

1 Q In addition to a facial photograph, have
2 you photographed areas where it appears that there may
3 have been scratches and specifically a cut or cuts on
4 a small finger?

5 A Yes, sir, they do.

6 MR. HARMON: Your Honor, the State offers
7 Proposed Exhibits 49 and 51 through 54.

8 MR. BROOKS: No objection.

9 THE COURT: They will be received in
10 evidence.

11
12 (State's Exhibits 49, 51-54
13 admitted into evidence.)

14 MR. HARMON: Thank you.

15 BY MR. HARMON:

16 Q Analyst Spoor, you also mentioned that
17 you were to take custody and book anything of
18 evidentiary value that the defendant had on his
19 person?

20 A That's correct.

21 Q Did you also photograph certain areas --
22 certain items that had been removed from pockets or
23 the person of the defendant?

24 A Yes, sir, I did.

25 Q I'm showing you Proposed Exhibit 55.

1 Do you recognize that picture?

2 A Yes, sir, I do.

3 Q Did you take the photograph?

4 A Yes, sir, I did.

5 Q What is depicted in Proposed Exhibit 55?

6 A What is depicted is a plastic case
7 containing four social security cards with four
8 separate names, a small piece of metal, a cigarette
9 lighter, a small tube, a white pill, a rolled up
10 matchbook and a settle of keys.

11 Q Did you later learn in the investigation
12 that the set of keys included the ignition key to a
13 Toyota Corolla?

14 A That's correct. I would also like to add
15 that that is a box cutter. There should have been two
16 photographs taken there.

17 Q What is a box cutter?

18 A It is something that you can use to open
19 a box. It contains a blade such as razor blade which
20 can be detracted and retracted and used to cut a box
21 open.

22 Q Was it your understanding that the box
23 cutter had also been taken from the person of the
24 defendant, Mr. Chappell?

25 A Yes, sir.

1 Q You also have referred to the plastic
2 container which has in it, it appears, a social
3 security card or cards?

4 A Yes, sir, four separate social security
5 cards.

6 Q To your knowledge, were they also
7 recovered from the suspect, the defendant in this
8 case, Mr. Chappell?

9 A Yes, sir, they were.

10 MR. HARMON: Your Honor, the State offers
11 Propose Exhibit 55.

12 MR. BROOKS: No objection.

13 THE COURT: Same will be received in
14 evidence.

15
16 (State's Exhibit 55
17 admitted into evidence.)

18 MR. HARMON: Thank you.

19 BY MR. HARMON:

20 Q Did you at the request of the office of
21 the district attorney bring certain items of evidence
22 to court with you today?

23 A Yes, I did.

24 Q Did those items include the social
25 security cards?

1 A Yes, sir, they did.

2 MR. HARMON: Your Honor, may we have the
3 court's indulgence.

4 BY MR. HARMON:

5 Q Analyst Spoor, I'm showing you Proposed
6 Exhibit 78.

7 Do you recognize the evidence envelope?

8 A Yes, sir, I do.

9 Q Is this a container into which you placed
10 the plastic bag and four social security cards?

11 A Yes, sir, it is.

12 Q Is it in a sealed condition at the
13 present time?

14 A Yes, sir, it is.

15 Q I'm passing you a pair of scissors the
16 clerk has furnished. Will you cut the envelope open
17 leaving the seal intact.

18 Please remove the contents now describing
19 for the record what you have removed.

20 A I removed a small plastic case containing
21 four social security cards in the name of James Monte
22 Panos, Deborah Ann Panos, Anthony Michael Panos and
23 Chantel Latrese Panos.

24 Q Are these the four social security cards
25 which you recovered at the Lucky's supermarket at 4420

1 East Bonanza Boulevard, September the 1st, 1995?

2 A Yes, sir, they are.

3 Q Was it your understanding that these are
4 also the same cards which were taken from the person
5 of the defendant, Mr. Chappell?

6 A Yes, sir.

7 Q Are they in substantially the same
8 condition now as they were on the dates that you
9 recovered them?

10 A Yes, sir, with the additional of my first
11 initial, P number, and last initial to each item of
12 evidence.

13 MR. HARMON: Your Honor, may we have the
14 plastic holder and four social security cards marked
15 as Proposed Exhibit 78A.

16 THE COURT: Yes.

17
18 (State's Exhibit 78A
19 marked for identification.)

20 MR. HARMON: The State moves at this time
21 for the admission of the envelope, Proposed 78, and
22 the cards and the holder, Proposed 78A.

23 MR. BROOKS: No objection.

24 THE COURT: It will be received in
25 evidence.

(State's Exhibit 78, 78A
admitted into evidence.)

MR. HARMON: Thank you.

BY MR. HARMON:

Q You've also mentioned that in addition to going to the store that you responded to the Clark County Detention Center?

A That's correct.

Q Did you recover at that location certain of the articles of clothing worn by James Chappell at the time of his arrest?

A Yes, sir, I did.

Q Did you recover his clothes and shoes?

A I recovered his clothing. I believe his shoes were recovered at the Vons -- or, excuse me, the Lucky's.

Q At the Lucky's did you book the footwear worn by the defendant?

A Yes, sir.

Q Did you bring one of those items to court?

A Yes, sir, I did.

Q Was it the right boot or shoe?

A The right shoe, yes, sir.

Q Did you see evidence of any blood like

1 substance on the shoe?

2 A I believe so.

3 Q Analyst, I'm showing you an evidence bag
4 marked as Proposed 79.

5 Do you recognize the bag as a container
6 into which you placed an item of evidence?

7 A Yes, sir, I do.

8 Q What did you put inside?

9 A I put inside one black boot, Fila work
10 boot, right foot.

11 Q Now, Fila is the brand?

12 A Yes, sir.

13 Q You have described this as the right
14 shoe. I assume you impounded the left boot or shoe as
15 well?

16 A Yes, sir.

17 Q But you were asked simply to bring the
18 right boot to court; is that correct?

19 A That's correct.

20 Q Is the bag sealed at the present time?

21 A Yes, sir, it is.

22 Q Using the scissors once again that the
23 clerk has given us, will you cut the bag open leaving
24 any seals intact and then remove the contents.

25 For the record have you removed the right

1 shoe worn by the defendant when you encountered him at
2 the Lucky's foot store September the 1st, 1995?

3 A Yes, sir, I did.

4 Q Was he wearing the shoe when you first
5 saw him?

6 A I do not believe that he was wearing the
7 shoe.

8 Q Where was the shoe when you first
9 acquired it?

10 A I believe the loss prevention specialist
11 for Lucky's food market had the shoe.

12 Q And you got it from them?

13 A Yes, sir.

14 Q Was it represented that this was a shoe
15 worn by the defendant?

16 A Yes, sir.

17 MR. HARMON: Your Honor, may we have the
18 shoe marked as Proposed Exhibit 79A.

19 THE COURT: Yes.

20

21 (State's Exhibit 79A
22 marked for identification.)

23 BY MR. HARMON:

24 Q Is what will be marked as Proposed
25 Exhibit 79A, the right boot or shoe you recovered and

1 is it in substantially the same condition now as it
2 was when you acquired it September the 1st, 1995?

3 A Yes, sir, it is with the exception of a
4 business card from Terry Cook being attached to the
5 boot.

6 Q Is Terry Cook a criminalist at the Las
7 Vegas Metropolitan Police Department crime lab?

8 A Yes, he is.

9 Q Does it appear that he has examined the
10 right boot subsequent to your impounding this as
11 evidence?

12 A It looks like he has examined it because
13 he has attached his card to it.

14 Q To your knowledge if there is evidence of
15 a blood-like substance on an object would Mr. Cook be
16 one of the persons responsible for further analysis?

17 A Yes, sir, he would.

18 MR. HARMON: Your Honor, the State offers
19 Proposed Exhibits 79 and 79A.

20 MR. BROOKS: No objection.

21 THE COURT: It will be received in
22 evidence.

23
24 (State's Exhibit 79, 79A
25 admitted into evidence.)

1 MR. HARMON: May I again approach the
2 witness, your Honor.

3 BY MR. HARMON:

4 Q Analyst Spoor, did you prepare an impound
5 report which lists all of the items which were
6 potentially of evidentiary value which you recovered
7 September the 1st, 1995?

8 A Yes, sir, I did.

9 Q This has been marked by the clerk as
10 Proposed Exhibit 63 and consists of four pages.

11 Is that an impound report you prepared in
12 connection with this case?

13 A Yes, sir, it is.

14 Q Does it list all the items that you
15 recovered both at the store and at the Clark County
16 Detention Center?

17 A Yes, sir, it does.

18 Q Is it a true and correct copy of your
19 original impound report?

20 A Yes, sir, it is.

21 MR. HARMON: Your Honor, the State offers
22 Proposed Exhibit 63.

23 MR. BROOKS: We'll submit the question to
24 the court.

25 THE COURT: It's admitted.

(State's Exhibit 63
admitted into evidence.)

MR. HARMON: That concludes direct,
your Honor.

MR. BROOKS: No cross, your Honor.

THE COURT: May this witness be
discharged?

MR. HARMON: Yes, your Honor.

THE COURT: Thank you, sir. You may step
down.

Call your next witness.

MR. HARMON: Mark Washington.

THE CLERK: Do you solemnly swear the
testimony which you are about to give shall be the
truth, the whole truth and nothing but the truth, so
help you God?

THE WITNESS: I do.

MARK WASHINGTON,
having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HARMON:

Q Will you state your name for the record?

A Sure, Mark Washington.

1 Q Mr. Washington, what is your business or
2 occupation?

3 A I am a crime scene analyst for the Las
4 Vegas Metropolitan Police Department.

5 Q How long have you worked with the Las
6 Vegas Metropolitan Police Department?

7 A Just a little over two years.

8 Q Were you employed with that department on
9 August the 31st, 1995?

10 A Yes, I was.

11 Q Are you one of the crime scene analysts
12 who responded to the Ballerina Mobile Home Park to the
13 location of a homicide?

14 A That's correct.

15 Q Was the victim identified as Deborah Ann
16 Panos?

17 A That's my understanding.

18 Q Were you involved in collecting items
19 which may have had evidentiary value --

20 A Yes.

21 Q -- at the crime scene?

22 A That's correct.

23 Q Was that 839 North Lamb Boulevard, Space
24 125?

25 A That's correct.

1 Q In connection with impounding the
2 evidence, did you prepare an impound report which
3 lists every item that you recovered?

4 A That's correct.

5 Q Did it also describe the location where
6 you found the item?

7 A Yes.

8 MR. HARMON: May we have the court's
9 indulgence.

10 BY MR. HARMON:

11 Q Analyst Washington, I'm showing you a
12 three page document marked as Proposed Exhibit 61.
13 Are you able to identify what this is?

14 A This is the impound evidence sheet that
15 you spoke of just a second ago.

16 Q Is it a true and correct copy of the
17 original?

18 A Yes, it is.

19 Q Does it list every item of evidence which
20 you recovered from the crime scene in this case?

21 A Yes.

22 Q Was that done on August the 31st, 1995?

23 A Yes.

24 MR. HARMON: Your Honor, the State offers
25 Proposed Exhibit 61.

1 MR. BROOKS: No objection, your Honor.

2 THE COURT: The same will be received in
3 evidence.

4
5 (State's Exhibit 61
6 admitted into evidence.)

7 MR. HARMON: Thank you, your Honor.

8 BY MR. HARMON:

9 Q The following day, September the 1st,
10 1995, did you, in connection with your duties in the
11 same case, the homicide occurring August the 31st,
12 respond to the Vera Johnson housing project in the
13 area of 507 North Lamb Boulevard in Las Vegas?

14 A Yes, I did.

15 Q Did you take photographs in that area of
16 a Toyota Corolla vehicle which did not have license
17 plates?

18 A That's correct.

19 MR. HARMON: May I approach the witness,
20 Judge.

21 THE COURT: Sure.

22 BY MR. HARMON:

23 Q I am showing you Exhibit 56 and Proposed
24 Exhibits 57 through 60. Will you examine the
25 photographs in that series and tell us if they appear

1 to be photographs taken by you?

2 A I took these photographs, uh-huh, and
3 they depict the vehicle which I located that day.

4 Q Do they show the vehicle in exactly the
5 location where you observed it to be September the
6 1st, 1995?

7 A That's correct.

8 Q Was this in an area which was readily
9 visible from the street?

10 A No.

11 Q Describe where it was in relation to the
12 street?

13 A There was a parking lot that was a
14 circular in shape, horseshoe in shape, and one of the
15 buildings was here in that parking lot. And then
16 behind the building, actually in the commons area of
17 the grass, is where this vehicle was located.

18 Q Are these photographs a true and accurate
19 representation of the appearance and location of the
20 Toyota Corolla as you observed it September the 1st,
21 1995?

22 A Yes.

23 MR. HARMON: Your Honor, 56 is already in
24 evidence. The State now offers Proposed 57 through
25 60.

1 MR. BROOKS: No objection.

2 THE COURT: They will be received in
3 evidence.

4

5 (State's Exhibits 57-60
6 admitted into evidence.)

7 BY MR. HARMON:

8 Q Analyst Washington, did there come a time
9 that you were given a set of keys by Homicide
10 Detective Jimmy Vaccaro?

11 A Yes, there was.

12 Q Did you take those keys and attempt to
13 verify if the ignition key to the vehicle depicted in
14 Exhibits 56 through 60 was in the set of keys?

15 A Could you repeat that question?

16 Q Yes. I'm asking you if you had occasion
17 to use any of the keys that were given you by
18 Detective Vaccaro on the vehicle depicted in Exhibits
19 56 through 60?

20 A Yes, I did.

21 Q Tell us what you did?

22 A I took the key that he gave me that day,
23 and I took it and I drove the car from the back of the
24 lot onto the tow yard ramp-styled tow truck because
25 the tow truck wasn't able to go back in the common

1 grass area where the vehicle was located.

2 Q So you drove the vehicle from the common
3 grass area to where the tow truck was at?

4 A That's correct. And which was in the
5 U-shaped parking lot.

6 Q And you're saying that you used a key
7 provided to you by Detective Vaccaro?

8 A That's correct.

9 Q Was the vehicle shown in Exhibits 56
10 through 60 unlocked at the location where you saw it?

11 A I believe so, yes.

12 Q Was it an ignition key that was given to
13 you by the detective?

14 A Yes, it is.

15 Q To your knowledge where was the vehicle
16 shown in the Photographs 56 through 60 taken from the
17 location in the project area of North Lamb?

18 A That would be the northwest area of the
19 project.

20 Q Was it taken somewhere after that for
21 subsequent examination?

22 A Was the --

23 Q The vehicle.

24 A Yes, it was. After it was placed on the
25 tow truck, it was taken to the crime lab and examined

1 there.

2 Q Did you become involved in examining the
3 vehicle further at the crime lab?

4 A Yes, I was.

5 Q Did you end up recovering anything that
6 you felt might have evidentiary value?

7 A Yes, I did.

8 Q What did you recover?

9 THE WITNESS: Your Honor, may I refer to
10 my notes.

11 THE COURT: Yes.

12 THE WITNESS: Thank you.

13 BY MR. HARMON:

14 Q Perhaps we could do it this way. I'm
15 showing you Proposed Exhibit 65. Is this a copy of
16 your impound report which lists all items recovered
17 from the car?

18 A Yes, it is.

19 Q Is this the same car shown in the
20 photographs 56 through 60?

21 A Yes, it is.

22 Q Is it a true and correct copy?

23 A Yes, it is.

24 MR. HARMON: Your Honor, the State offers
25 the impound report at this time, Proposed 65.

1 MR. BROOKS: No objection.

2 THE COURT: Same will be received in
3 evidence.

4
5 (State's Exhibit 65
6 admitted into evidence.)

7 BY MR. HARMON:

8 Q If you will, Analyst Washington, by
9 referring to Exhibit 65, tell us what you recovered
10 from the car?

11 A I recovered a blood-like substance and
12 control.

13 Q Where did you find that?

14 A That was from the interior rear lower
15 trunk frame near the right rear brake light of that
16 same vehicle.

17 Q So you are talking about a location in
18 the trunk area of the car --

19 A Right.

20 Q -- but inside the trunk?

21 A Well, it was the trunk frame. There is
22 that little piece of metal and frame. Basically in
23 the trunk, yeah.

24 Q But it looked like blood to you and
25 that's why you recovered the substance?

1 A That's correct.

2 Q What was your procedure in recovering the
3 blood like substance?

4 A What you do is you take a Q tip, and you
5 moisten it with distilled water and you rub it in the
6 area.

7 Then you take the Q tip and you put it
8 into a vial and then close the vial; and then, of
9 course, there is the other side which is the control
10 part of the same evidence item in which you take
11 another Q tip, squirt distilled water onto it, and
12 then rub it in the area close to that but not touching
13 any of the blood and placing that into a vial and that
14 becomes that one item.

15 Q You said this is a control item?

16 A That's correct.

17 Q What do you mean by that?

18 A Well, sometimes the substance can be
19 affected by the surface that it's on.

20 Q The suspect substance?

21 A Yes. Right. So what that does is it
22 helps people who analyze those substance determine the
23 substance from the surface of the substance that it's
24 on.

25 So if, say, it had landed on a recently

1 fertilized -- say, you're taking a sample off a
2 recently fertilized grass next to a sidewalk and the
3 fertilizer was on the concrete and you were taking a
4 substance off that concrete, and fertilizer was in
5 that substance, then the control could help determine
6 those type things.

7 Q Thank you. Will you indicate the other
8 items that you recovered from the car, please.

9 A Sure. One black cloth steering wheel
10 cover. The seat cover from the driver's side. A
11 white handled serrated-edge knife which was in the
12 glove box, and a piece of paper which depicted a
13 change of court date with the name James M. Chappell
14 on it, and that was from the vehicle, also from the
15 trunk of the vehicle.

16 Q At the request of the district attorney's
17 office, did you bring to court the envelope and
18 container into which the sample of the blood-like
19 substance was placed?

20 A Yes, I did.

21 MR. HARMON: Will you produce that,
22 please. Thank you.

23 Your Honor, may we have this envelope
24 marked as the State's next in order.

25 THE COURT: Yes.

(State's Exhibit 80
marked for identification.)

BY MR. HARMON:

Q Analyst Washington, the clerk has now marked the envelope that you handed me as Proposed Exhibit 80.

Is this the envelope into which you placed the sample of the blood-like substance recovered from the rim of the trunk that is from the automobile portrayed in the photographs, Exhibits 56 through 60?

A Yes, it is.

Q Is it in a sealed condition at the present time?

A Yes, it is.

Q Can you tell by looking at the seals if there has been subsequent examination on this item?

A Yes, I can. This blue label indicates that it was opened and then re-sealed.

Q Leaving the seals intact will you cut the envelope open with the scissors the clerk has furnished?

A Sure.

Q Will you now remove the contents describing for the record what you have removed?

MARCIA J. LEONARD, CCR NO. 204, RPR

1 A This is the vial which contains the
2 control of that item that I just removed from there.

3 Q Does it contain -- it is just the control
4 which is still here, sir?

5 A Yes, uh-huh.

6 Q So you don't really know what happened to
7 the actual sample --

8 A No.

9 Q -- from the swab after you placed it
10 inside?

11 A No, I do not.

12 Q Can you tell by looking at any additional
13 markings or seals who has examined?

14 A It appears to me it's a department
15 serologist, Terry --

16 Q Terry Cook?

17 A Yes, Terry Cook examined this, and his
18 initials are here and also on the side here.

19 Q Is Mr. Cook a criminalist who has a
20 specialty in serology?

21 A Yes.

22 Q And he works for the Las Vegas
23 Metropolitan Police Department crime lab.

24 A That's correct.

25 Q When you originally recovered the blood

1 samples, was there a second swab which had the
2 blood-like substance on it inside of the bottle?

3 A There would only be one sample here. One
4 swab here, and one swab here. This would be
5 containing the sample and this would be containing the
6 control.

7 Q So the control swab sample is still there
8 but the blood like substance swab is now missing?

9 A That's correct.

10 Q And there is additional writing upon the
11 vial?

12 A Yes.

13 Q Except for those differences, is this, in
14 fact, the vial into which you placed both the sample
15 of the blood like substance and the control sample?

16 A Yes, it is.

17 Q And besides the differences that you have
18 already explained is it in substantially the same
19 condition otherwise?

20 A Yes.

21 MR. HARMON: Your Honor, we would like to
22 have the vial marked as Proposed Exhibit 80A.

23 THE COURT: That will be the order.
24
25

(State's Exhibit 80A
marked for identification.)

MR. HARMON: Nothing further.

MR. BROOKS: No questions, your Honor.

THE COURT: May this witness be
discharged.

MR. HARMON: Yes.

THE COURT: Thank you, sir. You may step
down.

Call your next witness.

MS. SILVER: Your Honor, the State would
call Dina Freeman.

THE CLERK: Do you solemnly swear the
testimony which you are about to give shall be the
truth, the whole truth and nothing but the truth, so
help you God?

THE WITNESS: I do.

DINA FREEMAN,
having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. SILVER:

Q Can you please state your name and spell
it for the record?

1 A My name is Dina Freeman, D-I-N-A,
2 Freeman, F-R-E-E-M-A-N.

3 Q Miss Freeman, how old are you?

4 A 35.

5 Q And what city do you live in?

6 A Tucson.

7 Q Tucson, Arizona?

8 A Yes.

9 Q What do you do in Tucson Arizona?

10 A I'm a police dispatcher.

11 Q For what department?

12 A The Tucson Police Department.

13 Q How long have you been a dispatcher with
14 the Tucson Police Department?

15 A I have been there 12 years.

16 Q And during your employment did you become
17 familiar with a person by the name of Deborah Panos?

18 A Yes, I did.

19 Q Approximately when did you meet her?

20 A Approximately five years ago, six years
21 ago maybe.

22 Q And how did you meet her?

23 A Working. I worked with her.

24 Q What did she do there?

25 A She was a police service operator.

1 Q Is that a 911 service operator?

2 A Yes, that is.

3 Q How does that work in comparison to your
4 John?

5 A She takes 911 calls and sends them to me,
6 and I send out a police officer.

7 Q Are you in the same vicinity or were you
8 in the same vicinity as her when you worked together?

9 A Yes, I was.

10 Q And how is that?

11 A Usually she'd sit right behind me.

12 Q So you generally worked in the same room?

13 A Yes, we do.

14 Q And through your employment did you
15 become friends with Deborah Panos?

16 A Yes, we did.

17 Q How long were you her friend?

18 A Shortly after she started.

19 Q What types of things would you do
20 together as friends?

21 A We did everything. We went to dinner,
22 movies, fair. She would come over to my house quite a
23 bit.

24 Q Do you have children?

25 A I have a daughter.

1 Q I'm sorry. I didn't hear that?

2 A I have a daughter.

3 Q And how old is your daughter?

4 A She's 11.

5 Q Are you also expecting a child right now?

6 A Yes, I am.

7 Q Would your daughter play with her
8 children?

9 A Not a lot. Usually it was just Debbie
10 that came to my house. So my daughter knew her pretty
11 well.

12 Q And you mentioned that she has children.
13 Are you aware of how many children that she has?

14 A Yes.

15 Q How many?

16 A She has three.

17 Q And what are their names?

18 A J.P., Anthony and Chantell.

19 Q J.P. is short for --

20 A James Panos.

21 Q When would it be fair to say that Debbie
22 became one of your best friends?

23 A Yes, she did.

24 Q And would it be fair to say that you were
25 also one of Debbie's best friends?

1 A Yes.

2 Q And through your relationship with her,
3 did you know a person by the name of James Chappell?

4 A Yes.

5 Q Or Chappell?

6 A Yes, I did.

7 Q Do you see him here in court today?

8 A Yes, I do.

9 Q Could you please point to him and
10 identify an article of clothing for the record?

11 A He's sitting right over there in the
12 middle with a gray suit on, no shoes.

13 MS. SILVER: Your Honor, may the record
14 reflect that the witness has identified the defendant.

15 THE COURT: Yes.

16 BY MS. SILVER:

17 Q Thank you. Did Deborah Panos live -- who
18 did she live with when she was in Tucson?

19 A She lived with James and her children.

20 Q And did they live in a house or a
21 trailer?

22 A She lived in a trailer prior to them
23 moving here.

24 Q And about -- do you remember about what
25 date it was that they moved here to Las Vegas?

1 A It was in September. I don't remember
2 the exact date.

3 Q And what year was that?

4 A '94, I believe.

5 Q So up until September of 1994 -- well,
6 from the time that you met her, would it be fair to
7 say, 1990, in that area?

8 A Yes. Pretty close.

9 Q So up from 1990, or in that area, up
10 until she left in September of 1994, you were friends
11 with her and you worked with her?

12 A Yes.

13 Q During the time that you worked with
14 Deborah, did she ever come into work with injuries?

15 A Yes, she did.

16 Q What types of injuries?

17 A She would have bruises on her face or on
18 her arm.

19 Q And what would she do in regards to those
20 injuries on her face?

21 A She would wear heavier make-up in one
22 area. It wasn't real even all the time.

23 Q Did you have discussions with her about
24 how she received these bruises?

25 A Yes, I did.

1 Q Did you also have discussions with her
2 regarding her relationship with the defendant?

3 A Yes, I did.

4 Q During the time period that you knew
5 Debbie, approximately that four year period, did
6 Debbie have more than one job?

7 A Yes, she did.

8 Q Sometimes she had two jobs?

9 A Yes.

10 Q What were her other jobs?

11 A There was one of them that I remember she
12 worked at a Sears cataloging type place for a while.
13 And she had another one, but I can't remember where it
14 was that she worked.

15 Q And that was also in addition to her
16 working at the police department as well?

17 A Yes.

18 Q To your knowledge did the defendant have
19 a job?

20 MR. BROOKS: Objection, irrelevant.

21 THE COURT: Overruled.

22 THE WITNESS: No.

23 BY MS. SILVER:

24 Q Were you aware of about how old Debbie
25 was when she met the defendant?

1 A Yes.

2 Q And how old was that?

3 A I believe that she told me that it was 15
4 or 16. She was in high school.

5 MR. BROOKS: I'm going to object to
6 hearsay, your Honor.

7 THE COURT: Overruled.

8 BY MS. SILVER:

9 Q You stated that she was about 15 or 16
10 but she was in high school?

11 A She was in high school, yes.

12 Q And that's when she first began dating
13 the defendant?

14 A Yes.

15 Q Were you aware of where she and the
16 defendant were from originally?

17 A Yes.

18 Q Where was that?

19 A She was from --

20 MR. BROOKS: I'm going to object to any
21 testimony where she is simply relating information
22 related to her by Deborah Panos. It's clearly
23 hearsay.

24 THE COURT: Not necessarily. It's not
25 necessarily that it be admissible. There is an

1 exception under which this is admissible.

2 Miss Silver.

3 MS. SILVER: I believe that it's the
4 state of mind of the victim in this case.

5 MR. BROOKS: State of mind of the victim
6 is not a hearsay exception.

7 THE COURT: NRS 51.015 states, "A
8 statement of the declarant's then existing state of
9 mind, emotion, sensation, or physical condition, such
10 as intent, plan, motive, design, mental feelings,
11 pain, and bodily health is not admissible under the
12 hearsay rule."

13 Overruled.

14 MR. BROOKS: There is case law that --

15 MS. SILVER: I'm not going to go into
16 anything else other than the Michigan.

17 THE COURT: That's a statement of family
18 history and, therefore, it's admissible.

19 All right. Go ahead.

20 MR. BROOKS: May I make a record on this,
21 please, with regards to the present sense impression.

22 MS. SILVER: It's not present sense
23 impression. It's a state of mind.

24 MR. BROOKS: Correct. The case law says
25 the victim's state of mind is relevant only if we're

1 discussing self-defense, accident or suicide. If the
2 victim's state of mind is the issue here --

3 THE COURT: What is that?

4 MR. BROOKS: There is a case State v
5 Shultz, 616 P 2d. 388.

6 THE COURT: Is that a Nevada Supreme
7 Court case?

8 MR. BROOKS: Yes, it is.

9 MS. SILVER: I'm familiar with that case
10 as well, your Honor. And I can state to the court
11 what the facts of that case were very briefly.

12 MR. BROOKS: I don't have a copy of the
13 case. I just have a cite, I believe. However, in
14 this case, it's our position that she cannot testify
15 to the state of mind of the victim unless the issues
16 are self-defense, accident or suicide.

17 MS. SILVER: That's not what that case
18 says.

19 THE COURT: I agree. Overruled. Go
20 ahead.

21 MS. SILVER: Thank you.

22 THE WITNESS: I forgot the question now.

23 BY MS. SILVER:

24 Q Were you aware of where the defendant and
25 the victim were originally from?

1 A Yes, she was from Lansing, Michigan.

2 Q And were you aware of why she moved to
3 Arizona?

4 A Yes.

5 Q And why was that?

6 A Her mother had moved out here because her
7 stepfather had real bad emphysema and needed to be in
8 Arizona.

9 Q So she moved to Arizona to be close to
10 her mother?

11 A Yes.

12 Q During the time in 1994 were there times
13 that Deborah stayed with you at your home?

14 A Yes.

15 Q Would she stay with the children as well?

16 A When she came to my home?

17 Q Yes.

18 A No, she would be alone.

19 Q Directing your attention between the time
20 period of February of 1994 and September of 1994 do
21 you recall getting a phone call from Deborah Panos?

22 A Yes, I do.

23 Q And one in particular that perhaps caused
24 you concern?

25 A Yes.

1 Q And when you -- did she call you or did
2 you call her?

3 A No, she called me.

4 Q And what was her demeanor like on the
5 phone?

6 A She was upset, crying.

7 Q And did she tell you why she was calling
8 you?

9 A Yes, she did.

10 Q Why was that?

11 A She said that her and James were
12 fighting.

13 Q Did she say that he had done something to
14 her?

15 MR. BROOKS: I'm going to renew my
16 objection, your Honor, as hearsay.

17 THE COURT: To lay a foundation to this
18 pursuant to the court's previous order --

19 MS. SILVER: Your Honor --

20 THE COURT: You have to let me finish,
21 please.

22 MS. SILVER: I'm sorry.

23 THE COURT: -- you have to establish some
24 time frame in which the event occurred, the events
25 described occurred, and when the statement was heard.

1 MS. SILVER: I believe that I asked you
2 just a moment ago was this between February of 1994
3 and September of 1994.

4 THE COURT: I'm talking about the time
5 frame within which the event described occurred and
6 when it was relayed to the witness.

7 MS. SILVER: Okay.

8 BY MS. SILVER:

9 Q Did she tell you that something had just
10 occurred?

11 A Yes, she did.

12 Q And could you hear the defendant in the
13 background?

14 A Yes, I could.

15 Q Did you recognize his voice?

16 A Yes, I did.

17 MR. BROOKS: Renew the objection as
18 speculation and hearsay.

19 THE COURT: Overruled.

20 BY MS. SILVER:

21 Q And, of course, you had met him, at least
22 you had known him for about four years previous to
23 this date?

24 A Yes.

25 Q And so you recognized his voice in the

1 background?

2 A Yes, I did.

3 Q And to your recollection, do you remember
4 if you could hear the children at all?

5 A No, I could not. It was late at night.
6 We had just gotten off work at 11:00.

7 Q And at that time what did she tell you
8 happened?

9 A She told me that they had had a fight,
10 and I could hear him in the background.

11 Q And what did you hear -- how was he
12 speaking, can you describe that?

13 A His voice was raised at her also.

14 Q And what did he say?

15 A The part that I heard him say was "I
16 don't care what you do in front of" -- no, he said, "I
17 don't care what you do, but you don't fuck around in
18 front of my kids because I will kill you."

19 Q Did he say that he would kill her ass?

20 A Yes.

21 Q Did you hear him call her any names?

22 A Yes, I did.

23 Q Do you remember specifically what types
24 of names he was calling her?

25 A There was so many that I couldn't

1 pinpoint exactly which ones they were.

2 Q Can you give us an example of what types
3 of names he was saying?

4 A He was calling her slut, white bitch, she
5 was a whore, that type stuff.

6 Q Was there a time period prior to this
7 phone call that the defendant was not living in
8 Tucson?

9 A Yes.

10 Q Do you know where she had gone?

11 A To Michigan.

12 Q And would it be fair to say that when he
13 returned that's when this phone call occurred?

14 A Yes, it was the night that he came back.

15 Q During this time period that you were
16 friends with Debbie back then, to your knowledge was
17 she seeing anyone?

18 A She had met a guy. They were not really
19 dating. They were friends. She spent the majority of
20 her time at my house so they didn't really have time
21 to date, but that's what the argument was about.

22 Q But it was not a man that she was
23 actually dating?

24 A No.

25 Q Apparently he was a friend?

1 A Yeah.

2 Q Just before she moved to Las Vegas in
3 September of 1994, around August of 1994, did you
4 receive another phone call from Debbie?

5 A Yes, I did.

6 Q And when she called you, can you tell us
7 what her demeanor was?

8 A She was crying, upset.

9 Q And could you hear the defendant again in
10 the background?

11 A Yes, I could.

12 Q And what was the defendant saying this
13 time?

14 MR. BROOKS: Again, we'll object to all
15 of the information as to the statements for hearsay
16 and lack of foundation.

17 THE COURT: The court has already made a
18 previous ruling on it. You can have a continuing
19 objection.

20 THE WITNESS: He wanted the car. He told
21 her to give him the car or he was going to do an O.J.
22 Simpson on her ass.

23 BY MS. SILVER:

24 Q Did he mention again any suspicions that
25 he had?

1 A Not in that conversation. Not while I
2 was on the phone with her.

3 Q Did he ask her -- do you recall him
4 saying anything about your home?

5 A Yes. He said that she wasn't hanging out
6 at my house everyday for nothing.

7 Q When he said that he was going to do an
8 O.J. Simpson on her, was this after the homicide
9 involving O.J. Simpson?

10 A Yes.

11 THE COURT: By the way, for the record,
12 there is an argument that can be made that these
13 statements actually are not hearsay under the Nevada
14 Rules of Evidence.

15 In fact, they may be offered to prove the
16 truth of the matter that they happened, but to
17 establish intent or state of mind.

