wounds of
14 the neck and chest.

15 Q. And do you have an opinion as to the manner of
16 death?

17 A. I do.

18 Q. What is that opinion?

19 A. My opinion is this is homicide.

20 MS. LOGUE: Thank you, your Honor. We pass
21 this witness.

22 THE COURT: Mr. Bassett?

23 / / /

24 / / /

25 / / /

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CROSS-EXAMINATION

BY MR. BASSETT:

Q. Doctor, at the time you went in to perform this autopsy, could you tell me what information you had at that time?

A. We had information from our field investigator's written report. I would supply you with a copy if you'd like.

Q. I think we have a copy.

A. This basically gives us about a one- to two-page summary of what the crime scene looked like and whatever information was available at that time. Obviously he would have been talking to investigating officers. And looking at the body, the body had not been moved from where she died, hadn't been taken to a hospital.

Q. Had you had a chance to talk to your investigator personally or just to see his report?

A. We do have the chance to talk to him personally. At the time of the autopsy, usually one or both detectives involved will come over to see what we are finding, and they can often fill in a little more information than what we have from the crime scene itself.

Q. Do you recall who, other than yourself, was there present at the autopsy?

A. Detective Vaccaro and Detective Ramos from

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1 homicide detail, both were there. Mr. Peterson, crime lab
2 technician from the Criminalistics Bureau, he was there. He
3 did all the photography and trace evidence work, that kind
4 of thing.

5 Q. Were they present during the entire autopsy;
6 do you recall?

7 A. Mr. Peterson certainly was. I can't recall
8 whether Detective Vaccaro or Ramos or both were there the
9 entire time. It's pretty much their habit to stay through
10 the entire procedure, but I can't tell you for sure.

11 Q. Okay. In terms of the bruises that you have
12 indicated that they would have been within a day of her
13 having died, when you say a day, are we talking, what, 24
14 hours prior?

15 A. That's correct, yes.

16 Q. Okay. And that's as close as you can come in
17 terms of any kind of estimate as to when those bruises would
18 have occurred?

19 A. That's as close as we can come.

20 Q. Were there any other bruises you saw other
21 than the ones you say are recent bruises?

22 A. No, I didn't see any I would classify as older
23 or intermediate.

24 Q. In terms of the one that you talked about that
25 was under the collar bone, you talked about that hitting the

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1 ribs. Can you tell whether it was a wound where the knife
2 would have gone straight in or would the knife come down
3 into the person?

4 A. Pretty much straight in. It went through the
5 space between the first and second ribs, here in the left
6 upper chest, went back hitting the back of, the posterior
7 part, of the left third rib, which makes it just about a
8 horizontal wound.

9 Q. In terms of the wounds that you talk about
10 hitting the spine, were those the wounds that were under the
11 neck, or which wound hit the spine?

12 A. We're talking about several -- four of this
13 cluster of -- actually, there's eight in the neck here. I
14 mentioned that we have damage to the internal jugular vein,
15 both carotid arteries, trachea -- windpipe, one going
16 through the voice box, and four out of this group struck the
17 spinal column.

18 Q. Okay. In terms of the scraping, what you
19 referred to as scraping, is that from a scratch, or what is
20 it you are talking about when you're talking about scraping?

21 A. The type of injury that we could all get by
22 banging an unprotected elbow on a rough plaster wall.

23 Q. Okay. So any kind of rough surface being
24 brought to bear against the skin?

25 A. Yes, in terms of a sliding abrasion. If we

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1 skid our skip across any hard object, it can produce it, if
2 you hit it hard enough. There's also the contact abrasion,
3 which I don't think is involved here. Perhaps, at the angle
4 of the jaw where some object strikes the skin, leaves an
5 impression, does some damage but didn't skid.

6 Q. In terms of what you just described, then, is
7 there any way you can tell what caused the scraping?

8 A. No, these on the angle of the jaw are
9 undoubtedly contact type made by the same object, whatever
10 it was that produced the bruise here.

11 Q. In terms of what we had up here on the
12 forehead?

13 A. No, I can't tell what did that.

14 Q. Just so I am clear, then, too, you indicated
15 that there were the cluster of the ten stab wounds, overall
16 there were thirteen, so there were three wounds that weren't
17 in that cluster?

18 A. Wait a second. Wait a second. I think I've
19 confused you. We have a total of ten up in here, one over
20 here.

21 THE COURT: Excuse me. The record should
22 reflect that Dr. Green is indicating his, what I'll call his
23 throat area in front.

24 THE WITNESS: Okay. I'll try to be more
25 specific.

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1 Okay. We have a total of ten in the
2 front of the neck and upper chest; we have one below the
3 left ear for a total of eleven; one coming in right beside
4 the navel, twelve; one in the right groin. That makes the
5 thirteen.

6 BY MR. BASSETT:

7 Q. Okay.

8 A. None of those are defensive.

9 Q. In terms of the one in the neck, the one in
10 the abdomen and the third one being in the groin, those
11 aren't wounds that on their own would have caused death?

12 A. That's correct.

13 MR. BASSETT: Okay. I have no further
14 questions.

15 THE COURT: Redirect?

16

17 **REDIRECT EXAMINATION**

18 BY MS. LOGUE:

19 Q. Which stab wounds would have caused immediate
20 death?

21 A. Either of the wounds hitting the carotid
22 artery. Those are basically the lethal wounds. They would
23 have caused death very rapidly, either one of them or both
24 of them in combination.

25 The blood pressure would drop essentially

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1 to zero, almost instantaneously. She would probably have a
2 few seconds of remaining purposeful activity. The brain has
3 about 14 seconds worth of reserve oxygen supply. When
4 that's used up, consciousness is lost, so we've got a very
5 brief period between the time of actually losing her blood
6 pressure and losing consciousness.

7 Q. In fact, you're saying in probably, perhaps,
8 less than fifteen seconds?

9 A. Right.

10 Q. In fact, would it be your testimony that it
11 would be less than fifteen seconds she would lose
12 consciousness from the time either one or both of those
13 injuries was inflicted?

14 A. No, we are just talking about the two here,
15 not the rest of them.

16 Q. Do you have an opinion as to how long it would
17 have taken this victim to die?

18 A. Well, after one or both carotid arteries are
19 cut, she's going to lose consciousness in less, say in
20 fifteen seconds, quarter of a minute. Irreversible brain
21 damage will follow in approximately four minutes, and by ten
22 minutes there is absolutely no salvage.

23 Q. You stated on Direct Examination that the
24 manner of death in this case was a homicide. Can you define
25 a homicide?

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1 A. Well, from my own point of view, without
2 getting into legal problems, I think of it as the act by
3 which one person takes the life of another, but not getting
4 into intent, reason or anything else.

5 MS. LOGUE: Thank you. I would pass the
6 witness.

7 THE COURT: Any further cross?

8 MR. BASSETT: No, your Honor.

9 THE COURT: Dr. Green, you're excused -- just
10 one second.

11 Off the record.

12 (A discussion was held off the record.)

13 THE COURT: Back on the record.

14 We have concluded the testimony of
15 Dr. Green, ladies and gentlemen, but there's another
16 preliminary hearing this morning involving an in-custody
17 defendant in which Dr. Green is also an essential and
18 necessary witness. The attorneys for that case have agreed
19 to take Dr. Green out of order.

