

1 MR. HARMON: No, your Honor.

2 THE COURT: Okay.

3

4 (Off the record at 12:08 p.m. and back on
5 the record at 1:58 p.m.)

6

7 THE COURT: C131341, State of Nevada versus
8 James Montell Chappell.

9 The defendant is present represented by his
10 counsel, State of Nevada represented by the Deputy District
11 Attorneys.

12 This is the time set for the jury trial in
13 this matter. Are the parties ready to proceed?

14 MR. BELL: The State is ready, your Honor.

15 MR. LaPORTA: The defense is ready, your
16 Honor.

17 THE COURT: All right, thank you very much.

18 Ladies and gentlemen of the prospective jury
19 panel, my name is Bill Maupin. I'm the District Court
20 Judge who will be presiding over the trial in this matter.

21 This is a case where the defendant is
22 accused of first degree murder and the State is seeking the
23 death penalty. You have filled out your questionnaires.

24 Please understand that I understand that the
25 seating accommodations in here are not that comfortable.

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1 Whoever designed these courtrooms obviously never sat
2 through a jury trial, otherwise, they wouldn't have
3 designed them in this fashion. I do understand and please,
4 if you do become uncomfortable any time in these
5 proceedings, if you need to stand up and stretch or if you
6 want to bring cold drinks in the courtroom while you are
7 watching the proceedings, you are more than welcomed to do
8 so, but please if you feel like standing up and stretching,
9 please go ahead and do so. You won't bother any of us
10 while we go through this process.

11 At this time, I will introduce you to the
12 Court staff. Lisa Fagone is the bailiff. This is the
13 person you should have contact in the event that you have
14 any concerns to communicate to the Court. Tina Hurd is the
15 deputy court clerk. She marks and formally admits the
16 exhibits and keeps the minutes of the Court and Patsy Smith
17 is the court reporter. She is taking down everything that
18 is being said stenographically for the record.

19 At this time, I would inquire of the parties
20 in this action as to whether either side wishes to present
21 a challenge to the prospective jury panel as a whole?

22 MR. HARMON: The State does not, your
23 Honor.

24 MR. BROOKS: Defense does not, your Honor.

25 THE COURT: All right, thank you very much,

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1 counsel.

2 At this time I would ask that one of the
3 deputy -- counsel from the District Attorney's Office,
4 would you please rise, make a brief statement, introduce
5 your colleague, make a brief statement about the nature of
6 this action, and list the witnesses that the State intends
7 to call in support of its case.

8 MR. HARMON: Thank you, your Honor.

9 Good afternoon, ladies and gentlemen. My
10 name is Mel Harmon. I'm one of the prosecutors in this
11 case. I'm employed as a Deputy District Attorney with the
12 Clark County District Attorney's Office. My partner in the
13 case, also a Deputy District Attorney, is Abbi Silver
14 seated to my left, as I stand before you.

15 This is a criminal case. State of Nevada,
16 Ms. Silver, and I represent the State. It has charged the
17 defendant, Mr. Chappell, with three crimes. They are
18 burglary, robbery with the use of a weapon, the weapon in
19 this case is a knife, and murder with the use of a deadly
20 weapon.

21 It is alleged that these offenses occurred
22 on August the 31st, 1995. The victim is a female, 26 year
23 old mother of three, Deborah Ann Panos, P-A-N-O-S. She was
24 a girlfriend of the defendant, Mr. Chappell. They had
25 lived together periodically for eight to 10 years and three

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1 children of the victim, Ms. Panos, had been sired by the
2 defendant, Mr. Chappell. The offenses occurred at the
3 mobile home park where Ms. Panos resided. It is 839 North
4 Lamb Boulevard, space 125. The offenses occurred in the
5 early afternoon of Thursday, August the 31st, 1995.

6 The prosecution will call witnesses during
7 its case in chief from among the following persons. I wish
8 to indicate that we certainly won't call all of these
9 people. I'm just emphasizing that the witnesses called and
10 probably about 25 will be called as witnesses by the State
11 during its case in chief, but pay attention please to the
12 witnesses. We certainly would be interested in knowing if
13 the prospective jurors are acquainted with any of the
14 people who may be witnesses in the case.

15 Norm Adams, Las Vegas Nevada, K. Adkins,
16 A-D-K-I-N-S, Las Vegas Metropolitan Police Department,
17 Larry Arave, A-R-A-V-E, Las Vegas, Luana Dorene Ayers,
18 A-Y-E-R-S, Las Vegas, Laura Berfield, B-E-R-F-I-E-L-D,
19 Tucson, Arizona, R. Burton, Las Vegas Metropolitan Police
20 Department, Al Cabrales, C-A-B-R-A-L-E-S, of the Las Vegas
21 Metropolitan Police Department, Mike Compton, Las Vegas,
22 Dan Connell, C-O-N-N-E-L-L, Metropolitan Police Department,
23 Terry Cook also of the Las Vegas Metropolitan Police
24 Department, C. Dickens with the same department, Bill
25 Duffy, D-U-F-F-Y, Las Vegas, Nevada, John Duran, Las Vegas,

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1 Lisa Duran, D-U-R-A-N, Las Vegas, Linda Errichetto,
2 E-R-R-I-C-H-E-T-T-O, Las Vegas Metropolitan Police
3 Department, Lisa Foreman, F-O-R-E-M-A-N, Cellmark
4 Diagnostics, Germantown, Maryland, C. Grabowski,
5 G-R-A-B-O-W-S-K-I, Las Vegas, Sheldon Green, Coroner
6 Medical Examiner's Office, Las Vegas, A. Hanners,
7 H-A-N-N-E-R-S, and D. Heiner, H-E-I-N-E-R, both of the Las
8 Vegas Metropolitan Police Department, Ed Henderson, Las
9 Vegas, Ladonna Jackson, Las Vegas, G. Jolley, J-O-L-L-E-Y,
10 W. Keeton, K-E-E-T-O-N, and E. Kerns, K-E-R-N-S, all three
11 of the Las Vegas Metropolitan Police Department, Bill
12 Leaver, L-E-A-V-E-R, also of the Metropolitan Police
13 Department, Russell Lee, L-E-E, of the same department,
14 Michelle Mancho, M-A-N-C-H-O, Las Vegas, Lawrence Martinez,
15 Chino, California, M. Maston, M-A-S-T-O-N, Metropolitan
16 Police Department, K. Morris, Las Vegas, Maynard Munson,
17 M-U-N-S-O-N, Tucson, Arizona, Paul Osuch, O-S-U-C-H,
18 Metropolitan Police Department, James Panos, Tucson,
19 Arizona, Norma Penfield, P-E-N-F-I-E-L-D, Tucson, M.
20 Perkins and D. Peterson, that's S-O-N, of the Las Vegas
21 Metropolitan Police Department, both of those last two
22 witnesses, Mike Pollard, P-O-L-L-A-R-D, Las Vegas, Phil
23 Ramos, R-A-M-O-S, and R. Rees, R-E-E-S, both of the Las
24 Vegas Metropolitan Police Department, Kimberly Sempson,
25 S-E-M-P-S-O-N, La Habra, California, M. Shadler,

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1 S-H-A-D-L-E-R, Las Vegas, Nevada, Latrona Sherelle Smith,
2 first name L-A-T-R-O-N-A, North Las Vegas, Nevada,
3 Charmaine Smith, first name C-H-A-R-M-A-I-N-E, Las Vegas,
4 Monte Spoor, S-P-O-O-R, Metropolitan Police Department,
5 John Stallings, S-T-A-L-L-I-N-G-S, Coroner Medical
6 Examiner's Office, Las Vegas, K. Townsend, Las Vegas,
7 Deborah Turner, Las Vegas, Jimmy Vaccaro, V-A-C-C-A-R-O,
8 and M. Washington, both of the Las Vegas Metropolitan
9 Police Department, Wendy Wilkinson, Las Vegas, Willie
10 Wiltz, W-I-L-T-Z, Las Vegas, Calvin Winchell, Las Vegas, W.
11 Yada, Y-A-D-A, Las Vegas Metropolitan Police Department,
12 Paula Yates, Cellmark Diagnostics Germantown, Maryland,
13 Alan Williams, David Stansbury, S-T-A-N-S-B-U-R-Y, Michael
14 Sdles, S-D-L-E-S, Daniel Giersdorf, G-I-E-R-S-D-O-R-F; all
15 four of those prospective witnesses are with the Las Vegas
16 Metropolitan Police Department. Tonya Hobson, Las Vegas,
17 Dr. John McCourt, M-C-capital-C-O-R -- excuse me --
18 M-C-capital-C-O-U-R-T, University Medical Center, Las
19 Vegas, Dina Freeman, F-R-E-E-M-A-N, Tucson, Arizona, A.
20 Knapp, K-N-A-P-P, Las Vegas Metropolitan Police Department,
21 Dorothy Klein, K-L-E-I-N, of the same department, W. Grow,
22 Las Vegas, L. McNitt, M-C-capital-N-I-T-T, Officer
23 Haggerty, H-A-G-G-E-R-T-Y, J. Earnst, E-A-R-N-S-T, Officer
24 Neidkowski, N-E-I-D-K-O-W-S-K-I, Officer Vernon,
25 V-E-R-N-O-N, Officer Usserns, U-S-S-E-R-N-S, and Officer

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1 Stoner, S-T-O-N-E-R; all of those prospective witnesses
2 from Tucson, Arizona. Kenneth Gay, G-A-Y, Lansing,
3 Michigan, Paul Widner, W-I-D-N-E-R, and John Priebe,
4 P-R-I-E-B-E, also of Lansing, Michigan and, finally, Robin
5 Cotton or designee of Germantown, Maryland.

6 Thank you.

7 THE COURT: Mr. Brooks, if you would
8 introduce your colleague and your client to the members of
9 the jury and identify any potential witnesses you intend to
10 call, even though your client is under no obligation to
11 call any witnesses.

12 MR. BROOKS: Thank you, Judge.

13 My name is Howard Brooks. I'm a criminal
14 defense attorney here in town. I'm trying this case with
15 Wil Ewing, my partner here. My client is James Chappell.

16 THE COURT: Will counsel approach the
17 bench.

18 (Off the record discussion not reported.)

19 THE COURT: At this time, I would ask the
20 clerk to call the roll of the panel of prospective jurors.
21 When your name is called, please answer here.

22 THE CLERK: Joseph A. Haley?

23 A Here.

24 Q Tina Prato Spruell?

25 A Here.

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1 Q Roland M. Seward?
2 A Here.
3 Q Ross Carter?
4 A Here.
5 Q Denise Wright Parr?
6 A Here.
7 Q Kenneth Edward Gritis?
8 A Here.
9 Q Scott Gaines Emmert?
10 A Here.
11 Q Heather L. Neighbors?
12 A Here.
13 Q Donna Marie Linkogel?
14 A Here.
15 Q Lynn Hilary Westrom?
16 A Here.
17 Q Ronald Ulicki?
18 A Here.
19 Q Jim Blake Tripp?
20 A Here.
21 Q Steven Giron Remular?
22 A Here.
23 Q Annmarie Brenda Ryan?
24 A Here.
25 Q Martha Holdridge Rainwater?

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1 A Here.

2 Q Tia Marie Youngblood?

3 A Here.

4 Q Joyce A. Souder?

5 A Here.

6 Q Kellyanne Bentley Taylor?

7 A Here.

8 Q Helen L. Lloyd?

9 A Here.

10 Q Richard A. Cracroft?

11 A Cracroft, here.

12 Q Barbara Mastenbrook Dear?

13 A Here.

14 Q Olga C. Bourne?

15 A Here.

16 Q Edward Arnold Ferrell?

17 A Hair.

18 Q Troy Wayne Newberry?

19 A Here.

20 Q Richard Bruce Altz?

21 A Here.

22 Q Michael John Belbot, Jr.?

23 A Here.

24 Q Celestina Cecilia Lucido?

25 A Here.

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1 Q Cheryl Lynn Wells?
2 A Here.
3 Q Candy S. Cail?
4 A Here.
5 Q Jerry Wayne Ewell?
6 A Here.
7 Q David John Mesnard?
8 A Here.
9 Q Helen E. Digiovanna?
10 A Here.
11 Q Linda Ruth Aquilla?
12 A Here.
13 Q Cheryl Diane Hull?
14 A Here.
15 Q Helga Podkowski?
16 A Here.
17 Q Bruce Todd Larsen?
18 A Here.
19 Q Jeanne A. Jellema?
20 A Here.
21 Q Michael Richard Gushwa?
22 A Here.
23 Q Hannelore T. Kelly?
24 A Here.
25 Q Dolores Romero?

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1 A Here.

2 Q Michael Joseph Swartz?

3 A Here.

4 Q Mark Gregory Massar?

5 A Here.

6 Q Anthony J. Camacho?

7 A Here.

8 Q Duncan R. McCoy, II?

9 A Here.

10 Q Jimmy Lee Gilmore?

11 A Here.

12 Q Danna Terry Yates?

13 A Here.

14 Q Clinton Riley Marrs?

15 A Here.

16 Q Roger Alan Harmon?

17 A Here.

18 Q Rebecca Lynn Lund?

19 A Here.

20 Q Lillian Bruski?

21 A Here.

22 Q Glen Eugene Fittro?

23 A Here.

24 Q Annette Lynn Purcell?

25 A Here.

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1 Q Joseph Pietryman?
2 A Here.
3 Q Donn L. Chelli?
4 A Here.
5 Q John L. Difillippo?
6 A Here.
7 Q Malaythong Sayarath?
8 A Here.
9 Q Lois J. Ochoa?
10 A Here.
11 Q Sabina Corkalo?
12 A Here.
13 Q William Nicholas Poulos?
14 William Nicholas Poulos?
15 A Here.
16 Q Larry A. Allen?
17 A Here.
18 Q Nancy J. Patfield?
19 A Here.
20 Q Maryann Sheehan?
21 A Here.
22 Q Kenneth Roy Fitzgerald?
23 A Here.
24 Q Wendy Lynn Hill?
25 A Here.

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1 Q Allison Colleen Cutone?

2 A Here.

3 Q Jennifer L. Davis?

4 A Here.

5 Q Bernard Joseph Titony?

6 A Here.

7 Q Catherine M. Bennett?

8 A Here.

9 Q Henry Walter Fryt, Jr.?

10 A Here.

11 THE COURT: Is there anyone whose name was
12 not called?

13 Let the record reflect a uniform negative
14 response.

15 Will counsel agree and stipulate that I may
16 have the entire panel sworn at the same time to answer
17 truthfully all questions propounded to them as to their
18 qualifications to serve as jurors, as I might ask questions
19 collectively and so it won't be necessary to administer the
20 oath to each replacement?

21 MR. HARMON: The State agrees with that
22 procedure, your Honor.

23 MR. BROOKS: Defense does, your Honor.

24 THE COURT: Thank you.

25 At this time, would you all please stand,

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1 raise your right hands, and be sworn.

2

3 (At this time the entire prospective jury
4 panel was duly sworn.)

5

6 THE COURT: Ladies and gentlemen, what I'm
7 about to do is read some orientational jury instructions to
8 you. I would rather extemporize, but the points have to
9 specifically be made, as a matter of law, and so I must
10 read these carefully prepared preliminary jury
11 instructions.

12 We are about to commence what is called voir
13 dire examination of the prospective jurors in this case.
14 The term voir dire means, loosely translated, to tell the
15 truth. During this process, you will be asked questions
16 bearing upon your ability to sit as fair and impartial
17 jurors.

18 To accomplish this result, various questions
19 will be asked of you by me or counsel for the parties. On
20 occasion, some of these questions will seem somewhat
21 personal and we do not wish to unnecessarily pry into your
22 personal lives. However, the questions are necessary so
23 that counsel and the Court can make an intelligent
24 determination as to your capabilities to serve fairly and
25 impartially.

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1 I want you to know that I and the attorneys
2 and all other persons involved in this case are deeply
3 concerned with having this matter tried by 12 people who
4 are completely open minded, neutral, objective, and
5 unbiased in their thinking.

6 Wide discretion is vested in the trial judge
7 as to the method of examination of jurors. As I stated
8 previously, I will conduct the voir dire, but I must give
9 the attorneys the opportunity to participate in this
10 questioning.

11 The following areas of inquiry are not
12 properly within the scope of your voir dire examination by
13 counsel. 1. Questions already asked and answered by the
14 Court and other counsel. 2. Questions touching upon
15 anticipated instructions on the law. 3. Questions
16 touching upon the verdict a juror would return when based
17 upon hypothetical facts. 4. Questions that are, in
18 substance, arguments of the case.

19 Ladies and gentlemen, it is important that
20 you know the significance of full, complete, and honest
21 answers to all the questions we are about to ask you. I
22 caution you not to try to withhold anything which might
23 indicated bias or prejudice of any sort by any of you.

24 Should you fail to answer truthfully or if
25 you hide or withhold anything touching upon your

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1 qualifications, that fact may tend to contaminate your
2 verdict and subject you to further inquiry, even after your
3 discharge as jurors.

4 Your decision should be based upon all the
5 evidence presented during the trial and not based upon
6 preconceived prejudice or bias. Prejudice is an irrational
7 disposition against something or someone and bias is an
8 irrational predisposition in favor of something or
9 someone.

10 I'm going to conduct the general voir dire
11 examination of all of you while you are seated in the
12 audience. After those general questions, the clerk will
13 call 14 names using the order provided to us by the jury
14 commissioner to fill the jury box.

15 At some point during the process of
16 selecting the jury, the attorneys for both sides will have
17 the right to ask that a particular person not serve as a
18 juror. These requests are called challenges. There are
19 two types of challenges, challenges for cause and
20 peremptory challenges. A challenge for cause means that a
21 juror has been excused because his or her answers to some
22 of the voir dire questions indicate that he or she would
23 have a difficult time in giving a fair and impartial
24 hearing to the case.

25 A peremptory challenge means that a jury can

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1 be excused from duty without counsel having to give a
2 reason for the excusal. Please do not be offended should
3 you be excused by either of the challenge procedures. They
4 are simply part of the procedures designed to protect the
5 rights of the parties under our system of government.

6 Again, I would ask that counsel approach the
7 bench before I begin this process. I have one other
8 question I want to ask.

9 (Off the record discussion not reported.)

10 THE COURT: All right, ladies and gentlemen,
11 if you wish to respond to a question individually and in
12 the affirmative, please raise your hand, give your name,
13 and indicate the number you have been given on your badge.

14 Is there anyone who has such a sympathy,
15 prejudice, or bias relating to age, religion, race, creed,
16 sex, or national origin that they feel would effect their
17 ability to be open minded, fair, and impartial?

18 Yes, ma'am.

19 JUROR NO. 422: Helen Lloyd. My badge
20 number is 422. I'm one of Jehovah's Witnesses and I have
21 no desire to sit in judgment of another person.

22 THE COURT: Just so that you understand what
23 you are really doing here is not sitting in judgment on
24 another human being in the religious sense. What you are
25 is a judge of the facts and your judgment has to do with

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1 whether the State will be able to prove beyond a reasonable
2 doubt the guilt of the defendant. So your judgment is
3 really not a religious one. It is one of fact.

4 With that in mind, do you still believe that
5 you'd have a problem because of your religious beliefs in
6 sitting as a juror?

7 A Yes, I do especially in the case that
8 the death penalty would be involved in. I don't want to be
9 responsible for that.

10 THE COURT: I will go ahead and excuse you
11 from jury service in this rotation. Thank you.

12 Yes, ma'am.

13 JUROR NO. 440: My name is Helga Podkowski,
14 badge number 440. I have a problem should the death
15 sentence be applied. I could never --

16 THE COURT: Well, the question right now is
17 whether or not you have any racial, religious, gender bias
18 or prejudice that would prevent you from being a juror in
19 the case?

20 A I could never agree to it.

21 THE COURT: Well, it's not a matter of
22 agreeing, it's a matter of your civic duty to sit on a jury
23 if you can be qualified as a fair juror. Do you understand
24 that?

25 A I have a problem with that.

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1 THE COURT: With what?

2 A Whatever the sentence will be.

3 THE COURT: I understand, but the question
4 doesn't involve that yet. Is there something about the
5 death penalty that you could not give fair consideration to
6 the three forms of punishment that you might be called upon
7 to deliberate upon?

8 A Yeah, I feel God gives life and God
9 takes life and I just --

10 THE COURT: All right, I'll excuse you from
11 jury service at this time.

12 The question has to do -- again, I'll repeat
13 it. Is there anyone who has such a sympathy or bias
14 relating to age, religion, creed, sex or national origin
15 that they feel would effect their ability to be open
16 minded, fair, and impartial?

17 Yes, ma'am.

18 JUROR NO. 471: Yes, I feel the same way. I
19 feel God gave life and He should take it.

20 THE CLERK: Ma'am, please stand and give us
21 your badge number.

22 JUROR NO. 471: I'm sorry. Nancy Patfield,
23 471.

24 THE COURT: All right, I'll excuse you from
25 jury service. This question is not about the death penalty

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1 yet. In about three, four minutes, we will get to that,
2 but I will go ahead and excuse you.

3 JUROR NO. 471: Okay. Thank you.

4 THE COURT: With that in mind, ladies and
5 gentlemen, is there anyone who feels they have to answer
6 the question in the affirmative?

7 A VOICE: Can't hear you.

8 THE COURT: Is there anyone who feels they
9 have to answer the pending question in the affirmative?
10 Does anyone have any racial, religious, gender bias issues
11 that would prevent them from being fair and impartial to
12 everyone in the case?

13 Let the record at this point reflect a
14 uniform negative response.

15 Are any of you acquainted with the defendant
16 or his attorneys?

17 Let the record reflect a uniform negative
18 response.

19 Are any of you acquainted with the Deputy
20 District Attorneys that have been introduced to you this
21 afternoon?

22 Let the record reflect a uniform negative
23 response.

24 The District Attorney's Office employs many
25 deputies and other personnel. Is there anyone who has such

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1 a close relationship with either the District Attorney, his
2 deputies or other members of his staff that you feel might
3 effect your ability to serve as a fair and impartial juror
4 in this case?

5 Anyone have any relationship with members of
6 the District Attorney's staff or clerical staff or
7 investigator staff?

8 Let the record reflect a uniform negative
9 response.

10 Are any of you acquainted with any of the
11 witnesses whose names were previously mentioned by the
12 Deputy District Attorney?

13 Yes, sir. Please stand and give your badge
14 number and your name.

15 JUROR NO. 411: Ronald Ulicki. I know one
16 of the officers. I work with his brother.

17 THE COURT: Is there anything about your
18 acquaintanceship with this person that would effect your
19 ability to be a fair judge of his credibility and the
20 credibility of other witnesses in the case?

21 A No.

22 THE REPORTER: Badge number, please.

23 JUROR NO. 411: 411.

24 MR. BROOKS: I didn't hear. What was his
25 statement, please?

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1 THE COURT: No. His answer was no.

2 MR. BROOKS: Who is the person he knows?

3 THE COURT: Could you give us the name of
4 the witness, please.

5 JUROR NO. 411: David Stansbury.

6 THE COURT: Anyone else know any of the
7 witnesses?

8 JUROR NO. 464: I'm not sure -- Donn Chelli,
9 badge 464. I'm not sure if it's the same person. They
10 have the same name. Is Jimmy Vaccaro -- does he work for
11 the Metropolitan Police Department?

12 THE COURT: Yes.

13 MR. HARMON: Yes.

14 JUROR NO. 464: If it is, then it's a
15 different person.

16 THE COURT: All right. Thank you.

17 Anyone else know any of the witnesses?

18 Yes, ma'am.

19 JUROR NO. 474: Wendy Hill, 474. I work in
20 dispatch for the police department. I don't know any of
21 the officers personally, but just by name.

22 THE COURT: Is there anything about the fact
23 that you work with Metro as a dispatcher that would effect
24 your ability to fairly judge the credibility of police
25 witnesses along with all the other witnesses?

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1 A I don't think so.

2 THE COURT: All right, thank you. You may
3 be seated.

4 Anyone else know any of the witnesses?

5 Let the record reflect a uniform negative
6 response.

7 This case is expected to last two weeks,
8 possibly two and a half weeks. Is there anyone, among the
9 members of the prospective jury panel, that would have a
10 compelling reason why they could not serve that length of
11 time or otherwise could not serve in this case?

12 Right over here.

13 JUROR NO. 401: Joseph Haley, badge 401. Two
14 reasons. Really one, my wife was just admitted to the
15 hospital on Saturday going into premature labor. I'm
16 supposed to find out today whether she has to remain in the
17 hospital.

18 THE COURT: Is she close to term now?

19 A Seven and a half months.

20 THE COURT: Is she still in the hospital at
21 this point?

22 A Yeah. I'm supposed to find out between
23 2 and 2:30 whether she can come home or not.

24 THE COURT: If she comes home, can you serve
25 or --

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1 A Well, work-wise is really another issue
2 for me as well.

3 THE COURT: But I can understand that you
4 might be distracted during this period with this going on,
5 so I will go ahead and excuse you from jury service in this
6 rotation.

7 A Okay.

8 THE COURT: Yes, one at a time.

9 JUROR NO. 430: Richard Altz, badge 4:30.
10 As I indicated on my questionnaire, I work for a company
11 that's undergoing a conversion of all the state data
12 processing systems and that culminates November 8th. Right
13 now we are in the throws of making final changes in
14 procedures, training all of our staff, and I manage all the
15 operations of the State of Nevada for our company and if I
16 am --

17 THE COURT: What is the name of this
18 company?

19 A Pardon me?

20 THE COURT: What is the name of the company?

21 A Bank of America.

22 THE COURT: Oh, Bank of America.

23 What we will do is put you at the bottom of
24 the list and perhaps we won't have to get to you. For
25 those kinds of reasons, what we will do is put you at the

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1 bottom. Usually you won't get called.

2 A Okay.

3 THE COURT: But I have to take that
4 precaution so we can get a jury.

5 Yes, on this side of the room.

6 JUROR NO. 425: Richard Cracroft. I work in
7 communications. We filed our S-1 filing and we will be
8 going public here in the next probably three weeks. I'm
9 one of the directors here in Las Vegas in records, sales,
10 marketing, and it would present a hardship on my employees
11 to having me gone during this time.

12 THE COURT: We will put you on the bottom of
13 the list.

14 THE CLERK: Badge number, sir?

15 JUROR NO. 425: 425.

16 THE COURT: Yes.

17 JUROR NO. 431: Mike Belbot, 431. Working
18 full time, it would only give me eight days of jury duty
19 service. On top of that, I'm a night student as well. I
20 don't think I can afford two and a half weeks.

21 THE COURT: All right, we will put you on
22 the bottom of the list.

23 A Excuse me, sir?

24 THE COURT: We will put you at the bottom of
25 the list.

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1 JUROR NO. 409: Donna Linkogel, 409. I'm
2 just curious. Are they going to sequester?

3 THE COURT: No.

4 A Thank you.

5 THE COURT: Anyone over on this side of the
6 room still?

7 Yes, ma'am. Yes, ma'am.

8 JUROR NO. 414: Annmarie Ryan, 414. I have
9 a daughter who is just about to give birth to a baby and
10 she is living with me and my husband is out of town most of
11 the time. I can't --

12 THE COURT: Is she at term?

13 A -- leave her.

14 This is the last month.

15 THE COURT: All right, I will excuse you.

16 A She may have problems.

17 THE COURT: Yes, I will let you out of jury
18 service from this rotation.

19 Yes, ma'am?

20 A Martha Rainwater, badge 417, and it
21 would be a hardship on our company because I'm in charge of
22 the accounting department and we are getting installed this
23 week new computers and new software for the whole
24 accounting department.

25 THE COURT: I guess I should get into the

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1 computer vending business. We will put you at the bottom
2 of the list.

3 Yes, ma'am.

4 JUROR NO. 426: Barbara Dear, badge number
5 426, and two reasons. One is nonrefundable airplane
6 tickets for October 31st and I'm a team teacher in a
7 classroom.

8 THE COURT: This case will not go past the
9 31st of October.

10 Yes, ma'am.

11 JUROR NO. 418: Badge 418. I have two
12 reasons. I work three twelves at the hospital and I would
13 only get paid for an eight hour shift. The other reason is
14 I baby-sit two young children so their moms can go to
15 school and they can't come here.

16 THE COURT: All right, I will let you out of
17 jury service in this rotation.

18 Yes.

19 JUROR NO. 429: Badge number 429. I travel
20 at work quite a bit. I serve Nevada, Utah, parts of
21 Montana, Idaho, and Wyoming. It would be a hardship on my
22 company to have me out of work.

23 THE COURT: What is the kind of company you
24 work for?

25 A Company is Internet. As a matter of

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1 fact, I have airline tickets in my pocket. If released, I
2 would be going --

3 THE COURT: But they are company tickets,
4 right?

5 A Yes.

6 THE COURT: I will put you at the bottom of
7 the list.

8 Oh, yes ma'am, I'm sorry.

9 JUROR NO. 404: Hi. I'm Ross Carter, 404.

10 THE COURT: Yes, ma'am.

11 A I have nothing against anything here.
12 I'm physically unable to be here everyday. I have a
13 disintegrating spine and I can't stay in one position very
14 long.

15 THE COURT: Do you have a physician who
16 would be willing to write a letter to that effect?

17 A I have the letters to show it.

18 THE COURT: I think what you need to do, I'm
19 going to let you out of jury service, but I think you need
20 to give a copy of that letter to the jury commissioner and
21 indicate to them that I think that qualifies you for
22 disqualification from jury service.

23 A I have three diseases of the spine.

24 THE COURT: All right. I will go ahead and
25 excuse you.

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1 A Thank you.

2 THE COURT: Yes, sir.

3 JUROR NO. 451: Duncan McCoy, badge 451.

4 I'm president of the Nevada Library Association and
5 Chairman of the Annual Conference of that Association in
6 Laughlin this weekend. I need to be down in Laughlin on
7 Thursday and Friday. I will be through with that Sunday
8 night. If that's a problem, you know, it would create a
9 problem for me.

10 THE COURT: All right, we will put you at
11 the bottom of the list.

12 Yes, sir.

13 JUROR NO. 450: Juror 450, Anthony Camacho.
14 I'm bidding on the 11th for my job. If I'm not present, I
15 will lose my position and be put on the bottom of the
16 list.

17 THE COURT: All right, we will put you on
18 the bottom of the list.

19 MR. HARMON: What was that number, Judge?

20 THE CLERK: 450.

21 THE COURT: When you say you are bidding for
22 the job --

23 A On the 11th and I have to be present.

24 THE COURT: What kind of a job are you
25 bidding on?

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1 A Citizen Area Transit bus driver.

2 THE COURT: All right.

3 Anyone over here? Put him at the very
4 bottom of the list. I'm going to put you at the very
5 bottom of the list so that your chances of getting picked
6 are very narrow.

7 A Thank you.

8 THE COURT: Yeah.

9 JUROR NO. 460: Lillian Bruski, 460. I will
10 be out of the country as of next Monday, leaving to go out
11 of the country next Monday and also I would like to state
12 that emotionally and morally I would find it difficult to
13 go through a death penalty.

14 THE COURT: I'll let you out of jury service
15 at this time. If you would go back to the jury
16 commissioner. If you would go back to the jury
17 commissioner.

18 A The jury . You want me -- where is the
19 jury commissioner?

20 THE COURT: Where you just came from.

21 A Oh, okay.

22 THE COURT: Just explain to them that I have
23 excused you from jury service in this rotation.

24 A Thank you.

25 THE COURT: All right, thank you.

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1 Yes.

2 JUROR NO. 462: Badge 462. I work at a
3 local radio station. I might be privy to information that
4 is put out in the media that is about the trial.

5 THE COURT: Well, you will be instructed
6 about that.

7 Yes.

8 JUROR NO. 468: I don't understand very much
9 English.

10 THE COURT: All right, I will go ahead and
11 excuse you from jury service unless you want an
12 interpreter.

13 A I don't know.

14 THE COURT: Would you feel uncomfortable
15 sitting in a trial --

16 A No.

17 THE COURT: No, what I'm saying because of
18 the language barrier, would you feel like you might have
19 trouble following the proceeding?

20 A Yeah.

21 THE COURT: We can arrange to have an
22 interpreter, simultaneous interpreter.

23 A I don't understand. What's that?

24 (Off the record discussion not reported.)