18 MS. SILVER: Thank you.

19 BY MS. SILVER:

20 Q Finally around Thanksgiving of 1994, was
21 Deborah Panos here in Las Vegas during that time
22 period?

23 A Yes, she was.

24 Q And do you recall receiving another phone
25 call from her?

1 A Yes, I did.

2 Q And what was her demeanor like this time?

3 A She was upset, crying.

4 Q Could you hear the defendant again in the
5 background?

6 A Yes, I could.

7 Q Could you also hear the children in the
8 background as well?

9 A Yes, I could.

10 Q And what did you hear the defendant tell
11 her this time?

12 A I heard him tell her that he was going to
13 do an O.J. Simpson on her ass and he wanted the keys.

14 Q The keys to the car?

15 A To the car.

16 Q Whose decision was it to move to Las
17 Vegas in September of 1994, if you know?

18 A Hers.

19 Q Did the defendant follow her in that
20 decision?

21 A Yes.

22 Q I wanted to go back and ask you. You
23 stated that there was a time period that the defendant
24 had gone back to Michigan, and the evening that he
25 came home you recall the first of what we heard about

1 of the three phone calls mentioned.

2 How long was he in Michigan?

3 A Approximately two months.

4 MS. SILVER: Thank you. That would
5 conclude direct examination.

6 THE COURT: Cross.

7 MR. BROOKS: Thank you, Judge.

8

9 CROSS EXAMINATION

10 BY MR. BROOK:

11 Q Miss Freeman, you have worked for the
12 police department for how long again?

13 A 12 years.

14 Q In the course of your work there you've
15 obviously been exposed to domestic violence on the
16 telephone?

17 A Yes, I have.

18 Q And you were aware that domestic violence
19 is very dangerous?

20 A Yes.

21 Q And you're aware that sometimes people
22 get killed in domestic violence?

23 A Yes.

24 Q And you certainly would not underestimate
25 the importance of domestic violence, would you?

1 A No.

2 Q Now, when you heard this conversation on
3 the telephone in which you claim that James Chappell
4 made threats to her, you took them seriously, didn't
5 you?

6 A Yes, I did.

7 Q But did you call the police?

8 A No, I did not.

9 Q Did you see about getting any type of
10 help for Debbie?

11 A I offered my home to her.

12 Q Did she accept it?

13 A Yes, she did.

14 Q How long did she stay with you?

15 A She was there everyday. There was times
16 that she didn't even go home.

17 Q Did you encourage her to call the police?

18 A Yes, I did.

19 Q Did you encourage her to see a counselor?

20 A Yes, I did.

21 Q Did she see a counselor?

22 A Yes, she did.

23 Q Which counselor did she see?

24 A It's a counselor that's through the
25 police department.

1 Q What is the name of that counselor?

2 A I'm not sure which ones she spoke with.

3 Q Do you know the name of the counseling
4 service?

5 A It's not a service. It's just offered
6 through the police department as counseling.

7 Q Do you know how long she saw this
8 counselor?

9 A I have no idea.

10 Q You have indicated that you spoke to her
11 apparently on three occasions on the telephone when
12 you heard James in the background; is that correct?

13 A Yes.

14 Q How much interaction have you had with
15 James yourself?

16 A Well, he called my house everyday and
17 left messages on my answering machine.

18 Q Had you ever had conversations with him
19 in person?

20 A Yes, he's been to my house. My child's
21 birthday party.

22 Q How many times have you all been
23 together?

24 A That was probably the second, third time
25 that we socialized together.

1 Q And how many times in total would you say
2 that you all socialized together?

3 A Probably a total of three times other
4 than on the phone.

5 Q Did you ever go out to a restaurant with
6 James and Deborah?

7 A No, I did not.

8 Q Did you ever socialize with them in any
9 other way?

10 A No.

11 Q You've indicated that James went back to
12 Michigan. Do you know how many times he went back to
13 Michigan?

14 A He went back once that I know of.

15 Q You don't know the other times that he
16 might have gone back to Michigan?

17 A No.

18 Q You don't know the exact arrangements
19 that were made for him going back and forth, do you?

20 A I know what I was told.

21 Q But in terms of what you, yourself, know
22 you do not know?

23 A No.

24 Q I think that you've testified that James
25 didn't have a job; is that right?

1 A That's true.

2 Q Are you aware that he ever had a job
3 while he was in Tucson?

4 A I believe that he worked at the
5 McDonald's for a week or two.

6 Q Would it be possible in your mind that he
7 might have worked other places for short periods of
8 time as well?

9 A Not that I can recall.

10 Q But it's possible that you may not know
11 for sure?

12 A That's true.

13 Q Because you do not keep up with all of
14 his work and life?

15 A No.

16 Q When you heard him getting mad at her,
17 did you ever see him get mad at her in person?

18 A No, I did not.

19 Q You only heard this on the telephone?

20 A Yes.

21 Q And it seems like you heard extended
22 conversations on the telephone while you were talking
23 to Deborah?

24 A Yes.

25 Q Do you know who else witnessed these

1 conversations?

2 A On the phone?

3 Q Yeah.

4 A It was only her and I on the phone.

5 Q Was anybody else there in the trailer
6 that you know?

7 A James and the kids.

8 Q Anybody else that you know of?

9 A No.

10 Q Anybody else in the room with you when
11 you heard those?

12 A My daughter was sitting there.

13 Q Would you describe his state of mind
14 towards her as being extremely jealous?

15 A I can't say if he was extremely jealous
16 or not. All I can tell is that he was upset.

17 Q Could you tell that he was extremely
18 possessive of her?

19 A It appeared that way.

20 Q And she obviously knew about this?

21 A That he was extremely possessive?

22 Q Yes.

23 A I'm not sure if she really realized that
24 or not..

25 Q Despite these statements that you just --

1 A I mean this is my perception. I don't
2 know what hers was.

3 Q So from your perspective, the fact that
4 she heard these statements might not suggest that she
5 thought that he was possessive?

6 A That could be.

7 MR. BROOKS: Thank you. No further
8 questions.

9
10 REDIRECT EXAMINATION

11 BY MS. SILVER:

12 Q Defense counsel asked you whether or not
13 you ever saw Deborah and James or were aware of
14 Deborah and James socializing?

15 A Uh-huh.

16 Q Do you recall that and whether or not
17 they had gone to restaurants? You have to say yes or
18 no for the record?

19 A Oh. Ask me that again.

20 Q Okay. When you answer a question though
21 you have to say yes or no because the court reporter
22 cannot pick up uh-huh.

23 A Okay.

24 Q Okay. Defense counsel asked you on
25 cross-examination whether or not you were aware of

1 whether or not the defendant and Deborah socialized or
2 went to restaurants together?

3 A Yes.

4 Q Do you recall the defendant ever taking
5 her out to dinner?

6 A No, I do not.

7 Q Taking her to restaurants?

8 A No.

9 Q Taking her out dancing?

10 A No.

11 Q Taking her to the movies?

12 A No.

13 Q Doing anything that a normal boyfriend
14 would do for a girlfriend?

15 A No.

16 Q How did he treat her?

17 A From what I could tell is he was very
18 controlling. He ran the relationship and what he said
19 went.

20 Q He would tell her what to do?

21 A Yes.

22 Q Would it be fair to say that she
23 supported him?

24 A Yes.

25 Q Did you encourage Debbie as a friend to

1 get out of this relationship?

2 A No, I did not.

3 Q Why is that?

4 A Because I felt like Debbie was an adult.
5 I respected the way that she felt for him, but I
6 encouraged her that -- what I did do was give her my
7 opinion about what I would not tolerate.

8 Q And this was something that you would not
9 have tolerated?

10 A Yes, exactly.

11 Q Did she love the defendant?

12 A Yes, she did.

13 MS. SILVER: I don't have anything
14 further.

15 MR. BROOKS: No further questions, your
16 Honor.

17 THE COURT: May this witness be
18 discharged?

19 MR. HARMON: Yes, your Honor.

20 THE COURT: How long is your next witness
21 going to be?

22 MR. HARMON: I would say about ten
23 minutes.

24 THE COURT: If it's going to be ten
25 minutes, we'll take a recess then. If it's going to

1 be longer than that, we can do it now.

2 MR. HARMON: I don't know for sure, but I
3 think that about ten minutes.

4 THE COURT: Everybody comfortable? All
5 that we need is one dissenting vote.

6 Call you next witness.

7 MR. HARMON: Jeri Earnst.

8 THE CLERK: Do you solemnly swear the
9 testimony which you are about to give shall be the
10 truth, the whole truth and nothing but the truth, so
11 help you God?

12 THE WITNESS: I do.

13

14 JERI EARNST,

15 having been first duly sworn, testified as follows:

16

17

18 DIRECT EXAMINATION

19 BY MR. HARMON:

20 Q Will you state your name, please.

21 A My name is Jeri Earnst.

22 Q Please spell your names for the record?

23 A Jeri, J-E-R-I. Last name Earnst,
24 E-A-R-N-S-T.

25 Q Are you employed?

1 A Yes, I am.

2 Q What is your business or occupation?

3 A I'm a police officer with the City of
4 Tucson.

5 Q Officer Earnst, how long have you been
6 employed with the Tucson Police Department?

7 A With the Tucson Police Department
8 slightly over 17 years with a total of 20 years plus
9 of law enforcement now.

10 Q 20 years plus in all?

11 A Yes, sir.

12 Q Were you an officer with the Tucson
13 Police Department in Tucson, Arizona, on February the
14 23rd, 1994?

15 A Yes, I was.

16 Q On that day did you have occasion in the
17 City of Tucson to make contact with a citizen
18 identified to you as Deborah Panos?

19 A Yes, I did.

20 Q Where is it that you made contact with
21 Miss Panos?

22 A That would be at a Frys supermarket. A
23 grocery store at 16th and Ajo.

24 Q 16th and --

25 A A-J-O.

1 THE COURT: Ajo. I'm sorry. I went to
2 school there.

3 BY MR. HARMON:

4 Q Approximately what time was it that you
5 made contact with Miss Panos at that intersection?

6 A That would be about 9:30 at night is when
7 we actually arrived at that location.

8 Q You said that it was at a store?

9 A Yes.

10 Q You said it was Frys?

11 A Yes.

12 Q Will you spell that also?

13 A F-R-Y-S.

14 Q What was your purpose in making contact
15 with Deborah Panos?

16 A I had been advised by an officer that
17 works in an off-duty capacity at that location that he
18 had a domestic violence victim at that location that
19 needed a uniformed officer to respond.

20 Q Who was the officer you spoke with that
21 was off duty?

22 A That was Ed Niedkowski.

23 Q Will you spell Niedkowski, please.

24 A No.

25 Q Would N-I-E-D-K-O-W-S-K-I be pretty

1 close?

2 A Okay.

3 THE COURT: Two tries is all that you
4 get, Mr. Harmon.

5 BY MR. HARMON:

6 Q As a result of the conversation you had
7 with the off-duty officer did you then contact Miss
8 Panos?

9 A Yes, I did. She was present when he was
10 relating the information to me as to what -- how he
11 had been contacted by her.

12 Q So you responded to the location of the
13 Frys store and off-duty officer and the alleged victim
14 were both at that location?

15 A Yes, sir.

16 Q Inside or outside the store?

17 A Outside the store.

18 Q Did you then conduct some sort of
19 interview of Deborah Panos?

20 A Yes, I then walked her away from the
21 crowd and over toward where I had parked my vehicle to
22 speak with her in private.

23 Q Tell us what occurred at that time?

24 A She related to me that --

25 MR. BROOKS: Object.

1 BY MR. HARMON:

2 Q Before you go into what she related, will
3 you describe how she acted when you walked the short
4 distance away?

5 A She was standing off and not doing much
6 of anything at first. When Officer Neidkowski advised
7 me of what had happened, I then needed to speak with
8 her to determine whether I had enough to pursue this
9 for an investigation for an arrest.

10 Q So you apparently went off a short
11 distance with her?

12 A Yes, I did.

13 Q What I'm asking you is when you went a
14 short distance away and the two of you began to talk
15 one to one, how did she act?

16 A She started crying.

17 Q How long did you spend talking with her?

18 A I was with her out there probably about
19 20 minutes, maybe 25 before we went.

20 Q You said that she started crying. Did
21 she cry throughout the interview?

22 A Yes, she did.

23 Q Was she to you obviously upset?

24 A Yes, she was.

25 Q What, if anything, in addition to the

1 crying caused you to conclude that this individual was
2 upset?

3 A She was afraid. She did not want to go
4 back. I asked her --

5 MR. BROOKS: I'm going to object to
6 hearsay and to lack of foundation for excited
7 utterance.

8 MR. HARMON: I think that we have shown
9 the foundation, your Honor.

10 MR. BROOKS: We object to lack of
11 foundation. We don't know how much time passed since
12 the actual event.

13 THE COURT: That was going to be my next
14 concern.

15 MR. HARMON: We'll address that.

16 BY MR. HARMON:

17 Q Did you learn in connection with the
18 investigation when the alleged event had occurred?

19 A At approximately a half hour before my
20 arrival at the Frys, which would make it right around
21 nine o'clock.

22 Q And so it was your understanding that you
23 were speaking with a lady about 30 minutes after the
24 event had happened?

25 A That's correct.

1 MR. BROOKS: Defense would object. Our
2 position is that 30 minutes is clearly enough time for
3 the victim to reflect on what has happened which takes
4 the statements that she makes outside the excited
5 utterance rule.

6 THE COURT: Case law seems to clearly
7 indicate that that time frame is acceptable for
8 the admission of the statement as an excited utterance
9 under NRS 51.095.

10 MR. HARMON: Thank you.

11 BY MR. HARMON:

12 Q So you have testified that when you began
13 to talk with her, she started to cry?

14 A Yes, she did.

15 Q Was she emotional throughout the
16 interview?

17 A Yes, she was.

18 Q What did you ask her and what, if
19 anything, do you remember her saying to you?

20 A I asked her what had happened. She said
21 that she'd had a fight with her boyfriend. This was
22 her live-in boyfriend, father of her children. That
23 she had come home and had found that he had sold the
24 new dresser that she bought for her daughter. And she
25 was very upset about that and had confronted him about

1 it, and she had described that he had hit her not in
2 any specific area but had knocked her to the floor.

3 Q She told you that her boyfriend had hit
4 her and knocked her down?

5 A That's correct. Then she stated that
6 when she was trying to get up, he kicked her several
7 times in the leg and her right leg was extremely sore.

8 Q Did she complain to you at that time that
9 the leg was sore still?

10 A Yes, she did. She did refuse medical
11 attention.

12 Q Did she continue to be emotional as she
13 was giving you this account?

14 A Yes, she was.

15 Q You said that she was crying?

16 A She was.

17 Q Did you see tears on her face?

18 A Yes.

19 Q Do you know how it happened that the
20 police were contacted?

21 A She made -- she had driven from the
22 trailer. When she grabbed the kids and got in the car
23 and left, had driven straight to Frys because of the
24 fact that she knew that an off-duty officer worked at
25 that location, and that's specifically what she had

1 gone up there to do is go up there and make contact
2 with him.

3 Q The off-duty officer apparently had a
4 second job at Frys store?

5 A Yeah, they employ us in our police
6 capacity to work just strictly that particular
7 function that evening.

8 Q Did Miss Panos identify to you the name
9 of her boyfriend?

10 A Yes, she did.

11 Q Who had committed the acts of violence
12 upon her?

13 A Yes, she did.

14 Q Did you learn where it was that they
15 lived?

16 A Yes, I did.

17 Q What was the address that you learned?

18 A 1655 West Ajo. I think it was Space
19 Number 80, if I recall properly.

20 Q As a result of the information that you
21 had learned from Miss Panos, did you respond to 1655
22 West Ajo, Space 80?

23 A Yes, I did, along with another officer.

24 Q How soon after the interview of Deborah
25 Panos was this?

1 A Immediately at the conclusion where I
2 left her with Officer Neidkowski there at the Frys.
3 She did not want to go near the trailer while he was
4 still there.

5 Q You mentioned earlier that she expressed
6 being afraid of the boyfriend?

7 A That's correct.

8 Q Did it seem to be genuine fear to you as
9 you observed her manner?

10 A Yes, she would not get in the car. I
11 asked her if she wanted to show me where it was or
12 give me keys to get in the door, and she said that she
13 would not go back over there.

14 Q You said that you were contacted by some
15 other officers or other officers?

16 A One other officer.

17 Q Who was the other officer?

18 A Mark Vernon.

19 Q Vernon?

20 A Yes.

21 Q V-E-R-N-O-N?

22 A That one I can spell, yes.

23 Q I take it you and Officer Vernon then
24 proceeded to the address that she had given you?

25 A That's correct.

1 Q Did you make contact at that location
2 with an individual identified as James Chappell?

3 A Yes, I did.

4 Q Explain what happened when you approached
5 the residence?

6 A He was sitting inside watching TV.

7 Q Could you see into the trailer?

8 A Yes, I could. And I looked inside and
9 observed that he was sitting inside watching TV, and
10 we knocked a couple of times first and announced that
11 we were the police. And he finally said just come in.
12 He didn't ever get up from the couch to come out and
13 let us in.

14 Q Did you observe anyone else in the
15 trailer?

16 A No, I did not.

17 Q Could you actually see that as you waited
18 at the front door the individual that was inside was
19 simply watching television?

20 A That's what it appeared that he was
21 doing. The TV was on and he was sitting in front of
22 it looking at it.

23 Q Did Mr. Chappell seem to be upset?

24 A Well, he was when the police were there,
25 but --

1 Q Upset by the arrival of the police?

2 A That's correct.

3 Q Did you explain why you were there?

4 A Yes, I did.

5 Q Did he make any type of acknowledgment
6 regarding the incident?

7 A When I was reading over my report on the
8 slip that I had for the booking it says admissions
9 made, I've got "yes" circled. I do not recall what
10 was said.

11 Q You do not recall the specifics?

12 A Not specifically.

13 Q Was he taken into custody?

14 A Yes, he was.

15 Q For what, domestic battery?

16 A Yes, and he also had two warrants.

17 Q Okay. And as far as you know from the
18 cursory note written on your booking report, there was
19 some acknowledgment by the defendant in connection
20 with your contact with him that he had done something
21 to her?

22 A That's correct.

23 Q May we have the court's indulgence.

24 What do you remember about the demeanor
25 of the subject that you arrested, Mr. Chappell, that

1 evening?

2 A Extremely cocky.

3 Q You said what?

4 A Extremely cocky.

5 Q What do you mean by that?

6 A It was like all right, you're here, what
7 do you got to do, you know, let's get it done and go
8 away. No, it didn't seem there was any type of
9 surprise that we were there. It was just like he
10 didn't even care enough to get off the couch and let
11 us in.

12 Q Officer Earnst, while you were still
13 having contact with the victim, Deborah Panos, did you
14 give her any type of advice about calling 911 or he
15 getting in touch with the police?

16 A Yeah. I advised her that if she felt
17 like she needed to talk she could call me. I provided
18 her my pager number, which is always on, and told her
19 if she didn't want to call 911 based on the fact that
20 that's what she did for a living, that she could call
21 me and I would see if there was something that I could
22 do to help her out or get her into a shelter away from
23 the situation whatever she needed.

24 Q So you certainly did offer to help her
25 out?

1 A Yes, sir.

2 Q You gave her your pager number?

3 A Yes, I did.

4 Q Did she ever call you back after that --

5 A No, she didn't.

6 Q -- and ask you for assistance?

7 A No.

8 MR. HARMON: Thank you. That concludes
9 direct, your Honor.

10 THE COURT: Cross.

11

12 CROSS EXAMINATION

13 BY MR. BROOKS:

14 Q Officer Earnst, you're still with the
15 Tucson Police Department?

16 A Yes.

17 Q And you work how many days a week?

18 A It kind of depends. I'm in a different
19 function now.

20 Q Since this time back in 1994 when this
21 happened you have probably responded to how many
22 calls?

23 A Shortly after that I went into the
24 current assignment I'm in, so I haven't responded to
25 that many calls since.

1 Q Do you ever find that you have responded
2 to so many calls in the past that they tend to run
3 together?

4 A I've had those nights.

5 Q Do you rely a lot on your officer reports
6 to remember what happened?

7 A Some of it, unless there is something
8 special that stands out in my mind.

9 Q Apparently this case stood out in your
10 mind?

11 A She was one of our employees, yes.

12 Q I would like to just show you one thing
13 real quickly. I think this is your report.

14 Is there any mention in your report that
15 she was actually crying during the time that you were
16 talking to her? It did indicate that she was crying
17 earlier when she got hit by James. Is there anything
18 in your report about her crying at that time?

19 A No.

20 Q So this is something that you remembered
21 but you did not include in your report?

22 A I remember thinking how good she was
23 holding herself together while she was talking to the
24 other officer.

25 Q So apparently she contacted officers

1 Neidkowski first?

2 A Right.

3 Q And she talked to officer in this case.

4 Do you know how long she talked to him?

5 A I believe he called us at 2128. I think
6 that she must have got there about ten minutes prior.

7 Q I don't think in military terms. Like
8 9:30?

9 A 9:28, and I arrived at 9:30.

10 Q So what time do you estimate the actual
11 act of hitting on her occurred?

12 A Well, that's what she told me, it was
13 right at nine o'clock.

14 Q Roughly nine o'clock?

15 A Right.

16 Q So you started talking to her at about
17 what time?

18 A 9:30.

19 Q How long did you talk to her?

20 A Probably about 25 minutes.

21 Q I'm sorry?

22 A About 25 minutes, 20, 25.

23 Q You've testified here that she refused
24 medical care; is that correct?

25 A That's correct.

1 Q In your mind is there a difference
2 between refusing medical care and not requiring
3 medical care?

4 A It would be hard to tell. I have no way
5 to look below the skin, you know. That's something
6 that an individual would have to determine.

7 Q In your officer's report did you indicate
8 that she refused medical care or her wounds did not
9 require medical care in your report?

10 A I said that she did not. The victim was
11 complaining of pain in her right leg but did not
12 require medical attention. That's her words, not
13 mine. I can't make that determination for people.

14 MR. BROOKS: Thank you very much. No
15 further questions.

16 THE COURT: Redirect.

17 MR. HARMON: No redirect, your Honor.

18 THE COURT: May this witness be
19 discharged.

20 THE COURT: Thank you.

21 Ladies and gentlemen, we're going to take
22 our afternoon recess at this time. We'll reconvene 20
23 minutes after three o'clock.

24 During your recess, you are not
25 to discuss or converse among yourselves or with

1 anyone else on any subject connected with this trial
2 or read, watch or listen to any report of or
3 commentary on the trial or any person connected with
4 this trial by any medium of information including,
5 without limitation, newspapers, television or radio;
6 and you are not to form or express any opinion on any
7 subject connected with this case until it is finally
8 submitted to you.

9 We'll be at ease while you depart the
10 confines of the courtroom.

11
12 (Outside the presence of the jury.)

13
14 THE COURT: We're outside the presence of
15 the jury.

16 The first record I would like to make is
17 that one of the witnesses identifying the defendant
18 indicated that he was not wearing shoes. The record
19 will reflect that he has shoes and socks on today. He
20 just didn't have his shoes on when the witness was
21 describing him.

22 Second, the discussion in front of the
23 jury with regard to the case of Shults versus State,
24 96 Nevada 742, extracting from one of the headnotes
25 from the annotations to NRS 51.105.

1 It indicates that a prosecution for
2 murder, in order for state of mind exception to
3 hearsay rule to be applicable and allow testimony that
4 the victim stated that he was afraid of defendant,
5 victim's state of mind must be a relevant issue, the
6 relevance must be weighed against prejudice, and a
7 proper limiting instruction must be given or
8 objectionable testimony deleted.

9 The court finds as a matter of law that
10 the victim's state of mind was relevant to demonstrate
11 aggressiveness, and that the prejudicial effect is
12 outweighed by its probative value.

13 I'll ask the district attorney to prepare
14 a proper limiting instruction under State versus
15 Shults as to the probative value of this testimony.

16 MR. BROOKS: For the record, I think that
17 your cite is different than mine.

18 THE COURT: According to the legislative
19 counsel bureau annotations it is 96 Nevada 742, 616
20 Pacific 2nd 388, 1980, Supreme Court case.

21 MR. BROOKS: Thank you.
22
23

24 (Recess.)
25

1 (Outside the presence of the jury.)

2
3 MR. BROOKS: We have a short matter to
4 take up before the court begins when the court is
5 ready.

6 THE COURT: The court is ready.

7 Is the State ready? Should we wait for
8 Mr. Harmon?

9 MS. SILVER: Yes, please.

10 THE COURT: We're on the record outside
11 of the premises.

12 MR. BROOKS: I would like to make a brief
13 record regarding our position on all this evidence
14 that's coming in. We're obtaining a lot of evidence
15 here that's essentially, in our opinion, it's hearsay
16 evidence but it's essentially being brought in to show
17 the state of mind of the victim and the court has
18 clear --

19 THE COURT: Well, I also believe some of
20 this evidence is probing the state of mind of the
21 defendant.

22 MR. BROOKS: I'll address that in just a
23 moment, Judge. In the case of Shults v. State, the
24 case has stated in Keynote Number 16, just before we
25 had our recess. I would like the court to note that.

1 THE COURT: Let me have the case. Let me
2 see the case.

3 MR. BROOKS: I want the court to note
4 that Keynote 15 says hearsay statements as to a murder
5 victim's fear of defendant for implicating defendant
6 in robbery did not fall within statutory state of mind
7 hearsay exception where victim's state of mind was not
8 an issue since the defendant was not claiming
9 self-defense, accidental death or suicide as such
10 statements had the relevance. I want to make sure
11 that the court understands our position.

12 THE COURT: I understand that that is
13 your position. I also believe that that headnote does
14 not represent a general statement of the law for all
15 possible scenarios, and I believe that the State of
16 Nevada, if their reading of this case is similar to
17 mine, will argue that it's distinguishable.

18 MR. BROOKS: I would like the record to
19 reflect that our position is the state of mind of a
20 victim is not relevant, and this type of testimony
21 should not be allowed since we are, after all,
22 stipulating that my client killed the lady.

23 THE COURT: And, of course, that makes
24 the prejudice versus probative value issue easier to
25 weigh except on the question of first degree murder.

1 The State is still going to have to
2 prepare a limiting jurisdiction and the earlier that
3 it is given to admonish the jury the better. It is
4 under some case law regarding to the probative value
5 of this testimony. It's going to have to be read in
6 as an instruction to the jury at the conclusion of the
7 case.

8 Anything further?

9 MR. BROOKS: Will the court allow us a
10 continuing objection regarding to this issue?

11 THE COURT: Whenever the court has made a
12 preliminary ruling to this effect, you don't need to
13 ask for it. I'm going to allow you continuing
14 objections on all rulings in limine.

15 MS. SILVER: For the record, his
16 objection was to the original question that I posed to
17 the witness, which spurred this massive research on
18 the Shults case was, I believe I asked the witness on
19 the stand, "Do you know where they came from," and
20 this witness said Michigan, and that's when we got
21 into this objection.

22 THE COURT: That's an easy issue to
23 resolve. And probative versus prejudice, in that
24 case, and reliability, etcetera, all of those criteria
25 mandate that that evidence go in.

1 The question that the defense is more
2 concerned about centers around the utterances of the
3 victim relative to these physical confrontations that
4 were the subject of the witness' testimony.

5 MR. BROOKS: That's correct, your Honor.

6 THE COURT: All right. And I think that
7 there are a number of reasons that I have already
8 stated on the record that justify the admission of
9 this evidence particularly given the defendant's
10 opening statement which places in issue the question
11 of premeditation.

12 Now, at this point we'll bring in the
13 jury.

14 (In the presence of the jury.)

15 THE COURT: I am sitting here trying to
16 figure out when we're going to start Monday and
17 Tuesday.

18 Ladies and gentlemen of the jury, we are
19 back in session. I apologize for the delay in getting
20 started again. Some of it was my fault due to matters
21 that had to be taken up in chambers and other time was
22 spent resolving a couple of more evidentiary issues
23 outside your presence.
24
25

1 And so with that, will counsel stipulate
2 to the presence so we can continue on.

3 MR. HARMON: State will stipulate.

4 MR. BROOKS: Defense will, your Honor.

5 THE COURT: Thank you very much. The
6 State may continue with its case-in-chief.

7 MS. SILVER: State would call Officer
8 Giersdorf.

9 THE CLERK: Do you solemnly swear the
10 testimony which you are about to give shall be the
11 truth, the whole truth and nothing but the truth, so
12 help you God?

13 THE WITNESS: I do.

14
15 DANIEL GIERSDORF,
16 having been first duly sworn, testified as follows:

17
18 DIRECT EXAMINATION

19 BY MS. SILVER:

20 Q Could you please state your name and
21 spell it for the record.

22 A Officer Giersdorf, G-I-E-R-S-D-O-R-F.

23 Q What is your first name?

24 A Daniel.

25 Q And, sir, what is your occupation and

1 assignment?

2 A Police officer, Las Vegas Metro.

3 Q And what division are you currently
4 assigned to?

5 A Bike patrol.

6 Q I'm sorry?

7 A Bike patrol division.

8 Q How long have you been a police officer?

9 A Three and a half years, ma'am.

10 Q And prior to becoming a bike patrol
11 officer, what division were you assigned to?

12 A Patrol division.

13 Q Around midnight of January 9th of 1995,
14 did you have an occasion to be dispatched to 839 North
15 Lamb, Space Number 125?

16 A Yes, ma'am.

17 Q That's the Ballerina Mobile Home Trailer
18 Park?

19 A Yes, ma'am.

20 Q That's here in Las Vegas, Clark County,
21 Nevada?

22 A Yes, ma'am.

23 Q How were you dispatched?

24 A I was dispatched on 911 call of family
25 disturbance.

1 Q You say family disturbance. Are you
2 talking about a domestic violence call?

3 A Yes, ma'am, domestic violence call.

4 Q And were you aware of who was making the
5 call?

6 A The call came in from a female requesting
7 medical and police.

8 Q So your PR, or person reporting, would
9 have been a female for medical attention?

10 A Yes, ma'am.

11 Q That female did not necessarily request
12 police but for medical attention?

13 A Yes, ma'am.

14 Q When you arrived at that location, what
15 did you observe?

16 A Upon arriving at the Ballerina Mobile
17 Home Park, I arrived, there was an ambulance parked
18 out in front of Space 125, and it was two medical
19 techs and female was loaded in the back of the Mercy
20 Ambulance.

21 Q Did you have a conversation initially
22 with those Mercy Ambulance technicians?

23 A Yes, ma'am, I did.

24 Q And after that brief conversation, did
25 you go into the ambulance and view a female?

1 A Yes, ma'am.

2 Q Was she on the stretcher at this point?

3 A She was laid out on a stretcher mostly
4 covered up by sheets.

5 Q And can you tell us or describe her
6 injuries that you observed?

7 A She was very bloody and her hair was all
8 messed up. She had a large laceration above her eye,
9 and her nose was very big. It was about the size of
10 my hand.

11 Q Your fist?

12 A My fist. Like that, about that big.

13 Q So it was quite swollen then, I take it?

14 A She was very swollen about the face and
15 head and covered with a lot of blood.

16 Q Was she complaining of being in pain?

17 A Yeah, she was complaining about the
18 facial injuries and that. She was really hard to
19 understand because she could barely speak because of
20 the facial injury.

21 Q Where did you observe blood specifically?

22 A High volume of blood was coming out of
23 her nose and above her eye. It would be the left eye,
24 down the side of her face and over the top of her
25 head.

1 Q Did you see blood as well on her ears as
2 well as her hair?

3 A Yes, ma'am. The amount of blood was
4 enough that it covered her hair, ears, and the pillow
5 that she was laying on.

6 Q I would like to show you what's been
7 marked as State's Exhibit, what's actually been
8 admitted as State's Exhibit Number 25.

9 Does this appear to look like the woman
10 that you saw on January 9th of 1995?

11 A Yes, ma'am.

12 Q And if I told you that there has been
13 testimony that this picture was actually taken on
14 August 31st of 1995, sometime later, is it your
15 testimony that she looked very similar to this in
16 January?

17 A Pretty much very similar. She had a --
18 her face was a lot more swollen through there, and she
19 had a lot more blood on her when I saw her.

20 Q Blood at least around her face area?

21 A Yes, ma'am.

22 Q Did she seem upset to you?

23 A Yes, ma'am. She was upset crying and
24 rather hysterical, irrational.

25 Q What did she tell you happened to her?

1 A She had stated that her boyfriend that
2 she lived with at the mobile home park had hit her.

3 Q Did she tell you how long she had been
4 with that boyfriend?

5 A About approximately nine years.

6 Q Did she tell you whether or not she had
7 children in common?

8 A She stated that they three kids in
9 common.

10 Q Based on what she told you that she had
11 been hit in the face, did you proceed in your
12 investigation?

13 A Yes, ma'am.

14 Q Where did you go?

15 A Through my investigation I found out that
16 the incident had occurred within the residence at 125.

17 Q Did you go into the residence of 125?

18 A Yes, ma'am, I did.

19 Q And who did you see?

20 A I contacted a James Chappell who was
21 inside the residence.

22 Q Do you see him here in court today?

23 A Yes, ma'am, I do.

24 Q Can you please point to him and describe
25 an article of clothing for the record?

1 A Wearing gray suit, yellow shirt,
2 multi-colored tie, glasses.

3 MS. SILVER: Your Honor, may the record
4 reflect that the witness has identified the defendant.

5 THE COURT: Yes.

6 BY MS. SILVER:

7 Q Where was the defendant when you first
8 saw him?

9 A He was sitting in his living room in an
10 easy chair watching TV.

11 Q And what was his demeanor like?

12 A He was real lethargic, real quite, just
13 sat there.

14 Q Did he seem concerned for this woman?

15 A No, ma'am. He had like no emotion at all
16 when I contacted him at all.

17 Q Did he seem sad?

18 A No, ma'am.

19 Q Was he crying?

20 A No, ma'am.

21 Q Was he remorseful?

22 A No, ma'am.

23 Q Did you arrest him for battery, domestic
24 violence?

25 A Yes, ma'am I did.

1 MS. SILVER: Thank you. That would
2 conclude direct.

3 MR. BROOKS: No questions, your Honor.

4 THE COURT: Cross. No cross?

5 MR. BROOKS: No questions.

6 THE COURT: Any redirect?

7 MS. SILVER: No.

8 THE COURT: May this witness be
9 discharged?

10 MS. SILVER: Yes, sir.

11 THE COURT: You may be discharged.

12 THE WITNESS: Thank you, sir.

13 MS. SILVER: Your Honor, the State would
14 call Tanya Hobson.

15 THE CLERK: Do you solemnly swear the
16 testimony which you are about to give shall be the
17 truth, the whole truth and nothing but the truth, so
18 help you God?

19 THE WITNESS: Yes, I do.

20
21
22 TANYA HOBSON,
23 having been first duly sworn, testified as follows:
24
25

DIRECT EXAMINATION

BY MS. SILVER:

Q Can you please state your name and spell it for the record.