20 And Mr. Harmon and Mr. Bassett, if you
21 don't mind recessing this case for about ten minutes, we
22 will have Dr. Green testify in the other case, then pick up
23 with you. Is that okay Mr. Bassett?

24 MR. BASSETT: Yes, your Honor.

25 THE COURT: Is that okay Mr. Harmon?

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1 MR. HARMON: Yes, your Honor.

2 THE COURT: Thank you.

3 THE WITNESS: I appreciate that very much.

4 (Unrelated matters were heard.)

5 THE COURT: We are now back in session in case
6 No. 95F8114, State versus Chappell.

7 Once again, the record will reflect the
8 presence of the defendant, Mr. Chappell, in custody with his
9 attorney Mr. Bassett, Mr. Harmon and Ms. Logue for the State
10 and all officers of the Court.

11 We have just taken a short recess in this
12 case to allow Dr. Green, who was the State's first witness,
13 to testify in another case which is ongoing.

14 We are now ready to proceed again. Is
15 that correct, Mr. Harmon?

16 MR. HARMON: Yes, your Honor.

17 THE COURT: One second. Off the record.

18 (Unrelated matters were heard.)

19 THE COURT: On the record again in the
20 Chappell case.

21 Mr. Harmon, please call your next
22 witness.

23 MR. HARMON: Bill Duffey.

24 / / /

25 / / /

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1 **WILLIAM DUFFEY,**
2 having been first duly sworn, was
3 examined and testified as follows:
4

5 **THE CLERK:** Please be seated. State your full
6 name and spell you last name, please.

7 **THE WITNESS:** William Duffey, D-U-F-F-E-Y.
8

9 **DIRECT EXAMINATION**

10 **BY MR. HARMON:**

11 Q. Mr. Duffey, what is your business or
12 occupation?

13 A. I'm a probation officer with the State of
14 Nevada?

15 Q. How long have you worked as a probation
16 officer with the State of Nevada?

17 A. Sixteen years.

18 Q. Where is your office?

19 A. 215 East Bonanza Road.

20 Q. Is that Las Vegas, Nevada?

21 A. That's correct.

22 Q. What specifically are the nature of your
23 duties with the Nevada Department of Parole and Probation?

24 A. I'm Unit manager, oversee supervision of the
25 unit.

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1 Q. As a unit manager with the Nevada Department
2 of Parole and Probation, do you have information that James
3 Chappell was being supervised by your department on August
4 the 31st, 1995?

5 A. Yes, I do.

6 Q. In fact, did you have personal contact with
7 James Chappell on that date, August the 31st, 1995?

8 A. Yes, I did.

9 Q. Will you please explain the circumstances that
10 caused you to have personal contact with James Chappell?

11 A. I received a message from the city detention
12 center that Mr. Chappell was being released from custody.

13 Q. Released from custody from which facility?

14 A. Stewart-Mojave Center.

15 Q. Please proceed, sir?

16 A. I received a message he was being released,
17 and I assigned two officers to go pick him up and bring him
18 to the office.

19 Q. At approximately what time did you receive
20 information that Mr. Chappell was going to be released from
21 the Stewart-Mojave jail facility?

22 A. 9:00 a.m.

23 Q. The date is August 31st, 1995?

24 A. That's correct.

25 Q. What officers from your department did you

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1 send in connection with Mr. Chappell?

2 A. Officers Adams and Winchel.

3 Q. Would you spell the names for the record?

4 A. Adams, A-D-A-M-S, and Winchel, W-I-N-C-H-E-L.

5 Q. What was your reason for sending Officers
6 Adams and Winchel to make contact with James Chappell?

7 A. There was a court order that he enter into an
8 inpatient program, and I wanted him brought to my office so
9 that I could discuss that matter with him.

10 Q. You have already mentioned that Mr. Chappell
11 was being supervised by your department.

12 A. That's correct.

13 Q. For what offense, sir?

14 A. Possession of burglary tools.

15 Q. Had he been convicted in connection with a
16 certain department for that offense; that is, what court had
17 he been adjudicated in?

18 A. Judge Loehrer.

19 Q. District Court, Sally Loehrer?

20 A. That's correct.

21 Q. Was it a gross misdemeanor offense?

22 A. Yes, it was.

23 Q. What happened after you dispatched Officers
24 Adams and Winchel to bring Mr. Chappell to your office?

25 A. They returned with him to my office at about

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1 10:00 a.m.

2 Q. Still August the 31st, 1995?

3 A. That's correct.

4 Q. At that time did you have an interview with
5 James Chappell?

6 A. Yes, I did.

7 Q. Where did the interview occur?

8 A. In my office, 215 East Bonanza Road.

9 Q. Were there any other persons there besides
10 yourself and Mr. Chappell?

11 A. No, there was not.

12 Q. Do you see the James Chappell in court this
13 morning whom you interviewed beginning at about 10:00 a.m.
14 on August the 31st, 1995?

15 A. Yes, I do.

16 Q. Please point to him and describe some article
17 of clothing he's wearing.

18 A. He's sitting at the defense table in the dark
19 blue jumper.

20 MR. HARMON: Your Honor, may the record show
21 that the witness has identified the defendant, Mr. Chappell?

22 THE COURT: The record will so reflect.

23 BY MR. HARMON:

24 Q. About how long did you interview Mr. Chappell?

25 A. About 45 minutes.

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1 Q. What was the nature of the conversation, just
2 by summary?

3 A. We discussed the possibility of him entering
4 the EOB Drug Program and the Salvation Army Drug Program.

5 Q. What was the result of the conversation which
6 occurred between yourself and the defendant that morning?

7 A. He wanted to go to the EOB program to be
8 reinterview for possible admission.

9 Q. What decision, if any, did you make?

10 A. I decided to let him go to the EOB program for
11 intake interview, and he was directed to return to my office
12 at 1:00 to see his supervising officer for consideration for
13 getting into the Salvation Army Program.

14 Q. Upon what did you base your decision to
15 release him and let him go to try to get into the EOB
16 program?

17 A. He had been interviewed approximately a month
18 before by the EOB program, and they did not feel that he was
19 ready for the program at that time due to the fact that he
20 had been in custody for an additional month. I felt that it
21 might be possible for him to get into the program at that
22 time.

23 Q. During the time that you spent with
24 Mr. Chappell on August the 31st, 1995, did you detect
25 anything about him to indicate that he was under the

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1 influence of alcohol or any type of controlled substance?

2 A. No, I did not.

3 Q. He had just been released from a jail facility
4 before he was brought to you; is that correct?

5 A. That's correct.

6 Q. Did he seem willing to try to get into the
7 drug program?

8 A. Yes, he said that he couldn't understand why
9 he had not been considered appropriate for the program and
10 felt that he would be able to get in now.

11 Q. When did Mr. Chappell leave your office?

12 A. Around 11:00 a.m.

13 Q. Did he have certain instructions when he left
14 your office?

15 A. Yes, he did.

16 Q. What were the instructions?

17 A. He was to go to the EOB program for intake
18 interview and to return to the office of Parole and
19 Probation at 1:00 p.m.