25 THE COURT: I will give you that option.

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1 A I don't know. I don't know if they
2 speak my language.

3 THE COURT: All right, I will go ahead and
4 let you out.

5 THE CLERK: Badge number, ma'am?

6 A 468.

7 MS. SILVER: I'm sorry, I didn't hear that.

8 THE CLERK: 468.

9 THE COURT: You can go back to the jury
10 commissioner.

11 Yes, sir.

12 JUROR NO. 470: Larry Allen, badge number
13 470. My wife is in poor health and started having heart
14 problems and she's scheduled for one minor test and a
15 lengthy test this Thursday.

16 THE COURT: Is she going to be undergoing
17 angiography?

18 A Possibility. They are just testing her
19 now.

20 THE COURT: So she is having chest pains?

21 A Plus she is COPD, breathing on oxygen.

22 THE COURT: All right, I will go ahead and
23 excuse you from jury service.

24 Yes.

25 JUROR NO. 464: Donn Chelli, 464. I work

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1 two jobs, your Honor, and it's difficult to get from the
2 one job to my second job if we get off here at 5:00.

3 THE COURT: All right, I will put you at the
4 bottom of the list.

5 Yes.

6 JUROR NO. 475: Badge number 475, Allison
7 Cutone. My husband and I juggle one car between the two of
8 us going to and from work and I have a small infant and
9 with our jobs, both of us are responsible for watching the
10 baby and with me being in court, it would be hard to watch
11 the child and also to find another person to do it for me.

12 THE COURT: All right, I will go ahead and
13 excuse you from jury service in this rotation.

14 A Thank you.

15 JUROR NO. 477: Badge number 477, Bernard
16 Titony. Your Honor, I'm not a salaried employee. I travel
17 for a living and usually it takes me out of town Friday,
18 Saturday, Sunday, Monday, and Tuesday and that basically
19 depends on my livelihood because I do not work in Las
20 Vegas.

21 THE COURT: Where do you live then?

22 A I live in Las Vegas.

23 THE COURT: What I will do is put you at the
24 bottom of the list.

25 (Off the record discussion not reported.)

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1 THE COURT: Anyone else?

2 Yes, sir.

3 JUROR NO. 452: I haven't consulted my
4 doctor, but I'm being treated for a leaky heart valve and
5 high blood pressure. I don't know if he would approve or
6 not.

7 THE COURT: Do you feel like you can sit
8 through a jury trial and make a decision and work with
9 other people?

10 A I don't know. I have problems and then
11 I don't. I try to do everything. The doctor says don't do
12 anything. So.

13 THE COURT: We will put you at the bottom of
14 the list.

15 THE CLERK: Badge number, sir?

16 A 452.

17 (Off the record discussion not reported.)

18 THE COURT: Yes, sir.

19 JUROR NO. 413: Steve Remular, badge 413.
20 I'm in the brick layer's union from 6 to 2 and my wife
21 works from 4. She works at the casino. I have three
22 kids. They are under one, one years old, and my son is
23 three and a half. We have no other baby sitter to watch
24 them.

25 THE COURT: All right. Does she work?

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1 A Stardust Hotel.

2 THE COURT: She works at the Stardust?

3 A Yes.

4 THE COURT: What I'm going to do now is I'm

5 going to excuse this gentleman here. Could you give me

6 your name and badge number again, please.

7 JUROR NO. 477: Last name Titony, 477.

8 THE COURT: And you, sir.

9 JUROR NO. 464: Donn Chelli, 464.

10 THE COURT: And you, sir.

11 JUROR NO. 450: 450.

12 THE COURT: Your name again?

13 A Anthony Camacho.

14 THE COURT: And?

15 JUROR NO. 413: Steven Remular.

16 THE COURT: Those prospective jurors are

17 released.

18 MR. HARMON: Can we have the badge numbers

19 again, please.

20 THE COURT: Give us your badge number,

21 please.

22 MR. HARMON: 464?

23 JUROR NO. 464: Yes, sir.

24 JUROR NO. 450: 450.

25 THE COURT: Just take it back to the jury

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1 commissioner.

2 THE REPORTER: Was that 413?

3 JUROR NO. 459: 459, Rebecca Lund. I'm a
4 full time student at a technical school and I have paid for
5 my schooling.

6 THE COURT: When do you go to school?

7 A Academy of Hair Design. When? It's
8 Saturday from 8 to 4:30.

9 THE COURT: All right, I will let you out of
10 jury duty.

11 MS. SILVER: Badge number?

12 THE CLERK: 459.

13 MS. SILVER: Thank you.

14 JUROR NO. 431: Excuse me, your Honor?

15 THE COURT: Yes.

16 A Is a student status exempt from
17 possible jury service? As well, I have already paid for my
18 classes, but I go to school at night.

19 THE COURT: I'm going to go ahead and leave
20 you at the bottom of the list. Thank you.

21 THE CLERK: Badge number, sir?

22 JUROR NO. 431: 431.

23 THE COURT: Yes.

24 JUROR NO. 479: 479, Catherine Bennett. I
25 work for a law office down the street and I'm in and out of

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1 here all the time. I don't know if that matters.

2 THE COURT: Doesn't to me.

3 A It doesn't matter, but I hear stuff
4 going on all the time between the attorneys at my work and
5 I recognize her over there.

6 THE COURT: Who is that?

7 A Gillock, Koning & Killebrew.

8 THE COURT: There is precious little
9 likelihood that you will hear any discussion of this case
10 at that office since that primarily is civil law.

11 Is there anyone on the panel who's been
12 engaged in law enforcement or has a spouse or close
13 relative that has ever been engaged in law enforcement?

14 Yes, ma'am.

15 JUROR NO. 405: My brother-in-law is a
16 police officer for Metro.

17 THE COURT: Give your name and number.

18 A Denise Parr, 405. My brother-in-law
19 newly just past the academy three months ago as a Metro
20 police officer.

21 THE COURT: Anything about his status that
22 would prohibit you from giving the witnesses and the
23 parties in this case a fair trial?

24 A No.

25 THE COURT: All right, thank you. You may

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1 be seated.

2 THE COURT: Yes, sir.

3

4 (At this time, another court reporter took
5 over the proceedings.)

6

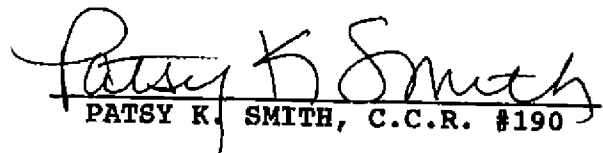
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9 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF PROCEEDINGS.

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PATSY K. SMITH, C.C.R. #190

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PATSY K. SMITH, OFFICIAL COURT REPORTER

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ORIGINAL

DISTRICT COURT
CLARK COUNTY, NEVADA
FILED IN OPEN COURT
OCT 8 1996
LORETTA BOWMAN, CLERK
BY *[Signature]* Deputy

THE STATE OF NEVADA,)
)
Plaintiff,) Case No. C131341
)
-vs-) Dept. No. VII
)
JAMES MONTELL CHAPPELL,) Docket: P
)
Defendant.)

REPORTER'S TRANSCRIPT
OF
TRIAL

BEFORE THE HONORABLE A. WILLIAM MAUPIN DISTRICT JUDGE

Monday, October 7, 1996
2:35 p.m.

Volume I - Afternoon Session
Pages 1 - 184, inclusive

APPEARANCES:
For the State: Melvyn Harmon, Esq.
Abbi Silver, Esq.
Deputy District Attorneys
For the Defendant: Howard Brooks, Esq.
Willard Ewing, Esq.
Deputy Public Defenders

Reported by: DANETTE L. ANTONACCI, CCR #222
Certified Court Reporter

CE

1 LAS VEGAS, NEVADA, MONDAY, OCTOBER 7, 1996

2 * * * * *

3
4
5 JUROR #406: Kenneth Edward Gritis, 406. My
6 brother is a park ranger at Lake Mead.

7 THE COURT: Anything about his work or your
8 knowledge of it that would affect your ability to be fair
9 to both sides?

10 JUROR #406: No.

11 THE COURT: Thank you. You may be seated.

12 JUROR #437: I have a son who is a retired
13 officer in New York City. Does that mean anything?

14 THE COURT: How is that possible?

15 Can you give the parties a fair trial in
16 this case?

17 JUROR #437: Absolutely.

18 THE CLERK: Badge number?

19 JUROR #437: 437.

20 THE COURT: Anyone else on this side of the
21 room?

22 JUROR #420: Yeah. I had a cousin that used
23 to be the chief of police, not here, but he has not been
24 that for sometime.

25 THE COURT: Can you give both sides a fair

1 trial?

2 JUROR #420: Yes.

3 THE CLERK: Badge number please?

4 JUROR #420: 420.

5 JUROR #409: Donna Marie Linkogel, 409. I
6 have two of my cousins are sergeants in New York City, but
7 I don't think that will --

8 THE COURT: Anything about their work or
9 knowledge of it that will affect your ability to be fair to
10 both sides?

11 JUROR #409: No, sir.

12 THE COURT: You may be seated.

13 Anyone else on your right side and my
14 left side of the room? All right.

15 JUROR #455: Danna Yates, 455. My mother is a
16 Nye County dispatcher.

17 THE COURT: Anything about her work or your
18 knowledge of it that would affect your ability to be fair
19 to both sides?

20 JUROR #455: No.

21 THE COURT: Anyone else on this side of the
22 room?

23 Yes, sir?

24 JUROR #444: 444, Mike Gushwa. My dad was a
25 security guard at the airport.

1 THE COURT: Can you give both sides a fair
2 trial?

3 JUROR #444: Yeah.

4 THE COURT: Yes, sir, in the back.

5 JUROR #458: 458, Roger Harmon. My brother
6 was border patrol for about seven years.

7 THE COURT: Anything about his work or your
8 knowledge of it that would affect your ability to fairly
9 judge the credibility of police witnesses in comparison to
10 other witnesses?

11 JUROR #458: No, sir.

12 THE COURT: Thank you very much. You may be
13 seated.

14 Anyone else on this side of the room?

15 Let the record reflect a uniform
16 negative response.

17 Over here in the ancillary.

18 JUROR #463: Joseph Pietryman, 463. I have a
19 nephew that is Metro.

20 THE COURT: Anything about his work or your
21 knowledge of it that would affect your ability to fairly
22 judge the credibility of police witnesses in comparison to
23 other witnesses?

24 JUROR #463: No.

25 THE COURT: Thank you.

1 Yes?

2 JUROR #469: Badge 469, William Nicholas
3 Poulos. My nephew is a police officer in Flagstaff.

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

5 JUROR #469: Yes.

6 MS. SILVER: I'm sorry, I couldn't hear. He's
7 a police officer where?

8 JUROR #469: Flagstaff, Arizona.

9 THE COURT: Anyone else?

10 JUROR #474: Wendy Hill, 474. I work in
11 dispatch for Metro.

12 THE COURT: There is nothing about your
13 interaction with the staff that would affect your ability
14 to be fair in this case?

15 JUROR #474: I don't think so.

16 THE COURT: Okay. Thank you.

17 Anyone else?

18 Yes, sir?

19 JUROR #411: Security guards, do you count
20 that as law enforcement?

21 THE COURT: Anything about that --

22 JUROR #411: I work as --

23 THE COURT: Anything about your work that
24 would affect your ability to be fair to both sides in this
25 case?

1 JUROR #411: Questionable.

2 THE COURT: Why do you say that?

3 JUROR #411: When you deal with certain types
4 of people all the time you do develop a disposition.

5 THE COURT: Let me ask you this: Can you
6 listen to the testimony of police witnesses and fairly
7 determine their credibility, their ability to perceive, to
8 remember and whether or not you think they are being
9 candid?

10 JUROR #411; Yeah.

11 THE COURT: Can you do that with other
12 witnesses?

13 JUROR #411: Yes.

14 THE COURT: All right. Anyone else?

15 Let the record reflect a uniform
16 negative response.

17 Would any of you have a tendency to give
18 more weight or credence to the testimony of a law
19 enforcement officer simply because the witness was a law
20 enforcement officer?

21 The record will reflect a uniform
22 negative response.

23 Is there anyone who may not be able to
24 follow the instructions of the Court on the law even if the
25 instructions on the law differed from their personal

1 1 conceptions of what the law ought to be, anyone have any
2 2 problem following the Court's instructions? For example,
3 3 we'll be defining the elements of the charge, how you
4 4 consider credibility, how you consider credibility of
5 5 witnesses, how you consider the testimony of experts, how
6 6 you behave yourself in the jury room, what the burden of
7 7 proof is, things like that all would be the subject of
8 8 legal instruction. Is there anyone that will have a
9 9 problem following those instructions even if they disagreed
10 10 as a matter of philosophy for example with the law stated
11 11 in the instructions?

12 Record reflect a uniform negative
13 13 response.

14 What I'm looking -- to be a little more
15 15 specific, for example, if you're in a, we're not in this
2 16 kind of a case, but if you were in a case that involved the
17 17 use of controlled substances, some people would believe
18 18 that controlled substances should be criminalized and some
19 19 people believe it should not be criminalized. And if you
20 20 were to sit in a jury in a case like that you would have to
21 21 qualify as a juror to say well, I'll follow the doctrine,
22 22 if the State proves a person guilty of drug possession then
23 23 I'll find him guilty, if I don't believe they met their
24 24 burden I'll find the defendant not guilty. The idea being
25 25 the law says that drug possession is against the law. And

2 1 so a juror in that kind of a case would have to acknowledge
2 that regardless of their personal conceptions they would be
3 able to follow the law and convict an individual of a crime
4 even if they disagreed with the criminalization of the
5 alleged misconduct. So in this case is there anyone that
6 would have any trouble at all following the Court's
7 instructions on the law that governs this case.

8 Record reflect a uniform negative
9 response.

10 Under our system there are certain
11 principles of laws that apply in every criminal case. They
12 are: One: That a person is presumed innocent; Two: That
13 the Information or Indictment that is the charging document
14 filed in the case is a mere accusation and is not evidence
15 of guilt; and Three: That the State must prove that the
16 defendant is guilty beyond a reasonable doubt.

17 Is there anyone who does not understand
18 or believe in these basic precepts of American justice?

19 Record reflect uniform negative
20 response.

21 Has any member of the prospective jury
22 panel been contacted by an individual in or around the
23 environs of the courthouse handing out information about
24 jury nullification, that is information that indicates that
25 you can make up your own rules in the jury room and decide

2 1 accordingly?

2 Let the record reflect a uniform
3 negative response.

4 Is there any member of the jury panel
5 that knows anything about this case other than what has
6 been stated in the courtroom today?

7 JUROR #480: Only what I've read in the
8 newspaper.

9 THE COURT: Is there anything about the news
10 accounts of this case that predisposes you one way or
11 another about any of the issues in this case?

12 JUROR #480: No.

13 THE COURT: You'll be able to listen to all
14 the evidence and put the State to their burden, its burden
15 of proof with regard to the guilt or innocence of this
16 defendant?

17 JUROR #480: Yes.

18 THE REPORTER: Your badge number please?

19 JUROR #480: 480.

20 THE COURT: In this case if any of you are
21 selected as jurors this matter may be divided into two
22 phases. First, the jury will determine that the defendant
23 is guilty, that is whether the State has met its burden
24 beyond a reasonable doubt of proving the facts of guilt.
25 Punishment is not to be considered during that phase of the

2 1 trial. Second, if the jury finds the defendant guilty of
2 first degree murder, then the law of this state requires
3 the jury to set the punishment. At that time the Court
4 will set a time for the hearing of evidence on punishment.

5 In the State of Nevada there are three
6 possible forms of punishment that the jury may consider and
7 then select the one they feel is the most appropriate under
8 the law and the facts of the case. Those three possible
9 forms of punishment in the event the jury is charged with
10 determining punishment are: A: Imposition of the death
11 penalty; B: Life imprisonment without the possibility of
12 parole; or C: Life imprisonment with the possibility of
13 parole.

14 Is there anyone among the members of the
15 prospective jury panel that does not understand --

16 MR. BROOKS: May we approach, Judge?

17 THE COURT: For what?

18 MR. BROOKS: Slight problem. I'm going to
19 object to it.

20
21 (Discussion off the record.)

22
23 THE COURT: Let me resummarize then.

24 If and only if the jury finds the
25 defendant guilty of first degree murder, then the jury

2 1 would be charged with setting punishment in the case in
2 what is called a penalty hearing. The three possibilities
3 of punishments -- actually there are four: The death
4 penalty, life imprisonment without the possibility of
5 parole, life imprisonment with the possibility of parole,
6 and 50 years in the Nevada State Prison, eligible for
7 parole in 20 years. Those are the four forms of punishment
8 that the jury would have to deliberate upon.

9 Is there anyone among the members of the
10 prospective jury members who does not understand that in
3 11 the event of a first degree murder conviction the jury
12 would then have to move onto the question of punishment?

13 Let the record reflect a uniform
14 negative response.

15 Is there any member of the jury panel at
16 this point that has a conscientious, moral or religious
17 objection to the imposition of the death penalty?

18 All right. You, sir.

19 JUROR #403: Roland Seward, 403. I couldn't
20 judge someone. God gave life, no one has the right to take
21 life away. I couldn't put myself to agree or disagree upon
22 that.

23 THE COURT: All right. Thank you. You may be
24 seated.

25 Yes. Next. Give me your name and badge

3
1 number.

2 JUROR #410: Lynn Westrom, badge 410.

3 THE COURT: What is your disposition one way
4 or the other?

5 JUROR #410: I can't, I don't agree with the
6 death penalty.

7 THE COURT: You may be seated.

8 Yes?

9 JUROR #417: Martha Rainwater, badge 417. And
10 although I admire people who can come up with the death
11 penalty, I cannot.

12 THE COURT: I'm sorry?

13 JUROR #417: I could not agree to the
14 punishment of death.

15 THE COURT: Be seated.

16 Yes?

17 JUROR #428: Edward Ferrell, badge 428. I
18 agree with all the forms of the punishment, but death
19 penalty I do not if the defendant is guilty.

20 THE COURT: Anyone else?

21 JUROR #457: Clint Marrs, 457. I couldn't be
22 involved in taking somebody's life.

23 THE COURT: Be seated.

24 MS. SILVER: I'm sorry. Was that 457?

25 THE COURT: Are you badge 457?

JUROR #457: Yes, sir.

MS. SILVER: Thank you.

THE COURT: Anyone else?

All right. The Court has asked this question now so that we know we have an identity of the jurors who have an issue with this. But as a matter of law we're still required to have you take a position in the jury box if we reach you to be questioned about your feelings in that regard. That's simply an issue that is a matter of law at this point. So I'm not going to elaborate further, but I have at least at this point identified the persons among the prospective jury panel that counsel need to be aware of so that they're ready to make the appropriate examinations at the appropriate time.

At this point I'd ask the clerk to call the first fourteen names from the panel to be seated in the jury box.

THE CLERK: Badge 402, Tina Prato Spruell,
S-p-r-u-e-l-l.

Badge number 403, Roland M. Seward,
S-e-w-a-r-d.

Badge number 405, Denise Wright Parr,
P-a-r-r.

Badge number 406, Kenneth Edward Gritis,
G-r-i-t-i-s.

3

1 Badge number 407, Scott Gaines Emmert,
2 E-m-m-e-r-t.

3 Badge number 408, Heather L. Neighbors,
4 N-e-i-g-h-b-o-r-s.

5 Badge number 409, Donna Marie Linkogel,
6 L-i-n-k-o-g-e-l.

7 Badge number 410, Lynn Hilary Westrom,
8 W-e-s-t-r-o-m.

9 Badge number 411, Ronald Ulicki,
10 U-l-i-c-k-i.

11 Badge number 412, Jim Blake Tripp,
12 T-r-i-p-p.

13 Badge number 420, Joyce A. Souder,
14 S-o-u-d-e-r.

15 Badge number 421, Kellyanne Bentley
16 Taylor, T-a-y-l-o-r.

17 Badge number 426, Barbara Mastenbrook
18 Dear, D-e-a-r.

19 Badge number 427, Olga C. Bourne,
20 B-o-u-r-n-e.

21 THE COURT: Let's start with Mr. Seward just
22 for a moment in order to expedite matters.

23 No, please be seated.

24 JUROR #403: Oh.

25 THE COURT: You indicated you had a

philosophical problem with imposing the death penalty in this case.

JUROR #403: Yes, sir.

THE COURT: Understand that in this particular instance the legislature has made a public policy decision that there are four forms of punishment in a first degree murder case, and if you're chosen as a juror you have to make a determination from one of those list of four. Can you put aside your personal opinions or philosophies and follow the instructions of the Court and give fair consideration to all four forms of punishment?

JUROR #403: To be honest, no, because the death penalty is in there and that would be on my mind at all times.

THE COURT: Counsel for the State.

MR. HARMON: The State challenges for cause, your Honor.

THE COURT: Traverse.

MR. BROOKS: We'll submit it, Judge.

THE COURT: I'll excuse Mr. Seward from jury service in this rotation.

THE CLERK: Badge number 428, Edward Arnold Ferrell, F-e-r-r-e-l-l.

THE COURT: Mr. Ferrell, I'll ask you the same question before you go up in the jury box, the question I

asked of Mr. Seward.

Is there any set of circumstances under which you could give fair consideration to the death penalty or the other three forms of punishment; 50 years with 20 years parole eligibility, life with the possibility of parole or life without the possibility of parole?

JUROR #428: I cannot support the death penalty. As I stated earlier all the other forms of punishment, I'm very hard core on that and I believe the person if he commits the crime and he's found guilty, I can agree with the other forms of punishment, but the death penalty, no.

THE COURT: Under no set of circumstances?

JUROR #428: No, sir.

THE COURT: State.

MR. HARMON: State challenges for cause.

THE COURT: Traverse.

MR. BROOKS: Submit it, your Honor.

THE COURT: Mr. Ferrell, I'll excuse you from jury service in this rotation.

THE CLERK: Badge number 432, Celestina Cecilia Lucido, L-u-c-i-d-o.

THE COURT: You can take your place in the jury box.

THE COURT: I believe Miss Westrom is the only

4 1 other person sitting in the jury box that voiced an
2 objection to the death penalty. Am I correct?

3 Could you at this point, Miss Westrom,
4 I'll turn to you, is there any set of circumstances under
5 which you could, based upon your, notwithstanding your
6 statements earlier, that you could consider the death
7 penalty?

8 JUROR #410: I don't believe so. I couldn't
9 consider the death penalty fairly.

10 THE COURT: State.

11 MR. HARMON: Not under any circumstances?

12 JUROR #410: I don't believe so.

13 MR. HARMON: We challenge for cause.

14 THE COURT: Traverse.

15 MR. BROOKS: We submit it, your Honor.

16 THE COURT: Miss Westrom, I'll excuse you from
17 jury service.

18 JUROR #410: Thank you.

19 THE COURT: Thank you much very much for
20 coming.

21 I want to reiterate something to the
22 members of the prospective jury panel that I know was part
23 of your juror orientation the other day. There is no right
24 or wrong answer to any of these questions. What we are
25 seeking here is only candid responses so that we can pick a

4 1 jury that can fairly judge all of the issues in the matter.

2 THE CLERK: Badge number 433, Cheryl Lynn
3 Wells, W-e-l-l-s.

4 THE COURT: I'll ask the other members of the
5 prospective jury panel that have indicated a problem with
6 imposing the death penalty. Would they all please stand,
7 please.

8 I'll ask, ma'am, could you give me your
9 badge number and name again.

10 JUROR #417: 417, Martha Rainwater.

11 THE COURT: Is there any set of circumstances
12 under which you could impose the death penalty?

13 JUROR #417: No, sir.

14 THE COURT: State.

15 MR. HARMON: We challenge for cause, your
16 Honor.

17 THE COURT: Traverse.

18 MR. BROOKS: We submit it, your Honor.

19 THE COURT: I'll excuse you from jury service.

20 Yes, sir?

21 JUROR 457: No, sir.

22 THE COURT: What's your name again?

23 JUROR #457: Clint Marrs, 457.

24 THE COURT: Mr. Marrs, there is no set of
25 circumstances under which you can impose the death penalty?

4 1 JUROR #457: No, sir.

2 MR. HARMON: Challenge for cause, your Honor.

3 MR. BROOKS: Submit it, your Honor.

4 THE COURT: You're excused from jury service.

5 JUROR #466: Your Honor, I could not consider
6 the death penalty.

7 THE COURT: I'm sorry?

8 JUROR #466: I could not support the death
9 penalty.

10 THE COURT: You could not?

11 JUROR #466: No -- we don't believe in
12 killing.

13 THE REPORTER: I'm sorry, I cannot hear you.

14 THE COURT: Is there any set of circumstances
15 under which you could impose the death penalty?

16 JUROR #466: No.

17 MR. HARMON: State challenges for cause.

18 MR. BROOKS: We'll submit, your Honor.

19 MS. SILVER: Badge number please?

20 JUROR #466: 466.

21 THE COURT: You are excused from jury service
22 in this rotation. Thank you very much for coming.

23 Anyone else?

24 Let the record reflect a uniform
25 negative response.

4

1 You're trying to raise your hand. Yes,
2 ma'am?

3 JUROR #443: Yes, my name is Jeanne Jellema
4 and my badge number is 443, and I would have a problem.

5 THE COURT: In a proper case do you think you
6 could give fair consideration to all four forms of penalty?

7 JUROR #443: Having given it more thought, the
8 death part bothers me too much.

9 THE COURT: There is no set of circumstances
10 under which you could consider the death penalty?

11 JUROR #443: Uhm, I don't think so, your
12 Honor. I waited this long because I kept trying to think
13 about it, but I think I would have a real serious problem
14 about, with that.

15 THE COURT: Counsel.

16 MR. HARMON: We challenge for cause, your
17 Honor.

18 MR. BROOKS: We'll submit it, your Honor.

19 THE COURT: I'll excuse you from jury service
20 in this rotation.

21 Did you just come to --

22 JUROR #431: No, sir. 431. My problem is I
23 have a problem, I have problems with the other three
24 possible penalties except death.

25 THE COURT: I don't mean to be unkind, but you

4 1 have waited until everyone else has gotten through doing
2 this and you have given approximately three concerns about
3 serving on the jury anyway.

4 JUROR #431: Well, no, sir. This is after
5 listening to everybody oppose the death penalty. I wasn't
6 sure if the question was problems with all four sentences
7 or just death. I think originally it was did we have
8 problem with all sentences.

9 THE COURT: Can you give fair consideration to
10 any of the sentences?

5 11 JUROR #431: I can give fair consideration to
12 the death penalty only if proven guilty.

13 THE COURT: What is your schedule?

14 JUROR #431: I'm sorry, sir?

15 THE COURT: What's your schedule so I can
16 reassess.

17 JUROR #431: Work schedule?

18 THE COURT: Yes.

19 JUROR #431: Well, I'm out the door about
20 usually seven o'clock and home by six and I'm in school
21 until roughly nine o'clock.

22 THE COURT: What days do you go to school?

23 JUROR #431: Monday, Tuesday, Wednesday.

24 THE COURT: State.

25 MR. HARMON: Your Honor, we'll stipulate to

excusing the juror.

THE COURT: Thank you. You're excused from jury service.

JUROR #431: Badge number 431.

EXAMINATION

BY THE COURT:

Q We'll turn to Miss Spruell.

A Yes.

Q Am I pronouncing your name correctly?

A Yes, correct.

Q Any reason that you can think of why you couldn't be fair to both sides in this case?

A No.

Q Can you wait to form any opinion you might have on any issue in this case until all the evidence is in?

A Yes.

Q Have you or any member of your family or any close friends of yours ever been arrested?

A My brother has.

Q For what?

A I'm not really certain on all of them. I think mostly driving without license. You know, teenage

5
1 stuff.

2 Q Anything about his experience with law
3 enforcement that would affect your thinking in a case like
4 this?

5 A No.

6 Q Have you or any member of your family or any
7 friends of yours ever been the victim of a crime?

8 A No.

9 Q Have you been on a jury before?

10 A No.

11 Q Do you have any concern about adverse opinion
12 that might result from any verdict you might render in this
13 case?

14 A No.

15 Q Have you ever been a witness or a participant
16 in any kind of court action?

17 A No.

18 Q Do you have any philosophical, religious, or
19 moral objections to the imposition of the death penalty?

20 A No.

21 Q If you were involved in this case would you
22 feel comfortable with twelve jurors just like you sitting
23 in judgment of the matter?

24 A Maybe not being pregnant. I can be emotional
25 at times.

Q Do you think you can be fair to both sides?

A Yes.

THE COURT: State.

MS. SILVER: Thank you, your Honor.

EXAMINATION

BY MS. SILVER:

Q Miss Spruell, what are your views regarding capital punishment?

A I believe in the death penalty. It just depends on the crime. If they're found guilty I do believe in the death penalty. I do believe in prison. You know, I believe in it all.

Q So you do --

A It just depends on the case and the circumstance of the case. I don't believe that someone that kidnaps a child should be let back out. But, you know -- just the circumstance.

Q So you recognize though and understand the process that only the jury, if you were selected as a juror, finds the defendant guilty collectively, all twelve unanimously, guilty of murder in the first degree, then it would go on into a second phase of the trial which we would call the penalty phase?

5

1 A Yeah.

2 Q You understand that process?

3 A Yes..

4 Q And according to what you stated then there are
5 certain situations in which you yourself actually believe
6 that the death penalty can be an appropriate punishment?

7 A Yes. Most of them.

8 Q If you were selected as a juror in this case and
9 heard all of the evidence and you felt like the State had
10 proven its case in the guilt phase, and you felt that the
11 defendant was guilty beyond a reasonable doubt of the crime
12 of murder in the first degree, could you come into this
13 courtroom and actually state your verdict here in court in
14 front of the defendant?

15 A Yes.

16 Q And in the second part of the trial, during the
17 penalty phase, the State would be able to present what we
18 call aggravating circumstances, and the defense if they
19 would like would be allowed to present evidence in
20 mitigation of punishment. The jury would be given the
21 choice to decide upon the four different verdicts which
22 you've read in your questionnaire. You recall that?

23 A Yes.

24 Q And you understand that process?

25 A Yes.

5 1 Q If you heard all the evidence in the penalty
2 phase and you felt that the only appropriate punishment was
3 in fact the death penalty, could you again come into this
4 courtroom and impose, along with the other jurors, a
5 sentence of death, and could you say that aloud in front of
6 the defendant?

7 A Yes.

8 Q Could you likewise also if you felt that life
9 without the possibility of parole was appropriate, could
10 you give that for a sentence?

11 A Yes.

12 Q Could you give life with the possibility of
13 parole, if you felt that the circumstances were right,
14 could you give that as a sentence?

15 A Yes.

6 16 Q And could you also likewise give a sentence of a
17 fixed term of 50 years with the possibility of parole,
18 could you also consider that as a sentence as well?

19 A Yes.

20 Q I question you on the because on one of the
21 answers here you weren't sure and you put something to the
22 effect of you didn't believe that a murder should have
23 parole. But what you're stating to me now verbally now
24 that you've listened to everything --

25 A Right.

6 1 Q -- you could consider all of the forms of
2 punishment?

3 A I can consider all the forms of punishment
4 depending upon the case. A murder is a murder and there is
5 a lot of different murders that take place and I think
6 there is a lot of different punishments that should take
7 place for the type of murder.

8 Q And depending on that situation, what was
9 presented to you, you're an open-minded juror, you can be
10 fair and impartial to both the State and the defense in
11 this case?

12 A Yes.

13 Q Do you think that people ought to be held a
14 accountable for their actions?

15 A Definitely.

16 MS. SILVER: Thank you, your Honor. This
17 juror is acceptable to the State and we would pass for
18 cause.

19 THE COURT: Mr. Brooks.

20 MR. BROOKS: Mr. Ewing will handle this,
21 Judge.

22 MR. EWING: Thank you, your Honor.

23
24 ///

25 ///

DIRECT EXAMINATION

BY MR. EWING:

Q Miss Spruell, the specific question that the district attorney referred to in the questionnaire, the question was "If the defendant was convicted of first degree murder and a penalty hearing is held, will you consider all four sentences?" And you write "No, I don't believe murderers should have parole." Do you recall writing that down?

A Yes. Thinking about it though, if you think about one murder to another murder, there is a lot of murders that take place and you think about it one murder should go with a lesser penalty. Do you understand what I'm saying?

