

1 awarded from Kansas State University -- excuse me --
2 Washburn University in 1979.

3 During the year 1979 to 1980, I was an
4 assistant instructor at the Kansas State University
5 chemistry department in Kansas. My duties there were to
6 essentially instruct freshman chemistry laboratories as
7 well as to work on a synthetic fuel project funded by
8 Phillips Petroleum. This project I worked on disbanded
9 after one year and I took a position as a toxicologist with
10 the Kansas Department of Health & Environment. That was a
11 temporary position.

12 As a toxicologist, I chemically extracted
13 body fluids, human, blood, and the vitreous humor, which is
14 the fluid behind your eye, and I would extract these for
15 the purpose of the detection of poisons. This term expired
16 after about nine months.

17 I then was asked to apply at the Kansas
18 Bureau of Investigation Crime Laboratory, which is located
19 and headquartered in Topeka, Kansas and it was at the
20 Kansas Bureau of Investigation that I underwent two years
21 of extensive in-house training as a serologist.

22 After completing my two years of training, I
23 then took a position as a Criminalist II with the Metro
24 crime lab in Las Vegas and that was in March 6th of 1983.
25 While at Metro, I have been working predominantly as a

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1 serologist, probably 95 percent of my time.

2 I have attended the FBI Hair and Fiber
3 School, the FBI Advanced Biochemical Methods of Blood Stain
4 Analysis School, the Serological Research Institute School
5 on Advanced Electrophoresis, as well as Semen
6 Identification. I have also attended the California
7 Criminalistics Institute School on DNA Extraction and
8 Quantification. I have attended the Perkin-Elmer School on
9 PCR, which is a form of DNA analysis, and I have just
10 recently come back from the FBI DNA class.

11 Q And how long, in sum, have you been
12 employed at the Las Vegas Metropolitan Police Department as
13 a serologist?

14 A Over 13 years.

15 Q Would it be fair to say that up until
16 recently, you have been the exclusive serologist at the Las
17 Vegas Metropolitan Police Department in most of the
18 homicide and sexual assault cases?

19 A For a period of time, of about two
20 years, I was the only serologist at the Las Vegas crime
21 laboratory.

22 Q How many -- have you ever testified as
23 an expert in the field of analyzing bodily fluids?

24 A As a serologist, yes, I have.

25 Q How many times?

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1 A Between 150 and 200 times.

2 Q In what courts?

3 A Every court in the Eighth Judicial
4 District including this one on several occasions.

5 MS. SILVER: Your Honor, at this time I
6 would ask that this Court deem Mr. Cook an expert in the
7 field of serology in analyzing bodily fluids.

8 THE COURT: He may so testify.

9 MS. SILVER: Thank you, your Honor.

10 Q Criminalist Cook, did you have an
11 occasion to examine evidence in the case of State of Nevada
12 versus James Chappell?

13 A I did.

14 Q And the evidence that you personally
15 tested, was it with all of that evidence booked under the
16 same case number, 950831-1351?

17 A That is correct.

18 Q And did you personally make three
19 different reports in this case describing your conclusion
20 on various pieces of evidence?

21 A That is also correct.

22 Q Would it assist you in your testimony
23 to the jury to use at least two of those reports in
24 describing what you did on these pieces of evidence?

25 A It would.

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1 Q I'd like to show you, Criminalist Cook,
2 what has been marked for purposes of identification as
3 State's Proposed Exhibit No. 84. Is this one of the
4 reports that you generated from this case?

5 A That is a chart that accompanies the
6 report I generated in this case, yes, it is.

7 Q And, obviously, this is a report that
8 has been blown up for purposes of these court proceedings.
9 Would this be a fair and accurate copy of your report that
10 you generated in this case?

11 A Yes, it is.

12 Q And it would aid you in your testimony
13 in describing what you did?

14 A Yes, it would.

15 MS. SILVER: Your Honor, at this time, I
16 would move to admit State's Proposed Exhibit No. 84.

17 MR. BROOKS: No objection.

18 THE COURT: Same will be received in
19 evidence.

20 MS. SILVER: Your Honor, may I publish that
21 to the jury as well during his testimony?

22 THE COURT: Yes.

23 Q (BY MS. SILVER) Also showing you what
24 has been marked as State's Proposed Exhibit No. 85, do you
25 recognize this as one of your other reports in this case?

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1 A Yes, I do.

2 Q And would this be a copy or a blowup
3 diagram of a copy of your LVMPD lab report that you issued
4 in this case?

5 A Yes, that is also a chart of a
6 supplemental report I issued in this case.

7 Q And it's a fair and accurate copy of
8 that report?

9 A Yes, it is.

10 Q It would aid you to refer to it in your
11 testimony in this case?

12 A Yes.

13 MS. SILVER: Your Honor, at this time, I'd
14 move to admit for purposes of identification and what's
15 just been described by this witness as State's Proposed
16 Exhibit No. 85.

17 MR. BROOKS: No objection.

18 THE COURT: Same will be received in
19 evidence.

20 MS. SILVER: Thank you.

21 I ask that this also be published as well.

22 THE COURT: Yes.

23 Q (BY MS. SILVER) I'm going to let you
24 point to this at various times.

25 Criminalist Cook, I would like to show you

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1 what has been marked as State's Exhibit No. 67. Can you
2 identify this?

3 A Yes, I can.

4 Q How is it that you can identify this
5 item?

6 A Actually two ways. It bears my
7 signature both on the chain of custody, as well as my
8 seals, the blue tapes, my initials TLC, and the date of the
9 examination, the day I actually opened this and sealed
10 this.

11 Q What is State's Exhibit No. 67?

12 A State's Exhibit 67 is called a sexual
13 assault kit. It is a collection of tubes, swabs, slides,
14 and combings collected from an individual who complains of
15 a sexual assault or, more routinely, when a female is
16 discovered dead.

17 Q This is done by the coroner and in this
18 case this was done by Dr. Green?

19 A Yes. The purpose is to collect and
20 preserve biological samples.

21 Q And you actually did some testing on
22 State's Exhibit No. 67 in this case?

23 A Right, the contents.

24 Q Including the vaginal slides within
25 this or vaginal swabs and slides within this?

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1 A That's correct.

2 Q Does it remain in a sealed condition
3 today?

4 A It does and it is.

5 Q Showing you what has been marked for
6 identification purposes as State's Proposed Exhibit No. 87,
7 do you recognize this?

8 A Yes, I do.

9 Q How is it that you recognize this?

10 A In the same manner, it bears both my
11 signature in the chain of custody, as well as my seals on
12 the back, the blue tape, my initials TLC, and the date in
13 which this item was sealed.

14 Q And what is State's Proposed Exhibit
15 No. 87?

16 A It's a serology standards kit. This is
17 routinely collected from deceased male individuals or
18 suspects in a case in which bodily fluids, blood, semen or
19 saliva, would be expected to be at the crime scene or is
20 possibly at the crime scene.

21 Q And whose serology is this?

22 A James M. Chappell.

23 Q And, again, this is identified by the
24 same case number assigned to it of 950831-1351?

25 A Yes, the same as the kit and the same

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1 as my reports.

2 Q And who was the booking officer in this
3 case?

4 A Jimmy Vaccaro and Garcia.

5 Q Now, does this remain in a sealed
6 condition as you sit here today?

7 A Yes, it is.

8 Q And does it appear to be in
9 substantially the same condition, State's Exhibit No. 87,
10 as when you replaced this back into the evidence vault?

11 A Yes, it is.

12 Q You brought it here to court today and
13 deposited this with the clerk prior to the court
14 proceedings?

15 A Less than an hour ago, that's correct.

16 MS. SILVER: Your Honor, at this time, I
17 would move to admit State's Proposed Exhibit No. 87.

18 MR. BROOKS: No objection.

19 THE COURT: Same will be received in
20 evidence.

21 MS. SILVER: Thank you.

22 Q Criminalist Cook, can you tell us what
23 you did, as far as testing in this case, on State's Exhibit
24 No. 67, which is the sexual assault kit of the victim and
25 State's Exhibit No. 87, which is the serology kit of the

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1 defendant. Tell us what tests you did and what results you
2 made and if you need to refer to your -- I believe your lab
3 report as well.

4 A Certainly.

5 Pursuant to my training and
6 responsibilities, what I would do is I would concern myself
7 with the contents of a sexual assault kit. First, what I
8 would do is I would ascertain the blood type or the blood
9 types of a victim and the blood type or blood types of a
10 suspect. I would establish their types in one of the
11 several systems. The A, B, O system, as the jury are
12 probably most familiar with. A, B, O types are A, AB or
13 O. In this case, if I can speak of these cases
14 collectively?

15 Q Sure.

16 A I noticed that both the victim is Type
17 O --

18 Q Would that be easier to put that up?

19 A Actually it would because I think there
20 is some people who can't see.

21 Q Maybe we could just have you hold it
22 like that.

23 A Fine.

24 Q Thank you.

25 A Noticed both the victim and the suspect

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1 are A, B, O Type O, which is really common. About 45
2 percent of the people are Type O. Of course, that doesn't
3 give me a lot of information when I'm processing bloods at
4 crime scenes because I'm not able to make a distinction
5 between the victim and suspect at this point.

6 We also have some other blood types and you
7 can think of them in the same way as you would think of
8 your A, B, O Type. This is called esterase dehydrogenase.
9 We call it EsD. Now we know the victim is Type 1 and the
10 suspect is Type 2-1. There is only three types, 1, 2-1,
11 and a 2, which isn't present in PGM, phosphoglucomutase.
12 If you notice again, the victim is Type 1 and the suspect
13 is 2-1. These are all independently inherited. A person
14 can be in the same group and it has no bearing on the
15 esterase type or bearing on the PGM type.

16 And there is another, glyoxalase. The
17 victim is 2-1 and the suspect a 1.

18 There is also a sub-type of this PGM and
19 these two are quite related. You can break this system
20 down a little bit more. This is called a PGM sub-type.
21 Now this is a type that the forensics people are most
22 interested in for two reasons. Number one, it's quite
23 stable. Actually, three reasons. Number one, it's quite
24 stable. Number two, there is 10 different types, different
25 combinations, and, number three, is it is found in semen.

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1 An individual who had this PGM type in his blood would also
2 have it in his semen and a female who would have it in
3 their blood would have it in their vagina secretions. This
4 is very informative. There is very good information for a
5 serologist.

6 In the processing of analyzing the medical
7 examiner's kit or sexual assault kit, I noticed the
8 presence of spermatozoa. I then knew that we were -- I
9 knew that 80 percent of us are called secretors and that is
10 to say we secrete A, B, O blood types in our body fluids.
11 Like I say, 80 percent of us, if we were to smoke a
12 cigarette, we would have our A, B, O blood group substances
13 in our saliva and this saliva would be on the cigarette
14 butt and in 80 percent of the case we could tell who smoked
15 it from the cigarette butt.

16 In the same way, when I identify
17 spermatozoa, I knew we had a chance to find some semen
18 types on the vaginal swab. Now, again, both the victim and
19 suspect are the Type O and the both of them are Type O
20 secretors. So I found a substance on the vaginal swab,
21 which is H, which is consistent with a Type O secretor and,
22 again, we can't make a statement whether this H substance
23 that's secreted came from the victim or suspect, which
24 makes the PGM sub-type much more informative. You notice
25 that the victim was a rare type of 1- and the suspect is a

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1 2+1+. It is understood that a vaginal swab is a mixture of
2 the victim's secretions and in the case of semen, another
3 body fluid of the suspect and you notice we have a 2+1+1-.
4 We are pretty sure that this 1- came from the victim and
5 this 2+1+ would come from the semen donor and Mr. Chappell
6 is a 2+1+.

7 So, at this point, I wrote a report saying
8 he could not be eliminated as a possible source of this
9 semen detected on the vaginal swabs. By the way, this
10 profile of an O secretor and a 2+1+ is consistent with
11 about 9.8 percent of the population. At a random
12 population, about 9.8 percent of them would be an O, a
13 secretor, and a 2+1+.

14 Q So a very small percentage of the
15 population, even using the A, B, O blood typing?

16 A Yes. The reason why the numbers --
17 like I say, it's about nine percent of the population, but,
18 see, the problem is that O is quite common. About 45
19 percent of the individuals are Type O. Had this been a
20 smaller number, we would have probably gotten it down to
21 the single digit for semen profilers.

22 Q Criminalist, Cook, I'm also showing you
23 what has been marked as State's Exhibit No. 79 and I would
24 like you to take a look at what is marked as State's
25 Exhibit No. 79 and ask you if you can recognize this as

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1 well?

2 A Yes, I can.

3 Q How is it that you recognize State's
4 Exhibit, I believe, 79, yes, 79?

5 A In the same manner, it bears both my
6 signature in the chain of custody, as well as my seal and
7 my initials at the date of the examination.

8 Q Could you take out the contents of
9 State's Exhibit 79 and I'd ask you if you can recognize
10 that item as well?

11 A Yes, I do.

12 Q How is it that you recognize State's
13 Exhibit No. 79?

14 A I remember this item as being the one
15 that was examined in this case.

16 Q In fact, your criminalist card is
17 attached to the lace?

18 A Yes, it is.

19 Q And this would be -- this boot is
20 marked as State's Exhibit No. 79-A. What side boot is
21 this, is this a right or left sided boot?

22 A It's a right sided.

23 Q Is it in substantially the same
24 condition as when you yourself did some testing on this?

25 A Yes, it is.

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1 Q Can you tell us what type of tests you
2 did on State's Exhibit No. 79-A and the results of that
3 test as well?

4 A Yes. I did a microscopic visual
5 examination for the presence of splattered blood and
6 whenever you examine something that's black and black is
7 often very difficult to visually trust your eyesight to see
8 things, so what I did is a chemical swabbing of this
9 looking for enzymes called peroxidases (phonetic) like
10 activity. You can find it in the blood, but not
11 exclusively in the blood. It's a presumptive test.

12 At this point what I did was check the top
13 layers for the presence of blood and found -- chemically, I
14 found none, but on the right heel, as on this chart as TLC
15 11, I found chemically traces of blood right here at the
16 heel area, but there was insufficient amount to derive A,
17 B, O types and esterase types and PGM types, which is a
18 small amount of blood, which is reasonably common in my
19 field.

20 Q So, basically, your result was blood
21 was detected, but it was actually insufficient for you to
22 be able to differentiate any blood type grouping?

23 A Yes, which is a very common answer in
24 my reports.

25 Q Showing you what has been marked as

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1 State's Proposed No. 80, I would like you to look at this
2 and tell me if you can recognize this as well?

3 A Yes, I can in the same manner as the
4 other evidence. It bears both my signature in the chain of
5 custody, as well as my seal at the bottom.

6 Q And could you take out the contents of
7 State's Exhibit No. 80 -- actually, you've taken it out.
8 It's State's Exhibit 80-A -- Proposed Exhibit 80-A. Can
9 you tell us what this is and if you can recognize it?

10 A Yes. It's a tandem swab, controlled
11 swab and a swab that contained blood. I can identify it by
12 a little tape tag that I characteristically put on
13 evidence, my initials, and the date of the examination.

14 Q Now, State's Exhibit No. -- Proposed
15 Exhibit 80 and 80-A, do they appear to be in substantially
16 the same condition as when -- well, let me ask you this.
17 Looking at -- strike that.

18 State's Proposed Exhibit No. 80-A, I show or
19 I see one swab in there and a compartment for another
20 swab. Do you know where the other swab would be?

21 A Yes. It was -- much of it was consumed
22 in the analysis.

23 Q Okay. And was some of this evidence in
24 this case sent off as well for DNA testing?

25 A That's correct.

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1 Q Now, besides the other swab being
2 missing from that compartment, except for that, would it be
3 fair to say that State's Proposed Exhibit 80-A and State's
4 Exhibit 80 are in substantially the same condition as when
5 you received them?

6 A Yes, they are.

7 MS. SILVER: Your Honor, at this time, I
8 would move to admit State's Proposed Exhibit No. 80 and
9 80-A.

10 MR. BROOKS: No objection, your Honor.

11 THE COURT: That motion is granted. It is
12 received in evidence.

13 MS. SILVER: Thank you.

14 THE COURT: Ms. Silver, I'm sorry to
15 interrupt, but because of prior conflicting commitments
16 that the Court has and also to make sure that everyone's
17 schedule remains as it should and because we can stay on
18 schedule by completing these proceedings this afternoon,
19 the Court is going to declare its noon recess at this
20 time.

21 Ladies and gentlemen of the jury, during the
22 recess, I would remind you it is your duty not to converse
23 among yourselves or with anyone else on any subject
24 connected with this trial or to read, watch, or listen to
25 any report of or commentary on this trial or any person

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1 connected with this trial by any medium of information,
2 including, without limitation, newspapers, television, or
3 radio, and you are not to form or express an opinion on any
4 subject connected with this case until it is finally
5 submitted to you.

6 Again, I apologize for the short session
7 this morning, but it could not be avoided. We will be at
8 ease while the jury departs the confines of the courtroom.
9 We are in recess. We will reconvene at about 1:35.

10

11 (Off the record at 12:05 p.m. and back on
12 the record at 1:45 p.m.)

13

14 THE COURT: Good afternoon, ladies and
15 gentlemen.

16 THE JURY: (In Unison) Good afternoon.

17 THE COURT: Counsel stipulate to the
18 presence of the jury?

19 MR. HARMON: Yes, your Honor.

20 MR. BROOKS: Defense does, your Honor.

21 THE COURT: You may recommence with your
22 direct examination of Mr. Cook.

23 MS. SILVER: Thank you.

24 . . .

25 . . .

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1 DIRECT EXAMINATION CONTINUED

2 BY MS. SILVER:

3 Q Criminalist Cook, you had just finished
4 identifying State's Exhibit No. 80 and 80-A, the vial
5 contained in 80 and I'd like to ask you what is this
6 evidence?

7 A It is a swab that contained a blood
8 like substance that I performed an analysis on and this is
9 a control, as well as an unstained section.

10 Q Where was this recovered from?

11 A 507 North Lamb by Investigator Mark
12 Washington.

13 Q And this would have been recovered on
14 September 1st of 1995?

15 A That's correct.

16 Q What testing did you do on State's
17 Exhibit No. 80, if you recall, and the results of that
18 test?

19 A If I may refer to my notes.

20 Q That would have been on your third
21 report I believe, Mr. Cook.

22 A I exposed it to some presumptive
23 tests. Again, found this peroxidase activity consistent
24 with the blood. Then I ultimately sent this item out for
25 DNA analysis.

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1 Q I'd like to show you now what has been
2 marked as Exhibit 68, 68-A, and you may look at the
3 contents of 68-A-1. You need gloves again to do that?

4 A Yes, I do.

5 MS. SILVER: May I have some gloves.

6 Thank you.

7 (Off the record discussion not reported.)

8 Q (BY MS. SILVER) As you are putting on
9 the gloves, maybe I can ask you, at least as to State's
10 Exhibit 68 and 68-A, do you recognize these items?

11 A Yes, I do in the same manner. They
12 bear both my signature on the chain of custody, as well as
13 my seal at the bottom. This item does in fact bear my
14 taped tag, my initials TLC, and the date of the
15 examination.

16 Q When you say this side, you are talking
17 about 68-A?

18 A That is correct.

19 Q And what is it that you've just
20 recovered?

21 A A small knife.

22 Q And what is the State's Exhibit number
23 on that?

24 A 68-A-1.

25 Q And do you recognize this item as

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1 well?

2 A Yes, I do.

3 Q How is it that you recognize this item?

4 A My initials TLC on the very tip of this
5 knife blade.

6 Q And what kind of examination did you do
7 on State's Exhibit No. 68-A-1 and what were the results of
8 that test?

9 A Well, upon opening this item, I then
10 walked it over to a latent print examiner on staff and we
11 searched it microscopically for the presence of
12 fingerprints, which is kind of a routine. None were
13 recorded.

14 At this point, I was able to remove samples
15 of blood from this knife, samples on the blade. In fact,
16 you can see some of the blood still on there. I then
17 performed the A, B, O typing, as well as the enzyme typing
18 and if you notice the knife, this is TLC 3, this is the
19 knife in question, we have the A, B, O type. We determined
20 it was Type O, the esterase type is being Type 1, the PGM
21 type is being Type 1, and the glyoxalase type is being type
22 2-1.

23 Now you notice that the four types on the
24 knife, the A, B, O, the esterase, the PGM, and the
25 glyoxalase, are the same as the victim Panos and they are

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1 dissimilar to that of the suspect. If you notice, even
2 though the result was O, you know the esterase type were
3 different, PGM type is different, the glyoxalase type is
4 different. So we conclude that the blood on the knife
5 could not have come from the suspect, but could have come
6 from the victim. In fact, that profile is consistent with
7 about 10 percent of the population.

8 Q You say the knife, you are talking
9 about the blade?

10 A That's correct.

11 Q Would it be fair to say, Criminalist
12 Cook, that the items we have just identified here in court
13 were the primary items which had significant serological
14 value to you?

15 A That's correct. Numerous items were
16 examined and are routinely in the course of an
17 investigation. Many of the items that are displayed in
18 that chart were examined for the presence of blood and
19 found to be negative, as the chart so indicates.

20 Q Did you do any other examinations at
21 all which also proved to be negative as well?

22 A Many examinations for the presence of
23 blood.

24 Q And you do that to cover every aspect
25 in a homicide case?

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1 A Yes. It's clear that not all the
2 evidence in homicide cases are analyzed, but the majority
3 of it. The ones that would give us information or insight
4 into a suspect's inclusion or elimination.

5 Q Now, at the conclusion of your various
6 analyses in this case, were you requested by the LVMPD
7 homicide detectives, as well as the District Attorney's
8 Office, to forward evidence to Cellmark for DNA analysis?

9 A Yes. Samples from numerous items
10 examined were, in fact, sent for DNA analysis and, again,
11 this is pretty routine. Conventional serology, which is
12 described here, has certain interpretational limitations
13 and we can get populations down to maybe eight, 10 percent
14 and maybe in some cases maybe one percent, but DNA has much
15 more inclusive, exclusive capabilities.

16 Q And presently, does the Las Vegas
17 Metropolitan Police Department have the capabilities of
18 performing DNA analysis?

19 A Presently, no. It's a long process,
20 several years in the making. We will probably be on line
21 within the next three months.

22 Q What laboratory did you send this
23 evidence to?

24 A Cellmark is a forensic laboratory that
25 we send most of our evidence to.

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1 Q Is that an independent private
2 laboratory?

3 A Yes, it is.

4 Q It's not affiliated with any kind of
5 law enforcement then?

6 A Oh, no.

7 Q This type of -- you are familiar with
8 Cellmark Laboratories?

9 A And many of their examiners.

10 Q And would it be fair to say that anyone
11 can contact them and generally request an analysis, whether
12 it could be defense attorneys or private individuals on
13 paternity cases or law enforcement?

14 A Yes. In fact, they are used by almost
15 everybody.

16 Q When you forwarded that evidence to
17 Cellmark Laboratories for DNA analysis, did you -- were all
18 the items sent under the event number which I have
19 described as 950831-1351?

20 A Yes, they were.

21 Q Before sending those items out for DNA
22 analysis, did you personally make what's called stain
23 cards?

24 A Yes. Stain cards is a routine part of
25 my duties and when liquid blood stain -- when liquid blood

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1 standards come to us typically in these forms, they come to
2 us liquid in a tube, they do not store well even when
3 refrigerated. So what I would do is make a blood stain
4 card from the victim's known blood standard and the
5 suspect's known blood standard, I would let them air dry,
6 then I would package them and put them in a freezer, which
7 is a blood reference library that we have in the forensic
8 lab.

9 Q So, for example, in our case, from the
10 sexual assault kit, there was blood from the victim and you
11 would prepare a stain card from that and forward that to
12 Cellmark with the identification of Deborah Panos on that
13 stain card?

14 A That's true and we also make them in
15 duplicate. We keep one in reserve in case the defense
16 would want the same option.

17 Q So in case there is any kind of further
18 testing by anyone?

19 A Certainly.

20 Q And would it be fair to say that from
21 that serology kit, which we have marked as an exhibit, that
22 you would take the blood from that kit, you don't send the
23 kit, but you prepare a stain card and forward that, at
24 least one of the stain cards to Cellmark Laboratories?

25 A That's true. I send preserved samples

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1 from the kit, not the kit itself.

2 MS. SILVER: Court's indulgence.

3 (Off the record discussion not reported.)

4 Q (BY MS. SILVER) Just briefly.

5 Was there also head hair found on the knife,
6 State's Exhibit 68-A-1?

7 A Yes, there were. There was a strand of
8 head hair that I did a microscopic comparison to that of
9 the victim and found it was microscopically similar with
10 the victim.

11 MS. SILVER: Thank you.

12 That would conclude my direct examination.

13 THE COURT: Any cross examination?

14 MR. BROOKS: No questions, your Honor.

15 THE COURT: May this witness be discharged?

16 MS. SILVER: Yes, your Honor.

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

19 State may call its next witness.

20 MS. SILVER: State would call Tom Wahl.

21 MR. HARMON: Wahl.

22

23 THOMAS A. WAHL,
24 having been first duly sworn to tell the truth, the whole
25 truth and nothing but the truth, testified and said as

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1 follows:

2

3 MS. SILVER: Court's indulgence.

4

5 DIRECT EXAMINATION

6 BY MS. SILVER:

7 Q Sir, can you please state your name and
8 spell it for the record.

9 A My name is Thomas A. Wahl. Last name
10 is spelled W-A-H-L.

11 Q And where are you employed currently?

12 A I'm currently with the Las Vegas
13 Metropolitan Police Department Forensic Laboratory here in
14 Las Vegas.

15 Q And what are your duties there
16 presently at the lab?

17 A My title is criminalist and my duties
18 at the present time are setting up a DNA identification lab
19 so that the Las Vegas Metro PD can provide human identity
20 testing capabilities using DNA technology.

21 Q What is your profession exactly? What
22 would you call yourself?

23 A I'd call myself a forensic biologist
24 utilizing DNA technology.

25 Q And what kind of formal training and

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1 experience do you have in the field of DNA?

2 A My educational background consists of a
3 bachelor of science degree in medical technology received
4 in 1977 from La Crosse, Wisconsin at the University of
5 Wisconsin La Crosse and, as far as my DNA training goes, I
6 have been performing DNA testing in a forensic capacity for
7 seven years and I was employed in several private
8 laboratories by Ph.D.s who had extensive experience
9 utilizing this technology and I was trained and worked with
10 these people during those seven years.

11 Q When you say you've worked at a private
12 laboratory using DNA, what private laboratory is that?

13 A There were two laboratories. From 1988
14 through 1993, I worked for a private laboratory doing DNA
15 testing called Analytical Genetic Testing Center in Denver,
16 Colorado and then subsequent to that, I worked as a
17 forensic supervisor. I was employed as a forensic
18 supervisor with Genelex Corporation located in Seattle,
19 Washington and while I was employed there, I did become
20 certified as a DNA analyst utilizing forensic DNA
21 technology capabilities by the American Board of
22 Criminalists.

23 Q Did you bring a resume with you to
24 court today? You may call it a curriculum vitae.

25 A Yes, I did provide a copy to you.

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1 Q Prior to court.

2 I would like to show you what's been marked
3 for identification purposes as State's Proposed Exhibit No.
4 88 and ask you if this is your resume?

5 A Yes, it is.

6 MS. SILVER: Your Honor, at this time, I
7 would move for its admission.

8 MR. BROOKS: No objection.

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

11 MS. SILVER: Thank you.

12 Q Have you ever testified in courts of
13 law and been deemed an expert in the field of DNA
14 technology?

15 A Yes, I have.

16 Q What courts?

17 A Various courts. I have testified as an
18 expert in DNA and my recollection is about 10 or 11
19 different state jurisdictions, as well as the country of
20 Canada and they are cited on my CV, which states where
21 those are.

22 Q So you have been recognized as a DNA
23 experts in both courts throughout the United States and
24 Canada as well?

25 A That's correct, yes.

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1 Q A total of how many times would you
2 estimate?

3 A I have testified on DNA findings, I
4 would say, somewhere between 15 and 20 times; probably
5 closer to 20 times.

6 Q And besides testifying as an expert in
7 your everyday duties, approximately how many cases have you
8 personally been involved with in processing DNA and
9 identification of DNA?

10 A My best estimate would be at least 500
11 cases and somewhere between 500 and a thousand.

12 Q Are you familiar with Cellmark
13 Laboratories?

14 A Yes, I am.

15 Q And how is it that you are familiar
16 with Cellmark Laboratories?

17 A They are another private laboratory
18 that provides forensic DNA identity testing and in my
19 previous capacity, I have had occasion to review some of
20 their work, when I was retained by some attorneys, as well
21 as familiarization with some of the employees of that
22 organization through professional meetings and things of
23 this nature.

24 Q And you say it's an independent
25 laboratory?

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1 A Yes, it is. It is a privately owned
2 laboratory and they do provide services to both prosecution
3 and defense.

4 Q So they are not affiliated with law
5 enforcement?

6 A No. Whoever wishes to retain their
7 services can.

8 Q They are an independent type of
9 facility?

10 A Yes.

11 Q They merely provide tests?

12 A Yes. I would classify it as an
13 independent laboratory, yes.

14 Q Do they do work as well in paternity
15 cases?

16 A Yes, they do.

17 Q Is that similar to the independent
18 laboratory that you worked at as well?

19 A Yes, both of the private laboratories I
20 worked in did perform paternity testing, as well as
21 forensic testing.

22 Q In fact, are you familiar with some of
23 the forensic -- excuse me -- molecular biologists at
24 Cellmark Laboratory, as well as any of the geneticists
25 there?

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1 A Yes, I had dinner with one of them
2 several weeks ago at a professional meeting.

3 Q And when something is sent to say
4 Cellmark, and now you work at LVMPD, when something is sent
5 to Cellmark, what is the general purpose of sending
6 something to Cellmark from LVMPD?

