

David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

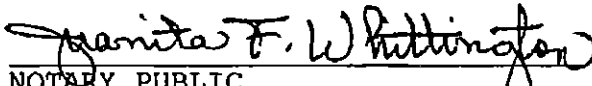
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treatment and understanding and certainly should not have
received the death penalty.

FURTHER, Affiant sayeth naught.


BARBARA DEAN

SUBSCRIBED AND SWORN to before me
this 24th day of February, 2003.


NOTARY PUBLIC

JANITA F. WHITTINGTON
NOTARY PUBLIC INGHAM CO., MI
MY COMMISSION EXPIRES Mar 29, 2006

AFFIDAVIT OF SHIRLEY SORRELL

STATE OF MICHIGAN)
) ss:
COUNTY OF EATON)

SHIRLEY SORRELL, being first duly sworn, deposes and says
I reside in Lansing, Michigan and knew JAMES CHAPPELL at
Otto Junior High School and at Sexton High School. I also met
Debbie Panos at Sexton High School.

I was aware that they had become a couple and in my
opinion she was very controlling of him. After they moved to
Arizona, JAMES wanted to come back to Lansing because of the
way Debbie and her family were treating him but stayed because
of his love for their children.

Debbie was really jealous of JAMES and would continually
accuse him of having had an affair with me, which was not true.
It appeared to me that she used our friendship to control
JAMES.

To my knowledge, JAMES was never violent towards Debbie,
although they did seem to argue a lot.

JAMES had tried to leave her on a number of occasions but
she would threaten that if he came back to Lansing he would
never see his children again.

I was aware that her parents were prejudiced against JAMES
and that this caused him great hardship and heartache.

JAMES did come back to Lansing from Arizona on one
occasion and within a couple of days Debbie was calling him and
telling him that if he did not come back he would never see the
children again. Debbie sent him the plane ticket so that he

1 would go back to Arizona.
2 During this entire time I have been living in Lansing,
3 Michigan and could have been very easily contacted. I was
4 never contacted prior to his trial and if asked would have been
5 more than willing to come to Las Vegas and testify on behalf of
6 JAMES.

7 FURTHER, Affiant sayeth naught.

8
9 
10 SHIRLEY SORRELL

11 SUBSCRIBED AND SWORN to before me
12 this 24 day of feb, 2003.

13 
14 NOTARY PUBLIC

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Las Vegas, NV 89101
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Mr. Green, during the interview, told me that he had known JAMES for three to four years and they were good friends. He also knew Debbie Panos and their three children. They got along well and were a normal loving couple, and JAMES really loved his kids. Debbie was aware that JAMES had a drug problem

1 and it was a sore spot between them as she did not approve of
2 his drug use. Mr. Green verified that JAMES had been employed
3 at Pancho'S Restaurant and Taco Bell in Tucson.

4 I obtained sufficient information to arrange the telephone
5 interview with Mr. Schieck. Mr. Green also put me in touch
6 with Chris Birdow. Mr. Birdow did not remember much about
7 JAMES and only knew him socially through David Green.

8 To my knowledge, Mr. Schieck conducted the phone interview
9 with Mr. Green and prepared and sent him an affidavit to sign
10 and return. A copy of the affidavit is attached hereto and I
11 have reviewed it and it comports with the contents of my
12 conversation with Mr. Green.

13 In late January, 2003 I was contacted by Mr. Schieck to
14 attempt to locate Mr. Green again because he had failed to sign
15 and return the affidavit sent to him by Mr. Schieck. I was
16 able to determine from his mother and Chris Birdow that Mr.
17 Green has disappeared and that they believe he's back on drugs
18 and living on the streets. He no longer works at his previous
19 place of employment.
20

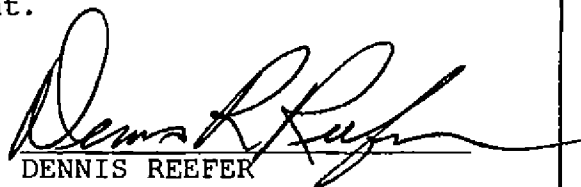
21 One of my other assigned tasks on this case was to contact
22 witnesses and set up interviews for Mr. Schieck in Lansing,
23 Michigan. Using phone numbers and information provided by
24 JAMES, I was readily able to set up interviews for Mr. Schieck
25 with Barbara Dean, Benjamin Dean, Ivri Marrell, Clara Axam,
26 Rodney Axam, James Ford, and Shirley Sorrell. I have been
27 informed by Mr. Schieck that he indeed traveled to Lansing,
28 Michigan and interviewed personally the above referenced

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1 individuals.

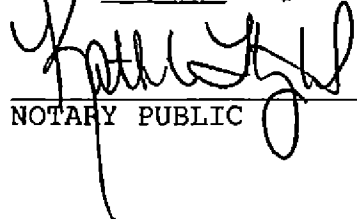
2 I have been unable to locate, in Las Vegas, witness
3 Ernestine Harvey. All information I have been able to locate
4 is extremely stale. It is my opinion that it would have been
5 much more likely that she could have been located in 1996.

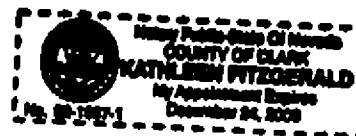
6 FURTHER, Affiant sayeth naught.

7
8 
9 DENNIS REEFER

10 SUBSCRIBED AND SWORN to before me

11 this 28 day of FEBRUARY, 2003.

12 
13 NOTARY PUBLIC



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ORIGINAL

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ACCT
EXPR

DAVID M. SCHIECK, ESQ.
Nevada Bar No. 0824
302 E. Carson #600
Las Vegas, NV 891010
702-382-1844

MAR 10 2 59 PM '03

Shirley R. Kingma
CLERK

ATTORNEY FOR CHAPPELL

DISTRICT COURT

CLARK COUNTY, NEVADA

* * *

JAMES MONTELL CHAPPELL,	)	CASE NO. C 131341
	)	DEPT. NO. XI
Petitioner,)	
)	
vs.)	
)	
THE STATE OF NEVADA,)	
)	
Respondent.	)	DATE: N/A
	)	TIME: N/A

AFFIDAVITS IN SUPPORT OF PETITION
FOR WRIT OF HABEAS CORPUS (POST CONVICTION)

See attached.

DATED: March 10, 2003.

RESPECTFULLY SUBMITTED:

David M. Schieck
DAVID M. SCHIECK, ESQ.

RECEIPT OF COPY

RECEIPT of a copy of the foregoing document is hereby
acknowledged.

DATED: 3/10/03

DISTRICT ATTORNEY'S OFFICE

Karen Miller
200 S. THIRD STREET
LAS VEGAS NV 89155

David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

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MAR 10 2003
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AFFIDAVIT

STATE OF MICHIGAN)
) ss:
COUNTY OF EATON)

IVRI MARRELL, being first duly sworn, deposes and says:

I live in Lansing, Michigan and was friends with JAMES CHAPPELL ("JAMES") while were attending high school and after high school. I would say that along with myself, James Ford and Benjamin Dean were JAMES' best friends in Lansing. I was not interviewed prior to the trial and penalty hearing. When I was interviewed by Mr. Schieck in November, 2002, I was present along with James Ford and Benjamin. Much of what we discussed was a collective recollection of JAMES and his relationship with Deborah. We all were of the same general opinions and believes about what had transpired.

I was aware that JAMES worked at a number of places in Lansing, including Cheddar's Restaurant. JAMES was a good friend and kept me out of trouble on a number of occasions.

I also knew Deborah Panos through her relationship with JAMES. There was a great deal of animosity from Deborah's family toward JAMES because he was black. After their first baby was born the problems got even worse because her parents kicked her out of the house and wanted nothing to do with JAMES or the baby. They lived with Carla, JAMES' sister for a while and then Deborah moved back in with her parents. JAMES would have to sneak over to the house to even see Deborah or the baby.

I used to double date with JAMES and Deborah and have

1 personal knowledge of what their relationship was like before
2 her parents forced her to move to Tucson and she convinced
3 JAMES to come with her. Their relationship was never
4 physically abusive and they appeared to be very much in love
5 despite the objections and actions of her parents.

6 Deborah was very controlling and jealous of JAMES and
7 wouldn't let him go out with the guys and would often verbally
8 abuse him. I observed JAMES around his kids and he was crazy
9 about them and never mistreated them and seeme to be a very
10 good and caring father.

11 I was not aware of what happened after JAMES went to
12 Tucson the first time because we did not talk very often, but I
13 knew he was unhappy and told him that he should come back to
14 Lansing where all of his friends and family were located.
15 JAMES did come back from Tucson for a short period of time and
16 lived with me for part of the time he was back in Lansing.

17 JAMES did not chase after Deborah after she went to
18 Tucson, the opposite is true. She was always calling him and
19 asking him to come back to Tucson and she sent him the ticket
20 to go back to Tucson, which was against the advice that
21 everyone gave to him.

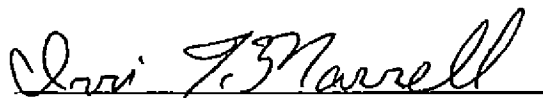
22 I feel that there were a number of important things that I
23 could have told the jury about JAMES and his relationship with
24 Deborah. I have been told that at the trial a lot of things
25 were said about JAMES that were not accurate and that I could
26 have testified about. For instance, JAMES was never violent to
27 my knowledge, especially toward Deborah and the children. He
28

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Attorney At Law
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Las Vegas, NV 89101
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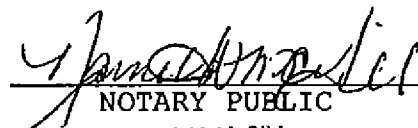
1 put up with a lot from her and her family and never resorted to
2 violence to my knowledge. If he became addicted to crack
3 cocaine in Tucson or Las Vegas that may have changed him, but
4 the JAMES I knew would never have been able to do the things
5 that he is accused of doing.

6 I have always lived in Lansing and could have been easily
7 located had anyone made an effort to find me or any of the
8 other friends of JAMES that knew the true story about the
9 relationship between JAMES and Deborah. If contacted I would
10 have been more than willing to travel to Las Vegas to testify
11 on behalf of JAMES at either the trial or the penalty hearing.

12 FURTHER, Affiant sayeth naught.

13 
14 IVRI MARRELL

15
16 SUBSCRIBED AND SWORN to before me
17 this 3 day of March, 2003
~~November, 2002.~~

18 
19 NOTARY PUBLIC
20 NANNETTE V. MCGILL
21 Notary Public, Eaton County, MI
22 ACTING Ingham CO.
23 My Commission Expires 04/01/2003
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AFFIDAVIT

STATE OF MICHIGAN)
) ss:
COUNTY OF EATON)

BENJAMIN DEAN, being first duly sworn, deposes and says:

I live in Lansing, Michigan and was friends with James Chappell while were attending high school and after high school. I would say that along with myself, Ivri Marrell and James Ford were James' best friends in Lansing. When I was interviewed by Mr. Schieck in November, 2002, I was present along with Ivri and James Ford. Much of what we discussed was a collective recollection of James and his relationship with Deborah. We all were of the same general opinions and beliefs about what had transpired.

After James came back from Tucson he told me about all the problems that he had to endure. He felt that it was his obligation to take care of Deborah and the kids and that another guy would not want to take care of her. He would do all the chores around their apartment such as cooking and cleaning and would take care of the children while Deborah worked. Despite this, Deborah was very controlling and demanding of him, often making racial comments to him. Her mother was very prejudiced and would call James a nigger.

I believe that when Deborah got to Tucson she made new friends that influenced her against James.

I have been told some of the negative testimony from the trial about James, and this is not the James that I knew for many years in Lansing. He was not violent, and was like a big

1 clown and was always real playful. He was the life of a party
2 and would always make people laugh.

3 Deborah was his first real girlfriend and she changed him
4 and his spirit. She was very manipulative of him, especially
5 after the first child and did not like for him to be around his
6 old friends. She came from a wealthy white family and James
7 came from the poorer black section of Lansing. She seemed to
8 hold this over his head and resented his true friends.

9 When he came back from Tucson, everything was fine until
10 Deborah started calling him and asking him to come back to
11 Tucson. Finally she sent him a ticket and went without telling
12 any of his friends because we would have all advised him not to
13 go back to Tucson. It was my opinion that she wanted to keep
14 James away from his friends in order to control him and that is
15 why she sent him the ticket
16

17 Deborah was very controlling and jealous of James and
18 wouldn't let him go out with the guys and would often verbally
19 abuse him.

20 I observed James around his kids and he was crazy about
21 them and never mistreated them and seemed to be a very good and
22 caring father.

23 My mother is Barbara Dean and she always was able to reach
24 me with a phone call. When James' previous attorney and
25 investigator came to Lansing they talked with me for a short
26 period of time and had me show them around the neighborhood,
27 but never asked me any questions about the relationship between
28 James and Deborah or about his character. I would have been

David M. Schieck

Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

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more than happy to come to Las Vegas to testify on behalf of
James at the trial or penalty hearing. From what I understand
the jury was given a very distorted picture of James. His
friends, such as myself could have told a more complete and
detailed story about James.

FURTHER, Affiant sayeth naught.

Benjamin Dean
BENJAMIN DEAN

SUBSCRIBED AND SWORN to before me

this 4th day of ~~November~~, 2002.
March 2003

Telhai Desta
NOTARY PUBLIC

TELHAI DESTA
Notary Public, Ingham Co., MI
My Comm. Expires July 29, 2008

AFFIDAVIT

STATE OF MICHIGAN)
) ss:
COUNTY OF EATON)

JAMES FORD, being first duly sworn, deposes and says:

I live in Lansing, Michigan and was friends with JAMES CHAPPELL ("JAMES") while we were attending high school and after high school. I would say that along with myself, Ivri Marrell and Benjamin Dean were JAMES' best friends in Lansing. I was not interviewed prior to the trial and penalty hearing. When I was interviewed by Mr. Schieck in November, 2002 I was present along with Ivri and Benjamin. Much of what we discussed was a collective recollection of JAMES and his relationship with Deborah. We all were of the same general opinions and beliefs about what had transpired.

I knew Deborah Panos through her relationship with JAMES. There was a great deal of animosity from Deborah's family toward JAMES because he was black. After their first baby was born the problems got even worse because her parents kicked her out of the house and wanted nothing to do with JAMES or the baby. They lived with Carla, JAMES' sister for a while and then Deborah moved back in with her parents. JAMES would have to sneak over to the house to even see Deborah or the baby.

Deborah was very controlling and jealous of JAMES and wouldn't let him go out with the guys and would often verbally abuse him.

I observed JAMES around his kids and he was crazy about them and never mistreated them and seeme to be a very good and

1 caring father.

2 I was not aware of what happened after JAMES went to
3 Tucson the first time because we did not talk very often, but I
4 knew he was unhappy and I told him that he should come back to
5 Lansing where all of his friends and family were located.
6 JAMES did come back from Tucson for a short period of time and
7 lived with Ivri for part of the time he was back in Lansing.

8 JAMES did not chase after Deborah after she went to
9 Tucson, the opposite is true. She was always calling him and
10 asking him to come back to Tucson and she sent him the ticket
11 to go back to Tucson, which was against the advice that
12 everyone gave to him.

13 I feel that there were a number of important things that I
14 could have told the jury about JAMES and his relationship with
15 Deborah. I have been told that at the trial a lot of things
16 were said about JAMES that were not accurate and that I could
17 have testified about. For instance, JAMES was never violent to
18 my knowledge, especially toward Deborah and the children. He
19 put up with a lot from her and her family and never resorted to
20 violence to my knowledge. If he became addicted to crack
21 cocaine in Tucson or Las Vegas that may have changed him, but
22 the JAMES I knew would never have been able to do the things
23 that he is accused of doing.

24 I have always lived in Lansing and could have been easily
25 located had anyone made an effort to find me or any of the
26 other friends of JAMES that knew the true story about the
27 relationship between JAMES and Deborah. If contacted I would
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David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

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have been more than willing to travel to Las Vegas to testify
on behalf of JAMES at either the trial or the penalty hearing.

It is shocking to me that JAMES received the death penalty
because the person I knew was not a bad person. It is a
terrible thing that Deborah was killed by JAMES, but it is also
terrible that JAMES was sentenced to death by a jury that did
not know the truth about him and the relationship with Deborah.

FURTHER, Affiant sayeth naught.

James Ford
JAMES FORD

SUBSCRIBED AND SWORN to before me
this 6th day of March, 2003
~~November, 2002.~~

Nannette V. McGill
NOTARY PUBLIC

NANNETTE V. MCGILL
Notary Public, Eaton County, MI
ACTING Indian CO.
My Commission Expires 04/01/2003

FILED

JUL 14 2 00 PM '03

Shirley E. Pangione
CLERK

PTAT
DAVID M. SCHIECK, ESQ.
NV BAR NO. 0824
302 E. CARSON, STE. 600
LAS VEGAS, NEVADA 89101
702-382-1844
ATTORNEY FOR CHAPPELL

DISTRICT COURT

CLARK COUNTY, NEVADA

* * *

JAMES MONTELL CHAPPELL,	)	CASE NO. C 131341
	)	DEPT. NO. XI
Petitioner,)	
)	
vs.)	
)	
THE STATE OF NEVADA,)	
)	
Respondent.	)	DATE: 9-2-03
	)	TIME: 9:00 A.M.

POST EVIDENTIARY HEARING BRIEF

COMES NOW, Petitioner JAMES MONTELL CHAPPELL (hereinafter referred to as CHAPPELL), by and through his attorney DAVID M. SCHIECK, ESQ., and hereby submits the following Post Evidentiary Hearing Brief.

STATEMENT OF THE CASE

CHAPPELL'S was charged by way of an Information filed on October 11, 1995 with Burglary, Robbery with use of a Deadly Weapon, and Murder with use of a Deadly Weapon. The State filed a Notice of Intent to seek the death penalty alleging four aggravating circumstances: the murder was committed while the person was engaged in the commission of or an attempt to commit a robbery; the murder was committed while the person was

David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

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COUNTY CLERK

1 engaged in the commission of or an attempt to commit any
2 burglary or home invasion; the murder was committed while the
3 person was engaged in the commission of or an attempt to commit
4 any sexual assault; and the murder involved torture or
5 depravity of mind.

6 The jury trial commenced on October 7, 1996 and the jury
7 convicted CHAPPELL of all charges and imposed a sentence of
8 death. The District Court imposed consecutive sentences on the
9 burglary and robbery charges. CHAPPELL pursued a direct appeal
10 to the Nevada Supreme Court with the conviction and sentence
11 being affirmed on December 30, 1998. Chappell v. State, 114
12 Nev. 1404, 972 P.2d 838 (1998). The Nevada Supreme Court
13 issued it's Remittitur on October 26, 1999. CHAPPELL timely
14 filed a Petition for Writ of Habeas Corpus on October 19, 1999.
15 After appointment of counsel a Supplemental Petition for Writ
16 of Habeas Corpus and Points and Authorities was filed on April
17 30, 2002.

18 After hearing argument of counsel on July 25, 2002 the
19 Court ordered that an evidentiary hearing be held to allow
20 trial counsel to testify concerning the failure to utilize the
21 witnesses named in the Supplemental Petition. The evidentiary
22 hearing was held on September 13, 2002 and attorneys Howard
23 Brooks and Willard Ewing testified. At the conclusion of the
24 evidentiary hearing CHAPPELL requested to be allowed to call
25 the other witnesses for live testimony and the Court denied the
26 request, but allowed CHAPPELL to obtain and file affidavits
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1 from the witnesses, and then allowed Post Hearing Briefing for
2 the purposes of showing the relationship between the attorney's
3 testimony and the witnesses that should have been used at the
4 trial and penalty hearing.

5 STATEMENT OF FACTS FROM EVIDENTIARY HEARING

6 Howard Brooks had been licensed as an attorney for 14
7 years and worked for the Clark County Public Defender's office
8 for 12 years (4). (Citation is to page number of the hearing
9 on September 13, 2002.) He was assigned to represent CHAPPELL
10 as soon as the case came into the system (5). He was part of
11 the murder team starting in January, 1995 and his supervisor
12 was Phil Kohn (5). During that period of time his caseload was
13 typically between nine and eleven cases (5-6). When the
14 CHAPPELL case went to trial Brooks had tried one other death
15 penalty case and three other murder trial (6). Will Ewing
16 assisted Brooks during trial and it was Ewing's first capital
17 murder case (7). Ewing's primary role was to prepare penalty
18 phase evidence and witnesses (7).

19
20 Brooks made the strategic decision to stipulate to certain
21 facts after talking to CHAPPELL about the matter (8). It had
22 become clear to Brooks that the State was trying to bring in
23 all sorts of extraneous evidence regarding the prior
24 relationship between CHAPPELL and Panos. Brooks wanted to
25 limit the evidence to the facts of the killing because he felt
26 he had a very strong argument for either second degree murder
27 or voluntary manslaughter. The only way that Brooks felt he
28

1 could make the other bad acts irrelevant was to stipulate that
2 CHAPPELL had committed the killing and it was not an accident
3 (8). Brooks discussed this strategy with CHAPPELL and he
4 agreed to the stipulation (9). The State argued that the
5 evidence was admissible despite the stipulation and the Court
6 agreed (9).

7 Brooks did not withdraw the offer to stipulate because he
8 was convinced that CHAPPELL could not get a fair trial if all
9 of the extraneous issues concerning domestic violence from
10 years earlier were admitted during the trial (10). At the
11 Petrocelli hearing the Court ruled that an offer of proof was
12 sufficient and that witnesses were not needed and based on the
13 offer of proof ruled that the prior incidents were proven by
14 clear and convincing evidence (11). The offer of proof was a
15 bare bones summary and had nothing to do with what was
16 presented at trial where there was vast testimony about every
17 single incident of domestic violence (11).

18 The focus of the trial became the long history of the
19 relationship between CHAPPELL and Panos and because Brooks did
20 not anticipate that the trial was going to be about their
21 relationship his investigation focused on the specifics of the
22 killing and mitigation evidence (13). CHAPPELL had given him a
23 list of witnesses that he wanted interviewed and called at
24 trial, but even with those witnesses that Brooks located, his
25 focus was still on the killing and not the long relationship
26 (13). Brooks was stunned that the evidentiary rulings were
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1 going against him and had no idea before trial that all the bad
2 character evidence would be admitted (13). Brooks did not seek
3 a continuance when he learned that the focus of the trial had
4 changed and admitted that he probably should have done so (14).

5 Although Brooks went to Michigan to prepare the case he
6 did not interview any high school friends concerning the
7 relationship between CHAPPELL and Panos (14). An investigator
8 went with him to Michigan but they were looking for information
9 on CHAPPELL'S past and were not focusing on the relationship at
10 all (15). When they went to Michigan they only were there for
11 one full day and should have stayed a few days and tried to
12 find the witnesses (21). If they did go to house of a witness
13 who wasn't home they did not go back later (21). He did not go
14 to Arizona to interview anyone concerning the Chappell/Panos
15 relationship while they lived in Arizona (15).

16 Brooks' opinion was that the case was compelling one for
17 voluntary manslaughter since the provocation of learning of the
18 betrayal by Panos was self-evident. Second degree murder was a
19 fall-back option (16).

20 It would have been important to present witnesses that
21 could have said that even though CHAPPELL and Panos would argue
22 and fight it was not uncommon that Panos would forgive him and
23 they would get back together (17). Brooks did not present any
24 witnesses to corroborate how the relationship was working
25 between them (17).

26 They were trying to find witnesses the week before trial
27
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1 due to the rulings of the Court on the character evidence and
2 in retrospect Brooks should have sought a continuance to give
3 him time to find the witnesses, but at the time he just
4 couldn't believe the great detail that the Court was allowing
5 (18).

6 Brooks did not contact Shirley Sorrell and did not spend a
7 lot of time trying to located James Ford (20). Ford was the
8 best friend of CHAPPELL in Michigan and could been presented at
9 trial to rebut what the State presented at trial and at the
10 penalty hearing (20-21). They looked for Iyri Marrell but
11 when they went to his house he wasn't there (22). They should
12 have stayed a few extra days and found him (23). Neither Chris
13 Bardow or David Green from Arizona were called as witnesses and
14 Brooks never spoke with them (23). CHAPPELL had told Brooks
15 orally about Green and Bardow and had given him a list of the
16 other witnesses that he wanted located and interviewed as
17 witnesses (24).

18 With respect to the claims concerning the failure to
19 object, Brooks did not have a strategic reason for not
20 objecting to any of the asserted improper arguments (26-29).
21 To his recollection none of his objections were successful in
22 the case and there were so exhausted by the rulings that by
23 halfway through the trial everything seemed futile (29).

24 One Motion that Brooks had filed before trial was to
25 dismiss the charges on equal protection grounds as he had other
26 similar cases where the State had not sought the death penalty
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Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
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1 and he believed that only reason the State sought the death
2 penalty against CHAPPELL because he was a black man that had
3 killed a white women (35-36). In hindsight he believed the
4 proper motion would have been to strike the death penalty
5 instead of to dismiss the entire case (36).

6 Based on the Briefs filed with the Nevada Supreme Court
7 and the issues raised which were not addressed by the Opinion
8 of the Court, Brooks was of the opinion that the case was not
9 fully and properly reviewed by the Nevada Supreme Court, and
10 that they did not address the most important issues raised
11 (41).

12 With respect to not offering jury instructions that set
13 forth specific mitigating circumstances and the proper limited
14 use of character evidence, Brooks did not have a strategic
15 reason for not having done so. (42-43).

16 Prior to trial, Brooks did not go out and interview any of
17 the State's witnesses and historically it had been the practice
18 of the Public Defender not to do so, and if you asked for it
19 the investigators would pretty much laugh at you (43). After
20 the Court ruled that the prior domestic battery incidents were
21 admissible, Brooks did no investigation into the facts and
22 circumstances of any of the other acts (44). If he had known
23 that all of the details were going to be admitted he certainly
24 would have done a tremendous number of things that he never did
25 (44).

26 Will Ewing was primarily assigned to handle the penalty
27
28

1 hearing and would have been the attorney responsible for making
2 objections at the penalty hearing (57). He was not yet
3 qualified under Supreme Court Rule 250 at the time of the
4 CHAPPELL trial (57). He had no strategic reasons for not
5 objecting to any of the arguments that were challenged in
6 CHAPPELL'S Habeas Corpus Petition and Supplement (58-60). With
7 respect to the testimony from the family of Panos asking the
8 jury to give CHAPPELL death, the failure to object was a
9 misunderstanding of the law that such testimony was permissible
10 (60). Further there was no strategic reason not to offer jury
11 instructions that contained specific mitigating circumstances
12 or which properly defined the use of character evidence at the
13 penalty hearing (61-62).

14 ARGUMENT

15 The record establishes that Brooks knew that the State was
16 trying to introduce substantial evidence concerning the prior
17 relationship between CHAPPELL and Panos. Given this knowledge
18 he should have been prepared to present testimony from those
19 persons that were most familiar with the relationship. The
20 affidavits submitted by CHAPPELL clearly establish that there
21 was a vast body of information that was kept from the jury that
22 would have made a great difference at the trial, both during
23 the trial phase and at the penalty hearing.

24 The affidavits that were filed came from witnesses that
25 were available and ready to testify from CHAPPELL'S hometown of
26 Lansing, Michigan. Without repeating verbatim the contents of
27
28

1 each affidavit, CHAPPELL will briefly summarize these witnesses
2 and incorporate herein by reference the entire contents of the
3 affidavits and attach copies hereto for the convenience of the
4 Court:

5 IVRI MARRELL was friends with CHAPPELL while in high
6 school and after high school and was one of his best friends.
7 He could have testified to CHAPPELL'S employment history and
8 also concerning his relationship with Panos. Marrell also knew
9 about CHAPPELL'S relationship with his children. Marrell
10 further could have testified that CHAPPELL did not follow Panos
11 to Arizona but rather it was she that was always calling him
12 and asking him to come back to Tucson and she sent him the
13 ticket to go back to Tucson.

14 BENJAMIN DEAN another good friend of CHAPPELL in Lansing
15 and had learned from CHAPPELL when he came back from Tucson
16 about all the problems that he had to endure. CHAPPELL felt
17 that it was his obligation to take care of Deborah and the kids
18 and that another guy would not want to take care of her. He
19 would do all the chores around their apartment such as cooking
20 and cleaning and would take care of the children while Deborah
21 worked. Despite this, Deborah was very controlling and
22 demanding of him, often making racial comments to him. Further
23 CHAPPELL was not violent, and was like a big clown and was
24 always real playful. He was the life of a party and would
25 always make people laugh.

26
27 JAMES FORD, another friend knew Deborah Panos through her
28

1 relationship with JAMES. There was a great deal of animosity
2 from Deborah's family toward JAMES because he was black.
3 Deborah was very controlling and jealous of JAMES and wouldn't
4 let him go out with the guys and would often verbally abuse
5 him. In many respects the testimony from Marrell, Ford and
6 Dean is similar because of their close friendship with CHAPPELL
7 and knowledge of his relationship with Panos.

8 CLARA AXAM is the grandmother of CHAPPELL raised him and
9 his two sisters after their mother was killed in an automobile
10 accident. Although she did testify at the penalty hearing she
11 was not called during the trial. Her knowledge of the
12 relationship with Panos should have been used to bolster the
13 argument for less than a first degree murder conviction. The
14 claim as to Axam is not for not locating her to testify, but
15 not using her to her full potential. She would have been able
16 to provide information to locate James Ford, Ivri Marrell, and
17 Ben Dean if she had been asked to do so.

18 SHIRLEY SORRELL knew CHAPPELL at Otto Junior High School
19 and at Sexton High School and also knew Panos in High School.
20 She was aware that they had become a couple and in her opinion
21 Panos was very controlling of him. Panos was really jealous of
22 JAMES and would continually accuse him of having had an affair
23 with Sorrell and used their friendship to control CHAPPELL.
24

25 BARBARA DEAN first met CHAPPELL when he was five years old
26 and she was working as a teacher's aid. He was a special
27 education student and was always hungry and would eat extra
28

1 lunches and breakfasts at the school. When he came back from
2 Tucson she believed that at that time he had started using
3 drugs and that he needed treatment. He should have received
4 treatment instead of being let out of jail. At the time of the
5 trial her health condition would not have allowed her to
6 travel to Las Vegas to testify at the trial but she could have
7 assisted in finding all of the other witnesses. For instance
8 her daughter Meka also knew CHAPPELL and Debbie and was nearer
9 to their same age and would have offered testimony about the
10 relationship. She was not interviewed by the attorney and
11 investigator but would have been readily available.