Q Let me ask you this then: What would you want to know about a person before you decide what kind of sentence to give?

A I wouldn't want to know nothing about the person. I would want to know everything about the crime that happened.

Q Would the history of the individual matter to you at all?

A No.

Q The situation three days before the crime

6 1 occurred, would that matter to you at all?

2 A No.

3 Q The situation two days before the crime
4 occurred, that wouldn't matter?

5 A Huh-uh.

6 Q Only the specific facts of the case is all that
7 would concern you?

8 A (No audible response.)

9 Q Do you understand what premeditation means?

10 A Yes, sir.

11 Q What does premeditation mean to you?

12 A A premeditated murder --

13 MS. SILVER: I'm going to object, your Honor.
14 I believe that the jury at the conclusion of the trial will
15 be given a set of instructions including what premeditation
16 is and it may be very different than what this juror --

17 THE COURT: It doesn't hurt to find out what
18 her notion of it is.

19 JUROR #402: Someone that plans a murder,
20 someone that has premeditated, they're going to murder this
21 person, they're going to do it, it was something that was
22 planned, it was not something that just happened because
23 they're irrational at the time they planned this murder.

24 BY MR. EWING:

25 Q If someone committed a premeditated murder,

6 1 could you consider all four possible punishments?

2 A I don't believe so. I don't believe you could
3 let someone out on parole that has planned a murder.

4 MR. EWING: I challenge for cause.

5 THE COURT: Traverse.

6 MS. SILVER: Yes, your Honor.

7
8 EXAMINATION
9

10 BY MS. SILVER:

11 Q You understand that if you came back with murder
12 in the first degree that you're basically stating that it
13 was a premeditated murder, there was an intent to kill.
14 Would you be willing in this case to listen to all of the
15 circumstances, whether they're aggravating circumstances
16 given by the State or facts in mitigation of punishment,
17 and depending on the crime, what you've stated, could you
18 listen to all of that and then make a decision using the
19 four forms of punishment?

20 A I believe I can listen to all the facts and form
21 a fair opinion. You know. Just my opinion about
22 premeditated murder is a little bit more harsh than someone
23 who just irrationally goes out of their mind for that point
24 in time and kills somebody. There is a difference, you
25 know. That's why I was telling him is that I could not

6 1 give someone life in prison with the possibility of parole
2 to go out and plan another murder.

3 Q So then in all first degree murder cases what
4 you're saying is if you came back then --

5 THE COURT: Miss Silver, the problem is this
6 whole line of questioning going back to defense counsel's
7 questioning is based upon a faulty premise.

8 MS. SILVER: Of what premeditation is.

9 THE COURT: The prospective juror has
10 indicated in her mind premeditation is a planned murder and
11 premeditation under the law is not defined necessarily as a
12 planned murder as we think of say a contract killing.

13 Premeditation is the intent to kill that can be formed in a
14 very short moment under our instructions; is that correct?

15 MS. SILVER: It's correct. It's successive
16 thoughts of the mind.

17 THE COURT: So the real question is will you
18 be able to follow the Court's instructions in the event
19 that you find the defendant guilty of first degree murder
20 which includes that admixture, can you keep an open mind
21 and consider all four forms of punishment?

22 JUROR #402: Yes.

23 THE COURT: Now the other thing is the
24 prospective juror made a comment about not being able to
25 consider other factors such as the background of the

7 1 defendant and the nature of the person charged; is that
2 correct?

3 MR. EWING: That's correct.

4 THE COURT: Now the Court will instruct you
5 that that is a factor that you can consider on the issue of
6 punishment. Knowing now that that is an issue that you are
7 permitted to consider, will you be able to consider the
8 background and other mitigating circumstances in addition
9 to this, the facts of the crime on the issue of punishment?

10 JUROR #402: On the facts of the crime itself?

11 THE COURT: Beyond the facts of the crime.

12 JUROR #402: Beyond the facts of the crime??

13 THE COURT: Yes. For example --

14 JUROR #402: If I was ordered to, yes.

15 THE COURT: The background of the defendant,
16 other mitigating factors that may have led him to that
17 point in his life, can you consider those things?

18 JUROR #402: If they were --

19 THE COURT: In terms of coming to one of the
20 four forms of punishment?

21 JUROR #402: If I was told we had to consider
22 them, yes, I could consider them.

23 THE COURT: You must be able to consider them
24 if you are a juror in the case. And the question is now in
25 all honesty, and you have your own conscience to consider,

7
1 at that point do you feel that philosophically you could
2 consider all other mitigating factors other than just the
3 nature of the crime itself before determining, and then in
4 determining whether or not any of the four punishments are
5 appropriate, can you do that?

6 JUROR #402: I believe I could.

7 BY MR. EWING:

8 Q You made a comment earlier that you felt that if
9 someone kidnaped a child they should never get out of
10 prison; is that true?

11 A It's just a for example. I couldn't say that
12 that would be a total case either because parents kidnap
13 children all the time. They kidnap their own children to
14 see their children.

15 Q So then it's safe to say you no longer feel that
16 if someone kidnapped a child they should not get out of
17 prison?

18 A I was saying that as a for example to kind of
19 give an example for different things, different types of
20 things that people do.

21 Q Based upon circumstances?

22 A Right, based upon the circumstances, not that I
23 believe that, just it was a circumstantial thing. I don't
24 believe that someone, not everybody should go to prison for
25 life for kidnapping a child. Parents do it all the time.

7 1 A lot of people, a lot of family members do it. You know.
2 Temporarily insane sometimes. I don't know.

3 Q The Court asked you a few moments ago if you
4 could consider other factors other than the facts of the
5 case itself and you've now indicated that you can. What
6 other factors do you think would be important?

7 A The state of mind he was in maybe. If he was
8 ill, mentally ill. I guess if you're saying about the
9 death penalty then you're wanting to know if I'm going to
10 consider family background. I don't know. I wouldn't
11 consider family background. I would consider the fact that
12 was he ill in his mind, was, you know, temporary insane,
13 something like that. I would consider facts that happened
14 before that. Do you understand what I'm saying? Like was
15 there an abusive relationship by one of the other --

16 Q So you feel that what's going on in the
17 defendant's mind is real critical to your senses; is that
18 correct?

19 A Yes, sir.

20 Q Do you consider 50 years in prison a harsh
21 sentence?

22 A With the possibility of 20 -- with the
23 possibility of parole?

24 Q With the possibility of parole.

25 A No.

7 1 Q Do you consider a life sentence with the
2 possibility of parole to be a harsh sentence? Do you
3 consider life without the possibility of parole to be a
4 harsh sentence?

5 A Yes.

6 Q What about the death penalty?

7 A It's the fullest extent.

8 Q So you consider the death penalty to be more
9 harsh than life in prison without the possibility of
10 parole?

11 A Well, that's a thought, isn't it.

12 You have to spend life in prison rather
13 than to die would be like let them go off free some would
14 think. I think definitely the death penalty is the
15 harshest.

16 MR. EWING: Court's indulgence for one moment
17 please.

8 18 JUROR #409: Excuse me, your Honor. May I go
19 to the restroom? I feel sick.

20 THE COURT: Yes.

21 JUROR #409: Thank you.

22 MR. EWING: Your Honor, I renew my motion to
23 challenge for cause based upon the questions.

24 THE COURT: Denied.

25 Does that complete your examination?

MR. EWING: Yes, it does.

EXAMINATION

BY THE COURT:

Q Miss Lucido, good afternoon.

A Good afternoon.

Q Any reason you can think of why you couldn't be fair to both sides in this case?

A No, your Honor.

Q Can you wait until all the evidence is in before coming to any conclusion about any issue in this case?

A Yes.

Q Have you or any member of your family or any close friends of yours ever been the victim of a crime?

A No.

Q Have you or any member of your family or any close friends of yours ever been arrested?

A No.

Q Ever been on a jury before?

A No.

Q Any concern about adverse public opinion as a result from any verdict that you might render?

A No.

Q Have you ever been in any involved in any court

proceeding as a party or a witness or otherwise?

A No.

Q Do you have any conscientious, moral or religious objections to the imposition of the death penalty?

A No.

Q If you were involved in this case would you feel comfortable with twelve jurors just like you sitting in judgment?

A Yes.

THE COURT: You may inquire.

MS. SILVER: Thank you, your Honor.

EXAMINATION

BY MS. SILVER:

Q Miss Lucido is it?

A Yes.

Q Good afternoon.

A Good afternoon.

Q I notice here that you stated in your questionnaire that -- well, let me ask you this way: You recognize that the burden of proof here in trial, criminal trials is such that the State has to prove beyond a reasonable doubt that the defendant committed the crime

8 1 before we, before the jury can convict a defendant?

2 A Yes.

3 Q You understand that. Do you have any problems
4 with the fact that the State has that burden of proof?

5 A No.

6 Q In fact, the defendant does not have any burden
7 at all, it's strictly our burden?

8 A Yes.

9 Q I just wanted to point that out because I notice
10 that on one of the questions, you may have been confused,
11 you had written you agreed that a defendant in a criminal
12 trial should be required to prove his innocence. Knowing
13 what we've just discussed, you would follow the law and
14 require the State to prove beyond a reasonable doubt the
15 crime in this case or the crimes?

16 A Yes.

17 Q You recognize also that the burden of proof,
18 whether it's in a murder case or a burglary case or a
19 misdemeanor petty larceny case, that the burden remains the
20 same in all criminal cases throughout the country; do you
21 understand that?

22 A Yes.

23 Q No matter what the case, it's the same burden of
24 proof?

25 A Yes.

8 1 Q Of course this is is a murder case and it's a
2 2 serious matter, but would you hold the State to a higher
3 3 standard or an impossible burden of proof because of the
4 4 seriousness of the charge?

5 A No.

6 Q You'd follow the law then?

7 A Yes.

8 Q If the circumstances were such that the State
9 9 was able to prove to you beyond a reasonable doubt that the
10 10 defendant committed murder in the first degree, you could
11 11 come back with a verdict of guilty of murder with use of a
12 12 deadly weapon?

13 A Yes.

14 Q Okay. Can you also consider all three forms of
15 15 punish -- excuse me, four forms of punishment that have
16 16 been listed to you in the questionnaire?

17 A Yes.

18 Q What are your views on capital punishment?

19 A Capital punishment to me is going to be like to
20 20 be given only depending upon the crime that has been
21 21 committed. And if all the evidence that was presented was
22 22 committed, then I think it's just right, that we have to
23 23 give the death penalty.

24 Q So there are situations?

25 A There are some situations that, it's not, you

8

1 know, it depends upon what happened, the oral presentation
2 of the evidence in the case.

3 Q And you would sit and listen to both the State's
4 and the defense's presentation to you?

5 A Yes.

6 Q Do you think that people ought to be held
7 accountable for their actions?

8 A Yes.

9 Q Do you think that you're the type of person that
10 if you found the death penalty was appropriate could
11 actually come back and impose the death penalty?

12 A If needed and if it's proven that the crime was
13 committed.

14 Q Have you ever talked about the death penalty
15 before with other people?

16 A No.

17 Q It's not something that you've gone around and
18 discussed?

19 A Huh-uh.

20 Q You can understand though my questions to you,
21 certainly it's one thing for all of us to talk about it,
22 but it's another thing for twelve people collectively to
23 decide such a sentence?

24 A Yes.

25 Q And you heard even some of the jurors or at

1 least one juror that said you know, after thinking about it
2 that is just something I can't do. Do you feel like you're
3 someone that can impose it if it is appropriate?

4 A If it's appropriate. I know it's hard but if
5 someone did that crime, it depends on the crime that is
6 committed.

7 Q Thank you.

8 This juror is acceptable to the State
9 and we would pass this witness for cause.

10 THE COURT: Mr. Brooks.

11 MR. EWING: Thank you, your Honor.

12
13 EXAMINATION
14

15 BY MR. EWING:

16 Q Is it Miss Lucido?

17 A Yes.

18 Q I notice that you were born in the Philippines.

19 A Yes.

20 Q How long have you been in the United States?

21 A Seventeen, sixteen years.

22 Q Sixteen years. While you were living in the
23 Philippines, did you become familiar with the laws in the
24 Philippines?

25 A Yes.

9 1 Q Do you feel like your knowledge of the
2 Phillipine law is in any way going to affect your ability
3 to serve on this jury?

4 A No.

5 Q You indicated in your jury questionnaire that
6 you consider yourself to be a leader; is that true?

7 A Yes.

8 Q Do you feel like your opinion matters?

9 A Yes.

10 Q Will you have any problem voicing your opinion
11 to your fellow jurors if you're selected to sit on the
12 jury?

13 A No.

14 Q Are you the kind of person that is going to
15 stick to your guns so to speak if you reach a conclusion or
16 make a decision?

17 A Yes.

18 Q Do you think you're easily persuaded?

19 A No.

20 Q Do you feel like you have the ability to
21 persuade others?

22 A Yes.

23 Q How do you feel about people who use drugs?

24 Let me make that a little more specific.

25 Have you got experience in your life

9 1 with people who use drugs?

2 A No.

3 Q Family members, friends?

4 A No.

5 Q You indicate in the jury questionnaire that the
6 death penalty should be given to people who are found
7 guilty of killing others. Does that mean that you think
8 that everyone who is found guilty of killing someone should
9 receive the death penalty?

10 A No, it depends upon if they're proven guilty and
11 all the evidence has been presented and I think it's just
12 right, then the death penalty. If -- you know.

13 Q If they've been found guilty of murder?

14 A Found guilty, all the evidence has been
15 presented.

16 Q So if they've been found guilty, all the
17 evidence indicates to you they're guilty of first degree
18 murder --

19 A Well --

20 Q -- would you consider other possibilities or
21 would you just want -- other possible sentences?

22 A It depends upon the graveness of the offense
23 committed.

24 Q In your own mind.

25 You also indicate in here that you feel

9 1 that the death penalty should be given to people who
2 2 repeatedly commit the same offense. Was that referring to
3 3 murder or other crimes?

4 A Other crimes too. If they murderers, those drug
5 5 dealers, that keep doing the same thing, you know, I think
6 6 they need to so people will learn and stop with all this
7 7 crime that is going on. It's getting worst.

8 Q So repeat offenders you feel should be punished
9 9 more harshly?

10 A The graveness of the offense they committed.

11 Q Do you feel that people with minimal criminal
12 12 offenses should be treated more leniently?

13 A Yes.

14 Q A lot of jurors were excused because they could
15 15 not consider the death penalty. How did you feel about
16 16 those jurors that said they couldn't consider the death
17 17 penalty?

18 A Well, different people have different way, you
19 19 know, feelings that they have. I know it's hard also to
20 20 impose the death penalty. But if the person really
21 21 committed that crime, I mean not one time only, it depends
22 22 on how the crime was done and it's repeatedly, he's doing
23 23 it repeatedly, so many times like that, that's the way I
24 24 look of giving them death penalty.

25 Q So you've indicated to me so far that someone's

9 1 history is very important to you, whether or not they
2 2 repeated lots of crimes or whether or not they had a clean
3 3 criminal record is very important to you in terms of
4 4 deciding sentences; is that correct?

5 A It does help a little in deciding, you know,
6 6 what punishment is to be given. It helps a little bit.

7 Q What do you think is more important, the history
8 8 of the person or the specific facts of the case?

9 A The specific facts of the case. But history
10 10 helps a little bit, what kind of person he is. It does
11 11 help.

12 Q What types of things do you think are important
13 13 to know about a person in deciding what kind of a sentence
14 14 to give them?

15 A Not really, I do not think any particular,
16 16 nothing in particular.

17 Q You don't have any specific things that you'd
18 18 like to know about that individual?

19 A No.

20 Q Do you understand why we're spending so much
21 21 time today talking about penalties and punishment?

22 A Yes.

23 Q Do you understand that -- you probably own a
24 24 car, don't you?

25 A Excuse me?

10 1 Q You own a vehicle, an automobile?

2 A Yes.

3 Q And probably have car insurance; correct?

4 A Yes.

5 Q And you bought that car insurance to protect you

6 in the event that you had an accident; right?

7 A Yes.

8 Q You're not going to go out tomorrow expecting to

9 have an accident; correct?

10 A No.

11 Q Can you understand that that's what we're trying

12 to do; in talking to you about the death penalty and the

13 possible range of punishments in today's jury selection is

14 we're trying to prepare the jury in the event that we get

15 to a penalty phase?

16 A Yes.

17 Q Do you understand that?

18 A Yes sir.

19 Q We're going to have a trial phase first. You're

20 going to have to make a decision about the guilt or

21 innocence of Mr. Chappell; you understand that, correct?

22 A Yes.

23 Q And nobody is conceding anything to you at this

24 point in the trial.

25 A No.

10

1 Q How do you see your role as a juror?

2 A I have an important part here because the life
3 of the person depends on us here, whatever position we're
4 going to make.

5 Q Life of the person depends upon your decision;
6 correct?

7 A Yes, our decision.

8 Q You are essentially the last obstacle, barrier,
9 whatever you want to say, between this individual being
10 free and this individual not being free; is that correct?

11 A Yes.

12 Q Is that important?

13 A That's important.

14 MR. EWING: Pass for cause.

15 THE COURT: We'll take our afternoon recess at
16 this point, ladies and gentlemen.

17 During the recess it is your duty not to
18 converse among yourselves or with anyone else connected
19 with the trial; or read, watch or listen to any report or
20 commentary on the trial or any person connected with the
21 trial by any medium of information, including without
22 limitation newspapers, television and radio; and you are
23 not to form or express an opinion on any subject connected
24 with this case until it is finally submitted to you.

25 We'll be back in session between fifteen

1 and ten minutes of the hour. We'll be at ease while the
2 prospective jury departs the confines of the courtroom.

3
4 (Recess.)

5
6 THE COURT: Continuation of jury selection in
7 State versus James Montell Chappell.

8 Moving over to Miss Parr.

9
10 EXAMINATION

11
12 BY THE COURT:

13 Q Good afternoon.

14 A Good afternoon.

15 Q Any reason that you can think of why you
16 wouldn't be fair to both sides in this case?

17 A No, sir.

18 Q Can you wait until all the evidence is in before
19 coming to any conclusion about any issue in this case?

20 A Yes, sir, I believe I can.

21 Q Have you or any member of your family or any
22 close friends of yours ever been arrested?

23 A No, sir.

24 Q Have you or any member of your family or close
25 friends of yours ever been the victim of a crime?

10

1 A No, sir.

2 Q Have you ever been a a jury before?

3 A Yes, I have.

4 Q How many times?

5 A Once.

6 Q Was it a criminal or a civil case?

7 A Criminal.

8 Q So you went through the process of assessing the
9 guilt over innocence of another citizen?

10 A Yes, sir.

11 Q So you're already familiar with the instructions
12 on reasonable doubt?

13 A Yes, sir.

14 Q And you feel comfortable with going through that
15 process again?

16 A I believe that my opinion, my result would be
17 based on the information that is submitted to me.

18 Q Now, do you have any concern about any adverse
19 publicity that might be generated from this case?

20 A I don't think I would.

21 Q Say, for example, you entered a verdict one way
22 or the other or any way and the newspapers wrote about it
23 and they were critical, it wouldn't bother you?

24 A It wouldn't bother me as long as I based my
25 decision on what was presented to me.

10 1 Q In the other case you sat as a juror, without
2 telling me what the verdict was, was your jury able to
3 reach a verdict?

4 A Yes, sir, it was.

5 Q Anything about that experience that would affect
6 your thinking in this case?

7 A Not in this case, no, your Honor.

8 Q So that was then, this is now and a whole new
9 set of facts?

10 A Correct.

11 Q Have you ever been involved in any way as a
12 participant in a court proceeding, as a witness or a party?

13 A Yes, sir. I was recently a witness in a grand
14 jury.

15 Q And that was a completely separate event from
16 this?

17 A Yes, it was job related.

18 Q Anything about that experience that would affect
19 your ability to be fair in this case?

20 A No, sir.

21 Q And in your present state of mind can you, if
22 selected as a juror, give fair consideration to all four
23 forms of punishment?

24 A Yes, sir, it would be based on all the
25 information that is submitted to me.

1 Q Is there anything in your life that would, as
2 you reflect on the situation, that would cause you concern
3 philosophically with the imposition of the death penalty or
4 giving fair or equal consideration to any other forms of
5 punishment?

6 A No, they would all be considered equally based
7 on the evidence.

8 Q So you would keep an open mind as to all four
9 possible forms of punishment if and only if the defendant
10 is convicted of first degree murder?

11 A Yes, sir, I will.

12 Q If you were involved in this case yourself in
13 any way, whether a witness or a member of any of the
14 participants, family or anything like that, would you feel
15 comfortable with twelve jurors just like you with your
16 sense of fairness sitting on this jury?

17 A Yes, sir, I think I would.

18 THE COURT: State may inquire.

19 MR. HARMON: Thank you, your Honor.

20
21 EXAMINATION

22
23 BY MR. HARMON:

24 Q Mrs. Parr, is it one case you served before as a
25 juror or several cases?

11 1 A One case.

 2 Q Was it a criminal case?

 3 A Yes, it was.

 4 Q What crime was it?

 5 A Rape.

 6 Q How long ago was that?

 7 A Ten years ago.

 8 Q You indicated in the questionnaire that you

 9 wouldn't mind serving on this case.

 10 A No, I don't think I would mind serving on any

 11 other case if asked again.

 12 Q You also mentioned that you were a little bit

 13 concerned about the time estimate, but you suggested that

 14 you could arrange your schedule.

 15 A Yes.

 16 Q So you can serve?

 17 A Yes. I have a small son, five and a half year

 18 old, and my husband is there and it can be arranged.

 19 Q As I'm sure you can appreciate simply as a

 20 citizen, but also because of your prior experience, it's

 21 imperative that we have jurors who can devote their full

 22 attention to these proceedings while the court is in

 23 session. Can you do that?

 24 A I believe I can, sir.

 25 Q If you were a legislator for a day and it was

11

1 solely within your power, would we have capital punishment
2 in the State of Nevada?

3 A I believe in capital punishment.

4 Q Why do you believe in it?

5 A Because I believe that the crime, that the
6 punishment should fit the crimes. And I believe that they
7 should be based on the evidence and everything submitted,
8 that it should be given if necessary.

9 Q If it becomes necessary in this case for the
10 jury to become involved in fixing the punishment, if after
11 you had heard all of the evidence you were persuaded in
12 this case that capital punishment fit the crime which had
13 been committed, would you have the strength of your
14 conviction to come into the courtroom and say so?

15 A Yes, sir, I think I would.

16 MR. HARMON: Thank you. Pass for cause, your
17 Honor.

18 THE COURT: All right. For the defense.

19 MR. BROOKS: Thank you, Judge.

20

21 EXAMINATION

22

23 BY MR. BROOKS:

24 Q Miss Parr, I'm going to take Mr. Harmon's
25 question turned around a little bit.

11

1 If you listen to all the evidence and we
2 got to the point where we were considering the death
3 penalty, and you did not feel that this crime warranted the
4 death penalty, would you be willing to state your
5 convictions and stick to them?

6 A Yes, sir, I believe I would.

7 Q One of the things in this series, this process,
8 what we're trying to do here of course is basically figure
9 out if you all have any particular preconceptions or
10 anything that would influence you in deciding what is
11 happening in this case. The judge is going to instruct you
12 as to the law toward the end of the guilt phase and then
13 the judge will instruct you again as to the law regarding
14 the penalties if we end up in a first degree murder
15 situation. We're going to be asking you to look closely at
16 the facts of this case and consider various alternatives.
17 Are you open to various alternatives in a murder situation
18 where a person has died?

19 A Yes, sir. I believe that it would all be
20 presented to you and based on that information is where you
21 would have to make your decision and all factors that could
22 be considered should be considered.

23 Q So you're not going to rule out something
24 because of some prejudice or feeling you have inside?

25 A I don't believe I am prejudiced.

11

1 Q Thank you.

2 We're in a system here where a defendant
3 is presumed innocent and as we sit here right now Mr.
4 Chappell is presumed innocent. That burden remains with
5 him until the evidence says otherwise. How do you feel
6 about that?

7 A I believe we're all innocent until someone is
8 proven guilty.

9 Q You will hold the State to that burden?

10 A Yes, I will, sir.

11 Q Is there anything in particular you think that
12 we should know about you before we make our decision if we
13 want you on the jury?

14 A No, I don't think -- I think you have the
15 questionnaire and I don't think there is anything that I
16 haven't revealed.

17 Q Are you a native Las Vegas?

18 A Yes, I was born here.

19 Q And I think you said you work for SIIS?

20 A Yes, I do, sir.

21 Q Thank you very much.

22 We'll pass for cause, your Honor.

23 THE COURT: All right. Thank you.

24

25 ///

EXAMINATION

BY THE COURT:

Q Mr. Gritis, am I pronouncing your name correctly?

A Yes.

Q Any reason you can think of why you wouldn't be fair to both sides in this case?

A No.

Q Can you wait until all the evidence is in before coming to any conclusion about any issue in the case?

A Yes.

Q Has anyone in your family, you or any close personal friends of yours ever been arrested?

A No.

Q Have you or any member of your family or any close personal friends of yours ever been the victim of a crime?

A Yes.

Q Tell us about that.

A My mother and I were robbed by two guys with knives about five years ago in our house.

Q So this was here in Las Vegas?

A Yes.

Q Anything about the way the police handled that

12 1 incident or about the fact of the incident itself that
2 would affect your ability to be fair to both sides in this
3 case?
4 A Not really, no.
5 Q So is there anything about the way the police
6 handled it that left you with a bad taste in your mouth
7 with regard to law enforcement?
8 A There wasn't much to be done. It was robbed and
9 out and that was it.
10 Q They never caught them?
11 A No.
12 Q So there is nothing -- so the theory being that
13 was then, this is now, you can put that aside and decide
14 any issue in this case upon the facts as they're presented
15 to you?
16 A Yes.
17 Q Have you ever been on a jury before?
18 A No.
19 Q Any concern about adverse public opinion that
20 might result from any verdict you might render?
21 A No.
22 Q Have you ever been the participant in any legal
23 proceeding in court, witness, party or otherwise?
24 A Parking ticket. That's it.
25 Q And you're still at large for that?

12 1 A Yes.

2 Q Nothing that we need to be concerned about in
3 this case?

4 A No.

5 Q Can you, if you're selected as a juror, give
6 fair consideration to all four forms of punishment set
7 forth by our legislature?

8 A Yes.

9 Q And do you have any conscientious, moral or
10 religious objections to the death penalty?

11 A No.

12 Q If you were involved in this case would you feel
13 comfortable with twelve jurors with your sense of fairness
14 and judgment sitting on the matter?

15 A Yes.

16 THE COURT: State may inquire.

17 MS. SILVER: Thank you.

18

19 EXAMINATION

20

21 BY MS. SILVER:

22 Q Perhaps I read you wrong. Did you hesitate at
23 all when the Court asked you under the right circumstances
24 could you yourself impose the death penalty? I shouldn't
25 say you yourself. If you collectively with twelve other

12 1 people decided that it was the appropriate punishment,
2 could you actually be involved in rendering a verdict of
3 the death penalty?

4 A Yes, I could. I was just thinking about it.

5 Q Sorry I read you wrong.

6 Let me ask you this regarding one of
7 your statements you made in your questionnaire. I just
8 wanted to ask you to explain it because I wasn't sure I
9 understood it. It says the statement an eye for an eye,
10 and you have "Equal retribution for equal offense. That is
11 assuming that whoever started it doesn't try to make
12 amends." I wasn't sure of that last part. What did you
13 mean by that?

14 A Well, they say an eye for an eye and if somebody
15 tries to bring a lawsuit against you or something and you
16 try to settle it equitable and someone just does it to
17 cause you more grief then, rack up bills and such.

18 Q So you were looking more in the sense of maybe a
19 civil proceeding?

20 A Yes.

21 Q Versus a criminal?

22 A The other question was about thou shalt not
23 kill. I thought that that covered the physical
24 retribution.

25 Q Do you think people ought to be held accountable

1 for their actions?

2 A Yes.

3 Q Is there anything about the nature of this case,
4 a death of a young woman, that would make it difficult for
5 you to participant in being a juror in this case?

6 A No.

7 Q And you yourself can consider all four
8 punishments if you and the other members of the jury came
9 back with murder in the first degree?

10 A Yes.

11 Q Thank you.

12 We would pass for cause, your Honor.

13 THE COURT: Thank you.

14 For the defense.

15 MR. EWING: Thank you, your Honor.

16
17 EXAMINATION
18

19 BY MR. EWING:

20 Q You stated that you believe that people ought to
21 be held accountable for their crimes; correct?

22 A Yes.

23 Q You also indicated that you could consider
24 honestly all four punishments in this particular case;
25 correct?

12 1 A Yes.

2 Q So is it safe to say then you feel there are

3 instances when sentencing someone to say 50 years would be

4 holding them accountable; correct?

5 A Yes.

6 Q Or sentencing them to life with the possibility

13 7 of parole would be holding them accountable?

8 A Yes.

9 Q You said there was an incident when you and your

10 mother were robbed at knife point while in your house;

11 correct?

12 A Yes.

13 Q How long ago did that happen?

14 A About five years ago.

15 Q How many individuals robbed you?

16 A Two.

17 Q Were they caught?

18 A No.

19 Q Were they disguised in any way?

20 A They just had normal clothing on.

21 Q Do you recall how old they were?

22 A Early twenties.

23 Q Did you see them?

24 A Yes.

25 Q Do you recall what race they were?

13

1 A I'm pretty sure they were both Hispanics.

2 Q Did that crime affect your feelings about people
3 of other races in any way?

4 A No.

5 Q You indicated in your jury questionnaire that
6 your father was an alcoholic.

7 A Most likely, yes.

8 Q Did he struggle with that?

9 A He just went with it.

10 Q He didn't try to quit?

11 A He didn't really think he had a problem.

12 Q Did you feel like he had a problem?

13 A Probably, yes.

14 Q Did that affect your relationship with him?

15 A No.

16 Q Do you feel like it was a disease?

17 A He could have stopped.

18 Q Do you feel like he didn't want to stop?

19 A I don't know.

20 Q But you feel like he could have stopped if he
21 wanted to?

22 A He had the will power to, yes.

23 Q If it gets to the point where you're trying to
24 assess punishment, will you consider the individual's
25 background as well as the facts of the case in arriving at

13

1 a sentence?

2 A How do you mean his background?

3 Q In your jury questionnaire the specific question
4 is asked "Should the defendant's background be considered
5 in deciding whether or not to impose a particular
6 sentence?" And you say "I have a hard time considering
7 that to be any kind of explanation."

8 A Yes, I have a hard time believing that because
9 you grew up poor, you're going to do something wrong?

10 Q Do you feel like that is something you shouldn't
11 consider?

12 A I have a hard time. It's not impossible. I
13 don't know.

14 Q Is that something that you're willing to
15 consider?

16 A I'm willing to consider many things.

17 THE COURT: The question is will you consider
18 that if you are instructed that is an appropriate
19 consideration.

20 JUROR #406: If I'm instructed, yes.

21 MR. EWING: I'm going to pass for cause.

22 THE COURT: Thank you.

23

24 ///

25 ///

EXAMINATION

BY THE COURT:

Q Mr. Emmert, am I pronouncing your name correctly?

A Right. Yes, sir.

Q Any reason you can think of why you couldn't be fair to both sides in this case?

A One reason. Right now I'm currently seeing a psychiatrist for depression and I just don't think that I'm -- maybe -- I'm taking certain medications that might have a -- you know -- such a big case.

Q How long have you been on the medication?

A About a year.

Q Does it affect your ability to work, the medication?

A No.

Q Can you work while you're on this medication?

A Yes.

Q Can you make decisions in the work place and at home while you're on the medication?

A Oh, yes.

Q And can you make decisions when you're under the pressure of the work place when you're on this medication?

13

1 A Yes.

2 Q So in essence what we're going to be asking you
3 to do is make some very important decisions, decisions that
4 equate to, as the jury instructions will say, the more
5 weighty affairs of our life. Since you've been on this
6 medication for this period of time you've obviously been
7 able to make life decisions and work decisions that are
8 very important?

9 A Right.

10 Q And you'll be able to do that with the
11 medication?

12 A Yes.

13 Q So with that in mind do you feel more
14 comfortable now about the process?

15 A Yes.

16 Q Other than what we've just been discussing here,
17 can you think of any other reason why you couldn't be fair
18 to both sides?