7 A The general purpose for sending it is
8 to send it to the laboratory so that they can perform DNA
9 testing on the evidence and the main purpose is to acquire
10 more genetic information about the evidence such that more
11 definitive conclusions, if it's possible, can be made.

12 Q For example, to exclude someone as a
13 suspect?

14 A Most definitely. DNA testing, one of
15 the reasons it is such a powerful tool is the fact that it
16 is a very excellent discriminator.

17 Q And another reason would be to actually
18 include someone or find that DNA could have originated from
19 a source?

20 A Yes. If no exclusion is obtained
21 during the comparative analyses, then the inclusionary
22 inferences can be made quite strong based on the types that
23 are obtained from the evidence.

24 MS. SILVER: Your Honor, at this time, I
25 would ask that he be deemed an expert, your Honor, in the

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1 field of forensic human identification utilizing DNA
2 technology.

3 MR. BROOKS: No objection.

4 THE COURT: He will be allowed to testify as
5 such.

6 MS. SILVER: Thank you.

7 Q Can you tell the ladies and gentlemen
8 of the jury what is DNA?

9 A DNA is an acronym or another term for
10 Droxy Rhybo Nucleic Acid. A very long word, but simply DNA
11 is found in the cells of all living organisms. They may
12 include bacteria, viruses, animals, plants, and humans.

13 It's also referred to as the genetic
14 blueprint and it is a basis for life as we know it. It's
15 comprised of building blocks called bases and there are
16 four types of these bases that comprise DNA. It is the
17 arrangement and sequence of these bases that determine the
18 genetic code of an orgasm.

19 The genetic code is responsible for the
20 organization, the growth, development, and the function of
21 the orgasm from the time it is born or developed until it
22 dies.

23 With respect to humans, DNA is organized and
24 compacted onto structures known as chromosomes and humans
25 have 23 pairs of these chromosomes present in their cells

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1 of their body. Therefore, DNA can be isolated from
2 biological substances such as blood, sperm, saliva, skin,
3 muscle, tissue, teeth, bones, and hairs.

4 The human genome, when I say the word
5 genome, that term just means all the DNA present in all
6 these chromosomes is called the human genome. The human
7 genome consist of approximately three billion of these
8 bases that I mentioned earlier. There is a lot of bases
9 and DNA is a very large biological substance. A vast
10 majority of this DNA does not differ amongst us all -- I'm
11 speaking about humans now -- and there is no genetic
12 differences. We all have pretty much the same sequence and
13 arrangements of DNA, but there is a portion of the human
14 genome, about 10 percent, that does have genetic
15 variability.

16 In other words, the genetic structure of
17 this DNA can vary amongst us all. There is genetic
18 variable regions of a molecule is what we focus on as
19 forensics analysts because this is where the genetic
20 differences rely and we can use these to identify people
21 and differentiate from each. There are sufficient genetic
22 differences from the variable regions of DNA. Such as an
23 individual has a unique DNA profile with one exception and
24 that is with identical twins. Identical twins will have
25 the exact same DNA.

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1 Scientists utilize the DNA technology in a
2 human identification of biological evidence and, as I
3 stated before, DNA technology is a very powerful
4 discriminatory tool. We can differentiate people quite
5 readily with DNA and if we don't exclude somebody, we may,
6 in actuality, determine that a profile is unique and only
7 derive one particular person.

8 The combination of these genetic differences
9 that we detect are commonly referred to as a DNA profile
10 and the individual's DNA profile is determined by the DNA
11 contribution of the biological father via sperm and the DNA
12 contribution of the mother via the egg cell at the time of
13 fertilization.

14 So your genetic DNA profile is a combination
15 of what you inherited from your parents, both motif
16 inheritances involved. Genetic DNA profile is derived from
17 the biological evidence we deal with in the crime lab such
18 as a blood stain on a piece of clothing. It can be
19 determined using this DNA technology and the DNA profile
20 can be compared to DNA profiles derived from known
21 reference standards, preferably the individual, usually in
22 the form of a blood sample, liquid blood sample.

23 The comparison of these genetic DNA profiles
24 allows the analyst to include or exclude the individual as
25 a source of the biological substance. In the case of

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1 exclusions, these are absolute. In other words, we can
2 render conclusions that the DNA from this biological
3 evidence absolutely, positively did not originate from
4 somebody. The profiles are inconsistent, therefore, they
5 could not have originated from a common source.

6 If an individual cannot be excluded based on
7 this genetic profile comparison, the individual could be
8 the source of the biological evidence and if no exclusions
9 are obtained, based on this comparison, one of the next
10 questions that needs to be addressed is what is the
11 significance of this genetic similarity or consistency that
12 we see between the biological evidence and the known
13 reference standard of the individual.

14 In order to address this question, a
15 statistical analysis can be performed and applied to
16 provide an inference or to establish a degree of the
17 strength of the association between the questioned evidence
18 and the individual or any individual chosen at random, for
19 that fact from the population.

20 Another way to put the question is
21 basically, well, how frequent is this genetic profile in
22 the population at large? How many other people may have
23 that profile?

24 Q Let me ask you this then. Basically,
25 we acquire our DNA then half from our mother and half from

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1 our father and that makes up our DNA?

2 A That's correct.

3 Q And except for identical twins, each of
4 us has something unique about our DNA?

5 A Yes.

6 Q And with the exception of identical
7 twins, are there other individuals that have the same DNA
8 as us?

9 A Other than identical twins?

10 Q Other than identical twins.

11 A Certain regions of the DNA individuals
12 may have the same type, DNA type, but if you look at
13 another region of the DNA, they may have a different type
14 and we look at various regions of the DNA molecule and
15 determine genetic DNA types at various locations and then
16 look at the entire profile and the reality is there is such
17 variability at the DNA level that if a questioned evidence
18 sample truly didn't originate from the individual, we will
19 be able to prove that using DNA technology.

20 Q So DNA can and is very unique to each
21 one of us individually?

22 A Yes, with the exception of identical
23 twins.

24 Q And when we say that DNA is within our
25 body such as our blood or saliva or semen or our skin or

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1 hair, would it be fair to say that, for example, my DNA, my
2 blood would be the same as my DNA in my hair?

3 A Yes the DNA is the same from a
4 particular individual's body no matter what source it came
5 from. Whether it be hair, skin or blood, it's the same.

6 Q What types of testing procedures are
7 there to compare or reveal DNA?

8 A There are two basic types of technology
9 that can be used in DNA identification. The first one and
10 the one that was used first with forensic application is
11 known as RFLP and that is an acronym or term that stands
12 for restriction fragment line polymorphism.

13 The second type of technology is referred to
14 as PCR, which stands for polymeicase chain reaction. Both
15 technologies are utilized with the same function and that
16 is to determine genetic differences amongst individuals.
17 They each go about a different way and each technology has
18 some advantages and disadvantages and some limitations.

19 Q RFLP is also known as the genetic
20 fingerprinting technique?

21 A Yes. It's commonly referred to as
22 that, although that's really a misnomer. That's more used
23 when the commercial laboratories started performing DNA,
24 they used that as a marketing tool. I prefer to use
25 genetic identify, but that's more of a better description

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1 by us. It is known as that.

2 Q Using RFLP, is it used as a result of
3 identification or exclusion as an individual as a donor?

4 A It may exclude somebody and it may
5 not. If it doesn't include somebody, if a sufficient
6 number of RFLP tests are performed, for all practical
7 purposes, you make an identification for all practical
8 information has been obtained.

9 Q So using RFLP, you can then determine
10 that DNA belongs to one individual and one individual in
11 this universe?

12 A That is possibly, if you do enough of
13 the testing, sufficient amount of the testing.

14 Q Is that something unique generally to
15 RFLP as opposed to PCR testing?

16 A At the present time, yes. However,
17 that is actually changing at the present time. Much of the
18 advances in DNA technology the last several years have been
19 with the PCR technology, such that the amount of
20 information that can be obtained with PCR testing is
21 approaching the definitiveness that can be obtained with
22 the RFLP testing.

23 Q And, to your knowledge, does Cellmark
24 use both RFLP and PCR testing procedures?

25 A Yes, they do.

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1 Q And you have used both procedures
2 yourself, obviously, in the past and have testified to them
3 in the past?

4 A Yes.

5 Q How does a scientist generally
6 determine which or, at least in a case like this, State of
7 Nevada versus James Chappell, how is it that a
8 determination is generally made as to what items will be
9 processed using RFLP as opposed to PCR?

10 A The main criteria is that the
11 laboratory will perform what is known as a DNA extraction
12 procedure. In other words, they have to isolate and
13 extract the DNA out of the material that's been submitted
14 to the laboratory.

15 For example, a blood stain that may be on a
16 shirt, they actually have to remove a portion of the blood
17 stain and then perform some chemical tests to isolate the
18 DNA, remove it from the stained cutting, and purify it and
19 then once they do that, conduct and complete that aspect of
20 the testing, they evaluate the DNA, human DNA content for
21 the quantity. In other words, how much human DNA were they
22 able to extract from the evidence and the quality of the
23 DNA to determine whether the DNA may have undergone some
24 degradation. DNA is a biological substance which can be
25 subjected to environmental insult, which would cause the

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1 DNA to degrade. Once the DNA evaluation test is done with,
2 then the analyst is in a better position to determine which
3 technology may be the best or whether both may be done to
4 the evidence.

5 Q Now, prior to your testimony here in
6 court today, have you had an occasion to review two
7 reports, Reported Laboratory Examinations from Cellmark
8 Diagnostics, specifically a March 26th, 1996 report and a
9 report of laboratory examination dated June 28th of 1996,
10 both authored by Paula J. Yates, a senior molecular
11 biologist at Cellmark Laboratories?

12 A Yes, I have.

13 Q And these two reports from Cellmark
14 authored by Paula Yates, they both reference this case,
15 State of Nevada versus James Chappell, our Las Vegas
16 Metropolitan Police Department event number 950831-1351?

17 A That's correct, yes.

18 Q And these two reports involve the
19 analysis of various items that were sent by Terry Cook to
20 Cellmark Laboratories?

21 A Yes.

22 Q Now, you've reviewed both of these
23 reports today prior to your testimony?

24 A Yes, I have.

25 Q Would it assist you in your testimony,

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1 as well to have a diagram in explaining the results in this
2 case?

3 A Yes, it's most helpful.

4 Q I would like to show you what's been
5 marked for identification purposes as State's Proposed
6 Exhibit No. 86. Do you recognize looking at this prior to
7 court?

8 A Yes, I do.

9 Q And would it help you in referring to
10 this during your testimony at this point?

11 A Yes, it would.

12 Q Would this be a fair and accurate
13 description of the results narrowing them down and
14 specifying those results from the actual reports?

15 A Yes. It's an accurate representative
16 synopsis of the results.

17 Q Thank you.

18 MS. SILVER: Your Honor, at this time, I
19 would move for the admission of State's Proposed Exhibit
20 No. 86 and I'd ask to publish it as well during the
21 testimony.

22 MR. BROOKS: No objection.

23 MS. SILVER: Thank you.

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

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1 Q (BY MS. SILVER) I'd like to ask you,
2 first, what the results of the testing in this case using
3 RFLP, what two items were tested and what the results of
4 those tests were?

5 A In respect to the RFLP results, the two
6 items up on the board here, one is a vaginal swab
7 purportedly collected from the female victim at the time of
8 the autopsy. Spermatozoa were identified, purportedly
9 identified in the vaginal swab, and the purpose for doing
10 the RFLP testing on the vaginal swab is to determine the
11 genetic profile of the sperm donor.

12 The synopsis of the results is that the
13 banding pattern from the sperm fraction of the vaginal swab
14 is consistent with the defendant, Mr. Chappell, and he is
15 not excluded as a sperm donor and then Cellmark has
16 provided the frequency that this DNA profile would occur
17 and they have cited three different population groups in
18 the report. On this one up here, the frequency estimate is
19 for the U.S. African/American population.

20 Q Was it other populations too? Did the
21 molecular biologist give a representation, for example, if
22 it was a Caucasian that was the source, if it was a
23 Hispanic or it was an African American?

24 A Generally, routinely, Cellmark will
25 provide population frequency data with three racial groups,

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1 Caucasians, African Americans, and western Hispanics.

2 Q And did they do that in this case?

3 A Yes, they did.

4 Q Because generally an independent
5 laboratory like what the laboratory that you worked at and
6 Callmark, they would not even know what color or what race
7 a suspect or victim was?

8 A The laboratory may not know and, in
9 some instances, the victim may not know.

10 Q So, in fact, all of those populations
11 or the data is given?

12 A Yes, and the reason for that is that
13 DNA profiles, there will be different frequency of
14 occurrences in different racial groups because certain
15 races have more common DNA types relative to other races.
16 So that when you look at the profiles, it's a fact that the
17 frequency numbers are going to vary amongst different
18 racial groups.

19 Q So in this case, as in this case,
20 because the defendant Chappell is a black, male adult, the
21 banding patterns in this case from the vaginal swabs would
22 be fair to say does, in fact, match the defendant and using
23 the statistics for the black community, this would occur
24 one in 14 billion?

25 A Yes. That's a reasonable estimate of

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1 the frequency of occurrence of this particular profile
2 derived from the vaginal swab in the African/American
3 population, U.S. population.

4 Q And, again, you've already stated that
5 in your testimony, but using RFLP, it's your opinion you
6 can determine that DNA belongs to one individual and one
7 individual in the universe, especially saying one in 14
8 billion?

9 A If the frequency of occurrence estimate
10 exceeds the earth's population, many scientists, for all
11 practical purposes, will state this represents more than
12 likely a unique profile.

13 Q Now, what is the next item that was
14 tested and what were the results of that test using RFLP?

15 A Second item is some blood that was
16 apparently swabbed from the knife. RFLP analysis was
17 performed by Cellmark and the banding patterns match and
18 are consistent with the banding pattern obtained from the
19 victim's DNA profile.

20 By the way, when we refer to bands, the DNA
21 actually manifests itself in bands that look something like
22 on a bar code at a grocery store and even we simply size
23 the bands and establish if there is reference strands and
24 if there is no detecting references between the bands, then
25 they are considered to be a match.

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1 So, in essence, what they are saying here is
2 that the DNA profile derived from the blood on the knife is
3 consistent with that of the female victim Panos.

4 Q Did the Molecular Biologist Yates give
5 various population data bases as to the frequency that this
6 would occur, again, from the populations of Caucasian or
7 from Afro American or Hispanic?

8 A Yes, Ms. Yates did cite the frequency
9 estimates for each of those three racial groups in our
10 report.

11 Q What would the one in 76 million
12 represent, which group?

13 A This is the estimated frequency
14 occurrence for Caucasians.

15 Q So if Ms. Panos was a Caucasian female,
16 it would be fair to say that the frequency that this type
17 of blood would be found would be one in 76 million?

18 A Actually, the way to state that
19 question would be the frequency of occurrence of this
20 profile on the knife in the Caucasian population is
21 estimated to be one in 76 million. I'm assuming that the
22 victim is, in fact, a Caucasian and that number is just
23 stating the frequency of occurrence of the blood in a DNA
24 profile in Caucasians, of which the victim is a Caucasian.

25 Q There was also PCR testing done in this

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1 case and can you tell us what one of -- specifically from
2 the knife handle, what the results were and the
3 significance of those results?

4 A With respect to the knife handle, let
5 me refer to the report just to refresh my memory.

6 Q Certainly.

7 A On the knife handle, there was
8 indications of more than one source of DNA present. In
9 other words, an admixture of DNA of which one of the
10 sources of DNA is considered the primary source. In other
11 words, the DNA was the source and that DNA was present in a
12 much higher concentration relative to the other source.
13 This primary source of DNA and the genetic profile that was
14 derived from its primary source of the admixture is
15 consistent with the genetic profile of the victim Panos and
16 then they have cited a frequency of that genetic profile
17 and the frequency cited is the Caucasian frequency. In the
18 report, Ms. Yates, the forensic analyst, did cite that
19 frequency estimate in all three racial groups, as she did
20 in the RFLP report, and it occurred in one and 17,000.
21 That profile occurred in approximately one and 17,000
22 Caucasians.

23 Then there were some faint results that were
24 detected in the DNA typing of this blood of the knife
25 handle. These typing faint results were consistent with

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1 the profile of Chappell.

2 Q And Criminalist Wahl, is it unusual in
3 stabbing cases to have two different individuals' DNA say
4 on a knife handle or to find that in a case like this?

5 A No, it's not unusual. There are
6 actually a fair amount of occasions where the individual
7 who uses a knife may cut themselves on the knife blade or
8 cut themselves on a bone from the victim or whatever, such
9 that you would have an admixture of the assailant's blood
10 mixed in with the victim's blood.

11 Q That is something that you have seen in
12 your dealings with DNA at your independent laboratory that
13 you use to be employed at?

14 A Oh, yes, on a fair amount of
15 occasions.

16 Q And from the item labeled blood swab,
17 what was the result?

18 A On the blood swab, the genetic profile
19 determined, using PCR technology, was consistent with the
20 genetic profile of the victim Panos and is inconsistent
21 with the profile of Mr. Chappell. So Mr. Chappell was
22 excluded as the source of the blood on the blood swab, but
23 the victim could not be excluded as the source of DNA.

24 Q And, finally, the blood swab from the
25 car, what was the results of that?

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1 A Again, let me refer to the report just
2 briefly.

3 The typing data that Cellmark obtained on
4 the blood swab in the car indicated again an admixture of
5 sources of DNA. In other words, with DNA present from more
6 than one individual on that blood spot. The primary source
7 of DNA is consistent with the profile derived from Mr.
8 Chappell. He cannot be excluded as the source of that
9 blood.

10 The other source of the admixture there were
11 faint results that were obtained by Cellmark. These faint
12 results were consistent with Panos. What this indicates is
13 that there was again admixture of with DNA of one source
14 appearing on the swab in a much higher concentration than
15 the other swab. That's why we have faint results and
16 stronger results.

17 Q Why wouldn't there be any kind of
18 frequencies placed on that last one? Are you aware of
19 why?

20 A It may be Cellmark's policy or their
21 report writing criteria that when they do have mixtures,
22 that they may not cite the population data on the mixtures
23 in that they are not absolutely sure which DNA types
24 originated from which source.

25 Q Is Cellmark an accredited laboratory?

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1 A Yes, they are accredited by the
2 American Society of Crime Lab Directors and at present I do
3 believe they are the only private laboratory that has
4 attained that credit issue.

5 Q So it's one of the highest
6 accreditations?

7 A It's the only accreditation that crime
8 laboratories can receive at the present time.

9 MS. SILVER: Court's indulgence.

10 Thank you. That would conclude direct.

11 MR. BROOKS: No questions, your Honor.

12 THE COURT: May this witness be discharged?

13 MR. HARMON: Yes.

14 MS. SILVER: Yes.

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

17 State my call its next witness.

18 MS. SILVER: Your Honor, I have here, and I
19 have shown it to defense counsel, a certified copy of UMC
20 medical record report. The records are from a patient
21 identified as Deborah Panos. It's from the custodian of
22 records. These are certified and they are the records
23 regarding her being taken to UMC Trauma Center on January
24 9th of 1995 and these are the records of Dr. McCourt, John
25 D. McCourt, and being certified, I would ask at this time

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1 that they be admitted at this time as State's Proposed
2 Exhibit No. 89.

3 MR. BROOKS: Judge, aside from our prior
4 objections to that type of evidence in general, we would
5 have no objection.

6 THE COURT: All right, the Court will,
7 subject to the defense's previous objections that have been
8 litigated in this matter, this exhibit will be admitted
9 into evidence for the consideration of the jury.

10 MS. SILVER: May I have the Court's
11 indulgence, please?

12 THE COURT: Most certainly.

13 (Off the record discussion not reported.)

14 THE COURT: Do you want to check with the
15 clerk a few moments?

16 MR. HARMON: Yes, your Honor.

17 (Off the record discussion not reported.)

18 MR. HARMON: Your Honor, the State has no
19 additional witnesses to call in its case in chief. We have
20 conferred with the clerk and have two remaining proposed
21 exhibits that we wish to offer. They are Proposed Exhibit
22 64, which in fact is a single sheet which is a copy of the
23 four social security cards identified by Lisa Duran and
24 Proposed 66, which is the photograph of Deborah Panos while
25 she was still alive.

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1 MR. BROOKS: No objection, your Honor.

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

4 MR. HARMON: The State rests, your Honor.

5 THE COURT: Thank you.

6 Ladies and gentlemen of the jury, before we
7 commence further proceedings in this case, it is incumbent
8 upon me to conduct a couple of matters outside your
9 presence with both sides. So I'm going to give you about a
10 five minute recess at this point. I'm going to ask that
11 you remain on the upper deck of the courthouses. We will
12 not be leaving the courtroom, but we will call you back
13 shortly.

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

23 You are more than welcomed to use the
24 facilities, but please remain in the hallway area while
25 this is going on.

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DISTRICT COURT
CLARK COUNTY, NEVADA

ORIGINAL

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FILED IN OPEN COURT

OCT 16 1996

19

LORETTA BOWMAN, CLERK

BY

CASE NO. C131341

Deputy

THE STATE OF NEVADA,

Plaintiff,

Vs

JAMES MONTELL CHAPPELL,

Defendant.

DEPT. NO. VII

DOCKET P

BEFORE THE HONORABLE:

A. WILLIAM MAUPIN DISTRICT JUDGE

TUESDAY, OCTOBER 15, 1996, 10:40 A.M.

VOLUME VI

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

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1 TUESDAY, OCTOBER 15, 1996, 10:40 A.M.

2 THE COURT: Good morning, ladies and
3 gentlemen.

4 THE JURY: (In Unison) Good morning.

5 THE COURT: You can see our clock is 40
6 minutes fast this morning.

7 Counsel stipulate to the presence of the
8 jury?

9 MR. HARMON: Yes, your Honor.

10 MR. BROOKS: Defense will, your Honor.

11 THE COURT: Call your next witness.

12 MR. EWING: Your Honor, the defense would
13 call Dr. Lewis Etcoff.

14
15 DR. LEWIS MARVIN ETCOFF,
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 MR. EWING:

22 Q Good morning, Dr. Etcoff.

23 A Good morning.

24 Q Would you please state your full name
25 and spell your last name for the record.

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1 A Lewis Marvin Etcoff, E-T-C-O-F-F.

2 Q And how are you currently employed?

3 A I'm self-employed in private practice
4 as a licensed psychologist in Las Vegas.

5 Q How long have you been in private
6 practice?

7 A Approximately 12 years.

8 Q Could you give the jury some idea of
9 your professional experiences prior to becoming a private
10 practitioner here in Las Vegas?

11 A Prior to going into private practice in
12 1985, I was in the United States Air Force where I was a
13 captain and a psychologist based at Nellis Air Force Base
14 for two years between 1983 and 1985 and was also in the air
15 force during my clinical psychology internship at Ryan
16 Patterson Air Force Base Medical Center just outside
17 Dayton, Ohio, August '82 through August '83.

18 Q Doctor, I got a little ahead of
19 myself. I apologize. Could you also tell the jury a
20 little bit about your educational background?

21 A Yes. I have a bachelor of arts and
22 master of arts degrees from Brandeis University in 1973 and
23 1975 and my Ph.D. is in clinical psychologist from the
24 University of Toledo, Toledo Ohio in 1983.

25 Q Do you currently serve on any board in

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1 your field of expertise?

2 A Yes. I am presently -- I was elected
3 President of the Nevada State Psychological Association and
4 am serving my term this year from May to May, from '96 to
5 '97, and I'm on the Board of Directors of the Nevada State
6 Psychological Association.

7 I am a diplomate in neuropsychology, which
8 is a subspecialty of clinical psychology having to do with
9 how the brain influences behavior, and in that respect, I
10 am on a national committee which is called the Examination
11 Process Committee in which I help examine
12 neuropsychologists who hope to earn a diploma or a
13 diplomate, as it's called, in neuropsychology and I study
14 their work product and try to see whether their work
15 product is good enough to go to the next level of the
16 examination.

17 I'm also an oral examiner for the state
18 board, the State of Nevada State Board of Psychological
19 Examiners, and in that capacity, over the past several
20 years, the president of the state board, myself, and one
21 other psychologist have developed and administered the new
22 -- not so new any more -- oral examination that has to be
23 taken by prospective licensed psychologists after they have
24 past the written portion of the national psychology
25 examination. So twice a year I volunteer my time to test

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1 people coming into the state or who are ready to be
2 licensed as psychologists and helped develop the test
3 questions.

4 And, last but not least, the State Bar of
5 Nevada asked me to become a member of their committee on
6 character and fitness and in that capacity, over the past
7 couple of years, I assist the attorneys who are
8 volunteering their time on the Bar in helping them
9 understand some attorneys who have gotten into trouble
10 because of psychological problems or legal problems of
11 their own or substance abuse problems and I also try to
12 help the attorneys decide which of the applicants for the
13 State Bar licensure should be given more time, let's say,
14 at the bar examination because they may have a history of
15 learning disabilities or some other neuro development
16 disorder which would require them to have extra time in
17 order to take the test fairly.

18 Q You mentioned a minute ago that there
19 was, basically, two areas of you dealt with, psychology and
20 neuropsychology. Could you explain the difference between
21 those areas of expertise?

22 A Well, clinical psychology is the study
23 of normal and abnormal behavior and that's what my Ph.D. is
24 in and in that capacity, clinical psychologists do things
25 such as psycho therapy, evaluations of people who are

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1 taught to do different types of tests that you are familiar
2 with like the IQ tests, academic, skills tests, test of
3 different cognitive functions, personalities tests, which I
4 will be talking about later today.

5 Neuropsychology is that subspecialty area
6 where I've received special education in evasive procedures
7 in order how to determine whether someone might have brain
8 impairments or some sort of disorder that is involving some
9 sort of brain disease or disorder and there are just
10 another series of tests and different aspects of education
11 that you need to acquire before you can earn the diploma or
12 diplomate in neuropsychology.

13 Q And in your profession right now in
14 your private practice, you function both as a clinical
15 psychologist and neuropsychologist, correct?

16 A Clinical psychologist and
17 neuropsychologist.

18 Q As part of professional experience,
19 have you done any social work for any part of the court
20 system?

21 A Yes.

22 Q And where is that?

23 A For several years, the Family Court has
24 asked me to evaluate, usually adults, sometimes children
25 already in the midst of a custody fight or battle or case

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1 in the court systems in which there are allegations made by
2 the husband or the wife or the former husband or former
3 wife that the Court needs expert opinion onto see whether
4 those allegations are truthful and credible or whether they
5 might not be and helping the judges in Family Court make
6 the best possible decision for the welfare of the child for
7 those children in those cases.

8 Q How long have you been doing that?

9 A Probably since the late '80s.

10 Q Do you also do some consulting work for
11 the Clark County School District?

12 A The Clark County School District has
13 had me in the past train its school psychologists because
14 half my practice is with children and I would say the
15 majority of the time I spent in my office is with kids.
16 I've trained the school psychologists in interview
17 techniques and neuropsychological testing so that the
18 school psychologists have a better background in the type
19 of things that they would need to know to diagnose
20 Attention Deficit Hyperactivity Disorder or learning
21 disabilities.

22 I'm also called upon by the school district,
23 as an outside expert, when a parent is upset with the
24 services that the school district has performed where they
25 believe -- they want an outside expert to say -- to see

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1 their child to say what the school district has done is
2 adequate or inadequate. Often times, I will be asked by
3 the school district to serve as that outside expert.

4 Q During these consulting-type
5 activities, have you had the opportunity to observe and
6 evaluate dysfunctional families?

7 A Yes.

8 Q Have you also had the opportunity to
9 observe and evaluate individuals with specific learning
10 disabilities?

11 A Yes.

12 Q And psychological disorders?

13 A Yes.

14 Q Do you have any professional experience
15 with any private hospitals or mental facilities here in Las
16 Vegas?

17 A Yes. In the late 18 -- 18 -- the late
18 1980s and early 1990s, I was on the staff of Montevista
19 Hospital and Charter Hospital and I was the Director of
20 Psychology at Montevista Hospital for a year and the
21 Director of Professional Development at Charter Hospital
22 for a year and during the three or four, five year period
23 where I was very involved in those hospitals, I saw
24 thousands of kids and adults who were psychiatrically
25 hospitalized for every possible reason from major affective

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1 disorder, depression, manic depression to psychosis to
2 acting out disturbances of kids. Their parents couldn't
3 take them any more and they put them in a psych hospital to
4 see if there was anything that could be done. Just about
5 all those things.

6 Q Now, as a consulting clinical
7 psychologist or neuropsychologist to the Family Court and
8 to the Clark County School District, do those entities look
9 to you to provide an unbiased assessment of an individual
10 or a family situation?

11 A Yes.

12 Q In your professional experience, have
13 you also had an opportunity to assess and evaluate
14 individuals who have been charged with crimes?

15 A Correct.

16 Q In fact, in this particular case, our
17 office asked you to perform an evaluation of Mr. Chappell,
18 correct?

19 A That's correct.

20 Q Have you qualified previously as an
21 expert in the Eighth Judicial District?

22 A Yes, I have.

23 Q On how many occasions?

24 A I don't keep strict count, but it's
25 probably about three dozen times.

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1 MR. EWING: Your Honor, we'd offer Mr.
2 Etcoff as an expert at this time unless the State has any
3 voir dire they'd like to conduct.

4 MR. HARMON: No voir dire. Submit it to the
5 Court's discretion.

6 THE COURT: He may testify as an expert.

7 MR. EWING: Thank you, your Honor.

8 Q Dr. Etcoff, we mentioned earlier that
9 you were asked by our office to perform an evaluation of
10 Mr. Chappell. Was that evaluation performed?