20 Q. What was the purpose in requesting him to
21 return to the Department of Parole and Probation?

22 A. I had spoken with his supervising officer and
23 directed them to contact the Salvation Army Program and
24 arrange for an interview. Mr. Chappell was to return to
25 meet with his supervising officer.

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1 Q. But who was the supervising officer?

2 A. Officer Arve.

3 Q. Could you spell Arve?

4 A. A-R-V-E.

5 Q. To your knowledge, Mr. Duffey, as a unit
6 manager with the Nevada Department of Parole and Probation,
7 did the defendant, Mr. Chappell, return for his meeting at
8 1:00 p.m. to the Department of Parole and Probation?

9 A. I asked his supervising officer the next day
10 if he had returned, if Mr. Chappell had returned at 1:00,
11 and he told me that he had not.

12 MR. HARMON: That concludes Direct
13 Examination.

14 THE COURT: Cross-examination?

15 MR. BASSETT: Yes, your Honor. Thank you.

16

17 **CROSS-EXAMINATION**

18 **BY MR. BASSETT:**

19 Q. You indicated that you got the call from the
20 jail at 9:00 a.m.

21 A. That's correct.

22 Q. And that by 10:00 a.m. the defendant was in
23 your office.

24 A. That's correct.

25 Q. And then, just so I'm clear, too, at this

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1 time, he's on probation; is that correct?

2 A. Yes, he is.

3 Q. And that's for the case out of Department XV?

4 A. Yes.

5 Q. Okay. Do you know why he was in custody over
6 at the jail?

7 A. Yes, he had some misdemeanor charges.

8 Q. So those weren't charges that had anything to
9 do with the case he was on probation for?

10 A. Well, they did indirectly.

11 Q. Right, but they were something that happened
12 separate from the case?

13 A. That's correct.

14 Q. And in terms of him getting into the treatment
15 program, was that a condition of the Department XV case or
16 of the other cases which he had been at Stewart-Mojave? Was
17 it a condition that had been imposed at the time he had been
18 sentenced?

19 A. No, it wasn't.

20 Q. Okay. That was something that had been added
21 later?

22 A. That's correct.

23 Q. You indicated that when you had him in the
24 office and you were talking to him, he indicated to you that
25 he didn't understand why he hadn't been considered an

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1 appropriate candidate earlier; is that right?

2 A. That's true.

3 Q. There had been a time prior to this time that
4 he had attempted to get into the program?

5 A. Well, he had been interviewed for the program.

6 Q. Okay. And he hadn't been accepted at the time
7 that he had been interviewed earlier?

8 A. That's true.

9 Q. Do you know why he wasn't accepted?

10 A. I was told that they didn't feel that he was
11 appropriate at the time he was interviewed for admission.

12 Q. Did they give any kind of reasons why they
13 didn't feel he was appropriate?

14 A. No, they did not.

15 Q. In terms of the program, was it to be an
16 inpatient program or outpatient program?

17 A. Inpatient.

18 Q. Okay. Just so I'm clear, too, is the reason
19 that you had him come back in the afternoon because you felt
20 he wouldn't get into EOB and you wanted to follow up with
21 the evaluation?

22 A. There were only two inpatient programs, and in
23 case he was not accepted at the one, the other was a backup
24 plan?

25 Q. Okay. And about how long after he came to

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1 your office, how long was he there would you estimate?

2 A. How long was he in the office with me?

3 Q. Yeah, in terms of the time you guys spent in
4 his office?

5 A. About 45 minutes.

6 Q. Okay. Did, during that time, did you make any
7 calls to anyone?

8 A. Yes, I did.

9 Q. And who did you call?

10 A. I called the EOB program.

11 Q. Okay. Were there any calls that you made to
12 the defendant's home or family during that time?

13 A. No. He made a phone call while he was in the
14 office.

15 Q. Do you know who he was making the phone call
16 to?

17 A. No, I do not.

18 Q. Okay. That was something he had asked you if
19 he could do, make that phone call?

20 A. I asked him if he had someone who could take
21 him to the program and give him a ride, and he made a
22 telephone call.

23 MR. BASSETT: Okay. I have no further
24 questions.

25 THE COURT: Mr. Harmon?

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1 MR. HARMON: No redirect, your Honor.

2 THE COURT: Officer, you're excused.

3 Is he excused for the rest of the day?

4 MR. HARMON: Yes, your Honor.

5 THE COURT: Thank you. Mr. Harmon and
6 Mr. Bassett, I am going to take a momentary recess in this
7 case to call another case scheduled for preliminary hearing
8 this morning because we need to reschedule that.

9 (Unrelated matters were heard.)

10 THE COURT: We're back on the record in case
11 95F8114, State versus Chappell.

12 After a brief recess, we're in session
13 again, once again with Mr. Chappell in custody with his
14 attorney Mr. Bassett, Mr. Harmon and Ms. Logue for the State
15 and all officers of the Court.

16 Mr. Harmon, would you call your next
17 witness, please.

18 MR. HARMON: Lisa Duran.

19

20 LISA DURAN,
21 having been first duly sworn, was
22 examined and testified as follows:

23

24 THE CLERK: Please be seated. State your full
25 name and spell your last name, please.

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1 THE WITNESS: Lisa Duran, D-U-R-A-N.

2 THE CLERK: And how do you spell your first
3 name?

4 THE WITNESS: L-I-S-A.

5

6 DIRECT EXAMINATION

7 BY MR. HARMON:

8 Q. Is it Miss or Mrs. Duran?

9 A. Miss.

10 Q. Miss Duran, what is your age?

11 A. Twenty-seven.

12 Q. Do you live in the Las Vegas area?

13 A. Yes, sir.

14 Q. How long have you lived in this community?

15 A. One year.

16 Q. Did you know Deborah Ann Panos?

17 A. Yes, sir.

18 Q. How is it that you were acquainted with
19 Deborah Panos?

20 A. We met at work.

21 Q. As of August the 31st, 1995, do you know her
22 age?

23 A. Twenty-six.

24 Q. Was she a friend of yours?

25 A. Yes, sir.

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1 Q. You said you met at work. Where are you
2 referring to?

3 A. GE Capital.

4 Q. Is GE Capital a business which is located here
5 in Las Vegas, Nevada?

6 A. Yes, sir.

7 Q. Do you also know the defendant in this action,
8 James Chappell?

9 A. Yes, sir.

10 Q. How is it that you know Mr. Chappell?

11 A. From Debbie.

12 Q. Did Mr. Chappell have a relationship with your
13 friend Deborah Panos?

14 A. Yes, sir.

15 Q. What type of relationship was it?

16 A. From what I understood it was
17 boyfriend-girlfriend, but towards the end it was
18 ex-boyfriend and girlfriend.

19 Q. For about how long had they, at least off and
20 on, had a boyfriend-girlfriend relationship?

21 A. From what Debbie told me, it would have been
22 ten years in January.

23 Q. Do you see James Chappell here in the
24 courtroom this morning?

25 A. Yes, sir, I do.

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1 Q. Would you point to him and describe something
2 he's wearing today in court?