A My name is Tanya Hobson, T-A-N-Y-A, H-O-B-S-O-N.

Q And, ma'am, how old are you?

A 29.

Q And where are you employed?

A Temporary Assistance for Domestic Crisis.

Q Is that also known as TADC?

A Yes, it is.

Q What type of organization is that?

A It's a shelter for battered and abused women, and we also do protective orders.

Q And what kind of training and experience do you have that enables you to work at this battered woman's shelter?

A First of all, you have to have a degree. I have been working there now for two years.

Q And do you, in fact -- let me ask you: What is your training and experience in this area?

A Basically, when I went to college I had an internship in it. And once you're employed there,

1 you have to go under training.

2 Q You, in fact, have a bachelor's degree?

3 A Yes.

4 Q In what field?

5 A Criminal justice with a minor in
6 sociology.

7 Q You stated that as part of your duties
8 you prepare protective orders?

9 A Yes.

10 Q And tell us what your process is if a
11 woman calls up your shelter and asks you for a
12 protective order?

13 A Well, basically we start out with asking
14 has the person been arrested and what time. Then from
15 there we get all the information, basically what
16 happened that night that led up to their arrest. And
17 from there we ask is there any other place that she
18 may frequent that the person may come and try to
19 harass her at, and we put that on the protective
20 order.

21 We also put down where the person would
22 be -- the person who is getting -- the defendant, will
23 be not able to come to the plaintiff's home.

24 Q Okay. And once you receive this
25 information from this victim, what do you do with that

1 information?

2 A We then take the information. We fax it
3 to our judge, and then from there the judge faxes it
4 to the jail.

5 Q When you say that you fax it to a judge,
6 do you fax it to a district court judge?

7 A Yes, we do.

8 Q A district court judge just like Judge
9 Maupin here?

10 A Yes.

11 Q And once it's faxed to the judge, let me
12 ask you this: How does that work if it's in the early
13 morning hours?

14 A Well, a judge is on call 24 hours. And
15 we call them at home and wake them up.

16 Q So there are different on-call judges for
17 this process?

18 A Yes, exactly.

19 Q And they may rotate weekly?

20 A Yes.

21 Q Once this is done via telephone and the
22 judge has -- let me ask you this: Do you do it by fax
23 machine?

24 A Yes, we do.

25 Q So the judge actually signs this after

1 it's faxed to him?

2 A Yes.

3 Q Or her?

4 A Yes.

5 Q And then that judge would fax the signed
6 order back to you?

7 A He'll fax the signed order to the jail
8 that the defendant is in, and he also gives us a copy,
9 signed copy.

10 Q So the batterer or the person that is in
11 jail receives notification of that order?

12 A Yes.

13 Q And they are served by jail employees?

14 A Right.

15 MS. SILVER: For the record, I have shown
16 defense counsel what I had marked for identification
17 purposes as State's Proposed Exhibits 81 and 82.

18 Would you like to see them again? I'm
19 sorry.

20 BY MS. SILVER:

21 Q For the record, I have shown defense
22 counsel State's Proposed Exhibit Numbers 81 and 82.

23 I would like to ask you first and show
24 you State's Proposed Exhibit Number 81. What is this?

25 A This is a protective order.

1 Q It's an application for a temporary
2 protective order by fax?

3 A Yes.

4 Q Do you recognize the handwriting on this
5 order?

6 A Yes, I do.

7 Q Whose handwriting is this?

8 A It's mine.

9 Q And this application for temporary
10 protective order by fax, State's Proposed Exhibit
11 Number 81. It's approximately four pages long?

12 A Yes.

13 Q And apparently you have looked at this
14 before court today?

15 A Right. Yes.

16 Q Is this one of the protective orders that
17 you have personally prepared?

18 A Yes, it is.

19 Q And who is the plaintiff in this matter?

20 A It's Deborah Panos.

21 Q And who is the defendant or adverse
22 party?

23 A James Chappell.

24 Q Was there a place in particular based on
25 this order that the defendant was not -- or, excuse

1 me, yes. The defendant, adverse party, was not to go
2 to?

3 A He was not to go to the plaintiff's home.

4 Q Was there another place that the
5 plaintiff was not to go to as well?

6 A Yes, her place of employment.

7 Q And were her children listed as well in
8 here?

9 A Yes, they are.

10 Q Showing you what has been marked as
11 State's Proposed Exhibit Number 82 for identification
12 purposes. What is this?

13 A This is also a protective order.

14 Q So this is your application for a
15 protective order that you actually wrote?

16 A Yes.

17 Q And then this is the actual protective
18 order itself?

19 A Yes.

20 THE COURT: When you say this, what are
21 you referring to?

22 BY MS. SILVER:

23 Q I'm sorry. This is Proposed Exhibit
24 Number 82, is the actual order itself; is that
25 correct?

1 A Yes, it is.

2 Q Do you recognize your writing on this as
3 well or is this your writing?

4 A This one is not mine, no.

5 Q Would it be fair to say, is this a four
6 page document?

7 A Yes.

8 Q And is it signed by a district court
9 judge?

10 A Yes, it is.

11 Q And are you familiar with what judge this
12 is?

13 A I believe that's Judge Marren.

14 Q Are you familiar with his handwriting as
15 well?

16 A Yes, I am.

17 Q Because he is on-call quite a bit?

18 A Yes.

19 Q And would this be, to the best of your
20 knowledge, his handwriting on this protective order?

21 A Yes, it is.

22 Q What are the dates of these orders marked
23 as State's Proposed Exhibits Number 81 and 82?

24 A This one here is January 10th.

25 Q 1995?

1 A 1995. And this one is also January 10 of
2 '95.

3 MS. SILVER: Your Honor, at this time I
4 would note to the court that these are both certified
5 court documents, and I would ask for their admission.

6 MR. BROOKS: I'll submit it, your Honor.
7 I would like to examine 82 again your Honor, please.

8 THE COURT: The court is well aware that
9 these are admissible. So they will be admitted at
10 this time.

11
12 (State's Exhibits 81, 82
13 admitted into evidence.)

14 MS. SILVER: Thank you. That will
15 conclude direct.

16 THE COURT: Cross-examination.

17
18 CROSS EXAMINATION

19 BY MR. BROOKS:

20 Q Miss Hobson, I'm not sure that I
21 understand this completely. Basically you didn't meet
22 Miss Panos, did you?

23 A No, I didn't.

24 Q Did you talk to her on the telephone?

25 A Yes, I did.

1 Q And you talked to her, I suppose, on
2 roughly January the 9th after she had been hit by her
3 boyfriend?

4 A Yes.

5 Q And she told you that she wanted a
6 temporary restraining order?

7 A Yes.

8 Q Exhibit 81, which Miss Silver just showed
9 you, was the application which you filled out and that
10 was faxed over to a judge?

11 A Yes.

12 Q Judge Marren then signed an order and it
13 was served on Mr. Chappell in the jail, correct?

14 A Correct.

15 Q And that's what's Exhibit 82; is that
16 correct?

17 A Correct.

18 Q Let me show you the last page of this
19 order signed by the judge. In fact, what this order
20 does is sets a hearing, doesn't it, on January 11th?

21 MS. SILVER: Mr. Brooks, this is the
22 order.

23 MR. BROOKS: I have a certified copy that
24 has all of the pages, and I'm going to show my
25 certified copy to the witness, please.

1 MS. SILVER: Could I see the copy of
2 that, sir, before you show the witness. Thank you.

3 MR. BROOKS: Yes. I would like to have
4 this marked as a defense exhibit whatever our first
5 exhibit number is.

6 MR. HARMON: That appeared to be the same
7 document which is already in evidence.

8 MR. BROOKS: It may very well be, but I'm
9 going to highlight something, Judge, that was not
10 highlighted before.

11 BY MR. BROOKS:

12 Q In defendant's exhibit, I believe it's A,
13 on the last page what the judge's order actually does
14 is order a hearing, doesn't it?

15 A Yes, it does.

16 Q And, in fact, the order that was signed
17 by the judge is merely a temporary order, isn't it?

18 A Yes.

19 Q And it only lasts until there is actually
20 a hearing before the judge?

21 A Until the court date.

22 Q And if the person who fills out the
23 application doesn't show up at the hearing, the order
24 gets vacated, correct?

25 A No.

1 Q That's not correct?

2 A No.

3 Q What happens if they don't show up?

4 A If the person -- if the defendant doesn't
5 show up, the protective order can still be put into
6 effect.

7 Q What if the plaintiff doesn't show up?

8 A Well, if the plaintiff doesn't show up,
9 then he doesn't do anything with it.

10 Q All right. I'm going to show you the
11 court minutes for January 11th. It's a certified
12 copy.

13 MS. SILVER: May I see that, please.

14 MR. BROOKS: Yes.

15 BY MR. BROOKS:

16 Q I'll give you a copy of what happened on
17 the hearing on January 11th. Who showed up on the
18 hearing on January 11th.

19 A No parties.

20 Q In other words, the plaintiff, Deborah
21 Panos, did not come to court on the 11th?

22 A Correct.

23 Q And, in fact, the order was vacated as of
24 the 11th; is that correct?

25 A Correct.

1 Q So any testimony that this order was in
2 effect after January 11th, 1995, is completely
3 incorrect, isn't it?

4 A Correct.

5 Q And the only way that they could have
6 gotten this changed is to put it back on calendar or
7 do something else?

8 A Correct.

9 MR. BROOKS: Thank you. We would ask
10 that this be admitted as Defendant's Exhibit B.

11 MS. SILVER: No objection.

12 THE COURT: It will be received.

13

14 (State's Exhibit B
15 admitted into evidence.)

16 MR. BROOKS: Thank you.

17 THE COURT: Anything further?

18 MR. BROOKS: No further questions.

19 THE COURT: Redirect.

20 MS. SILVER: Thank you.

21

22 REDIRECT EXAMINATION

23 BY MS. SILVER:

24 Q The order was in effect, however, up
25 until that hearing date?

1 A Yes, it was.

2 Q And he was not to make any contact with
3 her?

4 A Correct.

5 Q You don't know whether or not this
6 defendant was released from jail after January 10th of
7 1995, do you?

8 A No, I don't. I have no idea.

9 Q Let me ask you this: Have you had --
10 tell me what your experience is --

11 MR. BROOKS: I'm going to object. This
12 individual is not an expert witness on domestic
13 violence.

14 THE COURT: She hasn't finished the
15 question.

16 MS. SILVER: Thank you.

17 BY MS. SILVER:

18 Q May I ask you your experience and
19 training dealing with victims of domestic violence?

20 A It's only via telephone, basically when
21 we have our victims come into our shelter.

22 Q So you work with women on a day-to-day
23 basis in the shelter?

24 A Exactly.

25 Q And you have hands-on experience speaking

1 with victims of domestic violence?

2 A Yes, I do.

3 Q And did you take any courses or attend
4 any seminars regarding the psychology of victims of
5 domestic violence?

6 A Yes, we did.

7 Q What type of seminars?

8 A Basically they are the ones that go
9 through our agency, like the sensitivity, basically
10 just being aware of the signs and symptoms and --
11 sorry, I'm so nervous.

12 Q Let me ask you this: In your experience
13 and training is it uncommon for a victim of domestic
14 violence to drop charges against their perpetrator?

15 A Yes, it is. It's totally common.

16 Q How common is it when you say that?

17 A Basically, they change their minds. We
18 got a lot of them that call up and change their minds,
19 he's saying that he's going to change, or right now I
20 don't want to do it. I'm too afraid. He's
21 threatening me, and so we got calls like that.

22 Q So whether it's fear or whether it's love
23 or promises to be better, they don't show up for
24 court?

25 A Exactly.

1 Q That's not an uncommon event --

2 A No, it's not.

3 Q -- in this type of case?

4 A No, it's not.

5 Q Does it surprise you in any way that this
6 person who you prepared this report for did not show
7 up to court?

8 A No.

9 MS. SILVER: I don't have anything
10 further.

11
12 RECROSS EXAMINATION

13 BY MS. BROOKS:

14 Q As far as this individual case though,
15 you really don't know what her reasons were, do you?

16 A No, I don't.

17 Q You never talked to her again about this,
18 did you?

19 A I can't recall, no.

20 Q And, in fact, the order was in effect for
21 probably a total of 30 hours and that's all; is that
22 correct?

23 A It all depends on how long he was
24 incarcerated.

25 Q But it was only in effect until 11:59 on

1 January 11th?

2 A Okay. 12 hours.

3 Q After January 11th, 1995, the order had
4 no legal effect, correct?

5 A Correct.

6 MR. BROOKS: Thank you. No further
7 questions.

8 THE COURT: May this witness be
9 discharged?

10 MR. HARMON: Yes.

11 THE COURT: Thank you. You may step
12 down. Thank you very much.

13 Call your next witness.

14 MS. SILVER: The State would call Officer
15 Allen Williams.

16 THE CLERK: Do you solemnly swear the
17 testimony which you are about to give shall be the
18 truth, the whole truth and nothing but the truth, so
19 help you God?

20 THE WITNESS: I do.

21

22 ALLEN WILLIAMS,

23 having been first duly sworn, testified as follows:

24

25

DIRECT EXAMINATION

BY MS. SILVER:

Q Sir, what is your occupation and assignment?

A I'm a police officer assigned to patrol with the Las Vegas Metropolitan Police Department.

Q How long have you been a police officer?

A Approximately five and a half years.

Q And what divisions have you worked on in your five and a half years?

A Patrol.

Q On June 1st of 1995, at approximately 10:08 p.m., were you dispatched by a 911 call to 839 North Lamb, Space Number 125?

A Yes, I was.

Q That's the Ballerina Mobile Home Trailer Park?

A That's correct.

Q And that's here in Las Vegas, Clark County, Nevada?

A Yes.

Q When you arrived at that location, did you come into contact with a person by the name of Deborah Panos?

A Yes, I did.

1 Q Can you describe what her demeanor was
2 like when you made contact with her?

3 A She appeared to be very frightened and
4 was crying.

5 Q And as she was crying, did she tell you
6 why she summonsed you?

7 A Yes, she did.

8 Q And why was that?

9 A She stated that she had gotten into an
10 argument with her boyfriend. I don't recall what the
11 argument was over. He began yelling at her. He
12 became angry and threw her down on the bed. He then
13 climbed on top of her, pinning her arms down with his
14 knees and pulled out a knife, held it to her throat
15 and began threatening her with it.

16 Q Did something happen that caused him to
17 stop threatening her with this knife?

18 A She stated that there was a knock on the
19 door and that's when he stopped.

20 Q Was that a knock by her roommate?

21 A I don't recall offhand.

22 Q Did you also come into contact with the
23 boyfriend?

24 A Yes, I did.

25 Q And what was his name?

1 A His name was James Chappell.

2 Q And do you see him here in court today?

3 A Yes, I do.

4 Q Can you point to him and describe an
5 article of clothing for the record?

6 A The gentleman in the gray suit.

7 Q What color shirt is he wearing?

8 A Yellow.

9 MS. SILVER: Your Honor, may the record
10 reflect that the witness has identified the defendant.

11 THE COURT: It will.

12 BY MS. SILVER:

13 Q Did Deborah tell you how much time had
14 passed between the time the call was made to the
15 police department and the time that you arrived?

16 A It was a brief amount of time. I would
17 have to refer to my report to tell you exactly.

18 Q Would you like to refer to it --

19 A Yes.

20 Q -- for when the incident occurred prior
21 to your arrival?

22 A Approximately five to ten minutes.

23 Q Prior to your arrival?

24 A Yes.

25 Q Did you arrest the defendant for

1 battery-domestic violence?

2 A Yes, I did.

3 Q And did you transport him to the city
4 jail?

5 A Yes, I did.

6 MS. SILVER: That would conclude direct.

7 MR. BROOKS: No questions, your Honor.

8 THE COURT: May this witness be
9 discharged?

10 MR. HARMON: Yes, Judge.

11 THE COURT: The witness may be excused.
12 Call your next witness.

13 MS. SILVER: The next witness is Latrona
14 Smith.

15 THE CLERK: Do you solemnly swear the
16 testimony which you are about to give shall be the
17 truth, the whole truth and nothing but the truth, so
18 help you God?

19 THE WITNESS: Yes.

20

21 SHIRRY SMITH,

22 having been first duly sworn, testified as follows:

23

24

25

DIRECT EXAMINATION

BY MS. SILVER:

Q Can you please state your name and spell it for the record?

A Shirry Smith, S-H-I-R-R-Y, S-M-I-T-H.

Q Is it actually a different name but you go by Shirry?

A Yes, Latrona.

Q Will you spell that as well into the record?

A L-A-T-R-O-N-A.

Q Miss Smith, how old are you?

A 33.

Q And where are you employed?

A Angel Day Care.

Q Where is that located?

A On Lamb and Bonanza. The address is 4320 West Bonanza.

Q Could you speak up. I'm having trouble hearing you.

A Sorry.

Q That's okay. Is that here in Las Vegas, Clark County, Nevada?

A Yes.

Q How long have you worked there?

1 A Three years.

2 Q And what are your duties there?

3 A I am a supervisor. I answer the
4 telephone, greet parents when they come in to pick up
5 her children as well as take payments.

6 Q And during the course of your employment
7 did you come to know a woman by the name of Deborah
8 Panos?

9 A Yes.

10 Q And did she use Angel Day Care services
11 for her children?

12 A Yes.

13 Q And how old were her children?

14 A I'm not too sure as far as their ages.

15 Q Court's indulgence. Do you recall about
16 how many children she had at Angel Day Care?

17 A She has three.

18 Q Do you recall their names at all right
19 now?

20 A Chantell, Anthony and James.

21 Q Now, on August 31st of 1995 were you
22 working at Angel Day Care?

23 A Yes.

24 Q And did you receive a telephone call at
25 from Deborah Panos?

1 A Yes.

2 Q What time was it approximately?

3 A Between 12:15 and 12:30.

4 Q What was her demeanor like on the phone
5 when she called you?

6 A She was upset.

7 Q Was she crying?

8 A Yes.

9 Q What did you think when you heard her
10 crying?

11 A That something was wrong.

12 Q Could you hear any other voice at the
13 time besides hers over the telephone?

14 A Yes. I heard a gentleman's voice in the
15 background, but I didn't hear what he was saying.

16 Q And could you tell the demeanor of that
17 person?

18 A He sounded like he was upset.

19 Q Was he yelling?

20 A No, he wasn't yelling.

21 Q And could you hear anything that Deborah
22 was saying to this person?

23 A No.

24 Q What did she -- what did she talk to you
25 about as she was crying?

1 MR. BROOKS: I'm going to object, your
2 Honor, on the ground of hearsay.

3 THE COURT: Overruled.

4 THE WITNESS: She had asked what time she
5 needed to pick her children up.

6 BY MS. SILVER:

7 Q Did you think that that was strange that
8 she would call you and ask what time it was?

9 A Yes.

10 Q Had she ever called you before?

11 A No.

12 Q Did she also ask you something else?

13 A Yes, she had asked me to help her.

14 Q How many times did she ask you to help
15 her?

16 A Several times.

17 Q Do you recall if she asked you what time
18 she brought in the children?

19 A Yes, she did, and I looked in the book
20 and it was 7:45 when she brought them in.

21 Q 7:45 in the morning of August 31st of
22 1995?

23 A Yes.

24 Q Did you find that unusual that she would
25 ask you what time she brought her own children in?

1 A Yes.

2 Q Why is that?

3 A Because she's never called before as far
4 as to check to see what time she needs to pick her
5 children up.

6 Q What did you do when you heard her asking
7 these questions?

8 A I looked in the sign-in book to see what
9 time she had brought them in, and I told her that she
10 needs to pick them up by 5:35.

11 Q And as she was talking to you, do you
12 recall anything in particular that she said to this
13 person in the background?

14 A She had told him that she didn't have any
15 money.

16 Q Could you tell what the man was saying to
17 her at all at that time?

18 A No.

19 Q What did you tell her regarding picking
20 up her kids?

21 A I asked her would she be able to leave by
22 herself to come and pick her children up and she told
23 me no.

24 Q Why did you ask her if she could leave by
25 herself?

1 A Because she was telling me that she was
2 scared of him.

3 Q And she said no?

4 A Yes.

5 Q What else did you tell her?

6 A I asked her to see if she can make any
7 kind of excuse to see if she could leave to come by
8 herself to come and pick her children up, but she said
9 that he would come -- he would try to come up with
10 with her. So I asked her to see if she can just say
11 anything in order for her to get out of the house to
12 come and pick them up.

13 Q And what did she say? Could she leave by
14 herself?

15 A She said no, that she wouldn't be able
16 to.

17 Q Did she whisper something to you at this
18 point?

19 A She had asked me to help her.

20 Q Did she give you some other information?

21 A She had asked me to take and call her
22 back in a few minutes, and she gave me her telephone
23 number as far as to call her back.

24 Q Did that end your conversation with her?

25 A Yes.

1 Q Did you call her back?

2 A Yes, I did.

3 Q How long did you wait to call her back?

4 A It was like five minutes.

5 Q Did she answer the phone?

6 A Yes, she did. And I told her to go ahead
7 and come and pick the children up.

8 Q And what did she say?

9 A She said yes, that she was on her way.

10 Q Did you hear the voice in the background
11 this time?

12 A No.

13 Q Did she ever pick up her children?

14 A No, she didn't.

15 Q Who was the -- who was authorized to pick
16 up those children.

17 MR. BROOKS: Objection, irrelevant.

18 THE COURT: Overruled.

19 THE WITNESS: I think her name was Lisa.

20 BY MS. SILVER:

21 Q And who else?

22 A And Sharleen.

23 Q Was it --

24 A Well, other than Debbie, Debbie was the
25 only one who was allowed to pick them up?

1 Q So Deborah was the primary -- that was
2 the only one allowed to pick the children up?

3 A Yes.

4 Q Let me ask you this: Do you recall a
5 time earlier to this where you observed injuries to
6 Deborah's face?

7 A Yes.

8 Q What type of injuries?

9 A Her nose and her face were swollen.

10 Q Did she ever say that James Chappell
11 would pick up her children?

12 MR. BROOKS: Objection, irrelevant.

13 THE COURT: What is the relevance of
14 this?

15 MS. SILVER: Again, I would offer it for
16 state of mind of the victim.

17 MR. BROOKS: And our context is the State
18 of the mind of the victim in this regard is certainly
19 relevant.

20 THE COURT: I don't know what this has to
21 do with the state of mind, so I'll sustain it.

22 BY MS. SILVER:

23 Q Were you ever warned not to release the
24 children to anyone?

25 A No.

1 Q But to your knowledge the only persons
2 that were allowed to pick up the children were Deborah
3 Panos and her friend, Lisa Duran?

4 A Yes.

5 Q Had you ever seen the children's father
6 before?

7 A No.

8 Q He never picked the children up?

9 A No.

10 MS. SILVER: That would conclude direct.

11 MR. BROOKS: No questions, your Honor.

12 THE COURT: May this witness be
13 discharged?

14 MR. HARMON: Yes, your Honor.

15 THE COURT: You maybe excused.

16 Call your next witness.

17 MR. HARMON: Before we do that, I think
18 the that the court is aware that the parties have
19 entered into certain stipulations. We wish to make
20 the court and the jury aware of the details of those
21 stipulations at this time.

22 THE COURT: You may read the stipulation
23 into the record at this time as part of your
24 case-in-chief.

25 MR. HARMON: Thank you, your Honor.

1 First, regarding the custodial status of
2 the defendant, James Chappell, during a pertinent time
3 period, he was arrested on June the 1st, 1995, in
4 connection with the domestic battery described by
5 Officer Allen Williams in his testimony.

6 The defendant remained in custody until
7 his release June the 7th, 1995. He was re-arrested on
8 June the 26th, 1995, and from that point remained in
9 custody until his release from a city jail facility at
10 Stewart and Mojave Streets on August the 31st, 1995,
11 at approximately 10:45 a.m.

12 That concludes the first part of the
13 stipulation.

14 MR. BROOKS: We will stipulate to that,
15 your Honor.

16 MR. HARMON: Your Honor, further, in an
17 effort to expedite the proceedings and to avoid
18 calling a handwriting excerpt, the parties enter into
19 the following stipulation reference certain
20 handwriting evidence. Exhibits 69 through 73 all
21 contain various pieces of what is apparently the same
22 document or her.

23 And they were found at various places
24 inside the crime scene as described by Analyst Michael
25 Perkins. The parties do stipulate that all of the

1 writing contained in those exhibits, 69 through 73,
2 was written by a person other than the defendant. In
3 other words, we're agreeing that that handwriting is
4 not the handwriting of James Chappell.

5 We, furthermore, stipulate that in
6 Exhibits 74 and 75, which by the testimony of the same
7 Analyst Perkins involved a number of letters or
8 documents which were found at various places in the
9 master bedroom of the crime scene, that although there
10 may be some documents that are written by other
11 persons, at least as to the documents signed James or
12 signed James Chappell that those documents were
13 written by the defendant, James Chappell.

14 THE COURT: All right.

15 MR. BROOKS: The defense will stipulate
16 to that, your Honor.

17 MR. HARMON: Your Honor, the final
18 stipulation is a written stipulation.

19 And with the court's permission I'll read
20 into the record the pertinent part of the stipulation.
21 The parties have agreed;

22 Number one, that James Chappell on August
23 the 31st, 1995, entered the trailer rented to Deborah
24 Panos through a window;

25 Two, that James Chappell engaged in

1 sexual intercourse with Deborah Panos on August the
2 31st, 1995;

3 And three, that James Chappell caused the
4 death of Deborah Panos by stabbing her with a kitchen
5 knife and the act was not an accident;

6 Four, that James Chappell was jealous of
7 Deborah Panos because he believed she was giving
8 attention to or receiving attention from other men.

9 And this was dated October the 10th,
10 1996, and signed by all four of the attorneys involved
11 in this action.

12 MR. BROOKS: That's correct, your Honor.

13 THE COURT: All right. The court
14 officially accepts all of the stipulations. The jury
15 is instructed that the facts stipulated to are to be
16 treated as proved.

17 MR. HARMON: Thank you, Judge. The State
18 will call Jim Vaccaro.

19 THE CLERK: Do you solemnly swear the
20 testimony which you are about to give shall be the
21 truth, the whole truth and nothing but the truth, so
22 help you God?

23 THE WITNESS: I do.
24
25

JAMES VACCARO,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HARMON:

Q Will you state your name for the record?

A My name is James Charles Vaccaro,

V-A-C-C-A-R-O.

Q Is it Detective James Vaccaro?

A Yes.

Q Detective Vaccaro, where are you

employed?

A With the Las Vegas Metropolitan Police

Department.

Q How long have you worked with that

department?

A I'm in my 20th year now.

Q What is your present assignment, sir?

A I'm assigned to the homicide detail.

Q How long have you worked with the

homicide detail?

A Since December of 1993.

Q I want to direct your attention to August

the 31st, 1995. On that day did you become assigned

1 to investigate a homicide which occurred at the
2 Ballerina Mobile Home Park, specifically with
3 reference to a killing occurring at that park at 839
4 North Lamb Boulevard, Space Number 125?

5 A Yes, I did.

6 Q Was the victim identified as Deborah Ann
7 Panos?

8 A Yes.

9 Q So you were assigned as a primary
10 investigating officer in that case?

11 A Yes.

12 Q Did you have a partner?

13 A Yes, my partner's name is Phil Ramos.

14 Q Will you spell Ramos, please.

15 A R-A-M-O-S.

16 Q Is that routine procedure for the
17 homicide detail of the police department to assign two
18 detectives to investigate homicides?

19 A Yes, sir, it is.

20 Q In connection with your duties on this
21 case, did you respond to the crime scene on August the
22 31st, 1995?

23 A Yes, I did.

24 Q When you arrived will you tell us about
25 what time it was?

1 A I believe I was first notified about the
2 situation there in the mobile home park at about 4:15
3 in the afternoon.

4 As I remember, I was driving home and my
5 sergeant contacted me, told me to go to the mobile
6 home park because he wanted us to begin an
7 investigation there at that space that Mr. Harmon just
8 said, Space Number 125. I arrived probably driving
9 time 4:30, somewhere in there.

10 And I remember meeting my partner, Phil
11 Ramos, there. The street had been taped off with
12 yellow crime scene tape in the area of Space Number
13 125, and there were several uniform Metro officers
14 already on the scene. They had apparently made the
15 discovery and protected the crime scene until we could
16 arrive.

17 Q When you arrived, somewhere around 4:30
18 in the afternoon, did you go into the scene?

19 A Yes.

20 Q Was the body of the victim still there?

21 A Yes.

22 Q You observed the victim's body?

23 A Yes, I did.

24 Q Did you confer with other officers?

25 A Yes.

1 Q Did you arrive at some consensus
2 regarding a point of entry at the mobile home?

3 A Yes, we did.

4 Q Was that through a bedroom window?

5 A Yes.

6 Q Did you go into the bedroom where entry
7 had been made into?

8 A Yes, I did.

9 Q Did you see anything that attracted your
10 interest?

11 A Well, the entire room did. There were so
12 many things to describe about this room. It looked as
13 though there had been some kind of a burglary or
14 ransacking inside the room. The bed was unmade.
15 There was clothing strewn all about the room.

16 There was quite a bit of paperwork and
17 envelopes all over the floor and on the bed, and those
18 appeared to me to be things like the kind of paperwork
19 that you might save in a storage unit or something in
20 your room. But they were strewn all about. They were
21 legal documents, paperwork about driver's license
22 renewals, and such paperwork like that. These things
23 were all about the bedroom area.

24 There was, as I said, a lot of clothes
25 strewn. Drawers to a dresser were -- some were open,

1 some were slightly ajar. Some were closed. There is
2 an adjoining the master bedroom a bathroom. That
3 has -- it's a large room this bathroom, and it has a
4 roman tub, and next to it is a sink and a counter top
5 area.

6 And I noticed while I was walking in that
7 area that the cabinetry underneath the sink had been
8 opened and things were very disheveled even underneath
9 the sink in the bath bathroom.

10 I noticed on the outer leading edge of
11 the sink on the porcelain what looked like blood to
12 me, and next to that sink is a doorway to a small
13 bathroom or toilet area. And I noticed what appeared
14 to be blood on the seat of the toilet as well as on
15 the top, which was in the up position. So there was
16 two spots where I saw what I thought was blood and
17 brought that to the attention of the crime scene
18 analysts that were there inside the mobile home with
19 me.

20 Q Detective Vaccaro, when you found
21 evidence of blood in the bathroom, adjacent to the
22 master bedroom, particularly in the area of the sink,
23 did you come to any sort of conclusion concerning what
24 may have happened?

25 A Well, I suspected right away that

1 possibly the sink could have been used by whoever had
2 committed the crime to clean up in the sink. So my
3 first thought was the trap of the sink, the pipes
4 underneath, might still contain some water with a
5 higher concentration of blood rather than just the
6 small amount I saw on the sink surface.

7 So I instructed the crime scene analyst
8 to remove the trap from the sink area and carefully
9 take that water down and save that water as evidence
10 and also asked him to try to recover the blood from
11 the, like I said, the top of the sink and the toilet
12 seat.

13 Q You didn't know Deborah Panos prior to
14 becoming involved in this case, did you?

15 A No.

16 Q So I would presume that you don't know
17 what type of housekeeper that she was?

18 A No.

19 Q Have you ever been into a residence of
20 hers?

21 A No, I never have.

22 Q Even assuming that she may not have been
23 a perfect housekeeper, did you still see things in the
24 areas at least of the trailer that you have referred
25 to, the bedroom and bathroom, that caused you to think

1 that someone had been going through the drawers and
2 property?

3 A Yes, I certainly did. You know, there
4 was just an overall appearance of this mobile home.
5 The bedroom area, as I said, the clothing was strewn
6 about in such a way that you would have to either walk
7 on top of or step over piles of clothing to get to the
8 bed.

9 I don't think that there was even a sheet
10 on the mattress, and these letters and paperwork were
11 in an area where they didn't look like they had been
12 walked on before I got there. And you would have had
13 to walk on them to get in or out of the bed one way or
14 the other.

15 Other bedrooms of the mobile home had
16 closets and dresser in them. They were in also, you
17 know, equally disheveled. Some closet doors were left
18 open, and I didn't know whether or not those doors
19 were left open by the uniform officers that had
20 cleared the trailer apparently when they were inside
21 and they found Deborah Panos' body when they just
22 checked for other possible persons that would be
23 injured. It would be routine for them to open those
24 closet doors.

25 So to answer the question, overall it did

1 appear that there had been a lot of ransacking
2 especially in that master bedroom area.

3 Q Detective Vaccaro, did you after arriving
4 at the scene and conferring with other officers there
5 come to some conclusion regarding the possible
6 suspect?

7 A Yes.

8 Q Did that suspect based upon the
9 information you were getting have any relationship to
10 the victim, Deborah Panos?

11 A Yes, he did.

12 Q What was the relationship?

13 A Well, initially we first learned about a
14 man named James Chappell as possibly being married
15 with Deborah Panos knows, but then the longer that we
16 spent at the crime scene we started to get conflicting
17 stories that they may just be boyfriend and girlfriend
18 and have a couple kids together.

19 Most of the information that we received
20 was from uniform officers that were also present from
21 the scene and from a Lisa Duran, who is a girlfriend
22 of Deborah Panos that was also at the scene when we
23 arrived. We learned a lot about James Chappell
24 because the officers directly told me that there had
25 been incidents where he had been involved with law

1 enforcement, and that this was a residence known to --

2 MR. BROOKS: I would object to hearsay,
3 your Honor.

4 THE COURT: Sustained.

5 BY MR. HARMON:

6 Q Detective Vaccaro, you have mentioned the
7 presence of Lisa Duran.

8 Based upon contact that you had with her
9 and other officers who had spoken with her did you
10 obtain information that your suspect, the boyfriend,
11 James Chappell, had been seen leaving the area in a
12 particular car?

13 A Yes, that's what she told us.

14 Q Did you have an interest then in locating
15 that car and the boyfriend, Mr. Chappell?

16 A Yes, we certainly did.

17 Q Was the car described as a Toyota Corolla
18 which didn't have license plates?

19 A Yes, it was.

20 Q Did you while you were inside the
21 trailer, the crime scene, locate any type of
22 photograph which showed a partial view of the victim's
23 car?

24 A Yes, I did.

25 Q Where did you locate the photograph?

1 A There was a counter top between the
2 kitchen and the dining room, and this formica counter
3 top had a lot of paperwork from there were photographs
4 on top of it. There was paperwork. I think some
5 bills, power bill, phone bill. And it was among these
6 things that I found several photographs, started to
7 look at them. I learned about the Toyota Corolla.