11 A Yes, sir, it was.

12 Q Do you recall when it was performed?

13 A It was performed on June 11th, 1996.

14 Q And where did this take place?

15 A At my office.

16 Q Here in Las Vegas?

17 A In Las Vegas.

18 Q Mr. Chappell was transported to your
19 office?

20 A Yes, he was.

21 Q Very generally, would you explain to
22 the jury how long the exam took and what kinds of things
23 you did. I say generally because we are going to get into
24 each area more specifically as we proceed.

25 A Well, before I saw Mr. Chappell, I

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1 obviously had conversations with your office to determine
 2 the type of case, the charges against him, and your office
 3 sent to me the Las Vegas Metropolitan Police Department
 4 records of the crime, a voluntary statement of Lisa Ann
 5 Duran, letters that the defendant had apparently written to
 6 Deborah Panos, and eventually but not at that moment, I
 7 think I received somewhat later the Lansing, Michigan
 8 school records for Mr. Chappell. And so I reviewed all of
 9 those records except the Lansing, Michigan school records,
 10 which I reviewed subsequently to seeing Mr. Chappell.

11 The rest of the records were reviewed in
 12 about an hour, hour and a half of time. They were not
 13 hugely thick records and then on the day of the evaluation
 14 itself, Mr. Chappell was administered an IQ test, an
 15 Academic Achievement Test, an Objective Personality Test,
 16 and I spent two hours with him in what's called a face to
 17 face clinical interview talking to him about his life and
 18 the crime and anything of relevance to this case.

19 So approximately altogether, we were -- he
 20 was probably in my office about five hours that day.

21 Q As a result of this procedure that you
 22 went through, did you produce a detailed forensic
 23 psychological evaluation?

24 A Yes, I did.

25 Q Twelve pages long?

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1 A Yes.

2 MR. EWING: May I approach the witness, your
3 Honor?

4 Q I see that you are looking at a copy of
5 that document in front of yourself?

6 A That's correct.

7 Q Twelve pages in length. I'm going to
8 show this to the prosecutor.

9 (Off the record discussion not reported.)

10 Q (BY MR. EWING) Dr. Etcoff, as I am
11 conducting this examination, I'm going to be referring to
12 this document. Would it assist you in your testimony if
13 you had a copy of it in front of you to refer to?

14 A Yes, sir.

15 Q In fact, you will be referring to that
16 document throughout this examination?

17 A Yes, I will.

18 Q When you evaluated James Chappell, you
19 were aware that he had been charged with first degree
20 murder, correct?

21 A Correct.

22 Q And he had been charged with killing
23 his girlfriend, Deborah Panos?

24 A Correct.

25 Q And were you also aware that he had a

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1 history of domestic abuse directed towards Deborah Panos?

2 A Correct.

3 Q How did Mr. Chappell present himself
4 during the evaluation?

5 A He was very cooperative. He was
6 very -- I guess the word would be credible or believable as
7 another way of putting it. He expressed his emotions,
8 whether it was sadness and remorse, concerning the killing
9 of his girlfriend, which was expressed very greatly or
10 anger that he felt at the time. He was actually reliving
11 his relationship with Deborah Panos in my office and when I
12 was watching his emotional reactions to how he reported to
13 me what he was thinking and feeling during parts of the
14 relationship, it was very believable. He seemed to be very
15 sincere, he seemed to be speaking from the heart about his
16 anger, about his sadness and remorse, and so he was a very
17 credible informant.

18 Q During your interview -- during your
19 two hour interview, did you have an opportunity to discuss
20 with Mr. Chappell his childhood?

21 A Yes, I did.

22 Q And was Mr. Chappell basically your
23 only source of information concerning his childhood?

24 A During the interview, he was my only
25 source of information. Subsequently, when we got a hold of

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1 the Michigan school records of Mr. Chappell, we had
2 corroborating evidence for things he had told me and
3 amplification of the difficulties that he had experienced
4 as a child that had been written in those records.

5 Q What significant things did you learn
6 about Mr. Chappell as it relates to his mother?

7 A The most significant thing is that he
8 lost his mother. I think she died accidentally when he was
9 about two and a half years of age and that although a child
10 at age two and a half has no real ability to have memories,
11 although in the common lay press, you may have people
12 suddenly remembering things when they were two years of
13 age, it doesn't really occur in reality.

14 So Mr. Chappell would have no real memory of
15 his mother and the important fact is simply that she died
16 when he was two and a half and he was already without a
17 father, who I think was a criminal, and he went to live
18 with his grandmother who took the kids and apparently tried
19 the best she could to raise her grandchildren.

20 Q What, if anything, did you learn about
21 James' brothers and sisters?

22 A To the extent that I can recall today,
23 I think I recall that one of his siblings got into a little
24 more trouble during childhood than he did, but that,
25 otherwise, he depicted them as getting along decently, if

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1 my recollection is correct. I don't believe I spent an
2 enormous amount of time going into his understanding of
3 each of their personalities. So I don't have a lot to say
4 about his siblings.

5 Q Did you get any impressions concerning
6 his siblings relationship with the grandmother that was
7 taking care of them?

8 A They seemed to have trouble getting
9 along with the grandmother. In fact, I think it was his
10 older sister who wanted to save the rest of the kids and
11 one day kind of free them of grandmother's supposed
12 oppression. I think the older sister had a very rough time
13 in particular and some of the other siblings might also
14 have had a difficult time being raised by a grandmother,
15 who may have had a difficult time suddenly having to raise
16 several grandchildren as if they were her children.

17 Q But there is no evidence that James had
18 a particular problem with his grandmother, is there?

19 A I didn't get the impression that his
20 grandmother treated him in as terrible a fashion as he
21 depicted his siblings being treated and certainly not
22 nearly as bad a fashion as other people in his situation
23 have been treated by their parents.

24 Q Doctor, I would like to move on for a
25 moment to the intellectual tests that were given. Did

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1 these tests come before or after the interview?

2 A The IQ test was administered after the
3 interview.

4 Q Let's talk about that first. Can you
5 describe for the jury what the IQ test is and what it is
6 intended to accomplish?

7 A Yes. The IQ test or Intelligence
8 Quotient, the test itself is called the Wechsler Adult
9 Intelligence Scale Revised, meaning that it's been revised
10 in the early '80s. It's the foremost adult IQ test in
11 existence and it's divided into two sections. One section
12 measures a person's capacity to thinking words, language
13 skills. Another section is known as the part of the test
14 that are called performance subtests and you would receive
15 and you get from that a performance IQ. It measures visual
16 spacial thinking skills. The ability to think in images
17 and to build things with blocks or jigsaw puzzles and note
18 detailed analysis of pictures.

19 Both parts of the IQ test give you an IQ
20 score; one is the verbal IQ, the other one is called the
21 performance IQ and then a full scale IQ is derived from the
22 entire test itself.

23 Q What were the results of those tests?

24 A Mr. Chappell received a full scale IQ
25 of 80, 8-0. To give you an idea of what that means, an IQ

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1 of 100 is perfectly at the medium for the adult population
2 of the United States. So if you have an IQ of 100, your
3 overall intellectual abilities are measured in the 50th
4 percentile. Every 15 points above or below 100 is known as
5 a standards deviation. And so if you go down, let's say in
6 his case, we will go down -- let's say we go down to an IQ
7 of 85, being one standards deviation from the medium of
8 100, people with the IQ of 85 have an IQ measured in the
9 16th percentile, meaning 84 out of a hundred people have
10 more on the ball intellectually than people with an IQ of
11 85.

12 He, Mr. Chappell, received a full scale IQ
13 of 80, 8-0, which is right at the very bottom of what's
14 called the low average range and it's a score in the 9th
15 percentile meaning that 91 out of 100 people have more
16 intellectual skills than he showed at that time. IQ is
17 stable. If we had taken his IQ at age seven, eight or
18 nine, it would likely not be significantly different than
19 his IQ as an adult. It tends to be rather stable.

20 His performance IQ, that which measures his
21 spacial thinking-type skills, the type of things if someone
22 would want to be mechanically inclined, into art,
23 photography, architecture, engineering, drafting, building,
24 his IQ was there the 91. IQ of 91 on the performance
25 represents performance in the 27th percentile, which is

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1 considered still average, not low average.

2 The important finding in the IQ test was his
3 verbal IQ of 77, which is classified of him being
4 borderline range, borderline mentally retarded. Now he's
5 not mentally retarded. I don't want to give you that
6 impression. The verbal IQ of 77 being in the borderline
7 range means he's very diminished in intellectual
8 capacities, thinking in words, that he can't use the
9 language very well, and his IQ falls in the 6th percentile
10 meaning 94 out of 100 adults his age would have greater
11 verbal intellectual abilities and that would be,
12 essentially, the description or the outcome of the IQ
13 test.

14 Q What was the significance, from a
15 clinical standpoint, of his verbal IQ score?

16 A It was significant in that in reviewing
17 the school records and his IQ tests results, he would have
18 been, as a child, eligible for a diagnosis of having a
19 receptive language disorder and I'll define that in a
20 second. Suffice it to say that his vocabulary fell in the
21 5th percentile, meaning his ability to understand words is
22 worse than 95 out of a hundred people his age and his
23 ability to think logically and use common sense problem
24 solving abilities was also measured in the fifth
25 percentile, worse than 95 out of a hundred people his age.

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1 When you don't have the ability to think in
2 words, either as a child or as an adult, there is a rather
3 growing burgeoning literature in psychology and psychiatry
4 showing that children who have language abnormalities tend
5 to become easily frustrated because people are talking to
6 them and they don't understand what is being said or they
7 don't understand what is expected of them. They are
8 constantly misinterpreting things, getting into trouble,
9 doing poorly in school and without the language skills
10 necessary to stop yourself from behaving poorly, people
11 with language based problems tend to be more aggressive,
12 when we follow them into adolescence and adulthood than
13 people whose language skills are normal.

14 So the important aspect of Mr. Chappell's
15 language deficits are or is -- the important aspect is that
16 if you place someone like Mr. Chappell in a stressful
17 situation, he's already learning disabled, he can't think
18 well in words, if he has to make a snap decision or filter
19 through and problem solve complex information rapidly, you
20 will not find someone of his intellectual capacities
21 verbally doing a very good job and making the best choices
22 as a result of these language problems that are thought to
23 be genetically caused at this point.

24 Q So individuals that have this low
25 verbal IQ tend to be over represented in groups of

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1 adults --

2 A In prisons.

3 Q Did you perform any academic
4 achievement tests?

5 A Yes, and I had reviewed subsequently
6 records that showed that his academic performance was
7 dismal, but I needed at that moment to know whether he was
8 able to read because I couldn't administer some of the -- I
9 wouldn't be able to administer a personality test that
10 involves reading if his reading level wasn't at a
11 certain -- about a sixth or seventh grade level. His
12 reading skills, in fact, in high school, his level was in
13 the 21st percentile, which is low average. His spelling
14 skills were eighth grade level, low average. His
15 arithmetic skills is in the first percentile. That's
16 operational paper, pencil arithmetic and his arithmetic is
17 measured as a fourth grade level, meaning he is classified
18 as having a learning disability in arithmetic.

19 Q The fact that he could read better and
20 write better than what he could communicate, is that
21 indicative of his performance IQ?

22 A That's a good way of putting it.
23 Reading and spelling are not correlated to IQ. You can
24 have someone who is mentally retarded who can read at a low
25 average range. Reading skills are -- reading skills, in

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1 essence, involves the brain's ability to process sounds in
2 the temporal lobe of the left cortex cerebral hemisphere.
3 If your temporal lobe is working well and you know the
4 difference between a, e, it is well. Dyslexia are a
5 reading difficulty with the language. So although they may
6 be very bright or not so bright, their temporal lobe don't
7 process those sounds correctly and they have difficult
8 reading.

9 In Mr. Chappell's reading, his reading is
10 average.

11 Q Did you conduct any personality tests?

12 A Yes.

13 Q And what was the name of that test?

14 A The name of the test is called the
15 Millon, M-I-L-L-O-N, and Dr. Theodore Millon it's named
16 after, he made the test, and the rest of the complicated
17 name is Clinical Multiaxial Inventory II.

18 Q What is this test intended to measure?

19 A It's a self purport measures where
20 there are 175 statements true and false and the person
21 taking the test takes the test, hopefully, honestly. There
22 are built-in scales to measures a person's ability to
23 perform honestly or lack thereof and the test has research
24 developed skills that measure things. There are a group of
25 what I might call acute psychiatric scales, scales

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1 measuring whether the person might have a major depressive
2 order, bipolar manic depression, disomic depression, mild
3 depression, psychotic thinking disorder, various kinds of
4 drug and alcohol proclivities, dependence or abuse and all
5 of those skills exist and then the major part of the test
6 also measures abnormality characteristics.

7 So by the way the person answers the test,
8 you can determine whether the person's personality
9 functioning is abnormal in various types of ways.

10 Q You testified that this test has
11 built-in control mechanisms to tell whether or not an
12 individual is being true; is that true?

13 A True.

14 Q Was this test valid?

15 A Yes.

16 Q In your opinion, was Mr. Chappell
17 attempting to be honest when he took the test?

18 A Yes.

19 Q Is this test a generally accepted
20 method for testing individuals in your field of expertise?

21 A Yes.

22 Q What, if any, significant findings did
23 you make concerning Mr. Chappell as a result of this test?
24 Referring to page 10 of your report.

25 A Thank you.

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1 There were several of the abnormal
2 personality scales elevated beyond the level of
3 significance and without getting terribly technical, I'll
4 try to describe what they portray him as being.

5 The personality test suggests strongly that
6 he is a very socially awkward, introverted man who's
7 mistrustful of others, who wants to be liked and loved and
8 accepted, but is frightened of rejection and humiliation
9 because he expects that will occur; if he gets to know
10 someone very well, he'll be hurt. And so he tends to stay
11 distant as much as possible from other people so that he
12 won't have to feel the sense of humiliation and rejection
13 that he expects to occur if he gets to know somebody well.
14 The reason he feels this way is that he has enormously low
15 self-worth and very little self-respect which has been a
16 life long characteristic of his.

17 He also has a very horrible -- I call it
18 horrible personality characteristic, which the name of it
19 is really useless descriptively to you and to me. It's
20 called Borderline Personality Characteristic and it really
21 doesn't say what it's suppose to say. Suffice it to say
22 that if I can explain what borderline personality
23 characteristics are, think of someone who has no sense of
24 identity. It's like a ship without a rudder. There is no
25 sense of self. You don't know who you are and, as a result

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1 of you not knowing who you are, you have no self-worth and
2 you tend to be emotionally driven because since you have no
3 sense of who you are, you become dependent upon other
4 people to take care of you and what borderline personality
5 disordered people tend to do is that they find someone who
6 will seem to accept them, an institution, it can be a
7 church, it can be a business, it can be your grandmother, a
8 wife, husband, a person and they attach themselves to that
9 person compulsively. They can't not be with that person
10 because that person makes them feel slightly better or
11 whole than they can be alone. Alone, they are frightened,
12 unsure, insecure about themselves. When someone seems to
13 like them, they just attach and grab onto that person.

14 Now the bad thing about that is if that
15 person ever wants to leave the attachment, these
16 individuals with borderline personality characteristics get
17 hugely frightened and are enormously afraid of being
18 abandoned because if they are abandoned, all they have left
19 is themselves, but themselves is not good. They have
20 nothing when that person leaves them.

21 So they become enormously frightened and
22 emotional and sometimes they get extremely worked up about
23 what's going to happen if this person leaves me and they
24 can even become paranoid, which means they will start
25 having thoughts, which normal people will have if you love

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1 someone dearly and you think they are going to leave you,
2 you may start thinking things in your mind that you can say
3 to yourself, gosh, that's paranoid, you know, why am I
4 thinking about these things? This is really a little
5 paranoid. It's delusional.

6 Well, people who are not put together
7 emotionally do this commonly and start inventing a reality
8 that doesn't exist, which may have been the case in this
9 situation. It may have been -- in this situation, he
10 believes that the deceased had been cheating on him. That
11 may or may not have been true. He believed it because he
12 felt her leaving him.

13 Q Did you develop an opinion as to
14 whether or not there was some individual out there that Mr.
15 Chappell had become attached to, as you've described?

16 A I'm sorry, I missed --

17 Q Did you develop an opinion as to
18 whether or not there was some individual out there that Mr.
19 Chappell had become attached to, as you described?

20 A Ms. Panos was the person he was
21 attached to.

22 Q I would like to you refer to page 11 in
23 your report for a moment. The second full paragraph, you
24 state that, "Mr. Chappell would be the type of individual
25 to feel persecuted, humiliated, and disparaged by others

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1 because his own self-image is one of weakness and
2 ineffectuality. At times, Mr. Chappell can become so
3 self-absorbed that his daydreams blur fantasy filled with
4 reality."

5 What did you mean by that?

6 A Well, this is one of the personality
7 test results and personality tests aren't perfect. This
8 isn't physics or mathematics where one plus one equals
9 two. Personality tests, better or worse, measure
10 characteristics of a person and then by interviewing the
11 person and reviewing records, you judge whether the
12 personality characteristics generated by the personality
13 test appear to be accurate or not.

14 In this case, I believe that the test result
15 was a very accurate description of a person I had spent
16 time with and the person depicted in those school
17 psychological and school social work records. A person who
18 feels weak, ineffective, and feels easily hurt and
19 disparaged by other people to the point that, as I said
20 previously and not to bore you, if you feel that badly
21 about yourself and the one person you do rely upon you feel
22 is going away, then your mind may start having irrational
23 thoughts. She's probably sleeping with somebody, she is
24 sleeping with somebody, she stayed out at night, she must
25 be sleeping with somebody, who is it and it's probably that

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1 guy I saw her look at the other day. It's someone.

2 Those are normal feelings people could go
3 through when they lose someone they love. Someone with low
4 verbal IQ, with the childhood experiences with Mr.
5 Chappell, with this type of personality structure
6 inevitably have thoughts that approach this sort of
7 paranoid state, although he wasn't paranoid, paranoid at
8 that time. I can't say that he was actually out of touch
9 with reality. I am saying that he was having thoughts that
10 were, perhaps, not accurate representations of reality.

11 Q Were the results of these tests that
12 you ran, these three tests you just described, were they
13 consistent with your interview with Mr. Chappell?

14 A Yes, very much so.

15 Q Did Mr. Chappell discuss with you his
16 substance abuse problem?

17 A Yes.

18 Q Was that significant in your findings?

19 A Yes. To cut to the quick, he became
20 dependent on cocaine in about 1992, after a history of
21 using marijuana and cocaine socially or intermittently or
22 recreationally, however you want to call that, during his
23 teenage, late teenage years.

24 To become dependent on cocaine is a very
25 dangerous thing because of the short half life of cocaine.

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1 It gives you a short high and then you need more to stay
2 up. And so what happens is Mr. Chappell became dependent
3 upon having cocaine and notably, when one is dependent on
4 cocaine, the chances of having aggressive behaviors,
5 paranoid thoughts are two classic symptoms of being cocaine
6 dependent. If anybody in this jury were using cocaine
7 regularly, many of you would have paranoid thoughts and
8 would become more aggressive because that's what cocaine
9 does to you.

10 And so Mr. Chappell, unfortunately, probably
11 chose the very worst substance that he could become
12 dependent on. Cocaine was the one he chose -- well
13 chose -- he used and then became dependent upon its use.

14 Q During your interview with Mr.
15 Chappell, did you discuss his relationship with Deborah
16 Panos?

17 A Yes.

18 Q From a historical perspective
19 initially, what did he tell you about their relationship?

20 A It had been a rocky road and at the
21 same time he admitted to me that he had hit her in the
22 past. I think once he was arrested for domestic abuse in
23 Arizona, but that he loved her deeply and in listening to
24 him, and that's what psychologists or psychiatrists do, we
25 try to listen to see whether the person seems sincere in

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1 their depiction of their feelings or thoughts and in his
2 depicting his relationship with Ms. Panos, he was really
3 crying uncontrollably for several minutes, when we talked
4 about the actual murder, and he was enormously remorseful.
5 He knew that he had done something that he had never set
6 out to want to do. He had destroyed and killed the person
7 he most relied upon and cared about. As abnormally as that
8 caring might have been, it was his only attachment in life
9 to someone else, that he cared deeply for her and ended up
10 killing her and feels to this -- or at least felt, when I
11 saw him, enormously remorseful that he had actually done
12 what he had done.

13 Q You feel like his emotional outbursts
14 were sincere?

15 A I have seen -- yes. I have seen enough
16 murderers who do not show remorse except for themselves,
17 I'm going to be in prison for the rest of my life, poor me,
18 and there are a minority of people who kill who actually
19 wished that they could take it back and realize that it
20 wasn't what they wanted to do or intended to do and feel
21 terrible about it. I think he is one of those minority of
22 people who kill, who actually would do anything to turn the
23 clock back and undo what he did.

24 Q Did he discuss with you the facts or
25 factors of their relationship a couple months prior to her

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1 death?

2 A Yes.

3 Q Did you find anything significant about
4 the things, the facts that he discussed with you?

5 A Very significant because, and maybe
6 I'll take a few minutes going through this because I want
7 you to get an idea of his state of mind, what made him do
8 what he did. That's my job and so I took him back several
9 months and tried to have him explain to me what the
10 relationship was like and to the best that I could put this
11 together, this is what he told me and it seems to be -- it
12 seems to be a credible, a credible explanation of what
13 occurred in his life.

14 He said that he was in the Clark County
15 Detention Center charged with shoplifting between February
16 28 and May 10, 1995. During that time, he told me that Ms.
17 Panos was visiting him, bringing the children, bringing him
18 money, staying in touch, that he was doing okay in jail,
19 she was there for him.

20 Then he got out of jail on about May 10th,
21 1995 at which point apparently Ms. Panos had a couple of
22 female friends move into the apartment and they had
23 boyfriends or fellows that came over and Mr. Chappell, who
24 was not very happy with that whole state of affair because
25 the guys were drinking, leaving their bottles around, he

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1 just didn't like it. It wasn't a good time.

2 And then he told me that Ms. Panos began
3 staying out at night until 3, 4:00 in the morning with one
4 of the women who remained in the home at the time, a woman
5 by the name of Clair, whom I have never met, and he was
6 sitting up all night worrying and saying, "It's getting to
7 me," which was consistent with his personality
8 characteristics if that actually did in fact occur. She
9 was going out and staying out until 3, 4 a.m., then he
10 would be getting very anxious, nervous, what is she doing,
11 who is she with, what's going on?

12 And then what happened, she left him. For
13 whatever reason, she didn't like him, she fell out of love,
14 he hit her, whatever, she left with the kids for a couple
15 of weeks in June, I believe, and in June of 1995 and this
16 made him increasingly nervous that she was seriously
17 considering leaving him and then what happened, according
18 to what he told me, was one day he was at home and he got a
19 call that turned out to be from Motel 6 and he hit the
20 redial number on the telephone. He didn't know it was
21 Motel 6. He was asking for someone in the home and found
22 out that the motel operator had confirmed that his
23 girlfriend, Deborah Panos, had stayed at the motel the
24 night before and I asked him what was that like for you
25 when you found out? He said, "I was crying, nervous, hurt,

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1 totally blown away," which again was consistent with his
2 personality test results and consistent with the way he
3 felt at the time I saw him.

4 And, again, Ms. Panos apparently returned,
5 took the clothes, took the kids, and left for another week
6 and he said, "I started getting high on cocaine," which was
7 his way of getting rid of the world around him and he said,
8 "I was doing this 'to get it out of my head. I didn't
9 want to focus on her sleeping around Las Vegas,'" and now
10 the paranoid thoughts, and maybe she was sleeping around
11 Las Vegas or maybe, in his mind, that's what he thought was
12 the worst possible thing and he was now becoming somewhat
13 paranoid, she must be sleeping around with other guys,
14 that's why she left me and that's what was going through
15 his head at that point.

16 Then he was jailed again for shoplifting,
17 which is very common for people who use cocaine. They
18 steal things to get money for cocaine. He went back into
19 the detention center and became extremely out of touch with
20 -- he became more and more paranoid, thoughts started
21 going through his head. He said, "I could feel her being
22 touched. I had dreams of her messing with people." And so
23 he spent his time in jail thinking that his girl and love
24 is now really cheating on him and he's having vivid
25 pictures of it in his mind. He eventually called home one

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1 night, a man answered. It could have been nothing, but in
2 his mind the man was someone who was sleeping with Ms.
3 Panos. Finally, he got out of jail and the night that the
4 murder took place, he went to see Ms. Panos.

5 So to make all of that make sense, in his
6 mind over the summer, as she was drifting away from him, he
7 was feeling increasingly insecure, paranoid, feeling that
8 he was losing her, and getting increasingly anxious and
9 those emotions were depicted in the letters he was writing
10 to her, some of which I had and read. He was afraid and
11 frightened like a little kid that his mother was leaving
12 him. He was just absolutely frightened to death that his
13 -- that the one person he relied upon was slipping away.

14 Q Did you see any evidence, from your
15 conversations with Mr. Chappell at that time that he was in
16 custody, that he intended to do her any harm?

17 A He didn't state to me that he had any
18 intention to do her harm. He certainly was clearly angry
19 at her and even as he was talking to me, he became angry
20 when he relived what he was going through; thinking about
21 her, he was angry as he was talking to me. So the feelings
22 were still right there. Those feelings were right there
23 out in present, as he was depicting all of which was going
24 on in his life over the past -- at that time in his life.

25 Q I want to move onto what he told you

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1 about the day that Deborah was killed, referring to page
2 nine, last paragraph in your report. Can you indicate or
3 state to the jury what James told you about the day that
4 Deborah was killed and what significant things that taught
5 you?

6 A Well, I hesitate, but probably will do
7 it anyhow because it's probably useful. He was extremely
8 graphic and explicit in what he told me occurred when he
9 went into the window of the trailer to see Ms. Panos.

10 Now, again, as an expert witness, I feel
11 it's incumbent upon me to tell you I wasn't there, I really
12 don't know what happened that night, and I can't tell you
13 that I know what happened that night. I can only tell you
14 what Mr. Chappell told me happened that night and try to
15 understand whether what he told me seems to hang together
16 logically given his personality characteristics or it
17 doesn't, but I wasn't there, I don't know what happened
18 that night.

19 He said, in any event, that he didn't have
20 the key, he climbed in a window, and that Ms. Panos allowed
21 him to come into the window and he didn't know that she had
22 been home at that point and that the two of them had sex.
23 And then he said, and I'm going to quote this, even though
24 it's not the type of language that we would typically
25 quote. I think it's gives you an idea of what was going on

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1 in his mind at that moment I think. "When I enter her, her
2 vagina is all loose. It wasn't right. I instantly got
3 up. The smell on her wasn't good. I said, 'You been
4 fucking, huh?' She says, "No." I was crying and pacing.
5 She performs oral sex on me. Then I found men's boxers on
6 the bedroom floor. She says, 'It must be Claire or Lisa's
7 friends.' I'm really pissed. My mind's spinning. We're
8 walking out the door, get in the car. I see two boxes with
9 cheap beer cans. I ask her, 'Who's been drinking?' She
10 says, 'Lisa and Clair.' The car is trashy. Beer cans on
11 the floor. It's pissing me off. The light's broke off.
12 The ceiling upholstery is ripped. She's blaming the kids.
13 The gearshift was broke. The air conditioning was broke.
14 All my tapes were gone. Then I found a letter in the car
15 to her from some guy. He talking about, 'I love the way
16 you did this to me.' This feeling came inside me. She
17 sees me reading the note. All I could picture was my lady
18 in bed with someone else. I got out, grabbed her, took her
19 in the house. She's on the floor at the front door."

20 When he, when Mr. Chappell said those
21 sentences to me, hopefully my reading them to you can
22 convey half of what it felt like to listen to that from his
23 mouth. He was actually reliving what he seemed to be
24 reliving what had gone on in his mind, at least at that
25 moment. Obviously, to me, there's no possible way in

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1 reality he could tell that his wife was having sex with
2 another woman. I think in his mind already he thought she
3 was cheating on him.

4 So, as soon as he had sex with her, he
5 just -- those thoughts took over and he knew his wife was
6 cheating on him at that point and he just got up, ran out
7 of the house, into the car, finds his car a mess, gets
8 angry about that, then finds the love note, reads this
9 note, and that's the end of that and just loses it. Brings
10 her back into the house. I asked him what happened when he
11 got back into the house and he just started crying
12 uncontrollably and I waited until he was back in control
13 and he said, "She just laid on the floor and covered her
14 face. I still to this date don't remember everything I did
15 to her. It happened so quick. Then I panicked and left."

16 I didn't press him for the gruesome details
17 of what he did to her because, to some extent, when
18 something traumatic happens, whether you are the victim or
19 perpetrator, you will have a distorted memory of that, but,
20 to some extent, he probably does remember what he did and I
21 didn't feel like putting him through the torture of telling
22 me about stabbing her and so I just let it be because we
23 already knew what had happened to her and I didn't feel
24 like -- he was already a mess, crying uncontrollably in my
25 office. I didn't think it would serve any purpose for me

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1 to make him relive the events another time.

2 Q While he was reliving the events and
3 exhibiting his emotions, did you feel that they were
4 sincere?

5 A Yes.

6 Q You testified earlier that you did have
7 an opportunity to review the report from Lansing,
8 Michigan?

9 A Yes, I did.

10 Q We've discussed them, to some degree,
11 already today. Is there anything in those reports of
12 clinical value which you haven't already explained to the
13 jury?

14 A Well, to me, it's important. I would
15 hope that the jury could see the importance of it. I will
16 quickly go through the Lansing, Michigan report because I
17 think it attests to his credibility, when he was speaking
18 to me about his life. I know he wasn't lying about this
19 and it, basically, says that this was a young guy who, by
20 grade two, was already doing so badly in school and
21 behaving so unusually, that he came to the attention --
22 back in the 1970s, psychology was not the most exact
23 science or whatever you want to call psychology, art and
24 science, and for a child in the late '70s to come to the --
25 for the school district to realize there is something wrong

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1 with this kid in the late '70s and do the number of things
2 that the school district did to understand him, I thought
3 was unusual in the records I've reviewed in so many of
4 hundreds of cases in the past.

