

1 sorry and I apologize to each person I have hurt and
2 brought into this case of mine. May God forgive me and
3 bless us all.

4 I'm prepared to be sentenced, your Honor.

5 THE COURT: Thank you, Mr. Chappell.

6 Mr. Brooks, on behalf of the defendant.

7 MR. BROOKS: Judge, first, I would like to
8 correct a mistake in the presentence investigation report.
9 On page five, the Department of Parole & Probation quotes
10 the mother of the victim as stating, "I can't forgive the
11 courts for letting him out." I just want to make sure that
12 the record is absolutely clear, I went and read the order
13 of the courts in this case and the court specifically
14 ordered in this case that he not be released on the
15 streets, that he be sent to a drug program by the actual
16 personnel of the Department of Parole & Probation. The
17 people who released him were not the courts in this case,
18 it was the Department of Parole & Probation that released
19 him and they didn't mention that in their report.

20 Obviously, the jury has spoken in this case,
21 Judge, and I will simply say this. I have known this man
22 now for almost a year and a half. He has been one of the
23 most consistently polite and cooperative people I've ever
24 represented. He's an absolute pleasure to work with and
25 it's very interesting because in my dealings with James,

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 there's only one time when he ever raises his voice and
2 that's when he discusses Deborah Panos and her cheating on
3 him and the experience of calling his home and talking to
4 other men who were living in his home with his girlfriend
5 and his children and that makes him mad, it makes him
6 upset, and, by golly, that is exactly what caused this
7 terrible crime to occur and I will say this. If that makes
8 him a evil man, the fact that he was jealous, then I would
9 submit that the world is full of evil people because truly
10 this is a crime that occurred from passion, it occurred
11 from jealousy, and I do not believe this man is an evil man
12 and I'll submit it on that, your Honor.

13 THE COURT: Well, I'm afraid that I have to
14 take the most vigorous exception to the last portion of
15 counsel's statement with regard to how this occurred. The
16 circumstances that led to this tragic event were not such
17 that -- could not be described as circumstances of
18 provocation. There was absolutely no excuse, sociologic or
19 otherwise, for this final act of defiant control over this
20 woman.

21 The argument that was made during the trial
22 and has been made this morning that this was his home, his
23 children, and, in fact, I believe he even said, during his
24 testimony or even used during his testimony, the possessive
25 when it came to -- the possessive tense when it came to

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 describing the victim in this case, his possessions.

2 No human being owns another human being.

3 This was not his home. She paid for it, she lived there.

4 He was only an itinerant visitor to this home and he was
5 only, at best, an itinerant father. In fact, he was not a
6 father at all to these children. He was simply the
7 biological father of these children.

8 I can think of no more degrading or
9 counterproductive or damaging result than if this gentleman
10 should ever be reunited with his children. Before he did
11 this, I regret to say he was simply a shiftless bum. Now
12 he is a murderer of the mother of his children. The State
13 says that he is but a little man. I'm afraid that's not
14 true. He's really not a man at all.

15 In accordance with the law of the State of
16 Nevada, in addition to a \$25 administrative assessment, I
17 hereby sentence you, James Montell Chappell, as follows:

18 Count I, 120 months maximum in the Nevada
19 Department of Prisons with minimum parole eligibility to
20 commence when 48 months has been served.

21 Count II, 180 months in the Nevada
22 Department of Prisons with minimum parole eligibility to
23 commence in 72 months. Plus an equal and consecutive
24 sentence for the use of a deadly weapon.

25 The sentence under Count II is to be served

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 consecutive with that sentence under Count I.

2 Count III, the defendant is hereby sentenced
3 to death by statute in the Nevada Department of Prisons and
4 he is subject to an equal and consecutive sentence for the
5 use of a deadly weapon in the commission of that crime and
6 that sentence is imposed accordingly and the sentence under
7 Count III is to be served consecutively with the sentences
8 of Count I and Count II.

9 Credit for time served?

10 MS. LOWREY: Hundred seventy three days.

11 MR. BROOKS: Judge, may we approach with an
12 order on the stay of execution? It's an automatic stay.

13 THE COURT: Yes, I understand that. I will
14 sign that at this time and indicate to Ms. Panos' family,
15 my sincere sympathy and my hope that you can at least go
16 forward with your lives and in the hopes that these three
17 children can have the kind of life that they deserve.

18 MR. LUKENS: I think there is statutory
19 restitution, your Honor.

20 THE COURT: Statutory restitution.

21 MS. LOWREY: Your Honor, I was wrong with
22 the credit for time served. It's a hundred ninety two
23 days.

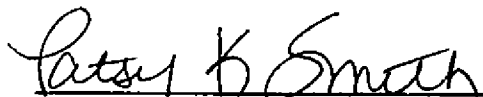
24 THE COURT: Anything further from the
25 parties at this time?

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 MR. LUKENS: Nothing by the State.
2 MR. BROOKS: Nothing, Judge. Thank you.
3 THE COURT: Thank you.
4

5 * * * * *

6
7 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF PROCEEDINGS.
8

9 
10 PATSY K. SMITH, C.C.R. #190
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PATSY K. SMITH, OFFICIAL COURT REPORTER

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Laetta L. Luman
CLERK

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

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

Plaintiff,

-vs-

11 JAMES MONTELL CHAPPELL,
12 #1212860

Defendant.

Case No. C131341
Dept. No. VII
Docket P

JUDGMENT OF CONVICTION

16 WHEREAS, on the 18th day of October, 1995, Defendant, JAMES MONTELL CHAPPELL,
17 entered a plea of Not Guilty to the crimes of COUNT I - BURGLARY (Felony); COUNT II -
18 ROBBERY WITH USE OF A DEADLY WEAPON (Felony) and COUNT III - MURDER WITH USE
19 OF A DEADLY WEAPON (Felony), NRS 205.060, 200.380, 193.165, 200.010, 200.030, 193.165; and

20 WHEREAS, the Defendant JAMES MONTELL CHAPPELL, was tried before a Jury and the
21 Defendant was found guilty of the crimes of COUNT I - BURGLARY (Felony); COUNT II -
22 ROBBERY WITH USE OF A DEADLY WEAPON (Felony) and COUNT III - MURDER OF THE
23 FIRST DEGREE WITH USE OF A DEADLY WEAPON (Felony), in violation of NRS 205.060,
24 200.380, 193.165, 200.010, 200.030, 193.165, and the Jury verdict was returned on or about the 16th
25 day of October, 1996. Thereafter, the same trial jury, deliberating in the penalty phase of said trial, in
26 accordance with the provisions of NRS 175.552 and 175.554, found that there were four (4) aggravating
27 circumstances in connection with the commission of said crime, to-wit:

1. The murder was committed while the Defendant was engaged in the commission of or an

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1 attempt to commit any Burglary and/or Home Invasion.

2 2. The murder was committed while the Defendant was engaged in the commission of or an
3 attempt to commit any Robbery.

4 3. The murder was committed while the Defendant was engaged in the commission of or an
5 attempt to commit any Sexual Assault.

6 4. The murder involved torture or depravity of mind.

7 That on or about the 24th day of October, 1996, the Jury unanimously found, beyond a reasonable
8 doubt, that there were no mitigating circumstances sufficient to outweigh the aggravating circumstance
9 or circumstances, and determined that the Defendant's punishment should be Death as to COUNT III -
10 MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY WEAPON in the Nevada State
11 Prison located at or near Carson City, State of Nevada.

12 WHEREAS, thereafter, on the 30th day of December, 1996, the Defendant being present in court
13 with his counsel, HOWARD BROOKS, Deputy Public Defender, and JOHN P. LUKENS, Chief Deputy
14 District Attorney, also being present; the above entitled Court did adjudge Defendant guilty thereof by
15 reason of said trial and verdict and sentenced Defendant to the following:

16 COUNT I - a maximum term of ONE HUNDRED TWENTY (120) months and a minimum term
17 of FORTY-EIGHT (48) months in the Nevada Department of Prisons for BURGLARY;

18 COUNT II - a maximum term of ONE HUNDRED EIGHTY (180) months and a minimum term
19 of SEVENTY-TWO (72) months in the Nevada Department of Prisons for ROBBERY plus a
20 consecutive maximum term of ONE HUNDRED EIGHTY (180) months and a minimum term of
21 SEVENTY-TWO (72) months in the Nevada Department of Prisons for USE OF A DEADLY
22 WEAPON, said sentence to run consecutive to Count I;

23 COUNT III - DEATH for MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY
24 WEAPON, said sentence to run consecutive to Counts I and II.

25 Credit for time served 192 days. \$25.00 Administrative Assessment Fee.

26 ///

27 ///

28 ///

1 THEREFORE, the Clerk of the above entitled Court is hereby directed to enter this Judgment
2 of Conviction as part of the record in the above entitled matter.

3 DATED this 31st day of December, 1996, in the City of Las Vegas, County of Clark, State of
4 Nevada.

5 

6 DISTRICT JUDGE

7 *Handwritten mark*

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27 DA#95-131341X/kjh
28 LVMPD DR#9508311351
1° MURDER W/WPN - F

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Joetta L. Luman
CLERK

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

DISTRICT COURT
CLARK COUNTY, NEVADA

8 **THE STATE OF NEVADA,**

9 **Plaintiff,**

10 **-vs-**

11 **JAMES MONTELL CHAPPELL,**
12 **#1212860**

13 **Defendant.**

Case No. C131341
Dept. No. VII
Docket P

15 **WARRANT OF EXECUTION**

16 A JUDGMENT OF DEATH was entered on the 24th day of October, 1996, against the above
17 named Defendant JAMES MONTELL CHAPPELL as a result of his having been found guilty of
18 COUNT III - Murder of the First Degree With Use of a Deadly Weapon, by a duly and legally impaneled
19 Jury of twelve persons. The Jury, with the HONORABLE A. WILLIAM MAUPIN presiding, after
20 determining Defendant's guilt to the crime of COUNT III - MURDER OF THE FIRST DEGREE WITH
21 USE OF A DEADLY WEAPON, in violation of NRS 200.010, 200.030, 193.165, returned said guilty
22 verdict on or about the 16th day of October, 1996. The Jury then proceeded to hear evidence and
23 deliberated on the punishment to be imposed as provided by NRS 175.552 and 175.554. Thereafter, the
24 trial jury returned with the sentence that the Defendant should be punished by Death, and found that there
25 were four (4) aggravating circumstances connected with the commission of said crime, to-wit:

26 1. The murder was committed while the Defendant was engaged in the commission of or an
27 attempt to commit any Burglary and/or Home Invasion.

28 2. The murder was committed while the Defendant was engaged in the commission of or an

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1 attempt to commit any Robbery.

2 3. The murder was committed while the Defendant was engaged in the commission of or an
3 attempt to commit any Sexual Assault.

4 4. The murder involved torture or depravity of mind.

5 That on or about the 24th day of October, 1996, the Jury unanimously found, beyond a reasonable
6 doubt, that there were no mitigating circumstances sufficient to outweigh the aggravating circumstance
7 or circumstances, said verdict having been returned in the County of Clark, State of Nevada. The Court
8 at this time, having determined that no legal reason exists against the execution of the Judgment.

9 IT IS HEREBY ORDERED that the County Clerk of the County of Clark, State of Nevada, shall
10 forthwith, execute, in triplicate, under the Seal of the Court, certified copies of the Warrant of Execution,
11 the Judgment of Conviction, and of the entry thereof in the Minutes of the Court. The original of the
12 triplicate copies of the Judgment of Conviction, Warrant of Execution, and entry thereof in the Minutes
13 of the Court, shall be filed in the Office of the County Clerk, and two of the triplicate copies shall be
14 immediately delivered by the Clerk to the Sheriff of Clark County, State of Nevada.

15 IT IS FURTHER ORDERED that one of the triplicate copies be delivered by the Sheriff to the
16 Director of the Department of Prisons or to such person as the Director shall designate. The Sheriff is
17 hereby directed to take charge of the said Defendant, JAMES MONTELL CHAPPELL, and transport
18 and deliver the prisoner, forthwith, to the Director of the Department of Prisons at the Nevada State
19 Prison located at or near Carson City, State of Nevada, and said prisoner, JAMES MONTELL
20 CHAPPELL, is to be surrendered to the custody of the said Director of the Department of Prisons or to
21 such authorized person so designated by the Director of the Department of Prisons, for the imprisonment
22 and execution of the said Defendant, JAMES MONTELL CHAPPELL, in accordance with the provisions
23 of this Warrant of Execution.

24 IT IS FURTHER ORDERED that in connection with the above facts and pursuant to the
25 provisions of NRS 176.345, 176.355 and 176.357, the Director of the Department of Prisons, or such
26 person as shall by him be designated, shall carry out said Judgment and Sentence by executing the said
27 JAMES MONTELL CHAPPELL, by the administration to him, said Defendant, JAMES MONTELL
28 CHAPPELL, an injection of a lethal drug, the drug or combination of drugs to be used for the execution

1 to be selected by the Director of the Department of Prisons after consulting with the State Health Officer.
2 Said execution to be within the limits of the State Prison, located at or near Carson City, State of Nevada,
3 during the week commencing on the 3rd day of March, 1997, in the presence of the Director of the
4 Department of Prisons, and notify those members of the immediate family of the victim who have,
5 pursuant to NRS 176.357, requested to be informed of the time, date and place scheduled for the
6 execution, and invite a competent physician, the county coroner, a psychiatrist and not less than six
7 reputable citizens over the age of 21 years to be present at the execution. The director shall determine
8 the maximum number of persons who may be present for the execution. The director shall give
9 preference to those eligible members or representatives of the immediate family of the victim who
10 requested, pursuant to NRS 176.357, to attend the execution.. The execution must take place at the state
11 prison and a person who has not been invited by the director may not witness the execution.

12 DATED this 31st day of December, 1996.

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14 
15 DISTRICT JUDGE
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CRIMINAL COURT MINUTES

95-C-131341-C STATE OF NEVADA

vs Chappell, James M

CONTINUED FROM PAGE: 021

12/11/96 09:00 AM 00 SENTENCING

HEARD BY: MICHAEL P GIBBONS, Visiting Judge; Dept. VJ30

OFFICERS: TINA HURD, Court Clerk
PATSY SMITH, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
003813	Silver, Abbi	Y
001 D1	Chappell, James M	Y
PUBDEF	Public Defender	Y
003374	Brooks, Howard S.	Y

Robert Lawson of the Division of Parole & Probation present. State advised she spoke with the court's secretary and did bring down witnesses, however, after conferring with the victim's family, she would request sentencing be continued for Judge Maupin to hear. Mr. Brooks moved sentencing go forward today. COURT ORDERED, matter CONTINUED to December 30.

CUSTODY

CONTINUED TO: 12/30/96 09:00 AM 01

12/30/96 09:00 AM 01 SENTENCING

HEARD BY: A. WILLIAM MAUPIN, Judge; Dept. 7

OFFICERS: TINA HURD, Court Clerk
PATSY SMITH, Reporter/Recorder

PARTIES: STATE OF NEVADA Y

Elaine Lowrey of the Division of Parole & Probation present. DEFT. CHAPPELL ADJUDGED GUILTY OF COUNT I - BURGLARY (F), COUNT II - ROBBERY WITH USE OF A DEADLY WEAPON (F) AND COUNT III - MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY WEAPON (F). Statements in mitigation of sentencing. COURT ORDERED, in addition to the \$25.00 Administrative Assessment Fee, deft. is SENTENCED to a MAXIMUM term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM parole eligibility of FORTY EIGHT (48) MONTHS in the Nevada Department of Prisons for Count I, and is SENTENCED to a MAXIMUM term of ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM parole eligibility of SEVENTY TWO (72) MONTHS in the Nevada Department of Prisons plus an EQUAL AND CONSECUTIVE MAXIMUM term of ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM parole eligibility of SEVENTY TWO (72) MONTHS in the Nevada Department of Prisons for the use of a deadly weapon for Count II, to be served CONSECUTIVELY to Count I and deft. is SENTENCED to DEATH for Count III, to be served CONSECUTIVELY to Counts I and II. Deft. to receive 192 DAYS Credit for Time Served and is to PAY STATUTORY RESTITUTION. BOND EXONERATED, if any. Stay of execution signed

CONTINUED ON PAGE: 023

PRINT DATE: 12/31/96

PAGE: 022

MINUTES DATE: 12/30/96

CRIMINAL COURT MINUTES

95-C-131341-C STATE OF NEVADA

vs Chappell, James M

CONTINUED FROM PAGE: 022

in open court.

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VERIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE

Dec 31 1996

Andrea Thomas
CLERK

ORIGINAL**FILED**

Dec 31 4 26 PM '96

Loetta L. Lamm
CLERK

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

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JAMES MONTELL CHAPPELL,
 #1212860

Defendant.

Case No. C131341
 Dept. No. VII
 Docket P

ORDER OF EXECUTION

A JUDGMENT OF DEATH having been entered on the 24th day of October, 1996, against the above named Defendant, JAMES MONTELL CHAPPELL, as a result of his having been found guilty of COUNT III - Murder of the First Degree with Use of a Deadly Weapon, by a duly and legally impaneled Jury of twelve persons; and

WHEREAS, this Court has made inquiry into the facts and found no legal reasons against the execution of the Judgment of Death.

IT IS ORDERED that the Director of the Department of Prisons shall execute the Judgment of Death, during the week commencing on the 3rd day of March, 1997.

DATED this 31st day of December, 1996.

Alvin M. ...
 DISTRICT JUDGE

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ORIGINALDISTRICT COURT
CLARK COUNTY, NEVADA**FILED**

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Loretta L. Luman
CLERK

CASE NO. C131341

DEPT. NO. VII

THE STATE OF NEVADA

To the Sheriff of Clark County, and the Warden or Officers in charge of the State Prison of the State of Nevada,

GREETINGS:

WHEREAS

JAMES MONTELL CHAPPELL

Having entered a plea of Not Guilty to the crime of COUNT III - Murder With Use of a Deadly Weapon, and the Defendant having been found guilty by the Jury of the crime of COUNT III - Murder of the First Degree With Use of a Deadly Weapon, and judgment having been pronounced against him that he be punished by the imposition of the Death Penalty by the administration of an injection of a lethal drug or combination of drugs.

All of which appears of record in the Office of the Clerk of said Court and a certified copy of the Judgment being attached hereto and made a part hereof.

Now this is to command you, the said Sheriff, to safely deliver the said JAMES MONTELL CHAPPELL, into the custody of the said Warden or his duly authorized representative, when requested to do so,

and this is to command you, the said Warden, or your duly authorized deputy, to receive from the said Sheriff, the said JAMES MONTELL CHAPPELL, to be sentenced as aforesaid, and that the said JAMES MONTELL CHAPPELL be put to death by an injection of a lethal drug or combination of drugs.

And these presents shall be your authority to do so. HEREIN FAIL NOT.

WITNESS, Honorable A. WILLIAM MAUPIN, Judge of the said District Court at the Courthouse, in the County of Clark, this 3rd day of January, 1997.

Witness my hand and the Seal of said Court,
the day and year last above written.

Loretta L. Luman Clerk

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1 NOAS
2 MORGAN D. HARRIS
3 CLARK COUNTY PUBLIC DEFENDER
4 Nevada Bar #1879
5 309 South Third Street, Suite #226
6 Las Vegas, Nevada 89155
7 (702) 455-4685
8 Attorney for Defendant

JAN 17 9 17 AM '97

Forresta
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,
11 Plaintiff,
12 vs.
13 JAMES MONTELL CHAPPELL,
14 Defendant.

Case No. C131341

Dept. No. VII

NOTICE OF APPEAL

16 TO: THE STATE OF NEVADA

17 STEWART BELL, DISTRICT ATTORNEY, CLARK COUNTY, NEVADA and
18 DEPARTMENT VII OF THE EIGHTH JUDICIAL DISTRICT COURT OF
19 THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK.

20 NOTICE is hereby given that JAMES MONTELL CHAPPELL,
21 presently incarcerated in the Nevada State Prison, appeals to the
22 Supreme Court of the State of Nevada from the judgment entered
23 against said Defendant on the 30th day of December, 1996, whereby he
24 was convicted of count I - burglary and sentenced to a minimum of
25 forty-eight (48) months to a maximum of one hundred-twenty (120)
26 months in the Nevada State Prison; count II - robbery with use of a
27 deadly weapon and sentenced to a minimum of seventy-two (72) months
28 to a maximum of one hundred-eighty (180) months on the robbery
charge plus a consecutive minimum of seventy-two (72) months to a

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1 maximum of one hundred-eighty (180) months for use of a deadly
2 weapon to run consecutive to count I; count III - first degree
3 murder with use of a deadly weapon and sentenced to death to be
4 served consecutively to counts I and II; credit for time served in
5 the amount of 192 days..

6 DATED this 16th day of January, 1997.

7 MORGAN D. HARRIS
8 CLARK COUNTY PUBLIC DEFENDER

9
10 By 

MICHAEL L. MILLER
NEVADA BAR #0836
DEPUTY PUBLIC DEFENDER
309 SOUTH THIRD STREET, SUITE #226
LAS VEGAS, NEVADA 89155-2610
(702) 455-4685

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23 RECEIPT OF A COPY of the foregoing Notice of Appeal is
24 hereby acknowledged this 16th day of January, 1997.

25 STEWART L. BELL
26 CLARK COUNTY DISTRICT ATTORNEY

27
28 By 

MARGIE ENGLISH

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CAS
MORGAN D. HARRIS
CLARK COUNTY PUBLIC DEFENDER
Nevada Bar #1879
309 South Third Street, Suite #226
Las Vegas, Nevada 89155-2610
(702) 455-4685
Attorney for Defendant

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

CASE APPEAL STATEMENT

1. Appellant filing this case appeal statement: JAMES
MONTELL CHAPPELL.

2. Judge issuing the decision, judgment, or order
appealed from: A. WILLIAM MAUPIN.

3. All parties to the proceedings in the district court
(the use of et al. To denote parties is prohibited): THE STATE OF
NEVADA, Plaintiff; JAMES MONTELL CHAPPELL, Defendant.

4. All parties involved in this appeal (the use of et al.
To denote parties is prohibited): JAMES MONTELL CHAPPELL,
Appellant; THE STATE OF NEVADA, Respondent.

/ / / /

/ / / /

1 5. Name, law firm, address, and telephone number of all
2 counsel on appeal and party or parties whom they represent:

3 MORGAN D. HARRIS
4 Clark County Public Defender
5 309 South Third Street, #226
6 Las Vegas, Nevada 89155-2610

7 Attorney for Appellant

STEWART L. BELL
Clark County District Attorney
200 South Third Street
Las Vegas, Nevada 89155

FRANKIE SUE DEL PAPA
Attorney General
State of Nevada
Capitol Complex
Carson City, Nevada 89710
(702) 486-3420

Counsel for Respondent

10 6. Whether appellant was represented by appointed or
11 retained counsel in the district court: Appointed.

12 7. Whether appellant is represented by appointed or
13 retained counsel on appeal: Appointed.

14 8. Whether appellant was granted leave to proceed in
15 forma pauperis, and the date of entry of the district court order
16 granting such leave: N/A

17 9. Date proceedings commenced in the district court
18 (e.g., date complaint, indictment, information, or petition was
19 filed): 10/11/95.

20 DATED this 23rd day of January, 1997.

21 MORGAN D. HARRIS
22 CLARK COUNTY PUBLIC DEFENDER

23
24 By 

25 MICHAEL L. MILLER
26 NEVADA BAR #0836
27 DEPUTY PUBLIC DEFENDER
28 309 SOUTH THIRD STREET, SUITE #226
LAS VEGAS, NEVADA 89155-2610
(702) 455-4685

1 RECEIPT OF A COPY of the foregoing Case Appeal Statement
2 is hereby acknowledged this 23rd day of January, 1997.
3 STEWART L. BELL
4 CLARK COUNTY DISTRICT ATTORNEY
5
6 By B.D. David Kpp
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1 NCA
2 MORGAN D. HARRIS
3 PUBLIC DEFENDER
4 NEVADA BAR #1879
5 309 South Third Street, Suite 226
6 Las Vegas, Nevada 89155
7 (702)455-4685
8 Attorney for the Defendant

FILED

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Loretta Dorman

CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

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

NOTICE OF COMPLIANCE WITH
SUPREME COURT RULE 250 REGARDING
MEMORANDUM OF DEFENSE COUNSEL

COMES NOW Deputy Public Defender Howard S. Brooks, the trial counsel for Defendant James Montell Chappell in the above-captioned case, and serves notice upon the Court and the State that Defense Counsel has complied with Section F of Supreme Court Rule 250 which mandates that Defense Counsel shall prepare a memorandum regarding efforts undertaken on behalf of the Defendant during the course of the preparation for the trial of this case.

This notice is supported by the attached Declaration of Counsel.

DATED March 14, 1997.

CLARK COUNTY PUBLIC DEFENDER

By *Howard S. Brooks*

HOWARD S. BROOKS #3374
DEPUTY PUBLIC DEFENDER

DECLARATION

HOWARD S BROOKS makes the following declaration:

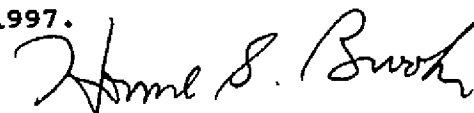
1. I am an attorney duly licensed to practice law in the State of Nevada; I am the Court Appointed Deputy Public Defender assigned to represent Defendant James Chappell; I am familiar with the facts and circumstances of this case.

2. Section 7 of Supreme Court Rule 250 requires Defense Counsel in a capital case to prepare a detailed memorandum describing the following: services furnished to Defendant, the nature and extent of communications with the Defendant, the degree of cooperation furnished by Defendant, and the investigation performed. The memorandum also requires that Defense Counsel state the names of any witnesses suggested by the Defendant to counsel, whether those witnesses were called to testify at trial, and any reasons why such witnesses were not called to testify if they were not in fact called to testify.

3. The purpose of this notice is to inform the Court and all parties that Defense Counsel did prepare such a memorandum, and said memorandum has been retained by Defense Counsel, and is also a part of the Defense Counsel's trial file.

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

EXECUTED March 14, 1997.



HOWARD S. BROOKS

(Mot\Chappell.250)

ORIGINAL

1 MORGAN D. HARRIS
2 Clark County Public Defender
3 Nevada Bar #1879
4 309 South Third Street, #226
5 Las Vegas, Nevada 89155
6 (702) 455-4685
7 Attorney for Defendant

FILED

MAY 27 1 12 PM '97

Lenetta Brown
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

10	THE STATE OF NEVADA,)	Case No. C131341
11)	
12	Plaintiff,)	Dept. No. VII
13)	
14	vs.)	
15)	
16	JAMES MONTELL CHAPPELL,)	
17)	
18	Defendant.)	
19)	

STIPULATION AND ORDER

IT IS HEREBY STIPULATED by and between the parties hereto
that the following attached Jury Questionnaires be made a part of
the District Court Record:

Olga Bourne, Juror Badge Number 427;
Adraine Marshall, Juror Badge Number 493;
Jim Tripp, Juror Badge Number 412;
Kellyanne Taylor, Juror Badge Number 421;
Mark Massar, Juror Badge Number 449;
Kenneth Fitzgerald, Juror Badge Number 473.

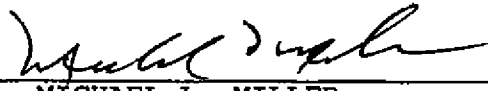
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1661

1 IT IS FURTHER STIPULATED that the attached jury
2 questionnaires are true and accurate copies of the original jury
3 questionnaires which were mistakenly destroyed prior to being made
4 a part of the District Court Record.