19 A No.

20 Q Can you wait until all the evidence is in before
21 coming to any conclusion about any issue in this case?

22 A Yes.

23 Q Have you or any member of your family or any
24 close friends of yours ever been arrested?

25 A Yes, my brother.

13

1 Q Tell us a little bit about that.

2 A Petty theft.

3 Q Anything about his experiences that would affect
4 your ability to be fair in this case?

5 A No.

6 Q That was his situation; that was then and this
7 is now?

8 A Right.

9 Q There is nothing about how the police handled
10 that that would jade you against the police department?

11 A No.

12 Q Or police witnesses?

13 A No.

14 Q Have you or any members of your family or any
15 close friends of yours ever been the victim of a crime?

16 A No.

17 Q Have you ever been on a jury before?

18 A No.

19 Q Any concern about adverse public opinion that
20 might be generated from any verdict that might be rendered
21 in the case?

22 A No.

23 Q Have you ever been involved in any court
24 proceeding whether it's a party or a witness?

25 A No.

14

14 1 Q In your present frame of mind, if you're
2 selected as a juror, will you be able to give fair
3 consideration to all four statutory forms of punishment?

4 A Yes.

5 Q Do you have any conscientious, moral or
6 philosophical objections to the imposition of the death
7 penalty?

8 A No.

9 Q If you were involved in this case yourself as a
10 witness or a member of one of the families involved in the
11 case, would you feel comfortable with twelve people like
12 you sitting in judgment on the case?

13 A Yes.

14 THE COURT: State of Nevada may inquire.

15 MR. HARMON: Thank you, your Honor.

16

17 EXAMINATION

18

19 BY MR. HARMON:

20 Q Is your name pronounced Emmert, sir?

21 A Yes.

22 Q Aside from the reservation that you already
23 expressed to the Court about being under a doctor's care
24 and taking medication, aside from that, how do you feel
25 about serving as a juror on this type of case?

14 1 A I feel good. It's part of your civic duty.

2 Q These of course are very serious charges.
3 Occasionally we encounter persons who simply aren't
4 comfortable making the very difficult decisions required of
5 a jury in a murder case. Mr. Emmert, do you feel that
6 you're the type of person who will be able to serve
7 effectively in a murder trial?

8 A No, I don't. Not at this time.

9 Q Now if you will explain to me, even though you
10 said that you would like to serve, and I know you made
11 comment to the Court, but to clarify why don't you feel
12 that you can effectively serve?

13 A I just feel at the time right now with, under
14 the doctor's program and things I'm doing now, that this
15 magnitude of a case I don't think I'm able right now.

16 Q You think you could give your full attention to
17 the proceedings while the court is in session?

18 A Yes.

19 Q Suppose the defendant after the initial phase of
20 the case was found guilty of murder of the first degree.
21 Are you telling us that if it came to a penalty phase that
22 that would be a problem to you because of this particular
23 time in your life?

24 A Yes, right now.

25 Q If you were sitting either at the table where

14 1 Miss Silver and I are seated or at the defense table, would
2 you want twelve jurors of your frame of mind to sit in
3 judgment on the case?

4 A No.

5 Q Is that for the reasons you've indicated?

6 A Yes.

7 MR. HARMON: We'll challenge for cause, your
8 Honor.

9 THE COURT: Traverse.

10

11 EXAMINATION

12

13 BY MR. BROOKS:

14 Q Mr. Emmert, it sounds to me like you don't want
15 to serve, but you don't have any actual objections to being
16 fair in this case if you had to serve?

17 A Right.

18 Q But basically you just don't really want to
19 serve in this case?

20 A Yes.

21 MR. BROOKS: Judge, we'll submit.

22 THE COURT: I'll grant the challenge. If
23 you'll report back to the jury commission. Thank you very
24 much.

25 THE CLERK: Badge number 434, Candy S. Cail,

1 C-a-i-l.

3 EXAMINATION

5 BY THE COURT:

6 Q Good afternoon, Miss Cail.

7 A Hi.

8 Q Any reason that you can think of why you
9 couldn't be fair to both sides in this case?

10 A No.

11 Q Can you wait until all the evidence is in before
12 coming to any conclusion about any issue in this case?

13 A Yes.

14 Q Have you or any member of your family or close
15 friends of yours ever been arrested?

16 A How detailed do you need?

17 Q First the answer is yes or no.

18 A Yes.

19 Q And the next question is what's the nature and
20 who was the party?

21 A It was a conspiracy to commit murder on my
22 parents. It was my little sister. I was not raised in the
23 house or anything. I was raised -- I lived with my
24 grandmother --

25 Q These were other siblings?

14 1 A Yeah. They lived in Texas and I lived here.

2 Q So your siblings were involved in an alleged
3 conspiracy with regard to a potential homicide of your
4 parents.

5 Is there anything about what your family
6 went through, that episode in their lives, that would
7 affect your thinking in this case?

8 A No, because we don't really, I don't have
9 anything to do with any of them.

10 Q Is there anything about how any police agency
11 may have handled the matter or anything like that that
12 might affect your thinking with regard to a witness in this
13 case or a police witness or anyone in the case?

14 A No. And --

15 Q That might testify?

16 A No. And I put no on my thing because I don't
17 have anything to do with them or anything. I just, I
18 forgot it so I did put no in there.

19 Q But you're telling us now that this did happen?

20 A Yeah.

21 Q And the police responded, it was investigated;
22 was there ever a prosecution?

23 A Yes, there was.

24 Q Is there anything about the way that was handled
25 that would affect your thinking here?

15 1 A No. I didn't really get involved at all.

 2 Q So you can put that aside and just judge this

 3 case on the facts of this case alone?

 4 A Yes.

 5 Q Anyone in your family or close personal friends

 6 or yours ever been the victim of a crime other than what

 7 we're just talking about?

 8 A No.

 9 Q Ever been on a jury before?

 10 A No.

 11 Q Any concern about adverse public opinion by

 12 virtue of any verdict you might render?

 13 A No.

 14 Q Ever been a participant in a court proceeding

 15 whether as a witness or a party or in any way?

 16 A No.

 17 Q Will you be able to give fair consideration to

 18 all four statutory forms of punishment in the event the

 19 defendant is convicted of first degree murder?

 20 A Yes.

 21 Q Do you have any conscientious, moral or

 22 religious objections to the imposition of the death

 23 penalty?

 24 A No.

 25 Q If you were involved in this case in any way,

15 1 whether you were a member of the defendant's family, a
2 2 member of the alleged victim's family, a witness, whatever,
3 3 would you feel comfortable with twelve people with your
4 4 sense of fairness sitting in judgment on the case?

5 A Yes.

6 THE COURT: State of Nevada may inquire.

7 MS. SILVER: Thank you, your Honor.

8

9 EXAMINATION

10

11 BY MS. SILVER:

12 Q Let me ask you just briefly, were these your
13 blood relatives, your blood brothers and sisters?

14 A Step.

15 Q Step. How were they related as step?

16 A Well, they were from my mom. Different --
17 second marriage but my mom had them.

18 Q So --

19 A I guess they're a half.

20 Q Were they actually your mother's children?

21 A Yes.

22 Q With a different father than yourself?

23 A Uh-huh.

24 Q You have to answer yes or no for the record.

25 A Yes. I'm sorry.

1 Q Thank you. Unfortunately she doesn't take down
2 head nods.

3 Were you in any way involved in that
4 either as a witness --

5 A No.

6 Q You just heard about it then in another state?

7 A Inside Edition.

8 Q So on TV then?

9 A Yeah.

10 Q Had your mother discussed this with you at all?

11 A She had called me after the fact.

12 Q How long ago was this?

13 A Like fourteen, fifteen years ago.

14 Q I notice that on your questionnaire you stated
15 that you really weren't sure as far as the notion of the
16 death penalty because you stated that you never had to deal
17 with anything like this before. Since you filled out the
18 questionnaire and since you had an opportunity to sit here
19 in court, can you tell us your views on the death penalty
20 and capital punishment?

21 A Depending on the evidence would matter a lot.
22 That would be the only thing that would matter. I won't
23 have a problem if the evidence showed that that's what
24 needed to be done.

25 Q Because I notice here you said, "Well, if it's

15

1 self-defense."

2 A Under different circumstances.

3 Q You understand though you wouldn't be going to a
4 penalty phase unless you all came back with murder in the
5 first degree?

6 A Uh-huh.

7 Q So that wouldn't even be a consideration?

8 A Right.

9 Q But if you found that a defendant was, in fact,
10 guilty beyond a reasonable doubt of murder in the first
11 degree, is the death penalty something that you could
12 consider?

13 A Yes.

14 Q Is it something that you could actually impose
15 with the other jurors?

16 A Yes.

17 Q You understand that here in your questionnaire
18 there appears to be some hesitation toward the death
19 penalty and that's why I'm asking you these questions?

20 You have to say yes or no for the
21 record.

22 A Yes.

23 Q Do you think it would be unfair if there was a
24 juror, say would it be unfair to the defense if someone
25 came in here and they believed in their heart, well, under

15 1 no circumstances could I ever give life with the
2 2 possibility of parole, but they got on this jury and there
3 3 was murder in the first degree conviction and thEn they
4 4 went back after hearing the evidence, didn't listen to the
5 5 other jurors and said, no, that's it, death penalty? Do
6 6 you think that would be unfair to the defense if someone
7 7 basically told us today well yeah, sure I could consider
8 8 life with the possibility of parole, but they really
9 9 couldn't?

10 A That wouldn't be fair if somebody, no, it
11 wouldn't.

12 Q You understand then that that would be unfair to
13 the defense?

14 A Yes, I do, right.

15 Q Do you think likewise it would be unfair to the
16 State as well if someone was to come here and say yes, I
16 could consider the death penalty, you know, conceptually,
17 but later on if the circumstances were right go back and
18 deliberate or go back to the jury room, throw their hands
19 up and said nope, can't do it, just can't give the death
20 penalty?
21 penalty?

22 A Right.

23 Q Do you think that would be unfair?

24 A Right.

25 Q But you're the type of person that could impose

16

1 the death penalty under the right circumstance?

2 A Yes.

3 Q I just have one more question. I just wanted to
4 know what you meant by this. When question 47 asks "More
5 than anything else what should the attorneys in the case
6 know about you in deciding whether you should be on the
7 jury", and you put "I will watch, listen and try to be as
8 fair as possible. If that were my family or I then I would
9 want the same respect." Who were you talking about when
10 you said "if it were my family and I", were you talking
11 about the defendant or were you talking about the victim's
12 family of this crime?

13 A Depending on which side you were on. If you
14 were the victim or not. I would just want fairness,
15 whichever side it would be on.

16 Q So you could be a fair juror to the defense in
17 this case and you could be a fair juror to perhaps the
18 State or the victim's family in this case?

19 You have to state yes or no for the
20 record.

21 A Yes.

22 Q Thank you.

23 We would pass this juror for cause.

24 THE COURT: For the defense.

25 MR. EWING: Thank you, your Honor.

EXAMINATION

BY MR. EWING:

Q Do you understand the concept of the presumption of innocence?

A Yes.

Q Do you understand that anybody charged with a crime is presumed innocent?

A Yes.

Q And they're innocent until such time that the jury may or may not find them guilty or not guilty?

A Yes.

Q I just noticed in your questionnaire you stated that a defendant in a criminal trial should be required to prove his innocence.

A Well, uhm --

Q Do you still agree with that statement?

A No.

Q Do you still feel like a defendant should be required to prove his innocence?

A No.

Q Can you appreciate how difficult it would be for someone charged with a crime to actually prove their own innocence?

A Yes.

16

1 Q Do you feel like it's fair that the burden is
2 placed upon the State to prove the guilt of another
3 individual?

4 THE COURT: Counsel, it is fair because it is so
5 far engrained in our system and everybody in the courtroom
6 has agreed that it is fair and under that it's the most
7 fundamental precept of American justice, so the line of
8 questioning I think at this point has been --

9 MR. EWING: Okay, your Honor.

10 THE COURT: In fact, the concept is the lynch
11 pin of our trial system.

12 MR. EWING: I don't have any other questions. I
13 pass for cause.

14 THE COURT: Thank you.

15

16 EXAMINATION

17

18 BY THE COURT:

19 Q All right. Miss Neighbors, any reason you can
20 think of why you wouldn't be fair to both sides in this
21 case?

22 A No.

23 Q Can you wait until all the evidence is in before
24 coming to any conclusion about any issue in the case?

25 A Yes.

16 1 Q Have you or any member of your family or any
2 close friends of yours ever been arrested?

3 A No.

4 Q Have you or any member of your family or any
5 close friends of yours ever been the victim of a crime?

6 A Yes.

7 Q Tell us about that.

8 A Best friend of mine was beaten by a man that she
9 hardly knew. It was a friend of a friend who was there and
10 he seemed to be interested in here and she wasn't in him
11 and he took it upon himself to attack her because of that.
12 And also my uncle --

13 Q He what?

14 A He beat her because she was not interested in
15 him. I am assuming that's why. But he beat her.

16 And my uncle was murdered in a robbery
17 at a casino when I was about five years old.

18 Q Is there anything about those incidents that
19 would affect your thinking in this case?

20 A No, I don't think so.

21 Q Obviously it's a most unhappy circumstance when
22 a member of your family is a victim of a crime like that
23 and we're trying a murder case here. Can you set that
24 aside and judge this case on its facts and not go into the
25 jury room and start relating what happened to you?

16 1 A Yes.

 2 Q Are you sure you can do that?

 3 A Yes.

 4 Q No one in your family or close friends has ever

 5 been arrested?

 6 A No.

 7 Q Ever been on a jury before?

 8 A No.

 9 Q Any concern about adverse public opinion that

 10 might result from any verdict that you might render in the

 11 matter?

 12 A No.

 13 Q Have you or any member of your family or close

 14 friends of yours ever been a participant in a court

 15 proceeding?

 16 A No.

 17 Q And will you be able to give fair consideration

 18 to all four statutory forms of punishment in the event the

 19 defendant is convicted of first degree murder?

 20 A I don't think so. I don't think I could

 21 consider giving somebody who I had judged was guilty of

 22 murder in the first degree, I don't think I could consider

 23 giving them only 50 years in prison. I don't think that's

 24 a fair sentence.

 25 Q Well, let's assume for a second that you get

17

17

1 back in the jury room and you've got this list and you hear
2 evidence about the defendant's background, you hear
3 evidence about his childhood, you hear about the
4 interaction between him and the victim, and even though
5 there is no, and you found the defendant guilty of first
6 degree murder, you found that there is premeditation, but
7 there is a long drawn out sequence of events that preceded
8 this, would you be able then to consider the form of
9 punishment, the 50 years with 20 years parole eligibility?

10 A I don't believe so. I just don't feel like
11 that's enough. If I find them guilty of murder in the
12 first degree that's just not enough consequences for that
13 crime.

14 THE COURT: Counsel, approach the bench.

15

16 (Discussion off the record.)

17

18 BY THE COURT:

19 Q In this case, Miss Neighbors, the charge is
20 murder with use of a deadly weapon and in the case of the
21 imposition of any of the forms of punishment, the
22 punishment doubles. So it's life and it's consecutive. So
23 if a person is sentenced to life imprisonment, then that's
24 two life imprisonments with or without the possibility of
25 parole. The same thing with the use of a deadly weapon

17 1 with regard to the 50 year provision. It's 50 years with
2 parole eligibilty at 20, plus another equal 50 years with
3 another parole eligibility period of 20. If you go back to
4 the jury room, would you be able to consider that form of
5 punishment knowing that that is the case in the event that
6 you also find that a deadly weapon was used?

7 A I don't think so. I could consider the death
8 penalty and I could consider two life terms in prison and I
9 could probably even consider the life imprisonment, two
10 life imprisonments with parole, but I just don't think it's
11 enough not to -- to murder someone you have to --

12 THE COURT: Now counsel approach the bench.

13
14 (Discussion off the record.)

15
16 THE COURT: All right, Miss Neighbors, thank
17 you very much. You're excused from jury service in this
18 rotation. You should report back to the jury commissioner.
19 I really appreciate you coming.

20 JUROR #408: Thanks.

21 THE CLERK: Badge number 435, Jerry Wayne
22 Ewell, E-w-e-l-l.

23
24 ///

25 ///

EXAMINATION

BY THE COURT:

Q Mr. Ewell, good afternoon.

A Good afternoon.

Q Any reason you can think of why you wouldn't be fair to both sides in this case?

A No.

Q Can you wait until all the evidence is in before coming to any conclusion about any issue in this case?

A Yes.

Q Have you or any member of your family or any close friends of yours ever been arrested?

A No.

Q Have you or any member of your family or any close friends of yours ever been the victim of a crime?

A No, not that I can remember.

Q Have you ever been on a jury before?

A No.

Q Any concern about adverse public opinion?

A No.

Q Ever been involved in any court proceedings as a participant, witness, otherwise?

A No.

Q Can you give fair consideration to all four

17 1 statutory forms of punishment?

2 A Yes.

3 Q Do you have any religious, conscientious or
4 moral objections to the imposition of the death penalty?

5 A No.

6 Q If you're involved in this case would you feel
7 comfortable with twelve jurors in your frame of mind
8 sitting in judgment on the matter?

9 A Yeah.

10 THE COURT: State of Nevada may inquire.

11 MR. HARMON: Thank you, your Honor.

12
13 EXAMINATION
14

15 BY MR. HARMON:

16 Q Mr. Ewell, in the questionnaire you seemed like
17 you'd be interested in serving as a juror if I'm getting
18 the tone of your answer, but you're a little bit concerned
19 about adjusting to your job?

20 A In a way. Kind of. I mean it's not too
21 important to me.

22 Q Are you willing to serve then on this case?

23 A Yeah.

24 Q Do you feel that you'll be of a frame of mind
25 where you can give your full attention to these proceedings

17 1 while the court is in session?

2 A Yeah.

3 Q Do you understand how serious this is?

4 A Yep. Yes.

5 Q Do you appreciate, sir, that a proper verdict at
6 any stage of the trial is not one based on race, it's not
7 based on gender, it's not one based upon a prejudice of any
8 type, a proper verdict is based solely upon the evidence
9 introduced during the trial?

10 A Uh-huh.

11 Q And applying to that the Court's legal
12 instructions?

18

13 A Yes.

14 Q Follow those principles?

15 A Yes.

16 Q Now when I said based solely upon the evidence
17 in the trial, that means for example that you aren't to
18 visit on your own the crime scene, for example.

19 A Uh-huh.

20 Q You aren't to be fact finders, don't become
21 investigators and try to collect evidence.

22 A Yeah, I understand.

23 Q But base your verdict upon what you hear in the
24 courtroom.

25 A Yes.

18

1 Q Will you do that?

2 A Yes.

3 Q If it was left solely up to you would we have
4 capital punishment in this state?

5 A Yes, there would.

6 Q Why do you believe we should have a death
7 sentence?

8 A Because I feel there are just some crimes that
9 it just has to be that way. Some murder crimes there just
10 has to be the death penalty. It's just the way I feel.

11 Q In this particular case, if we select you as
12 juror and if you're called upon to fix a punishment, after
13 you've heard everything, all the evidence and the Court's
14 legal instructions, if you had decided upon a particular
15 punishment, regardless which of the four it is, will you
16 have the strength of your conviction to come into the court
17 and vote how you feel in the case?

18 A Yeah. Yes.

19 Q If that happened to be the best sentence, can
20 you personally come to court and vote for that?

21 A Yes.

22 MR. HARMON: Pass for cause, your Honor.

23 THE COURT: Thank you.

24 For the defense.

25

EXAMINATION

BY MR. BROOKS:

Q Mr. Ewell, I notice in your questionnaire you said you were strongly for the death penalty.

A Yes.

Q When it comes to considering the four possibilities if we got to a penalty phase, are you in any way leaning towards that initially more than anything else?

A No. I just feel that if it warrants the death penalty, the death penalty should be used. But I could also consider the other things.

Q The judge is going to tell you if we get that far that you should consider the background of a person and you should also consider the facts, specific instructions as to what to consider about each. In your questionnaire you indicated that you really weren't that interested in knowing about the person's background.

A Well, yeah, I understand to a certain extent. I mean if it's just not relevant to the case then it shouldn't matter, but if you said, if something was said to like the victim, you know, that would be relevant to the case.

Q So you're open to receiving background information about Mr. Chappell if we had to get that far?

18

1 A Yeah.

2 Q And you're also open to listening to facts about
3 the case and considering that?

4 A Yes.

5 Q I hate to pound something that has been pounded
6 away here, but I'm just curious, want to make sure. Any
7 problems at all with the idea that my client is presumed
8 innocent?

9 A No. I think that's the way it should be.

10 Q And you believe you can apply that to the facts
11 of the case?

12 A Yes.

13 Q Is there anything that you want to tell us that
14 we should know about you before making our decision?

15 A No.

16 Q Okay. Thank you very much.

17 We'll pass for cause, Judge.

18 THE COURT: Thank you.

19

20 EXAMINATION

21

22 BY THE COURT:

23 Q Miss Linkogel, you're a little under the weather
24 today?

25 A Yes, sir. I apologize.

18 1 Q No need to apologize. What I'm trying to find
2 out --

3 A I have the flu.

4 Q -- if you're getting worse or you're on the
5 upswing?

6 A Three weeks into it so hopefully we're on the
7 back end of it.

8 Q Do you feel like you're well enough to serve on
9 this jury?

10 A Yes, sir.

11 Q All right. Any reason that you can think of why
12 you couldn't be fair both beat sides in this case?

13 A No, sir.

14 Q Can you wait until all the evidence is in before
15 coming to any conclusion about any issue in this case?

16 A Yes, sir.

17 Q Have you or any member of your family or any
18 close friends of yours ever been arrested?

19 A Not to my knowledge.

20 Q Have you, anyone in your family or any friends
21 of yours ever been the victim of a crime?

22 A Yes, sir. My sister in the last two months was
23 part of a bank robbery. She was robbed at the bank that
24 she works at. And just a month and a half ago I witnessed
25 a domestic dispute between a lady that works in my cubical

18 1 and her boyfriend that also works at the job site.

2 Q Is there anything about how the police responded
3 to either of those instances that would affect your ability
4 to be, to fairly judge the credibility of police witnesses?

5 A In the case of my sister they never caught
6 either person. As far as the domestic, since the lady in
7 my cube would not acknowledge the fact that it actually
19 happened there was no, they didn't bring any police or law
8 enforcement into the situation.
9

10 Q So there is nothing --

11 A Right.

12 Q There is nothing about how those incidents were
13 handled that would prejudice you against the prosecution in
14 the case?

15 A That is correct.

16 Q And on the other hand, is there anything about
17 the facts of those incidents or anything about them that
18 would cause you to prejudge this case against the
19 defendant?

20 A I wasn't a witness when my sister was robbed.
21 But the fact that my girl friend was seeing him after the
22 fact of the situation that happened, I have a hard time
23 with that issue. But if the situation, I mean in this
24 case, depending on the evidence, I can't see how that
25 would -- I couldn't judge that on this person.

19

1 Q I guess what I'm getting at is this: I think
2 all of us are concerned about the crime problem in the
3 country and we're appalled and upset when someone close to
4 us is victimized either in a robbery or a domestic violence
5 situation. We all have problems with that in terms of we
6 know that we wish that it wouldn't happen.

7 A Right.

8 Q The question is because there is a charge of
9 robbery in this case, and also you will hear facts
10 involving an issue of domestic intranquillity if you will
11 to understate the proposition here, that because of that
12 fact, because there is a robbery charge and there is going
13 to be domestic violence issues involved in this case, will
14 you be able to put the State to its burden of proof in this
15 case, that is not convict until the State has proved its
16 case beyond a reasonable doubt on any of the charges?

17 A Yes, sir.

18 Q And will you be able to give fair consideration
19 in this case to all four forms of statutory punishment?

20 A I do have an issue with parole. I think the
21 parole end of it, now a days in this country, I think some
22 people are let out too soon and they're going out and
23 committing crimes --

24 Q We know that.

25 A -- again and again. But that's -- I don't have

19

1 a problem with imposing any of those.

2 Q But don't you believe though that each case is
3 different?

4 A Yes, sir. Should be judged individually.

5 Q And that sometimes there are situations where
6 person are improvidently let out on parole?

7 A Yes, sir.

8 Q With disastrous results in fact?

9 A Yes, sir.

10 Q But there is also situations where people are
11 paroled and they have gone on to make successful lives for
12 themselves?

13 A Very much so.

14 Q With that in mind, could you consider in this
15 case based on the evidence at least going into the trial
16 all four forms of punishment?

17 A Yes, sir, most definitely.

18 Q Do you have any conscientious, moral or
19 religious objections to the imposition of the death
20 penalty?

21 A No, sir.

22 Q And have you ever, and you have not been
23 involved in any kind of legal proceeding as a --

24 A I was a witness in a hit and run.

25 Q I guess I didn't ask you that before. Have you

19 1 you been a witness or participant in any court proceeding?

2 A Yes.

3 Q It was the hit and run case?

4 A Yes.

5 Q That's the only one?

6 A Uh-huh.

7 Q Anything about that interaction with the court
8 system that would affect your thinking in this case?

9 A No, sir.

10 Q If you were involved in this case as a member of
11 the defendant's family a member of the victim's family or a
12 witness in any capacity, would you feel comfortable with
13 twelve people with your sense of fairness sitting in
14 judgment in this matter?

15 A Yes, sir.

16 THE COURT: The State of Nevada may inquire.

17 MR. HARMON: Thank you, Judge.

18

19 EXAMINATION

20

21 BY MR. HARMON:

22 Q How do you pronounce your last name?

23 A Linkogel.

24 Q I notice with our information that you've lived
25 here in this area for about four years?

19

1 A Yes, sir.

2 Q Where did you move from?

3 A St. Louis.

4 Q How long had you lived in St. Louis?

5 A Thirteen years.

6 Q What occasioned your move to southern Nevada?

7 A My husband was relocated here.

8 Q Now you also indicate that you and your husband
9 are separated?

10 A Yes, sir.

11 Q Is that still true?

12 A Yes, sir.

13 Q You further indicated some reluctance to serve
14 as a juror because I think you said your life was somewhat
15 in disarray?

16 A We're trying to reconcile and I want my focus to
17 be on our reconciliation. I was more concerned about being
18 sequestered. That's why I inquired earlier. I wouldn't
19 want to take my time that I could give to him in trying to
20 work this out and --

21 Q Well, we certainly wouldn't want this case to be
22 an impediment to a reconciliation, but the Court has
23 explained that the jury will not be sequestered.

24 A Right.

25 Q With that understanding, are you willing to

20

20

1 serve?

2 A Most definitely, yes.

3 Q And be able to give your full attention to this
4 case at least while the court is in session?

5 A Yes, sir.

6 Q You understand the seriousness of the charge?

7 A Yes, sir.

8 Q Regarding the situation at work that involved
9 the co-worker, are you telling us that you actually
10 witnessed that occur?11 A I was the closest person to the incident. I did
12 not witness it. I heard the verbal exchange and the young
13 lady had come around the corner with -- her hair piece was
14 out, her body was -- and she admitted to me that, you know,
15 this -- I was the first person that ever actually went and
16 did something about it. I contacted our supervisor but she
17 would not press charges.18 Q Are you telling us that it wasn't simply verbal
19 abuse, but there was some physical violence involved?

20 A Yes, sir.

21 Q You described yourself in the questionnaire as a
22 leader.

23 A Yes, sir.

24 Q Why did you select leader to describe yourself?

25 A In my work position I do a lot of training. I

20

1 got a lot of people through their functions at work.
2 People come to me for advice at my job. Outdoor functions,
3 functions -- I don't know. People have told me that I'm a
4 leader too so --

5 Q Okay. If selected as a juror on this case,
6 would you enter into the deliberation and fully express
7 your views about the evidence?

8 A I'm known to do that, yes.

9 Q Would you be willing on the other hand to listen
10 to the point of view, the reasons for those opinions of
11 other jurors?

12 A Yes, sir.

13 Q You state in the questionnaire regarding the
14 death penalty "I'm for it if it's warranted."

15 A Yes, sir.

16 Q What did you mean by that response?

17 A I think the self-defense issue has been brought
18 up. I believe a problem -- well, I can't imagine death
19 penalty on a self-defense case. That would be -- but I'm
20 for it. I'm open to other suggestions, but I have no
21 problem with capital punishment.

22 Q Well, the Court has explained to all the
23 prospective jurors the punishments that we've been talking
24 about. All four of them apply only to murder of the first
25 degree. And really by definition self-defense is

20

1 justifiable if a person is actually defending him or
2 herself.

3 A Right.

4 Q Do you have a problem with any of the
5 punishments as they pertain to murder of the first degree?

6 A No, sir.

7 MR. HARMON: Thank you. We'll pass for cause.

8 THE COURT: For the defense.

9

10 EXAMINATION

11

12 BY MR. BROOKS:

13 Q Miss Linkogel?

14 A Linkogel.

15 Q Linkogel. I'm sorry.

16 In this case you may hear some testimony
17 regarding domestic abuse. Do you feel that your
18 considerations here will be influenced by your prior
19 considerations in this other thing?

20 A No, sir.

21 Q You said in your questionnaire that a defendant
22 in a criminal trial should be required to prove his
23 innocence. After listening to all the stuff we've been
24 talking about, do you still feel that way?

25 A I believe he should have the right to be able to

20

1 prove his innocence.

2 Q Do you feel that he has a burden to prove his
3 innocence?

4 A Could you reword that?

5 Q Okay. I'm sorry.

6 A Okay.

7 Q Do you feel that he has a burden at this trial
8 to have to prove his innocence?

9 A I guess I don't understand the burden end of it.
10 I'm sorry.

11 Q When the judge instructs the jury, he's going to
12 tell you that the burden is entirely upon the State to
13 prove their case. We don't have any burden at all. And
14 there is no obligation for the defense to prove innocence.

15 A Okay.

16 Q Now in your questionnaire it suggests that your
17 gut feeling is that perhaps you disagree with that. I'm
18 just curious when the judge tells you that the burden is
19 entirely on the State --

20 A Okay.

21 Q -- would you let that gut feeling of yours
22 interfere with what the judge tells you?

23 A No, sir.

24 Q You'll follow his instructions?

25 A Yes, sir.

20

1 Q You also stated in here that the defendant's
2 background probably should not be considered when deciding
3 a possible penalty. The judge is going to tell you that
4 that is something to be considered. Are you open to that?

5 A Yes, sir.

6 Q Presumably on the business of the facts of the
7 case, facts of the case are to be considered and the
8 background as well. Any problem with considering both of
9 those?

10 A No, sir.

11 Q Anything in particular you want us to know about
12 you?

13 A Not to my knowledge. Not that you don't already
14 know, no.

15 Q You've been in Las Vegas about four years?

16 A Yes, sir.

17 Q Do you like it?

18 A No.

19 Q Some people do, some people don't. Stay around,
20 you probably will.

21 You came here directly from Missouri?

22 A Yes, sir.

23 Q Can my client count on you to get a fair trial?

24 A Yes, sir.

25 Q Thank you.

1

**PLEADING
CONTINUES
IN NEXT
VOLUME**

34

0043
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ORIGINAL

FILED

JUL 31 3 13 PM '96

Loretta Bowman

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: 9-11-96
Time of Hearing: 9:00 A.M.

MOTION TO COMPEL DISCLOSURE BY THE STATE OF ANY AND ALL
INFORMATION RELATING TO AGGRAVATING OR MITIGATING FACTORS

COMES NOW, the Defendant James Montell Chappell, by and through his attorney, Deputy Public Defender Howard S. Brooks, and hereby respectfully moves that this Court order the prosecuting attorney to supply the Defense with any evidence actually or constructively in the State's possession which directly or inferentially supports the finding of any aggravating or mitigating circumstance relating to this case.

This motion is made and based on the attached Declaration of Howard S. Brooks, the attached Points and

...

...

...

CE37

CE11

1 Authorities, all pleadings and papers on file herein, and any oral
2 argument deemed necessary by this Court.

3 DATED this 30 day of July, 1996.

4 CLARK COUNTY PUBLIC DEFENDER

5 
6 By _____

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

PROCEDURAL HISTORY

James Montell Chappell was charged by Criminal Complaint in September of 1995 with the crimes of Burglary While in Possession of a Deadly Weapon, Robbery With Use of a Deadly Weapon, and Murder With Use of a Deadly Weapon. The Complaint alleged Mr. Chappell entered a building at 839 North Lamb Boulevard, Las Vegas, Nevada, and killed Debra Panos. The Criminal Complaint also alleged Mr. Chappell took personal property from Ms. Panos under circumstances constituting Robbery.