5 By grade two and three, he had already been
6 a very poor student. His grade two teacher wrote, "James
7 is often reminded to get busy, often given extra time to
8 complete work, especially reading packet. Often talks to
9 those around him. Changes mood quickly."

10 In grade three, "Easily distracted and is
11 late getting his work in often. He needs to show work on
12 listening when others are talking."

13 In grade four, the teacher says, "James is
14 not applying himself. He has real difficulty in math, but
15 should be doing much better in reading. He is overly
16 disruptive in class and needs to be encouraged to be more
17 respectful and considerate."

18 A social worker in 1977 evaluated him
19 saying, "His actions and reactions are very slow. He asks
20 unrelated questions and will not respond when spoken to.
21 He is in the fourth grade and functioning at a second grade
22 level. His grandmother enrolled him in Head Start where he
23 would not play with anyone or talk to anyone." He finally
24 built a relationship with a new teacher, but she had to go
25 and left and he regressed to his old behavior and stopped

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1 talking to the kids.

2 So he was an emotionally disturbed kid, who
3 was diagnosed as SLD, severely learning disabled, and
4 placed in a SLD special education classroom setting where
5 he had one-on-one attention.

6 In high school, his Achievement Test results
7 were very bad. On the stanine scores that go from one to
8 nine, one being the lowest and nine being the highest,
9 James' stanine reading comprehension in 1985 was the
10 lowest, a one. In math, a one. So by high school, despite
11 being in Special Ed, he had gotten no where and, in fact,
12 when the school psychologist eventually saw him, when he
13 was 16 years nine months of age, she wrote, "The extensive
14 interview revealed a youngster who seems to feel he has
15 little hope of succeeding at life, especially as it relates
16 to academic achievement. He did not appear to have many
17 coping skills to deal with problems he encounters and tries
18 to endure whatever comes his way by purse pointing action.
19 He tends to withdraw and avoid when he encounters problems
20 and often takes what appears to him to be the easy way
21 out."

22 She described him as having, "Low
23 self-concept, depressed, distrusting, few coping skills,
24 low self-image, poor problem solving skills, difficulty
25 completing assignments," et cetera, and he graduated or,

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1 I'm sorry, in his ninth and tenth grade years, his GPA was
2 0.65 and making him ranked in his class of 584 out of 607
3 students. So he was a very unsuccessful student all the
4 way through school. Was, fortunately, found to be learning
5 disabled and the help they gave him didn't do the trick and
6 it just didn't help him.

7 Q Did you find any evidence in these
8 school records of any undiagnosed learning disabilities?

9 A They -- I'm not certain I ever saw them
10 make a diagnosis of a specific learning disability, but
11 from reconstructing those comments and how he scored on a
12 test I gave him, he certainly would have had a diagnosis of
13 developmental arithmetic disorder known as Mathematics
14 Disorder and language disorders known as Receptive Language
15 Disorder. So he was learning disabled.

16 Additionally, he probably met the criteria
17 of being a ADHD kid, Attention Deficit Hyperactivity
18 Disorder. Impulsive, unable to do work, couldn't sit
19 still, disruptive in class.

20 Q Today there are treatments for people
21 who have attention deficit hyperactivity disorder; is that
22 correct?

23 A Yes.

24 Q But there is no evidence that James
25 ever received any treatment?

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1 A And there were treatment back then, but
2 there is no evidence whether he received any treatment,
3 whether it was psycho therapeutic or medical.

4 Q James described to you, in great
5 detail, the circumstances that occurred when Deborah was
6 killed and I take it he essentially described to you that
7 he went into a rage?

8 A Yes.

9 Q Is that consistent with his behavioral
10 characteristics as you discovered them during your
11 evaluation?

12 A It's very consistent with his
13 personality test results and his use of cocaine,
14 absolutely.

15 Q Dr. Etcoff, we all have the ability to
16 make choices, correct?

17 A Yes.

18 Q I might call that our free will, for
19 lack of a better term?

20 A Yes.

21 Q In your expert opinion, do we all have
22 the same level of free will?

23 A No.

24 Q Can you go into more detail and explain
25 that?

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1 A Anybody, any person at various times
2 during his or her life, depending upon their intellectual
3 abilities, the amount of security and love in that person's
4 life, a variety of factors, the stresses in that person's
5 life comes to situations when a choice has to be made.
6 Sometimes, when you are of high intelligence and come from
7 a fairly normal home, even very stressful situations will
8 allow you to still have an enormous amount of free will or
9 the capacity to think before you act and come up with at
10 least a decent decision; maybe not the best, but something
11 decent.

12 To the extent that your IQ is lower, to the
13 extent that you've had learning disabilities, undiagnosed
14 neuro developmental disorders, such as learning
15 disabilities or ADHD, to the extent you may be dependent
16 upon a substance, whether it's alcohol, amphetamines or
17 cocaine or anything, and to the extent of your own
18 personality characteristics, your free will is limited. In
19 fact, people with personality disorders by definition have
20 limited free will because when a situation occurs as a
21 result of having an inflexible personality, the person with
22 an inflexible personality or set of characteristics,
23 something happens, they react, they either think a certain
24 thought feel, a certain feeling, behave a certain
25 behavior. They are not even conscious of it half the

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1 time. They just react as they have been reacting in life,
2 life long. That's why people repeat their mistakes in many
3 instances.

4 Q Did the fact that James had a low
5 verbal IQ effect his ability to make choices, effect his
6 free will?

7 A Yes, it lowered it.

8 Q Does the fact that he came from a
9 difficult childhood effect his ability to make choices to
10 exercise his free will?

11 A Yes.

12 Q Does the fact that he was diagnosed
13 with specific personality disorders effect his free will?

14 A Very much so.

15 MR. EWING: Can I have the Court's
16 indulgence for one moment?

17 (Off the record discussion not reported.)

18 MR. EWING: Thank you, Doctor.

19 I have no further questions.

20 THE COURT: Cross examination?

21 MR. HARMON: Thank you, your Honor.

22 . . .

23 . . .

24 . . .

25 . . .

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1 CROSS EXAMINATION

2 BY MR. HARMON:

3 Q Dr. Etcoff, prior to June the 11th,
4 1996, had you ever met or heard of James Chappell?

5 A I hadn't met. I may have read
6 something about it had it been in the RJ, but I had
7 probably forgotten. So for all intents and purposes, no.

8 Q How long did you spend with him during
9 your evaluation at your office?

10 A Interviewing him two hours and,
11 perhaps, another half an hour, three quarters of an hour
12 and other assorted evaluation components. And the actual
13 IQ test was administered by one of my associates in the
14 office and the personality test he did by himself via audio
15 tape. Since we weren't sure he could read well enough, we
16 gave the test by audio tape and that was without me in the
17 room.

18 Q When you interviewed him, were you
19 aware he was incarcerated?

20 A Oh, yes.

21 Q Did he most certainly seem to be aware
22 that he was in custody?

23 A There was a policeman sitting in the
24 room with us and he was in shackles.

25 Q Were you aware that he was charged with

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1 first degree murder and robbery and burglary?

2 A Yes.

3 Q You understood those to be serious
4 crimes?

5 A Yes.

6 Q Did Mr. Chappell seem to have the
7 presence of mind which enabled him to understand that he
8 was charged with those crimes?

9 A Yes.

10 Q You've described your experience. How
11 much opportunity have you had to evaluate persons who were
12 incarcerated who are facing a potential capital charge?

13 A I would since about 1990, when an
14 attorney who's now with the Federal Public Defender's
15 Office, Mr. Michael Pescetta, came into town on a
16 government grant to start the Nevada Appellate & Post
17 Conviction Project. It was an organization in which he was
18 asked to train Las Vegas defense attorneys to conduct
19 specialized cases such as death penalty cases.

20 From that point on, I was trained by Mr.
21 Pescetta, served on a panel with him in presenting these
22 types of cases to attorneys, have been to death row several
23 times, and have interviewed approximately three dozen
24 murderers, certainly not as many as you, Mr. Harmon, and
25 have done throughout your career, but about three dozen

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1 people who have killed.

2 Q You are talking about the three dozen
3 already being on death row?

4 A No, I have seen about six people
5 actually in Ely on death row and, perhaps, the rest were
6 actually either in the detention center or transported by
7 the detention center to my office.

8 Q So approximately 30 persons you are
9 telling us were facing potential capital charges when you
10 evaluated them?

11 A That's a guesstimate, but, yes, about
12 that.

13 Q Do you recognize whether this was true
14 in particular case that when one faces the possibility of a
15 conviction for serious crimes of violence and faces the
16 potential very severe punishment, even the imposition of a
17 death sentence, that there does exist the temptation to,
18 perhaps, adjust the version of what happened to assist in
19 the defense?

20 A I would absolutely agree.

21 Q In this case, you've described the
22 defendant as being very cooperative?

23 A He was cooperative.

24 Q How do you define cooperation?

25 A He wasn't irritated easily, he wasn't

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1 silent. There are people who I see in the same
2 circumstance who I have to send them back to the jail.
3 They won't talk to me, they won't look at me, they don't
4 want help, they don't want an evaluation, they have got a
5 chip on their shoulder. They are not trying their best.

6 Mr. Chappell did what I had hoped he would
7 do. He answered my questions, he was cooperative, he
8 didn't seem to have a chip on his shoulder, he cooperated
9 with the evaluation.

10 Q You say he didn't seem to have a chip
11 on his shoulder?

12 A Towards me about the evaluation.

13 Q But you said, as he appeared in your
14 office to relive this experience, that he was still very
15 angry?

16 A Yes, sir, he was.

17 Q His emotions were still right up to
18 where they were obviously apparent to you?

19 A Correct.

20 Q Still very angry at whom?

21 A At the deceased.

22 Q Deborah Panos?

23 A Yes. And himself, both.

24 Q If he was not telling you accurately
25 what happened on the day he killed her, would you still say

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 he was cooperative?

2 A No.

3 Q If he was either directly lying or
4 telling you half truths, then you would say cooperation
5 would be a mischaracterization?

6 A I would say I would have to re-think my
7 opinion and I might have to say that, in certain parts of
8 the interview, he was cooperative, in certain parts of the
9 interview, he was lying.

10 Q Now you've explained to us that you had
11 an opportunity before you talked with him on June the 11th
12 to review the police reports?

13 A That was the day I saw him for the
14 entire evaluation.

15 Q But prior to that, you had an
16 opportunity to review the Metropolitan Police Department
17 reports regarding this crime?

18 A Yes.

19 Q You mentioned that you reviewed a
20 statement by Lisa Duran?

21 A Yes.

22 Q You also reviewed some letters that the
23 defendant purportedly had written to Deborah Panos?

24 A Yes.

25 Q From jail?

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 A From jail.

2 Q And later, you reviewed Lansing,
3 Michigan school records?

4 A That's correct.

5 Q You never, of course, met Deborah
6 Panos?

7 A That's correct.

8 Q You didn't have an opportunity to
9 conduct a two hour evaluation in your office of the victim
10 in this case, did you?

11 A Of course not.

12 Q But you have no idea what she would
13 tell you about the circumstances of what happened on the
14 day this happened?

15 A That's absolutely correct.

16 Q Who told you it happened at night? You
17 have alluded several times in your testimony to the night
18 it happened.

19 A I don't recall whether it was Mr.
20 Chappell. I can't even tell you for certain that it
21 happened at night. I'm not certain, as I sit here, exactly
22 what time it occurred.

23 Q The evidence establishes that it
24 clearly occurred between 10:45 a.m. and 1:45 p.m. with
25 that assumption, if Mr. Chappell did tell you it happened

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 at night, would that be an accurate statement?

2 A That would be an inaccurate statement.

3 Q That wouldn't be credible or
4 believable, would it?

5 A That's correct.

6 Q Did you -- I think you mentioned you
7 never met Clair, Claire McGuire?

8 A I never met Claire McGuire.

9 Q You don't know what a friend and
10 roommate of Deborah Panos would say about the extent of the
11 domination and attempt to control by this defendant, Mr.
12 Chappell?

13 A No, I don't know the extent of that as
14 I haven't had the opportunity to interview that person.

15 Q You never actually met and talked with
16 Lisa Duran, did you?

17 A You are correct.

18 Q You didn't talk with other co-workers
19 of Deborah Panos who knew very well what her dilemma was,
20 such as Michael Pollard?

21 A That's correct.

22 Q Did you ever review any statements by
23 Dina Freeman, a twelve year employee of the Tucson Police
24 Department?

25 A I never had the opportunity to, no.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Q Were you unaware of the threats she
2 described which this defendant had directed at Deborah
3 Panos?

4 A I must be unaware of those threats.

5 Q You mentioned that when the defendant
6 described his relationship, he admitted that he had hit
7 her?

8 A Yes.

9 Q So you were aware, to some extent, that
10 there was a history of domestic violence?

11 A Correct.

12 Q I think you mentioned earlier, Doctor,
13 that the defendant told you he was arrested once in
14 Arizona?

15 A Yes.

16 Q Is that the only domestic violence
17 arrest he explained to you?

18 A I am not certain whether there were
19 others. There might have been others. I don't know.

20 Q That's the only one you alluded to?

21 A Yes.

22 Q Is that the only one you remember
23 specifically him advising you of?

24 A Yes.

25 Q He didn't tell you he was arrested on

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 several occasions in Las Vegas for domestic violence?

2 A I don't believe he did. I can check my
3 notes, but I think I would have placed that in the report
4 had he told me that.

5 Q Will you check your notes, please.

6 A Certainly.

7 He mentioned the domestic violence arrest in
8 Arizona and slapped her a couple times, had arguments about
9 the way her parents treated him. He left her twice to go
10 back to Michigan. He said she hit him also, pulled a
11 knife, went after him with scissors. He stated she never
12 needed medical attention as a result of these
13 altercations.

14 He said between January and February, 1995,
15 there was one incident and argument and she required
16 medical attention. I threw a cup at her, hit her in the
17 nose, broke her nose, I called 911, ambulance came, cops
18 came and took me off to jail.

19 So he actually might have said it to me and
20 in writing up my report, I was not careful enough and
21 actually didn't place that other incident into the report.
22 So there seems to be another January -- some time between
23 January and February, 1995, another incident of domestic
24 violence that resulted in the policemen having him being
25 taken to jail.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Q That incident resulting in a broken
2 nose to Deborah Panos?

3 A I'll take your word for it.

4 Q Well, is that what you read from your
5 notes?

6 A I don't know if he gave me a -- yes, a
7 broken nose. Yep.

8 Q Are there any other references to
9 arrests in Las Vegas for domestic violence?

10 A I don't believe so. I don't believe
11 so.

12 Q Did the defendant tell you about a June
13 1, 1995 incident when he was arrested?

14 A I don't recall him saying that.

15 Q Did he describe a situation where he
16 argued with Deborah Panos at the mobile home where they
17 lived, that the argument progressed into the bedroom where
18 he pushed her down on the bed, got on top of her, pinned
19 her arms down, and threatened her with a knife?

20 A I don't believe he told me that
21 incident, no.

22 Q Well, of course, just as you omitted to
23 put in your formal report one of the incidents he had told
24 you about, which appeared in your notes about the broken
25 nose, sometimes inadvertent mistakes can be made; is that

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 correct?

2 A Yes.

3 Q But assuming for a moment that the
4 omission by the defendant, when he talked to you in
5 describing the act of domestic violence occurring on June
6 the 1st was deliberate on his part, would that effect your
7 opinion about how cooperative he was being and how credible
8 he is?

9 A Yes.

10 Q Suffice it to say there had been a
11 history of domestic violence involving the defendant and
12 Ms. Panos?

13 A That's correct.

14 Q Were you aware there were three small
15 children that were born by Ms. Panos, sired by the
16 defendant?

17 A Yes, I was.

18 Q Did you know their ages were seven,
19 five, and three?

20 A I don't recall at this moment, but I
21 will take your word for it.

22 Q You have told us that half of your
23 practice involves children?

24 A That's correct.

25 Q For that reason, do you have opinions

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 about the affect upon children of 10 years of age --

2 MR. EWING: I'm going to object as to
3 relevancy.

4 Q (BY MR. HARMON) -- who were subject to
5 a history of domestic violence?

6 MR. EWING: Mr. Chappell is not charged with
7 any crimes relating to his children. I object on relevancy
8 grounds.

9 THE COURT: Sustained.

10 Q (BY MR. HARMON) Dr. Etcoff, would you
11 agree that at least partial opinions that you formed would
12 be invalidated if you weren't receiving accurate in
13 information from the defendant?

14 A I'm not ready, based upon the one
15 admission -- the one omission of Mr. Chappell about a
16 domestic violence episode that took place in 1995 to change
17 my professional opinion about this particular event. I
18 would --

19 Q Did you understand the question?

20 A I thought I did.

21 Q If he misrepresented to you, if, if he
22 misrepresented to you what occurred on the date of the
23 murder, not at night, during the daytime when the murder
24 occurred, if he did that, would that tend to invalidate
25 many of your opinions?

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1 A It might have an effect of making me
2 re-think my opinions, especially if the facts in the case
3 were much different than how he portrayed them to me. If
4 there were minor changes, I'm not certain how great an
5 effect it would have on my opinion, but if what he told me
6 what occurred was completely different than fact, then I
7 would really have to re-think my opinion.

8 Q In your experience interviewing persons
9 who are charged with serious crimes, don't they very often
10 attempt to justify what they did?

11 A Yes.

12 Q Don't you find very often that they try
13 to convince you that there is an area which mitigates their
14 responsibility for their acts?

15 A The very sophisticated ones do. The
16 ones who are not so sophisticated or smart don't even
17 understand that they should try to do that in their
18 defense.

19 Q It isn't a natural instinct of any
20 individual to attempt to excuse or explain or justify what
21 he did?

22 A That's a natural human inclination.

23 Q You've explained to us that despite
24 your findings in terms of the defendant's IQ and I think
25 you said his full scale intelligence quotient was 80?

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 A That's correct.

2 Q Which is the 9th percentile of the
3 population, you, nevertheless, emphasized that he is not
4 mentally retarded?

5 A That's correct.

6 Q Does this defendant, in your opinion,
7 have the ability to distinguish between right and wrong?

8 A Yes.

9 Q In your opinion, did he know it was
10 wrong on August the 31st, 1995 to kill Deborah Panos?

11 A That's -- there's a simple answer,
12 which is, of course, he did and then there is the
13 complicated but perhaps better answer that you can know
14 something is wrong, but have very bad control of yourself
15 and do something that's wrong without much control.

16 Q Well, that's a different issue, isn't
17 it?

18 A It's a different issue.

19 Q My question was, in your opinion, did
20 he know on August the 31st, 1995 that it was wrong to kill?

21 A Yes.

22 Q Now, you are suggesting that he may
23 have been prompted by various personality disorders, by
24 being obsessively attached to her, by being paranoid, by
25 his drug dependency to act impulsively?

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 A Yes.

2 Q But he certainly knew the action was
3 wrong?

4 A Yes, he did.

5 Q In your opinion, does he have the
6 capacity to premeditate?

7 A Yes, he can have the capacity to
8 premeditate.

9 Q Mr. Chappell certainly is of sufficient
10 soundness of mind to, for example, sit in the jail and
11 become so angry that he plans on committing a murder; he
12 could do that, couldn't he?

13 A He could.

14 Q And you can't actually climb into his
15 mind to know exactly what he had planned or decided to do
16 before going to her house that day?

17 A That's correct, I can't do that.

18 Q You simply don't actually know what
19 happened?

20 A That's correct.

21 Q You have a certain basis for an opinion
22 that you certainly are an expert in your field and you are
23 offering expert opinions, but it's basically all theory, is
24 it not?

25 A Well, the question you are asking is do

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 I know what happened that day and I believe I previously
2 answered, in my caveat to the jury, that I don't, I wasn't
3 there, I can't read his mind, I have no idea what really
4 transpired that day. All I can do is what a psychologist
5 does is to attempt to explain why he did what he did to the
6 best of my ability.

7 Q As apparently with the defendant's
8 statement, about two hours with you, in attempting to
9 explain what he did -- why he did what he did?

10 A He probably spent 10 minutes or 15
11 minutes trying to explain what he did and rest of the time
12 was spent talking about other aspects of his life.

13 Q Now, as I remember in the account the
14 defendant gave you June the 11th, 1996, he told you that he
15 went to the mobile home and entered through the window?

16 A I believe that's correct.

17 Q Now, at the time he was explaining
18 this, were you aware that it was certainly after his arrest
19 for murder?

20 A Oh, yes.

21 Q Did you know it was after a preliminary
22 hearing had been conducted?

23 A I probably didn't think of it at that
24 moment, but that makes sense.

25 Q The record in this case indicates that

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 the preliminary hearing for this defendant occurred October
2 the 3rd, 1995?

3 A Okay.

4 Q Did you know how many witnesses he
5 heard testify at his preliminary hearing?

6 A No, no, sir, I don't.

7 Q You didn't know that Dr. Sheldon Green,
8 a medical examiner, detailed the cause and manner of death,
9 that William Duffy, Lisa Duran, Russell Lee, Kimberly
10 Sempson, Mike Osuch, and Jimmy Vaccaro all testified at his
11 preliminary hearing?

12 A I didn't know.

13 Q So if he was paying attention, he knew
14 a lot about the evidence which had been arrayed against him
15 when he heard that evidence presented October the 3rd,
16 1995?

17 A That would make sense.

18 Q Were you aware that the State's notice
19 of intent to seek the death penalty was filed in this case
20 on November the 8th, 1995?

21 A I don't know if I ever knew that. I
22 certainly don't recall that at the moment.

23 Q Well, if all of those chronologies in
24 terms of when significant things happened in this case are
25 true, then when the defendant begins to give his version of

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 these offenses on June the 11th, 1996, he's already been
2 arrested, he knows what he's charged with, he's had a
3 preliminary hearing, he knows what the evidence is, and he
4 knows that the State is seeking the death penalty. , now,
5 as you think about this objectively, even with a person of
6 this defendant's background and with his personality, with
7 his IQ, does it not occur to you that there might have been
8 the temptation on his part to justify or perhaps distort,
9 to some extent, what occurred to make himself appear to be
10 in a more favorable light?

11 A That would be perfectly normal to
12 occur.

13 Q Now, you read from your report the
14 description the defendant made about when he had sexual
15 intercourse with her?

16 A Yes, sir.

17 Q And you read his description of the way
18 her anatomy seemed to him and then, as I remember, you read
19 from your report that it wasn't right and I instantly got
20 up?

21 A That's what he stated.

22 Q And that was after he had begun the act
23 of sexual intercourse?

24 A I imagine, yes.

25 Q You are looking at me like I'm --

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 A No, I don't think I paid as much
2 attention to the minutiae and details of how he had sex
3 with her, as you asked me to. I didn't give it much
4 thought.

5 Q I'm not asking for details of it. You
6 read the description, "He entered her vagina and it was all
7 loose?"

8 A Right, that's what he said.

9 Q "It wasn't right," and then he said,
10 "So I instantly got up?"

11 A Yes.

12 Q Did he tell you he ejaculated?

13 A I don't believe he used those words or
14 any other words and I don't believe I asked.

15 Q In fact, he told you that he entered
16 her and it was loose and it wasn't right and he instantly
17 got up, which would suggest, would it not, from his act to
18 you that he did not ejaculate?

19 A It could suggest that.

20 Q Well, if that was his suggestion and,
21 in fact, if he said from the witness stand yesterday in
22 this courtroom that he did not ejaculate, would that
23 further buttress the notion, when he said he instantly got
24 up, that he was telling you that that didn't happen?

25 A I guess what I'm thinking is you are

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 saying this, is that whether he remembered precisely
2 exactly what occurred during the sex act would be of less
3 consequence to me or little consequence to me in contrast
4 to him telling me we had sex, when in fact it never took
5 place or it never happened, I don't expect him to be able
6 to recount that one sexual experience perfectly a year or
7 so later, as I would not expect you to recount a sexual
8 experience you had a year ago with your wife perfectly to
9 me a year later.

10 Q We are not talking about me and my wife
11 just on some day when nothing significant happened. We're
12 talking about an act of which he is telling you occurred
13 within moments of his killing another human being.

14 A I understand.

15 Q Well, the validity of your opinions,
16 many of them seem to be based upon the defendant being
17 cooperative and credible and believable?

18 A Yes.

19 Q And if he told you it happened at
20 nighttime and it happened during the daytime, if -- I'm
21 saying because you had formed the opinion that this
22 happened at night and if he omitted telling you about
23 certain arrests, particularly one where he pulled a knife
24 on his girlfriend and now if he said he didn't ejaculate,
25 if he did, isn't that another example that would tend to

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 suggest maybe he isn't so credible?

2 A It could be. I'm not certain he was
3 the one who said it happened at night. I might have just
4 assumed that at this moment, but to the extent that the
5 evidence in the case is different than his depiction of the
6 evidence in the case, it does take away from his
7 credibility.

8 Q Well, the evidence in this case is that
9 his semen was inside of her. DNA has been done on it and
10 the genetic profile was consistent with him and the
11 frequency of this type of DNA profile being repeated is one
12 in 14 billion. So the evidence conclusively establishes
13 that he did ejaculate.

14 A I believe you.

15 MR. EWING: Your Honor, I'm going to object
16 to the characterization of the evidence. I don't think any
17 expert came in and said there is only semen after
18 ejaculation and that's incumbent upon the State to meet
19 that burden.

20 THE COURT: That's true, but it is a
21 permissible inference and, therefore, it's a proper subject
22 of cross examination. Your objection is overruled.

23 Q (BY MR. HARMON) To the extent each
24 time that this defendant has not engaged in total candor
25 with you during your evaluation, that also makes his

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 credibility to that extent more suspect, isn't it?

2 A That's correct.

3 THE COURT: Mr. Harmon, how much longer do
4 you have?

5 MR. HARMON: Probably about five minutes,
6 your Honor.

7 THE COURT: How much do you have in
8 rebuttal?

9 MR. EWING: Three.

10 THE COURT: All right.

11 Q (BY MR. HARMON) Now you said, Doctor,
12 that you didn't press him for the gruesome details --

13 A That's correct.

14 Q -- of exactly how he killed her?

15 A That's correct.

16 Q But you also are of the opinion that,
17 to some extent, he probably did remember what he did?

18 A Yes.

19 Q Based upon your opinion, if the
20 defendant said yesterday from the witness stand that he
21 does not remember, do you find that statement to be
22 somewhat suspect?

23 A Yes, but not in quite the same way as
24 you mean it in the sense that if -- there is a natural
25 desire to block out from your mind a horrible action such

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 as that, especially a murder, and I think it would be his
2 first basic instinct to kind of say I don't remember much,
3 I don't really know that much, and not to attempt to dig,
4 dig, dig and try to come back with as many memories as
5 possible. But I, on the other hand, believe that some
6 memories exist.

7 Q Isn't it the easy way out simply to
8 deny memory about something that you wish to avoid
9 describing?

10 A Yes.

11 Q Suppose the evidence suggests in this
12 case that, at least he represented to those of us in the
13 courtroom that he had a detailed memory about everything
14 that occurred right up to the moment that he inflicted the
15 fatal injuries upon Deborah Panos and suppose immediately
16 afterward, again, he has detailed memory, but he claims to
17 have only a loss of memory at the time of the murder, would
18 you think that would tend to indicate he is selectively
19 remembering?

20 A Yes.

21 Q Well, is that entirely candid? Is that
22 being cooperative to remember selectively?

23 A No.

24 Q He told you in his account to you that,
25 after he was released from jail, that he went to his old

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 hangout?

2 A Yes.

3 Q And he told you the first thing he did
4 was he drank a couple of beers with the guys?

5 A Yes.

6 Q That seems to be a good memory for
7 detail, if that's correct?

8 A Yes.

9 Q Now, as I remember, you told us a few
10 minutes ago that he found some men's boxers in the mobile
11 home?

12 A Yes, I believe so.

13 Q Did he tell you where he found them?

14 A I don't recall him telling me where he
15 found them. He might have said something.

16 Q Did he tell you that might make him
17 even more suspicious?

18 A I believe so, yes.

19 Q Did he tell you he confronted the
20 victim with the existence of these men's boxer shorts?

21 A I don't recall, but that would make
22 sense.

23 Q Did he tell you that her response was,
24 "It must be Claire or Lisa's friends?"

25 A Yes, I recall now. Yes, that's true.

PATSY K. SMITH, OFFICIAL COURT REPORTER

**PLEADING
CONTINUES
IN NEXT
VOLUME**

77
ORIGINAL

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

FILED IN OPEN COURT
OCT 14 1996 19
LORETTA BOWMAN, CLERK
BY *Loretta Bowman*
Deputy

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

13 **THE STATE OF NEVADA,**

14 **Plaintiff,**

15 **-vs-**

16 **JAMES MONTELL CHAPPELL,**
17 **#1212860**

18 **Defendant(s).**

Case No. C131341
Dept. No. VII
Docket P

19 **ORDER**

20 **TO ENDORSE NAMES ON INFORMATION**

21 Upon Motion of the STATE OF NEVADA, Plaintiff, by and through the Clark County
22 District Attorney, and Notice to Defendant(s) above named by and through Defendant's Counsel,
23 HOWARD BROOKS, DEPUTY PUBLIC DEFENDER, and good cause appearing therefore,

24 **IT IS HEREBY ORDERED** that the Motion is granted and the Clerk of the above entitled
25 Court is hereby directed to endorse upon the Information on file herein the following names:
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10/14/96

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NAME

ADDRESS

WAHL, THOMAS

LVMPD #5019 (LAB)

as prospective witnesses in the prosecution of the within matter.

DATED this 14th day of October, 1996.



DISTRICT JUDGE

STEWART L. BELL
DISTRICT ATTORNEY
Nevada Bar #000477

BY 

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

78.