12 DAVID GREEN was a witness residing in Tucson that knew of
13 the relationship in Arizona. He was located and interviewed by
14 both CHAPPELL'S investigator and attorney, but lost his job and
15 disappeared before his affidavit could be signed. CHAPPELL is
16 aware that the affidavit of investigator Reefer is hearsay and
17 not admissible for its content regarding Green's testimony.
18 The affidavit is offered to substantiate that witnesses were
19 available that could have assisted CHAPPELL'S defense if an
20 effort had been made to locate them at trial.

21
22 CONCLUSION

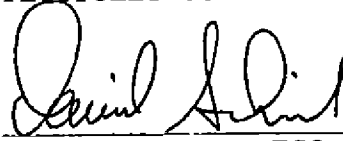
23 It is respectfully submitted that CHAPPELL has established
24 through the evidentiary hearing and affidavits a factual basis
25 for this Court to find that CHAPPELL did not receive effective
26 assistance of counsel as alleged in the Petition and
27

1 Supplemental Petition and that relief should therefore be
2 granted as requested therein.

3 DATED:

July 10, 2003

4 RESPECTFULLY SUBMITTED:

5 

6 DAVID M. SCHIECK, ESQ.

7
8
9 RECEIPT OF COPY

10 RECEIPT of a copy of the foregoing document is hereby
11 acknowledged.

12 DATED:

July 14, 2003

13 DISTRICT ATTORNEY'S OFFICE

14 

15 CLARK PETERSON
16 200 S. THIRD STREET
17 LAS VEGAS NV 89155

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David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

1 EXPR
2 DAVID M. SCHIECK, ESQ.
3 Nevada Bar No. 0824
4 302 E. Carson #600
5 Las Vegas, NV 891010
6 702-382-1844

7 ATTORNEY FOR CHAPPELL

FILED
MAR 7 10 02 AM '03
Shirley S. Purgina
CLERK

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 * * *

11 JAMES MONTELL CHAPPELL,
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Petitioner,

CASE NO. C 131341
DEPT. NO. XI

vs.

THE STATE OF NEVADA,

Respondent.

DATE: N/A
TIME: N/A

AFFIDAVITS IN SUPPORT OF PETITION
FOR WRIT OF HABEAS CORPUS (POST CONVICTION)

See attached.

DATED: March 7, 2003.

RESPECTFULLY SUBMITTED:


DAVID M. SCHIECK, ESQ.

RECEIPT OF COPY

RECEIPT of a copy of the foregoing document is hereby
acknowledged.

DATED: Mar. 7, 03

DISTRICT ATTORNEY'S OFFICE


200 S. THIRD STREET
LAS VEGAS NV 89155

AFFIDAVIT OF CLARA AXAM

STATE OF MICHIGAN)
) ss:
COUNTY OF EATON)

Clara Axam, being first duly sworn, deposes and says

I am the grandmother of JAMES CHAPPELL and I reside in Lansing, Michigan. I raised JAMES and his two sisters after their mother was killed in an automobile accident.

I testified at the penalty hearing on behalf of JAMES and was interviewed in Lansing before the trial. I was not asked to testify during the trial portion of the case, but would have been able to testify to various aspects of the relationship between JAMES and Debbie.

After the first child was born, Debbie was disowned by her family and had to move in and live with JAMES' sister Carla. Later Debbie move to Arizona and sent for JAMES to come and live with her. Debbie's mother got an apartment for Debbie and did not know that she had sent for JAMES.

I believed that JAMES had got involved with drugs after they moved to Las Vegas and that there were some incidents that occurred between them. Debbie would always take him back and it would have been entirely believable that after he got out of jail he would have returned to their house and believed they would get back together.

The attorney and investigator for JAMES did talk to me in Lansing and I gave him all of my information. He did not ask for any assistance in locating other witnesses. I would've been able to provide information to locate James Ford, Ivri

David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

1 Manell, and Ben Dean if I had been asked to do so.
2 JAMES really loved his children and he would always
3 babysit when Debbie was working. He never neglected the
4 children and I never saw him violent toward Debbie.
5 FURTHER, Affiant sayeth naught.

6
7 Clara Axam
8 CLARA AXAM

9 SUBSCRIBED AND SWORN to before me
10 this 26th day of February, 2003.

11 Nicole Baley
12 NOTARY PUBLIC

13
14 NICOLE BALEY
15 Notary Public, Ingham County, MI
16 My Comm. Expires June 17, 2004
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AFFIDAVIT OF SHIRLEY SORRELL

STATE OF MICHIGAN)
) ss:
COUNTY OF EATON)

SHIRLEY SORRELL, being first duly sworn, deposes and says
I reside in Lansing, Michigan and knew JAMES CHAPPELL at
Otto Junior High School and at Sexton High School. I also met
Debbie Panos at Sexton High School.

I was aware that they had become a couple and in my
opinion she was very controlling of him. After they moved to
Arizona, JAMES wanted to come back to Lansing because of the
way Debbie and her family were treating him but stayed because
of his love for their children.

Debbie was really jealous of JAMES and would continually
accuse him of having had an affair with me, which was not true.
It appeared to me that she used our friendship to control
JAMES.

To my knowledge, JAMES was never violent towards Debbie,
although they did seem to argue a lot.

JAMES had tried to leave her on a number of occasions but
she would threaten that if he came back to Lansing he would
never see his children again.

I was aware that her parents were prejudiced against JAMES
and that this caused him great hardship and heartache.

JAMES did come back to Lansing from Arizona on one
occasion and within a couple of days Debbie was calling him and
telling him that if he did not come back he would never see the
children again. Debbie sent him the plane ticket so that he

David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

1 would go back to Arizona.

2 During this entire time I have been living in Lansing,
3 Michigan and could have been very easily contacted. I was
4 never contacted prior to his trial and if asked would have been
5 more than willing to come to Las Vegas and testify on behalf of
6 JAMES.

7 FURTHER, Affiant sayeth naught.

8
9 
10 SHIRLEY SORRELL

11 SUBSCRIBED AND SWORN to before me
12 this 24 day of feb, 2003.

13 
14 Lansing, Michigan
15 NOTARY PUBLIC
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David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

1 chase after Debbie to Arizona but rather she sent for him to go
2 out to her.

3 To my knowledge JAMES was a good father to their children
4 and took good care of the babies.

5 The investigator and attorney from the trial did come and
6 speak with me, and my son Benjamin took them around the
7 neighborhood to find other persons that knew JAMES and Debbie.

8 I would have been more than willing to assist the attorney
9 and investigator in contacting witnesses that could have
10 testified on behalf of JAMES. At the time my own health
11 condition would not have allowed me to travel to Las Vegas to
12 testify at the trial.

13 My daughter Meka also knew JAMES and Debbie and was nearer
14 to their same age and would have offered testimony about the
15 relationship. She was not interviewed by the attorney and
16 investigator but would have been readily available.

17 I know that it is a terrible thing that JAMES killed
18 Debbie but from what I knew the entire story of the
19 relationship and the way Debbie controlled him and the insults
20 he suffered from her family was never presented to the jury at
21 his trial. Additionally the jury was never presented with
22 witnesses concerning JAMES' early years after his mother's
23 death which I and others personally observed.

24 While JAMES obviously deserved punishment, he also needed
25 . . .

26 . . .
27 . . .

28 . . .

David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

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treatment and understanding and certainly should not have
received the death penalty.

FURTHER, Affiant sayeth naught.

Barbara J. Dean
BARBARA DEAN

SUBSCRIBED AND SWORN to before me
this 24th day of February, 2003.

Janita F. W. Whittington
NOTARY PUBLIC

JANITA F. WHITTINGTON
NOTARY PUBLIC INGHAM CO., MI
MY COMMISSION EXPIRES MAY 23, 2004

AFFIDAVIT OF DENNIS REEFER

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

DENNIS REEFER, being first duly sworn, deposes and says
I am a licensed private investigator in the State of
Nevada and court appointed to represent JAMES CHAPPELL
("JAMES") on behalf of attorney David Schieck.

One of the tasks assigned to me was to locate witnesses
David Green and Chris Birdow in Tucson, Arizona. JAMES had
provided a description of the residence of Mr. Green's mother.
I was able to travel to Tucson on December 19 and 20, 2002, and
based on information provided by JAMES located the residence of
Mary Williams by knocking on a couple doors.

Ms. Williams is the mother of David Green and provided me
with a work address for Mr. Green. I contacted and interviewed
Mr. Green at his place of employment. Mr. Green, when told
that JAMES had been convicted of killing Ms. Panos and
sentenced to death, became very emotional and teary-eyed.

My main objective was to conduct an initial interview with
Mr. Green and arrange a telephonic interview with Mr. Schieck
so that he could prepare an affidavit to be submitted to the
Court in support of JAMES' writ of habeas corpus.

Mr. Green, during the interview, told me that he had known
JAMES for three to four years and they were good friends. He
also knew Debbie Panos and their three children. They got
along well and were a normal loving couple, and JAMES really
loved his kids. Debbie was aware that JAMES had a drug problem

1 and it was a sore spot between them as she did not approve of
2 his drug use. Mr. Green verified that JAMES had been employed
3 at Pancho'S Restaurant and Taco Bell in Tucson.

4 I obtained sufficient information to arrange the telephone
5 interview with Mr. Schieck. Mr. Green also put me in touch
6 with Chris Birdow. Mr. Birdow did not remember much about
7 JAMES and only knew him socially through David Green.

8 To my knowledge, Mr. Schieck conducted the phone interview
9 with Mr. Green and prepared and sent him an affidavit to sign
10 and return. A copy of the affidavit is attached hereto and I
11 have reviewed it and it comports with the contents of my
12 conversation with Mr. Green.

13 In late January, 2003 I was contacted by Mr. Schieck to
14 attempt to locate Mr. Green again because he had failed to sign
15 and return the affidavit sent to him by Mr. Schieck. I was
16 able to determine from his mother and Chris Birdow that Mr.
17 Green has disappeared and that they believe he's back on drugs
18 and living on the streets. He no longer works at his previous
19 place of employment.

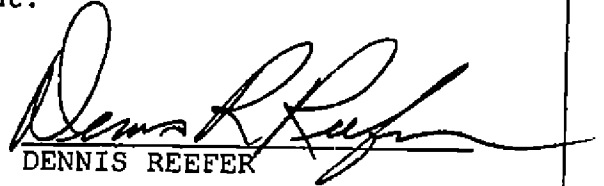
20 One of my other assigned tasks on this case was to contact
21 witnesses and set up interviews for Mr. Schieck in Lansing,
22 Michigan. Using phone numbers and information provided by
23 JAMES, I was readily able to set up interviews for Mr. Schieck
24 with Barbara Dean, Benjamin Dean, Ivri Marrell, Clara Axam,
25 Rodney Axam, James Ford, and Shirley Sorrell. I have been
26 informed by Mr. Schieck that he indeed traveled to Lansing,
27 Michigan and interviewed personally the above referenced
28

David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

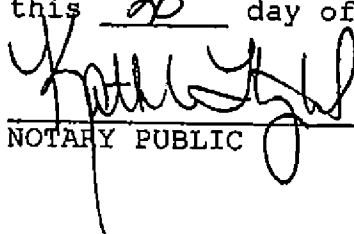
1 individuals.

2 I have been unable to locate, in Las Vegas, witness
3 Ernestine Harvey. All information I have been able to locate
4 is extremely stale. It is my opinion that it would have been
5 much more likely that she could have been located in 1996.

6 FURTHER, Affiant sayeth naught.

7
8
9 
DENNIS REEFER

10 SUBSCRIBED AND SWORN to before me
11 this 28 day of FEBRUARY, 2003.

12 
13 NOTARY PUBLIC



David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

1 EXPR
2 DAVID M. SCHIECK, ESQ.
3 Nevada Bar No. 0824
4 302 E. Carson #600
5 Las Vegas, NV 891010
6 702-382-1844

7 ATTORNEY FOR CHAPPELL

FILED

MAR 10 2 59 PM '03

Shirley S. Haggins
CLERK

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 * * *

11 JAMES MONTELL CHAPPELL,) CASE NO. C 131341
12) DEPT. NO. XI
13 Petitioner,)
14 vs.)
15)
16 THE STATE OF NEVADA,)
17)
18 Respondent.) DATE: N/A
19) TIME: N/A

20 AFFIDAVITS IN SUPPORT OF PETITION
21 FOR WRIT OF HABEAS CORPUS (POST CONVICTION)

22 See attached.

23 DATED: March 10, 2003.

24 RESPECTFULLY SUBMITTED:

David M. Schieck

25 DAVID M. SCHIECK, ESQ.

26 RECEIPT OF COPY

27 RECEIPT of a copy of the foregoing document is hereby
28 acknowledged.

DATED: *Mar. 10, 03*

DISTRICT ATTORNEY'S OFFICE

Km

200 S. THIRD STREET
LAS VEGAS NV 89155

AFFIDAVIT

STATE OF MICHIGAN)
) ss:
COUNTY OF EATON)

IVRI MARRELL, being first duly sworn, deposes and says:

I live in Lansing, Michigan and was friends with JAMES CHAPPELL ("JAMES") while were attending high school and after high school. I would say that along with myself, James Ford and Benjamin Dean were JAMES' best friends in Lansing. I was not interviewed prior to the trial and penalty hearing. When I was interviewed by Mr. Schieck in November, 2002, I was present along with James Ford and Benjamin. Much of what we discussed was a collective recollection of JAMES and his relationship with Deborah. We all were of the same general opinions and believes about what had transpired.

I was aware that JAMES worked at a number of places in Lansing, including Cheddar's Restaurant. JAMES was a good friend and kept me out of trouble on a number of occasions.

I also knew Deborah Panos through her relationship with JAMES. There was a great deal of animosity from Deborah's family toward JAMES because he was black. After their first baby was born the problems got even worse because her parents kicked her out of the house and wanted nothing to do with JAMES or the baby. They lived with Carla, JAMES' sister for a while and then Deborah moved back in with her parents. JAMES would have to sneak over to the house to even see Deborah or the baby.

I used to double date with JAMES and Deborah and have

1 personal knowledge of what their relationship was like before
2 her parents forced her to move to Tucson and she convinced
3 JAMES to come with her. Their relationship was never
4 physically abusive and they appeared to be very much in love
5 despite the objections and actions of her parents.

6 Deborah was very controlling and jealous of JAMES and
7 wouldn't let him go out with the guys and would often verbally
8 abuse him. I observed JAMES around his kids and he was crazy
9 about them and never mistreated them and seeme to be a very
10 good and caring father.

11 I was not aware of what happened after JAMES went to
12 Tucson the first time because we did not talk very often, but I
13 knew he was unhappy and told him that he should come back to
14 Lansing where all of his friends and family were located.
15 JAMES did come back from Tucson for a short period of time and
16 lived with me for part of the time he was back in Lansing.

17 JAMES did not chase after Deborah after she went to
18 Tucson, the opposite is true. She was always calling him and
19 asking him to come back to Tucson and she sent him the ticket
20 to go back to Tucson, which was against the advice that
21 everyone gave to him.


22 I feel that there were a number of important things that I
23 could have told the jury about JAMES and his relationship with
24 Deborah. I have been told that at the trial a lot of things
25 were said about JAMES that were not accurate and that I could
26 have testified about. For instance, JAMES was never violent to
27 my knowledge, especially toward Deborah and the children. He
28

David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844


1 put up with a lot from her and her family and never resorted to
2 violence to my knowledge. If he became addicted to crack
3 cocaine in Tucson or Las Vegas that may have changed him, but
4 the JAMES I knew would never have been able to do the things
5 that he is accused of doing.

6 I have always lived in Lansing and could have been easily
7 located had anyone made an effort to find me or any of the
8 other friends of JAMES that knew the true story about the
9 relationship between JAMES and Deborah. If contacted I would
10 have been more than willing to travel to Las Vegas to testify
11 on behalf of JAMES at either the trial or the penalty hearing.

12 FURTHER, Affiant sayeth naught.

13 
14 IVRI MARRELL

15
16 SUBSCRIBED AND SWORN to before me
17 this 3 day of March, 2003
~~November, 2002.~~

18 
19 NOTARY PUBLIC
20 NANNETTE V. MCGILL
21 Notary Public, Easton County, MI
22 ACTING Shoham CO.
23 My Commission Expires 04/01/2003
24
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AFFIDAVIT

STATE OF MICHIGAN)
) ss:
COUNTY OF EATON)

BENJAMIN DEAN, being first duly sworn, deposes and says:

I live in Lansing, Michigan and was friends with James Chappell while were attending high school and after high school. I would say that along with myself, Ivri Marrell and James Ford were James' best friends in Lansing. When I was interviewed by Mr. Schieck in November, 2002, I was present along with Ivri and James Ford. Much of what we discussed was a collective recollection of James and his relationship with Deborah. We all were of the same general opinions and beliefs about what had transpired.

After James came back from Tucson he told me about all the problems that he had to endure. He felt that it was his obligation to take care of Deborah and the kids and that another guy would not want to take care of her. He would do all the chores around their apartment such as cooking and cleaning and would take care of the children while Deborah worked. Despite this, Deborah was very controlling and demanding of him, often making racial comments to him. Her mother was very prejudiced and would call James a nigger.

I believe that when Deborah got to Tucson she made new friends that influenced her against James.

I have been told some of the negative testimony from the trial about James, and this is not the James that I knew for many years in Lansing. He was not violent, and was like a big

1 clown and was always real playful. He was the life of a party
2 and would always make people laugh.

3 Deborah was his first real girlfriend and she changed him
4 and his spirit. She was very manipulative of him, especially
5 after the first child and did not like for him to be around his
6 old friends. She came from a wealthy white family and James
7 came from the poorer black section of Lansing. She seemed to
8 hold this over his head and resented his true friends.

9
10 When he came back from Tucson, everything was fine until
11 Deborah started calling him and asking him to come back to
12 Tucson. Finally she sent him a ticket and went without telling
13 any of his friends because we would have all advised him not to
14 go back to Tucson. It was my opinion that she wanted to keep
15 James away from his friends in order to control him and that is
16 why she sent him the ticket

17 Deborah was very controlling and jealous of James and
18 wouldn't let him go out with the guys and would often verbally
19 abuse him.

20 I observed James around his kids and he was crazy about
21 them and never mistreated them and seemed to be a very good and
22 caring father.


23 My mother is Barbara Dean and she always was able to reach
24 me with a phone call. When James' previous attorney and
25 investigator came to Lansing they talked with me for a short
26 period of time and had me show them around the neighborhood,
27 but never asked me any questions about the relationship between
28 James and Deborah or about his character. I would have been

David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

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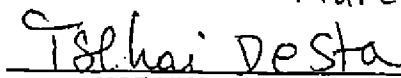
more than happy to come to Las Vegas to testify on behalf of
James at the trial or penalty hearing. From what I understand
the jury was given a very distorted picture of James. His
friends, such as myself could have told a more complete and
detailed story about James.

FURTHER, Affiant sayeth naught.


BENJAMIN DEAN

SUBSCRIBED AND SWORN to before me

this 4th day of ~~November~~, 2002.
March 2003


NOTARY PUBLIC

TSELHAI DESTA
Notary Public, Ingham Co., MI
My Comm. Expires July 29, 2006

AFFIDAVIT

STATE OF MICHIGAN)
) ss:
COUNTY OF EATON)

JAMES FORD, being first duly sworn, deposes and says:

I live in Lansing, Michigan and was friends with JAMES CHAPPELL ("JAMES") while we were attending high school and after high school. I would say that along with myself, Ivri Marrell and Benjamin Dean were JAMES' best friends in Lansing. I was not interviewed prior to the trial and penalty hearing. When I was interviewed by Mr. Schieck in November, 2002 I was present along with Ivri and Benjamin. Much of what we discussed was a collective recollection of JAMES and his relationship with Deborah. We all were of the same general opinions and beliefs about what had transpired.

I knew Deborah Panos through her relationship with JAMES. There was a great deal of animosity from Deborah's family toward JAMES because he was black. After their first baby was born the problems got even worse because her parents kicked her out of the house and wanted nothing to do with JAMES or the baby. They lived with Carla, JAMES' sister for a while and then Deborah moved back in with her parents. JAMES would have to sneak over to the house to even see Deborah or the baby.

Deborah was very controlling and jealous of JAMES and wouldn't let him go out with the guys and would often verbally abuse him.

I observed JAMES around his kids and he was crazy about them and never mistreated them and seeme to be a very good and

1 caring father.

2 I was not aware of what happened after JAMES went to
3 Tucson the first time because we did not talk very often, but I
4 knew he was unhappy and I told him that he should come back to
5 Lansing where all of his friends and family were located.
6 JAMES did come back from Tucson for a short period of time and
7 lived with Ivri for part of the time he was back in Lansing.

8 JAMES did not chase after Deborah after she went to
9 Tucson, the opposite is true. She was always calling him and
10 asking him to come back to Tucson and she sent him the ticket
11 to go back to Tucson, which was against the advice that
12 everyone gave to him.

13 I feel that there were a number of important things that I
14 could have told the jury about JAMES and his relationship with
15 Deborah. I have been told that at the trial a lot of things
16 were said about JAMES that were not accurate and that I could
17 have testified about. For instance, JAMES was never violent to
18 my knowledge, especially toward Deborah and the children. He
19 put up with a lot from her and her family and never resorted to
20 violence to my knowledge. If he became addicted to crack
21 cocaine in Tucson or Las Vegas that may have changed him, but
22 the JAMES I knew would never have been able to do the things
23 that he is accused of doing.

24 I have always lived in Lansing and could have been easily
25 located had anyone made an effort to find me or any of the
26 other friends of JAMES that knew the true story about the
27 relationship between JAMES and Deborah. If contacted I would
28

David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

1 have been more than willing to travel to Las Vegas to testify
2 on behalf of JAMES at either the trial or the penalty hearing.

3 It is shocking to me that JAMES received the death penalty
4 because the person I knew was not a bad person. It is a
5 terrible thing that Deborah was killed by JAMES, but it is also
6 terrible that JAMES was sentenced to death by a jury that did
7 not know the truth about him and the relationship with Deborah.

8 FURTHER, Affiant sayeth naught.

9
10 James Ford
11 JAMES FORD

12 SUBSCRIBED AND SWORN to before me
13 this 6th day of March, 2003
14 ~~November~~, 2002.

15 Nannette V. McGill
16 NOTARY PUBLIC

17 NANNETTE V. MCGILL
18 Notary Public, Eaton County, MI
19 ACTING Indian CO.
20 My Commission Expires 04/01/2003
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ORIGINAL

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SAA
STEWART L. BELL
Clark County District Attorney
Nevada Bar #000477
200 South Third Street
Las Vegas, Nevada 89155-2211
(702) 455-4711
Attorney for Plaintiff

SEP -2 A 9:31

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JAMES MONTELL CHAPPELL,
#1212860

Defendant.

Case No. C131341

Dept No. XI

STIPULATION AND ORDER
EXTENDING TIME

IT IS HEREBY STIPULATED AND AGREED by and between the above named parties, through their undersigned counsel of record, that the briefing schedule regarding the Petition for Writ of Habeas Corpus (Post-Conviction) is continued as follows: State's Response is due on or about September 23, 2003. Therefore, it is requested that the Argument currently scheduled for Tuesday, September 2, 2003, be vacated and reset to Tuesday, October 7, 2003, at 9:00 a.m., for Argument on Post-Conviction Writ.

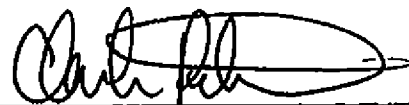
DATED this ____ day of August, 2003.

DATED this 28 day of August, 2003.

STEWART L. BELL
DISTRICT ATTORNEY
Nevada Bar#000477

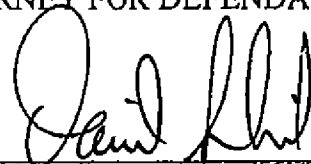
DAVID M. SCHIECK, ESQ.
ATTORNEY FOR DEFENDANT

BY



CLARK PETERSON
Chief Deputy District Attorney

BY



302 E. Carson Ave., #600
Las Vegas, Nevada 89101

COUNTY CLERK

SEP 17 2003

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DATED this 28th day of August, 2003.

[Signature]
DISTRICT JUDGE

FILED

JAN 27 2 35 PM '04

Shirley B. Longjumeau
CLERK

EXPT
DAVID M. SCHIECK, ESQ.
Nevada Bar No. 0824
302 E. Carson Ste. 600
Las Vegas, NV 89101
702-382-1844
Attorney for CHAPPELL

DISTRICT COURT

CLARK COUNTY, NEVADA

* * *

THE STATE OF NEVADA,
Plaintiff,

vs.

JAMES CHAPPELL,

Defendant.

CASE NO. C 131341
DEPT. NO. XI

DATE: N/A
TIME: N/A

EX PARTE MOTION FOR INTERIM PAYMENT
OF EXCESS ATTORNEY'S FEES
IN POST CONVICTION PROCEEDINGS

COMES NOW, DAVID M. SCHIECK, ESQ., attorney for JAMES
CHAPPELL, and moves this Court for an Order authorizing interim
payment of attorney fees in excess of the statutory allowance.

This Motion is made and based on the provisions of NRS
7.125, the request of the State Public Defender, and the
Affidavit of Counsel attached hereto.

Dated this 23 day of January, 2004.

RESPECTFULLY SUBMITTED:

BY *David M. Schieck*
DAVID M. SCHIECK, ESQ.

STATEMENT OF FACTS

DAVID M. SCHIECK, ESQ. was appointed on November 15, 1999 to represent JAMES CHAPPELL (CHAPPELL) for his post conviction proceedings.

Due to difficulty paying large sums at the completion of the case, the State Public Defender's Office has requested court appointed attorneys in post conviction proceedings submit bills on a quarterly interim. This request is for the quarter ending December, 2003 in the amount of \$3,982.30 (fees - \$3,945.00 and costs - \$37.30). Counsel's billing statement is attached hereto.

That counsel has submitted and been paid interim quarterly attorneys fees and costs in the amount of \$18,393.76.

POINTS AND AUTHORITIES

NRS 7.125 sets forth the amount of fees per hour an attorney is entitled to "who is appointed...to represent...a defendant at any stage of the criminal proceedings...." The statute was changed as of October 1, 2003 from \$75.00 per hour to \$125.00 per hour in cases where the death penalty is sought. On July 21, 2000 the jury returned a sentence of death and on March 13, 2002 the Nevada Supreme Court affirmed the conviction and sentence.

Further, NRS 7.125 states in pertinent part, as follows:

3. Except as otherwise provided in subsection 4, an attorney appointed by a district court to represent an indigent petitioner for a writ of habeas corpus or other post-conviction relief...is entitled to be paid a fee not to exceed \$750.

David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

1 4. If the appointing court because of:

2 (a) The complexity of a case of the number of
3 its factual or legal issues;

4 (b) The severity of the offense;

5 (c) The time necessary to provide an adequate
6 defense; or

7 (d) Other special circumstances,

8 deems it appropriate to grant a fee in excess of the
9 applicable maximum, the payment must be made, but
10 only if the court in which the representation was
11 rendered certifies that the amount of the excess
payment is both reasonable and necessary and the
payment is approved by the presiding judge of the
judicial district in which the attorney was
appointed...."

12 CONCLUSION

13 It is respectfully requested that this Court certify that
14 the fees in excess of the statutory limit are reasonable, and
15 grant interim payment for fees and costs in the amount of
16 \$3,982.30.

17 Dated this 21 day of January, 2004.

18 RESPECTFULLY SUBMITTED:

19 
20 BY
21 DAVID M. SCHIECK, ESQ.

David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

AFFIDAVIT OF DAVID M. SCHIECK

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

DAVID M. SCHIECK, being first duly sworn, deposes and
says:

That Affiant is an attorney duly licensed to practice law
in the State of Nevada and court appointed attorney for JAMES
CHAPPELL.

That statutory guidelines proscribe a cap of \$750.00 in
fees for post conviction proceedings. That the State Public
Defender's Office has requested that payment be made on a
quarterly basis instead of when the case is final. That
Affiant has submitted herewith a billing statement through the
quarter ending December, 2003 in the amount of \$3,982.30.

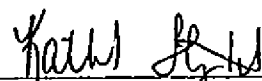
Therefore Affiant requests that this Court grant the
instant Motion for interim payment of excess fees.

Further Affiant sayeth naught.



DAVID M. SCHIECK

SUBSCRIBED and SWORN to before me
this 23 day of January, 2004.



NOTARY PUBLIC



Selection Criteria

Date range : 12/31/02 through 12/30/03
 Slip numbers : All
 Timekeeper : All
 Client : CHAPPELL.PCR
 Activity : All
 Custom Fields : All
 Reference : All
 Slip status : Billed slips and transactions excluded
 Other options :
 Print Bills that are "paid in full" : Yes
 Include transactions outside date range : Yes
 Print Bills with no activity : Yes

Nickname 1 : CHAPPELL.PCR Nickname 2: 35

Address : JAMES CHAPPELL, #52338
ESP

In reference to: CHAPPELL V. WARDEN
PCR
COURT APPOINTED

Rounding : None

Full Precision : No

Last bill :

Last charge : 12/16/03

Last payment : 5/19/03 Amount : \$6,625.90

Arrangement : Time Charges: From slips.
Expenses: From slips.