Mr. Chappell appeared in Justice Court, Department 3, on September 8, 1995, and received a copy of the Criminal Complaint.

A preliminary hearing was held on October 3, 1995, and Mr. Chappell was held to answer to all the charges noted above, except that the Court ruled there was no evidence to support a finding of Burglary With Use of a Deadly Weapon, and Mr. Chappell was held to answer in Count I to the Burglary charge.

Mr. Chappell appeared in District Court, Department VII, on October 18, 1995, and pled not guilty to the charges noted above. A trial date was set for June 3, 1996, with a calendar call of May 29, 1996.

On November 15, 1995, the State filed a Notice of Intent to Seek the Death Penalty in this case. The State alleged the following aggravating circumstances:

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 a burglary or

1 | home invasion.

2 | 3. The murder was committed while the person was
3 | engaged in the commission of or an attempt to commit a sexual
4 | assault.

5 | 4. The murder involved torture or depravity of mind.

6 | ARGUMENT

7 | Mr. Chappell is charged with murder with use of a deadly
8 | weapon and two other serious felonies. If he is found guilty at
9 | trial of first degree murder, a penalty hearing will be held
10 | pursuant to NRS 175.552. During a penalty hearing, the jury would
11 | hear evidence regarding aggravating and mitigating circumstances.
12 | Ultimately, a penalty hearing would result in a sentence of either
13 | death, life in prison without a possibility of parole, or life in
14 | prison with the possibility of parole.

15 | Because this is a death penalty case, the due process
16 | and Eighth Amendment provisions of the Federal Constitution, and
17 | Article 1, Sec. 8, of the Nevada Constitution, require a greater
18 | degree of reliability in the determination of guilt and the
19 | determination of an appropriate sentence. Beck v. Alabama, 447
20 | U.S. 625, 637-38 (1980); Lockett v. Ohio, 438 U.S. 586 (1978).


21 | A capital defendant has a constitutional right to
22 | present both statutory and non-statutory mitigating evidence that
23 | could persuade a penalty hearing jury to impose a sentence less
24 | than death. A defendant cannot present mitigating evidence that
25 | is not provided to him or if he is not made aware of such
26 | evidence. If the State is aware of any evidence which may tend to
27 | establish any of the mitigating factors described in NRS 200.035,
28 | or if the State is aware of any evidence which may tend to

1 disprove or diminish the impact of aggravating circumstances
2 alleged under NRS 200.033, the State has a burden to make this
3 evidence and information available to the Defense. This
4 requirement is consistent both with the due process guarantees of
5 the Constitution and to allow the defendant the right to effective
6 assistance of counsel under the State and Federal Constitutions.

7 Consequently, Defendant Chappell requests that this
8 Honorable Court order the State of Nevada to disclose to the
9 Defense any and all information, knowledge, or evidence, which
10 would assist the Defense in presenting mitigating evidence at a
11 penalty hearing, or in persuading a penalty hearing jury that
12 aggravating circumstances do not exist.

13 DATED this 30th day of July, 1996.

14 CLARK COUNTY PUBLIC DEFENDER

15 
16 By _____

17 HOWARD S. BROOKS #3374
18 DEPUTY PUBLIC DEFENDER
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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 procedural history of this case.

2. The custom in the District Attorney's Office in this jurisdiction is to maintain an "open file" policy, whereby Defense counsel may inspect the prosecutor's file and then request copies of any documents in that file which the defense does not already have. This policy does not apply to work product information in the prosecutor's file.

3. Prior to the hearing of this motion, Defense counsel intends to review again the State's file in this case and Defense counsel intends to request copies of any and all documents which the Defense counsel does not have. However, while Defense counsel is not aware of any knowledge being affirmatively withheld from the Defense by the State, this motion is made to establish as the law of this case that the State does have an affirmative duty to reveal to the Defense any and all information which directly or inferentially establishes or supports the existence of any aggravating circumstance or mitigating circumstance alleged in NRS 200.033 (statute defining aggravating circumstances in first degree murder prosecution) and NRS 200.035 (statute defining, but

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1 not limiting, mitigating circumstances regarding first degree
2 murder prosecution).

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

5 EXECUTED ON 7-20-96

6 Howard S. Brooks

7 HOWARD S. BROOKS
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NOTICE OF MOTION

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the foregoing Motion to
Compel will be heard on 9-11-96, at 9:00 A.M. in Department No.
VII of the District Court.

DATED this 30th of July, 1996.

CLARK COUNTY PUBLIC DEFENDER

Howard S. Brooks

By

HOWARD S. BROOKS #3374
DEPUTY PUBLIC DEFENDER

RECEIPT OF COPY of the above and foregoing Motion to Compel
is hereby acknowledged this 31 day of July, 1996.

CLARK COUNTY DISTRICT ATTORNEY

By *Tanet Schnell*

(Mot/Chappell, Compel/sms)

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0043
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

ORIGINAL

FILED

AUG 19 3 25 PM '96

Spencer Brown

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

MOTION TO COMPEL EXAMINATION OF DEFENDANT BY OPTOMETRIST
AND OBTAIN EYE GLASSES IF NECESSARY

COMES NOW, the Defendant, James Montell Chappell, by and through his attorney, Deputy Public Defender Howard S. Brooks, and does hereby move this Honorable Court to order the Clark County Detention Center to transport the Defendant to the office of an optometrist and have the Defendant examined by that optometrist. Defendant further requests that if the optometrist deems it necessary, that the Clark County Detention Center fit Mr. Chappell with prescription eye glasses.

This motion is made and based on the papers and pleadings on file herein and upon the attached Declaration of

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Counsel.

DATED this 19th day of August, 1996.

CLARK COUNTY PUBLIC DEFENDER

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

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 facts and circumstances of this case.

2. Over the course of the last six months, during my contact visits at the Clark County Detention Center with my client, James Chappell, James has told me that he has eye sight problems.

3. In recent weeks, I have noticed that James has a difficult time reading the legal documents that I have filed with the Court in his case. I have come to the conclusion that Mr. Chappell's eye sight problems prevent him from fully comprehending documents I have filed with the Court.

4. Mr. Chappell has placed requests with the Clark County Detention Center to have the Clark County Detention Center transport him to an eye doctor for eye glasses, but the Detention Center's position is that they will not do that unless they are ordered to do so by the Court, or Mr. Chappell pays for eye glasses himself.

5. Mr. Chappell has represented to me that he has no money, and is completely indigent.

6. Consequently, because Mr. Chappell cannot afford eye glasses, and he does appear to need eye glasses, the Defense would respectfully request that this Court order the Clark County Detention Center to transport Mr. Chappell to an optometrist where Mr. Chappell may be examined by a qualified optometrist. If the

1 optometrist deems it necessary, we would request that the Clark
2 County Detention Center be ordered to provide Mr. Chappell with
3 eye glasses at County expense.

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

6 EXECUTED ON August 19, 1996

7 
8

9 HOWARD S. BROOKS #3374
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NOTICE OF MOTION

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the foregoing Motion to Compel will be heard on September 4, 1996, at 9:00 A.M. in Department No. VII of the District Court.

DATED this 19th of August, 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 Compel is hereby acknowledged this 19 day of August, 1996.

CLARK COUNTY DISTRICT ATTORNEY

By Tara Schmied

(Mot\Chappell.Eye)

38

ORIGINAL

FILED

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

AUG 22 10 28 AM '96

[Signature]

CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 JAMES MONTELL CHAPPELL,
12 #1212860

13 Defendant(s).

Case No. C131341
Dept. No. VII
Docket P

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

18 DATE OF HEARING: 9-4-96
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 Wednesday, the 4th day
23 of September, 1996, at the hour of 9:00 o'clock, a.m., or as soon thereafter as Counsel can be heard, in
24 the Courthouse, Las Vegas, Clark County, Nevada, the STATE OF NEVADA will move the Court for
25 leave to endorse upon Information heretofore filed herein the names of the following witnesses:

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28 ///

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	<u>NAME</u>	<u>ADDRESS</u>
1		
2	WILLIAMS, ALAN	LVMPD #4083
3	STANSBURY, DAVID	LVMPD #3515
4	SZELES, MICHAEL	LVMPD #3526
5	GIERSDORF, DANIEL	LVMPD #4521
6	HOBSON, TANYA	P. O. BOX 43264 LAS VEGAS, NV
7		
8	MCCOURT, JOHN M.D.	UNIVERSITY MEDICAL CENTER LAS VEGAS, NV
9	FREEMAN, DINA	TUCSON POLICE DEPT. TUCSON, AZ
10		
11	KNAPP,	LVMPD # CCDC
12	KLEIN, DOROTHY	LVMPD #3997
13	GROVE, W.	CITY INTAKE JAIL #253
14	MCNITT, L.	TUCSON POLICE DEPT. TUCSON, AZ
15		
16	HAGGERTY,	TUCSON POLICE DEPT. TUCSON, AZ
17	EARNST, J.	TUCSON POLICE DEPT. TUCSON, AZ
18		
19	NEIDKOWSKI,	TUCSON POLICE DEPT. TUCSON, AZ
20	VERNON,	TUCSON POLICE DEPT. TUCSON, AZ
21		
22	AUSSERNS,	TUCSON POLICE DEPT. TUCSON, AZ
23	STONER,	TUCSON POLICE DEPT. TUCSON, AZ
24		
25	GAY, KENNETH	1705 S. WASHINGTON LANSING, MI
26	WIDNER, PAUL	LANSING POLICE DEPT. LANSING, MI
27		
28	PRIEBE, JON	LANSING POLICE DEPT. LANSING, MI

GRANGER, AL

ADDRESS UNKNOWN

CUSTODIAN OF RECORDS

LVMPD

CUSTODIAN OF RECORDS

CCDC

COTTON, ROBIN
or designee

CELLMARK DIAGNOSTIC
20271 GOLDENROD LN
GERMANTOWN, MD

DATED this 21st day of August, 1996.

STEWART L. BELL
DISTRICT ATTORNEY
Nevada Bar #000477

BY Abbi Silver
ABBI SILVER
Deputy District Attorney
Nevada Bar #003813

AFFIDAVIT IN SUPPORT OF MOTION

STATE OF NEVADA }
COUNTY OF CLARK } ss:

ABBI SILVER, being first duly sworn, deposes and says:

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

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

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

Executed this 21st day of August, 1996.

Abbi Silver
ABBI SILVER

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 her 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, she 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 21st day of August, 1996.

STEWART L. BELL
DISTRICT ATTORNEY
Nevada Bar #000477


BY 
ABBI SILVER
Deputy District Attorney
Nevada Bar #003813

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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 22 day of August, 1996.

PUBLIC DEFENDER
ATTORNEY FOR DEFENDANT

By 
309 S. Third Street #226
Las Vegas, Nevada 89155

40
ORIGINAL

1 0332
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

AUG 29 10 26 AM '96

Loretta L. Lamm

CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 JAMES MONTELL CHAPPELL,
12 #1212860

13 Defendant.

Case No. C131341
Dept. No. VII
Docket P

16 **NOTICE OF MOTION AND SUPPLEMENTAL MOTION TO**
17 **ADMIT EVIDENCE OF OTHER CRIMES, WRONGS OR BAD ACTS**

18 DATE OF HEARING: 9-4-96
19 TIME OF HEARING: 9:00 A.M.

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

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

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1 paycheck that the Defendant was forcing her to cash her check in order to give him the money.

2 Additionally, Dina saw bruises and marks on the victim's face numerous times, and the victim told
3 her that the Defendant caused her injuries. Dina would describe the victim and the Defendant's
4 relationship as "rocky" and that the Defendant was mentally and physically abusive to the victim. Further,
5 the Defendant was ordered to go to domestic violence counseling in the past.

6 **ARGUMENT**

7 The State would ask the Court to refer to the State's Motion to Admit Evidence of Prior Crimes,
8 Wrongs or Bad Acts, for the applicable law to admit the above-stated testimony. Additionally, the State
9 refers the Court to the same rationale and analysis for the admission of the above-stated testimony.

10 **CONCLUSION**

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

13 DATED this 29th day of August, 1996.

14 STEWART L. BELL
15 DISTRICT ATTORNEY
Nevada Bar #000477

16
17 BY 

18 **ABBI SILVER**
19 Deputy District Attorney
Nevada Bar #003813

20 **RECEIPT OF COPY**

21 RECEIPT OF COPY of the above and foregoing NOTICE OF MOTION AND MOTION TO
22 ADMIT EVIDENCE OF OTHER CRIMES, WRONGS OR BAD ACTS is hereby acknowledged this
23 29 day of April, 1996.

24 PUBLIC DEFENDER'S OFFICE
25 ATTORNEY FOR DEFENDANT

26
27 BY 

28 309 8th Third Street #226
Las Vegas, Nevada 89155

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ORIGINAL

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

FILED IN OPEN COURT

SEP 04 1996 19

LORETTA BOWMAN, CLERK

BY

Lori Brown

Deputy

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JAMES MONTELL CHAPPELL,
#1212860

Defendant(s).

Case No. C131341
Dept. No. VII
Docket P

ORDER TO ENDORSE NAMES ON INFORMATION

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

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

NAME	ADDRESS
WILLIAMS, ALAN	LVMPD #4083
STANSBURY, DAVID	LVMPD #3515
SZELES, MICHAEL	LVMPD #3526

///

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16501

1	GIERSDORF, DANIEL	LVMPD #4521
2	HOBSON, TANYA	P. O. BOX 43264
3		LAS VEGAS, NV
4	MCCOURT, JOHN M.D.	UNIVERSITY MEDICAL CENTER
5		LAS VEGAS, NV
6	FREEMAN, DINA	TUCSON POLICE DEPT.
7		TUCSON, AZ
8	KNAPP,	LVMPD #
9		CCDC
10	KLEIN, DOROTHY	LVMPD #3997
11	GROVE, W.	CITY INTAKE JAIL #253
12	MCNITT, L.	TUCSON POLICE DEPT.
13		TUCSON, AZ
14	HAGGERTY,	TUCSON POLICE DEPT.
15		TUCSON, AZ
16	EARNST, J.	TUCSON POLICE DEPT.
17		TUCSON, AZ
18	NEIDKOWSKI,	TUCSON POLICE DEPT.
19		TUCSON, AZ
20	VERNON,	TUCSON POLICE DEPT.
21		TUCSON, AZ
22	AUSSERNS,	TUCSON POLICE DEPT.
23		TUCSON, AZ
24	STONER,	TUCSON POLICE DEPT.
25		TUCSON, AZ
26	GAY, KENNETH	1705 S. WASHINGTON
27		LANSING, MI
28	WIDNER, PAUL	LANSING POLICE DEPT.
		LANSING, MI
	PRIEBE, JON	LANSING POLICE DEPT.
		LANSING, MI
	GRANGER, AL	ADDRESS UNKNOWN
	CUSTODIAN OF RECORDS	LVMPD
	CUSTODIAN OF RECORDS	CCDC
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COTTON, ROBIN
or designee

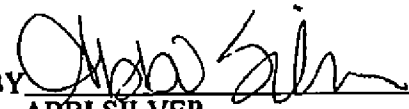
CELLMARK DIAGNOSTIC
20271 GOLDENROD LN
GERMANTOWN, MD

as prospective witnesses in the prosecution of the within matter.

DATED this 3rd day of September, 1996.


DISTRICT JUDGE

STEWART L. BELL
DISTRICT ATTORNEY
Nevada Bar #000477

BY 
ABBI SILVER
Deputy District Attorney
Nevada Bar #003813

ORIGINAL

FILED

SEP 10 9 28 AM '96

for the defendant

CLERK

OPPS
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,

v.

JAMES MONTELL CHAPPELL,

Defendant.

CASE NO. C131341x

DEPT. NO. VII

Date of Hearing: 9-16-96

Time of Hearing: 9:00 A.M.

DEFENDANT'S OPPOSITION TO STATE'S MOTION TO ADMIT
EVIDENCE OF OTHER CRIMES, WRONGS OR BAD ACTS

Comes now Defendant James Chappell, by and through his attorney, Deputy Public Defender Howard S. Brooks, and files this Opposition to the State's Motion to Admit Evidence of Other Crimes, Wrongs or Bad Acts filed May 8, 1996 and the State's Supplemental Motion to admit Evidence of Other Crimes, Wrongs or Bad Acts filed August 29, 1996.

This Opposition is based upon the papers and pleadings on file in this case, the attached points and authorities, and

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oral argument if deemed necessary by the Court.

DATED this 9th day of September, 1996.

CLARK COUNTY PUBLIC DEFENDER

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

MEMORANDUM OF POINTS AND AUTHORITIES

FACTS

The State charges James Chappell with burglary of the mobile home where Chappell's three children lived, murder with use of a deadly weapon of Chappell's long-time girlfriend, Deborah Panos, and robbery with use of a deadly weapon for Chappell's taking of Panos's car after the killing.

The State seeks to introduce evidence during the trial of Mr. Chappell of the following:

1. Testimony of Lisa Duran concerning her observations in December 1994 of Defendant Chappell striking Panos in the face.

2. Medical Records from University Medical Center regarding Panos suffering a broken nose on January 9, 1995. Panos told UMC employees that her boyfriend hit her.

3. Unidentified records related to June 1, 1995 domestic battery incident wherein Chappell was charged with battery upon Panos and plead guilty to same.

4. Unidentified records or testimony related to February 23, 1994 allegation of domestic battery against James Chappell for battery of Panos.

5. Testimony of Dina Freeman, a Tucson friend of Deborah Panos, who would describe (a) a telephone conversation with Panos on an unknown date in approximately 1993 or 1994 when Panos claimed James Chappell "jumped her." Dina claims she heard a voice in the background that said, "if you ever fuck around in front of my kids, I will kill your ass."

6. Testimony of Dina Freeman that Deborah Panos called her in August of 1994 and she could hear James Chappell in the

1 background say, "either you give me that car or you give me some
2 money 'cause I know your fuckin' around on me. You're not going
3 to Dina's house everyday for nothin', I'm gonna do an O.J. Simpson
4 on your ass."

5 7. Testimony of Dina Freeman that Deborah Panos called
6 her at 2:00 in the morning on an unknown date crying that James
7 Chappell had left her at a grocery store because the store would
8 not cash Panos' check and Chappell was forcing Panos to give her
9 money.

10 8. Testimony of Dina Freeman that she saw Deborah Panos
11 with bruises on her face many times, and Panos claimed James
12 Chappell inflicted these injuries.

13 9. Testimony of Dina Freeman that the relationship
14 between Panos and Chappell was "rocky," and that Chappell was
15 abusive to Panos.

16 10. Testimony of Dina Freeman that Chappell was ordered
17 to attend domestic violence counseling at some unknown date in the
18 past.

19 ARGUMENT

20 The State's Motion is Unnecessary
21 Because the Defense Will Stipulate
22 that James Chappell killed Deborah
Panos

23 NRS 48.045(2) provides:

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

The State cites a smorgasbord of cases that support the

1 | admissibility of prior acts of domestic violence when the prior
2 | acts help to establish disputed issues, like identity or absence
3 | of accident or plan. The State declares in its filings with the
4 | Court that its desire to introduce this prior bad act evidence is
5 | based on the necessity of showing identity, motive, pattern of
6 | behavior, and ill-will towards the victim by Chappell.

7 | The Defense objects to the State's desire to introduce
8 | a pattern of behavior to show Mr. Chappell murdered Lisa Duran.
9 | NRS 48.045 does not authorize the admissibility of prior bad acts
10 | to show a pattern of behavior.

11 | As for identity, the evidence in this case is
12 | overwhelming that James Chappell caused the death of Deborah
13 | Panos, the mother of his three children and his girlfriend for
14 | approximately ten years. Furthermore, as noted in the Defendant's
15 | Offer to Stipulate to Facts filed September 10, 1996, the Defense
16 | in this case will stipulate:

- 17 | 1. That James Chappell on August 31,
18 | 1995, entered the trailer rented to Deborah
19 | Panos through a window;
- 20 | 2. That James Chappell engaged in sexual
21 | intercourse with Deborah Panos on August 31,
22 | 1995; and
- 23 | 3. That James Chappell caused the death of
24 | Deborah Panos by stabbing her with a kitchen
25 | knife and the act was not an accident.
- 26 | 4. That James Chappell was jealous of
27 | Deborah Panos giving attention to, or
28 | receiving attention from, other men.

1 Therefore, in light of these stipulations, identity is
2 not an issue in this case.

3 Furthermore, motive and ill-will toward the victim by
4 Chappell are explained by the Defendant's stipulation that he was
5 jealous toward Panos.

6 In light of these stipulations, the only reason to allow
7 the proposed bad act testimony is to prejudice the jury with the
8 allegation that James Chappell was a woman-batterer. This prior
9 bad act testimony is highly prejudicial to Mr. Chappell and the
10 probative value is low. Therefore, this Honorable Court should
11 deny the State's Motion.

12
13 Certain Allegations Of Prior Bad
14 Act Evidence Are So Vague As To Be
 Meaningless

15 According to the State's Motions, the State seeks to
16 introduce the following into evidence:

17 Unidentified records related to June 1,
18 1995 domestic battery incident wherein
19 Chappell was charged with battery upon Panos
20 and plead guilty to same.

21 Unidentified records or testimony
22 related to February 23, 1994 allegation of
23 domestic battery against James Chappell for
24 battery of Panos.

25 The purpose of a motion to introduce prior bad act
26 evidence is to alert the defense to certain specific evidence or
27 allegation that the State seeks to introduce in their case-in-
28 chief. Does the State intend to introduce eyewitness testimony of

1 | these alleged events? Does the State intend to introduce medical
2 | records? Or does the State intend to introduce hearsay
3 | allegations? We do not know.

4 | The State's motion does not describe evidence with
5 | sufficient particularity to allow the Defense to respond.

6 |

7 | Much of the Testimony Proposed by
8 | the State is Irrelevant and
9 | Consists of Blatant Hearsay That
 Can Never Pass the Clear and
 Convincing Evidence Test

10 | When the State seeks to introduce evidence of prior bad
11 | acts, the burden is on the State to show that the evidence is
12 | relevant, and to show that clear and convincing evidence supports
13 | the allegation that the defendant committed the alleged prior bad
14 | acts. Petrocelli v. State, 101 Nev. 46, 692 P.2d 503 (1985).

15 | The State claims the following incidents are admissible:

16 | Testimony of Dina Freeman that Deborah
17 | Panos called her at 2:00 in the morning on an
18 | unknown date crying that James Chappell had
19 | left her at a grocery store because the store
20 | would not cash Panos' check and Chappell was
21 | forcing Panos to give her money.

22 | This testimony is blatantly irrelevant
23 | hearsay, and should not be admitted.

24 | The State also seeks the admission of the following:

25 | Testimony of Dina Freeman, a Tucson
26 | friend of Deborah Panos, who would describe
27 | (a) a telephone conversation with Panos on an
28 | unknown date in approximately 1993 or 1994

1 when Panos claimed James Chappell "jumped
2 her." Dina claims she heard a voice in the
3 background that said, "if you ever fuck
4 around in front of my kids, I will kill your
5 ass."

6 Testimony of Dina Freeman that Deborah
7 Panos called her in August of 1994 and she
8 could hear James Chappell in the background
9 say, "either you give me that car or you give
10 me some money 'cause I know your fuckin'
11 around on me. You're not going to Dina's
12 house everyday for nothin', I'm gonna do an
13 O.J. Simpson on your ass."

14 Testimony of Dina Freeman that she saw
15 Deborah Panos with bruises on her face many
16 times, and Panos claimed James Chappell
17 inflicted these injuries.

18 Testimony of Dina Freeman that the
19 relationship between Panos and Chappell was
20 "rocky," and that Chappell was abusive to
21 Panos.

22 Testimony of Dina Freeman that Chappell
23 was ordered to attend domestic violence
24 counseling at some unknown date in the past.

25 These proposed items of evidence are blatant hearsay,
26 and consist primarily of conjecture and speculation. They
27 certainly do not meet a "clear and convincing evidence" test.

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SUMMARY

Based on the absence of related disputable issues and the poor evidentiary quality of the prior bad act allegations by the State, the Defense opposes their admission. Furthermore, as noted in a companion motion, the Defense respectfully requests a Petrocelli hearing to compel the State to make a legal showing that said evidence can be shown to be "clear and convincing."

DATED this 9th day of September, 1996.

CLARK COUNTY PUBLIC DEFENDER

By 
HOWARD S. BROOKS #3374
DEPUTY PUBLIC DEFENDER

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RECEIPT OF COPY of the above and foregoing Opposition to
State's Motion to Admit Evidence of Other Crimes, Wrongs or Bad
Acts is hereby acknowledged this 10 day of September, 1996.

CLARK COUNTY DISTRICT ATTORNEY

By T. J. Schneider

(Mot\Chappell.Opp)

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of the Court
CLERK

1 0043
2 MORGAN D. HARRIS
3 PUBLIC DEFENDER
4 NEVADA BAR #1879
5 309 South Third Street, Suite 226
6 Las Vegas, Nevada 89155
7 (702)455-4685
8 Attorney for the Defendant
9 Public Defender File No. F-95-5254
10

11 DISTRICT COURT
12 CLARK COUNTY, NEVADA
13

14 THE STATE OF NEVADA,
15
16 Plaintiff,
17
18 v.
19
20 JAMES MONTELL CHAPPELL,
21
22 Defendant.

CASE NO. C131341x

DEPT. NO. VII

Date of Hearing: 9-16-96

Time of Hearing: 9:00 A.M.

23 DEFENDANT'S MOTION TO COMPEL PETROCELLI
24 HEARING REGARDING ALLEGATIONS OF PRIOR BAD ACTS

25 Comes Now Defendant James Chappell, by and through his
26 attorney, Deputy Public Defender Howard S. Brooks, and moves this
27 Honorable Court to Compel the State to present, at a pre-trial
28 hearing, legally admissible evidence supporting the prior act
conduct that the State seeks to introduce during their case-in-
chief.

This motion is based upon the attached affidavit of

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Howard S. Brooks.

DATED this 9th day of September, 1996.

CLARK COUNTY PUBLIC DEFENDER

By 

HOWARD S. BROOKS #3374
DEPUTY PUBLIC DEFENDER

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 facts and circumstances of this case.

2. I have reviewed the State's Motion to Admit Evidence of Other Crimes, Wrongs or Bad Acts filed May 8, 1996 and the State's Supplemental Motion to Admit Evidence Of Other Crimes Wrongs or Bad Acts filed August 29, 1996, and find that the State seeks to introduce the following evidence:

1. Testimony of Lisa Duran concerning her observations in December 1994 of Defendant Chappell striking Panos in the face.

2. Medical Records from University Medical Center regarding Panos suffering a broken nose on January 9, 1995. Panos told UMC employees that her boyfriend hit her.

3. Unidentified records related to June 1, 1995 domestic battery incident wherein Chappell was charged with battery upon Panos and plead guilty to same.

4. Unidentified records or testimony related to February 23, 1994 allegation of domestic battery against James Chappell for battery of Panos.

5. Testimony of Dina Freeman, a Tucson friend of Deborah Panos, who would describe (a) a telephone conversation with Panos on an unknown date in approximately 1993 or 1994 when Panos claimed James Chappell "jumped her." Dina claims she heard a voice in the background that said, "if you ever fuck around in

1 front of my kids, I will kill your ass."

2 6. Testimony of Dina Freeman that Deborah Panos
3 called her in August of 1994 and she could hear James Chappell in
4 the background say, "either you give me that car or you give me
5 some money 'cause I know your fuckin' around on me. You're not
6 going to Dina's house everyday for nothin', I'm gonna do an O.J.
7 Simpson on your ass."

8 7. Testimony of Dina Freeman that Deborah Panos
9 called her at 2:00 in the morning on an unknown date crying that
10 James Chappell had left her at a grocery store because the store
11 would not cash Panos' check and Chappell was forcing Panos to give
12 her money.

13 8. Testimony of Dina Freeman that she saw Deborah
14 Panos with bruises on her face many times, and Panos claimed James
15 Chappell inflicted these injuries.

16 9. Testimony of Dina Freeman that the relationship
17 between Panos and Chappell was "rocky," and that Chappell was
18 abusive to Panos.

19 10. Testimony of Dina Freeman that Chappell was
20 ordered to attend domestic violence counseling at some unknown
21 date in the past.

22 3. In accordance with Petrocelli v. State, 101 Nev. 46,
23 692 P.2d 503 (1985), the Defense respectfully requests that this
24 Court compel the State to present "clear and convincing" legal
25 evidence of said prior acts in a hearing before trial, and that
26 the Court reserve any ruling on the admissibility of said evidence
27 until such burden is met.

28 ...

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

3 EXECUTED ON September 9, 1996.

4 

5 HOWARD S. BROOKS
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1 RECEIPT OF COPY of the above and foregoing Motion to
2 Compel Petrocelli Hearing Regarding Allegations of Prior Bad Acts
3 is hereby acknowledged this 10 day of September, 1996.

4 CLARK COUNTY DISTRICT ATTORNEY

5
6 By T. A. Schmidt

7
8 (Mot\Chappell.Pet)

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NOTC
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

SEP 10 9 29 AM '96

Donna L. Loomis

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: 9-16-96
Time of Hearing: 9:00 A.M.

DEFENDANT'S OFFER TO STIPULATE TO CERTAIN FACTS

COMES NOW, the Defendant, by and through his attorney,
Deputy Public Defender Howard S. Brooks, does hereby offer to
stipulate to certain facts relevant to the litigation of this
criminal case.

DATED this 9th day of September, 1996.

CLARK COUNTY PUBLIC DEFENDER

By

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

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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 facts and circumstances of this case.

2. I have spoken to James Chappell at the Clark County Detention Center, and we have reviewed the discovery in this case. To facilitate an efficient trial, Defendant Chappell is willing to stipulate to the truth of the following statements:

1. That James Chappell on August 31, 1995, entered the trailer rented to Deborah Panos through a window;

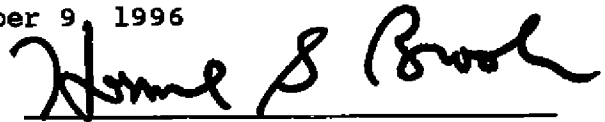
2. That James Chappell engaged in sexual intercourse with Deborah Panos on August 31, 1995, and

3. That James Chappell caused the death of Deborah Panos by stabbing her with a kitchen knife and the act was not an accident.

4. That James Chappell was jealous of Deborah Panos giving attention to, or receiving attention from, other men.

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

EXECUTED ON September 9, 1996


HOWARD S. BROOKS

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RECEIPT OF COPY of the above and foregoing Offer to
Stipulate to Certain Facts is hereby acknowledged this 16 day
of September, 1996.

CLARK COUNTY DISTRICT ATTORNEY

By T. Brett Schneider

(Mot\Chappell.Offer)

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1 **ANSW**
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**

SEP 11 3 12 PM '96

Stewart L. Bell

LEER

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

13 **THE STATE OF NEVADA,**

14 **Plaintiff,**

15 **-vs-**

16 **JAMES MONTELL CHAPPELL,**
17 **#1212860**

18 **Defendant(s).**

Case No. C131341
Dept. No. VII
Docket P

19
20
21 **ANSWER TO MOTION TO COMPEL DISCLOSURE BY**
22 **THE STATE OF ANY AND ALL INFORMATION RELATING TO**
23 **AGGRAVATING OR MITIGATING FACTORS**

24 **DATE OF HEARING: 9-16-96**
25 **TIME OF HEARING: 9:00 A.M.**

26 COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through ABBI
27 SILVER, Deputy District Attorney, and respondent does hereby again represent to the court and counsel
28 that the prosecution is maintaining an open file policy of discovery on this case. Hence, the defense is
free to peruse the file of the prosecution at any reasonable time in order that it might discover any
mitigating circumstances developed during the police investigation.