ORIGINAL

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

FILED IN OPEN COURT
OCT 14 1996 19
LORETTA BOWMAN, CLERK
BY Livia Hurd Deputy

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Case No. C131341
Dept. No. VII
Docket P

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

18 DATE OF HEARING: 10-14-96
19 TIME OF HEARING: 9:00 A.M.

20 TO: Defendant(s) above named, and
21 TO: Your Counsel of Record: HOWARD BROOKS, DEPUTY PUBLIC DEFENDER,
22 YOU, AND EACH OF YOU WILL PLEASE TAKE NOTICE that, on Monday, the 14th day
23 of October, 1996, at the hour of 9:00 o'clock, a.m., or as soon thereafter as Counsel can be heard, in the
24 Courthouse, Las Vegas, Clark County, Nevada, the STATE OF NEVADA will move the Court for leave
25 to endorse upon Information heretofore filed herein the names of the following witnesses:
26 ///
27 ///
28 ///

CE31

ADDRESS

LVMPD #5019 (LAB)

STEWART L. BELL
DISTRICT ATTORNEY
Nevada Bar #000477

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

STATE OF NEVADA)
COUNTY OF CLARK) ss.

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

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

Melvyn T. Harmon
MELVYN T. HARMON

1 **POINTS AND AUTHORITIES IN SUPPORT OF MOTION**

2 **TO ENDORSE NAMES ON INFORMATION**

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

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

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

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

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

20 DATED this 14th day of October, 1996.

21 STEWART L. BELL
22 DISTRICT ATTORNEY
Nevada Bar #000477

23
24 BY Melvin T. Harmon
25 MELVYN T. HARMON
26 Chief Deputy District Attorney
27 Nevada Bar #000862
28

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RECEIPT OF COPY

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

**PUBLIC DEFENDERS OFFICE
ATTORNEY FOR DEFENDANT**

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

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DISTRICT COURT

COUNTY OF CLARK, STATE OF NEVADA

* * * * *

FILED

ORIGINAL ^{Oct 15 11 19 AM '96}

THE STATE OF NEVADA,

Plaintiff,

-vs-

JAMES MONTELL CHAPPELL,

Defendant.

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) Case No. 0431341
) Dept. No. VII
)
)
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)

REPORTER'S TRANSCRIPT

OF

JURY TRIAL, VOLUME V, AFTERNOON SESSION

BEFORE THE HONORABLE A. WILLIAM MAUPIN, DISTRICT JUDGE

Monday, October 14, 1996

2:30 P.M.

APPEARANCES:

For the State:

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: LISA BRENSKE, CCR No. 186

WITNESSES FOR THE DEFENDANT:BRET ROBELLO

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JAMES CHAPPELL

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1 LAS VEGAS, CLARK COUNTY; MONDAY, OCTOBER 14, 1996

2
3 P R O C E E D I N G S
4

5 THE COURT: The record will reflect that we are
6 outside the presence of the jury but still in session. The
7 State of Nevada has rested.

8 At this time pursuant to statute I would ask
9 that Mr. Chappell please stand. Mr. Chappell, Nevada
10 Revised Statute 175.171 provides in its heading and in its
11 text as follows. No special instructions to be given
12 relating exclusively to defendant's testimony.

13 In the trial of all indictments, complaints and
14 other proceedings against persons charged with the
15 commission of crimes or offenses, the person so charged
16 shall, at his own request, but not otherwise, be deemed a
17 competent witness, the credit to be given his testimony
18 being left solely to the jury, under the instructions of the
19 court, but no special instructions shall be given relating
20 exclusively to the testimony of the defendant.

21 Mr. Chappell, Nevada Revised Statute 175.181
22 provides in its heading and in its text as follows:
23 Instruction not to be given relative to the failure of
24 defendant to testify.

25 Subsection 1. No instruction shall be given

1 relative to the failure of the person charged with the
2 commission of crime or offense to testify, except, upon the
3 request of the person so charged, the court shall instruct
4 the jury that, in accordance with a right guaranteed by the
5 constitution, no person can be compelled, in a criminal
6 action, to be a witness against themselves.

7 Subsection 2. Nothing herein contained shall
8 be construed as compelling any such person to testify.

9 Mr. Chappell, you have the right under the
10 Constitution of the United States of America and under the
11 Constitution of the State of Nevada not to be compelled to
12 testify in this case. Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: You may if you wish give up this
15 right and take the witness stand and testify. If you do,
16 you will be subject to cross-examination by the district
17 attorney and anything that you may say, be it on direct or
18 cross-examination, will be the subject of fair comment when
19 the district attorney speaks to the jury in his or her final
20 argument. Do you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: If you choose not to testify, the
23 court will not permit the district attorney to make any
24 comments to the jury concerning the fact that you have not
25 testified. Do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: If you elect not to testify, the
3 court will instruct the jury only if your attorney
4 specifically requests, as follows:

5 Quote: "The law does not compel a defendant in
6 a criminal case to take the stand and testify and no
7 presumption may be raised and no inference of any kind may
8 be drawn from the failure of a defendant to testify."

9 Do you have any questions you would like to ask
10 at this time about these rights?

11 THE DEFENDANT: No, sir.

12 THE COURT: It is my understanding, Mr. Brooks,
13 that the decision has been made that Mr. Chappell will
14 testify in his case in chief.

15 MR. BROOKS: That is correct, Your Honor.

16 THE COURT: Mr. Chappell, you've had an
17 opportunity to discuss this with your attorney and it is
18 your wish to do so?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And you've done this with full,
21 open and comprehensive interaction with your counsel?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: With that we'll bring the jury back
24 in.

25 (Jury entered courtroom.)

1 THE COURT: Will counsel stipulate to the
2 presence of the jury?

3 MR. HARMON: Yes, Your Honor.

4 MR. BROOKS: Defense will, Your Honor.

5 THE COURT: At this time the defense may put on
6 its case in chief.

7 MR. BROOKS: Your Honor, the defense would call
8 Bret Robello.

9
10 BRET ROBELLO,
11 called as a witness by the Defendant, having been first duly
12 sworn, was examined and testified as follows:

13
14 DIRECT EXAMINATION

15 BY MR. BROOKS:

16 Q Mr. Robello, could you please state your name
17 and spell your name for the record.

18 A Bret Robello, R-o-b-e-l-l-o, first name
19 B-r-e-t.

20 Q What do you do, Mr. Robello?

21 A I am currently a nurse and a paramedic.

22 Q And who are you employed by?

23 A I'm an agency nurse contracted to Sunrise
24 Hospital and I'm a jail nurse at the North Las Vegas
25 Detention Center.

1 1 Q What is your home address?

2 A 839 North Lamb Boulevard, space 126.

3 Q Is that a trailer?

4 A Yes, it is.

5 Q And is that in the Balerina Sunrise Mobile Home

6 Park?

7 A Yes, sir.

8 Q Do you recognize Mr. Chappell sitting over at

9 the defense table there?

10 A Yes, sir, I do.

11 Q How would you know Mr. Chappell?

12 A He was my neighbor for -- actually I don't

13 recall how long it was, but he lived in space number 127 I

14 believe.

15 Q Would that be right next to your trailer?

16 A Yes, sir.

17 Q How long have you lived in the Balerina Sunrise

18 Mobile Home Park?

19 A May 5th will be five years.

20 Q So you were there before he ever moved in?

21 A Yes, sir.

22 Q I am going to show you State's Exhibit 66. Do

23 you recognize this individual?

24 A Yes, I do.

2 25 Q Who would this person be, if you know?

2 1 A First name was Debbie, I believe Panos was the
2 last name.

3 Q And did she live in the trailer with James?

4 A Yes, sir.

5 Q Next door to you?

6 A Yes, sir.

7 Q Who else lived in that trailer during the time
8 that they lived there, if you know?

9 A When Mr. Chappell lived there, I believe the
10 only other people were their children, three young children.

11 Q And when Mr. Chappell did not live there who
12 lived there?

13 A It's real hard to say there was so many people
14 in and out of there. Three or four couples that I recall
15 staying there.

16 Q Did you ever get a chance to meet any of these
17 couples?

18 A Not on a personal level. They would argue and
19 fight quite often and we would hear them in the driveway
20 making up, fighting, making up, fighting intermittently.

21 Q Did you ever get a chance to socialize with
22 these people?

23 A No, sir.

24 Q Did you ever get a chance to go inside James
25 Chappell's trailer?

2 1 A Briefly, yes, sir.

2 Q Why did you go inside their trailer?

3 A One morning their young daughter had gotten out
4 of the house somehow for some reason and I guess she had
5 gotten lost. Since the trailers kind of resemble each other
6 she was trying to get in our trailer probably thinking it
7 was her house. She was kind of crying so I picked her up
8 and took her over to their house and brought her in. I just
9 came in the front a little bit enough to see the kitchen
10 area and a little bit of the dining room.

11 Q What was the state of the housekeeping that you
12 saw?

13 A The house looked in a messy condition.

14 Q Consistent with someone who has three kids?

15 A Yes, sir.

16 Q Someone who probably doesn't have a maid?

17 A Most definitely.

18 MR. BROOKS: We'll pass the witness, Your
19 Honor.

20 THE COURT: Cross?

21 MR. HARMON: Thank you, Judge.

22

23 CROSS-EXAMINATION

24 BY MR. HARMON:

25 Q How did you spell your last name, sir?

2

1 A R-o-b-e-l-l-o.

2 Q Did you say you still lived in the Balerina
3 Mobile Home Park?

4 A Yes, sir.

5 Q You have referred in your testimony to a period
6 of time when the defendant Mr. Chappell was, what, your next
7 door neighbor?

8 A Yes, sir.

9 Q What time period was that?

10 A I left for California for the police academy on
11 August 22nd of the year it happened. So I would say
12 probably possibly three to four months prior to that at
13 most. I'm really not -- I can tell you up until August
14 22nd -- from the day they moved in until August 22nd when we
15 left for California for the police academy the incident in
16 question happened while I was at the academy. I didn't
17 graduate until December 15th.

18 Q Are you talking about the calendar year 1995?

19 A Yes, sir.

20 Q Were you living in the park when Deborah Panos
21 and the defendant and the children moved in?

22 A Yes, sir.

23 Q So to your knowledge how long before your
24 leaving for the police academy in California was it that Mr.
25 Chappell had not lived next door?

2 1 A An honest answer is I really don't recall, sir.
2 2 Several months at least.

3 3 Q And you're saying you left town on August the
4 4 22nd, 1995?

5 5 A Yes, sir.

6 6 Q Now, I take it during this several month period
7 7 where the defendant was not there that there seemed to be
8 8 several couples that you associated with the next door
9 9 residence?

10 A We didn't associate with them. They were just
11 11 frequently there.

12 Q No, I'm saying that you associated with.

13 A With the home, yes, sir.

14 Q Did you meet any of those persons?

15 A No, sir. Several times the police were called
16 16 out there and one night we came home and there was a
17 17 policeman crouched in the corner of our house with his gun
18 18 at his side kind of moving slowly towards the residence.
19 19 This was after Mr. Chappell had left the residence. Law
20 20 enforcement was called out there several times that I
21 21 recall.

22 Q Do you know anything about those circumstances?

23 A No, sir, I had no idea at that particular
24 24 moment while we were there. There were instances where we
25 25 were going to call but we never did because we didn't want

2 1 problems with all the couples staying over there.

2 Q What do you mean going to call, because of
3 noise?

4 A Loud music, arguing. Mainly the loud music.

5 Q Now, you mentioned if I understood your
6 testimony correctly that when Mr. Chappell was living there
7 you became aware of fighting which was going on between he
8 and Miss Panos?

9 A I don't recall any fighting between him and
10 her. The fighting -- the arguing I'm talking about is
11 between the couples that were staying in the residence after
12 the defendant was gone. I don't recall the two of them ever
13 having any major problems.

14 Q I misunderstood your testimony. Were you
15 living at the Balerina Mobile Home Park on January the 9th,
16 1995?

17 A Yes, sir.

18 Q Would Mr. Chappell have been living there with
19 Miss Panos on that date?

20 A I don't recall the exact date they moved in,
21 sir. I know when they moved in they all appeared to move in
22 together. I don't remember the date.

23 Q But if you were there and if they were there on
24 January the 9th, 1995 you don't recall any fighting going
25 on?

3

1 A Not between the two of them.

2 Q Were the police summoned on that day?

3 A The only times I remember the police being
4 summoned to that residence were after he was gone. I
5 remember --

6 Q Well, my question is do you remember the police
7 being summoned to the Balerina Mobile Home Park to the
8 residence of Miss Panos on January the 9th, 1995?

9 A No, sir, I do not.

10 Q You were unaware that she suffered injury at
11 the hands of the defendant?

12 A No, sir.

13 Q You didn't know that she was transported to the
14 hospital?

15 A No, sir.

16 Q You didn't realize she suffered a broken nose,
17 sir?

18 A No.

19 MR. BROOKS: I am going to object. Obviously
20 if he didn't know any of those events, he didn't know
21 anything that flows from that as well.

22 THE COURT: The objection is overruled.

23 THE WITNESS: The answer I can give --

24 BY MR. HARMON:

25 Q You have answered. You were unaware of any of

3

1 this?

2 A Until earlier today when my wife mentioned it I
3 was unaware of it.

4 Q You were still living as a next door neighbor
5 to Miss Panos on June the 1st, 1995?

6 A Yes, I was.

7 Q Were you aware of any type of disturbance
8 involving Mr. Chappell the defendant and Miss Panos on that
9 date?

10 A No, sir.

11 Q You didn't know the police came out?

12 A No, sir.

13 Q Were you aware the defendant was arrested on
14 that day?

15 A I had heard he had been arrested but I don't
16 know the date and I don't know the circumstances. I just --
17 we had received some mail to our residence from him because
18 my wife's name is Debbie and the mail had messed up. I
19 believe it had the jail address on the envelope. That's
20 when I found out he was incarcerated. Prior to that I had
21 no knowledge.

22 Q Is it your testimony you went inside the Panos
23 residence on one occasion?

24 A Yes, sir. Just in the immediate kitchen area
25 and I could see part of the dining room. And it was just to

3

1 return their daughter.

2 Q So you're saying that the room you went into
3 was the kitchen but you could see into a portion of the rest
4 of the mobile home?

5 A Just the dining room, yes, sir.

6 Q When was that?

7 A It was probably within a three to four week
8 period of them moving there, maybe a little bit less.

9 Q But you don't know when that was?

10 A No, sir. It was shortly after when they first
11 moved in. That's all I can testify to.

12 Q You don't know if it was late 1994 then or
13 early 1995?

14 A No, sir. I have no recollection of the date or
15 approximate date.

16 Q You went in on one occasion, you formed some
17 type of opinion about how well kept the home was at that
18 time?

19 A I suppose I formed an opinion, but it wasn't
20 something that I spent a lot of time thinking about.

21 Q But you don't know how the house looked after
22 that, do you?

23 A Absolutely not.

24 MR. HARMON: Thank you. That's all I have.

25

REDIRECT EXAMINATION

BY MR. BROOKS:

Q Mr. Robello, Mr. Harmon has asked about why you might know or asked whether or not you knew of these police coming to this residence. You weren't home 24 hours a day on January 9th, were you?

A No, sir. I work anywhere from an eight to a 50 hour shift straight through sometimes if there's a call-in. I'll be 58, 60 hours.

Q So it would not be unusual for the police to come and you not be aware of it next door?

A No, sir.

Q And the same would go for June 1st, 1995?

A Yes, sir.

MR. BROOKS: No further questions.

MR. HARMON: Nothing further.

THE COURT: May this witness be discharged?

MR. HARMON: Yes.

MR. BROOKS: Yes.

THE COURT: Call your next witness.

MR. BROOKS: Judge, we are going to call James Chappell at this time.

JAMES CHAPPELL,

called as a witness by the Defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BROOKS:

Q James, could you state your name for the record and spell your name, please.

A James Chappell, C-h-a-p-p-e-l-l.

Q James, where are you from originally?

A Lansing, Michigan.

Q Did you grow up in Lansing, Michigan?

A Yes, sir.

Q Where did you meet Deborah Panos?

A J. W. Sexton High School.

Q You were a student there?

A Yes, sir.

Q Was she a student there?

A Yes, sir.

Q How old were you when you met her?

A Sixteen.

Q What happened when you all met?

A We had about a five minute conversation. She gave me her phone number and that was it the first time we seen each other.

4 1 Q What do you mean that was it?

2 A The bill had rang for us to go to class so we

3 couldn't talk for that long.

4 Q Did you all become involved with each other?

5 A Yes, sir.

6 Q Did you become lovers?

7 A Yes, sir.

8 Q And you subsequently had children with her?

9 A Yes, sir.

10 Q When did you all have your first child?

11 A April 23rd, 1988.

12 Q What was the name of that child?

13 A James Monte Panos.

14 Q Where was that child born?

15 A Sparow Hospital in Lansing, Michigan.

16 Q Were you and Deborah living together at that

17 time?

18 A Not when she was pregnant and had the child,

19 no.

20 Q Did you love her at that time?

21 A Yes, sir.

22 Q Did she love you?

23 A Yes, sir.

24 Q She was a white person, correct?

25 A Yes, sir.

4 1 Q And you're black?

2 A Yes.

3 Q How did her family react to your relationship

4 with her?

5 A They hated it.

6 Q Did they hate the relationship or did they hate

7 you or both?

8 A Both.

9 Q Did you ever get along with them when they were

10 in Lansing?

11 A Never.

12 Q Did you have much contact with her parents

13 there in Lansing?

14 A We came in contact a couple of times.

15 Q What kind of contact would you have with her

16 parents?

17 A They caught me in their house.

18 Q What were you doing in their house?

19 A Staying the night with Debbie.

20 Q Did Debbie want you to spend the night with

21 her?

22 A Yes, sir.

23 Q And you wanted to spend the night with her?

24 A Yes.

25 Q Did you graduate from high school in Lansing?

4

1 A No, I did not.

2 Q What happened to your education?

3 A I got suspended a couple of times and my
4 grandmother took me out of there. And made me go to adult
5 education.

6 Q Did you ever end up finishing high school or
7 getting a GED?

8 A No.

9 Q What were your plans in terms of a job?

10 A I had many jobs in Michigan.

11 Q What kind of jobs did you have?

12 A Most of them were restaurant jobs. I had a
13 janitorial job at the high school at one time.

14 Q What kind of restaurant work did you do?

15 A Would you like me to name the restaurants?

16 Q If you can.

17 A I worked at Taco Bell, Ponderosa Steakhouse, I
18 worked in the cafeteria at the adult education high school,
19 a restaurant called Cupies, a restaurant called Chetters.

20 Q These are all in Lansing?

21 A Burger King.

22 Q These are all in Lansing?

23 A Yes, sir.

24 Q Did you have any trouble keeping your work at
25 these places?

4 1 A Yeah, I had some problems.

2 Q How come you had a problem keeping your jobs?

3 A I guess it was the friends I was hanging

4 around.

5 Q What kind of friends did you have?

6 A Most of them were drug dealers.

7 Q Were you using drugs during those times

8 yourself?

9 A Yes, sir.

10 Q How about Deborah, was she using drugs?

11 A She said she tried marijuana once, but she

12 didn't like it and I've never ever seen her do no drugs.

13 Q Did she know that you were using drugs?

14 A Yes, she did.

15 Q Did her family know that you were doing drugs?

16 A I don't think in Michigan I don't think they

17 knew that.

18 Q Now, her parents both her mother and father

19 lived in Lansing; is that right?

20 A Yes, sir.

21 Q And there came a time when her parents moved

22 away?

23 A Yes.

24 Q Where did her parents move to?

25 A Tucson, Arizona.

4 1 Q What did Debbie do, Deborah Panos do when they
2 moved off to Arizona?

3 A She stayed with me because they wouldn't let
4 her keep the child, they said if she didn't give up the
5 child for adoption she couldn't live with them.

6 Q Did they stick with that position or not?

7 A For a couple of months.

8 Q Then what happened?

9 A They sent for her to come to Arizona.

10 Q And did she go to Arizona?

11 A Yes, sir.

12 Q Do you recall when she went to Arizona
13 approximately?

14 A J.P. was an infant so about two months. He was
15 about two months old so it was about June of '98 -- '88 I
16 mean.

17 Q How did you feel about her going to Arizona
18 with your son?

19 A Pardon me?

20 Q How did you feel about her going to Arizona
21 with your son?

22 A I was extremely hurt, but I wanted the best for
23 her and him so I knew they would be all right out there with
24 her mother.

25 Q She moved to Tucson. Did she keep in touch

4 1 with you and when I say she I mean Deborah Panos?
5

2 A She had to sneak around. They put a lock on
3 the mailbox.

4 Q What do you mean they put a lock on the
5 mailbox?

6 A She couldn't go to the mailbox, get the mail
7 out. They were always around her when she tried to do
8 something.

9 Q Could she talk to you on the telephone?

10 A She would go to the mall and she would sneak
11 away from them while they were in the store and she would
12 call me from the mall.

13 Q Would you ever call her at her house?

14 A No.

15 Q How come?

16 A She wouldn't give me the number.

17 Q Do you think she didn't want you calling there
18 when her parents were there?

19 A Exactly, yes, sir.

20 Q There came a time when you went down to Tucson
21 and stayed with Debbie; is that right?

22 A Yes.

23 Q Describe how that happened.

24 A Her mother and her stepfather took our two
25 children. Anthony was born and she came back to me after

5 1 she had went out to Arizona the first time and she got
2 2 pregnant back there and when she went back, her mom and her
3 3 stepfather drove from Arizona to Michigan with the two
4 4 children and she sent for me to come out there.

5 Q So her parents weren't home?

6 A No.

7 Q How long were they gone from the house where
8 Deborah lived?

9 A They were gone for like two months.

10 Q And you went out and stayed in that house while
11 they were gone?

12 A Yes, sir.

13 Q How did you get to Tucson?

14 A Plane.

15 Q Who paid for the ticket?

16 A Deborah Panos.

17 Q Where did you fly out from?

18 A Detroit.

19 Q Do you recall the airline?

20 A Southwest Airlines.

21 Q Where did you fly to?

22 A Phoenix, Arizona.

23 Q How did you get from Phoenix to Tucson?

24 A A shuttle bus.

25 Q So you stayed in the Panoses' home in Tucson?

5 1 A Yes, sir.

2 Q How long did that go on?

3 A For about two months.

4 Q Did there come a time when you all had a second

5 child?

6 A She had Anthony in Tucson.

7 Q And I apologize but did Deborah previously come

8 back and visit you in Michigan?

9 A Yes, she did.

10 Q Is that when she got pregnant with your second

11 child?

12 A Yes, sir.

13 Q And I'm sorry, when was your second child born?

14 A February 15th, 1990.

15 Q And that child's name?

16 A Anthony Michael Panos.

17 Q So you're staying in the house with Deborah and

18 neither of your two kids are there; is that correct?

19 A No, sir.

20 Q Where are the two kids?

21 A Her mom and her stepdad were on their way back

22 to Michigan with them. They traveled with the two children.

23 Q Were you intending to stay in Tucson with

24 Deborah at this time or not?

25 A Yes, sir.

5 1 Q What did you guys do when her parents returned?

2 A She had gotten me a furnished studio apartment

3 before they arrived.

4 Q And is that where you started living?

5 A Yes, sir.

6 Q Did you get any kind of job?

7 A Yes, sir.

8 Q Where did you work?

9 A I worked at Smugglers in the hotel.

10 Q What did you do there?

11 A I was a dishwasher and a busser.

12 Q How long did you keep that job?

13 A About four months.

14 Q And why did you lose that job?

15 A Because James, Jr. told his grandmother that I

16 was out there and she kicked Debbie out and Debbie came to

17 stay with me at the studio and a neighbor downstairs told

18 the office that there was a whole entire family in the

19 studio so we had to get a two bedroom apartment. And

20 Debbie's job was better than mine so I had to stay home and

21 watch the children.

22 Q Where was she working at that time?

23 A The Census Bureau.

24 Q Helping to take the census?

25 A Yes, sir.

5

1 Q Now, there came a time when you left her,
2 didn't you, and went back to Michigan?

3 A Yes, sir.

4 Q Why did you leave?

5 A Because her mother and her stepfather.

6 Q What do you mean by that?

7 A They were always in our business.

8 Q Had you still not reconciled with them?

9 A No.

10 Q Did you ever go over and socialize with them?

11 A They wouldn't allow Debbie to show me where
12 they lived and I never even tried to find out where they
13 lived.

14 Q But you had stayed out there, didn't you?

15 A They had moved after they came back. They
16 moved to a different home.

17 Q So you eventually went back to Michigan?

18 A Yes, sir.

19 Q And when you went back to Michigan how did you
20 get there?

21 A Plane.

22 Q How did you afford that?

23 A Deborah paid for it.

24 Q Why is it that Deborah keeps paying for things?

25 A She would always say she was going to do it and

5 1 I didn't argue with her. I didn't argue with her and try to
2 2 change her mind.

3 Q Did you go back to Tucson after awhile in
4 4 Michigan?

6 5 A Yes, sir.

6 6 Q Do you recall when you went back there?

7 7 A It was in '91 sometime.

8 8 Q And this time why did you go back there?

9 9 A Because Debbie had begged me to come back
10 10 there.

11 11 Q You guys were keeping in touch still?

12 12 A Yes, sir.

13 13 Q How were you keeping in touch?

14 14 A She had her own place where she could call any
15 15 time she wanted to. She called a lot. We'd talk a lot.

16 16 Q Were you glad that she was keeping the
17 17 relationship alive?

18 18 A Yes, sir. Very much.

19 19 Q When you went back what happened?

20 20 A I got a job.

21 21 Q Where at?

22 22 A Poncho's Mexican buffet.

23 23 Q What were you doing there?

24 24 A Prep cooking.

25 25 Q What was your plan now that you were back in

6

1 Tucson again?

2 A To be with my woman and my children and get
3 married.

4 Q And how come you didn't get married?

5 A Because we planned on getting married in Las
6 Vegas.

7 Q That was a long term plan?

8 A Yes, sir.

9 Q Could you afford to just come up there to Las
10 Vegas and get married?

11 A Not at that time.

12 Q Were you planning on staying in Tucson now
13 permanently or not?

14 A Yes, sir.

15 Q And did you get Deborah pregnant again?

16 A Yes, sir.

17 Q When did she have her third child?

18 A June 26th, 1992.

19 Q And which child was this?

20 A Shauntel Lautrice Panos.

21 Q Had her parents become more accepting of your
22 relationship with their daughter after three children?

23 A I remember calling her mother after the baby.
24 I watched her have the baby. She was the only one I seen
25 come out. I called her mother and we talked for a little

6

1 while. Her mom came around after that.

2 THE COURT: Mr. Brooks, I am going to have to
3 interrupt you at this point. I need to take a recess in
4 order to swear in a couple of new attorneys that need to
5 have their oaths taken so they can proceed with their
6 careers.

7 Ladies and gentlemen, during the recess it is
8 your duty not to converse among yourselves or with anyone
9 connected with the trial, or read, watch or listen to any
10 report of or commentary on the trial by any medium of
11 information including, without limitation, newspaper,
12 television and radio, and you are not to form or express any
13 opinion on any subject connected with this case until it is
14 finally submitted to you.

15 Twenty-five minutes after the hour we'll
16 reconvene. We will be in recess while the jury departs the
17 confines of the courtroom.

18 (Recess.)

19 THE COURT: Counsel stipulate to the presence
20 of the jury?

21 MR. HARMON: Yes, Your Honor.

22 MR. BROOKS: Defense will, Your Honor.

23 THE COURT: You may recommence your direct
24 examination of Mr. Chappell.

25

6

1 BY MR. BROOKS:

2 Q James, I think we have you in Tucson right now.
3 You've had your third child with Deborah and you're living
4 with her there; is that right?

5 A Yes, sir.

6 Q Now, we heard a lot of testimony during this
7 trial about your job situation. You testified you had some
8 jobs. Did you have jobs in Tucson during this period of
9 time?

10 A Seven exactly, sir.

11 Q Seven different jobs?

12 A Yes, sir.

13 Q Why so many different jobs?

14 A Some because of our babysitting situation, some
15 because they gave me a lousy raise and a couple I just
16 didn't like.

17 Q Was Deborah working during this time?

18 A Yes, sir.

19 Q Did Deborah pretty much always have a job?

20 A Yes, sir.

21 Q Was she the one that always brought in the
22 money other than yourself?

23 A Yes, sir.

24 Q Were you using drugs while you were in Tucson?

25 A Yes, sir.

6

1 Q Were you doing drugs more when you were in
2 Michigan or about the same?

3 A I'd say about the same, sir.

4 Q You testified that you smoked I think it was
5 marijuana in Michigan; is that correct?

6 A Yes, sir.

7 Q Had you been doing cocaine in Michigan?

8 A I did it a couple times, yes.

9 Q Did you start doing cocaine in Tucson?

10 A No. I did it in Michigan first.

11 Q But did you do it in Tucson also?

12 A Yes, sir.

13 Q Did this interfere much with your work?

14 A No.

15 Q You never lost a job because of your drug
16 problems?

17 A No.

18 Q We heard testimony during the State's case
19 regarding a battery in Tucson where you and Deborah were
20 living in a trailer and she went to either 7-Eleven or
21 Circle K or something and told them that she had been beaten
22 up and the police came and arrested you. Did that happen?

23 A Yes, sir.

24 Q Why did it happen?

25 A Because I had returned a dresser that she had

6 1 bought. I returned it back to the store.
7

2 Q And why did you do that?

3 A Because I needed money at the time.

4 Q What did you need money for?

5 A For some drugs.

6 Q And she got mad at you?

7 A Yes.

8 Q And you reacted by hitting her?

9 A We argued for a little while and she said a
10 couple things that made me upset.

11 Q How do you feel about the fact that you hit
12 her?

13 A Extremely bad.

14 Q You guys eventually decided to leave Tucson and
15 move to Las Vegas?

16 A Yes, sir.

17 Q Now, somebody says that she came to Las Vegas
18 and you followed her to Las Vegas; is that true or false?

19 A No, sir.

20 Q How did you guys wind up coming to Las Vegas?

21 A We came and visited first for a week, me, her
22 and Shauntel stayed at Circus Circus and we both looked for
23 a job, we both looked for a home together.