5 DATED this 23rd day of May, 1997.

6 MORGAN D. HARRIS
7 CLARK COUNTY PUBLIC DEFENDER

8 By 
9 MICHAEL L. MILLER
10 DEPUTY PUBLIC DEFENDER

11 STEWARD L. BELL
12 CLARK COUNTY DISTRICT ATTORNEY


13 By 
14 JAMES TUFTE
15 DEPUTY DISTRICT ATTORNEY

16
17 IT IS HEREBY ORDERED that the foregoing Stipulation and
18 attached Jury Questionnaires be made a part of the District Court
19 Record in the above entitled case and transmitted to the Nevada
20 Supreme Court to be made a part of the Record on Appeal.

21 DATED this 27 day of May, 1997

22 
23 DISTRICT COURT JUDGE

24 MORGAN D. HARRIS
25 CLARK COUNTY PUBLIC DEFENDER

26 By 
27 MICHAEL L. MILLER
28 NEVADA BAR #0836
DEPUTY PUBLIC DEFENDER

Badge # 427
I.D.# 0331669

Juror Questionnaire

Dear Prospective Juror:

You have been placed under oath. Please answer all questions truthfully and completely, as though the questions were being asked of you in open court. You may be asked additional questions in open court during the jury selection process.

Some of the questions ask your opinions. Be honest and state them. If you need more room on any question, use the margins or the next-to-last page, which has been left blank.

The purpose of this questionnaire is to help the court and the lawyers in their attempt to select a fair and impartial jury to hear this case. The answers provided by you in this document will be made available to counsel for both the state and defense. Your answers may also become part of the court's permanent record, and may, therefore, be a public document.

A summary of the case allegations and the procedure to be followed in this case are noted below. The fact that these allegations have been made does not mean they are necessarily true. The State has the burden of proving the allegations beyond a reasonable doubt.

Remember, you must fill out the questionnaire yourself, and when you are finished, please sign the oath on the last page and leave the questionnaire with a jury assistant.

Summary of Case

On August 31, 1995, Deborah Panos was found dead in her trailer at 839 North Nellis, Las Vegas. She died of multiple stab wounds. The next day, James Chappell, the father of Deborah's three children, was arrested and charged with murder with use of a deadly weapon and other charges related to the killing. The media covered the crime, and Mr. Chappell's arrest was reported.

Procedure

This is a murder case where the State is seeking the death penalty.

After the jury is empanelled, the trial will occur. The purpose of the trial is to determine, based on legally-presented evidence, if the State can prove the criminal charges beyond a

reasonable doubt. Mr. Chappell is presumed innocent.

If the jury convicts Mr. Chappell of Murder in the First Degree, then the trial is followed by a Penalty hearing where the jury would hear evidence related to punishment. The jury would determine the sentence, and would choose among the following: death; a life sentence in prison with the possibility of parole; a life sentence in prison without the possibility of parole; or a fixed sentence of 50 years with the possibility of parole.

If the jury finds Mr. Chappell Not Guilty, or finds him guilty of charges other than First Degree Murder, then no penalty hearing will occur. If Mr. Chappell is found guilty of charges other than First Degree Murder, the Judge will sentence Mr. Chappell.

The parties anticipate that the trial of this case could last two weeks; a possible penalty hearing could last an additional week. All the trial and penalty proceedings in this case could last a total of three weeks.

1. Do you have any thoughts, concerns, or questions about this procedure:

No

2. Are you familiar with this case? Have you read media reports about it? Do you know Deborah Panos or James Chappell? No

Questions About You

3. Your full name Olga C BOURNE Race Black

4. Age 67 Place of birth Trinidad Marital Status Single

5. Children 0

	Age	Sex	Education	Occupation
--	-----	-----	-----------	------------

(a)				
(b)				
(c)				
(d)				

6. In what part of the county do you live? South eastern

7. Highest educational grade completed Master's Degree

8. Any special schooling or training? Registered Nurse, Nurse-Midwife

9. Any courses or training in a legal field? No

10. Your occupation and relevant duties for the last ten years: Retired 1993
after 5 years with U.S. Post office - Retired from
U.S. Army 1980

11. What is your spouse's occupation, if you have a spouse?

N/A

12. Have you ever been in business for yourself? If yes, please explain. _____

No

13. Ever been a supervisor or boss? If yes, explain. Head Nurse

14. Ever served in the military? If yes, please provide some details. Head Nurse
Operating Room, OB-Gyn Nurse Practitioner

15. Do you attend religious services? If yes, what church or service, and how often?

No

16. Have you ever changed religions? If so, why? No

17. Any relatives who are judges or attorneys? If yes, what is your relationship to them and how often do you talk to them? No

18. Any relatives in law enforcement? If yes, what is your relationship, and how often do you talk to them? No

19. Ever been a juror before? If yes, what did you think of the experience? _____

I found it interesting

20. Have you or any member of your family ever had a drug or alcohol problem?

No

21. Have you or any members of your family ever been arrested? If so, why? And what

happened? No

22. Do you have any bias or ill feeling toward the police or the government or prosecutors as a result of any prior experience with law enforcement? No

23. Have you or any one you know been a victim of domestic violence? No

24. Have you or any one you know been affected by domestic violence? How? No

Opinions, Interests, & Views

25. What do you think of the criminal justice system? I never really gave it serious thought, but feel it's okay

26. What are your hobbies and interests? Reading, gardening, Travel

27. Do you consider yourself to be a leader or a follower? Not Sure, Why? Because, in some occasions I am one or the other. No fixed pattern

28. What do you like to read? Murder mysteries especially British; other novels usually fiction

What do you think of each of the following:

29. Defense attorneys Needed by clients to state their case as properly & effectively as possible

30. Public Defenders The poor needs them.

31. State Prosecutors Public needs them to protect us from

dangerous persons

32. Federal Prosecutors Same as above

33. Police officers Needed as first ~~step~~ level of protection between us and the lawless people

34. Judges Hopefully they are fair + just

35. The Death Penalty Should be used rarely if at all

36. The statement: "An Eye for an Eye." I do not feel this way

37. The statement: "You Shall Not Kill." I agree, but people are doing it all the time

38. The statement: If a prosecutor has taken the trouble of bringing someone to trial, then the person must be guilty. I do not believe this

39. The statement: A defendant in a criminal trial should be required to prove his innocence: No. I like the fact that the law must provide the proof. There is less likelihood that an innocent person will not be convicted

40. The statement: The Death Penalty is appropriate in some cases, but not in others: It's hard for me to answer this. Each case arouses different levels of anger or repulsion re. the crime itself.

41. The statement: The Death Penalty is appropriate in all cases where somebody murders somebody: I do not agree

42. The statement: A defendant's background should be considered in deciding whether or not the death penalty is an appropriate punishment: Not sure what you mean. If the background is proven to be mentally incapacitating yes. Other causes ~~possible~~ probably. Each case will tell

43. The statement: The facts surrounding a killing, and not the killer's background, should be the main consideration in determining punishment: Both should be, but

primarily the former

44. The statement: Black people cause more crime than white people:

They may cause more crime but poor people cause more crime and most black people are poor

45. The statement: It's Ok for black people and white people to date each other and have children together. It's their business, not mine.

Each person must live his own life, as long as the two parties are consenting

46. The statement: It may be Ok for people of different races to date each other, but I would have a hard time dealing with my child doing it: I have no

children, so I really do not know how I'd feel

47. More than anything else, what should the attorneys in this case know about you in deciding whether you should be on the jury: That I will try

to be objective & impartial as possible. And that I'd try to base my decision on the facts presented in court

48. Do you want to be on the jury? Why yes or Why no?

Yes — because it goes with being a good citizen. If I can do a good job, as a juror, I'll be helping to keep the judicial system as efficient as possible

49. If Mr. Chappell is convicted of first degree murder, and a penalty hearing is held, would you consider all four possible sentences, those being the death penalty, life without the possibility of parole, life with the possibility of parole, or a fixed term of 50 years with the possibility of parole

Yes

50. In your present state of mind, can you, if selected as a juror, consider equally all four possible forms of punishment and select the one that you feel is the most appropriate depending upon the facts and the law?

Yes

51. If you believed the evidence warranted the death penalty, could you personally vote to impose the death penalty? I don't know

52. Are you a member of any organization that advocates or opposes the imposition of the death penalty? No

Explanation Area

Feel free to supplement any of your prior answers, or ask any questions which you may have.

Oath

I swear or affirm that the responses given are true and accurate to the best of my knowledge and belief.

Alana C. Bourne 10/2/95
Signature Date

Admonition

You are instructed not to discuss this questionnaire or any aspect of this case with anyone, including other prospective jurors. You are further instructed not to view, read, or listen to any media account of these proceedings.

A. William Maupin
A. William Maupin, District Judge

Badge # 493
I.D.# 1374620

Juror Questionnaire

Dear Prospective Juror:

You have been placed under oath. Please answer all questions truthfully and completely, as though the questions were being asked of you in open court. You may be asked additional questions in open court during the jury selection process.

Some of the questions ask your opinions. Be honest and state them. If you need more room on any question, use the margins or the next-to-last page, which has been left blank.

The purpose of this questionnaire is to help the court and the lawyers in their attempt to select a fair and impartial jury to hear this case. The answers provided by you in this document will be made available to counsel for both the state and defense. Your answers may also become part of the court's permanent record, and may, therefore, be a public document.

A summary of the case allegations and the procedure to be followed in this case are noted below. The fact that these allegations have been made does not mean they are necessarily true. The State has the burden of proving the allegations beyond a reasonable doubt.

Remember, you must fill out the questionnaire yourself, and when you are finished, please sign the oath on the last page and leave the questionnaire with a jury assistant.

Summary of Case

On August 31, 1995, Deborah Panos was found dead in her trailer at 839 North Nellis, Las Vegas. She died of multiple stab wounds. The next day, James Chappell, the father of Deborah's three children, was arrested and charged with murder with use of a deadly weapon and other charges related to the killing. The media covered the crime, and Mr. Chappell's arrest was reported.

Procedure

This is a murder case where the State is seeking the death penalty.

After the jury is empanelled, the trial will occur. The purpose of the trial is to determine, based on legally presented evidence, if the State can prove the criminal charges beyond a

reasonable doubt. Mr. Chappell is presumed innocent.

If the jury convicts Mr. Chappell of Murder in the First Degree, then the trial is followed by a Penalty hearing where the jury would hear evidence related to punishment. The jury would determine the sentence, and would choose among the following: death; a life sentence in prison with the possibility of parole; a life sentence in prison without the possibility of parole; or a fixed sentence of 50 years with the possibility of parole.

If the jury finds Mr. Chappell Not Guilty, or finds him guilty of charges other than First Degree Murder, then no penalty hearing will occur. If Mr. Chappell is found guilty of charges other than First Degree Murder, the Judge will sentence Mr. Chappell.

The parties anticipate that the trial of this case could last two weeks; a possible penalty hearing could last an additional week. All the trial and penalty proceedings in this case could last a total of three weeks.

1. Do you have any thoughts, concerns, or questions about this procedure:

NO

2. Are you familiar with this case? Have you read media reports about it? Do you know Deborah Panos or James Chappell? NO

Questions About You

3. Your full name Odaine D. Marshall Race Black

4. Age 37 Place of birth Austin Texas Marital Status married

5. Children

	Age	Sex	Education	Occupation
(a)	<u>Jason</u>	<u>T</u>	<u>Marshall</u>	<u>2 yrs - 2nd grade - male</u>
(b)	<u>Jacobi</u>	<u>T</u>	<u>Marshall</u>	<u>5 yrs - Kindergarten - male</u>
(c)	<u>Terrett</u>	<u>T</u>	<u>Marshall</u>	<u>4 yrs - male</u>
(d)				

6. In what part of the county do you live? Clark

7. Highest educational grade completed 2yr college degree

8. Any special schooling or training? none

9. Any courses or training in a legal field? NO

10. Your occupation and relevant duties for the last ten years: United Parcel Services - Clerk - Head Clerk over 5 employees
duties are collecting pkgs with bad addresses - maintaining fuel drop for pkg car & tractors.

11. What is your spouse's occupation, if you have a spouse?
Automation Clerk at the Post Office

12. Have you ever been in business for yourself? If yes, please explain. NO

13. Ever been a supervisor or boss? If yes, explain. NO

14. Ever served in the military? If yes, please provide some details. NO

15. Do you attend religious services? If yes, what church or service, and how often?
YES - Halley's Christian Fellowship - I used to attend Church almost every Sunday.

16. Have you ever changed religions? If so, why? NO

17. Any relatives who are judges or attorneys? If yes, what is your relationship to them and how often do you talk to them? NO

18. Any relatives in law enforcement? If yes, what is your relationship, and how often do you talk to them? NO

19. Ever been a juror before? If yes, what did you think of the experience? YES
I think it was a great experience. Every citizen should least serve once for the knowledge on our court system.

20. Have you or any member of your family ever had a drug or alcohol problem?
NO

21. Have you or any members of your family ever been arrested? If so, why? And what
NO

happened? _____

22. Do you have any bias or ill feeling toward the police or the government or prosecutors as a result of any prior experience with law enforcement? NO

23. Have you or any one you know been a victim of domestic violence? NO

24. Have you or any one you know been affected by domestic violence? How? NO

Opinions, Interests, & Views

25. What do you think of the criminal justice system? Sometimes it's fair
& sometimes not, depending what seat you're beating
in. (no personal experience)

26. What are your hobbies and interests? Shopping, skating, & spending
quality time with my children.

27. Do you consider yourself to be a leader or a follower? Leader why? Because
I have my own mind to make decisions.

28. What do you like to read? Magazines - People - Ebony -
Essence, Bille - etc.

What do you think of each of the following:

29. Defense attorneys ~~no views~~ No Views at this
time.

30. Public Defenders No views at this time

31. State Prosecutors No views at this time

32. Federal Prosecutors No views at this time

33. Police officers are to protect the citizen of Clark County

34. Judges Judges are there to keep order in the court room making a defendant have a fair trial

35. The Death Penalty I don't know how I really feel about the death penalty;

36. The statement: "An Eye for an Eye:" I believe that we have to be held accountable for our actions.

37. The statement: "You Shall Not Kill:" The bible course us not to kill.

38. The statement: If a prosecutor has taken the trouble of bringing someone to trial, then the person must be guilty. A person is innocent until proven guilty.

39. The statement: A defendant in a criminal trial should be required to prove his innocence: No the prosecutor has to find him guilty.

40. The statement: The Death Penalty is appropriate in some cases, but not in others:

I don't know

41. The statement: The Death Penalty is appropriate in all cases where somebody murders somebody: I don't know.

42. The statement: A defendant's background should be considered in deciding whether or not the death penalty is an appropriate punishment: No

43. The statement: The facts surrounding a killing, and not the killer's background, should be the main consideration in determining punishment: Yes.

44. The statement: Black people cause more crime than white people:

Any race can be an criminal

45. The statement: It's Ok for black people and white people to date each other and have children together.

I can be with who make you happy - not the cause of race.

46. The statement: It may be Ok for people of different races to date each other, but I would have a hard time dealing with my child doing it:

I want my children to be with who makes them happy - they could marry the same race & be unhappy.

47. More than anything else, what should the attorneys in this case know about you in deciding whether you should be on the jury:

I tried to be an fair & honest person in everyday life. Treating people how I would like to be treated.

48. Do you want to be on the jury? Why yes or Why no?

Yes. When I first walk in this morning I didn't know if I really wanted to do this - but after listening to the orientation I feel it is my civic duty.

49. If Mr. Chappell is convicted of first degree murder, and a penalty hearing is held, would you consider all four possible sentences, those being the death penalty, life without the possibility of parole, life with the possibility of parole, or a fixed term of 50 years with the possibility of parole

Yes.

50. In your present state of mind, can you, if selected as a juror, consider equally all four possible forms of punishment and select the one that you feel is the most appropriate depending upon the facts and the law?

I would have to hear the case.

51. If you believed the evidence warranted the death penalty, could you personally vote to impose the death penalty?

I don't know.

52. Are you a member of any organization that advocates or opposes the imposition of the death penalty? NO

Explanation Area

Feel free to supplement any of your prior answers, or ask any questions which you may have.

Oath

I swear or affirm that the responses given are true and accurate to the best of my knowledge and belief.

Thomas D. Marshall
Signature

10-2-1996
Date

Admonition

You are instructed not to discuss this questionnaire or any aspect of this case with anyone, including other prospective jurors. You are further instructed not to view, read, or listen to any media account of these proceedings.

A. William Maupin
A. William Maupin, District Judge

Badge # 412
I.D.# 0384736

Juror Questionnaire

Dear Prospective Juror:

You have been placed under oath. Please answer all questions truthfully and completely, as though the questions were being asked of you in open court. You may be asked additional questions in open court during the jury selection process.

Some of the questions ask your opinions. Be honest and state them. If you need more room on any question, use the margins or the next-to-last page, which has been left blank.

The purpose of this questionnaire is to help the court and the lawyers in their attempt to select a fair and impartial jury to hear this case. The answers provided by you in this document will be made available to counsel for both the state and defense. Your answers may also become part of the court's permanent record, and may, therefore, be a public document.

A summary of the case allegations and the procedure to be followed in this case are noted below. The fact that these allegations have been made does not mean they are necessarily true. The State has the burden of proving the allegations beyond a reasonable doubt.

Remember, you must fill out the questionnaire yourself, and when you are finished, please sign the oath on the last page and leave the questionnaire with a jury assistant.

Summary of Case

On August 31, 1995, Deborah Panos was found dead in her trailer at 839 North Nellis, Las Vegas. She died of multiple stab wounds. The next day, James Chappell, the father of Deborah's three children, was arrested and charged with murder with use of a deadly weapon and other charges related to the killing. The media covered the crime, and Mr. Chappell's arrest was reported.

Procedure

This is a murder case where the State is seeking the death penalty.

After the jury is empanelled, the trial will occur. The purpose of the trial is to determine, based on legally presented evidence, if the State can prove the criminal charges beyond a

reasonable doubt. Mr. Chappell is presumed innocent.

If the jury convicts Mr. Chappell of Murder in the First Degree, then the trial is followed by a Penalty hearing where the jury would hear evidence related to punishment. The jury would determine the sentence, and would choose among the following: death; a life sentence in prison with the possibility of parole; a life sentence in prison without the possibility of parole; or a fixed sentence of 50 years with the possibility of parole.

If the jury finds Mr. Chappell Not Guilty, or finds him guilty of charges other than First Degree Murder, then no penalty hearing will occur. If Mr. Chappell is found guilty of charges other than First Degree Murder, the Judge will sentence Mr. Chappell.

The parties anticipate that the trial of this case could last two weeks; a possible penalty hearing could last an additional week. All the trial and penalty proceedings in this case could last a total of three weeks.

1. Do you have any thoughts, concerns, or questions about this procedure:

NO

2. Are you familiar with this case? Have you read media reports about it? Do you know Deborah Panos or James Chappell? NO

Questions About You

3. Your full name JIM BLAKE TRIPP Race W

4. Age 53 Place of birth ILLINOIS Marital Status M

5. Children 4

	Age	Sex	Education	Occupation
(a)	<u>26</u>	<u>AF</u>	<u>12 H School</u>	<u>SECRETARY</u>
(b)	<u>27</u>	<u>M</u>	<u>SOME MORE HIGH SCHOOL</u>	<u>HOUSEWIFE</u>
(c)	<u>25</u>	<u>F</u>	<u>10TH GRADE</u>	<u>HOUSEWIFE</u>
(d)	<u>11</u>	<u>AF</u>	<u>GRADE SCHOOL</u>	<u>NA</u>

6. In what part of the county do you live? SOUTH WEST

7. Highest educational grade completed 9TH GRADE

8. Any special schooling or training? NO

9. Any courses or training in a legal field? NO
10. Your occupation and relevant duties for the last ten years: CONSTRUCTION
NEW CAR DEALER SHIP PRESENT TIME
11. What is your spouses's occupation. if you have a spouse?
HOUSE WIFE
12. Have you ever been in business for yourself? If yes, please explain. NO
13. Ever been a supervisor or boss? If yes, explain. MANAGER FOR
TRANSMISSION SHOP
14. Ever served in the military? If yes, please provide some details. NO
15. Do you attend religious services? If yes, what church or service, and how often?
NO
16. Have you ever changed religions? If so, why? NO
17. Any relatives who are judges or attorneys? If yes, what is your relationship to them and how often do you talk to them? NO
18. Any relatives in law enforcement? If yes, what is your relationship, and how often do you talk to them NO
19. Ever been a juror before? If yes, what did you think of the experience? NO
20. Have you or any member of your family ever had a drug or alcohol problem?
NO
21. Have you or any members of your family ever been arrested? If so, why? And what

happened? NO

22. Do you have any bias or ill feeling toward the police or the government or prosecutors as a result of any prior experience with law enforcement? NO

23. Have you or any one you know been a victim of domestic violence? NO

24. Have you or any one you know been affected by domestic violence? How? NO

Opinions, Interests, & Views

25. What do you think of the criminal justice system? Good

26. What are your hobbies and interests? Stock Car Racing

27. Do you consider yourself to be a leader or a follower? Leader Why? DETERMINATION

28. What do you like to read? Love Stories

What do you think of each of the following:

29. Defense attorneys FACT'S About The Case

30. Public Defenders ?

31. State Prosecutors FACT'S About The Case

32. Federal Prosecutors _____
33. Police officers They Do There Job
A DANGEROUS ONE
34. Judges For The Most Of Them Fail
The Other Part To Easy
35. The Death Penalty For IT
36. The statement: "An Eye for an Eye:" NO
37. The statement: "You Shall Not Kill:" yes
38. The statement: If a prosecutor has taken the trouble of bringing someone to trial, then the person must be guilty. "NOT TRUE"
39. The statement: A defendant in a criminal trial should be required to prove his innocence: NOT TRUE Lawyer's Job
40. The statement: The Death Penalty is appropriate in some cases, but not in others: True
41. The statement: The Death Penalty is appropriate in all cases where somebody murders somebody: Depends
42. The statement: A defendant's background should be considered in deciding whether or not the death penalty is an appropriate punishment: Depends ON There
BACK ground IF IT Should be Used
43. The statement: The facts surrounding a killing, and not the killer's background, should be the main consideration in determining punishment: Yes

44. The statement: Black people cause more crime than white people:

NO

45. The statement: It's Ok for black people and white people to date each other and have children together. Yes

46. The statement: It may be Ok for people of different races to date each other, but I would have a hard time dealing with my child doing it: Yes

47. More than anything else, what should the attorneys in this case know about you in deciding whether you should be on the jury: I AM NOT PREJUDICED
AND HAVE AN OPEN MIND

48. Do you want to be on the jury? Why yes or Why no? Yes
To help serve justice and see
justice is fair

49. If Mr. Chappell is convicted of first degree murder, and a penalty hearing is held, would you consider all four possible sentences, those being the death penalty, life without the possibility of parole, life with the possibility of parole, or a fixed term of 50 years with the possibility of parole

LIFE WITHOUT THE POSSIBILITY OF PAROLE

50. In your present state of mind, can you, if selected as a juror, consider equally all four possible forms of punishment and select the one that you feel is the most appropriate depending upon the facts and the law?

Yes

51. If you believed the evidence warranted the death penalty, could you personally vote to impose the death penalty? Yes

52. Are you a member of any organization that advocates or opposes the imposition of the death penalty? No

Explanation Area

Feel free to supplement any of your prior answers, or ask any questions which you may have.

Oath

I swear or affirm that the responses given are true and accurate to the best of my knowledge and belief.

Jim Blake Jupp 10/2-96
Signature Date

Admonition

You are instructed not to discuss this questionnaire or any aspect of this case with anyone, including other prospective jurors. You are further instructed not to view, read, or listen to any media account of these proceedings.

A. William Maupin
A. William Maupin, District Judge

Badge # 421
I.D.# 15910916

Juror Questionnaire

Dear Prospective Juror:

You have been placed under oath. Please answer all questions truthfully and completely, as though the questions were being asked of you in open court. You may be asked additional questions in open court during the jury selection process.

Some of the questions ask your opinions. Be honest and state them. If you need more room on any question, use the margins or the next-to-last page, which has been left blank.

The purpose of this questionnaire is to help the court and the lawyers in their attempt to select a fair and impartial jury to hear this case. The answers provided by you in this document will be made available to counsel for both the state and defense. Your answers may also become part of the court's permanent record, and may, therefore, be a public document.

A summary of the case allegations and the procedure to be followed in this case are noted below. The fact that these allegations have been made does not mean they are necessarily true. The State has the burden of proving the allegations beyond a reasonable doubt.

Remember, you must fill out the questionnaire yourself, and when you are finished, please sign the oath on the last page and leave the questionnaire with a jury assistant.

Summary of Case

On August 31, 1995, Deborah Panos was found dead in her trailer at 839 North Nellis, Las Vegas. She died of multiple stab wounds. The next day, James Chappell, the father of Deborah's three children, was arrested and charged with murder with use of a deadly weapon and other charges related to the killing. The media covered the crime, and Mr. Chappell's arrest was reported.

Procedure

This is a murder case where the State is seeking the death penalty.

After the jury is empanelled, the trial will occur. The purpose of the trial is to determine, based on legally presented evidence, if the State can prove the criminal charges beyond a

reasonable doubt. Mr. Chappell is presumed innocent.

If the jury convicts Mr. Chappell of Murder in the First Degree, then the trial is followed by a Penalty hearing where the jury would hear evidence related to punishment. The jury would determine the sentence, and would choose among the following: death; a life sentence in prison with the possibility of parole; a life sentence in prison without the possibility of parole; or a fixed sentence of 50 years with the possibility of parole.

If the jury finds Mr. Chappell Not Guilty, or finds him guilty of charges other than First Degree Murder, then no penalty hearing will occur. If Mr. Chappell is found guilty of charges other than First Degree Murder, the Judge will sentence Mr. Chappell.

The parties anticipate that the trial of this case could last two weeks; a possible penalty hearing could last an additional week. All the trial and penalty proceedings in this case could last a total of three weeks.

1. Do you have any thoughts, concerns, or questions about this procedure:

no

2. Are you familiar with this case? Have you read media reports about it? Do you know Deborah Panos or James Chappell? no

Questions About You

3. Your full name Kellyanne Bentley Taylor Race Northern European

4. Age 31 Place of birth Texas Marital Status married

5. Children

	Age	Sex	Education	Occupation
(a)	<u>10</u>	<u>F</u>	<u>5th grade</u>	<u>childhood</u>
(b)				
(c)				
(d)				

6. In what part of the county do you live? southern

7. Highest educational grade completed bachelor's degree

8. Any special schooling or training? /

9. Any courses or training in a legal field? no

10. Your occupation and relevant duties for the last ten years:

financial Management Assistant - Accounting
College Student

11. What is your spouses's occupation, if you have a spouse?

student

12. Have you ever been in business for yourself? If yes, please explain.

no

13. Ever been a supervisor or boss? If yes, explain. yes, I currently share

supervision of one employee

14. Ever served in the military? If yes, please provide some details. no

15. Do you attend religious services? If yes, what church or service, and how often?

yes LDS Weekly

16. Have you ever changed religions? If so, why? no

17. Any relatives who are judges or attorneys? If yes, what is your relationship to them and how often do you talk to them? yes, my brother-in-law is an attorney
I see him about once every two months

18. Any relatives in law enforcement? If yes, what is your relationship, and how often do you talk to them no

19. Ever been a juror before? If yes, what did you think of the experience? no

20. Have you or any member of your family ever had a drug or alcohol problem?

no

21. Have you or any members of your family ever been arrested? If so, why? And what

happened? my brother-in-law (not the attorney) was arrested for stealing a car - he was in fact repossessing it & had the proper documentation - the charges were dropped.