NRS 175.552 requires that the State must disclose evidence of aggravating circumstances other
than those which arise from the nature of the offense itself". . . before the commencement of the penalty
hearing." The case of Emmons v. State, 107 Nev. 53, 807 P.2d 718 (1991), provides that the defense

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1 shall be given reasonable notification of any and all evidence to be presented by the prosecution during
2 a penalty hearing. The Emmons decision states in part:

3 "... Consistent with the constitutional requirements of
4 due process, defendants should be notified of any and all
5 evidence to be presented during the penalty hearing.
6 Although the State in this case did give the accused
7 notice before the commencement of the penalty hearing,
8 it was only one day's notice. We hold that the notice
9 given in this case was inadequate to meet the
10 requirements of due process. The evidence was
11 therefore improperly admitted. Cf. Browning v. State,
12 104 Nev. 269, 273 n.2, 757 P.2d 351, 353 n.2 (1988);
13 Rogers v. State, 101 Nev. 457, 466-67, 705 P.2d 664,
14 671 (1985) cert. denied 476 U.S. 1130 (1986)."

15 Emmons, at 62, 807 P.2d at 724.

16 Consequently, it is always the intention of the State of Nevada to make available all reports and witness
17 statements regarding penalty hearing evidence it intends to introduce as soon as possible.

18 The State has provided the defense with a Notice of Intent to Seek the Death Penalty which
19 outlines all aggravating factors alleged by the State. The State has not withheld any discovery, but
20 instead prepared a discovery package for defense counsel. The defense even acknowledges in its
21 declaration that the State has an open file policy and has given the defense every opportunity to inspect
22 the State's files and request copies of any discoverable documents. Therefore, the State submits that the
23 Defendant's motion is without merit and should be appropriately denied.

24 DATED this 9th day of September, 1996.

25 Respectfully submitted,

26 STEWART L. BELL
27 DISTRICT ATTORNEY
28 Nevada Bar #000477

29 BY Abbi Silver
30 ABBIE SILVER
31 Deputy District Attorney
32 Nevada Bar #003813

RECEIPT OF COPY

RECEIPT OF A COPY of the above and foregoing ANSWER TO MOTION TO COMPEL
DISCLOSURE BY THE STATE OF ANY AND ALL INFORMATION RELATING TO
AGGRAVATING OR MITIGATING FACTORS is hereby acknowledged this 11 day of September,
1996.

PUBLIC DEFENDER'S OFFICE

By Robert A. Dolan
309 S. Third St., #226
Las Vegas, Nevada 89101

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Amelia Bell
CLERK

1 **OPPS**
 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

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

11 **THE STATE OF NEVADA,**

12 Plaintiff,

13 -vs-

14 **JAMES MONTELL CHAPPELL,**
 15 **#1212860**

16 Defendant(s).

Case No. C131341
 Dept. No. VII
 Docket P

17 **OPPOSITION TO MOTION TO STRIKE ALLEGATIONS OF**
 18 **CERTAIN AGGRAVATING CIRCUMSTANCES ALLEGED IN**
 19 **STATE'S NOTICE OF INTENT TO SEEK DEATH PENALTY**

20 **DATE OF HEARING: 9-16-96**
TIME OF HEARING: 9:00 A.M.

21 COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through ABBI
 22 SILVER, Deputy District Attorney, and files this Opposition to Defendant's Motion to Strike Allegations
 23 of Certain Aggravating Circumstances Alleged in State's Notice of Intent to Seek Death Penalty.

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

4 DATED this 9th day of September, 1996.

5 Respectfully submitted,

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

9 BY 

10 ABBOT SILVER
11 Deputy District Attorney
12 Nevada Bar #003813

13 **POINTS AND AUTHORITIES**

14 **PROCEDURAL HISTORY**

15 On September 8, 1995, a Criminal Complaint was filed against James Montell Chappell,
16 hereinafter the Defendant, accusing him of Burglary with Use of a Deadly Weapon, Robbery with Use
17 of a Deadly Weapon, and Murder with Use of a Deadly Weapon. A preliminary hearing was held on
18 October 3, 1995, wherein the Defendant was held to answer for all charges except use of a Deadly
19 Weapon as to the Burglary. On October 11, 1995, the State filed an Information reflecting the
20 Defendant's charges. On October 18, 1995, the Defendant pled not guilty. On November 8, 1995, the
21 State filed a Notice of Intent to Seek the Death Penalty pursuant to NRS 175.552 and 200.033. The
22 following aggravating circumstances were alleged:

- 23 1. The murder was committed while the person was
24 engaged in the commission of or an attempt to commit
25 a robbery.
- 26 2. The murder was committed while the person was
27 engaged in the commission of or an attempt to commit
28 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 The Defendant now moves this court to strike said aggravators as alleged.

2 **STATEMENT OF FACTS**

3 Lisa Duran testified that she was Debra Panos' (the 26 year old victim) friend through their
4 employment at GE Capitol. (PHT 38, 39). Duran stated that Debra lived in Las Vegas for approximately
5 a year prior to her demise. (PHT 39) she was aware that Debra and the Defendant had a ten (10) year
6 "on again, off again" boyfriend-girlfriend relationship. (PHT 39) The Defendant and Debra had three
7 children together, and on August 31, 1995, they were approximately three (3), five (5) and seven (7)
8 years old, respectively. (PHT 43)

9 Prior to her murder, Debra broke up with the Defendant "for good." (PHT 39) She had told
10 Duran that her relationship with the Defendant was over, she no longer wanted him in her life, and after
11 he was released from jail, she wanted to send him back to his home in Mississippi. (PHT 76)

12 Duran described the physical abuse Debra had suffered at the hands of the Defendant during the
13 year prior to her murder. Specifically, several weeks before Christmas 1994, Duran observed both the
14 Defendant and Debra in a car. (PHT 40) The Defendant was yelling at Debra and she was crying. (PHT
15 41) The Defendant continued to yell at her and then hit her face with his open hand. (PHT 41)
16 Additionally, near Christmas of the same year, Debra came to work with a broken nose. (PHT 42)

17 University Medical Center Records confirm that on January 9, 1995, Debra Panos was seen in
18 the emergency room at University Medical Center after being transported via Mercy Ambulance. Debra
19 complained of pain to her head and face after an assault. Specifically, Debra stated that she was punched
20 in the face and nose several times by her boyfriend. Debra told doctors that her boyfriend often beats her,
21 but never like this. Debra's injuries included a fractured nose and several lacerations on the right
22 eyebrow and nose. The Defendant was arrested for the battery on January 9, 1995.

23 Duran testified that she met the Defendant on Memorial Day weekend, May 1995. (PHT 42)
24 Duran also stated that Debra and the children stayed with her, at her apartment, until the Defendant called
25 for Debra, and she returned home. (PHT 45) Duran stated that she received approximately seven (7)
26 telephone calls where the Defendant called her or Debra's residence. (PHT 46) Specifically, on one
27 occasion, Duran was watching the children and the Defendant called from jail adamantly requesting to
28 know where Debra was. (PHT 47) The Defendant said, "I want to know what other nigger she's laying

1 underneath." (PHT 47) The Defendant warned Duran, "You tell Debbie, when she gets home that I
2 called and that when I get out, she's not going to have any friends." (PHT 48)

3 Duran described another incident where the Defendant called and was upset because Debra had
4 not gone to visit him at jail, she was not writing him letters, and she was not accepting his calls. (PHT
5 48) The Defendant told Duran, "If he couldn't have Debra, that nobody else could, and when he got out,
6 she wasn't going to have any friends; she wouldn't be able to go anywhere, and he'd make sure of that."
7 (PHT 48)

8 Duran stated that on the afternoon of August 31, 1995, she was driving to Debra's house to
9 retrieve some of her belongings since she had stayed with Debra the week before. (PHT 49, 50) At
10 approximately 1:30 to 1:45 p.m. she entered Debra's trailer park. As she was driving towards Debra's
11 residence, she saw the Defendant driving Debra's car, with a bicycle hanging out the back of the trunk.
12 (PHT 51, 52) Duran was aware that the Defendant used a bicycle for transportation. (PHT 52)

13 When Duran went to Debra's residence, nobody answered, but Duran could hear the TV and air
14 conditioner running. (PHT 54) After several attempts to locate Debra, Duran noticed the back bedroom
15 window was off track and became concerned for Debra's safety. (PHT 56). As a result, Duran contacted
16 the police. Ultimately, the police made entry into Debra's trailer through the bedroom window and found
17 Debra's body in a pool of blood, lying by a knife, and her home was ransacked. (PHT 58).

18 Significantly, Duran did not notice any bruises or lacerations to Debra's face and body on August
19 31, 1995 at 8:00 a.m.--just hours before the Defendant was seen driving her vehicle from the trailer park
20 but prior to her body being discovered by the police. (PHT 63).

21 Bill Duffy testified that on August 31, 1995, that he was a Unit Manager supervising probationers
22 at the Department of Parole and Probation. (PHT 27). On that date, Duffy received a call from City
23 Detention that the Defendant was being released on probation from City Jail for a gross misdemeanor.
24 (PHT 28). As a result, Duffy had two officers go to pick the Defendant up and bring him back to his
25 office. (PHT 28, 29). Duffy personally interviewed the Defendant at 10:00 a.m. on August 31, 1995.
26 (PHT 30). At the conclusion of the interview, Duffy agreed to release the Defendant so that he could go
27 to a drug program and enroll. (PHT 31). The Defendant was to report back to Duffy's office within
28 three (3) hours, at approximately 1:00 p.m. (PHT 31). The Defendant never returned.

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

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

14 Dr. Green testified that these injuries would have been caused by blunt trauma consistent with a
15 fist hitting Debra in the face. (PHT 11). Lastly, Dr. Green opined that the manner of death to Debra
16 Panos was a homicide and that the cause of death was the result of multiple stab wounds of the neck and
17 chest. (PHT 18).

18 Las Vegas Metropolitan Police Department reports show that on June 1, 1995, JUST THREE
19 (3) MONTHS PRIOR TO HER MURDER, Debra Panos reported to police the Defendant had battered
20 her during a domestic dispute. Specifically, Debra told police that the Defendant was yelling at her after
21 he found a piece of paper with a strange phone number on it. He was jealous. The Defendant pushed
22 Debra down on the bed in their trailer, pinning her down with his knees on her arms. The Defendant
23 thereafter pulled out a knife and began threatening her with the knife until he was interrupted by a friend
24 knocked on the door.

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

28 On February 23, 1994, while living together in Tucson, Arizona, Debra Panos reported to the

1 police she had been a victim of domestic violence at the hands of this Defendant. Debra told the police
2 that the Defendant knocked her to the floor after he saw Debra crying because the Defendant had sold
3 the children's furniture. Debra stated that when she tried to get up from the floor, the Defendant began
4 kicking her in the legs. Debra was able to get herself and her children into the car and immediately
5 contacted police. The Defendant was then taken into custody and booked for domestic assault.
6 Currently, there is no disposition to this Arizona case, as the Defendant failed to appear. A bench warrant
7 for his arrest is currently in effect.

8 ARGUMENT

9 I

10 **THE STATE'S AGGRAVATORS WERE PROPERLY ALLEGED AND CANNOT BE** 11 **STRICKEN AT THIS STAGE IN THE LITIGATION**

12 The Defendant contends that there is insufficient evidence to support the alleged aggravators
13 stated in the State's Intent to Seek the Death Penalty. However, the State maintains that the Defendant's
14 motion to strike said aggravators lacks merit and is otherwise inappropriate at this stage in the
15 proceedings.

16 The Nevada Supreme Court has held that the State does not need to give notice of the specific
17 conduct used as an aggravator. "Proof at trial of the facts constituting the aggravating circumstance
18 suffices." Hogan v. State, 103 Nev. 21, 24 n. 3, 732 P.2d 422 (1987), *cert. denied*, 108 S.Ct. 201
19 (1986); Deutshcher v. State, 95 Nev. 669, 678, 601 P.2d 407, 413 (1979). Therefore, the State does not
20 need to give notice of exactly how the Defendant committed the murder while: (1) attempting to commit
21 a robbery, (2) attempting to commit a burglary and/or a home invasion, (3) attempting to commit a sexual
22 assault, or (4) torturing his victim. (NRS 175.552; 200.033). Instead, it is sufficient that the State wait
23 and prove these aggravators at trial.

24 The Defendant nonetheless argues that this court has the authority to strike the alleged
25 aggravating circumstances at the pre-trial stage. However, the authority cited for this proposition is not
26 only misplaced but also attempts to mislead this court into believing that the Nevada Supreme Court has
27 embraced the striking of aggravators if they are proven at the preliminary hearing. The Defendant cites
28 Goldberg v. Eighth Judicial District, 93 Nev. 614, 572 P.2d 521 (1977), to support his assertion that this

1 court has "authority" to strike the alleged aggravators listed in the States Intent to Seek Death. Yet,
2 Goldberg, supra, resolved whether the judiciary had the authority to make rules which are generally
3 reasonable and necessary for the administration of justice. Id. at 616. Essentially Goldberg, supra, is a
4 separation of powers case, and is in no way relevant to the issue at bar. Moreover, the Nevada Supreme
5 Court has not changed the burden of proof necessary at preliminary hearing. Under Nevada law, the
6 State may establish probable cause in a preliminary hearing under the standard of "slight evidence." See
7 Sheriff v. Baddillo, 95 Nev. 593, 594, 600 P.2d 221, 222 (1979); Sheriff v. Hodes, 96 Nev. 184, 606
8 P.2d 178 (1980); Sheriff v. Potter, 99 Nev. 389, 663 P.2d 350 (1983). Since a preliminary hearing is not
9 a determination of guilt or innocence, only slight evidence is required. Id. The State met its burden in
10 this case and the Defendant was properly bound over for Burglary, Robbery and Murder. Pursuant to
11 NRS 175.552 the State is merely required to notify the Defendant of intent to present aggravators prior
12 to the commencement of the penalty hearing.

13 . . . The state may introduce evidence of additional
14 aggravating circumstances as set forth in NRS 200.033,
15 other than the aggravated nature of the offense itself,
only if it has been disclosed to the defendant before the
commencement of the penalty hearing.

16 NRS 175.552(3)

17 The Nevada Supreme Court has further interpreted NRS 175.552 as simply requiring the State
18 to give notice to the Defendant sufficient to insure due process so that a defendant can meet any new
19 evidence presented during the penalty hearing. See Emmons v. State, 107 53, 62, 807 P.2d 718 (1991);
20 Bennett v. State, 106 Nev. 135, 142, 787 P.2d 797 (1990); Hogan v. State, 103 Nev. 21, 25, 732 P.2d
21 422 (1987); Deutscher v. State, 95 Nev. 669, 601 P.2d 407 (1979). The Nevada Supreme Court has also
22 held that notice of aggravating circumstances one week before trial was adequate notice. See Emmons
23 v. State, 107 53, 62, 807 P.2d 718 (1991); Emil v. State, 105 Nev. 858, 867, 784 P.2d 956 (1989).

24 Therefore, the Defendant's argument that the State was required to prove the existence of
25 aggravating circumstances during the preliminary hearing is not the law in Nevada and has never been
26 embraced by the Nevada Supreme Court. Consequently, the fact that no evidence regarding the
27 Defendant's alleged sexual assault was presented at the preliminary hearing creates no legal defect nor
28 does it warrant the striking of any alleged aggravators in this case. Again, the Defendant's motion must

1 fail as it is contra to the statutory standard and unsupported by case law.

2 II

3 **THERE ARE SUFFICIENT FACTS TO SUPPORT THE STATE'S ALLEGATION OF**
4 **TORTURE OR DEPRAVITY OF MIND**

5 On the outset, it is important to note the Defendant's motion attempts to misconstrue the facts
6 of his cited authority. See Beets v. State, 107 Nev. 957, 821 P.2d 1044 (1991); Cavanaugh v. State, 102
7 Nev. 478, 729 P.2d 481 (1986); Moran v. State, 103 Nev. 138, 734 P.2d 712 (1987).

8 The Defendant cites Beets v. State, 107 Nev. 957, 821 P.2d 1044 (1991), and quotes the
9 following language to show that although defendant Beets beat his ex-girlfriend with a hammer, tied her
10 up in the bathroom, sexually assaulted her, found the ex-girlfriend's mother and beat the mother to death
11 with the hammer, then sexually assaulted the ex-girlfriends's daughter, his violent and heinous acts did
12 not rise to the level of depravity of mind or torture:

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

16 Beets, at 965, 821 P.2d at 1050. (See Defendant's Motion to Strike p. 10)

17 However, this quote and the context of the Defendant's argument misrepresents the facts of
18 Beets, *supra*. Although, Beets committed several criminal acts, the aggravator of depravity of mind or
19 torture only applied to the killing of the ex-girlfriend's mother. Therefore, it is misleading to consider
20 all his acts collectively as failing to reach the level of depravity of mind or torture. Furthermore, in order
21 to find depravity of mind or torture there must be sufficient acts beyond the act of killing itself. Robins
22 v. State, 106 Nev. 611, 629, 798 P.2d 558, 570 (1990), *cert. denied*, ___ U.S. ___ (1991); Accord
23 Jimenez v. State, 106 Nev. 769, 801 P.2d 1366 (1990). In Beets, the defendant's singular act of hitting
24 the ex-girlfriend's mother with a hammer did not go beyond the act of killing, and based on that reason
25 alone the Nevada Supreme Court concluded the depravity of mind aggravator failed.

26 The Defendant cites Moran v. State, 103 Nev. 138, 734 P.2d 712 (1987), however fails to
27 adequately explain the underlying facts of the case. The Defendant states that Moran killed two people
28 in a bar by shooting them several times with his pistol. The Defendant then quotes language from the

1 case asserting the proposition that the Nevada Supreme Court rejected the aggravating circumstance of
2 depravity of mind for that killing:

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

6 Moran, at 142, 734 P.2d 714. (See Defendant's Motion to Strike p. 11)

7 However, this quote relates to Moran's murder of his ex-wife, Linda Vandervoort, not the murder of the
8 bartender, Sandra DeVere, and the customer, Russell Rhodes at the Red Pearl Saloon.

9 What the Defendant fails to illustrate is that Moran, *supra*, represents a consolidation of two
10 cases. In the first case, Moran was found guilty for the simultaneous shooting deaths of a bartender and
11 customer at the Red Pearl Saloon. In the second case, Moran was found guilty for the separate and
12 subsequent shooting death of his ex-wife, Linda Vandervoort. Regarding Vandervoort's murder, at the
13 penalty phase, the three-judge panel found "depravity of mind." However, the Nevada Supreme Court
14 overturned that finding on appeal based upon the underlying facts of the killing:

15 The circumstances of this murder were these: After
16 talking to Vandervoort for a few minutes Moran asked
17 her if she had read about the Red Pearl shooting. As she
18 turned to answer, Moran immediately began firing.
19 There is no indication of torture or sadistic acts
20 performed by Moran. Vandervoort appears to have died
21 instantly with no disturbance occurring to her body
22 other than the gunshot wounds. As cold-blooded and
23 malicious as the killing was, under the guidance given to
24 us by the United States Supreme Court, we must
25 conclude that the record does not support a finding of
26 depravity of mind under NRS 200.033(8). Godfrey v.
27 Georgia, 446 U.S. 420 (1970); Deutscher v. State, 95
28 Nev. 669, 601 P.2d 407 (1979); *see also* Rogers v.
State, 101 Nev. 456, 705 P.2d 644 (1985); Neuschafer
v. State, 101 Nev. 331, 705 P.2d 609 (1985).

24 Moran, at 141-142, 734 P.2d at 714.

25 Therefore, the Defendant's motion inaccurately represents that the Moran court overturned the
26 depravity of mind aggravator in the bar shootings. To the contrary, depravity of mind was not even an
27 alleged aggravator in the bar shooting case. Moran, at 142-144, 734 P.2d at 714-715.

28 It is apparent that the Defendant is unable to find a comparable case in which the Nevada

1 Supreme Court has overturned depravity of mind or torture where a defendant brutally stabbed his victim
2 thirteen different times. (PHT 7). Additionally, Dr. Green testified that Debra's face and body was
3 covered with fresh contusions and abrasions consistent with her being beaten prior to her death. The
4 Defendant stabbed Debra in the jugular vein in the neck, the carotid artery in the neck, lungs, ribs and
5 back. The Defendant stabbed Debra so hard that four of the stab wounds in the neck penetrated the bone
6 of the spinal column. It is clearly arguable that the numerous stab wounds found on Debra's body shows
7 that the Defendant's acts went well beyond the killing itself. Robins v. State, 106 Nev. 611, 629, 798
8 P.2d 558, 570 (1990), *cert. denied*, ___ U.S. ___ (1991). Further, the Defendant sexually assaulted
9 Debra in addition to killing her. Consequently, it is appropriate for the State to allege depravity of mind
10 as an aggravating circumstance in this case.

11 The Defendant attempts to compare himself to Cavanaugh in Cavanaugh v. State, 102 478, 729
12 P.2d 481 (1986)--asserting that the instant murder was not as heinous as Cavanaugh.¹ Yet, the State
13 asserts that Cavanaugh, *supra*, does not represent the threshold standard of depravity of mind or torture.
14 In other words, one need not dismember the victim in order to exhibit depravity of mind or that the victim
15 was tortured beyond the act of killing itself.

16 On balance, the State has properly alleged the aggravating circumstances depravity of mind or
17 torture against the Defendant in this case. NRS 200.033 It is therefore appropriate for this court to deny
18 the Defendant's instant motion.

19 III

20 THE PROCEDURES FOLLOWED IN SEEKING THE DEATH PENALTY DO NOT 21 VIOLATE THE DEFENDANT'S DUE PROCESS RIGHTS

22 The Defendant alleges that failing to prove the aggravators at the preliminary hearing violates the
23 Defendant's due process rights. This contention is without merit.

24

25

26 1. Patrick Cavanaugh first shot his victim in the face, then, after discovering the victim was still alive several
27 hours later, cut out his vocal cords and shot him two more times in the head. Cavanaugh then cut off the
28 victim's hands and feet with an electric saw and attempted to cut off his head. He used acid in an attempt to
remove the prints from the victim's fingers, then disposed of the remains in several locations. Cavanaugh, at
481, 729 P.2d at 483.

1 According to the Nevada Revised Statutes, the State may introduce evidence of aggravating
2 circumstances only after giving notice of the aggravators to the Defendant. (NRS 175 552(3)). The
3 Nevada Supreme Court has stated the "the purpose of the statute is to provide the accused notice and
4 to insure due process so he can meet any new evidence which may be presented during the penalty
5 hearing." Deutscher, supra, at 678; Emmins v. State, 107 Nev. 53, 807 P.2d 718 (1991); Bennett v.
6 State, 106 Nev. 135, 787 P.2d 797 (1990), *cert. denied*, 111 S.Ct. 307 (1990).

7 Since the State has given the required notice of aggravators, the Defendant's due process rights
8 have not been violated. Moreover, the Defendant's motion lacks merit and should be appropriately
9 denied.

10 **CONCLUSION**

11 Based on the arguments set forth above, the State respectfully requests this Court to deny the
12 Defendant's motion.

13 DATED this 11th day of September, 1996.

14 Respectfully submitted,

15 STEWART L. BELL
16 DISTRICT ATTORNEY
Nevada Bar #000477

17 BY Abbi Silver
18 ABBI SILVER
19 Deputy District Attorney
20 Nevada Bar #003813
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RECEIPT OF COPY

RECEIPT OF A COPY of the above and foregoing OPPOSITION TO MOTION TO STRIKE
ALLEGATIONS OF CERTAIN AGGRAVATING CIRCUMSTANCES ALLEGED IN STATE'S
NOTICE OF INTENT TO SEEK DEATH PENALTY is hereby acknowledged this 14th day of
September, 1996.

PUBLIC DEFENDER'S OFFICE

By *Judith Johnson*
309 S. Third St., #276
Las Vegas, Nevada 89101

52 ORIGINAL 74

FILED

SEP 25 9 30 AM '96

1 ORDER
2 MORGAN D. HARRIS
3 PUBLIC DEFENDER
4 NEVADA BAR #1879
5 309 South Third Street, Suite 226
6 Las Vegas, Nevada 89155
7 (702)455-4685
8 Attorney for the Defendant
9 Public Defender File No. F-95-5254

Laetta Luman
CLERK

DISTRICT COURT

CLARK COUNTY, NEVADA

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

14 This matter having come before this Court on September
15 4, 1996, upon Defendant's Motion to Compel, with the State of
16 Nevada represented by the District Attorney, and Defendant
17 Chappell represented by Deputy Public Defender Howard S. Brooks,
18 and good cause appearing therefor,

19 IT IS HEREBY ORDERED that the Clark County Detention
20 Center must transport James Montell Chappell to an optometrist and
21 have Mr. Chappell examined by that optometrist for eye glasses.
22 If the optometrist deems such eye glasses necessary, the Clark

23 ...

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27 ...

28 ...

1 County Detention Center shall provide Mr. Chappell with eye
2 glasses at County expense.

3 DATED this 11th day of September, 1996.

4
5 SUBMITTED BY:


DISTRICT JUDGE

6 CLARK COUNTY PUBLIC DEFENDER

7
8
9 BY



HOWARD S. BROOKS #3374
DEPUTY PUBLIC DEFENDER

10
11 (Ord/Chappell.Eye/sas)

FILED

SEP 21 1 23 PM '96

Joetta Simon
CLERK

1 EXPR
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

10 THE STATE OF NEVADA,)
11)
12 Plaintiff,) CASE NO. C131341x
13 v.) DEPT. NO. VII
14 JAMES MONTELL CHAPPELL,)
15)
16 Defendant.)

EX PARTE APPLICATION FOR TRANSCRIPT

17 Defendant James Montell Chappell, by and through his
18 attorney, Deputy Public Defender Howard S. Brooks, does hereby
19 respectfully request that this Court grant this ex parte
20 application for a transcript of the proceeding in State of Nevada
21 vs. James Montell Chappell, Case No. C126882, on August 1, 1995.
22 This application is supported by the attached Declaration of
23 Counsel.

24 DATED this 27 day of September, 1996.

CLARK COUNTY PUBLIC DEFENDER

Howard S. Brooks

By HOWARD S. BROOKS #3374
Deputy Public Defender

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 facts and circumstances of this case.

2. As of August 1, 1995, James Chappell was on probation in Case C126882 for the gross misdemeanor possession of burglary tools.

3. James Chappell appeared in District Court XV on that date, and, according to the notes of his attorney at that time, stipulated to facts underlying revocation, with an order by the court that he be released from the jail directly to Parole and Probation and Parole and Probation was to enroll Mr. Chappell in a drug treatment program.

4. The issue of what precisely the court's order was on August 1, 1995, is relevant to the instant case wherein Mr. Chappell is charged with murder because he was released to the Department of Parole and Probation, and the Department of Parole and Probation did not admit him into a drug treatment program, but rather released him to the streets. The Department of Parole and Probation's action violated the court's order.

5. Therefore, the defendant would respectfully request that this Court order a transcript of the proceedings on August 1, 1995, in District Court XV, wherein Mr. Chappell appeared for revocation proceedings so that any dispute regarding what the court ordered in that case may be resolved by the transcript.

I declare under penalty of perjury that the foregoing

1 is true and correct. (NRS 53.045).

2 EXECUTED ON September 26, 1996.

3 *Howard S. Brooks*

4 HOWARD S. BROOKS

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FILED

SEP 27 1 23 PM '96

Loetta S. ...
CLERK

1 ORDER
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

10 THE STATE OF NEVADA,)
11)
12 Plaintiff,) CASE NO. C131341x
13 v.) DEPT. NO. VII
14 JAMES MONTELL CHAPPELL,)
15)
16 Defendant.)

ORDER

17 This matter having come before the Court on the Ex
18 Parte Application of James Montell Chappell, and good cause
19 appearing therefore;

20 IT IS HEREBY ORDERED that the court reporter for
21 District Court XV prepare at State expense a transcript of
22 proceedings in Case C126882 in District Court XV on August 1,
23 1995, wherein James Chappell (incorrectly identified in the
24 State's pleadings in that case as James Chappall) stipulated to
25 facts underlying his revocation proceedings and also was ordered
26 to attend counseling through the Department of Parole and
27 Probation.

28 DATED this 27th day of September, 1996.

[Signature]
DISTRICT JUDGE

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SUBMITTED BY:

CLARK COUNTY PUBLIC DEFENDER

By Howard S. Brooks
HOWARD S. BROOKS #3374
Deputy Public Defender

(Mot/Chappell.Ex)

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0071
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

OCT 4 10 48 AM '96

Robert Brown

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: 10-7-96

Time of Hearing: 11:00 A.M.

DEFENDANT'S MOTION IN LIMINE REGARDING DETAILS OF DEFENDANT'S

RELEASE FROM JAIL AND FACT THAT HE WAS ON PROBATION

COMES NOW, the Defendant, by and through his attorney, Deputy Public Defender Howard S. Brooks, and moves that this Honorable Court rule that the following evidence is not admissible at trial:

1. Testimony of Parole and Probation Officer William Duffy or any other Parole and Probation officer that James Chappell was on probation for the gross misdemeanor of possession of burglary tools as of August 31, 1995;

2. Testimony of Parole and Probation Officer William Duffy or any other Parole and Probation officer regarding the details of James Chappell's release from jail on August 31, 1995;

3. Any and all testimony regarding Mr. Chappell being

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1 on probation as of August 31, 1995, for the gross misdemeanor of
2 possession of burglary tools or any and all testimony regarding
3 the botched release from jail on August 31, 1995, wherein the
4 State Department of Parole and Probation violated the Court's
5 order and released Mr. Chappell to the streets rather than to a
6 drug treatment program.

7 This motion is made and based on the upon attached
8 Memorandum of Points and Authorities.

9 DATED this 4th day of October, 1996.

10 CLARK COUNTY PUBLIC DEFENDER

11 
12 By _____

13 HOWARD S. BROOKS #3374
14 DEPUTY PUBLIC DEFENDER
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MEMORANDUM OF POINTS AND AUTHORITIES

FACTS

James Chappell is charged in this case with murder with use of a deadly weapon for killing Debra Panos, the mother of his three children, on August 31, 1995.

On April 27, 1995, James Chappell was sentenced in Case Number C126882x to one year in the Clark County Detention Center and that sentence was suspended for the gross misdemeanor charge of possession of burglary tools. The Honorable Sally Loehrer in District Court, Department XV, sentenced Mr. Chappell.

On July 18, 1995, Mr. Chappell appeared in District Court VI for the State's motion to revoke his probation. The motion to revoke probation was based on a May 29, 1995, citation for petit larceny and possession of narcotic paraphernalia, a June 1, 1995, for domestic violence, and an arrest on a bench warrant from a November 14, 1994, incident wherein Mr. Chappell was charged with under the influence of controlled substance. The grounding of a motion to revoke probation based on events that occurred before Mr. Chappell was placed on probation was clearly erroneous.

On August 1, 1995, Mr. Chappell appeared in District Court, Department XV, and stipulated to violation of certain terms related to his probation. The court ordered that he be released directly to Parole and Probation and that Parole and Probation enroll Mr. Chappell into an in-patient drug treatment program. The court did not authorize the department to release Mr Chappell to the streets.

According to testimony at the preliminary hearing by

1 Parole and Probation Officer William Duffy, Mr. Chappell was
2 released to Parole and Probation officers on August 31, 1995, at
3 approximately 10:00 a.m. Rather than take Mr. Chappell to a drug
4 treatment program and enroll him in that program as ordered by the
5 court, Mr. Duffy released Mr. Chappell to the streets at
6 approximately 10:45 a.m. and told him to go to the EOB Treatment
7 Program and complete an evaluation and return to the Parole and
8 Probation Office at 1:30 p.m.

9 Contrary to the court's order, Mr. Chappell was released
10 to the streets, and Mr. Chappell did not return to the Parole and
11 Probation Office at approximately 1:30 p.m.

12 ARGUMENT

13 TESTIMONY REGARDING MR. CHAPPELL'S
14 GROSS MISDEMEANOR CONVICTION AND
15 HIS PROBATION IN THAT CASE ARE
16 IRRELEVANT.

17 The testimony of William Duffy or the testimony of any
18 other Parole and Probation officer or any other person that James
19 Chappell was on probation for a conviction for possession of
20 burglary tools as of August 31, 1995, that Mr. Chappell was
21 released to Parole and Probation for the purpose of entering into
22 a drug treatment program on that date, and that Mr. Chappell was
23 released to the streets on August 31, 1995, by Parole and
24 Probation, are all irrelevant to the facts of the present case.