Date/Slip#	Description	HOURS/RATE	AMOUNT	TOTAL
12/31/02	DMS / RVW	0.20	15.00	
#3407	REVIEW INV REPORTS	75.00		
1/2/03	DMS / RC	0.20	15.00	
#3414	REVIEW CORRESPONDENCE	75.00		
1/2/03	DMS / LC	0.20	15.00	
#3415	LETTER TO CLIENT	75.00		
1/2/03	DMS / TCTI	0.20	15.00	
#3416	TELEPHONE CALL TO INVESTIGATOR	75.00		
1/2/03	DMS / P	1.00	75.00	
#3417	PREPARE AFFIDAVIT OF GREEN	75.00		
1/2/03	DMS / L	0.20	15.00	
#3418	LETTER TO GREEN	75.00		

Date 1/22/04
Time 3:06 pm

DAVID M. SCHIECK
Client Billing Worksheet

Page 2

CHAPPELL.PCR :JAMES CHAPPELL, #52338 (continued)

Date/Slip#	Description	HOURS/RATE	AMOUNT	TOTAL
1/8/03	DMS / RC	0.20	15.00	
#3477	REVIEW CORRESPONDENCE	75.00		
1/9/03	DMS / RC	0.20	15.00	
#3492	REVIEW CORRESPONDENCE	75.00		
1/9/03	DMS / LC	0.20	15.00	
#3493	LETTER TO CLIENT	75.00		
1/21/03	DMS / CASH	1.00	75.00	
#3599	COURT APPEARANCE - STATUS HEARING	75.00		
1/31/03	DMS / RC	0.20	15.00	
#3546	REVIEW CORRESPONDENCE	75.00		
2/3/03	DMS / P	1.00	75.00	
#3698	PREPARE BARBARA DEAN AFFIDAVIT	75.00		
2/3/03	DMS / P	0.50	37.50	
#3699	PREPARE S.SORRELL AFFIDAVIT	75.00		
2/3/03	DMS / P	1.00	75.00	
#3700	PREPARE CONFERENCE.AXAM AFFIDAVIT	75.00		
2/3/03	DMS / TCF	0.20	15.00	
#3707	TELEPHONE CALL FROM REEFER RE: GREEN	75.00		
2/5/03	DMS / TCFI	0.20	15.00	
#3731	TELEPHONE CALL FROM INVESTIGATOR	75.00		
2/17/03	DMS / P	2.00	150.00	
#3838	PREPARE WITNESS AFFIDAVITS	75.00		
2/17/03	DMS / P	1.00	75.00	
#3839	PREPARE REEFER AFFIDAVIT	75.00		
2/17/03	DMS / L	0.20	15.00	
#3840	LETTER TO WITNESSES	75.00		
2/17/03	DMS / RVW	1.00	75.00	
#3841	REVIEW GREEN REPORTS	75.00		
2/18/03	DMS / C	0.30	22.50	
#3853	CONFERENCE WITH REEFER	75.00		

Date 1/22/04
Time 3:06 pm

DAVID M. SCHIECK
Client Billing Worksheet

Page 3

CHAPPELL.PCR :JAMES CHAPPELL, #52338 (continued)

Date/Slip#	Description	HOURS/RATE	AMOUNT	TOTAL
2/24/03 #3889	DMS / TCF TELEPHONE CALL FROM LAW CLERK	0.20 75.00	15.00	
2/25/03 #3901	DMS / CASH COURT APPEARANCE - STATUS HEARING	1.00 75.00	75.00	
3/2/03 #4051	DMS / TCTI TELEPHONE CALL TO INVESTIGATOR	0.20 75.00	15.00	
3/4/03 #4069	DMS / TCF TELEPHONE CALL FROM DEPT. 11	0.20 75.00	15.00	
3/7/03 #3996	DMS / TCTI TELEPHONE CALL TO INVESTIGATOR	0.20 75.00	15.00	
3/8/03 #4087	DMS / RVW REVIEW AFFIDAVITS	0.20 75.00	15.00	
3/10/03 #4104	DMS / TCTI TELEPHONE CALL TO INVESTIGATOR	0.20 75.00	15.00	
3/11/03 #4109	DMS / CASH COURT APPEARANCE - STATUS HEARING	1.00 75.00	75.00	
3/24/03 #4181	DMS / TCF PETERSON	0.20 75.00	15.00	
3/25/03 #4187	DMS / CASH COURT APPEARANCE - STATUS HEARING	1.00 75.00	75.00	
3/25/03 #4188	DMS / P PREPARE DRAFT OF PHB	1.00 75.00	75.00	
3/29/03 #4267	DMS / P PREPARE POST HEARING BRIEF	1.50 75.00	112.50	
4/2/03 #4312	DMS / P PREPARE POST HEARING BRF	2.00 75.00	150.00	
4/3/03 #4325	DMS / P PREPARE POST HEARING BRF	2.00 75.00	150.00	
4/4/03 #4329	DMS / P PREPARE P/H/B	2.50 75.00	187.50	

CHAPPELL.PCR :JAMES CHAPPELL, #52338 (continued)

Date/Slip#	Description	HOURS/RATE	AMOUNT	TOTAL
4/5/03	DMS / P	1.00	75.00	
#4332	PREPARE POST HEARING BRIEF	75.00		
4/11/03	DMS / P	2.00	150.00	
#4377	PREPARE POST HRG BRIEF	75.00		
4/14/03	DMS / P	2.00	150.00	
#4395	PREPARE POST HRG BRIEF	75.00		
4/22/03	DMS / TCFI	0.20	15.00	
#4467	TELEPHONE CALL FROM INVESTIGATOR	75.00		
6/18/03	DMS / P	1.50	112.50	
#5093	PREPARE P/H BRIEF	75.00		
7/1/03	DMS / P	1.00	75.00	
#5275	PREPARE POST HEARING BRIEF	75.00		
7/8/03	DMS / CASH	1.00	75.00	
#5379	COURT APPEARANCE - STATUS HEARING	75.00		
7/9/03	DMS / P	2.50	187.50	
#5384	PREPARE POST HRG BRIEF	75.00		
7/9/03	DMS / TCT	0.20	15.00	
#5385	TELEPHONE CALL TO PETERSON	75.00		
7/10/03	DMS / TCT	0.20	15.00	
#5401	TELEPHONE CALL TO PETERSON	75.00		
7/10/03	DMS / P	1.00	75.00	
#5402	PREPARE POST HRG BRIEF	75.00		
7/11/03	DMS / RC	0.20	15.00	
#5406	REVIEW CORRESPONDENCE	75.00		
7/22/03	DMS / RC	0.20	15.00	
#5487	REVIEW CORRESPONDENCE	75.00		
7/24/03	DMS / CC	2.00	150.00	
#5508	CONFERENCE WITH CLIENT	75.00		
8/6/03	DMS / RVW	0.30	22.50	
#5647	REVIEW FILES	75.00		
8/6/03	DMS / LC	0.20	15.00	
#5648	LETTER TO CLIENT	75.00		

Date 1/22/04
Time 3:06 pm

DAVID M. SCHIECK
Client Billing Worksheet

Page 5

CHAPPELL.PCR :JAMES CHAPPELL, #52338 (continued)

Date/Slip#	Description	HOURS/RATE	AMOUNT	TOTAL
8/21/03	DMS / C	0.20	15.00	
#5793	CONFERENCE WITH PETERSON	75.00		
8/27/03	DMS / RC	0.20	15.00	
#5957	REVIEW CORRESPONDENCE	75.00		
8/27/03	DMS / LC	0.20	15.00	
#5958	LETTER TO CLIENT	75.00		
9/1/03	DMS / RC	0.20	15.00	
#6122	REVIEW CORRESPONDENCE	75.00		
9/2/03	DMS / CASH	1.00	75.00	
#6128	COURT APPEARANCE - STATUS HEARING	75.00		
9/2/03	DMS / TCT	0.20	15.00	
#6129	TELEPHONE CALL TO PETERSON	75.00		
10/7/03	DMS / CASH	1.00	125.00	
#6397	COURT APPEARANCE - STATUS HEARING	125.00		
10/8/03	DMS / LC	0.20	25.00	
#6405	LETTER TO CLIENT	125.00		
10/15/03	DMS / RC	0.20	25.00	
#6489	REVIEW CORRESPONDENCE	125.00		
11/3/03	DMS / TCT	0.20	25.00	
#6724	TELEPHONE CALL TO PETERSON	125.00		
11/3/03	DMS / TCF	0.20	25.00	
#6725	TELEPHONE CALL FROM DEPT. 12	125.00		
11/5/03	DMS / TCF	0.20	25.00	
#6766	TELEPHONE CALL FROM DEPT 12	125.00		
11/5/03	DMS / TCT	0.20	25.00	
#6767	TELEPHONE CALL TO PETERSON	125.00		
11/6/03	DMS / CA	1.00	125.00	
#6771	COURT APPEARANCE - RESET ARGUMENT	125.00		
11/6/03	DMS / LC	0.20	25.00	
#6772	LETTER TO CLIENT	125.00		

Date 1/22/04
Time 3:06 pm

DAVID M. SCHIECK
Client Billing Worksheet

Page 6

CHAPPELL.PCR :JAMES CHAPPELL, #52338 (continued)

Date/Slip#	Description	HOURS/RATE	AMOUNT	TOTAL
12/3/03	DMS / TCT	0.20	25.00	
#6975	TELEPHONE CALL TO PETERSON	125.00		
12/4/03	DMS / CA	1.00	125.00	
#6982	COURT APPEARANCE - ARGUMENT (CONT'D)	125.00		
12/4/03	DMS / P	0.50	62.50	
#6983	PREPARE FOR ARGUMENT	125.00		
12/11/03	DMS / CASH	1.00	125.00	
#7059	COURT APPEARANCE - STATUS HEARING	125.00		
12/16/03	DMS / LC	0.20	25.00	
#7115	LETTER TO CLIENT	125.00		
TOTAL BILLABLE TIME CHARGES		48.40		\$3,945.00

Date/Slip#	Description	QTY/PRICE		
2/3/03	DMS / \$X	34	3.40	
#3911	PHOTOCOPIES	0.10		
2/11/03	DMS / \$X	15	1.50	
#3914	PHOTOCOPIES	0.10		
2/18/03	DMS / \$X	20	2.00	
#3920	PHOTOCOPIES	0.10		
3/10/03	DMS / \$X	32	3.20	
#3969	PHOTOCOPIES	0.10		
7/11/03	DMS / \$X	150	15.00	
#5330	PHOTOCOPIES	0.10		
8/6/03	DMS / \$X	122	12.20	
#5831	PHOTOCOPIES	0.10		
TOTAL BILLABLE COSTS				\$37.30
TOTAL NEW CHARGES				\$3,982.30

Date 1/22/04
Time 3:06 pm.

DAVID M. SCHIECK
Client Billing Worksheet

Page 7

CHAPPELL.PCR :JAMES CHAPPELL, #52338 (continued)

PAYMENTS/REFUNDS/CREDITS

10/26/00 Payment - thank you	(2,872.50)
7/23/01 Payment - thank you	(3,023.44)
5/8/02 Payment - thank you	(2,002.50)
5/20/02 Payment - thank you	(619.36)
8/29/02 Payment - thank you	(1,728.90)
2/4/03 Payment - thank you	(1,521.16)
5/19/03 Payment - thank you	(6,625.90)

TOTAL PAYMENTS/REFUNDS/CREDITS

(\$18,393.76)

NEW BALANCE

New Current period *Previous Balances* ~~(14,411.46)~~ 18,393.76

TOTAL NEW BALANCE

~~(14,411.46)~~

3982.30

In Ct

6 hrs x ⁵75 = \$ 450-
4 hrs x 125 = \$ 500-

Out Ct

36.1 hrs x \$75 = 2707.50
2.3 hrs x 125 = 287.50

exp

37.30

3982.30

ORIGINAL

3

1 EXPR
 2 DAVID M. SCHIECK, ESQ.
 3 Nevada Bar No. 0824
 4 302 E. Carson Ste. 600
 5 Las Vegas, NV 89101
 6 702-382-1844
 7 Attorney for CHAPPELL

Shirley B. Panning

JAN 28 3 05 PM '04

FILED

DISTRICT COURT

CLARK COUNTY, NEVADA

* * *

9 THE STATE OF NEVADA,	)	CASE NO. C 131341
	)	DEPT. NO. XI
10 Plaintiff,)	
	)	ORDER GRANTING INTERIM
11 vs.	)	PAYMENT OF EXCESS
	)	ATTORNEY'S FEES
12 JAMES CHAPPELL,)	
)	
13 Defendant.	)	DATE: N/A
	)	TIME: N/A

14 Based upon the Ex Parte Motion for Interim Payment of
 15 Excess Attorney's Fees in Post Conviction Proceedings (a copy
 16 of which is submitted herewith), the Court being fully advised
 17 in the premises, and good cause shown, it is hereby

18 ORDERED, ADJUDGED AND DECREED that interim payment of
 19 excess attorneys fees and costs is granted in the amount of
 20 \$3,982.30.
 21

22 DATED and DONE: 1-28-04

[Signature]
 23 DISTRICT COURT JUDGE

24 SUBMITTED BY

25 *[Signature]*
 26 DAVID M. SCHIECK, ESQ.
 27
 28

David M. Schieck
 Attorney At Law
 302 E. Carson Ave., Ste. 600
 Las Vegas, NV 89101
 (702) 382-1844

RECEIVED
 JAN 28 2004

ORIGINAL

EXPT
 DAVID M. SCHIECK, ESQ.
 Nevada Bar No. 0824
 302 E. Carson #600
 Las Vegas, NV 89101
 702-382-1844
 Attorney for CHAPPELL

Shirley B. Papp

APR 8 2 03 PM '04

DISTRICT COURT

CLARK COUNTY, NEVADA

* * *

THE STATE OF NEVADA,	)	CASE NO. C 131341
	)	DEPT. NO. XI
Plaintiff,)	
)	
vs.	)	EX PARTE MOTION FOR AN
	)	ORDER TO PRODUCE DEFENDANT'S
JAMES CHAPPELL,	)	INSTITUTIONAL FILE
)	
Defendant.	)	DATE: N/A
	)	TIME: N/A

COMES NOW, Defendant JAMES CHAPPELL, by and through attorney DAVID M. SCHIECK, ESQ., and moves this Court for an Order directing Ely State Prison to release to David M. Schieck, Esq. a copy of its Institutional file on JAMES CHAPPELL (Inmate No. 52338).

This Motion is based on the Points and Authorities submitted herewith, and the Affidavit of Counsel attached hereto.

STATEMENT OF THE CASE

In 1996 JAMES CHAPPELL (hereinafter referred to as CHAPPELL) was convicted of First Degree Murder and related charges and sentenced to death. His direct appeal was denied and a Petition for Writ of Certiorari to the U.S. Supreme Court

David M. Schieck
 Attorney At Law
 302 E. Carson Ave., Ste. 600
 Las Vegas, NV 89101
 (702) 382-1844

CLERK

APR 9 2004

RECEIVED

1 was denied in 1999. CHAPPELL timely filed a Petition for Writ
2 of Habeas Corpus and was granted an evidentiary hearing.
3 CHAPPELL'S trial attorneys only were allowed to testify but the
4 Court allowed Affidavits from witnesses to be filed. After the
5 post hearing briefs were submitted, CHAPPELL'S Petition was
6 granted in part and was granted a second penalty hearing on
7 April 2, 2004.

8 CHAPPELL is requesting that this Court order Ely State
9 Prison to release its institutional file (I-File) to his
10 attorney to be used potentially at the second penalty hearing.

11 POINTS AND AUTHORITIES

12 The prosecution has the duty to disclose to the Defendant
13 all exculpatory evidence. Brady v. Maryland, 373 U.S. 83
14 (1963); See, also, Giles v. Maryland, 386 U.S. 66 (1967);
15 Dennis v. U.S., 384 U.S. 855, 873 (1966); Giglio v. U.S., 925
16 S.Ct. 763 (1972). It is clear that the trial court has wide
17 discretion in permitting discovery. See, Marshall v. District
18 Court, 79 Nev. 280, 382 P.2d 214 (1963).

19 The Nevada Supreme Court has held that "[c]onsistent with
20 the constitutional requirements of due process, defendants
21 should be notified of any and all evidence to be presented
22 during the penalty hearing." Emmons v. State, 107 Nev. 53, 62,
23 807 P.2d 718 (1991). More than one day's notice is necessary
24 to satisfy due process requirements. Id.

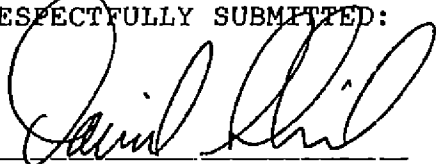
25 Wherefore, it is respectfully requested that this Court
26 grant CHAPPELL'S Motion for an Order that Ely State Prison
27
28

David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

1 release Defendant's I-File to his attorney.

2 DATED this 7 day of April, 2004.

3 RESPECTFULLY SUBMITTED:

4 
5
6 DAVID M. SCHIECK, ESQ.

7 AFFIDAVIT OF DAVID M. SCHIECK

8 STATE OF NEVADA)
9) ss:
COUNTY OF CLARK)

10 DAVID M. SCHIECK, being duly sworn, deposes and says:

11 That Affiant is an attorney duly licensed to practice law
12 in the State of Nevada and court appointed counsel for
13 CHAPPELL.

14 CHAPPELL'S Petition for Writ of Habeas Corpus (Post
15 Conviction) was granted in part on April 2, 2004 and his
16 sentence of death was vacated. CHAPPELL was granted a new
17 penalty hearing.

18 As this is a death penalty case Affiant is required by
19 Supreme Court Rule 250 to present any and all mitigating
20 evidence at CHAPPELL' penalty hearing.

21 CHAPPELL has been continuously incarcerated on death row
22 in Ely State Prison since 1996. Therefore Affiant requests
23 this Court grant the Motion for an Order that CHAPPELL'S
24 Institutional File be released to counsel to potentially be
25

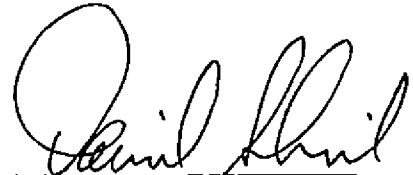
26 . . .

27 . . .


David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

1 used at the penalty hearing. It is often found that favorable
2 behavior while incarcerated is a mitigating factor considered
3 by jurors.

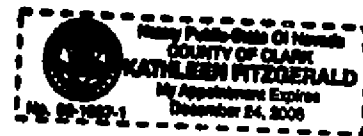
4 FURTHER, Affiant sayeth naught.


DAVID M. SCHIECK

7 SUBSCRIBED AND SWORN to before
8 me this 7 day of April, 2004.

9 
10 _____

11 NOTARY PUBLIC



ORIGINAL

21

FILED

APR 12 3 57 PM '04

Shirley B. Rungius
CLERK

1 EXPR
2 DAVID M. SCHIECK, ESQ.
3 Nevada Bar No. 0824
4 302 E. Carson #600
5 Las Vegas, NV 89101
6 702-382-1844
7 Attorney for CHAPPELL

DISTRICT COURT

CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,
9 Plaintiff,

CASE NO. C 131341
DEPT. NO. XI

vs.

EX PARTE ORDER TO PRODUCE
INSTITUTIONAL FILE

JAMES CHAPPELL,

Defendant.

DATE: N/A
TIME: N/A

14 Based on the Ex Parte Motion for Order to Produce
15 Defendant's Institutional File, a copy of which is submitted
16 herewith, the Court being fully advised in the premises, and
17 good cause appearing

18 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Ely State
19 Prison is to release a copy of the Institutional File (I-File)
20 for James Chappell, #52338, to David M. Schieck, Esq.

DATED AND DONE: April 9, 2004

SUBMITTED BY:

DISTRICT COURT JUDGE

DAVID M. SCHIECK, ESQ.

David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

APR 13 2004

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David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

COUNTY CLERK
JUN - 3 2004
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FFCL
DAVID M. SCHIECK, ESQ.
Nevada Bar No. 0824
302 East Carson, Ste. 600
Las Vegas, NV 89101
702-382-1844
Attorney for CHAPPELL

FILED
JUN 3 4 31 PM '04
Shirley S. Rungius
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

* * *

JAMES MONTELL CHAPPELL,	)	CASE NO. C 131341
	)	DEPT. NO. XI IV
Petitioner,)	
)	
vs.)	
)	
THE STATE OF NEVADA,)	
)	
Respondent.	)	DATE: N/A
	)	TIME: N/A

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The Petition and Supplemental Petition for Habeas Corpus (Post Conviction) having come on for hearing before the Honorable Michael Douglas, District Court Judge, on April 2, 2004, the Petitioner not present, represented by David M. Schieck, Esq., and the State of Nevada by Chief Deputy District Attorney Clark Peterson; the Court having considered the evidence produced at the Evidentiary Hearing and the pleadings and affidavits on file; now makes the following Findings of Fact, Conclusions of Law and Judgment:

FINDINGS OF FACT

1. The Court has considered all claims regarding errors of trial counsel at the trial phase and finds that any errors

1 were harmless due to the overwhelming evidence of guilt.

2 2. The Court need not address the first prong of
3 Strickland v. Washington, 566 U.S. 668, 104 S.Ct. 2052 (1984)
4 that there was deficient performance of trial counsel as the
5 Court has determined that none of the claimed errors prejudiced
6 the outcome of the case.

7 3. Based on the Court's determination that none of the
8 claimed trial errors would have effected the outcome of the
9 trial the Court makes no determination as to the merits of any
10 claimed errors or deficiencies.

11 4. With respect to the penalty hearing, the Court finds
12 that there were several witnesses that were available to
13 provide testimony in mitigation from both Michigan and Arizona.

14 5. Defense counsel was deficient in not locating and
15 presenting these witnesses at the penalty hearing. The
16 substance of the testimony is reflected in affidavits submitted
17 by CHAPPELL which the Court finds sufficient to determine that
18 the outcome of the penalty hearing cannot be relied upon as
19 having produced a just result. The outcome of the penalty
20 hearing was prejudiced by the failure to produce and present
21 the numerous witnesses that could have described CHAPPELL and
22 the dynamics of his relationship with the victim and their
23 children.
24

25 CONCLUSIONS OF LAW

26 1. A criminal defendant is entitled to receive reasonable
27 effective assistance of counsel through trial, including the
28

1 penalty hearing, and upon direct appeal of his conviction.
2 Strickland v. Washington, 460 U.S. 668 (1984). In order to
3 establish a claim of ineffective assistance of counsel the
4 defendant must establish first that counsel's performance was
5 deficient and second that the deficient performance prejudiced
6 the defense.

7 2. Deficient assistance requires a showing that trial
8 counsel's representation of the defendant fell below an
9 objective standard of reasonableness. If the defendant
10 establishes that counsel's performance was deficient, the
11 defendant must next show that, but for counsel's error, the
12 result of the trial probably would have been different. State
13 v. Love, 109 Nev. 1136, 1138, 865 P.2d 322 (1993).

14 3. The performance of trial counsel is found to be
15 deficient in failing to locate, interview and call as witnesses
16 at the penalty hearing numerous witnesses that would have
17 established mitigating factors for CHAPPELL.

18 4. The failures of counsel were prejudicial to CHAPPELL'S
19 defense and were so serious as to deprive CHAPPELL of fair
20 penalty hearing, to wit: a penalty hearing whose result was
21 reliable, such that, but for counsel's error the result of the
22 penalty hearing probably would have been different.

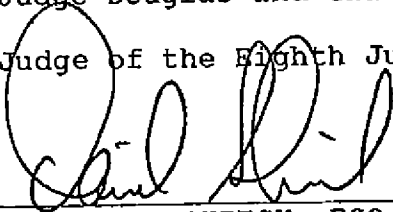
23 5. Pre-trial investigation and preparation for trial are
24 key to effective representation of counsel. Defense counsel
25 has a duty "to make reasonable investigation or to make a
26 reasonable decision that makes particular investigation
27
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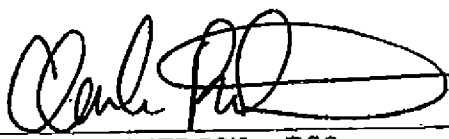
David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

unnecessary." Strickland, 466 U.S. at 691; State v. Love, 109 Nev. 1136, 865 P.2d 322 (1993). Counsel is required to present all available mitigation evidence at a penalty hearing in a capital case.

STIPULATION OF COUNSEL

Due to the appointment of Judge Michael Douglas to the Nevada Supreme Court, the above named parties by and through their respective counsel hereby stipulate that the Findings of Fact and Conclusions of Law adequately reflect the ruling of Judge Douglas and that the Order may be executed by the Chief Judge of the Eighth Judicial District Court.


DAVID M. SCHIECK, ESQ.
Attorney for CHAPPELL
302 E. Carson, Ste. 600
Las Vegas NV 89101

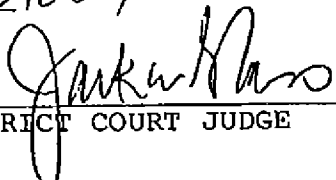

CLARK PETERSON, ESQ.
District Attorney's Office
200 S. Third Street
Las Vegas NV 89155

ORDER

Based on the Findings of Fact and Conclusions of Law herein contained, it is hereby

ORDERED, ADJUDGED AND DECREED that JAMES CHAPPELL'S Petition and Supplemental Petition for Habeas Corpus (Post Conviction) is denied as to his Conviction and granted as to his sentence which is hereby vacated and the matter is to be reset for a new penalty hearing.

DATED AND DONE: June 2nd, 2004


DISTRICT COURT JUDGE *Run*

NOED

District Court

Clark County, Nevada

FILED

JUN 10 10 27 AM '04

Shirley B. Parraguirre
CLERK

JAMES MONTELL CHAPPELL,

Petitioner,

vs

Case No. C131341

Dept. No. IV

THE STATE OF NEVADA,

Respondent.

NOTICE OF ENTRY OF
DECISION AND ORDER

PLEASE TAKE NOTICE that on June 3, 2004, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on June 10, 2004.

SHIRLEY B. PARRAGUIRRE, CLERK OF COURT

By:

Norreta Caldwell, Deputy Clerk

CERTIFICATE OF MAILING

I hereby certify that on the 10 day of June, 2004, I placed a copy of this Notice of Entry of Decision and Order in:

The bin(s) located in the Office of the County Clerk of:
Clark County District Attorney's Office - Appellate Division
Attorney General's Office - Appellate Division

☐ The United States mail addressed as follows:

David M Schieck - Attorney
302 East Carson #600
Las Vegas, Nv 89101

Norreta Caldwell
Norreta Caldwell, Deputy Clerk

Notice of Entry of Decision and Order/2-01/jh

S2

David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

COUNTY CLERK

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JUN - 3 2004

1 FFCL
2 DAVID M. SCHIECK, ESQ. .
3 Nevada Bar No. 0824
4 302 East Carson, Ste. 600
5 Las Vegas, NV 89101
6 702-382-1844
7 Attorney for CHAPPELL

FILED

JUN 3 4 31 PM '04

Shirley S. Rungione
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

* * *

9 JAMES MONTELL CHAPPELL,)	CASE NO. C 131341
10)	DEPT. NO. XI IV
11)	
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28)	

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent.

DATE: N/A
TIME: N/A

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The Petition and Supplemental Petition for Habeas Corpus (Post Conviction) having come on for hearing before the Honorable Michael Douglas, District Court Judge, on April 2, 2004, the Petitioner not present, represented by David M. Schieck, Esq., and the State of Nevada by Chief Deputy District Attorney Clark Peterson; the Court having considered the evidence produced at the Evidentiary Hearing and the pleadings and affidavits on file; now makes the following Findings of Fact, Conclusions of Law and Judgment:

FINDINGS OF FACT

1. The Court has considered all claims regarding errors of trial counsel at the trial phase and finds that any errors

David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 800
Las Vegas, NV 89101
(702) 382-1844

1 were harmless due to the overwhelming evidence of guilt.

2 2. The Court need not address the first prong of
3 Strickland v. Washington, 566 U.S. 668, 104 S.Ct. 2052 (1984)
4 that there was deficient performance of trial counsel as the
5 Court has determined that none of the claimed errors prejudiced
6 the outcome of the case.

7 3. Based on the Court's determination that none of the
8 claimed trial errors would have effected the outcome of the
9 trial the Court makes no determination as to the merits of any
10 claimed errors or deficiencies.

11 4. With respect to the penalty hearing, the Court finds
12 that there were several witnesses that were available to
13 provide testimony in mitigation from both Michigan and Arizona.

14 5. Defense counsel was deficient in not locating and
15 presenting these witnesses at the penalty hearing. The
16 substance of the testimony is reflected in affidavits submitted
17 by CHAPPELL which the Court finds sufficient to determine that
18 the outcome of the penalty hearing cannot be relied upon as
19 having produced a just result. The outcome of the penalty
20 hearing was prejudiced by the failure to produce and present
21 the numerous witnesses that could have described CHAPPELL and
22 the dynamics of his relationship with the victim and their
23 children.
24

25 CONCLUSIONS OF LAW

26 1. A criminal defendant is entitled to receive reasonable
27 effective assistance of counsel through trial, including the
28

David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

1 penalty hearing, and upon direct appeal of his conviction.
2 Strickland v. Washington, 460 U.S. 668 (1984). In order to
3 establish a claim of ineffective assistance of counsel the
4 defendant must establish first that counsel's performance was
5 deficient and second that the deficient performance prejudiced
6 the defense.

7 2. Deficient assistance requires a showing that trial
8 counsel's representation of the defendant fell below an
9 objective standard of reasonableness. If the defendant
10 establishes that counsel's performance was deficient, the
11 defendant must next show that, but for counsel's error, the
12 result of the trial probably would have been different. State
13 v. Love, 109 Nev. 1136, 1138, 865 P.2d 322 (1993).

14 3. The performance of trial counsel is found to be
15 deficient in failing to locate, interview and call as witnesses
16 at the penalty hearing numerous witnesses that would have
17 established mitigating factors for CHAPPELL.

18 4. The failures of counsel were prejudicial to CHAPPELL'S
19 defense and were so serious as to deprive CHAPPELL of fair
20 penalty hearing, to wit: a penalty hearing whose result was
21 reliable, such that, but for counsel's error the result of the
22 penalty hearing probably would have been different.

23 5. Pre-trial investigation and preparation for trial are
24 key to effective representation of counsel. Defense counsel
25 has a duty "to make reasonable investigation or to make a
26 reasonable decision that makes particular investigation
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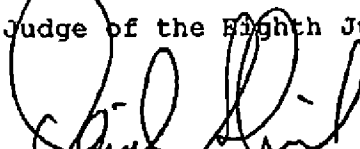
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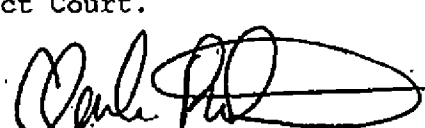
David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

unnecessary." Strickland, 466 U.S. at 691; State v. Love, 109 Nev. 1136, 865 P.2d 322 (1993). Counsel is required to present all available mitigation evidence at a penalty hearing in a capital case.

STIPULATION OF COUNSEL

Due to the appointment of Judge Michael Douglas to the Nevada Supreme Court, the above named parties by and through their respective counsel hereby stipulate that the Findings of Fact and Conclusions of Law adequately reflect the ruling of Judge Douglas and that the Order may be executed by the Chief Judge of the Eighth Judicial District Court.


DAVID M. SCHIECK, ESQ.
Attorney for CHAPPELL
302 E. Carson, Ste. 600
Las Vegas NV 89101


CLARK PETERSON, ESQ.
District Attorney's Office
200 S. Third Street
Las Vegas NV 89155

ORDER

Based on the Findings of Fact and Conclusions of Law herein contained, it is hereby

ORDERED, ADJUDGED AND DECREED that JAMES CHAPPELL'S Petition and Supplemental Petition for Habeas Corpus (Post Conviction) is denied as to his Conviction and granted as to his sentence which is hereby vacated and the matter is to be reset for a new penalty hearing.