8 And as a matter of fact, I have the
9 picture with me that I found on top of the counter
10 top.

11 Q Will you produce that, please.

12 MR. HARMON: Thank you. Your Honor, may
13 we have the photograph that the officer has handed me
14 marked next in order.

15
16 (State's Exhibit 83
17 marked for identification.)

18 MR. HARMON: May I approach the witness,
19 your Honor.

20 THE COURT: Yes.

21 BY MR. HARMON:

22 Q Detective Vaccaro, I'm showing you what
23 the clerk has marked as Proposed 83.

24 Is this the photograph you located in the
25 area you have described at the crime scene?

1 A Yes.

2 Q Were you able either based upon what you
3 were told or simply from looking at the picture to
4 determine from where this photograph was taken?

5 A Well, I could clearly see by stepping out
6 in front of the mobile home that I was on the street
7 that's depicted in the photograph, which is the street
8 in the Ballerina Mobile Home Park because the picture
9 appears to be taken right in front of the Space Number
10 125.

11 And then I showed this photograph to Lisa
12 Duran and asked her if that was the vehicle, and I
13 learned that it was the vehicle that she had seen
14 James Chappell in.

15 Q Now, is it correct that in Proposed 83
16 only part of the vehicle is shown in the picture?

17 A Yes.

18 Q But based upon what you observed
19 regarding the street and the location of Space 125,
20 was this vehicle parked directly in front of Space
21 125?

22 A Yes.

23 Q Whenever the picture was taken?

24 A Yes.

25 MR. HARMON: Your Honor, the State offers

1 Proposed Exhibit 83.

2 MR. BROOKS: No objection.

3 THE COURT: Same will be received in
4 evidence.

5 MR. HARMON: Thank you.

6

7 (State's Exhibit 83
8 admitted into evidence.)

9 BY MR. HARMON:

10 Q Detective Vaccaro, the following day,
11 September the 1st, 1995, did you receive information
12 at some point that James Chappell had been located
13 and, in fact, was being detained at a Lucky's
14 supermarket?

15 A Yes.

16 Q Was that at 4420 East Bonanza Boulevard
17 in Las Vegas?

18 A That's right.

19 Q Did you respond to that location?

20 A Yes, I did.

21 Q Do you remember about what time you got
22 there?

23 A It was probably about 12:30 in the
24 afternoon because I was in my vehicle. I received a
25 message from dispatch, and by the time that I drove

1 there I had heard that there was a uniform officer
2 that was already at the store at about 1:15, so
3 probably about 12:30.

4 Q When you arrived, did you locate the
5 uniform officer?

6 A Yes.

7 Q Was that Officer Paul Osuch?

8 A Yes, it was.

9 Q Did you make contact with the person who
10 was being detained?

11 A Yes, I did.

12 Q Where was he when you saw him that day?

13 A In the very rear corner of the store in
14 the employees area. The employees only area is a
15 small office and he was seated on a chair in this
16 small office. It is a kind of a glass enclosed office
17 in the back of the Lucky's store.

18 Q Did you subsequently verify the identity
19 of the person who was being detained?

20 A Yes, I did visually looking at Mr.
21 Chappell -- I had familiarized myself with the
22 photograph of him prior to that, prior to my going to
23 the Lucky's, and the moment that I saw him I knew that
24 I was looking at James Chappell.

25 Q Is the person that you made contact with

1 on September the 1st, 1995, at the Lucky's
2 supermarket, here in the courtroom this afternoon?

3 A Yes, he is.

4 Q Will you point to him and describe
5 something that he's wearing today in court?

6 A He's seated between counsel wearing a
7 yellow shirt.

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

11 THE COURT: Yes.

12 BY MR. HARMON:

13 Q Did you acquire information once you
14 responded that at least for a period of time Mr.
15 Chappell was maintaining that he was someone else?

16 A Yes.

17 Q He was someone named Ivory Morrell?

18 A Yes, I did. I learned from Officer Osuch
19 that he had begun to complete a Las Vegas Metro
20 misdemeanor citation, which I have with me, and the
21 citation was filled out by Officer Osuch with the
22 information that he had apparently received from this
23 individual, and it had that name on it, Ivory. I
24 can't recall what the last name was.

25 Q Did you have an opportunity to observe

1 the hands of the defendant, Mr. Chappell, at the
2 Lucky's store?

3 A Yes, I did.

4 Q Did you notice anything unusual about a
5 finger?

6 A I certainly did. Once I realized I was
7 looking at Mr. Chappell, one of the first things that
8 I wanted to do was look at his hands.

9 Q Why did you want to look at his hands?

10 A Well, it's been my experience in doing
11 investigations that oftentimes if a knife is the
12 weapon involved in a situation that the person that is
13 wielding the knife often suffers a wound because of
14 the fact that their hand can often slide down the
15 shank of the knife to the blade when they are striking
16 with the knife. So I was interested in seeing if Mr.
17 Chappell had such wounds on his hands.

18 Q What was your observation, sir?

19 A I did notice what appeared to be two
20 incision type of cuts on his -- I believe it was his
21 right pinky finger. And they were close to the palm
22 area not very far out on the fingertip by close down
23 by the palm and both of them appeared to be very
24 recent wounds to me.

25 Q Did you also at some point after your

1 arrival at the Lucky's market on September the 1st,
2 take possession of some keys?

3 A Yes.

4 Q How is it that you came into possession
5 of the keys?

6 A Well, while I was in this employees only
7 area at the back of the Lucky's store, there was a
8 cart on wheels that the security officers, and
9 apparently Officer Osuch, had placed the objects that
10 they had found in possession of Mr. Chappell on top of
11 this table.

12 They were brought to my attention. And
13 when I looked at these objects, I noticed that one was
14 a key that was a Toyota brand key. And, of course, I
15 was looking for a Toyota Corolla so as soon as I saw
16 that key I wanted to find out if there was a car to go
17 with the key.

18 Q Was this one of several keys in the group
19 of keys?

20 A Yes, I believe it was.

21 Q Did you thereafter attempt to locate the
22 Toyota Corolla what?

23 A Yes.

24 Q What did you do in an effort to find it
25 in the area of the Lucky's store?

1 A I began to drive around the parking lot
2 through the front parking lot and rear parking lot of
3 the Lucky's store. I drove basically in a spiral type
4 of search as far as I could starting at the Lucky's
5 store and working my way out.

6 Across the street to the west of the
7 Lucky's store is a housing project called the Vera
8 Johnson housing project at about the 500 block of
9 North Lamb, and I went back into that apartment
10 complex because there were so many parking stalls that
11 I thought maybe the car was left back in that
12 location, and I started looking around for it over
13 there.

14 I was very unsuccessful back there, and
15 it bothered me a little bit so I remembered that I had
16 that photograph and I went to some people that were
17 standing in the parking lot in the housing project and
18 I said to them -- as a matter of fact, it was two
19 black gals. One was Ladonna and the other one was
20 Deborah.

21 Q Ladonna Jackson?

22 A That's right, Ladonna Jackson.

23 Q And Deborah Turner?

24 A And Deborah Turner. And I walked up to
25 them with the picture, and I said have you guys seen

1 this car. And they said no, we never saw that car
2 anywhere. And I just sensed that they were, you know,
3 just not being truthfully with me.

4 I said, you know, the guy that has this
5 car I'm looking for him because I believe that he's
6 involved in that homicide that occurred last night on
7 North Lamb.

8 And they both went oh, really. Well,
9 it's right behind the building over here. And they
10 took me -- actually, we walked together behind the
11 507, Building 507. And what was unusual about it was
12 it wasn't in a parking lot. You had to drive over the
13 curb, on the grass, over the sprinkler system, around
14 the back side of Building Number 507, and it was
15 parked up against the wall.

16 And there was a small triangle of grass
17 surrounded by block wall and tree canopy. So that's
18 why I couldn't find the car until they told me where
19 it was being parked at.

20 Q When you located the car with the
21 assistance of the young women, Ladonna Jackson and
22 Deborah Turner, was there an effort then to determine
23 if the key that you had obtained at the Lucky's store,
24 which had been by testimony in this courtroom, and I
25 presume by information you had received that day had

1 been taken from the defendant, did you determine if
2 that key operated the vehicle parked against the
3 building of 507 Lamb?

4 A I did determine if the key operated that
5 vehicle, but it wasn't until a little bit later.

6 First, I wanted to call a crime scene
7 analyst to the scene where the vehicle was at. I
8 wanted it to be photographed. And I wanted its
9 condition to be observed before we put the key in it
10 because I wanted to see how the vehicle was left by
11 whoever left it there.

12 And so while I was present, Mark
13 Washington, the crime scene analyst that responded, he
14 used the key, unlocked the door and eventually drove
15 the vehicle from where it was at onto a tow truck that
16 I had called for so that the vehicle could be removed
17 to the lab for processing.

18 Q Was it a single key that you moved from
19 the key chain and gave to Mark Washington?

20 A Yes.

21 Q And is it your recollection that it both
22 opened the door and worked on the ignition?

23 A Yes, it did.

24 Q So there is no doubt that the key
25 recovered from the defendant was a key to the victim's

1 car, the Toyota Corolla?

2 A No doubt.

3 Q Did you have an opportunity after you
4 were assisted by the two ladies you have referred to,
5 to interview them and to find out what information
6 they might have about the suspect and the Toyota?

7 A Yes.

8 Q When were those interviews conducted?

9 A Actually, they were conducted with
10 Ladonna and Deborah there at the government housing
11 project. We were standing around waiting for the
12 crime scene analyst to come actually, and I was
13 completing a tow sheet. And I was talking to them
14 about the vehicle, and they told me that James had
15 operated the vehicle and had parked it there, and that
16 he had been there the night before.

17 And we just generally talked about his
18 presence and the fact that he had remained, I believe,
19 in one of the apartments of Building 507 the night
20 before. I don't recall which apartment it was though.

21 Q Detective Vaccaro, there has been
22 testimony in the trial up to this point, or references
23 in various impound reports that have been introduced
24 as exhibits, that processing was done at the crime
25 scene and also in connection with the vehicle for the

1 presence of latent prints, that also certain items
2 recovered as evidence were processed for prints, are
3 you aware of that?

4 A Yes, I made the request, if I'm not
5 mistaken. I put the request in for the analysis of
6 those latent prints and also for the blood work that
7 was recovered from the mobile home.

8 Q Do you know if there has been a
9 comparison of latents recovered from the vehicle or
10 items of evidence from the crime scene with the known
11 prints of any person or persons?

12 A The only thing that I know is that the
13 results of any comparisons were negative for the
14 request for prints that I had put in.

15 Q Do you recall asking that the defendant,
16 James Chappell's, known prints be compared with any
17 latent prints recovered from the car or from the crime
18 scene?

19 A Yes, I did. I included Mr. Chappell
20 along with Ladonna and Deborah, because I learned that
21 they had both been occupants of the car. And I also
22 included Deborah Panos' fingerprints who I don't
23 believe her fingerprints were on file with the police
24 department, but they were recovered at the autopsy.

25 And so we had fingerprints of all of

1 these people, and I requested that comparisons be made
2 with any recovered latents from the mobile home and
3 the vehicle for all four individuals.

4 Q Was it latent print examiner Robert Rees
5 of the police department who did the comparisons in
6 this case?

7 A Yes.

8 Q Is that R-E-E-S?

9 A I believe that's how you spell it, yes,
10 sir.

11 Q To your knowledge were any of the
12 findings positive?

13 A No, to my knowledge none were regarding
14 latent prints.

15 Q Now, does that surprise you that a person
16 who owned the car and who actually lived in the mobile
17 home where she was killed and, in fact, also the
18 suspect who had been a boyfriend and also who had had
19 access to the vehicle, that neither one of them would
20 have identifiable prints located within the mobile
21 home or the car?

22 A Did it surprise me, I would say that it
23 didn't surprise me very much about the vehicle because
24 most vehicles interiors do not have surfaces that are
25 very good for lifting latent prints, and I know that

1 from personal experience and from training that I've
2 had.

3 And I know that with the exception of the
4 glass on the vehicle and maybe the exterior, and this
5 particular car had a fuzzy kind of wheel covering on
6 the steering wheel. So it didn't surprise me so much
7 about the vehicle.

8 The residence, however, had several
9 surfaces that probably could have been good for latent
10 print recovery. But those surfaces looked like they
11 had been wet at one time to me with regard to the
12 formica tops in the bathroom area and the formica tops
13 in the kitchen, and so it surprised me a little bit
14 that there weren't recovered latents, but sometimes
15 you just don't get any, and sometimes it's just like
16 that.

17 Q Are there a great many variables that
18 effect the ability to develop and lift latent prints?

19 A Yes. Often the crime scene analyst will
20 use powder to try to detect a latent print and you
21 will see a smudge or something developing, but it may
22 not be recognizable or liftable so that he could then
23 left the print and utilize it for an identification
24 purpose. So there is often times smudges, and you
25 know someone has been there but it doesn't pick up

1 well enough to be analyzed.

2 Q If water, in fact, was spilled or in some
3 manner went on the surface of where a print had been
4 deposited, would that effect the ability to develop
5 and lift the latent?

6 A Absolutely.

7 Q Does heat also effect it?

8 A Many variables like you stated. It is
9 not any particular field, but from what I've learned
10 in the schools that I've gone to, had the counter tops
11 been wiped down or had a heavy concentration of dust,
12 or heat been exposed to a certain print, it will
13 deteriorates, it also deteriorates.

14 Q You're saying that all the print work was
15 negative in this particular case?

16 A Yes.

17 Q There weren't any prints matched to
18 either the girls, Ladonna Jackson or Deborah Turner --

19 A Yes.

20 Q -- Deborah Turner --

21 A That's correct, there were no matches.

22 Q -- to the vehicle and you didn't match
23 any prints of Mr. Chappell or Miss Panos to either the
24 vehicle or the mobile home?

25 A No, sir.

1 Q Since they had had the relationship of
2 boyfriend, girlfriend, did you find it particularly
3 crucial in this case that there were or were not
4 prints?

5 A Not particularly. I expected to find Mr.
6 Chappell's prints in the mobile home because the
7 information that I had received was he resided there
8 at one time. And I expected to find Mr. Chappell's
9 prints in the vehicle because they, as a couple,
10 utilized that vehicle according to the information
11 that I received.

12 So the absence of those wasn't
13 particularly interesting. I like to get the latent
14 prints whenever I can. But if they are not there,
15 they are not there.

16 Q At the conclusion of the investigative
17 work conducted either at the Lucky's store on East
18 Bonanza and in connection with locating and impounding
19 the Toyota Corolla was Mr. Chappell, the defendant,
20 placed under arrest?

21 A Yes, he was.

22 Q Was he arrested for the murder of Deborah
23 Panos?

24 A Yes, he was.

25 Q What was the basis utilized by you and

1 your partner, Detective Phil Ramos in effecting an
2 arrest of the defendant on the charge of murder?

3 A Well, we just took it by the numbers the
4 way that we had learned everything; that he had been
5 seen leaving the mobile home where her body was
6 recovered; that he was seen leaving in a Toyota
7 Corolla; that he had the key to which was later
8 discovered at a location where we learned he had
9 stayed the night before; he was in the Lucky's store
10 in possession of documentation that pertained to the
11 Panos' children, that being the social security cards;
12 and he had wounds on his hand that to me appeared
13 consistent with wounds that you could get from having
14 a knife in your hand, striking a hard object and
15 having your hand slide down the knife.

16 Those were several of the things along
17 with eyewitness' statements about Mr. Chappell leaving
18 the area, the condition of Deborah Panos body, and the
19 way that she appeared to me as far as the duration of
20 time that she had been dead. Everything fit for James
21 Chappell to be the suspect in this, how long she
22 appeared to be deceased and the other factors that
23 I've just described.

24 And so he became our suspect, and once we
25 were done there at the Lucky's store, he was advised

1 that he was being placed under arrest for murder and
2 my partner, Phil Ramos, transported him to the jail
3 and booked him on that charge while I tended to the
4 vehicle.

5 Q Detective Vaccaro, to complete the
6 investigation did you have an interest in obtaining a
7 blood sample from the defendant?

8 A Yes.

9 Q Was a blood sample recovered from James
10 Chappell, the defendant?

11 A Yes. I don't recall the date but it
12 seemed like some months later, maybe weeks later. I
13 made a request through the district attorney's office
14 for a warrant to search the body of James Chappell for
15 his blood, and I received the warrant.

16 I proceeded over to the jail. The jail
17 personnel brought him down to the nurse's office. And
18 in my presence blood was drawn from his arm, and then
19 I took possession of the blood, filled out an evidence
20 impound for the blood, and then I placed it in a
21 refrigerator and I make a request for the blood to be
22 analyzed. And it stays locked up in this padlocked
23 refrigerator in the jail until it's picked up by the
24 chemist to do their analysis.

25 Q When blood samples are recovered from a

1 suspect in a case such as this and in this case of
2 James Chappell, the defendant, is it typically called
3 a serology kit?

4 A Yes.

5 Q And so you obtained a serology kit from
6 this defendant?

7 A Yes.

8 Q You said that you made a request of
9 someone for a blood analysis?

10 A Yes.

11 Q Who do you make that request for?

12 A Typically, we fill out a form that
13 requests our chemist's to conduct an examination of
14 the serology kit and all of its contents, and often
15 times we confer with them and request additional
16 outside laboratory work be done for DNA analysis, as
17 we did in this case.

18 MR. BROOKS: I'm going to object to any
19 additional testimony regarding blood and all of this
20 because we stipulated to the fact that our client
21 killed the woman. It's unnecessary. It's a waste of
22 time, and we object to it.

23 MR. HARMON: It isn't, your Honor. The
24 ultimate decision rests with the jury.

25 THE COURT: The objection is overruled,

1 but I believe that this portion of the presentation
2 can be abbreviated by the use of leading questions to
3 avoid the wasting of time.

4 MR. HARMON: Your Honor, we'll try to
5 expedite it.

6 THE COURT: How much longer do you have
7 with this witness?

8 MR. HARMON: About 30 seconds.

9 THE COURT: Go ahead.

10 BY MR. HARMON:

11 Q Detective Vaccaro, who did the initial
12 blood work in this case at the crime lab of the
13 Metropolitan Police Department? Was it the
14 criminalist, serology specialist, Terry Cook?

15 A Yes, it was.

16 Q And you mentioned that there,
17 furthermore, was a follow-up request for a DNA
18 analysis?

19 A Yes.

20 Q Were samples submitted by the crime lab
21 to Cellmark Diagnostic in Germantown, Maryland?

22 A Yes.

23 Q Did the department obtain DNA results?

24 A Yes.

25 MR. HARMON: Thank you. That concludes

1 direct, your Honor.

2 THE COURT: Cross examination.

3 MR. BROOKS: No questions.

4 THE COURT: May this witness be
5 discharged?

6 MR. HARMON: Yes.

7 THE COURT: Thank you, sir. You may step
8 down.

9 Ladies and gentlemen of the jury, we're
10 going to take our weekend recess at this time.

11 We will be convening as soon after 10:30
12 on Monday morning as we can. I have a lengthy
13 calendar so I can't make any promises. So if you will
14 please be here in the courthouse at 10:30 in the
15 morning.

16 And with that, I'll give you your
17 standard admonition. By now, I think that you have it
18 memorized.

19 It is your duty not to converse among
20 yourselves or with anyone else on any subject
21 connected with this trial or read, watch or listen to
22 any report of or commentary on the trial or any person
23 connected with this trial by any medium of information
24 including, without limitation, newspapers, television
25 or radio; and you are not to form or express any

1 opinion on any subject connected with this case until
2 it is finally submitted to you.

3 Have a nice weekend, ladies and
4 gentlemen. We'll see you Monday morning. We'll be at
5 ease while the jury departs the confines of the
6 courtroom.

7
8 (Outside the presence of the jury.)
9

10 THE COURT: Anything further from the
11 parties before we adjourn?

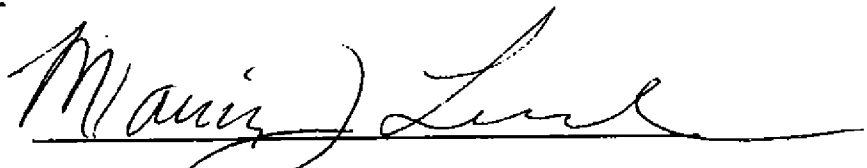
12 MR. HARMON: Not from the State.

13 MR. BROOKS: Not from the defense, your
14 Honor.

15 THE COURT: All right. Have a nice
16 weekend.
17

18 * * * * *

19 ATTEST: Full, true and accurate transcript of
20 proceedings.

21 
22
23 Marcia J. Leonard, RPR, CCR No. 204
24
25

FILED

DISTRICT COURT
CLARK COUNTY, NEVADA

Oct 11 9 50 AM '96

Scott Bowman
CLERK

State of Nevada
Plaintiff,
vs.
James Chappell
Defendant.

Case No. C131341
Dept. No. 7
Docket No. P

MEDIA REQUEST

Carri Geer, of Review-Journal

hereby requests permission to broadcast, record, photograph or
televise proceedings in the above-entitled case in the courtroom
of Department 7, Judge Bill Maupin, commencing
on the 10th day of October, 1996.

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

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

DATED this 8th day of October, 1996.

Carri Geer
MEDIA REPRESENTATIVE

455-4845

MEDIA PHONE NUMBER

P.O. Box 70

MEDIA ADDRESS

CE31

DISTRICT COURT
CLARK COUNTY, NEVADA

FILED

OCT 11 9 50 AM '96

Forrest L. Brown
CLERK

State of Nevada
Plaintiff,

vs.

James Chappell
Defendant.

Case No. C131341
Dept. No. 7
Docket No. p

ORDER GRANTING PERMISSION OF MEDIA ENTRY

Upon written request of Carri Geer, of
Review-Journal for written permission to broadcast,

record, photograph, or televise proceedings in the above-entitled
case, in the courtroom of Department 7, and being satisfied that
approval of this request would not distract participants, impair
the dignity of the proceedings or otherwise materially interfere
with the achievement of a fair trial or hearing herein.

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

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

DATED this 8th day of October, 1996.

Al Winters
DISTRICT JUDGE

1601

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ORIGINAL

0056
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

FILED IN OPEN COURT

OCT 11 1996 19

LORETTA BOWMAN, CLERK

BY

Lina Hard

Deputy

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

JAMES MONTELL CHAPPELL,

Defendant.

CASE NO. C131341x

DEPT. NO. VII

Date of Hearing: 10-11-96

Time of Hearing: 9:00 A.M.

**DEFENDANT'S MOTION TO DISMISS ALL CHARGES
BASED ON THE STATE'S VIOLATION OF THE
EQUAL PROTECTION CLAUSE OF THE 14TH AMENDMENT**

COMES NOW, the Defendant, James Montell Chappell, by and through his attorneys, Deputy Public Defenders Howard S. Brooks and Willard N. Ewing, and moves that this Honorable Court dismiss the charges currently pending in this case, that being Burglary, Murder With Use of a Deadly Weapon, and Robbery With Use of a Deadly Weapon, because the State of Nevada has engaged and is engaging in a pattern of racial discrimination in both its charging decisions and in its use of peremptory challenges to remove black individuals from the jury pool in violation of the 14th Amendment right to equal protection of the laws. Furthermore, the Defense contends the alleged race-neutral reasons used by the State to justify their preemptory challenges were

1 || pretextual in nature.

2 This motion is made and based on the papers and
3 pleadings on file herein, Declaration of Howard S. Brooks and
4 Memorandum of Points and Authorities attached hereto.

5 DATED this 10th day of October, 1996.

6 CLARK COUNTY PUBLIC DEFENDER

7 Home & Brook

8 By _____
9 HOWARD S. BROOKS #3374
DEPUTY PUBLIC DEFENDER

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MEMORANDUM OF POINTS AND AUTHORITIES

FACTS

As noted in the Declaration of Howard S. Brooks, 36 jurors were qualified by the Court and the parties in this case as potential jurors to serve in this case. Of the 36 individuals, only 2 were black. The State of Nevada eliminated both black jurors by exercising peremptory challenges.

The Court allowed this exercise of peremptory challenges by the State, citing the State's reliance on alleged equivocal answers by the black venireman to questions regarding the death penalty.

ARGUMENT

In Doyle v. State, 112 Nev., Adv. Op. 118 (July 22, 1996), the Nevada Supreme Court discussed in detail an allegation that the State violated the defendant's right to equal protection of the laws by using its preemptory challenges to eliminate black venireman persons from the jury pool. Doyle, relying on Batson v. Kentucky, 476 U.S. 79, (1986), claimed the State improperly used its preemptory challenges to remove black venireman persons from the jury pool in violation of the 14th Amendment right to equal protection of the laws. The State contended that the reasons given for excluding the jurors were race neutral and did not constitute discrimination.

Batson sets forth a three-step process for evaluating race-based objections to preemptory challenges.

The opponent of a preemptory challenge must make a prima facie showing of racial discrimination; the burden of proof then shifts to the proponent of the strike to come forward with a race

1 neutral explanation. If a race neutral explanation is tendered,
2 the trial court must decide whether the opponent of the strike has
3 shown that the proffered race neutral explanation is merely a
4 pretext for purposeful racial discrimination. Doyle v. State, 112
5 Nev., Adv. Op. 118 at 4.

6 The Nevada Supreme Court has stated that a "pattern" of
7 strikes against black jurors gives rise to an inference of
8 discrimination. Doyle, 112 Nev., Adv. Op. 118 at 5.

9 In the present case, the State of Nevada eliminated both
10 black venireman from the jury pool, thereby leaving a pool within
11 which there were no black potential jurors to serve. In Doyle,
12 the exclusion of 3 out of 4 black prospective jurors was
13 sufficient to make out a prima facie Batson violation.
14 Consequently, the exclusion of all black jurors in the present
15 case certainly provides a basis for a prima facie Batson
16 violation.

17 The State presented the same race-neutral explanation in
18 support of its exercise of the preemptory challenge against the 2
19 black individuals in the present case. Both individuals,
20 according to the State, were equivocal in their expressions of
21 support for the death penalty. The Court ruled that the State's
22 race-neutral reasons were sufficient to allow the strikes.

23 When the State offers explanations that justify their
24 proposed strikes, and those reasons are facially neutral, a
25 defendant must show purposeful discrimination by showing the
26 explanations to be pretextual. United States v. Joe, 938 F.2d 99,
27 102 (4th Cir., 1991).

28 It is the contention of the Defense in this case that

1 the exclusion of all black jurors in this case and the exclusion
2 of all black jurors in the death penalty case of State of Nevada
3 vs. William Chris Shoels, noted in the Declaration, and the racial
4 discrimination suggested by the State seeking the death penalty in
5 this case while not seeking the death penalty in cases with
6 remarkably similar facts, suggest a pattern of racial
7 discrimination by the State of Nevada, which suggests the reasons
8 stated on the record for the use of preemptory challenges was
9 pretextual in nature, meant solely to disguise the State's true
10 motive in excluding the black jurors from this jury.

11 CONCLUSION

12 For the above-stated reasons, the Defense respectfully
13 requests that this Honorable Court dismiss the charges in the
14 instant case based on the outrageous misconduct by the State of
15 Nevada in discriminating against James Montell Chappell because he
16 is black, in violation of the 14th Amendment and other
17 constitutional guarantees, both in the federal and state
18 constitution, guaranteeing equal protection of the law.

19 DATED this 10th day of October, 1996.

20 CLARK COUNTY PUBLIC DEFENDER

21

22 By _____
23 HOWARD S. BROOKS #3374
24 DEPUTY PUBLIC DEFENDER

25

26

27

28

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. In the present case of State of Nevada vs. James Montell Chappell, I represent Mr. Chappell, a black man who is 26 years old.

3. The purpose of this declaration is to provide evidence of a pattern of racial discrimination by the State of Nevada in its charging decisions and its use of peremptory challenges in this case and another case.

CHARGING DECISIONS

4. In the instant case, Mr. James Chappell is charged with Burglary, Murder With Use of a Deadly Weapon, and Robbery With Use of a Deadly Weapon, for killing the mother of his three children, Debra Panos, who Mr. Chappell allegedly stabbed fourteen times on August 31, 1995. No eyewitnesses witnessed the stabbing in this case. James Chappell is black, and Debra Panos, the victim, is white. The State is seeking the death penalty.

5. In the similar case of State of Nevada vs. Sonthraht Sengsuwan, Case Number C132173x, also pending in this same District Court, the State of Nevada has charged Mr. Sengsuwan with the charges of Murder With Use of a Deadly Weapon, Attempt Murder With Use of a Deadly Weapon, and Robbery With Use of a Deadly Weapon. Mr. Sengsuwan stabbed the owner of the restaurant where he worked approximately twenty times. There were no witnesses to

1 the stabbing. Both the defendant and the victim are natives of
2 Thailand. The State is not seeking the death penalty in that
3 case.

4 6. In the case of State of Nevada vs. Michael Keeves,
5 Case Number Cl34404x, Mr. Keeves allegedly stabbed the victim
6 approximately fifteen times. There were no eyewitnesses to the
7 acts of stabbing. Both Mr. Keeves, a British tourist, and the
8 victim, an employee of a Las Vegas casino, were young white men.
9 The State did not seek the death penalty.

10 7. In the three above-mentioned cases, all three
11 defendants were charged with Murder With Use of a Deadly Weapon.

12 8. In the all three of the above cases, all three
13 murder defendants were charged under both a premeditation theory
14 and a felony murder theory. All three individuals either took the
15 victim's vehicle after the killing, or tried to take the victim's
16 vehicle after the killing.

17 9. All three individuals used a deadly weapon in the
18 crime. All three individuals used a knife in the killing.

19 10. James Chappell stabbed the mother of his three
20 children approximately fourteen times; Sonthraht Sengsuwan stabbed
21 his victim approximately twenty times; Michael Keeves stabbed his
22 victim approximately twenty times.

23 11. In the case of State of Nevada vs. Michael Keeves,
24 where a white man killed a white man, the case was negotiated to
25 Voluntary Manslaughter With Use of a Deadly Weapon and a Robbery
26 conviction. Mr. Keeves pled guilty to the charge.

27 12. In the case of State of Nevada vs. Sonthraht
28 Sengsuwan, where a Thai killed a Thai, the State of Nevada is

1 currently seeking a first degree murder conviction, but is not
2 seeking the death penalty.

3 13. In the case of State of Nevada vs. James Chappell,
4 where a black man killed a white woman, the State of Nevada is
5 seeking the death penalty.

6 14. It is the contention of the Defense that the
7 seeking of the death penalty against James Chappell in light of
8 the extraordinary similarity in circumstances among the three
9 cases evidences a racial prejudice on the part of the State of
10 Nevada in violation of the equal protection clause of the 14th
11 Amendment.

12 JURY SELECTION IN CHAPPELL

13 15. I, Howard S. Brooks, observed the following to
14 occur during the selection of the jury in the case of State of
15 Nevada vs. James Chappell.

16 16. One hundred thirty-five people filled out the juror
17 questionnaire for jury service in this case. Of the one hundred
18 thirty-five, fifteen identified themselves as black.

19 17. Sixty-six jurors were excused for various reasons,
20 including the following: opposition to the death penalty;
21 opposition to parole for someone convicted of murder; illness;
22 hardships at work; pre-planned vacations; and other sundry
23 reasons. Of the sixty-six individuals excused for these
24 miscellaneous reasons, ten were black.

25 18. During the selection procedure, thirty-three jurors
26 were never brought into the process. Of those thirty-three, three
27 were black.

28 19. Of the remaining thirty-six jurors who were passed

1 for cause by both parties, two were black. During their exercise
2 of peremptory challenges, the State eliminated both black jurors,
3 stating that juror #493, Adrian D. Marshall, a 37 year old black
4 woman, was equivocal in her representations to the Court regarding
5 her ability to impose the death penalty. Similarly, the State
6 excused juror #427, Olga C. Bourne, a 67 year old black woman, who
7 the State also alleged was equivocal in her representations
8 regarding the imposition of the death penalty.

9 20. By eliminating the only two jurors passed for cause
10 among the thirty-six jurors qualified by both parties, the State
11 effectively eliminated all black representation on the jury in
12 this present case.

13 21. Mr. Chappell, a 26 year old black man, will be
14 tried by a jury of twelve white individuals, with 4 white
15 individuals serving as alternate jury members.

16 22. At the conclusion of the jury selection process,
17 the Defense objected to the exercise of peremptory challenges by
18 the State, and the Court accepted the State's representation that
19 both black jurors were being excused for race-neutral reasons,
20 that being the equivocal nature of these individual's answers
21 regarding their ability to impose the death penalty.

22 23. The actions of the State of Nevada in this case are
23 consistent with a pattern of racial prejudice by the State of
24 Nevada in its jury selection practices.

25 JURY SELECTION IN THE SHOELS CASE

26 24. During my twenty-one months as a Deputy Public
27 Defender serving on the murder team, this is the second death
28 penalty case I have taken to trial.

1 25. In the other death penalty case which I took to
2 trial, that being the case of State of Nevada vs. William Chris
3 Shoels, Case Number C115759, which was tried in the District
4 Court, Department III, in September of 1995, Mr. Shoels was
5 charged with first degree murder with use of a deadly weapon and
6 possession of a firearm by an ex-felon.

7 26. During jury selection, Mr. Shoels was represented
8 by myself and Deputy Public Defender David Wall.

9 27. The State of Nevada was represented by Chief Deputy
10 District Attorney Daniel Seaton and Deputy District Attorney
11 Lester Quam.

12 28. In that case, the original jury panel consisted of
13 seventy-five persons. During the first and second day, the
14 parties questioned and passed for cause thirty-two potential
15 jurors.

16 29. Only two of the thirty-two jurors passed for cause
17 were black. One was juror Bobbie Walker Minefee, badge number
18 491. The other was Lisa Renee Culmer, badge number 492.

19 30. Both of these potential black jurors, the only
20 blacks among the panel passed for cause, were precluded from
21 serving on the jury by preemptory challenges by the State. The
22 reasons given by the State were the answers in the jury
23 questionnaire regarding their positions on the death penalty, even
24 though those positions were not maintained when the individuals
25 heard what the law required.

26 31. The ultimate jury selected in the case of William
27 Chris Shoels was entirely made up of white people with the
28 exception of one Hispanic on the jury.

1 32. For the record, William Chris Shoels was a black
2 man accused of murdering another black man.