3 A. He's sitting right there (indicating), and he
4 has as blue shirt on.

5 MR. HARMON: Your Honor, may the record show
6 that the witness has identified the defendant, Mr. Chappell?

7 THE COURT: The record will so reflect.

8 MR. HARMON: I thank you.

9 BY MR. HARMON:

10 Q. You mentioned that you and Deborah Panos both
11 worked at the same business. At your place of employment,
12 several weeks prior to Christmas time of last year, 1994,
13 did you observe some type of incident involving the
14 defendant, Mr. Chappell, and Deborah Panos?

15 A. Yes, sir, I did.

16 Q. What is it that you observed, and please tell
17 us how it is that you were able to see it happen?

18 A. I was standing by the front door at work and I
19 was getting ready to leave and I noticed the two of them
20 sitting in the car out front and he was --

21 Q. When you say "noticed the two of them sitting
22 in the car out front," who are you talking about?

23 A. I am talking about Debbie and James.

24 Q. Debbie Panos and James Chappell, the
25 defendant?

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1 A. Yes, sir.

2 Q. What did you see happen as they sat in the car
3 out front?

4 A. He was yelling at her, and she was crying.
5 And he just kept yelling at her, and then he hit her in the
6 face.

7 Q. Did you actually see that happen?

8 A. Yes.

9 Q. Do you remember what side of the face it was?

10 A. No.

11 Q. Do you remember which hand Mr. Chappell used
12 to hit Debbie's face?

13 A. No.

14 Q. Were you able to tell if his hand was open or
15 if he had made a fist when he did it?

16 A. His hand was open.

17 Q. Was it one time that you saw?

18 A. Yes.

19 Q. What occurred then?

20 A. After that happened, she got out of the car
21 and she came inside.

22 Q. To your knowledge, around Christmas time in
23 1994, did Deborah Panos suffer a broken nose?

24 A. Yes, sir, she did.

25 Q. Did you actually observe that she had an

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1 injury to her nose?

2 A. Yes, sir, I did.

3 Q. Do you have any personal knowledge in terms of
4 actually having seen what happened in connection with that
5 injury?

6 A. No, sir, I did not.

7 Q. When was it, Miss Duran, that you formally met
8 the defendant, Mr. Chappell?

9 A. It was Memorial Day weekend.

10 Q. Of 1995?

11 A. Yes, sir.

12 Q. Where were you when you formally met the
13 defendant?

14 A. I went to Debbie's home to pick her up.

15 Q. Where was she living at that time?

16 A. 839 East Lamb, No. 125.

17 Q. Could it be 839 North Lamb Boulevard?

18 A. Yes, sir.

19 Q. Was it in some type of mobile home park?

20 A. Yes, sir.

21 Q. What is the name of the park?

22 A. Ballerina Sunrise.

23 Q. And you mentioned a particular space number.

24 A. No. 125.

25 Q. Is 839 North Lamb Boulevard, Space 125 in

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1 Clark County, Las Vegas, Nevada?

2 A. Yes, sir.

3 Q. Do you know, as of Memorial Day weekend 1995,
4 about how long Debbie Panos had been living at that address?

5 A. She recalled once that she had moved there in
6 October of '94.

7 Q. To your knowledge, did the defendant live
8 there from time to time with her during the calendar years
9 1994 and 1995?

10 A. Yes, sir.

11 Q. Did Debbie Panos have any children?

12 A. Yes, sir.

13 Q. How many children?

14 A. Three.

15 Q. Will you tell us their names?

16 A. J.P., Anthony and Chantell.

17 Q. You say J.P., what is the first name?

18 A. James.

19 Q. James Panos?

20 A. Yes, sir.

21 Q. And you mentioned Anthony.

22 A. Anthony.

23 Q. Anthony Panos as well?

24 A. Yes, sir.

25 Q. And you mentioned Chantell.

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1 A. Yes, sir.

2 Q. Chantell Panos?

3 A. Yes, sir.

4 Q. Do you know how Chantell is spelled?

5 A. C-H-A-N-T-E-L-L.

6 Q. What were the ages of the children?

7 A. Three, five and seven.

8 Q. Those were children of Debbie Panos?

9 A. Yes, sir.

10 Q. Do you know who the father was?

11 A. Yes, sir.

12 Q. Who was the father?

13 A. The defendant, James Chappell.

14 Q. Was there an occasion that either on the

15 Memorial Day weekend, or at least in that close time frame,

16 when Debbie Panos stayed overnight at your place?

17 A. Yes, sir.

18 Q. Tell us more precisely when that was.

19 A. Memorial Day weekend, that Friday night when

20 we had gone out. We were out late and she had spent the

21 night at my apartment and about 6:00 in the morning --

22 Q. The following morning?

23 A. Yes, sir.

24 Q. That would be Saturday morning, still Memorial

25 Day weekend?

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1 A. Yes, sir.

2 Q. What happened at about 6:00 in the morning on
3 Saturday of that weekend?

4 A. The defendant called my apartment.

5 Q. How do you know it was the defendant?

6 A. Because when I picked up the phone and I said
7 hello, he said very sternly, "Let me speak with Debbie."

8 Q. Did you recognize his voice at that time?

9 A. Yes, sir.

10 Q. Did you have any further words with the
11 defendant over the telephone at that time after he said let
12 him speak to Debbie?

13 A. Not that day, no.

14 Q. As a result of the call by the defendant at
15 6:00 in the morning, what happened?

16 A. At about 10:00 that morning Debbie and I were
17 getting ready so that I could take her home, and at about
18 12:00 that afternoon, I brought her back home.

19 Q. Subsequent to that Saturday morning, have you
20 had other telephone conversations with the defendant?

21 A. Since then, yes.

22 Q. Can you give us, in your best estimate, the
23 approximate time frame of the subsequent telephone
24 conversations that you have had with the defendant?

25 A. Over a two-month period.

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1 Q. You're saying for about two months after
2 Memorial Day weekend?

3 A. Yes, sir.

4 Q. Were these calls you placed to the defendant
5 or calls placed to your residence?

6 A. They were calls placed to my residence and
7 placed to Debbie's residence.

8 Q. About how many calls were there?

9 A. Seven.

10 Q. On each of those seven occasions, did you
11 speak personally with the defendant?

12 A. On five of those occasions I did speak with
13 the defendant. On two of them he had left voice messages on
14 my machine.

15 Q. Did you, in each instance, recognize the voice
16 of the person you were speaking to?

17 A. Yes, sir.

18 Q. During this two-month time frame, did the
19 defendant ever discuss with you his feelings concerning your
20 friend Debbie Panos?

21 A. Yes, sir.

22 Q. Are you able to tell us what you remember him
23 saying during the conversation?

24 A. There was an evening when I was at Debbie
25 Panos's and I was watching her kids. And he called the

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1 trailer and I accepted the call and he had asked me where
2 she was.

3 Q. Do you know whether he was in custody or out
4 of custody?

5 A. He was in custody because I accepted the
6 collect call from the Clark County Detention facility.

7 Q. When you referred to "he," you were speaking
8 of the defendant, Mr. Chappell?

9 A. Yes, sir.

10 Q. What was the nature of the conversation you
11 had with the defendant on that evening in connection with
12 the collect call?

13 A. When I told him that Debbie wasn't home, he
14 became upset and he asked me where she was. And I told him
15 that she had gone out to the store and that she was using my
16 car. And then he asked me where his kids were, and I told
17 him they were with me.