22. Do you have any bias or ill feeling toward the police or the government or prosecutors as a result of any prior experience with law enforcement? no

23. Have you or any one you know been a victim of domestic violence? no

24. Have you or any one you know been affected by domestic violence? How?

no

Opinions, Interests, & Views

25. What do you think of the criminal justice system? I don't know much about it & I think what the media reports is probably a little slanted.

26. What are your hobbies and interests? reading, needlepoint, photography, movies, crafts.

27. Do you consider yourself to be a leader or a follower? Why?
It depends, I am a reluctant leader if the situation warrants it.

28. What do you like to read? mind candy - light novels

What do you think of each of the following:

29. Defense attorneys That they are probably portrayed poorly on T.V.

30. Public Defenders That they are probably portrayed poorly on T.V.

31. State Prosecutors That they are probably portrayed poorly on T.V.

32. Federal Prosecutors That they are probably portrayed poorly on T.V.
33. Police officers They have a hard job & are underpaid
34. Judges That they try very hard to uphold the law
35. The Death Penalty It should be given reluctantly after much thought and only as a last resort or in very extreme cases
36. The statement: "An Eye for an Eye:" for us it is given to forgive and judge not
37. The statement: "You Shall Not Kill:" It's pretty straight forward but I don't think it applies in the course of self defense, the defense of others, or in case of war
38. The statement: If a prosecutor has taken the trouble of bringing someone to trial, then the person must be guilty. was made by an ignorant person
39. The statement: A defendant in a criminal trial should be required to prove his innocence: that's stupid - the burden of proof is upon the prosecutor
40. The statement: The Death Penalty is appropriate in some cases, but not in others: Well, okay, but I don't think that the death penalty should be handed out like candy.
41. The statement: The Death Penalty is appropriate in all cases where somebody murders somebody: - wrong
42. The statement: A defendant's background should be considered in deciding whether or not the death penalty is an appropriate punishment: Uhm, I'm not totally comfortable agreeing with this - maybe ?!
43. The statement: The facts surrounding a killing, and not the killer's background, should be the main consideration in determining punishment: Absolutely.

44. The statement: Black people cause more crime than white people:

The numbers don't support this - it's an ugly generalization

45. The statement: It's Ok for black people and white people to date each other and have children together.

It's none of my business who people choose to date or marry. That's a decision everyone must make for themselves.

46. The statement: It may be Ok for people of different races to date each other, but I would have a hard time dealing with my child doing it:

The oldest cop out in the book.

47. More than anything else, what should the attorneys in this case know about you in deciding whether you should be on the jury:

Just because I have red hair doesn't mean I have a temper or jump to conclusions

48. Do you want to be on the jury? Why yes or Why no? Sure, I

think it would be interesting to see the process in action.

49. If Mr. Chappell is convicted of first degree murder, and a penalty hearing is held, would you consider all four possible sentences, those being the death penalty, life without the possibility of parole, life with the possibility of parole, or a fixed term of 50 years with the possibility of parole

yes

50. In your present state of mind, can you, if selected as a juror, consider equally all four possible forms of punishment and select the one that you feel is the most appropriate depending upon the facts and the law?

yes

51. If you believed the evidence warranted the death penalty, could you personally vote to impose the death penalty? after careful thought, yes

52. Are you a member of any organization that advocates or opposes the imposition of the death penalty? NO

Explanation Area

Feel free to supplement any of your prior answers, or ask any questions which you may have.

Oath

I swear or affirm that the responses given are true and accurate to the best of my knowledge and belief.

Signature

Date

Admonition

You are instructed not to discuss this questionnaire or any aspect of this case with anyone, including other prospective jurors. You are further instructed not to view, read, or listen to any media account of these proceedings.


A. William Maupin, District Judge

Badge # 449
I.D.# 0882358

Juror Questionnaire

Dear Prospective Juror:

You have been placed under oath. Please answer all questions truthfully and completely, as though the questions were being asked of you in open court. You may be asked additional questions in open court during the jury selection process.

Some of the questions ask your opinions. Be honest and state them. If you need more room on any question, use the margins or the next-to-last page, which has been left blank.

The purpose of this questionnaire is to help the court and the lawyers in their attempt to select a fair and impartial jury to hear this case. The answers provided by you in this document will be made available to counsel for both the state and defense. Your answers may also become part of the court's permanent record, and may, therefore, be a public document.

A summary of the case allegations and the procedure to be followed in this case are noted below. The fact that these allegations have been made does not mean they are necessarily true. The State has the burden of proving the allegations beyond a reasonable doubt.

Remember, you must fill out the questionnaire yourself, and when you are finished, please sign the oath on the last page and leave the questionnaire with a jury assistant.

Summary of Case

On August 31, 1995, Deborah Panos was found dead in her trailer at 839 North Nellis, Las Vegas. She died of multiple stab wounds. The next day, James Chappell, the father of Deborah's three children, was arrested and charged with murder with use of a deadly weapon and other charges related to the killing. The media covered the crime, and Mr. Chappell's arrest was reported.

Procedure

This is a murder case where the State is seeking the death penalty.

After the jury is empanelled, the trial will occur. The purpose of the trial is to determine, based on legally presented evidence, if the State can prove the criminal charges beyond a

reasonable doubt. Mr. Chappell is presumed innocent.

If the jury convicts Mr. Chappell of Murder in the First Degree, then the trial is followed by a Penalty hearing where the jury would hear evidence related to punishment. The jury would determine the sentence, and would choose among the following: death; a life sentence in prison with the possibility of parole; a life sentence in prison without the possibility of parole; or a fixed sentence of 50 years with the possibility of parole.

If the jury finds Mr. Chappell Not Guilty, or finds him guilty of charges other than First Degree Murder, then no penalty hearing will occur. If Mr. Chappell is found guilty of charges other than First Degree Murder, the Judge will sentence Mr. Chappell.

The parties anticipate that the trial of this case could last two weeks; a possible penalty hearing could last an additional week. All the trial and penalty proceedings in this case could last a total of three weeks.

1. Do you have any thoughts, concerns, or questions about this procedure:

No

2. Are you familiar with this case? Have you read media reports about it? Do you know Deborah Panos or James Chappell? No

Questions About You

3. Your full name Mark Gregory Massar Race Anglo

4. Age 36 Place of birth S.A., Tx. Marital Status S

5. Children

	Age	Sex	Education	Occupation
(a)		<u>N/A</u>		
(b)				
(c)				
(d)				

6. In what part of the county do you live? NW

7. Highest educational grade completed BBA

8. Any special schooling or training? EMT, HIAA

9. Any courses or training in a legal field? Health Care Law

10. Your occupation and relevant duties for the last ten years:

Image System Coordinator for Sierra
Health Services since 7/10/89. I administrate
an imaging system which scans documents into a computer

11. What is your spouse's occupation, if you have a spouse?

N/A

12. Have you ever been in business for yourself? If yes, please explain.

At 23 partnered in a mobile blind installation company
we closed a year later

13. Ever been a supervisor or boss? If yes, explain.

Sergeant in the AF for one year.

14. Ever served in the military? If yes, please provide some details.

Enlisted @ 18
USAF as a medic. Obtained EMT
license & rank of Sergeant. Honorable discharge
after 4 years.

15. Do you attend religious services? If yes, what church or service, and how often?

Baptized Catholic. Attend services on Easter &
Christmas generally, sometimes at other
denominations.

16. Have you ever changed religions? If so, why?

No, despite #15
above, I am Catholic but I am not compelled
to attend only Catholic services.

17. Any relatives who are judges or attorneys? If yes, what is your relationship to them and how often do you talk to them?

No. No. Yes. A friend in
Brownsville Texas named Louis Sarola.
I talk to him about once a month.

18. Any relatives in law enforcement? If yes, what is your relationship, and how often do you talk to them

No

19. Ever been a juror before? If yes, what did you think of the experience?

No

20. Have you or any member of your family ever had a drug or alcohol problem?

No

21. Have you or any members of your family ever been arrested? If so, why? And what

happened?

No

22. Do you have any bias or ill feeling toward the police or the government or prosecutors as a result of any prior experience with law enforcement?

No

23. Have you or any one you know been a victim of domestic violence?

No I have not, but there are many friends of mine who have, as well as co-workers.

24. Have you or any one you know been affected by domestic violence? How?

Emotionally, it seems to take a heavy toll. They become bitter, wary and resentful.

Opinions, Interests, & Views

25. What do you think of the criminal justice system?

Not perfect, but better than anywhere else.

26. What are your hobbies and interests?

Golf, Fishing, chess, gambling & Computers

27. Do you consider yourself to be a leader or a follower? Follower Why?

Where I lead no one wants to follow.

28. What do you like to read?

Sports mags, Classic Fiction,

What do you think of each of the following:

29. Defense attorneys

The angle finders. Masters of the loophole, but essential to fully exposing the circumstances of a case.

30. Public Defenders

Cornerstone of American Justice overworked, underpaid, not able to provide the angles of a Defense attorney.

31. State Prosecutors

Same as Public Defenders

32. Federal Prosecutors Same as State Prosecutors.
No direct involvement with any of these,
just my perception.

33. Police officers Have an honest desire to
serve & protect. Mistakes brought on
by stress or whatever.

34. Judges

35. The Death Penalty Justified though life in
prison seems the harshest penalty of
all.

36. The statement: "An Eye for an Eye:" Justice should never
exceed this premise.

37. The statement: "You Shall Not Kill:" You should not take a
life unless your life or the life of a loved
one is in danger

38. The statement: If a prosecutor has taken the trouble of bringing someone to trial,
then the person must be guilty. Possibly not beyond a reasonable
doubt however.

39. The statement: A defendant in a criminal trial should be required to prove his
innocence: False. Better the guilty go free
than one innocent man be convicted.

40. The statement: The Death Penalty is appropriate in some cases, but not in others:
True. Circumstances ~~and~~ ~~evidence~~ should
play a role in sentencing.

41. The statement: The Death Penalty is appropriate in all cases where somebody murders
somebody: No. The premeditation and
events involved should play a role.

42. The statement: A defendant's background should be considered in deciding whether
or not the death penalty is an appropriate punishment: No, not background.

43. The statement: The facts surrounding a killing, and not the killer's background, should
be the main consideration in determining punishment: True

44. The statement: Black people cause more crime than white people:

False. They are convicted more,
but do not cause more.

45. The statement: It's Ok for black people and white people to date each other and have children together. True

46. The statement: It may be Ok for people of different races to date each other, but I would have a hard time dealing with my child doing it: False

47. More than anything else, what should the attorneys in this case know about you in deciding whether you should be on the jury:

How impartial I am
How clear my thinking is
How well I can use facts
to make decisions.

48. Do you want to be on the jury? Why yes or Why no?

Yes. To experience it, to get out
of work, to do my civic duty and
because I do feel that I am
able to be impartial if reasonable.

49. If Mr. Chappell is convicted of first degree murder, and a penalty hearing is held, would you consider all four possible sentences, those being the death penalty, life without the possibility of parole, life with the possibility of parole, or a fixed term of 50 years with the possibility of parole

Yes

50. In your present state of mind, can you, if selected as a juror, consider equally all four possible forms of punishment and select the one that you feel is the most appropriate depending upon the facts and the law?

Yes

51. If you believed the evidence warranted the death penalty, could you personally vote to impose the death penalty? Yes

52. Are you a member of any organization that advocates or opposes the imposition of the death penalty? No

Explanation Area

Feel free to supplement any of your prior answers, or ask any questions which you may have.

Oath

I swear or affirm that the responses given are true and accurate to the best of my knowledge and belief.

Signature

Date

Admonition

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A. William Maupin, District Judge

Badge # 473
I.D.# 1605525

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The parties anticipate that the trial of this case could last two weeks; a possible penalty hearing could last an additional week. All the trial and penalty proceedings in this case could last a total of three weeks.

1. Do you have any thoughts, concerns, or questions about this procedure:

NO

2. Are you familiar with this case? Have you read media reports about it? Do you know Deborah Panos or James Chappell? NO

Questions About You

3. Your full name KENNETH R. FITZGERALD Race CAUCASIAN

4. Age 39 Place of birth C.A. Marital Status SINGLE

5. ~~Children~~

Age Sex Education Occupation

- (a) _____
- (b) _____
- (c) _____
- (d) _____

6. In what part of the county do you live? LAS VEGAS NV. S.E.

7. Highest educational grade completed 12

8. Any special schooling or training? _____

9. Any courses or training in a legal field? _____

10. Your occupation and relevant duties for the last ten years: _____

MUSICIAN/SINGER/SOUND ENG.

11. What is your spouses's occupation, if you have a spouse? _____

12. Have you ever been in business for yourself? If yes, please explain. _____

SELF EMPLOYED MUSICIAN

13. Ever been a supervisor or boss? If yes, explain. _____

BAND LEADER

14. Ever served in the military? If yes, please provide some details. _____

15. Do you attend religious services? If yes, what church or service, and how often? _____

16. Have you ever changed religions? If so, why? _____

17. Any relatives who are judges or attorneys? If yes, what is your relationship to them and how often do you talk to them? _____

18. Any relatives in law enforcement? If yes, what is your relationship, and how often do you talk to them? _____

19. Ever been a juror before? If yes, what did you think of the experience? _____

20. Have you or any member of your family ever had a drug or alcohol problem? _____

21. Have you or any members of your family ever been arrested? If so, why? And what

happened? DUI,

22. Do you have any bias or ill feeling toward the police or the government or prosecutors as a result of any prior experience with law enforcement? NO

23. Have you or any one you know been a victim of domestic violence? NO

24. Have you or any one you know been affected by domestic violence? How? NO

Opinions, Interests, & Views

25. What do you think of the criminal justice system? I DONT KNOW MUCH ABOUT IT

26. What are your hobbies and interests? MUSIC / SING & WRITING

27. Do you consider yourself to be a leader or a follower? LEADER Why? I LIKE TO MAKE MY OWN DECISIONS

28. What do you like to read? MAGAZINES AND MANUALS

What do you think of each of the following:

29. Defense attorneys ~~THEY~~, I DONT

30. Public Defenders I DONT

31. State Prosecutors I DONT

32. Federal Prosecutors I DON'T

33. Police officers I DON'T

34. Judges I DON'T

35. The Death Penalty I HAVEN'T A OPINION AT THIS TIME

36. The statement: "An Eye for an Eye:" STUPID

37. The statement: "You Shall Not Kill:" IN A PERFECT WORLD

38. The statement: If a prosecutor has taken the trouble of bringing someone to trial, then the person must be guilty. OF COURSE THATS NO A TRUE STATEMENT

39. The statement: A defendant in a criminal trial should be required to prove his innocence: NOT IN THIS COUNTRY

40. The statement: The Death Penalty is appropriate in some cases, but not in others: MAYBE SO

41. The statement: The Death Penalty is appropriate in all cases where somebody murders somebody: NOT NECESSARILY

42. The statement: A defendant's background should be considered in deciding whether or not the death penalty is an appropriate punishment: ALL FACTS SHOULD BE

43. The statement: The facts surrounding a killing, and not the killer's background, should be the main consideration in determining punishment: ALL FACTS SHOULD BE CONSIDERD

44. The statement: Black people cause more crime than white people:

STUPID

45. The statement: It's Ok for black people and white people to date each other and have children together. YES I DONT MIND

46. The statement: It may be Ok for people of different races to date each other, but I would have a hard time dealing with my child doing it: SOUNDS CLOSE MINDED

47. More than anything else, what should the attorneys in this case know about you in deciding whether you should be on the jury: I'M JUST A PERSON LIKE EVERY ONE ELSE

48. Do you want to be on the jury? Why yes or Why ~~no~~? I HAVE A LOT OF WORK TO DO AND LITTLE TIME RIGHT NOW

49. If Mr. Chappell is convicted of first degree murder, and a penalty hearing is held, would you consider all four possible sentences, those being the death penalty, life without the possibility of parole, life with the possibility of parole, or a fixed term of 50 years with the possibility of parole

SURE

50. In your present state of mind, can you, if selected as a juror, consider equally all four possible forms of punishment and select the one that you feel is the most appropriate depending upon the facts and the law?

SURE

51. If you believed the evidence warranted the death penalty, could you personally vote to impose the death penalty? YES

52. Are you a member of any organization that advocates or opposes the imposition of the death penalty? No

Explanation Area

Feel free to supplement any of your prior answers, or ask any questions which you may have.

Oath

I swear or affirm that the responses given are true and accurate to the best of my knowledge and belief.

Date

Admonition

You are instructed not to discuss this questionnaire or any aspect of this case with anyone, including other prospective jurors. You are further instructed not to view, read, or listen to any media account of these proceedings.

A. William Maupin, District Judge

1 RECEIPT OF A COPY of the foregoing Stipulation and Order
2 is hereby acknowledged this 27th day of May, 1997.

3 STEWART L. BELL
4 CLARK COUNTY DISTRICT ATTORNEY

5
6 By  _____
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23 RECEIPT OF A COPY of the foregoing Stipulation and Order
24 is hereby acknowledged this 27th day of May, 1997.

25 LORETTA BOWMAN
26 DISTRICT COURT CLERK

27
28 By  _____

Case No. C-131341

Dept. No. 111

Docket No.

OCT 19 4 40 PM '99

Subscribed and sworn to
CLERK

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

JAMES MONTELL CHAPPELL, PETITIONER,

v.

E. K. McDANIEL, WARDEN, RESPONDENT,

FROM A JUDGMENT OF CONVICTION AND SENTENCE OF DEATH
EIGHTH JUDICIAL DISTRICT COURT, CLARK COUNTY,
LAS VEGAS, NEVADA

PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

JAMES M. CHAPPELL
PETITIONER

By:

James M. Chappell
JAMES M. CHAPPELL
In Propria Persona
Inmate No. 52338
ELY STATE PRISON
P. O. BOX 1989
ELY, NEVADA 89301

RECEIVED

OCT 19 1999

COUNTY CLERK

PARTIES TO THE PROCEEDINGS

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PETITIONER

JAMES MONTELL CHAPPELL
In Propria Persona
Inmate No. 52338
ELY STATE PRISON
P. O. BOX 1989
ELY, NEVADA 89301

RESPONDENT

E. K. MCDANIEL, WARDEN
ELY STATE PRISON
P. O. BOX 1989
ELY, NEVADA 89301

STEWART L. BELL
CLARK COUNTY DISTRICT ATTORNEY
200 SOUTH THIRD STREET, SUITE 701
LAS VEGAS, NEVADA 89155

FRANKIE SUE DEL PAPA
NEVADA ATTORNEY GENERAL
100 NORTH CARSON STREET
CARSON CITY, NEVADA 89701

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OPINION, SUPREME COURT OF NEVADA
DATED DECEMBER 30, 1998

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PETITION QUESTION 16. (a), (3) Grounds Raised:

APPENDIX "C"

SUPREME COURT OF NEVADA ORDER DENYING REHEARING
DATED MARCH 17, 1999

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PETITION QUESTION 23. (a) Ground One - Supporting Facts

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Constitutions

United States Constitution
Fifth Amendment.....APPENDIX "J" PAGE 1
Fourteenth Amendment.....APPENDIX "J" PAGE 1

Case No. C-137-1

Dept. No. _____

FILED

OCT 19 1999

SHIRLEY B. PARRAGUIRRE, CLERK
v. Wall DEPUTY

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

JAMES M. CHAPPELL,

Petitioner,

v.

E. K. McDANIEL, WARDEN,

Respondent.

PETITION FOR WRIT
OF HABEAS CORPUS
(POST-CONVICTION)

INSTRUCTIONS:

(1) This petition must be legibly handwritten or type-written, signed by the petitioner and verified.

(2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.

(3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.

(4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the department of prisons, name the warden or head of the institution. If you are not in a specific institution of the department but within its custody, name the director of the department of prisons.

(5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence.

-1-

MC

CE42 CE52

1 Failure to raise all grounds in this petition may preclude you
2 from filing future petitions challenging your conviction and
sentence.

3 (6) You must allege specific facts supporting the claims
4 in the petition you file seeking relief from any conviction or
5 sentence. Failure to allege specific facts rather than just
6 conclusions may cause your petition to be dismissed. If your
petition contains a claim of ineffective assistance of counsel,
that claim will operate to waive the attorney-client privilege
for the proceeding in which you claim your counsel was
ineffective.

7 (7) If your petition challenges the validity of your
8 conviction or sentence, the original and one copy must be filed
9 with the clerk of the district court for the county in which
the conviction occurred. Petitions raising any other claims
10 must be filed with the clerk of the district court for the
county in which you are incarcerated. One copy must be mailed
11 to the respondent, one copy to the attorney general's office,
and one copy to the district attorney of the county in which
12 you were convicted or to the original prosecutor if you are
challenging your original conviction or sentence. Copies must
13 conform in all particulars to the original submitted for
filing.

14 PETITION

15 1. Name of institution and county in which you are
16 presently imprisoned or where and how you are presently
17 restrained of your liberty:

18 ELY STATE PRISON, WHITE PINE COUNTY, ELY, NEVADA.

19 2. Name and location of court which entered the judgment
20 of conviction under attack: Eighth Judicial District Court Of
21 The State Of Nevada, Clark County, Las Vegas, Nevada

22 3. Date of judgment of conviction: December 31, 1996

23 4. Case number: C-131341

24 5. (a) Length of sentence: DEATH

25 (b) If sentence is death, state any date upon which
26 execution is scheduled: N/A.

27 6. Are you presently serving a sentence for a conviction
28 other than the conviction under attack in this motion:

1 Yes _____ No XXXXXX. If "yes," list crime, case number and
2 sentence being served at this time: N/A.
3 _____
4 _____

5 7. Nature of offense involved in conviction being
6 challenged: MURDER (FELONY - NRS 200.010, 200.030); BURGLARY
7 (FELONY - NRS 205.060); and ROBBERY (FELONY - NRS 200.380).

8 8. What was your plea? (check one)

9 (a) Not guilty XXXXXXXX

10 (b) Guilty _____

11 (c) Nolo contendere _____

12 9. If you entered a guilty plea to one count of an
13 indictment or information, and a not guilty plea to another
14 count of an indictment or information, or if a guilty plea was
15 negotiated, give details: N/A.
16 _____
17 _____

18 10. If you were found guilty after a plea of not guilty,
19 was the finding made by: (check one)

20 (a) Jury XXXXXXX

21 (b) Judge without a jury: N/A.

22 11. Did you testify at the trial? Yes XXXXX No _____

23 12. Did you appeal from the judgment of conviction?

24 Yes XXXXX No _____

25 13. If you did appeal, answer the following:

26 (a) Name of court: Nevada Supreme Court

27 (b) Case number or citation: 29884
28

1 (c) Result: Denied

2 (d) Date of Result: December 30, 1998.

3 (Attach copy of order or decision, if available).

4 (SEE APPENDIX "A")

5 14. If you did not appeal, explain briefly why you did
not: N/A.

6
7 15. Other than a direct appeal from the judgment of
8 conviction and sentence, have you previously filed any
9 petitions, applications or motions with respect to this
10 judgment in any court, state or federal? Yes XXXXX No _____.

11 16. If your answer to No. 15 was "yes," give the
12 following information:

13 (a) (1) Name of Court: Nevada Supreme Court

14 (2) Nature of proceeding: Petition For Rehearing

15
16
17 (3) Grounds raised: SEE APPENDIX "B"

18
19
20 (4) Did you receive an evidentiary hearing on
21 your petition, application or motion? Yes _____ No XXXXX

22 (5) Result: Denied

23 (6) Date of Result: March 17, 1999.

24 (7) If known, citations of any written opinion or
25 date of orders entered pursuant to each result: SEE APPENDIX "C"

1 (b) As to any second petition, application or motion,
2 give the same information:

- 3 (1) Name of Court: United States Supreme Court
4 (2) Nature of proceeding: Petition Writ Of Certiorari
5 (3) Grounds raised: SEE APPENDIX "D"
6 (4) Did you receive an evidentiary hearing on
7 your petition, application or motion? Yes No XXXXX
8 (5) Result: Denied
9 (6) Date of Result: October 6, 1999
10 (7) If known, citations or any written opinion or
11 date of orders entered pursuant to each result: N/A.
12

13 (c) As to any third or subsequent additional
14 applications or motions, give the same information as above,
15 list them on a separate sheet and attach. N/A.

16 (d) Did you appeal to the highest state or federal
17 court having jurisdiction, the result or action taken on any
18 petition, application or motion? YES.

19 (1) First petition, application or motion?

20 Yes XXXXX No

21 Citation or date of decision: December 30, 1998.

22 (2) Second petition, application or motion?

23 Yes XXXXX No

24 Citation or date of decision: March 17, 1999.

25 (3) Third or subsequent petitions, applications
26 or motions? Yes XXXXX No

27 Citation or date of decision:

1 e. If you did not appeal from the adverse action on
2 any petition, application or motion, explain briefly why you
3 did not. (You must relate specific facts in response to this
4 question. Your response may be included on paper which is
5 8 1/2 x 11 inches attached to the petition. Your response may
6 not exceed five handwritten or typewritten pages in length.)

7 N/A.

8
9 17. Has any ground being raised in this petition been
10 previously presented to this or any other court by way of
11 petition for habeas corpus, motion or application or any other
12 post-conviction proceeding? If so, identify: identify: NO.

13 a. Which of the grounds is the same: N/A.

14
15 b. The proceedings in which these grounds were raised:

16 N/A.

17 c. Briefly explain why you are again raising these
18 grounds. (You must relate specific facts in response to this
19 question. Your response may be included on paper which is
20 8 1/2 x 11 inches attached to the petition. Your response may
21 not exceed five handwritten or typewritten pages in length.)

22 N/A.

23 18. If any of the grounds listed in Nos. 23(a), (b), (c)
24 and (d), or listed on any additional pages you have attached,
25 were not previously presented in any other court, state or
26 federal, list briefly what grounds were not so presented, and
27 give your reasons for not presenting them. (You must relate

1 specific facts in response to this question. Your response may
2 be included on paper which is 8 1/2 by 11 inches attached to
3 the petition. Your response may not exceed five handwritten or
4 typewritten pages in length.)

5 N/A.

6 19. Are you filing this petition more than 1 year
7 following the filing of the judgment of conviction or the
8 filing of a decision on direct appeal? If so, state briefly
9 the reasons for the delay. (You must relate specific facts in
10 response to this question. Your response may be included on
11 paper which is 8 1/2 x 11 inches attached to the petition.
12 Your response may not exceed five handwritten or typewritten
13 pages in length.) NO.

14
15 20. Do you have any petition or appeal now pending in any
16 court, either state or federal, as to the judgment under
17 attack? Yes _____ No XXXXX.

18 If yes, state what court and the case number: N/A.

19
20 21. Give the name of each attorney who represented you in
21 the proceeding resulting in your conviction and on direct
22 appeal: Howard S. Brooks, Michael L. Miller, Morgan D. Harris,
23 Kedric A. Bassett, Willard N. Ewing.

24 22. Do you have any future sentences to serve after you
25 complete the sentence imposed by the judgment under attack?

26 Yes _____ No XXXXX. If yes, specify where and
27 when it is to be served, if you know: N/A.

1 23. State concisely every ground on which you claim that
2 you are being held unlawfully. Summarize briefly the facts
3 supporting each ground. If necessary you may attach pages
4 stating additional grounds and facts supporting same.