DATED AND DONE: June 2nd, 2004


DISTRICT COURT JUDGE *RM*

ORIGINAL

FILED

JUN 18 12 48 PM '04

Shirley S. Thompson
CLERK

CASE APPEAL STATEMENT
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
STEVEN OWENS
Chief Deputy District Attorney
Nevada Bar #004352
200 South Third Street
Las Vegas, Nevada 89155-2212
(702) 671-2750
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

-vs-

JAMES MONTELL CHAPPELL,

Defendant(s)

Case No. C131341

Dept. No. IV

CASE APPEAL STATEMENT

1. Name of appellant filing this case appeal statement:
The State of Nevada
2. Identify the judge issuing the decision, judgment, or order appealed from:
The Honorable Michael Douglas made the ruling in this case. However, due to Judge Douglas's appointment to the Nevada Supreme Court, Chief Judge Kathy Hardcastle executed the Order.
3. Identify all parties to the proceedings in the district court:
James Montell Chappell
The State of Nevada
4. Identify all parties involved in this appeal:
Same as #3

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JUN 18 2004
CLERK

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

3 Steven Owens
4 Chief Deputy District Attorney
5 Nevada Bar #004352
6 Clark County District Attorney's Office
7 200 South Third Street
8 Las Vegas, Nevada 89155-2212
9 (702) 671-2750

David M. Schieck
Attorney at Law
Nevada Bar #000824
302 E. Carson, Ste. 600
Las Vegas, Nevada 89101-5905
(702) 382-1844

7 Counsel for Appellant
8 The State of Nevada

Counsel for Respondent
James Montell Chappell

9 **6. Indicate whether appellant was represented by appointed or retained**
10 **counsel in the district court: N/A**

11 **7. Indicate whether appellant is represented by appointed or retained**
12 **counsel on appeal: N/A**

13 **8. Indicate whether appellant was granted leave to proceed in forma**
14 **pauperis, and the date of entry of the district court order granting such leave: N/A**

15 **9. Date proceedings commenced in the district court:**

16 Pro Per Petition for Writ of Habeas Corpus (Post-Conviction)
17 filed October 19, 1999.

18 **DATED June 17, 2004.**

19 Respectfully submitted,

20 DAVID ROGER
21 Clark County District Attorney
22 Nevada Bar # 002781

23 BY



24 STEVEN OWENS
25 Chief Deputy District Attorney
26 Nevada Bar #004352
27
28

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CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing Case Appeal Statement was made June 17, 2004, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

David M. Schieck
Attorney at Law
302 E. Carson, Ste. 600
Las Vegas, Nevada 89101-5905



Employee, District Attorney's Office

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FILED

JUN 18 12 49 PM '04

Shirley D. Ruggione
CLERK

NOAS
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
STEVEN OWENS
Chief Deputy District Attorney
Nevada Bar #004352
200 South Third Street
Las Vegas, Nevada 89155-2212
(702) 455-4711
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

v.

JAMES MONTELL CHAPPELL,
Defendant(s).

Case No. C131341
Dept. No. IV

NOTICE OF APPEAL

TO: JAMES MONTELL CHAPPELL, Defendant; and

TO: DAVID M. SCHIECK, Attorney for Defendant; and

TO: KATHY HARDCASTLE, District Judge, Eighth Judicial District, Dept. No. IV

NOTICE IS HEREBY GIVEN BY THE STATE OF NEVADA, Plaintiff in the above entitled matter, appeals to the Supreme Court of Nevada from the Findings of Fact, Conclusions of Law and Order filed June 3, 2004 Granting Defendant's Petition and Supplemental Petition for Writ of Habeas Corpus (Post-Conviction) as to his sentence, thereby vacating his sentence and setting the matter for a new penalty hearing.

Dated this 17th day of June, 2004.

DAVID ROGER
Clark County District Attorney

BY

Steven Owens
STEVEN OWENS
Chief Deputy District Attorney
Nevada Bar # 004352

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JUN 18 2004
COUNTY CLERK

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CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing NOTICE OF APPEAL was made this
17th day of June, 2004 by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

David M. Schieck
Attorney at Law
302 E. Carson, Ste. 600
Las Vegas, Nevada 89101-5905

BY


Employee, District Attorney's Office

OWENS/englm/Jimenez

196

ORIGINAL

B

1 NCA
 2 DAVID M. SCHIECK, ESQ.
 3 NEVADA BAR NO. 0824
 4 302 E. CARSON, STE. 600
 5 LAS VEGAS, NV 89101
 6 (702) 382-1844
 7 Attorney for DEFENDANT

Anthony B. Pennington

JUN 24 2 30 PM '04

DISTRICT COURT

FILED

CLARK COUNTY, NEVADA

* * *

8 THE STATE OF NEVADA,
 9 Plaintiff,

CASE NO. C 131341
 DEPT. NO. IV

10 vs.

CASE APPEAL STATEMENT

11 JAMES CHAPPELL,

12 Defendant.

DATE: N/A
 TIME: N/A

- 14 1. Cross-Appellant filing case appeal statement is James Chappell
- 15 2. The Judge issuing the decision was The Honorable Michael Douglas (Chief Judge Kathy Hardcastle signed the Findings of Fact)
- 16 3. Defendant was James Chappell
- 17 Plaintiff was The State of Nevada
- 18 4. Cross-Appellant is James Chappell
- 19 Cross-Respondent is The State of Nevada
- 20 5. Counsel for Cross-Appellant: David M. Schieck, Esq., 302 E. Carson, #600, Las Vegas, NV 89101, 702-382-1844

23 Counsel for Cross-Respondent: David Roger, District Attorney, 200 S. Third St., Las Vegas, NV 89155, 702-455-4711; and Brian Sandoval, Nevada Attorney General, 100 N. Carson St., Carson City, Carson City, NV 89701, 702-687-4170

- 24 6. James Chappell was represented by appointed counsel David M. Schieck, Esq. for his post conviction proceedings

David M. Schieck
 Attorney At Law
 302 E. Carson Ave., Ste. 600
 Las Vegas, NV 89101
 (702) 382-1844

COUNTY CLERK

JUN 24 2004

RECEIVED

7. James Chappell is represented by appointed counsel, David M. Schieck, Esq. on cross-appeal from that portion of the Findings of Fact, Conclusions of Law, and Order filed June 3, 2004 that denied James Chappell a new trial.
8. James Chappell was granted leave to proceed in forma pauperis and appointed counsel for appeal.
9. James Chappell's Notice of Entry of Decision and Order was filed June 3, 2004

Dated this 24 day of June, 2004.

SUBMITTED BY:


DAVID M. SCHIECK, ESQ.

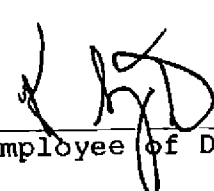
CERTIFICATE OF MAILING

The undersigned does hereby certify that on the 24 day of ~~May~~ ^{JUNE}, 2004, I deposited in the United States Post Office at Las Vegas, Nevada, a copy of the Case Appeal Statement, postage prepaid, addressed to the following:

District Attorney's Office
200 S. Third Street
Las Vegas NV 89155

Nevada Attorney General
100 N. Carson
Carson City, NV 89701-4717

James Chappell, No. 52338
Ely State Prison
P.O. Box 1989
Ely NV 89301


An employee of David M. Schieck, Esq.

197
ORIGINAL

1 NOA
2 DAVID M. SCHIECK, ESQ.
3 NEVADA BAR NO. 0824
4 302 E. CARSON, STE. 600
5 LAS VEGAS, NV 89101
6 (702) 382-1844
7 Attorney for DEFENDANT

Shirley B. Paragiani

JUN 24 2 30 PM '04

DISTRICT COURT

FILED

CLARK COUNTY, NEVADA

* * *

8 THE STATE OF NEVADA,
9 Plaintiff,

) CASE NO. C 131341
) DEPT. NO. IV
)

10 vs.

) NOTICE OF CROSS-APPEAL
)

11 JAMES CHAPPELL,

12 Defendant.

) DATE: N/A
) TIME: N/A
)

13
14 TO: THE STATE OF NEVADA, Plaintiff, herein;

15 TO: DAVID ROGER, District Attorney, and

16 TO: DEPARTMENT IV OF THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK:

17 NOTICE IS HEREBY GIVEN that JAMES CHAPPELL, by and through
18 his attorney DAVID M. SCHIECK, ESQ., cross-appeals to the
19 Nevada Supreme Court that portion of the Findings of Fact,
20 Conclusions of Law and Order filed June 3, 2004 that denied
21 CHAPPELL a new trial regarding the guilty phase of his trial.

22 Dated this 24 day of June, 2004.

23 SUBMITTED BY:

24 *David M. Schieck*
25
26 DAVID M. SCHIECK, ESQ.

David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

COUNTY CLERK
JUN 24 2004
RECEIVED

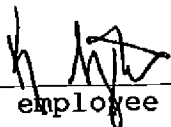
CERTIFICATE OF MAILING

The undersigned does hereby certify that on the 24 day of June, 2004, I deposited in the United States Post Office at Las Vegas, Nevada, a copy of the Notice of Cross Appeal, postage prepaid, addressed to the following:

District Attorney's Office
200 S. Third Street
Las Vegas NV 89155

Nevada Attorney General
100 N. Carson
Carson City, NV 89701-4717

James Chappell, No. 52338
Ely State Prison
P.O. Box 1989
Ely NV 89301


An employee of David M. Schieck, Esq.

David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

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David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

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EXPT
DAVID M. SCHIECK, ESQ.
Nevada Bar No. 0824
302 E. Carson Ste. 600
Las Vegas, NV 89101
702-382-1844
Attorney for CHAPPELL

Shirley B. Rosenberg
JUL 6 2 24 PM '04
FILED

DISTRICT COURT
CLARK COUNTY, NEVADA

* * *

THE STATE OF NEVADA,	)	CASE NO. C 131341
	)	DEPT. NO. <u>4</u>
Plaintiff,)	
)	
vs.)	
)	
JAMES CHAPPELL,)	
)	
Respondent.	)	DATE: N/A
	)	TIME: N/A

EX PARTE MOTION FOR PAYMENT OF
FINAL ATTORNEY'S FEES AND COSTS

COMES NOW, DAVID M. SCHIECK, ESQ., attorney for JAMES CHAPPELL, and moves this Court for an Order authorizing final payment of attorney fees and costs in excess of the statutory allowance in the amount of \$2,460.31.

This Motion is made and based on the provisions of NRS 7.125 and the Affidavit of Counsel attached hereto.

Dated this 2 day of July, 2004.

RESPECTFULLY SUBMITTED:

BY 
DAVID M. SCHIECK, ESQ.

David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

STATEMENT OF FACTS

On November 15, 1999 David M. Schieck, Esq. was appointed to represent JAMES CHAPPELL (CHAPPELL) for his post conviction proceedings. (See Order attached hereto.) CHAPPELL'S Petition for Writ of Habeas Corpus was granted as to a new penalty hearing only. The Notice of Entry of Findings of Fact was filed on June 10, 2004.

CHAPPELL has requested and previously been paid \$22,375.56. This request is for final payment of attorney's fees and costs in the amount of \$2,460.31 (fees: 2,325.00, and costs: \$135.31). (See counsel's billing statement attached hereto.)

The compensation for attorney's fees allowed in post conviction proceedings is not to exceed \$750.00 pursuant to statute.

POINTS AND AUTHORITIES

NRS 7.125 sets forth the amount of fees per hour an attorney is entitled to "who is appointed...to represent...a defendant at any stage of the criminal proceedings...." The statute was changed as of October 1, 2003 from \$75.00 per hour to \$125.00 per hour in cases where the death penalty is sought.

Further, NRS 7.125 states in pertinent part, as follows:

3. Except as otherwise provided in subsection 4, an attorney appointed by a district court to represent an indigent petitioner for a writ of habeas corpus or other post-conviction relief...is entitled to be paid a fee not to exceed \$750.

4. If the appointing court because of:

David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

1 (a) The complexity of a case of the number of
2 its factual or legal issues;

3 (b) The severity of the offense;

4 (c) The time necessary to provide an adequate
5 defense; or

6 (d) Other special circumstances,

7 deems it appropriate to grant a fee in excess of the
8 applicable maximum, the payment must be made, but
9 only if the court in which the representation was
10 rendered certifies that the amount of the excess
11 payment is both reasonable and necessary and the
12 payment is approved by the presiding judge of the
13 judicial district in which the attorney was
14 appointed...."

15 CONCLUSION

16 It is respectfully requested that this Court certify that
17 the fees in excess of the statutory limit are reasonable and
18 necessary, and grant final payment in the amount of \$2,460.31.

19 Dated this 2 day of July, 2004.

20 RESPECTFULLY SUBMITTED:

21 BY 
22 DAVID M. SCHIECK, ESQ.

23 AFFIDAVIT OF DAVID M. SCHIECK

24 STATE OF NEVADA)
25) ss:
26 COUNTY OF CLARK)

27 DAVID M. SCHIECK, being first duly sworn, deposes and
28 says:

29 That Affiant is an attorney duly licensed to practice law
30 in the State of Nevada and court appointed attorney for
31 CHAPPELL.

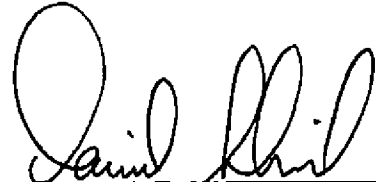
David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

1 That statutory guidelines proscribe a cap of \$750.00 in
2 fees for post conviction proceedings and the hourly rate
3 changed from \$75.00 per hour to \$120.00 in cases where the
4 death penalty is sought as of October 1, 2003.


5 That Affiant has submitted herewith his final billing
6 statement for fees and costs in the amount of \$2,460.31.

7 That Affiant requests this Court find the fees reasonable
8 and necessary and grant the instant Motion for payment of
9 excess fees and costs.

10 Further Affiant sayeth naught.

11 
12
13 DAVID M. SCHIECK

14 SUBSCRIBED and SWORN to before me
15 this 2 day of July, 2004.

16 
17 NOTARY PUBLIC



DR
DAVID M. SCHIECK, ESQ.
Nevada Bar No. 0824
302 E. Carson, #600
Las Vegas, NV 89101
702-382-1844

FILED

Nov 29 4 02 PM '99

DISTRICT COURT
CLARK COUNTY, NEVADA

Shirley L. Rungius
CLERK

* * *

THE STATE OF NEVADA,

Plaintiff,

vs.

JAMES M. CHAPPELL,

Defendant.

CASE NO. C131341
DEPT. NO. VII

AMENDED ORDER
APPOINTING COUNSEL

DATE: 11-15-99
TIME: 9:00 a.m.

The above entitled matter having come before the Court on the 15th day of November, 1999, DAVID M. SCHIECK, ESQ. appearing, and a representative of the District Attorney's Office appearing on behalf of The State of Nevada, the Court being fully advised in the premises, and good cause appearing therefor,

IT IS HEREBY ORDERED that DAVID M. SCHIECK, ESQ. be appointed to represent CHAPPELL for post conviction relief.

IT IS FURTHER ORDERED that the Public Defender turn over all files including attorney work product to David Schieck.

DATED AND DONE: 11-29-99

MARK GIBSON

DISTRICT COURT JUDGE

SUBMITTED BY:

By:

David M. Schieck
DAVID M. SCHIECK, ESQ.

Selection Criteria

Date range : 1/5/04 through 6/30/04
Slip numbers : All
Timekeeper : All
Client : CHAPPELL.PCR
Activity : All
Custom Fields : All
Reference : All
Slip status : Billed slips and transactions excluded
Other options :
 Print Bills that are "paid in full" : Yes
 Include transactions outside date range : Yes
 Print Bills with no activity : Yes

Nickname 1 : CHAPPELL.PCR Nickname 2: 35
Address : JAMES CHAPPELL, #52338
In reference to: CHAPPELL V. WARDEN
 PCR
 COURT APPOINTED
Rounding : None
Full Precision : No

Last bill :
Last charge : 6/24/04
Last payment : 5/10/04 Amount : \$2,357.60
Arrangement : Time Charges: From slips.
 Expenses: From slips.

Date/Slip#	Description	HOURS/RATE	AMOUNT	TOTAL
1/5/04 DMS / RC		0.20	25.00	
#7214	REVIEW CORRESPONDENCE	125.00		
1/5/04 DMS / LC		0.20	25.00	
#7215	LETTER TO CLIENT	125.00		
1/21/04 DMS / TCF		0.20	25.00	
#7390	TELEPHONE CALL FROM PETERSON	125.00		
1/22/04 DMS / CA		1.00	125.00	
#7417	COURT APPEARANCE - CONT HEARING	125.00		
1/22/04 DMS / LC		0.20	25.00	
#7418	LETTER TO CLIENT	125.00		
1/22/04 DMS / TCT		0.20	25.00	
#7419	TELEPHONE CALL TO PETERSON	125.00		
1/28/04 DMS / C		0.20	25.00	
#7487	CONFERENCE WITH PETERSON	125.00		

Date 7/2/04
Time 10:56 am

DAVID M. SCHIECK
Client Billing Worksheet

Page 2

CHAPPELL.PCR :JAMES CHAPPELL, #52338 (continued)

Date/Slip#	Description	HOURS/RATE	AMOUNT	TOTAL
1/28/04 DMS / TCT		0.20	25.00	
#7488 TELEPHONE CALL TO BROOKS		125.00		
1/28/04 DMS / L		0.20	25.00	
#7489 LETTER TO PETERSON		125.00		
2/25/04 DMS / TCFC		0.20	25.00	
#7772 TELEPHONE CALL FROM CLIENT		125.00		
2/26/04 DMS / TCF		0.20	25.00	
#7784 TELEPHONE CALL FROM COURT		125.00		
2/26/04 DMS / LC		0.20	25.00	
#7785 LETTER TO CLIENT		125.00		
2/26/04 DMS / TCTDA		0.20	25.00	
#7786 TELEPHONE CALL TO DISTRICT ATTORNEY		125.00		
3/2/04 DMS / LC		0.20	25.00	
#7999 LETTER TO CLIENT		125.00		
4/2/04 DMS / P		1.00	125.00	
#8459 PREPARE FOR HEARING		125.00		
4/2/04 DMS / CA		1.00	125.00	
#8460 COURT APPEARANCE - ARGUMENT		125.00		
4/2/04 DMS / LC		0.20	25.00	
#8461 LETTER TO CLIENT		125.00		
4/2/04 DMS / TCT		0.20	25.00	
#8462 TELEPHONE CALL TO BROOKS		125.00		
4/2/04 DMS / TCT		0.20	25.00	
#8463 TELEPHONE CALL TO FEDERAL PUBLIC DEFENDER		125.00		
4/5/04 DMS / TCF		0.20	25.00	
#8472 TELEPHONE CALL FROM BROOKS		125.00		
4/5/04 DMS / P		1.50	187.50	
#8473 PREPARE FINDINGS		125.00		
4/6/04 DMS / DD		1.50	187.50	
#8504 DRAFT DOCUMENT (FINAL) OF FOF AND ORDER		125.00		

Date 7/2/04
Time 10:56 am

DAVID M. SCHIECK
Client Billing Worksheet

Page 3

CHAPPELL.PCR :JAMES CHAPPELL, #52338 (continued)

Date/Slip#	Description	HOURS/RATE	AMOUNT	TOTAL
4/7/04	DMS / RVW	1.00	125.00	
#8522	REVIEW, RESEARCH, REVISE FINDINGS	125.00		
4/7/04	DMS / L	0.20	25.00	
#8523	LETTER TO PETERSON	125.00		
4/7/04	DMS / RVW	1.50	187.50	
#8524	REVIEW PSYCH REPORTS RE: DEATH PENALTY	125.00		
4/8/04	DMS / C	1.00	125.00	
#8534	CONFERENCE (ATTEMPT VISIT WITH CLIENT)	125.00		
4/8/04	DMS / LC	0.20	25.00	
#8535	LETTER TO CLIENT	125.00		
4/13/04	DMS / LC	0.20	25.00	
#8583	LETTER TO CLIENT	125.00		
4/13/04	DMS / TCF	0.20	25.00	
#8584	TELEPHONE CALL FROM DEPT. 11	125.00		
4/13/04	DMS / RC	0.20	25.00	
#8586	REVIEW CORRESPONDENCE	125.00		
4/27/04	DMS / TCT	0.40	50.00	
#8732	TELEPHONE CALL TO PETERSON	125.00		
4/27/04	DMS / TCF	0.20	25.00	
#8733	TELEPHONE CALL FROM PETERSON	125.00		
4/28/04	DMS / P	0.30	37.50	
#8757	PREPARE REVISED FINDINGS	125.00		
4/28/04	DMS / L	0.20	25.00	
#8758	LETTER TO PETERSON	125.00		
5/5/04	DMS / L	0.20	25.00	
#8962	LETTER TO PETERSON	125.00		
5/12/04	DMS / TCT	0.20	25.00	
#9050	TELEPHONE CALL TO PETERSON	125.00		
5/13/04	DMS / TCT	0.40	50.00	
#9065	TELEPHONE CALL TO AND FROM OWENS	125.00		

Date 7/2/04
Time 10:56 am

DAVID M. SCHIECK
Client Billing Worksheet

Page 4

CHAPPELL.PCR :JAMES CHAPPELL, #52338 (continued)

Date/Slip#	Description	HOURS/RATE	AMOUNT	TOTAL
6/1/04	DMS / TCT	0.20	25.00	
#9379	TELEPHONE CALL TO BROOKS	125.00		
6/1/04	DMS / TCTDA	0.20	25.00	
#9380	TELEPHONE CALL TO DISTRICT ATTORNEY	125.00		
6/16/04	DMS / LC	0.20	25.00	
#9540	LETTER TO CLIENT	125.00		
6/23/04	DMS / LC	0.20	25.00	
#9661	LETTER TO CLIENT	125.00		
6/23/04	DMS / PAD	1.00	125.00	
#9662	PREPARE APPEAL DOCUMENTS	125.00		
6/24/04	DMS / R	1.00	125.00	
#9681	RESEARCH CROSS APPEAL	125.00		
TOTAL BILLABLE TIME CHARGES		18.60		\$2,325.00

Date/Slip#	Description	QTY/PRICE	
1/27/04	DMS / \$X	24	2.40
#7280	PHOTOCOPIES	0.10	
1/29/04	DMS / \$X	33	3.30
#7289	PHOTOCOPIES	0.10	
2/4/04	DMS / \$X	11	1.10
#8316	PHOTOCOPIES	0.10	
4/7/04	DMS / \$X	10	1.00
#8812	PHOTOCOPIES	0.10	
4/9/04	DMS / \$TT	1	77.81
#8427	TRAVEL EXPENSES	77.81	
5/5/04	DMS / \$C	1	48.50
#9186	COST TO ESP FOR I-FILE	48.50	
5/13/04	DMS / \$X	12	1.20
#9153	PHOTOCOPIES	0.10	

Date 7/2/04
Time 10:56 am

DAVID M. SCHIECK
Client Billing Worksheet

Page 5

CHAPPELL.PCR :JAMES CHAPPELL, #52338 (continued)

TOTAL BILLABLE COSTS	\$135.31
----------------------	----------

TOTAL NEW CHARGES	\$2,460.31
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PAYMENTS/REFUNDS/CREDITS

10/26/00 Payment - thank you	(2,872.50)
7/23/01 Payment - thank you	(3,023.44)
5/8/02 Payment - thank you	(2,002.50)
5/20/02 Payment - thank you	(619.36)
8/29/02 Payment - thank you	(1,728.90)
2/4/03 Payment - thank you	(1,521.16)
5/19/03 Payment - thank you	(6,625.90)
4/15/04 Payment - thank you	(1,524.20)
4/26/04 Payment - thank you	(100.00)
5/10/04 Payment - thank you	(2,357.60)

TOTAL PAYMENTS/REFUNDS/CREDITS	(\$22,375.56)
--------------------------------	---------------

PREVIOUS BALANCE

\$22,375.56

NEW BALANCE

\$ 2,460.31

EXPR
DAVID M. SCHIECK, ESQ.
Nevada Bar No. 0824
302 E. Carson Ste. 600
Las Vegas, NV 89101
702-382-1844
Attorney for CHAPPELL

Shirley B. Punguan

JUL 12 3 20 PM '04

FILED

DISTRICT COURT
CLARK COUNTY, NEVADA

* * *

THE STATE OF NEVADA,	)	CASE NO. C 131341
	)	DEPT. NO. <u>4</u>
Plaintiff,)	
	)	ORDER GRANTING FINAL PAYMENT
vs.	)	OF ATTORNEY FEES AND COSTS
)	
JAMES CHAPPELL,)	
)	
Respondent.	)	DATE: N/A
	)	TIME: N/A

Based upon the Ex Parte Motion for Final Payment of Excess Attorney's Fees in Post Conviction Proceedings (a copy of which is submitted herewith), the Court being fully advised in the premises, and good cause shown, it is hereby

ORDERED, ADJUDGED AND DECREED that payment of excess attorneys fees and costs is granted to David M. Schieck, Esq. in the amount of \$2,460.31.

DATED and DONE:

July 7, 2004

DISTRICT COURT JUDGE

SUBMITTED BY:

DAVID M. SCHIECK, ESQ.

David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

JUL 12 2004

CLERK OF DISTRICT COURT

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FILED
JUL 23 8 25 AM '04

CLARK COUNTY
DISTRICT COURT

Shirley E. Ruggie
CLERK

6 THE STATE OF NEVADA,

7 PLAINTIFF,

8 VS.

9 JAMES MONTELL CHAPPELL,

10 DEFENDANT.

CASE NO. C131341

DEPT. NO. XI

12 BEFORE THE HONORABLE MICHAEL L. DOUGLAS, DISTRICT JUDGE

13 FRIDAY, APRIL 2, 2004; 9:00 A.M.

15 RECORDER'S TRANSCRIPT RE:
16 DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS

17 APPEARANCES:

18 FOR THE STATE: CLARK PETERSON, ESQ.
Deputy District Attorney

19 FOR THE DEFENDANT: DAVID SCHIECK, ESQ.

RECEIVED
JUL 23 2004
COUNTY CLERK

25 RECORDED BY: RICHARD KANGAS, COURT RECORDER

FRIDAY, APRIL 2, 2004; 9:00 A.M.

THE COURT: Mr. Schieck, Mr. Peterson. This is on Chappell, Page 2, C131341. It's labeled as hearing: defendant's petition for writ of habeas corpus, but it's more of a status check. Where are we at?

MR. SCHIECK: Well, your Honor, with your appointment and you being the judge that heard the evidentiary hearing, we've agreed to go ahead and argue the matter today so that your Honor can decide it before you leave because if you leave, we're going to have a judge that didn't hear the evidentiary hearing and have to try to decide the case. And Mr. Peterson has been tied up in a trial for three weeks and hasn't been able to get his proposed hearing brief in.

The proposed hearing brief really only focused on the evidence that came in during that evidentiary hearing from the testimony of Mr. Brooks and the affidavits of the witnesses that we found in Michigan and in Arizona on what they would have said if Mr. Brooks had called them at the penalty hearing. And that's really the only issue that your Honor had left open to us when you granted the evidentiary hearing. We had raised a number of other factual and legal issues, but your Honor only wanted to hear from the attorneys concerning those penalty hearing witnesses and possibly whether those witnesses could have been used during the guilt phase to rebut some of the evidence on the other bad acts and the relationship between Debra Panos and Mr. Chappell.

We've submitted those affidavits. The witnesses included his girl friend that knew both he and Debra – that would be Shirley Sorrelli, Barbara Jean, who was sort of a second mother to him, David Green, Chris Bardow and then his three

1 best friends from Mr. Michigan, Mr. Merrell, Mr. Dean and Mr. Ford. Mr. Brooks
2 testified that he did go to Michigan, but his focus was only on getting school records
3 and looking into that type of information and not in talking to his friends. Mr. Brooks
4 was quite candid in saying he should have done more, he should have found these
5 friends, he should have called them as witnesses. And I think the issue is really
6 going to come down to your Honor deciding whether or not if Mr. Brooks had done
7 this it would have made a difference at the penalty hearing, which is really what any
8 ineffective claim comes to is if he had done it the way – we're second guessing him
9 now and saying he should have done it – would the result have been different either
10 at the trial or the penalty hearing. And based on Mr. Brooks' testimony, I believe he
11 feels that it would have made a difference and that he should have done it. But that
12 question is ultimately up to your Honor to decide.

13 MR. PETERSON: And, Judge, I essentially agree that the issue is focused on
14 that one point. And our position is somewhat as Mr. Schieck summarizes. If you
15 refer to the written opinion in this case and to the State's brief, what becomes clear
16 is that there is overwhelming evidence of guilt in this case. The defendant himself,
17 Mr. Chappell, conceded that he had killed Ms. Panos, basically dragging her back
18 into the trailer, stabbing her numerous times with a kitchen knife, and, in fact, leaving
19 that knife impaled essentially in her chest. In my review of the photographs and of
20 other cases, I have to say that was a – it was a horrific manner of death and it was
21 coupled with a sexual assault of that same victim. And the aggravator of sexual
22 assault was found by the jury as well as during the course of robbery and burglary.

23 It's our position that because the killing was established, these other
24 witnesses went to sort of the scope of their relationship and domestic violence

1 issues. I just can't see – and I'll submit it to the Court – that you could parade as
2 many witnesses in when you've got a defendant who admits he's the killer. When
3 you see those photos and you hear that she was raped by the same killer, bringing
4 in a witness or two or three or four about trying to mitigate their prior domestic
5 violence issues is just simply not going to rise to the level of the Strickland standard.

6 I spoke with Mr. Schieck. I believe he and I are both comfortable
7 submitting on this brief argument. The issue is relatively focused, and it's the State's
8 opinion that we just can't find prejudice here by any perceived failure by defense
9 counsel. I think defense counsel correctly focused on mitigation evidence. When
10 you have a case where essentially guilt is pretty clear and while it was certainly
11 counsel's hope to shoot for a voluntary by taking a "I was in a jealous rage" type of
12 defense, clearly the issue here was trying to avoid the death penalty and that
13 investigation and that action counsel did take. What he's saying was not undertaken
14 was an attempt to sort of minimize some of the other bad act/domestic violence
15 evidence that was admitted during guilt phase for its case-in-chief in its – in primary.
16 And I'm comfortable submitting it on that, Judge, and leaving it to the Court to issue
17 a written opinion when the Court's comfortable.

