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2 An Information is but a formal method of accusing a person of a crime and is not of itself any  
3 evidence of his guilt.

4 In this case, it is charged in an Information that on or about the 31st day of August, 1996, the  
5 Defendant committed the following offenses:

6 **COUNT I - BURGLARY**

7 did then and there wilfully, unlawfully, and feloniously enter, with intent to commit larceny and/or  
8 assault and/or battery and/or robbery and/or murder, that certain building located at 839 North Lamb  
9 Boulevard, Las Vegas, Clark County, Nevada, Space No. 125 thereof, occupied by DEBORAH PANOS.

10 **COUNT II - ROBBERY WITH USE OF A DEADLY WEAPON**

11 did then and there wilfully, unlawfully, and feloniously take personal property, to-wit: social  
12 security cards and/or keys and/or a motor vehicle, from the person of DEBORAH PANOS, or in her  
13 presence, by means of force or violence, or fear of injury to, and without the consent and against the will  
14 of the said DEBORAH PANOS, said Defendant using a deadly weapon, to-wit: a knife, during the  
15 commission of said crime.

16 **COUNT III - MURDER (OPEN) WITH USE OF A DEADLY WEAPON**

17 did then and there, without authority of law and with malice aforethought wilfully and feloniously  
18 kill DEBORAH PANOS, a human being, by stabbing at and into the body of the said DEBORAH  
19 PANOS with a deadly weapon, to-wit: a knife, during the commission of said crime; defendant  
20 committing said act with premeditation and deliberation and/or committing said act during the  
21 perpetration of a burglary and/or robbery.

22 It is the duty of the jury to apply the rules of law contained in these instructions to the facts of  
23 the case and determine whether or not the Defendant is guilty of one or more of the offenses charged.

24 Each charge and the evidence pertaining to it should be considered separately. The fact that you  
25 may find a defendant guilty or not guilty as to one of the offenses charged should not control your verdict  
26 as to any other offense charged.

INSTRUCTION NO. 4

Any person who by day or night, enters any residence or mobile home or building with intent to commit larceny and/or assault and/or battery and/or robbery and/or murder or any felony, is guilty of Burglary.

INSTRUCTION NO. 5

Larceny is the theft of personal goods or property of another person.

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INSTRUCTION NO. 6

An Assault is an unlawful attempt, coupled with present ability, to do a violent injury to another person.

To constitute an assault, it is not necessary that any actual injury be inflicted.

INSTRUCTION NO. 7

Battery means any willful and unlawful use of force or violence upon the person of another.

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INSTRUCTION NO. 8

You are instructed that the offense of Burglary is complete if you find that entry was made into a residence or mobile home or building with the intent to commit larceny and/or assault and/or battery and/or robbery and/or murder therein.

An entry is deemed to be complete when any portion of an intruder's body, however slight, penetrates the space within the building.

Any person who, in the commission of a burglary, commits any other crime, may be prosecuted for each crime separately.

INSTRUCTION NO. 9

You are further instructed that an unlawful entry is one ordinarily done without the authority, permission or consent of the owner or one in lawful possession of the building. However, consent to enter is not a defense to the crime of burglary nor need there be a breaking into or a forced entry so long as it is shown that entry was made with the specific intent to commit larceny and/or assault and/or battery and/or robbery and/or murder or any felony therein.

The authority to enter a building extends only to those who enter with a purpose consistent with the reason the residence or mobile home or building is open to them. An entry with intent to commit larceny and/or assault and/or battery and/or robbery and/or murder or any felony cannot be said to be within the authority granted someone who has permission to enter.

INSTRUCTION NO. 10

You are further instructed that in order to constitute the crime of burglary, it is not necessary to prove that the defendant actually stole any of the articles, goods or money contained in the residence or mobile home or building. The gist of the crime of burglary is the unlawful entering of a residence or mobile home or building with the intent to commit larceny and/or assault and/or battery and/or robbery and/or murder or any felony therein



INSTRUCTION NO. 11

Robbery is the unlawful taking of personal property from the person of another, or in her presence, against her will, by means of force or violence or fear of injury, immediate or future, to her person or property, or the person or property of a member of her family, or of anyone in her company at the time of the robbery. A taking is by means of force or fear if force or fear is used to:

- (a) Obtain or retain possession of the property;
- (b) Prevent or overcome resistance to the taking; or
- (c) Facilitate escape.

The degree of force used is immaterial if it is used to compel acquiescence to the taking of or escaping with the property. A taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom taken, such knowledge was prevented by the use of force or fear.

INSTRUCTION NO. 12

The value of property or money taken is not an element of the crime of Robbery, and it is only necessary that the State prove the taking of some property or money.

INSTRUCTION NO. 13

You are instructed that if you find a defendant guilty of Robbery you must also determine whether or not a deadly weapon was used in the commission of this crime.

INSTRUCTION NO. 14

A deadly weapon is any weapon, device, instrument, material or substance which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing substantial bodily harm or death.

INSTRUCTION NO. 15

If you find beyond a reasonable doubt that a defendant committed Robbery with the Use of a Deadly Weapon, then you are instructed that the verdict of Robbery with the Use of a Deadly Weapon is the appropriate verdict.

If, however, you find that a deadly weapon was not used in the commission of the Robbery, but you do find that a Robbery was committed, then you are instructed that the verdict of Robbery without the Use of a Deadly Weapon is the appropriate verdict.

You are instructed that you cannot return a verdict of both Robbery with the Use of a Deadly Weapon and Robbery without the Use of a Deadly Weapon.

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2 If a jury is not satisfied beyond a reasonable doubt that a defendant is guilty of an offense charged,  
3 a defendant may, however, be found guilty of a lesser related offense which was not charged, the  
4 commission of which is necessarily included in the offense charged, if the evidence is sufficient to  
5 establish the defendant's guilt of such lesser related offense beyond a reasonable doubt.

6 You may find the defendant guilty of the lesser crime only if you are not convinced beyond a  
7 reasonable doubt the defendant is guilty of the offense charged, and all twelve of you are convinced  
8 beyond a reasonable doubt the defendant is guilty of the lesser crime.

9 The offense of Robbery with which the defendant is charged includes the lesser related offense  
10 of Grand Larceny Auto.  
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INSTRUCTION NO. 17

Any person who steals, takes and carries away, or drives away the motor vehicle of another, regardless of its value, is guilty of Grand Larceny.

INSTRUCTION NO. 18

Murder is the unlawful killing of a human being, with malice aforethought, whether express or implied. The unlawful killing may be effected by any of the various means by which death may be occasioned.



INSTRUCTION NO. 19

Malice aforethought means the intentional doing of a wrongful act without legal cause or excuse or what the law considers adequate provocation. The condition of mind described as malice aforethought may arise, not alone from anger, hatred, revenge or from particular ill will, spite or grudge toward the person killed, but may result from any unjustifiable or unlawful motive or purpose to injure another, which proceeds from a heart fatally bent on mischief or with reckless disregard of consequences and social duty. Malice aforethought does not imply deliberation or the lapse of any considerable time between the malicious intention to injure another and the actual execution of the intent but denotes rather an unlawful purpose and design in contradistinction to accident and mischance.

INSTRUCTION NO. 20

Express malice is that deliberate intention unlawfully to take away the life of a fellow creature, which is manifested by external circumstances capable of proof.

Malice may be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart.

INSTRUCTION NO. 21

Murder of the First Degree is murder which is (a) perpetrated by any kind of willful, deliberate and premeditated killing and/or (b) committed in the perpetration of burglary or attempted burglary and/or (c) committed in the perpetration of robbery or attempted robbery.

A killing which is committed in the perpetration or attempted perpetration of burglary and/or robbery is deemed to be murder of the first degree, whether the killing was intentional, unintentional or accidental. This is called the Felony-Murder rule.

The Felony-Murder rule is applicable to this case only if you find that the Defendant possessed a specific intent to commit burglary and/or robbery.

INSTRUCTION NO. 22

Premeditation is a design, a determination to kill, distinctly formed in the mind at any moment before or at the time of the killing.

Premeditation need not be for a day, an hour or even a minute. It may be as instantaneous as successive thoughts of the mind. For if the jury believes from the evidence that the act constituting the killing has been preceded by and has been the result of premeditation, no matter how rapidly the premeditation is followed by the act constituting the killing, it is willful, deliberate and premeditated murder.

INSTRUCTION NO. 23

The intention to kill may be ascertained or deduced from the facts and circumstances of the killing, such as the use of a weapon calculated to produce death, the manner of its use, and the attendant circumstances characterizing the act.

INSTRUCTION NO. 24

An act done with intent to commit a crime, and tending but failing to accomplish it, is an attempt to commit that crime.

INSTRUCTION NO. 25

You are instructed that if you find a defendant guilty of murder of the first degree, you must also determine whether or not a deadly weapon was used in the commission of this crime.

INSTRUCTION NO. 26

If you find beyond a reasonable doubt that a defendant committed Murder of the First Degree with the Use of a Deadly Weapon, then you are instructed that the verdict of Murder of the First Degree with the Use of a Deadly Weapon is the appropriate verdict.

If, however, you find that a deadly weapon was not used in the commission of the Murder, but you do find that a Murder was committed, then you are instructed that the verdict of Murder of the First Degree without the Use of a Deadly Weapon is the appropriate verdict.

You are instructed that you cannot return a verdict of both Murder of the First Degree with the Use of a Deadly Weapon and Murder of the First Degree without the Use of a Deadly Weapon.



INSTRUCTION NO. 27

The offense of First Degree Murder necessarily includes the lesser offense of Second Degree Murder.

If you are convinced beyond a reasonable doubt that the crime of murder has been committed by a defendant, but you have a reasonable doubt whether such murder was of the first or of the second degree, you must give the defendant the benefit of that doubt and return a verdict of murder of the second degree.

INSTRUCTION NO. 28

**Murder of the Second Degree** is murder with malice aforethought, but without the admixture of premeditation.

**All murder which is not Murder of the First Degree is Murder of the Second Degree.**

INSTRUCTION NO. 29

You are instructed that if you find a defendant guilty of murder of the second degree you must also determine whether or not a deadly weapon was used in the commission of this crime.

INSTRUCTION NO. 30

If you find beyond a reasonable doubt that a defendant committed Murder of the Second Degree with the Use of a Deadly Weapon, then you are instructed that the verdict of Murder of the Second Degree with the Use of a Deadly Weapon is the appropriate verdict.

If, however, you find that a deadly weapon was not used in the commission of the Murder, but you do find that a Murder was committed, then you are instructed that the verdict of Murder of the Second Degree without the Use of a Deadly Weapon is the appropriate verdict.

You are instructed that you cannot return a verdict of both Murder of the Second Degree with the Use of a Deadly Weapon and Murder of the Second Degree without the Use of a Deadly Weapon

INSTRUCTION NO. 31

The offenses of first degree murder and second degree murder necessarily includes the lesser offense of voluntary manslaughter.

If you have a reasonable doubt that the defendant is guilty of murder of the first degree and if you have a reasonable doubt that a defendant is guilty of murder of the second degree, but you do believe from the evidence beyond a reasonable doubt that the defendant is guilty of manslaughter, you will acquit him of murder and find him guilty of Voluntary Manslaughter.

INSTRUCTION NO. 32

Voluntary Manslaughter is the unlawful killing of a human being without malice express or implied, and without any admixture of deliberation. It must be voluntary, upon a sudden heat of passion, caused by a provocation apparently sufficient to make the passion irresistible. In cases of voluntary manslaughter there must be a serious and highly provoking injury inflicted upon the person killing, sufficient to excite an irresistible passion in a reasonable person, or an attempt by the person killed to commit a serious personal injury on the person killing.

The killing must be the result of that sudden, violent impulse of passion supposed to be irresistible; for, if there should appear to have been an interval between the assault or provocation given and the killing, sufficient for the voice of reason and humanity to be heard, the killing shall be attributed to deliberate revenge and punished as murder.

A serious and highly provoking injury need not be a direct physical assault on the accused.

INSTRUCTION NO. 33

**You are instructed that if you find a defendant guilty of Voluntary Manslaughter you must also determine whether or not a deadly weapon was used in the commission of this crime.**

INSTRUCTION NO. 34

If you find beyond a reasonable doubt that a defendant committed Voluntary Manslaughter with the Use of a Deadly Weapon, then you are instructed that the verdict of Voluntary Manslaughter with the Use of a Deadly Weapon is the appropriate verdict.

If, however, you find that a deadly weapon was not used in the commission of the Voluntary Manslaughter, but you do find that Voluntary Manslaughter was committed, then you are instructed that the verdict of Voluntary Manslaughter without the Use of a Deadly Weapon is the appropriate verdict.

You are instructed that you cannot return a verdict of both Voluntary Manslaughter with the Use of a Deadly Weapon and Voluntary Manslaughter without the Use of a Deadly Weapon.



INSTRUCTION NO. 35

To constitute the crime charged, there must exist a union or joint operation of an act forbidden by law and an intent to do the act.

The intent with which an act is done is shown by the facts and circumstances surrounding the case.

Do not confuse intent with motive. Motive is what prompts a person to act. Intent refers only to the state of mind with which the act is done.

Motive is not an element of the crime charged and the State is not required to prove a motive on the part of the Defendant in order to convict. However, you may consider evidence of motive or lack of motive as a circumstance in the case.

The Defendant is presumed innocent until the contrary is proved. This presumption places upon the State the burden of proving beyond a reasonable doubt every material element of the crime charged and that the Defendant is the person who committed the offense.

A reasonable doubt is one based on reason. It is not mere possible doubt but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or speculation.

If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a verdict of not guilty.

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2 The evidence which you are to consider in this case consists of the testimony of the witnesses,  
3 the exhibits, and any facts admitted or agreed to by counsel.

4 There are two types of evidence; direct and circumstantial. Direct evidence is the testimony  
5 of a person who claims to have personal knowledge of the commission of the crime which has been  
6 charged, such as an eyewitness. Circumstantial evidence is the proof of a chain of facts and  
7 circumstances which tend to show whether the Defendant is guilty or not guilty. The law makes no  
8 distinction between the weight to be given either direct or circumstantial evidence. Therefore, all of  
9 the evidence in the case, including the circumstantial evidence, should be considered by you in  
10 arriving at your verdict.

11 Statements, arguments and opinions of counsel are not evidence in the case. However, if the  
12 attorneys stipulate to the existence of a fact, you must accept the stipulation as evidence and regard  
13 that fact as proved.

14 You must not speculate to be true any insinuations suggested by a question asked a witness.  
15 A question is not evidence and may be considered only as it supplies meaning to the answer.

16 You must disregard any evidence to which an objection was sustained by the court and any  
17 evidence ordered stricken by the court.

18 Anything you may have seen or heard outside the courtroom is not evidence and must also  
19 be disregarded.  
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INSTRUCTION NO. 38

Evidence of a person's character or a trait of his character or evidence of other crimes, wrongs or acts, is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion.

However, such evidence is admissible for other purposes, such as proof of motive, intent, plan, knowledge, identity, or absence of mistake or accident.

INSTRUCTION NO. 39

A statement of a declarant's then-existing state of mind, emotion, sensation or physical condition, such as intent, plan, motive, design, mental feeling, pain and bodily health, is not inadmissible under the hearsay rule. However, such evidence is admitted only for the purpose of establishing the declarant's state of mind and not for the purpose of proving the truth of what the declarant said.

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2       The credibility or believability of a witness should be determined by his manner upon the  
3 stand, his relationship to the parties, his fears, motives, interests or feelings, his opportunity to have  
4 observed the matter to which he testified, the reasonableness of his statements and the strength or  
5 weakness of his recollections.

6       If you believe that a witness has lied about any material fact in the case, you may disregard  
7 the entire testimony of that witness or any portion of his testimony which is not proved by other  
8 evidence.  
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A witness who has special knowledge, skill, experience, training or education in a particular science, profession or occupation is an expert witness. An expert witness may give his opinion as to any matter in which he is skilled.

You should consider such expert opinion and weigh the reasons, if any, given for it. You are not bound, however, by such an opinion. Give it the weight to which you deem it entitled, whether that be great or slight, and you may reject it, if, in your judgment, the reasons given for it are unsound.

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2 Although you are to consider only the evidence in the case in reaching a verdict, you must  
3 bring to the consideration of the evidence your everyday common sense and judgment as reasonable  
4 men and women. Thus, you are not limited solely to what you see and hear as the witnesses testify.  
5 You may draw reasonable inferences from the evidence which you feel are justified in the light of  
6 common experience, keeping in mind that such inferences should not be based on speculation or  
7 guess.

8 A verdict may never be influenced by sympathy, prejudice or public opinion. Your decision  
9 should be the product of sincere judgment and sound discretion in accordance with these rules of law.  
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INSTRUCTION NO. 43

In arriving at a verdict in this case as to whether the defendant is guilty or not guilty, the subject of penalty or punishment is not to be discussed or considered by you and should in no way influence your verdict.

If the Jury's verdict is Murder in the First Degree, you will, at a later hearing, consider the subject of penalty or punishment.

INSTRUCTION NO. 44

When you retire to consider your verdict, you must select one of your number to act as foreperson who will preside over your deliberation and will be your spokesman here in court.

During your deliberation, you will have all the exhibits which were admitted into evidence, these written instructions and forms of verdict which have been prepared for your convenience.

Your verdict must be unanimous. As soon as you have agreed upon a verdict, have it signed and dated by your foreperson and then return with it to this room.

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2 If, during your deliberation, you should desire to be further informed on any point of law or  
3 hear again portions of the testimony, you must reduce your request to writing signed by the  
4 foreperson. The officer will then return you to court where the information sought will be given you  
5 in the presence of, and after notice to, the district attorney and the Defendant and his counsel.

6 Readbacks of testimony are time-consuming and are not encouraged unless you deem it a  
7 necessity. Should you require a readback, you must carefully describe the testimony to be read back  
8 so that the court reporter can arrange his notes. Remember, the court is not at liberty to supplement  
9 the evidence.  
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INSTRUCTION NO. 46

Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence as you understand it and remember it to be and by the law as given to you in these instructions, with the sole, fixed and steadfast purpose of doing equal and exact justice between the Defendant and the State of Nevada.

GIVEN:   
DISTRICT JUDGE

IN OPEN COURT 10-15-96

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OCT 16 1996 19 3:35pm  
LORETTA BOWMAN, CLERK  
BY Lina Hurd  
Deputy

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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA  
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8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 JAMES MONTELL CHAPPELL,

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13 Defendant(s).  
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Case No.  
Dept. No.  
Docket

C/31341  
C131240  
VII  
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15 VERDICT

16 We, the jury in the above entitled case, find the defendant JAMES MONTELL CHAPPELL,  
17 Guilty of COUNT I - BURGLARY.

18 DATED this 16 day of October, 1996.  
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20 Wendy L. Hill  
21 FOREPERSON  
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3 OCT 16 1996 19 3:35 pm  
4 LORETTA BOWMAN, CLERK  
5 BY Tim Hurd  
6 Deputy

7 DISTRICT COURT  
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 JAMES MONTELL CHAPPELL,

13 Defendant(s).  
14

Case No. C131341  
Dept. No. C131240  
Docket VII  
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15 VERDICT

16 We, the jury in the above entitled case, find the defendant JAMES MONTELL CHAPPELL,  
17 Guilty of COUNT II - ROBBERY WITH USE OF A DEADLY WEAPON.

18 DATED this 16 day of October, 1996.

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20 Wendy L. Hill  
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LORETTA BOWMAN, CLERK  
BY Tina Hurd  
Deputy

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JAMES MONTELL CHAPPELL,

Defendant(s).

Case No. 9131341  
Dept. No. C131240  
Docket VII  
P

VERDICT

We, the jury in the above entitled case, find the defendant JAMES MONTELL CHAPPELL,  
Guilty of COUNT III - MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY  
WEAPON.

DATED this 16 day of October, 1996.

Wendy L. Hill  
FOREPERSON

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DISTRICT COURT

CLARK COUNTY, NEVADA

ORIGINAL

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FILED IN OPEN COURT

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LORETTA BOWMAN, CLERK

BY *Lisa Hunt* Deputy

CASE NO. C131341

DEPT. NO. VII

DOCKET P

THE STATE OF NEVADA,  
Plaintiff,  
Vs  
JAMES MONTELL CHAPPELL,  
Defendant.

BEFORE THE HONORABLE:

HEARD BY LEE A. GATES DISTRICT JUDGE

WEDNESDAY, OCTOBER 16, 1996, 3:35 P.M.

VOLUME VII

APPEARANCES:

FOR THE STATE: MELVYN T. HARMON  
Chief Deputy District Attorney

FOR THE DEFENDANT: HOWARD S. BROOKS &  
WILLARD N. EWING  
Deputies Public Defender

REPORTED BY: PATSY K. SMITH, C.C.R. #190

PATSY K. SMITH, OFFICIAL COURT REPORTER

CE



1 WEDNESDAY, OCTOBER 16, 1996, 3:35 P.M.

2 THE COURT: All right, let the record  
3 reflect that we are in open court now. Present is Mr.  
4 Harmon from the DA's office.

5 Counsel, what is your name? I've forgot.

6 MR. BROOKS: Howard Brooks, your Honor, and  
7 Mr. Ewing, Wil Ewing.

8 THE COURT: Pardon me.

9 Mr. Brooks and Mr. Ewing, as well as the  
10 defendant.

11 The Court has been informed that the jury  
12 has reached a verdict; is that correct?

13 THE JURY: (In Unison) Yes.

14 THE COURT: Who is the foreman?

15 You are, okay.

16 All right, at this time, we'll have the  
17 clerk read the verdicts out loud.

18 THE CLERK: "District Court, Clark County,  
19 Nevada, the State of Nevada, plaintiff, versus James  
20 Montell Chappell, defendant. Case number," --

21 (Off the record discussion not reported.)

22 THE CLERK: "C131341, Department No. VII,  
23 Docket P.

24 Verdict: We the jury in the above entitled  
25 case find the defendant, James Montell Chappell, guilty of

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Count I, burglary. Dated this 16 day of October, 1996.

2 Wendy L. Hill, foreperson.

3 District Court, Clark County, Nevada, the  
4 State of Nevada, plaintiff, versus James Montell Chappell,  
5 defendant. Case number C131341, Department No. VII, Docket  
6 P.

7 Verdict: We the jury in the above entitled  
8 case find the defendant, James Montell Chappell, guilty of  
9 Count II, robbery with use of a deadly weapon. Dated this  
10 16 day of October, 1996. Wendy L. Hill, foreperson.

11 District Court, Clark County, Nevada, the  
12 State of Nevada, plaintiff, versus James Montell Chappell,  
13 defendant. Case number C131341, Department No. VII, Docket  
14 P.

15 Verdict: We the jury in the above entitled  
16 case find the defendant, James Montell Chappell, guilty of  
17 Count III, murder of the first degree with use of a deadly  
18 weapon. Dated this 16 day of October, 1996. Wendy L.  
19 Hill, foreperson."

20 Ladies and gentlemen of the jury, are those  
21 your verdicts as read, so say you one, so say you all?

22 THE JURY: (In Unison) Yes.

23 THE COURT: All right, Ms. Clerk, poll the  
24 jury.

25 THE CLERK: Denise Wright Parr, are those

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 your verdicts as read?  
2 A Yes, they are.  
3 Q Kenneth Edward Gritis, are those your  
4 verdicts as read?  
5 A Yes, they are.  
6 Q Jerry Wayne Ewell, are those your  
7 verdicts as read?  
8 A Yes.  
9 Q Cheryl Lynn Wells, are those your  
10 verdicts as read?  
11 A Yes.  
12 Q Jim Blake Tripp, are those your  
13 verdicts as read?  
14 A Yes.  
15 Q Kellyane Bentley Taylor, are those your  
16 verdicts as read?  
17 A Yes.  
18 Q Bruce Todd Larsen, are those your  
19 verdicts as read?  
20 A Yes, they are.  
21 Q Mark Gregory Massar, are those your  
22 verdicts as read?  
23 A Yes.  
24 Q Danna Terry Yates, are those your  
25 verdicts as read?

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 A Yes.

2 Q Glenn Eugene Fittro, are those your  
3 verdicts as read?

4 A Yes.

5 Q Kenneth Roy Fitzgerald, are those your  
6 verdicts as read?

7 A Yes.

8 Q Wendy Lynn Hill, are those your  
9 verdicts as read?

10 A Yes.

11 THE COURT: All right, enter the verdict in  
12 the minutes of the Court.

13 All right, folks, this necessitates a  
14 penalty phase. What date do you want?

15 MR. HARMON: Monday, the 21st, your Honor.

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

17 THE COURT: Is that all right for Judge  
18 Maupin?

19 THE CLERK: Yes, Judge.

20 THE COURT: All right, we will set this  
21 matter for Monday, the 21st, at 10 a.m.?

22 (Off the record discussion not reported.)

23 THE COURT: All right, 11 a.m.

24 All right, at this time, the Court is going  
25 to excuse the jury. However, the case is not over with, so

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1 the Court is going to admonish you it is your duty not to  
2 converse among yourselves or with anyone else on any  
3 subject connected with this trial or to read, watch, or  
4 listen to any report of or commentary on this trial or any  
5 person connected with this trial by any medium of  
6 information, including whatsoever newspapers, television,  
7 or radio, and you are not to form or express an opinion on  
8 any subject connected with this case until it is finally  
9 submitted to you and you reach your decision on the  
10 penalty.

11 All right, we will be in recess until 11  
12 a.m. Monday morning. The jury is excused.

13

14 (At this time the jury left the courtroom.)

15

16 THE COURT: Was there any bail in this  
17 case?

18 MR. BROOKS: Not that I'm aware of, Judge.

19 THE COURT: Pardon me?

20 MR. BROOKS: Not that I'm aware of.

21 THE COURT: All right. If there was, there  
22 is no bail. He is remanded to the custody of the sheriff  
23 without bail.

24 All right, we are in recess.

25 . . .

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(Off the record at 3:40 p.m.)

\* \* \* \* \*

ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF PROCEEDINGS.

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

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DISTRICT COURT

CLARK COUNTY, NEVADA

FILED IN OPEN COURT

ORIGINAL

\* \* \* \* \* OCT 22 1996 19

LORETTA BOWMAN, CLERK

THE STATE OF NEVADA,

BY

*[Signature]*

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 21, 1996, 11:10 A.M.

PENALTY PHASE - VOLUME I - 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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1 MONDAY, OCTOBER 21, 1996, 11:10 A.M.

2 THE COURT: State versus Chappell.

3 We're outside the presence of the jury.

4 MR. EWING: Yes, your Honor. We only have  
5 one motion prior to the jury coming in.

6 It's our understanding that the State  
7 anticipates calling a few witnesses that will continue with  
8 the testimony regarding hearsay comments made to them by  
9 the victim --

10 THE COURT: Correct.

11 MR. EWING: -- going to her state of mind  
12 and what we are going to do is make a continuing objection  
13 so we don't have to keep making an objection.