3 33. It is the contention of the Defense that the State
4 of Nevada engages in a pattern of racial discrimination in the
5 selection of juries and in the charging decisions regarding the
6 imposition of the death penalty. The Defense also asserts that
7 the State's objection to black jurors for their alleged views
8 regarding the death penalty constitutes a pretextual excuse by
9 which the State of Nevada eliminates blacks from the juries.

10 34. It is the contention of the Defense that the
11 practices and actions of the State of Nevada in this case and in
12 the other cases cited in this declaration constitute outrageous
13 governmental misconduct, and such conduct warrants dismissal of
14 the charges in this case.

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

17 EXECUTED ON October 10, 1996.

18 

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20 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 will be heard on October 11, 1996, at 9:00 A.M. in Department No. VII of the District Court.

DATED this 10th of October, 1996.

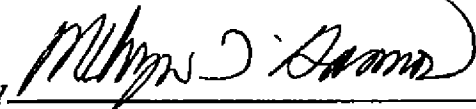
CLARK COUNTY PUBLIC DEFENDER



By _____
HOWARD S. BROOKS #3374
DEPUTY PUBLIC DEFENDER

RECEIPT OF COPY of the above and foregoing Motion is hereby acknowledged this 11th day of October, 1996.

CLARK COUNTY DISTRICT ATTORNEY

By 

(Mot\Chappell.Dismiss)

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ORIGINAL

DISTRICT COURT
CLARK COUNTY, NEVADA FILED IN OPEN COURT

OCT 14 1996 19

* * * * *

LORETTA BOWMAN, CLERK

BY Lina Hurd 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

FRIDAY, OCTOBER 11, 1996, 9:35 A.M.

VOLUME IV - MORNING SESSION

APPEARANCES:

FOR THE STATE:

MELVYN T. HARMON &
ABBI SILVER
Deputies 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

CE

1	<u>INDEX</u>	
2		<u>PAGE</u>
3		
4	<u>STATE'S WITNESSES</u>	
5		
6		
7	<u>DEBORAH TURNER</u>	
8	DIRECT EXAMINATION BY MS. SILVER	14
9	CROSS EXAMINATION BY MR. BROOKS	24
10	REDIRECT EXAMINATION BY MS. SILVER	27
11	<u>LaDONNA JACKSON</u>	
12	DIRECT EXAMINATION BY MS. SILVER	28
13	CROSS EXAMINATION BY MR. BROOKS	41
14	REDIRECT EXAMINATION BY MS. SILVER	43
15	RECROSS EXAMINATION BY MR. BROOKS	47
16	<u>LAWRENCE MARTINEZ</u>	
17	DIRECT EXAMINATION BY MR. HARMON	61
18	CROSS EXAMINATION BY MR. BROOKS	73
19	<u>KIMBERLY SEMPSON</u>	
20	DIRECT EXAMINATION BY MR. HARMON	74
21	<u>PAUL OSUCH</u>	
22	DIRECT EXAMINATION BY MS. SILVER	83
23	CROSS EXAMINATION BY MR. BROOKS	99
24	REDIRECT EXAMINATION BY MS. SILVER	103
25	RECROSS EXAMINATION BY MR. BROOKS	104
	FURTHER REDIRECT EXAMINATION BY MS. SILVER	105
	FURTHER RECROSS EXAMINATION BY MR. BROOKS	108

PATSY K. SMITH, OFFICIAL COURT REPORTER

1	<u>STATE'S EXHIBITS</u>	
2		<u>PAGE</u>
3		
4		
5	Exhibit No. 56	38
6	Exhibit No. 77	99
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
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1 FRIDAY, OCTOBER 11, 1996, 9:35 A.M.

2 THE COURT: Let's go on the record outside
3 the presence of the jury. The defendant is present
4 represented by his counsel.

5 MR. BROOKS: Judge, the defense would ask
6 the Court for permission to file the defendant's motion to
7 dismiss all charges based on the State's violation of the
8 equal protection clause of the 14th Amendment. I have
9 provided the State a copy of the motion and we would comply
10 with anything the Court wants regarding the State to
11 respond.

12 THE COURT: What is the nature of the
13 motion?

14 MR. BROOKS: Let me make a brief record with
15 regards to the nature.

16 THE COURT: You can file it in open court at
17 this time.

18 MR. BROOKS: Thank you, Judge.

19 What I did is I went back and went through
20 all the jury questionnaires and discovered that in our jury
21 questionnaires, we had 135 jury questionnaires and of the
22 135, 15 people identified themselves as black. Of that
23 135, we excused 66 for various reasons involving opposition
24 to the death penalty, opposition to parole, illness,
25 hardship, work or other reasons. Of the 66 that were

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1 excused, 10 were black, leaving only five members on the
2 panel.

3 During the selection procedure --

4 THE COURT: Yes, although you will recall
5 that the minority jurors in the prospective panel all asked
6 to be off.

7 MR. BROOKS: That is correct.

8 THE COURT: Or indicated an opposition to
9 the death penalty.

10 MR. BROOKS: That is correct, your Honor.

11 During the selection procedure, 33 jurors
12 were never brought into the process. Of those 33, three
13 were black, leaving a total of 36 jurors who were passed
14 for cause by both parties, two of whom were black.

15 THE COURT: What do you mean 33 were never
16 brought in?

17 MR. BROOKS: Thirty three we never got to.
18 In other words, when we actually qualified --

19 THE COURT: There were 33 left.

20 MR. BROOKS: Right, there were 33 left when
21 we got to them.

22 THE COURT: I'm not sure there were that
23 many.

24 MR. BROOKS: During the exercise of the
25 peremptory challenges, the State eliminated both black

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1 jurors, 493, Adrian Marshall, and 427, Olga Bourne, and the
2 State provided the Court a reason; that being that these
3 individuals were equivocal about their ability to impose
4 the death penalty. The Court accepted that as a race
5 neutral reason.

6 In going back and looking at my last death
7 penalty trial, which is the Shoels case, which occurred in
8 Department III of District Court in September of 1995,
9 that's case number C115759, we went through precisely the
10 same procedure and in that case, we qualified 32 jurors
11 that were passed for cause and of the 32 jurors, two of the
12 jurors were black and, in that case, the State also knocked
13 off both black jurors, that being juror Bobbie Walker
14 Minefee, M-I-N-E-F-E-E, badge 491 and Lisa Renee Culmer,
15 badge 492. And, once again, the State offered the precise
16 same reasons they offered in this case that these two black
17 jurors were equivocal in their support for the death
18 penalty, even though, during the examination, they
19 indicated they could impose it.

20 When we take that information, Judge, the
21 two cases, the State's behavior is the same and also
22 consider their actions in charging this case. I would like
23 to briefly mention that. The charging decision in this
24 case, I currently represent three different clients where
25 the facts are remarkably similar and in all three cases,

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1 the individual stabbed someone with whom he is acquainted,
2 he stabs them anywhere from 15 to 25 times in each case,
3 and in each case he either takes the car or tries to take
4 the car afterwards.

5 In one case, where a white man kills a white
6 man, that being the cases of State of Nevada versus Michael
7 Keeves, the case negotiated to a voluntary manslaughter
8 with use of a use deadly weapon and a robbery. The State
9 did not seek the death penalty.

10 In the case of State of Nevada versus
11 Sonthraht Sengsuwan, which involved a Thai killing a Thai,
12 the State of Nevada did not seek the death penalty, but is
13 seeking a first degree murder conviction and then in this
14 case, where a black man kills a white woman and the facts
15 are almost precisely the same as the others, the State of
16 Nevada not only seeks first degree murder, they seek the
17 death penalty.

18 Our position is in light of these charging
19 decisions and what they did in the Shoels case, it appears
20 that the reasons being given by the State in their jury
21 selection, when they say they are knocking black jurors off
22 because of their equivocality regarding the death penalty,
23 we submit that's a pretext and we submit that the law under
24 Doyle, which is cited in my motion, adequately supports the
25 idea that we've established a prima facie case of

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1 discrimination and, in fact, the State's reasons are
2 pretextual and, in fact, the State is practicing racial
3 discrimination in how they charge these cases.

4 MS. SILVER: Just briefly.

5 We haven't even had an opportunity to read
6 the motion, but I am offering a couple things for the
7 record right now.

8 One of the things I would like to mention is
9 I prosecuted a case, death penalty case called State of
10 Nevada versus Edward Lee Jones and in that case, it's very
11 similar to this case. He stalked his girlfriend of many --
12 I think a year. They had a abusive relationship, there was
13 a robbery involved, and I got the death penalty. The
14 victim was black, the defendant was black, and no matter
15 what color my victim or my defendant is, I think we look at
16 the facts of the case and we decide it based on each of the
17 different facts. I don't know the facts of Mr. Brooks'
18 cases, but I can tell you that Edward Lee Jones was almost
19 identical to this case and I did get the death penalty on
20 that case and that was with a black victim.

21 THE COURT: You mean the defendant got the
22 death penalty.

23 MS. SILVER: The defendant was black and his
24 girlfriend was black and I asked for the death penalty, as
25 well in that case, and it was just almost identical.

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1 Be that as it may, I can't respond to cases
2 that he negotiates down to voluntary manslaughter or some
3 other charge. I wasn't the prosecutor on those cases,
4 whether they were a Thai victim. I don't know the
5 circumstances of those cases. Obviously, there are reasons
6 why we may or may not seek the death penalty and that's for
7 our panel to decide. There's a whole panel in the D.A.'s
8 Office that decides that. It's not a unilateral decision
9 by one person.

10 In any event, I did want to make a record
11 that even of the 33 jurors that was left, I would note to
12 the Court that the black individuals that were kicked from
13 the jury panel, many of them raised their hands because it
14 was a case that they did not feel comfortable being a juror
15 in. Some of them said it's because they could not give the
16 death penalty.

17 I would note to the Court, and I will
18 provide exhibits as well, that there were at least two
19 black males that stood up here and told the Court that they
20 -- that they would sit on this case. However, the only
21 two punishments they could decide was the death penalty or
22 life without, that they could not consider life with.
23 Those individuals were kicked by the defense. Those were
24 two different jurors.

25 One of the jurors I had personally on the

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1 questionnaire, which I'm going to admit as an exhibit and I
2 would like to take time to research the number because one
3 of the things he said that struck me of why I wanted him as
4 a juror is he stated that his sisters were two guards at
5 the prison. One of the statements he made is, "I know what
6 really goes on in prison," and one of the things I was
7 going to follow-up with is, "Why don't you tell us what
8 prison life is really like," and enlighten the people as to
9 the fact that it's not like --

10 THE COURT: That would not have been proper
11 voir dire examination.

12 MS. SILVER: Well, in any event, we heard
13 from one white juror that said prison is like the movie
14 Serpico --

15 THE COURT: Papillon.

16 MS. SILVER: -- with Al Pacino.

17 THE COURT: Papillon.

18 MS. SILVER: I don't know where I got that.

19 THE COURT: It was with Dustin Hoffman and
20 Steve McQueen.

21 MS. SILVER: I'm wrong on all that.

22 In any event, that was a juror I was very
23 interested in having black, white, or otherwise and be that
24 as it may, no one was able to place that juror in the jury
25 panel because of his statement that he could not consider

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1 all the punishments; he would only consider the death
2 penalty or life without.

3 There was another juror, a black male, and
4 I'm going to have to go back over my notes and I cannot
5 remember for the life of me what his name was or what he
6 did, but I recall him coming from where the bailiff is
7 sitting right now and he left the jury box as well because
8 he said he could only consider death or life without and so
9 I just wanted to make the representations that the only two
10 jurors that, you know, that we had struck for cause or,
11 excuse me, perempted was based on their answers and their
12 indecisive answers in this case and I think we have already
13 made a record on that.

14 THE COURT: All right, the Court is of the
15 opinion that the current method of selecting jurors is just
16 about as race neutral as it can be. The pool is comprised
17 of persons who have automobile driver's licenses. This is
18 probably as close as you can get to a demographic --
19 demographically balanced pool of prospective jurors. So,
20 in my opinion, the process itself by which we obtain a pool
21 of jurors is race neutral.

22 The instances pointed to by the Deputy
23 Public Defender representing Mr. Chappell are discrete in
24 and of themselves. The Court is familiar with one of them,
25 having taken the plea in the Keeves case, that there are

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1 differing features to these cases. These are discrete
2 cases that can only at least, in terms of the predicate for
3 this motion, can be considered to be only episodic.

4 There is no question but that the victim in
5 this case is a Caucasian and the defendant in this case is
6 an African American. At this point, there is an
7 insufficient foundation laid to establish that the
8 prosecution in this case, in the jury selection, violated
9 the defendant's rights of equal protection and at this time
10 I'll ask that the jury be brought in.

11 MR. BROOKS: Thank you, Judge.

12 (Off the record discussion not reported.)

13 THE COURT: Can counsel approach the bench
14 for just a minute.

15 (Off the record discussion not reported.)

16 THE COURT: Well, we will give him 10
17 minutes and if the juror is not here, we will use an
18 alternate.

19 THE BAILIFF: He has a long beard.

20 (Off the record discussion not reported.)

21 THE COURT: We will use the 10 minute rule
22 at this point for our professor. If he's not here, we'll
23 move on with an alternate.

24

25 (Off the record at 9:55 a.m. and back on the

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1 record at 10:05 a.m.)

2

3 THE COURT: Good morning, ladies and
4 gentlemen.

5 THE JURY: (In Unison) Good morning.

6 THE COURT: Counsel stipulate to the
7 presence of the jury?

8 MR. HARMON: Yes, your Honor.

9 MR. BROOKS: Defense will, your Honor.

10 THE COURT: This is the continuation of the
11 jury trial. The State may resume with its case in chief.
12 You may call your next witness.

13 MS. SILVER: Thank you, your Honor. The
14 State would call Deborah Turner.

15

16 DEBORAH TURNER,
17 having been first duly sworn to tell the truth, the whole
18 truth and nothing but the truth, testified and said as
19 follows:

20

21 MR. BROOKS: Judge, for the record, one of
22 the jurors has a question apparently.

23 A VOICE: Can we continue with the
24 pictures?

25 THE COURT: Oh, that's correct. If we can

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1 continue the circulation of the photographs. The Court has
2 already made the appropriate -- in its view, the
3 appropriate rulings on their admissibility.

4 MS. SILVER: Thank you.

5

6 DIRECT EXAMINATION

7 BY MS. SILVER:

8 Q Can you please state your name and
9 spell your names, first and last, for the record.

10 A Deborah Turner. D-E-B-O-R-A-H
11 T-U-R-N-E-R.

12 Q And, Deborah, how old are you?

13 A Nineteen.

14 Q And on August 31st of 1995, did you
15 know someone by the name of James?

16 A Yes.

17 Q Do you see him here in court today?

18 A Yes, I do.

19 Q Can you please point to him and tell us
20 what he is wearing.

21 A He's wearing a suit with a yellow
22 shirt, with a tie, gray suit.

23 MS. SILVER: Your Honor, may the record
24 reflect that the witness has identified the defendant?

25 THE COURT: Yes.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Q (BY MS. SILVER) Did you also call him
2 Hip Hop?

3 A Yes.

4 Q Why did you call him that?

5 A Because he danced around with his
6 radio.

7 Q Where would you generally see the
8 defendant?

9 A In the apartments on Las Vegas -- I
10 mean on Lamb and Bonanza.

11 Q What's that area known as?

12 A The Rayson --

13 Q Is that a series of projects?

14 A It's a project housing.

15 Q And how long before August 31st of 1995
16 had you known him? How long before that?

17 A Approximately six to eight months.

18 Q And during that time period, how often
19 would you see him around the complex?

20 A All the time. He was there hanging out
21 most of the time.

22 Q Would it be fair to say almost
23 everyday, if not everyday?

24 MR. BROOKS: I'm going to object and move to
25 strike, your Honor. This is irrelevant testimony.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 THE COURT: Overruled.

2 THE WITNESS: I seen him everyday that I was
3 out hanging out. He was there.

4 Q (BY MS. SILVER) Did you live in that
5 complex?

6 A At that time, yes.

7 Q Now, during that time, to your
8 knowledge, did he have a job?

9 MR. BROOKS: Objection, irrelevant.

10 THE COURT: Overruled.

11 THE WITNESS: Not to my knowledge, no.

12 Q (BY MS. SILVER) To your knowledge, did
13 he have a vehicle?

14 A No, he didn't have one personally, but
15 he was driving his girlfriend's car.

16 Q Did you ever see that girlfriend?

17 A No.

18 Q I'd like to show you what's been marked
19 for identification purposes as State's Proposed Exhibit 56
20 and ask you if this is the car you recall the defendant in
21 possession of?

22 A Yes, ma'am.

23 Q Had you ever seen his children before?

24 A Yes, on several times.

25 Q Now, on August 31st of 1995, do you

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 recall seeing the defendant?

2 A On the day?

3 Q Let me ask you this.

4 You recall one day speaking to homicide
5 detectives, correct?

6 A Oh, yes.

7 Q The evening before, do you recall
8 seeing the defendant?

9 A Oh, yes.

10 Q Was that approximately August 31st of
11 1995?

12 A It was that night.

13 Q Okay.

14 And was it dark out?

15 A It was --

16 Q When you saw the defendant -- or was it
17 light?

18 A It was dark outside.

19 Q Do you know the exact time when you
20 first saw him?

21 A No. It was just -- I just know it was
22 dark.

23 Q And did you see the vehicle that you
24 just identified in State's Proposed Exhibit No. 56? Did
25 you see it?

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 A Yeah, it was in the projects.
2 Q And where was he in connection to where
3 the car was?
4 A He was in the area the last spot I seen
5 him.
6 Q And what was he doing when you saw him?
7 A He had shrimp and pie and he was going
8 door to door trying to sell it.
9 Q Did he approach you as well?
10 A Yes.
11 Q And did you buy something from him?
12 A I bought the shrimp and the pie and
13 rented the car.
14 Q And how much did you rent the car and
15 buy the shrimp and the pie for?
16 A Fifteen dollars.
17 Q How did he ask you -- what did he say
18 to you before he sold these items to you?
19 A Well, when he approached me, he just
20 said -- he called me -- he called me over. He know my
21 name. He was like, "Dee Dee, come here. You want this?"
22 I looked in the bag and told him, "Yes," but after he left
23 and came back, he asked me about the car and I told him,
24 "Yeah, I wanted to rent it." That's when he added on the
25 additional \$10.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Q Did you have to negotiate with him on a
2 price for all of those three items?

3 A To a certain extent, but he was freely
4 to let me drive the car, like no limit really. He just
5 told me --

6 Q Did he give you the keys to the car?

7 A Yes.

8 Q And did he tell you what to do with the
9 vehicle when you were done?

10 A To park it in the back by my house,
11 like in the back of the apartments.

12 Q Did he hand over the shrimp to you?

13 A Did he hand --

14 Q Did he give you the bag of shrimp?

15 A And the pie together.

16 Q With the keys?

17 A Not at the same time. When we came
18 back, he did.

19 Q And what did you give him after he gave
20 you these three items, the keys, and the shrimp, and the
21 pie?

22 A Gave him the money.

23 Q How much again was that?

24 A Fifteen dollars.

25 Q And let me ask you this. Did the

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 defendant -- how was he acting at that time?

2 A Just like he always be. Just Hip Hop.
3 He just -- like everyday, hip hop, which is dancing and
4 just doing his thing.

5 Q Did he seem sad?

6 A He didn't seem nothing. He was just
7 the normal way. He always be happy and goofing around.

8 Q So he was not sad?

9 A (Witness shook head negatively.)

10 THE REPORTER: Is that answer no?

11 Q (BY MS. SILVER) You have to say yes or
12 no.

13 A No. It wasn't no sadness. I wouldn't
14 think there was anything wrong.

15 Q He didn't seem upset?

16 A No.

17 Q You said you generally saw him dancing
18 around. Did you see him dancing around that evening, do
19 you recall?

20 A For just a little bit after he got the
21 radio out of the car. You know, his little radio. After
22 awhile, I sat out there for a little bit and he was goofing
23 around, dancing, and then we joked for a little bit and we
24 got in the car and I picked up my friend and we left.

25 Q What kind of dancing was he doing?

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 A Just break dancing, just dancing. No
2 particular dancing, just dancing.
3 Q Was anyone dancing with him?
4 A No.
5 Q And as he was dancing, did he seem
6 sad?
7 A No.
8 Q What did you do with the vehicle? What
9 did you do with the car?
10 A I picked up my friend and we drove.
11 Q Who was your friend?
12 A Ladonna Jackson. I picked her up. We
13 went driving around.
14 Q Were you driving the car?
15 A Yes.
16 Q And where was she sitting?
17 A In the passenger seat.
18 Q Where all did you go?
19 A I went over to my God mamma's house.
20 Man, we just drove around the streets and took off kind of
21 late and we came back home.
22 Q And where did you park the car?
23 A On the side of the back of my house.
24 Q And was that in a parking lot area?
25 A It was on top of grass behind the

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1 building.

2 Q If you were on the street, could you
3 have seen where that car was?

4 A No.

5 Q And did you park it at the same
6 location that the defendant told you to park it in?

7 A Yes.

8 Q What did you do with the keys?

9 A Put them underneath the seat,
10 underneath the seat back or whatever that thing is.

11 Q And then you left the car?

12 A Went into my house.

13 Q Do you recall about what time this
14 was?

15 A It was like approximately like about 3
16 and 5 in the morning, but it was before the sun came up.

17 Q So that would have been 3 to 5 in the
18 morning on September 1st of 1995?

19 A Right, the next day.

20 Q Going in from the time that you --

21 A That night.

22 Q -- rented this vehicle into the early
23 morning hours?

24 A Right.

25 Q Did you ever see the defendant again

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 after that?

2 A No.

3 Q Did there come a time the next day that
4 you saw some people around that vehicle?

5 A Yeah, I was in my bed and my friend
6 told me that the police was at the car. So I came out and
7 they were fingerprinting the stuff and the car and he was
8 asking people and I didn't really want to say nothing until
9 I found out who it was. I thought I was in trouble, but --

10 Q Who was asking people things?

11 A The detectives and they told me --
12 after they told me, I mean, what he did --

13 Q Let me ask you this. Were you giving
14 the police information initially about what was going on?

15 A As far as I knew, I just told them I
16 drove the car and it was me and --

17 Q Why did you tell the police -- why did
18 you give the police information?

19 A I'm not no snitch or nothing, but I
20 mean I don't know what I'm suppose to say, but I know them
21 kids, I feel for them kids. I seen them kids in the
22 apartments and I just feel that it was wrong what he did
23 and I don't really like to snitch on nobody or nothing like
24 that, but I just feel it was wrong. Them kids -- I just --
25 I don't know.

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1 Q Okay.

2 A I work way too hard for my mom and I
3 have been in the states and stuff.

4 Q Okay. Let me ask you the next
5 question.

6 Did you take -- do you recall taking a taped
7 statement from the police or a handwritten statement or did
8 they just talk to you?

9 A They -- they did -- they talked to me
10 and did a written. Wrote some of the stuff down on his pad
11 or whatever.

12 MS. SILVER: Court's indulgence.

13 Thank you. That concludes direct
14 examination.

15 THE COURT: Cross.

16

17 CROSS EXAMINATION

18 BY MR. BROOKS:

19 Q Ms. Turner, you just testified that
20 James was dancing around that evening, correct?

21 A Yes.

22 Q He was dancing around because he was
23 high on cocaine; isn't that right?

24 A I didn't see him do any cocaine.

25 Q Did he do cocaine in the projects?

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 A From what I have known, he was -- he
2 was a crack head from what I know.

3 Q He was a crack head.

4 A And that's why he was selling the shrimp and
5 the car to get money for drugs?

6 A I don't know what he was doing it for.

7 Q Does that make sense, though?

8 MS. SILVER: I'm going to object as to
9 speculation.

10 THE COURT: Overruled.

11 Q (BY MR. BROOKS) You may answer the
12 question.

13 A Oh. It makes sense, but I wouldn't
14 just pinpoint it.

15 Q But you didn't see him using drugs that
16 night?

17 A I didn't see him do drugs at all that
18 night.

19 Q But you have seen him doing drugs on
20 other occasions?

21 A Have I seen him personally?

22 Q Yeah.

23 A I don't know what he done behind closed
24 doors. I have been in the same house with him, but I never
25 saw him do it.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Q You say he hangs out there quite often?
2 A Yes.
3 Q Did he hang out with you?
4 A No.
5 Q Who did he hang out with?
6 A His friends.
7 Q Who were his friends there?
8 A He had a friend named Bridget, CC, just
9 some other people that hanged out in the projects.
10 Q Did you ever get high with him?
11 A No.
12 Q Was that the only time you ever used
13 his girlfriend's car?
14 A No, I have used it once before.
15 Q Have you seen him with that car over
16 there many times before?
17 A I wouldn't say many times, but every so
18 often.
19 Q So he would use the car occasionally
20 and bring it over to those apartments?
21 A Yes.
22 MR. BROOKS: Thank you.
23 No further questions.
24 THE COURT: Redirect?
25 MS. SILVER: Yes.

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1

2

REDIRECT EXAMINATION

3 BY MS. SILVER:

4

5

Q Did the defendant spend the night over
there in the complex?

6

A Yes.

7

8

Q And whose apartment would he spend the
night at?

9

A Bridget's.

10

Q And that's a female?

11

A Yes.

12

13

Q Did he rent the car out to other
people, as well as yourself, for money?

14

15

A Yes. He rented it out to several
people in the projects.

16

Q For what does he rent it out for?

17

18

A For money for like an hour or two
hours.

19

Q Does he rent it out for other things?

20

A Like --

21

Q For rock cocaine?

22

23

24

25

A Yeah, he does it for that too, but I
mean never to another person's knowledge because everybody
doesn't do everything in the open, I guess, but I have
dealt with him on a different level.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 MS. SILVER: Court's indulgence.

2 (Off the record discussion not reported.)

3 MS. SILVER: Thank you. That would conclude
4 my redirect.

5 MR. BROOKS: No questions, your Honor.

6 THE COURT: May this witness be discharged?

7 MS. SILVER: Yes.

8 THE COURT: Thank you, ma'am. You may step
9 down.

10 THE WITNESS: All right.

11 THE COURT: Call your next witness.

12 MS. SILVER: The next witness is Ladonna
13 Jackson.

14

15 LADONNA JACKSON,
16 having been first duly sworn to tell the truth, the whole
17 truth and nothing but the truth, testified and said as
18 follows:

19

20 DIRECT EXAMINATION

21 BY MS. SILVER:

22 Q Can you please state your name and
23 spell it for the record.

24 A Ladonna Jackson, L-a-D-O-N-N-A
25 J-A-C-K-S-O-N.

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1 Q And, Ms. Jackson, how old are you?
2 A I'm 27.
3 Q And do you have any children?
4 A Yes, I have a ten year old.
5 Q And where do you live?
6 A I live at 507 North Lamb, apartment 6.
7 Q Is that also known as the Vera Johnson
8 Housing --
9 A Yes.
10 Q -- Complex?
11 A Yes, it is.
12 Q That's here in Las Vegas, Clark County,
13 Nevada?
14 A Yes, it is.
15 Q On August 31st of 1995, did you know
16 someone by the names of James?
17 A Yes.
18 Q Do you see him here in court?
19 A Yes, I do.
20 Q Can you please point to him and
21 describe what he is wearing.
22 A The man in the gray suit with the
23 glasses.
24 MS. SILVER: Your Honor, may the record
25 reflect that the witness has identified the defendant?

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 THE COURT: Yes.

2 MS. SILVER: Thank you, your Honor.

3 Q Does he also go by the name of Hip
4 Hop?

5 A Yes.

6 Q And why is that?

7 A He listens to a lot of music and he use
8 to dance around all the time, so we gave him the name Hip
9 Hop.

10 Q When you say we gave him the name,
11 would that be fair to say the people in the complex?

12 A Everybody over in the complex.

13 Q Is he well known over there?

14 A Yes.

15 Q About when was it that you met him
16 prior to August 31st of 1996?

17 A About five or six months ahead of
18 time.

19 Q And would it be fair to say he
20 generally hung out there at the complex?

21 A Yeah, he was there day in, day out. He
22 was there.

23 Q Do you know whether or not he had a
24 job?

25 MR. BROOKS: Objection.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 THE WITNESS: No.

2 THE COURT: The objection is overruled.

3 Q (BY MS. SILVER) He did not have a
4 job --

5 A No.

6 Q -- to your knowledge?

7 How many hours a day would you see him
8 hanging around over there?

9 A All day, just all day.

10 Q To your knowledge, did he have a car?

11 A Yes.

12 Q To your knowledge, do you know whose
13 car it was?

14 A It was his -- well, I thought she was
15 his wife. It was his girlfriend's car.

16 Q And had you ever seen this girlfriend
17 before?

18 A Yes.

19 Q I'd like to show you what's been marked
20 for purposes for identification as State's Proposed Exhibit
21 No. 56. What is this a picture of?

22 A Our apartment complex and the car
23 parked on the side of the apartment.

24 Q And, in fact, it says 507 right there
25 on the building?

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 A Right. I live in apartment 6.

2 Q And showing you what has been marked
3 for identification purposes as State's Proposed Exhibit No.
4 66, is this the woman you knew as his wife or girlfriend?

5 A Yes.

6 Q That you've just described?

7 A Yes.

8 Q About how many times prior to August
9 31st of 1995 did you see this girlfriend?

10 A It wasn't often. I seen her twice;
11 like two or three times. I never seen her as much as I did
12 him.

13 Q What was she doing when she came to the
14 complex?

15 A Once, when I was coming -- walking down
16 the sidewalk, she was telling him something about the car,
17 she was coming to get the car and I overheard them arguing
18 about the car and I kept walking. So.

19 Q And what about the other time?

20 A Another time, she was just sitting in
21 the car, her and the kids. I seen the kids in the car
22 too. They were just in the car.

23 Q About how many times had you seen his
24 children?

25 A Just twice. Once when she was with

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1 them in the car and once he came through there with the
2 kids in the car. It was the first time I had seen his
3 kids.

4 Q Do you know how many kids he had?

5 A He had two toddlers -- well, not
6 even -- like maybe four, five year old, a toddler, and a
7 new born I believe it was or they might not have even been
8 that young, but there were three kids.

9 Q You stated that the defendant was at
10 the complex all the time. Would he often spend the night
11 in the area?

12 A Yes, he spent the night over there,
13 yes.

14 Q And whose apartment would he spend the
15 night at?

16 A Bridget. This girl named Bridget.

17 Q On August 31st of 1995, did you see the
18 defendant?

19 A Yes.

20 Q And where -- what was the defendant
21 doing when you first saw him?

22 A When we first seen him, he was just
23 pulling into the complex and my sisters and I were on our
24 way from the store because there's a Lucky's right across
25 the street and we seen him pulling in and we went on to the

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1 house. We spoke, he spoke, and we went onto the house.
2 Q So you actually saw him pulling up into
3 the complex?
4 A Yes.
5 Q Was he -- what kind of -- what vehicle
6 was he driving?
7 A The little bluish gray Toyota.
8 Q The same vehicle that you've just
9 described in State's Exhibit No. 56?
10 A Yes.
11 Q And when he pulled up into the complex
12 in that car and you spoke with him, how was he acting?
13 A Like James.
14 Q What do you mean like James?
15 A Hip Hop, James. Just hi, hi or what's
16 up. That's it. Just James.
17 Q Did he seem sad at all?
18 A No.
19 Q Did he seem like he had been upset
20 about anything?
21 A No, he wasn't nervous or anything. He
22 was just James like we usually see him.
23 Q Would you have ever suspected that
24 anything was wrong?
25 A Absolutely not, no.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Q How long would you say you talked with
2 him while you were with your sisters?

3 A We just spoke. It was not even -- you
4 know, just hi and hi and we went on to the back. Hey,
5 James. Hey. That was it.

6 Q Were there other people in the area as
7 well?

8 A No, it was me and my sisters. Like I
9 said, he had just pulled up and gotten out of the car and
10 we were walking through there.

11 Q Do you recall about what time it was
12 when you first saw him pulling up?

13 A During the evening time.

14 Q Let me ask you this.

15 A The sun was almost going down at that
16 time.

17 Q But you can't give an exact time?

18 A I don't have an exact time. I can't
19 remember, no.

20 Q Did there come a time that you met with
21 Deborah Turner?

22 A Yes.

23 Q And how did that come about?

24 A About an hour after we had saw him come
25 into the complex, about an hour later, Deborah came to the

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1 back and she was like, "I got the car, come on, let's go,"
2 you know, to talk about whatever and I was like -- you
3 know, I didn't want to go and she was like, "Come on," but
4 he had given her the car to go.

5 Q And did you get into the car?

6 A Yes, I did.

7 Q And were you the driver?

8 A No.

9 Q Or passenger?

10 A I was the passenger.

11 Q Do you recall where you went that
12 evening in the vehicle?

13 A We went to Taco Bell and we just rode
14 around for a minute and then we came back to the house.

15 Q Do you remember about what time it was
16 when you came home?

17 A It was late. Maybe between 12 and 1.
18 It was late.

19 Q The early morning hours?

20 A Early morning hours, yes.

21 Q You weren't sitting there looking at
22 the time when you got home?

23 A No.

24 Q And when you came home to the complex,
25 did you or did Deborah park the vehicle?

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1 A Deborah parked it. She let me out in
2 front of the door, which is right beside that window there,
3 and she told me she had to park it on the side of the
4 building and I asked her why and she said because he asked
5 her to park it, you know, I guess where nobody could see
6 it. So she parked it on the side of the building.

7 Q Did you watch her park it there?

8 A I stood outside while she parked the
9 car. I mean that building and where the car is parked,
10 there's my apartment door right there.

11 Q And I have shown you this exhibit,
12 State's Exhibit No. 56. Do you recall is that about where
13 she parked the vehicle?

14 A Yep. This is where she parked it. The
15 night we were done, this is where she parked it.

16 Q What did you do after you watched her
17 park the vehicle?

18 A We went into the house and went to
19 bed.

20 Q When you got up the next day, do you
21 recall the vehicle still being there like this?

22 A It was still there. Yes, it was still
23 there.

24 Q Would this be a fair and accurate
25 depiction of the way the vehicle looked on the date of

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1 September 1st of 1995?

2 A Yes, yes, that's exactly how she parked
3 it.

4 MS. SILVER: Your Honor, at this time I
5 would move to admit State's Proposed Exhibit No. 56.

6 MR. BROOKS: No objection.

7 THE COURT: All right, same will be received
8 in evidence.

9 Q (BY MS. SILVER) Now, the next morning,
10 September 1st of 1995, did you have an occasion to see the
11 defendant again?