18 MR. SCHIECK: Just one last thing, your Honor. I talked primarily about the
19 penalty hearing evidence; however, Mr. Brooks' strategy at the guilt phase was to
20 admit that James committed the homicide but to try to get a lesser offense than first
21 degree murder. That is why those witnesses were so important to show their
22 relationship at the guilt phase also between Debra and James. And so I'm not
23 conceding that there wasn't ineffectiveness at the guilt also for not calling those
24 same witnesses. If that's going to be your theory of defense, you better put

1 somebody on to justify that theory of defense. And those people from Michigan that
2 knew James, knew Debbie, knew her family, knew how he was treated by her family,
3 all would have been extremely relevant, in my opinion, to the jury considering less
4 than first degree murder under the horrendous facts of this case.

5 THE COURT: The Court would note as to this matter that previously when the
6 Supreme Court had denied rehearing in this matter back on March 17th of 1999, they
7 noted that the jury returned a verdict of death after finding two mitigating
8 circumstances: the murder was committed while under the influence of extreme
9 mental or emotional disturbance and any other mitigating circumstances did not
10 outweigh four aggravating factors. The murder was committed during the
11 commission of a robbery, burglary and sexual assault, and the murder involved
12 torture or depravity of mind.

13 On appeal, the Court affirmed Chappell's conviction of sentence of
14 death but concluded that the torture aggravating factor was not supported by
15 sufficient evidence. After reweighing the remaining aggravating factors against the
16 mitigating circumstance, the Court concluded that the death sentence was not
17 improper.

18 This Court likewise is going to state that based upon the record, the
19 underlying verdict of guilty is appropriate and there is no ineffective assistance of
20 counsel as to find that Mr. Chappell is guilty of the crime so charged; however, it is
21 different as to the issue of penalty. Defense counsel does have an obligation to
22 present evidence. The Supreme Court recently has looked at that, and in that light,
23 it would be appropriate even though, Mr. Peterson, that some points may be correct
24 that there was overwhelming evidence. Still the Supreme Court has opined that it's

1 necessary that counsel do the things that he's required to do to make sure that the
2 jury has that in front of them when they are considering the issue of death. That was
3 not done in this case. For that reason, it would be appropriate to order that a new
4 penalty hearing be held in this matter. And if counsel wish to – Mr. Schieck, if you
5 would draft an order to that, run it by Mr. Peterson.

6 MR. SCHIECK: I'll include findings concerning your ruling on the guilt phase
7 also and Mr. Peterson will probably want to supplement what I say about that.

8 THE COURT: And as always, if there's a dispute, each side give me what they
9 think is appropriate and the Court will make the determination.

10 (Whereupon, proceedings were concluded.)

11 * * * * *

12 ATTEST: I do hereby certify that the foregoing is a true and accurate transcript from
13 the electronic sound recording of the proceedings in the above-entitled matter.

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JANICE R. LISTON
Court Recorder

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Jul 23 8 25 AM '04
Shirley D. Kingma
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

JAMES MONTELL CHAPPELL,

Defendant.

CASE NO. C131341
DEPT. XI

CERTIFICATE OF MAILING

I certify that I am an employee of the Eighth Judicial District Court, and that on this day, I deposited for mailing in the U. S. Mail at Las Vegas, Nevada, a true copy of the 4/2/04 hearing transcript in the above-entitled case and enclosed same in a sealed envelope/box upon which first class postage was prepaid to:

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COUNTY CLERK


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Supreme Court of Nevada
Capitol Complex
201 South Carson Street
Carson City, Nevada 89710

District Attorney's Office
Criminal Appeals
200 So. Third St.
Las Vegas, NV 89155

David M. Schieck, Esq.
302 E. Carson Avenue, Suite 600
Las Vegas, NV 89101

DATED this 23 day of July, 2004.


JANICE R. LISTON, CERT. No. 209
Sr. Court Recorder
Eighth Judicial District Court
Department IV
200 South Third Street
Las Vegas, NV 89155
(702) 455-5875

207

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES MONTELL CHAPPELL,
Appellant/Cross-Respondent,
vs.
THE STATE OF NEVADA,
Respondent/Cross-Appellant.

Supreme Court No. 43493

District Court Case No. C131341

FILED

2006 MAY -5 P 3:14

E. B. Bloom
CLERK

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Janette M. Bloom, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, It is now ordered, adjudged and decreed, as follows: "ORDER the judgment of the district court AFFIRMED."

Judgment, as quoted above, entered this 7th day of April, 2006.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada, this 2nd day of May, 2006.

Janette M. Bloom, Supreme Court Clerk

By:

J. Richards
Chief Deputy Clerk

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JUDGMENT ENTERED

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IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES MONTELL CHAPPELL,
Appellant/Cross-Respondent,
vs.
THE STATE OF NEVADA,
Respondent/Cross-Appellant.

No. 43493

FILED

APR 07 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Bloom*
CHIEF DEPUTY CLERK

This is an appeal and cross-appeal from a district court order partially granting and partially denying a post-conviction petition for a writ of habeas corpus in a death penalty case.¹ Eighth Judicial District Court, Clark County; Eighth Judicial District Court Dept. 11, Judge.

Appellant James Chappell was convicted by the district court on December 31, 1996, pursuant to a jury verdict, of burglary, robbery with the use of a deadly weapon, and first-degree murder with the use of a deadly weapon. The jury found four circumstances aggravated the murder: it was committed during a burglary and/or home invasion, it was committed during a robbery, it was committed during a sexual assault, and it involved torture or depravity of mind. Chappell was sentenced to death. On direct appeal this court struck the aggravator based on torture or depravity of mind, but affirmed Chappell's conviction and death sentence.²

¹The Honorable Michael Douglas, Justice, and the Honorable A. William Maupin, Justice, did not participate in the decision of this matter.

²See Chappell v. State, 114 Nev. 1403, 972 P.2d 838 (1998).

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SUPREME COURT
OF
NEVADA

06-07408

Chappell originally filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The district court appointed counsel to represent Chappell, and counsel filed a supplement to the petition.

After an evidentiary hearing, the district court partially granted and partially denied the petition. The district court found merit in Chappell's claim that his trial counsel were ineffective for failing to investigate and call several witnesses to testify on his behalf during his penalty hearing. That omitted testimony, the district court found, had a reasonable likelihood of impacting the jury's decision to return a death sentence. It therefore ordered a new penalty hearing, vacating Chappell's death sentence. The district court, however, denied Chappell relief on those claims in his petition relating to the guilt phase of his trial, and upheld his conviction. Chappell appeals and the State cross-appeals. We address the State's cross-appeal first.

The State's cross-appeal

The State contends that the district court improperly granted relief on Chappell's claim that his trial counsel were ineffective for failing to investigate and call several witnesses to testify on his behalf during his penalty hearing. The State maintains that Chappell's trial counsel did not act unreasonably in this matter and that even if the omitted witnesses had testified during the hearing, their testimony "would not have changed the outcome of the case." The State therefore maintains that the district court erroneously granted Chappell a new penalty hearing. We disagree.

A claim of ineffective assistance of counsel presents a mixed question of law and fact subject to independent review.³ To establish that counsel's assistance was ineffective, a two-part test must be satisfied.⁴ First, it must be shown that the performance of the petitioner's trial counsel was deficient, falling below an objective standard of reasonableness.⁵ Second, there must be prejudice.⁶ Prejudice is demonstrated by showing that, but for the errors of the petitioner's trial counsel, there is a reasonable probability that the result of the proceedings would have been different.⁷ Both parts of the test do not need to be considered if an insufficient showing is made on either one.⁸

Here, Chappell's trial counsel acknowledged during the evidentiary hearing that Chappell had provided him with a list of several potential witnesses who could have testified favorably about his character and his long relationship with the victim, Deborah Panos. Although Chappell's trial counsel did some investigation, he conceded that he "had a hard time finding these people. And quite frankly, the ones that we did find, I was still focusing on the killing and not the long relationship. I had no idea that the trial [was] going to be about the long relationship." Thus,

³See Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996).

⁴See Strickland v. Washington, 466 U.S. 668, 687 (1984); Kirksey, 112 Nev. at 987-88, 923 P.2d at 1107.

⁵See Strickland, 466 U.S. at 687.

⁶Id.

⁷Id. at 694.

⁸Id. at 697.

most of these potential witnesses were never contacted by Chappell's trial counsel and did not testify at his penalty hearing.

Chappell's post-conviction counsel, however, was able to locate six of these omitted witnesses and obtain affidavits from five of them. These witnesses generally described in the affidavits what they would have testified to during Chappell's penalty hearing.⁹ Many of them also averred that they would have been willing to testify, but they were never contacted or asked to do so.

These affidavits were submitted to the district court for review. The district court found that these witnesses "could have described CHAPPELL and the dynamics of his relationship with the victim and their children," and that the inclusion of their testimony during Chappell's penalty hearing would have probably resulted in the jury returning a sentence other than death.

It is well-settled that a defendant has a right to present all relevant evidence mitigating a death sentence during a penalty hearing,¹⁰ and presenting to the jury "the fullest information possible regarding the defendant's life and characteristics is essential to the selection of an appropriate sentence."¹¹ A defendant's trial counsel therefore has a duty

⁹A total of seven affidavits were obtained by Chappell's post-conviction counsel. One of these witnesses testified during the penalty phase of Chappell's trial, but not the guilt phase. Another affidavit was prepared by an investigator who had contacted and spoken with a seventh potential witness.

¹⁰See NRS 175.552(3); see also NRS 200.035.

¹¹Wilson v. State, 105 Nev. 110, 115, 771 P.2d 583, 586 (1989).

to make all reasonable investigations into such evidence or to make a reasonable decision not to do so.¹²

We conclude that the district court appropriately found that the failure of Chappell's trial counsel to investigate the omitted witnesses and to call them to testify during Chappell's penalty hearing constituted conduct that fell below an objective standard of reasonableness. Chappell faced a death sentence and had provided his trial counsel with a list of witnesses who could have testified favorably on his behalf during his penalty hearing. His trial counsel had a duty to thoroughly investigate and act upon this information or make a reasonable decision not to do so. It appears that he did neither, making only a slight effort to determine whether these witnesses could have provided testimony that may have benefited his client. That Chappell's post-conviction counsel was able to locate them and obtain affidavits further supports this conclusion.

Also consistent with the district court's decision, our independent review of the affidavits reveals a reasonable probability that Chappell was prejudiced by counsel's deficient performance. The jury in this case heard much evidence and argument from the State about Chappell's bad character, criminal history, and abusive relationship with Panos. The testimony of the omitted witnesses would have countered that argument, providing the jury with a more complete picture of Chappell and the history of the former couple's relationship, which, as the district court found, had a reasonable probability of altering his sentence. The district court's decision to find Chappell's trial counsel ineffective was

¹²See Strickland, 466 U.S. at 691.

supported by substantial evidence and not clearly wrong.¹³ We affirm its decision.¹⁴

Given the new penalty hearing that is required, two claims that Chappell raises in this appeal regarding his original penalty hearing warrant comment. First, he contends that his trial and appellate counsel were ineffective in failing to challenge the improper expression by the victim's aunt of her belief that Chappell should be sentenced to death.¹⁵ We need not decide whether this failure constituted ineffective assistance of counsel, but we caution the State to prevent such inflammatory testimony in the new hearing. Second, Chappell contends that the instruction given to the jury regarding the proper use of "other matter" character evidence admitted during the penalty hearing was inadequate. He has failed to demonstrate either good cause for not raising this claim

¹³See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994); cf. Wilson, 105 Nev. at 115, 771 P.2d at 586 (concluding that the failure of defendant's trial counsel to present more evidence mitigating his sentence constituted ineffective assistance and warranted a new penalty hearing).

¹⁴Chappell also contends on appeal that the district court improperly denied him relief on this claim as it related to the performance of his trial counsel during the guilt phase. Given the overwhelming evidence of Chappell's guilt, see Chappell, 114 Nev. at 1407, 972 P.2d at 840, however, we conclude that he is unable to make the necessary showing of prejudice, i.e., that there was a reasonable likelihood that had these witnesses testified during the guilt phase of his trial, the result would have been different. We affirm the district court's decision on this claim.

¹⁵See Witter v. State, 112 Nev. 908, 922, 921 P.2d 886, 896 (1996), receded from on other grounds by Byford v. State, 116 Nev. 215, 994 P.2d 700 (2000).

on direct appeal or prejudice, and it is procedurally barred.¹⁶ In fact, the pertinent case law that Chappell invokes was not decided until after his trial.¹⁷ But we take this opportunity to alert the parties to our 2001 decision in Evans v. State where we provided appropriate jury instructions regarding the use of this evidence.¹⁸

A new penalty hearing is warranted in this case. We reject the State's cross-appeal and affirm the decision below in this respect. We turn to Chappell's appeal.

Chappell's appeal

Because we affirm the district court's decision to grant Chappell a new penalty hearing, we conclude that Chappell's other claims of ineffective assistance of counsel relating to the penalty phase do not warrant further discussion.

Chappell also contends on appeal that the district court improperly denied his claims of ineffective assistance of trial counsel with respect to the guilt phase: failure to object to the exclusion of African-Americans from the prospective jury pool; failure to object to a jury instruction regarding premeditation and deliberation; failure to object to a jury instruction regarding malice; failure to object to remarks by the prosecutor during arguments to the jury, including an erroneous quantification of the reasonable doubt standard; failure to object to

¹⁶See NRS 34.810.

¹⁷See Evans v. State, 117 Nev. 609, 634-37, 28 P.3d 498, 515-17 (2001); see also Hollaway v. State, 116 Nev. 732, 745-46, 6 P.3d 987, 996 (2000).

¹⁸See Evans, 117 Nev. at 635-37, 28 P.3d at 516-17.

portions of Chappell's cross-examination by the prosecutor; and failure to move to strike the State's notice of intent to seek death on the basis that the State was unconstitutionally motivated by race in pursuing a death sentence against him.

We have carefully reviewed each of these claims and conclude that Chappell has failed to demonstrate that the performance of his trial counsel with respect to them both fell below an objective standard of reasonableness and prejudiced the outcome of the guilt phase of his trial. In reaching this conclusion, we note that overwhelming evidence supported Chappell's conviction¹⁹ and that any errors in the jury instructions or the prosecutor's remarks were harmless beyond a reasonable doubt, whether Chappell's trial counsel objected to them or not.²⁰ Chappell has also failed to support with specific factual allegations his assertion that the State's decision to seek the death penalty against him was racially motivated²¹ or explain how a motion based on such an assertion had any likelihood of success. We therefore conclude that the district court properly denied Chappell relief on these claims.²²

¹⁹See Chappell, 114 Nev. at 1407, 972 P.2d at 840.

²⁰We note that this court has consistently rejected the claims of error Chappell raises respecting the instructions. See Garner v. State, 116 Nev. 770, 788-89, 6 P.3d 1013, 1025 (2000), overruled on other grounds by Sharma v. State, 118 Nev. 648, 56 P.3d 868 (2002); Cordova v. State, 116 Nev. 664, 666-67, 6 P.3d 481, 483 (2000).

²¹See Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

²²Chappell also raises these same issues as claims of ineffective assistance of appellate counsel. See Kirksey, 112 Nev. at 998, 923 P.2d at
continued on next page . . .

Chappell also appeals from the district court's denial of issues that he framed as direct appeal claims. NRS 34.810(1)(b)(2) provides that a claim shall be dismissed if the defendant's conviction was the result of a trial and the claim could have been raised on direct appeal, unless both good cause and prejudice are established to excuse this failure²³ or the denial of his claim on procedural grounds would result in a fundamental miscarriage of justice.²⁴

He contends that his constitutional rights were violated because African-Americans were underrepresented on his jury and did not represent a fair cross-section of the community. Chappell, however, essentially raised this issue on direct appeal, and it was rejected by this court. Our prior determination on this matter is the law of the case and precludes relitigation of the issue.²⁵

He further contends that Nevada's death penalty scheme fails to constitutionally narrow the class of persons eligible to receive a death sentence because it contains statutory aggravating circumstances that are numerous and vague. Chappell has failed to demonstrate good cause as to why this claim was not raised on direct appeal and prejudice, and it is also procedurally barred.

... continued

1113-14. For the same reasons we affirm the district court's decision to deny them.

²³See NRS 34.810(3); Evans, 117 Nev. at 646-47, 28 P.3d at 523.

²⁴See Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996).

²⁵See Hall v. State, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975).

We conclude that the district court properly denied Chappell relief on these direct appeal claims, as he failed to overcome the procedural bar of NRS 34.810 or to otherwise demonstrate that invoking that bar to these claims' review would result in a fundamental miscarriage of justice.

McConnell issue

We finally address Chappell's challenge to the validity of the three aggravating circumstances pending against him. He contends that his trial and appellate counsel were ineffective for failing to object to "[t]he use of overlapping aggravating circumstances to impose death." To the extent that he contends the aggravators based on robbery and burglary are duplicative of each other, he is not entitled to relief.²⁶

Chappell also claims specifically that the three felony aggravators found by the jury are invalid pursuant to our 2004 decision, McConnell v. State.²⁷ The State responds that this claim is not cognizable because it was not raised in the district court. The State also asserts that McConnell announced a new rule that should not apply retroactively to Chappell's conviction, which has been final since 1999. Finally, the State argues that even if McConnell applies, the aggravating circumstances should remain viable because there was overwhelming evidence of premeditation and deliberation in this case.

²⁶See Bennett v. Dist. Ct., 121 Nev. ___, ___ n.4, 121 P.3d 605, 608 n.4 (2005).

²⁷120 Nev. 1043, 102 P.3d 606 (2004), reh'g denied, McConnell v. State (McConnell II), 121 Nev. ___, 107 P.3d 1287 (2005).

As we explain below, we conclude that Chappell's McConnell claim has merit and that two of the three aggravators pending against him violate the holding in McConnell as a matter of law and cannot be realleged. In reaching this conclusion, we recognize that Chappell did not cite McConnell in challenging his aggravators in his habeas petition before the district court—he is raising this issue for the first time on appeal. However, McConnell was not decided at the time Chappell filed his petition below, and that decision renders two of the three aggravators invalid as a matter of law. The State has had an opportunity to address this issue on appeal during briefing and oral arguments. The interests of justice and judicial economy warrant resolving the issue now, prior to any new penalty hearing.²⁸ We further recognize that this court has not decided whether McConnell applies retroactively to final cases.²⁹ However, because we affirm the district court's decision to grant Chappell a new penalty hearing, Chappell's conviction in regard to his sentence is not final, and retroactivity is not an issue.³⁰

In McConnell, this court advised that if the State charges alternative theories of first-degree murder intending to seek a death sentence, jurors in the guilt phase should receive a special verdict form that allows them to indicate whether they find first-degree murder based on deliberation and premeditation, felony murder, or both. Without the return of such a form showing that the jury did

²⁸See Bennett, 121 Nev. at ___, 121 P.3d at 608.

²⁹See McConnell II, 121 Nev. at ___, 107 P.3d at 1290.

³⁰See Bennett, 121 Nev. at ___, 121 P.3d at 608-09.

not rely on felony murder to find first-degree murder, the State cannot use aggravators based on felonies which could support the felony murder.³¹

Chappell was charged with open murder based upon the theories of premeditated and deliberate murder and/or felony murder. The felonies underlying the felony-murder theory were one count of burglary and/or one count of robbery with the use of a deadly weapon. The jury found Chappell guilty of first-degree murder with the use of a deadly weapon, but the verdict form does not indicate which theory or theories it relied upon to do so. Following Chappell's direct appeal, three aggravators found by the jury in support of his death sentence remained valid:

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

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

The murder was committed while the person was engaged in the commission of or an attempt to commit any Sexual Assault.³²

Under McConnell, this court does not determine whether there was adequate proof of premeditation and deliberation on Chappell's part, but rather whether the record establishes conclusively that no juror

³¹McConnell, 120 Nev. at 1069, 102 P.3d at 624.

³²At the time of Chappell's trial, sexual assault was included in the list of enumerated felonies under NRS 200.033(4). That subsection was later amended, and sexual assault was removed from subsection (4) and made into its own distinct aggravating circumstance in subsection (13). See 1997 Nev. Stat., ch. 356, § 1, at 1293-94.


relied on felony murder to find first-degree murder. The record here carries no such assurance. We conclude that McConnell squarely applies to Chappell's case and renders infirm the aggravators based on the robbery and burglary, the predicate felonies that supported the felony-murder theory. However, our conclusion does not extend to the aggravator based upon sexual assault.

The critical consideration is McConnell's ban on the State's "selecting among multiple felonies that occur during 'an indivisible course of conduct having one principal criminal purpose' and using one to establish felony murder and another to support an aggravating circumstance."³³ Here, the State did not rely upon sexual assault to support the theory of felony murder, and this omission was certainly not an attempt to circumvent McConnell since Chappell's trial was held long before that opinion. But most important, there is evidence in the record that could support finding not only that Chappell committed a sexual assault but that he did so with a criminal purpose distinct from the burglary and robbery. Therefore, based on the record before us, we conclude that the aggravator based upon sexual assault remains viable.


³³McConnell, 120 Nev. at 1069-70, 102 P.3d at 624-25 (quoting People v. Harris, 679 P.2d 433, 449 (Cal. 1984), rejected by People v. Proctor, 842 P.2d 1100, 1129-30 (Cal. 1992)).

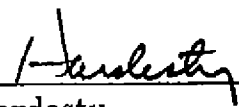
Therefore, a single aggravator remains for the State to pursue if it decides to again seek a sentence of death against Chappell during the new penalty hearing.³⁴ Accordingly, we


ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Rose

_____, J.
Becker

_____, J.
Gibbons

_____, J.
Hardesty

_____, J.
Parraguirre

cc: Eighth Judicial District Court Dept. 11, District Judge
Special Public Defender David M. Schieck
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

³⁴See generally NRS 175.552.

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES MONTELL CHAPPELL,
Appellant/Cross-Respondent,

vs.

THE STATE OF NEVADA,
Respondent/Cross-Appellant.

Supreme Court No. 43493

District Court Case No. C131341

REMITTITUR

TO: Shirley Parraguire, Clark County Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.

Receipt for Remittitur.

DATE: May 2, 2006

Janette M. Bloom, Clerk of Court

By:

J. Richards
Chief Deputy Clerk

cc: Eighth Judicial District Court Dept. 11, District Judge
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Special Public Defender David M. Schieck

RECEIPT FOR REMITTITUR

Received of Janette M. Bloom, Clerk of the Supreme Court of the State of Nevada, the

REMITTITUR issued in the above-entitled cause, on MAY 04 2006

BRANDI L. WENDEL

Deputy

County Clerk

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MAY 04 2006

COUNTY CLERK

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1 EXPR
2 DAVID M. SCHIECK
3 SPECIAL PUBLIC DEFENDER
4 Nevada Bar No. 0824
5 CLARK W. PATRICK
6 Deputy Special Public Defender
7 Nevada Bar No. 9451
8 330 S. Third St., Ste. 800
9 Las Vegas NV 89155-2316
10 (702)455-6265
11 Attorneys for Defendant

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Aug 24 3 14 Pm '06

8/23
DISTRICT COURT
CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,
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12 Plaintiff,
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14 vs.
15 JAMES CHAPPELL,
16 Defendant.

CASE NO. C 131341
DEPT. NO. XVII

DATE: N/A
TIME: N/A

16 EX PARTE APPLICATION AND ORDER
17 TO PRODUCE DEFENDANT'S INSTITUTIONAL FILE

18 APPLICATION

19 COMES NOW, DAVID SCHIECK, Special Public Defender, and CLARK W. PATRICK,
20 Deputy Special Public Defender, and requests this Honorable Court for an Order instructing
21 Ely State Prison to provide to the Office of the Special Public Defender a copy of James
22 Chappell's Institutional File, including but not limited to: a record/print-out of his disciplinary
23 history; records of his educational/programming participation; and copies of certificates
24 earned.

25 This request is made and based on the following facts:

26 JAMES CHAPPELL was convicted pursuant to a jury verdict, of burglary, robbery with
27 the use of a deadly weapon, and first-degree murder with the use of a deadly weapon and
28 sentenced to death. On direct appeal the Nevada Supreme Court struck the aggravator based

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SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

1 on torture or depravity of mind, but affirmed CHAPPELL'S conviction and death sentence. A
2 proper person post conviction petition for a writ of habeas corpus was filed in the District Court
3 and counsel was appointed to represent CHAPPELL. Counsel filed a supplement to the
4 petition.

5 After an evidentiary hearing, the District Court upheld CHAPPELL'S conviction but
6 vacated the death sentence and ordered a new penalty hearing. The State filed an appeal
7 from the granting of a new penalty hearing and CHAPPELL cross-appealed from the District
8 Court's denial of his claims of ineffective assistance of counsel with respect to the guilt phase.

9 The Nevada Supreme Court issued an Order of Affirmance on April 7, 2006 affirming
10 the District Court's granting of a new penalty hearing and upholding its decision to not grant
11 a new guilt phase of the trial. The Court went on further to state:

12 "...We conclude that McDonnell squarely applies to Chappell's case and renders
13 infirm the aggravators based on the robbery and burglary, the predicate felonies
14 that supported the felony-murder theory. However, our conclusion does not
15 extend to the aggravator based upon sexual assault....."

16 The penalty hearing is set for March 12, 2007.

17 CONCLUSION

18 JAMES CHAPPELL has been continuously incarcerated on death row in Ely State
19 Prison since 1997. Therefore, Defendant requests this Court grant the Order that
20 CHAPPELL'S Institutional File be released to counsel to potentially be used at the penalty
21 hearing. It is often found that favorable behavior while incarcerated is a mitigating factor
22 considered by jurors.

23 DATED this 22 day of August, 2006.

24 SPECIAL PUBLIC DEFENDER
25 DAVID M. SCHIECK

26 DAVID M. SCHIECK
27 330 S. Third Street, Ste. 800
28 Las Vegas, Nevada 89155-2316
Attorney for CHAPPELL

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

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ORDER TO RELEASE CHAPPELL I-FILE

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Ely State Prison is to release a copy of the Institutional File (I-File) for James Chappell, No. 52338, to his attorney, David M. Schieck, Special Public Defender's Office.

DATED AND DONE: 8/24/06


DISTRICT COURT JUDGE

SUBMITTED BY:


SPECIAL PUBLIC DEFENDER

DAVID M. SCHIECK
330 S. Third Street, No. 800
Las Vegas NV 89155
Attorney for CHAPPELL

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

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6 STATE OF NEVADA,

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Plaintiff,

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vs.

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JAMES MONTELL CHAPPELL,

10

Defendant.

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BEFORE THE HONORABLE MICHAEL L. DOUGLAS, DISTRICT JUDGE

13

FRIDAY, SEPTEMBER 13, 2002

14

15

RECORDER'S TRANSCRIPT RE:
EVIDENTIARY HEARING
DEFT'S PETITION FOR WRIT OF HABEAS CORPUS

16

17

18

APPEARANCES:

19

For the Plaintiff:

LYNN M. ROBINSON, ESQ.
Chief Deputy District Attorney

20

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For the Defendant:

DAVID M. SCHIECK, ESQ.

22

23

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RECORDED BY: Cat Nelson, Court Recorder

RECORDED

SEP 24 2002

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S17

1 LAS VEGAS, NEVADA; FRIDAY, SEPTEMBER 13, 2002; 8:45 A.M.

2
3 THE COURT: James Chappell.

4 MR. SCHIECK: Good morning, Your Honor.

5 THE COURT: We are on the record this morning, Mr. Schieck is here
6 on behalf of Mr. Chappell. We do not have, I presume, Mr. Chappell.

7 MR. SCHIECK: I'm going to need to make some representations on
8 the record in that regard, Your Honor.

9 THE COURT: Yes.

10 MR. SCHIECK: First, Mr. Ewing is in trial and he is desiring to go
11 back to his office to work on those preparations, and if we need him -- when
12 we need him, if we do need him, we can call him and he'll come right over,
13 with the Court's --

14 THE COURT: The Court has no problem with that.

15 MR. EWING: Thank you, Your Honor.

16 MR. SCHIECK: Your Honor, I went to see James Chappell several
17 weeks ago shortly after the Court had granted the Evidentiary Hearing, and
18 we were discussing his presence at the time of the hearing. I had prepared
19 and the Court had issued an order for him to be transported, but before I
20 transported him, I wanted to talk with him and explain exactly what was
21 going to happen. It was Mr. Chappell's decision not to be present at the
22 time of this hearing because inmates that are on death row, if they are
23 transported out to court, they lose their housing. And when they go back,
24 they're put into segregation and they remain in the segregation unit until
25

1 somebody else goes to court and a house opens up and they get to move
2 back in, and it's very inconvenient and distressing to their lives such as they
3 exist up there.

4 Mr. Chappell understands that the testimony today is only
5 going to be from Mr. Brooks and Mr. Ewing pursuant to the Court's Order
6 on what things we needed to explore before the Court decided if we need
7 to expand the Evidentiary Hearing as to the other witnesses and what their
8 testimony would have been if they had been called by Defense counsel.
9 With that in mind is the reason that he asked that his presence be waived.
10 I should have prepared a written waiver. I will do that and send it to him
11 and get it back so that that's in the record -

12 THE COURT: Thank you.

13 MR. SCHIECK: - but he did, in fact, ask not to be here for purposes
14 of this hearing.

15 THE COURT: That being the case, unless there's some objection
16 from the State, and Mr. Schieck has now indicated he would supplement the
17 record, which is something the Court would have requested in this type of
18 hearing based upon the stakes, I guess we need to go ahead and have our
19 witness called.

20 MS. ROBINSON: That's fine.

21 MR. SCHIECK: Call Howard Brooks, Your Honor.

22 THE COURT: Thank you.

23 THE CLERK: Please be seated. State your name, spelling it for the
24 record.

25

1 THE WITNESS: My name is Howard Brooks, H-O-W-A-R-D
2 B-R-O-O-K-S.

3 HOWARD BROOKS

4 Having been called as a witness and being first duly sworn testified as
5 follows:

6 DIRECT EXAMINATION

7 BY MR. SCHIECK:

8 Q Mr. Brooks, how are you employed?

9 A I'm a Deputy Public Defender with Clark County. I'm a
10 lawyer there.

11 Q How long have you been employed with the Clark County
12 Public Defender's Office?

13 A Twelve years.

14 Q And how long have you been licensed to practice?

15 A Fourteen years in the State of Nevada.

16 Q What did you do for the two years prior to working for the
17 Public Defender's Office?

18 A I was an associate with the law firm of Vargas and Bartlett,
19 where I did commercial litigation for two years.

20 Q And are you licensed in any other states?

21 A I'm also licensed in the State of Colorado.

22 Q And did you practice in Colorado?

23 A No.

24 Q Are you familiar with the case of James Chappell?

25

1 A Yes, I am. I was his attorney.

2 Q And do you recall when you were assigned to represent
3 Mr. Chappell?

4 A I don't recall the exact date, but it was in 1995 sometime.
5 I think that the killing occurred in roughly August of 1995. I was assigned
6 the case as soon as it came into the court system.