14 THE COURT: Court notes that hearsay is  
15 admissible during the penalty phase and, to the extent to  
16 which the objection had to be lodged in order to effect the  
17 prior contentions with regard to the prior rulings, you may  
18 have a continuing objection.

19 Let's bring the jury in.

20 MR. EWING: And, Judge, also one other  
21 thing. We would like to put our grounds on the record.  
22 It's in violation of the confrontation clause of the 6th  
23 Amendment.

24 THE COURT: I understand.

25

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1 (At this time the jury entered the  
2 courtroom.)  
3

4 THE COURT: Counsel stipulate to the  
5 presence of the jury?

6 MR. HARMON: Yes, your Honor.

7 MR. EWING: Defense would, your Honor.

8 THE COURT: Good morning, ladies and  
9 gentlemen.

10 THE JURY: (In Unison) Good morning.

11 THE COURT: This is the continuation of the  
12 jury trial in State of Nevada versus James Chappell.

13 The defendant having been convicted of first  
14 degree murder by the jury, the State may now commence with  
15 the prosecution of the penalty phase of this matter. At  
16 this time, the State of Nevada may make its opening  
17 statement.

18 MR. HARMON: Thank you, Judge.

19 Judge Maupin, counsel, good morning, ladies  
20 and gentlemen.

21 Aristotle has declared, "What is justice but  
22 to give every man his due." Your task at this phase of the  
23 trial will be to decide what justice demands in this case  
24 of James Chappell from the law and evidence applicable in  
25 this case. As you will learn, additional evidence will be

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1 presented at this phase of the trial and also you may rely  
2 upon the evidence and exhibits introduced during the guilt  
3 phase of the trial as well, but from all of the law and  
4 evidence applicable to this case, you, during this stage of  
5 the proceedings, and it may not be pleasant, it certainly  
6 is not easy to pass judgment upon a fellow human being, but  
7 your duty is going to be to give Mr. Chappell, in the words  
8 of the philosopher, his due.

9 As the Court will explain to you in more  
10 detail, when he provides the formal Instructions, the  
11 jury's task involves balancing the aggravating and  
12 mitigating circumstances. The defense will allege that  
13 there are certain factors which mitigate the first degree  
14 murder of Deborah Panos. The prosecution alleges that  
15 certain factors exist which aggravate this crime. As the  
16 parties will explain to you, for the death penalty even to  
17 be an option, the prosecution must establish beyond a  
18 reasonable doubt the existence of at least one aggravating  
19 circumstance. The State in this case alleges four  
20 aggravating circumstances and some of them -- in fact, as I  
21 speak, I was about to say some of them, but all of the  
22 circumstances relate to the evidence of this case.

23 It is alleged that a burglary or home  
24 invasion occurred in connection with the murder of Deborah  
25 Panos, that a robbery occurred at the time she was killed.

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1 It is alleged by the prosecution that she was raped in  
2 connection with the crime perpetrated upon her and, fourth,  
3 that the murder involved torture or depravity of mind and  
4 the Court will explain to you what those phrases mean  
5 during his legal Instructions.

6 The prosecution will also present some  
7 additional evidence which will involve friends or  
8 co-workers of the victim, Deborah Panos. You heard from  
9 the defendant on the witness stand. Naturally, Ms. Panos  
10 isn't here to take the witness stand and explain what her  
11 state of mind was, but in the weeks prior to her murder,  
12 she talked quite extensively to good friends and persons  
13 with whom she worked about the relationship with James  
14 Chappell.

15 At a penalty hearing, the rules of evidence  
16 are relaxed somewhat and hearsay evidence is admissible.  
17 So the prosecution will call Clare McGuire, M-C capital  
18 G-U-I-R-E. She lived at 839 North Lamb, space 125, for a  
19 period of time with the victim. We will call also Michelle  
20 Mancho and Michael Pollard. They were good friends of the  
21 victim and also worked with her at G.E. Capital and from  
22 conversations, they were able to determine her state of  
23 mind. So you will hear from those three witnesses.

24 An officer has been produced from Lansing,  
25 Michigan and is prepared to describe an incident occurring

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1 quite a few years ago. It was August the 18th, 1988. His  
2 name is Paul Weidner, W-E-I-D-N-E-R. He's with the Lansing  
3 Police Department. At about 6:40 in the evening on the  
4 date I gave you, August 18 of 1988, he investigated a  
5 situation involving a citizen, Kenneth Gay, G-A-Y, the  
6 defendant, a co-defendant named Harold Smith, and certain  
7 other individuals. The defendant, Mr. Chappell, and Mr.  
8 Smith ended up being charged with felonious assault.

9                   There was an argument in an alleyway when  
10 Mr. Gay tried to drive his vehicle to the rear of his  
11 residence. Words were exchanged, some racial words,  
12 bottles, several bricks were thrown at the vehicle and also  
13 at Kenneth Gay, the complaining witness. He became very  
14 upset, produced a bat and even a gun to protect himself  
15 from the individuals, who included the defendant, and he  
16 was hit on at least one occasion in the left side of his  
17 back with a brick that he related to the investigating  
18 officer was thrown by the defendant, Mr. Chappell. So  
19 you'll hear brief testimony about that incident occurring  
20 in the State of Michigan.

21                   You will also learn further details at this  
22 hearing regarding the nature and circumstances of the  
23 defendant's release from custody on August the 31st, 1995  
24 at about 10:45 a.m. You understand that he was being  
25 supervised by the Department of Parole & Probation. That

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1 was in addition to the domestic violence case of June the  
2 1st that you are already aware of.

3                   You will learn that the defendant had been  
4 arrested at a K-Mart store, 5050 East Charleston Boulevard  
5 on February the 18th, 1995 and charged with burglary, being  
6 under the influence of a controlled substance, and  
7 possession of burglary tools. He had on his person two  
8 pairs of pliers and three screwdrivers at the time he was  
9 apprehended. An officer, in a somewhat similar incident  
10 described by the theft prevention officers from Lucky's,  
11 the defendant was observed putting clothing and cassette  
12 tapes under his clothes. He had removed the security  
13 devices and tried to walk out. Well, that case resulted in  
14 his arrest on felony charges. It was plea bargained.

15                   He, at a later date, entered a plea of  
16 guilty to a gross misdemeanor, possession of burglary  
17 tools. He was sentenced on or about April the 27th, 1995  
18 by a local District Court Judge, given a nine month  
19 suspended sentence, and placed onto a year of probation  
20 with a condition of probation -- there were a number of  
21 conditions, but one of them was that he enter and complete  
22 a drug rehabilitation program.

23                   The defendant, in connection with the  
24 presentence investigation on that case, filled out a  
25 handwritten statement, which the State will have marked and

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1 offer as evidence also, wherein, basically, he says, "I  
2 have learned my lesson. I am never going to do anything  
3 else wrong if I'm given a break," and, of course, he was  
4 given a break of sorts. He got probation.

5 His supervising officer was Charmaine Smith  
6 of the Department of Parole & Probation. Initially, she  
7 was involved in the case. It was later, shortly before the  
8 murder of Deborah Panos, the case was transferred to Larry  
9 Arve of the Department. Mr. Arve had very little contact  
10 with the defendant.

11 Charmaine Smith will explain that toward the  
12 middle of June, 1995, she received several telephone  
13 conversations from Deborah Panos. She will relate that Ms.  
14 Panos indicated that the defendant didn't -- told her he  
15 didn't intend to report to the Department. They were  
16 concerned because someone being supervised, they have to  
17 maintain regular contact.

18 On June the 15th, 1995, Ms. Panos came in to  
19 the office of Parole & Probation. In the presence of  
20 Charmaine Smith, then the supervising officer, and Paul  
21 Ellis, Ms. Smith's supervisor, she explained the nature of  
22 her relationship with the defendant, explained her fear,  
23 explained the beatings which had occurred, talked about the  
24 knife incident. They encouraged her to move and to change  
25 her locks and they will explain that her response at that

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1 time was she couldn't afford to move.

2 Ms. Smith will tell you that a violation  
3 report of the defendant's probation for the gross  
4 misdemeanor was submitted on June the 30th, 1995 and there  
5 was a hearing before the sentencing judge on August the  
6 1st, 1995, during which certain admissions were made that  
7 violations had occurred as conditions of probation, but,  
8 nevertheless, the defendant was reinstated on probation  
9 with the specific condition that he be, whenever he was  
10 released because he still had the domestic battery pending  
11 in Municipal Court, the condition being that when he was  
12 released, it would be to the care of the Department of  
13 Parole & Probation, who were to transport him to an  
14 in-patient drug rehabilitation program and that was the  
15 Court order.

16 You will learn that, for whatever reason,  
17 and Officer William Duffy of the Department of Parole &  
18 Probation will testify that it was he on August the 31st,  
19 1995, who had two officers go to the city jail where the  
20 defendant was then being housed, the Mojave Stewart  
21 facility. At about 9:00 in the morning, the defendant was  
22 released to them. He was then brought to the office of  
23 William Duffy, a supervisor at the Department of Parole &  
24 Probation. Mr. Duffy talked with the defendant, received  
25 an assurance from the defendant that he would go directly

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1 to EOB where the defendant had claimed, despite being  
 2 turned down earlier by that agency as not an appropriate  
 3 candidate for their drug rehab program, the defendant  
 4 convinced Duffy that if he could personally talk to the  
 5 person in charge, that they would find a bed space for him  
 6 and so, as it turns out for Miss Panos, Mr. Duffy made a  
 7 serious error in judgment. He didn't maintain in a  
 8 custodial status. He released the defendant to walk to EOB  
 9 at about 10:45 a.m. with the understanding that he had to  
 10 report back to the Department at 1:00 in the afternoon. Of  
 11 course, he didn't report back. The rest is history in  
 12 terms of what happened to Deborah Panos.

13 It will be the State's position in this case  
 14 that justice occurs when the punishment fits the crime and  
 15 it would be your obligation, ladies and gentlemen, from  
 16 what character evidence you hear, from the totality of the  
 17 evidence, balancing whatever aggravating or mitigating  
 18 circumstances are applicable to the case, it is your  
 19 responsibility to determine, from the range of punishments  
 20 provided in this state for murder of the first degree,  
 21 which punishment fits this crime.

22 Thank you.

23 THE COURT: Thank you.

24 Opening statement on behalf of the defense.

25 MR. EWING: Thank you.

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1                   Good morning, your Honor, counsel, good  
2 morning, ladies and gentlemen.

3                   On Wednesday of last week, you returned your  
4 verdict of first degree murder and you might imagine that,  
5 although we don't agree with that verdict, we do respect it  
6 and we're ready to move on today with the penalty phase of  
7 this trial.

8                   It's important for you to realize that  
9 nothing happens in a vacuum. Everything happens because of  
10 reasons. There is reasons why people do things. Some  
11 reasons they control and some reasons that they don't  
12 control and that's what this penalty phase is about.

13                  I want to read to you a quote, "The focus of  
14 the penalty phase of a capital trial is twofold. It's on  
15 the defendant seeing in the light not only of the crime  
16 he's committed, but of all that he has done and been. It  
17 is also on ourselves, as a civilized society, for all we  
18 have done and been and are striving to do better." When  
19 carrying out this task, the jury is required to focus on  
20 the defendant as a uniquely individual -- as a uniquely  
21 individual human being.

22                  The trial phase of the trial, the guilt  
23 phase of the trial was about evidence, it was about Deborah  
24 Panos, it was about the crime that occurred. The penalty  
25 phase is about James Chappell. It's about his history,

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1 about his childhood, about his unique set of circumstances,  
2 and it's also about the facts of this particular case,  
3 which we can't escape.

4 During the trial -- the course of the trial,  
5 I heard all the same evidence you did about the death of  
6 Deborah Panos and I feel the same compassion that you feel  
7 for her and for her family. It's a tragedy and no one can  
8 help but feel compassion, but the penalty phase is no  
9 longer about Deborah Panos. It's about James Chappell and  
10 that might not seem fair, it might seem insensitive. We  
11 don't want to seem that way. We don't want to act like we  
12 are forgetting her because we're not, but you have got to  
13 keep in mind that the action brought on behalf of the State  
14 of Nevada is not an action brought in the name of Deborah  
15 Panos, it's an action brought in the name of the State of  
16 Nevada. It's an action brought by the State of Nevada to  
17 decide what we should do to redress the injury which  
18 occurred, the injury to us and pursue our goal in living  
19 together as a civilized society.

20 That's why we have crimes. That's why it  
21 says State of Nevada versus James Chappell because we are  
22 trying to decide -- you are going to try to decide what you  
23 should do as members of society to redress the wrong and  
24 you do that by focusing on the life and circumstances of  
25 James Chappell.

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1                   We're not here to dispute the correctness of  
2     the death penalty. During voir dire, you all indicated  
3     that you were in favor of it or, under certain  
4     circumstances, could vote for the death penalty and I think  
5     that each one of us could envision in our minds a fact  
6     scenario which is so egregious where the defendant has the  
7     kind of a history of criminal activity and commits the type  
8     of a crime where he should be removed from society. We can  
9     all probably envision that, but this is not the case in  
10    this particular scenario.

11                   The State of Nevada has seen fit to give you  
12    four options in terms of punishment. You can sentence Mr.  
13    Chappell to 50 years in prison for the murder plus an equal  
14    and consecutive 50 years in prison for the use of a deadly  
15    weapon. Parole eligibility after 20 years on each  
16    element. Meaning he would be 40 years old before he is  
17    eligible for parole.

18                   You can sentence him to life imprisonment  
19    with the possibility of parole, which means his sentence is  
20    life. It would be a life sentence on each element, life  
21    sentence on the murder and life sentence for the use of a  
22    deadly weapon to run consecutive. He would be parole  
23    eligible after he serves 20 years for the murder and 20  
24    years for the use of a weapon, which means he would be  
25    parole eligible after he serves 40 years, which means he

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1 would be approximately 66 years old before he is parole  
2 eligible.

3 You can sentence him to life without the  
4 possibility of parole, which means just that. He would  
5 never have a chance to returning to society or you can  
6 sentence him to the death sentence.

7 In order to arrive at a fair and just  
8 sentence, though, I think it's really important for you to  
9 consider that you need to be able to look at Mr. Chappell  
10 as a human being. You need to be able, to a certain  
11 extent, look beyond what happened when the crime occurred  
12 and look at the circumstances.

13 It's easy to inflict an unduly harsh  
14 sentence on someone when you don't understand them and what  
15 we're asking for is fairness and in order to be fair, you  
16 need to understand the totality of the circumstances and  
17 that's what we're going to try to present to you during the  
18 penalty phase.

19 During the guilt phase of the trial, we  
20 called Dr. Etcoff to the stand, who is a clinical  
21 psychologist and a neuropsychologist. We're not going to  
22 call him again at the penalty phase, but everything he said  
23 is applicable and important to the penalty phase. We  
24 didn't want to bring him in here to say everything all over  
25 again because you've heard him once.

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1                   Now, I don't know how you considered that  
2 testimony when you arrived at your verdict. I don't know  
3 if you felt like it was not important to the reasons why  
4 the crime occurred, but I would submit to you that in  
5 regards to punishment, it is absolutely critical to  
6 understand what was going on in the mind of James Chappell  
7 prior to the date that this occurred and on the date that  
8 this occurred and if we are in a situation where we can't  
9 look at the circumstances like learning disabilities,  
10 psychological problems, emotional problems in arriving at a  
11 just sentence, then, in a sense, we're not demonstrating  
12 humanity ourselves and we need to do that in this penalty  
13 phase.

14                   We're also going to call Clara Aksum  
15 (phonetic), who is Mr. Chappell's grandmother and who was  
16 responsible for raising him. That way she can give you a  
17 little history about his childhood, the neighborhood he  
18 grew up in, his school situation, how he struggled in  
19 school, how he struggled in relationships.

20                   We are also going to call Sharon Aksum, his  
21 aunt, and she, while his grandmother was working, was  
22 responsible for a lot of the raising him and can give you a  
23 good insight of how the person he was, how he was a kind  
24 person, good to his brothers and sisters, he was respectful  
25 of his elders, and things of this nature. We're going to

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1 call a Willy Moore, who was a probation officer, a juvenile  
2 probation officer in Lansing, Michigan, who had an  
3 opportunity to work with James and supervise him and was  
4 available to visit him in his environment and was also able  
5 to observe him and how he responded to having a good  
6 favorable authority figure in his life, to a good positive  
7 stimulus, how he responded to opportunities to work and be  
8 productive. And we're also going to put Mr. Chappell back  
9 on the stand, not to give a sworn statement, but to give an  
10 allocution statement about his feelings about what  
11 occurred.

12 Now, Mr. Harmon talked to you a few minutes  
13 about the role of the penalty phase, the fact of weighing  
14 mitigating circumstances and aggravating circumstances.  
15 The State has alleged four aggravators, two of which you  
16 have already decided. You have already decided there was a  
17 burglary and you have already decided that there was a  
18 robbery. So it's a foregone conclusion that there are  
19 going to be two aggravators in this case.

20 The State also alleges sexual assault. You  
21 have heard -- at least we believe that you have heard all  
22 of the evidence that can be heard as to whether or not  
23 there was a sexual assault and we believe that the evidence  
24 doesn't support that. The State also alleges that the  
25 crime involved torture and I think the critical testimony

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1     there for you to remember is the testimony of the coroner.  
2     I don't know if the State is going to call him back or not,  
3     but he testified in the guilt phase that all of the  
4     injuries were contemporaneous, that they all happen to have  
5     happened at the same time, which doesn't indicate torture.  
6     That leaves the two remaining aggravators which you have  
7     already found exist.

8                     So your role from that point then is to look  
9     at the mitigating circumstances. Also, let me go back to  
10    the aggravators for one moment. The aggravators must be  
11    found beyond a reasonable doubt and they must be  
12    unanimous. You must all agree. The mitigating  
13    circumstances don't have to be unanimous and they don't  
14    have to be beyond a reasonable doubt. One of you can find  
15    something to be mitigating that someone else doesn't and  
16    you can still consider that. The law provides that a first  
17    degree murder may be mitigated by anything that you find to  
18    be mitigating. You'll receive an instruction listing some  
19    possible mitigating circumstances, but you are not bound by  
20    that. You might find something else that is important and  
21    we want you to consider that.

22                    We're going to highlight some of them in the  
23    penalty phase and I'm going to list those for you, but,  
24    again, this isn't an exclusive list of mitigating  
25    circumstances. The youth of the defendant, the fact that

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1 he had no significant history of criminal activity. A lot  
2 of you felt like that was important when we were doing the  
3 initial jury selection. The murder was committed while the  
4 defendant was influenced by extreme mental or emotional  
5 disturbances. We also will ask you to consider his  
6 childhood, the loss of his mother, the non-existence of his  
7 father, his learning disabilities. We will ask you to  
8 examine the love he has for his family and the love his  
9 family has for him and we are going to ask you to consider  
10 remorse, which you saw from the witness stand, which Dr.  
11 Etcoff saw when he saw him. The fact that he accepts  
12 responsibility for what he did. You can remember, when he  
13 testified in the guilt phase, he said, "If I could change  
14 places with her, I would." He acknowledged that he was  
15 criminally responsible for what he did and he also said  
16 that he's going to accept whatever decision you make. We  
17 think that's mitigating.

18 Also consider anything else that you  
19 consider to be mitigating because that's your option.

20 What do you do with the aggravating and  
21 mitigating circumstances? First of all, you have to find  
22 some aggravating circumstances and you are going to because  
23 you already have. Then you look at the mitigating  
24 circumstances and you ask yourself do the mitigating  
25 circumstances outweigh the aggravating circumstances and if

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1 they do, then death is not an option. Are the mitigating  
2 circumstances equal to the aggravating circumstances? If  
3 they are, then the death penalty is not an option.

4 Only if the aggravators outweigh the  
5 mitigators does the death sentence even enter into the  
6 picture and even under that scenario, you are still not  
7 obligated, you still have the right to decide. You can  
8 determine that there are two aggravators and no mitigators  
9 and still decide that a life sentence is appropriate in  
10 this case. That's your discretion.

11 The penalty phase is about reasons. It's  
12 not about excuses and I don't want you to be confused about  
13 that. We're not up here to try to justify what happened,  
14 we're not up here to try to give excuses for what  
15 happened. We are trying to explain what happened and why  
16 it happened so that you can arrive at a fair verdict  
17 considering James Chappell as a human being and if you do  
18 those things, then we're confident that you will decide  
19 that a life sentence is what is appropriate.

20 Thank you.

21 THE COURT: Thank you.

22 Is the State ready to proceed with its  
23 witnesses?

24 MR. HARMON: Yes, your Honor.

25 THE COURT: Call your first witness.

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1 MR. HARMON: Paul Weidner.

2

3

PAUL WEIDNER,

4 having been first duly sworn to tell the truth, the whole  
5 truth and nothing but the truth, testified and said as  
6 follows:

7

8

DIRECT EXAMINATION

9 BY MR. HARMON:

10 Q Will you state your name, please?

11 A Paul Weidner.

12 Q Please spell your last name.

13 A W-E-I-D-N-E-R.

14 Q Is it Officer Paul Weidner?

15 A Detective.

16 Q Detective Weidner, what is your  
17 business or occupation?

18 A I am a homicide investigator with the  
19 City of Lansing Police Department, Lansing, Michigan.

20 Q How long have you been in law  
21 enforcement?

22 A Twenty four years.

23 Q How long with the Lansing Police  
24 Department?

25 A Twenty four years.

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1                   Q     Were you employed as either a detective  
2     or police officer with the Lansing Police Department on  
3     August the 18th, 1988?

4                   A     Yes, it was.

5                   Q     What were your duties?

6                   A     I was a uniformed police officer at the  
7     time assigned to the crime suppression unit.

8                   Q     On August the 18th, 1988, at about 6:45  
9     p.m., did you have occasion to respond to the 1700 block of  
10    South Washington Street in Lansing, Michigan?

11                  A     Yes.

12                  Q     What was your reason for going to that  
13    location?

14                  A     My partner and I had been sent into the  
15    area regarding a disturbance in the 1700 block of South  
16    Washington.

17                  Q     Identify for the record your partner.

18                  A     Officer John Priebe.

19                  Q     Will you spell his names, please.

20                  A     I believe P-R-I-E-B-E.

21                  Q     What happened after you arrived?

22                  A     We made contact with the victim. He  
23    stated that he had been assaulted. When we first arrived,  
24    we exited our vehicle, we encountered a subject that was  
25    standing at his front porch with a shotgun that turned out

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1 to be the victim of our crime.

2 Q You have just explained that he was  
3 standing on his front porch?

4 A Yes, I believe so.

5 Q You are referring to the front porch of  
6 his residence?

7 A Yes, 1705 South Washington Avenue.

8 Q Did you identify the victim by name?

9 A His name was Kenneth Gay.

10 Q G-A-Y?

11 A G-A-Y.

12 Q Are you able to describe whether Mr.  
13 Gay was armed in any fashion when you and your partner,  
14 Officer Priebe, arrived?

15 A According to my report, it indicated  
16 that Mr. Gay was armed with a shotgun.

17 Q Are you able to describe the demeanor  
18 of the victim, Mr. Gay, at that time?

19 A I recall that he was very upset. My  
20 recollection is that there appeared to be a lot of tension  
21 and the victim was very upset.

22 Q Were there other subjects in the area?

23 A Yes.

24 Q Did you have occasion to investigate  
25 the allegations made by Kenneth Gay?

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1                   A     We interviewed Mr. Gay and upon  
2     receiving his statement and information, we subsequently  
3     made an arrest on two individuals that evening for an  
4     assault.

5                   Q     What individuals did you arrest that  
6     evening?

7                   A     We arrested a James Montell Chappell  
8     and also a -- I believe his name was Harold Smith.

9                   Q     Did you obtain dates of birth for the  
10    two arrestees?

11                  A     Yes, we did.

12                  Q     Let's start with Mr. Chappell, what was  
13    his date of birth?

14                  A     According to my police report, Mr.  
15    Chappell's date of birth was 12/27 of '69.

16                  Q     What about the other subject, William  
17    Smith?

18                  A     It's Harold Smith.

19                  Q     I'm sorry.

20                  A     His date of birth was 10/30 of '66.

21                  Q     You mentioned that you interviewed the  
22    complaining witness, Mr. Gay?

23                  A     Yes.

24                  Q     Did he tell you what occurred?

25                  A     Yes, he did.

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1 Q What did he tell you?

2 A According to my report, Mr. Gay advised  
3 that he was coming home that evening in his vehicle. There  
4 is an alley that runs behind his house. He attempted to  
5 pull into that alley and encountered several subjects that  
6 were in the alley yelling and screaming at him. He stated  
7 to us that the subjects began pounding on his vehicle and a  
8 brick was thrown at his vehicle. He stated that he  
9 encountered these subjects after he got out of his vehicle  
10 and was struck in the back with what appeared to be a brick  
11 or a rock on the left side and he identified his assailant  
12 as Mr. Smith and Mr. Chappell.

13 Q Did the complaining witness, Mr. Gay,  
14 identify Harold Smith and James Chappell as individuals who  
15 had participated in the assault?

16 A Yes. According to my report, he named  
17 them by name, that Smith and Chappell had been involved in  
18 the assault.

19 Q Did he say specifically whether  
20 anything, any object was thrown at him by James Chappell?

21 A He stated, according to my report, that  
22 he also observed Mr. Chappell -- he was hit on the left  
23 side of his back with a brick and stated that the subject  
24 Chappell threw the brick.

25 Q Did you have occasion to examine the

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1 back of Kenneth Gay?

2 A Yes. He did receive some injury to the  
3 left side. There was an imprint of what appeared to be a  
4 brick on his shirt and also he sustained what appeared to  
5 be some bruising and some lacerations.

6 Q Do you happen to recall what type of  
7 shirt Mr. Gay was wearing?

8 A I believe it was a T-shirt; a light  
9 colored T-shirt, to the best of my recollection.

10 Q Now is it your testimony that his  
11 report to you was that the individual, who threw the brick  
12 which hit him in the area on the back where he was injured,  
13 was James Chappell?

14 A That is -- I'm referring to my police  
15 report and that's what my report reflects.

16 Q Now, you've mentioned that the two  
17 subjects, Harold Smith and James Chappell, were arrested in  
18 connection with the incident?

19 A That is correct.

20 Q On what charge?

21 A Felonious assault.

22 Q Did you have occasion to interview Mr.  
23 Chappell, one of the arrestees, after you had commenced the  
24 investigation?

25 A My partner, once we arrived at the

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1 station, read the accused his Miranda warnings and then did  
2 take a statement from him.

3 Q Did Mr. Chappell give a statement which  
4 was somewhat contradictory of the account given by Kenneth  
5 Gay, the victim?