24 Q Did you all find a place to stay?

25 A Yes, sir.

7

1 Q And where did you find a place?

2 A 839 North Lamb, space 125.

3 Q When did you all actually move to Las Vegas?

4 A If I'm not mistaken it was October 1st exactly.

5 Q Of what year?

6 A Of 1994, sir.

7 Q Did you all come up here at the same time?

8 A Yes, sir.

9 Q How did you come up here?

10 A We flew out of Tucson on Reno Air.

11 Q And you flew directly to Las Vegas?

12 A Yes, sir.

13 Q Did you have a car at that time?

14 A Yes, sir.

15 Q Where was the car?

16 A We had a couple drive our U-Haul and the car
17 was on the back of it. They drove it from Arizona to Las
18 Vegas. They were supposed to meet us here.

19 Q Why did you all move to Las Vegas from Tucson?

20 A One reason was because her job they started
21 getting in our private lives trying to control her, private
22 life, and she was upset about that and her mother is the one
23 that suggested coming to Las Vegas.

24 Q Do you know why Las Vegas was mentioned?

25 A We had two choices, Las Vegas or Lansing,

7

1 Michigan.

2 Q And why Las Vegas?

3 A Her mother talked her into coming to Las Vegas.
4 It was more of her mother's decision than it was hers.

5 Q I am going to show you a photograph the State
6 introduced as State's Exhibit No. 1. It shows the trailer
7 where Deborah died. Is that the trailer that you and she
8 lived together in?

9 A Yes, sir.

10 Q Was that your home in Las Vegas?

11 A Yes, sir.

12 Q Is that where you lived from roughly
13 October 1st of '94 until the time that she died except for
14 the times you were in jail?

15 A Yes, sir.

16 Q Did you find work in Las Vegas?

17 A Yes, sir.

18 Q Where did you work?

19 A Ethel M Chocolate Factory.

20 Q Where is that?

21 A It's out there around Sunset.

22 Q How long did you work out there?

23 A About a month and a half.

24 Q How come you lost that job?

25 A Because day-care had cost too much when we

7 1 first got here and Debbie was working two jobs and I told
2 her I would stay home with the kids. I called them three
3 times and they terminated me.

4 Q They fired you?

5 A Yes, sir.

6 Q Did you start doing drugs here in Las Vegas?

7 A Yes, sir.

8 Q Did you start hanging out at the Vera Johnson
9 projects doing drugs there?

10 A Yes, sir.

11 Q Did that interfere with your ability to be a
12 good father?

13 A No, it did not.

14 Q Did it interfere much with your relationship
15 with Deborah?

16 A I'm sure it did close to the end, but not at
17 the beginning when we got here.

18 Q Going back for just a second Dina Freeman
19 testified about this phone conversation while you were still
20 living in Arizona where she's got you saying in the
21 background to Deborah I'm going to do an O.J. Simpson on
22 your ass. Did you ever say that?

23 A Honestly, no, I did not say that.

24 Q Did you ever threaten her in front of Dina
25 Freeman or on the telephone?

7 1 A Never. Never. Never.

2 Q Did you ever talk about O.J. Simpson in front
3 of Dina?

4 A No, sir, I did not.

5 Q So she's not telling the truth when she
6 testified to that?

7 A No. She lied under oath, sir.

8 Q You heard testimony regarding Deborah receiving
9 a broken nose on January 9th, 1995 here in Las Vegas. Tell
10 us what happened there.

11 A We were both in the dining room. I forgot what
12 we were talking about, but we were talking about doing
13 something together and we got in an argument over something,
14 I'm not sure exactly what it was, and she had went and laid
15 down on the couch and I was talking to her as she was laying
16 down and she said something back to me, something smart, I
17 don't remember her exact words, but I took a cup, it was
18 like one of those thermal coffee cups and I threw it and it
19 came over the top of her head and it hit her right here.
20 And she got up and she ran to the bathroom. I ran in there
21 after her. She was covering her face. She said I think my
22 nose is broke. I said let me see. She removed her hands
23 and she had a gash right here.

24 Q Are you indicating the side of your nose?

25 A Yes, right here.

8

1 Q Was she bloody?

2 A It wasn't coming out at that time. It was
3 open, but when I looked at it, it looked like it was just a
4 piece of meat right here. You could see in the inside. No
5 blood was gushing out at that time.

6 Q Who called 911?

7 A I did, sir.

8 Q Now, the medical records that were introduced
9 by the State into evidence included a remark my Deborah
10 Panos that said she had been beaten before but never like
11 this. How do you respond to that?

12 A I couldn't picture her saying that. I threw a
13 cup, that's all I did, I did not try to hit her in the face.
14 It accidentally hit her in her nose and broke her nose. I'm
15 sorry, but there's nothing I could do about it. I called
16 911 and got the ambulance there, the police came and they
17 slammed me all over the place, took me to jail in front of
18 my children in my boxers and my socks. They weren't even
19 listening to me. They thought I was lying. I showed them
20 the cup.

21 Q James, you have another allegation that you
22 attacked her on June 1st of 1995 and you were arrested again
23 for domestic battery. What happened that time?

24 A Well, Deborah had been gone all day the
25 previous day before that and she went to work the next day

8 1 and after she got off work she went somewhere else. So I
2 didn't see her for a long time. And when she came home
3 another friend arrived. I guess they were talking about
4 doing something else. We started arguing and we went in the
5 bedroom and I pinned her down and I showed her a knife and
6 when I realized that doing that wasn't going to get nothing
7 out of her, I got rid of it. Claire knocked on the door.

8 Q Who is Claire?

9 A One of her so-called friends from Arizona.

10 Q Was she living with you?

11 A Yes.

12 Q How long did she live there?

13 A I'd say approximately two months, sir.

14 Q Go ahead, I'm sorry.

15 A I let Debbie up, she went outside with both
16 Claire and her other friend that was there and then I went
17 outside and then the cops pulled up. And I went to jail.

18 Q Did you plead guilty to domestic battery in
19 that case eventually?

20 A Yes, sir.

21 Q That was June 1st of '95. How much of the
22 summer did you spend in jail?

23 A Could I just tell you the first time I went to
24 jail when I got out when I went back?

25 Q Sure, if you want to.

8 1 A First time I went to jail was February 28th,
2 1995, stayed in jail till May 10th. Debbie came and picked
3 me up, took me home. When I got out, there was two friends
4 living there.

5 Q When you say two friends, you mean male friends
6 or female friends?

7 A Female friends.

8 I went back to jail for that domestic violence
9 on June 1st, 1995, got out June 7th. Claire came and picked
10 me up, took me back home and we were back together.

11 Then I went back to jail June 26th on
12 Shauntel's birthday, her third birthday.

13 Q And when did you get out of jail that time?

14 A I didn't get out of jail until August 31st.

15 Q Now, from that summer let's say June 26th when
16 you got arrested until the time you got released on August
17 31st did Deborah accept your phone calls?

18 A Yes, sir.

19 Q How often would you call her approximately if
20 you can remember?

21 A Sometimes a couple times a day.

22 Q Did she ever tell you this relationship was
23 over?

24 A Never. Never.

25 Q Did anybody else ever tell you the relationship

8

1 was over?

2 A No, sir.

3 Q Did you ever call that trailer and get mad
4 because of who answered the phone?

5 A Yes, sir.

6 Q What was going on?

7 A There was numerous different women answering
8 the phone. Sometimes the children would pick up the phone,
9 knock it over and the phone would just be sitting on the
10 floor and I could hear stuff in the background.

11 Q What would you hear?

12 A Music, people, voices. Another time there was
13 men answering the phone.

14 Q Did you know these men?

15 A Absolutely not.

16 Q Did that make you mad?

17 A Yes, it did.

18 Q Why did it make you mad?

19 A Because when we moved here Debbie had told me
20 that I couldn't answer the phone because her mother would
21 get upset about it. I gave her that respect. And then I
22 turn around and go to jail and there's all kinds of people I
23 don't even know answering our phone, hanging up on me.

24 Q How did you feel about the idea of other men
25 being in the trailer when you called your home?

9

9

1 A I was stunned, hurt, afraid.

2 Q What were you afraid of?

3 A My children.

4 Q What were you afraid of about your children?

5 A We had numerous babysitters in Arizona that
6 wouldn't feed our kids sometimes. Some even hit them.

7 Q You say that you would talk to Deborah on the
8 telephone. Did she ever come visit you that summer in jail?

9 A Between June 26th and August 31st? Was that
10 what you're talking about?

11 Q Yes, sir.

12 A No, she didn't.

13 Q Do you know why she didn't come visit you?

14 A No. Because she told me on the phone she was
15 going to come many times. I knew something had to be going
16 on at that house, but I didn't know what was going on.

17 Q Did you think she was messing around with other
18 men?

19 A I sensed it but I didn't know for sure so I
20 couldn't keep throwing it in her face when I was talking to
21 her. I asked her straight out if you're dating somebody,
22 let me know. She said no, I'm not dating nobody, I'm not
23 seeing nobody, I don't want nobody else. That was her exact
24 words to me.

25 Q Now, in the State's opening statement they

9 1 talked about some letters you sent to her from jail. Did
2 2 you send her letters from jail?

3 A Many.

4 Q And the State referred to things that you said
5 5 in those letters. What kinds of things did you say to her?

6 A I asked her how she was doing, how the kids
7 7 were doing. I told her I loved her, I missed her, I told
8 8 her she meant the world to me.

9 Q Were those things true?

10 A Yes, sir, very much.

11 Q Did you also say degrading things to her in
12 12 those letters?

13 A Like the last two letters I put some bad words
14 14 in there.

15 Q Did you call her a slut?

16 A I told her if she was out there messing
17 17 around --

18 Q James, did you call her a slut?

19 A Yes, I did.

20 Q Did you call her a whore?

21 A I wrote that, yes.

22 Q Did you ask her questions like are you easy?

23 A Yes.

24 Q Why did you say these things to her?

25 A Because so many things were happening while I

9 1 was in jail, I was very depressed, upset, lonely, hurt,
2 2 devastated. She once told me on the phone that she would
3 3 never abandon me in Las Vegas.

4 Q James, did you see her on August 30th, 1995?

5 A Yes, sir.

6 Q Where did you see her?

7 A At the city courthouse.

8 Q Did she come to your court appearance that day?

9 A Yes, sir.

10 Q Did she testify against you?

11 A No, sir.

12 Q Did you plead guilty that day to domestic
13 battery?

14 A Yes, sir.

15 Q Did you know on August 30th or August 31st that
16 you would be released from custody?

17 A Absolutely not.

18 Q But you were released from custody, weren't
19 you?

20 A Yes, sir.

21 Q And when you were released from custody what
22 did you do?

23 A I walked from downtown to around Bonanza and
24 Lamb.

25 Q About how far is that, if you know, and how

9

1 long did it take you to walk out there?

2 A From around Las Vegas Boulevard and Bonanza and
3 Lamb it would take about 45 minutes, 50 minutes.

4 Q Why did you walk out there?

5 A I was happy to be out. I just wanted to see my
6 girl and my children.

7 Q Where were you going?

8 A I didn't go home at first.

9 Q Where did you go?

10 A To Vera Johnson project apartments.

11 Q What did you do there at the Vera Johnson
12 Apartments?

13 A Went over there and just talked to a couple
14 people.

15 Q Who did you talk to?

16 A Some man over there named Ben and a couple
17 other people.

18 Q Now, how far is Vera Johnson complex from where
19 you lived at the Balerina Sunrise place, if you know?

20 A It's only like two blocks so approximately it
21 would take like probably 15 minutes to get from there to
22 home.

23 Q Did you borrow a bicycle there?

24 A Yes, I did.

25 Q And once you had the bicycle what did you do?

9 1 A I went home.

10 2 Q Now, when you went home this is the home at
3 839 North Lamb?

4 A Yes, sir.

5 Q This is the trailer that you shared with
6 Deborah?

7 A Yes, sir.

8 Q Did you expect her to be there?

9 A No, I did not because I called twice before I
10 went home.

11 Q Where did you call from, if you recall?

12 A I called from downtown and I called from Vera
13 Johnson Apartments.

14 Q And nobody answered?

15 A No, sir.

16 Q So you arrived at the trailer and what do you
17 do?

18 A I put the bike on the side of the house.

19 Q James, I'm sorry, but your hands are in front
20 of your mouth and the jury needs to hear this.

21 A I put the bike on the side of the house and
22 went to the window.

23 Q James, I am going to interrupt for a second and
24 show you a picture again, State's Exhibit 1, which is a
25 picture of the trailer. Is one of these windows there where

10

1 you went to?

2 A Yes.

3 Q Is one of these windows where you entered the
4 place?

5 A Yes.

6 Q Why did you go into your place through the
7 window?

8 A I had been through the window through many of
9 our residences in Arizona, in Michigan and I didn't figure
10 nothing was wrong with that.

11 Q Did you have a key to get inside the place?

12 A I used to but I lost it.

13 Q You start climbing in the window and what
14 happens?

15 A I start climbing through the window and Debbie
16 walked in the doorway and she asked me why didn't I knock at
17 the door. I said I didn't know you were home. I said I
18 just called, why didn't you answer the phone. She said I
19 just got here.

20 Q Do you know what time this is?

21 A No, sir, I wasn't paying attention to the time.
22 I know I had to be back downtown at one o'clock.

23 Q So you get in the window, right?

24 A Yes, sir.

25 Q What happens? You get into the window and do

10

1 you guys talk or what?

2 A Yeah, we talked.

3 Q What else did you do?

4 A I got on my knees in front of her and she was
5 sitting on the couch, I asked her what has she been doing
6 while I was in jail. She said working full-time and
7 watching the kids.

8 Q What happened next?

9 A We talked about a couple of things that were
10 said over the phone. She told me about a couple things that
11 her friends had did while I was in jail.

12 Q Were you glad to see her?

13 A Absolutely.

14 Q Did you think everything was okay?

15 A Yes.

16 Q How long did you all talk?

17 A About 20 minutes.

18 Q What did you all do then?

19 A We kissed a couple of times.

20 Q And then what happened?

21 A We started taking each other's clothes off. We
22 began to have sex on the couch.

23 Q Where was the couch?

24 A Excuse me?

25 Q Where was the couch where you were having sex?

10

1 A It was along the wall right at the corner of
2 the kitchen.

3 Q It was not in the master bedroom?

4 A No.

5 Q I guess it had been a long time since you'd had
6 sex?

7 A A very long time.

8 Q But you'd had sex with her probably hundreds of
9 thousands of times with her before?

10 A A million, billions of times.

11 Q And you loved her?

12 A Extremely. She was the world to me.

13 Q And what happened?

14 A When I entered her, her vagina was all loose
15 and wet and smelly and it wasn't nothing like it used to be.

16 Q What did you think? What did that mean to you?

17 A I immediately thought that she had been messing
18 around on me.

19 Q You thought she was messing around with other
20 men?

21 A Yes, sir.

22 Q What did you do?

23 A I got up, I grabbed her and asked her who she'd
24 been with. She said nobody. She said I swear to God on my
25 grandmother's grave I ain't been with nobody. That was her

10

1 exact words.

2 Q Did you believe her?

3 A Absolutely not.

4 Q So what did you do then?

5 A I walked away from her and started walking in
6 the master bedroom. She came up behind me, she grabbed me
7 around my waist, she asked me could she get on top of me.

8 Q You mean get on top of you sexually?

9 A Yeah. She know I used to love her on top of
10 me. And she asked if she could get on top of me and I told
11 her no.

12 Q What happened next?

13 A She performed oral sex on me.

14 Q Now, had you hit her at all as of this point?

15 A No, sir.

16 Q This was consensual oral sex she performed on
17 you?

18 A Of course, yes, sir. I never pressured her in
19 having sex with me. Never. Never had to.

20 Q What happened next?

21 A She was done, got up and went into the
22 bathroom. I put my clothes back on. She went and got on
23 the phone. She said I'm going to call the day-care and see
24 what time I have to pick up the children. And I said okay,
25 I want to see them anyway.

11

11

1 Q Were you right by her when she was talking to
2 day-care?

3 A No, not at the beginning, sir, no.

4 Q Where were you?

5 A I was in the bathroom.

6 Q Now, did she put her clothes back on after the
7 sex?

8 A Yes, she did.

9 Q You put your clothes back on?

10 A Yes, sir.

11 Q So you can't say exactly what she said to the
12 day-care people?

13 A No. She wasn't talking that loud so I couldn't
14 hear what she was saying. I knew she was talking to the
15 day-care, though.

16 Q At that time when she called day-care the first
17 time would you be surprised to hear that she was scared?

18 A Yeah. When I read that, I couldn't believe
19 that because I didn't hear her say none of that. When I
20 walked in there, I heard her say 5:30, that did you have to
21 pick them up at 5:30 and she said okay, and I told her tell
22 them that we're going to be there. And that's what she told
23 the lady.

24 Q Now, the lady called back, didn't she?

25 A Yes.

11 1 Q And were you there when she talked to the lady
2 at that time?

3 A Yes, sir.

4 Q How was Deborah by then?

5 A She didn't seem to me scared.

6 Q You think she was scared the first time she
7 called them?

8 A When I came in there she did look like she was
9 scared the first time.

10 Q You think she was scared of you?

11 A I think that she knew that she had got caught.

12 Q When you say got caught, got caught doing what?

13 A She knew I knew she had been messing around. I
14 know Debbie. I know Debbie better than probably anybody.

15 Q Now, when she called the day-care center had
16 you done anything violent towards her that day?

17 A No, sir.

18 Q Had you threatened her with violence?

19 A No, sir.

20 Q Okay. They call, she talks to them and then
21 what happens?

22 A She said we're on our way, we're coming to pick
23 up the kids.

24 Q So what happened next?

25 A We got ready to leave, we walked out the door,

11 1 the bike I rode over there, she grabbed the bike and placed
2 2 it on the front porch for me. We started walking to the
3 3 car.

4 Q Was this the Toyota that you've seen in
5 5 pictures here in court?

6 A Yes, sir.

7 Q Go on.

8 A She asked me did I want to drive. I told her
9 9 yes. We walked along to the car, I looked on the side of
10 10 the house, there was a whole box full of beer cans and I had
11 11 asked her who was drinking all that beer there.

12 Q Now, did she drink?

13 A No, she did not.

14 Q So what did you think when you saw the beer
15 15 cans?

16 A That there had to be some kind of little
17 17 parties going on there. There was lots of them, lots of
18 18 them.

19 Q Go on.

20 A We got in the car and I when I got in the car I
21 21 looked around and the car was all trashy, papers everywhere,
22 22 beers cans on the floor. I tried to turn the air
23 23 conditioner on, it was broke, the gear shift was cracked,
24 24 the ceiling to the car was ripped all off, the light in the
25 25 back window was broke, busted and I asked her who did all

11 1 that. She said the kids did it. So I started up the car,
2 2 backed out.

3 3 Q Where were you going?

4 4 A We were going to pick up the kids.

5 5 Q Did you start to leave?

6 6 A Yes, I did. I pulled out the driveway, put the
7 car in drive, started moving. I asked her -- I said look
8 for my Michael Jackson Off The Wall tape. She was looking
9 up under the seat, going through all the mess that was on
10 the floor. And before I went to jail I had lots of tapes in
11 the car and I would keep them in the middle of the seats.

12 Q Is that a console?

13 A Yes, sir.

14 Q Okay.

15 A I opened it up and there was a little note in
16 there.

17 Q When you say a note, do you mean a note or a
18 letter?

19 A A letter, sir. I grabbed the letter, opened
20 it --

21 Q Did you read part of the letter?

22 A Yes, sir, I opened it up. I even let go of the
23 steering wheel, almost crashed into a car that was parked.
24 I was going through the letter as quickly as I could. When
25 she noticed me reading the letter, she tried to grab the

12

1 note. We was fighting over the note.

2 Q Could you read some of the words in the letter?

3 A Yes, sir.

4 Q What was it saying?

5 A Some guy talking about having sex with her,
6 said he had been with her and she was teasing him.

7 Q How did you react to that?

8 A I was shocked, I was devastated.

9 Q What did you do?

10 A I stopped the car, put it in reverse, backed it
11 up and parked in front of the house.

12 Q Go on.

13 A When we got out of the car, I went out on her
14 side, I stepped over her lap, went out the passenger door, I
15 grabbed her out of there, took her back in the house.

16 Q And what did you do inside the house?

17 A I don't recall everything I did now.

18 Q Did you stab her?

19 A I didn't know until I had cut my finger.

20 Q Do you know how many times you stabbed her?

21 A No, I did not.

22 Q Do you know how many times you hit her?

23 A No, I do not.

24 Q Do you know where you got the knife?

25 A No, I do not.

12 1 Q Why were you doing this?

 2 A I don't know.

 3 Q Did she run away from you?

 4 A No.

 5 Q What did she do?

 6 A She didn't make no noise, she didn't try to

 7 run, she didn't do nothing.

 8 Q Did she fall to the ground right there?

 9 A She went in the door, yes, she just fell on the

 10 floor and stayed there.

 11 Q James, when you got out of the car, did you

 12 have any thought of killing her or hurting her?

 13 A Absolutely not, sir.

 14 Q What did you think you were going to do when

 15 you took her back inside the house?

 16 A At the time I don't know. My mind just clicked

 17 and it was stuck. I couldn't think beyond that letter. I

 18 was stuck at that letter.

 19 Q What were you thinking about? What was going

 20 on in your mind?

 21 A Her doing what she done to me to somebody else.

 22 Q You mean having sex with somebody else?

 23 A Yes, sir.

 24 Q That's what was going on in your head?

 25 A Exactly.

12 1 Q And you were upset?

 2 A Very.

 3 Q Did you realize you killed her?

 4 A No, I did not. I couldn't look at her. I just

 5 hurried up and took off out the door and left.

 6 Q From the time that you got out of the car to

 7 the time that this stuff happened inside how much time

 8 passed, if you know?

 9 A I don't know. It happened like that, sir. It

 10 happened real quick.

 11 Q James, I am going to show you a photograph,

 12 State's Exhibit 26, that shows part of Deborah lying on the

 13 floor and right beside her head is a letter with blood on

 14 the letter. Do you recognize that letter?

 15 A Yes, sir.

 16 Q Why do you recognize that letter?

 17 A It was the letter I found in the car.

 18 Q Is that the letter from what you think is

 19 another man?

 20 A Of course. Yes, it is.

 21 Q Did you two fight over the letter in the car?

 22 A Yes, she tried her best to get it from me.

 23 Q Was the letter torn up into many different

 24 pieces?

 25 A Yes, sir.

12

1 Q Who tore it up into many different pieces?

2 A She tried to rip it, I know that.

3 Q Did you rip some of it too?

4 A I was trying to hold onto it. She was trying
5 to get it from me and it ripped.

6 Q I am going to show you Exhibit 31, a photograph
7 of a piece of a letter. Is that a piece of that letter do
8 you think?

9 A Yes, sir.

10 Q I am going to show you State's Exhibit 32,
11 another piece of the letter. Is that the letter as far as
12 you know?

13 A Yes, sir.

14 Q Now, when Officer Perkins testified, he
15 testified that one letter was found right beside her.
16 That's this letter we're talking about?

17 A Exactly, sir.

18 Q And he also testified that there were letters
19 found strewn about on the floor in the master bedroom. How
20 did they get there?

21 A When me and Debbie was in the room, when she
22 came in there and she had grabbed me by my waist, we was in
23 the room, some of the letters that I wrote her was beside
24 the bed on the table, some of the letters was up on the
25 entertainment center. The ones that was on the side of the

12 1 table I took them and I threw them at her and I asked her, I
2 2 said these didn't mean nothing to you, none of this meant
3 3 nothing to you, did it. That's exactly what I said to her.

4 Q I am going to show you State's Exhibit 8 which
5 5 is a photograph of that room and there are letters on the
6 6 floor. Are these the letters that you threw at her?

7 A Exactly, sir, yes.

13 8 Q I am going to show you State's Exhibit 10 which
9 9 includes you can see some of the writing on the letters on
10 10 the floor. Is that your writing on that letter?

11 A Yes, sir.

12 Q James, the State has tried to say in this case
13 13 that you ransacked the master bedroom. Did you ransack that
14 14 master bedroom?

15 A I didn't touch nothing in that room, sir.
16 16 Nothing.

17 Q You didn't try to steal anything from that
18 18 room?

19 A Of course not, sir. No. Absolutely not.

20 Q After you killed Deborah did you steal anything
21 21 from inside the trailer?

22 A I looked at Debbie on the floor and I ran out
23 23 the door, sir. I did not touch nothing in that house.
24 24 Nothing.

25 Q Where did you get the social security cards

13

1 from?

2 A They were in the car up under the driver's
3 seat, sir.

4 Q Were they in this black folder that one of the
5 witnesses talked about?

6 A No, they were not.

7 Q Where were they?

8 A They were in the plastic thing they were in and
9 they were on the floor. There was so much stuff in the car
10 on the floor. There was trash everywhere, sir.

11 Q Why did you get in the car and leave?

12 A When I seen her like that, sir, I panicked and
13 I just had to get out of there as quick as possible.

14 Q You obviously didn't think about calling the
15 police or trying to get attention for her? No?

16 A No, sir.

17 Q How do you feel about what you did?

18 A Extremely bad. Lower than dirt. If I could
19 give up my life for hers, I would. In a heartbeat.

20 Q Where did you go, James, in the car?

21 A I went to the Vera Johnson Apartments.

22 Q And that's how far away from the trailer?

23 A About 15 minutes.

24 Q What did you do when you got down there?

25 A I parked the car and I just sat there with my

13 1 head in my hands on the steering wheel. There was blood on
2 2 my hands and my finger was cut.

3 Q Did you get high?

4 A Not for awhile, sir.

5 Q You eventually got high, though?

6 A Later on, yes, I did.

7 Q Did you get high on cocaine?

8 A Yes, sir.

9 Q Why did you get high on cocaine?

10 A Because I felt bad and when you're on cocaine
11 it makes your mind go somewhere else, sir.

12 Q When you killed her were you high on cocaine?

13 A Absolutely not. No, I was not. No.

14 Q There's been some testimony that while you were
15 at the Vera Johnson projects somebody saw you dancing
16 around. Is that possible?

17 A No. I don't recall doing that at all, sir.
18 No.

19 Q But you did get high?

20 A Yes, I did.

21 Q There's been testimony that the next day you
22 went and shoplifted at Lucky's; is that right?

23 A Yes, sir.

24 Q Why were you stealing there the next day?

25 A Actually I went over there to get a newspaper.

13 1 Q Let me go back for a second. That night after
2 2 this had happened did you ever go back to the trailer where
3 3 Deborah was?

4 4 A Yes, I did go back.

5 5 Q What time did you go back if you know?

6 6 A It was between 11 -- it was after I had watched
7 7 the news, sir, over at Bridget's house over at the Vera
8 8 Johnson Apartments.

9 9 Q Did you see that they were looking for you?

10 10 A They showed my picture, gave a description of
11 11 the car and everything.

12 12 Q So how did you get back over there to the
13 13 trailer?

14 14 A I walked.

15 15 Q Did you go inside the trailer again?

16 16 A No. I just stood on the other side of the wall
17 17 and looked at the house.

18 18 Q Were the police still there?

19 19 A There was some detectives there.

20 20 Q You knew that taking her car was wrong, didn't
21 21 you?

22 22 A Yes.

23 23 Q And you know that you're responsible for that?

24 24 A Yes, sir.

25 25 Q You know you're responsible for killing her?

13

1 A Yes, sir.

2 MR. BROOKS: We'll pass the witness, Your
3 Honor.

4 THE COURT: Cross-examination.

5 MR. HARMON: Thank you, Your Honor.

6

7

CROSS-EXAMINATION

8

BY MR. HARMON:

9

Q How old are you, Mr. Chappell?

10

A Twenty-six now, sir.

11

Q What is your date of birth?

12

A 12-27-69.

13

Q How tall are you?

14

A About six foot, sir.

15

Q On August 31st, 1995 about how much did you

16

weigh?

17

A About a hundred eighty pounds, sir.

18

Q Do you know how tall Deborah Panos was?

19

A Not exactly. I'd say about five-four,

20

five-five.

21

Q Do you know about how much she weighed on the

22

date she was killed?

23

A I read in the papers they say she weighed a

24

hundred thirty pounds, sir.

25

Q So you were substantially larger than her,

13 1 weren't you?

2 A Yes, sir.

3 Q You've told us that you were in jail from
4 February the 25th until May the 10th, 1995?

14 5 A February 28th until May 10th, 1995, sir.

6 Q You said that you were arrested on June the 1st
7 and were released on June the 7th?

8 A Yes, sir.

9 Q Rearrested on June the 26th?

10 A Yes, sir.

11 Q And remained in custody until the date you were
12 released and you killed Deborah Panos, correct?

13 A Yes, sir.

14 Q Why were you arrested on Shauntel's birthday?

15 A I was trying to shoplift Shauntel a couple
16 outfits for her birthday.

17 Q Do you like being in custody?

18 A Absolutely not, sir.

19 Q It's not much of a life to be incarcerated, is
20 it?

21 A No, sir.

22 Q You've had a substantial period of time to
23 think about today, haven't you?

24 A Yes, sir.

25 Q You've known for quite awhile, haven't you,

14

1 that at some point you would take the witness stand and give
2 the jury your version of what happened?

3 A Yes, sir.

4 Q And once you had made that decision, whenever
5 it was, you've given a lot of attention to what you would
6 tell the jury?