18 Q. Was that basically the extent of the
19 conversation that evening?

20 A. No.

21 Q. What else did the defendant say?

22 A. He then asked me, he said, "I want to know
23 what other nigger she's laying up underneath." I told him
24 that I wasn't going to tell him anything. And he said,
25 "Well, what kind of friend are you?" I said, "The kind of

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1 friend who minds her own business." And then he told me,
2 "You tell Debbie when she gets home that I called and that
3 when I get out she's not going to have any friends."

4 Q. Did the defendant, in connection with that
5 particular telephone conversation or in subsequent
6 conversations, ever say anything to you of which was a
7 threat towards Debbie Panos?

8 A. Yes, sir.

9 Q. In connection with the conversation you have
10 been describing or later on?

11 A. Later on.

12 Q. About how long later?

13 A. I don't know. I don't remember.

14 Q. Where were you when you got any call or calls
15 that were threats?

16 A. I was at her house.

17 Q. Tell us what happened.

18 A. He told me that he was upset because she
19 hadn't gone to see him and she wasn't writing him letters.
20 And he was upset that she wasn't accepting his calls. And
21 that's when he told me that if he couldn't have her, nobody
22 else could. And then he made the comment again that when he
23 got out that she wasn't going to have any friends; she
24 wouldn't be able to go anywhere, and he'd make sure of that.

25 Q. Well, Miss Duran, as a result of the

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1 conversations you had with the defendant during the time
2 frame you described and as a result of things you actually
3 observed, in your opinion, was he jealous of Debbie Panos?

4 A. Yes, sir, he was very jealous.

5 Q. Why do you say the defendant was very jealous?

6 A. Because of all of the things that he had said,
7 when he told me she wasn't going to have any friends and he
8 wanted to know who she had been seeing and just that he was
9 upset.

10 Q. Sometime prior to August the 31st, 1995, have
11 you lived, for a short period of time, with Debbie Panos and
12 her children at 839 North Lamb Boulevard, Space 125?

13 A. Yes, sir.

14 Q. About how long had you lived there?

15 A. About a week.

16 Q. Specifically, on Thursday, August the 31st,
17 1995, were you still living with Debbie Panos at her mobile
18 home?

19 A. No, sir, I was just going there to get some of
20 my things.

21 Q. Did you still have belongings at her
22 residence?

23 A. Yes, sir.

24 Q. That Thursday afternoon, August 31st, 1995,
25 did you go from your residence to the Ballerina Sunrise

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1 Mobile Home Park at 839 Lamb Boulevard?

2 A. Yes, sir, I did.

3 Q. What was your purpose in going there?

4 A. I was going to meet Debbie Panos there so that
5 I could get some of my belongings. She was going to help
6 me.

7 Q. Were you by yourself?

8 A. Yes, sir.

9 Q. Were you traveling in a car?

10 A. Yes, sir.

11 Q. What type of vehicle was it?

12 A. I was a '93 Nissan Sentra.

13 Q. Was it your car or was it a vehicle you had
14 borrowed?

15 A. It was my mother's car.

16 Q. About what time was it when you arrived at the
17 Ballerina Sunrise Mobile Home Park?

18 A. It was about 1:30 quarter to 2' in the
19 afternoon.

20 Q. As you entered the park and proceeded towards
21 the residence of Debbie Panos, did you see a car you
22 recognized?

23 A. Yes, sir.

24 Q. Please explain where you were and where the
25 vehicle was that you recognized.

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1 A. I was going westbound, and the car was coming
2 eastbound out of the driveway?

3 Q. What driveway are you talking about?

4 A. I'm talking about the main driveway where
5 people entered and exited into the mobile home park.

6 Q. So you're saying you were going in and this
7 vehicle was coming out?

8 A. Yes, sir.

9 Q. Did you pass close to the vehicle?

10 A. Yes, sir.

11 Q. You were driving your mother's car?

12 A. Yes, sir.

13 Q. Did you see the person who was driving the
14 other car?

15 A. Yes, sir.

16 Q. How close were you to that person?

17 A. About four or five feet.

18 Q. What car was being driven by this other
19 individual?

20 A. It was a 1983 four-door Toyota Corola. It was
21 dark silver.

22 Q. Did you recognize whose car it was?

23 A. Yes, sir.

24 Q. Whose car was it?

25 A. It was Debbie Panos' car.

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1 Q. How is it you were able to recognize the car
2 as hers?

3 A. I had seen it and ridden in it many times
4 before, and there were no license plates on her car, so
5 that's how I knew, also, it was hers.

6 Q. Is there any doubt in your mind that the car
7 that was going out of the mobile home park on August the
8 31st, 1995, in the early afternoon hours was the vehicle
9 that you had come to know belonged to Debbie Panos?

10 A. Yes, sir, it was the car.

11 Q. Is there any doubt in your mind it was her
12 car?

13 A. No, sir.

14 Q. Did you have occasion to notice anything else
15 in connection with the vehicle in terms of what it might
16 have been carrying?

17 A. I noticed that in the back of the car there
18 was -- the trunk was open and there was a bicycle hanging
19 out the back.

20 Q. Did you know whether the defendant,
21 Mr. Chappell, on occasion, used a bicycle?

22 A. Yes, sir, I did.

23 Q. How is it that you were aware of that?

24 A. Debbie Panos told me.

25 Q. You didn't ever actually see him with the

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1 bicycle?

2 A. No, sir.

3 MR. HARMON: May I approach the witness, your
4 Honor?

5 THE COURT: Yes.

6 BY MR. HARMON:

7 Q. Miss Duran, I am showing you Proposed Exhibits
8 28 through 31. I want you to concentrate on the vehicle
9 which is shown in the pictures. Are you able to recognize
10 those?

11 A. Yes, sir.

12 Q. Whose car is shown in Proposed Exhibit 28
13 through 31?

14 A. Debbie Panos'.

15 Q. Is this the same vehicle that you saw at about
16 1:30 in the afternoon on August the 31st, 1995?

17 A. Yes, sir.

18 Q. Who was driving the vehicle when you saw it
19 that afternoon?

20 A. The defendant, James Chappell.

21 Q. Did you proceed on to space 125 of the
22 residence of Debbie Panos?

23 A. Yes, sir, I did.

24 Q. About how long from the point that you passed
25 her vehicle being driven by the defendant, Mr. Chappell, was

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1 it that it took you to get to her place?

2 A. About a minute.

3 Q. What happened when you arrived there?

4 A. When I arrived at Debbie's house, I got out of
5 the car and I went to the front door and I knocked on the
6 door. I waited for her to come to the front door. And when
7 she didn't come to the front door, I went to open the front
8 door to see if it was open, and the door was locked. At
9 that point I thought maybe she had gone to Mike's house.

10 Q. Who is Mike?

11 A. Mike is another friend from work.

12 Q. What is Mike's last name?

13 A. Mike Pollard.

14 Q. Please spell Pollard.

15 A. P-O-L-L-A-R-D.

16 Q. So you felt maybe she wasn't at home?

17 A. Yes, sir.

18 Q. Had you been able to hear any sounds from
19 inside of the residence?

20 A. I heard the TV and I heard the air
21 conditioning going and I thought that that was unusual.

22 Q. Why did you think it was unusual?

23 A. Because Debbie never liked to keep the air
24 conditioning on when nobody was home because of the high
25 electric bills.