6 A Somewhat.

7 Q What was the account provided by Mr.  
8 Chappell?

9 A If I may refer to my report?

10 MR. HARMON: May he do so, your Honor, to  
11 refresh his memory?

12 THE COURT: Yes.

13 Q (BY MR. HARMON) You may, sir.

14 A Yes, sir. According to the statement  
15 here written by Officer Priebe, it stated that Mr. Chappell  
16 told Officer Priebe that we were standing in the alley when  
17 the car started driving up the alley. It wasn't going very  
18 fast, but it didn't honk and while I was getting out of the  
19 way, Harold yelled that he tried to run us over and so he  
20 threw a brick at the car as it went by. He didn't hit the  
21 car, but the white guy, complainant Gay, came out of his  
22 house with a baseball bat and under some derogatory  
23 statements made, if you'd like me to state those?

24 Q What were those statements?

25 A The victim stated, according to Mr.

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1 Chappell, saying, " Come on you, niggers. I'm not afraid of  
2 you." Harold then threw a brick at the white guy and it  
3 knocked him down. The guy went into his house and Harold  
4 picked up the bat. The guy came onto the porch with a gun  
5 and one of the other guys threw a bottle at him, which hit  
6 him on the shoulder.

7 He continues with the police arrived and  
8 that the guy who threw the bottle ran off between the  
9 houses. There were four of us and I don't know the other  
10 two guys that left. They were Harold's friends. The one  
11 that threw the bottle was described as a black male, 6  
12 foot, heavy build with a red shirt and blue jeans and he  
13 stays on Elm Street.

14 Q I take it, from your description of Mr.  
15 Chappell's statement, that except for acknowledging his  
16 presence, he didn't admit to any active participation in  
17 the felonious assault?

18 A According to his statement, no.

19 Q However, as you examined your report,  
20 is it very clear that the victim, Mr. Gay, identified  
21 Chappell as one of the persons who had thrown and, in fact,  
22 hit him in the back with a brick?

23 A Yes, it is.

24 Q Were you ever called upon to testify in  
25 court on this matter?

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1 A No.

2 Q Do you have a personal recollection now  
3 of the disposition of the charge?

4 A No, I do not. I have no idea what  
5 happened to the charge.

6 MR. HARMON: That concludes direct, your  
7 Honor.

8 THE COURT: Thank you.  
9 Cross.

10

11 CROSS EXAMINATION

12 BY MR. BROOKS:

13 Q Officer, going back to this date, this  
14 occurred when again, please?

15 A It occurred on August 18th, 1988.

16 Q So that's about what, almost eight,  
17 little more than eight years ago?

18 A That is correct.

19 Q Now, as far as what happened, you  
20 personally didn't see anything, did you?

21 A No, we did not.

22 Q All you did was talk to the victim and  
23 apparently a witness and apparently you talked to James?

24 A Yes. Upon our arrival, we conducted an  
25 investigation and talked with the people that were there.

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1                   Q    Do you recall if the victim -- can you  
2 describe the victim at all?

3                   A    I just recall him being a older white  
4 male. He was -- I remember him specifically being very  
5 irate, very upset, but anything else except for the police  
6 report, I could tell you his date of birth and so on.

7                   Q    And when you first saw him, he  
8 apparently had a shotgun out?

9                   A    Yes.

10                  Q    And you learned, during the course of  
11 your talking to people, at one time he had a baseball bat  
12 out?

13                  A    He -- yes, he did.

14                  Q    When you talked to him, he never  
15 admitted anything about calling these guys, "Come on you  
16 bunch of niggers?"

17                  A    If I could review my report quickly?

18                  Q    Go ahead.

19                  A    No, I do not see anything in the  
20 report.

21                  Q    And based on his statement, he did not  
22 indicate any responsibility on his part for starting any of  
23 this, did he?

24                  A    The only thing he indicated, according  
25 to the report, that he attempted to pull in the alley

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1     behind his house and he was confronted by several subjects  
2     in the alley.

3                     Q     When apparently you guys arrested Mr.  
4     Smith and Mr. Chappell; is that correct?

5                     A     Yes.

6                     Q     Now Mr. Smith was not cooperative, was  
7     he?

8                     A     According to the report, he was quite  
9     combative.

10                    Q     He didn't give you a statement?

11                    A     No, he did not.

12                    Q     Was Mr. Chappell cooperative?

13                    A     He gave us a statement.

14                    Q     He was more cooperative than Mr.  
15     Smith?

16                    A     Well, it would appear so according to  
17     the report.

18                    Q     And while he had not acknowledged  
19     throwing the brick, apparently the evidence is that both he  
20     and Smith both threw a brick at one point or another?

21                    A     Yes.

22                    Q     Do you recall who the other witness was  
23     that you interviewed that was not necessarily the victim?

24                    A     I have a name on my police report by  
25     the name of Dennis -- I think it's Wersbicky (phonetic).

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1 Q What did he say he observed?

2 A If I may refer to my report?

3 Q Go ahead.

4 A He stated that he was out and about  
5 walking his dog when he observed the victim drive down the  
6 alley and was attacked by the black males. The witness  
7 stated he stated two accused subjects, along with other  
8 subjects, started beating on the victim's vehicle and  
9 started throwing rocks at the vehicle. He also observed  
10 the victim being struck with the bricks and observed  
11 accused Smith throw a brick and strike the victim.

12 Q He doesn't actually say he observed Mr.  
13 Chappell throw a brick?

14 A That is correct.

15 Q If you could, Officer, refer if you  
16 would to page 6 of your report, if you don't mind, look  
17 down in the lower right-hand corner.

18 A Which would be page six?

19 Q Mine just says page six of and I don't  
20 have the last part of that. I think it's the one that has  
21 all the little blanks to fill in.

22 May I approach, Judge?

23 THE COURT: Yes.

24 THE WITNESS: Okay, I see it. Is it a  
25 descriptor?

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1 Q (BY MR. BROOKS) It has all the little  
2 numbers to fill in a report quickly. It says subject  
3 injury, how did your associate respond to that?

4 A Let me find that modus operandi page.  
5 Means of attack?

6 Q No, subject injury, down on the farther  
7 right-hand side. This is the -- Judge, may I approach?

8 THE COURT: Yes.

9 Q (BY MR. BROOKS) This is the sheet on  
10 Harold Lee Smith, this one here.

11 A Oh, okay. Let me see.

12 Q How did you fill that out or how did  
13 you and your associate fill that out?

14 A It indicates no injury.

15 Q Now is that speaking of Mr. Gay, the  
16 one who is hit by the brick?

17 A No, that's speaking of the arrestee.

18 Q Oh, I see. That's probably Mr. Smith  
19 then?

20 A Yes.

21 Q Okay.

22 Do you know if Mr. Gay had to go to the  
23 hospital at all?

24 A I do not recall.

25 Q Would you guys have put that in the

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1 report someplace if he had sustained serious injuries of  
2 any kind?

3 A Yes. If we would have requested the  
4 Lansing Fire Department and Ambulance to arrive at the  
5 scene, it would be on the report. If he was seeking his  
6 own medical attention, it may not be.

7 Q But there is no indication on the  
8 report that you guys called an ambulance?

9 A That is correct.

10 Q You've indicated that you don't know  
11 exactly how this eventually got resolved; is that correct?

12 A You mean how the case was adjudicated?

13 Q Right.

14 A No, I have no idea.

15 Q Would it surprise you if I said there  
16 was no judgment of conviction for a felony in this case?

17 A One way or the other, it wouldn't  
18 because I have no idea.

19 MR. BROOKS: Thank you. I have no further  
20 questions.

21 MR. HARMON: No redirect, Judge.

22 THE COURT: All right, in that case, we'll  
23 take our noon recess. Sir, you may step down.

24 THE WITNESS: Thank you.

25 THE COURT: Thank you very much.

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1                   Ladies and gentlemen of the jury, during  
2                   this recess, it is your duty not to converse among  
3                   yourselves or with anyone else on any subject connected  
4                   with this trial or to read, watch, or listen to any report  
5                   of or commentary on this trial or any person connected with  
6                   this trial by any medium of information, including, without  
7                   limitation, newspapers, television, or radio, and you are  
8                   not to form or express an opinion on any subject connected  
9                   with this case until it is finally submitted to you.

10                   We will reconvene at the hour of 1:30 this  
11                   afternoon. Please be downstairs ready to be collected  
12                   about that time. We will be at ease while you depart the  
13                   confines of the courtroom.

14                   Anything further from the parties before we  
15                   recess?

16                   MR. BROOKS: Not from the defense, your  
17                   Honor.

18                   THE COURT: All right.

19  
20                   (Off the record at 11:58 a.m. and back on  
21                   the record at 1:56 p.m.)

22  
23                   THE COURT: Counsel stipulate to the  
24                   presence of the jury?

25                   MR. HARMON: Yes, your Honor.

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1 MR. EWING: Yes, your Honor.

2 THE COURT: State may call its next  
3 witness.

4 MS. SILVER: The State would call Clare  
5 McGuire.

6  
7 CLARE MCGUIRE,  
8 having been first duly sworn to tell the truth, the whole  
9 truth and nothing but the truth, testified and said as  
10 follows:

11  
12 DIRECT EXAMINATION

13 BY MS. SILVER:

14 Q Could you please state your name and  
15 spell it for the record.

16 A Clare McGuire, C-L-A-R-E  
17 M-c-G-U-I-R-E.

18 Q And how old are you?

19 A Twenty 6.

20 Q And do you live here in Las Vegas  
21 currently?

22 A Yes.

23 Q Are you employed?

24 A Yes.

25 Q Where are you employed?

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1 A At the Showboat.

2 Q What do you do at the Showboat?

3 A Soft count.

4 Q What is soft count?

5 A We count the bills from validators and

6 from the pit.

7 Q I'm sorry, I'm having trouble hearing.

8 Can you speak up?

9 A We count the bills from the slot

10 machines and also from the pit from blackjack and craps and

11 stuff like that.

12 Q Before moving to Las Vegas, did you

13 live anywhere else?

14 A No. Oh, I'm sorry, I lived in Tucson.

15 Before moving to Vegas?

16 Q Yes.

17 A I lived in Tucson, Arizona.

18 Q While living in Tucson, Arizona, did

19 you come to know a person by the name of Deborah Panos?

20 A Yes.

21 Q And when was it that you met Deborah

22 Panos approximately?

23 A In February or March of 1990.

24 Q And where did you meet her?

25 A At work.

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1 Q Where were you working?  
2 A At Computer Services of the City of  
3 Tucson.  
4 Q Computer Services, City of Tucson?  
5 A Uh-huh.  
6 Q You have to say yes or no for the  
7 record.  
8 A Yes.  
9 Q And what was that?  
10 A We entered -- we entered things into  
11 the computer for the city like sales tax and paychecks so  
12 that people ended up getting paid. It all has to do with  
13 revenue or anything going into the main computer system for  
14 the City of Tucson.  
15 Q Was Deborah Panos also a employee of  
16 the City of Tucson at that time?  
17 A Yes.  
18 Q And were you aware of how old Deborah  
19 Panos was at the time of her death approximately?  
20 A Twenty 6.  
21 Q At the time that you met Deborah Panos,  
22 did she have any children?  
23 A Yes, she had two.  
24 Q And what were their names?  
25 A JP and Anthony.

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1 Q Did she later have another child?

2 A Yes.

3 Q And what was that child's name?

4 A Chantell.

5 Q And was that a girl?

6 A Yes.

7 Q When you worked with the defendant --  
8 excuse me -- when you worked with Deborah, did you become  
9 friends with her as well?

10 A Yes.

11 Q What kinds of things would you do  
12 together with Deborah?

13 A We did everything. We went out  
14 together, we took the kids to the park, we went to the  
15 circus, we did -- just everything.

16 Q And when you say you took the kids  
17 together places, do you have a child?

18 A Yes.

19 Q And how old is your child?

20 A She's nine right now.

21 Q So you would take your child along with  
22 her children to various places?

23 A Yes.

24 Q Do you know a person by the name of  
25 James Chappell?

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1 A Yes.

2 Q Do you see him here in court today?

3 A Yes.

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

6 A He's sitting right there with glasses  
7 and a button up shirt, striped.

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

10 THE COURT: Yes.

11 MS. SILVER: Thank you.

12 Q When was it that you met the defendant  
13 approximately?

14 A Maybe a week after I met Debbie.

15 Q And do you know where Debbie lived in  
16 Tucson or with whom she lived with?

17 A She lived in an apartment with her kids  
18 and James.

19 Q Was the defendant her boyfriend during  
20 this time period?

21 A Yes.

22 Q When you say that you would go and do  
23 different things with Debbie with your kids, did the  
24 defendant include himself in those activities?

25 A Most of the time, it was Debbie, but he

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1     went sometimes.

2                     Q     Now, when you stated that you became  
3     friends with Debbie through work and also outside of work;  
4     is that right?

5                     A     Yes.

6                     Q     Did you learn at some point that the  
7     defendant was abusing her?

8                     A     Yes.

9                     Q     When I say abusing her, what are we  
10    talking about?

11                    A     He use to leave bruises on her by  
12    hitting here, throwing things at her. She showed them to  
13    me.

14                    Q     So you actually observed these  
15    bruises?

16                    A     Yes.

17                    Q     And about what year was it that you  
18    started to notice these bruises?

19                    A     In 1990.

20                    Q     So, as early as 1990, you observed  
21    these bruises?

22                    A     Yes.

23                    Q     Can you tell us where you would observe  
24    bruises on Debbie's body?

25                    A     She had them on her neck, on her arms,

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1 her back, she had them on her head. It was really tender  
2 to the touch on the back of her head and I think that was  
3 about it.

4 Q You stated that Debbie showed you these  
5 bruises?

6 A Yes.

7 Q Do you know if she showed many other  
8 people these bruises?

9 A She showed a couple of us at work.  
10 There was about four of us that kind of hung around each  
11 other at work.

12 Q How did she feel about these bruises?

13 A She wasn't happy about them. She  
14 didn't want everybody to know about them. She just told us  
15 that were there with her all the time. Most of the time  
16 she wore clothes to where you couldn't see them if you  
17 didn't know her.

18 Q Were you aware whether or not she wore  
19 makeup as well to cover them?

20 A Yes.

21 Q Makeup on her face?

22 A Yes.

23 Q Was Debbie employed from the time  
24 period that you knew her?

25 A Yes.

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1                   Q     Let's talk about in Tucson. Were you  
2 aware about when she left Tucson to move to Las Vegas  
3 approximately?

4                   A     In October. Was it '94?

5                   Q     Approximately October of '94?

6                   A     Yes, '94.

7                   Q     And in that time period, what jobs did  
8 Debbie have, if you can recall?

9                   A     I knew she worked at the City of Tucson  
10 from '90 until that time. She also had a second job. She  
11 worked at WalMart, she worked at a pizza restaurant, and  
12 she worked at the -- well, before she worked at the City of  
13 Tucson, she worked for the Census Bureau and I'm not sure,  
14 but I think she worked at Sears.

15                  Q     Would it be fair to say that at times  
16 she would have two and three jobs?

17                  A     Yes.

18                  Q     To your knowledge, did the defendant  
19 have a job or steady employment?

20                  A     Not steady employment. I only seen him  
21 work one time.

22                  Q     So in the time period that you've known  
23 the defendant, at least in Tucson from 1990 to 1994, you've  
24 only known the defendant to have one job?

25                  A     Right.

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- 1 Q And what was that?
- 2 A I think he was a dishwasher or
- 3 something to do in the back of a restaurant.
- 4 Q What restaurant?
- 5 A Bob's Big Boy.
- 6 Q And about how long did that job last?
- 7 A As far as I know, about a week.
- 8 Q During this time period in Tucson, did
- 9 you ever personally observe the defendant get physical with
- 10 Deborah?
- 11 A Yes.
- 12 Q And about how many times did you see
- 13 this?
- 14 A Maybe 10, 15 times.
- 15 Q Ten to 15 times?
- 16 A Probably, in Tucson.
- 17 Q What types of violent acts would you
- 18 see the defendant do to Deborah?
- 19 A I saw him just push her or take her
- 20 into another room or just things to where she -- mostly
- 21 just push her into another room or the wall or as she was
- 22 walking, to trip her or something like that.
- 23 Q What would Deborah do when she got
- 24 pushed into the wall by this defendant?
- 25 A She would either yell at him or cry or

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1 just get upset.

2 Q Did you also work for the fire  
3 department in Tucson?

4 A Yes.

5 Q Were you aware of any 911 calls made by  
6 Deborah regarding the defendant's violence?

7 A Yes. I know of three.

8 Q So you personally know of three 911  
9 calls?

10 A Yes.

11 Q And how is it that you are aware of  
12 this?

13 A Because I keyed in the reports. I  
14 keyed in every file report that we went to -- that the  
15 Tucson Fire Department went out to.

16 Q Why would the fire department go out to  
17 such a domestic violence call?

18 A They have the paramedics and the fire  
19 trucks together with the fire department. So sometimes --  
20 usually, if it was a domestic call, the fire department,  
21 they would have like a fire truck go out and a paramedic or  
22 sometimes just the fire truck would go out without a  
23 paramedic.

24 Q That was if there was some kind of  
25 injury?

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1                           A     Yes.

2                           Q     Were you also aware that Deborah needed  
3     to go to the hospital as well?

4                           A     Yes.

5                           Q     As a result of this defendant?

6                           A     Yes.

7                           Q     And this was again during this period  
8     of 1990 to 1994?

9                           A     Yes.

10                          Q     And what happened in that respect?

11                          A     Like I say, from '92 to '94 because I  
12     started to live there from '92.

13                          Q     So from 1992 to 1994, what happened  
14     during that time period in which the defendant caused  
15     Deborah to go to the hospital?

16                          A     I just know she had a head injury and  
17     she had to be seen at the hospital.

18                          Q     I'm sorry, I still can't hear you.

19                          A     She had a head injury and she needed to  
20     be seen at the hospital for it. I don't know the  
21     circumstances of what happened.

22                          Q     But the defendant was involved in  
23     causing the circumstances?

24                          A     Yes.

25                          Q     Did you ever see that injury --

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1 A No.

2 Q -- to her head?

3 You stated that Deborah moved here  
4 approximately October of 1994. Do you know why she moved  
5 here to Las Vegas?

6 A She had said that she had to leave her  
7 job. They recommended her to come either to Las Vegas or  
8 somewhere in California. She chose here.

9 Q So, as a result of her work, she moved  
10 here?

11 A She had to leave her job because she  
12 couldn't be around or have any involvement with anybody  
13 that was in trouble with the police, which she was with  
14 James.

15 Q So due to the defendant being in  
16 trouble with the police, it forced her to leave her job  
17 with the Tucson --

18 A Right.

19 Q -- Police Department?

20 A Yes.

21 Q Were you aware initially that the  
22 defendant had come here to Las Vegas as well?

23 A No.

24 Q Why is that?

25 A She didn't tell me. She didn't tell me

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1     that he had moved here with her.

2                     Q     And why didn't she tell you?

3                     A     I don't know. I guess maybe she was  
4     embarrassed to let me know. When she left Tucson, she had  
5     told me he wasn't coming. She was coming up here with her  
6     kids and that was it.

7                     Q     During the time -- did there come a  
8     time period that you actually moved here to Las Vegas as  
9     well?

10                    A     Yes.

11                    Q     Or came out here to visit?

12                    A     Yes.

13                    Q     When about was that?

14                    A     I started visiting in March. At the  
15     end of March.

16                    Q     Of 1995?

17                    A     Yes.

18                    Q     So from the time period between October  
19     of 1994, when Debbie moved here, until you came out for  
20     your visits in March of 1995, did you still talk with  
21     Debbie and make contact with her?

22                    A     Yes.

23                    Q     Did she tell you problems with the  
24     defendant here in Las Vegas?

25                    A     Yes.

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1 Q What types of problems?

2 A He had taken things out of the home.

3 Q Like what types of things?

4 A Furniture, clothing from the kids,  
5 shoes for the kids. He --

6 Q Can you give us some examples when you  
7 say clothing for the children?

8 A He had taken jackets from them. This  
9 was in October. He took the jackets from them to -- they  
10 didn't have any more jackets to go to day care or school  
11 with.

12 Q So in October, this defendant had taken  
13 the children's coats for the winter?

14 A Right.

15 Q Is that yes?

16 A Yes.

17 Q Did she tell you what he did with those  
18 coats?

19 A She just said that he had taken them.  
20 They were no longer in the house.

21 Q I can't hear you.

22 A She just said he had taken them and  
23 they were no longer in the house.

24 Q Did she also -- you stated that -- did  
25 you mention that the defendant took shoes as well?

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1 A Yes.

2 Q And how were you aware of that?

3 A She told me.

4 Q What did she tell you regarding the  
5 shoes?

6 A She just said that he had taken those  
7 also. He had taken a lot of things and she had listed a  
8 few things.

9 Q Were you actually present here in Las  
10 Vegas at a time period when the defendant had taken some  
11 shoes?

12 A Yes.

13 Q And how did that occur?

14 A We had bought some shoes for Chantell.  
15 She didn't have any. She had peed on the shoes she had, so  
16 we went and got her some sandals from WalMart.

17 Q When you say we, who are you talking  
18 about?

19 A Debbie and me and Chantell and the tags  
20 weren't even off of them yet and by morning time, they were  
21 gone.

22 Q And the defendant had taken them?

23 A Yes.

24 Q What types of furniture had he taken  
25 from her?

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1                   A     She had a lot of furniture, but when I  
2     went up there, she hardly had anything.

3                   Q     When you say she had a lot of  
4     furniture, where did she have a lot of furniture?

5                   A     In Tucson.

6                   Q     And when you came up here in March, she  
7     hardly had anything?

8                   A     Right. She use --

9                   Q     What did she will tell you had happened  
10    to the furniture?

11                  A     She said James had taken it.

12                  Q     Did she say what James had done with  
13    it?

14                  A     She said James had sold it or taken it  
15    for drugs.

16                  Q     Did you notice, when you came from  
17    Tucson, that the furniture was gone?

18                  A     Definitely.

19                  Q     Did you she also tell you during this  
20    time period something regarding the food stamps she was  
21    given from the government?

22                  A     He would always take the food stamps or  
23    food that was in the house every time she got them. She  
24    only got them once a month and she would buy food for the  
25    whole month and usually within a week, it was gone.

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1 Q And how was it gone?

2 A Mostly by James taking it.

3 Q So she and the children were left with  
4 no food as well?

5 A Right.

6 Q And this was something that she  
7 complained to you about?

8 A Yes.

9 Q Was she upset when she told you this?

10 A Yes.

11 Q Would what would the defendant do  
12 during paydays, when Deborah would get paid?

13 A He'd come to see Debbie and then he'd  
14 always end up taking her money.

15 Q How would he take her money?

16 A Physically taking it from her. She  
17 kept her money in a -- like a wallet-type. It had like a  
18 calendar and some bills that she had to pay or whatever and  
19 she had kept her money in there.

20 Q When you came here to Las Vegas in  
21 March of 1995, did you notice something different about  
22 Debbie's nose?

23 A Yes.

24 Q What did you notice?

25 A She had a scar and it was a little bit

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1 more larger than it use to be. It was a little deformed.

2 Q And that scar was on her nose?

3 A It went all the way across her nose  
4 right here.

5 Q Can you show the jury one more time  
6 what you were showing me?

7 A It went from like this side all the way  
8 over.

9 Q So that scar went clear across her  
10 nose?

11 A Yes.

12 Q And it was noticeable to anyone talking  
13 to her?

14 A Yes.

15 Q That wasn't there when she had left  
16 Tucson the last time you saw her?

17 A No.

18 Q Did she tell you how she had received  
19 that scar and why her nose looked different?

20 A She said that James had done it. She  
21 said that he had -- he had hit her while she was sleeping  
22 because he wanted to take stuff out of the house. He  
23 wanted her to go in the bedroom and sleep instead of  
24 sleeping on the couch and so she wouldn't move. As soon as  
25 she fell asleep, he would hit her.

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1                   Q     Were there reasons why she slept on the  
2     couch as opposed to the bedroom?

3                   A     Sometimes the kids would be sleeping in  
4     their bedroom on their bed because they didn't have beds  
5     set up in their rooms.  If the kids weren't there, she  
6     would just lay there to watch TV or just to be out of the  
7     room.

8                   Q     Did there come a time that you actually  
9     moved in with Debbie?

10                  A     Yes.

11                  Q     And when about was that?

12                  A     I had moved my things here in May and I  
13     physically moved up here in June, first week of June.

14                  Q     When you say you moved here in May, did  
15     you bring items or your personal belongings to Las Vegas?

16                  A     Yes.

17                  Q     And where did you put your personal  
18     belongings?

19                  A     I put my furniture around the house.  
20     Since she didn't have any, I filled up the house with my  
21     furniture.

22                  Q     Are you talking about the trailer  
23     located at the Ballerina Mobile Home Park?

24                  A     Yes.

25                  Q     And where did you get this furniture

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1 from that you put in there?

2 A I had a four bedroom house that I lived  
3 in in Tucson.

4 Q So the furniture from a four bedroom  
5 house, was it fully furnished too, that four bedroom home?

6 A Yes.

7 Q Did you place that furniture into  
8 Deborah's home at the Ballerina Mobile Home Park?

9 A Yes.

10 Q And did you place other items of your  
11 personal belongings into that home?

12 A Yes.

13 Q Did there come a time you left in May  
14 about, but then returned back in June to live with Debbie?

15 A Yes.

16 Q Why did you leave?

17 A My daughter was still in school in  
18 Tucson. She didn't get out until, I believe, June 6th.

19 Q When you returned back to Las Vegas in  
20 June of 1995 or around that time, what happened when you  
21 arrived at the trailer?

22 A Most of my stuff had been gone through  
23 -- actually everything had been gone through. I had a  
24 room in the back that I had all my boxes and my bed and  
25 everything and all of that had been gone through.

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1 Q Were items of your property taken as  
2 well?

3 A Yes.

4 Q What items were taken?

5 A At that time, mostly I had stuff that  
6 belonged to my car, like a radar detector and jewelry,  
7 stuff like that, small items.

8 Q Did other items eventually begin to  
9 disappear as well?

10 A I had a TV, stereo, VCR taken and after  
11 I had lived there, I had money taken and more jewelry that  
12 I had brought up with me. I always kept with me.

13 Q Approximately how much would you  
14 estimate the value was of the property that was taken as it  
15 remained in that Ballerina Mobile Home Court trailer?

16 A Probably over \$3,000.

17 Q Three thousand dollars?

18 A Yes.

19 Q And did you confront the defendant as  
20 to him taking this property?

21 A Yes.

22 Q And what did he tell you when you asked  
23 him for your property back?

24 A One time, he told me that for \$30 I  
25 could have my TV, VCR, and the stereo back. It was just

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1 right down the street and he could go get it.