7 Q And as of August of 1995 when you were assigned the case,
8 were you working in any special unit at the Public Defender's Office?

9 A As of January 1st, 1995, I was assigned to the murder team,
10 which handles only murder cases.

11 Q And who was the head of that team?

12 A As of January of 1995, it was Phil Kohn, K-o-h-n.

13 Q And did he remain as head of that team until after Mr.
14 Chappell's trial?

15 A Yes, he did.

16 Q He would have been your supervisor there?

17 A Correct.

18 Q Or at least your direct supervisor?

19 A Correct.

20 Q As of August of 1995, how many other murder cases had
21 been assigned to you?

22 A As of -- I can't give the exact number as of August of 1995.
23 As of September of 1996, I was at ten murder cases. During the 1995
24 through 1997 period, my case load was typically nine to eleven. Our cases

25

1 were very heavy at that time; our case loads were very heavy.
2 Q Okay. Those were all murder cases?
3 A Correct.
4 Q You didn't have any other regular cases that you were
5 responsible for?
6 A No.
7 Q Mr. Chappell went to trial in October of 1996?
8 A That's correct.
9 Q As of that date, how many murder trials had you taken
10 through the jury trial?
11 A The Chappell case was my second death penalty murder trial,
12 and I believe it was my fourth murder trial.
13 Q What was the other death penalty trial?
14 A The Chris Schoels case, which occurred in roughly September
15 of 1995. That is why I did not do the Preliminary Hearing for Mr. Chappell,
16 because I was doing the murder case of Chris Schoels.
17 Q And then you had four non-capital murder trials?
18 A No. I had the two capital murder cases, and then I had two
19 non-capital murder cases in that time period.
20 Q For a total of four?
21 A It may be five, but it was either four or five.
22 Q Who was Second Chair on Mr. Chappell's case?
23 A In the Chappell case, Kedric Bassett did the Preliminary
24 Hearing because I was on the Schoels case. Then at trial, it was myself, it
25

1 was my second capital murder case, and Will Ewing, it was his first capital
2 murder case. And then there were different people on the appeal.

3 Q Were you 250 qualified at that time?

4 A I was Rule 250 qualified after I did the Schoels murder case
5 in 1995.

6 Q And Mr. Ewing was not 250 qualified then?

7 A That is correct.

8 Q How would you describe the leadership role between yourself
9 and Mr. Ewing?

10 A It was essentially my case and I worked on it through that
11 long period. Will Ewing was only assigned to the case, I believe, in about
12 August, a month before the trial. And he had virtually nothing to do with
13 the trial preparation in terms of the guilt phase. He first met Mr. Chappell
14 in September of 1996. His primary role was to prepare Dr. Etcoff and
15 certain penalty phase evidence. So, essentially I was taking care of the
16 entire guilt phase proceeding, and he may have handled a handful of
17 witnesses. He was taking care of the entire penalty phase and so his role
18 was relatively limited, primarily in terms of work in August and September
19 of 1996.

20 Q Who was making the final call on strategic decisions?

21 A In our office, it's always the trial attorney, and of course the
22 client.

23 Q Now, you made certain decisions concerning trial strategy in
24 this case?

25

1 A That's correct.

2 Q Was one of those strategic decisions the decision to stipulate
3 to certain facts?

4 A That's correct.

5 Q Who made that decision?

6 A I did, and I talked with James Chappell about it.

7 Q And what was – how did that discussion go?

8 A In early September, it was becoming clear to me that the
9 State was trying to bring into evidence all sorts of extraneous evidentiary
10 matters relating to the prior relationship of Panos and Chappell, Panos being
11 the victim and the mother of his three children. And I wanted to make sure
12 that we tried to limit the case to a consideration of the evidence about the
13 killing, because the facts of the killing itself had a very strong argument for
14 either Voluntary Manslaughter or Second Degree Murder. And the State had
15 filed a motion to admit the bad acts, in I think it was May of 1996. They
16 filed a supplemental motion in, I think late August or early September of
17 1996, and they were trying to make the trial about the whole relationship.

18 So, I wanted to limit this as much as possible so that we
19 could make sure that James had some credibility in describing what
20 happened in this case. The only way that I could see to make sure that it
21 was absolutely irrelevant to go into all this extraneous evidence would be
22 to stipulate that he killed the woman, which he readily admitted, and that
23 it was not an accident; therefore, it was a crime. So, I discussed that
24 with James, and James understood what I was doing. And so, I filed on
25

1 September 10th, 1996, the offer to stipulate to those facts.

2 Q Did James agree that you do that?

3 A Yes.

4 Q Did you advise him that that was in his best interest?

5 A Yes, I did.

6 Q So, it was based on your recommendation that he agreed?

7 A That's correct.

8 Q So, basically you offered a month or so before trial to

9 stipulate that James had killed Deborah Panos, and some related information

10 concerning that?

11 A That's correct, and that it was not an accident.

12 Q When was the hearing on the admitting of the other bad acts,

13 after the offer to stipulate or before?

14 A It was after. The Petrocelli Hearing, if we can call it that,

15 occurs, I believe, on October 6th, 1996.

16 Q Did you argue to the Court that based on your offer to

17 stipulate that the evidence was not relevant?

18 A That's correct.

19 Q And what was the Court's ruling?

20 A Mr. Harmon argued that the State had the right to present

21 the evidence regardless of the stipulation, and the Court agreed with that

22 argument.

23 Q At that point in time, did you withdraw the offer to stipulate

24 then?

25

1 A No, I did not.

2 Q And why not?

3 A I'm convinced that in terms of an issue, I'm convinced that

4 I'm correct on the evidentiary point that James could not get a fair trial if

5 we're going to turn the trial into a circus where we're going to be dealing

6 with all sorts of extraneous issues involving domestic violence incidents that

7 occurred years before. So, I was convinced that I was right that in order for

8 him to get a fair trial, we had to limit the testimony to the – just the time

9 period just before and the actual events that occurred in the killing.

10 Q So, the stipulation was then entered in the record?

11 A Correct.

12 Q You referred to the Petrocelli Hearing. Can you describe that

13 hearing?

14 A The Petrocelli Hearing was, in my understanding, going to be

15 a situation where the witnesses would be presented regarding the long list

16 of people that the State wanted to present involving this long relationship

17 between James Chappell and Deborah Panos. We came into court, the

18 witnesses – I don't know if the witnesses were available or not, but Judge

19 Maupin was in a hurry and he wanted to go ahead and not have a full

20 hearing. He made a reference on the record regarding his belief that we

21 were not having an evidentiary hearing. Mr. Harmon made references on

22 the record that he did not feel it was necessary.

23 So, at that point, Judge Maupin – we discussed Petrocelli and

24 the requirements of Petrocelli. I think we actually reviewed the case, and in

25

1 the Petrocelli case there was an offer of proof. And so, the Judge ruled that
2 an offer of proof was sufficient. And we objected to that and said, Judge,
3 I don't see – we don't see how in the world the Court can determine the
4 prejudicial impact of all this evidence without hearing what the evidence is.
5 And the Judge disagreed, and we simply had an offer of proof by Abbi
6 Silver, and the Judge ruled that it was all proven by clear and convincing
7 evidence.

8 Q Did the offer of proof include the type of evidence that got
9 presented at trial?

10 A The offer of proof was a bare bones summary, and it had
11 nothing to do with what was presented at trial. At trial we had vast
12 testimony about every single incident of domestic violence, every act of
13 violence, every hit. We had testimony at trial regarding things that were
14 never mentioned at all in the Petrocelli Hearing. We showed at trial that
15 some of the things that were so called – that were proven by clear and
16 convincing evidence at the Petrocelli Hearing were not, in fact, true. And
17 I could give you an example if you wanted to know that.

18 Q What example is that?

19 A At the Petrocelli Hearing, Ms. Silver talked about how
20 Deborah Panos had applied for a Temporary Protective Order, and we had
21 an order that was a Temporary Protective Order. And the Judge ruled by
22 clear and convincing evidence that it was shown that she must have applied
23 for this. Well, after the Petrocelli Hearing, and during the trial, I went
24 down to Family Court and got the full file. And the full file was much more
25

1 substantial than the document that was given at the Petrocelli Hearing.
2 And, in fact, Deborah Panos never applied for the TPO; a police officer
3 applied for the TPO, the TPO was issued. Panos was told to come the next
4 day and the order would be extended. She never showed up, and of course
5 it expired. So, there was a case where the Court had ruled by clear and
6 convincing evidence that something happened, and it had nothing to do with
7 the reality. And I was able to show that at trial, so in this particular instance
8 there was no prejudice ultimately, but it was the kind of problem we had
9 with that Petrocelli Hearing.

10 Q Was the focus of the trial on the relationship between
11 Deborah and James?

12 A Let me give an example on that. At the -

13 MS. ROBINSON: Your Honor, I have to say, Mr. Brooks has been
14 giving us a nice narrative here, but that's a yes or no question. I mean, let
15 me give you an example, I mean -

16 THE COURT: I'll sustain the objection.

17 MR. BROOKS: The answer is -- I'm sorry, could you repeat the
18 question, please?

19 BY MR. SCHIECK:

20 Q Was the focus of the trial the relationship between Deborah
21 and James?

22 A The focus of the trial was on the long history of their
23 relationship, yes.

24 Q What investigation did you do into the history of that
25

1 relationship in preparation for the trial?

2 A I never anticipated that the trial of this murder charge was
3 going to be about the long history of their relationship; therefore, my
4 investigation did not focus on that at all. My investigation was much more
5 centered on the specific facts of the killing, and the mitigation evidence
6 related to his own past.

7 Q Had James given you a list of witnesses that he desired you
8 to interview and perhaps call at trial?

9 A Yes, he did.

10 Q Did those witnesses tend to focus on his relationship with
11 Deborah?

12 A I don't know, because we had a hard time finding these
13 people. And quite frankly, the ones that we did find, I was still focusing on
14 the killing and not the long relationship. I had no idea that the trial was
15 going to be all about the long relationship.

16 Q At what point in time did you become aware that the focus of
17 the trial was going to be the history of the relationship and not just the facts
18 of the killing?

19 A I was stunned to watch the evidentiary rulings go against us
20 from the Petrocelli Hearing on, where it became clear that Judge Maupin
21 was going to let anything in about his bad character.

22 Q And you hadn't anticipated that this evidence would be
23 coming in?

24 A I had no idea this would be coming in.

25

1 Q And so, hadn't prepared to present evidence to rebut that?
2 A That's correct.
3 Q Did you then move to continue the trial, saying the focus of
4 the trial has now changed, Judge, I'm not prepared, I need a continuance?
5
6 A No, I did not, and I probably should have done that.
7 Q You went back to Michigan in preparation of the case to
8 investigate?
9 A Correct.
10 Q Did James and Deborah, in fact, meet in Michigan and live
11 there in Michigan for awhile?
12 A Yes. Their relationship started in Michigan. I think it started
13 in high school in Michigan.
14 Q Did you interview any people from their high school
15 concerning the relationship between Deborah and James?
16 A I did not.
17 Q How long were they together there in Michigan, do you
18 recall?
19 A They were together a total of roughly ten years, and I don't
20 know - I think it was two or three years in Michigan, I'm not exactly sure
21 how many years.
22 Q Then they moved to Arizona?
23 A Correct.
24 Q And then to Las Vegas?
25

1 A Correct.

2 Q Did you go to Arizona and interview anybody that had
3 personal knowledge of their relationship in Arizona?

4 A No, I did not.

5 Q Other than high school people I asked you about in Michigan,
6 did you go back and interview any of their friends in Michigan concerning
7 their relationship?

8 A No, I did not.

9 Q And how about in Las Vegas?

10 A No.

11 Q Had the names that James given you included his friends and
12 people that were familiar with the relationship that he had with Deborah?

13 A Yes.

14 Q Did you have an investigator go interview those people?

15 A No, no. An investigator accompanied me to Michigan, but
16 again, we were looking for information on James' past and were not
17 focusing on the relationship at all.

18 Q Would it be fair to say that a key component of your ultimate
19 defense in this case was that James had learned that Deborah perhaps was
20 communicating with another male, became jealous and had killed her in a
21 rage? Is that a fair – and if it's not, if you could correct me?

22 A Well, it's more specific than that. He enters the trailer and
23 finds – he enters the car with her and finds a love note from a man from
24 New Jersey, who describes intimacies with her. He grabs her in a rage after
25

1 reading this letter, drags her back into the trailer, and takes a knife and –
2 takes a knife he grabs in the kitchen and stabs her to death, and the letter
3 is found right there at the scene torn up.

4 Q So, you were arguing basically for Second Degree as opposed
5 to First Degree?

6 A I think it's a compelling case for Voluntary Manslaughter,
7 since the provocation of learning of the betrayal is self-evident. It's a great
8 Voluntary Manslaughter case and it's a fall-back to a Second Degree case.

9 Q James was also charged with sexual assault?

10 A Correct. Well, no, he was not charged with sexual assault.

11 Q Okay. One of the –

12 A Sexual assault was an aggravator, but it's not a charged
13 offense.

14 Q Okay. You, in fact – was one of the stipulations was that
15 they had sexual relations?

16 A They had consensual sex, correct.

17 Q Did the State agree that the sex was consensual, or did they
18 argue that, in fact, it was a sexual assault as an aggravating circumstance?

19 A Without any proof, they suggested it had to be a rape.

20 Q And did the jury find that as an aggravator?

21 A Yes, they did.

22 Q Okay. James and Deborah, prior to the incident where she
23 was killed, were having some problems between themselves, would that be
24 a fair statement?

25

1 A They had problems for years.

2 Q Wouldn't it have been important to present witnesses that
3 could have come in and said, yes, James and Deborah would argue and
4 fight, but then it wasn't uncommon that Deborah would forgive him and
5 they would get back together and everything would be hunky-dory?

6 A That's correct.

7 Q And, in fact, that's what you were trying to present, when
8 James came over to her trailer, that they were getting back together,
9 reconciling, and that the sex was consensual, and then the letter incident
10 happens and he goes into a rage?

11 A Yes.

12 Q Did you present any testimony that would have corroborated
13 that that was the extent of their relationship or how their relationship was
14 working?

15 A No.

16 Q In fact, they had separated in the past?

17 A Their relationship was a constant stream of separations and
18 reconciliations.

19 Q Any witnesses presented to establish that?

20 A No.

21 Q Now, let me just ask you some specific names of witnesses
22 and ask if, first of all, if you interviewed each of these witnesses and
23 whether or not they were a name that James had given you as someone as
24 a potential witness, okay?

25

1 A Certainly.

2 Q Okay. Ernestine Harvey?

3 A I don't remember now whether we actually found her or not.

4 I know we tried to find her, but I'm not sure we ever actually found her.

5 Q And do you recall where you looked for her?

6 A I think we looked for her in a housing project close to where

7 James lived. There's a housing project where he would go and do drugs,

8 and I think it was – I've got a sheet of paper here, it's his handwritten

9 instructions on how to find her. She was at 515 North Lamb, #1, Las

10 Vegas, Nevada 89110. Her street name was Sue. And James wrote me

11 a diagram to try to find her. We did try to find her, but we didn't find her.

12 Q That was here in Las Vegas?

13 A Yes. And I might add, I wish that we had been able to try to

14 find her much earlier. This is literally, I think, the week before trial that

15 we're trying to find her.

16 Q Based on the short notice of what the Judge was going to

17 allow in and the shift of the focus of the trial, and the fact that you couldn't

18 find a witness that James had given you specific instructions on how to

19 locate, did you go to the Court and ask to continue the trial and say, we've

20 got to find these witnesses?

21 A No, I did not.

22 Q Should you have done so?

23 A In retrospect, yes. At the time, I just couldn't believe that

24 this was going to be a case where we're going to go into great detail about

25

1 their relationship.

2 Q Did you discuss with other members of the murder team or
3 other members of your office the way that the Judge had entered this ruling
4 and the fact that you had no witnesses to rebut it?

5 A I don't recall if I ever had a discussion with the entire murder
6 team. I was talking generally with Philip Kohn about this matter throughout
7 the trial.

8 Q Did you talk to him about the need to continue it?

9 A I don't recall a conversation like that.

10 Q So, the decision not to move to continue would have been
11 yours?

12 A Basically.

13 Q Was it something you even considered, or you were so blown
14 away by the rulings that you didn't think about it?

15 A I never seriously thought about it. It was a matter of we
16 were there, I was going to get the case done.

17 Q Did you have any reason to believe that the Court would deny
18 the motion to continue if you filed it?

19 A Yeah.

20 Q And what was that based on?

21 A Judge Maupin was running for the Nevada Supreme Court.
22 He had three death penalty cases in a row. All three cases came back with
23 death verdicts. There was a lot of pressure, in my opinion, to get this case
24 in as one of these three cases.

25

1 Q But, nonetheless, you didn't even try the motion to continue?
2 A That's correct.
3 Q Which Judge Maupin may have granted?
4 A Correct.
5 Q What about Shirley Sorrell, S-o-r-r-e-l-l?
6 A I don't recall that name, but I - that may be on the list. I
7 know that I never talked to that woman.
8 Q If she was in Arizona, you wouldn't have - you didn't go
9 down and try to find her at all?
10 A We did not.
11 Q What about James C. Ford?
12 A James C. Ford was on the list of people that James gave me,
13 and I could be wrong but I think he was back in Michigan, and I think that
14 we tried - we asked his mother or his grandmother in Michigan if she knew
15 where he was and she didn't know, so we didn't spend a lot of time trying
16 to find her - trying to find him, excuse me.
17 Q Other than asking the mother, do you know where he's at,
18 you did no other effort?
19 A Correct.
20 Q Were you aware or had James told you that Mr. Ford was his
21 best friend, and that he had grown up with both he and Deborah?
22 A Now that you say that, that does ring a bell.
23 Q Was he a witness that you could have used to rebut what
24 the State presented at trial and at the Penalty Hearing concerning their
25

1 relationship?

2 A Absolutely. In retrospect, I should have stayed in that
3 Michigan town a few days trying to find these people. We were only there
4 for one full day, and basically if we didn't find them that morning, we didn't
5 make another effort to get them. We should have made more of an effort
6 to get Mr. Ford.

7 Q Where in Michigan was this?

8 A Lansing, Michigan.

9 Q Did you fly into Lansing and then fly out the same day, or
10 how did that work?

11 A We flew into Detroit on one day, spent – drove to Lansing,
12 spent the night in Lansing, got up, spent one full day looking for people in
13 Lansing, and then drove back that night to Detroit and flew back that night
14 or the next morning to Las Vegas.

15 Q Now, when you say you spent the full day looking for
16 people, wouldn't it be more accurate that you spent the day interviewing
17 the people that you knew how to find and didn't really go looking for other
18 people?

19 A That's correct. We did try to find a police officer and we
20 were unsuccessful in trying to find him. I think we actually went to Ford's
21 house and he was not there, but we didn't go back to the house. One of
22 Chappell's sisters, we went to her house but she was not there; we did not
23 go back. We spent a significant amount of time with his grandmother that
24 day. We spent a significant amount of time with Bill Moore that day. And
25

1 we went and visited a psychiatrist's office that day, and that was ultimately
2 unfruitful.

3 Q Now, who is Bill Moore?

4 A Bill Moore was a Parole and Probation Officer with the State
5 of Michigan who worked with James when James was a juvenile. He
6 ultimately testified in the penalty phase.

7 Q So, he was a Penalty Hearing witness?

8 A Correct.

9 Q And you said you looked for a police officer and couldn't find
10 that police officer. Was that also a Penalty Hearing witness?

11 A Yes. It was related to one of the crimes that James was
12 accused of doing. It was a minor crime as a juvenile.

13 Q Not one of the crimes that they were trying to admit at the
14 trial as opposed to -

15 A Correct. It was a simple incident of kids running around an
16 alley and doing something as children.

17 Q Did you interview anybody in Michigan that wasn't a Penalty
18 Hearing witness?

19 A No.

20 Q The next name is Mr. Ivory Marrell, M-a-r-r-e-l-l.

21 A Ivri Marrell.

22 Q Yes.

23 A I don't think we ever found him. We tried, we looked for
24 him. I mean, we went to his house when he wasn't there, but he was

25

1 around. We should probably have stayed a few days extra and found him.
2 Q Prior to going to Michigan, had you given people notice that
3 you were coming and ask them to have people available for you, or did you
4 just show up, knocked on the door, if they weren't home, that's the end of
5 it?
6 A I don't know what my investigator did in this respect. I do
7 not know.
8 Q Now, you said that you had looked for one of his sisters. Do
9 you recall which one? And she wasn't home and you never went back?
10 A I don't recall her name.
11 Q I've got two names, Myra and Carla Chappell.
12 A It may have been both, I don't recall.
13 Q Do you recall that James and Deborah had lived with Carla for
14 a period of time?
15 A I do not recall that.
16 Q Do you recall whether or not she was called to testify at trial?
17 A I know she wasn't called to testify at trial. She may have
18 been called to testify at the penalty phase, but I'm not sure.
19 Q What about Chris Bardow and David Green from Arizona?
20 A They were not called to testify at either the trial or the
21 penalty phase, and I've never spoken with them.
22 Q And so the record is clear, who testified at the trial portion of
23 the case?
24 A We had James Chappell testify, we had Bret Robello testify,
25

1 and we had Dr. Lewis Etkoff testify in the guilt phase.

2 Q And the middle name was a neighbor from –

3 A He was the next door neighbor there in the Ballerina Trailer
4 Park where James and his – the mother of his children lived.

5 Q And was the focus of his testimony on the messiness of the
6 trailer?

7 A There were two aspects of his testimony. He testified
8 regarding the messy state of the trailer, because the State was claiming the
9 messy state of the trailer suggested that the house was ransacked. And
10 also he testified about the fact that there were men coming and going from
11 that trailer all the time when James was in jail.

12 Q Were there any other names that I haven't asked you about
13 that James gave you and asked for you to interview and call as a witness?

14 A I can't – off the top of my head, I can't tell you that. I had a
15 sheet of paper which I should have brought this morning. I thought that I
16 brought it, but I didn't. But it was the list that he gave me, and I believe it
17 covered everything you've mentioned here and in your petition, with the
18 exception of the two names in Arizona which James told me about orally.

19 Q Okay, that would be Chris Bardow and David Green?

20 A Correct.

21 Q And when did he tell you about them orally?

22 A Some time prior to trial. I don't know exactly.

23 Q The names that you had, you had them all prior to trial?

24 A Correct.

25

1 Q Now, there's a number of issues that we've raised in our
2 petition, and you've had a chance to review the supplemental petition, is
3 that correct?

4 A Yes, that's correct.

5 Q And some of the issues are raised in order to preserve the
6 record as opposed to factual matters, but I just need to clear up a couple of
7 points with respect to those matters. One of the issues we've raised was
8 your failure to object to the system – the jury selection system in Clark
9 County that systematically excludes African-Americans. Did you file a
10 motion raising that issue?

11 A During trial, we made Batson objections, and that would be
12 found, I believe, at 4 Record on Appeal 831. I also filed a document during
13 trial to dismiss the charges based on the equal protection violations, which
14 pointed out the disparate treatments of different defendants which I had
15 handled. So, the answer is yes, and that motion was denied.

16 Q Did you file a motion to strike the overlapping aggravating
17 circumstances, and by that I mean the fact that the act of burglary and
18 robbery are kind of duplicitous as aggravating circumstances?

19 A I did not file a motion alleging that specific argument. I did
20 file a motion to strike the aggravating circumstances based on the
21 sufficiency of the testimony at the Preliminary Hearing, but I did not include
22 the argument which you mentioned.

23 Q Did you have a strategic reason for not raising that particular
24 argument?

25

1 A No, I just didn't think of it.

2 Q As part of your trial strategy, did you and Mr. Ewing have any
3 understanding as to who was to make trial objections?

4 A I'm pretty sure it was my responsibility to make trial
5 objections; his to make penalty phase objections.

6 Q And did you make objections during the trial?

7 A I did.

8 Q And at the Penalty Hearing?

9 A I don't recall if Will was the one objecting or not. I'm hoping
10 that we objected some at the Penalty Hearing, I just don't recall.

11 Q Now, I've raised a number of issues in the supplemental
12 petition concerning arguments that weren't objected to. Do you have the
13 petition in front of you?

14 A I do not, but I have reviewed it.

15 Q One of the arguments at the Penalty Hearing, I believe by Ms.
16 Silver, was – and I'll just read it for you, and I'm going to ask you whether
17 or not you had a strategic reason for not –

18 MS. ROBINSON: What page are you on?

19 MR. SCHIECK: Oh, page 21.

20 BY MR. SCHIECK:

21 Q And I'm quoting now: "And this is a Penalty Hearing. It's a
22 Penalty Hearing because a violent murder occurred on August 31st of 1995.
23 So, it's not appropriate for you to consider rehabilitation. This isn't a
24 rehabilitation hearing." Did you object to that argument?

25

1 A I don't believe we did.

2 Q Did you have a strategic reason for not objecting to Ms.
3 Silver's argument that it's not appropriate for the jury to consider
4 rehabilitation?

5 A No.

6 Q At a Penalty Hearing, is it appropriate for a jury to consider
7 rehabilitation?

8 A I think so, yes.

9 Q You're familiar with the fact that during a closing argument
10 a prosecutor is not to refer to evidence or matters that have not been
11 presented into evidence?

12 A That's correct.

13 Q Do you recall whether you objected to the argument that --
14 this following argument. This is page 22: "The death penalty deters. We
15 know that all we need to do is look in the newspapers or turn on the
16 television set and we recognize that a very large percentage of the murders
17 that are committed out there today are murders by individuals who have
18 abused their victims in the past, just like in this case." Was there any
19 evidence presented at the Penalty Hearing to indicate that the percentage of
20 murders that are committed involved abuse of the victim prior?

21 A Not that I'm aware of.

22 Q Did you object to that?

23 A No.

24 Q Did you have a strategic reason for not objecting to the
25

1 prosecutor referring to facts outside of the record?

2 A No.

3 Q Do you recall the prosecutor arguing that: "We know the
4 death penalty deters"?

5 A I do remember her arguing that.

6 Q Did you object to that?

7 A No, I did not.

8 Q Did you have a strategic reason for not objecting to that?

9 A The answer is no, and I was uncertain at the time whether or
10 not she could argue that, because there's some case out there that says the
11 State can argue general deterrents.

12 Q The quote that I was referring to, though, is the prosecutor
13 saying: We know that it deters.

14 A Oh, I see. Yeah, I had no strategic reason to not object.

15 Q And the next one I'm going to -

16 MR. SCHIECK: If I could approach, Your Honor?

17 THE COURT: Go ahead.

18 BY MR. SCHIECK:

19 Q I'm going to show you page 24, it's a lengthy argument, and
20 the question when you finish reading it is just, did you have a reason for not
21 objecting to this argument?

22 A In reference to this quote on page 24 of your petition, I had
23 no reason not to object to that.

24 Q Had your objections been generally successful?

25

1 A None of our objections were successful in this case.
2 Q Did that impact on your decision to make objections?
3 A We were so exhausted by the rulings in this case, that by
4 halfway through the trial, everything seemed futile.
5 Q Did you stop objecting because it seemed futile?
6 A I don't know. I think that we were just -- I think just we were
7 emotionally exhausted. I mean, we were amazed at the stuff that was
8 coming in. And I can't remember if we ever stopped objecting or not, but
9 I know that it was just a really bizarre experience.
10 Q Even if you were exhausted and felt that you were being
11 unfairly ruled against, should you have continued to voice objections to
12 things that were objectionable?
13 A Absolutely.
14 Q Do you recall the prosecutor arguing at the Penalty Hearing
15 that the jury should send a message to the community by their verdict?
16 A Yes, I do recall that.
17 Q Did you object to that?
18 A No.
19 Q Did you have any reason, strategic reason not to object?
20 A No.
21 Q We've raised allegations concerning certain arguments made
22 during the guilt phase of the trial that we've characterized as victim impact
23 argument, and they're listed on page 27. Specifically: "All evil required
24 was a cowering victim, Deborah Ann Panos, 26 years of age, the mother of
25

1 three little children, age 7, 5, and 3. Where is the promise of her years once
2 written on her brow, where sleeps that promise now." Did you object to
3 that?

4 A No.

5 Q Did you have any strategic reason not to object?

6 MS. ROBINSON: Your Honor, maybe for the record we ought to
7 make – if we're going to be reading things into the record, we should make
8 a note of the Record on Appeal, citations.

9 THE COURT: Please do so.

10 MR. SCHIECK: It's 9 ROA 1607.

11 THE WITNESS: No. I had no strategic reason not to do so.

12 BY MR. SCHIECK:

13 Q As of the time you went to trial in this case, how many just
14 trials in general had you handled, not just –

15 A Twenty-nine. I did twenty-five trials before going on the
16 murder team.

17 Q And during those twenty-nine trials, is it fair to assume or
18 can you tell us, did the prosecutor typically argue the concept of reasonable
19 doubt to the jury?

20 A Yes.

21 Q Do you recall an argument that was made in this case
22 concerning reasonable doubt and quantifying reasonable doubt wherein the
23 prosecutor stated – and this is page 28 of the supplement: "What is a
24 weighty affair of life? Well, for some people it could be the decision to get
25

1 married, for some people it could be the decision to have a child or switch
2 occupations, or perhaps, let me put it to you this way." And she goes on to
3 talk about the concept of buying a home as being a decision that is a more
4 weighty affair of life. Do you recall that argument?

5 A Yes.

6 Q Did you object to that argument?

7 A No.

8 Q At the time that you tried this case, was that type of
9 argument generally a permissible argument?

10 A As far as I know, it was.

11 Q Are you aware in 1998, in the Holmes decision, the Court
12 found that that was, in fact, improper to quantify the concept of buying a
13 house as being a weighty affair of life?