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- 1 Q. How long did you remain at the front door
2 knocking?
- 3 A. For about two or three minutes.
- 4 Q. Did you get any response at all?
- 5 A. No, sir.
- 6 Q. So you concluded that perhaps she was gone to
7 Mike's. What did you do?
- 8 A. I then got in the car and drove to Mike's.
- 9 Q. Did you locate her at Mike Pollard's place?
- 10 A. No, sir, I did not.
- 11 Q. Did you have a conversation, without going
12 into the conversation, with Mr. Pollard?
- 13 A. Yes, I did.
- 14 Q. As a result of that conversation, did you
15 become quite concerned about your friend Debbie Panos?
- 16 A. Yes, sir.
- 17 Q. What did you do?
- 18 A. After I left Mike's house, I went to the
19 convenience store up the street, and I tried to call her
20 house to see if she'd pick up the phone. And when all I got
21 was her voice mail, I left a message that I was wondering
22 where she was and if she was okay and that I was trying to
23 find her and that I was on my way back to her trailer.
- 24 Q. Did you go back to her trailer?
- 25 A. Yes, sir.

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1 Q. What happened when you got back?

2 A. When I --

3 Q. Or at least in close proximity to the trailer?

4 A. When I went back to the trailer, I got out of
5 the car and I knocked on the door again and there was still
6 no answer. So then I went around to the back door and the
7 back door was locked and there was still no answer. So I
8 went around to the front of the house, and as I got into my
9 car, that's when I noticed the bedroom window was off the
10 track.

11 Q. What was your frame of mind when you made that
12 observation concerning the bedroom window?

13 A. I was afraid that he'd done something to her.

14 Q. By "he," are you referring to the defendant?

15 A. Mr. Chappell, yes.

16 Q. Did you make contact with some police officer?

17 A. At that point I went to the kids' day care to
18 see if they were still there, and the woman told me that the
19 kids were still there.

20 Q. You're referring to the three children of
21 Debbie Panos?

22 A. Yes, sir. And after I had a brief
23 conversation with the lady at the day care center, I got
24 scared so I went home and I got my mother and my brother and
25 I told them that James was out, that I think he did

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1 something to her because she wouldn't answer the door. So
2 then we drove back to the trailer and that's when I spotted
3 a police officer and I told him that I thought my friend had
4 been hurt because she wasn't answering the door and if he
5 could please follow us.

6 Q. Did the officer agree to do this?

7 A. Yes, sir.

8 Q. Did the four of you then go walk to Debbie
9 Panos' residence?

10 A. Yes, sir.

11 Q. About what time did you arrive back there with
12 the police officer?

13 A. It was about 3:30, a quarter to 4'.

14 Q. In the afternoon?

15 A. Yes, sir.

16 Q. Is it still Thursday, August the 31st, 1995?

17 A. Yes, sir.

18 Q. What time was it, to the best of your memory,
19 when you saw the defendant driving the victim's car?

20 A. It was about 1:30, a quarter to 2'.

21 Q. So approximately two hours before this?

22 A. Yes, sir.

23 Q. What happened when you got back to Debbie's
24 trailer with the police officer?

25 A. I showed the police officer the window that

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1 was off the track.

2 Q. What, if anything, did the officer do?

3 A. The officer, at that point, he popped out the
4 window and he put the window down in front of the house and
5 then he went inside.

6 Q. Did you then learn that he had made a
7 discovery inside the residence?

8 A. Yes, sir.

9 Q. Did you ever actually go inside the residence
10 to see what had been discovered?

11 A. No, sir, but I was standing by the front door.

12 Q. From your vantage point at the front door,
13 were you able to see inside the residence to some extent?

14 A. I saw on the floor by the front door, and when
15 the officer tried to close the door so we couldn't see
16 anything, I could see her feet.

17 Q. You recognized from what you saw who it was?

18 A. Yes, sir.

19 Q. Who was it?

20 A. It was Debbie Panos.

21 Q. Is there any doubt in your mind that you had
22 seen part of her body?

23 A. No, sir.

24 Q. Did you, about a week later, attend the
25 funeral service for Debbie Panos?

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1 A. Yes, sir.

2 Q. Was the casket open, at least during part of
3 the funeral proceedings?

4 A. Yes, sir.

5 Q. Did you see her body at that time?

6 A. Yes, sir.

7 MR. HARMON: May I again approach the witness,
8 your Honor?

9 THE COURT: Yes.

10 BY MR. HARMON:

11 Q. Miss Duran, I'm showing you Proposed Exhibit
12 1, 2 and 3. Do you recognize what those are pictures of?

13 A. Yes, sir.

14 Q. What are they pictures of, ma'am?

15 A. They are Debbie Panos' house.

16 Q. Do they appear to truly and accurately show
17 the appearance and condition of her trailer as you saw it on
18 Thursday, August 31st, 1995?

19 A. Yes, sir.

20 Q. But you see in Proposed Exhibit 1, 2 and 3
21 that this bedroom window is where you said the window was
22 off the track and where the officer entered to discover the
23 body of Deborah Panos?

24 A. Yes, sir.

25 Q. By way of description on the photographs,

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1 where is it that that window appears?

2 A. It appears at Debbie Panos' bedroom at the
3 front of the trailer.

4 Q. As the officer went in after he had taken the
5 outside window off, did there come a time when you were able
6 to see that there was a screen to the window inside the
7 bedroom?

8 A. Yes, sir.

9 Q. That you actually saw?

10 A. Yes, sir.

11 Q. Had you done anything to cause the screen to
12 be inside the room?

13 A. No, sir.

14 Q. I'm also showing you Proposed Exhibit 4, 5 and
15 6. Do you recognize what room is depicted in those
16 photographs?

17 A. This is Debbie Panos' bedroom.

18 Q. Is this the same room that that front window
19 leads into where you saw the window was first off the track
20 and then you saw a screen inside the room?

21 A. Yes, sir.

22 Q. You had lived, you said, with Debbie for a
23 about a week?

24 A. Yes, sir.

25 Q. Had you visited on many occasions at her

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1 residence?

2 A. Yes, sir.

3 Q. Did you know what type of housekeeper she was?

4 A. She had three small kids, and it was hard for
5 her to keep up at times.

6 Q. Do you see the condition as it is depicted in
7 the photographs to the master bedroom in Proposed Exhibits
8 4, 5 and 6?

9 A. Yes, sir.

10 Q. Do you see some evidence of ransacking?

11 A. Yes, sir.

12 Q. What is there about those photographers that
13 causes you to conclude that there had been ransacking?

14 A. In this photograph right here --

15 Q. Well, what's the number of that photograph?

16 A. Exhibit 6.

17 Q. What do you see in Proposed Exhibit 6?

18 A. I see a lot of mail and letters all over the
19 floor. Debbie always tried to be particular about keeping
20 her papers together.

21 Q. Did you ever see papers scattered around on
22 the floor of the master bedroom or any room in the house in
23 the manner you see portrayed in Proposed Exhibit 6?