2 Q So he acknowledged that he took this  
3 property from you?

4 A Yes.

5 Q And he, basically, responded that you  
6 weren't going to get that property back unless you paid  
7 him?

8 A Correct.

9 Q It was your property, wasn't it?

10 A Yes.

11 Q Did you give the defendant permission  
12 to take your property?

13 A No.

14 Q Did you ever give him that money so he  
15 would give you your property back?

16 A No.

17 Q And why was that?

18 A Well, I didn't trust him.

19 Q You think he would have just taken your  
20 \$30?

21 A Yes.

22 Q Where did the defendant live, if you  
23 are aware of that?

24 A Some times he stayed at the trailer.  
25 Most of the time he wasn't there.

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1 Q Where did he stay mostly?

2 A He said -- from what we had ever found  
3 out, that he lived in the projects that were right across  
4 the street from Lucky's on Bonanza and Lamb.

5 Q When the defendant would come to the  
6 residence, how would he usually get in?

7 A Through a window.

8 Q Which window?

9 A Located in the bedroom or the back  
10 living room.

11 Q When you said the bedroom, you are  
12 talking about the window out in front of the trailer, the  
13 master bedroom window?

14 A Yes.

15 Q How do you know this?

16 A The lock was not working on it, the  
17 screen is not on it any more, and I've actually seen him  
18 from times that he's been in the house, you know, and we  
19 didn't know how; you just going around the house and look  
20 and usually it's that window that was broken or, you know,  
21 it was still up or it was unlocked.

22 Q Was it actually damaged as a result of  
23 the defendant constantly coming through that window?

24 A Yes, yes.

25 Q Would there be times that you and

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1 Debbie and the children would be inside the trailer and,  
2 yet, the defendant would still come in through the window?

3 A If we had the doors locked and we  
4 didn't let him in, yes.

5 Q So there were times that you and her  
6 did not let him in?

7 A Yes.

8 Q Would it be fair to say that it didn't  
9 matter whether you let him in or whether you didn't let him  
10 in, this defendant got in that residence if he wanted to  
11 get in the residence?

12 A Yes.

13 Q Where did the defendant -- where did he  
14 keep his clothes?

15 A We kept his clothes on the porch.

16 Q So he did not have clothes inside of  
17 the residence?

18 A When I first moved there he did, but  
19 after awhile, we moved them out on the porch. He was  
20 hardly ever there. We were calling the police too many  
21 times and she didn't want him in the house any more, so we  
22 put his clothes on the porch.

23 Q About how many times did you and she --  
24 how long did you live with Debbie from about June of '95  
25 until when?

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1 A I moved out the end of July.

2 Q So for the period of July 1995?

3 A Yes.

4 Q So for approximately for that two month  
5 period, how many times would you have called the police?

6 A I myself probably did it five or six  
7 times.

8 Q And what types of calls? Why would you  
9 call 911?

10 A Because Debbie thought James was going  
11 to hurt her.

12 Q Had he broken in on some of those  
13 calls?

14 A Yes.

15 Q How did Debbie act when he would  
16 break-in or come into the residence?

17 A She was always scared telling him he's  
18 not coming in and after awhile, she would be crying after  
19 he was in there.

20 Q Do you recall a time that Debbie was  
21 staying at Lisa Duran's home?

22 A Yes.

23 Q During this time period?

24 A Yes.

25 Q And why was it that Debbie was staying

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1 at Lisa Duran's?

2 A She was afraid to stay at the house.

3 Q She was afraid of the defendant?

4 A Yes.

5 Q Do you recall Debbie calling you to  
6 warn you about the defendant?

7 A Yes.

8 Q What did she tell you?

9 A One time, she told me that she had  
10 talked to him on the phone. I think she was at Lisa's, but  
11 I'm not sure and he had said, "I'm going to go to the  
12 house. I want you to be there. If Clare is there, I'm  
13 going to end up raping her. If you are not there, I'm  
14 going to burn the house down and you won't have a home to  
15 come home to."

16 Q Now you were on the phone with Debbie  
17 at that time?

18 A Yes, I was at the trailer on the phone  
19 with her.

20 Q Were the doors and windows locked at  
21 that time, when you learned that the defendant was coming  
22 over to rape you or burn the house down?

23 A Yes.

24 Q And as you were on the phone with  
25 Debbie, what happened?

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1                   A     James had broke into the house.  
2                   Q     Do you know how he got into the house  
3     that time?  
4                   A     Through a window.  
5                   Q     And where were you located while you  
6     were on the phone with Debbie?  
7                   A     In my bedroom. It was located in the  
8     back.  
9                   Q     Did you lock your bedroom door?  
10                  A     Yes.  
11                  Q     And why did you do that?  
12                  A     I was afraid of James.  
13                  Q     And as you were on the phone with  
14     Debbie, what happened?  
15                  A     He came into my room. He unlocked the  
16     door somehow and came into my room.  
17                  Q     How did he unlock your door?  
18                  A     I don't know.  
19                  Q     But he somehow was able to gain entry?  
20                  A     Yes.  
21                  Q     And what happened at that point?  
22                  A     He kept asking me if it was Debbie on  
23     the phone, which it was, but I had it three-way with 911.  
24                  Q     Did you call 911 or did she?  
25                  A     I did.

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1                   Q     But you telephoned the police, but  
2 stayed on the line with Debbie?

3                   A     Right.

4                   Q     What happened?

5                   A     Debbie kept asking me questions about  
6 what he is wearing, if he had a gun or knife or if I could  
7 see anything.

8                   Q     Why was Debbie asking you the  
9 questions?

10                  A     She knew all the questions to ask me, I  
11 guess, from being a 911 operator and also because she had  
12 been around James and she had talked to me for a little  
13 while and then --

14                  Q     What was the defendant doing as he  
15 opened the door?

16                  A     He kept asking me, " if That's Debbie,  
17 if it's her, I want to talk to her," and then he went into  
18 the bathroom, which was right around the corner from my  
19 bedroom, and then he came back and was asking me again, "If  
20 it's Debbie, I want to talk to her," and finally the 911  
21 operator said, "The police were outside and they can't get  
22 in because the door is locked. Could you please go ahead,  
23 give him the phone, let him talk to Debbie, and then go out  
24 and unlock the front door for the police."

25                  Q     Did you give him the phone?

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1                   A     Yes.

2                   Q     And was Debbie on the line?

3                   A     Yes.

4                   Q     And what did you proceed to do?

5                   A     I went and unlocked the door.

6                   Q     Did you let the policemen in?

7                   A     Yes.

8                   Q     What happened?

9                   A     They went over -- they went into the

10 back bedroom. They asked me where he was and I told him he

11 went back there and --

12                  Q     When you say back bedroom, that's your

13 bedroom where the defendant was?

14                  A     Yes.

15                  Q     And what happened?

16                  A     They handcuffed him and brought him

17 into the living room.

18                  Q     Did you go back into that back bedroom

19 and discover something?

20                  A     There was a knife located next to the

21 -- it was a water bed and it has drawers underneath it.

22 Next to the water bed halfway covered up by the drawers was

23 the knife.

24                  Q     Prior to the defendant walking in

25 there, was that knife in your bedroom?

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1 A No.

2 Q And did you recognize that knife as one  
3 of Debbie's knives from the kitchen?

4 A Yes.

5 Q Who was on the lease during that time  
6 period at the trailer?

7 A Debbie, myself, and her three kids and  
8 my daughter.

9 Q I want to direct your attention to  
10 approximately June 1st of 1995. Do you recall calling 911  
11 and the police on this date as well?

12 A Yes.

13 Q And what happened that caused you to  
14 call 911?

15 A Debbie had asked me to.

16 Q Did -- was the defendant in the  
17 premises again?

18 A Yes, he was in the living room and I  
19 was in the dining room/kitchen area; where the kitchen goes  
20 into the dining room.

21 Q And tell me what was Debbie's demeanor  
22 like as you watched her in the living room?

23 A She was very nervous and crying. She  
24 was really upset because he kept telling her to come into  
25 the bedroom, I just want to talk to you, I want to talk to

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1     you and she didn't want to go. She said she was scared.  
2     She kept saying he was going to hurt her and for me to call  
3     911.

4                     Q     She was crying as well?

5                     A     Yes.

6                     Q     Was she afraid to go into that  
7     bedroom?

8                     A     Yes.

9                     Q     Was the defendant angry?

10                    A     He seemed to be. He just kept telling  
11     her," All I want to do is talk to you. All I want to do is  
12     talk to you," and just kept pacing back and forth in the  
13     living room.

14                    Q     Why did he usually become angry with  
15     her?

16                    A     Usually if he found a piece of paper  
17     with any male person's name on it or phone number that  
18     didn't have a name or an address or anything really that he  
19     didn't think Debbie should be doing. Something from a  
20     nightclub, if she had, you know, a card from somewhere that  
21     he didn't go with her to, he wanted to know why she was  
22     there and just anything that was out of the ordinary for  
23     him.

24                    Q     So any time he found a piece of paper  
25     with say another man's name on it or it looked foreign to

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1 the defendant?

2 A Yes.

3 Q Did you call 911 as she asked you to?

4 A Yes.

5 Q Did you see her go somewhere with the

6 defendant?

7 A In the bedroom.

8 Q And about how long were they in the

9 bedroom?

10 A Maybe 10, 15 minutes.

11 Q Is that when the police arrived at that

12 point?

13 A Yes.

14 Q And during that time period, what did

15 you do?

16 A I was on the phone with the police.

17 Q Were you scared for her?

18 A Yes.

19 Q When the police arrived, did Debbie or

20 the defendant come out of the bedroom?

21 A I had knocked on the door and Debbie

22 came out.

23 Q And tell us what was her demeanor as

24 she was coming out of that bedroom?

25 A She was crying. She looked -- she was

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1 still very nervous and she looked hot.

2 Q Did she tell you what the defendant had  
3 done to her while in that bedroom?

4 A At the time she didn't. She waited  
5 until we were outside and James was already in handcuffs  
6 and she told me that he had her -- he had his knees on her  
7 -- on her elbows and he was sitting on top of her and he  
8 had a knife up against her throat.

9 Q Did you ever see that knife?

10 A Yes.

11 Q Where was that knife?

12 A It was underneath the pillow on the  
13 bed.

14 Q What type of knife?

15 A Like a butcher knife.

16 Q And did you recognize that knife?

17 A Yes.

18 Q And whose knife was that?

19 A Debbie's.

20 Q And where was that knife usually  
21 located?

22 A In the kitchen.

23 Q Was there a drawer that she generally  
24 kept her knives?

25 A Yes.

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1 Q And that was located in the kitchen as  
2 well?

3 A Right.

4 Q Was the defendant arrested at that  
5 time?

6 A Yes, he was.

7 Q Do you recall the children being  
8 present during that time?

9 A Yes. Anthony even said, "My daddy is  
10 going to jail, isn't he," and I told him, "Yes, he is," and  
11 I took him inside.

12 Q Was Anthony crying when he said that?

13 A Yes.

14 Q And Anthony was approximately how old  
15 when he saw this?

16 A Five. All of the kids were out there,  
17 but he is the one that asked. JP just kind of went back  
18 into the house and I don't remember where Chantell was. I  
19 remember she was outside for awhile.

20 Q While you were living with Deborah, did  
21 she want the defendant to be her boyfriend?

22 A No.

23 Q Would it be fair to say she wanted him  
24 out of her life?

25 A Yes. She kept trying to get him to go

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1 back to Michigan. She wanted him to just go away and leave  
2 her and the kids alone.

3 Q Were you aware of a bus ticket that she  
4 had bought for him?

5 A No. You have to pay for the tickets  
6 for the bus when you get there and every time we told him  
7 that we were going to take him, he would disappear for a  
8 couple days or just long enough until the bus isn't running  
9 any more that day and I had purchased a plane ticket for  
10 him. I believe it was in June.

11 Q Of 1995?

12 A Yeah.

13 Q And what happened?

14 A He didn't go.

15 Q I kept the plane ticket in my  
16 possession because I didn't want him to go and refund it or  
17 change it or do anything to it. So I kept it until it was  
18 the time for him to go and during that time to go, he  
19 didn't go. He wasn't around.

20 Q Were you aware of the defendant  
21 exchanging things for the cash back?

22 A The clothes and shoes, yes.

23 Q And whose clothes and whose shoes did  
24 he receive cash back?

25 A The kids' and Debbie's.

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1 Q Where would Debbie stay when he was  
2 actually out of jail, generally?

3 A When he was out, usually at Lisa's  
4 house or JR's house. Just at friend's house. She hardly  
5 ever stayed at home.

6 MS. SILVER: Court's indulgence.

7 That's all on direct.

8 THE COURT: Cross?

9 MR. BROOKS: Yes.

10

11 (At this time another court reporter took  
12 over the proceedings.)

13

14 (Off the record at 2:30 p.m.)

15

16 \* \* \* \* \*

17

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

19

20

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

21

22

23

24

25

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1 Q And he told you that the effect of that  
2 was to make him really pissed and he said, "At that point  
3 my mind was spinning?"

4 A Yes.

5 Q Did you accept the existence of the  
6 men's boxer shorts as being an accurate recitation of  
7 something he observed that day?

8 A I didn't have any reason to doubt him.

9 Q You wouldn't, of course, know that the  
10 police didn't list any men's boxer shorts on any impound  
11 report of evidence recovered at the crime scene?

12 A I didn't know that.

13 Q You, of course, wouldn't be aware that  
14 the defendant omitted to mention that at all yesterday on  
15 the witness stand when he explained what things had made  
16 him so upset?

17 A I didn't know that.

18 Q Well, would that tend to suggest that  
19 when he talked to you about finding the men's boxers, that,  
20 perhaps, he wasn't being fully cooperative or credible?

21 A Yes, that could suggest that.

22 Q You stated that the defendant explained  
23 to you that, when he dragged her back into the mobile home,  
24 he threw her to the floor and she just laid on the floor  
25 and covered her face?

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1 A Yes.

2 Q Did he tell you that she ever attacked  
3 him that day?

4 A No.

5 Q Did she say -- did he say there was any  
6 attempt by Deborah Panos to injure him?

7 A No.

8 Q Didn't he tell you that he came to her  
9 house and went into the window and then this occurred after  
10 he had come?

11 A Yes.

12 Q Did he describe that she indulged in  
13 any attempt or actual physical violence towards him?

14 A No.

15 Q During your interview with the  
16 defendant, did he admit that he felt abandoned by Deborah  
17 Panos?

18 A I don't recall if he said so in words  
19 such as that, but I think that if he didn't say-so in those  
20 words, he said so in his -- in other words and certainly it  
21 would be consistent for him to feel that way.

22 Q I've got the supplemental report,  
23 Doctor, which included the Lansing, Michigan school records  
24 and your initial report and on the initial report, at page  
25 11 in the middle of the page, you have written, "Mr.

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1 Chappell admitted that he felt abandoned by Deborah Panos.  
2 He believes that she lied to him about not having seen  
3 other men?"

4 A Oh, I doubt that he used the word  
5 abandoned because of his vocabulary being poor, but I used  
6 that word to describe how he was feeling. Had it been a  
7 quote, I would have quoted it. So that's accurate.

8 Q You talk about limited free will. In  
9 your opinion, wasn't the defendant very capable at some  
10 point that afternoon at the crime scene of deciding that he  
11 was going to kill her?

12 A That's possible, he could.

13 Q Do you know where he got the knife  
14 from?

15 A I can't testify to where it came from.  
16 I think it was there in some capacity around there.

17 Q You don't know what his thought process  
18 was at the time he decided to use a knife?

19 A No.

20 Q If he took a kitchen knife or steak  
21 knife and if he plunged it 10 times into her neck and  
22 chest, are you of the opinion that he had the capacity to  
23 make decisions to do that each time?

24 A Obviously, he was capable of forming a  
25 thought to plunge the knife into her body or it couldn't

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1 have been -- or it couldn't have occurred. Neurologically,  
2 he had to have had that thought to do that.

3 Q If the evidence further suggests that  
4 on the other side of her neck he had stabbed her again and  
5 she's also stabbed just to the right of her naval and also  
6 just above and to the right of her pubic hair, would that  
7 suggest the possibility that he was acting maliciously and  
8 vengefully towards this victim?

9 A Yes.

10 MR. HARMON: That's all, Judge.

11 THE COURT: Redirect.

12 MR. EWING: Thank you, your Honor.

13

14 REDIRECT EXAMINATION

15 BY MR. EWING:

16 Q Dr. Etkoff, as you sit here today, do  
17 you have any specific recollection that James told you this  
18 happened at night?

19 A No, I don't.

20 Q You were told that James had a history  
21 of domestic abuse, correct?

22 A Yes.

23 Q Did you ever ask him to go into a great  
24 amount of detail in discussing his history of domestic  
25 abuse?

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1                   A     No. I didn't ask in this case to list  
2     every single arrest or every single instance of abuse,  
3     which may account for his record being incomplete in that  
4     respect. I just wanted to know in general was there a  
5     history.

6                   Q     When he was discussing what occurred on  
7     the date that Deborah was killed and he was explaining to  
8     you what happened when they were engaging sex, did you stop  
9     him and ask him if he ejaculated?

10                  A     No I didn't.

11                  Q     Mr. Harmon asked you questions about  
12     other individuals attempting to justify what they did. Did  
13     James Chappell ever attempt to make excuses for what he  
14     did?

15                  A     None.

16                  Q     Did he ever attempt to justify what he  
17     did?

18                  A     No.

19                  Q     Mr. Harmon asked you about his ability  
20     to premeditate and you said, "Yes, James has the ability to  
21     premeditate." Does James have the same ability to  
22     premeditate as someone with an average verbal like you?

23                  A     Not as much, no.

24                  Q     Does he have the same ability with the  
25     average performance IQ?

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1 A Yes.

2 Q Does he have the same ability to  
3 premeditate as someone who is not severely learning  
4 disabled?

5 A That probably -- the answer is probably  
6 a little less.

7 Q Does he have the same ability to  
8 premeditate as someone who does not have a borderline  
9 personality disorder?

10 A He doesn't have the same ability to  
11 premeditate.

12 Q Mr. Harmon asked you about the number  
13 of stab wounds?

14 A Yes.

15 Q Would 13 vicious stab wounds also be  
16 indicative of someone who was in a rage?

17 A Yes.

18 MR. EWING: I don't have any other  
19 questions.

20 MR. HARMON: Nothing further, Judge.

21 THE COURT: May this witness be discharged?

22 MR. HARMON: Yes, your Honor.

23 THE COURT: Thank you. You may step down.

24 We will take our noon recess at this time.

25 Would counsel approach the bench briefly so we can discuss

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1 scheduling.

2 (Off the record discussion not reported.)

3 THE COURT: Ladies and gentlemen of the  
4 jury, we are going to take our noon recess at this point.  
5 It's my understanding that the defense is about to rest its  
6 case in chief.

7 MR. BROOKS: Judge, as a matter of fact, we  
8 can rest at this moment.

9 THE COURT: Any other exhibits to admit?

10 MR. BROOKS: No.

11 THE COURT: Any rebuttal?

12 MR. HARMON: The State also rests.

13 THE COURT: All right, thank you.

14 In that case, we will adjourn in your  
15 absence to complete the process of finalizing the Jury  
16 Instructions, after which they will be read to you and then  
17 you will hear the final arguments of the attorneys in the  
18 case. Our estimation is that we probably will not be ready  
19 to proceed in terms of -- because we have to make a record  
20 of everything outside your presence with regard to the Jury  
21 Instructions and make arguments with regard to the content  
22 of those Jury Instructions. So we probably won't be ready  
23 for you until about 2:15. So we will reconvene for your  
24 purposes at 2:15.

25 During this recess, you are admonished it is

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

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

11 We will see you all at about 1:45.

12  
13 (Off the record at 12:25 p.m. and back on  
14 the record at 2:05 p.m.)

15  
16 THE COURT: We are on the record outside  
17 presence of the jury.

18 Do the parties waive the presence of the  
19 defendant?

20 MR. BROOKS: Defense does, your Honor.

21 THE COURT: We are here to settle Jury  
22 Instructions. Are the parties familiar with the Court's  
23 Proposed Jury Instructions 1 through 46?

24 MR. HARMON: State is familiar, your Honor.

25 MR. BROOKS: Defense is as well, your Honor.

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1 THE COURT: Does the State have any  
2 objection to the giving of any of these Instructions?

3 MR. HARMON: No, your Honor .

4 THE COURT: Does the State have any  
5 additional Instructions to offer at this time?

6 MR. HARMON: No, your Honor.

7 THE COURT: Does the defense object to any  
8 of the Court's Proposed Jury Instructions 1 through 46.

9 MR. BROOKS: Yes, Judge. We object to No.  
10 23, which states "The intention to kill may be ascertained  
11 or deduced from the facts and circumstances of the killing,  
12 such as the use of a weapon calculated to produce death,  
13 the manner of its use, and the attendant circumstances  
14 characterizing the act."

15 Our position is that this Instruction is  
16 essentially an argument and it's lightening the burden on  
17 the State to show an intention to kill by almost suggesting  
18 that the use of the weapon means intention to kill, where,  
19 in fact, a use of a weapon is an equivocal thing and it may  
20 or may not be an intention to kill. Therefore, we object.

21 THE COURT: The objection is overruled. The  
22 Court believes that it's a appropriate theory of the case  
23 in the Instructions. The State wants it in and it is a  
24 correct statement of the legal doctrine governing these  
25 proceedings.

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1 Any other objections?

2 MR. BROOKS: Not from the defense, your  
3 Honor.

4 THE COURT: Does the defense have any other  
5 additional instructions to propose at this time?

6 MR. BROOKS: No, your Honor.

7 THE COURT: Very well.

8 Does either party wish to have the jury  
9 instructed prior to final argument?

10 MR. HARMON: The State makes that request,  
11 Judge.

12 THE COURT: That will be the order.

13  
14 (Off the record at 2:10 p.m. and back on the  
15 record at 2:30 p.m.)

16  
17 THE COURT: Counsel stipulate to the  
18 presence of the jury?

19 MR. HARMON: Yes, your Honor.

20 MR. BROOKS: Defense will, your Honor.

21 THE COURT: The defense has rested and the  
22 State has also rested its case, correct?

23 MR. HARMON: That is correct, your Honor.

24 THE COURT: So the parties agree at this  
25 time we have settled the instructions in chambers and we

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1 can begin with the process of instructing the jury and then  
2 proceed onto closing arguments?

3 MR. HARMON: Yes, Judge.

4 MR. BROOKS: Yes, your Honor.

5 THE COURT: Thank you very much.

6 Ladies and gentlemen of the jury I'm about  
7 to instruct you upon the law as it applies in this case. I  
8 would like to instruct you orally without reading to you.  
9 However, to ensure that the Instructions comply with Nevada  
10 law, it is necessary for me to read to you these carefully  
11 prepared written Instructions.

12 The Instructions are long and some are quite  
13 complicated. If they are not especially clear when I read  
14 them to you, please bear in mind, when you go to the jury  
15 room, you will be able to take these written Instructions  
16 with you so that you can there read and consider them  
17 carefully.

18

19 (At this time the Court read the  
20 Instructions to the jury.)

21

22 THE COURT: Given in open court this 15th  
23 day of October, 1996, A. William Maupin, District Judge,  
24 Department No. VII of the Eighth Judicial District.

25 At this time, ladies and gentlemen of the

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1 jury, you will hear final arguments. The State of Nevada  
2 may make its first presentation.

3 MR. HARMON: May it please the Court, Ms.  
4 Silver, defense counsel, good afternoon, ladies and  
5 gentlemen. The philosopher Pascal has made this  
6 observation. " Evil is easy and has infinite forms."

7 All evil required on August the 31st, 1995  
8 was two hours -- two months of incarceration from June the  
9 26th until August the 31st, a malignant and vengeful heart  
10 and unfortunate release at about 10:45 in the morning, a  
11 sinister choice by that inmate released from custody.

12 All evil required with sturdy legs and  
13 resolute strides from an opposite Main Street and Bonanza  
14 down to North Lamb Boulevard. A borrowed bicycle to be  
15 used for what? As a get away vehicle if he couldn't get  
16 the car. A pretext, a letter the accused asserts that he  
17 found in the console. He could have found it anywhere at  
18 839 North Lamb, space 125.

19 All evil required was a kitchen knife,  
20 Exhibit 68-A-1. Not a large knife, but deadly in its  
21 consequences for Deborah Panos. All evil required was a  
22 cowering victim. Deborah Ann Panos, 26 years of age, the  
23 mother of three little children aged seven, five, and  
24 three. Where is the promise of her years once written on  
25 her brow? Where sleeps that promise now?

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1                   Thomas Carlyle has said, " man makes the  
2 circumstances." In this case, as any other criminal case,  
3 one of the primary responsibilities of the jury is to  
4 decide what man, what person made these circumstances? The  
5 evidence to an absolute certainty perhaps in this case  
6 establishes that the man who made the circumstances causing  
7 the premature and untimely death of Debbie Panos is James  
8 Chappell. He was identified leaving the scene of the crime  
9 in the victim's car by Lisa Duran. He had possession of  
10 stolen property when confronted by the police, keys to the  
11 car, the car, and social security cards belonging to his  
12 victim and her children.

13                   When the vehicle was inspected at the crime  
14 lab by Analyst Washington, who recovered evidence and then  
15 submitted that to Criminalist Terry Cook, blood consistent  
16 with that of James Chappell was found on the trunk of the  
17 vehicle just inside close to the rim. Analyst Cook  
18 discovered an indication of blood on the right heel of the  
19 shoe being worn by the defendant and the defendant's  
20 seminal fluid was found inside Deborah Panos.

21                   Now given the relationship of eight to 10  
22 years, that wouldn't have been unusual except for one  
23 salient feature. He had been in custody since June the  
24 26th. The Court has instructed you about the various forms  
25 of evidence in this case. There are two great bodies of

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1 evidence in criminal trial work. They are identified as  
2 direct and circumstantial evidence and direct has a very  
3 simple definition. If it's something that a witness  
4 perceived with any of his or her physical senses, if they  
5 saw it or smelled it or heard it or touched it, then it's  
6 direct evidence and when Lisa Duran saw the defendant in  
7 the victim's car driving away from the crime scene, that's  
8 direct evidence. Anything which isn't direct is  
9 circumstantial and attorneys in this courthouse have  
10 various examples of circumstantial evidence. I'm very  
11 found of one announced by Thoreau many years ago and his  
12 quotation is, "Some circumstantial evidence is very strong  
13 as when you find a trout in the milk."

14 It may surprise you I'm attired in a suit,  
15 am employed by the District Attorney's Office, but I  
16 haven't been a lawyer all my life. I was raised on a dairy  
17 farm and it's for that reason that Thoreau's example is  
18 appealing to me. I happen to know, from personal  
19 experience, that the cows didn't always give as much milk  
20 as we hoped at our farm and so the temptation was always  
21 there because it was important to have bulk in the milk we  
22 sold to, perhaps, make the milk go a little bit further.