12 A Yeah. He was on his way to Lucky's,
13 but we had seen him before he was on his way. I seen him
14 twice. Earlier I had seen him and we were all standing out
15 and standing around. Then we seen him like about 30
16 minutes later crossing the street on his way to Lucky's.
17 We knew where he was going.

18 Q Now, let me ask you this. When you say
19 you saw him earlier that morning, how long did you talk
20 with him?

21 A We never talked to James that long.
22 Like maybe five minutes. Hey, James. Hi. That's all we
23 ever did is say hi, you know.

24 Q And when you talked with him and said
25 hello, did see seem upset at all?

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 A No.

2 Q Did he seem sad?

3 A No.

4 Q Could you tell whether or not anything
5 was wrong?

6 A No. No.

7 Q After you saw him go towards the Lucky
8 store, did you ever see him again after that?

9 A No.

10 Q Did there come a time, after you saw
11 him going towards Lucky's, that the police came to the
12 complex?

13 A About I'll say like prior to an hour
14 afterwards, a detective came and he was looking for the
15 car. So we were all standing out there; nonchalantly, we
16 don't know. We knew where the car was, but we weren't
17 saying anything.

18 Q Why weren't you saying anything when
19 the police were looking for the car?

20 A Because that's just how it is over
21 there where we live. Nobody opens their mouth about
22 anything. We said we don't know. We thought maybe
23 something was wrong or something -- maybe she had reported
24 the car stolen or something. So we were like we don't
25 know.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Q So you were protecting him?

2 A Protecting who?

3 Q Protecting James at the time?

4 A No. We were looking out for
5 ourselves. We weren't protecting James.

6 Q You just didn't want to get involved?

7 A No, you don't get involved with things
8 like that over there. You just don't get involved, you
9 know. We don't know where the car is and that's when he
10 told us, "Here's my card. In case someone sees the car,
11 give me a call."

12 Q What was his name?

13 A I think it was kind of like a Italian
14 name.

15 Q Was it Detective James Vaccaro?

16 A That's his name, with the mustache.

17 Q After he gave you the card, what
18 happened?

19 A He told us that he was looking for the
20 car because the guy that drives the car had just stabbed
21 his girlfriend to death and we were all like panicked. We
22 were like -- and I told him, well -- I said, "The car is
23 around the corner." I told him exactly where it was at
24 that time because that scared me and then he told us what
25 he had done and we took him straight to the car. That's

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 how he got the car.

2 MS. SILVER: Thank you.

3 That would conclude by direct examination.

4 MR. BROOKS: Thank you.

5

6 CROSS EXAMINATION

7 BY MR. BROOKS:

8 Q Ms. Jackson, I'm curious. James hung
9 around there a lot, didn't he?

10 A A lot.

11 Q And he had the car a lot there as
12 well?

13 A Pretty much. Yeah, he -- well, not all
14 the time, but the majority of the time, yes, he did have
15 the car.

16 Q Had you ever used the car before
17 yourself?

18 A Yes.

19 Q And he had rented the car out to other
20 people, didn't he?

21 A Yeah.

22 Q He used it as sort of way to make a
23 little money on the side there?

24 A Yeah, that's what he was doing.

25 Q Is it fair to say there are a lot of

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1 people who hang around that place and do drugs?

2 A Yeah, it is.

3 Q Is it fair to say that there are some
4 apartments that are known as crack houses?

5 A Yes.

6 Q Is it fair to say Bridget's place was a
7 crack house?

8 A Yes.

9 Q And James use to hang out at Bridget's
10 crack house, didn't he?

11 A Yes.

12 Q James was a crack head, wasn't he?

13 A I have seen worse. I mean he's not --
14 he wasn't just totally cracked out to where he just lost
15 it, but, yeah, he was doing crack pretty bad.

16 Q He did crack there a lot, didn't he?

17 A Well, yeah, he did, but like I have
18 said, I have seen worse.

19 Q On August 31st, I may have missed this,
20 did you say you saw him actually pull up and arrive or
21 not?

22 A We seen him pull into the complex.

23 Q You saw him.

24 What time did he pull in?

25 A This was like -- I'm not sure; during

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1 the early morning time. May have been the afternoon time.

2 Q You are not sure of the time?

3 A I'm not sure.

4 Q How far are you, at the Vera Johnson
5 Projects --

6 A Uh-huh.

7 Q -- Vera Johnson Projects, how far are
8 you from that Lucky's?

9 A It's like a two, three minute walk. We
10 are right across the street.

11 Q Okay.

12 A Right across the street.

13 MR. BROOKS: No further questions. Pass the
14 witness.

15 THE COURT: Redirect?

16 MS. SILVER: Yes.

17

18 REDIRECT EXAMINATION

19 BY MS. SILVER:

20 Q Defense counsel asked you whether or
21 not the defendant would rent out this car for money?

22 A Right.

23 Q A way to make a little money?

24 A Right.

25 Q What did he do with that money?

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1 A Buy crack with it.

2 Q He didn't -- you never saw him buy
3 anything for his family, did you?

4 A No, no. We all knew what he wanted the
5 money for and that's the reason why he was one of the main
6 sources of getting a car when you needed a car to go do
7 anything.

8 Q What were the other ways he made his
9 money?

10 A Stealing.

11 MR. BROOKS: Objection. Move to strike.

12 THE COURT: Overruled.

13 Q (BY MS. SILVER) And what do you mean
14 by that? What was his other name in the complex?

15 A Regulator.

16 Q What does that mean, The Regulator?

17 A That when you call on the regulators
18 around there, that means they can go to the store and get
19 anything you want. Anything.

20 MR. BROOKS: Object, move to strike, your
21 Honor.

22 THE COURT: Overruled.

23 Q (BY MS. SILVER) Once they get
24 something from that store, what store are you talking
25 about?

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 A It doesn't matter, Lucky's, wherever.
2 He had transportation. He can go to different stores.

3 Q And once he got the items, what would
4 he do with them over there at the complex?

5 A Sell them. He'd sell them.

6 Q For the money for the drugs?

7 A For the money or the drugs. Both.
8 Didn't make any difference. He was trying to do both. If
9 they gave him money, he would use the money for crack. If
10 not, he would sell it to the people for crack.

11 Q And when you saw his girlfriend a
12 couple of times over there in the complex, did she seem
13 happy about the fact that he had her car?

14 A No. I mean who would be happy. No.

15 Q Why do you say that?

16 A Well, because she knew what he was
17 doing, you know. I mean everybody --

18 Q Did she need to go somewhere?

19 MR. BROOKS: Objection, speculation.

20 THE WITNESS: She had to go to work.

21 THE COURT: Overruled.

22 You have got to wait until I rule on the
23 objection.

24 THE WITNESS: Oh, I'm sorry.

25 THE COURT: That's okay.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 THE WITNESS: Yeah.

2 Q (BY MS. SILVER) Did you hear her say
3 that?

4 A I heard her yell, like I said, when I
5 heard the earlier statement, when I saw those two there, I
6 saw her coming and retrieving the car and I heard her say
7 something about work and day car.

8 Q Taking her children to the day care?

9 A Taking her kids to the day care.

10 Q He didn't watch the children during the
11 day?

12 A He couldn't watch them over there at
13 Vera Johnson's.

14 Q This crack house of Bridget's, did you
15 ever actually see the defendant sleeping there as well?

16 A Yes.

17 Q So he didn't actually do drugs there,
18 you saw him sleep there?

19 A I saw him sleep there. I came there a
20 couple times because she also does nails and I get my nails
21 done there and he was past out on the couch.

22 Q Did you ever see him selling any of his
23 children's things?

24 MR. BROOKS: Objection. Irrelevant.

25 THE COURT: Overruled.

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1 THE WITNESS: Diapers.

2 Q (BY MS. SILVER) How do you know he was
3 selling his children's diapers?

4 A Well, I'm not exactly sure, but I do
5 know he went to the car and got them. When he would steal
6 from Lucky's, he would be stealing stuff out of his
7 clothes. He got those diapers out of the car. So I
8 assumed those were probably one of his kid's diapers.

9 Q And he would sell those diapers?

10 A Yeah, he would sell them.

11 MS. SILVER: Thank you.

12 I don't have anything further.

13

14 RECROSS EXAMINATION

15 BY MR. BROOKS:

16 Q He would sell these diapers, as Ms.
17 Silver said, because he wanted drugs?

18 A Yes.

19 Q He would do all the stuff apparently to
20 get drugs?

21 A Yes.

22 Q And, as far as you can tell, his
23 girlfriend, the mother of his children, knew what was going
24 on?

25 A I'm sure she had a pretty good idea

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1 about what was going on. I mean that's her kids' father.
2 Any woman would know what's going on.

3 Q And she would come over there to get
4 her car back?

5 A She would have no choice if she wanted
6 to go to work.

7 Q How long had she been coming over there
8 and get her car back?

9 A She never came over there that much.
10 Like I said, I seen her two, maybe three times like I
11 said. She never came over there that often, but he had the
12 car the majority of the time.

13 Q Okay. Thank you very much.

14 A Thank you.

15 THE COURT: May this witness be discharged?

16 MS. SILVER: Yes, your Honor.

17 THE COURT: Thank you, ma'am. You may step
18 down.

19 Call your next witness.

20 MR. HARMON: May we approach the bench?

21 THE COURT: Yes.

22 (Off the record discussion not reported.)

23 THE COURT: Ladies and gentlemen of the
24 jury, we're going to take a brief recess and take a matter
25 outside your presence. I would ask that you remain on the

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1 upper deck of the courthouse immediately outside the doors
2 of the courtroom. Of course, you can use the facilities
3 during that time if you need to.

4 During this recess, it is your duty not to
5 converse among yourselves or with anyone else on any
6 subject connected with this trial or to read, watch, or
7 listen to any report of or commentary on this trial or any
8 person connected with this trial by any medium of
9 information, including, without limitation, newspapers,
10 television, or radio, and you are not to form or express an
11 opinion on any subject connected with this case until it is
12 finally submitted to you.

13 We will be at ease while you depart the
14 confines of the courtroom.

15

16 (At this time the jury left the courtroom.)

17

18 THE COURT: All right, Mr. Harmon, at this
19 time I would like to have you briefly summarize your offer
20 of proof once again so that the record will have some
21 context.

22 MR. HARMON: Thank you, your Honor.

23 The State's next three witnesses will relate
24 to the detention of the defendant, Mr. Chappell, at a
25 Lucky's Food Store at 4420 East Bonanza and it occurred on

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1 September the 1st of 1995 in the early afternoon and I
2 believe that the last witness, Ladonna Jackson, previewed
3 that by mentioning that she saw the defendant headed toward
4 Lucky's.

5 The first witness worked in a security
6 capacity at Lucky's. He is Lawrence Martinez. He saw the
7 defendant pick up various items and also saw him use what I
8 believe he describes as a box cutter to remove the security
9 labels from the items he picked up. It was a bottle of
10 whiskey, a bottle of rum, a beer, and I think four candy
11 bars.

12 When the defendant attempted to leave
13 without paying, he detained him. In connection with the
14 detention, Mr. Chappell was handcuffed. Mr. Martinez
15 patted him down and in the process felt an object in his
16 right pants pocket. He asked the defendant what it was.
17 Of course, at this time Martinez and the next witness we
18 intend to call, Kimberly Sempson, S-E-M-P-S-O-N, who also
19 was employed in a security capacity at Lucky's, they don't
20 actually work out of a particular Lucky's store, but I
21 guess, for lack of a better expression, independent
22 contractors.

23 He and Ms. Sempson had no idea that this man
24 was a suspect in a murder, that they were simply carrying
25 out their security duties. Mr. Martinez asked the

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1 defendant what was in his pocket and he said, "It's keys
2 and stuff." At that point, since the defendant had already
3 been handcuffed, Martinez asks for permission to go into
4 the pocket and remove the keys. He did. There were keys
5 and some miscellaneous items, but, your Honor, these are
6 keys that are later connected to the vehicle in question,
7 the Toyota Corolla, which is in the series of photographs;
8 I think it's 56 through 60, but I'm not sure. I know 56
9 came into evidence. Definitely identified as --

10 THE COURT: Well, under other circumstances,
11 would this be relevant to show probable cause for detaining
12 him and then obtaining these goods except, of course, this
13 is a private security guard, I guess?

14 MR. HARMON: That's correct, your Honor.

15 THE COURT: All right. So it wouldn't be
16 probative for that purpose?

17 MR. HARMON: It wouldn't be probative now
18 for what purpose?

19 THE COURT: Probable cause to detain him
20 since it was a private security guard.

21 MR. HARMON: Right. I don't know that it
22 is.

23 THE COURT: You have not alleged -- I'm
24 sorry, go ahead.

25 MR. HARMON: I said I don't know that that's

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1 an issue in the case. It certainly hasn't been raised. So
2 I'm not suggesting that really is the basis for its
3 admissibility.

4 THE COURT: You haven't alleged felony
5 murder in this case?

6 MR. HARMON: We have alleged felony murder.
7 Yes, we have and that is the basis for the offer.

8 In addition to the keys, which were
9 eventually handed over to Detective Vaccaro, one of the
10 primary investigating officers, who then locates the
11 vehicle with the assistance of Ladonna Jackson and Deborah
12 Turner --

13 THE COURT: Well, is it also part of the
14 State's theory that this person is just on a -- almost as
15 part of his life-style is living by stealing and,
16 therefore, this shows a pattern of conduct to confirm the
17 burglary and the robbery charges?

18 MR. HARMON: That most definitely is our
19 position, your Honor. The defense, basically, opened the
20 door on the drug use. We had stayed away from that.

21 Having established now from the last two
22 witnesses that, however you wish to describe it, whether he
23 was the worst they saw or at least a crack head, he spent
24 his time over here, he either sold items or if he had
25 money, he used that to buy crack and we're arguing, since

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1 we have alleged burglary and robbery the day before and, in
2 fact, felony murder in connection with this crime, that it
3 was his pattern and if he obviously had the need, the
4 intention to steal the day after, we're not talking about a
5 time where it's remote from his entry into the mobile home
6 where the murder occurred. That certainly is proof of his
7 motive and intent on August the 31st.

8 Now, we're not trying to say that petty
9 larceny at a Lucky's Store is the equivalent of murdering a
10 girlfriend, as the defense had argued earlier in these
11 proceedings, but we're saying and we understand the
12 defense's theory and if the defendant takes the witness
13 stand, he can explain in detail why he went in through a
14 window, but because he says that or is expected to say
15 that, that doesn't mean --

16 THE COURT: Well, it's been represented that
17 that's the theory of the defense or part of the theory of
18 the defense in part of the opening statement offered by the
19 defense.

20 MR. HARMON: That's true, because that's
21 their theory. It doesn't mean that it's necessarily
22 factual. Candidly, it's unlikely that Ms. Panos was even
23 there when he got there. Otherwise, it doesn't make a lot
24 of sense that he would have needed to go in through the
25 window in the manner established as the point of entry.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 The evidence, we submit from the pattern as
2 shown and, in fact, the cavalier attitude of this
3 defendant, as described by the last two witnesses, we would
4 submit is further buttressed by his willingness to go into
5 this Lucky's Store and steal things, even candy bars.
6 That's not consistent with someone who acted on an impulse
7 and killed someone basically in a heat of passion, who
8 doesn't reflect sadness or depression or remorse on his
9 part.

10 What it reflects is someone who probably is
11 a crack head, someone who killed her because he thought she
12 was unfaithful and because of the timing in which he did it
13 in relation to his release, probably intended in the jail
14 to kill her as soon as he got out. And so when you talk
15 about pretext, it's an excuse to say that he acted in part,
16 basically, as some irresistible impulse.

17 What Kimberly Sempson --

18 THE COURT: Is the October 11, '95
19 Information the charging document in this case?

20 MR. HARMON: Yes, it is, your Honor. The
21 preliminary hearing was conducted October the 3rd.

22 THE COURT: Yes.

23 Forgive me, I may be -- at the moment, I'm
24 confused on my recollection of the case authority, but this
25 charge is open murder. It says nothing about felony

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1 murder.

2 MR. HARMON: To the contrary, I think it
3 does, your Honor. Down in the body of the --

4 THE COURT: Excuse me, I'm sorry. You are
5 right.

6 MR. HARMON: -- of the complaint.

7 THE COURT: You are right. I misspoke.

8 MR. HARMON: We have pled an alternative
9 theory.

10 THE COURT: All right.

11 MR. HARMON: And it's our position that we
12 are entitled to present evidence of the --

13 THE COURT: The pattern of conduct.

14 MR. HARMON: -- the pattern of conduct and
15 the defendant's likely motive and intent on the day he
16 entered this trailer and on the day he murdered the
17 victim.

18 Now Kimberly Sempson, who was working with
19 Martinez, became involved in the detention and at some
20 point, Martinez left the room after the arrival of Officer
21 Osuch of the Las Vegas Metropolitan Police Department and,
22 at some point, Officer Osuch had also done his own pat down
23 search of the defendant, he left the room, and Sempson, who
24 stayed nearby, will testify that almost immediately, when
25 the officer left the room, the defendant still in cuffs,

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1 his hands are behind his back, he began to fidget. She
2 paid attention to that because, as she's explained to us,
3 because of her job, she thought the guy was going to try to
4 dump something. She thought he had something in his hands
5 and so she continued to watch him and he fidgeted and then
6 began to reach over. It appeared he was trying to put
7 something into a cardboard box, but it was taped and so he
8 was unable because his -- the movement of his hands was
9 impaired and he couldn't do that and she said, "What have
10 you got there? What are you trying to get rid of," and at
11 that point it apparently startled the defendant a little
12 bit and he dropped it on the floor. She retrieved it. It
13 was a small plastic bag and she picked it up. She could
14 see on top a social security card in the name of a female.
15 She kept that and turned it over to Officer Osuch. In
16 fact, the social security card is the card of Deborah Panos
17 and underneath it were three other cards. They were the
18 cards of the children.

19 That's the part of our allegation in this
20 case that he took social security cards and the car and, in
21 fact, his effort to secrete them is certainly proof of his
22 consciousness of guilt and the testimony of Sempson placing
23 this item in his possession is proof that he took it.

24 THE COURT: All right, I think I understand
25 the State's theory.

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1 MR. BROOKS: Judge, first of all, we very
2 much differentiate between the testimony of someone
3 regarding what happened in the office once he was in
4 custody and the testimony regarding the actual shoplifting
5 incident. The testimony of someone in the office observing
6 him is clearly admissible, but the testimony regarding the
7 actual shoplifting incident is absolutely irrelevant to
8 this case and I'm really shocked and surprised that the
9 State would try to claim that entering a Lucky's Store to
10 shoplift is evidence as intent on another day, when a
11 person enters their home to kill somebody, and that's what
12 the State is saying. What they are really doing, Judge, is
13 they are introducing this for character evidence. It's
14 outrageous they are trying to do this and it's absolutely
15 unnecessary and it's irrelevant to this case.

16 I will also add, Judge, for the record, Mr.
17 Harmon has suggested that I opened the door on this by
18 bringing in the testimony -- the evidence regarding him
19 being a -- my client being a Coke head, when the State is
20 introducing evidence that my client was dancing around on
21 the same day he killed his girlfriend. We had to explain
22 that and we had to bring in the fact that he was, in fact,
23 a crack head and was probably high at the time, but that
24 certainly does not open the door to introduce the evidence
25 of the shoplifting incident that occurred a day after the

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1 murder. To suggest that the intent is the same on entering
2 a store and stealing is the same as when you enter your
3 home to kill your girlfriend is simply not true.

4 THE COURT: Well, the argument assumes that
5 the defense theory has to be accepted, which is not the
6 case, and that is the argument you are making. First,
7 since the evidence of what happened in this security room
8 has to come in, there's little likelihood of prejudice for
9 the jury to know why he was being detained in handcuffs in
10 the security area. There had to be a reason for that.

11 Second, the defense's theory of the case is
12 that the defendant was an addict and responded in a manner
13 consistent with an addict's behavior and that this was a
14 crime of passion at most deletes the need by the State to
15 attempt to rebut that theory and the allegations of
16 burglary, robbery, and felony murder all in this case are
17 based on theories consistent with a motive or a need, if
18 you will, to constantly steal to support himself or to
19 obtain narcotics and, therefore, the issues of motive and
20 pattern, modus operandi, are all there in order to
21 establish a predicate for the felony murder rule, robbery,
22 and burglary and also are relevant to address the theory of
23 the State articulated in the defense's opening statement.

24 With that, we need to bring back the jury.

25 MS. SILVER: Wait, your Honor. I had one

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1 more question on something.

2 One of the things Officer Osuch recovered
3 from the defendant, once he was arrested, was a glass
4 pipe. Now I had told Officer Osuch not to present that
5 evidence because it was obviously evidence of drug use
6 because we weren't going to bring that obviously into our
7 case, but now since the defendant has raised it, all I'm
8 asking right now, if the defense isn't going to object, I
9 would prefer to just -- if they want it in, I was just
10 going to ask the officer straight out, "What items did you
11 recover," but I didn't want to hide that evidence. I've
12 already told them not to discuss it and then have the
13 defense say, "Well, isn't there one other item that, you
14 know, you recovered and isn't it a glass pipe."

15 MR. BROOKS: Under the circumstances, we
16 prefer to have the evidence brought out considering our
17 overall circumstance here.

18 THE COURT: Under the circumstances, I would
19 allow the State to bring it out anyway given the theory of
20 the defense of the case and, also, so that the State can
21 avoid the appearance of withholding evidence from the
22 jury.

23 One other matter before we bring the jury
24 back?

25 MR. BROOKS: Yes, Judge.

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1 Judge, would it be possible to allow a
2 continuing objection throughout the next three witnesses to
3 anything involving the shoplifting?

4 THE COURT: Yes. You have made your record
5 on that. It's not necessary to object in front of the
6 jury. For your trial positioning, you don't need to do
7 that.

8 MR. BROOKS: Thank you, Judge.

9 THE COURT: Let's bring the jury back in.
10

11 (At this time the jury entered the
12 courtroom.)
13

14 THE COURT: The State may call its next
15 witness.

16 Counsel stipulate to the presence of the
17 jury?

18 MR. HARMON: We've got one missing, your
19 Honor.

20 THE COURT: Counsel stipulate to the
21 presence of the jury?

22 MR. HARMON: Yes, your Honor.

23 MR. BROOKS: Defense will, your Honor.

24 THE COURT: You may call your next witness.

25 MR. HARMON: Thank you.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Lawrence Martinez.

2

3 LAWRENCE MARTINEZ,

4 having been first duly sworn to tell the truth, the whole
5 truth and nothing but the truth, testified and said as
6 follows:

7

8 DIRECT EXAMINATION

9 BY MR. HARMON:

10 Q Will you state your name, please.

11 A Lawrence Martinez.

12 Q Please spell your last name.

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

14 Q Mr. Martinez, what is your business or
15 occupation?

16 A I'm a loss prevention security
17 supervisor.

18 Q You are employed with what business?

19 A Burns Incorporated.

20 Q What's the name?

21 A Burns Incorporated.

22 Q How long have you been employed with
23 Burns Incorporated?

24 A Since February of '96.

25 Q Did you work in some type of security

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1 capacity prior to that?

2 A Yes, I did.

3 Q With what business?

4 A With Lucky's Store Incorporated.

5 Q What were your duties with Lucky
6 Stores?

7 A I was in the same capacity. I was a
8 loss prevention supervisor.

9 Q Did you work at a particular Lucky
10 store or did you rotate throughout?

11 A Rotated, sir.

12 Q I want to direct your attention to
13 September the 1st, 1995. On that date, were you employed
14 by Lucky's Food Stores?

15 A Yes.

16 Q In the capacity of a security officer?

17 A Yes.

18 Q On that particular day, were you
19 assigned to a Lucky's store located at 4420 East Bonanza
20 Boulevard?

21 A Yes.

22 Q Is that in Las Vegas, Nevada?

23 A Yes.

24 Q During the course of your duties that
25 day, did you have occasion to detain an individual

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1 subsequently identified as James Chappell?

2 A Yes.

3 Q Do you see James Chappell in the
4 courtroom?

5 A Yes, I do.

6 Q Will you point to him and describe some
7 article of clothing he's wearing.

8 A It's the gentleman with the gray suit
9 and the glasses sitting at the defendant's table.

10 MR. HARMON: May the record show that the
11 witness has identified the defendant, James Chappell, your
12 Honor?

13 THE COURT: Yes.

14 Q (BY MR. HARMON) About what time was it
15 that you first observed the defendant, Mr. Chappell, on
16 September first, 1995?

17 A It was approximately 11 a.m.

18 Q Where was Mr. Chappell when you first
19 saw him?

20 A He was in the liquor department.

21 Q You said the liquor department?

22 A Liquor.

23 Q Of the Lucky Food Store at 4420 East
24 Bonanza Boulevard?

25 A Yes.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Q Explain what you saw happen after the
2 initial observation.

3 A I saw him -- he was pushing a cart and
4 he selected two bottles of liquor. He then pushed the cart
5 to the beer case where he selected a can of Budweiser
6 beer. He also put that in the child's portion of the cart
7 along with the two bottles that he had previously
8 selected.

9 He then walked towards the back of the store
10 where he entered what we call the max pack area, which is
11 somewhat of a warehouse-type setup display. It's numerous
12 and institutionalized products that we sell.

13 Q Did you continue to observe the
14 defendant?

15 A Yes.

16 Q Did you see him do anything unusual?

17 A Yes. He removed a box cutter from his
18 pants pocket.

19 Q What is a box cutter?

20 A Box cutter is an item to cut boxes in
21 grocery, warehouse-type situations, factories.

22 Q So you say you saw him remove a box
23 cutter from his pants?

24 A Yes.

25 Q What did he do with the box cutter?

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1 A He began to scrape the security tags
2 off the liquor bottles.

3 Q What is the purpose of the security
4 tags on the liquor bottles?

5 A When an item is taken out of the store
6 that isn't paid for, there's a tag on the bottles, which is
7 called an EAS tag, which stands for electronic article
8 surveillance tag, and it beeps when they go out the door if
9 it hasn't been purchased.

10 Q If the security tag is scraped off,
11 what is the effect when the person leaves the store?

12 A The tag is inoperable.

13 Q So there wouldn't be the beeping
14 sound?

15 A No.

16 Q Were you concerned when you saw the
17 defendant scraping the security tags off the liquor
18 bottles?

19 A Yes.

20 Q What eventually happened?

21 A He placed the two bottles in the front
22 waistband of his pants after he finished scraping the tags
23 off. He then placed the box cutter back into his pocket.
24 He then took the beer can and he also placed that in the
25 waistband of his pants concealing it from view with his

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 T-shirt.

2 Q Did you see him pick up any other items
3 besides the beer can and the two bottles of liquor?

4 A No, I did not.

5 Q At some point, did you detain Mr.
6 Chappell?

7 A Yes, I did.

8 Q Where was he when you detained him?

9 A He was exiting the store well past the
10 registers and the point of purchase and I stopped him right
11 at the exit door.

12 Q Did you observe him continuously from
13 the point you saw him removing the security labels from the
14 liquor?

15 A Yes.

16 Q Did he make any effort to pay for the
17 merchandise?

18 A No, he did not.

19 Q What happened when you approached him?

20 A I identified myself as security and he
21 attempted to walk by me where I stepped in front of him and
22 I told him to come back inside, I wanted to see him and I
23 also told -- he had a cane in his hand.

24 Q He had what in his hand?

25 A A walking cane. I told him to drop the

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1 cane. He did not. He seemed kind of confused and he was
2 looking past me towards the doorway. So I thought he was
3 going to try and flee and since I was by myself, I chose to
4 handcuff him for my safety.

5 Q After you handcuffed the defendant, did
6 you take him to a security office?

7 A Yes.

8 Q At some point, either at the office or
9 after he was handcuffed, did you pat him down?

10 A Yes, I did.

11 Q To determine what he had on his
12 person?

13 A Yes, I did.

14 Q Did you locate merchandise that he had
15 taken from the Lucky's Store?

16 A Yes.

17 Q What did you recover from his person?

18 A I recovered the two bottles of liquor,
19 the can of beer, and I also recovered from his pocket three
20 candy bars, a fourth larger candy bar, and other items that
21 were of his own personal property.

22 Q In the process of the pat down, did you
23 feel something in his right pants pocket?

24 A Yes, I did.

25 Q Was he handcuffed at that time?

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 A Yes.

2 Q Did you ask the defendant what it was
3 you were feeling?

4 A Yes.

5 Q Did he answer?

6 A Yes.

7 Q What did he say?

8 A He said, " Keys and stuff."

9 Q What happened then?

10 A I told him, "I'm going to take the keys
11 out," and he said, "Fine," and I pulled the keys out of his
12 right pocket and also a pen and an empty package of bubble
13 gum tape in a plastic container and I placed them in the
14 child's portion seat in the cart, which was in the back
15 room in which we were.

16 Q As a result of observing the defendant
17 removing security labels and going from the store,
18 attempting to leave without paying for the merchandise, did
19 you or someone at the Lucky's Store contact the Las Vegas
20 Metropolitan Police Department?

21 A We contacted the police department
22 after we had him detained.

23 Q Did someone from the police department
24 arrive?

25 A Yes.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Q Was that an Officer Osuch?
2 A Yes, it was.
3 Q Do you know whether a citation was
4 issued for petty larceny?
5 A I don't -- he was starting to write a
6 citation out, from what I can remember, and then he began
7 to interview the suspect and some other -- I wasn't in the
8 room when it happened, but he said some other incidents
9 have come up and he had to call the station for something.
10 Q What happened to the keys that you had
11 recovered from the defendant's right pants pocket?
12 A The keys were left in the cart where I
13 put them until one of the detectives asked what property
14 belonged to him.
15 Q Was this someone other than Officer
16 Osuch?
17 A Yes.
18 Q A plainclothes detective?
19 A Yes, he came later.
20 Q Did you understand this to be a
21 homicide detective?
22 A I was told that when they first came.
23 Q Did the homicide detective eventually
24 take the keys?
25 A Yes, he did.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Q So the keys you recovered from the
2 defendant's right pants pocket were turned over to a
3 homicide detective?

4 A Yes.

5 Q After the detention of the defendant,
6 was there an effort to determine what his name was?

7 A Yes.

8 Q Did he tell you what his name was?

9 A Yes, he did.

10 Q What did he tell you?

11 A He gave me the name of Ivri Merrell
12 (sic) or Morrell.

13 Q Would you spell the two names for the
14 record.

15 A The spelling he gave me, first name
16 Ivri, I-V-R-I.

17 Q And the last name you said was Morrell?

18 A I believe it was Morrell,
19 M-O-R-R-E-L-L.

20 Q M-O-R-R-E-L-L or M-A-R-R-E-L-L?

21 A I'm not sure if it was A or O. He
22 spelled it out for me.

23 Q It would be one or the other?

24 A One or the other, yeah.

25 Q Did you find any identification on the

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1 person of the defendant that day in the name Ivri Morrell?
2 A No, I did not.
3 Q Did he personally tell you that was his
4 name?
5 A Yes.
6 Q Did you subsequently learn that that
7 wasn't his name?
8 A Yes, I did.
9 Q That his name was actually James
10 Chappell?
11 A Yes.
12 Q Did the defendant ever tell you that
13 his name wasn't Ivri Morrell, that in fact it was James
14 Chappell?
15 A No, he did not.
16 Q Do you know a young lady named Kimberly
17 Sempson?
18 A Yes, I do.
19 Q Did she also become involved in the
20 investigation regarding the shoplifting at Lucky's?
21 A Yes, at one point, she was.
22 Q Some time after the arrival of Officer
23 Osuch of the Metropolitan Police Department, did you leave
24 the security office where the defendant was being
25 detained?

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 A Yes, I walked away from it.

2 Q Did you learn that in your absence the
3 defendant attempted to get rid of something?

4 A Yes, I learned later.

5 Q But you didn't personally see that
6 occur?

7 A No, I didn't.

8 Q How long were you in the presence of
9 the defendant that day, September the 1st, 1995?

10 A The whole time?

11 Q Yes.

12 A There was a few times where I had to
13 leave the area, I left him with an officer and Ms. Sempson,
14 but total, about three hours.

15 Q Had you known the defendant prior to
16 this occasion?

17 A No.

18 Q Did you form any type of opinion about
19 whether he was drunk or under the influences of some drug?

20 A Personally, I couldn't tell if he was
21 or not, but I had asked him if he was intoxicated or under
22 the influence of any drugs and he said no.

23 Q Thank you.

24 MR. HARMON: May we have the Court's
25 indulgence, your Honor?

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 That's all on direct, your Honor.

2 THE COURT: Cross examination.

3

4 CROSS EXAMINATION

5 BY MR. BROOKS:

6 Q Mr. Martinez, when you arrested him and
7 emptied his pockets, did you empty everything in his
8 pockets?

9 A Yes, I believe so.

10 Q Did you find a cocaine pipe in his
11 pocket?

12 A I believe it was. I found some kind of
13 glass tubing.

14 Q Thank you.

15 MR. BROOKS: No further questions.

16 MR. HARMON: No redirect, your Honor.

17 THE COURT: May this witness be discharged?

18 MR. HARMON: Yes, your Honor.

19 THE COURT: Thank you, sir. You may step
20 down.

21 THE WITNESS: Thank you.

22 THE COURT: Call your next witness.

23 MR. HARMON: Kimberly Sempson.

24

25 KIMBERLY SEMPSON,

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 having been first duly sworn to tell the truth, the whole
2 truth and nothing but the truth, testified and said as
3 follows:

4

5

DIRECT EXAMINATION

6 BY MR. HARMON:

7 Q Will you state your name, please.

8 A Kimberly Sempson.

9 Q Please spell your first and last
10 names.

11 A K-I-M-B-E-R-L-Y S-E-M-P-S-O-N.

12 Q Ms. Sempson, are you employed?

13 A Yes.

14 Q Where do you work?

15 A I work for Lucky Stores.

16 Q How long have you worked for Lucky
17 Stores?

18 A Six years.

19 Q What are the nature of your duties with
20 Lucky's?

21 A I work for the loss prevention
22 department.

23 Q Were you working with the loss
24 prevention department of Lucky's Food Stores on September
25 the 1st, 1995?

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 A Yes, I was.

2 Q On that day were you assigned to a
3 particular store?

4 A Yes, I was.

5 Q What store?

6 A I think it was the store on Bonanza
7 Avenue.

8 Q 4420 East Bonanza Avenue?

9 A Yes.

10 Q That's in Las Vegas?

11 A Yes.

12 Q During your shift that day at that
13 particular store, did you become involved in investigating
14 the detention of a subject identified as James Chappell for
15 shoplifting?