25 The fact that Mr. Chappell was on probation for a gross
26 misdemeanor is not a matter by which the State may impeach Mr.
27 Chappell. The fact that he was on probation for a gross
28 misdemeanor is not admissible as evidence. It is also not
probative of any disputed fact in the present litigation.

The fact that Mr. Chappell was released to the

1 Department of Parole and Probation to be entered into a drug
2 treatment program, and the Department of Parole and Probation
3 failed to follow the court's order and released Mr. Chappell to
4 the streets is again not probative of any fact relevant to the
5 litigation currently before the court.

6 Any testimony regarding Mr. Duffy's order to Mr.
7 Chappell that he report to the EOB Drug Treatment Program for an
8 evaluation is not probative of any fact relating to the litigation
9 currently before the court.

10 The fact that Mr. Chappell was on probation, the fact
11 that he was released to the streets to go to a drug treatment
12 program and the fact that he did not in fact go to the drug
13 treatment program are all matters that are unrelated to the
14 present litigation unless the State attempts to prove their case
15 by showing bad character on the part of Mr. Chappell.

16 NRS 48.045 states:

- 17 1. Evidence of a person's character or a
18 trait of his character is not admissible
19 for the purpose of proving that he acted
in conformity therewith ...

20 Furthermore, NRS 48.035 states:

21 Evidence is not admissible if its probative
22 value is substantially outweighed by the
danger of unfair prejudice, of confusion of
the issues or of misleading the jury.

23 The fact that James Chappell was on probation for a
24 gross misdemeanor, the fact that the Department of Parole and
25 Probation released him to the streets in violation of the court's
26 order, and the fact that James Chappell did not in fact go to a
27 drug treatment program, are all matters that are highly
28 inflammatory to a jury. They suggest a general criminal tendency

1 on the part of Mr. Chappell, which goes to character, and they
2 also suggest an inability or indifference on the part of Mr.
3 Chappell to follow instructions or to affirmatively address his
4 drug problem, again matters related to character. Since these
5 matters are not relevant to the present case, since they are
6 highly inflammatory, any testimony by Mr. Duffy or any other
7 Parole and Probation officer or any other witness regarding these
8 matters should be ruled inadmissible by this court.

9 **THIS EVIDENCE IS NOT SO CLOSELY**
10 **RELATED TO THE KILLING THAT IT MUST**
11 **BE INCLUDED IN THE TESTIMONY.**

12 NRS 48.035 also provides that:

13 Evidence of another act or crime which is so
14 closely related to an act in controversy or a
15 crime charged that an ordinary witness cannot
16 describe the act in controversy or the crime
17 charged without referring to the other act or
18 crime shall not be excluded, but the request
19 of an interested party, a cautionary
20 instruction shall be given explaining the
21 reason for its admission.

22 The Defense anticipates the State's argument that
23 somehow the fact that Mr. Chappell was on probation for the gross
24 misdemeanor, the fact that he was released to the streets by
25 Parole and Probation to go to a drug treatment program are somehow
26 entertwined with the killing in this case. The Defense
27 anticipates that the State will argue that this matter can be
28 resolved by simply having the court provide the jury with a
29 cautionary instruction.

30 These matters are not so related to the killing that
31 they must be described by witnesses. The State need merely start
32 the "story" of this crime with Lisa Duran attempting to find her
33 friend and being unable to do so, rather than starting with the

1 release of Mr. Chappell from jail. There is no reason in the
2 world for testimony to go into the fact that Mr. Chappell was on
3 probation or the fact that he was released from jail that day or
4 the fact that he was released to a drug treatment program.

5
6 SUMMARY

7 Therefore, the Defense respectfully submits that the
8 following testimony be excluded during the trial portion of these
9 proceedings:


10 1. Testimony of Parole and Probation Officer William
11 Duffy or any other Parole and Probation officer that James
12 Chappell was on probation for the gross misdemeanor of possession
13 of burglary tools as of August 31, 1995;

14 2. Testimony of Parole and Probation Officer William
15 Duffy or any other Parole and Probation officer regarding the
16 details of James Chappell's release from jail on August 31, 1995;

17 3. Any and all testimony regarding Mr. Chappell being
18 on probation as of August 31, 1995, for the gross misdemeanor of
19 possession of burglary tools or any and all testimony regarding
20 the botched release from jail on August 31, 1995, wherein the
21 State Department of Parole and Probation violated the Court's
22 order and released Mr. Chappell to the streets rather than to a
23 drug treatment program.

24 DATED this 4th day of October, 1996.

25 CLARK COUNTY PUBLIC DEFENDER

26 

27 By
28 HOWARD S. BROOKS #3374
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 will be heard
on October 7, 1996, at 11:00 A.M. in Department No. VII of the
District Court.

DATED this 4th of October, 1996.

CLARK COUNTY PUBLIC DEFENDER

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

RECEIPT OF COPY of the above and foregoing is hereby
acknowledged this 4 day of October, 1996.

CLARK COUNTY DISTRICT ATTORNEY

By Tara Schmedt

(Mot\Chappell.1)

ORIGINAL FILED 24

0071
 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

OCT 4 10 46 AM '96

CLEAR

DISTRICT COURT
 CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)	
)	
Plaintiff,)	CASE NO. C131341x
)	
v.)	DEPT. NO. VII
)	
JAMES MONTELL CHAPPELL,)	Date of Hearing: 10-7-96
)	Time of Hearing: 11:00 A.M.
Defendant.)	

DEFENDANT'S MOTION IN LIMINE REGARDING EVENTS RELATED TODEFENDANT'S ARREST FOR SHOPLIFTING ON SEPTEMBER 1, 1995

COMES NOW, the Defendant, by and through his attorney, Deputy Public Defender Howard S. Brooks, and moves that this Honorable Court exclude during the trial portion of the proceedings in this case the following testimony:

1. The testimony of Lawrence Martinez regarding his observations of James Chappell shoplifting at the Lucky's store at 4420 East Bonanza, Las Vegas, on September 1, 1995.

2. Any and all testimony of Kimberly Sempson regarding the allegation of shoplifting against Mr. Chappell on September 1, 1995.

3. All other testimony regarding the arrest of Mr. Chappell for shoplifting at the Lucky's store at 4420 East

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Bonanza, Las, Vegas, on September 1, 1995.

This motion is made and based on the upon attached
Memorandum of Points and Authorities.

DATED this 4th day of October, 1996.

CLARK COUNTY PUBLIC DEFENDER

By 

HOWARD S. BROOKS #3374
DEPUTY PUBLIC DEFENDER

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 FACTS

3 On August 31, 1995, Las Vegas citizen Lisa Duran,
4 accompanied by police officers, discovered the dead body of Debra
5 Panos. Initial speculation and investigation centered on James
6 Chappell as the primary suspect in the case. Mr. Chappell lived
7 at the trailer where Ms. Panos lived, and he and Ms. Panos had
8 three children together.

9 Furthermore, Lisa Duran saw a man she identified as
10 James Chappell leaving the trailer court where Debra Panos lived,
11 and Mr. Chappell allegedly had possession of Ms. Panos' car.

12 The next morning, security office Lawrence Martinez at
13 the Lucky's at 4420 East Bonanza observed James Chappell
14 shoplifting several bottles of liquor and other items. Mr.
15 Chappell allegedly tried to leave the store without paying for the
16 items, and Mr. Martinez took Mr. Chappell into custody. Mr.
17 Chappell was held in custody at the office of the Lucky's store
18 while awaiting the arrival of Metropolitan police units, and
19 subsequently was questioned by Metropolitan police. He gave the
20 fake name of "Ivri Marrell" to the police, and was subsequently
21 observed by Kimberly Sempson as he was detained in the security
22 office attempting to dispose of social security cards which
23 belonged to Debra Panos and the three children.

24 ARGUMENT

25 The Defense objects to any testimony by Lawrence
26 Martinez or Kimberly Sempson or any other witness regarding Mr.
27 Chappell's acts of shoplifting. The allegations of shoplifting
28 are completely irrelevant to the present murder case. Testimony

1 || may easily skirt around the arrest for shoplifting.

2 The State will certainly concede that James Chappell was
3 already a suspect for murder on the morning of September 1, 1995,
4 and that officers were looking for James Chappell. Therefore,
5 testimony regarding his arrest should certainly be allowed, but
6 the subject of shoplifting is irrelevant to this case.

7 The Defense objects to this testimony on the grounds
8 that it is not relevant, that it is more prejudicial than
9 probative pursuant to NRS 48.035, the allegations of shoplifting
10 are essentially allegations regarding character evidence, which is
11 not admissible pursuant to NRS 48.045, and the evidence regarding
12 shoplifting can easily be excised from the State's testimony by
13 merely having his arrest described by the Metropolitan police
14 officers who arrived at the scene without going into the details
15 regarding the shoplifting.

16 SUMMARY

17 Therefore, based on the foregoing arguments, the Defense
18 respectfully submits that the following testimony should be
19 excluded during the trial portion of these proceedings:

20 1. The testimony of Lawrence Martinez regarding his
21 observations of James Chappell shoplifting at the Lucky's store at
22 4420 East Bonanza, Las Vegas, on September 1, 1995.

23 2. Any and all testimony of Kimberly Sempson regarding
24 the allegation of shoplifting against Mr. Chappell on September 1,
25 1995.

26 | | . . .


27 | ...

28 | ...

1 3. All other testimony regarding the arrest of Mr.
2 Chappell for shoplifting at the Lucky's store at 4420 East
3 Bonanza, Las, Vegas, on September 1, 1995.

4 DATED this 4th day of October, 1996.

5 CLARK COUNTY PUBLIC DEFENDER

6 
7 By _____

8 HOWARD S. BROOKS #3374
9 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 will be heard on October 7, 1996, at 11:00 A.M. in Department No. VII of the District Court.

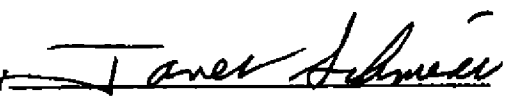
DATED this 4th of October, 1996.

CLARK COUNTY PUBLIC DEFENDER


By _____
HOWARD S. BROOKS #3374
DEPUTY PUBLIC DEFENDER

RECEIPT OF COPY of the above and foregoing is hereby acknowledged this 4 day of October, 1996.

CLARK COUNTY DISTRICT ATTORNEY

By 

(Mot\Chappell.2)

NOTC
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,)	
)	
Defendant.)	

SUMMARY OF JUROR QUESTIONNAIRE DEVELOPMENTS

COMES NOW, the Defendant, by and through his attorney,
Deputy Public Defender Howard S. Brooks, and does hereby file this
Notice with the Court describing developments related to the juror
questionnaire.

This notice is made and based on the attached
Declaration of Howard S. Brooks.

DATED this 4th day of October, 1996.

CLARK COUNTY PUBLIC DEFENDER

By 

HOWARD S. BROOKS #3374
DEPUTY PUBLIC DEFENDER

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 facts and circumstances of this case.

2. Because the James Chappell case is a death penalty case, the intent of the Defense was to present a juror questionnaire in this case. Ordinarily, we would have filed a motion to allow the Court to order a juror questionnaire, and we would have attached a copy of the juror questionnaire to the motion.

3. In this case, however, the Court anticipated developments on Monday, September 30, 1996, at the jury selection status check wherein the Court asked whether we intended to submit a juror questionnaire to the potential jury pool. After the Defense replied that we did in fact intend to do that, the Court ordered us to submit a juror questionnaire to the Court for approval.

4. On September 30, 1996, I submitted to Mel Harmon, counsel for the State, a proposed juror questionnaire. Mel Harmon and I reviewed the questionnaire together, and identified concerns. The questionnaire was revised according to those concerns, and a revised copy of the juror questionnaire was submitted to the Court, and the Court approved the juror questionnaire on the afternoon of Monday, September 30, 1996.

5. The juror questionnaire was reproduced at the Clark County print shop, and provided to the jury services office on

1 Tuesday, October 1, 1996.

2 6. I am informed that 125 jurors filled out the juror
3 questionnaire on Wednesday, October 2, 1996; and copies of the
4 completed questionnaire were made available to parties on the
5 afternoon of Wednesday, October 2, 1996.

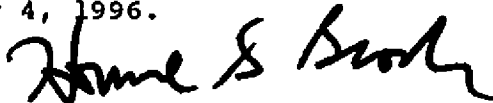
6 7. The juror questionnaire submitted to the jury panel
7 and approved by the Court is attached to this Notice as Exhibit A.

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

10 EXECUTED ON October 4, 1996.

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HOWARD S. BROOKS #3374

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1 RECEIPT OF COPY of the above and foregoing Notice is hereby
2 acknowledged this 4 day of October, 1996.

3 CLARK COUNTY DISTRICT ATTORNEY

4
5 By *Tanel Schneider*

6
7 (Mot\Chappell.Notice)
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Badge # _____
I.D.# _____

Juror Questionnaire

Dear Prospective Juror:

You have been placed under oath. Please answer all questions truthfully and completely, as though the questions were being asked of you in open court. You may be asked additional questions in open court during the jury selection process.

Some of the questions ask your opinions. Be honest and state them. If you need more room on any question, use the margins or the next-to-last page, which has been left blank.

The purpose of this questionnaire is to help the court and the lawyers in their attempt to select a fair and impartial jury to hear this case. The answers provided by you in this document will be made available to counsel for both the state and defense. Your answers may also become part of the court's permanent record, and may, therefore, be a public document.

A summary of the case allegations and the procedure to be followed in this case are noted below. The fact that these allegations have been made does not mean they are necessarily true. The State has the burden of proving the allegations beyond a reasonable doubt.

Remember, you must fill out the questionnaire yourself, and when you are finished, please sign the oath on the last page and leave the questionnaire with a jury assistant.

Summary of Case

On August 31, 1995, Deborah Panos was found dead in her trailer at 839 North Nellis, Las Vegas. She died of multiple stab wounds. The next day, James Chappell, the father of Deborah's three children, was arrested and charged with murder with use of a deadly weapon and other charges related to the killing. The media covered the crime, and Mr. Chappell's arrest was reported.

Procedure

This is a murder case where the State is seeking the death penalty.

After the jury is empanelled, the trial will occur. The purpose of the trial is to determine, based on legally presented evidence, if the State can prove the criminal charges beyond a

reasonable doubt. Mr. Chappell is presumed innocent.

If the jury convicts Mr. Chappell of Murder in the First Degree, then the trial is followed by a Penalty hearing where the jury would hear evidence related to punishment. The jury would determine the sentence, and would choose among the following: death; a life sentence in prison with the possibility of parole; a life sentence in prison without the possibility of parole; or a fixed sentence of 50 years with the possibility of parole.

If the jury finds Mr. Chappell Not Guilty, or finds him guilty of charges other than First Degree Murder, then no penalty hearing will occur. If Mr. Chappell is found guilty of charges other than First Degree Murder, the Judge will sentence Mr. Chappell.

The parties anticipate that the trial of this case could last two weeks; a possible penalty hearing could last an additional week. All the trial and penalty proceedings in this case could last a total of three weeks.

1. Do you have any thoughts, concerns, or questions about this procedure:

2. Are you familiar with this case? Have you read media reports about it? Do you know Deborah Panos or James Chappell? _____

Questions About You

3. Your full name _____ Race _____

4. Age _____ Place of birth _____ Marital Status _____

5. Children

Age Sex Education Occupation

- (a) _____
(b) _____
(c) _____
(d) _____

6. In what part of the county do you live? _____

7. Highest educational grade completed _____

8. Any special schooling or training? _____

9. Any courses or training in a legal field? _____

10. Your occupation and relevant duties for the last ten years: _____

11. What is your spouses's occupation, if you have a spouse?

12. Have you ever been in business for yourself? If yes, please explain. _____

13. Ever been a supervisor or boss? If yes, explain. _____

14. Ever served in the military? If yes, please provide some details. _____

15. Do you attend religious services? If yes, what church or service, and how often?

16. Have you ever changed religions? If so, why? _____

17. Any relatives who are judges or attorneys? If yes, what is your relationship to them
and how often do you talk to them? _____

18. Any relatives in law enforcement? If yes, what is your relationship, and how often do
you talk to them _____

19. Ever been a juror before? If yes, what did you think of the experience? _____

20. Have you or any member of your family ever had a drug or alcohol problem?

21. Have you or any members of your family ever been arrested? If so, why? And what

happened? _____

22. Do you have any bias or ill feeling toward the police or the government or prosecutors as a result of any prior experience with law enforcement? _____

23. Have you or any one you know been a victim of domestic violence? _____

24. Have you or any one you know been affected by domestic violence? How? _____

Opinions, Interests, & Views

25. What do you think of the criminal justice system? _____

26. What are your hobbies and interests? _____

27. Do you consider yourself to be a leader or a follower? _____ Why? _____

28. What do you like to read? _____

What do you think of each of the following:

29. Defense attorneys _____

30. Public Defenders _____

31. State Prosecutors _____

32. Federal Prosecutors

33. Police officers

34. Judges

35. The Death Penalty

36. The statement: "An Eye for an Eye:"

37. The statement: "You Shall Not Kill."

38. The statement: If a prosecutor has taken the trouble of bringing someone to trial, then the person must be guilty.

39. The statement: A defendant in a criminal trial should be required to prove his innocence:

40. The statement: The Death Penalty is appropriate in some cases, but not in others:

41. The statement: The Death Penalty is appropriate in all cases where somebody murders somebody:

42. The statement: A defendant's background should be considered in deciding whether or not the death penalty is an appropriate punishment:

43. The statement: The facts surrounding a killing, and not the killer's background, should be the main consideration in determining punishment:

44. The statement: Black people cause more crime than white people:

45. The statement: It's Ok for black people and white people to date each other and have children together.

46. The statement: It may be Ok for people of different races to date each other, but I would have a hard time dealing with my child doing it:

47. More than anything else, what should the attorneys in this case know about you in deciding whether you should be on the jury:

48. Do you want to be on the jury? Why yes or Why no?

49. If Mr. Chappell is convicted of first degree murder, and a penalty hearing is held, would you consider all four possible sentences, those being the death penalty, life without the possibility of parole, life with the possibility of parole, or a fixed term of 50 years with the possibility of parole

50. In your present state of mind, can you, if selected as a juror, consider equally all four possible forms of punishment and select the one that you feel is the most appropriate depending upon the facts and the law?

51. If you believed the evidence warranted the death penalty, could you personally vote to impose the death penalty?

52. Are you a member of any organization that advocates or opposes the imposition of the death penalty? _____

Explanation Area

Feel free to supplement any of your prior answers, or ask any questions which you may have.

Oath

I swear or affirm that the responses given are true and accurate to the best of my knowledge and belief.

Signature

Date

Admonition

You are instructed not to discuss this questionnaire or any aspect of this case with anyone, including other prospective jurors. You are further instructed not to view, read, or listen to any media account of these proceedings.



A. William Maupin, District Judge

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DISTRICT COURT
CLARK COUNTY, NEVADA
FILED IN OPEN COURT
OCT 07 1996
* * * * * **LORETTA BOWMAN, CLERK**
BY *[Signature]* Deputy
THE STATE OF NEVADA,)
Plaintiff,) CASE NO. C131341
Vs) DEPT. NO. VII
JAMES MONTELL CHAPPELL,) DOCKET P
Defendant.)

ORDER FOR TRANSCRIPT

IT IS HEREBY THE ORDER OF THE COURT, pursuant to Supreme Court Rule 250.4(b), "Priority of Calendaring and Transcribing," that a daily transcript be prepared of the above-entitled case through and including the penalty phase and any post-trial motions. This transcription is to be paid at the daily copy transcription rate of \$5.63 per page for the original and two copies.

IT IS FURTHER THE ORDER OF THE COURT that the County will pay for two court reporters during said trial and including the penalty phase at the rate of \$140.00 per day per court reporter.

DATED and DONE this 7th day of October, 1996.
[Signature]
HONORABLE A. WILLIAM MAUPIN
DISTRICT COURT JUDGE, DEPT. VII

PATSY K. SMITH, OFFICIAL COURT REPORTER

1000

ORIGINAL

DISTRICT COURT
CLARK COUNTY, NEVADA
FILED IN OPEN COURT
OCT 08 1996
LORETTA BOWMAN, CLERK

* * * * *

BY *Loretta Bowman*
Deputy

THE STATE OF NEVADA,

Plaintiff,

Vs

JAMES MONTELL CHAPPELL,

Defendant.

CASE NO. C131341

DEPT. NO. VII

DOCKET P

BEFORE THE HONORABLE:

A. WILLIAM MAUPIN DISTRICT JUDGE

MONDAY, OCTOBER 7, 1996, 11:14 A.M.

VOLUME I - MORNING SESSION

APPEARANCES:

FOR THE STATE:

MELVYN T. HARMON
Chief Deputy District Attorney
& ABBI SILVER
Deputy District Attorney

FOR THE DEFENDANT:

HOWARD S. BROOKS &
WILLARD N. EWING
Deputies Public Defender

REPORTED BY:

PATSY K. SMITH, C.C.R. #190

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 MONDAY, OCTOBER 7, 1996, 11:14 A.M.

2 THE COURT: All right, this is C131341,
3 State of Nevada versus James Montell Chappell.

4 This matter is on this morning for a
5 Petrocelli hearing for the State's motion to admit evidence
6 of other crimes, wrongs or bad acts. The Court has made a
7 ruling in favor of this motion and made some observations
8 to the incremental offers.

9 At this time, I will have the State make its
10 offer of proof on a formal basis in open court on the
11 record and then we will proceed with the evidentiary
12 portion of the hearing.

13 MR. HARMON: Thank you very much, your
14 Honor. Ms. Silver will be making the offer of proof.

15 THE COURT: Thank you.

16 MS. SILVER: Thank you, your Honor.

17 If I could, chronology wise and according to
18 my motion, on page six of our motion for other wrongs,
19 crimes or bad acts, on page six at the top, I have domestic
20 battery of February 23rd, 1994 in Tucson, Arizona, the
21 State would offer, by way of proof, the testimony of an
22 officer on duty on February 23rd of 1994 at approximately
23 9:30 p.m. and that would Officer Earnst and I believe the
24 spelling on Officer Earnst is J. Earnst, E-A-R-N-S-T. That
25 officer would basically testify that on that evening, she

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 was dispatched by an off duty officer at a grocery store,
2 that she responded to that location. This is in Tucson,
3 Arizona where she received preliminary information from
4 that off duty officer by the name of Nikowski, Ed Nikowski,
5 and that based on that information, she came into contact
6 with the victim in this case, Deborah Panos, at which point
7 she took her aside, asked her what had happened.

8 She observed her demeanor was that to be
9 crying, extremely upset, and had stated that within 30
10 minutes she had become a victim of domestic violence at the
11 hands of the defendant, James Chappell. That they had been
12 living together as boyfriend and girlfriend, they had three
13 children in common. That on that evening, just prior to
14 her making contact with the off duty officer, they were in
15 the trailer together, that she had learned that the
16 defendant had sold the children's furniture. She became
17 upset and was crying, at which point they began to argue --
18 the defendant and Deborah Panos began to argue. He pushed
19 her down to the ground and, as she was trying to get up, he
20 started to kick her in her lower body and her extremities.
21 That, at some point, she was able to get out of the trailer
22 with the children and run to or, excuse me, actually drive
23 to that grocery store where she contacted the off duty
24 police officer, who was actually in uniform. They contract
25 out -- that grocery store contracts out security with the

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Tucson police and she immediately told him.

2 That would be the offer of proof as to that
3 battery.

4 THE COURT: All right. How does that
5 testimony -- how do you deal with the hearsay objection
6 that's inevitable to that testimony?

7 MS. SILVER: I believe that this is an
8 exception to the hearsay rule, your Honor, as an excited
9 utterance, if I might, under 51.095, which provides that
10 a --

11 THE COURT: Well, I understand what the
12 statute says. Is there a Nevada case that says that --

13 MS. SILVER: Yes.

14 THE COURT: -- an utterance at a remote time
15 and place is admissible?

16 MS. SILVER: Yes, your Honor.

17 THE COURT: In order to satisfy the other
18 section?

19 MS. SILVER: Yes, your Honor, Deering
20 (phonetic) versus State, 100 Nevada 595, 1994, our Nevada
21 Supreme Court had held that a child victim's statement,
22 approximately an hour and a half after she was sexually
23 assaulted, to a police detective was admissible at the
24 trial as an excited utterance.

25 THE COURT: But wasn't that witness

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 available for testimony and cross examination in the case?

2 MS. SILVER: I have Deering right here. If
3 I may have the Court's indulgence a moment and I can
4 check. I don't think she was available at the trial, your
5 Honor, just offhand, but if the Court wants me to check --

6 THE COURT: Why don't you let me see the
7 case and I can look at it.

8 MS. SILVER: Sure, but I do have another
9 case to where the child was dead and that's Lopez versus
10 State.

11 (Off the record discussion not reported.)

12 MS. SILVER: I do believe that the child was
13 unavailable in Deering.

14 THE COURT: Let me see a Xerox copy of it.

15 MS. SILVER: I don't have Deering. It's my
16 understanding that the child was unavailable and the whole
17 reason that the issue came about is, is that a statement
18 that is reliable enough that the Court can present it by
19 way of testimony, without presenting the testimony, is it
20 sufficiently reliable.

21 THE COURT: Is this witness going to be
22 present to testify?

23 MS. SILVER: Yes, this witness is present to
24 testify.

25 MR. BROOKS: Court's indulgence, your

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Honor. I have a copy of Deering.

2 THE COURT: If you would bring it forward, I
3 would appreciate it.

4 MS. SILVER: And, for the record as well, in
5 Lopez versus State, at 105 Nevada 68, 1989, our Nevada
6 Supreme Court reiterated its rationale in Deering and
7 extended the time in which a statement is still considered
8 an excited utterance. In Lopez, the statements made by a
9 four year old victim, by virtue of torture statements, were
10 made to that mother regarding that stepfather's physical
11 abuse, that was admissible by the court as an excited
12 utterance, even though the events happened "within a couple
13 hours of the events," because the Court's reason was that
14 the child was still under the stress of the exciting
15 condition and that's what we really look for here. Is it
16 reliable.

17 THE COURT: That's fine. I don't want to
18 hear argument on it. I want to get a preliminary -- do you
19 have the case, Mr. Brooks? . Yes.

20 THE COURT: Can I have it? I'll just read
21 it myself.

22 All right, what's the rest of your offer of
23 proof?

24 MS. SILVER: That would be as to that
25 battery, your Honor.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 As to the -- Court's indulgence.

2 It would be on page five, number one, Lisa
3 Duran's observations of the defendant beating Deborah Panos
4 in the face while yelling at her, I would offer, by way of
5 proof, the testimony which at the preliminary hearing Lisa
6 Duran basically recounted her relationship with the victim,
7 Deborah Panos in this case. They were co-workers
8 together.

9 THE COURT: Was this information at the --

10 MS. SILVER: Yes.

11 THE COURT: So you are going to publish the
12 preliminary hearing transcript as evidence at this time?

13 MS. SILVER: I could do that if the Court
14 would like. I could do that for the record. Court's
15 indulgence.

16 THE COURT: Mr. Brooks.

17 MR. BROOKS: Judge, we are anticipating the
18 actual witness would come in and testify.

19 THE COURT: Then let's go ahead and have the
20 witness then.

21 MS. SILVER: That's fine.

22 Just by way of an offer of proof, she
23 basically was working with Deborah Panos that day. She
24 looked outside the window of her work and she could see
25 Deborah Panos and the defendant in a vehicle, at which time

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 she noticed that the victim was crying, as they appeared to
2 be arguing. The defendant was yelling at the victim and,
3 at some point, the defendant basically took his hand, open
4 handed, and slapped the victim across the face and Deborah
5 Panos then exited the vehicle, went into work, and that's
6 all. Nothing was ever said about it. They just observed
7 this battery and that did come out at the preliminary
8 hearing as well.

9 As to page five, number two, I have listed
10 down University Medical Center records and testimony of
11 Deborah Panos' broken nose of January 9th of 1995 as a
12 result of the defendant battering Deborah Panos. I have
13 for an offer of proof, your Honor.

14 THE COURT: I think for the purpose of the
15 offer, you can just submit the medical records at this
16 point.

17 MS. SILVER: Well, there is actually --

18 THE COURT: A custodian of records?

19 MS. SILVER: There's going to be testimony
20 as well. Actually, the doctor should be able to testify
21 and also the medical records.

22 THE COURT: I understand. In this hearing
23 this morning?

24 MS. SILVER: No. I'm sorry, not for this
25 hearing, just for the trial and the doctor and the medical

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1 records would be the offer of proof.

2 THE COURT: All right. Well, let me see the
3 medical records at this time and I'll admit them as Court's
4 Exhibit A for the purpose of the Petrocelli hearing.

5 Have you seen these records, Mr. Brooks?

6 MR. BROOKS: I may have seen part of them,
7 Judge, in examining the evidence.

8 MS. SILVER: I have provided them to the
9 defense, your Honor.

10 THE COURT: All right, what is next?

11 MS. SILVER: Additionally, we have the same
12 January incident, we would be providing the testimony of
13 Officer Giersdorf, G-I-E-R-S-D-O-R-F, who would state that
14 around midnight of January 9th, 1995, he was dispatched to
15 Ballerina Mobile Home Park where the battered occurred. He
16 got a 911 call via the fire department and when he got to
17 that location, he noticed the victim. She had already been
18 in the ambulance, she had blood covering her face, her
19 ears, her hair, and that her nose was bleeding profusely.
20 There appeared to be lacerations on her nose, there
21 appeared to be blood as well and lacerations on her
22 forehead, and she was complaining of being in pain and she
23 was upset. She had a hard time, trouble talking because of
24 the blood and, basically, she told the officer that the
25 defendant, James Chappell, had beaten her in the face. She

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1 was unsure of what it was. I believe he had --

2 THE COURT: All right. What is your next
3 offer?

4 MS. SILVER: Just, also for the record, your
5 Honor, that he then went into the residence, he contacted
6 the defendant to ask his side of the story, and that the
7 defendant admitted to hitting the victim in the face with a
8 plastic cup and, at that point, he arrested the defendant
9 for domestic violence.

10 That would be that instance, your Honor, and
11 if I might address the clerk and have this marked as an
12 exhibit.

13 THE COURT: Is this from the January 9
14 incident?

15 MS. SILVER: Yes, that's the medical
16 documents.

17 As far as the domestic battery of June 1st,
18 1993, it's listed as number three, where the defendant
19 threatened Deborah with a knife, I have by way of offer of
20 proof, if the Court would give me some indulgence on this,
21 I would find it. I have a certified copy of a judgment of
22 conviction from that battery out of the City.

23 Additionally -- oh, I need to go back. I'm
24 sorry, your Honor. I also forgot on the January 9th, 1995
25 battery, we will also be presenting to the Court a

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1 certified copy of a Family Court application for temporary
2 protective order by fax and a temporary protective order
3 issued by fax. These are certified documents issued by
4 Judge Marren, Deborah Panos being the plaintiff and the
5 defendant James Chappell being the defendant.

6 For the record, I have provided the defense
7 with both of these items. I'd ask that they also be marked
8 as Exhibits B and C at this time and we'd also be providing
9 the testimony regarding the fact that a woman by the name
10 of Tonya Hobson prepared that document, that, basically, to
11 explain to the jury that a victim contacts them by way of
12 phone, and that she prepares the document, which goes to
13 the judge, and the perpetrator is actually served with that
14 order while incarcerated and he was served that evening.
15 If you look at the order, that was done on an emergency
16 basis and he was served with that order in the early
17 morning hours of January 10th of 1995, according to those
18 official court documents, and that would be as to that,
19 again January 9th.

20 Going back to the domestic battery of June
21 1st of 1995, I would, by way of testimony, be offering the
22 testimony of Officer Williams who was dispatched to a
23 domestic violence call on June 1st of 1995 in the evening
24 hours to the Ballerina Mobile Home Trailer Park --

25 THE COURT: Is this going to be in this

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1 hearing or at trial?

2 MS. SILVER: I'm making a offer of proof as
3 to what this person would testify to at trial.

4 THE COURT: No, I understand that.

5 MS. SILVER: No, not at this hearing.

6 MR. BROOKS: Judge, we are asking the State
7 show clear and convincing evidence of this acts.

8 THE COURT: You said an hour. We are a half
9 hour into the hearing. When are we going to hold this
10 hearing?

11 MS. SILVER: Well, we are trying right now.

12 THE COURT: I understand, but I'm trying to
13 account for the jury coming in this afternoon at 1:30 and I
14 want to do this and you are entitled to this.