23 Now I don't acknowledge that we ever did  
24 that at the Harmon farm, but what Thoreau had in mind is  
25 that some dairy farmers would succumb to the temptation and

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1 to make the milk go a little bit further, they would take  
2 the dairy can down to the stream and in the process of  
3 making the milk go further, sometimes fish would swim into  
4 the can. And so his point, some circumstantial evidence is  
5 very strong as when you find a rainbow trout in the milk or  
6 he could have put it another way, the natural habitat of a  
7 rainbow trout isn't a ten gallon can of milk. The fact is  
8 if there is fish in the milk container, we all know it  
9 didn't come from the utter of the cow. We all know from  
10 that that the farmer was involved in doing something he  
11 ought not to have done. He was watering down his milk and  
12 in the process, the fish got into the milk.

13 Well, we know in this case absolutely,  
14 conclusively that this defendant had contact with her at a  
15 time proximate to her death because a fluid from his body  
16 and the DNA genetic profile had a frequency rate of one in  
17 14 billion. It would be 14 billion other persons before  
18 the type of DNA that was found inside Ms. Panos would be  
19 discovered and it is proof positive that this defendant had  
20 sexual relations with her and so he is connected to the  
21 crime almost to an absolute certainty.

22 And if there should be any doubt, the  
23 defense has entered into a stipulation with the State in  
24 this case, a rather extraordinary stipulation which has  
25 already been read to you. I will read it again, if you

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1 will indulge me. The parties have stipulated in this case,  
2 one, that James Chappell, on August 31, 1995, entered the  
3 trailer rented to Deborah Panos through a window. They  
4 didn't stipulate that he came in through the door. They  
5 didn't stipulate that he knocked on the door, that she came  
6 to the door and let him in. He went through a window.

7 Two, that James Chappell engaged in sexual  
8 intercourse with Deborah Panos on August the 31st, 1995.  
9 Well, having heard the testimony of Dan Peterson, who  
10 recovered the sexual assault kit at the time of the  
11 autopsy, September the 1st, 1995, and having heard the  
12 criminalist, Mr. Cook, testify, and having heard Thomas  
13 Wahl, the DNA expert, describe the findings of Cellmark  
14 Diagnostics in Germantown, Maryland and learning the chance  
15 of someone else having deposited the semen in this woman is  
16 one in 14 billion, should it come as a surprise to any  
17 reasonable persons in this courtroom that the defense  
18 decided that they would stipulate to sexual relations?

19 Now you are left with your own imagination  
20 of whether there would or would not have been a stipulation  
21 had there not been the DNA findings. Some things that  
22 happen in criminal courtrooms are a matter of necessity and  
23 some times parties agree to facts they have to agree to or  
24 they lose credibility.

25 Number three, continuing with the

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1 stipulation, that James Chappell caused the death of  
2 Deborah Panos by stabbing her with a kitchen knife and the  
3 act was not an accident.

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

7 As I've indicated, this evidence, along with  
8 the stipulation, proves conclusively, as horrible really as  
9 it is to contemplate, and in decent minded persons, it's  
10 hard to accept the fact that in this courtroom, a few feet  
11 from everyone of us sits a killer. Someone who, without  
12 legal justification, has brutally ended the life of another  
13 human being.

14 The second fundamental issue to be resolved  
15 by any jury in a criminal case, particularly in a murder  
16 case, involves the resolution of the question assuming then  
17 that the defendant is responsible for the terrible, illegal  
18 acts, what crimes has he committed and with your  
19 indulgence, I'd like to spend the rest of my argument  
20 discussing that issue.

21 James Chappell has been charged by the  
22 prosecution with three crimes. He's been charged with  
23 committing burglary, he's been charged with committing  
24 robbery, robbery with the use of a deadly weapon; the  
25 deadly weapon in this case being 68-A-1, the kitchen knife,

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1 and he's charged with first degree murder with the use of a  
2 deadly weapon.

3 Now the question is, since the State has  
4 obviously met its burden of proof regarding the identity of  
5 the perpetrator, has the prosecution also met its burden,  
6 has it been shown beyond a reasonable doubt that this  
7 defendant is guilty of burglary, robbery, and murder of the  
8 first degree and I submit, ladies and gentlemen, that the  
9 evidence has proved that that burden was met. The  
10 defendant is guilty of all three counts.

11 The Court has given you a series of  
12 Instructions identifying the elements of the various  
13 crimes. I will start with burglary. The place the  
14 defendant is alleged to have burglarized he lived at from  
15 time to time, not too much of the time in 1995 because he  
16 spent most of the time at the jail, but I haven't  
17 forgotten -- the State didn't forget in alleging burglary  
18 that the defendant had resided there, on occasion, 839  
19 north Lamb, space 125.

20 Instruction 4 is the general instruction  
21 defining burglary. "Any person who, by day or night, enters  
22 any residence or mobile home or building with intent to  
23 commit larceny and/or assault and/or battery and/or robbery  
24 and/or murder or any felony is guilty of burglary."

25 Well, there are lots of possibilities. The

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1 State isn't perfect with its crystal ball. State doesn't  
2 actually read minds a bit better than Dr. Etcoff does,  
3 despite his expertise in the field of psychology. Burglary  
4 is a crime of entry. It's not a crime against the person.  
5 It is a crime of illegal entry and a person may have  
6 entered a business a hundred times or a house or a mobile  
7 home a thousand times with the consent of the occupant.

8                   However, if on the date in question the  
9 entry was made by this defendant with the intention either  
10 to steal, she wasn't going to let him come into that mobile  
11 home for any purpose consistent with theft. If he entered  
12 with the intent to assault her or to commit a domestic  
13 battery or to commit robbery when he was inside or to  
14 murder her, if any of those thoughts were in his mind, then  
15 as soon as he stepped across the threshold, as soon as he  
16 entered, he had committed burglary. It's not a complicated  
17 principle. It involves entry and criminal intent.

18                   While the Court in Instruction No. 5  
19 describes larceny for you, you all probably knew it without  
20 the Instruction, but we don't take anything for granted.  
21 Larceny is theft. Larceny is the theft of personal goods  
22 or property of another. Let's just take that as an  
23 example. What evidence is there in this case that the  
24 defendant has been proven beyond a reasonable doubt to have  
25 been a person who entered the mobile home on August the

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1 31st, 1995, with the intention to steal and I'm not  
2 eliminating the other possible intentions of assault or  
3 battery or robbery or murder or any felony, but let's just  
4 use larceny as an example. What evidence?

5 Well, let's start with his point of entry.  
6 Despite his protestation that he went in through the window  
7 all the time, when a person goes through a window and has  
8 to remove a screen and ends up placing that inside the  
9 mobile home and has to walk on it and bend it and damage it  
10 and this wasn't his property, this isn't his mobile home,  
11 he wasn't paying the rent, she didn't own it. Panos had to  
12 pay the rent and when there is this type of surreptitious  
13 entry and when it causes potential damage, doesn't that  
14 suggest that the entry is made for some illegal purpose?

15 Now, despite the assertion of the defendant  
16 that he didn't ransack, other witnesses in this case who  
17 saw the crime scene were of a different opinion. Michael  
18 Perkins is the crime scene analyst who identified the  
19 diagram, who identified all the photographs of the crime  
20 scene and he said it looked like to him, particularly in  
21 the master bedroom, that somebody had gone through the  
22 property. He acknowledged he wasn't familiar with the  
23 housekeeping habits of Deborah Panos and none of these  
24 witnesses, with the exception of Lisa Duran, were that I'm  
25 going to allude to now, but it was very apparent to

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1 Perkins. Do you think this was the first crime scene  
2 Perkins ever went to? He works in the crime lab of the  
3 Metropolitan Police Department. His duties are, as a crime  
4 scene analyst, going out to crime scenes, taking  
5 photographs, drawing sketches, and collecting evidence. He  
6 has seen hundreds, perhaps thousands of crime scenes and he  
7 said it appeared to him, particularly in the master  
8 bedroom, that someone had been going through the property,  
9 through drawers looking for something.

10 And the homicide detective in this case,  
11 Vaccaro said it was apparent, there were drawers out, there  
12 were doors opened, there was the type of dishevelment, even  
13 granting that the occupant wasn't a perfect housekeeper,  
14 which convinced Vaccaro there was ransacking by the  
15 assailant.

16 Lisa Duran, who went in at some point after  
17 this, also observed that there was evidence of ransacking  
18 in her opinion and she had lived there and she knew Deborah  
19 Panos very well.

20 The State called the witness from the Angel  
21 Day Care Center. Sherry LaTronna Smith got a very curious  
22 telephone call. As I remember, she said perhaps at 12:15,  
23 or 12:30 in the afternoon and it was from Deborah Panos and  
24 this was the first time Deborah Panos had ever called her  
25 or, to her knowledge, persons at the day care center and

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1 wanted to know when she had to pick her kids up. It wasn't  
2 as though she was a brand new customer. It was obvious  
3 that Deborah Panos had been bringing the children there  
4 regularly for some period of time, but curiously and by  
5 sinister coincidence, on this particular early afternoon,  
6 she called and really asked a meaningless, stupid question,  
7 "When am I supposed to pick the kids up," and Sherry Smith  
8 has explained that she was obviously upset and she was  
9 crying and she was scared and she heard someone in the  
10 background, a man, and she also heard, and this is the  
11 significant point on this part of my argument, she heard  
12 Deborah Panos say to this man, "I don't have any money."

13 Well, isn't that consistent with the purpose  
14 of his entry and isn't this the same guy who said from the  
15 witness stand he was broke when he walked down Bonanza  
16 Boulevard, when he went to the Vera Johnson Projects and  
17 hung out for a half hour. She was broke then. He entered  
18 intending to steal. His need for money is obvious from the  
19 statement made by Deborah Panos during her telephone  
20 conversation to Sherry Smith. She said to someone,  
21 naturally Sherry doesn't know who. We all know she was  
22 talking to James Chappell and telling him, "I don't have  
23 any money."

24 Further evidence is the fact that he stole  
25 the car keys and the car and he went back to the projects

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1 and, at some point that night, he is selling shrimp and pie  
2 and he sold that and rented Debbie Panos' car, his homicide  
3 victim, to Johnson and Turner, the two young black ladies  
4 for 15 bucks, the car, and the pie, and the shrimp because  
5 he needed money. Now doesn't that reflect back on what his  
6 intention was when he went in to this mobile home? He's a  
7 man with cocaine dependence. Dr. Etcoff explained that and  
8 the defendant also explained from the witness stand later  
9 on that night, he got high on crack and as stupid as it is  
10 in all probability, his need for money stemmed from his  
11 desire to get high on crack.

12 Well, the following day, when he was  
13 arrested, what was he doing? Stealing booze and candy bars  
14 from a Lucky Food Store. Now if he had that frame of mind  
15 at about noon at Lucky's, isn't it reasonable to conclude  
16 the man who walked to the scene of the crime, who entered  
17 through a window, who ransacked the mobile home, who was  
18 asking for money entered with the intention on August the  
19 31st, 1995 of stealing and if he did, he's guilty of  
20 burglary.

21 Instruction No. 9 I submit is helpful. It  
22 begins, "You are further instructed that an unlawful entry  
23 is one that is ordinarily done without the authority,  
24 permission or consent of the owner or one in lawful  
25 possession of the building. However, consent to enter is

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1 not a defense to the crime of burglary nor need there be a  
2 breaking into or forced entry so long as it is shown that  
3 entry was made with a specific intent to commit larceny or  
4 assault or battery or robbery or murder.

5 At line seven, the authority to enter a  
6 building extends only to those who enter with the purpose  
7 consistent with the reason the residence or mobile home or  
8 building is opened to them. Now I'm making this argument  
9 simply to explain that even if we accept the really rather  
10 incredible assertion of this defendant that she met him at  
11 the window and she was happy that he was there, despite the  
12 history, despite the letters, that she would greet him with  
13 open arms and contrary to the whole tone of her telephone  
14 conversation with Sherry Smith, even if we look at this  
15 evidence in a light most favorable to the defendant and she  
16 did help him in, if, because she couldn't read his mind, if  
17 he entered with the intention to do any of those things  
18 alleged, he's a burglar. It doesn't matter how many times  
19 he had been in there before. We're talking about one day,  
20 August the 31st, 1995.

21 Now the State in Count II has alleged  
22 robbery. Robbery, like burglary, is not a complicated  
23 concept, but it's very different. Burglary is a crime  
24 against property. It's a crime of entry and robbery is a  
25 crime against the person and it involves the taking of

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1 money or property by means of force or violence or fear of  
2 injury. The Court explains that in Instruction 11. He  
3 says something very significant in Instruction 12, which is  
4 the value of property or money taken is not an element of  
5 the crime of robbery and it's only necessary that the State  
6 prove the taking of some property or money.

7 Now, that makes sense because robbery is a  
8 crime against the person. It does not matter if the  
9 property stolen by means of force or violence or fear of  
10 injury was worth six cents or six million dollars. It does  
11 not matter. Value is irrelevant because this personal  
12 crime involves the forceful taking of property of any kind  
13 from the person or presence of the victim.

14 Now you may think, well, in this case  
15 Deborah Panos was rendered unconscious. She may have been  
16 totally unaware that after he got in there, he took the  
17 keys and he took the car and he took out of this black  
18 folder certain personal items; the social security cards.  
19 Well, ladies and gentlemen, the Court answers that concern,  
20 if any of you were considering it, in the last paragraph of  
21 Instruction 11. The Court continues beginning at line  
22 nine. "The degree of force used is immaterial if it is  
23 used to compel, acquiesces to the taking of or escaping  
24 with the property," and the last sentence, a taking  
25 constitutes robbery whenever it appears that, although the

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1 taking was fully completed without the knowledge of the  
2 person from whom taken, such knowledge was prevented by the  
3 use of force or fear."

4 Homicide victims can certainly also be  
5 robbery victims and there is no greater force, no greater  
6 violence than to kill and then complete the crime of  
7 robbery. She certainly was helpless to object to his  
8 taking the car, the keys, the social security cards, or  
9 anything else once she was dead and I believe that's the  
10 point being made by the Court in the last paragraph of  
11 Instruction No. 11.

12 The State submits that it has proven beyond  
13 a reasonable doubt that in addition to being a burglar,  
14 this defendant is also a robber. The Court has instructed  
15 you on a lesser related offense, that of grand larceny  
16 auto. He didn't just commit a grand larceny. Grand  
17 larceny doesn't involve force, does not involve injury. A  
18 grand larceny would be if, when she went into the bathroom,  
19 he then took the keys and sneaked off in the car without  
20 her permission. This man killed her and then he took her  
21 car and that's the reason it's robbery and it's robbery  
22 with use of a deadly weapon and not grand larceny auto.

23 In Count III, the prosecution charges this  
24 defendant with murder. There are three possibilities and I  
25 might mention, in terms of the verdicts, when you look at

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1     them, you are going to find that there are various verdicts  
2     for each count. They are really rather a simple process,  
3     but it's one that you must engage in very conscientiously  
4     and very carefully. You are to consider the evidence and  
5     the Instructions and then select one appropriate verdict  
6     for each count. You are going to find there are  
7     substantially more than three verdicts submitted, but you  
8     must examine the evidence and return with one verdict for  
9     each of the three counts.

10                 The possibilities for Count III are first of  
11     the degree murder, second degree murder, and voluntary  
12     manslaughter. Ladies and gentlemen, a second degree murder  
13     is distinguished from first degree murder because it  
14     doesn't have the element of premeditation and in terms of  
15     murder, if it isn't first, it's second. So it's pretty  
16     easy to keep that in a proper perspective.

17                 The other possibility of a crime called  
18     voluntary manslaughter and, as I recall, Mr. Brooks, in his  
19     opening statement, suggests that the defendant was guilty  
20     not of first or second degree murder, but of voluntary  
21     manslaughter and so I'm going to address that first and  
22     then I will move on up to a discussion of murder of the  
23     first degree.

24                 Voluntary manslaughter is defined in  
25     Instruction 32. "Voluntary manslaughter is the unlawful

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1 killing of a human being without malice, express or  
2 implied, and without any admixture of deliberation." Now  
3 as you remember a moment ago before I told you the  
4 difference between first and second degree murder is that  
5 in first, you have premeditation and in second degree  
6 murder, that isn't required, but in second degree murder  
7 there must be malice and if you find in this case that the  
8 man who repeatedly stabbed this young woman with a deadly  
9 weapon in her chest and neck and then who apparently  
10 elected to stab her near her naval and also near her pubic  
11 area, if you conclude he was acting maliciously, then this  
12 isn't voluntary manslaughter because voluntary manslaughter  
13 is the killing unlawfully of a human being without malice,  
14 either express or implied. And if he had malice and there  
15 is any element of deliberation, any vengeance involved, it  
16 isn't voluntary manslaughter.

17                   The Court goes on to say in the second line,  
18       "It must be voluntary upon a sudden heat of passion caused  
19 by a provocation apparently sufficient to make the passion  
20 irresistible." In cases of voluntary manslaughter, there  
21 must be a serious and highly provoking injury inflicted  
22 upon the person killing sufficient to excite an  
23 irresistible passion and if a reasonable person or if there  
24 isn't a serious and highly provoking injury inflicted upon  
25 the person killing, well, who is that? That's talking

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1 about the killer, Mr. Chappell. What this is contemplating  
2 and in the last sentence, the Court does explain at line  
3 12, "A serious and highly provoking injury need not be a  
4 direct physical assault on the accused," but what this  
5 whole crime contemplates is that the aggressor is the  
6 victim and she attacked him and either tried to kill him or  
7 inflicted in some manner, whether it was a direct physical  
8 attack or in some other way, inflicted a serious and highly  
9 provoking injury upon him. There's no evidence of that in  
10 this case. Where is the provocation? Who provoked whom?  
11 He's the guy who was released, he sought her out. She  
12 didn't come looking for him. And then he had the audacity,  
13 when he went in through her window, and he had his way with  
14 her. He has the audacity to say, "When I entered her, she  
15 was all loose and wet and smelly. It wasn't nothing like  
16 it use to be." Well, excuse Deborah Panos if she wasn't  
17 expecting company; maybe had she known that he was going to  
18 be there that day and sneak in through the window, she  
19 would have showered.

20 Where's the provocation? He's talking about  
21 beer cans outside the mobile home. Anybody could have put  
22 the beer cans there. He's talking about the condition of  
23 her car. Not his car, her car. And he's claiming a letter  
24 inside the console triggers what he did. That's his  
25 excuse, that's his explanation. Did Deborah Panos do

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1 anything to provoke him? Even if we accept his story,  
2 after he got in there and he is accusing her, he is  
3 confronting her, she wants to know if he will continue with  
4 the sexual act and let her get on top and then, according  
5 to him, she gives him oral sex. Is there any testimony in  
6 this record that she flaunted her infidelity that  
7 afternoon? Even by the account of Mr. Chappell, when he  
8 confronted her, when he says he jumped up because of what  
9 he sensed about her body and he asks has she been with  
10 other men, she denied it and according to him, when they  
11 went into the bedroom, she was still denying it and he's  
12 the one who says -- threw the letters around that he sent  
13 her and said, "These don't mean anything to you?"

14 Well, this letter from Devin or whoever the  
15 man is could have been anywhere. Only the defendant, the  
16 person with the primary interest in how this case turns out  
17 says that it is out in the console. Wherever it was, is  
18 there any evidence that she said, well, yeah, that's  
19 right. You caught me now. I have been unfaithful. There  
20 isn't any evidence she ever acknowledged doing anything.  
21 She did not provoke him and this is not a case of voluntary  
22 manslaughter.

23 It's a case of murder. It's a case that  
24 involves malice and it also involves premeditation. And  
25 the Court in Instruction 21 discusses murder of the first

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1 degree and there are three possible ways, under the State's  
2 theories alleged in this case, to get to murder of the  
3 first degree and if we satisfy those allegations, it  
4 obviously isn't second degree murder, because second is  
5 only everything which isn't first. So if it's first, we  
6 stop there.

7 Murder of the first degree is murder which  
8 is, A, perpetrated by any kind of willful, deliberate, and  
9 premeditated killer and/or, B, committed in the  
10 perpetration of burglary or attempted burglary and/or, C,  
11 committed in the perpetration of robbery or attempted  
12 robbery and what B and C represent is a policy judgment by  
13 our legislature that certain crimes are inherently  
14 dangerous and the legislature wanted to discourage the  
15 commission of burglaries and robberies. Legislature wanted  
16 to discourage people like James Chappell from walking miles  
17 to a crime scene and then breaking and entering through a  
18 window and the legislature wanted to discourage the Mr.  
19 Chappells of this state from taking money or cars or keys  
20 or social security cards by means of force or violence or  
21 fear of injury. And so the legislature set up a rule. We  
22 know it as the Felony Murder Rule and it means quite  
23 simply, when you commit a burglary or a robbery, you do so  
24 at your risk because if during the perpetration of those  
25 crimes an intended victim dies, you are guilty of murder of

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1 the first degree.

2 The Court explains in the second paragraph  
3 of Instruction 21, "A killing which is committed in the  
4 perpetration or attempted perpetration of burglary and/or  
5 robbery is deemed to be murder of the first degree.  
6 Whether the killing was intentional, unintentional or  
7 accidental, this is called the Felony Murder Rule." The  
8 Felony Murder Rule is applicable to this case only if you  
9 find that the defendant possessed a specific intent to  
10 commit burglary and/or robbery. For the reason I've  
11 already explained, I submit the State has established that  
12 this defendant committed burglary and robbery on August the  
13 31st, 1995 and if he committed those crimes, either of them  
14 or both and if, as we know he killed Deborah Panos while he  
15 was committing the offenses, it's deemed to be first degree  
16 murder, not second degree, not voluntary manslaughter.  
17 Murder one.

18 Subheading A involved a willful, deliberate,  
19 and premeditated killing and the State has also alleged  
20 that that happened in this case. The Court defines  
21 premeditation in Instruction 22. "Premeditation is a  
22 design, a determination to kill distinctly formed in the  
23 mind at any moment before or at the time of the killing."  
24 Some laypersons come to a court of law with the mistaken  
25 notion about premeditation. Some people think for it to be

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1 premeditated, you necessarily had to plan it for a day or a  
2 week or some particular time interval before the killing  
3 occurred. And Judge Maupin dispels that notion with  
4 Instruction 22 in the second paragraph. It reads,

5 "Premeditation need not be for a day, an hour, or even a  
6 minute. It may be as instantaneous as successive thoughts  
7 of the mind," and all that is required is that the  
8 defendant formed in his mind either at the moment of the  
9 killing or immediately before it the clear design to kill  
10 and if that is satisfied, it is deliberate and premeditated  
11 murder.

12 What is the evidence in this case to  
13 establish that this was a premeditated killing? Let me  
14 start with evidence of prior threats. It's not uncommon  
15 for people who, at least have murder on their mind, to talk  
16 about it. Now it's apparent that this defendant  
17 substantially before August the 31st had thought about  
18 killing. That was not a strange thought to James  
19 Chappell. Dina Freeman, the 12 year dispatcher from the  
20 Tucson Police Department has testified -- I haven't  
21 forgotten the defendant denies that he said anything like  
22 this to Deborah Panos. However, in addition to calling  
23 Dina Freeman a liar, he suggested that several members of  
24 the Metropolitan Police Department were at least testifying  
25 inaccurately. Everybody testifies as inaccurately but Mr.

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1 Chappell and, yet, he's the one with the primary interest  
2 in how this case turns out.

3 Dina Freeman testified that between February  
4 and September in 1994, the defendant, she was aware, had  
5 gone to Detroit for several months. He came back and  
6 became embroiled in an argument with Deborah Panos and one  
7 can easily surmise what they were arguing about. If he had  
8 been gone for two months, this guy was going to come back  
9 and give her the third degree and he was in the process of  
10 doing that when she called Dina Freeman and Dina says she  
11 was upset and crying and she said that her and James were  
12 fighting and Dina Freeman heard the defendant's voice in  
13 the background. So they were fighting and she was crying  
14 and he was obviously in a confrontational mode and up close  
15 to her and Dina heard him say, "I don't care what you do,  
16 but you don't F-U-C-K around in front of my kids because I  
17 will kill your ass." Other people will say, well, you  
18 know, individuals say things like that all the time in the  
19 heat of anger, they don't mean it, but somehow it has a  
20 more sinister ring when we appreciate he said it in 1994  
21 and on September the 1st, she is lying cold and stiff on a  
22 slab at the Clark County Morgue.

23 And there was another telephone call  
24 described by Dina Freeman. She said it was August or  
25 September 1994, just before the move to Las Vegas from

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1 Tucson, and again she called crying and upset and she heard  
2 the defendant's argumentative voice in the background and  
3 according to Freeman, he wanted the car, he told her to  
4 give him the car or he was going to do an OJ Simpson on her  
5 ass and around Thanksgiving of the same year from Las  
6 Vegas, Deborah Panos called crying and Dina Freeman heard  
7 the defendant say that he was going to do an OJ Simpson on  
8 her ass and he wanted the keys to the car.

9 Lisa Duran, a good friend of Deborah Panos,  
10 they were co-workers at G.E. Capital, a financial  
11 collections business. Lisa Duran had worked there for  
12 about two years, said that in the two months approximately  
13 after Memorial Day weekend 1995, she talked with the  
14 defendant on about five separate occasions. He would call  
15 either to the mobile home on North Lamb and talk to her in  
16 Deborah's absence or he would call to her apartment and on  
17 two occasions, he left messages on the answering machine.

18 Lisa Duran was then asked if there were  
19 occasions when the defendant uttered threats during that  
20 time frame and she acknowledged that they were and talked  
21 about a particular conversation, which was at about 8:00 in  
22 the evening. "Question: What do you remember about that  
23 particular conversation? The conversation -- he asked  
24 where Deborah was and I told him that she had gone out  
25 and he asked where his children were and I told him

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1           that his children were with me and that's when he made  
2           the comment to me that he wanted to know what other  
3           nigger she was laying up underneath and I told him  
4           that was none of my business to tell him and he said,  
5           well, what kind of friend are you and I said the kind  
6           of friend who minds her own business and he told me,  
7           well, you tell Debbie that I called and that when I  
8           get out of here, she's not going to have any friends,  
9           she's not going to have any life and that includes  
10          you."

11                       Now does that sound like a threat? Does  
12          that sound sinister? Does that sound serious in view of  
13          what happened? And doesn't it make the assertions of the  
14          well meaning expert, who doesn't actually know anything  
15          about this case, sound pretty ridiculous?

16                       There was another telephone call described  
17          by Duran. "Question: Tell us what you remember. Answer:

18               That he would sit there and talk about how he was  
19               upset and she hadn't been answering his phone calls  
20               and she hadn't been writing him and he was upset that  
21               she hadn't brought the children to see him.

22               Question: To see him in jail? Answer: Yes, sir.

23               Question: Or to write him while he was in custody?

24               Answer: Yes, sir. Question: What else did he say?

25               Answer: He just told me that he was angry and that

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1           when he got out, she wasn't going to have any friends  
2           and that if he couldn't have her, nobody could."