24 A. No, sir.

25 Q. I'm showing you Proposed Exhibit No. 9, but

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1 will you focus on what appears to be a knife depicted in
2 that photograph, do you recognize whether this is similar or
3 dissimilar to any set of knives which Debbie had at the
4 residence?

5 A. It's from her house.

6 Q. Why do you say that the knife depicted in
7 Proposed Exhibit 9 is from her house?

8 A. Because I recognize the end of the knife, the
9 worn mark on it. I had seen the knife before.

10 Q. What type of knife is it?

11 A. I believe it's a steak knife.

12 Q. Are you able to estimate about how long the
13 blade of the steak knife was?

14 A. No.

15 Q. Where did Debbie keep her steak knives?

16 A. There was a drawer between the refrigerator
17 and stove in the kitchen.

18 Q. Would it have been her habit with small
19 children living with her to have left a steak knife on the
20 floor of any room of the house?

21 A. No, sir, never.

22 MR. HARMON: May we have the Court's indulgence?

23 (There was a consultation between

24 Mr. Harmon and Ms. Logue.)

25 / / /

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1 BY MR. HARMON:

2 Q. Miss Duran, you mentioned that you were going
3 to, at 1:30 or 1:45 p.m. on August the 31st, to meet with
4 your friend Debbie Panos. Had you spoken with her earlier
5 that day?

6 A. I had seen her at work earlier that morning at
7 about 8:00.

8 Q. Had you seen her since about 8:00 in the
9 morning?

10 A. No.

11 Q. Had you had some type of agreement that you
12 would meet her early that afternoon at her place?

13 A. Yes, sir.

14 Q. Did she seem to be in a normal frame of mind
15 when you saw her at about 8:00 in the morning on August the
16 31st?

17 A. Yes, sir.

18 Q. Did you see any evidence of injury to her
19 body?

20 A. No, sir.

21 Q. Did you see any bruises or scrapes anywhere on
22 her face or neck or arms?

23 A. No, sir.

24 MR. HARMON: Thank you. That concludes
25 Direct, your Honor.

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1 THE COURT: We're going to take a five-minute
2 recess before we cross-examine the witness.

3 I can tell she's a little bit upset by
4 having to recount these incidents, and I think she could use
5 a few minutes to recover. So we will take a short break.

6 (A recess was taken.)

7 THE COURT: The record will reflect we're back
8 in session in case 95F8114, State versus Chappell. The
9 defendant is present in custody with his attorney
10 Mr. Bassett, Mr. Harmon and Ms. Logue for the State and all
11 officers of the Court.

12 Mr. Bassett, are you ready to
13 cross-examine?

14 MR. BASSETT: Yes, your Honor. Thank you.

15
16 CROSS-EXAMINATION

17 BY MR. BASSETT:

18 Q. Just a few questions, Miss Duran. I need to
19 clarify some things.

20 Let's go back to the incident that you
21 had talked about about Christmas time. And just so I'm
22 clear, in terms of, you know, where you were when you saw
23 what you saw, you said this happened at work?

24 A. Yes, sir.

25 Q. And you said that at that time that you saw

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1 this incident that you were standing in the doorway?

2 A. Yes, sir.

3 Q. Is that the doorway to the entrance of work?

4 A. There are two doors. The one door is the main
5 door, then there's a small door and then another door that
6 opens.

7 Q. Okay. And which door were you standing at?

8 A. I was standing in between them.

9 Q. Okay. About how far away was the car parked,
10 would you estimate, at the time that you observed this?

11 A. It was right out front, in front of the door.

12 Q. Okay. Does the door come all the way out to
13 the curb?

14 A. No, there's the door to the building then
15 there's a small sidewalk then there's the blacktop and curbs
16 to indicate parking spaces.

17 Q. So about how far would you estimate that you
18 were from the car?

19 A. About six or seven feet away.

20 Q. Do you remember what kind of car it was?

21 A. No, sir, I do not.

22 Q. Do you recall if, like, any of the windows in
23 the car were tinted or anything?

24 A. No, sir, I wasn't paying attention to the car.
25 I was only paying attention to what happened inside.

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1 Q. Okay. About what time of the day was it?

2 A. Late afternoon.

3 Q. Okay. And that is in December?

4 A. Yes, sir.

5 Q. Okay. In terms of outside by that area, are
6 there any kind of street lights or anything?

7 A. No, sir.

8 Q. And just so I'm clear on that, too, at this
9 point you hadn't been introduced formally to the defendant;
10 is that correct?

11 A. No, sir.

12 Q. And then in terms of one of the other -- let's
13 go back to the first phone call that you talked about.

14 A. Yes, sir.

15 Q. That happened when?

16 A. Memorial Day weekend.

17 Q. Okay. Just so I'm clear on which day, do you
18 remember which?

19 A. It was Saturday morning that he called, at
20 6:00 a.m., looking for Debbie.

21 Q. And so I'm clear on this, too, you indicated
22 that you hadn't been introduced to him until Memorial Day
23 weekend?

24 A. Yes, sir.

25 Q. Had you been introduced to him on that

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1 evening?

2 A. Yes, sir, that Friday evening.

3 Q. Okay. Do you remember where it was that you
4 were introduced to him?

5 A. At Debbie's home.

6 Q. Did you have a chance to talk to him that
7 evening?

8 A. No, sir.

9 Q. So the kind of thing where, like, you were
10 coming or going and introduced, it was short?

11 A. It was very short.

12 Q. Okay. And you didn't have a chance to talk to
13 him then?

14 A. No, sir.

15 Q. Okay.

16 A. He didn't speak to me either.

17 Q. Okay. And then you get the call that Saturday
18 morning?

19 A. Yes, sir.

20 Q. Okay. Let's go back, then, to the date in
21 question, August 31st. Just so I am clear, too, on the kind
22 of arrangement that you had with the victim, you had lived
23 at her house for a while?

24 A. I was there for a week, and all of my
25 belongings were in her trailer.

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1 Q. Had you intended to stay more than a week when
2 you first moved in?

3 A. At the time I moved in, yes, I intended to
4 stay more than a week.

5 Q. Okay. And so on that day, just so that I
6 understand, too, what happened, you had seen her earlier
7 that morning at work?

8 A. Yes, sir.

9 Q. You had, at that time, a chance to speak to
10 her, stated that you wanted to come by and pick up your
11 stuff?

12 A. We had made arrangements the night before. We
13 had talked about it before we had left work. And when she
14 came in on Thursday morning, she was in work for about an
15 hour and she at that point had told me, "Yes, I'll be home
16 and yes, I'll help you. When you get off, come meet me at
17 home."

18 Q. Okay. And she would have known what time you
19 got off work that day?

20 A. Yes, sir, she did.

21 Q. Okay. You estimate that you came to the
22 trailer park about 1:30, 1:45?

23 A. Yes, sir.

24 Q. How is it that you remember the time?

25 A. I recall the time because when I had gotten

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1 off work at 1:00, I had gone home first to get my mother's
2 car, and I spent approximately, I'd say, about 15 minutes at
3 my mothers house. And once I got my Mom's car, I then drove
4 to Debbie's house, which takes about 15 minutes from my
5 mother's.