16 A Yes, I did.

17 Q Did a Metro officer, Officer Osuch,
18 arrive as part of this same investigation?

19 A Yes.

20 Q Were you assisting Officer Lawrence
21 Martinez also employed in loss prevention that day?

22 A Yes.

23 Q Was there a time when both Officer
24 Martinez and Officer Osuch of the Metropolitan Police
25 Department left the room?

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 A Yes.

2 Q After the officer from the police
3 department arrived, was he involved in patting the
4 defendant or Mr. Chappell down for anything he might have
5 on his person?

6 A Yes, he did.

7 Q Did you see that happen?

8 A Yes, I did.

9 Q After that time, was Mr. Chappell
10 handcuffed?

11 A Yes.

12 Q Do you see Mr. Chappell in the
13 courtroom this morning?

14 A Yes, I do.

15 Q Will you point to him and describe
16 something he's wearing.

17 A He's sitting at the table over there.
18 He is wearing a gray suit with a yellow shirt and glasses.

19 Q What color shirt did you say?

20 A Yellow.

21 MR. HARMON: May the record show that the
22 witness has identified the defendant, James Chappell, your
23 Honor?

24 THE COURT: Yes.

25 Q (BY MR. HARMON) Now you mentioned

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1 already that at some point the Metro officer left the room
2 where Mr. Chappell was being detained?

3 A Yes.

4 Q Did you remain nearby and did you
5 continue to watch the defendant?

6 A Yes.

7 Q Tell us what happened after the Metro
8 officer left the room where the defendant was being held?

9 A I noticed Mr. Chappell started to move
10 around, kind of fidgeting.

11 Q How quickly did he begin to do this
12 after the Metro officer had left the room?

13 A Just a few seconds.

14 Q You say he started to move around and
15 became fidgety?

16 A Yes.

17 Q Will you demonstrate what you are
18 talking about.

19 A Well, he was sitting in the chair like
20 this and he just started moving around like this with his
21 hands.

22 Q His hands were handcuffed behind his
23 back?

24 A Yes.

25 Q Did you become concerned when you saw

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 him doing this?

2 A Yes.

3 Q Did you continue, for that reason, to
4 look closely at him?

5 A Yes.

6 Q Why did you pay attention to what he
7 was doing?

8 A Well, normally, when somebody starts
9 moving around like that, especially when he had been
10 sitting there really still for probably about an hour and
11 he started moving around, and usually I've had on many
12 occasions people try to dump other merchandise or other
13 items and sometimes trying to -- like if they have certain
14 things on them they are not supposed to have, they try to
15 hide them, try to pull them out and ditch them something
16 where. So that's why I was paying attention to him for
17 that reason.

18 Q That was your thought process when you
19 saw him start to fidgeting?

20 A Yes.

21 Q Now did you eventually see him attempt
22 to hide something?

23 A Yes.

24 Q What did you see him do?

25 A Well, I saw him kind of scoot over just

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1 a little bit, probably about a foot. There was a flat cart
2 that the store uses when they pull boxes onto the floor to
3 stock and there was a box underneath this flat cart, a
4 brown cardboard box, and I saw Mr. Chappell lean over and
5 try to stick a clear plastic card holder into the box,
6 which was taped shut with clear tape.

7 Q Was he able to get the plastic
8 container into the cardboard box?

9 A No.

10 Q Why not?

11 A Because it was taped shut with clear
12 tape and I don't think he realized it was taped.

13 Q Because the tape was clear?

14 A Right.

15 Q When you saw him do this, did you say
16 something?

17 A Yes. I said, "What are you doing," and
18 it kind of startled him and he dropped the clear plastic
19 card holder to the floor.

20 Q Did you retrieve it?

21 A Yes.

22 Q Were you able at that point to see
23 anything that was inside the clear plastic card holder?

24 A Yes. I picked it up off the floor and
25 I noticed that there was a social security card inside

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 visible.

2 Q Did you pay any attention to the name?

3 A Yeah. It was a female name.

4 Q When you went to pick it up -- strike
5 that, please.

6 After the defendant apparently became
7 somewhat startled and dropped it to the floor, did he do
8 anything then to attempt to hide the card before you picked
9 it up?

10 A Yes, he put his foot on top of it.

11 Q As soon as it fell to the floor?

12 A Yes. As soon as I reached for it, he
13 put his foot on top of it.

14 Q Did you get him to move his foot?

15 A Yeah, I just said, "Move," -- I told
16 him to move away and I picked it up and looked at it.

17 Q At that point you saw that it was a
18 social security card in the name of a female?

19 A Right.

20 Q At this time, did you know anything
21 about the killing of Deborah Ann Panos?

22 A No.

23 Q What did you do with the plastic card
24 holder and its contents after you picked it up?

25 A Well, I looked at it, noticed it was a

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1 female name and I could tell that there was some more
2 social security cards underneath it and I thought at that
3 point that one of the cards might have his name on it since
4 he didn't have I.D. on him. I thought maybe one of them
5 contained his real name and that's why he was trying to
6 hide it.

7 Q You said you thought one of them might
8 contain his real name. What name was Mr. Chappell using up
9 to that point?

10 A Ivri Morrell.

11 Q But you said he didn't have any
12 identification on him in that name?

13 A Right.

14 Q Did you eventually turn the card holder
15 and its contents over to representatives of the police
16 department?

17 A Yes.

18 (Off the record discussion not reported.)

19 Q (BY MR. HARMON) Do you remember about
20 what time it was that you would have observed the defendant
21 attempting to hide the plastic card holder from you?

22 A It was about 12:20, 12:30.

23 Q Still, of course, on September the 1st,
24 1995?

25 A Yes.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Q How much time did you spend in the
2 presence of the defendant?

3 A The whole time? The whole time from
4 when he was brought into the back until he was walked out?

5 Q I'm asking you for an estimate as to
6 how long that was.

7 A Until the police got there or the
8 entire time?

9 Q The entire time.

10 A The entire time, probably from about
11 11:30 til I think it was probably about 2:30.

12 Q From about 11:30 a.m. until 2:30 p.m.?

13 A Right.

14 Q Did you know this defendant prior to
15 that day?

16 A No.

17 Q Did you detect anything about him that
18 suggested that he was drunk on alcohol or high on some type
19 of drugs?

20 A No.

21 Q In your presence, was he asked if he
22 was drunk or high?

23 A Not that I recall.

24 MR. HARMON: Thank you.

25 That's all we have, your Honor.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 MR. BROOKS: No questions, your Honor.

2 THE COURT: May this witness be discharged?

3 MR. HARMON: Yes.

4 THE COURT: Thank you, ma'am. You may step
5 down.

6 Call your next witness.

7 MS. SILVER: Your Honor, the State would
8 call Officer Osuch.

9
10 PAUL OSUCH,
11 having been first duly sworn to tell the truth, the whole
12 truth and nothing but the truth, testified and said as
13 follows:

14
15 DIRECT EXAMINATION

16 BY MS. SILVER:

17 Q Sir, can you please state your name and
18 spell it for the record.

19 A First name is Paul. Last name Osuch.
20 O-S-U-C-H, no apostrophe.

21 Q And, sir, what is your occupation and
22 assignment?

23 A I'm a police officer with the Las Vegas
24 Metropolitan Police Department currently assigned to the
25 detective bureau.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Q What detective bureau?

2 A Property crimes.

3 Q Prior to this, what other assignments
4 have you had?

5 A Before my transfer, I was a patrol
6 officer with the Las Vegas Metropolitan Police Department
7 working in a black and white.

8 Q Did you also have any assignments as
9 bike patrol as well?

10 A Yes, I did.

11 Q How long have you been with the Las
12 Vegas Metropolitan Police Department?

13 A This February will mark my 17th year.

14 Q I want to direct your attention to
15 September 1st, 1995, at approximately 12:15 p.m., on that
16 date, did you have an occasion to be dispatched to the
17 Lucky's Store at 4420 East Bonanza?

18 A Yes, ma'am.

19 Q That's here in Las Vegas, Clark County,
20 Nevada?

21 A Yes, ma'am.

22 Q On September 1st of 1995, what was your
23 shift?

24 A At that time, I was working the day
25 shift. My start time was 0645 hours or 6:45 in the morning

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 to 4:45 in the afternoon or 1645 hours.

2 Q Is that military time?

3 A Military and regular time.

4 Q And that morning, had you been briefed
5 regarding a homicide that had occurred the day before?

6 A Yes, ma'am.

7 Q A homicide that occurred at the
8 Ballerina Mobile Home Park?

9 A Yes.

10 Q What had you been briefed about?

11 MR. BROOKS: Objection, irrelevant.

12 MS. SILVER: Well, I can ask it a different
13 way.

14 THE COURT: It's not a matter of how it was
15 asked, it's whether it's relevant. I tend to think that it
16 is for at least probable cause.

17 Go ahead. It's overruled.

18 Q (BY MS. SILVER) I'd like to ask it to
19 you in a different way anyway.

20 After being briefed, were you given a
21 description of a possible suspect?

22 A Yes, ma'am.

23 Q And who did you get that briefing
24 from?

25 A At that time, I was working under my

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1 supervisor was Sergeant Bill Yada.

2 Q And would it be fair to say that
3 Sergeant Yada had been at the scene the day before?

4 A Yes.

5 Q And he conveyed the information from
6 his experience to you that morning?

7 A Yes, to myself and the squad.

8 Q Besides getting the description of the
9 suspect, did you yourself recall a name at that time?

10 A No.

11 Q And I mean the name of the suspect?

12 A No.

13 Q Do you recall whether or not he gave
14 you the name of the victim at that time?

15 A No.

16 Q Did you also have an occasion to talk
17 with other officers regarding this homicide?

18 A Yes.

19 Q Now when you were dispatched at
20 approximately 12:15 on that date, why were you dispatched
21 to that location?

22 A Lucky's had a shoplifter in custody.

23 Q And when you go to a shoplift, do you
24 generally issue citations?

25 A Yes.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Q What does that mean?

2 A It's a reasonable misdemeanor citation
3 complaint form and what we do is it's a misdemeanor crime.
4 We have the ability to make a decision whether to arrest or
5 cite. Usually, on a petty larceny, it's a property crime
6 more than it is a person to person crime. We issue a
7 citation, the court date, and then they are supposed to
8 show up for court.

9 Q So, generally, at least the usual
10 procedure, is to hand someone a citation when you are
11 through with the paperwork?

12 A Yes, and then they sign it and promise
13 they will appear on that date, whatever is given.

14 Q Now, when you went to the store, did
15 you meet with Security Officers Martinez and Sempson?

16 A Yes.

17 Q And did you also see the person that
18 they had detained?

19 A Yes.

20 Q And do you see him here in court
21 today?

22 A The gentleman wearing the gray suit,
23 yellow shirt with the glasses.

24 MS. SILVER: Your Honor, may the record
25 reflect that this witness has identified the defendant?

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 THE COURT: Yes.

2 Q (BY MS. SILVER) Did you receive
3 information from Officer or Security Officer Martinez
4 regarding the details of that petty larceny?

5 A Yes.

6 Q As well as the things that he had
7 recovered from his person?

8 A Yes.

9 Q The defendant's person?

10 A Yes.

11 Q Did you have an occasion to look at a
12 cart that was outside the door to this office?

13 A Yes, I did.

14 Q And what items did you observe lying
15 there in the cart?

16 A On the cart was a key chain with a
17 Toyota emblem on it, a cylindrical tube, hallow tube was
18 also there, a broken up piece of coat hanger. I don't know
19 how long it would be in length, and some bubble gum, I
20 believe, or some gum.

21 Q Did you notice a lighter as well?

22 A Yes, ma'am, a lighter, yes.

23 Q Now, when you came into contact with
24 the defendant, did you ask him his name?

25 A Yes, I did.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Q And what did he tell you his name was?

2 A I believe he gave me Ivri Morrell,
3 Moran. I don't remember actually.

4 Q Did you ask him for other
5 identification as well?

6 A Yes, and he stated he didn't have any.

7 Q Did he give you any kind of date of
8 birth or social security number?

9 A Date of birth of 12/27/67 or '68 and he
10 gave me social security number. I believe it started with
11 a three. I couldn't give you all 10 digits, though. I
12 have problems remembering my own.

13 Q After he gave you this information,
14 what did you do?

15 A Well, as he was giving it to me, I was
16 writing out the citation form with the information he gave
17 me. I did a records check through the phone; being I was
18 inside a building, just called records, did our standard
19 watch check, records check to see what kind of priors he
20 had, and the girl down in records -- I don't recall her
21 name -- came back and said he wasn't with that name, date
22 of birth, and soc locally in our area and NCIC, which is
23 national, and it didn't show any kind of prior record.

24 Q If you can't confirm someone's identity
25 when you are confronted in a case like this, what is your

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 alternative then as far as issuing a citation?

2 A Is to take the man to jail or person to
3 jail.

4 Q And, again, that's discretionary with
5 yourself?

6 A Yes.

7 Q Now, as you are sitting here writing
8 this citation, did you have any idea that this person was
9 actually a suspect in the homicide case the day before?

10 A No, ma'am, not at the time I was
11 writing the citation, no.

12 Q Now after you spoke with the dispatch
13 regarding the identity, did you ask the defendant
14 anything?

15 A As I was sitting there writing, he was
16 handcuffed, sitting down in a chair, I just went fishing,
17 for lack of a better term, and said, " Could you tell me
18 anything that may have happened over at the Ballerina
19 Mobile Home Park the day before," and at that time his
20 demeanor not toward me started changing.

21 Q What do you mean it started changing?

22 A He became nervous, couldn't stay
23 still.

24 Q Before that, how was he acting?

25 A Pretty mellow, laid back.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Q So you noticed an immediate change in
2 his behavior?

3 A Yes.

4 Q And his demeanor?

5 A Yes.

6 Q Did you then -- what did you do at that
7 point?

8 A Well, I continued writing the citation,
9 didn't believe that the name he gave me was actually his.
10 I told him I would finish his citation, issue it to him,
11 and then take him to city jail on the paraphernalia items I
12 had on the cart. That would be my arrest, my booking.

13 Q So both for the petty larceny and
14 possession of a drug paraphernalia?

15 A Yes, ma'am.

16 Q You considered the glass tube
17 paraphernalia?

18 A Yes.

19 Q And when you told the defendant that
20 you were going to arrest him and not give him a citation,
21 did he say anything to you?

22 A He asked if I could give him a break.
23 I stated no.

24 Q What did you say?

25 A I stated, "No, no breaks."

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Q At that time did you have any idea that
2 this defendant was the suspect in that crime?

3 A The sixth sense started kicking in. I
4 didn't think it would be that close to where he was
5 apprehended at to the location of the crime, but I was
6 starting to get a feeling that I have something a little
7 bit more here than a petty larceny.

8 Q Is that because of the way his demeanor
9 was changing?

10 A Yes. I could safely say-so, yes.

11 Q Did there come a time, after you told
12 him you weren't going to give him any breaks, that you left
13 the room once again?

14 A I finished up my crime report and the
15 citation, we have to put down the total amount that was
16 taken and also list items on it. I went outside the little
17 security area office to Loss Prevention Agent Martinez just
18 to get the total price of the items taken. Looked back not
19 even a minute, probably even a lot less than that and
20 noticed like a little not scuffle, but the female agent
21 Sempson was in there. I went in behind her and she was
22 reaching down for something off the floor or near a box. I
23 don't actually recall.

24 Q And did she hand you the item that she
25 picked up from the ground?

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 A She handed me a clear plastic sheath
2 that you would keep pictures in, but just one, not like in
3 a wallet that had some cards in it.

4 Q What type of cards?

5 A They were social security cards,
6 ma'am.

7 Q And at that time, when you picked up
8 the cards and you looked at them, did you know the victim's
9 in the homicide case name at that time?

10 A No, I didn't.

11 Q And, as a result of not knowing the
12 names, did you call someone?

13 A I called my supervisor, Sergeant Yada
14 again and got him on the phone, his cellular and just asked
15 him what the name of the victim was the day before.

16 Q And do you recall what name he gave to
17 you?

18 A Panos, P-A-N-O-S.

19 Q Did he gave you a first name?

20 A If he did, I don't recall it right
21 now.

22 Q How many cards were in this plastic
23 bag?

24 A A total of four.

25 Q Do you recall the names of these social

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 security numbers?

2 A All the last names were Panos.

3 MS. SILVER: Court's indulgence.

4 (Off the record discussion not reported.)

5 THE COURT: Has the jury completed looking
6 at the photographs?

7 Q (BY MS. SILVER) Officer Osuch, I would
8 like to show you what's been marked for purposes of
9 identification as State's Exhibit No. 64 and take a look at
10 a copy of four social security cards. It's a copy, a two
11 page copy.

12 Are these the four social security cards
13 that you recovered or, excuse me, yeah, that you received
14 from Security Officer Kimberly Sempson?

15 A Yes, ma'am.

16 Q And what are the names on these cards?

17 A Okay, from top to bottom, one Deborah
18 Ann Panos, P-A-N-O-S. I will just use the first name for
19 the rest of them because it's all the same last name. One
20 looks like James, looks like middle name Monte. I'm going
21 to say Chantell, last letter could be E. It could be
22 Chantee, can't make out the middle name, Latrese.

23 Q What's the last name?

24 A Panos. And then the bottom part is
25 Anthony Michael Panos.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Q And, again, these are the four cards
2 that you recovered from the security officer?

3 A Yes, ma'am.

4 Q A copy of the four cards?

5 A Yes.

6 Q Once you learned, from Sergeant Yada,
7 that this was in fact the victim's name, did you make
8 contact with homicide as well?

9 A Yes.

10 Q And you notified them of your
11 situation?

12 A Yes, we did.

13 Q And did you secure the integrity of the
14 scene for the homicide detectives?

15 A Yes, ma'am, I did.

16 Q You stayed with all of the items and
17 the defendant until they arrived?

18 A Yes.

19 Q Did you then turn over the scene to the
20 homicide detectives?

21 A It was their case, it was their scene.
22 I still stayed by until they dismissed me.

23 Q That would be Homicide Detectives
24 Vaccaro and Ramos?

25 A Yes, ma'am.

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1 Q Did the defendant ever tell you his
2 name was James Chappell?

3 A No.

4 Q While waiting for the homicide
5 detectives, did you notice any injuries to the defendant?

6 A Yes.

7 Q Do you recall what type of injuries?

8 A A cut.

9 Q Where?

10 A Fingers area. I don't recall which
11 one.

12 Q Ultimately, did you transport the
13 defendant to jail for homicide?

14 A No, I believe Detective Ramos did
15 that.

16 MS. SILVER: Court's indulgence.

17 (Off the record discussion not reported.)

18 Q (BY MS. SILVER) One of the things you
19 mentioned was how close this Lucky's was to the Ballerina
20 Mobile Home. How close, can you describe to the jury?

21 A Approximately a quarter of a mile.
22 Lucky sits at the intersection of Bonanza and Lamb on the
23 east -- southeast corner.

24 Q Let me ask you this, Officer Osuch.
25 There's a piece of paper on a board. Could you make a very

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1 rough diagram of the distance using the roads?

2 A Yes, ma'am.

3 Q Thank you.

4 A Please bear with me, I'm not very
5 artistic.

6 (Witness drawing.)

7 Lamb Boulevard. That would be north and to
8 the south and then (Witness drawing.)

9 To the west up that way -- sorry about
10 that -- and to the east to the bottom of the paper. And,
11 okay, over here we have -- this would be Washington, which
12 would be your major cross streets; again east to the top,
13 west to the bottom.

14 Q Where is Nellis from there?

15 A Nellis will be down. I will draw a
16 straight line because Nellis is the next major street to
17 Lamb. So Nellis is at the bottom of the paper.

18 Over in this corner you have a 7-11,
19 opposite corner is a vacant lot, and then you have a mobile
20 home park, which is Ballerina here, and you have I believe
21 another one here, which is Three Crowns or Crown Point --

22 Q Can you write Ballerina.

23 A Okay.

24 Q Actually maybe off to the side.

25 A (Witness drawing.)

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1 Q Thank you.

2 A And there's another one over in this
3 area, which I believe is Three Crowns; I can't recall that
4 one.

5 Now Lucky's Store sits on the corner of Lamb
6 and Bonanza. The building sits off here and this is all
7 parking lot and across the street from there you have the
8 Vera Johnson Projects. My handwriting is terrible.

9 THE COURT: It's better than the Court's
10 is.

11 THE WITNESS: So we're here and I would say
12 about a quarter of a mile, give or take a tenth,
13 two-tenths, up in that general vicinity.

14 Q (BY MS. SILVER) How long would it take
15 you to walk from say the Vera Johnson Projects to Ballerina
16 Mobile Home Park?

17 A Ten minutes max on a slow stroll.

18 Q Okay.

19 A That's the Ballerina right there.

20 Q Could you just put your name on the
21 bottom, Officer Osuch?

22 A Yes.

23 Q And I ask that it be marked and
24 admitted as the next exhibit in line.

25 MR. BROOKS: Which exhibit number, please?

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1 THE CLERK: It will be 77.

2 THE COURT: You can resume your seat.

3 MS. SILVER: Thank you.

4 Is that admitted then, your Honor?

5 THE COURT: Objection?

6 MR. BROOKS: No objection, your Honor.

7 THE COURT: It will be admitted.

8 MS. SILVER: Thank you. That would conclude
9 my direct examination.

10 THE COURT: Cross.

11

12 CROSS EXAMINATION

13 BY MR. BROOKS:

14 Q Officer, you testified that Mr.
15 Chappell or Mr. Morrell or, whatever, was born on December
16 27th, '68 or '67; is that correct?

17 A I don't recall his exact birth date,
18 but I believe, yes.

19 Q If I show you the citation, would that
20 refresh your recollection?

21 A Yes, sir.

22 He gave me the name of Merrell,
23 M-E-R-R-E-L-L. It is my handwriting. I was writing it
24 down as he was talking to me. First name Ivri, I-V-R-I.
25 He gave a date of birth of 12/27/69.

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1 Q Thank you.

2 When you were there, you saw Mr. Chappell

3 there. How long did you spend with him?

4 A The total time, sir?

5 Q Yes, sir.

6 A From start to finish?

7 Q Yes.

8 A About two and a half, three hours.

9 Q Did you notice if his eyes were

10 glassy?

11 A Yes.

12 Q And you noticed that he had been

13 stealing very sweet things, candy bars, liquor?

14 A Yes.

15 Q Does that mean anything at all to you?

16 A Yes, it does.

17 Q What does it mean to you?

18 A Either, A, he was coming down off a

19 sugar high or he needed sugar.

20 Q What's a sugar high?

21 A When I worked down on the bike team, a

22 lot of the dope users -- may I use that term?

23 Q Yes.

24 THE COURT: Sure.

25 THE WITNESS: Between their fixes would need

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1 sugar for whatever reason. I don't quite understand,
2 whatever their body was, I'm not a chemist, but it seemed
3 like they always needed something sweet between it.
4 Whatever significance that is I couldn't tell you.

5 Q (BY MR. BROOKS) You were going to cite
6 him for misdemeanor shoplifting, correct?

7 A Yes, sir.

8 Q And you had the opportunity of either
9 just releasing him with the citation or taking him to the
10 jail?

11 A No. I had the opportunity of citing
12 him or taking him to the jail on the misdemeanor petty
13 larceny. However, due to the fact that the paraphernalia
14 was there, that would have been my decision, my arrest in
15 that case, the State is the victim, I would book him on the
16 paraphernalia charge. He still would have received his
17 citation.

18 Q Was paraphernalia also a misdemeanor?

19 A Yes, sir, it was.

20 Q And the shoplifting is a misdemeanor?

21 A Yes, it is.

22 Q And that is the lowest level criminal
23 offense in the system?

24 A Yes, sir, it is.

25 Q And, generally, when you cite or stop

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1 somebody for a misdemeanor, you have the option of either
2 releasing them or taking them into custody?

3 A Releasing them with the citation,
4 releasing them with a warning or taking them to custody,
5 yes, sir.

6 Q Out of curiosity, is the misdemeanor
7 the same thing as a traffic ticket or not?

8 A I believe we consider traffic tickets a
9 citation now, but it's a misdemeanor.

10 Q Still a misdemeanor infraction,
11 misdemeanor crime?

12 A Yes.

13 Q Do you recall the total value of the
14 things he was taking there at the Lucky's?

15 A Not the total. Would you like an
16 estimate?

17 Q Sure.

18 A From memory?

19 Forty dollars.

20 MR. BROOKS: Thank you.

21 No further questions.

22 . . .

23 . . .

24 . . .

25 . . .

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1 REDIRECT EXAMINATION

2 BY MS. SILVER:

3 Q How long were you a patrol officer in
4 this area?

5 A I got transferred off the bikes in
6 November, November of '94, and worked the northeast area
7 command from November '94 to the present before I got
8 transferred to the bureau, which would be May 20th of this
9 year.

10 Q So were you familiar that Vera --

11 A Vera Johnson?

12 Q Yeah.

13 Was that a high narcotics area?

14 A High narcotic? How about I just say a
15 high call for a service area.

16 Q Would it be fair to say that there are
17 a lot of Coke users there, crack users?

18 A Yes, it's a safe assumption.

19 Q And so it would also be fair to say
20 that, perhaps, some of the crack users there may have
21 wanted something sweet to come down from?

22 A Yes.

23 Q If this defendant had not been a
24 suspect and this homicide had not taken place and he had
25 given you the name of James Chappell, would it be fair to

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1 say that you would have given him two misdemeanor tickets,
2 one for petty larceny and one for drug paraphernalia?

3 A Yes.

4 Q You would have merely handed him two
5 citations, been on your way to the next call?

6 A Yes, ma'am.

7 MS. SILVER: I don't have anything further
8 from this witness.

9

10 RECROSS EXAMINATION

11 BY MR. BROOKS:

12 Q Officer, he was transported to jail at
13 roughly 2:30; is that correct?

14 A I believe so, sir.

15 Q So roughly 2:30 in the afternoon on
16 September 1st, almost 24 hours after the killing, he's
17 roughly a quarter of a mile from the crime scene; is that
18 correct?

19 A A quarter mile to the south, yes, sir.

20 MR. BROOKS: Thank you.

21 No further questions.

22 MS. SILVER: Your Honor, I apologize. I had
23 forgotten something and it came to me right after I sat
24 down.

25 THE COURT: Go ahead.

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1 MS. SILVER: You can see I had a pause there
2 and I wouldn't have any opposition of him asking any
3 questions from it.

4 THE COURT: You may proceed.

5 MS. SILVER: Thank you, your Honor.
6

7 FURTHER REDIRECT EXAMINATION

8 BY MS. SILVER:

9 Q The questions I meant to ask you, which
10 slipped my mind for a minute, you said you observed the
11 defendant for how long?

12 A From the time I got the call until he
13 was transported?

14 Q Yes.

15 A Approximately two and a half, three
16 hours.

17 Q And in your 17 years as an officer,
18 have you made a number of arrests for under the influence
19 of a controlled substance?

20 A Yes, ma'am.

21 Q How many would you say?

22 A The bike team alone, maybe one a day,
23 16 working days, let's say roughly a hundred, more to the
24 lower end on that than to the higher end.

25 Q And that's maybe people you've

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1 arrested. You have seen many more than that as witnesses
2 or just coming into contact?

3 A Yes.

4 Q It would be fair to say thousands of
5 people under the influence?

6 A Yes.

7 Q What are some of the signs that you see
8 when someone is under the influence?

9 A Incoherent, glassy eyes, fidgety, a lot
10 of paranoia. No matter what drug I have come across, it
11 seems like a lot of paranoia.

12 Q You say incoherent. What do you mean
13 by that?

14 A It depends how much they have
15 ingested. Just you can't talk to them, you can't converse
16 with them, you can't get nothing from them.

17 Q They don't understand what you are
18 saying and sometimes you don't understand what they are
19 saying?

20 A That's correct, yes, ma'am.

21 Q Would that be fair to say?

22 A Yeah.

23 Q They are very confused people?

24 A It's almost like their own language.

25 Q Did the defendant have any problem

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1 understanding what you were saying to him?

2 A No, ma'am.

3 Q Did he understand the questions that
4 you were posing to him?

5 A I believe he did, ma'am.

6 Q In fact, he gave you the name of Irvi
7 Merrell; is that right?

8 A Irvi Marnell, whatever the citation
9 says, ma'am, yes.

10 Q And he gave you a date of birth, as I
11 believe you said 12/27/69?

12 A Yeah, on the citation was '69. I
13 thought he said '67, '68, but, yes, he gave me a date of
14 birth.

15 Q And, in fact, he asked you not to take
16 him to jail; is that correct?

17 A Yes, ma'am.

18 Q Did he seem to be confused or
19 incoherent at all to you?

20 A No, ma'am.

21 Q Did he seem to be talking in a language
22 all of his own?

23 A No, ma'am.

24 MS. SILVER: I don't have any further
25 questions.

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1

2

FURTHER RECROSS EXAMINATION

3

BY MR. BROOKS:

4

5

Q So obviously he was not in the middle
of a being high period?

6

A I would say --

7

Q From what you could tell?

8

A With all the sugar and the liquor I saw
there, he was probably coming down needing something. So
he was on a downwards slope or he was already cleaned out.

11

MR. BROOKS: Thank you.

12

No further questions.

13

THE COURT: May this witness be discharged?

14

MR. HARMON: Yes, your Honor.

15

THE COURT: All right, thank you, sir.

16

THE WITNESS: Thank you, your Honor.

17

THE COURT: We will call our noon recess at
this time, ladies and gentlemen of the jury. During the
recess, I would remind you it is your duty not to converse
among yourselves or with anyone else on any subject
connected with this trial or to read, watch, or listen to
any report of or commentary on this trial or any person
connected with this trial by any medium of information,
including, without limitation, newspapers, television, or
radio, and you are not to form or express an opinion on any

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1 subject connected with this case until it is finally
2 submitted to you.

3 We will be at ease while you depart the
4 confines of the courtroom. We will reconvene at 1:30.
5 Please be downstairs at 1:25 ready to be collected.

6
7 (At this time the jury left the courtroom.)

8
9 THE COURT: We're outside the presence of
10 the jury. I don't recall whether this point was made. I
11 think it was made, at least tangentially with regard to the
12 evidence of shoplifting. So I will just make one further
13 observation on the record as to my rationale behind letting
14 this evidence go to the jury.

15 One of the defense theories is that this was
16 a crime that was committed in the heat of passion. This
17 evidence -- the evidence of the shoplifting does confirm
18 the State's theory that there was no remorse. Remorse
19 would certainly be consistent with the defendant's theory
20 and, thus, this shoplifting incident is evidence that he
21 was simply going on with his usual life activities and it
22 would tend to rebut the defendant's theory of the case.

23 With that, we will be in recess.

24
25 (Off the record at 12 noon p.m.)

PATSY K. SMITH, OFFICIAL COURT REPORTER

* * * * *

ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF PROCEEDINGS.


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

PATSY K. SMITH, OFFICIAL COURT REPORTER

DISTRICT COURT

COUNTY OF CLARK, STATE OF NEVADA

FILED IN OPEN COURT

OCT 14 1996 19

LORETTA BOWMAN, CLERK

ORIGINAL

[Signature]

Deputy

THE STATE OF NEVADA,

Plaintiff,

vs.

Case No. C131341

JAMES MONTELL CHAPPELL,

Defendant.

REPORTER'S TRANSCRIPT

OF

JULY TRIAL, VOLUME IV, AFTERNOON SESSION

BEFORE THE HONORABLE A. WILLIAM MAUPIN, DISTRICT JUDGE

OCTOBER 11, 1996

1:30 P.M.

APPEARANCES:

For the Plaintiff:

MELVYN T. HARMON, ESQ.
Deputy District Attorney

&

ABBI SILVER, ESQ.
Deputy District Attorney

For the Defendant:

HOWARD S. BROOKS, ESQ.
Deputy Public Defender

&

WILLARD N. EWING, ESQ.
Deputy Public Defender

REPORTED BY: Marcia Leonard, RPR, CCR No. 204

MARCIA J. LEONARD, CCR NO. 204, RPR

CE

I N D E X

1		
2	State's Witnesses:	Page
	MONTE SPOOR	
3	Direct examination by Mr. Harmon:	5
4	MARK WASHINGTON	
	Direct examination by Mr. Harmon:	19
5	DINA FREEMAN	
6	Direct examination by Ms. Silver:	34
	Cross examination by Mr. Brooks:	51
7	Redirect examination by Ms. Silver	57
8	JERI EARNST	
	Direct examination by Mr. Harmon:	60
9	Cross examination by Mr. Brooks:	73
10	DANIEL GIERSDORD	
	Direct examination by Ms. Silver:	83
11	TANYA HOBSON	
12	Direct examination by Ms. Silver:	91
	Cross examination by Mr. Brooks:	98
13	Redirect examination by Ms. Silver:	102
	Recross examination by Mr. Brooks:	105
14	ALLEN WILLIAMS	
15	Direct examination by Ms. Silver:	107
16	LATRONA SMITH	
	Direct examination by Ms. Silver:	110
17	JAMES VACCARO	
18	Direct examination by Mr. Harmon:	123
19		
20		
21		
22		
23		
24		
25		

	E X H I B I T S	
1	STATE'S	MARKED ADMITTED
2	41	-- 9
	51-54	-- 9
3	55	-- 11
	57-60	-- 24
4	61	-- 22
	63	-- 19
5	65	-- 27
	78	-- 13
6	78A	13 13
	79	-- 17
7	79A	16 17
	80	30
8	80A	33
	81-82	-- 98
9	83	132 134

10

11

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MARCIA J. LEONARD, CCR NO. 204, RPR

1 CLARK COUNTY, NEVADA, FRIDAY, OCTOBER 11, 1996

2 *****

3
4 THE COURT: All right. Counsel,
5 stipulate to the presence of the defendant.

6 MR. HARMON: Yes.

7 MR. BROOKS: Defense will, your Honor.

8 THE COURT: Thank you.

9 Ladies and gentlemen, there was a little
10 delay getting started because of some logistical
11 issues. They were going over some evidence in here to
12 try to streamline the proceedings a little bit. So
13 sometimes a little delay here and there helps
14 facilitate the presentation once we get in here.

15 I think that now we'll be able to make a
16 better use of our time.

17 Mr. Harmon, can we proceed in the absence
18 of Ms. Silver?

19 MR. HARMON: Yes. She'll be back
20 shortly, your Honor.

21 THE COURT: Very well. The State of
22 Nevada may continue with the presentation of its
23 case-in-chief.

24 MR. HARMON: Thank you, Judge.

25 The next witness will be Monte Spoor.

MARCIA J. LEONARD, CCR NO. 204, RPR

1 THE CLERK: Do you solemnly swear the
2 testimony which you are about to give shall be the
3 truth, the whole truth and nothing but the truth, so
4 help you God?