3                   The timing of the release in this case is  
4           certainly consistent with the follow through by this  
5           defendant of those threats. He didn't wait a week after he  
6           was released, he didn't wait 24 hours. This guy was  
7           released at 10:45 in the morning and within three hours,  
8           Deborah Panos was dead. His steps made a beeline east on  
9           Bonanza Boulevard, as he stalked his prey.

10                   Choices. Nobody forced Mr. Chappell to do  
11           this. Nobody forced him to seek her out. He had no claim  
12           on her. He hadn't married her. She was free to go  
13           wherever she wanted and, as long as it was legal, to do  
14           whatever she wanted with other people, men or women. He  
15           had no moral or legal claim upon her. He didn't own her,  
16           but he wanted to control her and he wanted to own her and  
17           he had decided that day would be vengeance day and the  
18           unfortunate release of James Chappell resulted in the  
19           murder of a Clark County citizen.

20                   I've already discussed the manner of entry.  
21           It's also consistent with the premeditated act. The use of  
22           a deadly weapon. Ladies and gentlemen, any one of those  
23           little kids he sired out of wedlock with this woman, James  
24           or Anthony or even Chantell, would know you don't take a  
25           steak knife and plunge it repeatedly into the chest and

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1 neck of another human being. When you do that, you must  
2 intend to kill.

3 Instruction 23, by the Court, "The intention  
4 to kill may be ascertained or deduced from the facts and  
5 circumstances of the killing, such as the use of a weapon  
6 calculated to produce death, the manner of its use, and the  
7 attendant circumstances characterizing the act." The  
8 location and number of stab wounds, 13, 10 in the neck and  
9 chest area, one to the right side of the neck, one to the  
10 right of the naval, and one to the right of the pubic area  
11 and essentially in this case, despite the emotion shown by  
12 the defendant on the witness stand, self-serving on his  
13 behalf and despite his description of a woman who welcomed  
14 him into her home through the bedroom window, her state of  
15 mind is forever established through the testimony of Sherry  
16 LaTronna Smith. The woman who called Miss Smith and used,  
17 as a pretext, "When do I pick up the kids," was not a happy  
18 person. She was a person who was afraid, she was a person  
19 who was upset and crying. She was a person trying to deal  
20 with the defendant in the background and she was the person  
21 who on two separate occasions -- and it's pathetic to think  
22 about it now; do you remember the tears by Sherry Smith?  
23 Can you appreciate the guilt she must feel, the pleas twice  
24 by this woman in a whisper, "Help me." And the question,  
25 "Can you get away from him? Can you come by yourself to

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1 the day care center? No."

2 The flight of this defendant is consistent  
3 with murder of the first degree, his failure to render  
4 medical assistance, or his failure to summon medical  
5 assistance. He claims he didn't know she was dead. Did he  
6 go to the telephone, did he call 911, did he go over and  
7 try to resuscitate this woman he claims he loved? Did he  
8 report it to the police? He probably recognized Lisa Duran  
9 as he drove away from the scene of the crime. Did he flag  
10 her down and say, "There's been a horrible thing that  
11 happened and I just lost it and I've killed or seriously  
12 injured Deborah." He didn't do any of those things.

13 Did he show remorse that evening when he was  
14 consistent with his Hip Hop nickname? When, as the  
15 witnesses Turner and Jackson said, "He was just James,"  
16 dancing with his radio, selling shrimp and pie and renting  
17 the car, getting high on crack cocaine? Did he show  
18 remorse the next day in stealing booze and candy bars?

19 There is evidence of concealment of the  
20 crime as a consciousness of guilt. He didn't want to be  
21 caught. He used an alias. He told these security guards  
22 he was Ivri Morrell and he got real fidgety when Osuch of  
23 the police department confronted him and Osuch didn't know  
24 this was the suspect, but he just, because it was in close  
25 proximity to the crime scene, he just threw it out at him.

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1 "What do you know about the homicide of this woman over at  
2 the Ballerina Mobile Home Park yesterday," and he said the  
3 defendant immediately became real fidgety and wouldn't make  
4 eye contact with him and then Osuch left the room. What  
5 did the defendant do immediately? He continued to fidget  
6 and Kimberly Sempson was aware that he was about to dump  
7 something and so she watched him and he did drop this  
8 plastic card holder and she went over to pick it up and he  
9 put his shoe on it and tried to hide it. Did he want to  
10 get caught? No. Does he want to be convicted now? No.

11 Ladies and gentlemen, when Ms. Silver stood  
12 before you and offered the opening statement of the  
13 prosecution. She promised that the State of Nevada would  
14 prove these charges, burglary, robbery with use of a deadly  
15 weapon, and murder of the first degree beyond a reasonable  
16 doubt. When you were selected as jurors, by implication,  
17 every one of you, when you raised your right arms and took  
18 the juror oath, promised that if the prosecution met its  
19 burden, you would render equal and exact justice. You  
20 impliedly promised if the State proved its case, you would  
21 find the defendant guilty and in all sincerity I am telling  
22 you that we kept our promise. I'm asking you now to keep  
23 yours.

24 I conclude with the words of William Blake  
25 which are appropriate to this case, "Cruelty has a human

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1 heart. Jealousy a human face." The jealous face is the  
2 face of James Chappell and the cruel heart in this  
3 courtroom in this case is the heart of James Chappell.

4 THE COURT: Thank you, Mr. Harmon.

5 At this time we will take a brief recess at  
6 this time, ladies and gentlemen. During the recess, I  
7 would remind you it is your duty not to converse among  
8 yourselves or with anyone else on any subject connected  
9 with this trial or to read, watch, or listen to any report  
10 of or commentary on this trial or any person connected with  
11 this trial by any medium of information, including, without  
12 limitation, newspapers, television, or radio, and you are  
13 not to form or express an opinion on any subject connected  
14 with this case until it is finally submitted to you.

15 We will reconvene at about 10 minutes after  
16 4:00.

17 Lisa.

18 (Off the record discussion not reported.)

19 THE COURT: At this time, I ask that you  
20 remain on the upper deck and and, sir, if you could remain  
21 for just a moment and I'll the rest of the jurors can go on  
22 break. We will be at ease while the jury departs the  
23 confines of the courtroom.

24

25 (At this time the jury left the courtroom.)

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THE COURT: If you could please approach the bench with the attorneys, sir, on the record, please.

(Off the record discussion not reported.)

(Off the record at 4 p.m. and back on the record at 4:18 p.m.)

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

MR. HARMON: Yes, your Honor.

MR. BROOKS: Defense will, your Honor.

THE COURT: All right, the defense may make its closing argument.

MR. BROOKS: Thank you, Judge.

May it please the Court, counsel, ladies and gentlemen of the jury, this is our opportunity to address the evidence. Mr. Harmon has just given the State's opening closing statement. I will now give our statement and Ms. Silver I understand will follow me. This is our only opportunity to talk with you about the evidence for the defense.

Back when this case started, roughly a week ago, we told you in opening statement that this case is about the tragic love relationship between James Chappell

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1 and Deborah Panos. We told you that their relationship was  
2 like a mixture of air and gasoline, an absolutely explosive  
3 mixture. James was the gasoline we said and that mixture  
4 was dangerous waiting for a spark, waiting for something to  
5 set it off unless somebody diffused that situation.

6 Well, you have now heard the evidence in  
7 this case. You heard that nobody diffused the situation  
8 and you heard of the death, the tragic death of Deborah  
9 Panos. As we talk about this evidence, ladies and  
10 gentlemen, please keep in mind the following. This case is  
11 not about who killed Deborah Panos. My client has taken  
12 full responsibility for that. This case is about what  
13 degree of responsibility my client must have, must accept  
14 for having killed Deborah Panos, the mother of his three  
15 children, the woman that he loved.

16 We've said it before and we'll say it  
17 again. James Panos takes full responsibility and we are  
18 not offering any excuses for what happened in this case.  
19 This is important because the State may very well say,  
20 well, the defense is trying to offer some type of excuse.  
21 Well, an excuse is a justification and a justification  
22 leads to your saying this is justifiable homicide or a not  
23 guilty verdict. This case is not like that at all. My  
24 client committed a crime, he accepts full responsibility  
25 for his crime, and he is going to accept responsibility in

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1 the criminal system for what he did, but the question  
2 remains what level of legal responsibility exist for what  
3 he did and how do we resolve that question?

4 We know how the State of Nevada would try to  
5 resolve that question. You have watched the State of  
6 Nevada put witnesses on the stand here, you have heard them  
7 question these witnesses, you have seen how they approach  
8 the evidence, and I submit to you their approach is  
9 entirely flawed because they ignore what's obvious. They  
10 distort facts and presume guilt and they feed us character  
11 evidence rather than hard evidence of premeditation,  
12 deliberation, and intent.

13 And, finally, they overwhelm us with  
14 evidence of obvious facts, evidence of things that just  
15 don't matter in this case. Let's look at ignoring the  
16 obvious first. They have tried to prove premeditated,  
17 deliberate murder in this case by ignoring the single most  
18 obvious and most powerful fact that came out in any of this  
19 testimony. Ladies and gentlemen, they can try to ignore it  
20 or scare it away or whatever, but the fact remains this man  
21 loved Deborah Panos and Deborah Panos loved this man and  
22 that is the single most powerful fact in this entire case.  
23 He may have treated her poorly, he may have been a complete  
24 SOB, he may have been worthless, but for whatever it was  
25 worth, they loved each other.

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1                   Did this relationship have problems? God  
2   bless America it had problems. She was white, he was  
3   black. She worked, he seldom did. He used drugs and  
4   alcohol, she was sober. Have you noticed how the State  
5   tried to get around this obstacle, they tried to tell you  
6   that this relationship was over. They told you that James  
7   followed Deborah to Las Vegas suggesting, of course, that  
8   she was trying to get away from him, suggesting the  
9   relationship was dead. They said James would not let go.  
10   They even suggested that she got a temporary restraining  
11   order to keep him away.

12                   Well, what did the evidence show? Was it  
13   over? Lisa Duran said she never heard Deborah Panos tell  
14   James Chappell this relationship was over nor did anybody  
15   else. When police came to Deborah Panos' trailer the day  
16   she died, Lisa Duran told them they were  
17   boyfriend/girlfriend and in the weeks and months before she  
18   died, Deborah Panos continued to take James' calls from the  
19   jail. He would call many times each week. She continued  
20   to tell him she loved him and she continued to tell him she  
21   cared for him. When she saw him on August 30th, the day  
22   before she died in Municipal Court, there was not a single  
23   word about this relationship being over.

24                   Did James follow her to Las Vegas like the  
25   State suggested? Absolutely not. You heard the

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1 testimony. They came here together. They spent a week at  
2 Circus Circus. The next door neighbor testified they moved  
3 in together and they would have you believe this love  
4 relationship, this 10 year love relationship was somehow  
5 over. Well, it wasn't.

6               They said that the Court issued a temporary  
7 restraining order telling James to stay away from their  
8 home. They forgot to tell you the temporary restraining  
9 order was in effect for less than 40 hours. It expired  
10 eight months before the killing in this case and when  
11 Deborah Panos had a choice, on January 11th, whether to go  
12 to a hearing to get that order extended, she didn't go and  
13 to use the terminology of the State, that was a choice she  
14 made.

15               Ladies and gentlemen, the State of Nevada  
16 wants you to ignore one of the greatest truths of all  
17 time. Love is strange, love can be bazaar. These two  
18 people had a ten year relationship that began when they  
19 were 16 years old in Lansing, Michigan. They were  
20 sweethearts, they were lovers, they brought three children  
21 into this world. They persevered despite the fact that she  
22 was white and he was black. They persevered even though  
23 Deborah's parents wanted to crush this relationship and  
24 they persevered even though they were often separated by  
25 the distance between Michigan and Arizona. They even

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1 persevered as their lives took separate paths.

2 Deborah was responsible, she worked, she had  
3 jobs. He was shiftless. He couldn't keep work. He seldom  
4 had money, but the relationship endured. We know that  
5 Deborah brought James to Tucson when her parents weren't  
6 there so that they could be together. He lived in her  
7 house, in her parents' house when they weren't home. We  
8 know that she put him up in an apartment. We know that  
9 James left her twice and both times she brought him back  
10 and the State of Nevada, the government wants you to ignore  
11 that, ignore all of it, but I'll tell you something,  
12 folks. It's evidence, it's real and it's true.

13 What they have done in this case, ladies and  
14 gentlemen, is raise the red flag of character after  
15 ignoring the most obvious facts of this case, the  
16 government has showered this defense with character  
17 allegations. You have heard testimony that James could not  
18 hold a job. Lisa Duran and Dina Freeman both testified to  
19 that. You heard that James was a drug addict, a crack  
20 head. You heard he was a lousy father, you heard he was no  
21 good at providing for his girlfriend or his kids. You  
22 heard insinuations about his not marrying Deborah and  
23 giving those children his name. You heard he's a chronic  
24 shoplifter, he steals to buy drugs. You heard he steals to  
25 buy things for his children. You heard how he calls his

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1 girlfriend a slut and whore and you heard he's a girlfriend  
2 beater, a chronic abuser, and I submit to you that that is  
3 the great majority of their case and it is made because  
4 they want to push your buttons, they want to make you mad,  
5 they want you to be angry, and they want you to convict my  
6 client of first degree murder.

7           If you think about character in this case,  
8 ladies and gentlemen, you will remember that the State has  
9 a burden of proving beyond a reasonable doubt every element  
10 in this case. Being a bad father does not make you a  
11 burglar, being a bad husband or boyfriend doesn't make you  
12 a killer and the State knows that and they've done what  
13 they've done because they haven't got premeditation or  
14 deliberation in this case.

15           Let's look at how they've distorted the  
16 facts and presumed guilt. There is an old saying that  
17 money will make you do things you don't want to do and  
18 sometimes one can wonder if a desire to get a conviction  
19 doesn't do the same thing. Let's look at some of their  
20 distortions. When Ms. Silver opened, she told us the State  
21 was going to prove that when the police went to Deborah  
22 Panos' trailer on August 31st in response to the call in  
23 this case, the police knew he was a bad guy. He was such a  
24 bad guy they called backup units. Is that what the  
25 evidence said? Absolutely not. The officer testified that

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1 domestic situations are inherently dangerous. The standard  
2 procedure is to call backup. He didn't say anything about  
3 some special situation involving James Chappell.

4 By taking the facts, as the State did, and  
5 interpreting in the way they did, they started a process  
6 which we will call the presumption of guilt and I submit to  
7 you if you want to know how to apply the presumption of  
8 innocence in this case, watch how the State took the  
9 evidence and twisted it to form their presumption of  
10 guilt. Do the opposite and you will be there.

11 You may recall that during one of the  
12 domestic battery testimonies, Ms. Silver showed a picture  
13 of poor dead Deborah Panos stabbed 13 times lying in a pool  
14 of blood to the police officer on the stand who answered  
15 the domestic violence call and she asked him, "Is this how  
16 Deborah Panos appeared on that day?" Now you would hope  
17 the State's witness would have the integrity to say, well,  
18 she had more blood on her face because her nose was broken,  
19 but she wasn't lying there unconscious, she wasn't dead,  
20 she didn't have 13 stab wounds and she wasn't lying in a  
21 pool of blood, but the officer followed the State's lead,  
22 yes, that's how she looked only more blood. That, ladies  
23 and gentlemen, is the type of effort being made to cloud  
24 this case with inflammatory evidence.

25 Ransacking. The State's entire case really

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1 comes down to the idea that James Chappell goes to that  
2 trailer with the intent to commit a crime. He enters the  
3 trailer to commit the crime and he commits the crime and,  
4 of course, he does in fact kill his girlfriend. He  
5 explained why and he explained how, but they also contend  
6 that he ransacked the trailer and this, of course, would  
7 support their claim that he was going there to steal or  
8 take something.

9                   You will have to look at these pictures very  
10 carefully back in the back because I submit to you these  
11 pictures, these are State's Exhibits 6 through 8 or 5  
12 through 8. They don't show a ransacked trailer. They show  
13 a messy trailer. Mr. Harmon, I just disagree with what he  
14 said a little bit earlier. He claims that Officer Perkins  
15 said it was ransacked. I recall hearing a different  
16 answer. I think officer Perkins was quite equivocal about  
17 whether this trailer was ransacked.

18                   The fact of the matter is the drawers are in  
19 their place, the top of a roll top desk is still there,  
20 it's not even rolled back. Clothes are piled on the  
21 ground, which is consistent with a single mother with three  
22 kids who's in the process of moving. There was no  
23 ransacking of that, no ransacking at all, but I'll tell you  
24 what really shows there's no ransacking. The State perhaps  
25 believes that James must have killed Deborah and then

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1 ransacked. Well, take a look at this folks. He kills her  
2 here in the living room. That's where her body is found,  
3 that's where the pool of blood is. He has blood on his  
4 shoe and he has blood on his hands from the cuts. They  
5 testify that there is blood found by her body and on the  
6 toilet and the sink, I believe.

7 Not a bit of evidence, not one bit of any  
8 blood being found in the master bedroom and I might add  
9 this B, B, B right here is letters, not blood on this  
10 diagram. Absolutely no blood in that room and the reason  
11 why is because there was no ransacking afterwards. This  
12 man had blood on him. If he was ransacking, there would be  
13 blood found elsewhere in that trailer.

14 Well, let's look at the alternative. Let's  
15 assume that the State could say that he ransacked and then  
16 killed her. He gets released from custody at 10:45. He  
17 walks roughly three miles, which is roughly an hour's walk  
18 to that place, the trailer. He gets there at roughly  
19 noon. She goes to work at 9:00 and gets off work at 10.  
20 Now we don't know for sure, but she most likely went home,  
21 which suggests she was home before he was and she greeted  
22 him when he arrived home. There's no evidence of  
23 ransacking in this case, but if you want to take the  
24 evidence and twist it in the way most damaging to my  
25 client, as the State of Nevada has done, you might be able

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1 to get there, but it's not right and it's not fair.

2 What really takes the cake in the  
3 presumption of guilt is how the State presented to you the  
4 evidence regarding the so-called temporary protective  
5 order. Do you recall -- I think it was Tonya Hopkins  
6 (sic). She said Deborah Panos applied for a temporary  
7 protective order on January 9th, when she suffered her  
8 broken nose. This was when she went to the hospital and  
9 the State would have been perfectly happy if you believed  
10 that that TPO, that order keeping him away from his woman  
11 was still in effect eight months later in August of 1995.  
12 That was what they said in their opening and that was the  
13 evidence you would believe when you listened to the direct  
14 examination from that stand.

15 Absolutely untrue. Absolutely untrue. The  
16 fact is they did call in the order, a judge set a hearing  
17 date two days later. Deborah Panos did not go to that  
18 hearing and that order was vacated, but if you want to take  
19 the evidence and twist it, as the State has done, to  
20 somehow create this case, this overwhelming case of first  
21 degree murder, perhaps you can use that too.

22 And there's more. What about Mr. Harmon's  
23 questioning of my client on the stand and Mr. Harmon's  
24 questioning of Dr. Etcoff. Do you recall where his  
25 reasoning was going? It goes sort of like this. Mr.

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1 Chappell, you want to minimize what happens to you, don't  
2 you? Therefore, you are going to not tell the truth here  
3 today. Now think about where that inference takes us. Is  
4 the State of Nevada contending that every time they charge  
5 somebody with a crime, that anything a person says not  
6 consistent with their idea of what happened must be  
7 untrue? That's a heck of a presumption for a criminal  
8 defendant to face. You've probably heard of this type of  
9 stuff before. The I.R.S. does it all the time.

10 They say my client burglarized his own  
11 home. They can run from this evidence, ladies and  
12 gentlemen, but the fact remains in Las Vegas, Nevada, when  
13 my client wasn't in jail, that trailer was his home.  
14 That's where his three kids lived, that's where the woman  
15 he loved lived. He told you he went there. He didn't have  
16 a key. He had called twice before and no one answered and  
17 he went to a window and he gained entry.

18 Mr. Harmon characterized it as  
19 surreptitious. Is it surreptitious to enter the most  
20 obvious window on a trailer, the one facing the street at  
21 12:00 noon on a bright sunny August day? Is that a  
22 surreptitious entry? Is that an entry on a man with a  
23 guilty mind and intent to murder? No, it's a man who just  
24 got released from jail who doesn't have a key in his  
25 pocket, who wants to go home and he starts going in the

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1 window, the one facing the street, the one that is least  
2 protected from view. He could have tried to go into  
3 another window if he wanted, if he wanted that  
4 surreptitious element, but he didn't and the reason he  
5 didn't seek a more protected entry way was because James  
6 Chappell was not committing a burglary.

7 We know he had sex with Deborah and we know  
8 it was consensual. The State of Nevada can huff and puff  
9 all day long, ladies and gentlemen, but the fact remains  
10 they haven't got any evidence suggesting it was not  
11 consensual. This man had made love with this woman a  
12 thousand times before, 10 years of love making between  
13 them, three children, and they want to say, oh, it couldn't  
14 have been consensual. Well, it was consensual.

15 They both took their clothes off and I  
16 submit to you that if James Chappell had gone there  
17 intending to rape and kill her, which is what the State is  
18 really saying, if he had done that, why in the world would  
19 he have dressed the body up after the crime? Wouldn't he  
20 have left the dead body raped there in the bedroom? She  
21 got dressed after that sex and she got dressed after that  
22 sex because that was consensual sex between two consensual  
23 -- two consenting adults.

24 The State claims he waited for her. This is  
25 where their premeditation, deliberation comes in perhaps.

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1 They want you to believe he went in that trailer and  
2 perhaps waited for her. Nothing supports that. Nothing at  
3 all. The State says he showed his criminal intent by  
4 taking her car. Well, ladies and gentlemen, I think you  
5 heard quite a bit of testimony here that he had used her  
6 car before. He had lived with this woman and taken her car  
7 many times, which is not unusual when you have two people  
8 living together. Now that does not make it right that he  
9 takes her car after he kills her. However, think about it,  
10 you've just killed somebody, you don't know what to do.  
11 You leave and he took her car. It does not show any intent  
12 prior to the killing that he took the car afterwards.  
13 That, again, is the presumption of guilt coming from the  
14 State of Nevada.

15 They say no remorse. He didn't show any  
16 remorse after he killed her. Well, quite frankly, this man  
17 did not behave in the way one would hope someone would  
18 behave after killing somebody who you love. Ideally, you  
19 would call 911, you would become suddenly very, very  
20 contrite. He was scared, he didn't know what to do. He  
21 left. He went and got high and he told you what happens  
22 when he gets high. He gets high to escape. That's clearly  
23 not an appropriate response, but it's explainable  
24 response. It's something that could be understood. It's  
25 something that can be understood by the evidence.

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1                   And then there's the shoplifting the next  
2   day. They want you to believe that the intent he showed in  
3   going in to a Lucky Supermarket and shoplifting on  
4   September 1st is somehow supportive of the idea that he  
5   went into her trailer to kill him -- to kill her. How in  
6   the world can the State make this stretch? How in the  
7   world can they suggest that entering a store to shoplift is  
8   the same as entering a trailer to kill somebody? Are those  
9   not entirely separate events? Absolutely.

10                  And, oh, yes, there's the OJ Simpson  
11   remark. We have the woman from Tucson, Dina Freeman,  
12   stating that my client said something to the effect of you  
13   are not going over to Dina's for nothing. I'm going to do  
14   an OJ Simpson on your ass. Well, frankly, these remarks  
15   were made anywhere from a year to a year and a half before  
16   this thing happened. They were certainly not close in time  
17   and as such, their evidentiary value to you is highly  
18   suspect.

19                  But since the State brings up this, I ask  
20   you what in the world do the remarks mean? What does it  
21   mean to do an OJ Simpson on your ass? After all, the man  
22   was found not guilty, though many may disagree with that.  
23   Well, I submit to you, ladies and gentlemen, that's perhaps  
24   you can take some instruction from that remark because this  
25   is not a murder in this case where a man goes to another

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1 home or another business or whatever with a knife. He does  
2 not lye in wait for the victim and he does not, in a very  
3 sophisticated way, fly off to another state after the  
4 killing. That case even had gloves.

5 My client went to this trailer, the kitchen  
6 knife was something found inside the trailer. He didn't  
7 bring it there. That right there shows he didn't enter  
8 with any intent to hurt her or kill her and the fact is,  
9 and the State may not like acknowledging this, the fact is  
10 this man, when he fled, he didn't flee to some other state,  
11 he went a quarter mile away and I might add, he had a car.  
12 He could have gone somewhere had he really wanted to get  
13 away, but he went one quarter mile away and there's a  
14 reason why he only went a quarter mile away and that's  
15 because, as much as the State may want to ignore this,  
16 there was a bond between these two people and that bond was  
17 there even after she was dead.

18 Finally, I want to mention what I call the  
19 prosecutors Muzak. You have heard in this case an  
20 overwhelming amount of evidence regarding things which are  
21 absolutely unimportant to the resolution of this case.  
22 During the opening by Ms. Silver, she said the State would  
23 use DNA evidence to prove that the blood beside the dead  
24 woman, who was stabbed 13 times, actually came from the  
25 dead woman. Do you see the utter absurdity of this? We

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1 don't need DNA evidence to prove that a woman lying dead  
2 with 13 stab wounds that the blood lying beside her come  
3 from her body. We don't need DNA evidence.

4 We stipulated from the very beginning that  
5 my client killed this woman. We stipulated it was not an  
6 accident. We've taken that responsibility, but you have  
7 heard an incredible amount of evidence that is absolutely  
8 unnecessary and the reason it's there, the reason this  
9 meaningless background noise is there from the State is  
10 because that's what they have. They can prove my client  
11 killed her, but that does not resolve the issues in the  
12 case.

13 What happened here, ladies and gentlemen, my  
14 client's account of things remains virtually  
15 uncontradicted. The relationship was tragic, but it was  
16 real. This man and Deborah Panos loved each other. He was  
17 jealous as could be. He was obsessed with this woman. He  
18 was obsessed with the idea she was seeing other men and she  
19 probably was seeing other men. Lisa Duran testified that  
20 she had lots of friends. The letter that was found right  
21 here beside the body is from another man in New Jersey.  
22 You can examine that in evidence.

23 Lisa Duran also told us that JR was her  
24 boyfriend of three months here in Las Vegas and we know  
25 from James, he would call the trailer and strange people

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1 would answer the telephone. He didn't know who these  
2 people were around his kids. He was in jail a long time  
3 and while there, he called Deborah regularly and they  
4 talked. She may not have visited him at the jail, she may  
5 not have put money on the books, but let's face it, she  
6 didn't have much time with those three kids and she didn't  
7 have much money, but when he got out of jail, he went to  
8 the only place he could go, that being his home and that,  
9 friends, is something we all do.