5 (a) Ground one: SEE APPENDIX "E"

6
7 Supporting FACTS (Tell your story briefly without citing cases
8 or law): SEE APPENDIX "E"

9
10 (b) Ground two: SEE APPENDIX "F"

11
12 Supporting FACTS (Tell your story briefly without citing cases
13 or law): SEE APPENDIX "F"

14
15 (c) Ground three: SEE APPENDIX "G"

16
17 Supporting FACTS (Tell your story briefly without citing cases
18 or law): SEE APPENDIX "G"

19
20 (d) Ground four: SEE APPENDIX "H"

21
22 Supporting FACTS (Tell your story briefly without citing cases
23 or law): SEE APPENDIX "H"


24
25 ADDITIONAL GROUNDS:

26 SEE APPENDICES: "J"; "K"; "L"; "M"; "N"

1 WHEREFORE, Petitioner prays that the court grant
2 petitioner relief to which he may be entitled in this
3 proceeding.

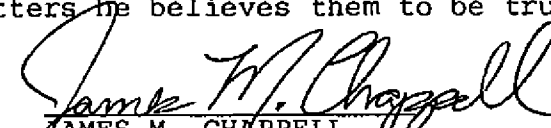
4 EXECUTED at ELY STATE PRISON, WHITE PINE COUNTY, ELY,
5 NEVADA on this 17 day of October, 1999.

6 
7 JAMES M. CHAPPELL
8 PETITIONER

9 By: 
10 JAMES M. CHAPPELL
11 In Propria Persona
12 Inmate No. 52338
13 ELY STATE PRISON
14 P. O. BOX 1989
15 ELY, NEVADA 89301

16 VERIFICATION

17 Under penalty of perjury, the undersigned declares that he
18 is the petitioner named in the foregoing petition and knows the
19 contents thereof; that the pleading is true of his own
20 knowledge, except as to those matters stated on information and
21 belief, and as to such matters he believes them to be true.

22 
23 JAMES M. CHAPPELL
24 PETITIONER

APPENDIX "A"

OPINION, SUPREME COURT OF NEVADA
DATED DECEMBER 30, 1998

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES MONTELL CHAPPELL,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 29864

FILED

DEC 30 1998

JENNIFER M. DOW
CLERK OF THE COURT
BY *J. Richards*

Appeal from a judgment of conviction pursuant to a jury verdict of one count each of burglary, robbery with the use of a deadly weapon, and first-degree murder with the use of a deadly weapon, and from a sentence of death. Eighth Judicial District Court, Clark County; A. William Maupin, Judge.

Affirmed.

Morgan D. Harris, Public Defender, Michael L. Miller, Deputy Public Defender, Howard S. Brooks, Deputy Public Defender, Clark County, for Appellant.

Frankie Sue Del Papa, Attorney General, Carson City; Stewart L. Bell, District Attorney, James Tufteland, Chief Deputy District Attorney, Abbi Silver, Deputy District Attorney, Clark County, for Respondent.

O P I N I O N

PER CURIAM:

On the morning of August 31, 1995, James Montell Chappell was mistakenly released from prison in Las Vegas where he had been serving time since June 1995 for domestic battery. Upon his release, Chappell went to the Ballerina Mobile Home Park in Las Vegas where his ex-girlfriend, Deborah Panos, lived with their three children. Chappell entered Panos' trailer by climbing through the window. Panos was home alone, and she and Chappell engaged in sexual intercourse. Sometime later that morning, Chappell repeatedly stabbed Panos with a kitchen knife, killing her. Chappell then left the

trailer park in Panos' car and drove to a nearby housing complex.

The State filed an information on October 11, 1996, charging Chappell with one count of burglary, one count of robbery with the use of a deadly weapon, and one count of murder with the use of a deadly weapon. On November 8, 1996, the State filed a notice of intent to seek the death penalty. The notice listed four aggravating circumstances: (1) the murder was committed during the commission of or an attempt to commit any robbery; (2) the murder was committed during the commission of or an attempt to commit any burglary and/or home invasion; (3) the murder was committed during the commission of or an attempt to commit any sexual assault; and (4) the murder involved torture or depravity of mind.

Prior to trial, Chappell offered to stipulate that he (1) entered Panos' trailer home through a window, (2) engaged in sexual intercourse with Panos, (3) caused Panos' death by stabbing her with a kitchen knife, and (4) was jealous of Panos giving and receiving attention from other men. The State accepted the stipulations, and the case proceeded to trial on October 7, 1996.

Chappell took the witness stand on his own behalf and testified that he considered the trailer to be his home and that he had entered through the trailer's window because he had lost his key and did not know that Panos was at home. He testified that Panos greeted him as he entered the trailer and that they had consensual sexual intercourse. Chappell testified that he left with Panos to pick up their children from day care and discovered in the car a love letter addressed to Panos. Chappell, enraged, dragged Panos back into the trailer where he stabbed her to death. Chappell argued that his actions were the result of a jealous rage.

The jury convicted Chappell of all charges. Following a penalty hearing, the jury returned a sentence of death on the murder charge, finding two mitigating circumstances -- murder committed while Chappell was under the influence of extreme mental or emotional disturbance and "any other mitigating circumstances" -- and all four alleged aggravating circumstances. The district court sentenced Chappell to a minimum of forty-eight months and a maximum of 120 months for the burglary; a minimum of seventy-two months and a maximum of 180 months for robbery, plus an equal and consecutive sentence for the use of a deadly weapon; and death for the count of murder in the first degree with the use of a deadly weapon. The district court ordered all counts to run consecutively. Chappell timely appealed his conviction and sentence of death.

DISCUSSION

Admission of evidence of prior bad acts

Chappell contends that the district court abused its discretion by admitting evidence of prior acts of theft without holding a Petrocelli¹ hearing. During the State's case-in-chief, LaDonna Jackson testified that Chappell was known as a "regulator"² and that, on one occasion, he sold his children's diapers for drug money.

Ordinarily, in order for this court to review a district court's decision to admit evidence of prior bad acts, a Petrocelli hearing must have been conducted on the record. *Armstrong v. State*, 110 Nev. 1322, 1324, 885 P.2d 600, 600-01

¹See *Petrocelli v. State*, 101 Nev. 46, 692 P.2d 503 (1985).

²Jackson testified that a "regulator" is a person who steals items from a store and then resells those items for money or drugs.

(1994). However, where the district court fails to hold a proper hearing on the record, automatic reversal is not mandated where "(1) the record is sufficient for this court to determine that the evidence is admissible under the test for admissibility of bad acts evidence . . . ; or (2) where the results would have been the same if the trial court had not admitted the evidence." *Qualls v. State*, 114 Nev. ___, ___, 961 P.2d 765, 767 (1998).

The district court in the instant case did not hold a Petrocelli hearing either on or off the record. Under the circumstances, we conclude that the record is not sufficient for this court to determine whether the evidence was admissible under the test for admissibility of prior bad acts evidence. In light of the overwhelming evidence of guilt in this case, however, we conclude that had the district court not admitted the evidence, the results would have been the same. *See Big Pond v. State*, 101 Nev. 1, 3, 692 P.2d 1288, 1289 (1985) (when deciding whether an error is harmless or prejudicial, the following considerations are relevant: "whether the issue of innocence or guilt is close, the quantity and character of the error, and the gravity of the crime charged"); *see also Bradley v. State*, 109 Nev. 1090, 1093, 864 P.2d 1272, 1274 (1993). Accordingly, we hold that the district court's failure to conduct a Petrocelli hearing before admitting this evidence amounted to harmless error, and does not, therefore, require reversal.

Issues arising out of alleged aggravating circumstances

Chappell argues that insufficient evidence exists to support the jury's finding of the four alleged aggravating circumstances. The first three aggravating circumstances depend on whether Chappell killed Panos during the commission

of or an attempt to commit robbery, burglary and/or home invasion, and sexual assault. Chappell's challenge to each of these aggravators comes down to a challenge of the sufficiency of the evidence supporting each of the "aggravating" offenses.

On appeal, the standard of review for sufficiency of the evidence is "whether the jury, acting reasonably, could have been convinced of the defendant's guilt beyond a reasonable doubt." *Kazalyn v. State*, 108 Nev. 67, 71, 925 P.2d 573, 581 (1992). Where there is sufficient evidence in the record to support the verdict, it will not be overturned on appeal. *Id.* We conclude that there is sufficient evidence to support the aggravating circumstances for robbery, burglary and sexual assault. We further conclude that the evidence does not support the aggravating circumstance of torture or depravity of mind.

Robbery

Chappell contends that the evidence shows that he took Panos' car as an afterthought and, therefore, cannot be guilty of robbery. The State argues that a rational trier of fact could find that Chappell took Panos' social security card and car through the use of actual violence or the threat of violence. Under Nevada's criminal law, robbery is defined as

the unlawful taking of personal property from the person of another, or in his presence, against his will, by means of force or violence or fear of injury, immediate or future, to his person or property 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.

The statute does not require that the force or violence be committed with the specific intent to commit robbery.

This court has held that in robbery cases it is irrelevant when the intent to steal the property is formed. In *Norman v. Sheriff*, 92 Nev. 695, 697, 553 P.2d 541, 542 (1976), this court stated:

(A)lthough the acts of violence and intimidation preceded the actual taking of the property and may have been primarily intended for another purpose, it is enough, to support the charges in the indictment, that appellants, taking advantage of the terrifying situation they created, fled with [the victim's] property.

This position was affirmed in *Sheriff v. Jefferson*, 93 Nev. 392, 394, 649 P.2d 1365, 1366-67 (1982), and *Patterson v. Sheriff*, 93 Nev. 238, 239, 562 P.2d 1134, 1135 (1977). See also *State v. Myers*, 640 P.2d 1245 (Kan. 1982) (holding that where aggravated robbery requires taking by force or threat of force while armed, it is sufficient that defendant shot victim and then returned three hours later to take victim's wallet, as there was a continuous chain of events and the prior force made it possible to take the property without resistance); *State v. Mason*, 403 So. 2d 701 (La. 1981) (holding that acts of violence need not be for the purpose of taking property and that it is sufficient that the taking of a purse was accomplished as a result of earlier acts of pushing victim onto bed and pulling her clothes).

Accordingly, we hold that there is sufficient evidence to support the conviction of robbery and the finding of robbery as an aggravating circumstance.

Burglary

Chappell argues that the State adduced insufficient evidence to prove that he committed a burglary. We disagree. MRS 205.060(1) provides that a person is guilty of burglary when he "by day or night, enters any . . . semitrailer or house trailer . . . with the intent to commit grand or petit larceny, assault or battery on any person or any felony." At trial, the State introduced evidence that Panos wanted to end her relationship with Chappell, that Chappell had threatened and abused Panos in the past, and that Panos did not communicate with Chappell while he was in jail. Moreover, there was testimony that the trailer appeared ransacked, and that Panos' social security card and car keys were found in Chappell's possession. Accordingly, we conclude that there is sufficient evidence to support the conviction of burglary and the finding by the jury of burglary as an aggravator.

Sexual assault

Chappell argues that the State failed to prove beyond a reasonable doubt that the sexual encounter between Chappell and Panos was nonconsensual. We do not agree. The jury was instructed to find sexual assault if Chappell engaged in sexual intercourse with Panos "against [her] will" or under conditions in which Chappell knew or should have known that Panos was "mentally and emotionally incapable of resisting." The evidence at trial and during the penalty hearing showed that Panos and Chappell had an abusive relationship, that Panos had ended her relationship with Chappell, that Chappell was extremely jealous of Panos' relationships with other men, and that Panos was involved with another man at the time of the killing. We conclude that a rational trier of fact could have concluded that either Panos would not have consented to

sexual intercourse under these circumstances or was mentally or emotionally incapable of resisting Chappell's advances, and that Chappell therefore committed sexual assault. Consequently, the evidence supports the jury's finding of sexual assault as an aggravating circumstance.

Torture or depravity of mind

Chappell argues that the circumstances of Panos' death do not rise to the level necessary to establish torture or depravity of mind. We agree. The depravity of mind aggravator applies in capital cases if "torture, mutilation or other serious and depraved physical abuse beyond the act of killing itself" is shown. *Robins v. State*, 106 Nev. 611, 629, 798 P.2d 555, 570 (1990); NRS 200.033(8).³ In the present case, the jury was instructed that the elements of murder by torture are that "(1) the act or acts which caused the death must involve a high degree of probability of death, and (2) the defendant must commit such act or acts with the intent to cause cruel pain and suffering for the purpose of revenge, persuasion or for any other sadistic purpose."⁴ Panos died as a result of multiple stab wounds; thus, the first element is satisfied. The second element is not as easily met under the facts of this case.

The State argues that evidence of torture may be found in the following: Panos was severely beaten by

³NRS 200.033(8) was amended in 1995 deleting the language of "depravity of mind." 1995 Nev. Stat., ch. 467, §§ 1-3, at 1490-91. In the present case, the murder was committed before October 1, 1995, thus, the previous version of NRS 200.033(8) applies. *Id.*

⁴These instructions were approved by this court in *Deutscher v. State*, 95 Nev. 669, 677 n.5, 601 P.2d 407, 413 n.5 (1979); see NRS 200.030(1)(a) (defining first-degree murder by torture as murder "[p]erpetrated by means of . . . torture").

Chappell, there were numerous bruises and abrasions on Panos' face, Panos was stabbed in the groin area and chest. Panos was stabbed thirteen times, and four of the stabs were of such force as to have penetrated the spinal cord in Panos' neck. We conclude that there is no evidence that Chappell stabbed Panos with any intention other than to deprive her of life. No evidence exists that Chappell intended to cause Panos cruel suffering for the purposes of revenge, persuasion, or other sadistic pleasure. Nor does Chappell's act of stabbing Panos thirteen times rise to the level of torture. Accordingly, we hold that the record does not contain sufficient evidence to support the aggravating circumstance of depravity of mind and torture.

Invalidating an aggravating circumstance

Invalidating an aggravating circumstance does not automatically require this court to vacate a death sentence and remand for new proceedings before a jury. See Witter v. State, 112 Nev. 908, 929, 921 P.2d 886, 900 (1996); see also Canape v. State, 109 Nev. 864, 881-83, 859 P.2d 1023, 1034-35 (1993). Where at least one other aggravating circumstance exists, this court may either reweigh the aggravating circumstances against the mitigating evidence or conduct a harmless error analysis. Witter, 112 Nev. at 929-30, 921 P.2d at 900. In the present case, the jury designated as mitigating circumstances (1) that the murder was committed while the defendant was under the influence of extreme mental or emotional disturbance, and (2) any other mitigating circumstances. We conclude that the remaining three aggravators, robbery, burglary and sexual assault, clearly outweigh the mitigating evidence presented by Chappell. We therefore conclude that Chappell's death sentence was proper.

Mandatory review of propriety of death penalty

NRS 177.055(2)⁵ requires this court to review every death penalty sentence. Pursuant to the statutory requirement, and in addition to the contentions raised by Chappell and addressed above, we have determined that the aggravating circumstances of robbery, burglary and sexual assault, found by the jury, are supported by sufficient evidence. Moreover, there is no evidence in the record indicating that Chappell's death sentence was imposed under the influence of passion, prejudice or any arbitrary factor. Lastly, we have concluded that the death sentence Chappell received was not excessive considering the seriousness of his crimes and Chappell as a person.

Additional issues raised on appeal

Chappell further contends that: (1) the State's use of peremptory challenges to excuse two African-American jurors from the jury pool was discriminatory; (2) the district court erred in admitting hearsay statements; (3) the district court erred by denying Chappell's motion to strike the notice of intent to seek the death penalty; (4) the State improperly

⁵ NRS 177.055(2) provides:

2. Whether or not the defendant or his counsel affirmatively waives the appeal, the sentence must be reviewed on the record by the supreme court, which shall consider, in a single proceeding if an appeal is taken:

(a) Any error enumerated by way of appeal;

(b) Whether the evidence supports the finding of an aggravating circumstance or circumstances;

(c) Whether the sentence of death was imposed under the influence of passion, prejudice or any arbitrary factor; and


(d) Whether the sentence of death is excessive, considering both the crime and the defendant.

appealed to the jury for vengeance during the penalty phase; (5) cumulative error denied Chappell a fair hearing; and (6) victim impact testimony denied Chappell a fair penalty hearing. We have reviewed each of these issues and conclude that they lack merit.

CONCLUSION

For the foregoing reasons, we affirm the judgment of conviction for robbery, burglary and first-degree murder and the sentence of death.⁶ ⁷


Shearing J.


Rose J.


Young J.

⁶The Honorable Charles E. Springer, Chief Justice, voluntarily recused himself from participation in the decision of this appeal.

⁷The Honorable A. William Maupin, Justice, voluntarily recused himself from participation in the decision of this appeal.

APPENDIX "B"

PETITION QUESTION 16. (a), (3) Grounds raised:

NEVADA SUPREME COURT
PETITION FOR REHEARING

Grounds raised:

1. MISAPPREHENSION OR OVERSIGHT: THE SUPREME COURT OPINION DID NOT ADDRESS OR CONSIDER THE ATTACK ON CHAPPELL'S CHARACTER WHICH DENIED CHAPPELL A FAIR TRIAL IN VIOLATION OF STATE AND FEDERAL CONSTITUTIONAL GUARANTEES.
2. MISAPPREHENSION OR OVERSIGHT: THE SUPREME COURT'S OPINION NEVER ACKNOWLEDGES THE STATE ATTACKED CHAPPELL'S CHARACTER PRIOR TO HIS DECIDING WHETHER TO TESTIFY.
3. MISAPPREHENSION OR OVERSIGHT: THE SUPREME COURT'S OPINION NEVER ACKNOWLEDGES THAT WHEN CHAPPELL DID TESTIFY, THE STATE USED CROSS EXAMINATION TO EXPAND THE CHARACTER ATTACK.
4. MISAPPREHENSION OR OVERSIGHT: THE SUPREME COURT'S OPINION NEVER DISCUSSES THE TRIAL COURT'S ABUSE OF DISCRETION IN ALLOWING EVIDENCE OF PRIOR DOMESTIC BATTERIES WHEN THOSE PRIOR BATTERIES WERE NOT RELEVANT.
5. MISAPPREHENSION OR OVERSIGHT: THE SUPREME COURT'S OPINION NEVER ACKNOWLEDGES THE LANGUAGE FROM A JUST RELEASE OPINION THAT PRIOR EVIDENCE OF PHYSICAL ABUSE IS HIGHLY PREJUDICIAL TO A DEFENDANT CHARGED WITH MURDER.
6. MISAPPREHENSION OR OVERSIGHT: THE SUPREME COURT'S OPINION FAILS TO DISCUSS OR ACKNOWLEDGE THE SUBSTANTIAL CASE LAW REQUIRING RECOGNITION OF CUMULATIVE ERROR.
7. MISAPPREHENSION OR OVERSIGHT: THE SUPREME COURT'S OPINION NEVER ACKNOWLEDGES THAT THIS CASE WAS ABOUT DEGREES OF

LIABILITY, NOT GUILT.

1 8. MISAPPREHENSION OR OVERSIGHT: THE SUPREME COURT'S OPINION
2 IGNORES THE STATE'S WILLFUL REMOVAL OF BLACK JURORS,
3 RESULTING IN AN ALL WHITE JURY IN A CASE WHERE A BLACK MAN
4 KILLED A WHITE WOMAN.

5 9. DID THE SUPREME COURT OVERLOOK OR MISAPPREHEND THE
6 FUNDAMENTAL PRINCIPLE THAT A DECISION TO KILL A CONVICTED
7 MURDERER IS NEVER MANDATORY, EVEN WHEN AGGRAVATING
8 CIRCUMSTANCES OUTWEIGH MITIGATING CIRCUMSTANCES?

9 10. THE SUPREME COURT'S FAILURE TO CONSIDER THE MATTERS PRESENTED
10 BY THE APPELLANT IN THIS APPEAL DENIED THE APPELLANT HIS
11 FEDERAL AND STATE CONSTITUTIONAL RIGHTS TO MEANINGFUL
12 APPELLATE REVIEW.

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15 ///

APPENDIX "C"

SUPREME COURT OF NEVADA
ORDER DENYING REHEARING
DATED MARCH 17, 1999

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES MONTELL CHAPPELL,

No. 29884

Appellant,

vs.

FILED

THE STATE OF NEVADA,

MAR 17 1999

Respondent.

CLERK OF SUPREME COURT
BY *J. Richards*

ORDER DENYING REHEARING

This is a petition for rehearing of Chappell v. State, 114 Nev. __, __ P.2d __ (Adv. Op. No. 148, December 30, 1998). Appellant James Montell Chappell was convicted, pursuant to a jury verdict, of one count each of first degree murder with the use of a deadly weapon, robbery with the use of a deadly weapon, and burglary for the murder of his ex-girlfriend, Deborah Panos, by multiple stab wounds. The jury returned a verdict of death after finding that two mitigating circumstances (the murder was committed while under the influence of extreme mental or emotional disturbance and any other mitigating circumstances) did not outweigh four aggravating factors (the murder was committed during the commission of a robbery, burglary, and sexual assault, and the murder involved torture or depravity of mind). On appeal, this court affirmed Chappell's conviction and sentence of death, but concluded that the torture aggravating factor was not supported by sufficient evidence. After reweighing the remaining aggravating factors against the mitigating circumstances, this court concluded that the death sentence was not improper. Subsequently, Chappell filed the instant petition for rehearing, and the state filed an opposition.

When petitioning for rehearing, a petitioner may not reargue a point already raised, nor raise a point for the first time. NRAP 40(c)(1). This court may consider rehearing when the court has overlooked or misapprehended a material fact or material question of law or when the court has overlooked,


misapplied, or failed to consider any legal authority directly controlling a dispositive issue. NRAP 40(c)(2).

Chappell correctly indicates that this court did not address two issues in the opinion: whether the district court erroneously admitted evidence of Chappell's prior acts of domestic violence upon Panos, and whether the district court erroneously admitted evidence that Chappell was unemployed. Although these issues were not specifically discussed in the opinion, prior to filing the opinion we had carefully and fully reviewed these issues and determined that they did not require reversal.

The remaining contentions Chappell raises in this petition are either rearguments in violation of NRAP 40(c)(1) or do not warrant rehearing under the standards enumerated in NRAP 40(c)(2). Accordingly, we deny rehearing.

It is so ORDERED.¹

 _____, C.J.
Rose

 _____, J.
Young

 _____, J.
Shearing

cc: Hon. Mark W. Gibbons, District Judge
Hon. Frankie Sue Del Papa, Attorney General
Hon. Stewart L. Bell, District Attorney
Morgan D. Harris, Public Defender
Shirley Parraguirre, Clerk

¹This petition challenges an opinion that was issued prior to the expansion of the court from five to seven justices on January 4, 1999. Only those justices remaining on the court who previously heard this matter participated in this decision. The Honorable A. William Maupin, Justice, voluntarily recused himself from the decision of this matter.

APPENDIX "D"

PETITION QUESTION 16, (b), (3) Grounds raised:

UNITED STATES SUPREME COURT
PETITION FOR WRIT OF CERTIORARI
TO THE NEVADA SUPREME COURT

Grounds raised:

1. THE STATE DISCRIMINATED AGAINST PETITIONER BY
USING PEREMPTORY CHALLENGES TO SELECTIVELY
EXCLUDE THE ONLY TWO BLACK PERSONS QUALIFIED
FOR THE JURY POOL.

APPENDIX "E"

PETITION QUESTION 23. (a) Ground One - Supporting Facts

(a) Ground One:

1 All issues raised on direct appeal, because petitioner
2 was prevented from successfully pursuing them due to erroneous
3 court rulings.

4 Supporting Facts:

5 See, Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994)
6 (erroneous court rulings constitute impediment external to
7 the defense which justifies re-litigation of same issues in
8 subsequent court proceedings).

9 ///

10 ///

11 ///

APPENDIX "F"

PETITION QUESTION 23. (b) Ground Two - Supporting Facts

(b) Ground Two:

All issues raised in the petition for certiorari to the
United States Supreme Court.

Supporting Facts:

No supporting facts available.

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APPENDIX "G"

PETITION QUESTION 23. (c) Ground Three - Supporting Facts

(c) Ground Three:

Any and all cognizable issues not raised on direct appeal but which become known to effective post-conviction counsel after both a comprehensive investigation of the facts surrounding this case and thorough and exhaustive search of the record.

Supporting Facts:

No supporting facts available.

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APPENDIX "H"

PETITION QUESTION 23. (d) Ground Four - Supporting Facts

(d) Ground Four:

Any and all cognizable issues not contained in the record that shall become known to effective post-conviction counsel after a comprehensive investigation of the facts surrounding this case.

Supporting Facts:

No supporting facts available.

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APPENDIX "I"

PETITION QUESTION 23. (e) Ground Five - Supporting Facts

APPENDIX "J"

PETITION QUESTION 23. (f) Ground Six - Supporting Facts

(f) Ground Six:

Petitioner's conviction and sentenced imposed for the crime (s) of Burglary; Robbery; and Murder is unlawful and unconstitutional because [he] was not indicted be a Grand Jury for the crime (s) of Burglary; Robbery; and Murder as provided by the Fifth and Fourteenth Amendments to the United States Constitution.

Supporting Facts:

The petitioner, James M. Chappell, was charged, convicted and sentenced for the crime (s) of Burglary; Robbery; and Murder without first being indicted by a Grand Jury as provided by the Fifth and Fourteenth Amendments to the United States Constitution.

CONSTITUTION OF THE UNITED STATES
AMENDMENT V. provides:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The petitioner is a citizen of the United States, and as such is protected by the Fourteenth Amendment to the United States Constitution. All persons born or naturalized in the

1 United States are subject and protected by the Constitution
2 of the United States. No state shall make or enforce any law
3 which shall abridge the privileges or immunities of citizens
4 of the United States; nor shall any state deprive any person
5 of life, liberty, or property, without first due process of
6 law.

7 The petitioner is sentenced to death and was not first
8 indicted by a Grand Jury. The petitioner did not waive [his]
9 right to be indicted by a Grand Jury. By the state of Nevada
10 not first obtaining a indictment from a Grand Jury raises a
11 constitutional claim that the petitioner believes that [he]
12 is entitled to redress for.

13 ///

14 ///

15 ///

(g) Ground Seven:

Petitioner's conviction and sentence imposed for the crime (s) of Burglary; Robbery; and Murder is unlawful and unconstitutional because the court erred in giving jury instructions to the jury.

Supporting Facts:

See court transcripts for court instructions to jury.

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APPENDIX "L"

PETITION QUESTION 23. (h) Ground Eight - Supporting Facts

(h) Ground Eight:

Petitioner's conviction and sentence imposed for the crime (s) of Burglary; Robbery; and Murder is unlawful and unconstitutional because and/or due to jury misconduct.

Supporting Facts:

Jury foreperson Wendy Lee Hill #474 was a 911 operator for the Las Vegas Metropolitan Police Department. The victim Deborah Panos was also a 911 operator for the Tucson Police Department. This was told to the jury before they were selected and it is alleged that this in of itself prejudice the jury and/or jury foreperson Wendy Lee Hill #474 directly against the defense.

Jury foreperson Wendy Lee Hill #474 stated in [her] voir dire questions from both the state and defense that she did not think have police personal testify would make her prejudice toward the defense. Nor would such witnesses cause her to and/or adversely affect her judgment.

Jury foreperson Wendy Lee Hill #474 stated in the Las Vegas Review Journal on the last day of penalty phase that she could not think of anything but death after reviewing photograph shown jury during trial and penalty phase. It is further alleged that said photographs of victim prejudice jury against defense.