14 A Yes, I've been informed of that.

15 THE COURT: But for the record, this was not 1998, is that correct?

16 MR. SCHIECK: That's correct.

17 BY MR. SCHIECK:

18 Q That's the point I was making. That decision came out after
19 your case was tried?

20 A That's correct.

21 Q And this is absolutely in hindsight, you should have objected
22 to that argument and preserved that issue?

23 THE COURT: Let's go to the next question. We've already had that
24 question beat to death.

25

1 MR. SCHIECK: Okay. Thank you, Your Honor.

2 BY MR. SCHIECK:

3 Q Who was responsible for the appeal?

4 A The appeal was prepared initially by Mike Miller. I took the
5 appeal, I was unhappy with it, and I rewrote much of the appeal. And it
6 turned out that when we finished, I had written the factual section, the
7 sections dealing with all the character evidence that came in. Mike wrote
8 the section on the Batson issues where they knocked off all the blacks off
9 the jury, and he also wrote the sections on the adequacy of the evidence
10 supporting the burglary, the robbery, and the first degree murder, and he
11 wrote all the penalty phase parts of the appeal.

12 Q Did you have input into what issues would be raised and what
13 issues wouldn't be raised?

14 A Mike and I discussed it, yes.

15 Q Were there any issues that you thought were meritorious that
16 you did not raise?

17 A No.

18 Q During the - let me back up. Did you raise certain issues on
19 the appeal, even though there was no contemporaneous objection at trial?

20 A Yes, we did.

21 Q And did you note those for the Court, that there had been no
22 contemporaneous objection?

23 A I don't - I can't identify those arguments, but I know that
24 there were some arguments like that in the appeal. And I believe that they

25

1 were almost all penalty phase issues, because on the character stuff we
2 were objecting like crazy.

3 Q During the Penalty Hearing, do you recall that the aunt of
4 Deborah testified?

5 A That's correct.

6 Q And do you recall her asking the jury to give James what he
7 gave Debbie – death?

8 A I do recall that.

9 MS. ROBINSON: What page are we on?

10 MR. SCHIECK: Page 30.

11 BY MR. SCHIECK:

12 Q Did you object to that?

13 A I don't recall, but I think that we did not do that.

14 Q Did you raise it on appeal, though?

15 A I believe we did.

16 Q Were you successful on that issue on appeal?

17 A No.

18 Q Was it an issue that the Supreme Court even discussed in
19 their Opinion, as opposed to listing it in the generic category of: Other claims
20 we find that have no merit?

21 A I don't believe it was specifically discussed in the Opinion.

22 Q Do you recall whether you asked the Court to admonish the
23 jury to disregard that request from the victim's aunt?

24 A I just don't recall that.

25

1 Q And do you recall the mother of Deborah Panos testifying,
2 Norma Pinfield (phonetic)?
3 A Yes.
4 Q And do you recall her making a similar request to the jury that
5 they give James the ultimate punishment?
6 A I do recall that.
7 Q Okay. No objection at trial?
8 A I don't remember, but I believe we did not.
9 Q But you did raise it on appeal?
10 A I believe so.
11 Q Are you familiar with the concept that the failure to object at
12 trial can in some instances preclude appellate review of issues?
13 A Yes.
14 Q Do you know whether or not that affected the review you
15 received in the Supreme Court, that being your failure to object?
16 A I just don't recall whether the Opinion addressed that or not.
17 I just don't recall.
18 Q Do you recall that James testified during the trial portion of
19 the case?
20 A Yes.
21 Q Do you recall that he was questioned by the prosecutor over
22 the fact that he had had time to come up with this story and that he was
23 just making it up for trial?
24 A Yes, I do recall that.
25

1 Q Was there any objection to that line of questioning?
2 A No, there was not.
3 Q Do you recall that a similar argument concerning that was
4 made during the closing argument by the prosecutor?
5 A That's correct.
6 Q Did you object to that?
7 A No.
8 Q Did you raise these matters on appeal, however?
9 A I don't remember.
10 Q You indicated that you had filed a motion to strike the Death
11 Penalty - excuse me. You indicated you had filed a motion to dismiss the
12 charges on equal protection grounds?
13 A That's correct.
14 Q And what was the basis of that?
15 A It was a very interesting situation. I had three defendants
16 who I was representing at the same time, and the three cases had
17 tremendous similarities. In all three cases, the individuals stabbed someone
18 to death using many stabs, like anywhere from ten to twenty-five stab
19 wounds. In all three cases, they took the vehicle after they had killed the
20 person, and none of them had prior felony records. The one client who
21 was white, who killed a white man, received a plea bargain of Voluntary
22 Manslaughter. A Thai man who killed a Laotian woman went to trial, he
23 was offered, I think, Life With the Possibility of Parole, but he went to trial,
24 was convicted and received Life Without the Possibility of Parole. Neither
25

1 of those two cases were Death Penalty cases. But the case here, where
2 we have the black man killing the white woman, the State seeks the Death
3 Penalty and gets it.

4 Q That motion was denied by the Trial Court?

5 A That's correct.

6 Q Did you raise that issue on direct appeal?

7 A I don't recall if we raised that or not on the direct appeal.

8 Q If I represented to you that you had not, would you have any
9 reason to argue with that?

10 A No, I would not.

11 Q Did you have any strategic reason not to raise that issue on
12 direct appeal and exhaust it at the Supreme Court?

13 A No, I did not.

14 Q That was a motion to dismiss the entire case, is that correct?

15 A Correct.

16 Q Did you file a motion to strike the Death Penalty, the fact that
17 the State was seeking the Death Penalty, on similar grounds, that it was
18 being applied in a disparate fashion?

19 A No, and as I think about it right now, obviously that's what
20 we should have done is file the motion to strike the Death Penalty notice,
21 not the - not necessarily the entire case.

22 Q No strategic reason not for trying to get the Death Penalty
23 stricken?

24 A No.

25

1 Q Now, in the direct appeal, did you challenge the jury
2 instruction concerning the definition of premeditation and deliberation?
3 A I don't recall this, but I would accept your representation.
4 I just don't remember.
5 Q Are you familiar with the Byford decision?
6 A Yes, I am.
7 Q Was Mr. Chappell's issue on the jury instruction being proper
8 preserved for him at trial or on direct appeal, or was it not raised?
9 A I don't think it was raised.
10 Q Should you have raised it?
11 A Probably, yes.
12 Q Referring again to the overlapping aggravating circumstances,
13 was that raised on direct appeal?
14 A No, I don't think so.
15 Q Did you argue this case before the Nevada Supreme Court?
16 A I did.
17 Q And who argued for the State?
18 A Deputy District Attorney Abbi Silver.
19 Q And you were familiar with all the issues raised on – in your
20 direct appeal?
21 A At that time I was, yes.
22 Q And you've read the Supreme Court's decision on the direct
23 appeal, I assume?
24 A Yes.
25

1 Q Did the Supreme Court address all of the issues you raised?

2 A No.

3 Q What issues did they not address?

4 A I would have to have it laid out in front of me to be able to
5 tell, to say that. But, there was just a tremendous amount of prior bad act
6 evidence that was simply totally ignored in the appeal. Things like, you
7 know, the State bringing in the fact that Chappell was a chronic thief, that
8 he was stealing diapers from his children to buy drugs, he was stealing his
9 children's furniture to buy drugs – all of this coming in the guilt phase. It
10 was just never addressed in the appeal.

11 Q Was the fact that all of this evidence was not relevant
12 because you'd stipulated to the underlying facts addressed in the direct
13 appeal?

14 A I would submit that much of this evidence would never have
15 been relevant. The fact that he was a chronic thief, for example.

16 Q Did the Supreme Court address that issue in their Opinion?

17 A I don't believe they did.

18 Q Was it something that was contained in your briefs and
19 argued to the Court?

20 A Yes. My whole – the gist of the first six issues in the brief
21 concerned the overwhelming character evidence, all these different things
22 about him being unemployed, which was allowed in; the fact that he was a
23 chronic thief; the fact that he was stealing from his children. All of these
24 things, which I can't imagine how it can be admissible.

25

1 MR. SCHIECK: May I approach?

2 THE COURT: Yes. If you'll let counsel know what page you're
3 going to.

4 BY MR. SCHIECK:

5 Q Mr. Brooks, I'm showing you what is the opening brief. If
6 you could identify it, first of all, as being the opening brief that you filed in
7 Mr. Chappell's case?

8 A Yes, it is.

9 Q And we're looking at page 27, which is argument one?

10 A Correct.

11 Q Does argument one refer to all the evidence concerning the
12 prior domestic batteries of Mr. Chappell?

13 A Yes, it does.

14 Q And you list out, in fact, six specific incidents that they
15 offered testimony at trial?

16 A Correct.

17 Q And these were the incidents that were the subject of the
18 Petrocelli Hearing?

19 A Yes, if we can call it that.

20 Q Okay. We'll just refer to that for the record. Did you argue
21 all of these incidents not being admissible to the Supreme Court?

22 A Yes.

23 Q How long was your oral argument?

24 A I want to say it was thirty minutes for each side.

25

1 Q Because this is a capital case?

2 A Correct.

3 Q Okay. If we can go on in the opening brief, through page 34.
4 So, from page 28 through page 34 was all argument concerning the prior
5 domestic batteries and why they should not have been admitted?

6 A Yes, that's correct.

7 Q Of your thirty minutes before the Supreme Court, do you
8 have any estimate of how much time you spent arguing to the Court the
9 extremely prejudicial impact of all of this evidence on your case?

10 A I can't tell you the precise amount of time, but it was a
11 significant part, and there is a transcript available of that oral argument. It
12 was filed with the Nevada Supreme Court.

13 Q And I'm showing you Mr. Chappell's decision from the
14 Nevada Supreme Court, which is at 114 Nev. page 1403. Is, in fact, the
15 first issue they discuss the admission of other bad acts?

16 A Correct.

17 Q And that appears at page 1406, continuing on to page 1407?

18 A Correct.

19 Q What other acts do they refer to in their discussion?

20 A They discuss that Chappell was known as a regulator, which
21 they identify as a person who steals items from a store and then resells
22 those items for money or drugs. They discuss that he sold his children's
23 diapers for drug money.

24 Q Is there any discussion at all in their Opinion concerning the
25

1 other incidents of domestic violence that you devoted a lot of time in your
2 argument before them and in your written brief to?

3 A No.

4 Q Okay. Do you feel that based on your – the brief you filed
5 and the oral argument you made to the Court, that is to the Nevada Supreme
6 Court, that this case was fully and properly reviewed by the Court?

7 A No, I do not.

8 Q Do you think they addressed the most important issue in your
9 brief?

10 A No, I do not.

11 Q Did you file for a rehearing?

12 A Yes, I did.

13 Q Why did you file for a rehearing?

14 A Because I thought the decision was incredibly unfair. It had
15 only addressed a slight portion of the arguments.

16 THE COURT: Mr. Schieck, I have a problem with the relevance of
17 the last set of questions. This Court is not a reviewing Court of our
18 Supreme Court, so if we can keep ourself in context, let's do so.

19 MR. SCHIECK: I understand, Your Honor, and these questions are
20 really for the record as opposed to expecting Your Honor to overrule the
21 Supreme Court.

22 THE COURT: Well, then it's not for this record because they're not
23 relevant, so let's just move it on.

24 MR. SCHIECK: Thank you, Your Honor. And I think I'm about done,
25

1 Your Honor. Court's indulgence for just a minute.

2 THE COURT: That's fine. Please review and see what else you need
3 to ask.

4 BY MR. SCHIECK:

5 Q Do you recall the jury instructions that were given to the jury
6 at the penalty phase?

7 A I don't have a specific memory of them, no.

8 Q There's two specifically I want to ask you about. The first
9 has to do with the one that lists the mitigating circumstances for the jury.
10 Do you recall that in this case that that jury instruction just listed the
11 statutory or mitigating circumstances, the seven of them that concludes
12 with: Any other mitigating circumstance?

13 A That's correct.

14 Q Did you offer to the Court a jury instruction that defined
15 specific mitigating circumstances that you wanted the jury to consider, as
16 opposed to the statutory six and any other?

17 A I'm sorry, I just don't remember that.

18 Q If I were to represent to you that the record does not show
19 that you offered such an instruction, would you have any reason to quarrel
20 with that?

21 A No, I would not.

22 Q Did you have any strategic reason for not tendering an
23 instruction that contained your defense theory of the case with respect to
24 specific mitigating circumstances?

25

1 A No, I did not.

2 Q Did you offer any instruction to the jury that defined the
3 proper use of the character evidence at the Penalty Hearing? By that, I mean
4 an instruction that informs the jury that they must decide the aggravators
5 and the mitigators and weigh them before they can consider any character
6 evidence?

7 A I don't believe I did.

8 Q Did you have any strategic reason for not doing so?

9 A No, I did not.

10 Q And did you raise any objection to the Death Penalty in
11 Nevada as generally being unconstitutional because the aggravating
12 circumstances do not narrow the class of individuals that are eligible for the
13 Death Penalty?

14 A No, I did not.

15 Q Did you have any strategic reason for not doing so?

16 A No, I did not.

17 Q Prior to trial, did you go out and interview any of the State's
18 witnesses?

19 A No, I did not.

20 Q Any reason why you didn't?

21 A I mean, quite frankly, the practice in our office historically has
22 been not to do that, and if you asked for it, the investigators pretty much
23 laughed at you.

24 Q After you were aware that the Court's ruling was going to
25

1 be the admission of all these other prior domestic batteries, did you do any
2 investigation into the facts and circumstances of those other acts?

3 A No.

4 Q In other words, did you go interview any of the witnesses to
5 those other acts?

6 A No.

7 Q Would it be fair to say a number of those witnesses did come
8 in and testify?

9 A Yes.

10 Q Which was beyond what you expected at the Petrocelli
11 Hearing?

12 A Correct.

13 Q Were you surprised then by the extent of their testimony and
14 what they had to say?

15 A I was stunned.

16 Q If you had gone out and interviewed these witnesses, you
17 would have known the extent of their testimony?

18 A Yes. If I had known that we were going to put all of this
19 stuff into issue in great detail, every blow, I would certainly have done a
20 tremendous number of things I never did.

21 Q Did you move to continue so you could interview the State's
22 witnesses on these other bad acts?

23 A No, I did not.

24 Q Who was responsible for offering the jury instructions, you
25

1 or Mr. Ewing, or the combination of both of you?

2 A For the guilt phase or the penalty phase?

3 Q Well, let's start with the guilt phase.

4 A The guilt phase, that was my responsibility, and the penalty
5 phase, it was Will's.

6 Q Other than Penalty Hearing issues, then you have the most
7 intimate knowledge and not Mr. Ewing?

8 A Correct -- I'm sorry, could you repeat the question, please?

9 Q Except for the Penalty Hearing issues, you're the attorney
10 with the most knowledge as to all the things that happened at the guilt
11 phase?

12 A That's correct.

13 Q Did you think this was a close case?

14 A I thought it was a very close case as far as Voluntary
15 Manslaughter or Second Degree Murder, if we look at the evidence of what
16 happened in terms of the killing and what happened immediately before the
17 killing.

18 MR. SCHIECK: That's all the questions I have, Your Honor.

19 THE COURT: Let's take a ten minute break and we'll come back and
20 pick up our Cross and any Redirect.

21 (Whereupon a brief recess
22 was taken)

23 THE COURT: We're back on the record at this time in the Evidentiary
24 Hearing. Mr. Brooks is on the stand. We'll pick back up with Cross.

25

1 CROSS-EXAMINATION

2 BY MS. ROBINSON:

3 Q Mr. Brooks, when you took this case, you knew that the
4 defendant and the victim had a long time relationship, that's true?

5 A That's correct.

6 Q You also knew that it had been a - shall we say a tumultuous
7 relationship?

8 A Correct.

9 Q You knew that at the time of the - of Deborah Panos' murder,
10 the defendant had just gotten out of jail?

11 A That's correct.

12 Q And within hours went over to the trailer that he - that
13 Deborah Panos was living in?

14 A I would submit they both lived there, but yes.

15 Q He didn't have a key to this trailer?

16 A Right. He had been in jail for quite awhile.

17 Q Okay. And he entered this trailer through a window?

18 A Correct.

19 Q And whatever went on in that trailer is absolutely known only
20 to James Chappell and Deborah Panos?

21 A Generally true, yes.

22 Q Okay. You also knew that the defendant had had convictions
23 for Battery/Domestic Violence on this particular victim?

24 A Yes.

25

1 Q More than one?

2 A I believe so.

3 Q And so, is it fair to say that your theory of the case was
4 basically heat of passion?

5 A Correct.

6 Q That James Chappell was so in love with this woman and
7 she was seeing someone else, and that inflamed him as a male person?

8 A Dr. Etcoff's testimony is on this point. And Dr. Etcoff
9 testified that James Chappell had a view of himself as being nothing, and
10 all of his identity was tied up with this woman, and losing this woman was
11 the greatest fear of his life, and that's why he reacted in such a violent way
12 when he would find out about her cheating on him. And for him - this for
13 him was everything, the idea of losing her.

14 Q But there was a split of testimony about whether James
15 Chappell actually lived there at the time?

16 A Well, it was his home when he was out of jail.

17 Q He - according to him?

18 A According to the neighbors as well.

19 Q And you said that your theory of the case was that the
20 provocation for the murder had to do with the relationship?

21 A The relationship and the finding of the note, the love note
22 from a man from New Jersey that was found at the scene, in which he
23 describes intimate relations with Deborah Panos.

24 Q And so, you got all this information from James Chappell
25

1 about all these people who you basically couldn't find, most of them?

2 A That's correct.

3 Q Okay. And you told us that you had tried to find some
4 people, couldn't find them, and you were still not focusing – you keep telling
5 us you were not focusing on the relationship angle?

6 A I was not focusing on the long-term history of the
7 relationship, correct.

8 Q Is it possible that even had you been able to find these
9 witnesses, who now it's alleged they would have said that everything was
10 hunky-dory with the defendant and Deborah Panos, that could have been a
11 two-edged sword?

12 A Certainly.

13 Q So, you can't say for certain whether calling them would have
14 made a difference?

15 A I can't.

16 MS. ROBINSON: Okay. I'm sorry, Court's indulgence.

17 BY MS. ROBINSON:

18 Q And you did make a series of motions regarding an equal
19 protection argument about the Death Penalty?

20 A That's correct.

21 Q Now, Mr. Schieck asked you if you had objected to the jury
22 selection process. Have you ever done that before in a trial previous to this
23 Chappell case?

24 A I've objected to – I've made Batson challenges and I have
25

1 also challenged the venire as not having a representative percentage of
2 minorities. I've never objected to the jury selection process, per se.

3 Q Do you know what you would have had to have proved had
4 you made an objection to the jury venire at the time?

5 A The venire or the system?

6 Q Well, the system?

7 A I'm assuming that I'd have to show somehow that the system
8 we have of bringing jurors together is inherently flawed and has a tendency
9 to over-represent white people or non-minorities.

10 Q Do you figure you could have proved that then?

11 A I don't know, but my personal belief is, no.

12 Q And James Chappell is an African-American?

13 A That's correct.

14 Q Okay. There were African-Americans on the panel?

15 A On the venire?

16 Q Yes.

17 A There were a total of five on the venire.

18 Q Were any excused because of their beliefs about the Death
19 Penalty?

20 A Two jurors made it to the twelve, and the State used their
21 peremptory challenges on both of those and eliminated all of them, so -

22 Q And you raised Batson issues?

23 A Correct.

24 Q Which the Court found that there were race-neutral reasons
25

1 for the challenges?

2 A That's what the Court concluded.

3 Q Okay. Now, Mr. Schieck has raised a number of issues that
4 you had maybe failed to object to, jury instructions, the premeditation and
5 deliberation instruction. Tell us when this trial happened, 1996?

6 A It was in October of 1996.

7 Q So, would it be fair to say that you did basically a Kazalyn
8 instruction?

9 A I believe that's correct.

10 Q Okay. But Byford overruled Kazalyn later?

11 A That's correct.

12 Q But that was when, 2000?

13 A That's correct.

14 Q So, you weren't aware of Byford at the time of – in 1996?

15 A That's correct.

16 Q And the Petrocelli Hearing information – well, strike that.

17 Regarding overlapping aggravating circumstances, Mr. Schieck asked you if
18 you objected to that, and you didn't?

19 A That's correct. I filed a motion to strike the aggravating
20 circumstances, but I did not include it as one of my arguments, the
21 overlapping nature of the aggravating circumstances.

22 Q Were you perhaps aware of a 1990 case, Bennett v. State, in
23 which the Supreme Court let us know that if a defendant can be prosecuted
24 for both crimes separately, they could be used as aggravators?

25

1 A I think I was aware of that, yes.

2 Q And let me ask you also about the inflammatory – so-called
3 inflammatory statements, victim impact statements during both the penalty
4 phase and the trial itself, the guilt phase. Would it be a reasonable practice
5 to object to every victim impact statement, whether it be in guilt phase or a
6 trial phase, can that be a two-edged sword? Do you understand what I
7 mean?

8 A I think I do. I think clearly when they're violating the rules,
9 you should probably object. I know that we don't like to object where we
10 might be perceived as being insensitive to the victims.

11 Q So, sometimes there may be a strategic reason for not
12 objecting?

13 A There could be. I don't recall thinking about that. Remember
14 that I was – Will was the primary person during the penalty phase.

15 Q And regarding the fact that you didn't object to Ms. Silver's
16 argument regarding reasonable doubt, the buying a house thing. Were you
17 perhaps aware of a 1991 Nevada Supreme Court decision, Lord v. State, in
18 which the Nevada Supreme Court said that even that argument can be
19 corrected and is not prejudicial when the jury is properly instructed?

20 A I think I was familiar with Lord v. State.

21 MS. ROBINSON: Your Honor, I don't have any more questions.

22 THE COURT: Redirect, Mr. Schieck?

23 MR. SCHIECK: Thank you, Your Honor.

24

25

1 REDIRECT EXAMINATION

2 BY MR. SCHIECK:

3 Q Just a couple of follow-up areas, Mr. Brooks. You had
4 testified that James had been in jail for an extended period of time, and then
5 when he got out came to what he perceived as his home, where he lived
6 with Deborah, is that correct?

7 A That's correct.

8 Q Is that something that had happened before when James had
9 been arrested, that he would – when he got out of jail, he went back to
10 Deborah and they resumed their relationship?

11 A Yes, I believe it was.

12 Q Did you present any witnesses to show that that had
13 happened previously?

14 A No, I did not.

15 Q James testified concerning these incidents, correct, the
16 domestic violence?

17 A That's correct.

18 Q Was asked numerous questions by Mr. Harmon on the issue?

19 A That's correct.

20 Q You at one point had counted how many questions was asked
21 on cross-examination concerning that?

22 A Yes. He was asked more than 150 questions regarding the
23 prior domestic batteries and his failure to support Deborah, and all the other
24 extraneous prior bad act stuff.

1 Q Out of how many total questions?
2 A I'm not sure, but I believe it was roughly 250.
3 Q You indicated on cross-examination that there were a number
4 of witnesses you couldn't find prior to trial?
5 A That's correct.
6 Q Is it fair to state that you only were looking for them for a
7 very short period of time prior to trial?
8 A That's correct.
9 Q And just made the efforts you've already talked about?
10 A That's correct.
11 Q You were asked on cross-examination about the Byford
12 decision coming down after you had tried James' case. Were you aware,
13 however, at the time that you went to trial in this case, that there were
14 alternatives to the premeditation and deliberation instruction that was being
15 given here in Nevada?
16 A Yes. In fact, we had an alternative in our office that we were
17 offering in some cases, and my memory is that we offered that in this case.
18 I can't say for sure.
19 Q Specifically, the Kazalyn instruction talks about premeditation
20 and deliberation being instantaneous thoughts of the mind?
21 A Correct.
22 Q The instruction that you had in the office didn't have that
23 language, had the language more similar to Byford?
24 A That's correct.
25

1 Q And if you didn't, could have been offered in this case?

2 A Correct.

3 Q How did the fact that the definition of First Degree Murder
4 could occur as instantaneous as successive thoughts of the mind
5 impact your ability to argue to the case that this was not First Degree
6 Murder?

7 A The problem with that instantaneous successive thoughts
8 of the mind instruction is that when you think about it, any killing can be
9 construed to have the component of a mind thinking about the killing and
10 then deciding to do it. So, in a case where you have the heat of passion,
11 arguably every case could still be First Degree Murder if, in fact, you have
12 the successive thoughts of the mind occurring.

13 Q You're familiar with what the Byford instruction says in
14 defining premeditation and deliberation?

15 A Yes. That would have been very helpful in this case.

16 MR. SCHIECK: Thank you. No further questions.

17 MS. ROBINSON: I don't have anything further.

18 THE COURT: Mr. Brooks, you're off the hot seat. Thank you.

19 THE WITNESS: Thank you.

20 THE COURT: I guess we need to take a short recess and give Mr.
21 Ewing a call, if you're going to call Mr. Ewing, and get him over.

22 MR. SCHIECK: Yes. I'll call him right now, Your Honor. He's going
23 to be fairly brief, as you can tell. It's limited to just a couple of issues that
24 Mr. Brooks couldn't answer.

25

1 THE COURT: I understand. We'll go off the record until we get
2 Mr. Ewing.

3 (Whereupon a brief recess was taken)

4 THE COURT: Mr. Schieck, for the record, if you'd call your next
5 witness.

6 MR. SCHIECK: Will Ewing, Your Honor.

7 THE COURT: Thank you.

8 THE CLERK: State your name, spelling it for the record.

9 THE WITNESS: Willard Ewing, W-I-L-L-A-R-D E-W-I-N-G.

10 WILLARD EWING

11 Having been called as a witness and being first duly sworn testified as
12 follows:

13 DIRECT EXAMINATION

14 BY MR. SCHIECK:

15 Q Mr. Ewing, how are you employed?

16 A Deputy Public Defender with the Clark County Public
17 Defender's Office.

18 Q And how long have you been licensed as an attorney?

19 A Since October of '90.

20 Q And when did you start work for the Public Defender's Office?

21 A In October of '90.

22 Q Have you been with the Public Defender's Office continuously,
23 or was there a brief period of time when you left the office?

24 A I left for a couple of years.

1 Q And when did you return?
2 A I returned, I believe, in '93.
3 Q Do you recall representing James Chappell?
4 A Yes.
5 Q Do you recall when you got onto that case?
6 A Not specifically, no.
7 Q With respect to when the trial started, how long had you been
8 on the case?
9 A It would be an estimate, but I would say perhaps two months.
10 Q And who was primary counsel?
11 A Howard Brooks.
12 Q And did you guys divide up your responsibilities?
13 A We did.
14 Q And what were your areas of responsibility?
15 A Howard asked me to prepare a Dr. Etcoff, who was one of
16 the evidence phase witnesses. And other than that, I was limited to the
17 penalty phase witnesses. I guess basically I was in charge of the penalty
18 phase.
19 Q Now, Howard Brooks has already testified concerning his
20 involvement on the guilt phase, but let me just clarify. Were you assigned to
21 do any investigation or interview any witnesses concerning the guilt phase of
22 the trial, other than Dr. Etcoff?
23 A No.
24 Q That was Howard's responsibility?
25

1 A Yes.

2 Q With respect to the Penalty Hearing, who would have been
3 the one responsible for making the objections to anything that transpired
4 that was inappropriate?

5 A Me.

6 Q And was that understood when you started the Penalty
7 Hearing?

8 A Yes, with the exception, I guess, of one Penalty Phase
9 witness that Mr. Brooks took, which was a probation officer.

10 Q How many murder trials had you done prior to Mr. Chappell's?

11 A Zero.

12 Q Is that murder trials or capital murder trials? I mean, I was
13 going to separate the two, asking you murder first and then capital murder
14 second.

15 A I had handled lots of murder trials, but I honestly can't tell
16 you if one had been tried to completion prior to Chappell being tried to
17 completion.

18 Q Were you 250 qualified at the time Chappell went to trial?

19 A No.

20 Q Was it this case that qualified you, then, under 250?

21 A Yes. And that would have meant I would have had to have
22 done one murder trial prior to that to be 250 qualified.

23 Q I'm going to ask you some questions concerning closing
24 arguments at the Penalty Hearing, where there was no objection made.

25

1 And the question I'm going to ask after I read you the quote is whether or
2 not you had a strategic reason for not making an objection. Okay, the first,
3 this is on page 21 of the supplement, and this is from Prosecutor Silver,
4 where she argued to the jury: "And this is a Penalty Hearing. It's a Penalty
5 Hearing because a violent murder occurred on August 31st of 1995, so it's
6 not appropriate for you to consider rehabilitation. This isn't a rehabilitation
7 hearing." Did you have any strategic reason to not object to Ms. Silver
8 telling the jury that it's inappropriate for them to consider rehabilitation?

9 A There was no strategic reason for not objecting to that
10 particular comment.

11 Q And again, it's closing argument at the Penalty Hearing, it
12 would have been your responsibility as opposed to Mr. Brooks to object?

13 A Yes.

14 Q Did you have any input into the appeal?

15 A None.

16 Q At the Penalty Hearing – and I'm on page 22, counsel – the
17 prosecutor made reference to the fact that, and I'll read you the sentence or
18 the sentences: "The Death Penalty deters. We know that all we need to do
19 is look in newspapers or turn on the television set and we all recognize that
20 a very large percentage of the murders that are committed out there today
21 are murders by individuals who have abused their victims in the past, just
22 like in this case." Was there any evidence presented at the Penalty Hearing
23 to show the percentages of murders that involved past abuse of the victims?

24 A No.

25

1 Q So, the prosecutor was referring to facts not in the record –
2 A That's correct.
3 Q – or alleged facts. Any reason not to object to her making
4 that argument?
5 A No.
6 Q She also argued to the jury that: "We know the Death
7 Penalty deters." Any objection to that?
8 A There could have been, yes.
9 Q Any strategic reason not to object to that?
10 A No.
11 Q Also at the Penalty Hearing, there was a – again, this is by
12 Ms. Silver – a lengthy argument that focused in on the children of Deborah
13 and James. I'm going to show you that, those portions of the argument
14 on 24. And what we're asserting is that these were inflammatory improper
15 arguments that should have been subject to objection. If you could just read
16 that quickly.
17 A (Witness reading).
18 Q Any strategic reason not to object to those arguments?
19 A No.
20 Q The prosecutor also argued that the jury by their verdict
21 should send a message to the community by giving him the Death Penalty.
22 Did you have any reason not to object to that argument?
23 A No strategic reason for that particular argument.
24 Q And again, just so we're clear on the record, any of the
25

1 improper arguments made during the trial phase would have been Mr. Brooks'
2 responsibility, as opposed to yourself?

3 A Yes.

4 Q At the Penalty Hearing, do you recall the aunt of Deborah
5 testifying, Carol Monson (phonetic)?

6 A Not particularly, no.

7 Q The record indicates that she did testify, and one of the
8 things that she told the jury was as follows: "We only pray now that justice
9 will do what it needs to do and not fail her children again, by that I mean
10 give James what he gave Debbie, death." That's at 11 ROA 1960. Do you
11 recall that?