10 He entered that trailer through the window  
11 and he's told you why. Nothing contradicts his account.  
12 Deborah was there and she helped him inside. Nothing  
13 contradicts that statement. They talked and they had sex  
14 just as they had had many times before and he became  
15 upset. Mr. Harmon has described to you the reasons why.  
16 He got mad and he accused her of seeing other men. She did  
17 become scared and during that time while she was scared,  
18 she called the day care center and she may well have been  
19 crying. He was in the bathroom. Nothing contradicts that,  
20 but we do know from LaTronna Smith, also known as Sherry  
21 Smith, we do know that she called back a few minutes later  
22 and everything seemed fine.

23 These two people were about to go pick up  
24 their children and they go out to that car and get in the  
25 car and start to drive and he's looking for his tape and he

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1 finds this letter. I'm going to refer here, ladies and  
2 gentlemen, to State's Exhibit 72. This letter is found not  
3 only in this exhibit, it's found in other exhibits also  
4 because it's found in a bunch of different pieces. When he  
5 found this letter, he read it or tried to read it and she  
6 pulled it from his hands and this letter confirmed his  
7 worst fears. The letter was evidence to him that  
8 everything he suspected was true and that set him off.

9                   What did he do? Within a minute, he had  
10 taken this woman, taken her back in the trailer and he  
11 killed her. The State wants to say, well, what about that  
12 kitchen knife, how would he go in the kitchen to get that  
13 knife? This lady was in the process of moving. When you  
14 are in the process of moving, you often use knives to cut  
15 tape, possibly to open boxes or close boxes. You use a  
16 knife and there's no reason at all to believe that when he  
17 went inside that trailer, he was in such a rage, he grabbed  
18 something, he saw maybe it was in the chair, maybe it was  
19 on the floor, he picked up that knife and he stabbed her  
20 over and over again. He killed her. He committed a  
21 crime. He's guilty of that, but this was a crime committed  
22 in a fit of rage brought on from that letter confirming his  
23 worse fears. Nothing contradicts this. Nothing.

24                   Look at the placement of that body. Right  
25 there by the door where he enters with her and look where

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1 the letter is found, X - torn letter right there beside her  
2 body. In fact, I think they testified that some of the  
3 parts of the letter were found outside to which would also  
4 suggest that they brought the letter from outside  
5 supporting Mr. Chappell's testimony and contradicting the  
6 State's claim that nothing supports his idea they found the  
7 letter in the car. Two pieces of that letter were found  
8 outside. Mr. Perkins, I believe, testified to that.

9                   What is his mind thinking of? The State  
10 wants you to believe his mind is thinking about the intent  
11 to kill, killing, the desire to hurt her. His mind is  
12 thinking about what she had been doing with him a little  
13 while before. His mind is thinking about this woman he  
14 loved making love, having sex other people. Now I ask you,  
15 in the course of human history, is that not a provoking  
16 idea? It is the ultimate provoking idea.

17                   He doesn't know how many times he stabbed  
18 her. Perhaps, as Dr. Etcoff testified, he had the ability  
19 to remember, but you can certainly understand why he would  
20 not want to remember. He felt low -- he feels lower than  
21 dirt for what he did. He feels horrible for what he did.  
22 He finishes, he washes his hands off, and he leaves and  
23 didn't go far. He goes a quarter mile away.

24                   Now that story is uncontradicted. Nothing  
25 they have got contradicts his story. He is accused of a

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1 crime and every criminal defendant using the State's theory  
2 has a motive to lie, but what can he do? He can only tell  
3 you the truth. He's taken full responsibility here and the  
4 only thing we're asking, ladies and gentlemen, is that you  
5 consider these facts and apply the law to them.

6 Did he commit a burglary? A burglary is an  
7 entry with an intent to commit a crime. He entered the  
8 trailer because he was going home. He had no intent to  
9 hurt that woman. He is not guilty of burglary.

10 Did he commit a robbery? He took the car as  
11 an afterthought and because of that, he is guilty of grand  
12 larceny auto, a felony, but he never used force on her to  
13 take something from her. He used force on her in a fit of  
14 rage and, as an afterthought, took the four social security  
15 cards belonging to his three kids and her and her car.  
16 There is no connection between the killing in this case and  
17 the stealing that occurred.

18 Does he commit first degree murder? First  
19 degree murder is premeditated, deliberate killing. Mr.  
20 Harmon is quite correct that that premeditation and that  
21 deliberation can arise in as little as successive thoughts  
22 of the mind, but it need not. That does not mean every  
23 time a person kills somebody and their mind processes that  
24 information, that that's a first degree murder. We have a  
25 second degree murder in this state. We also have voluntary

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1     manslaughter. This was not a first degree murder. This  
2     was absolutely unpremeditated. It was absolutely  
3     undeliberate and the absolute uncontroverted evidence of  
4     the lack of premeditation is this New Jersey letter. That  
5     is what set this man off. That is what turned this mixture  
6     of air and gasoline into an explosion.

7                     Does their alternative theory of felony  
8     murder work? No, it doesn't work. They would like you to  
9     believe that he was in the process of committing a crime  
10    and he goes in there and does all this stuff and she  
11    happens to die during the course of committing a crime.  
12    Well, that would work if, in fact, he had committed a  
13    burglary from the beginning. If he had gone in that  
14    trailer intending to rob her or steal from her and/or  
15    whatever and he ended up killing her in the course of it,  
16    that's felony murder, first degree. No questions asked,  
17    but the State's case is flawed because he didn't enter with  
18    that intent. The intent to kill her never even arose in  
19    any type of deliberate way in this case. The man went into  
20    a rage and he killed her and then, then he does what he has  
21    to do and leaves and we're here.

22                    Did he commit second degree murder? He did  
23    not commit second degree murder because there's no malice  
24    in this case. The State would have you believe that the  
25    knife wounds, the use of the kitchen knife is itself

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1 evidence of the malice, his intent to harm this woman.  
2 Think about it. He was in a complete fit of rage. Dr.  
3 Green testified these were deep wounds and they were  
4 inflicted fast, they were inflicted hard, and I submit to  
5 you this was done in a rage, it was done in a rage of  
6 passion, it was done in a rage of jealousy. There was no  
7 second degree murder because there was no malice.

8                   What this man did and what fits the facts of  
9 this case is what we told you in the beginning. That being  
10 voluntary manslaughter with use of a deadly weapon. He is  
11 guilty of a crime. We've never contested that. Don't let  
12 anyone say we are saying this is an excuse. No excuses  
13 here. He's guilty of a crime. The question is what was  
14 his state of mind? That relationship was a dangerous  
15 relationship. It had been a dangerous relationship for  
16 years. Deborah knew it. She had been a victim of this  
17 relationship. So why didn't someone end it. Look at  
18 James. He's got a low IQ, poor verbal skills, learning  
19 disability, borderline personality, he is crack head, and  
20 he is, quite frankly, extremely dependent on Deborah  
21 Panos. You think he is going to end this relationship?  
22 Well, going by the State's strategy, he could have. He  
23 certainly had free will as a human being to end that  
24 relationship, but realistically he's not going to do it.  
25 If you were going to bet your money on it, he was not going

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1 to end that relationship.

2                   Could Deborah have left the relationship?  
3 The State of Nevada will say and they have said no. He  
4 controlled her. He was the one calling the shots, he was  
5 telling her what to do. Whatever happened to free choice?  
6 Whatever happened to the idea we make decisions and take  
7 responsibility? Ms. Panos suffered a terrible death, a  
8 death that no one deserves to suffer, but the fact is she  
9 stayed in this relationship because she loved this man and,  
10 ladies and gentlemen, that was risky, dangerous behavior.

11                   You take that risky, dangerous situation and  
12 you add to that the spark and something is going to  
13 happen. When he found that letter in the car, the letter  
14 said -- and, by the way, you'll have to look at the letter  
15 because parts of it are incomprehensible and, quite  
16 frankly, you have to look around to find these things  
17 because it's all torn up, but it says in various parts,  
18 "You really teased me bad the night before I flew back to  
19 Jersey. When I come back, we're going to spend hours so I  
20 can do it right." Those something pants I love to see you  
21 in. I'm saving up for my trip to Las Vegas.

22                   Remember, this is a person in New Jersey who  
23 is writing this. We also have a boyfriend in Las Vegas,  
24 JR, who Lisa Duran told us about. Now, she had a right to  
25 date these people. She wasn't his slave. She had an

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1 absolute right to engage in risky, dangerous behavior, but  
2 you tell me if you are in a situation with an extremely  
3 jealous man, he's extremely attached to you and he let's  
4 you know he doesn't want you around any other guys, are you  
5 taking a risk when you mess around? Yes, you are taking a  
6 risk and you have that right to take a risk, but if  
7 somebody gets mad because of this risk in a situation where  
8 they are provoked, why he is certainly responsible for the  
9 crime. It's not the same thing as first degree murder.  
10 It's not the same thing as hanging out and waiting to kill  
11 somebody or planning a killing.

12 I hope you won't be offended by this  
13 example, but if I walk outside this courthouse right now,  
14 walked up to somebody and said to them, assuming it was a  
15 black person, I said, "Nigger, I like sleeping with your  
16 woman," that man might kill me. Now what I have done is  
17 stupid, it's rude, and if I did that, he might kill me and  
18 when he killed me, it's a crime that he killed me.

19 However, is he in the same position as  
20 somebody who plans a killing, someone who lies in wait,  
21 someone who deliberates and premeditate? Absolutely not.  
22 Now going by the State's theory, there may very well have  
23 been successive thoughts in the mind, in his mind. How can  
24 you avoid it, but this State says there is such a thing as  
25 second degree murder and this State says that a provoked

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1 killing is voluntary manslaughter and that's the law.

2 That letter from New Jersey in and of itself  
3 may not have meant very much, but that letter confirmed  
4 things to James. It implied actions, it implied she was  
5 cheating on him, and, ladies and gentlemen, the State can  
6 talk forever and I submit to you that the letter and  
7 Deborah Panos' dangerous behavior was a provocation. It  
8 was a provocation and my client reacted in a provoked way,  
9 in a stupid way, in a criminal way, but it's not first  
10 degree murder.

11 This case is about a tragic relationship, a  
12 horrible, tragic relationship. My client killed probably  
13 the person who means more to him than anybody else in the  
14 world and he is going to pay for it, but he's not a first  
15 degree murderer. He committed voluntary manslaughter with  
16 use of a deadly weapon and grand larceny auto and, ladies  
17 and gentlemen, that's what the evidence says.

18 Thank you.

19 THE COURT: Ms. Silver, on behalf of the  
20 State of Nevada.

21 Everybody comfortable?

22 MS. SILVER: A tragic relationship. For  
23 whom was it a tragic relationship? It was a tragic  
24 relationship for Deborah Panos. This was a relationship  
25 about power and control, domestic violence. The definition

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1 of domestic violence is James Chappell, the defendant. Any  
2 time that he felt he was losing that control, he used force  
3 to remind her, to remind her that she was his woman, as he  
4 said so many times as he was sitting up on the stand, but  
5 you know, ladies and gentlemen, the ultimate act of power  
6 and control came on August 31st of 1995, when he murdered  
7 Deborah Panos. That's what their relationship was about,  
8 not what the defense would have you believe. It was tragic  
9 for Deborah.

10 This isn't a case like manslaughter. This  
11 is not a manslaughter case. This is a first degree murder  
12 case. A manslaughter case, well, that would probably be a  
13 case, for example, where you have a husband and wife of say  
14 20 years, he works everyday real hard, goes out to make a  
15 living for his wife and his kids, and, as he is busting his  
16 back everyday, he comes home one night after 20 years of  
17 marriage and he actually finds his wife and his best friend  
18 in bed and in the heat of passion, before the voice of  
19 reason can come into his mind, he grabs the nearest object  
20 and he kills them. That is a voluntary manslaughter case.  
21 That's a voluntary manslaughter case. It's certainly not  
22 the facts of this case now, is it?

23 This defendant treated her like his  
24 possession. He didn't treat her the way I've just  
25 described in a voluntary manslaughter case. He didn't

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1 treat her like a boyfriend, he didn't take her out to eat,  
2 he didn't take her dancing, he didn't take her to a  
3 restaurant, he didn't take her out like the defense tried  
4 to claim he did during their questions to witnesses.  
5 That's not the way he treated her.

6 Look at the way he treated her. This  
7 defendant sits here and cries in front of you and he cries  
8 up on the stand and he tells you that he loves her, but you  
9 do not treat someone that you love like this. You do not  
10 treat them with violence. He treated her like his  
11 possession, like his woman. That's called power and  
12 control, ladies and gentlemen, and as much as the defense  
13 can scream and yell and point their fingers at you and  
14 point their fingers at the State, that's what this case is  
15 about.

16 Facts are a stubborn, stubborn thing. If he  
17 loved her so much, he would have married her after she had  
18 asked for that ring over and over again and given her  
19 children his name if he really loved her and if he really  
20 loved her, he would have been there for the birth of all  
21 three of his children and not just the one child who he  
22 happen to be in town for that day. And if he really loved  
23 her, he wouldn't make her work two jobs as he went over to  
24 the projects and hung out all day Hip Hopping and smoking  
25 crack and going over to Bridget's house and leaving his

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1 shoes over at Sue's apartment. If he really loved her, he  
2 wouldn't have done that.

3 If he really loved her, he wouldn't have  
4 made her or forced her to put her children, their children  
5 into day care because he would be too busy hanging out  
6 being the Regulator and being Hip Hop and not providing for  
7 his girlfriend and his three children. If he really loved  
8 her, he wouldn't have sold the furniture that she went and  
9 busted her butt so hard to buy for her children and if he  
10 really loved her, he wouldn't have kicked her when she was  
11 down on the ground and watched her flee in fear with her  
12 children if he really loved her.

13 Was it love that he was feeling as he busted  
14 her in the nose? Was that the love he was feeling? A man  
15 that loves his woman does not bust her nose, does not send  
16 her to UMC Trauma Center in a stretcher in an ambulance. A  
17 man that loves a woman doesn't call her a slut and a bitch  
18 and a whore and tell her that he hopes that she gets aids  
19 and dies.

20 Read the letters and I'm going to go over  
21 some of these letters because it rebuts everything the  
22 defendant just sits here and claims or the defense claims  
23 to you. This isn't someone he loved, it is someone he  
24 abused. This was his punching bag. It was the carpet he  
25 walked on on a daily basis. It was the woman who he ripped

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1 her heart out on a daily basis by degrading her and being  
2 violent towards her.

3 This wasn't his home, ladies and gentlemen.  
4 This was a war field. This wasn't his girlfriend and  
5 children. These were little prisoners of war and this  
6 defendant, James Chappell, was commander in chief.  
7 Domestic and tranquility? That's what the defense attorney  
8 said in opening statements, domestic and tranquility. Is  
9 that a pretty way for explaining how the defendant busted  
10 her nose and was violent with her so many times and is  
11 voluntary manslaughter another pretty term for murder in  
12 the first degree for what he did to Deborah Panos? I  
13 submit to you it is.

14 What did she do to deserve this? She had  
15 every right, every legal right to see whoever she wants and  
16 this defense waves this letter. She had every right to see  
17 whoever she wanted and she shouldn't have to be paraded  
18 around in this courtroom like she is some kind of slut.  
19 She was a person and she loved this defendant for whatever  
20 reason because she felt some kind of loyalty to him, she  
21 felt sorry for him, and look what he did to her. Where did  
22 it get her? This isn't State of Nevada versus Deborah  
23 Panos, ladies and gentlemen. This is State of Nevada  
24 versus James Chappell.

25 Let's talk about the consciousness of guilt

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1 in this case. Let's talk about how remorseful he was. How  
2 remorseful was he? Well, he sat up here too and the tears  
3 just flowed, didn't it? And he seemed very pitiful,  
4 probably the same tears that flowed in Dr. Etcoff's office,  
5 very convenient tears, but I submit to you who were those  
6 tears for? They were for himself, they were not for  
7 Deborah Panos. Where were the tears and it is said that  
8 actions speak louder than words; where were the tears,  
9 ladies and gentlemen, where was the remorse when he beat  
10 her after he sold the children's furniture and he kicked  
11 her and he beat her about her body and the police came and  
12 he sat on that easy chair and they described him -- Officer  
13 Earnst described him as cocky. Where were the tears then?  
14 He wasn't acting like he did on the witness stand. Where  
15 were the tears? How remorseful was he?

16 And when the police arrested him again in  
17 January of 1995, when they again were dispatched on a 911  
18 call and she lied there on a stretcher and she was bloody  
19 and the defense may want to down it play, but the officer,  
20 Officer Gierdorf was being honest. There was more blood  
21 because her nose was busted opened than perhaps in this  
22 picture. He wasn't being untruthful to you. Apparently,  
23 there was even more blood. He had made her even look worse  
24 than this on a prior occasion. If that isn't pitiful, but,  
25 in any event, as she lied there and she's gurgling on her

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1 blood and she can't even tell him what happened because her  
2 nose is busted in two and she is lying on this stretcher,  
3 where were the tears? Was he holding her hand? Was he in  
4 the stretcher? Was he telling her, gee, I have made a  
5 terrible, horrible accident, a mistake here? I'm sorry.  
6 Where were the tears? No, he was sitting there in an easy  
7 chair again watching television, as his children just  
8 observed what he did to the woman he loves so very much.

9 His little three year old, his little five  
10 year old, and little seven year old just watched mommy get  
11 her nose broken. How horrific for little children to see,  
12 but that's this defendant who sits up here and tells you  
13 how much he loves his children on the stand. Where were  
14 the tears? Where was the remorse? If he loved her so much  
15 and I ask you was he remorseful or was he the cold,  
16 calculated murderer and the cold calculated person that he  
17 always was the day he drove over to the projects after he  
18 murdered her? Were there tears? We asked all the  
19 witnesses, Deborah Turner, Ladonna Jackson, was he crying?  
20 No. Did he seem sad? No. Did he seem upset? No. Did he  
21 seem like anything in the world was wrong? No. He seemed  
22 like James. Why? Because violence was a part of James'  
23 life. Doing these types of things to Debbie was part of  
24 his life. He wasn't doing anything different that day  
25 except this is the day he made her heart stop, made her

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1 stop breathing forever.

2                   The rage, the rage was no different than  
3 every other time he did this to her. It wasn't a sudden  
4 rage. This is the same rage, which she had seen time and  
5 time again and lived with. Where were the tears? How  
6 remorseful was he and we know presumably, at some point,  
7 because he's the regulator and he wants to get crack for  
8 his habit, he had to have probably -- you can infer by  
9 going over to Lucky's and, ladies and gentlemen, as he is  
10 perusing that frozen food section looking for the right  
11 package of shrimp that he can sell over to the apartment  
12 complex to the highest bidders, where were the tears for  
13 what he did to Deborah Panos? Where were the tears that he  
14 shed up on this stand? And where were the tears when he  
15 picked and selected what pie he was going to steal? And  
16 where were the tears, ladies and gentlemen, as he knocked  
17 door to door asking each one of the occupants, "You want to  
18 buy a pie? You want to buy a bag of shrimp?" Where were  
19 the tears? Wasn't acting like he did on the stand.

20                   How remorseful was he and when he gave  
21 Deborah Turner this deal, \$15 for the shrimp, for the car  
22 rental, for the pie and he tells her, "Make sure to park  
23 the car behind the complex," how remorseful was he or is  
24 that consciousness of guilt because he knows that what he  
25 did was wrong? That's called consciousness of guilt,

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1 ladies and gentlemen. That's called a cold, calculated  
2 murderer. A heartless person sits here before us today.  
3 He wasn't crying when he said, "Bring back the keys," as  
4 he's getting ready to get stoned on his crack. Wasn't  
5 thinking about Debbie then.

6 And a fourth of a mile away, the defense  
7 makes a big deal that this is a fourth of a mile away. He  
8 wanted his crack cocaine and we know he's not the brightest  
9 person in the world from his IQ. I suppose that's where  
10 the relevance of the IQ testing may lie is that he didn't  
11 take off and go somewhere else, but, ladies and gentlemen,  
12 the State would submit to you that he didn't think he was  
13 going to get caught and I'll go into why very shortly.

14 He was so upset he told you he spent the  
15 night at Bridget's. He was so upset or was it Sue that he  
16 kept his shoes at? Did he cry to them about what he did?

17 The next day, when he went to Lucky's and he  
18 had a box cutter and he was ripping the security labels off  
19 the liquor, was he envisioning again the knife that he  
20 plunged into Debbie's throat or could he think of one thing  
21 and that was to make sure he could get items so he could be  
22 the regulator across at the projects so he could sell it  
23 for more crack. Was he shedding tears as he was cutting  
24 into those security labels? No, he wasn't. No, he wasn't  
25 and we know from the police he was laid back, he was cool

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1 because, ladies and gentlemen, you heard generally all  
2 people get is a citation. This is one criminally, slick  
3 individual. He's not as stupid as Dr. Etcoff would make  
4 you believe. We certainly know he is no stronger to  
5 shoplifting and how it works. And so what does he do? He  
6 gives a false name because he if gives a false name, he  
7 knows he gets a citation and think about it. He's not  
8 arrested for it. It's not James Chappell that will be  
9 arrested for that and that shows consciousness of guilt and  
10 did he shed a tear? Was he remorseful? No.

11 And when he was trying to get rid of the  
12 evidence and threw it back behind him and put his foot over  
13 it even, was he remorseful or was he showing consciousness  
14 of guilt that he did not want to get caught because what he  
15 did, he knew was a first degree murder, ladies and  
16 gentlemen. I submit to you do not give this cold,  
17 calculated, selfish murderer a manslaughter.

18 The defense tries to claim that he thought  
19 everything was okay. You heard the defendant. He sat up  
20 on the stand and he told you -- recall the testimony  
21 yesterday, I thought everything was okay. He thought  
22 everything was okay in their relationship while he was in  
23 jail and he said he was -- it's in quotes in my notes and  
24 hopefully you'll recall this. "I was shocked to find the  
25 note." Shocked, amazed that she was cheating on me; that

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1 provoked him into this rage that killed her. Remember,  
2 shocked? He said he thought everything was okay. He knows  
3 that in order for you to buy into the voluntary  
4 manslaughter defense, you've got to believe somehow he was  
5 shocked and provoked into this, but let's look at the  
6 evidence in this case here.

7 We know that he stated, at least on the  
8 stand, he thought there were parties and men answering the  
9 phone when he would call over. He even believed at some  
10 point there was something different about her during sex  
11 and then, again, he claims it's not until he finds the  
12 letter that the heat of passion occurs, but let's look at  
13 his letters, ladies and gentlemen. Let's just look at his  
14 letters for a moment, shall we, because on Sunday, July 30,  
15 1995, he writes, "I have been in here 35 days. Where are  
16 you?" She wasn't coming around. She wasn't visiting him  
17 like she usually did, like she did when he was in jail for  
18 domestic violence. No, she wasn't doing any of these  
19 things recall? Because she was afraid of him and this is  
20 his words and these are in the letters that you will see  
21 and you will take back before you. These are just some of  
22 the tidbits that are important in this case to rebut any  
23 kind of voluntary manslaughter because he knew during this  
24 time period she was seeing other men.

25 "I have been in here 35 days. Where are

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1     you? You must be terrified to visit me, huh?" Why  
2     shouldn't she be terrified? The last time she saw you, you  
3     had a knife at her throat and the police were called on a  
4     domestic call on June 1st, 1995. And, perhaps, he was  
5     threatening her again that he was going to be doing an OJ  
6     on her when the police arrived or when Claire knocked at  
7     the door, but, in any event, he says, "You know, they can't  
8     put you on the witness stand, huh. One day soon I'll be  
9     at that front door and what in God's name will you do,  
10    huh?"

11                   I submit to you, ladies and gentlemen, he  
12    knows right there, he knows right here what he's going to  
13    do. He also states here on July 30th, "Why is it so hard  
14    for you to talk to me? Why is it so hard for you to let me  
15    know about him. You must have someone real special," and  
16    I'm going to go back to this, but he also states here July  
17    31st, 1995, "It's 36 days now and I haven't received  
18    anything from my woman." She wasn't making contact with  
19    him. She was terrified of this man. He wasn't going home  
20    to greet her to have this great consensual sex. She was  
21    terrified.

22                   "Well, it hurts a lot, but inside I know  
23    you don't owe me anything." Even the defendant recognizes  
24    that she's got no responsibility to him. She can see  
25    whoever she wants because he recognizes she doesn't belong

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1 to him. She's fed up, as we can see, I believe, it's right  
2 here. " I know you were afraid, scared, hurt, fed up and  
3 worried. What is going to happen next? I know I was  
4 holding you down. I guess I just wanted the kind of  
5 control," not a word that the State made up, ladies and  
6 gentlemen. This is the defendant's own words. "I just  
7 couldn't have." It wasn't our words. The defense was  
8 right, we were going to come up here and say this. It  
9 wasn't our words, that's his because that's his state of  
10 mind while he's in jail. And I'm going to go back to  
11 this.

12 So when was it that he wanted to kill her?  
13 When was that intent formed? Was it, ladies and gentlemen,  
14 when he told her in 1994 he said, "If you ever F'd around  
15 on me, I'll kill your ass?" Well, it may have been. Was  
16 that a coincidence because we know right here, he states,  
17 "One day soon I will be at that front door and what in  
18 God's name will you do," and in the same breath, he talks  
19 about someone special. So he knows what he is going to do  
20 and so does Deborah. She wants to get out of there and  
21 move before he gets out.

22 He tells Dina Freeman or, excuse me, he  
23 tells Deborah on the phone in 1994, he says, "I'm going to  
24 do an OJ on your ass," or, "I'm going to do an OJ Simpson  
25 on you." Wow, what a coincidence? What a prophecy. You

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1 know, when he went into this rage, he didn't choke her to  
2 death, he didn't take the phone and smash her skull in with  
3 it, he didn't take the shoe that was lying by her and smash  
4 her skull in. He didn't beat her up to death. He did an  
5 OJ Simpson on her. Was he planning on it then? Was it  
6 something that he was considering back then in jail? The  
7 State submits he was because he did exactly what he  
8 promised he would do to her and she knew it and she was  
9 scared and she was terrified because she knew what he would  
10 do to her.

11 When he became angry with her on January  
12 9th, 1995, sure everyone is a liar in this case, as the  
13 defendant said, but read the medical records because he can  
14 feel his control slipping away and I submit to you that in  
15 January, she most likely was trying to separate and get  
16 away from this defendant. Recall Lisa Duran was over there  
17 all the time from February to May and there was no hiding  
18 or air of the defendant. Of course, we know he was  
19 incarcerated, but even at this time, we know that she was  
20 trying to break away. Why? Because she states to the  
21 doctor he's beating her so badly before, but he's never  
22 beat her like this. This is the time he broke her nose.  
23 You can see that escalation of violence towards her because  
24 he was losing the control over her and he was recognizing  
25 that loss. It wasn't that he lost control that day in a

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1 rage. This was something he had been recognizing.