6 Q. Okay. So in terms of the time, it's because
7 of the things that you did that you would estimate about
8 what time it was?

9 A. Yes, sir.

10 Q. Okay. And then, just so I'm clear, as you
11 were pulling into the trailer park, you see her car exiting
12 the trailer park?

13 A. Yes, sir.

14 Q. And about how fast was her car going?

15 A. Maybe five miles an hour. There are speed
16 bumps, so you would have to drive pretty slow.

17 Q. So there wasn't anything about the speed of
18 the car that got your attention?

19 A. No, sir. It was the car itself.

20 Q. Could you see the car coming toward you before
21 you pulled inside the trailer park?

22 A. Just as I pulled in, I saw the car come in so,
23 yes, I identified it right away.

24 Q. Okay. At the beginning of that day, August
25 31st, where did you think the defendant was?

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1 A. From what I understood from Debbie Panos, he
2 was still in custody, and from what she had told me, they
3 were waiting for a bed to become available for Mr. Chappell
4 so that he could go through drug rehab for three months.

5 Q. Okay. When is it that you became aware that
6 he was not in custody?

7 A. When I went to Mike Pollard's to look for
8 Debbie the first time.

9 Q. So Mike is the one that told you he was out of
10 custody?

11 A. Yes, sir.

12 Q. So at the time you see Debbie's car, you don't
13 know he's out of custody?

14 A. No, sir.

15 Q. In terms of your indication that you saw in
16 the back of the car a bike --

17 A. Yes, sir.

18 Q. -- had you ever seen the defendant's bike that
19 you knew that he got around on?

20 A. No, sir. The only way I knew about that was
21 from what Debbie had told me.

22 Q. So you don't have any idea what his bike
23 looked like?

24 A. No, sir.

25 Q. You couldn't tell whether that was the

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1 defendant's bike in the car from looking at it?

2 A. No, sir.

3 Q. So you go to the house, you go to the front
4 door and knock?

5 A. Yes, sir.

6 Q. There isn't any answer?

7 A. No, sir.

8 Q. Just so I'm clear, too, do you go around the
9 back at that time or --

10 A. It wasn't until I went back to the trailer the
11 second time that I had learned that James Chappell was out
12 that I then tried to open the back door, and it was locked.

13 Q. So you tried the front door and don't get an
14 answer?

15 A. Yes, sir.

16 Q. You leave and go to Mike's house?

17 A. The first time, yes, sir.

18 Q. Where does Mike live?

19 A. Mike lives about 15 minutes away on the
20 southwest side of town.

21 Q. Okay. So from the trailer to his house was
22 about 15 minutes?

23 A. Yes, sir.

24 Q. How long would you estimate you were at Mike's
25 house?

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1 A. Not even five minutes, maybe, four, five
2 minutes, no longer than that.

3 Q. You leave his house and go to the store?

4 A. Yes, sir.

5 Q. Can you tell me what you did at the store?

6 A. I made the phone call to Debbie's trailer, but
7 Mike does not have a phone.

8 Q. Okay. How far was the store from Mike's
9 house?

10 A. A block away.

11 Q. Okay. Did you do anything besides make a
12 phone call?

13 A. No.

14 Q. So after you leave the store, you drive back
15 to the trailer?

16 A. Yes, sir.

17 Q. How much time would you estimate from the time
18 you left the trailer and went to Mike's and then came to the
19 trailer, how much time would you estimate had passed?

20 A. About 45 minutes.

21 Q. Okay. So you're gone 45 minutes?

22 A. Yes, sir.

23 Q. Okay. The second time you were at the
24 trailer, you go to the door and there isn't any answer?

25 A. Yes, sir.

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1 Q. You go around to the back?

2 A. Yes, sir.

3 Q. Okay. Can you hear the TV from the front or
4 is it when you go around to the back that you hear the TV?

5 A. When I was around the front, I had put my ear
6 to the door because sometimes when Debbie is in the back
7 part of the house she couldn't hear the door knock, and when
8 I put my ear to the door, that's when I heard noise from the
9 TV.

10 Q. So it's been your experience that there's been
11 times that you have been at Debbie's when someone is
12 knocking and she can't hear because she was in that part of
13 the trailer.

14 Then you go back around to the front?

15 A. Yes, sir.

16 Q. And you see the window?

17 A. Yes, sir.

18 Q. That's the first time that you see the window
19 off of the track?

20 A. The second time I went back to the trailer,
21 yes, that's when I noticed the window.

22 Q. You hadn't been aware of the window off the
23 track earlier?

24 A. No, sir.

25 Q. So then you leave again?

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1 A. Yes, sir.

2 Q. And you go to the day care?

3 A. Yes, sir.

4 Q. How far is the day care from the trailer?

5 A. Three, four minutes away. It's very close.

6 Q. How long would you estimate you were there at
7 the day care?

8 A. Five minutes.

9 Q. Then you leave there and go home to your
10 house?

11 A. Yes, sir.

12 Q. How far is it from the day care to your house?

13 A. Fifteen minutes.

14 Q. Then how long would you estimate you were at
15 home?

16 A. Ten minutes.

17 Q. Okay. Then you go back to the trailer?

18 A. Yes, sir.

19 Q. Okay. So from the time that you're at the
20 trailer to the second time you leave to go to the day care
21 to the time you come back, how much time would you estimate?

22 A. An hour.

23 Q. Okay. It's on your way back to the trailer
24 the second time that you see the officer?

25 A. I was on my way back to the trailer the third

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1 time.

2 Q. Okay. Right, the third time that you went,
3 you see the officer?

4 A. Yes, sir.

5 Q. You are in the company, coming at that time,
6 with your mother and brother?

7 A. Yes, sir.

8 Q. Just so that I'm clear, then, and have this
9 right, the first time you left the trailer from the time
10 that you're there and leave and come back, you estimate 45
11 minutes that you're gone?

12 A. Yes, sir.

13 Q. And then from the time, the second time, you
14 leave and come back a third time, you estimate there's been
15 an hour that you're gone?

16 A. Yes, sir.

17 Q. So you aren't aware what's happening at the
18 trailer during the times that you're gone?

19 A. No, sir.

20 Q. Okay. And then, just so I'm clear about the
21 time, you estimate, then, when you go back and get the
22 officer, you get there 3:30, quarter to 4'?

23 A. It was more like 4:00.

24 Q. Just so I'm clear, too, you had indicated that
25 at the time that the officer was trying to close the door so

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IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

JAMES CHAPPELL,

S.C. CASE NO. 61967

Appellant,

Electronically Filed
Nov 18 2013 02:15 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

vs.

THE STATE OF NEVADA,

Respondent.

APPEAL FROM DENIAL OF PETITION FOR WRIT OF HABEAS CORPUS
(POST-CONVICTION) AND SENTENCE OF DEATH
EIGHTH JUDICIAL DISTRICT COURT
THE HONORABLE JUDGE CAROLYN ELLSWORTH, PRESIDING

~~~~~  
APPELLANT'S APPENDIX TO THE OPENING BRIEF  
VOLUME I  
~~~~~

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IN THE SUPREME COURT OF NEVADA

JAMES CHAPPELL,

CASE NO. 61967

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on this 18th day of November, 2013. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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