7 A I didn't make up anything, sir.

8 Q I didn't say you made up anything, Mr.
9 Chappell. Have you thought a lot about what you would tell
10 the jury?

11 A No.

12 Q Have you thought a lot about how you would act
13 on the witness stand?

14 A No, sir.

15 Q As you sit here this afternoon are you
16 concerned about punishment?

17 A No, sir. Whatever I get I'll accept it.

18 Q It doesn't matter to you whether you're
19 convicted of voluntary manslaughter or murder of the second
20 degree or murder of the first degree?

21 A Does it matter? Is that what you said?

22 Q I'm asking you if it matters which you were
23 convicted of.

24 A No, it doesn't matter, sir. Whatever I'm
25 convicted of I'll accept it.

14 1 Q And you're not concerned if it's murder of the
2 2 first degree that the punishments be minimized to some
3 3 extent?

4 4 A Could you please repeat that, sir.

5 5 Q You said it really doesn't matter to you what
6 6 you're convicted of, if it's first degree murder you will
7 7 accept that. Is that what you said basically?

8 8 A Yes, whatever I'm convicted of I will accept
9 9 it, sir.

10 10 Q My question therefore was so there isn't some
11 11 effort here on the witness stand to present yourself in such
12 12 a way that you will minimize your punishment?

13 13 A No, sir.

14 14 Q You don't care if you get a death sentence?

15 15 A Yes, I do care if I get the death sentence.

16 16 Q So you don't want to get a death sentence?

17 17 A I have three children, sir, and I want to see
18 18 them and be able to do something with them sometime in my
19 19 life.

20 20 Q So we have established that is a punishment
21 21 that you want to avoid; is that true?

22 22 A Yes, sir, I am pretty sure any man or woman
23 23 would want to avoid the death penalty.

24 24 Q Are you telling us it doesn't matter beyond
25 25 that if it's life with the possibility of parole or life

14

1 without parole? You don't care?

2 A I do care, but --

3 Q What do you mean you do care?

4 A Of course I'm going to care, you know.

5 Q The bottom line is you don't want to get life
6 without parole either, do you, Mr. Chappell?

7 A If I get it, I will accept it, sir.

8 Q Is that what you want?

9 A No. I have three children and I want to see my
10 three children and be able to do something with them in
11 their life. I never had no father, sir.

12 Q So you'd certainly prefer a life with a parole
13 sentence?

14 A I would be honored to have life with.

15 Q Honored, is that your answer?

16 A I would be honored to be able to get out
17 sometime in my life and be able to reconcile with my
18 children.

19 Q So you do have an interest in how this case
20 turns out?

21 A Of course. Yes.

22 Q You were asked about jobs that you've held. I
23 don't want to go back to Lansing, Michigan or Tucson,
24 Arizona, I want to limit the questions about employment,
25 gainful employment to Las Vegas. You said you got a job at

14

1 Ethel M Chocolate?

2 A Yes, sir.

3 Q You worked there a month and a half?

4 A Yes, sir.

5 Q And then you said because Deborah worked that
6 you needed to watch the children?

7 A No. I didn't say it that way.

8 Q How did you say it?

9 A We couldn't afford day-care at that time, sir,
10 and we didn't know nobody in Las Vegas yet so we couldn't
11 find no babysitter and me staying home with the children
12 watching the kids wasn't nothing new so I went ahead and I
13 did it again and I lost my job.

15

14 Q After a month and a half?

15 A Yes. I called them three times, sir, and lost
16 my job.

17 Q How quickly after you had moved to Las Vegas,
18 which as I remember you said was around October the 1st,
19 1994, was it that you got the job at Ethel M?

20 A When was it when I got the job at Ethel M?

21 Q How quickly after you arrived in Las Vegas?

22 A Very quick. Because Debbie was going to work
23 there too. We both went there and took the test. Probably
24 about two weeks after we arrived here, sir, to live here.

25 Q So perhaps the middle of October?

15 1 A Yes, sir.

 2 Q Of 1994?

 3 A Yes, sir.

 4 Q About two years ago?

 5 A Yes, sir.

 6 Q And as you've just explained you worked for

 7 approximately a month and a half?

 8 A Yes, sir.

 9 Q Now, where is it that you next had gainful

 10 employment in Las Vegas?

 11 A Me and Debbie went out together and I turned in

 12 applications, but I didn't get no response. And I went to a

 13 temporary service to get a job at Price Rite on Bonanza and

 14 I forgot the other name of the street but Price Rite on

 15 Bonanza, and I was supposed to go take my drug test, you

 16 know, and I didn't make it there.

 17 Q Is the answer you didn't ever have gainful

 18 employment after you lost your job at Ethel M's?

 19 A No, sir.

 20 Q So after perhaps the middle of October -- I'm

 21 sorry -- perhaps after, what, the first of December 1994 you

 22 didn't ever contribute financially to the support of Deborah

 23 Panos and your children?

 24 A I got some things for my children. I also got

 25 some things for Debbie, but I did not --

15

1 Q How, sir?

2 A How?

3 Q How?

4 A As you know I shoplifted a couple of times,
5 sir.

6 Q You were asked earlier if your drug problem had
7 hindered your ability to be a good father and in this case a
8 good boyfriend to Deborah. Are you still saying while you
9 lived in Las Vegas that your drug problem didn't affect your
10 ability to provide for your family?

11 A No. I was doing drugs, sir, and I did bring
12 things home for my children and Debbie.

13 Q What things?

14 A I brought Debbie an outfit home, Valentine's
15 Day I got her a card, stuffed animal. I got my kids some
16 video games, hand held video games. When Debbie and I had
17 accidentally broke her nose with the cup, I went and stole
18 her some bandages and Band Aids and stuff and Neosporin for
19 her nose. Got cough medicine for the children.

20 Q Did you ever help pay for the rent?

21 A Around that time, no, sir.

22 Q Around what time?

23 A After I lost my job at Ethel M.

24 Q Any time after that did you pay for the rent?

25 A No.

15

1 Q Did you regularly put food on the table to feed
2 your children?

3 A I brought food home a couple of times, sir.

4 Q You consider a couple of times providing for
5 your kids?

6 A Not 100 percent, but I was doing something. I
7 just didn't --

8 Q What drugs were you using in Las Vegas?

9 A Marijuana and cocaine, sir.

10 Q How regularly did you use marijuana and
11 cocaine?

12 A When we first moved here I didn't mess around
13 for like about two months and then after that a couple of
14 times a week and then around between May 10th and around
15 June 26th I did it a lot, probably every day, sir.

16 Q Are we talking about marijuana or cocaine or
17 both?

18 A Both.

19 Q How much marijuana, if as you said from perhaps
20 May the 10th until June the 26th you were using it daily,
21 how much on a daily basis?

22 A Probably about two joints a day.

23 Q How much cocaine?

24 A I'm not exactly sure. There was different
25 amounts on different days, sir.

15

1 Q How would you ingest the cocaine?

2 A Smoke it. Freebase it, sir.

3 Q Where would you get it?

4 A From people who lived over at Vera Johnson
5 Apartments, sir.

6 Q The Vera Johnson projects at 507 North Lamb?

7 A Yes, sir.

8 Q You spent a lot of time over there?

9 A I spent some time over there.

10 Q What does that mean I spent some time?

11 A At the beginning, no, I wasn't staying over
12 there a lot. Towards the end around between like June 1st
13 and June 26th I was over there a lot.

14 Q Every day?

15 A Yes.

16 Q For hours every day?

17 A Yes.

18 Q Stay overnight at crack houses?

19 A No. I remember LaDonna Jackson saying she seen
20 me sleeping over there. I don't recall --

21 Q Bridget's place, who is Bridget?

22 A Bridget -- a girl that lives over there, some
23 lady that lives over there.

24 Q Did you stay overnight at Bridget's place?

25 A No, I'd be there late at night, but I never

16

16 1 went there and slept there all night and stayed there all
2 night and got up the next day and went home or nothing like
3 that. It wasn't like that.

4 Q How late is late at night?

5 A I'd be there sometimes three in the morning,
6 four in the morning, something like that.

7 Q Did that happen regularly during the month of
8 June?

9 A No. I didn't hang out at Bridget's house all
10 the time, no.

11 Q Well, were you concerned when you would stay
12 out very late about Deborah's welfare, those of your
13 children?

14 A I would talk to her. I would call her and talk
15 to her or I would go home in the middle of the day and let
16 her know what I was doing or where I was.

17 Q How were you getting the crack that you were
18 smoking?

19 A Sometimes it was people over there that had it
20 that would share. Sometimes I would shoplift to get it.
21 Both ways. Sometimes people had it, they shared, sometimes
22 I would shoplift and I'd get some.

23 Q The defense asked you about this incident which
24 occurred in Tucson on February the 23rd, 1994 when the
25 police came?

16

1 A Yes.

2 Q You may remember that the lady officer from
3 Tucson a Jeri Earnst testified?

4 A Yes, I remember her testifying.

5 Q Now, as I remember you said on direct
6 examination that you had taken a dresser that Deborah had
7 purchased and you took it back to the store and you got
8 refund money?

9 A Yes, sir.

10 Q And it was for that reason the two of you were
11 arguing?

12 A That's how the argument started out and then
13 it --

14 Q Whose dresser was it?

15 A I know she bought it.

16 Q But didn't she buy it for Shauntel your little
17 daughter?

18 A I'm not sure she bought it for Shauntel. I
19 don't think that's true. I think -- I don't think it was
20 for Shauntel. I don't think so. I don't recall her buying
21 no dresser for Shauntel. We had plenty of dressers in the
22 house, sir. We had lots of them.

23 Q But she bought it for some reason?

24 A Right, she bought it for some reason.

25 Q With her money?

16

1 A Right.

2 Q Did you get her permission to take it back to
3 the store and get a refund?

4 A No, sir. No, I did not.

5 Q What did you do with money? Did you get
6 Deborah an outfit or bandages?

7 A I don't recall exactly what I did do with the
8 money, sir, but I know that I had to make up for it because
9 there would be times that --

10 Q We've had testimony from Officer Earnst that
11 this argument according to Deborah concluded with you
12 engaging in acts of domestic violence. What did you do?

13 A I don't recall everything I did.

14 Q Did you knock her to the floor?

15 A I don't remember doing that.

16 Q Did you kick her?

17 A I did not kick her, sir.

18 Q So if that's what she related tearfully and
19 emotionally to the officer, that would be inaccurate?

20 A I did not kick her, sir. I do not recall
21 kicking her so I know I did not kick her. If I kicked her,
22 I would know it. I did not kick her that day, sir. I did
23 not kick her at all.

24 Q Well, if you kicked her when she was down,
25 would you admit it?

16 1 A Of course. I'm not going to lie about nothing.
2 I'm not going to lie about nothing.

3 Q You wouldn't lie about anything here on the
4 witness stand, would you?

5 A No, sir.

6 Q You were asked on direct examination about the
7 situation where Deborah's nose was broken January the 9th,
8 1995 here in Las Vegas?

9 A Yes.

10 Q You said that you threw a plastic thermal cup?

11 A Yes, sir.

12 Q You didn't hold it and strike her with it?

13 A No.

14 Q You just threw it?

15 A I threw it.

16 Q And you said it hit her on the nose?

17 A Yes, sir.

18 Q You didn't strike her in any other way?

19 A No, I did not.

20 Q You didn't hit her in the forehead?

21 A No, sir. The cup came across this way so it
22 could have hit her forehead and it landed right here.

23 Q It could have been a cup, a thermal container
24 that caused a laceration on the forehead and also on the
25 side of the nose?

17

1 A The cup caused the damage to her face, sir,
2 yes, it did.

3 Q Well, during your direct you talked about the
4 injury to the nose, the nose was broken, correct?

5 A Yes, sir. That's what the doctor said, yes.

6 Q And the medical report in evidence indicates
7 stitches were taken on the bridge of the nose?

8 A Yes, sir.

9 Q There was also a running stitch taken in the
10 right eyebrow area?

11 A Yes, I remember seeing that, sir.

12 Q But you're saying that was all from throwing
13 the cup, you didn't strike her there?

14 A She got hit with the cup and that was it, sir.

15 THE COURT: Mr. Harmon, there's been a request
16 that we take a brief recess at this point to accommodate the
17 jury.

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

17 1 This will be about a ten minute recess. I
2 don't want you to leave the upper deck of the courthouse.
3 We will be reconvening at five minutes after 5:00 at which
4 time I'll be able to tell you -- before we go we'll do this
5 right now. Would counsel approach the bench.

6 (At this time, an
7 off-the-record
discussion was held.)

8 THE COURT: I understand one of the jurors has
9 to be someplace at six o'clock; is that correct? Because if
10 somebody has an appointment, we are going to accommodate. I
11 just need to know how far it is so we can give an estimate.

12 JURR NO 11: I just wanted to get out for the
13 game.

14 THE COURT: In that case I think we should be
15 able to finish with this witness today. We'll finish with
16 this witness and our estimate is somewhere in the area of
17 5:30 to 5:45.

18 (Recess.)

19 THE COURT: Counsel stipulate to the presence
20 of the jury?

21 MR. HARMON: Yes, Your Honor.

22 MR. BROOKS: Defense will, Your Honor.

23 THE COURT: Mr. Chappell, will you please
24 retake the witness stand.

25 Mr. Harmon, you may continue your

17

1 cross-examination of this witness.

2 MR. HARMON: Thank you, Judge.

3 BY MR. HARMON:

4 Q Mr. Chappell, was it your testimony during
5 direct examination that after you hurt your wife's nose that
6 you called 911?

7 A Yes, sir.

8 Q Do you recall the testimony that was offered by
9 Daniel Giersdorf of the police department that the call came
10 from Deborah?

11 A No. I heard him say that, but he was false.
12 He was wrong.

13 Q She was taken to the hospital, wasn't she?

14 A Yes, she was.

15 Q Did you go along?

16 A No, I did not. I walked with her to put her
17 inside the back, but three kids were along the side and I
18 went back inside and they said she was going to go to UMC.

19 Q The testimony by Giersdorf suggested when they
20 got there and made contact with you, you were sitting calmly
21 and watching television?

22 A That was false also, sir. The TV was in the
23 bedroom at that time, the three children were sitting in the
24 front of the TV. I was outside in the living room sitting
25 in the chair. The TV wasn't even in the room at that time,

17 1 sir. They came in and they slammed me all around like I
2 2 just testified, told my attorney about.

3 Q They said they came up and announced their
4 4 presence, could see inside and you didn't even get up?

5 A That's not true. I let them in. He didn't
6 6 just come --

7 Q Ultimately?

8 A He didn't just come in and open the door. I
9 9 got up and opened the door for him, sir.

10 Q On June the 1st, 1995 we've had testimony that
11 11 there was another argument between you and Deborah Panos?

12 A Yes, sir.

13 Q You indicated that you hadn't seen her for
14 14 quite awhile?

15 A Exactly.

16 Q How did it happen that you hadn't seen her?

17 A I don't remember why, but I know she was gone.

18 Q Had she been gone for a number of days?

19 A She was gone all day the day before that day,
20 20 sir.

21 Q Did you become concerned about where she was
22 22 and what she was doing and who she was doing it with?

23 A Yes, sir.

24 Q So when she came home you started to ask a lot
25 25 of questions; is that correct?

17 1 A I asked her a number of questions, yes.

2 Q What types of questions?

3 A I don't remember. I remember asking her where

4 she had been.

5 Q Does she tell you where she had been?

6 A She gave me many excuses, different excuses.

7 They all didn't add up together.

8 Q They were not excuses you accepted; is that

9 correct?

10 A No.

11 Q So you got rough with her; is that true?

12 A Not immediately, sir.

13 Q Well, if not immediately, at a certain point

14 did you take her into the bedroom?

15 A I didn't take her in there. We both walked in

16 the bedroom.

17 Q After you walked into the bedroom did you

18 become physical with her?

19 A Yes, I put her on the bed.

20 Q What does that mean yes, I put her on the bed?

21 A That's what I did.

22 Q Did you grab her?

23 A I don't remember exactly.

24 Q I'm trying to figure out how she got from a

25 standing position to on the bed.

18

18

1 A I don't remember, sir.

2 Q So after you had put her on the bed did you get
3 up and straddle her and pin her arms down with your knees?

4 A I got on top of her, yes, sir.

5 Q Did you pin her arms down with your knees?

6 A I'm not sure about pin her arms down. I was on
7 top of her, sir, I know that.

8 Q So while you were on top of her according to
9 your testimony on direct examination you said I showed her a
10 knife.

11 A Yes, I did.

12 Q Now, Mr. Chappell, what does that mean, I
13 showed her a knife?

14 A That means I held it up like this and I asked
15 her where she had been.

16 Q Describe the knife you held up like that.

17 A I don't remember, sir.

18 Q Where did you get the knife?

19 A The knife was on the dresser.

20 Q On the dresser in the bedroom?

21 A Yes, sir.

22 Q Whose knife was it?

23 A It belonged to the household.

24 Q It was Deborah's knife?

25 A If you want to say that, yes.

18 1 Q I'm asking you. Whose knife was it?

2 A It belonged to both of us, sir.

3 Q Was it a kitchen knife?

4 A Yes, sir.

5 Q Steak knife?

6 A I'm not sure if it was a steak knife, sir.

7 Q You've seen the knife in court, 68-A-1, that

8 you used to kill her. Did it look like that knife?

9 A No, it did not.

10 Q Was it the same type of knife?

11 A No, it was not.

12 Q So when you're on top of her you say you showed

13 her this knife?

14 A Yes.

15 Q What did you do, reach over and take it off of

16 the table?

17 A Yeah.

18 Q What was your purpose in showing her the knife?

19 A I was trying to get information out of her.

20 That's it.

21 Q You were trying to use the knife to coerce

22 information out of her; is that true, Mr. Chappell?

23 A Yes, I guess so, sir.

24 Q You were trying to find out if she had a

25 boyfriend?

18

1 A I didn't ask her that.

2 Q What type of information were you trying to get
3 out?

4 A I don't remember what questions I asked her. I
5 know I asked her where she had been.

6 Q You were jealous?

7 A No, not at that point, no. I was just
8 concerned and she had me worried and when we argued about
9 it, she said a couple of things and I got upset about it.

10 Q You weren't just concerned about the baseball
11 scores, were you, or the weather forecast, what type of
12 information were you trying to get her to divulge by showing
13 her a knife?

14 A I just wanted to know where she had been.
15 That's it.

16 Q Did you feel you were entitled to know where
17 she had been?

18 A She asked me every time when I was gone where I
19 had been.

20 Q Well, obviously if you had to put her down on
21 the bed and get on top of her and show her a knife she
22 didn't want to tell you what you wanted to know; is that a
23 safe assumption?

24 A That could be.

25 Q Did you feel like you're entitled to get

18

1 answers from her?

2 A I answered her when she asked me so I expected
3 the same thing.

4 Q You weren't married, were you?

5 A No, we didn't make it, sir.

6 Q She hadn't made any marital commitment to you,
7 had she?

8 A She told me you get me a ring and I'll marry
9 you. That's what she told me.

10 Q Did you ever get her the ring, Mr. Chappell?

11 A No, I did not, sir.

12 Q You say you showed her the knife. Did you
13 threaten her with the knife?

14 A No. I just was asking her questions and just
15 showed her the knife. I didn't threaten her, didn't do
16 nothing with the knife, no, sir.

17 Q Officer Allen Williams testified about this
18 incident and said it was related to him by Deborah that she
19 had been threatened --

20 A No.

21 Q -- with the knife.

22 A He was false also, sir.

23 Q Dina Freeman the employee with the Tucson
24 Police Department is a liar; is that what you're telling us?

25 A What she said in her testimony in this

18

1 courtroom was false.

2 Q Daniel Giersdorf from the Metropolitan Police
3 Department is a liar?

4 A I don't remember everything he said. I
5 remember exactly everything she said.

19

6 Q Well, you said he lied about how you were
7 acting when they came to the mobile home on January the 9th.
8 He's a liar?

9 A Are you talking about the cup incident?

10 Q I'm talking about the day that Deborah's nose
11 was broken by you.

12 A Yeah, he said I was sitting there watching TV.
13 That's not true. The TV was not in the living room.

14 Q So Giersdorf also is a liar?

15 A I can't call him no liar, but when he said I
16 was sitting there watching TV, that was false.

17 Q You were standing watching TV?

18 A No. When they opened the door, I sat down. He
19 came inside, two of them came inside and they grabbed me, my
20 son James Panos seen the entire incident and was crying and
21 screaming and they were telling him to go sit down,
22 everything would be okay. They slammed me all over the
23 place and took me to jail in my boxers, sir, and my socks.
24 That's it. I didn't even get a chance to talk. They came
25 in, they roughed me up and moved me quickly to their vehicle

19

1 and slapped me on the hood and put me in the car.

2 Q And you thought that was inappropriate police
3 conduct regarding someone battering his girlfriend?

4 A In that situation, yes, they were out of
5 control, yes, they were.

6 Q You hadn't been out of control?

7 A They were out of control that day.

8 Q And furthermore it is your allegation that on
9 June the 1st, 1995 Officer Williams got information which
10 was false, you did not threaten Deborah Panos with a knife?

11 A No, I didn't say no threats to her. She might
12 have considered me -- my actions as threatening, but I
13 didn't say no threats towards her, no, I did not.

14 Q Why in the world would she think that just
15 because you put her down on the bed and got on top of her
16 and showed her a knife?

17 A I'm pretty sure any woman would be scared in
18 that position, sir.

19 Q And you wanted her to be scared, didn't you?

20 A I just wanted to get information from her. I
21 admit I seen that it wasn't working and so I got rid of the
22 knife, sir. And I let her up.

23 Q After her roommate knocked on the bedroom door;
24 isn't that true?

25 A No. No. No, because I had -- I remember

19 1 putting the knife on the dresser and I was not even on the
2 2 bed when she knocked on the door, no, that's not true.

3 Q Didn't Claire interrupt what was happening?

4 A No, Claire did not open the door and come
5 inside or nothing. That did not happen, sir.

6 Q While you were asked on direct examination if
7 you had said some degrading things to Debbie Panos in
8 letters you sent from jail -- do you remember that question?

9 A Yes, sir.

10 Q Do you remember stating that in the last two
11 letters you said some degrading things?

12 A Yes.

13 Q When were the last two letters written?

14 A I stayed in the city nine days so it was before
15 that. Between August 5th and August 15.

16 Q So we're talking about letters written within a
17 few weeks before you killed her; is that correct?

18 A That was the last letters I written, sir. I am
19 not sure of the exact dates but they were the last ones I
20 written.

21 Q And you told your counsel that you wrote the
22 letters because you were feeling lonely and you were very
23 depressed and you were hurt and you were devastated?

24 A Right. Exactly.

25 Q Why, Mr. Chappell? Why did you have those

19

1 feelings?

2 A Because the things she was telling me on the
3 phone.

4 Q You already suspected her of being unfaithful,
5 didn't you?

6 A I asked her and she told me no so I didn't
7 pressure her about that.

8 Q Well, you had some pretty strong suspicion.
9 Didn't you call her a slut?

10 A I did write that, yes, sir.

11 Q Didn't you call her a bitch?

12 A I did write that, yes, sir.

13 Q Did you call her a whore?

14 A I did write that, yes, sir.

15 Q And you called her stupid?

16 A I don't remember writing that. If I wrote
17 it -- if I wrote it --

18 Q You even made a religious judgment. You said
19 she was going to hell; is that correct?

20 A I don't recall writing that, sir.

21 Q You don't recall writing that?

22 A No.

23 Q Did you ask her at any time in your
24 correspondence if she had AIDS yet from sleeping around with
25 other men?

19 1 A All through our relationship, you know, we
20 2 would talk about that situation, talking about people being
3 3 unfaithful and we just would conversate about what was going
4 4 on around the world and with other people and how everybody
5 5 around in our community and stuff was getting that disease
6 6 and I just wanted to put AIDS in her mind and let her know
7 7 that sleeping around wasn't good if she was doing it, sir.

8 8 Q Didn't you ask her if she had AIDS yet?

9 9 A I remember writing something like that, yes.

10 10 Q Now, why would you ask that type of question
11 11 and why would you call this woman that you are representing
12 12 to us here today in this courtroom as being someone you
13 13 loved, why would you call her a whore and a slut and a
14 14 bitch?

15 15 A I was upset at that time, sir.

16 16 Q Obviously very upset?

17 17 A I was upset.

18 18 Q What made you so upset that you would
19 19 characterize her in very hateful degrading language?

20 20 A I was upset about numerous things. I wrote
21 21 those things and I'm sorry. I told her I was sorry. We
22 22 talked about them letters before I got out of jail, sir, and
23 23 I apologized to her over the phone.

24 24 Q You said you talked to Deborah Panos the day
25 25 before you killed her, August the 30th?

20

1 A I seen her at court, yes, sir.

2 Q So you didn't talk with her, you simply saw
3 her?

4 A I did too talk to her. I seen her and talked
5 to her, sir.

6 Q That was the day you entered a plea of guilty
7 to a domestic battery charge?

8 A Numerous charges that day, sir.

9 Q The domestic battery to which you pled guilty
10 was the June 1st, 1995 crime?

11 A Yes, sir.

12 Q Did Deborah Panos offer testimony at any type
13 of hearing on August the 30th against you?

14 A No, sir. No, she did not.

15 Q Explain what enabled you to speak with her?

16 A I was sitting outside the courtroom, I was
17 sitting right here, the officer was sitting right here and
18 she came walking through the door. She was talking to me
19 right here and she was like right in my face right here.

20 Q What did you say to her?

21 A I asked her how she'd been. I was crying. She
22 told me to stop crying. She told me she missed me. She
23 told me she loved me. She said the kids had been asking
24 about you. She said -- she asked me was I getting out, she
25 asked me that numerous times.

20

1 Q What did you tell her?

2 A I said I am pretty sure I am getting out but I
3 said, you know, I'm supposed to go to the rehab place. But
4 I told her yes, I should be getting out tomorrow. She said
5 okay.

6 Q You're telling us that you knew on August the
7 30th that you were going to get out the following day?

8 A They wasn't supposed to let me go, sir, so I
9 didn't know I was leaving that day, sir.

10 Q Well, that must be true because you explained
11 earlier to your counsel you didn't know when you were going
12 to get out?

13 A No. I just told her what happened in court and
14 she asked me was I getting out tomorrow.

15 Q And you certainly weren't in the position to
16 tell her yes, I'm going to be seeing you out at 839 North
17 Lamb?

18 A I told her -- I said I should be seeing you and
19 the children tomorrow. I told her that. Those were my
20 exact words to her, sir.

21 Q Who had told you there was any possibility you
22 would get out on August the 31st?

23 A EOB came and seen me in jail and they said.

24 Q When did they come and see you?

25 A I don't know the exact date but when I was

20 1 incarcerated between June 26th and August before I went to
2 2 the city -- August 20th or 21st between that time they came
3 3 and had a little session with me. I took a little test and
4 4 they talked to me and told me that when I do get out that
5 5 they said you're not going to be forced to stay there. They
6 6 said you want to come there and take care of your business,
7 7 you could do that. But they said if I wanted to leave and
8 8 go home or whatever I could also do that.

9 Q The representative of EOB said when you get
10 out?

11 A That wasn't the lady's exact words.

12 Q That's what you just said but they didn't tell
13 you when that would be, did they?

14 A No, they didn't give me no exact date. I was
15 shocked when the city came and got me.

16 Q You were sentenced after you pled guilty to
17 domestic battery, weren't you?

18 A Right.

19 Q Didn't EOB come by to see you even before you
20 were sentenced?

1 21 A They came by, come to the county before I was
22 sentenced in the county, not in the city, no.

23 Q They came to see you before you pled guilty and
24 that would obviously be before you were sentenced so they
25 certainly didn't tell you when --

1 A I had two different cases, sir. I had a case
2 in the county and several cases in the city.

3 Q I'm asking you if EOB told you when you were
4 going to get out?

5 A No, they didn't know the exact date I was
6 getting out, no.

7 Q Furthermore you didn't tell Deborah Panos when
8 you were going to get out when you saw her August the 30th
9 because you didn't know?

10 A I told her I should get out tomorrow. That was
11 my exact words to her, sir.

12 Q And upon what did you base that statement to
13 her?

14 A Pardon me?

15 Q Why did you think you were going to get out on
16 the 31st?

17 A Because EOB had told me when I do get out, they
18 said that I would be able to leave sometimes from that
19 facility and go home.

20 Q You said that Deborah told you on the 30th she
21 loved you?

22 A Yes, sir.

23 Q She didn't tell you it was over between the two
24 of you?

25 A She never said them words to me, sir. No.

1 Q So you're telling us that in fact your guess
2 came true the following day August the 31st you were
3 released?

4 A I was released, yes, sir.

5 Q And you talked with a representative of law
6 enforcement at about 10:45 a.m.?

7 A Not from about 9:30 till ten something.

8 Q From perhaps 9:30 in the morning until ten
9 o'clock something on August the 31st --

10 A They let me out at nine o'clock, went to the
11 county jail and then we went to his office. So it had to be
12 around 9:30, 9:45 and I stayed there till about 10:45. I
13 was there about an hour.

14 Q And after about 10:45 a.m. you were released
15 and that's when you said you walked back out to the area of
16 Deborah's mobile home?

17 A I didn't go home first, sir.

18 Q I said to the area.

19 A Yes.

20 Q You've told us that the Vera Johnson projects
21 area is just a couple blocks away?

22 A Yes.

23 Q Also on North Lamb?

24 A Yes, sir.

25 Q You were by yourself?

1 A Yes, sir.

2 Q Did you have money in your pocket?

3 A No. No.

4 Q You were broke, weren't you?

5 A Yes, sir.

6 Q How long did you stay in the Vera Johnson
7 projects area?

8 A About 30, 40 minutes.

9 Q Why did you go there first?

10 A I had some belongings over there and I was
11 going over there to get them. But the person wasn't home so
12 I couldn't get them.