By jury foreperson Wendy Lee Hill #474 giving a interview to the Las Vegas Review Journal (see attached) shows in and/or by [her] statements that she was prejudice against defense. Furthermore, Wendy Lee Hill stated directly, "There was no way

APPENDIX "K"

PETITIONER QUESTION 23. (g) Ground Seven - Supporting Facts

we could give him anything less than what he got."

That statement to the Las Vegas Review Journal in and of itself shows that Ms. Lee's mind was made up about the defendant without considering mitigating facts.

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Clint Karsen/Review-Journal

Deputy Public Defender Howard Brooks, left, talks with James Chappell after jurors Thursday sentenced Chappell to death for fatally stabbing the mother of his three children. He was convicted of first-degree murder last week.

Las Vegas sentenced to death

□ James Chappell, 26, admitted killing the mother of his children, and jurors say he has to be executed.

By Carl Geer
Review-Journal

A Las Vegas man was sentenced to death Thursday for fatally stabbing the mother of his three children last year after entering her residence through a window.

"There was no way we could give him anything less than what he got," jury forewoman Wendy Hill said.

Jurors convicted James Chappell, 26, last week of first-degree murder with a deadly weapon, robbery with a deadly weapon and burglary in connection with the Aug. 31, 1995, slaying.

Chappell testified during his trial and said he killed 26-year-old Deborah Panos after he found a love letter she had received from another man.

He sat with his head slightly bowed Thursday as District Judge Bill Maupin announced the jury's decision.

Prosecutors alleged the following aggravating circumstances as their basis for seeking the death penalty against Chappell: The murder occurred during the commission of a robbery; the murder occurred during the commission of a burglary; the murder occurred during the commission of a sexual assault; the murder involved torture or depravity of mind.

Jurors found that prosecutors proved all four aggravating factors. Although Chappell never faced a formal sexual assault charge,

prosecutors claimed he raped Panos before killing her.

DNA tests showed semen in the victim's body matched Chappell. The defendant claimed he and Panos had consensual sex before he discovered the letter.

The seven-man, five-woman jury deliberated about seven hours Wednesday and Thursday before deciding on Chappell's sentence. Hill said the panel spent most of that time determining which aggravating and mitigating circumstances existed in the case.

In order to impose a death sentence, jurors must find that aggravating factors outweigh any mitigating factors.

Hill, a 911 operator, said most of

Please see CHAPPELL/3B



DEBORAH PANOS
Graduation photo

Chappell

From 1B
The jurors were leaning toward a death sentence from the beginning of their deliberations. She included herself in that category.

"Once I saw those pictures and started hearing the evidence, no, I don't think I ever thought of anything less than the death penalty," she said.

Panos died in her North Lamb Boulevard residence after Chappell stabbed her 13 times with a kitchen knife. Chappell then fled the scene in her car.

Police had arrested Chappell three times since February 1994 on domestic violence charges involving Panos. He was released from jail in an unrelated case less than three hours before the killing.

Hill said Chappell's history of abusing Panos, coupled with the brutality of the slaying, made the death penalty warranted in this case.

Prosecutors argued that Panos had ended her relationship with Chappell, but Chappell refused to let her go.

APPENDIX "M"

PETITION QUESTION 23. (i) Ground Nine - Supporting Facts

(i) Ground Nine:

1 Petitioner's conviction and sentenced imposed for the
2 crime (s) of Burglary; Robbery; and Murder is unlawful and
3 unconstitutional because the defense in this case did not
4 have affective assistance of counsel as required by law.

5 Supporting Facts:

6 The record in this case (see transcripts) shows that
7 questioning of witnesses by counsel [Howard S. Brooks] was
8 inconsistent with [his] duties and/or without the input of
9 the defendant.

10 The defendant, James M. Chappell, directly gave counsel
11 [Howard S. Brooks] information concerning said witnesses.

12 Counsel failed to act on said information that may have
13 been helpful to defense. Counsel further ignored information
14 given [him] concerning said witnesses.

15 ///

16 ///

17 ///

APPENDIX "N"

PETITION QUESTION 23. (j) Ground Ten - Supporting Facts

(j) Ground Ten:

Petitioner's conviction and sentence imposed for the crime (s) of Burglary; Robbery; and Murder is unlawful and unconstitutional because the court erred in allowing witnesses to testify as to the state of mind of the victim.

By court allowing said testimony court allowed hearsay testimony without evidence and/or supporting evidence.

Supporting Facts:

See court transcripts.

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CERTIFICATE OF SERVICE

I, JAMES M. CHAPPELL, hereby certify that on the
date of October 17, 1999, I served a true and correct
copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS
(POST-CONVICTION) by mailing a copy thereof to:

E. K. McDANIEL, WARDEN
ELM STATE PRISON
P. O. BOX 1989
ELY, NEVADA 89301

STEWART L. BELL
CLARK COUNTY DISTRICT ATTORNEY
200 SOUTH THIRD STREET, SUITE 701
LAS VEGAS, NEVADA 89155

FRANKIE SUE DEL PAPA
NEVADA ATTORNEY GENERAL
100 NORTH CARSON STREET
CARSON CITY, NEVADA 89701


JAMES M. CHAPPELL
PETITIONER

DISTRICT COURT

CLARK COUNTY, NEVADA FILED IN OPEN COURT

ORIGINAL

* * * * *

OCT 24 1996 19

LORETTA BOWMAN, CLERK

BY

Lora Harman

Deputy

THE STATE OF NEVADA,

Plaintiff,

Vs

JAMES MONTELL CHAPPELL,

Defendant.

CASE NO. C131341

DEPT. NO. VII

DOCKET P

BEFORE THE HONORABLE:

A. WILLIAM MAUPIN DISTRICT JUDGE

WEDNESDAY, OCTOBER 23, 1996, 11:25 A.M.

PENALTY PHASE - VOLUME III

APPEARANCES:

FOR THE STATE:

MELVYN T. HARMON &
ABBI SILVER
Deputies District Attorney

FOR THE DEFENDANT:

HOWARD S. BROOKS &
WILLARD N. EWING
Deputies Public Defender

REPORTED BY:

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

PATSY K. SMITH, OFFICIAL COURT REPORTER

CE

1 WEDNESDAY, OCTOBER 23, 1996, 11:25 A.M.

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

4 MR. HARMON: Yes, your Honor.

5 MR. EWING: Yes, your Honor.

6 THE COURT: All right.

7 I have excused Ms. Lucido from jury service
8 for one of the alternates. The reason is that we were
9 advised, most unhappily this morning, she sustained a death
10 in her family this morning and she wished to go back to the
11 Philippines to attend the funeral. I didn't think the
12 parties would mind that decision. So I went ahead and
13 excused her.

14 Do both the parties agree with that
15 decision?

16 MR. HARMON: The State does.

17 MR. EWING: Yes, your Honor.

18 THE COURT: The defense may continue with
19 its closing statement to the jury.

20 MR. EWING: Thank you, your Honor.

21 Good morning, your Honor, counsel, ladies
22 and gentlemen of the jury, I'd like to thank you in advance
23 for the time and attention you are willing to pay to my
24 closing argument. I would like to request that you bear
25 with me and pay close attention. This is the only

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1 opportunity I will get to speak to you and I will try to
2 state our position plainly and simply so that there will be
3 no confusion about where we stand on these very important
4 issues.

5 Now, we sat over her during the course of
6 the trial and we listened to the same witnesses that you
7 listened to and we heard about this terrible tragedy. We
8 heard about Deborah Panos and her life and we felt for her
9 just as you did. We felt sorrow, we felt pain. We saw the
10 pain on the faces of her family, as they came in to
11 testify, and we are not asking you to forget her. I want
12 you to remember that. We have never, ever asked you to
13 forget her.

14 James told you that if he could exchange his
15 life for hers, he would, but nothing we do today is going
16 to bring her back and that's not what can be accomplished
17 by a penalty phase in this case. The penalty phase is not
18 about vengeance. In a few minutes, the case will be yours
19 and you will have to make some difficult decisions, but you
20 can look at the bright side. This case is so far removed
21 from any case which would warrant death penalty
22 consideration, that you can summarily dismiss that as an
23 option and let's talk about why that's the case.

24 Penalty phases, as the Judge instructed you,
25 are about aggravating and mitigating circumstances.

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1 Generally, the aggravating circumstances apply to the facts
2 of the case, how the murder was committed. I say generally
3 because there is exceptions. Generally, the mitigating
4 circumstances apply to the history of the defendant and
5 circumstances surrounding him.

6 The Court, in the Jury Instructions, told
7 you that the penalty phase is about aggravating and
8 mitigating circumstances, which means that the penalty
9 phase is about James Chappell. We don't say that to be
10 insensitive, we say that because that's true. The penalty
11 phase in this case, the State did not present one shred of
12 evidence to assist you in the validity of the aggravating
13 circumstances.

14 During the guilt phase, the State presented
15 that James Chappell was not always a nice person, that he
16 was a cocaine addict, that he was a petty thief, that, on
17 occasion, he abused Deborah Panos, that she was afraid of
18 him, and that she wanted out of the relationship.

19 In the penalty phase of the trial, after the
20 guilt phase, the State presented evidence that James
21 Chappell was not always a nice person, that he was a
22 cocaine addict, that he was a petty thief, that he
23 sometimes abused Deborah Panos, that she was afraid of him,
24 and that she wanted out of the relationship. They gave you
25 no assistance in determining the existence of these alleged

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1 aggravating circumstances. They didn't because they
2 couldn't. They brought in character evidence through
3 hearsay and innuendo so that they could conceal the fact
4 that they could not prove the alleged allegations of
5 aggravating circumstances. They could not do what the law
6 requires them to do.

7 Let's talk about these alleged aggravating
8 circumstances for a few minutes. During the guilt phase,
9 you found beyond a reasonable doubt the existence of a
10 robbery and a burglary. We can't, at this juncture,
11 dispute that and those are the alleged aggravators. The
12 law allows you to consider those as two aggravators. My
13 argument to you is that these two incidents occurred at the
14 same time. I don't know, I can't speculate about what
15 occurred during your deliberation, but I assume that you
16 determined that James entered with the intent to steal
17 something and he stole something. They are the same course
18 of conduct and for purposes of this hearing and your
19 deliberation, our argument is you should consider that as
20 one aggravating circumstance.

21 The State alleged sexual assault as an
22 aggravating circumstance. Never once in the penalty phase
23 was the word sexual assault even mentioned. Never once in
24 the guilt phase was the word sexual assault mentioned. It
25 wasn't mentioned until closing argument and in this closing

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1 argument, the State asks you to speculate that there was a
2 sexual assault with absolutely no corroborating evidence.

3 What do we actually know about this case?

4 We know James and Deborah had a ten year relationship. We
5 know that they had a sexual relationship for 10 years. We
6 know that they had three children together. We know that
7 Debbie's friends told you that she loved James. We know
8 that James admitted that they had consensual sex. We know
9 that Deborah was found dead right next to the front door
10 fully clothed. We know there was no evidence presented
11 from any experts indicating any injuries consistent with
12 sexual assault. We know there was no evidence presented by
13 any expert, including bodily fluids on the carpeting where
14 she was lying, indicating that there was a sexual assault.

15 The State asks you to speculate and our
16 argument is, our contention is that to make an arbitrary
17 decision about a sexual assault without any evidence is
18 wrong and it would be improper for you to do so in this
19 case.

20 The prosecutor went into quite a dialogue
21 about no means no. Where was there any evidence that
22 Deborah ever said no or ever wanted to say no? I wish I
23 could count the number of times in counsel's closing
24 argument that she used the word maybe or perhaps or might
25 have been. She used these to describe her unsubstantiated

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1 theories about what might have occurred.

2 The Court instructed you that aggravating
3 circumstances have to be proven beyond a reasonable doubt
4 and in the instruction, it says you cannot speculate and
5 that's exactly what she asked you to do. She asked you not
6 to follow the law and I'm asking you to follow the law. In
7 voir dire, we asked each and every one of you, "Are you the
8 kind of a person who can be fair to James Chappell? Are
9 the kind of a person, if you were a defendant, that you
10 would want you to be on your jury," and each one of you
11 responded in the affirmative.

12 Our position is that that type of juror
13 would have looked at yesterday's closing argument as a pile
14 of speculation and innuendo and looked at that closing
15 argument as an attempt to outrage, to cause you to hate,
16 and to cause you to seek vengeance and that's not why you
17 are here.

18 Let's talk about the aggravating
19 circumstance of torture for a few minutes. Never once in
20 the penalty phase did the State mention the word torture.
21 Never once in the guilt phase did the State mention the
22 word torture, not until closing argument. Initially, they
23 wanted you to look at the alleged punches that were
24 thrown. Now, James admitted to you that he caused the
25 injuries that Deborah Panos suffered on that day. To stand

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1 here and speculate about the number of blows without any
2 corroborating evidence is wrong and, also, the legal
3 interpretation was wrong and I'm going to try and explain
4 that to you.

5 The Instruction No. 20, which defines
6 torture, generally states that the act or acts which caused
7 the death -- I'm paraphrasing here, but look at the
8 instruction -- the act or acts which caused the death must
9 involve a high degree of probability of death. Let me do
10 it this way. Let me just read you the Instruction. That
11 way I'm not paraphrasing and you can understand. "The
12 essential elements of murder by means of torture are, one,
13 the act or acts which caused the death must involve a high
14 degree of probability of death." Those punches did not
15 have a high degree of probability of death.

16 Number two, "The defendant must commit such
17 act or acts," same acts that caused a high degree of
18 probability of death, "with the intent to cause cruel pain
19 and suffering for the purpose of revenge, persuasion or for
20 any other sadistic purpose." Those punches could not cause
21 death, therefore, they are not torture.

22 But, more importantly, referring to the
23 punctures and stab wounds, the only evidence we had was Dr.
24 Green. Dr. Green said they were all contemporaneous, they
25 all happened at the same time. There was no attempt to

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1 prolong anything and they were all rapid. We don't know
2 which wound caused the death. We don't know what the order
3 of the wounds were, but they were all contemporaneous.
4 James, as Instruction 21 states, James did nothing, did
5 nothing beyond the act of killing itself. There is no
6 torture and there is no depravity of mind.

7 The only aggravator you can find in this
8 case is the robbery and burglary and I say the word
9 aggravator in a singular sense because, based on the facts
10 of the case, in all fairness, you should consider that as
11 one aggravator. There are many, many other aggravating
12 circumstances under our system of justice which can cause a
13 first degree murder to be subjected to the possibility of a
14 death sentence and I want to talk to you about what this
15 case isn't for a few minutes.

16 The only circumstances by which murder of
17 the first degree may be an aggravated are, number one, and
18 I want you to keep in mind this is our legislature's
19 attempt to compile an inclusive list. These are the only
20 circumstances which can aggravate a first degree murder.
21 Number one, "The murder was committed by a person under a
22 sentence of imprisonment." Mr. Chappell never has been
23 under a sentence of imprisonment. He wasn't at the time.
24 He's never been convicted of a felony and during voir dire,
25 that was important to you, was he an ex-felon, had he

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1 committed murders in the past.

2 That's the next one, "The murder was
3 committed by a person who had previously been convicted of
4 another murder or of a felony involving the use or threat
5 of violence to the person of another." The State did not
6 allege that because that's not James. He didn't commit
7 that aggravating circumstance.

8 Number three, "The murder was committed by a
9 person who knowingly created a great risk of death to more
10 than one person by means of a weapon, device or course of
11 action which would normally be hazardous to the lives of
12 more than one person." The primary example is someone who
13 sits in a garage, meticulously makes a bomb, takes it to a
14 building where a lot of people are going to be, and set it
15 off. A cold and malignant heart.

16 Number four is the one and only circumstance
17 that applies to James Chappell. "The murder was committed
18 while the person was engaged in the commission of or an
19 attempt to commit or flight after committing or attempting
20 to commit any robbery, sexual assault, arson, burglary,
21 invasion of the home or kidnapping." That is the one and
22 only circumstance that applies to James Chappell.

23 Number five, "The murder was committed to
24 avoid or prevent a lawful arrest or to effect an escape
25 from custody."

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1 Again, insinuating somebody plans a cold and
2 calculated act, "The murder was committed by a person to
3 receive money or any other thing of monetary value." The
4 primary example of that would be murder for hire or killing
5 someone for an inheritance. Again, does not apply to
6 James.

7 "The murder was committed upon a peace
8 officer or a fireman who was killed while engaged in the
9 performance of his official duty or because of an act
10 performed in his official capacity and the defendant knew
11 he was a police officer or a fireman." Doesn't apply to
12 James.

13 "The murder involved torture or the
14 mutilation of the victim." As I have already argued to
15 you, that does not apply to James.

16 "The murder was committed upon one or more
17 persons at random and without apparent motive." Again,
18 indicating a cold blooded, heartless-type of killing that
19 does not apply in this case.

20 "The murder was committed upon a person
21 less than 14 years of age." Doesn't apply to James.

22 "The murder was committed upon a person
23 because of the actual or perceived race, color, religion,
24 national origin, physical or mental disability or sexual
25 orientation of that person." A hate crime. Doesn't apply

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1 to James.

2 And the last one, number 12 states, "The
3 defendant has, in the immediate proceeding, been convicted
4 of more than one offense of murder." The case of a
5 multiple murder situation, which again doesn't apply to
6 James.

7 These cases are the statutory aggravators.
8 I think it gives you a good indication, I think, on what
9 the legislature was looking for in terms of people who
10 would commit premeditated, preplanned acts that are not the
11 case in this case and you keep in mind the only aggravating
12 circumstance basically alleged is that James went in there
13 to commit a crime and, during the course of the crime,
14 killed Deborah. Completely different.

15 I want to introduce to you a term of art I'd
16 like to call the worst of the worst and I'm going to use a
17 little chart to give you a visual aid of about what I'm
18 talking about. If I could have the Court's indulgence.

19 I think we can all accept, first of all, we
20 know James has been convicted of first degree murder with
21 use of a deadly weapon and this is the worst kind of a
22 case. I think we can all accept the proposition, though,
23 that all killings are bad, but some killings are worse and
24 I think we can accept the proposition that all killers are
25 bad, but some killers are worse.

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1 This is not the case of a mass murderer,
2 which some of you mentioned in voir dire that you thought
3 was important. This is not the case of someone who sits in
4 their garage and puts together a bomb so they can blow up a
5 building full of people. This is not the case where an
6 individual kidnaps and tortures and murders small
7 children. This is a case where a man got into a
8 relationship and relationships are difficult. He got into
9 a relationship he couldn't handle. With his emotional and
10 psychological problems, he couldn't handle the relationship
11 and he killed Deborah. This is not a case where the death
12 penalty is appropriate. It is not a case of the worst of
13 the worst.

14 The Court instructed you during your
15 deliberation to consider both aggravating and mitigating
16 circumstances. They are both important and that's the
17 law. This is part of this slow, careful, well thought out
18 decision that Mr. Brooks asked you to make yesterday. The
19 prosecutor stood up yesterday and told you to ignore the
20 mitigating circumstances. They are all excuses, they don't
21 matter. Again, she asked you to not follow the law. We're
22 going to talk a few minutes about the mitigating
23 circumstances.

24 Instruction No. 7, and I'm just going to
25 focus on the part that deals with mitigation because

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1 Instruction 7 also deals with aggravation and if you have
2 any questions about that, make sure you refer to that
3 Instruction. A mitigating circumstance itself need not be
4 unanimous. That is if only one juror can find a mitigating
5 circumstance without the agreement of the other jurors,
6 then that juror can consider that and that's important as
7 we consider these mitigating circumstances, as I'm going to
8 list them. I'm going to talk about seven mitigating
9 circumstances and my list isn't all inclusive either. You
10 have the liberty and the right to consider anything you
11 want to be mitigating.

12 First thing I want to talk about is the
13 youth of Mr. Chappell. He was born December 27th, 1969.
14 At the time he committed the offense, he was 26 years old.
15 At the time of the offense, Deborah Panos, who was born on
16 May 4th, 1969, was also 26 years old. She was a few months
17 older than James. The State, in its closing argument,
18 referred to her as young Deborah Panos inferring Deborah
19 Panos was still young in her life and we will concede
20 that's true and so was James. The State later argued that
21 James was not young, he was older and experienced. This is
22 not consistent arguments. The truth of that is both were
23 young. Both of them were probably in their first serious
24 relationship. They had gotten together when they were 16.
25 Therefore, they were probably both experiencing their first

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1 breakup.

2 In terms of dealing with relationships, they
3 were both very young. I want you to remember Dr. Etcoff's
4 testimony because it's important to realize that James had
5 some problems and, in actuality, emotionally and
6 intellectually he was probably younger than his
7 chronological years. The youth of the defendant, James
8 Chappell, is a mitigating circumstance and it's something
9 that you should consider.

10 Next, I want to talk about the lack of
11 significant criminal history. When James was 14 years old,
12 he was arrested in Michigan for petty thefts and petty
13 crimes. His probation officer came in here to talk to
14 you. He was arrested, he was put under community
15 supervision, and he did very well. He thrived under that
16 support and that authority. He did what he was asked and I
17 think it is pretty obvious his probation officer liked him,
18 took an interest in him, and liked the way that he was
19 treated as his probation officer.

20 As an adult, he had some problems. He had
21 an addiction to crack cocaine. He had incidents of
22 domestic abuse and he was a petty thief. And he's admitted
23 all this to you from the beginning. The system never
24 intervened and the State made a big deal about how the
25 system failed Deborah Panos. James has no felony

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1 convictions. He has never been to prison. The question to
2 ask yourself is, does James' history warrant the death
3 penalty? Do you execute people because they are petty
4 thieves? Do you execute people because they are cocaine
5 addicts? Do you execute people because they have emotional
6 problems and commit domestic violence? That's the issue.

7 The phrase is significant criminal history
8 and the operative word is the word significant. When I was
9 discussing the aggravating circumstances with you a few
10 minutes ago, we talked about different types of criminal
11 history which can aggravate a first degree murder and James
12 didn't fall into any of those categories because his
13 criminal history is not substantial and it should not be a
14 aggravating fact. It should be considered mitigating.
15 This is not again -- I mean I have said this before and I'm
16 going to say it again, this is not the case of the ultimate
17 murder situation, a murder for hire, this was not the case
18 of a bombing or the torture and killing of children. James
19 does not have a significant criminal history warranting the
20 consideration of the death penalty.

21 I found it very ironic that the State of
22 Nevada would stand up and say that because the system, the
23 very system that they are a part of, failed Deborah Panos.
24 The result is that you should kill James Chappell. I think
25 that was incredibly ironic. The system failed a lot of

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1 people in this case and vengeance and hate is not the
2 solution.

3 The murder was committed while James was
4 under the influence of extreme mental and emotional
5 disturbance. You may ask why did we put Dr. Etcoff on the
6 stand? Did we put him on the stand to show you what James
7 did was okay? Absolutely not. We put him on the stand so
8 you could understand James, understand how he functions,
9 how he thought, and some of his deficiencies and always
10 keep in mind that James didn't ask for these deficiencies,
11 he didn't choose to have these problems he had. There was
12 a lot in his life.

13 We have all been involved in relationships
14 that have ended, at least I assume we all have and we know
15 how that feels. The knot you get in your stomach, the fact
16 you can't concentrate, you can't see the words on the page
17 in the book in front of you. Now I can accept the fact
18 that none of us killed the person that the relationship was
19 with that was ending, but you see, we have abilities to
20 choose and channel that James does not have. We have
21 control mechanisms that James does not have. We have
22 communication skills and emotional stability that James
23 does not have. I want to refer to a couple things that Dr.
24 Etcoff said in his examination, during the guilt phase of
25 the trial, and this is going to be brief and I realize that

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1 it's only a part of what he said. I'm trying not to take
2 it out of context and I want you to understand that I'm
3 aware that I'm just pulling a few excerpts out of this
4 testimony.

5 He was referring to the low verbal IQ that
6 put him in the seventh percentile nationally. Out of a
7 hundred people, 93 had better verbal skills than James
8 did. He said, "The important aspect of Mr. Chappell's
9 language deficits is that if you place someone like Mr.
10 Chappell in a stressful situation, he's already learning
11 disabled, he can't think well in words, if he has to make a
12 snap decision or filters through the problems of solving
13 complex information rapidly," -- excuse me -- "filter
14 through and problem solve complex information rapidly, you
15 will not find someone of his intellectual capacities
16 verbally doing a very good job and making the best choices
17 as a result of these language problems that are thought to
18 be genetically caused at this point."

19 And he went onto refer to how people who
20 have this deficiency tend to be aggressive and tend to be
21 over represented in the population of prisons.

22 And in regards to the personality test, he
23 stated, "The personality test suggests strongly that he is
24 very socially awkward, introverted, a man who is
25 distrustful of others, who wants to be liked and accepted,

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1 but is frightened of rejection and humiliation because he
2 expects that to occur, if he gets to know someone very
3 well, he'll be hurt."

4 Then he refers to horrible personality
5 borderline characteristics. He refers to those people who
6 have absolutely no sense of identity, they have no sense of
7 self.

8 Again, James didn't ask for these
9 deficiencies, he didn't request them. They were given to
10 him. There is a lot of things he's done in his life. He
11 is responsible for his crimes. There's no question, but he
12 is responsible for his action.

13 Remorse. Number four, remorse. James came
14 to you in court and cried. I would submit to you his tears
15 were genuine and they were the same tears Dr. Etcoff
16 testified he saw and he is trained to view people. And he
17 was remorseful to you. I will say that I expect some of
18 the remorse was towards James. He is in a very difficult
19 position. How can you argue that the vast majority of that
20 wasn't addressed to Deborah Panos? He killed the woman he
21 loved and he feels terrible about it. He told you he would
22 trade places if he could, but he can't. His remorse is
23 genuine. It's mitigating because it demonstrates he
24 doesn't have that cold and malignant heart that I talked
25 about before.

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1 James accepts responsibility for his
2 actions. That's mitigating circumstance number five. He
3 told you whatever you do, he will accept. He told you he
4 killed her, he knew it was criminal. Now his lawyers
5 presented a defense of voluntary manslaughter because we
6 listened to his story and we thought that's what he was
7 telling us. It's difficult for him to understand the
8 differences between the two. He stood up there and told
9 you he committed the crime and he also told you whatever
10 you do, he will accept. This again strongly demonstrates
11 that he doesn't have that cold, malignant heart of someone
12 who is worthy of the death penalty consideration.

13 I want you to consider his family's love for
14 him. They came in here yesterday and briefly told you a
15 little bit about him and it was difficult for them and they
16 asked you to allow him to remain a part of their lives.

17 I want to talk to you for a few minutes
18 about his obvious willingness to adapt to a prison
19 environment, to a prison setting. It's mitigating.
20 There's been no evidence that he had a problem in jail.
21 He's been in jail since the crime was committed a year and
22 a couple months ago. No evidence he's had any problems.
23 Bill Moore told you, when he was under his supervision, he
24 responded well to authority, he was respectful, he liked
25 the structure, he listened. There is no evidence presented

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1 that he would be a problem in prison and you are in a
2 position where you can severely punish him, where you can
3 protect society, where you can rest assure that the inmates
4 aren't in danger and you can do that with a life sentence.

5 The last mitigator I want to discuss is
6 James' childhood. There was particular individual
7 tragedies which he had to endure to shape his life. The
8 loss of his mother, when he was two and a half, which
9 interestingly resulted in his inability to speak for at
10 least a year. His grandma said a year. Bill Moore said
11 two years. That had to have been a substantial trauma. He
12 grew up in a neighborhood where there was drug, violence,
13 and theft. These things he saw all the time. Bill Moore
14 said it would have taken an exceptional youth to be able to
15 rise out of that situation and not have problems and he
16 said James wasn't that exceptional youth.