5 THE WITNESS: Yes, I do.

6
7 MONTE SPOOR,

8
9 having been first duly sworn, testified as follows:

10
11 DIRECT EXAMINATION

12
13 BY MR. HARMON:

14 Q Will you state your name for the record?

15 A My name is Monte Wade Spoor. Last name
16 spelling, S-p-o-o-r.

17 Q How do you spell your first name?

18 A Monte, M-O-N-T-E.

19 Q Mr. Spoor, what is your business or
20 occupation?

21 A I'm employed as a senior crime scene
22 analyst with the Las Vegas Metropolitan Police
23 Department.

24 Q How long have you been employed with the
25 Metropolitan Police Department?

1 A Six years and ten months.

2 Q I take it you were employed with that
3 department on September the 1st, 1995?

4 A Yes, sir, I was.

5 Q On that occasion did you respond to the
6 area of Lucky's food store at 4420 East Bonanza
7 Boulevard, and also to the area where a Toyota vehicle
8 was parked at 507 North Lamb Boulevard in the Vera
9 Johnson housing project?

10 A I responded to 4420 East Bonanza Road,
11 and then to the Clark County Detention Center. I did
12 not respond to the location of the vehicle.

13 Q Approximately what time did you respond
14 to the store?

15 A I arrived at approximately 1310 hours,
16 1:10 in the afternoon.

17 Q What was your purpose in going to the
18 area of the Lucky's food market?

19 A I was summonsed there by Homicide
20 Detective Jimmy Vaccaro who had a possible suspect in
21 relation to the homicide that occurred on August the
22 31st, and I was to go there and photograph the suspect
23 and recover various items of evidence from the
24 suspect.

25 Q Did you, in fact, photograph the suspect?

1 A Yes, sir, I did.

2 Q Where were the photographs taken?

3 A They were taken in the rear area or the
4 south storage area of the Lucky's food store at that
5 location.

6 Q Did you take a facial shot of the
7 suspect?

8 A Yes, sir, I did.

9 Q Did you also photograph other areas of
10 the body?

11 A Yes, sir, I did.

12 Q Did you have a particular reason for
13 photographing certain parts of the body?

14 A Yes, sir. There appeared to be injuries
15 to the other parts of the body and we were just making
16 notation of the injuries.

17 MR. HARMON: May I approach the witness,
18 your Honor.

19 THE COURT: Yes.

20 BY MR. HARMON:

21 Q Analyst Spoor, you've mentioned that you
22 took photographs of the suspect. What was the name of
23 the suspect?

24 A His name was James Chappell.

25 Q And these pictures were taken on

1 September the 1st, 1995?

2 A That's correct.

3 Q At about what time did you photograph the
4 suspect?

5 A It would probably have to be about ten to
6 15 minutes after arriving.

7 Q So that would be approximately what time?

8 A Approximately 1325 hours.

9 Q Approximately 1:25?

10 A 1:25 p.m., yes, sir.

11 Q I'm showing you Proposed Exhibits 49 and
12 51 through 54. Are you able to recognize the
13 photographs that I have just given you?

14 A Yes, sir, I am.

15 Q Are these photographs taken by you in the
16 Lucky's food store, 4420 East Bonanza Boulevard, on
17 September the 1st, 1995?

18 A Yes, sir, they were.

19 Q Are they photographs of the defendant,
20 Mr. Chappell, who is here in the courtroom?

21 A Yes, sir, they are.

22 Q Do they truly and accurately reflect his
23 appearance and condition as of that day, September the
24 1st, 1995?

25 A Yes, sir, they do.

IN THE SUPREME COURT OF NEVADA

JAMES CHAPPELL,

CASE NO. 61967

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

APPENDIX

<u>VOLUME</u>	<u>PLEADING</u>	<u>PAGE NO</u>
11	ACKNOWLEDGMENT AND WAIVER (FILED 9/26/2003)	2622-2622
11	AFFIDAVITS IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS (FILED 3/7/2003)	2672-2682
11	AFFIDAVITS IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS (FILED 3/10/2003)	2683-2692
8	AMENDED JURY LIST (10/23/1996)	2062-2062
10	AMENDED ORDER APPOINTING COUNSEL (FILED 11/29/1999)	2359-2359
2	ANSWER TO MOTION TO COMPEL DISCLOSURE BY THE STATE OF ANY AND ALL INFORMATION (FILED 9/11/1996)	306-308
12	APPLICATION AND ORDER FOR DEFENDANT CHAPPELL (FILED 1/25/2007)	2901-2903
9	CASE APPEAL STATEMENT (FILED 1/23/1997)	2202-2204
11	CASE APPEAL STATEMENT (FILED 6/18/2004)	2754-2756
11	CASE APPEAL STATEMENT (FILED 6/24/2004)	2759-2760
20	CASE APPEAL STATEMENT (FILED 10/22/2012)	4517-4519
11	CERTIFICATE OF MAILING	

1	12	(FILED 7/23/2004) CERTIFICATE OF MAILING (FILED 9/21/2006)	2780-2781 2879-2880
2	1	CRIMINAL BINDOVER (FILED 10/10/1995)	001-037
3	20	COURT MINUTES	4644-4706
4	10	DECLARATION IN SUPPORT OF MOTION TO PERMIT PETITION (FILED 10/19/1999)	2324-2326
5	10	DECLARATION IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS (FILED 10/19/1999)	2328-2332
6	9	DEFENDANT'S MOTION FOR STAT OF EXECUTION (FILED 12/27/1996)	2175-2177
7	2	DEFENDANT'S MOTION IN LIMINE REGARDING DETAILS OF DEFENDANT'S RELEASE (FILED 10/4/1996)	328-335
8	2	DEFENDANT'S MOTION IN LIMINE REGARDING EVENTS RELATED TO DEFENDANT'S ARREST FOR SHOPLIFTING ON SEPTEMBER 1, 1995 (FILED 10/4/1996)	336-341
9	2	DEFENDANT'S MOTION TO COMPEL PETROCELLI HEARING REGARDING ALLEGATIONS (FILED 9/10/1996)	297-302
10	5	DEFENDANT'S MOTION TO DISMISS ALL CHARGES BASED ON STATE'S VIOLATION (FILED 10/11/1996)	1070-1081
11	1	DEFENDANT'S MOTION TO STRIKE ALLEGATIONS OF CERTAIN AGGRAVATING CIRCUMSTANCES (FILED 7/30/1996)	250-262
12	1	DEFENDANT'S MOTION TO STRIKE STATE'S NOTICE OF INTENT TO SEEK DEATH PENALTY (FILED 7/23/1996)	236-249
13	1	DEFENDANT'S MOTION TO VACATE JUNE 3, 1996, TRIAL DATE AND CONTINUE TRIAL UNTIL SEPTEMBER (FILED 4/23/1996)	210-215
14	2	DEFENDANT'S OFFER TO STIPULATE TO CERTAIN FACTS (FILED 9/10/1996)	303-305
15	2	DEFENDANT'S OPPOSITION TO STATE'S MOTION TO ADMIT EVIDENCE OF OTHER CRIMES, WRONGS OR BAD ACTS (FILED 9/10/1996)	287-296

1	12	DISTRICT COURT JURY LIST (FILED 3/13/2007)	3046-3046
2	20	DOCKETING STATEMENT (FILED 10/30/2012)	4520-4526
3			
4	9	ENTRY OF MINUTE ORDER (FILED 1/3/1997)	2199-2199
5	16	ENTRY OF MINUTE ORDER (FILED 5/10/2007)	3860-3860
6			
7	12	EX PARTE APPLICATION AND ORDER TO PREPARE TRANSCRIPTS (FILED 1/23/2007)	2898-2900
8			
9	11	EX PARTE APPLICATION AND ORDER TO PRODUCE DEFENDANT'S INSTITUTIONAL FILE (FILED 8/24/2007)	2798-2800
10			
11	2	EX PARTE APPLICATION FOR TRANSCRIPT (FILED 9/27/1996)	323-325
12	11	EX PARTE APPLICATION TO UNSEAL PSI (FILED 11/18/2002)	2629-2631
13			
14	11	EX PARTE MOTION FOR AN ORDER TO PRODUCE DEFENDANT'S INSTITUTIONAL FILE (FILED 4/8/2004)	2740-2743
15			
16	10	EX PARTE MOTION FOR APPOINTMENT OF INVESTIGATOR AND FOR EXCESS FEES (FILED 9/18/2002)	2550-2552
17			
18	11	EX PARTE MOTION FOR CHANGE OF INVESTIGATOR, EX PARTE MOTION FOR FEES IN EXCESS OF STATUTORY LIMIT, AND EX PARTE MOTION FOR CONTRACT VISITS (FILED 10/15/2002)	2623-2626
19			
20	10	EX PARTE MOTION FOR INTERIM PAYMENT OF EXCESS ATTORNEY'S FEES (FILED 7/13/2000)	2374-2381
21			
22	10	EX PARTE MOTION FOR INTERIM PAYMENT OF EXCESS ATTORNEY'S FEES (FILED 5/17/2001)	2385-2398
23			
24	10	EX PARTE MOTION FOR INTERIM PAYMENT OF EXCESS ATTORNEY'S FEES (4/11/2002)	2405-2415
25			
26	10	EX PARTE MOTION FOR INTERIM PAYMENT OF EXCESS ATTORNEY'S FEES (FILED 7/8/2002)	2521-2539
27			
28	11	EX PARTE MOTION FOR INTERIM PAYMENT OF EXCESS ATTORNEY'S FEES (FILED 12/11/2002)	2633-2649

1	11	EX PARTE MOTION FOR INTERIM PAYMENT OF EXCESS ATTORNEY'S FEES (FILED 2/3/2003)	2655-2670
2			
3	11	EX PARTE MOTION FOR INTERIM PAYMENT OF EXCESS ATTORNEY'S FEES (FILED 1/27/2004)	2728-2738
4			
5	10	EX PARTE MOTION FOR ORDER TO TRANSPORT PETITIONER (FILED 7/30/2002)	2541-2542
6			
7	11	EX PARTE MOTION FOR PAYMENT OF FINAL ATTORNEY FEES AND COSTS (FILED 7/6/2004)	2763-2772
8			
9	11	EX PARTE ORDER GRANTING CHANGE OF INVESTIGATOR, FEES IN EXCESS OF STATUTORY LIMIT, AND CONTACT VISIT (FILED 10/17/2002)	2627-2628
10			
11	11	EX PARTE ORDER TO PRODUCE INSTITUTIONAL FILE (FILED 4/12/2004)	2744-2744
12			
13	10	EX PARTE ORDER TO TRANSPORT PETITIONER (FILED 7/31/2002)	2543-2543
14	11	EX PARTE ORDER TO UNSEAL PSI (FILED 12/3/2002)	2632-2632
15			
16	11	FINDINGS OF FACTS, CONCLUSIONS OF LAW, AND ORDER (FILED 6/3/2004)	2745-2748
17			
18	20	FINDINGS OF FACTS, CONCLUSIONS OF LAW, AND ORDER (FILED 11/20/2012)	4527-4537
19			
20	1	INFORMATION (FILED 10/11/1995)	038-043
21	7	INSTRUCTIONS TO THE JURY (FILED 10/16/1996)	1701-1746
22			
23	9	INSTRUCTIONS TO THE JURY (FILED 10/24/1996)	2134-2164
24	15	INSTRUCTIONS TO THE JURY (FILED 3/21/2007)	3742-3764
25			
26	9	JUDGMENT OF CONVICTION (FILED 12/31/1996)	2190-2192
27	16	JUDGMENT OF CONVICTION (FILED 5/10/2007)	3854-3855
28			
	4	JURY LIST (FILED 10/9/1996)	843-843

1	1	MEDIA REQUEST (FILED 1/3/1996)	206-206
2			
3	5	MEDIA REQUEST (FILED 10/11/1996)	1068-1068
4	1	MOTION AND NOTICE OF MOTION TO ENDORSE NAMES ON INFORMATION	
5		(FILED 7/9/1996)	230-233
6	2	MOTION AND NOTICE OF MOTION TO ENDORSE NAMES ON INFORMATION	
7		(FILED 8/22/1996)	276-280
8	6	MOTION AND NOTICE OF MOTION TO ENDORSE NAMES ON INFORMATION	
9		(FILED 10/14/1996)	1347-1350
10	12	MOTION IN LIMINE TO LIMIT PENALTY HEARING EVIDENCE TO AVOID VIOLATION OF THE EIGHTH AMENDMENT	
11		(FILED 9/20/2006)	2831-2837
12			
13	20	MOTION FOR AUTHORIZATION TO OBTAIN A SEXUAL ASSAULT EXPERT	
14		(FILED 2/15/2012)	4556-4561
15	20	MOTION FOR AUTHORIZATION TO OBTAIN AN INVESTIGATOR AND FOR PAYMENT FEES	
16		(FILED 2/15/2012)	4550-4555
17	20	MOTION FOR AUTHORIZATION TO OBTAIN EXPERT SERVICES AND FOR PAYMENT FEES	
18		(FILED 2/15/2012)	4485-4490
19	12	MOTION TO ALLOW JURY QUESTIONNAIRE (FILED 9/20/2006)	2838-2842
20	12	MOTION TO BIFURCATE PENALTY PHASE (FILED 9/20/2006)	2843-2848
21			
22	2	MOTION TO COMPEL DISCLOSURE BY THE STATE OF ANY AND ALL INFORMATION RELATING TO AGGRAVATING OR MITIGATING FACTORS	
23		(FILED 7/31/1996)	263-270
24	2	MOTION TO COMPEL EXAMINATION OF DEFENDANT BY OPTOMETRIST AND OBTAIN EYE GLASSES IF NECESSARY	
25		(FILED 8/19/1996)	271-275
26			
27	12	MOTION TO DISMISS STAT'S NOTICE OF INTENT TO SEEK DEATH PENALTY	
28		(FILED 9/20/2006)	2849-2878

1	12	MOTION TO REMAND FOR CONSIDERATION BY THE CLARK COUNTY DISTRICT ATTORNEY'S DEATH REVIEW COMMITTEE (FILED 9/20/2006)	2817-2825
2			
3			
4	12	MOTION TO STRIKE SEXUAL ASSAULT AGGRAVATOR OF THE STATE'S NOTICE OF INTENT TO SEEK THE DEATH PENALTY (FILED 9/20/2006)	2801-2816
5			
6	10	NEVADA SUPREME COURT CLERK'S CERTIFICATE JUDGEMENT -AFFIRMED (FILED 11/4/1999)	2338-2353
7			
8	11	NEVADA SUPREME COURT CLERK'S CERTIFICATE JUDGEMENT-AFFIRMED (FILED 5/5/2006)	2782-2797
9			
10	9	NOTICE OF APPEAL (FIELD 1/17/1997)	2200-2201
11			
12	11	NOTICE OF APPEAL (FILED 6/18/2004)	2757-2758
13	20	NOTICE OF APPEAL (FILED 10/22/2012)	4515-4516
14			
15	9	NOTICE OF COMPLIANCE WITH SUPREME COURT RULE 250 (FILED 3/17/1997)	2205-2206
16			
17	11	NOTICE OF CROSS-APPEAL (FILED 6/24/2004)	2761-2762
18	12	NOTICE OF DEFENDANT'S EXPERT WITNESS (FIELD 2/15/2007)	2927-2977
19			
20	12	NOTICE OF DEFENDANT'S WITNESSES (FIELD 3/1/2007)	3043-3045
21	20	NOTICE OF DEFICIENCY (FILED 10/23/2012)	4430-4430
22			
23	11	NOTICE OF DECISION AND ORDER (FILED 6/10/2004)	2749-2753
24	20	NOTICE OF ENTRY OF FINDINGS OF FACT CONCLUSIONS OF LAW AND ORDER (FLED 11/20/2012)	4538-4549
25			
26	12	NOTICE OF EVIDENCE IN SUPPORT OF AGGRAVATING CIRCUMSTANCES (FILED 2/23/2007)	3032-3038
27			
28	12	NOTICE OF EXPERT WITNESSES (FILED 2/16/2007)	2978-3011

1	1	NOTICE OF INTENT TO SEEK DEATH PENALTY (11/8/1995)	044-046
2	12	NOTICE OF MOTION AND MOTION FOR DISCOVERY OF POTENTIAL PENALTY HEARING EVIDENCE (FILED 9/20/2006)	2826-2830
3			
4	1	NOTICE OF MOTION AND MOTION TO ADMIT EVIDENCE OF OTHER CRIMES, WRONGS OR BAD ACTS (FILED 5/9/1996)	217-226
5			
6	10	NOTICE OF MOTION AND MOTION TO APPOINT COUNSEL FOR CAPITAL MURDER DEFENDANT TO HELP (FILED 11/2/1999)	2334-2337
7			
8	10	NOTICE OF MOTION AND MOTION TO PLACE ON CALENDAR (FILED 4/17/2001)	2383-2384
9			
10	2	NOTICE OF MOTION AND SUPPLEMENTAL MOTION TO ADMIT EVIDENCE OF OTHER CRIMES, WRONG OR BAD ACTS (FILED 8/29/1996)	281-283
11			
12	12	NOTICE OF WITNESSES (FILED 2/28/2007)	3039-3042
13			
14	2	OPPOSITION TO MOTION FOR STRIKE ALLEGATIONS OF CERTAIN AGGRAVATING CIRCUMSTANCES (FILED 9/11/1996)	309-320
15			
16	2	ORDER (FILED 9/25/1996)	321-322
17			
18	2	ORDER (FILED 9/27/1996)	326-327
19	12	ORDER (FILED 1/29/2007)	2904-2905
20			
21	15	ORDER (FILED 3/20/2007)	3628-3629
22	10	ORDER APPOINTING COUNSEL (FILED 11/16/1999)	2357-2357
23			
24	10	ORDER APPOINTING INVESTIGATOR AND GRANTING EXCESS FEES (FILED 9/24/2002)	2553-2553
25			
26	16	ORDER FOR PRODUCTION OF INMATE (FILED 3/29/2007)	3831-3832
27	9	ORDER FOR STAY OF EXECUTION (FILED 12/30/1996)	2178-2178
28			
	2	ORDER FOR TRANSCRIPT (FILED 10/7/1996)	354-354

1	10	ORDER FOR TRANSCRIPT (FILED 11/19/1999)	2358-2358
2	11	ORDER GRANTING FINAL PAYMENT OF ATTORNEY'S FEES AND COSTS	
3		(FILED 7/12/2004)	2773-2773
4	10	ORDER GRANTING INTERIM PAYMENT OF EXCESS ATTORNEY'S FEES	
5		(FILED 7/24/2000)	2382-2382
6	10	ORDER GRANTING INTERIM PAYMENT OF EXCESS ATTORNEY'S FEES	
7		(FILED 6/7/2001)	2399-2399
8	10	ORDER GRANTING INTERIM PAYMENT OF EXCESS ATTORNEY'S FEES	
9		(FILED 4/12/2002)	2416-2416
10	10	ORDER GRANTING INTERIM PAYMENT OF EXCESS ATTORNEY'S FEES	
11		(FILED 7/10/2002)	2540-2540
12	11	ORDER GRANTING INTERIM PAYMENT OF EXCESS ATTORNEY'S FEES	
13		(FILED 12/12/2002)	2650-2650
14	11	ORDER GRANTING INTERIM PAYMENT OF EXCESS ATTORNEY'S FEES	
15		(FILED 1/28/2004)	2739-2739
16	1	ORDER GRANTING PERMISSION OF MEDIA ENTRY (FILED 1/3/1996)	207-207
17			
18	5	ORDER GRANTING PERMISSION OF MEDIA ENTRY (FILED 10/11/1996)	1069-1069
19	9	ORDER OF EXECUTION (FILED 13/31/1996)	2198-2198
20			
21	16	ORDER OF EXECUTION (FILED 5/10/2007)	3856-3856
22	10	ORDER RE: PETITION FOR WRIT OF HABEAS CORPUS (FILED 10/20/1999)	2333-2333
23			
24	1	ORDER TO ENDORSE NAMES ON INFORMATION (FILED 7/15/1996)	234-235
25	2	ORDER TO ENDORSE NAMES ON INFORMATION (FILED 9/4/1996)	284-286
26			
27	6	ORDER TO ENDORSE NAMES ON INFORMATION (FILED 10/14/1996)	1345-1346
28	16	ORDER TO STAY EXECUTION (5/14/2007)	3861-3861

1	1	ORDER TO TRANSPORT (FILED 4/26/1996)	216-216
2	9	PETITION FOR WRIT OF HABEAS CORPUS (FILED 10/19/1999)	2258-2316
3	10	PETITION FOR WRIT OF HABEAS CORPUS MOTION FOR APPOINTMENT OF COUNSEL (FILED 10/19/1999)	2317-2322
4	10	PETITION FOR WRIT OF HABEAS CORPUS MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS (FILED 10/19/1999)	2323-2323
5	10	PETITION FOR WRIT OF HABEAS CORPUS MOTION TO PERMIT PETITION TO CONTAIN LEGAL CITATIONS (FILED 10/19/1999)	2327-2327
6	11	POST EVIDENTIARY HEARING BRIEF (FILED 7/14/2003)	2693-2725
7	18	PRE-SENTENCE INVESTIGATION REPORT NOT FILED (CONFIDENTIAL)	
8	16	PROPOSED JURY VERDICTS NOT FILED	
9	20	RECEIPT FOR DOCUMENTS (FILED 10/24/2012)	4429-4429
10	20	RECORDER'S TRANSCRIPT RE: EVIDENTIARY HEARING: ARGUMENT MONDAY, OCTOBER 19, 2012 (FILED 10/29/2012)	4417-4428
11	20	RECORDER'S TRANSCRIPT RE: STATUS CHECK WEDNESDAY, AUGUST 29, 2012 (FILED 1/15/2013)	4413-4428
12	20	REPLY TO STATE'S RESPONSES TO SUPPLEMENTAL BRIEF (FILED 7/30/2012)	4491-4514
13	1	REPORTER'S TRANSCRIPT OF OCTOBER 3, 1995 PRELIMINARY HEARING (FILED 11/14/1995)	047-205
14	1	REPORTER'S TRANSCRIPT OF MAY 1, 1996 TRIAL SETTING (FILED 5/9/1996)	227-229
15	2	REPORTER'S TRANSCRIPT OF OCTOBER 7, 1996 VOLUME 1- MORNING SESSION (FILED 10/8/1996)	355-433

1	2-3	REPORTER'S TRANSCRIPT OF OCTOBER 7, 1996 VOLUME 1- AFTERNOON SESSION (FILED 10/8/1996)	434-617
2			
3	3-4	REPORTER'S TRANSCRIPT OF OCTOBER 8, 1996 VOLUME 2- MORNING SESSION (FILED 10/9/1996)	717-842
4			
5	3	REPORTER'S TRANSCRIPT OF OCTOBER 8, 1996 VOLUME 2-AFTERNOON SESSION (FILED 10/9/1996)	618-716
6			
7	4	REPORTER'S TRANSCRIPT OF OCTOBER 10, 1996 VOLUME 3-MORNING SESSION (FILED 10/11/1996)	846-933
8			
9	4	REPORTER'S TRANSCRIPT OF OCTOBER 10, 1996 VOLUME 3- AFTERNOON SESSION (FILED 10/11/1996)	934-1067
10			
11	5	REPORTER'S TRANSCRIPT OF OCTOBER 11, 1996 VOLUME 4- MORNING SESSION (FILED 10/14/1996)	1082-1191
12			
13	5	REPORTER'S TRANSCRIPT OF OCTOBER 11, 1996 VOLUME 4- AFTERNOON SESSION (FILED 10/14/1996)	1192-1344
14			
15	6	REPORTER'S TRANSCRIPT OF OCTOBER 14, 1996 VOLUME 5- MORNING SESSION (FILED 10/15/1996)	1472-1529
16	6	REPORTER'S TRANSCRIPT OF OCTOBER 14, 1996 VOLUME 5- AFTERNOON SESSION (FILED 10/15/1996)	1351-1471
17			
18	6-7	REPORTER'S TRANSCRIPT OF OCTOBER 15, 1996 VOLUME 6 (FILED 10/16/1996)	1530-1700
19			
20	7	REPORTER'S TRANSCRIPT OF OCTOBER 16, 1996 VOLUME 7 (FILED 10/17/1996)	1750-1756
21			
22	7	REPORTER'S TRANSCRIPT OF OCTOBER 21, 1996 PENALTY PHASE VOLUME 1- MORNING SESSION (FILED 10/22/1996)	1757-1827
23			
24	8	REPORTER'S TRANSCRIPT OF OCTOBER 21, 1996 PENALTY PHASE VOLUME 1- AFTERNOON SESSION (FILED 10/22/1996)	1828-1952
25			
26	8	REPORTER'S TRANSCRIPT OF OCTOBER 22, 1996 PENALTY PHASE VOLUME 2 (FILED 10/23/1996)	1953-2061
27			
28	9	REPORTER'S TRANSCRIPT OF OCTOBER 23, 1996 PENALTY PHASE VOLUME 3 (FILED 10/24/1996)	2063-2122

1	9	REPORTER'S TRANSCRIPT OF OCTOBER 24, 1996 PENALTY PHASE VOLUME 4 (FILED 10/24/1996)	2123-2133
2			
3	9	REPORTER'S TRANSCRIPT OF DECEMBER 11, 1996 (FILED 12/12/1996)	2172-2174
4	9	REPORTER'S TRANSCRIPT OF DECEMBER 30, 1996 (FILED 12/31/1996)	2179-2189
5			
6	10	REPORTER'S TRANSCRIPT OF NOVEMBER 8, 1999 STATE'S MOTIONS (FILED 1/13/2000)	2363-2365
7			
8	10	REPORTER'S TRANSCRIPT OF NOVEMBER 15, 1999 (FILED 11/16/1999)	2354-2356
9	10	REPORTER'S TRANSCRIPT OF DECEMBER 15, 1999 (FILED 12/16/1999)	2360-2362
10			
11	10	REPORTER'S TRANSCRIPT OF JANUARY 19, 2000 STATUS CHECK (FILED 2/29/2000)	2366-2370
12			
13	10	REPORTER'S TRANSCRIPT OF JUNE 27, 2000 (FILED 6/28/2000)	2371-2373
14	11	REPORTER'S TRANSCRIPT OF NOVEMBER 6, 2000 HEARING: WRIT (FILED 12/23/2002)	2651-2654
15			
16	10	REPORTER'S TRANSCRIPT OF JUNE 12, 2001 (FILED 6/13/2001)	2400-2402
17			
18	10	REPORTER'S TRANSCRIPT OF JULY 26, 2001 STATUS CHECK ON BRIEFING SCHEDULE (FILED 8/28/2001)	2403-2404
19			
20	10	REPORTER'S TRANSCRIPT OF JULY 25, 2002 HEARING: WRIT (FILED 8/19/2002)	2544-2549
21			
22	11	REPORTER'S TRANSCRIPT OF SEPTEMBER 13, 2002 (FILED 9/24/2002)	2554-2621
23	11	REPORTER'S TRANSCRIPT OF APRIL 2, 2004 DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS (FILED 7/23/2004)	2774-2779
24			
25			
26	12	REPORTER'S TRANSCRIPT OF JULY 17, 2006 STATE'S REQUEST PER SUPREME COURT REMITTITUR (FILED 2/13/2007)	2924-2926
27			
28	12	REPORTER'S TRANSCRIPT OF JULY 25, 2006 (FILED 2/9/2007)	2912-2914

1	12	REPORTER'S TRANSCRIPT OG OCTOBER 3, 2006 HEARING ON MOTIONS (FILED 2/9/2007)	2918-2920
2			
3	12	REPORTER'S TRANSCRIPT OF NOVEMBER 2, 2006 HEARING ON DEFENDANT'S MOTIONS (FILED 2/9/2007)	2921-2923
4			
5	12	REPORTER'S TRANSCRIPT OF NOVEMBER 16, 2006 RE: HEARING ON DEFENDANT'S MOTIONS (FILED 2/9/2007)	2915-2917
6			
7	12	REPORTER'S TRANSCRIPT OF JANUARY 11, 2007 PRE-PENALTY PHASE MOTIONS (FILED 2/20/2007)	3012-3031
8			
9	16	REPORTER'S TRANSCRIPT OF JANUARY 11 PRE-PENALTY MOTIONS (FILED 4/9/2007)	3833-3853
10			
11	13	REPORTER'S TRANSCRIPT OF MARCH 14, 2007 MORNING SESSION (FILED 3/15/2007)	3047-3166
12			
13	13	REPORTER'S TRANSCRIPT OF MARCH 14, 2007 AFTERNOON SESSION (FILED 3/15/2007)	3167-3222
14			
15	14	REPORTER'S TRANSCRIPT OF MARCH 15, 2007 MORNING SESSION (FILED 3/16/2007)	3268-3404
16			
17	13	REPORTER'S TRANSCRIPT OF MACH 15, 2007 AFTERNOON SESSION (FILED 3/16/2007)	3223-3267
18			
19	14-15	REPORTER'S TRANSCRIPT OF MARCH 16, 2007 MORNING SESSION (FILED 3/19/2007)	3450-3627
20			
21	14	REPORTER'S TRANSCRIPT OF MARCH 16, 2007 AFTERNOON SESSION (3/19/2007)	3405-3449
22			
23	15	REPORTER'S TRANSCRIPT OF MARCH 19, 2007 PENALTY HEARING (FILED 3/20/2007)	3630-3736
24			
25	16	REPORTER'S TRANSCRIPT OF MARCH 20, 2007 PENALTY HEARING (FILED 3/21/2007)	3765-3818
26			
27	16	REPORTER'S TRANSCRIPT OF MARCH 21, 2007 PENALTY HEARING VERDICT (FILED 3/22/2007)	3819-3830
28			

1	12	REQUEST FOR PREPARATION OF TRANSCRIPT OF PROCEEDINGS (FILED 2/6/2007)	2906-2911
2			
3	16	REQUEST FOR PREPARATION OF TRANSCRIPT OF PROCEEDINGS (FILED 5/17/2007)	3862-3866
4			
5	9	SPECIAL VERDICT (FILED 10/24/1996)	2168-2169
6	9	SPECIAL VERDICT (FILED 10/24/1996)	2170-2171
7			
8	15	SPECIAL VERDICT (FILED 3/21/2007)	3737-3737
9	15	SPECIAL VERDICT (FILED 3/21/2007)	3738-3738
10			
11	15	SPECIAL VERDICT (FILED 3/21/2007)	3739-3740
12	12	STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR DISCOVERY OF POTENTIAL PENALTY HEARING EVIDENCE (FILED 9/29/2006)	2888-2889
13			
14	12	STATE'S OPPOSITION TO DEFENDANT'S MOTION IN LIMINE TO LIMIT PENALTY HEARING EVIDENCE TO AVOID VIOLATION (FILED 9/29/2006)	2895-2897
15			
16	12	STATE'S OPPOSITION TO DEFENDANT'S MOTION TO ALLOW JURY QUESTIONNAIRE (FILED 9/29/2006)	2886-2887
17			
18	12	STATE'S OPPOSITION TO DEFENDANT'S MOTION TO BIFURCATE PENALTY PHASE (FILED 9/26/2006)	2893-2894
19			
20	12	STATE'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS STATE'S NOTICE OF INTENT TO SEEK DEATH PENALTY (FILED 9/29/2006)	2881-2883
21			
22	12	STATE'S OPPOSITION TO DEFENDANT'S MOTION TO REMAND FOR CONSIDERATION BY THE CLARK COUNTY DISTRICT ATTORNEY'S DEATH REVIEW COMMITTEE (FILED 9/29/2006)	2884-2885
23			
24	12	STATE'S OPPOSITION TO DEFENDANT'S MOTION TO STRIKE SEXUAL ASSAULT AGGRAVATOR (FILED 9/29/2006)	2890-2892
25			
26	20	STATE'S OPPOSITION TO MOTION FOR LEAVE TO CONDUCT DISCOVERY	
27			
28			

1	(FILED 5/16/2012)	4479-4485
2	20	
3	STATE'S OPPOSITION TO MOTION FOR AUTHORIZATION TO OBTAIN EXPERT SERVICES AND PAYMENT OF FEES (FILED 5/16/2012)	4468-4473
4	20	
5	STATE'S OPPOSITION TO MOTION FOR AUTHORIZATION TO OBTAIN SEXUAL ASSAULT EXPERT AND PAYMENT OF FEES, AND OPPOSITION TO MOTION FOR INVESTIGATOR AND PAYMENT FEES (FILED 5/16/2012)	4474-4478
6		
7	20	
8	STATE'S RESPONSE TO DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS AND DEFENDANT'S SUPPLEMENTAL BRIEF (FILED 5/16/2012)	4431-4467
9	10	
10	STATE'S RESPONSE TO DEFENDANT'S SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS (FILED 6/19/2002)	2481-2520
11	9	
12	STIPULATION AND ORDER (FILED 5/27/1997)	2207-2257
13	11	
14	STIPULATION AND ORDER EXTENDING TIME (FILED 9/2/2003)	2726-2727
15	1	
16	STIPULATION REGARDING BRIEFING SCHEDULE (FILED 3/27/1996)	208-209
17	4	
18	STIPULATION TO CERTAIN FACTS (FILED 10/10/1996)	844-845
19	2	
20	SUMMARY OF JUROR QUESTIONNAIRE DEVELOPMENTS (FILED 10/4/1996)	342-353
21	20	
22	SUPPLEMENTAL BRIEF IN SUPPORT OF DEFENDANT'S WRIT OF HABEAS CORPUS (FILED 2/15/2012)	4562-4643
23	9	
24	SUPPLEMENTAL INSTRUCTION (FILED 10/24/1996)	2165-2166
25	10	
26	SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS (FILED 4/30/2002)	2417-2480
27	9	
28	VERDICT (FILED 10/24/1996)	2167-2167
	15	
	VERDICT (FILED 3/21/2007)	3741-3741
	7	
	VERDICT-COUNT I (FILED 10/16/1996)	1747-1747
	7	
	VERDICT- COUNT II (FILED 10/16/1996)	1748-1748

1	7	VERDICT - COUNT III (FILED 10/16/1996)	1749-1749
2	9	WARRANT OF EXECUTION (FILED 12/31/1996)	2193-2197
3			
4	16	WARRANT OF EXECUTION (FILED 5/10/2007)	3857-3859
5			
6			
7			
8			
9			
10			
11			
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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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