13 Q What belongings?

14 A I had a pair of shoes over at somebody's house.

15 Q At whose house?

16 A It was this lady by the name of Sue.

17 Q Who is Sue?

18 A A resident over in them apartments.

19 Q A girlfriend of yours?

20 A No. I wasn't messing with any other woman, no,
21 sir. She was just a friend.

22 Q How do your shoes happen to be at Sue's place?

23 A Oh, I got some new shoes one day and left my
24 old ones over at her house. And that was before I went to
25 jail and they were at her house the entire time I was in

1 jail.

2 Q Do you consume any drugs while you were at the
3 Vera Johnson area?

4 A Absolutely not, sir.

5 Q Have anything to drink?

6 A No.

7 Q Haven't you said before that you had a couple
8 of beers?

9 A There was a guy over there that had some beer
10 and he asked me did I want some and I told him not right
11 now, I told him that I had to go back downtown at one
12 o'clock, be back downtown at one o'clock.

13 Q So you didn't drink any beers?

14 A No, I did not.

15 Q Didn't use any dope?

16 A No, sir, I did not.

17 Q You were certainly of sound mind, that is you
18 knew what you were doing --

19 A I was sober, sir.

20 Q -- when you borrowed the bicycle and you went
21 on over to 839 North Lamb, space 125; is that correct?

22 A I was sober and I went home, yes, sir.

23 Q Were you aware of who you were?

24 A Yes.

25 Q Did you know where you were going?

1 A Yes, sir.

2 Q Did you know why you were going there?

3 A Yes, sir.

4 Q You said that you borrowed the bicycle and went
5 home.

6 A Yes, sir.

7 Q I want to get something straight. By home
8 you're referring to 839 North Lamb, space 125?

9 A Yes, sir.

10 Q Was the mobile home rented in your name?

11 A No, it was not.

12 Q Had you paid any of the rent at that residence?

13 A No, I did not.

2 Q Did you have a key in your pocket that was
14 going to enable you to get into your home?

15 A I lost my key, sir.

16 Q Did you get another one from Deborah?

17 A No, I did not.

18 Q When did you lose your key?

19 A Right before I went to jail, sir.

20 Q Which time?

21 A Before June 26th, 1995, sir.

22 Q Did you have a marriage certificate on your
23 person that gave you entitlement to go into 839 North Lamb,
24 space 125?
25

2

1 A No, I did not have no marriage certificate.

2 Q When you got there did you knock on the door?

3 A No, I did not.

4 Q Is there a doorbell?

5 A No, there is not.

6 Q You didn't knock?

7 A No, sir.

8 Q You elected to go through a bedroom window?

9 A I went through that window many times, sir.

10 That wasn't the first time.

11 Q I didn't ask how many times it had been. Your
12 decision was to get in by going in through a window; is that
13 your testimony?

14 A Yes, I went through the window, sir.

15 Q And you're saying she was in there and met you
16 as you were coming in?

17 A Yes, sir.

18 Q And you said she was happy to see you?

19 A I told you her exact words when I went inside
20 the window, sir.

21 Q I've forgotten her exact words.

22 A She asked me why didn't I knock at the door. I
23 told her I did not know you was home, I just called two
24 times and nobody answered the phone. And she came over and
25 actually moved the nightstand, moved it a little ways away

2

1 from the window for me, sir, and I climbed in the window.

2 Q When did the screen get pushed down and bent?

3 A I put the screen inside so when she moved the
4 nightstand I guess it must have went -- some of it got on
5 top of the screen because I didn't take the screen and put
6 it up under there, you know.

7 Q The testimony has been that the print of a shoe
8 was on the screen. You had to walk on the screen you'd put
9 inside to get in?

10 A Well, if I stepped on it, I don't remember
11 doing that, but if there was a footprint on it, my footprint
12 must have been on it.

13 Q The screen is damaged?

14 A No, it wasn't damaged the last time I seen it.

15 Q It's bent, sir, according to the photographs
16 taken by the officers. You didn't damage the screen?

17 A No, I did not damage the screen, sir.

18 Q She according to you met you at the window and
19 asked why you hadn't knocked. That was a good question,
20 wasn't it?

21 A I didn't knock because nobody answered the
22 phone when I called her.

23 Q Did you have the money to pay for any damage to
24 the window or the screen as a result of your entry through a
25 window?

2 1 A I didn't damage the window and I didn't damage
3 2 the screen so there wouldn't be no need for no financial
4 3 assistance.

5 4 Q You said the two of you talked for about 20
6 5 minutes, you began to kiss and then you started taking each
7 6 other's clothes off?

8 7 A Exactly.

9 8 Q And you began to have sex?

10 9 A Yes, sir.

11 10 Q You said you began to have sex.

12 11 A Yes, sir.

13 12 Q And as I remember you said when I entered her,
14 13 her vagina was all loose and wet and smelly?

15 14 A Exactly.

16 15 Q You said it wasn't nothing like it used to be?

17 16 A Nothing. Never like that. Never.

18 17 Q That made you angry?

19 18 A Of course I would be upset.

20 19 Q What do you mean of course I would be upset?

21 20 A Any man would be upset they come home to their
22 21 lady and she wasn't the way -- her vagina was the way
23 22 Debbie's was that day.

24 23 Q Mr. Chappell, you keep calling her your lady.
25 24 Was she wearing a little gold band that you had bought for
 25 her on her left ring finger?

2

1 A She told me that she was my girl. And I'm
2 going to go by that, sir.

3 Q Did you think you owned her, sir?

4 A No, I did not.

5 Q So you've told us that when you detected that
6 something was different you got up and grabbed her?

7 A Yes, I did.

8 Q Grabbed her how?

9 A I put my hand in this area right here.

10 Q This area meaning in the area of her neck?

11 A Yeah.

12 Q Did you begin to choke her, Mr. Chappell?

13 A I didn't choke her that she couldn't say
14 nothing or nothing like that, she couldn't breathe, it
15 wasn't nothing like that.

16 Q With both hands did you begin to choke her,
17 sir?

18 A No. No.

19 Q With only one hand?

20 A One hand, sir.

21 Q Which hand?

3

22 A My right hand, sir.

23 Q Did you grasp her neck with your right hand?

24 Did you take a hold of her neck with your right hand?

25 A She was laying down, I was on top of her

3 1 holding her like onto her neck. I wasn't squeezing it,
2 2 nothing like that.

3 Q She was still laying on the sofa?

4 A Yes, sir.

5 Q But you were standing at that time?

6 A I was like on my knees on top of her. I wasn't
7 standing up yet.

8 Q Pinning her down?

9 A If you call just holding on to the front of her
10 neck pinning her down, yes, sir.

11 Q Mr. Chappell, I'm not calling it anything. I'm
12 asking you what you were doing.

13 A I don't call it pinning her down, no, sir, I
14 was not pinning her down.

15 Q You said you grabbed her with your right hand.
16 What were you doing with your left hand?

17 A My left hand was at the side of the couch like
18 that.

19 Q Did you have the knife at that time?

20 A Absolutely not, sir.

21 Q Had you ejaculated at that time?

22 A No, sir.

23 Q You've said that she wanted to know if she
24 could get on top of you after you'd begun to accuse her of
25 being with someone else?

3 1 A Yes. She asked me that about three times.

2 Q And you rejected that because at this point you
3 were very angry with her?

4 A Yes, I rejected that.

5 Q Were you now convinced that she was being
6 unfaithful?

7 A No. Not totally, no.

8 Q You said she performed oral sex on you?

9 A Yes, sir.

10 Q And it was at some point after this that she
11 finished and went into the bathroom?

12 A Exactly.

13 Q And then she called the day-care center?

14 A Yes, sir.

15 Q About what time is it that she called the
16 day-care center?

17 A I wasn't watching the clock so I don't know
18 what time it was.

19 Q What time would you say you arrived at the
20 mobile home and went into the window and through the window
21 and you were greeted by Deborah?

22 A I don't know the exact time, sir. I didn't
23 look at the clock at all when I was there.

24 Q Well, how far did you have to walk to get from
25 the office of where you had met with the law enforcement man

3 1 to get out to the projects area in the 500 block of North
2 Lamb?

3 A Las Vegas Boulevard and Bonanza to Lamb and
4 Bonanza took about 45, 50 minutes, sir.

5 Q So if you left the office at about 10:45, then
6 it was, what, 11:30 or 11:35 when you arrived at the Vera
7 Johnson area?

8 A I didn't see no clock over there, but I guess
9 so, sir.

10 Q You said you were there for about half an hour?

11 A Yeah. Yes.

12 Q So that's somewhere around noon or perhaps
13 shortly after twelve o'clock noon?

14 A Yes.

15 Q You borrowed a bicycle?

16 A Yes.

17 Q How long did it take you to ride the bicycle
18 from Vera Johnson to the Balerina Mobile Home Park?

19 A No longer than ten minutes, sir.

20 Q Now, you said you had called from downtown to
21 try to talk to her and you didn't get her on the telephone?

22 A I called from Mr. Duffy's office, sir. He
23 dialed and I left a message on the answering machine.

24 Q And you said you called from the projects also?

25 A Yes, sir.

3 1 Q Did you leave a second message on the answering
2 machine?

3 A Yes, I did, sir.

4 Q And you're telling us you thought she wasn't
5 home?

6 A Exactly. She would have picked up the phone if
7 she was home.

8 Q So approximately what time is it that she is
9 supposedly calling the day-care center about the children?

10 A I didn't see no clock, sir, so I don't know.

11 Q Do you know why she called the day-care center?

12 A She said let's go pick up the kids. We was
13 going to get the kids.

14 Q I thought you mentioned that she was talking
15 with someone and you heard her mention 5:35?

16 A The lady told her that she had to pick up the
17 children by 5:30. She said that in her testimony --

18 Q It certainly wasn't close to 5:30, was it?

19 A No, that's what I asked her. I knew right away
20 that -- she said she had to take the kids at 7:30, dropped
21 them off at 7:30 and I knew right then that she didn't have
22 to pick them up until later in the afternoon, but I told her
23 I wanted to see them anyway, I wanted to see them.

24 Q But you said she was acting scared when she was
25 on the telephone?

3 1 A She looked nervous to me. If she was scared,
4 2 that I think if she was scared she probably would have ran
3 3 or left the mobile home while I was in the bathroom. So I
4 4 don't think she was scared. She was just nervous.

5 Q Nervous of you?

6 A Nervous of the condition of her vagina and she
7 7 knew that I was upset about it.

8 Q That you had accused her of being unfaithful?

9 A I asked her who she had been with and she said
10 nobody.

11 Q Had you threatened her?

12 A No, I did not.

13 Q Sheri Smith has testified earlier in your
14 trial, do you remember her, the young lady from the Angel
15 Day-Care Center?

16 A Yes.

17 Q She testified that she asked Deborah Panos if
18 she could get away from you and come by herself to the
19 day-care center and Deborah said no?

20 A I also read that in her statement. I didn't
21 hear none of that so I don't know.

22 Q At this point was Deborah Panos free to go
23 somewhere by herself?

24 A We had both agreed to both going to get the
25 children so I don't know why that was said over the phone.

4 1 Q If she had not agreed to let you go with her,
2 would you have gone along with her?

3 A Yeah, I would have gone along with her because
4 I wanted to shower and change and all that anyway, sir.

5 Q Sheri Smith also said that twice during the
6 telephone conversation Deborah asked her for help.

7 A I heard that, sir.

8 Q Why would Debbie be asking this employee of the
9 day-care center for help?

10 A I don't know, sir. She had a chance to call
11 911 if she was really scared. She didn't do it so she
12 couldn't have been really scared, sir. She was nervous, but
13 she wasn't scared.

14 Q Well, you told us a little earlier that she was
15 more than nervous. You said she was scared and you figured
16 that was because she knew I knew she had been messing
17 around; isn't that what you told us earlier?

18 A She was probably thinking that in her mind,
19 yeah. I don't know what she was thinking about.

20 Q Were you also asking Deborah for money?

21 A No, I had asked Deborah when we pick up the
22 kids could we all go out and eat together and she said she
23 didn't have no money. We used to go out and eat together a
24 lot.

25 Q Well, you've told us that the two of you left

4 1 together and you went out to the car and she was going to
2 let you drive?

3 A Yes, we left together and she asked me do you
4 want to drive and I said yes. She handed me the keys and we
5 went to go get in the car.

6 Q You've seen the car depicted in Exhibits 56
7 through 60, the photographs?

8 A Yes, sir.

9 Q Is that Debbie's car?

10 A Yes, sir.

11 Q It wasn't your car, was it?

12 A No, it wasn't.

13 Q Did you have a key to the car?

14 A No, I did not.

15 Q Did she let you have your own key to her car?

16 A No.

17 Q You hadn't made any of the payments on the car?

18 A When she got the car she only paid a thousand
19 bucks for it. It didn't need a payment, sir.

20 Q Well, that was a thousand dollars more than you
21 had, wasn't it?

22 A Yeah, you're right. But when she got the car
23 she told me she had a big surprise for me. She came and
24 picked me up May 10th at the Clark County Detention Center
25 in that car, sir.

4 1 Q Now, you've told us that as the two of you
2 walked out you saw the beer cans over next to the house?

3 A Yes, sir.

4 Q And you didn't like the condition of the Toyota
5 when you got in it?

6 A The Toyota was trashed and messed up, sir. Of
7 course I didn't like it. She didn't like it either. She
8 said a couple comments I know the air conditioner is broke,
9 this and that, this and that.

10 Q And then you're saying you found a letter in,
11 where, the console area?

12 A Yes, sir. Right here. Right in between the
13 two seats, sir.

14 Q And you found that as you were backing out and
15 in the process of driving the vehicle?

16 A No, I didn't find it while I was backing out.
17 I was like two houses down and then I looked, sir.

18 Q Two houses down driving the vehicle?

19 A Yes.

20 Q It was moved?

21 A Yes.

22 Q And then as you went along you began to read
23 it?

24 A Pardon me?

25 Q As you were driving down the street you were

4 1 reading what was on the note or letter?

2 A Yes, I let go of the steering wheel like I said
3 and read the letter as quickly as I could.

4 Q Did you stop it when you let go of the steering
5 wheel?

6 A Stop what?

7 Q The car.

5 8 A No. Like I said I almost ran into another car
9 that was parked.

10 Q And what you read is that some guy had written
11 her and he was talking about having sex with her?

12 A He said numerous things about sex, sir.

13 Q And you've told us that you were shocked and
14 devastated.

15 A Very.

16 Q And you backed up, you pulled into the driveway
17 and you said you climbed out on her side of the car?

18 A Yes, sir.

19 Q Did you grab her at that time?

20 A I pulled her out of the car, yes, sir.

21 Q Why did you climb out on her side? Were you
22 afraid she was going to run?

23 A She didn't attempt to do it so I don't know,
24 sir.

25 Q You don't know why you got out on her side of

5

1 the car?

2 A No.

3 Q You had to step across her to get out, didn't
4 you?

5 A Exactly, yes, sir.

6 Q You said she was trying to get the note or
7 letter from you?

8 A She was trying to take it from me, sir.

9 Q And it was being torn into pieces as you
10 struggled over it?

11 A Right.

12 Q And you remember all of these details; is that
13 true, Mr. Chappell?

14 A I remember --

15 Q You remember dragging her back into the mobile
16 home?

17 A I remember removing her from the vehicle and
18 going towards the house, sir.

19 Q When you got her into the house do you remember
20 throwing her onto the floor?

21 A I remember her falling on the floor, yes.

22 Q Did she have a little help in falling on the
23 floor?

24 A Yes, she did.

25 Q And when you helped her fall to the floor what

5

1 did she do?

2 A She laid there like I said, sir. She didn't
3 move.

4 Q She just laid there and covered up her face,
5 didn't she?

6 A Yes, sir.

7 Q And tried to protect herself; is that true, Mr.
8 Chappell?

9 A Yes.

10 Q Had she tried to attack you?

11 A No, she did not.

12 Q Had she got a knife or some type of weapon and
13 tried to injure you or hurt you?

14 A No, sir.

15 Q Did you suffer any type of serious injury as a
16 result of the struggle between the two of you?

17 A No, sir.

18 Q So what happened after you had her on the floor
19 and she just laid there and tried to cover herself up, what
20 did you do, sir?

21 A I can't picture it, sir. I don't remember.

22 Q You can't picture it or you don't want to tell
23 us what you picture now in this courtroom in your mind?

24 A I can't see myself hitting her, sir. I am
25 telling you I blacked out, sir. Quit just like that.

5

1 Q You're saying you blacked out?

2 A Right. I don't remember seeing myself strike
3 this woman or do nothing.

4 Q And you remember precisely what happened right
5 up to the moment that you killed her, but you don't remember
6 that part of it and then afterwards you remember again?

7 A I remember moving her towards the house, sir,
8 and I remember seeing her on the floor. That's it.

9 Q Are you just telling us what you want to tell
10 us?

11 A No, sir.

12 Q Aren't you just remembering what you want to
13 remember?

14 A No, sir, that's not true.

15 Q Where did the knife come from?

16 A I don't know, sir.

17 Q Is 68-A-1 your knife?

18 A No, it is not.

19 Q Then it was Deborah's knife; is that correct?

20 A It belonged to the household, sir.

21 Q Didn't it stay in a drawer in the kitchen?

22 A I don't know.

23 Q You killed her in the living room, didn't you?

24 A I don't know if it was in no drawer. I don't
25 remember opening no drawer, sir.

5 1 Q At some point after you had beat her into
2 2 submission you had to walk somewhere to get the steak knife;
3 3 isn't that correct?

4 4 A I don't remember where I got the knife from,
5 5 sir. If I did, I would tell you. But I don't.

6 6 Q The medical examiner says you stabbed her at
7 7 least 13 times in the neck and the chest ten times. You're
8 8 telling us you don't remember any of that?

9 9 A No, I do not.

10 10 Q You don't remember stabbing her even once with
11 11 a knife?

12 12 A No.. No, I do not.

13 13 Q Now, when is it that you went into the bedroom
14 14 and you threw these letters that you had written to her
15 15 around the room?

16 16 A The letters were tossed at her before she had
17 17 performed oral sex on me, sir, right when we went in the
18 18 room.

19 19 Q While you were accusing her; is that true?

20 20 A I had accused her when I was laying on top of
21 21 her, sir. When I got off of her I didn't repeat what I had
22 22 said to her. I just walked away from her.

23 23 Q How did the two of you get in the bedroom? How
24 24 did the two of you get into the bedroom?

25 25 A I walked in there, she followed me and she

6

1 hugged me around my waist like I said, sir.

2 Q But you didn't want her affection at that
3 point; is that what you're telling us?

4 A No, I did not.

5 Q Because you were angry; is that true?

6 A I was upset.

7 Q You were jealous?

8 A Upset.

9 Q Suspicious?

10 A Upset.

11 Q Did you call her a bitch or whore or slut?

12 A No.

13 Q That afternoon?

14 A No, sir, I did not.

15 Q But you've told us at some point you picked up
16 a stack of your letters and suggested that these hadn't
17 meant anything to you?

18 A My exact words, yes.

19 Q You've testified that after this happened you
20 didn't know that you had killed her?

21 A I seen her on the floor, sir. I left. I
22 couldn't sit there.

23 Q Did you check for a pulse?

24 A No. No.

25 Q There is a telephone inside the mobile home,

6

1 isn't there?

2 A Yes, there was.

3 Q Did you go to the telephone since you didn't
4 know that she was dead and call 911?

5 A If you see somebody like that laying in front
6 of you, sir, you are not going to sit there and look at
7 that, sir.

8 Q Did you try to help her?

9 A I couldn't look at that, sir.

10 Q So you chose to ignore her situation; is that
11 what you're telling us? Is that your testimony?

12 A I couldn't sit there and look at that, sir. I
13 had to get out of there, sir. I couldn't look at it.

14 Q You didn't climb on your bicycle, you stole her
15 car; isn't that true?

16 A If you want to call it stealing it. I don't
17 consider myself stealing it, sir.

18 Q Were the keys still in the car?

19 A I don't remember, sir.

20 Q And you drove to the Vera Johnson projects in
21 the car and you got high?

22 A No, I did not get high. I parked the car, I
23 went inside an abandoned apartment and stayed in there about
24 three hours, sir.

25 Q Is that where you got the shrimp and the pie?

6 1 A I didn't get that till like ten o'clock at
2 night, sir.

3 MR. HARMON: May I approach the witness, Your
4 Honor?

5 THE COURT: Yes.

6 BY MR. HARMON:

7 Q Mr. Chappell, this is a couple of pages, it
8 looks like they're numbered seven and eight which have been
9 removed from letters taken from the bag, Exhibit 75. Is
10 that your handwriting?

11 A Yes, sir.

12 Q So both on the front which is identified as
13 page seven and on the back page eight this is a letter
14 written by you?

15 A Yes, sir.

16 Q You wrote this from the jail?

17 A Yes, sir.

18 Q And you wrote this a few weeks before you
19 killed her?

20 A I don't know the exact date I wrote the letter,
21 sir.

22 Q You begin this page of the letter by saying,
23 "Hello, Sweetie. Found some more paper. It's Sunday,
24 July 30, 1995." Is that date in your handwriting?

25 A Yes, sir.

6 1 Q So is that apparently the date you wrote this?

2 A Yes, sir.

3 Q You say, "Been here 35 days. Where are you?"

4 And you have four question marks?

5 A Yes.

6 Q You go on to write, "You must be terrified to
7 visit me, ha?"

8 A Yes, I wrote that.

9 Q Did you further write, "You know I'll put you
10 on the witness stand, ha?" Did you write that?

11 A Yes, she knows she can't lie to my face, sir.
12 That's why I wrote that. I'd know if she was telling the
13 truth.

14 Q You meant when you saw her you were going to
15 give her the third degree, didn't you?

16 A I was going to question her, yes.

17 Q About where she'd been and who she'd been with?

18 A I already knew who she was hanging with.

19 Q Who?

20 A Lisa Duran and Claire and Jennifer, that lady
21 that was sitting in the back of the courtroom.

22 Q And now after you talked about putting her on
23 the witness stand did you say, "And you can't face it or me,
24 ha?" Is that what you write, "and you can't face it or me,
25 ha?"

6 1 A I wrote that, yes, sir.

2 Q You didn't get out of custody between
3 July the 30th, 1995 and August the 31st, did you?

4 A No.

5 Q Do you then write, "One day soon I'll be at
6 that front door and what in God's name will you do then?"
7 Did you write that, sir?

8 A Yeah, I wrote that.

9 MR. HARMON: That's all we have, Your Honor.

10 THE COURT: Redirect?

11 MR. BROOKS: Court's indulgence, Your Honor.

12 We have no questions, Judge.

13 THE COURT: All right. Mr. Chappell, you may
14 step down.

15 We'll declare the evening recess at this time.
16 Ladies and gentlemen, thank you very much for your patience
17 today with us starting so late and that couldn't be avoided.

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

7 1 We are going to start proceedings tomorrow
2 morning at ten o'clock. So if you'd be in the courthouse
3 sometime between 9:45 and ten o'clock I would appreciate it.
4 Good evening. We will be at ease while you depart the
5 confines of the courtroom.

6 (Jury left.)

7 THE COURT: All right. Anything further from
8 the parties at this time?

9 MR. HARMON: Not from the State.

10 MR. BROOKS: No, Your Honor.

11 THE COURT: We're off the record.

12
13 (The proceedings concluded.)

14
15 * * * * *

16
17 ATTEST: Full, true and accurate transcript of
18 proceedings.

19
20 
21 LISA BRENSKE, CCR No. 186
22
23
24
25

DISTRICT COURT

CLARK COUNTY, NEVADA FILED IN OPEN COURT

ORIGINAL

* * * * * OCT 15 1996 19

LORETTA BOWMAN, CLERK

THE STATE OF NEVADA,

BY

Deputy

Plaintiff,

CASE NO. C131341

Vs

DEPT. NO. VII

JAMES MONTELL CHAPPELL,

DOCKET P

Defendant.

BEFORE THE HONORABLE:

A. WILLIAM MAUPIN DISTRICT JUDGE

MONDAY, OCTOBER 14, 1996, 11:35 A.M.

VOLUME V - 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

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PATSY K. SMITH, OFFICIAL COURT REPORTER

1 MONDAY, OCTOBER 14, 1996, 11:35 A.M.

2 THE COURT: We're on the record outside the
3 presence of the jury.

4 MR. HARMON: Judge, the State has two
5 additional witnesses to call during its case in chief. The
6 first witness will be Terry Cook. He's available.

7 Our problem lies with the Cellmark witness.
8 We were going to use Paula Yates, as she is ill apparently
9 with the flu is it?

10 MS. SILVER: Hundred five fever.

11 MR. HARMON: She would not be available
12 until after we intended to recess this week. So then we
13 wanted to use her partner Lisa Foreman. Ms. Foreman, as I
14 understand it, had a serious illness in her family. At the
15 earliest, she wouldn't be available until tomorrow and
16 we're not sure if she would be available until later than
17 that.

18 THE COURT: That testimony undoubtedly is
19 going to take an hour.

20 MR. HARMON: Well, it may. I don't think
21 it's going to be extensive.

22 THE COURT: But still in order to convey the
23 technology to the jury it's going to take some time in
24 terms of just foundationally I would think.

25 MR. HARMON: That's possible, Judge.

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1 What we propose to do is move to endorse a
2 name. Thomas Wahl of the Metro Police Department Crime
3 Lab, who has experience and knows of Cellmark, has had an
4 opportunity to review the findings in this case and would
5 be prepared -- that is W-A-H-L -- to testify today. So we
6 could proceed without any delay. So we're simply asking
7 for permission, even though we understand --

8 THE COURT: Is there any objection to this?

9 MR. BROOKS: We're not going to oppose
10 this. We are not contesting any of this DNA evidence, so
11 there is no objection at all.

12 THE COURT: All right, motion is granted.

13 MR. HARMON: May I file the motion in open
14 court and also approach the bench with the order?

15 THE COURT: Yes.

16 Let's bring in the jury.

17 (Off the record discussion not reported.)

18

19 (At this time the jury entered the
20 courtroom.)

21

22 THE COURT: Good morning, ladies and
23 gentlemen.

24 THE JURY: (In Unison) Good morning.

25 THE COURT: I apologize for the late start.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 However, this morning's calendar went over two hours and it
2 was quite elaborate and, unfortunately, that's the system
3 that is in place in this county. It's a system that needs
4 badly to be changed and with some minimum level of
5 creativity among the jurists of this state, it will be
6 changed, but it hasn't been changed yet.

7 With that, will counsel stipulate to the
8 presence of the jury?

9 MR. HARMON: Yes, your Honor.

10 MR. BROOKS: Defense will, your Honor.

11 THE COURT: All right, the State may call
12 its next witness.

13 MS. SILVER: Thank you, your Honor.

14 We would call Terry Cook to the stand.

15

16 TERRY L. COOK,
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 . . .

22 . . .

23 . . .

24 . . .

25 . . .

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 DIRECT EXAMINATION

2 BY MS. SILVER:

3 Q Sir, could you please state your name
4 and spell it for the record.

5 A Terry L. Cook, C-O-O-K.

6 Q And, sir, what is your occupation and
7 assignment?

8 A I'm a Criminalist II with the Las Vegas
9 Metro Police Department Crime Laboratory for Las Vegas,
10 Nevada.

11 Q As a criminalist with the Las Vegas
12 Metropolitan Police Department, what do your duties
13 include?

14 A Well, a criminalist is an individual
15 with a specialized background or training that utilizes
16 that training in the analysis of evidence. My particular
17 area of expertise is in the field of serology. A
18 serologist would concern himself with the identification of
19 body fluids on items of evidence found on or near crime
20 scenes. They would be semen, saliva, and, most commonly,
21 blood.

22 Q And what type of training and
23 experience do you have in order to become such a serologist
24 with the crime lab?

25 A I have a bachelor degree in chemistry

PATSY K. SMITH, OFFICIAL COURT REPORTER

CHRISTOPHER R. ORAM, LTD.
520 SOUTH 4TH STREET | SECOND FLOOR
LAS VEGAS, NEVADA 89101
TEL. 702.384-5563 | FAX. 702.974-0623

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

JAMES CHAPPELL,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

S.C. CASE NO. 61967

Electronically Filed
Nov 18 2013 02:18 p.m.
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Clerk of Supreme Court

APPEAL FROM DENIAL OF PETITION FOR WRIT OF HABEAS CORPUS
(POST-CONVICTION) AND SENTENCE OF DEATH
EIGHTH JUDICIAL DISTRICT COURT
THE HONORABLE JUDGE CAROLYN ELLSWORTH, PRESIDING

~~~~~  
APPELLANT'S APPENDIX TO THE OPENING BRIEF  
VOLUME VI  
~~~~~

ATTORNEY FOR APPELLANT

CHRISTOPHER R. ORAM, ESQ.

Attorney at Law
Nevada Bar No. 004349
520 S. Fourth Street, 2nd Floor
Las Vegas, Nevada 89101
Telephone: (702) 384-5563

ATTORNEY FOR RESPONDENT

STEVE WOLFSON, ESQ.

District Attorney
Nevada Bar No. 001565
200 Lewis Avenue
Las Vegas, Nevada 89101

CATHERINE CORTEZ MASTO

Nevada Attorney General
Nevada Bar No. 0003926
100 North Carson Street
Carson City, Nevada 89701-4717

IN THE SUPREME COURT OF NEVADA

JAMES CHAPPELL,

CASE NO. 61967

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on this 18th day of November, 2013. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

CATHERINE CORTEZ-MASTO
Nevada Attorney General

STEVE OWENS
Chief Deputy District Attorney

CHRISTOPHER R. ORAM, ESQ.

BY:

/s/ Jessie Vargas
An Employee of Christopher R. Oram, Esq.

CHRISTOPHER R. ORAM, LTD.
520 SOUTH 4TH STREET | SECOND FLOOR
LAS VEGAS, NEVADA 89101
TEL. 702.384-5563 | FAX. 702.974-0623