17 Now did James choose to be born where he was
18 born in the neighborhood he was forced to live in? He
19 didn't make those choices. He was forced and he is
20 suffering the consequences because of that. Is that an
21 excuse? No, but it's a reason and it's mitigating. It's
22 clear in this case that the mitigators vastly and
23 drastically outweigh the existence of any aggravators.

24 I want to talk to you now about the fact
25 that our law, which you've all sworn to uphold and which

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1 you talked about during voir dire being important to you,
 2 the law favors life. The law we live under favors life.
 3 There is lots of kinds of criminal homicide, as I listed in
 4 my chart, criminal homicide where there is a death and it's
 5 a crime and I've listed those. Involuntary manslaughter is
 6 punishable up to one to six years in prison. It's
 7 probationable.

8 Voluntary manslaughter is punishable up to
 9 one to 20 years.

10 Second degree murder, which is the
 11 intentional, malicious killing, 25 years or life with
 12 parole eligibility after 10 years.

13 First degree murder, premeditated and
 14 deliberate or a felony murder, punishable by 50 years or
 15 life with or without the possibility of parole. If there
 16 is parole eligibility, it will be after 20 years and only
 17 in this last area here, the point of this triangle is the
 18 death penalty even as an option and that's where there is
 19 murder in the first degree with aggravating circumstances.

20 Now, if you conclude that there is
 21 aggravating circumstances, then you are asked to weigh them
 22 against the mitigating circumstances and if the mitigating
 23 circumstances outweigh the aggravators, then you must vote
 24 life. If you compare them and the aggravators outweigh the
 25 mitigators, but you determine that life -- that death isn't

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1 appropriate, then you must vote life. Only when the
2 aggravators outweigh the mitigators and you conclude that
3 death is appropriate, then you have the option of
4 considering it and you may. You may impose a death
5 penalty, but even then it's not required. You have the
6 right to say no. You have the right to say it's not
7 appropriate.

8 The prosecutors would have you believe that
9 if you don't vote death, you are somehow giving James a
10 free ride. I would submit to you that is absolutely
11 ridiculous to say that a life sentence is a free ride.
12 Remember that first degree murder with use of a deadly
13 weapon with the possibility of parole would mean that James
14 would not even be parole eligible for 40 years until he is
15 66 years old. If you give him life without the possibility
16 of parole, he'll never get out and what is prison like?
17 What's it like? Is it a walk in the park? You know, when
18 I'm sitting over her preparing for court everyday, I know
19 when James is coming down the hall because I can hear the
20 chains rattling. He is in chains when he comes and goes.
21 When he gets to jail, he is behind bars. He eats when they
22 tell him to eat. He sleeps when they tell him to sleep.
23 He has visitors when they tell him he can have visitors.
24 He never gets to go to the park and he never gets to go
25 anywhere. And I acknowledge the fact that Deborah Panos

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1 doesn't either. That's true. We are not asking you to
2 forget her. We are asking you to accept the fact that
3 prison is harsh and it's a severe punishment.

4 Prosecutor made a real valid point in her
5 argument yesterday. She said that mercy can never rob
6 justice and she is absolutely true. She's absolutely
7 correct. Being merciful and showing mercy will never rob
8 justice. Justice and mercy are intertwined, they are a
9 part of each other. Mercy is not part of hate. Mercy is
10 not part of vengeance, but neither is justice.

11 The State wants you to hate, they want you
12 to seek vengeance, and that's why the closing argument was
13 presented yesterday the way it was. That's why the case
14 has been presented the way that it was. They want you to
15 hate and they want you to seek vengeance. They asked you
16 to stoop way down to the level of someone who would commit
17 first degree murder and show him that same kind of mercy.
18 That's scary, that's very scary.

19 The State also wanted to talk about winning
20 and losing. Nobody wins here. Everybody loses. If James
21 gets a life sentence with the possibility of parole, he
22 will probably die in prison. I'm confident that you are
23 going back to the jury room and make a reasoned, thought
24 out decision based upon the evidence, that you are going to
25 put aside the emotion, that you are going to remember

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1 Deborah Panos, you are going to remember James Chappell,
2 you are going to remember the evidence, and you are going
3 to make a conclusion what this case deserves, and you are
4 going to send James to prison for life. That's obvious.
5 You are going to send him to prison for life, but you
6 should do that with the possibility of parole for one
7 simple reason.

8 Number one, there is very little difference
9 between the two. He'll be 66 years old when he even has
10 the eligibility of being released, but what it will do is
11 provide for James some type of motivation to make prison a
12 positive experience in the event that some day he has a
13 chance of getting out. It provides him more motivation to
14 continue to do, as he has done before, to be cooperative,
15 to be helpful, to respect authority, and to respond well to
16 that type of a situation.

17 That's what justice deserves in this case
18 and that's what we're asking for. Please don't hate,
19 please don't seek vengeance. Look at the facts in a
20 reasoned and calculated manner and return a verdict of life
21 with the possibility of parole.

22 Thank you.

23 THE COURT: Thank you.

24 Mr. Harmon, for the State of Nevada.

25 MR. HARMON: May it please the Court,

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1 co-counsel, gentlemen for the defense, good morning, ladies
2 and gentlemen. I want to congratulate a number of people
3 in this case. The Court, as usual, Judge Maupin has been
4 very thoughtful, very fair, and objective and professional
5 in conducting these proceedings. He's a gentleman and a
6 true credit to the judiciary.

7 I congratulate my co-counselor, Abbi
8 Silver. She's been a great assistance on this case and has
9 done what I submit the citizens expect of a prosecutor and
10 that is to prosecute as vigorously as she is capable of
11 doing and to strike hard blows, but not foul ones.

12 I also congratulate the esteemed defense
13 counselors. Mr. Brooks and Mr. Ewing are fine gentlemen,
14 but very capable lawyers and although there isn't a person
15 in this courtroom who would want to exchange places with
16 Mr. Chappell, having said that and with that understanding,
17 he is a very lucky man. He's lucky to live in America.
18 He's lucky to be someone who, having committed a heinous
19 crime, is provided under our system due process of law.
20 He's lucky that he has two bright, skilled, very fluent
21 attorneys to state his position in this courtroom and
22 they've done so very ably and I congratulate them for their
23 effort.

24 This is an adversary system and surely, as
25 intelligent men and women, you didn't come to the courtroom

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1 thinking that the prosecuting attorneys and the defense
2 attorneys were going to agree about all the issues in this
3 case. It doesn't work that way in an adversary system and
4 we each have our roles to be performed. Without appearing
5 to try to curry favor because I want to assure you that the
6 decision in this case, as it has been from the time it was
7 submitted to you at the conclusion of the guilt phase, the
8 decision is yours. You are the triers of fact and you are
9 now judges in the sense that you have the awesome
10 responsibility of passing judgment upon a fellow human
11 being and you must do that without submitting to any type
12 of temptation to do it based upon prejudice, based upon
13 gender or race.

14 Ms. Silver and I are confident that you can
15 do that and we congratulate you, as a juror, for your
16 willingness to serve on this case and for the fact that you
17 were obviously conscientious, you are fair minded, decent
18 human beings, and what I say to you now is just an
19 expression of some thoughts about the evidence in this
20 case, but it's with full realization that the persons who
21 must wrestle with the decision after the attorney rhetoric
22 is done will be you, as the members of the jury, and we are
23 fully confident that you will do your very best to give Mr.
24 Chappell what you believe he is due given the facts and
25 circumstances of this case.

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1 There are a number of comments by the
2 defense attorneys that I wish to reply to. It's been at
3 least inferred by Mr. Ewing that the aggravating
4 circumstances become inferior at the penalty phase if there
5 wasn't additional evidence presented concerning them and
6 with that inference in mind, I want to direct your
7 attention to penalty hearing Instruction No. 25. It reads,
8 "The jury is instructed that in determining the
9 appropriate penalty to be imposed in this case, that it may
10 consider all evidence," those are the operative words, "all
11 evidence introduced and the Instructions given both at the
12 penalty hearing phase of these proceedings and at the trial
13 of this matter." We have different phases, but it's all
14 one trial and when you retire to deliberate and to
15 determine the judgment to be imposed upon Mr. Chappell, you
16 aren't limited to the circumstances that were described at
17 the penalty hearing. You may consider all the evidence.

18 So with due respect to Mr. Ewing, it's
19 somewhat slightly misleading to suggest that a
20 circumstance, an aggravator somehow carries less weight
21 because the prosecution didn't supplement it at the penalty
22 hearing with additional evidence. Many aggravating
23 circumstances, as you can tell from the list of 12,
24 described to you by Mr. Ewing and he accurately did so;
25 those are the legislative enactments regarding mitigation,

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1 but many of them relate to the facts and circumstances of
2 the murder because in some cases, and this is one of those
3 cases, there are factors about this case that aggravate it,
4 they make it worse, they arguably make it among the worst
5 of the worst. And, actually, when you consider the
6 significance of the statement premeditated murder, then
7 it's surely not far off the mark to argue that any
8 premeditated murder falls into the category of the worst of
9 the worst, as we look at various crimes which can occur.

10 Now, Mr. Ewing has characterized the
11 prosecution arguments and I assume has referred to my
12 partner, since I hadn't stood up yet, the argument as a
13 pile of speculation and innuendo. Mr. Ewing and Mr.
14 Brooks, of course, are entitled to whatever opinions they
15 choose to form. The statement, as it implies that you
16 should not guess or should not speculate by Mr. Ewing is
17 accurate, but I don't concede for a moment that the
18 position of the prosecution is based upon a pile of
19 speculation and innuendo.

20 You may draw just and reasonable inferences
21 from the evidence presented and that doesn't amount to
22 innuendo or speculation. In Instruction 28, if I might
23 command your attention to another Instruction, the Court
24 points out, and I'm reading in part from the Instruction
25 beginning at line four, "You may draw reasonable inferences

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1 from the evidence which you feel are justified in the light
2 of common experience."

3 Now contrary to the notion of some persons,
4 trials such as this are based upon the rule of reason and
5 nobody asked you to leave your common sense, your good
6 judgment, your ability to be thoughtful and reasonable and
7 to draw appropriate inferences from the evidence outside of
8 the courtroom. We want you to bring that with you and we
9 want you to draw just and reasonable inferences from the
10 evidence during the deliberation process. And so if Mr.
11 Ewing meant to imply that you aren't to draw reasonable
12 inferences, I simply wanted to remind him and you of the
13 Court's Instruction No. 28.

14 This is World Series time. I'm a baseball
15 fan and somehow, as I heard the argument of Mr. Ewing this
16 morning and the short but very direct remarks of Mr. Brooks
17 yesterday afternoon, I thought of an interview that the
18 great home run hitter Hank Aaron had with the media a
19 number of years ago after he had succeeded in breaking the
20 home run record of Babe Ruth and Hammering Hank was asked
21 by the journalists if he would explain how he had managed
22 to hit so many home runs. There was a very short pause and
23 then Hank Aaron responded, "I did it this way. I did it by
24 always keeping my eyes on the ball."

25 What that suggests to me is, in addition to

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1 the literal application to baseball, Mr. Aaron was saying
2 if you want to succeed, stay focused. Don't lose sight of
3 what is important in your experience and, as it applies to
4 this case, I'm suggesting that many things are a matter of
5 perspective. The defense says one perspective, the
6 prosecution another, and, as the jury, you are in the
7 middle and you would have a somewhat different perspective,
8 but it is important, as the triers of fact, to stay focused
9 on the things which are truly important about this case,
10 not to become distracted, not to lose your concentration or
11 your resolve to do what is proper.

12 Well, despite the disclaimer of Mr. Ewing
13 this morning and he said we're not asking you to forget
14 her, we have never, never asked you to forget Deborah
15 Panos. Mr. Ewing said later, in his argument this morning,
16 he said it twice during his opening statement commencing
17 the penalty hearing proceedings, "The penalty phase is
18 about James Chappell." I said he mentioned that twice as
19 though he wanted to make the point. A little later, he
20 said, and I quote, "The penalty hearing is no longer about
21 Deborah Panos. It is about James Chappell." Well, in
22 part, it's about James Chappell, but if Mr. Ewing meant to
23 say that you eliminate during this sentencing phase all
24 consideration of the person whose life was taken, that is
25 ridiculous, with due respect, Mr. Ewing.

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1 I recall from this evidence a mother and
2 grandmother testifying about an event occurring in her life
3 that forever changed her mortal life on August the 31st,
4 1995. I remember the testimony of Norma Penfield that she
5 got a fateful telephone call and a strange man's voice came
6 on the telephone and he uttered the words no mother ever
7 wants to hear, "Debbie is dead."

8 Now, when you fix a punishment for the worst
9 of the worst, a premeditated killer, someone who has been
10 convicted of murder of the first degree, surely, it is of
11 paramount importance to try to determine the degree, the
12 scope of moral culpability. You must determine what the
13 loss is, what the impact has been upon the friends and
14 family of this person whose life was prematurely taken.
15 That's part of the calculus of imposing sentence, to
16 determine the degree of evil. Just how bad is this? Just
17 how much has it damaged not only the life of the victim,
18 who was taken from her little children, but how much has it
19 effected those who loved her, those who respected her,
20 those who knew she was intelligent, she was hard working,
21 she was generous, she made many friends, she was a devoted
22 mother of three children, she loved to be with her parents,
23 her aunts, her uncles, her nieces, and nephews on special
24 occasions. She was a very nice lady, a good person, a
25 loving, decent human being. Now, there's no requirement in

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1 this state that this had to be a mass murder to make it
2 appropriate for a death sentence. It's important to
3 consider this was a good, decent human being and it is a
4 terrible injustice, it is a hideous evil that she has been
5 murdered.

6 Now I recall the testimony of the aunt,
7 Carol Monson, and the words were echoed also by Debbie's
8 mother, Norma Penfield. They were talking about the impact
9 upon the children of tender years when they lose their
10 mother and little Chantell, only three years old when this
11 happened, four years old now, made the statement, " I want
12 to die and go to heaven so I can see my mommy," and the
13 defense tells you that the penalty hearing is only about
14 James Chappell.

15 Defense, and I refer now to my esteemed
16 colleague, Mr. Brooks, tells you to be thoughtful, well
17 reasoned, conscientious, and objective and, yet, he chose,
18 in his brief remarks yesterday afternoon, to ignore all
19 semblance of respect and instead, he chose to indulge in
20 attacking personalities by accusing the State of a, "rabid
21 dog style of prosecution." Well, I hadn't spoken yet. He
22 isn't a mind reader. So I must conclude, by inference, Mr.
23 Brooks was saying my colleague, Abbi Silver, is a rabid
24 dog. That's offensive. She is a dedicated, skillful
25 professional, who articulated tremendously well the

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1 legitimate position of the prosecution in this case and
2 while Mr. Brooks says that he wants you to be thoughtful
3 and well reasoned, what Mr. Brooks really wants you to do
4 is to lose your focus, to take your eyes off of the ball
5 and become distracted, when he accuses the prosecution of
6 having an ulterior motive.

7 The philosopher Goethe is quoted as saying,
8 and I adopt his remarks for the remainder of my argument,
9 "I can promise you to be sincere, but not impartial." Ms.
10 Silver and myself are not impartial on the subject of
11 murder of the first degree. The murder of this young woman
12 was hideous. There weren't any eyewitnesses left, so no
13 one knows for sure the exact sequence of events. You heard
14 the account of the defendant, but he surely has an interest
15 when this case occurs. When he cries, we must all wonder
16 why does he cry? When he is tearful and convinces a
17 clinical psychologist, Dr. Etcoff, months after he's been
18 arrested, after the preliminary hearing, after he's heard
19 witnesses testify about the State's case, when he does this
20 after he's been bound over, after the Information charging
21 him with murder and robbery and burglary have been filed,
22 and after the State's filing of its Notice of Intent to
23 Seek the Death Penalty, and after all this, the defendant
24 speaks with a psychologist. He surely must know the intent
25 to call to the witness stand if he makes the right

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1 impression. Now are those remarks inherently suspect? Is
2 there an attitude, something to be gained by the defendant
3 and Dr. Etcoff acknowledged if he was being given
4 inaccurate information, his whole premise fails because if
5 the defendant was being untruthful, if he wasn't explaining
6 this how it happened, then his opinions are invalid.

7 Was the defendant credible in June when he
8 was interviewed by the doctor? Is he credible now on the
9 witness stand? Debbie Panos is beyond our jurisdiction.
10 We can't subpoena her. She is not subject to service of
11 process. She can't be brought into the courtroom to
12 explain how this occurred from her perspective. So the
13 defendant tells us he got there after she arrived.

14 Well, having said, as I did, that no one
15 knows, can know for sure because there are no surviving eye
16 witnesses except the killer, who has an interest in what
17 happens to him in this case. Let me refer you to a couple
18 of things the defendant said on the witness stand and a
19 number of other factors about the case that offer a rather
20 convincing argument that she didn't get there first, he got
21 there first, and that he got there and, of course, that's
22 when he could ransack the trailer, look for anything he
23 wanted. That's when he could locate the knife and have
24 that ready. That's when he could lay in wait for her.

25 What did he say he did from the witness

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1 stand when he was excused by the law enforcement officer we
2 now know to be Bill Duffy of Parole & Probation? He said
3 he took a hike down Bonanza to Nellis and Lamb and he said
4 he went to the projects, said he stayed there for awhile,
5 borrowed a bicycle. He claims he watched a couple of other
6 people drink a couple of beers and then he went over to 839
7 North Lamb, space 125 and he says he didn't knock; didn't
8 do the logical thing, didn't knock, didn't even go up and
9 try the door. That's what he claims. That is what he is
10 asking you to accept to see if the door was opened.
11 Instead, he went directly to a window and he gave a
12 justification for that. Mr. Chappell said, "I had just
13 called two times." Didn't he say that from the witness
14 stand? "I had just called two times and nobody answered
15 the phone." Just called and where are the projects? Where
16 is this Vera Johnson apartment complex from the crime
17 scene? A couple of blocks away. How long did it take to
18 get there? Minutes.

19 Then a little later, he was asked, "Why
20 didn't you knock? I didn't knock because nobody answered
21 the phone when I called." Well, if she had just been
22 called and she wasn't there to answer and that's his
23 testimony, why are we to accept that she was there when he
24 got over after he had ridden the bicycle the several blocks
25 to her place? Well, ladies and gentlemen, I submit the far

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1 more reasonable inference in this case is that he did knock
2 to make she wasn't there, but he was real sure she wasn't
3 anyway because he had just barely telephoned. He
4 telephoned her from Duffy's office and she wasn't there and
5 he telephoned again from the projects and she wasn't there
6 and he went over and knocked and she didn't answer because
7 she wasn't there and he went in through the window because
8 he wanted to get in and he went in through the window he
9 did that goes through the master bedroom because he
10 couldn't without more effort that he wanted to employ get
11 the others opened and we know that to be true because the
12 officers tried from the Metropolitan Police Department and
13 they ended up going in through the same window he went in
14 through.

15 Now, there's another reason. He had to
16 remove the screen, didn't he. There are photographs that
17 show that it was inside. Well, if this was all something
18 that was reasonable, if there was no malice involved, why
19 did he put the screen inside? This is the window right out
20 next to the driveway. When she would pull up, she'd have
21 to see it, but if he puts the screen inside instead of
22 outside the house, Debbie, when she arrives, has no way of
23 knowing he is inside the house. And so he put it inside
24 and he put his foot on it and he bent it in going to the
25 house and then he prepared for murder, for premeditated

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1 murder of the first degree.

2 We know that for months he had indulged in
3 thoughts of murder. You heard Dina Freeman testify. I'm
4 not going to repeat the threats that she described. Lisa
5 Duran testified about threats that she heard and most
6 recently and something which is truly significant in this
7 case is what happened the day before Debbie was murdered.
8 She had been given something by the City of Las Vegas.
9 That something was a subpoena and that subpoena didn't just
10 invite her to go somewhere. It commanded her to appear at
11 the Municipal Court on August the 30th for the purpose of
12 giving testimony in the matter of the City of Las Vegas
13 versus James Chappell and the charge was domestic violence
14 and the woman who hadn't bothered in January, 1995 to
15 follow-up on the temporary protective order and so it
16 expired, elected to follow-up this time. And the woman the
17 defendant had already been calling vile names in his letter
18 I supposed to him added insult to injury because she
19 responded to the subpoena, she came to court, and was there
20 prepared to testify against him and Michelle Mancha and
21 Lisa Duran both mentioned that they had seen the subpoena
22 at work, they both said that Debbie left work early that
23 day, and Michelle Mancha said she talked with Debbie over
24 the telephone. She estimated at perhaps 2 or 2:30 in the
25 afternoon still on the same day and Debbie said she had

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1 been to court, explained that the judge assured her that
2 the defendant was going to an in-patient drug program, that
3 he wouldn't be released for three months, and remember how
4 Michelle said that made everyone feel a lot better. We
5 felt a safety zone and then Debbie explained that she had
6 talked with the defendant and, although Michelle got the
7 idea it was right in court; it wasn't clear to her whether
8 it was during the time that she was at the courthouse, the
9 municipal courthouse or whether it was after and it was a
10 visit with the defendant at the jail, but words were
11 exchanged and according to what the victim related to
12 Michelle Mancha, she had told the defendant that it was
13 over.

14 Now, the defense said there wasn't any
15 evidence at all that bears on the aggravating
16 circumstances, but I submit if, in fact, the victim in this
17 case, within 24 hours of her murder, number one, appeared
18 in court to testify against the defendant and that resulted
19 in his guilty plea to domestic battery of her, and if she
20 had the occasion and, in fact, used it to tell him that the
21 relationship was finished, does that have a bearing on
22 whether a burglary occurred? Does that have a bearing on
23 whether he committed robbery and does that have a bearing,
24 despite their prior acts through the years of consensual
25 sex, does that have a bearing on whether she said yes or no

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1 or whether she had any choice to respond at all to sexual
2 penetration? Did the defendant have a response to the
3 statement by the victim that their relationship was done,
4 finished, over? Michelle Mancha testifies that her
5 co-worker and friend Deborah Panos told her that the
6 defendant then said that he was going to kill her. Well,
7 that's a statement that certainly has sinister implications
8 when we realize it was made less than 24 hours before he did
9 kill her. Those types of statements are self prophecies
10 and they can be self-fulfilled, as indeed that one was by
11 the defendant.

12 The defense refers to a rabid dog style of
13 prosecution, and, yet, Mr. Brooks yesterday conceded, as
14 did Mr. Ewing this morning, that the defendant is a
15 worthless SOB, a thief, and a wife beater. Those were Mr.
16 Brooks' words yesterday afternoon. Of course, Mr. Brooks,
17 he is isn't a wife beater, now is he? He never married the
18 woman. We made that point already. She never wore a
19 wedding band around her finger. He didn't beat a wife. He
20 beat someone who was a free woman, free to go anywhere and
21 be with anyone she chose and, perhaps, inadvertently in
22 listing the negative descriptions of the defendant, Mr.
23 Brooks forgot to mention in addition to being a worthless
24 SOB and a thief and a woman beater, he's a murderer.

25 The defense said -- Mr. Brooks said that

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1 James Chappell will never be reasoned. Well, is murder
2 reasoned? Any murder? Is anyone ever justified in
3 committing premeditated murder of the first degree? The
4 fact is murder, by its definition, is unreasonable. So
5 that doesn't somehow distinguish Mr. Chappell because he
6 will never be well reasoned. Murder is irrational, it's
7 illogical, it is stupid. It doesn't make sense and, yet,
8 fortunately, we don't have a defense either during the
9 guilt or at sentencing in this state called felony stupid.

10 Now, the defense says James Chappell will
11 never be deliberate in what he does. Wrong. Wrong. He
12 said on August the 30th he was going to kill her and, as
13 soon as he was released, even though he had promised,
14 begged for the opportunity to go to EOB to personally
15 petition to get admitted to their drug rehabilitation
16 program, he didn't go to EOB, he didn't go to D Street and
17 Washington. He went in the opposite direction. Now was
18 that deliberate? Was he making choices? You know the
19 psychologist comes in to this courtroom and it is months
20 after the crime has occurred. He doesn't know the
21 principles in this case. He spent two hours with this guy
22 and he reads his books and he gives his tests and then he
23 forms certain conclusions. Was this defendant being a free
24 agent when he walked out of Duffy's office and turned
25 right, not left? Was he being deliberate when he went to

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1 the trailer and he broke in and then he ransacked and then
2 he confronted her?

3 I want to talk about something called shared
4 responsibility. My partner, Ms. Silver, very ably has
5 discussed in her argument the primary purposes for the
6 imposition of penalty for first degree murder. Punishment
7 is a primary purpose. It is legitimate for society, in
8 some way, to vent its sentience of moral outrage, at
9 conduct which is unconscionable, which is totally
10 unacceptable.

11 My partner also mentioned deterrence.
12 There's nothing illegitimate about deterrence as a factor
13 to be considered. You have it in this case, as the ladies
14 and gentlemen of this jury, within your power to guarantee
15 by the punishment you impose that Mr. Chappell never makes
16 another woman a corpse. You can certainly deter him and
17 you have it within your power to send a message today out
18 into this community, which is we do not tolerate those who
19 have a history of domestic violence, who will let it
20 accelerate and become a murderer and you can tell the other
21 would be James Chappells what the consequence is when you
22 engage in that type of action. That's a legitimate
23 position to take and, yet, the defense says the prosecution
24 wants you to hate. They want you to stoop way down and Mr.
25 Brooks yesterday said the State asks you to act in the way

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1 he acted. Asinine.

2 Mr. Brooks, with due respect, sir, imposing
3 a death sentence within the criminal justice system is not
4 the equivalent of battering a woman into submission and of
5 murdering her with a knife, but Mr. Brooks continues, "You
6 are not cocaine addicts, you are not thieves, you are not
7 to descend to the level of James Chappell," in what
8 basically he is saying, once again, is forget about the
9 ball, don't focus and Mr. Brooks wants on your shoulders,
10 each of you, guilt. He wants you to feel guilty and
11 invites you to go on that trip and so I want to talk for
12 just a moment about shared responsibility.

13 Long before you were summoned by the jury
14 commissioner to come to the courthouse, long before you
15 were selected on this case certain decisions were made
16 about the criminal justice system and a legislature decided
17 that we would have capital punishment in this state. The
18 legislature made a policy judgment and we all elect our
19 legislators and, hopefully, what they decide represents the
20 consensus of a society and there are aggravating
21 circumstances that apply to this case and you weren't
22 involved in the statute making process. So if there is
23 guilt, at least let it be shared by the legislature, which
24 adopted the statutory scheme which applies to the case of
25 State of Nevada versus James Chappell.

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1 Well, long before you got involved, long
2 before the office of the district attorney got involved,
3 the Las Vegas Metropolitan Police Department investigated
4 this case, and the primary officers who were assisted by
5 crime lab specialists, patrol officers, and many other
6 people, were the homicide detectives, Detectives Ramos and
7 Vaccaro, and, surely, they have some responsibility in what
8 occurs here. They interviewed the witnesses, they
9 investigated the case, they submitted the case to the
10 Office of the District Attorney, and then the D.A.'s office
11 made certain choices. A public agency and the police
12 department and the legislature and the Office of the
13 District Attorney all share in the responsibility that this
14 is before you today. All share in the responsibility of
15 imposing a severe punishment.