15 MR. HARMON: Your Honor, I think the
16 confusion lies on which witnesses we actually intend to
17 offer at this hearing.

18 THE COURT: Right.

19 MR. HARMON: We're making a offer of proof
20 in lieu of testimony.

21 THE COURT: That was not clear to me.

22 MS. SILVER: I'm sorry.

23 MR. HARMON: So she is almost through with
24 the offer proof.

25 THE COURT: Oh, okay. All right.

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1 MR. BROOKS: Judge, our position remains
2 that the State must show, by actual witnesses taking the
3 stand, each prior bad act that the State intends to prove.

4 MR. HARMON: Well, we have to show by clear
5 and convincing evidence, but it doesn't have to be through
6 testimony. Petrocelli makes that clear. In fact,
7 Petrocelli was an offer of proof.

8 THE COURT: Yes, I understand.

9 MR. BROOKS: Petrocelli was reversed.

10 THE COURT: Not for that reason.

11 MS. SILVER: Again, we would be offering the
12 testimony of Officer Williams, who arrived on June 1st of
13 1995. He observed the victim's demeanor as crying and
14 upset. As an excited utterance, we would be offering the
15 victim's statements to the police officer that the
16 defendant began to argue with the victim about five to 10
17 minutes prior to his arrival at the location and that --

18 THE COURT: What events are you talking
19 about now?

20 MS. SILVER: This is June 1st, 1995.

21 THE COURT: All right.

22 MS. SILVER: And that, as a result of the
23 argument, the defendant basically threw her down onto the
24 bed, he became violent with her, he jumped on top of her,
25 he placed his knees over her arms, and then he pulled out a

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1 knife and threatened her with that knife and, ultimately, a
2 friend named Clair began to knock on the door and then also
3 the police arrived and that was the --

4 THE COURT: So this is also a spontaneous
5 utterance?

6 MS. SILVER: Yes, as an excited utterance to
7 the police officer.

8 Additionally, your Honor, if the Court could
9 indulge me just a moment, I have the conviction.

10 THE COURT: Was this a misdemeanor battery?

11 MS. SILVER: Yes, your Honor.

12 I have a one, two, three, four, five, six
13 page stapled document. They are all certified. It's a
14 judgment of conviction from a plea of guilty to battery on
15 Deborah Panos on 8 -- excuse me -- August 30th, 1995, the
16 day before her murder. It also is a two page judgment
17 signed by Tony Abbatangelo, the Municipal Judge. It has
18 two pages of court minutes and on the last page is the
19 criminal complaint, which is also certified, showing that
20 the victim is Deborah Panos. I have provided this as well
21 to the defense. I ask that this be marked as State's
22 Exhibit, I believe we are up to D.

23 MR. BROOKS: Judge, if in fact the Court
24 rules that evidence of a prior domestic battery, in terms
25 of testimony of the actual battery, is going to be

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1 admitted, we understand that, in fact, the State may be
2 allowed to get in the judgment of conviction of the battery
3 that supported it happened.

4 MS. SILVER: We're not going to do that at
5 the trial. We are not going to say he was convicted.
6 We're just offering this conviction for the purposes of
7 Petrocelli.

8 MR. BROOKS: We want to make sure that our
9 position is that should not go in front of the jury at all
10 because --

11 MS. SILVER: That's fine.

12 THE COURT: It's just part of the offer of
13 proof.

14 MS. SILVER: It's just an offer of proof,
15 your Honor. If I could have that marked as D.

16 THE COURT: I'm sorry, I was confused. I
17 thought you were going to actually bring in live testimony
18 this morning. That's why it would prove to be more
19 perfunctory than it is. You can continue with your
20 Petrocelli hearing.

21 MS. SILVER: Thank you.

22 Finally, for the Petrocelli offer of proof,
23 we would also, as you can see from our supplemental Points
24 & Authorities for the motion for prior bad acts, it's our
25 position that the threats made by the defendant to Dina

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1 Freeman are actually not bad acts. They are just threats,
2 but we would specifically be, if this is allowed in, as the
3 Court has already stated it's inclined to allow it in,
4 basically three items. Just for the Court's knowledge,
5 that this is a co-worker at the Tucson Police Department
6 with Deborah Panos. This woman, Dina Freeman, is a police
7 dispatcher. The victim in this case was a 911 operator for
8 the police department. They became friends, they were
9 friends about five years, they worked together, and they
10 were friends, and that, in 1999, the victim would stay over
11 her house a lot, she wouldn't go home. That between
12 February '94 and September of '94, a period of about six or
13 seven months, that there was a telephone call made to her
14 by the victim, Deborah Panos, that the victim was screaming
15 and crying and said that the defendant had jumped on her.
16 She could hear the defendant in the background, whose voice
17 she knew, as she was friends with the victim, and she could
18 hear the defendant saying, "He didn't care what she did, if
19 she ever F'd around in front of his kids, he would kill her
20 ass," and she could hear him calling her names, but she
21 wasn't sure of the names.

22 There is a second telephone call that was
23 made before the victim moved to Las Vegas in September of
24 '94 and she would testify that it occurred approximately
25 August of 1994 where Deborah again called Dina Freeman up

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1 crying and she could hear the defendant in the background
2 saying either give me the car or you give me some money
3 cause I know you are F'ing around on me. You are not going
4 to Dina's house everyday for nothing. I'm going to do an
5 OJ Simpson on your ass.

6 I would also note to the Court that there
7 is, I believe, one last thing -- oh, excuse me, two more
8 things.

9 There was also another telephone call
10 approximately Thanksgiving of 1994, when Dina was here in
11 Las Vegas. According to her statement and what we would
12 offer by testimony, she was crying and heard the defendant
13 again in the background tell her that he was going to do an
14 OJ Simpson on her ass and to let him take the car and that
15 she could also hear the children present.

16 Finally, she would basically testify that
17 between February of 1994 and when the victim left for Las
18 Vegas, which was September of 1994, a period of six months,
19 that the victim was often seen at work with bruises,
20 bruises on her face, on her eyes, that she would cover up
21 these bruises with makeup, and that she saw bruises on her
22 arms.

23 We would submit to the Court that that would
24 be observations as well as these are threats made by the
25 defendant and not necessarily what you would "deem other,"

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1 you know, crimes like the batteries that we've been
2 prepared to introduce.

3 Thank you, your Honor. We would submit that
4 as our offer of proof for Petrocelli.

5 THE COURT: So, in summary, you are going to
6 be offering Lisa Duran's observations of the Defendant
7 beating Deborah Panos in the face while yelling at her,
8 that's number one?

9 MS. SILVER: Yes.

10 THE COURT: And that relates to what event
11 chronologically?

12 MS. SILVER: I have it out of chronological
13 order in my motion. It's actually close to Christmas 1994
14 when she lives here in Las Vegas.

15 THE COURT: All right, 12/94.

16 MS. SILVER: Yes, your Honor.

17 THE COURT: All right, University Medical
18 Center records of Deborah Panos' broken nose of January 9,
19 1995?

20 MS. SILVER: Yes, and Officer Giersdorf as
21 well.

22 THE COURT: Will testify about his
23 observations and her statements to him?

24 MS. SILVER: Correct, your Honor.

25 THE COURT: And then the domestic battery of

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1 June 1, 1995 where the defendant allegedly threatened the
2 victim with a knife which resulted in his conviction,
3 incarceration, and release within two years -- with two
4 hours of her murder.

5 MS. SILVER: Yes.

6 On number two, your Honor, we had also been
7 prepared to -- we submitted the T.R.O., which was the
8 temporary protective order issued out of Family Court. So
9 that would be added to number two as part of the testimony
10 of that battery and she was so in fear, she went --

11 THE COURT: So domestic battery, June 1,
12 1995 is a separate --

13 MS. SILVER: Yes, your Honor, and that would
14 be Officer Williams and he would testify not only to the
15 threat with the knife, but that the defendant jumped on top
16 of her.

17 THE COURT: And domestic battery February
18 23rd, 1994.

19 MS. SILVER: That's the Tucson incident
20 where she contacted the off duty officer, who dispatched
21 Officer Earnst to the scene.

22 THE COURT: And this is Dina?

23 MS. SILVER: Finally, Dina Freeman.

24 THE COURT: Dina Freeman will testify with
25 regard to that.

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1 MS. SILVER: No. Officer Earnst will
2 testify to the domestic battery when the defendant was
3 arrested by Officer Earnst.

4 THE COURT: In February '94?

5 MS. SILVER: Yes.

6 THE COURT: In Tucson?

7 MS. SILVER: Yes.

8 THE COURT: And spontaneous other incidents
9 that occurred at that time?

10 MS. SILVER: Right, and then Dina Freeman as
11 far as the threats --

12 THE COURT: All right.

13 MS. SILVER: -- just made over the
14 telephone.

15 THE COURT: And at this time you are not
16 going to be -- this is your offer of proof, but you are not
17 going to be bringing in live testimony at this point?

18 MS. SILVER: Not for this hearing.

19 MR. BROOKS: We would object to that, your
20 Honor.

21 THE COURT: I understand.

22 Let me quickly look at the Deering decision
23 before you argue because I know that this is what you are
24 going to be arguing at this point.

25 MR. BROOKS: Okay.

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1 THE COURT: Well, Deering, according to the
2 headnote, Deering does involve an excited utterance of a
3 live witness and a different evidentiary rule was brought
4 into play.

5 MS. SILVER: Lopez does not.

6 THE COURT: To wit: the rehabilitation by a
7 prior consistent statement.

8 MS. SILVER: Lopez does not, your Honor.
9 That's a dead victim and I can give the Court that case as
10 well.

11 THE COURT: Because that's a factor that the
12 Court can consider on the issue of liability -- I mean on
13 reliability and the right of confrontation.

14 MS. SILVER: I do have U.S. Supreme Court
15 law on the confrontation clause as far as the excited
16 utterances go, as well --

17 THE COURT: I just want to see the Lopez
18 decision.

19 MS. SILVER: Lopez. Thank you.

20 THE COURT: Bring it forward.

21 MS. SILVER: Court's indulgence.

22 THE COURT: These excited utterances that
23 you are talking about are all made upon immediate
24 confrontation with the police or Dina Freeman?

25 MS. SILVER: Actually the one with Dina

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1 Freeman, the defendant is yelling out in the background of
2 what he is doing. She actually hears him screaming at
3 her.

4 THE COURT: They are immediately upon her
5 contacting the police --

6 MS. SILVER: Dispatch, yes. Two of them are
7 dispatched here in Las Vegas and the one in Arizona, she
8 got out of the residence and actually within -- she was
9 able to contact that officer within approximately half hour
10 of it occurring. She actually contacted the off duty
11 officer first.

12 THE COURT: Right.

13 All right, your argument, Mr. Brooks.

14 MR. BROOKS: Judge, there is three issues
15 here I think that need to be touched upon.

16 First of all, the purpose of a Petrocelli
17 hearing is the State is to provide clear and convincing
18 evidence, as we understand it, through testimony that
19 allows this to be evaluated.

20 THE COURT: Which Petrocelli case are you
21 talking about?

22 MR. BROOKS: The Petrocelli hearing as to
23 these witnesses to show clear and convincing evidence of
24 these prior bad acts.

25 THE COURT: Well, I have 101 Nevada 46, the

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1 '85 case in front me at this point.

2 MS. SILVER: I also have Armstrong, your
3 Honor, at 110 Nevada.

4 THE COURT: He says Petrocelli was
5 reversed. Here it says it was affirmed.

6 MR. BROOKS: I must be referring to a
7 different one, Judge.

8 THE COURT: All right.

9 MR. BROOKS: Our position is that we cannot
10 evaluate these witnesses to determine whether there's clear
11 and convincing evidence without them taking the stand.

12 Secondly, Judge, in terms of foundation for
13 the excited utterances, we have had no foundation presented
14 here by an actual witness regarding an actual excited
15 utterance. In fact, some of these cases we know that the
16 person that Ms. Logue -- Ms. Silver is talking about is not
17 the first officer she talked to, but rather the second
18 officer.

19 For example, when Deborah Panos talked to
20 Officer Earnst in Tucson, she actually ran up to one other
21 officer first and reported things. That's the officer who
22 might have the excited utterance. Later, she talked to
23 Officer Earnst, but we don't know that because we can't
24 have the testimony.

25 And, finally, Judge, it is our position all

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1 of this is putting the cart before the horse when you
 2 consider that the defense has stipulated, in a filing of
 3 September 10th, that we are stipulating that James Chappell
 4 caused the death of Deborah Panos by stabbing her with a
 5 kitchen knife and the act was not an accident and we will
 6 also stipulate it was not self-defense and because of that,
 7 there is no reason to bring in these prior bad acts except
 8 to show character evidence and the State has made no
 9 showing at all that these witnesses can say anything
 10 regarding motive. We have a pattern of conduct, but a
 11 pattern of conduct is not necessarily a pattern of motive.

12 So we object to any prior bad evidence in
 13 light of our prior stipulation that he killed the woman.

14 THE COURT: Now you have offered the
 15 stipulations. They have not accepted it.

16 MR. HARMON: Your Honor, we're certainly
 17 prepared to accept the stipulation. That's something we
 18 wanted formalized today. However --

19 THE COURT: If that is true, then the issues
 20 you are speaking about are during the guilt phase.

21 MR. HARMON: No, I don't agree with that at
 22 all.

23 THE COURT: Certainly this evidence is
 24 admissible.

25 MR. HARMON: They --

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1 THE COURT: One at a time.

2 Certainly the evidence is admissible by way
3 of hearsay at the penalty phase.

4 MR. HARMON: The defense is stipulating --
5 agreeing to stipulate and we're saying on the record we
6 accept their stipulation, number one, that he entered the
7 residence on the day of the crime through the window, but
8 they don't say it was a burglary. They just admit that he
9 entered into the window. They are saying that after he got
10 inside, he had sexual relations with her. They aren't
11 saying that it was forcible. They are just acknowledging
12 that that happened and, of course, there is D.N.A. to prove
13 in this case that it happened.

14 THE COURT: All right.

15 MR. HARMON: They're saying that he killed
16 her and it wasn't an accident. They aren't saying that the
17 offense is voluntary manslaughter or second degree murder
18 or first degree murder. They are saying that he did it
19 because he was jealous.

20 THE COURT: So this is all motive and
21 intent?

22 MR. HARMON: All this is evidence of his
23 state of mind, of his motive, his intent. The issue in
24 this case is going to be whether he premeditated and we
25 submit, your Honor, we have a right to bring out the

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1 evidence of the pattern of conduct which certainly
2 buttresses our ultimate conclusion that before he was
3 released from the jail, he had decided to murder her.

4 Now the jury is going to have to decide
5 whether that theory accurately describes what happened
6 here, but that's our theory and all this relates to the
7 state of mind of the defendant.

8 THE COURT: So it relates to one of the
9 elements of your cause of action against this defendant?

10 MR. HARMON: It does and they are admissible
11 because the jury may or may not accept the stipulation. I
12 realize we're undoubtedly going to instruct them that they
13 have an obligation to do so, but we're suggesting, yes, we
14 accept their stipulation, but we're asking the Court for
15 permission to proceed with our proof nevertheless because
16 we have to convince the jury beyond a reasonable doubt.

17 THE COURT: All right.

18 MS. SILVER: If I could --

19 MR. BROOKS: Judge --

20 THE COURT: I will let Mr. Brooks finish his
21 argument.

22 MR. BROOKS: Judge, excluding the statement
23 by Dina Freeman regarding, "I'm going to do an OJ Simpson
24 on your ass," which is a separate type of thing here in
25 relation to the other evidence offered by the State, we

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1 have not heard anything that said why these different
2 events occurred and I'm not sure if any of these things
3 really tell us why they occurred except to say they have
4 happened and the problem is we have this type of pattern of
5 domestic violence, it's highly inflammatory to the jury, it
6 paints him as a wife beater. In this case, she was
7 essentially his common law wife and the problem is --

8 THE COURT: He's admitted now he is a wife
9 killer.

10 MR. BROOKS: Right, but the problem is
11 that's how highly inflammatory it is, but that's for
12 character evidence. He's a wife beater and the problem,
13 Judge, this doesn't tell us why. None of this evidence
14 does, none of it at all.

15 Dina Freeman's statement is the only
16 statement that sheds light on whether or not there is some
17 motive here, but the problem with Dina Freeman's statement
18 is that we are talking about a woman in Tucson, Arizona
19 talking on the telephone with Deborah Panos and Deborah
20 Panos, as the testimony will show, had been in and out of
21 that trailer over and over again. She had many different
22 boyfriends. How does she possibly know which person it was
23 in that trailer.

24 MS. SILVER: That's --

25 MR. BROOKS: She can't. She can't show it

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1 and the reason she can't show it is because she didn't see
2 who made the statement and she can't identify who made the
3 statement and James Chappell was in jail almost half the
4 time they lived in Las Vegas. We don't even have a date
5 for that conversation.

6 THE COURT: Well, there has to be --

7 MS. SILVER: There is a date. That was in
8 1994 when she lived in Tucson with the defendant. That's
9 when those calls came. Not in Las Vegas. If you looked at
10 my brief and listened to my argument --

11 THE COURT: No, no. Don't address comments
12 to him.

13 MS. SILVER: But it is in 1994. It has
14 nothing to do with Las Vegas. When Dina Freeman is getting
15 called by the victim, she is in Tucson.

16 THE COURT: I understand that.

17 MS. SILVER: Additionally --

18 THE COURT: You have laid a foundation for
19 that.

20 Go ahead, Mr. Brooks.

21 MR. BROOKS: Judge, obviously, I may be
22 wrong on that aspect of the case. However, even if she was
23 living in Tucson, if she is talking about living in Tucson
24 and she's talking to somebody on the telephone, she can't
25 identify who is talking in the background. She doesn't see

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1 the person speaking and that's hardly clear and convincing
2 evidence that James Chappell said that. James Chappell
3 will take the stand and testify clearly he never said
4 that.

5 So, Judge, in summary, we are in a situation
6 here where we will object throughout the trial with regard
7 to the lack of foundation with regard to these statements,
8 but we also believe that we need to evaluate the evidence
9 from the witness stand as to these people to see whether or
10 not they are in fact credible witnesses of these alleged
11 acts and then, finally, the State has made no showing all
12 of what in the world these are going to show. It will
13 inflame the jury because, in fact, we've stipulated to the
14 main point they want to prove. We are not contesting
15 identity. We are not contesting that he killed her.

16 MS. SILVER: If I could, your Honor.

17 THE COURT: Yes, in reply.

18 MS. SILVER: My entire argument of the law
19 in every case I cited to the Court, including Nevada, which
20 is Hogan versus State, it allowed in, in a cases where it
21 was a murder case, it allowed in prior evidence that the
22 defendant has thrown his girlfriend to the ground and they
23 did it not as to identity, but "to demonstrate ill will as
24 a motive for the crime and the Court found that the threats
25 made by the defendant to the victim prior to the murder

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1 were also admitted as proper excited utterances."

2 I go on, your Honor. My entire brief to the
3 Court is filled with various California Supreme Court
4 cases, all of which say that this is more probative than
5 prejudicial. Time and time again, this has come in, prior
6 threats, prior abuse in case after case in order to show
7 intent to kill and motive.

8 Additionally, your Honor, it's interesting
9 to note that in the threats the defendant was making in the
10 background in which Dina Freeman overheard --

11 THE COURT: The jury can assess her
12 credibility as to whether that's the voice she heard.

13 MS. SILVER: Exactly, but, additionally,
14 it's interesting to note that the defendant is threatening
15 to do an OJ Simpson on her ass and in the end, the
16 defendant did do an OJ Simpson on this woman. He did slice
17 her throat. He didn't choke her, didn't put a bullet in
18 her head, he sliced her throat the same way.

19 So there's some reliability, again at least
20 for purposes of this hearing, that the defendant threatened
21 to do this, he intended to do it, and he carried out what
22 he intended to do. It's probative for motive. The defense
23 in their opposition could not cite even one case that said
24 that this evidence does not come in. All they can do is
25 throw in a stipulation and say, oh, gee, the State doesn't

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1 need to present this in their case, but they don't cite to
2 this Court not one legal argument for this, not one case,
3 not one statute, and what the State has presented is a
4 multitude of case law and statute.

5 THE COURT: And your argument is that you
6 can make an oral offer of proof on this point to satisfy
7 the burden by putting the witness on the stand at trial and
8 that would satisfy the clear and convincing evidence
9 standard?

10 MR. HARMON: That is our position,
11 absolutely, your Honor, and, in fact, that's the way it was
12 done in the Petrocelli case the Court referenced.

13 THE COURT: That's the way it appears to
14 have been done, according to the discussion at pages 51 and
15 52 of Petrocelli, 101 Nevada 46.

16 MR. HARMON: Yes.

17 THE COURT: All right, does the matter on
18 this issue stand submitted?

19 MR. BROOKS: Yes, sir.

20 MS. SILVER: Yes.

21 MR. BROOKS: Yes, Judge, we would like an
22 individual ruling as to each one of the admissions.

23 THE COURT: Well, I'm going to allow Lisa
24 Duran's observation of the defendant beating Deborah Panos
25 and yelling at her in December '94.

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1 I will allow the admissions of the
2 University Medical Center records and testimony regarding
3 Deborah Panos' broken nose in January of 1995 as a result
4 of a battery committed by the defendant.

5 I will also allow the existence of the
6 temporary protective order to be admitted. I believe that
7 has definite probative value as to premeditation and the
8 domestic battery of June 1, 1995 will be admitted along
9 with the domestic battery of February 23rd, 1994 in Tucson,
10 Arizona.

11 I believe that there has been -- the offer
12 of proof, at least as it is presented in Court, lays a
13 proper foundation for the admission of excited utterances
14 and is a hearsay exception and on that basis, the Court
15 finds that at least the offer would demonstrate that the
16 State will be able to prove by clear and convincing
17 evidence that these events occurred.

18 MS. SILVER: How about as to --

19 THE COURT: In conformance with Petrocelli.

20 Now we have to move onto the question of the
21 two motions in limine that were brought by the defendant.

22 MS. SILVER: Is your ruling preventing us
23 from bringing in Dina Freeman as to the threats she had
24 heard over the phone made by the defendant?

25 THE COURT: No, no. I'm allowing that as

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1 well.

2 MS. SILVER: Thank you, your Honor.

3 THE COURT: Sorry. That was part and parcel
4 of the order. I was reading from page five and six of your
5 motion.

6 MS. SILVER: Thank you, your Honor.

7 THE COURT: When are those? What's the date
8 of those threats, Ms. Silver?

9 MS. SILVER: Your Honor, as to the first
10 telephone conversations, the date of that would be February
11 of 1994; some time in February of 1994 to approximately
12 September of 1994. The second phone call was just before
13 she moved to Las Vegas in September of 1994. So that's
14 estimated about August of 1994 and the last --

15 THE COURT: And she heard those threats?

16 MS. SILVER: She heard them and she can say
17 it's the defendant's voice.

18 THE COURT: All right.

19 MS. SILVER: And, finally, there was one in
20 Thanksgiving where she heard the defendant, again over the
21 phone, and that was Thanksgiving of '94. So about November
22 of '94.

23 THE COURT: Okay, next motion is the
24 defendant's motion in limine regarding events related to
25 his arrest for shoplifting on September 1, 1995. I

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1 understand -- what's the State's position on that?

2 MR. HARMON: Your Honor, it's our position
3 that evidence of the shoplifting is admissible as proof of
4 intent and motive. We have alleged in the Information that
5 on the day before August the 31st, in addition to murdering
6 Deborah Panos, that the defendant forced his way in to the
7 residence with the intent to commit larceny and/or assault
8 or battery.

9 We also have alleged robbery with use of a
10 weapon and, in fact, he did take the vehicle, he did take
11 social security cards, but there wasn't really anything
12 much of value there. It certainly is pertinent to his
13 state of mind the day before that he's out stealing the
14 very next day. It's not remote in time. It is something,
15 as counsel suggests, yes, we can bring out that he had on
16 him the victim's property, including the keys. We can
17 bring that out without mentioning the details of the petty
18 larceny arrest, but what we're alleging is that he had the
19 motive to steal the day before and, in fact, had that as
20 part of his motivation for entering and, in fact, stole or
21 tried to steal, in connection with the murder, within 24
22 hours, he is observed stealing property at a Lucky
23 supermarket and it's certainly our position that this is
24 evidence of his intent and motive. If that was his state
25 of mind, if he wanted to steal on September the 1st, then

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1 undoubtedly he wanted to steal also on August the 31st,
2 1995 and we think the jury is entitled to hear that
3 information.

4 THE COURT: What is your position on the
5 defendant's motion in limine regarding the details of the
6 defendant's release from jail and the fact he was on
7 probation?

8 MR. HARMON: Your Honor, they don't need to
9 know that he was on probation for a gross misdemeanor.
10 They don't need to hear the testimony of Parole & Probation
11 regarding the details. In fact, we had already concluded
12 before the motion that we would reserve that evidence for a
13 penalty hearing, if it becomes necessary.

14 However, it is important, without
15 identifying anything except domestic battery, for the
16 prosecution to be able to establish that he was in custody
17 because he wrote letters that we intend to offer suggesting
18 a custodial setting and it's furthermore crucial --

19 THE COURT: What stimulated his custody
20 status from which he was released just before this
21 incident?

22 MR. BROOKS: He was released because of a
23 probation violation.

24 THE COURT: No, no. Why was he in custody?

25 MR. BROOKS: Domestic violence.

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1 THE COURT: On this victim?

2 MR. BROOKS: Domestic violence and a
3 shoplifting warrant.

4 THE COURT: But he was in jail because he
5 was -- because of a domestic violence incident involving
6 the victim in this case?

7 MS. SILVER: Yes, your Honor.

8 MR. BROOKS: Correct.

9 MR. HARMON: He was in jail. They were also
10 trying to revoke his probation on the gross misdemeanor.

11 THE COURT: All right.

12 MR. HARMON: That was involved in that, but,
13 Judge --

14 THE COURT: I see.

15 MR. HARMON: -- we don't even, beyond the
16 domestic violence, need to have the Court rule. We don't
17 need to tell the jury that he was involved with a gross
18 misdemeanor or anything else.

19 THE COURT: Well, to that extent, the motion
20 is granted, but I think the fact that he was in custody
21 because of a domestic violence issue involving this victim
22 is highly probative on the question of motive.

23 MR. HARMON: Well, it is. The release and
24 the timing, of course, of the murder, which occurs within a
25 few hours of the release.

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1 THE COURT: The fact that he was released
2 and the fact that the murder occurred within that time
3 frame is certainly admissible, as far as the Court is
4 concerned, but the fact that he was on probation and why he
5 was on probation doesn't need to be conveyed to the jury.

6 MR. BROOKS: We would also ask, Judge, in
7 relationship to that motion, that there be no mentioning of
8 this story regarding Mr. Duffy telling him to go enter a
9 drug treatment program and him not going.

10 THE COURT: I'll accept the State's
11 assurances that won't be introduced in the guilt phase of
12 the trial.

13 MR. BROOKS: Right.

14 MR. HARMON: You have our assurance.

15 THE COURT: All right.

16 So the only other issue then is the
17 shoplifting incident the next day.

18 MR. BROOKS: Judge, I have heard Mr.
19 Harmon's arguments and the Court seems inclined, and my
20 impression is, to accept his arguments. I'm surprised the
21 State is treading on this kind of dangerous ground to
22 suggest that shoplifting on another day and going into a
23 supermarket and taking a bottle of liquor is the same thing
24 as going in somebody's home and killing them for the
25 purposes of stealing. I think it's a tremendous stretch

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1 and is not probative.

2 THE COURT: I'm going to reserve ruling on
3 this aspect of this. I think this is a more marginal offer
4 of proof than the others. What I'm going to do is await
5 the presentation of the evidence of this crime and then
6 I'll make a determination as to whether or not its
7 prejudicial value outweighs its probative effect and so
8 I'll accept another offer of proof later on in the trial on
9 that issue.

10 MR. HARMON: That will be fine.

11 In terms of establishing that the defendant
12 was in custody for domestic violence and the timing of his
13 release from custody, is that something that we can handle
14 just by way of stipulation since the Court has ruled or is
15 it going to be necessary to put Officer Duffy of the
16 Department of Parole & Probation on? We certainly would be
17 prepared to stipulate that he was in custody for domestic
18 violence, that he was released at about 9:00 in the morning
19 on August the 31st, 1995.

20 THE COURT: That's fine.

21 MR. HARMON: He met briefly with -- we don't
22 even, I suppose, have to mention that he met someone, but
23 he had an agreement to report back to law enforcement at
24 1:30 in the afternoon and didn't keep that.

25 MS. SILVER: Actually --

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1 THE COURT: Do you want this?

2 MS. SILVER: It's at 10:45 according to the
3 testimony.

4 THE COURT: Do you want --

5 MR. HARMON: He was released at 9.

6 MR. BROOKS: Judge, I would like to think
7 about that.

8 THE COURT: That's fine, but in the absence
9 of a stipulation, I will allow that evidence because I
10 think that's obviously, to use an outdated phrase, part of
11 the res gestae of the alleged events.

12 MR. HARMON: Very well, your Honor.

13 Before we conclude, to return to the
14 defense's offer to stipulate, because we would like to know
15 for sure to stand by that, are they formalizing that offer
16 now? Do they still stand by the things --

17 THE COURT: It's filed as part of the record
18 in the case.

19 MR. BROOKS: The offer to stipulate has been
20 made on the record and we will at this time stipulate to
21 those four facts as phrased in the offer at this time.

22 THE COURT: So you can read that stipulation
23 to the jury in your opening statement, Mr. Harmon.

24 MR. BROOKS: That's correct.

25 THE COURT: Or Ms. Silver.

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1 MR. HARMON: Very good.

2 MS. SILVER: Court's indulgence.

3 THE COURT: Whoever it is.

4 MR. HARMON: Ms. Silver is going to give the
5 opening statement.

6 THE COURT: Let's very briefly talk about
7 scheduling. We will come back at 1:30 for jury selection
8 today. I intend to take us until about 6:00 this evening.
9 I have vacated my civil calendar tomorrow. There is one
10 brief matter at 9:00. We could start jury selection at
11 8:30 in the morning, but I'll leave that to the parties.

12 You have no other case responsibilities
13 during the next two weeks, Mr. Brooks?

14 MR. BROOKS: I do not, Judge. I don't mean
15 to sound manipulative here, obviously, we have a situation
16 where we are going to slow down and be speeding up. I will
17 let the Court know my problem. Dr. Etcoff, for the defense
18 cases, is not available Friday morning or Monday. He is
19 available Friday afternoon or Tuesday morning for us.

20 THE COURT: You mean next Tuesday?

21 MR. BROOKS: Yes. Also we have --.

22 MR. HARMON: Is he available this Thursday?

23 MR. BROOKS: He is available this Thursday
24 afternoon.

25 THE COURT: The two Wednesdays of these

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1 weeks, there are not going to be any proceedings. I think
2 everybody understood that from the beginning.

3 MR. HARMON: Yes.

4 THE COURT: We should be able to get the
5 jury by tomorrow. Does anybody have any senses about
6 that?

7 MR. HARMON: No, we anticipate getting a
8 jury tomorrow.

9 THE COURT: All right, let's do this. We
10 will try to start at 9:15 in the morning and so I think I
11 will get one civil hearing started and we should be able to
12 conclude jury selection by tomorrow. Hopefully, get to
13 opening statements.

14 MR. BROOKS: Just so the record is clear,
15 Judge, the reason Mr. Chappell is not dressed right now is
16 because we took clothes to him on Friday and the jail would
17 not let him try them on because he is in lock down and they
18 would not remove the devices he is currently constrained
19 by. When he came to court this morning, I took him back
20 and he tried the things on. So we have taken the clothes
21 over and I would ask the jail to have him dress out because
22 this is the court clothes for the jury.

23 THE COURT: Of course.

24 All right, anything further from the parties
25 at this time?

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IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

JAMES CHAPPELL,

S.C. CASE NO. 61967

Appellant,

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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 II  
~~~~~

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IN THE SUPREME COURT OF NEVADA

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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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