2 Did he intend to kill her on January 1st of  
3 1995 when he became angry with her? Recall she hadn't been  
4 home. Perhaps out of fear for him, she hadn't been home  
5 and when she got home, he made sure. He took her in the  
6 bedroom, he threw her down. He put her out on the bed like  
7 this and he got up on her elbows and he took a knife,  
8 probably close to this, and he put it at her throat and  
9 recall what the defendant said on the stand. "I just  
10 wanted to get information from her." Really? Well, what  
11 type of information, Mr. Harmon asked? What type of  
12 information would you need? We know he's threatening to do  
13 an OJ on her. We know if she is ever caught cheating, he  
14 is going to kill her ass. What kind of information? Do  
15 you think maybe he was suspecting she was seeing someone  
16 else? Do you think maybe he was losing control at that  
17 time, control of her? And at least in that case, the  
18 police were called or Claire knocked on the door, but there  
19 was a witness, so he didn't do it. There was no witnesses  
20 on August 31st of 1995, ladies and gentlemen.

21 Did he want to kill her then? Probably, but  
22 you see then he went to jail and he went to jail for about  
23 seven days. Recall he was in custody until about June 7th  
24 of 1995. You know, sure even though he had a prior  
25 domestic violence where he broke her nose, he gets out

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1 within seven days and, all of a sudden, we hear that she's  
2 gone a lot. Suddenly, it's the poor defendant. He's home  
3 as the victim. She's out, ladies and gentlemen, because  
4 he's out and she's staying at Motel 7 because he's out.  
5 It's not because she's a slut or a bitch or a whore, it's  
6 because of this, ladies and gentlemen. It's because, you  
7 know, he's just trying to get information from her. And so  
8 she isn't staying home during that time period. She didn't  
9 go home again apparently until June 26th of 1996, when he  
10 is picked up again on another shoplifting charge.

11 I submit to you, ladies and gentlemen, that  
12 at a very minimum the intent to kill her was formed by  
13 Sunday, July 30th of 1995 if not sooner and you can see it  
14 by the letters and you know if everything was okay and if  
15 he was so shocked when he came home that day and found that  
16 letter, why does he say, "Debbie, do I have any more  
17 chances?" If everything is so great, why does he say  
18 that? And why does he say, "If you are teaching me a  
19 lesson, believe me it's surely working." Why does he say,  
20 "If you want me to stop, I'll set you free." Oh, he is  
21 going to set his little prisoner of war free? No, he's  
22 not. He's got no intention of setting her free. He is  
23 going to cry to her and he is going to try make you feel  
24 bad and tried to make Dr. Etcoff feel bad with his promises  
25 of changing. That prisoner of war, I'll set you free.

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1 Free of lies because he's a liar and he recognizes he's a  
2 liar. Free of being scared, just tell me what's up and, of  
3 course, don't forget that money on my books because we know  
4 what is most important to that defendant and that's money.  
5 Certainly isn't his relationship with the woman he loves or  
6 his children. By July 31st of 1995, the next day, he says,  
7 "Well, it's 36 days now. I haven't received anything from  
8 my woman." She's not talking to him. She's not -- where  
9 is the communication do you see in any of these letters?  
10 It's pretty painfully obvious that he has lost contact with  
11 her and that inferiorities him, that makes him angry. How  
12 dare she.

13 "Don't end it like this." There's the  
14 topper. He recognizes it was the end here -- well, here  
15 July 31st, one month before. Everything wasn't okay and he  
16 wasn't shocked. When he got out on that day, he was out  
17 for revenge because you know what, she didn't contact him.  
18 See, will you please write me, visit me. When he comes in  
19 the house and he throws up the letters and screams to her,  
20 "Didn't this mean anything to you?" It was because he was  
21 angry and he was mad and he had lost control and he wanted  
22 to kill her for it. And he had all that time to sit in  
23 there and think about how he was going to do the OJ on  
24 her.

25 And then, finally, "What's up slut? Are you

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1 easy, Debbie? You are going to hell slut, whore, stupid  
2 bitch." And then at some point, "I will find more  
3 patience." He's begging her back again through his  
4 manipulation and he says, "I'll find more patience, learn  
5 to understand, trust more, stop resulting to violence. I  
6 never wanted or meant to scare her. I finally noticed that  
7 she is very scared of me like I'm an animal or something."

8 I submit to you that he was planning to  
9 murder her then.

10 When he would call Lisa Duran while he was  
11 in jail because he couldn't get through to Deborah and he  
12 said, "If I can't have her, nobody else can," he wanted to  
13 kill her then and when he said to Lisa Duran, "When I get  
14 out, I'm going to make sure she won't have any friends, she  
15 won't be able to go anywhere," ladies and gentlemen, he  
16 fulfilled his promise to Lisa Duran.

17 On August 31st, the day before his release  
18 from jail, that is a significant date, ladies and  
19 gentlemen. Why? Because she wasn't bringing the kids, she  
20 wasn't visiting him, she wasn't bringing him money, she  
21 wasn't communicating and he gets the ultimate slap in his  
22 face. She shows up at his battery trial. How dare she  
23 unlike the TRO and unlike what the defense claims we didn't  
24 want you to know how long the TRO lasted. We are the ones  
25 who entered it in evidence. It clearly says how long it

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1 last, but recall he got out of jail on the January case and  
2 you recall my question to the TPO -- the lady that prepared  
3 it, you don't know whether or not the defendant was out to  
4 control her to prevent her from showing up to court, to  
5 scare her and you recall what he said. He said, " I started  
6 crying to her." He started crying like he was crying in  
7 court to manipulate her, to make her feel sorry for him,  
8 but it wasn't working this time because, ladies and  
9 gentlemen, she showed up and what happened, he pled guilty  
10 to battery domestic violence. The first time this  
11 defendant ever had to be accountable for his actions was  
12 the day before he murdered her. That is the first time she  
13 made him accountable and he wanted revenge and if he wasn't  
14 planning on killing her then, he was certainly going to do  
15 it then. How dare she. How dare she.

16 On August 31st of 1995, what did he do when  
17 he got released? He may have gone and got a bicycle.  
18 Maybe he went to go see if he could score a rock and  
19 couldn't and realized he needed money and knew he better go  
20 to his meal ticket, but he was on his way. Make no  
21 mistake, he was on his way. He was on his way to Debbie's  
22 and you know the defense makes a deal of the fact he went  
23 through, what, a conspicuous window, the front window?  
24 Well, recall what the police said. It was the only window  
25 they could get opened. They couldn't get anything else

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1 opened. It was all locked. So he picked the window that  
2 he could get into not because it was conspicuous, but  
3 because he could get into the trailer that way.

4 He went to the window and when he bashed --  
5 when he opened it up and came in, he bashed that screen in  
6 and that's why you see a footprint and that's why this is  
7 as well a burglary case. And he wanted to get in there not  
8 only for money, but he wanted to take the car and he was  
9 going to wait for Deborah and I submit to you we don't know  
10 when Deborah came home. We have no idea and I submit to  
11 you that he surprised her. He waited for that car because  
12 recall he can rent that car out and he did. He rented it  
13 out on several occasions. That car is a moneymaker to him,  
14 as he is off there being the regulator at Lucky's. He can  
15 also make money by renting her car.

16 And so he waited for her to get home and she  
17 probably got home pretty soon after. And she was  
18 surprised. Why? Because just as Lisa Duran said no one  
19 had any idea that he was getting let out of jail. Our  
20 system. What was she supposed to do? This defense counsel  
21 stands here and says she was playing risky. What, like she  
22 deserved it? What more could she have done? She filed  
23 police reports, she filed a restraining order, she finally  
24 went to court and said, "I'm not going to be a victim any  
25 more of domestic violence," and look where it got her.

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1 What kind of message does that send out?

2 She did what we all expected her to finally  
3 do and that was to break it off from this defendant and she  
4 finally did and he did confront her and he asked her about  
5 the letters, his letters and why wasn't she answering him  
6 and he did ransack, as much as the defense wants to scream,  
7 take a look at the pictures, common sense will show you  
8 that the house was ransacked. She was messy, but it was  
9 ransacked as well and he beat her and he took his fists and  
10 he beat her like he had in the past and you look at those  
11 pictures because it's unfortunate of how badly he beat  
12 her. He beat her so bad that she had to put her hands up  
13 and there is bruises all over her hands and arms and most  
14 of the parts of her body.

15 There is a severe, severe bruise around her  
16 ear, on her forehead, there's like a gash in her head. He  
17 beat her up and I submit to you that at some point, when he  
18 felt like it, he committed the ultimate act of violence  
19 upon a woman besides murder and that's called rape, ladies  
20 and gentlemen. That is an act of violence. It is not an  
21 act of sex. So that when they found her bloodied dead  
22 body, he left his mark on her. That was his woman. And  
23 the defense says, oh, yeah, we have said from the very  
24 beginning that he had intercourse with her. Well, this  
25 stipulation was entered into on October 10th of 1996 --

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1                   MR. BROOKS: Objection, your Honor. We  
2     filed this in September and she knows it.

3                   THE COURT: Mr. --

4                   MS. SILVER: Let me move back anyway.

5                   THE COURT: Just a minute. If you are going  
6     to make a legal argument, make them as lawyers.

7                   MS. SILVER: I will disregard that.

8                   THE COURT: Now do you have an objection to  
9     make to that statement, Mr. Brooks?

10                  MR. BROOKS: I do, your Honor. It's  
11     absolutely not in evidence. It's also misleading the  
12     jury.

13                  MS. SILVER: He read that stipulation.

14                  MR. BROOKS: I submit she admits to  
15     contradicting it.

16                  MS. SILVER: He argued it to the jury as if  
17     it were so.

18                  THE COURT: Your objection is overruled.

19                  MS. SILVER: Thank you.

20                         This stipulation wasn't entered into until  
21     the beginning of trial, not of the beginning when he was  
22     arrested for this case, ladies and gentlemen, and the fact  
23     remains that this defendant has no other alternative but to  
24     claim heat of passion, rage.

25                         Think about it. Her body, her dead body had

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1 his semen. One in 14 billion people have the same type of  
2 blood and DNA and semen as this defendant conclusively this  
3 defendant. He can't claim the OJ. He did an OJ on her,  
4 but he can't claim the OJ because he's stuck. He left the  
5 evidence in her and he can't claim that anyone planted this  
6 evidence. So he's stuck.

7                   So what else is he going to tell you? Well,  
8 he's got to make up some convenient facts to fit this case  
9 and you heard, ladies and gentlemen, wasn't it interesting  
10 the property report that was testified to with the RFLP  
11 from Cellmark came back in March of 1996. It wasn't until  
12 June 1996 when this defendant made his trip to Dr. Etcoff's  
13 office for that rage defense. Isn't that interesting? The  
14 defense would have you believe that he, from the very  
15 beginning, never contested that this defendant did this  
16 that we are supposed to know.

17                   MR. BROOKS: I'm going to object, your  
18 Honor. This is presuming a burden on a defendant to say  
19 something prior to trial, which does not exist.

20                   THE COURT: Well, you have made that  
21 statement and I guess it's correct, but this is simply  
22 argument about the motivation behind the statements having  
23 been made. So I'm going to overrule the objection.

24                   MS. SILVER: The defense wants you to hold  
25 it against us because we did DNA testing. If we didn't

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1 cover every aspect of this case, ladies and gentlemen, we  
2 wouldn't be diligent in our jobs as prosecutors. We don't  
3 know when a defendant is going to stipulate that he did the  
4 crime and come up with a different defense. We don't know  
5 that. So, yes, we did test it and don't hold that against  
6 us. We are just doing our jobs.

7 Can anyone believe that this woman would  
8 want to have sex with this defendant after he was arrested  
9 for domestic violence on June the 1st, when he puts a knife  
10 to her and then she goes to court the day before she's  
11 murdered against him as a witness, can anyone believe that  
12 someone who is writing letters don't end it like this, that  
13 when he's coming through that window, she's in open arms  
14 and she's just ripping off her clothes to be with him? How  
15 absurd is that? It's a mockery, absolute mockery, and  
16 degrades that victim just one more time.

17 So she does put her clothes on and she's  
18 beaten up and she's raped and she's scared and she's  
19 terrified and maybe, at some point, she knows it's going to  
20 get worse and she's scared and she makes an excuse about  
21 the children and she calls and she pleads for her life and,  
22 unfortunately, those pleas for help were never answered  
23 unfortunately for Miss Panos.

24 And, at some point, he does find a letter  
25 perhaps and he rips it up. Obviously, the letter is

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1 found. There is no dispute, we never claimed that she  
2 wasn't dating anyone else. We even asked was she seeing  
3 someone? Yeah, JR. So what. She did what she had a right  
4 to do. She finally found someone who was maybe good and  
5 kind to her and her children and treated her with a little  
6 human dignity, which she deserved.

7                   And what does he do? He continues to beat  
8 her and we know he holds her neck, as well because he is  
9 getting really mad by this point and I submit to you,  
10 ladies and gentlemen, that possibly at some point Deborah  
11 may have run for the phone. She may have run for the phone  
12 to call 911 for help. We know that she keeps this right by  
13 her side, the information for victims of domestic  
14 violence. We know she keeps this at hand, you know, in  
15 case she has a problem, but you can see here that the phone  
16 is off the hook and, you know, coincidentally and  
17 ironically, there is a book lying right here and that book  
18 is titled A Time to Kill and I submit to you, ladies and  
19 gentlemen, that it's ironic because it was the time to  
20 kill, because beating her bloodied and bruised wasn't  
21 enough for this defendant because you see, he wanted  
22 ultimate control and he wasn't getting it. There was  
23 nothing he could do to get her back and I submit to you,  
24 ladies and gentlemen, that it's called premeditation and as  
25 much as the defense doesn't want you to look at Instruction

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1 No. 22, it's premeditation. It's a design, a determination  
2 to kill distinctly formed in the mind at any moment before  
3 or at the time of the killing. Any moment before the time  
4 of the killing. It didn't have to be a day, an hour or a  
5 minute. If I walked up to any one of you and I had a gun  
6 and I drew down and shot any one of you, there is no doubt  
7 that that's first degree murder. That is a simple act of  
8 drawing down and shooting someone is premeditation.

9 All premeditation is successive thoughts in  
10 the mind. It's not like TV. Successive thoughts in the  
11 mind. She didn't keep a knife laying out with three  
12 children and when he was done beating her, he went to the  
13 kitchen where Lisa Duran said she kept the knives and, you  
14 know, he wasn't in a rage, he wasn't in a rage because he  
15 didn't pick up a spoon and he didn't pick up a fork and he  
16 didn't pick up soup ladle and he didn't pick up a spatula.  
17 No, he picked up an instrument calculated at producing  
18 death and maybe she ran towards the door and that's why her  
19 body lies by the door, but she never made it to the door,  
20 ladies and gentlemen, because I submit to you he grabbed  
21 her and he threw her down just like he did on June 1st. He  
22 grabbed her and threw her down and she lied there just like  
23 this, just like this, just like she had before looking at  
24 that same angered face she had before. Not a face that  
25 cried to you on the stand, but this face, an angry face, a

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1 face that wanted to control her and I submit to you, that  
2 he premeditated this murder, this murder 13 times over,  
3 each time as he stabbed into her body as he stabbed her  
4 throat.

5                   Why was she lying like that? Because Dr.  
6 Green told you that most stabbing victims have defensive  
7 wounds. They try to stop the knife from coming at them,  
8 sometimes they even grab the knife. You generally see  
9 defensive wounds in the arms and the hands. It's a natural  
10 reaction just like when she was getting beaten to put her  
11 hands up, but, ladies and gentlemen, she was helpless. She  
12 was lying there and all she could look at is the man who  
13 supposedly loved her and she watched him as he took that  
14 knife and she watched that blade come down into her throat  
15 and she watched her own blood spurt up onto the side of  
16 that recliner and she watched him, this person who sits up  
17 here and cries and tells you that he loved her, stabbed  
18 every last breath out of her.

19                   He premeditated this murder just like the  
20 Time to Kill. It was the time to kill her. He told you up  
21 on the stand he was so scared. Recall? He was so scared  
22 he didn't know what to do, so he ran out of the house he  
23 said. Recall that testimony. He said he fled the  
24 residence. He didn't flee the residence because we know  
25 from the pictures, we know from the pictures that he washed

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1 his hands off. There is blood on the sink. And whose  
2 blood is on it with that DNA we shouldn't have done? It's  
3 Deborah's blood. It's Deborah's blood. He didn't flee the  
4 way he claimed. A mad person in a rage who just killed  
5 their girlfriend, the woman they loved of 10 years, the  
6 mother of their children would have ran out in the street  
7 in a frenzy, oh, my gosh, help, help! I have just killed  
8 the woman I love. I didn't mean to do it. I'm sorry. Did  
9 he do that? Oh, no. The cold calculated murder, he washed  
10 his hands of her blood. He could not wash his hands of her  
11 blood. He cannot buy a voluntary manslaughter verdict.

12 He's cold and he's calculated and this is a  
13 murder in the first degree and he lied to you on the stand,  
14 but you know facts are a stubborn thing and maybe his IQ  
15 came into place and he couldn't get all the facts  
16 straight. He said he fled. He didn't -- and we know he  
17 took the keys and we know he locked the door, locked the  
18 door too. He had enough presence of mind to lock the door  
19 and lock everyone out. And we know during some time he  
20 took the social security cards.

21 And we know that he even has enough presence  
22 of mind not to leave his bicycle there, because, see, that  
23 too could be sold for a price for a cocaine rock and he  
24 even takes that. No need to leave anything valuable and he  
25 goes right to the projects.

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1 Ladies and gentlemen, when this defendant  
2 walked into this courtroom, he was presumed innocent, but  
3 with every piece of innocence here, with each piece, a  
4 layer of that presumption has been lifted and I submit to  
5 you he sits there before you in all of his naked guilt.  
6 There's one Instruction I want to go over before I end,  
7 ladies and gentlemen, and conclude and that is Instruction  
8 No. 36 and that is the reasonable doubt instruction.

9 A reasonable doubt is one which is based on  
10 reason. It's a reasonable doubt. It's not mere possible  
11 doubt. So it's not possibilities, it's not speculation  
12 because it says, "Doubt to be reasonable must be actual,  
13 not mere possibility or speculation," okay. It's got to be  
14 something based on reason, okay. It's not an impossible  
15 burden, ladies and gentlemen. Prosecutors across the  
16 country everyday meet this burden. It's not an impossible  
17 burden. It's a doubt which is based on reason.

18 It's a type of doubt that would control a  
19 person in the weighty affairs of life. What is a weighty  
20 affair of life? Well, for some people it could be the  
21 decision to get married. For some people it could be the  
22 decision to have a child or switch occupations or perhaps  
23 -- let me put it to you this way. You have all made  
24 reasonable doubt or, excuse me, you have all made weighty  
25 affair of life decisions. You have all made them. You

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1 have all probably, at some time, bought a home. So what  
2 are some of the things you look for when you buy a home?  
3 You look at maybe the purchase price, what's the mortgage  
4 on the house, what is your interest rate going to be. You  
5 look around the area, you look at the schools, is my house  
6 going to appreciate, depreciate; you look at all those  
7 factors and then you make that weighty affairs of life  
8 decision. It's usually a very big decision in all of our  
9 lives and you buy that house and, you know, after you buy  
10 the house, you may think to yourself and think, well, I  
11 really wish I had a bay window in the kitchen. I wish my  
12 closet was a little bit bigger, but did it prevent you have  
13 from buying that house that you loved?

14                   The type of doubt that you must have in this  
15 case is a doubt which would -- it's a doubt which is based  
16 on reason. It's a doubt that would prevent you from making  
17 that weighty affairs of life decision, prevent you from  
18 buying that house, in order to find him not guilty, it must  
19 be that type of doubt. If in the mind of the jurors it  
20 says here after the entire comparison and consideration of  
21 all of the evidence, you are in such a condition that they  
22 can say they feel an abiding conviction for the truth of  
23 the charge against this defendant, then you do not have a  
24 reasonable doubt.

25                   Ladies and gentlemen, the defendant stated

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1 in his opening that this defendant takes absolute, total,  
2 and complete responsibility for her death. Yet, he sits up  
3 here in court throughout this trial and he cries not for  
4 what he did, but for himself. If our criminal justice  
5 system means anything, it means that when brutal, heinous,  
6 violent offenses like this murder, like this robbery occur,  
7 that the murderer be held accountable. Absolute total and  
8 complete accountability, that's the words of this defendant  
9 and the only way to achieve this is through a murder in the  
10 first degree conviction.

11 The defendant stated in opening that he just  
12 wanted justice. You've all probably seen the statute of  
13 justice -- Statue of Justice. It's a lady and she's got a  
14 scale in one hand and the sword in the other. You've all  
15 probably seen it and she wears a blindfold around her  
16 eyes. Ladies and gentlemen, that blindfold is a shield  
17 from impartiality and not from reality. Do not be blind to  
18 the realities of this case and find the defendant guilty of  
19 what he is guilty of and that is burglary, robbery with use  
20 of a deadly weapon, and murder in the first degree with use  
21 of a deadly weapon under both the Felony Murder Rule and  
22 because he premeditated this murder.

23 Thank you.

24 THE COURT: Thank you, Ms. Silver.

25 That concludes the presentation to the jury

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1 in this matter and it will now be your task to decide this  
2 case.

3 The alternates picked by lot at the  
4 beginning of these proceedings before peremptory challenges  
5 are Celestina Cecilia Lucido, David John Mesnard, Michael  
6 Joseph Swartz, Lois J. Ochoa. The alternates are going to  
7 be released, not from jury service, but will be released  
8 with the understanding that you can be brought back to the  
9 courthouse at any time to serve during deliberations. We  
10 will advise you when the time comes for the verdict to come  
11 in. So you will have to behave as if you were on an  
12 extended recess until further notice.

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

23 The ladies and gentlemen that I have listed  
24 as the alternates, again I say to you, you must honor this  
25 admonition until you are advised otherwise. You will be

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1 notified on a day-to-day basis on the status of the matters  
2 by this Department.

3 At this time I would ask that the clerk  
4 swear the officers to take charge the jury.

5 (Off the record discussion not reported.)

6 Ma'am, our list is all mixed up here because  
7 every has moved around.

8 A VOICE: I was number one. We switched.

9 THE COURT: I understand. What is your  
10 name?

11 MS. PARR: Denise Parr.

12 THE COURT: Denise Parr.

13 Ms. Parr, yes, you are juror number two  
14 officially.

15 A Oh, okay.

16 THE COURT: You have indicated that you may  
17 have known or your children may have seen Dr. Etcoff?

18 A No.

19 THE BAILIFF: I'm sorry. Wrong seat.

20 THE COURT: All right, what is your name  
21 ma'am?

22 MS. WELLS: Cheryl Wells.

23 THE COURT: All right, we'll discuss this  
24 with you for just a few moments. Will the clerk swear the  
25 officer to take charge of the jury.

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1

2

(At this time the officer was duly sworn by  
the clerk.)

3

4

5

THE COURT: All right, at this time Ms.

6

Lucido, Mr. Mesnard, Mr. Swartz, and Ms. Ochoa, I guess

7

what you will have to do is accompany the bailiff and we'll

8

make a decision very quickly on whether Ms. Lucido who is

9

the first alternate would take the place of this juror.

10

All right, if you will all please rise

11

except for Ms. Wells and accompany the bailiff back to the

12

place of deliberations.

13

A VOICE: Do we stay with her or go out?

14

THE COURT: Everybody has to stay with her

15

given this situation.

16

17

(At this time the jury left the courtroom.)

18

THE COURT: All right, Ms. Wells, if you

19

would just take a seat for a moment.

20

A Okay.

21

THE COURT: Ms. Wells, did you recognize Dr.

22

Etcoff to be a person that you have actually consulted one

23

of your children?

24

A That actually consulted what?

25

THE COURT: Yeah, with one of your children?

PATSY K. SMITH, OFFICIAL COURT REPORTER

1                   A     Yes, both of them. I have taken both  
2 of them -- two children to him and had them tested.

3                   THE COURT: Is there anything about your  
4 interaction with him that would effect your ability to  
5 assess his credibility in this case?

6                   A     No.

7                   THE COURT: Is there anything about your  
8 children's interaction with him or your interaction with  
9 him that leaves you with any preconceived notions about  
10 whether he is a witness to be believed in this context,  
11 that is in this trial or not?

12                  A     Both my children were tested with  
13 learning disabilities. They both have learning  
14 disabilities and --

15                  THE COURT: This isn't something necessarily  
16 I wanted you to discuss.

17                  A     No, I'm not sure what you need from me.

18                  THE COURT: Well, my question is did he just  
19 perform tests?

20                  A     Right.

21                  THE COURT: You did not do any counseling?

22                  A     No.

23                  THE COURT: So you weren't in a position to  
24 judge his credibility or derive any preconceived notions  
25 about his credibility before coming to court today?

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 A No.

2 THE COURT: Or before the trial I mean?

3 A No.

4 THE COURT: Any questions by the parties?

5 MR. BROOKS: Not from the defense, your  
6 Honor.

7 MR. HARMON: Not from the State.

8 THE COURT: Is there any problem with her  
9 sitting on the jury?

10 You have to answer out loud.

11 MR. BROOKS: Not from the defense, your  
12 Honor.

13 MR. HARMON: The State does not have a  
14 problem.

15 THE COURT: And the Court finds that there  
16 is no reason why Ms. Wells cannot sit on the jury. The  
17 alternates are released under their admonition to be  
18 advised of the status of the proceedings on an ongoing  
19 basis and to remain under the admonition until such time as  
20 they are advised to the contrary.

21 Ms. Wells, thank you very much. You can now  
22 go back to the jury room with the rest of the jurors.

23 A Okay.

24 THE COURT: We are in recess.

25 (Off the record at 6:09 p.m.)

PATSY K. SMITH, OFFICIAL COURT REPORTER

\* \* \* \* \*

ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF PROCEEDINGS.

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

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 INST

FILED IN OPEN COURT  
 OCT 16 1996 19 3:35 pm  
 LORETTA BOWMAN, CLERK  
 BY Tina Hurd  
 Deputy

DISTRICT COURT  
 CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 JAMES MONTELL CHAPPELL,

12 Defendant(s).

Case No. C131341  
 Dept. No. C131240  
 Docket VII  
 P

## 15 INSTRUCTIONS TO THE JURY (INSTRUCTION NO. 1)

## 16 MEMBERS OF THE JURY:

17 It is now my duty as judge to instruct you in the law that applies to this case. It is your duty as  
 18 jurors to follow these instructions and to apply the rules of law to the facts as you find them from the  
 19 evidence.

20 You must not be concerned with the wisdom of any rule of law stated in these instructions.  
 21 Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your  
 22 oath to base a verdict upon any other view of the law than that given in the instructions of the Court.

23

24

25

26

27

28

6201

INSTRUCTION NO. 2

If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

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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 02:19 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 VII  
~~~~~

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IN THE SUPREME COURT OF NEVADA

JAMES CHAPPELL,

CASE NO. 61967

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

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**CERTIFICATE OF SERVICE**

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on this 18<sup>th</sup> day of November, 2013. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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