16 When you retire to deliberate and you select
17 whatever punishment you deem to be appropriate, it's not
18 going to be an individual thing, it's going to be an
19 experience, a decision, a judgment shared by 12. It is
20 ridiculous, however, to attempt to equate what you will do
21 under the Court's legal Instructions, having been drafted
22 into jury service, not having any axe to grind, no interest
23 in this case to suggest that somehow the blood this man has
24 on his hands is the equivalent of what you will do. Mr.
25 Brooks, Mr. Ewing is not thoughtful, that argument is not

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1 objective, it's not reasoned.

2 Now the State, as you know, has alleged a
3 total of four aggravating circumstances. As my partner
4 expressed yesterday, murder is the ultimate act of
5 selfishness. Mr. Chappell, as he had said to Lisa Duran,
6 within that several month time span after Memorial Day
7 Weekend, "If I can't have her, nobody can," was simply
8 lived out in all of its brutal details August the 31st.
9 Harry Emerson Fosdick once said, "The person completely
10 wrapped up in himself makes a small package," and a
11 murderer, a thief, someone who would steal not only from
12 his girlfriend, but from his children food, shoes, jackets,
13 diapers, toys is a selfish person. He is a small package,
14 he is someone who has forfeited the right to live because
15 his conduct cannot, will not be condoned not by decent
16 minded persons.

17 This is a case where a burglary occurred in
18 connection with the murder. You may ask rhetorically,
19 well, why does burglary aggravate? Perhaps you haven't
20 asked that rhetoric. My thought is the legislature made a
21 judgment because things are worse when they happen in
22 somebody's home. Debbie Panos had worked hard for this
23 trailer where she lived, 839 North Lamb, space 125, and her
24 mother, who came up with the down payment to get her into
25 the trailer, made a sacrifice, but she had been there for

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1 six or eight or nine months; it would have apparently been
2 a year in early October and this defendant invaded her
3 home, her refuge, her sanctuary, her special place where,
4 except for his repeated intrusions, she should have found
5 safety.

6 Well, in the view of this evidence and from
7 the perspective of the prosecution and I submit the
8 legislature, when you do that, when you commit a burglary,
9 particularly when you kill someone in their home, you have
10 made it one of the worst of the worst. Now to add insult
11 to injury, he also stole from her after he killed her, he
12 stole from her and the legislature made a judgment about
13 robbery because robbery is an inherently dangerous crime
14 because it very often involves force and violence and fear
15 of injury and so the legislature said you have a strict
16 liability if you commit that crime and someone dies, then
17 you must know, first, you are guilty of murder of the first
18 degree and, second, you must know we say that aggravates
19 the murder.

20 Well, there are certainly two aggravating
21 circumstances already found by you in your previous
22 deliberation. The third circumstance is rape, murder.
23 Instruction 18 defines sexual penetration. It says,
24 "Sexual penetration means cunnilingus, fellatio or any
25 intrusion, however slight, of any part of a person's body

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1 or any object manipulated or inserted by a person into the
2 genital or anal openings of the body of another including
3 sexual intercourse," and then the Court says, " Sexual
4 intercourse is the placing of the penis of the perpetrator
5 into the vagina of the victim."

6 Mr. Ewing says the State asks you to
7 speculate with absolutely no corroboration and, ladies and
8 gentlemen, I say to the contrary, agreeing wholeheartedly
9 with the remarks already made by my co-counsel, this case
10 to almost an absolute certainty, when just and reasonable
11 inferences are drawn from the totality of the evidence,
12 proves that this had to have been a sexual assault. For
13 the victim told her friend Michelle Mancha, during the
14 telephone conversation the day before, that she had told
15 him no and if she said no, it's over, it's finished on the
16 30th, why is it reasonable that she would suddenly have
17 done a hundred eighty degree turn and helped him into her
18 trailer? It's just absurd when you put it in the
19 chronology of what was happening because this is the woman
20 who was accompanied from work on the 31st, the day she was
21 to be killed, Michael Pollard. She went to his residence,
22 dropped him off, and then went on home and to his surprise,
23 she showed back up just a few minutes later. This is the
24 woman who apparently had already received the telephone
25 message that Mr. Chappell made from Bill Duffy's office and

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1 she had learned, to her surprise, that he was going to be
2 released.

3 So how did Pollard describe her when she got
4 back to his residence? He said she was curled up like a
5 ball on the sofa crying and shivering and shaking. She was
6 so afraid of this defendant and the defense is saying that
7 it's speculation in view of the fact that she told a friend
8 the day before that it was over and that he replied he was
9 going to kill her and when you understand that after his
10 release, within two hours, he had killed her. Well, surely
11 if she was saying no on the 30th, she was saying no, if it
12 was within her physical capacity to do so. She was saying
13 no on the 31st.

14 The Court in Instruction 19 explains
15 something helpful, "Physical force is not a necessary
16 element in the commission of sexual assault. The issue is
17 not whether the victim was physically forced to engage in a
18 sexual assault, but whether the act was committed without
19 her consent. A victim of a sexual assault is not required
20 to do more than her age, strength, surrounding facts and
21 attending circumstances make it reasonable for her to do to
22 manifest her opposition."

23 Well, ladies and gentlemen, this is a woman
24 who was battered, been, by the concession of the defendant,
25 a woman that he grabbed around the throat with his right

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1 hand. This is a woman he used a knife on. This is a woman
2 whose residence he ransacked. This is a crime scene where,
3 as the point of entry, he didn't use the door, neither the
4 front door or the back door. He came in through the window
5 forcing his way inside and the defense says there's no
6 evidence that he sexually assaulted her. Well, he said he
7 never ejaculated, but that is rebutted by the DNA
8 evidence. One in 14 billion in describing the genetic
9 profile. I submit to you that the State has proven beyond
10 a reasonable doubt that he not only murdered her, he raped
11 her. He not only murdered her, he robbed her. He not only
12 committed murder, he broke and entered and he committed
13 burglary and the defense says it's all the same course of
14 conduct. If the legislature wanted to make those types of
15 distinctions, they would have done so and your obligation,
16 as objectively and as dispassionately as you can, is to
17 apply the law to the evidence in this case. That's all we
18 can ask.

19 The State's fourth aggravating circumstance
20 is that this murder involved torture or depravity of mind.
21 Instruction No. 20 describes torture. My partner ably
22 explained to you the elements of murder by torture
23 yesterday. I'm not going to repeat what she said.
24 Instead, I want to emphasize depravity of mind. This
25 aggravating circumstance is couched in disjunctive

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1 language. It doesn't necessarily require torture. It says
2 murder involving torture or depravity of mind. Now, you
3 think back about the circumstances of this case, is this a
4 depraved murder? Is this depravity when the individual who
5 kills is writing letters hurling defamatory adjectives at
6 the woman who was supposedly the love of his life?

7 The Court defines depravity of mind in
8 Instruction 21 and I commend that to your attention when
9 you deliberate. "The condition of mind described as
10 depravity of mind is characterized by an inherent
11 deficiency of moral sense and rectitude. It consists of
12 evil, corrupt, and perverted intent which is devoid of
13 regard for human dignity and which is indifferent to human
14 life." Weren't the actions of Mr. Chappell on the day of
15 this murder devoid of regard for human dignity? Didn't he
16 act in a way totally indifferent to the sanctity of human
17 life?

18 The Court concludes at line six and seven,
19 "To find an aggravating circumstance based on depravity of
20 mind, you must additionally find that there was torture,"
21 that's one of the ways to get there or there's the
22 disjunctive again, "torture or other serious and depraved
23 physical abuse beyond the act of killing itself." Now the
24 defense says the only evidence we have in this case is the
25 testimony of Dr. Green. Of course, they were focusing

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1 primarily upon the torture argument and it's quite true Dr.
2 Green, the Chief Medical Examiner in Clark County,
3 explained that, in his opinion, all of the wounds inflicted
4 on this victim were contemporaneous. Well, Dr. Green
5 didn't tell us what contemporaneous means except to say
6 they all happened at about the same time. He doesn't know
7 what the sequence of these lethal blows happened to be any
8 more than Dr. Etcoff. Dr. Green is not an eye witness. He
9 didn't see this as it happened and what he's, basically,
10 saying is that the knife wounds happened at about the same
11 time. He wouldn't know if there was a five minute
12 interval. He couldn't tell that from his medical
13 findings. He wouldn't know if there was a fifteen minute
14 interval. He can say from the evidence of the battering,
15 the pommeling to the head and face and body and arms of
16 this victim, that those acts were before she died. The
17 fact that she has defensive wounds, the bruises on her arms
18 suggests that she was trying to cover herself up.

19 Well, that's Dr. Green, the expert that he
20 is, is sill subject to limitations. What he did say is
21 that this woman died of multiple stab wounds and that's the
22 point I wish to make regarding depravity of mind because
23 the requirement is if the action is depraved, that in order
24 to find it, you must additionally find that there was
25 torture or other serious and depraved physical abuse beyond

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1 the act of killing herself. Now, as horrendous as 13 stab
2 wounds are, they didn't all kill her. My partner yesterday
3 referred to the wound close to the naval. It was
4 gratuitous, that was depraved. There's a stab wound down
5 near her pubic area. Why does he stab her there? Do we
6 get some insight from the fact that a few weeks ago, he had
7 been writing from the jail, "You're going to hell, you are
8 a slut, you are a whore, you are a stupid bitch," and he
9 stabs her near her pubic area. That didn't kill her.

10 So are those acts of serious and depraved
11 physical abuse beyond the act of killing itself and when
12 the defendant says that things weren't right, he says when
13 they were having consensual sex and the prosecution alleges
14 when he was raping her, he says he jumped up and she was
15 still laying down and he grabbed her with his right hand
16 around the neck. He says, "No, I wasn't cutting off her
17 air supply, I wasn't choking her. No, it wasn't anything
18 like that," but he demonstrated how he grabbed her. Is
19 that a serious and depraved act of physical abuse beyond
20 the act of killing itself and he battered her. My partner
21 counted 12. I don't know if it was six or 10 or 12 or 30
22 times. She bears the scrapes and bruises which show the
23 number of times the fists of this defendant impacted her
24 body. That didn't kill her, though. She died of stab
25 wounds and so those are serious and depraved acts of

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1 physical abuse beyond the act of killing itself and this
2 was a depraved murder.

3 The defense has talked about mitigation.
4 Ladies and gentlemen, to say that somebody who is now 26
5 going on 27 and when he committed these depraved acts was
6 25 years, going on 26, that somehow because of his youth,
7 that is a mitigating circumstance that outweighs his
8 heinous violent acts is an absurd position to take.

9 The defense says that he has a lack of
10 significant criminal history. Ladies and gentlemen, the
11 guy that got hit in the back with his brick, Mr. Gay, from
12 Lansing, Michigan might have something to say about that
13 defense argument. The stores who have been repeatedly
14 victimized by his efforts to satisfy his cocaine habit
15 might disagree. The Tucson Police Department that had to
16 respond repeatedly to the allegations of domestic violence
17 might disagree and certainly the woman whose nose was
18 broken, who was threatened with a knife to her throat on
19 June the 1st, Debbie Panos might beg to disagree and in all
20 likelihood, these persons would allege that the man who was
21 being supervised on probation when he committed this crime
22 for a gross misdemeanor, in fact, was the person who had a
23 very significant criminal history.

24 Because the defendant takes the witness
25 stand and cries, because he's tearful when interviewed by

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1 the defense psychologist, does that mean he's remorseful?
2 Well, even Dr. Etcoff said this is a very angry person and
3 when he began to explain what happened, I could see how
4 close to the surface the anger was and the prosecution
5 submits the remorse is phony. It's all an effort simply to
6 mitigate the punishment. It's an effort to diffuse his
7 responsibility. The defense says he fully accepts
8 responsibility. Not if he lies about what he did. Not if
9 he was there, laid around and waited, not if he raped her.
10 They say it's mitigation that he can adapt to prison life
11 and then they talk about his childhood.

12 Well, ladies and gentlemen, you'll be
13 thankful to know I'm almost done. There are two operative
14 words at this stage of the proceedings and in view of the
15 position taken by Dr. Etcoff, whose opinions are valid only
16 if what the defendant told him is valid, and in view of the
17 arguments made by the defense, these words are particularly
18 appropriate. The words are accountability and commitment.
19 Shakespeare in the play Julius Caesar has one of his
20 characters make a statement that I'm very fond of. The
21 statement is, "The fault, dear Brutus, is not in our stars,
22 it is in ourselves." Mr. James Chappell, the fault does
23 not lie in your stars nor, to borrow a phrase from Flip
24 Wilson, "Did the devil make you do it?" Ralph Waldo
25 Emerson said, "Things are in the saddle and ride mankind,"

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1 and crack cocaine rides hard and with a heavy spur and he
2 was an addict, that's for sure, and he had a problem, but
3 it is not an excuse, even though criminals repeatedly try
4 to make it an excuse, because nobody made him use crack
5 cocaine. Crack didn't make you do it, Mr. Chappell. Drugs
6 don't kill, people kill.

7 It wasn't the fault of Debbie Panos. She
8 didn't make James Chappell do it. He sought her out, he
9 came to her home, he was the aggressor, she denied his
10 accusations, she did nothing to provoke him into burglary
11 and robbery and rape and murder. It isn't even the fault
12 of the knife, 68-A-1. Without Mr. Chappell, the knife
13 could never have got outside of the drawer in the kitchen.
14 It is an aminate object, it was the instrument used by him
15 to destroy her life, but he is the one who picked it up.
16 He made the series of choices. His hand grasped the knife,
17 his hand, his arm plunged the cold steel of the knife
18 repeatedly into her neck and her chest and other parts of
19 her body.

20 It isn't the fault of EOB. When they
21 interviewed him the first time, he didn't have the attitude
22 of someone who was ready to change his life-style, to give
23 up dope. It's not the fault of William Moore, the
24 probation officer from Michigan, who did his best with this
25 defendant and with his family and it isn't the fault of

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1 grandmother Clara Axam. She undoubtedly did her best under
2 the circumstances with the defendant James Chappell. It's
3 not the fault of his Aunt Sharon Axam. This defendant made
4 the choice. He was the free agent who turned right down
5 Bonanza and didn't go over to EOB. It isn't the fault of
6 the absentee father. It's not the fault of the police in
7 this case. It isn't the fault of the witnesses, not the
8 fault of the Office of the District Attorney, it's not the
9 fault of Judge Maupin. He has a hefty case calendar. He
10 didn't need the Chappell case. No one made James Chappell
11 do what he did.

12 Mr. James Chappell, the fault lies in you
13 and if the criminal justice system means anything, it means
14 that when persons commit serious crimes of violence, they
15 must be held personally accountable. And you've already
16 held him accountable to some extent, but now it's judgment
17 day for James Chappell and the issue now becomes whether
18 you, as the ladies and gentlemen of this jury, possess the
19 resolve, the determination, the courage, the conviction,
20 the intestinal fortitude, the sense of commitment to do
21 your legal duty.

22 What about punishment? How does Mr.
23 Chappell feel? He testified about life with the
24 possibility of parole. "I would be honored," the murderer
25 would be honored to have life with parole. "I would be

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1 honored to be able to get out some time in my life." Don't
2 honor him, don't honor the depraved killer of Deborah
3 Panos. Don't honor someone who batters the head and face
4 and arms of a helpless mother of three children, who simply
5 lays on the floor and covers her face inside her home.
6 Don't honor someone who then culminates his murder, his
7 assault by repeatedly plunging a knife into his victim's
8 neck and chest and abdomen and pubic area. Those actions
9 make James Chappell an object of derision, not someone
10 worthy of the badge of honor of life with the possibility
11 of parole.

12 The grandmother quoted JP, the oldest child,
13 as saying about his father, "He's mean and he's in jail,"
14 and she also described why she -- I'm talking about Norma
15 Jean Penfield, her greatest fear, that after she dies, this
16 defendant gets out to further torment her grandchildren and
17 I'm asking you, I'm imploring you, as the ladies and
18 gentlemen of this jury, to grant a grandmother peace of
19 mind.

20 Remember the words of the defendant, Exhibit
21 75, the words of someone who is filled with the spirit of
22 vengeance and hatred, adding insult to injury. Well, a
23 wise man many years ago said, "The world once in a broad
24 flies irrevocably." A fist, a steak knife, these
25 instruments once sent abroad flied irrevocably. Ask the

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1 loved ones and friends of Deborah Panos if these aren't
2 irrevocable. Ladies and gentlemen, I ask you, on behalf of
3 the State of Nevada, specifically on behalf of my partner
4 Abbi Silver, in this case to impose a sentence which is
5 just as severe, just as deadly, just as final, just as
6 irrevocable as the fists and knife of James Chappell.

7 Deborah Panos had no due process of law, no
8 fine lawyers urging the defendant to back off, no right of
9 allocution, no jury, no safety net, no domestic violence
10 hotline. With the most profound disrespect for one who
11 would steal food and clothes and toys from his children and
12 from the so-called love of his life for crack cocaine, who
13 then stole from these children their mother and prematurely
14 sent her to heaven, I add my words to the words of Debbie's
15 aunt, Carol Monson, "Give James what he gave Debbie." I
16 mean by that death.

17 THE COURT: Does this matter now stand
18 submitted?

19 MR. HARMON: Yes, your Honor.

20 MR. EWING: Yes.

21 THE COURT: At this time we will leave this
22 case with the jury. I will ask the clerk to swear the
23 officers to take charge of the jury and the alternates.

24

25 (At this time the officers were duly sworn

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1 by the clerk.)

2

3 THE COURT: Ladies and gentlemen of the
4 jury, if you will now accompany the officers to
5 deliberation. First order of business is that they will
6 take you to lunch.

7 We will be at ease while the jury departs
8 the confines of the courtroom.

9

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

11

12 THE COURT: Mr. Ewing, you have something
13 you wish to bring to the Court's attention at this time.

14 MR. EWING: Your Honor, yes.

15 Yesterday afternoon, I made a motion for
16 mistrial. The Court made a ruling, but the Court allowed
17 me an opportunity to present the Court with a case for the
18 Court's file relating to the motion and the validity of a
19 mistrial.

20 THE COURT: You rely upon this case in
21 support of your argument?

22 MR. EWING: Yes, that's correct. It's
23 pretty much on point and I provided a copy to the
24 prosecution.

25 Does the Court wish to hear any more

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1 argument on the subject?

2 THE COURT: The Court believes that each
3 accusation of misconduct and argument has to be considered
4 on its special facts. The case of Lesko versus Lehman, 925
5 F.2d 1527, in the Court's view, apply to the discrete facts
6 of that case and is distinguishable and, therefore, makes
7 the case part of this record and incorporates it as part of
8 the defense's argument for mistrial.

9 Anything further at this time?

10 MR. HARMON: Not from the State, your
11 Honor.

12 MR. EWING: Not from the defense.

13 THE COURT: All right, we're in recess.

14

15 (Off the record at 1:26 p.m.)

16

17 * * * * *

18

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

20

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

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PATSY K. SMITH, OFFICIAL COURT REPORTER

DISTRICT COURT

CLARK COUNTY, NEVADA

FILED IN OPEN COURT

ORIGINAL

* * * * *

OCT 24 1996 19

LORETTA BOWMAN, CLERK

THE STATE OF NEVADA,

BY

Deputy

Plaintiff,

CASE NO. C131341

Vs

DEPT. NO. VII

JAMES MONTELL CHAPPELL,

DOCKET P

Defendant.

BEFORE THE HONORABLE:

A. WILLIAM MAUPIN DISTRICT JUDGE

THURSDAY, OCTOBER 24, 1996, 10:15 A.M.

PENALTY PHASE - VOLUME IV

APPEARANCES:

FOR THE STATE:

MELVYN T. HARMON &
ABBI SILVER
Deputies District Attorney

FOR THE DEFENDANT:

HOWARD S. BROOKS &
WILLARD N. EWING
Deputies Public Defender

REPORTED BY:

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

PATSY K. SMITH, OFFICIAL COURT REPORTER

CE

1 THURSDAY, OCTOBER 24, 1996, 10:15 A.M.

2 THE COURT: We are on the record outside the
3 presence of the jury. The presence of the defendant is
4 waived by both parties?

5 MR. BROOKS: Defense does, your Honor.

6 MR. HARMON: Yes, your Honor.

7 THE COURT: The jury has presented a written
8 question, which has been marked as Court's Jury Exhibit No.
9 1. The question is as follows, "Please come in and explain
10 to us what exactly our responsibility is as a jury. Are we
11 supposed to be investigators? Are we here to judge the
12 victim or the State's cause? What do we do about a juror
13 who insists on being an investigator?" Signed Wendy Hill,
14 foreperson, October 24th, 1996.

15 The parties have agreed that the Court may
16 read to the jury a Supplemental Instruction and leave it
17 with the jury, which will state the following.

18 "As jurors, your obligation is to find the
19 facts pursuant to the Court's Jury Instructions. Your
20 findings must be based on your analysis of the evidence
21 introduced into court. You are not investigators.

22 As to your question as to whether you are to
23 judge the victim or the State's cause, your
24 responsibilities are to follow the Court's Instructions and
25 apply them to the facts presented."

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1 At this time, I will return the Court's
2 Supplemental Jury Instruction, which will be entitled No.
3 1, Supplemental Instruction No. 1 and simply read it to the
4 jury off the record and supply it to the -- and leave this
5 Instruction with the jury.

6 MR. HARMON: That's fine with the State,
7 your Honor.

8 MR. BROOKS: That's fine with the defense,
9 your Honor.

10 THE COURT: All right.

11 MR. BROOKS: Judge, is it possible at some
12 point today a copy of both those will be made available to
13 us?

14 THE COURT: We will make them right now.

15 MR. BROOKS: Okay, great.

16
17 (Off the record at 10:17 a.m. and back on
18 the record at 2:27 p.m.)

19
20 THE COURT: Will counsel stipulate to the
21 presence of the jury?

22 MR. HARMON: Yes, your Honor.

23 MR. BROOKS: Defense does, your Honor.

24 THE COURT: Ladies and gentlemen of the
25 jury, I understand that you have reached a verdict; is that

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1 correct?

2 THE JURY: (In Unison) Yes.

3 THE COURT: I will now read the verdicts of
4 the jury into the record.

5 "District Court, Clark County, Nevada,
6 State of Nevada, plaintiff, versus James Montell Chappell,
7 defendant. Case No. C131341, Department No. VII, Docket
8 P.

9 Special verdict: We the jury in the above
10 entitled case having found the defendant, James Montell
11 Chappell, guilty of Count III, murder of the first degree,
12 designate that the mitigating circumstance or
13 circumstances, which have been checked below, have been
14 established.

15 The murder was committed while the defendant
16 was under the influence of extreme mental or emotional
17 disturbance and any other mitigating circumstances."

18 Those two blocks have been checked by the
19 jury.

20 "Special verdict: State of Nevada,
21 plaintiff, versus James Montell Chappell, defendant.
22 District Court, Clark County, Nevada, Case No. C131341,
23 Department VII, Docket P.

24 Special verdict: We the jury in the above
25 entitled case having found the defendant, James Montell

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1 Chappell, guilty of Count III, murder of the first degree,
2 designate the aggravating circumstance or circumstances,
3 which have been checked below, have been established beyond
4 a reasonable doubt.

5 The murder was committed while the person
6 was engaged in the commission of or an attempt to commit
7 any burglary and/or home invasion.

8 The murder was committed while the person
9 was engaged in the commission of or an attempt to commit
10 any robbery.

11 The murder was committed while the person
12 was engaged in the commission of or an attempt to commit
13 any sexual assault.

14 District Court, Clark County, Nevada, State
15 of Nevada, plaintiff, versus James Monte Chappell,
16 defendant. Case No. C131341, Department VII, Docket P.

17 We the jury in the above entitled case
18 having found the defendant, James Montell Chappell, guilty
19 of Count III, murder of the first degree and having found
20 that the aggravating circumstance or circumstances outweigh
21 any mitigating circumstance or circumstances impose a
22 sentence of death.

23 Dated at Las Vegas, Nevada, this 24th day of
24 October, 1996, Wendy L. Hill, foreperson."

25 The two special verdicts that have been read

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1 into the record have also been signed this 24th day of
2 October, 1996, by Wendy L. Hill, foreperson.

3 Ladies and gentlemen of the jury, are these
4 your verdicts, so say you one, so say you all?

5 THE JURY: (In Unison) Yes.

6 THE COURT: Either of the parties wish to
7 have the jury polled?

8 MR. BROOKS: Defense will, your Honor.

9 THE COURT: All right. The clerk will now
10 pole the jury.

11 THE CLERK: Denise Wright Parr, are those
12 your verdicts as read?

13 A Yes, they are.

14 Q Kenneth Edward Gritis, are those your
15 verdicts as read?

16 A Yes, they are.

17 Q Jerry Wayne Ewell, are those your
18 verdicts as read?

19 A Yes.

20 Q Cheryl Lynn Wells, are those your
21 verdicts as read?

22 A Yes.

23 Q Jim Blake Tripp, are those your
24 verdicts as read?

25 A Yes.

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1 Q Kellyanne Bentley Taylor, are those
2 your verdicts?

3 A No.

4 A VOICE: He missed the second page of the
5 aggravator.

6 THE COURT: Oh.

7 The murder involved torture or depravity of
8 mind. Excuse me. That blank has been checked. The jury
9 is correct.

10 (Off the record discussion not reported.)

11 THE COURT: Go ahead and start over.

12 THE CLERK: Denise Wright Parr, are those
13 your verdicts as read?

14 A Yes, they are.

15 Q Kenneth Edward Gritis, are those your
16 verdicts as read?

17 A Yes, they are.

18 Q Jerry Wayne Ewell, are those your
19 verdicts as read?

20 A Yes.

21 Q Cheryl Lynn Wells, are those your
22 verdicts as read?

23 A Yes, they are.

24 Q Jim Blake Tripp, are those your
25 verdicts as read?

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1 A Yes, they are.

2 Q Kellyanne Bentley Taylor, are those
3 your verdicts as read?

4 A Yes.

5 Q Bruce Todd Larsen, are those your
6 verdicts as read?

7 A Yes.

8 Q Mark Gregory Massar, are those your
9 verdicts as read?

10 A Yes.

11 Q Danna Terry Yates, are those your
12 verdicts as read?

13 A Yes.

14 Q Glenn Eugene Fittro, are those your
15 verdicts as read?

16 A Yes.

17 Q Kenneth Roy Fitzgerald, are those your
18 verdicts as read?

19 A Yes.

20 Q Wendy Lynn Hill, are those your
21 verdicts as read?

22 A Yes.

23 THE COURT: Is there anything further from
24 the parties at this time?

25 MR. HARMON: No, your Honor.

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

3 THE COURT: Ladies and gentlemen of the
4 jury, you are here by discharged from jury service in this
5 rotation with the thanks of the Court and Clark County. I
6 know this has been a difficult process for you and a
7 lengthy one, but your commitment to this process was
8 essential to the resolution of this matter.

9 You are hereby released from your
10 admonishment not to discuss this case with anyone,
11 yourselves or any third parties. You are also under no
12 obligation to speak to anyone about the verdicts that you
13 have rendered in this case. I would, however, request that
14 if the representatives of the parties would wish to talk to
15 you or representatives of the press want to interview with
16 you about this matter, you are free to do so. I would
17 encourage you to do so. It does assist the process if you
18 do provide that information, but you don't have to. If
19 anyone wishes to or seeks to or insists upon discussing
20 these verdicts with you over your protestations or your
21 objections, please report that fact to me.

22 Ladies and gentlemen, you are now
23 discharged. I would ask that you remain behind in the jury
24 room for a few moments so that I can talk to you, not
25 necessarily about the deliberations, but about anything you

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1 might have that would be of assistance to us in improving
2 this process. It is a process that is run and involved by
3 human beings. It is fraught, but it is the best system we
4 have and, in our opinion, the best system in the world for
5 resolving these kinds of disputes, but if you would be so
6 kind to remain behind a few moments, you don't have to of
7 course, but I would appreciate it and we will be at ease
8 while the bailiff conducts you from the courtroom.

9

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

11

12 THE COURT: Anything further from the
13 parties at this time outside the presence of the jury?

14 MR. BROOKS: We need a sentencing date, your
15 Honor.

16 THE COURT: Okay.

17 THE CLERK: December 11 at 9:00 a.m.

18 THE COURT: All right, the verdicts of the
19 jury will now be a part of the Court record. This matter
20 is adjourned, but before I do that, I would like at this
21 point to indicate my thanks to the attorneys in this matter
22 for a very well tried case. It was a difficult case for
23 everyone obviously, but the Court's view is that the
24 attorneys in this case acquitted themselves in the highest
25 tradition of our profession.

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1 MR. HARMON: Thank you, Judge.

2 MS. SILVER: Thank you.

3 THE COURT: With that, the Court will

4 adjourn.

5

6 (Off the record at 2:35 p.m.)

7

8 * * * * *

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

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1 INST

FILED IN OPEN COURT
OCT 24 1996 19 2:27pm
LORETTA BOWMAN, CLERK
BY [Signature] Deputy

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4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA
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8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 JAMES MONTELL CHAPPELL

12
13 Defendant.
14

Case No. C131341
Dept. No. VII
Docket P

15 INSTRUCTIONS TO THE JURY

16 (INSTRUCTION NO. 1)

17 MEMBERS OF THE JURY:

18 It is now my duty as judge to instruct you in the law that applies to this penalty hearing. It is your
19 duty as jurors to follow these instructions and to apply the rules of law to the facts as you find them from
20 the evidence.

21 You must not be concerned with the wisdom of any rule of law stated in these instructions.
22 Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your
23 oath to base a verdict upon any other view of the law than that given in the instructions of the Court.
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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.

INSTRUCTION NO. 3

The trial jury shall fix the punishment for every person convicted of murder of the first degree.

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The jury shall fix the punishment at:

- (1) A definite term of 50 years imprisonment, with eligibility for parole beginning when a minimum of 20 years has served,
- (2) Life imprisonment with the possibility of parole,
- (3) Life imprisonment without the possibility of parole, or
- (4) Death.

Life imprisonment with the possibility of parole is a sentence of life imprisonment which provides that a defendant would be eligible for parole after a period of twenty years. This does not mean that he would be paroled after twenty years, but only that he would be eligible after that period of time.

Life imprisonment without the possibility of parole means exactly what it says, that a defendant shall not be eligible for parole.

If you sentence a defendant to death, you must assume that the sentence will be carried out.

Furthermore, any person who uses a deadly weapon in the commission of a crime shall be punished by imprisonment in the state prison for a term equal to and in addition to the term of imprisonment prescribed for the primary offense. The deadly weapon enhancement runs consecutively with the sentence imposed for the primary offense.

Therefore, any punishment the jury imposes will be doubled at the time of formal sentencing because of the deadly weapon enhancement.

INSTRUCTION NO. 6

In the penalty hearing, evidence may be presented concerning aggravating and mitigating circumstances relative to the offense, and any other evidence that bears on the defendant's character.

Hearsay is admissible in a penalty hearing.

The State has alleged that aggravating circumstances are present in this case.

The defendants have alleged that certain mitigating circumstances are present in this case.

It shall be your duty to determine:

(a) Whether an aggravating circumstance or circumstances are found to exist; and

(b) Whether a mitigating circumstance or circumstances are found to exist; and

(c) Based upon these findings, whether a defendant should be sentenced to a definite term of 50 years imprisonment, life imprisonment or death.

The jury may impose a sentence of death only if (1) the jurors unanimously find at least one aggravating circumstance has been established beyond a reasonable doubt and (2) the jurors unanimously find that there are no mitigating circumstances sufficient to outweigh the aggravating circumstance or circumstances found.

A mitigating circumstance itself need not be agreed to unanimously; that is, any one juror can find a mitigating circumstance without the agreement of any other juror or jurors. The entire jury must agree unanimously, however, as to whether the aggravating circumstances outweigh the mitigating circumstances or whether the mitigating circumstances outweigh the aggravating circumstances.

Otherwise, the punishment shall be imprisonment in the State Prison for a definite term of 50 years imprisonment, with eligibility for parole beginning when a minimum of 20 years has been served or life with or without the possibility of parole.

INSTRUCTION NO. 8

You are instructed that it is not necessary for the Defendant to present any mitigating circumstances. Even if the State establishes one or more aggravating circumstances beyond a reasonable doubt and the Defendant presents no evidence in mitigation you should not automatically sentence the Defendant to death. The law never requires that a sentence of death be imposed; the jury however, may only consider the option of sentencing the Defendant to death where the State has established beyond a reasonable doubt that an aggravating circumstance or circumstances exist and the mitigating evidence is not sufficient to outweigh the aggravating circumstance.

You are instructed that the following factors are circumstances by which Murder of the First Degree may be aggravated:

1. The murder was committed while the Defendant was engaged in the commission of or an attempt to commit any Burglary and/or Home Invasion.

2. The murder was committed while the Defendant was engaged in the commission of or an attempt to commit any Robbery.

3. The murder was committed while the Defendant was engaged in the commission of or an attempt to commit any Sexual Assault.

4. The murder involved torture or depravity of mind.

INSTRUCTION NO. 10

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. 11

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.

1
2 You are further instructed that an unlawful entry is one ordinarily done without the authority,
3 permission or consent of the owner or one in lawful possession of the building. However, consent to
4 enter is not a defense to the crime of burglary nor need there be a breaking into or a forced entry so long
5 as it is shown that entry was made with the specific intent to commit larceny and/or assault and/or battery
6 and/or robbery and/or murder or any felony therein.

7 The authority to enter a building extends only to those who enter with a purpose consistent with
8 the reason the residence or mobile home or building is open to them. An entry with intent to commit
9 larceny and/or assault and/or battery and/or robbery and/or murder or any felony cannot be said to be
10 within the authority granted someone who has permission to enter.
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INSTRUCTION NO. 13

Any person who, by day or night, forcibly enters an inhabited dwelling without permission of the owner, resident or lawful occupant, whether or not a person is present at the time of the entry, is guilty of invasion of the home.

"Forcibly enters" means the entry of an inhabited dwelling involving any act of physical force resulting in damage to the structure.

"Inhabited dwelling" means any structure, building, house, apartment, or mobile home in which the owner or other lawful occupant resides.

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. 16

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. 17

Any person who subjects another person to sexual penetration, against the victim's will or under conditions in which the perpetrator knows or should know the victim is mentally and emotionally incapable of resisting is guilty of sexual assault.

Sexual penetration means cunnilingus, fellatio, or any intrusion, however slight, of any part of a person's body or any object manipulated or inserted by a person into the genital or anal openings of the body of another, including sexual intercourse.

Sexual intercourse is the placing of the penis of the perpetrator into the vagina of the victim.

INSTRUCTION NO. 19

Physical force is not a necessary element in the commission of sexual assault. The issue is not whether the victim was physically forced to engage in a sexual assault but whether the act was committed without her consent. A victim of a sexual assault is not required to do more than her age, strength, surrounding facts and attending circumstances make it reasonable for her to do to manifest her opposition.

The essential elements of murder by means of torture are (1) the act or acts which caused the death must involve a high degree of probability of death, and (2) the defendant must commit such act or acts with the intent to cause cruel pain and suffering for the purpose of revenge, persuasion or for any other sadistic purpose.

The crime of murder by torture does not necessarily require any proof that the defendant intended to kill the deceased nor does it necessarily require any proof that the deceased suffered pain.

The condition of mind described as depravity of mind is characterized by an inherent deficiency of moral sense and rectitude. It consists of evil, corrupt and perverted intent which is devoid of regard for human dignity and which is indifferent to human life. It is a state of mind outrageously, wantonly vile, horrible or inhuman.

To find an aggravating circumstance based on depravity of mind you must additionally find that there was torture, or other serious and depraved physical abuse beyond the act of killing itself.

Murder of the first degree may be mitigated by any of the following circumstances, even though the mitigating circumstance is not sufficient to constitute a defense or reduce the degree of the crime:

- (1) The defendant has no significant history of prior criminal activity.
- (2) The murder was committed while the defendant was under the influence of extreme mental or emotional disturbance.
- (3) The victim was a participant in the defendant's criminal conduct or consented to the act.
- (4) The defendant was an accomplice in a murder committed by another person and his participation in the defendant's criminal conduct or consented to the act.
- (5) The defendant acted under duress or under the domination of another person.
- (6) The youth of the defendant at the time of the crime.
- (7) Any other mitigating circumstances.

INSTRUCTION NO. 23

The burden rests upon the prosecution to establish any aggravating circumstance beyond a reasonable doubt and you must be unanimous in your finding as to each aggravating circumstance.

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.

INSTRUCTION NO. 25

The jury is instructed that in determining the appropriate penalty to be imposed in this case that it may consider all evidence introduced and instructions given at both the penalty hearing phase of these proceedings and at the trial of this matter.

INSTRUCTION NO. 26

In your deliberation you may not discuss or consider the subject of guilt or innocence of a defendant, as that issue has already been decided. Your duty is confined to a determination of the punishment to be imposed.

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

If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of his testimony which is not proved by other evidence.

1
2 Although you are to consider only the evidence in the case in reaching a verdict, you must bring
3 to the consideration of the evidence your everyday common sense and judgment as reasonable men and
4 women. Thus, you are not limited solely to what you see and hear as the witnesses testify. You may
5 draw reasonable inferences from the evidence which you feel are justified in the light of common
6 experience, keeping in mind that such inferences should not be based on speculation or guess.

7 A verdict may never be influenced by sympathy, prejudice or public opinion. Your decision
8 should be the product of sincere judgment and sound discretion in accordance with these rules of law.
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INSTRUCTION NO. 29

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 verdicts must be unanimous except with regard to any findings you may make as to the existence of individual mitigating circumstances. When you have agreed upon your verdicts, they should be signed and dated by your foreperson.

INSTRUCTION NO. 30

The Court has submitted two sets of verdicts to you. One set of verdicts reflects the four possible punishments which may be imposed. The other verdicts are special verdicts. They are to reflect your findings with respect to the presence or absence and weight to be given any aggravating circumstance and any mitigating circumstances.

INSTRUCTION NO. 31

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 was given you in these instructions, and return a verdict which, according to your reason and candid judgment, is just and proper.

*Given in open court
10-22-96*

William H. Morgan, Jr.

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19 2:27 pm
CLERK

CASE NO. C131341
DEPT. NO. VII
DOCKET "P"

LE38

In response to your inquiries set forth in court's exhibit #1:

As jurors, your obligation is to find the facts pursuant to the Court's jury instructions. Your findings must be based on your analysis of the evidence introduced into court. You are not investigators.

As to your question as to whether you are to judge the victim or the State's cause:

Your responsibilities are to follow the court's instructions and apply them to the facts presented.

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FILED IN OPEN COURT
OCT 24 1996 19 2:27pm
LORETTA BOWMAN, CLERK
BY [Signature] Deputy

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,
9 Plaintiff,
10 -vs-
11 JAMES MONTELL CHAPPELL
12
13 Defendant.

Case No. C131341
Dept. No. VII
Docket P

VERDICT

16 We, the Jury in the above entitled case, having found the Defendant, JAMES MONTELL
17 CHAPPELL, Guilty of COUNT III - MURDER OF THE FIRST DEGREE and having found that the
18 aggravating circumstance or circumstances outweigh any mitigating circumstance or circumstances
19 impose a sentence of,

- 20 _____ A definite term of 50 years imprisonment, with eligibility for parole beginning when a
- 21 minimum of 20 years has been served,
- 22 _____ Life in Nevada State Prison With the Possibility of Parole.
- 23 _____ Life in Nevada State Prison Without the Possibility of Parole.
- 24 ☒ Death.

26 DATED at Las Vegas, Nevada, this 24th day of October, 1996

27 Wendy L. Hill
28 FOREPERSON

CE31

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FILED IN OPEN COURT
OCT 24 1996 19 2:27pm
LORETTA BOWMAN, CLERK
BY Lina Hurd Deputy

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6 DISTRICT COURT
CLARK COUNTY, NEVADA

7
8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 JAMES MONTELL CHAPPELL

12
13 Defendant.
14

Case No. C131341
Dept. No. VII
Docket P

15 SPECIAL
16 VERDICT

17 We, the Jury in the above entitled case, having found the Defendant, JAMES MONTELL
18 CHAPPELL, Guilty of COUNT III - MURDER OF THE FIRST DEGREE, designate that the
19 aggravating circumstance or circumstances which have been checked below have been established beyond
20 a reasonable doubt.

- 21 ☒ The murder was committed while the person was engaged in the commission of or an
22 attempt to commit any Burglary and/or Home Invasion.
23 ☒ The murder was committed while the person was engaged in the commission of or an
24 attempt to commit any Robbery.
25 ☒ The murder was committed while the person was engaged in the commission of or an
26 attempt to commit any Sexual Assault.

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✓ The murder involved torture or depravity of mind.

DATED at Las Vegas, Nevada, this 24th day of October, 1996.

Wendy L. Hill
FOREPERSON

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FILED IN OPEN COURT
OCT 24 1996 19 2:27pm
LORETTA BOWMAN, CLERK
BY [Signature]
Deputy

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Case No. C131341
Dept. No. VII
Docket P

SPECIAL
VERDICT

17 We, the Jury in the above entitled case, having found the Defendant, JAMES MONTELL
18 CHAPPELL, Guilty of COUNT III - MURDER OF THE FIRST DEGREE, designate that the mitigating
19 circumstance or circumstances which have been checked below have been established.

- 20 ☐ The defendant has no significant history of prior criminal activity.
- 21 ☒ The murder was committed while the defendant was under the influence of extreme mental
22 or emotional disturbance.
- 23 ☐ The victim was a participant in the defendant's criminal conduct or consented to the act.
- 24 ☐ The defendant was an accomplice in a murder committed by another person and his
25 participation murder was relatively minor.
- 26 ☐ The defendant acted under duress or under the domination of another person.

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 The youth of the defendant at the time of the crime.

 ✓ Any other mitigating circumstances.

 No mitigating circumstances are found to exist.

DATED at Las Vegas, Nevada, this 24th day of October, 1996.

Wendy L. Hill
FOREPERSON

DISTRICT COURT

CLARK COUNTY, NEVADA

ORIGINAL

* * * * *

FILED IN OPEN COURT
DEC 12 1996

19
LORETTA BOWMAN, CLERK
BY *Lina Hurd* Deputy

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

CASE NO. C131341
DEPT. NO. VII
DOCKET P

BEFORE THE HONORABLE:

MICHAEL P. GIBBONS VISITING DISTRICT JUDGE

WEDNESDAY, DECEMBER 11, 1996, 9:00 A.M.

APPEARANCES:

FOR THE STATE:

ABBI SILVER
Deputy District Attorney

FOR THE DEFENDANT:

HOWARD S. BROOKS
Deputy Public Defender

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

PATSY K. SMITH, OFFICIAL COURT REPORTER

CE

1 WEDNESDAY, DECEMBER 11, 1996, 9:00 A.M.

2 MS. SILVER: Good morning. Abbi Silver
3 appearing on behalf of the State.

4 MR. BROOKS: Howard Brooks appearing on
5 behalf of the defendant.

6 MS. SILVER: Just for the record, I did
7 speak with Judge Maupin's secretary. We had brought the
8 victim's family down from Arizona, but it was going to be
9 the State's request to continue it for Judge Maupin since
10 he had heard the entire capital murder case. He is very
11 familiar, obviously, with the facts of the case and after
12 conferring with the victim's family as well and at our
13 request, we are going to ask to put it over for the 30th.
14 When I checked with chambers, they said Judge Maupin had
15 also requested to do that.

16 THE COURT: That was my plan also. Defense
17 counsel wanted to go ahead today.

18 MS. SILVER: I would ask the Court to
19 continue it for Judge Maupin since he heard the case and
20 since it's the State's request and Judge Maupin's request.

21 MR. BROOKS: For the record, our position
22 would be to go forward today.

23 MS. SILVER: For the record, he received the
24 death penalty, so I don't see any prejudice by continuing
25 it to the 30th.

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1 THE COURT: Matter continued to December
2 30th at 9:00 for sentencing.

3 MS. SILVER: Thank you.

4 MR. BROOKS: May I approach the clerk,
5 Judge?

6 THE COURT: Yes.

7 MR. BROOKS: Thanks.

8

9 * * * * *

10

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

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

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PATSY K. SMITH, OFFICIAL COURT REPORTER

101
App
1 NCA
2 MORGAN D. HARRIS
3 PUBLIC DEFENDER
4 NEVADA BAR #1879
5 309 South Third Street, Suite 226
6 Las Vegas, Nevada 89155
7 (702)455-4685
8 Attorney for the Defendant
9 Public Defender File No.

ORIGINAL

FILED

Dec 27

1 05 PM '96

Christa L. ...
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,
11 Plaintiff,
12 v.
13 JAMES MONTELL CHAPPELL,
14 Defendant.

CASE NO. C131341x

DEPT. NO. VII

Date of Hearing: 12-30-96
Time of Hearing: 9:00 A.M.

DEFENDANT'S MOTION FOR STAY OF EXECUTION

16 COMES NOW Defendant James Montell Chappell, by and
17 through his attorney, Deputy Public Defender Howard S. Brooks, and
18 respectfully requests that this Honorable Court stay the execution
19 of Mr. Chappell pursuant to NRS 176.415 and NRS 177.095.

20 This motion is based upon the attached Declaration of
21 Counsel.

22 DATED this 27th day of December, 1996.

23 CLARK COUNTY PUBLIC DEFENDER

24 By *Howard S. Brooks*
25 HOWARD S. BROOKS #3374
26 DEPUTY PUBLIC DEFENDER
27
28

DECLARATION

HOWARD S BROOKS makes the following declaration:

1. I am an attorney duly licensed to practice law in the State of Nevada; I am the Court Appointed Deputy Public Defender assigned to represent Defendant James Chappell; I am familiar with the facts and circumstances of this case.

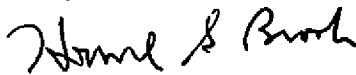
2. It is anticipated that the Honorable A. William Maupin of the Eighth Judicial Court, Department VII, will formally sentence Mr. Chappell to death on December 30, 1996, at the sentencing hearing. This formal sentencing will be pursuant to a jury verdict rendered in this case on October 24, 1996.

3. NRS 177.055 provides an automatic appeal to the Supreme Court of Nevada from a judgment of death. NRS 177.095 provides that such sentence of death shall be mandatorily stayed when an appeal is made.

4. Pursuant to these statutory provisions, the Office of the Clark County Public Defender will immediately file a notice of appeal and pursue an appeal to the Nevada Supreme Court. Consequently, we would request that this Honorable Court stay the execution of the sentence in this case pursuant to the statute.

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

EXECUTED ON December 27, 1996.



HOWARD S. BROOKS

(Mot\Chappell.Stay)

1 RECEIPT OF COPY of the above and foregoing Defendant's
2 Motion for Stay of Execution is hereby acknowledged this 22
3 day of December, 1996.

4 CLARK COUNTY DISTRICT ATTORNEY

5
6 By Tand Schmidt

FILED

DEC 30 1 39 PM '96

Loetta L. Luman
CLERK

1 ORDR
2 MORGAN D. HARRIS
3 PUBLIC DEFENDER
4 NEVADA BAR #1879
5 309 South Third Street, Suite 226
6 Las Vegas, Nevada 89155
7 (702)455-4685
8 Attorney for the Defendant
9 Public Defender File No.

DISTRICT COURT
CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA)	
)	
11 Plaintiff,)	CASE NO. C131341x
)	
12 v.)	DEPT. NO. VII
)	
13 JAMES MONTELL CHAPPELL,)	ORDER FOR STAY OF EXECUTION
)	
14 Defendant.)	

15 This matter having come before this Court on December
16 30, 1996, upon Defendant's Motion for Stay of Execution, and good
17 cause appearing therefor;

18 IT IS HEREBY ORDERED that the execution of Defendant
19 James Montell Chappell be stayed pending resolution of the
20 automatic appeal from the Judgment of Conviction in this case.
21 This stay of execution is made pursuant to NRS 176.415 and NRS
22 177.095.

23 DATED this 30 day of DECEMBER, 1996.

24
25 SUBMITTED BY:
26 CLARK COUNTY PUBLIC DEFENDER

27 BY *Howard S. Brooks*
28 HOWARD S. BROOKS #3374
DEPUTY PUBLIC DEFENDER

(Ord/Chappell Stay)

[Signature]
DISTRICT JUDGE

CE31

DISTRICT COURT

CLARK COUNTY, NEVADA

FILED IN OPEN COURT

DEC 31 1996

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LORETTA BOWMAN, CLERK

BY

Deputy

ORIGINAL

THE STATE OF NEVADA,

Plaintiff,

Vs

JAMES MONTELL CHAPPELL,

Defendant.

CASE NO. C131341

DEPT. NO. VII

DOCKET P

BEFORE THE HONORABLE:

A. WILLIAM MAUPIN DISTRICT JUDGE

MONDAY, DECEMBER 30, 1996, 9:00 A.M.

APPEARANCES:

FOR THE STATE:

JOHN P. LUKENS
Chief Deputy District Attorney

FOR THE DEFENDANT:

HOWARD S. BROOKS
Deputy Public DefenderFOR THE DEPT. OF
PAROLE & PROBATION:

ELAINE LOWREY

REPORTED BY:

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

PATSY K. SMITH, OFFICIAL COURT REPORTER

CE11

1 MONDAY, DECEMBER 30, 1996, 9:00 A.M.

2 THE COURT: C131341, State of Nevada versus
3 James Montell Chappell.

4 The defendant is present in custody
5 represented by his counsel, State of Nevada represented by
6 the Deputy District Attorney. Also present are
7 representatives of the Department of Parole & Probation.

8 This is the time set for the entry of
9 judgment and imposition of sentence. Are the parties ready
10 to proceed?

11 MR. BROOKS: Defense is, your Honor.

12 MR. LUKENS: And the State is, your Honor.

13 THE COURT: All right.

14 First, there is a motion for stay of
15 execution.

16 MR. BROOKS: We can handle that after the
17 sentencing, Judge. Whatever the Court's pleasure.

18 THE COURT: All right.

19 On October the 16th, 1996, the trial in this
20 matter was concluded and the jury found the defendant
21 guilty of burglary under Count I, robbery with the use of a
22 deadly weapon under Count II, and murder with the use of a
23 deadly weapon under Count III and the jury also having
24 imposed the death penalty on Count III, we're now
25 proceeding on the sentencing for these charges.

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1 The Information in this case that generated
2 these charges was filed in this matter -- it's not on the
3 calendar. When was the Information filed?

4 MR. BROOKS: Judge, it was filed October
5 11th, 1995.

6 THE COURT: All right, the record will so
7 reflect.

8 Is there any legal cause or reason why
9 judgment should not be pronounced against the defendant at
10 this time?

11 MR. BROOKS: No, your Honor.

12 THE COURT: By virtue of the jury verdicts,
13 the defendant is hereby adjudged guilty of burglary, a
14 felony, under Count I, robbery with use of a deadly weapon,
15 a felony, under Count II, and murder in the first degree
16 with the use of a deadly weapon under Count III.

17 Does the Department have anything to add to
18 its report?

19 MS. LOWREY: No, your Honor.

20 THE COURT: State of Nevada.

21 MR. LUKENS: Briefly, your Honor.

22 I would advise the Court that the victim's
23 relatives are in court this morning and declined an
24 opportunity to speak because they felt that they would be
25 too emotional and would not be able to address the Court as

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1 they felt the Court should be addressed.

2 THE COURT: The Court has a clear
3 recollection of the testimony that was had during the
4 trial.

5 MR. LUKENS: Thank you.

6 I simply wish to comment regarding what this
7 man wrote to the Court after he was convicted on October
8 16th, 1996.

9 Winston Churchill, when once describing one
10 of the most horrendous men to have lived in our century,
11 simply said, "He was an evil man." It would be easy to
12 call this man some sort of monster, someone who does
13 horrific and terrible things, but that would be to dignify
14 him. He was not and is not that. He is a little man who
15 is evil. He's a little man who even, when called before
16 the Court, says of his victim, the mother of his three
17 children, he says, "But she still made a bad choice and got
18 caught. Yes, she thought I would let her get away with
19 this since I let her get away with so much in the past."

20 Even today, he cannot accept and understand
21 as a decent human being. He simply says, in his delusion
22 when he says, "But I'm going to need to learn a little bit
23 for when I get free, so what I'm going to do now is learn
24 as much as possible. If I ever get free," and so forth.

25 This man forfeited his right to live. The

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1 jury imposed the sentence and the sentence is just. He
 2 deserves to die for what he did, but because often times in
 3 the nature and the course in the events, that, for some
 4 reason, the Supreme Court in the future sees some reason
 5 not to have this man forfeit his life, I'm going to ask the
 6 Court to run all of those sentences consecutive rather than
 7 concurrent as recommended by the Department of Parole &
 8 Probation. There's no question that this type of person
 9 should never, ever be a free man to walk among us or among
 10 decent people and breathe free air. Those sentences should
 11 be consecutive.

12 I would submit it.

13 THE COURT: Thank you.

14 Mr. Chappell, your attorney will have an
 15 opportunity to make a statement on your behalf. Do you
 16 have anything to tell the Court in mitigation of punishment
 17 before sentence is pronounced?

18 THE DEFENDANT: Of course, your Honor.

19 First of all, I would like to thank you and
 20 the State for my glasses that you bought me and I would
 21 like to send my most sincere apologies to my three lovely
 22 children and their beloved mother, who I tried very hard to
 23 love, but somewhere along the way obsession took over and I
 24 lost all my self-esteem and self control.

25 I did not and could not burglarize my own

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1 children's home. I did not and could not rob my own
2 children's mother. I did not and could not plan to kill my
3 own children's mother or any other human being. I am not a
4 cold blooded, violent person and my misdemeanor history
5 with the law shows that.

6 I have never in my life seen so many people
7 lie under oath in my trial. My trial was completely full
8 of hearsay. Not one witness who testified knew me or Ms.
9 Panos but her mother, who did a lot for us, bless her
10 heart, and our children and, Norma, I'm truly sorry. Your
11 daughter was the most caring person I've ever met in my
12 life. I learned so much from her. She will always remain
13 in my heart and soul to the very last day I am on this
14 earth.

15 I still can't believe all this has
16 happened. I made a very bad mistake and I'm about to pay
17 for it. I knew from the beginning that no one would
18 understand me or listen to me. Maybe if I had some African
19 Americans on my jury things would have came out different.

20 I would like to say to James Panos, Anthony
21 Panos, and Chantel Panos who are the real victims here and
22 I am going to do all I can to reunite with them and my
23 family. They know the real James Chappell. You all
24 don't.

25 Once again, I would like to say I'm truly

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JAMES CHAPPELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Electronically Filed
Nov 18 2013 02:20 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

**APPELLANT’S APPENDIX TO THE OPENING BRIEF
VOLUME IX**

CATHERINE CORTEZ MASTO
Nevada Attorney General
Nevada Bar No. 0003926
100 North Carson Street
Carson City, Nevada 89701-4717

IN THE SUPREME COURT OF NEVADA

JAMES CHAPPELL,

CASE NO. 61967

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

APPENDIX

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on this 18th day of November, 2013. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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