12 A I do recall that.

13 Q Any strategic reason not to object to the aunt asking the jury
14 to return a death verdict?

15 A I would have to say at that point in time there was, but it was
16 based upon a mistake of law.

17 Q Could you explain that?

18 A I remember that particular issue because Howard and I talked
19 about it, and it was our mistake of law that that was not objectionable, and
20 we found out later that it was.

21 Q Would it have been your responsibility to prepare and submit
22 any proposed Defense jury instructions at the penalty phase?

23 A I honestly don't recall if that was my responsibility or not.

24 Q If Mr. Brooks had indicated that he had left the jury
25

1 instructions of the penalty phase up to you, would you have any reason to
2 quarrel with his recollection?

3 A No.

4 Q I'm just going to ask you about two instructions. The first
5 has to do with the mitigating circumstances in the case, and the jury was
6 instructed as to just the statutory mitigating circumstances which are six,
7 plus the seventh being any other mitigating circumstance. Do you recall
8 whether you offered a jury instruction that specified specific jury instructions
9 to this case, as opposed to just the statutory list?

10 A I don't recall doing that, no.

11 Q If you did not do so, did you have any strategic reason not
12 to do so?

13 A No.

14 Q Is it fair to say that in most capital cases, the list of statutory
15 mitigating circumstances, most of them don't apply to the specific facts of
16 a case?

17 A That's - yeah, that's true.

18 Q Did you seek out any assistance from other members of the
19 office or of the murder team on what jury instructions you might want to
20 offer at the Penalty Hearing?

21 A I don't recall.

22 Q Mr. Kohn was the head of the office at that time?

23 A Yes.

24 Q Head of the murder team?

25

1 A Yes, that's correct. And it was his practice to try to make
2 people available to run through instructions and things.
3 Q Do you recall doing that in this case?
4 A I don't recall doing it, I don't recall not doing it.
5 Q Would your answers then be the same on the jury instruction
6 that defined the proper use of character evidence at the Penalty Hearing?
7 A Yeah, answer would be the same.
8 Q At any point, did you and Mr. Brooks discuss the possible
9 need to continue the trial because more investigation needed to be done?
10 A I don't remember.
11 Q Do you remember that there was a Petrocelli Hearing or a
12 hearing before Judge Maupin shortly before the trial where the Judge had
13 ruled that all of the prior domestic violence incidents could come in against
14 James?
15 A I recall him making that ruling, but it was without a hearing.
16 We were denied a hearing.
17 Q Do you recall after he made that ruling any discussion with
18 Howard that – with Mr. Brooks that further investigation might be
19 warranted?
20 A No, I don't recall.
21 MR. SCHIECK: Okay. I have no further questions, Your Honor.
22 THE COURT: Any questions by the State?
23 MS. ROBINSON: Thank you, Your Honor.

24
25

1 CROSS-EXAMINATION

2 BY MS. ROBINSON:

3 Q Mr. Ewing, you've stated over and over again on Mr.
4 Schieck's prompting that you had no strategic reasons for objecting to
5 certain prosecutor's statements. Regarding, for example, the rehabilitation
6 argument made by the State, were you aware of any case law before or
7 statutes before 1996 which made such an argument objectionable?

8 A And you're asking specifically about the rehabilitation
9 argument or --

10 Q Yeah, rehabilitation; yes.

11 A I was not.

12 Q And same thing regarding the alleged facts not in evidence
13 argument?

14 A I think that that -- I think we're all instructed that that's
15 objectionable. I can't say I know a particular case that makes it objectionable.

16 Q And regarding the sending a message to the community
17 argument?

18 A No.

19 Q Okay. And as a matter of fact, regarding the impact on the
20 children, the aunt's testimony at the penalty phase, could it be that you
21 were aware that the Nevada Supreme Court in Lay v. State in 1994 -- that's
22 L-a-y v. State -- expressly stated that it was okay to comment on the loss
23 of a family member, could you have been aware of that and not objected
24 because of that?

25

1 A That was the quote where she was talking about the damage
2 to the kids?

3 Q Yeah.

4 A I don't know if I was aware of that case at that time or not.

5 Q And let's also talk about the jury instructions regarding
6 mitigators and the character evidence, the lack of an instruction about
7 specific statutory mitigating factors – I mean, the ones in addition to the
8 specific statutory mitigating factors, and the correct usage of character
9 evidence. Were you aware at that time of any statutes or case law which
10 would have mandated you to make those instructions, to offer those
11 instructions?

12 A No.

13 Q Okay. Would it be fair to say that after this case, case law
14 changed and your practices changed regarding murder cases?

15 A Substantially.

16 Q But before then, you had been unaware of any case law
17 which mandated you to put in a special mitigating factors instruction and/or
18 a special character evidence instruction?

19 A That's true.

20 MS. ROBINSON: I have nothing further.

21 THE COURT: Mr. Schleck, anything additional?

22 MR. SCHIECK: No, Your Honor.

23 THE COURT: Mr. Ewing, you may step down. Thank you.

24 MR. EWING: Thank you.

25

1 THE COURT: Any additional evidentiary that needs to be presented,
2 either at this day or for another day?

3 MR. SCHIECK: Yes, Your Honor. When the Court granted us the
4 evidentiary hearing for today, it was for the purposes of having Mr. Brooks
5 and Mr. Ewing. It turned out just to be Mr. Brooks testified concerning the
6 investigation and these witnesses that we specifically named. I think that
7 we should now proceed, based on his testimony, to have these witnesses
8 testify and say what they would have said at the time of trial, so the Court
9 can make the determination of whether or not their testimony would have
10 made or could have made a difference at the time of trial, as it specifically
11 dove-tails into the defense that Mr. Brooks was trying to present to the jury.

12 MS. ROBINSON: Your Honor, we don't believe that any more
13 testimony is necessary. Mr. Brooks' testimony, while impassioned, is in my
14 mind patently implausible, the way he says he was unaware that this was
15 going to be about the relationship, yet it was a heat of passion defense. He
16 also tells us at one point, Mr. Brooks does, that he had these people that he
17 couldn't get in touch with, but he still didn't know that this would have to
18 do with the relationship. What these people are going to come in and testify
19 to is irrelevant, because Mr. Brooks couldn't find them in the first place.

20 And the Supreme Court has basically stated on a lot of the grounds
21 that the overwhelming nature of the evidence in this case would make most
22 of this harmless error, would make whether he could testify that - whether
23 anyone could testify that they were loving when they weren't fighting,
24 when they weren't having domestic violence, when there weren't Temporary
25

1 Protective Orders, when the defendant wasn't climbing through windows
2 and stabbing her to death. The testimony of these witnesses clearly, even
3 if they are to be believed, would not have any impact on the outcome of
4 the trial and is clearly, if error at all, harmless, and we don't think it's a
5 necessity to bring them in and testify.

6 THE COURT: Anything additional on that point, Mr. Schieck?

7 MR. SCHIECK: Just one point. Ms. Robinson argues that these
8 witnesses aren't relevant anyway because Mr. Brooks couldn't find them.
9 I think the Court heard his efforts to find these witnesses consisted of
10 knocking on the door and the guy wasn't home and we gave up. I mean,
11 I don't think that's looking for a witness. I think that's hoping that you run
12 across something that might be helpful. I think that in the abundance of
13 caution, this being a capital case, that the Court should let me locate and
14 call those witnesses to testify and make a complete record, so that whether
15 it's this Court or a Court that reviews this later has a basis to say this would
16 have or could have made a difference.

17 THE COURT: In all candor, Mr. Schieck, I doubt seriously in terms of
18 these witnesses being offered in the case-in-chief, if it would have changed
19 the outcome. It leads us to an issue as to whether or not it would have
20 changed in the penalty phase, more so. Mr. Brooks has stated on the record
21 his theory of the case. He also has stated his surprise as to what was
22 allowed to come in. But at some points, he has not wavered in terms of his
23 theory of the case and what he was attempting to do, even under the
24 circumstances.

25

1 But that aside, I think it would be more appropriate to allow
2 you to obtain affidavits of testimony of these individuals to supplement the
3 record as to what they might have said had they testified, but to bring them
4 in to testify, I don't think that's going to at one point serve any purpose
5 above what an affidavit could service in terms of making the point as to
6 what they might testify to, because what we will have is we'll have direct,
7 we'll have cross, and I won't say the cross would be meaningless, but
8 nonetheless, it's something that a jury would have to hear and determine in
9 light – and the Court is going to have to read the affidavits – in light of the
10 testimony that was offered at the time of trial, to make the ultimate decision
11 as to whether or not it would have really made a difference.

12 But having said that, I think it would be appropriate to allow
13 you to supplement your record to get affidavits, sworn statements of
14 individuals you think are pertinent, and then as to whether you wish to offer
15 them for the concerns as to the case-in-chief or as to penalty or as to both.
16 So, what it sounds like we need to do is probably at least a three week
17 status check date just to find out what you think the time to get a
18 completion of that, so that we can then kind of boil it down and say, okay,
19 on this date we should have argument as to what we have, what has been
20 written, what has been testified to, and what additionally you will then
21 provide and supplement the record.

22 So, if we can have a date in three weeks and let's just do it at
23 nine o'clock. It will be a quick in and out of here in terms of status of where
24 we're at with this and you procuring affidavits, or additional time to procure
25

1 affidavits based on the difficulty of locating individuals.

2 THE CLERK: October 1st.

3 MS. ROBINSON: 9:00 a.m.?

4 THE COURT: 9:00 a.m. We'll get in and out, so it's just a status.

5 Thank you.

6 MR. SCHIECK: Thank you, Your Honor.

7 MS. ROBINSON: Thank you, Your Honor.

8 (Proceedings concluded)

9 * * * * *

10

11

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19

20 ATTEST: I do hereby certify that I have truly and correctly transcribed
21 the sound recording in the above-entitled case.

22

23

24

25


ELIZABETH GARCIA
Court Transcriber

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ORIGINAL

FILED

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DAVID M. SCHIECK, ESQ.
NV BAR NO. 0824
302 E. CARSON, STE. 600
LAS VEGAS, NEVADA 89101
702-382-1844
ATTORNEY FOR CHAPPELL

SEP 26 3 52 PM '02

Shirley L. Lavorgna
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

* * *

JAMES MONTELL CHAPPELL,	)	CASE NO. C 131341
	)	DEPT. NO. XI
Petitioner,)	
)	
vs.	)	ACKNOWLEDGMENT AND WAIVER
)	
THE STATE OF NEVADA,)	
)	
Respondent.	)	DATE: N/A
	)	TIME: N/A

I, JAMES CHAPPELL, do hereby acknowledge that my presence was waived at the evidentiary hearing held on September 13, 2002 as the hearing was limited to the testimony of my two trial attorneys. I understand that I have the right to be present at such evidentiary hearings and that if any further hearings are held I may be present if I so desire.

DATED: Sept. 23, 2002

James Chappell

JAMES CHAPPELL, NO. 52338
Ely State Prison
P.O. Box 1989
Ely NV 89301

David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

COUNTY CLERK
SEP 26 2002

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FILED

Oct 15 1 22 PM '02

Shirley L. Rungius
CLERK

EXPT
DAVID M. SCHIECK, ESQ.
Nevada Bar No. 0824
302 East Carson Ave., Ste. 600
Las Vegas NV 89101
702-382-1844

Attorney for CHAPPELL

DISTRICT COURT

CLARK COUNTY, NEVADA

* * *

THE STATE OF NEVADA,	)	CASE NO. C 131341
	)	DEPT. NO. XI
Plaintiff,)	
)	
vs.)	
)	
JAMES MONTELL CHAPPELL,)	
)	
Defendant.	)	DATE: N/A
	)	TIME: N/A

EX PARTE MOTION FOR CHANGE OF INVESTIGATOR,
EX PARTE MOTION FOR FEES IN EXCESS OF STATUTORY LIMIT,
AND EX PARTE MOTION FOR CONTACT VISITS

COMES NOW, Defendant JAMES CHAPPELL, by and through his attorney DAVID M. SCHIECK, ESQ., and moves this Court for an Order appointing Reefer Investigations as private investigator through District Court proceedings in place of Dymont Investigations.

Should this Court grant the Order changing Investigator it is requested that an Order be granted authorizing payment to Reefer Investigations in excess of the statutory limit pursuant to N.R.S. 7.135(1) in the amount of \$5,000.00.

It is further requested that this Court grant contact visits for the investigator during these proceedings.

RECEIVED

OCT 15 2002

COUNTY CLERK

1 This Motion is made and based upon the Points and
2 Authorities and Affidavit of Counsel attached hereto.

3 STATEMENT OF FACTS

4 DAVID M. SCHIECK, ESQ. was appointed November 15, 1999 to
5 represent CHAPPELL on his petition for habeas corpus (post
6 conviction). At the evidentiary hearing on September 13, 2002
7 the Court allowed counsel for CHAPPELL to file witness
8 affidavits. This Court granted appointment of Dymant
9 Investigations as investigator on or about September 23, 2002
10 and granted the sum of \$5,000.00.

11 Dennis Reefer was the investigator at Dymant
12 Investigations most familiar with the facts and investigative
13 status of this case. Mr. Reefer is now working for himself
14 (Reefer Investigations) therefore counsel for CHAPPELL requests
15 the investigator be changed.

16 Counsel requests this Court grant Reefer Investigations
17 investigative fees in the amount of \$5,000.00. Further,
18 counsel requests that contact visits be granted.

19 POINTS AND AUTHORITIES

20 N.R.S. 7.135 states:

21 "The attorney appointed by a magistrate or
22 district court to represent a defendant is entitled,
23 in addition to the fee provided by NRS 7.125 for his
24 services, to be reimbursed for expenses reasonably
25 incurred by him in representing the defendant and may
26 employ, subject to the prior approval of the
27 magistrate or the district court in an ex parte
28 application, such investigative, expert or other
services as may be necessary for an adequate defense.
Compensation to any person furnishing such
investigative, expert or other services must not

David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

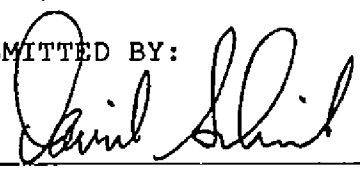
1 exceed \$300, exclusive of reimbursement for expenses
2 reasonably incurred, unless payment in excess of that
limit is:

3 1. Certified by the trial judge of the
4 court...as necessary to provide fair
5 compensation for services of an unusual
character or duration...."

6 Based on the facts set forth and Counsel's affidavit
7 attached hereto, it is respectfully requested that the
8 investigator be changed from Dyment Investigations to Reefer
9 Investigations, and that fees in excess of the statutory limit
10 be granted in the amount of \$5,000.00

11 DATED this 14 day of October, 2002.

12 SUBMITTED BY:

13 
14 DAVID M. SCHIECK, ESQ.

15 AFFIDAVIT OF COUNSEL

16 STATE OF NEVADA)
17) ss:
COUNTY OF CLARK)

18 DAVID SCHIECK, being first duly sworn, deposes and says:

19 That Affiant is an attorney duly licensed to practice law
20 in the State of Nevada and is counsel for CHAPPELL.

21 That this Court appointed Dyment Investigations as
22 investigator and granted fees in excess of the statutory limit
23 in the amount of \$5,000.00.

24 That a change of investigators is necessary as Dennis
25 Reefer and Dyment Investigations have separated. Mr. Reefer
26 was the investigator most familiar with the facts and
27
28

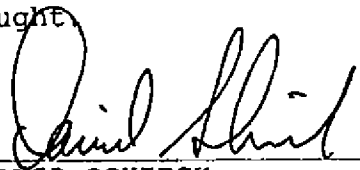
David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

1 investigative status of the case.

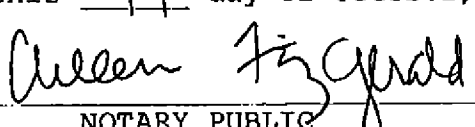
2 That Affiant requests this Court appoint Reefer
3 Investigations and grant fees in the amount of \$5,000.00 to
4 Reefer Investigations.

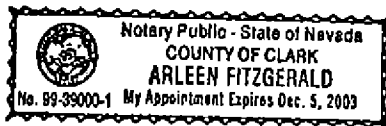
5 Affiant requests that this Court grant contact visits for
6 the investigator.

7 Further, Affiant sayeth naught.

8
9 
10 DAVID SCHIECK

11 SUBSCRIBED AND SWORN to before me
12 this 14 day of October, 2002.

13 
14 NOTARY PUBLIC



ORIGINAL

FILED

OCT 17 3 38 PM '02

Shirley B. Pungina
CLERK

EXPR
DAVID M. SCHIECK, ESQ.
Nevada Bar No. 0824
302 East Carson Ave., Ste. 600
Las Vegas NV 89101
702-382-1844

Attorney for CHAPPELL

DISTRICT COURT

CLARK COUNTY, NEVADA

* * *

THE STATE OF NEVADA,	)	CASE NO. C 131341
	)	DEPT. NO. XI
Plaintiff,)	
)	
vs.)	
)	
JAMES MONTELL CHAPPELL,)	
)	
Defendant.	)	DATE: N/A
	)	TIME: N/A

EX PARTE ORDER GRANTING CHANGE OF INVESTIGATOR, FEES
IN EXCESS OF STATUTORY LIMIT, AND CONTACT VISITS

Based on the Ex Parte Motion to Change Investigator, for
Fees in Excess of Statutory Limit, and Contact Visits, a copy
submitted herewith, the Court being fully advised in the
premises, and good cause appearing

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the
investigator is changed from Dyment Investigations to Reefer
Investigations through District Court proceedings.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that fees in
excess of the statutory limit shall not exceed \$5,000.00
exclusive of reimbursement for expenses reasonably incurred

RECEIVED

OCT 17 2002

COUNTY CLERK

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\$16

David M. Schieck

Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

13-16-02 4:08:42 PM

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OCT 15 2002

COUNTY CLERK

David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

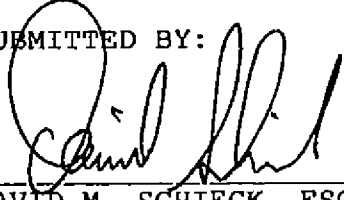
1 pursuant to NRS 7.135, unless further ordered by the Court.,

2 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that contact
3 visits are allowed for Dennis Reefer of Reefer Investigations.

4 DATED and DONE: OCTOBER 15, 2002

5
6 
DISTRICT COURT JUDGE

7
8 SUBMITTED BY:

9 
10 DAVID M. SCHIECK, ESQ.
11
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1 DAVID M. SCHIECK, ESQ.
 2 Nevada Bar No. 0824
 3 302 East Carson Ave., #600
 4 Las Vegas NV 89101
 702-382-1844
 Attorney for CHAPPELL

Nov 18 4 00 PM '02

Shirley D. L. Ingerson
 CLERK

DISTRICT COURT

CLARK COUNTY, NEVADA

* * *

8 JAMES MONTELL CHAPPELL,	)	CASE NO. C 131341
	)	DEPT. NO. XI
9 Petitioner,)	
)	
10 vs.)	
)	
11 THE STATE OF NEVADA,)	
)	
12 Respondent.	)	DATE: N/A
	)	TIME: N/A

EX PARTE APPLICATION TO UNSEAL PSI

15 DAVID M. SCHIECK, ESQ. hereby requests this Court order
 16 the District Court Clerk to unseal the PSI of Earnestine Harvey
 17 in State of Nevada v. Earnestine Harvey, Case No. C90300, and
 18 allow said PSI to be reviewed by DAVID M. SCHIECK, ESQ. or a
 19 representative of Reefer Investigations, court appointed
 20 investigators for CHAPPELL.

21 This request is made and based on the Affidavit of David
 22 M. Schieck attached hereto.

23 DATED: Nov. 18, 2002

SUBMITTED BY:

David M. Schieck
 DAVID M. SCHIECK, ESQ.

David M. Schieck
 Attorney At Law
 302 E. Carson Ave., Ste. 600
 Las Vegas, NV 89101
 (702) 382-1844

COUNTY CLERK

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David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

AFFIDAVIT OF DAVID M. SCHIECK

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

DAVID M. SCHIECK, being first duly sworn, deposes and
says:

That Affiant is an attorney duly licensed to practice law
in the State of Nevada and is court appointed to represent
JAMES CHAPPELL in his capital post conviction proceedings.
That this Court appointed Reefer Investigations as investigator
for the post conviction proceedings.

That this Court granted Affiant time to prepare and submit
affidavits from witnesses on behalf of Mr. Chappell. One of
the witnesses is Earnestine Harvey. That neither Affiant nor
his investigator have been able to locate and interview Ms.
Harvey.

That Affiant has been informed and believes the file in
Case No. 89-C-090300, State v. Earnestine Harvey, contains a
PSI of Ms. Harvey's and that it is sealed. Affiant believes
Ms. Harvey's PSI may provide information that allows Affiant
and/or his investigator to find her.

That Affiant requests this Court issue an Order to the

. . .

. . .

. . .

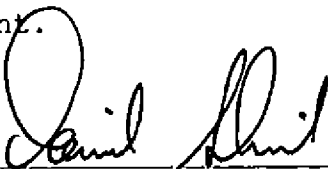
. . .

. . .

David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844


1 Clerk of the Court to unseal the PSI in Case No. C90300 and
2 allow Affiant or his investigator to view the PSI in order to
3 obtain information necessary to locate Ms. Harvey.

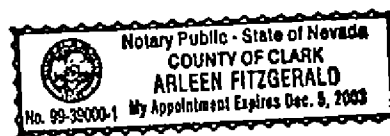
4 FURTHER, Affiant sayeth naught.

5 
6
7 DAVID M. SCHIECK

8 SUBSCRIBED AND SWORN to before me

9 this 18 day of November, 2002.

10 
11 NOTARY PUBLIC



DAVID M. SCHIECK, ESQ.
Nevada Bar No. 0824
302 East Carson Ave., #600
Las Vegas NV 89101
702-382-1844
Attorney for CHAPPELL

FILED

DEC 3 4 21 PM '02

Shirley E. Ruggins

DISTRICT COURT CLERK

CLARK COUNTY, NEVADA

* * *

JAMES MONTELL CHAPPELL,	)	CASE NO. C 131341
	)	DEPT. NO. XI
Petitioner,)	
)	
vs.)	
)	
THE STATE OF NEVADA,)	
)	
Respondent.	)	DATE: N/A
	)	TIME: N/A

EX PARTE ORDER TO UNSEAL PSI

Based on the Ex Parte Application to Unseal PSI, a copy of which is submitted herewith, the Court being fully advised in the premises, and good cause appearing

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Clerk of the Court unseal the PSI of Earnestine Harvey in the file, State of Nevada v. Earnestine Harvey, Case No. 89 C 090300 and allow the PSI to be reviewed by DAVID M. SCHIECK, ESQ. or a representative of Reefer Investigations.

DATED: *10th day of March 2002*

Submitted by:

Michael P. Dwyer
DISTRICT COURT JUDGE*David M. Schieck*
DAVID M. SCHIECK, ESQ.

David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

FILED
DEC 03 2002

RECEIVED

COPIES

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EXPT
DAVID M. SCHIECK, ESQ.
Nevada Bar No. 0824
302 E. Carson Ste. 600
Las Vegas, NV 89101
702-382-1844
Attorney for CHAPPELL

Dec 11 3 01 PM '02

DISTRICT COURT
CLARK COUNTY, NEVADA

* * *

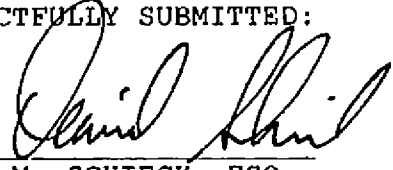
THE STATE OF NEVADA,	)	CASE NO. C 131341
	)	DEPT. NO. XI
Plaintiff,)	
)	
vs.)	
)	
JAMES M. CHAPPELL,)	
)	
Defendant.	)	DATE: N/A
	)	TIME: N/A

EX PARTE MOTION FOR INTERIM PAYMENT
OF EXCESS ATTORNEY'S FEES
IN POST CONVICTION PROCEEDINGS

COMES NOW, DAVID M. SCHIECK, ESQ., attorney for JAMES M. CHAPPELL, and moves this Court for an Order authorizing interim payment of attorney fees in excess of the statutory allowance.

This Motion is made and based on the provisions of NRS 7.125, the request of the State Public Defender, and the Affidavit of Counsel attached hereto.

Dated this 11 day of December, 2002.

RESPECTFULLY SUBMITTED:

BY
DAVID M. SCHIECK, ESQ.

David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

COUNTY CLERK

DEC 11 2002

516

David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

STATEMENT OF FACTS

DAVID M. SCHIECK, ESQ. was appointed on November 15, 1999 to represent JAMES CHAPPELL (hereinafter referred to as CHAPPELL) for his post conviction proceedings.

Due to difficulty paying large sums at the completion of the case, the State Public Defender's Office has requested court appointed attorneys in post conviction proceedings submit bills on an interim basis every quarter. This request for payment of attorney's fees and costs in the amount of \$1,521.16 is for the quarter ending September 30, 2002. (July, 2000 - \$2,872.50; May, 2001 - \$3,023.44; April, 2002 -\$2,621.86; and June, 2002 - \$1,728.90)

The compensation for attorney's fees allowed in post conviction proceedings is not to exceed \$750.00 pursuant to statute. Counsel's billing statement is attached hereto and reflects attorneys fees in the amount of \$1,380.00 and costs in the amount of \$141.16.

POINTS AND AUTHORITIES

NRS 7.125 provides, in pertinent part, as follows:

"1. ...an attorney other than a public defender appointed by a magistrate or a district court to represent or defend a defendant at any stage of the criminal proceedings from the defendant's initial appearance...through the appeal, if any, is entitled to receive a fee for court appearances and other time reasonably spent on the matter to which the appointment is made, \$75 per hour....

. . .

3. An attorney appointed by a district court to represent an indigent petitioner for a writ of habeas

David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

1 corpus or other post-conviction relief...is entitled
2 to be paid a fee not to exceed \$750.

3 4. If the appointing court because of:

4 (a) The complexity of a case of the number of
5 its factual or legal issues;

6 (b) The severity of the offense;

7 (c) The time necessary to provide an adequate
8 defense; or

9 (d) Other special circumstances,

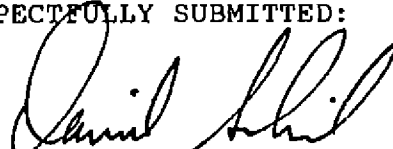
10 deems it appropriate to grant a fee in excess of the
11 applicable maximum, the payment must be made, but
12 only if the court in which the representation was
13 rendered certifies that the amount of the excess
14 payment is both reasonable and necessary and the
15 payment is approved by the presiding judge of the
16 judicial district in which the attorney was
17 appointed....."

18 CONCLUSION

19 It is respectfully requested that this Court certify that
20 the fees in excess of the statutory limit are reasonable, and
21 grant interim payment in the amount of \$1,521.16.

22 Dated this 11 day of December, 2002.

23 RESPECTFULLY SUBMITTED:

24 BY 
25 DAVID M. SCHIECK, ESQ.

David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

AFFIDAVIT OF DAVID M. SCHIECK

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

DAVID M. SCHIECK, being first duly sworn, deposes and
says:

That Affiant is an attorney duly licensed to practice law
in the State of Nevada and court appointed attorney for
CHAPPELL.

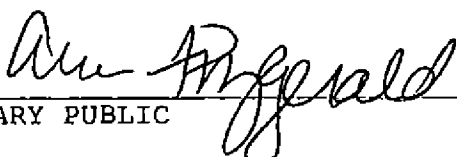
That statutory guidelines proscribe a cap of \$750.00 in
fees for post conviction proceedings. That the State Public
Defender's Office has requested that payment be made on a
quarterly basis instead of when the case is final. That
Affiant has submitted herewith a billing statement through the
quarter ending September 30, 2002 in the amount of \$1,521.16.

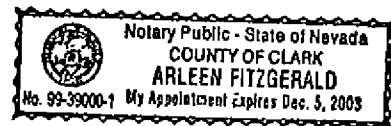
Therefore Affiant requests that this Court grant the
instant Motion for interim payment of excess fees.

Further Affiant sayeth naught.


DAVID M. SCHIECK

SUBSCRIBED and SWORN to before me
this 11 day of December, 2002.


NOTARY PUBLIC



Date 12/10/02
Time 3:19 pm

DAVID M. SCHIECK
Client Billing Worksheet

Page 1

Selection Criteria

Date range :Earliest through 9/30/02
Slip numbers :All
Timekeeper :All
Client :CHAPPELL.PCR :PECKHAM.PCR :ROYSMITH.PCR
:WESLEY.PCR
Activity :All
Custom Fields :All
Reference :All
Slip status :Billed slips and transactions excluded
Other options :
Print Bills that are "paid in full" :Yes
Include transactions outside date range :Yes
Print Bills with no activity :Yes

Nickname 1 : CHAPPELL.PCR Nickname 2: 35
Address : JAMES CHAPPELL, #52338
ESP

In reference to: CHAPPELL V. WARDEN
PCR
COURT APPOINTED

Rounding : None
Full Precision : No

Last bill :
Last charge : 9/28/02
Last payment : 8/29/02 Amount : \$1,728.90
Arrangement : Time Charges: From slips.
Expenses: From slips.

Date/Slip#	Description	HOURS/RATE	AMOUNT	TOTAL
11/15/99	DMS / CACA	1.00	75.00	
#37	COURT APPEARANCE - COURT APPOINTMENT	75.00		
11/15/99	DMS / P	0.20	15.00	
#38	PREPARE ORDER	75.00		
11/17/99	DMS / RVW	0.50	37.50	
#39	REVIEW SUPREME COURT DECISION	75.00		
11/18/99	DMS / LC	0.20	15.00	
#40	LETTER TO CLIENT	75.00		
12/9/99	DMS / TCF	0.20	15.00	
#41	TELEPHONE CALL FROM BROOKS	75.00		
12/9/99	DMS / C	0.30	22.50	
#42	CONFERENCE WITH BROOKS	75.00		

Date 12/10/02
Time 3:19 pm

DAVID M. SCHIECK
Client Billing Worksheet

Page 2

CHAPPELL.PCR :JAMES CHAPPELL, #52338 (continued)

Date/Slip#	Description	HOURS/RATE	AMOUNT	TOTAL
12/9/99	DMS / RVW	1.00	75.00	
#43	REVIEW ROA	75.00		
12/11/99	DMS / RVW	1.00	75.00	
#44	REVIEW ROA	75.00		
12/13/99	DMS / TCF	0.20	15.00	
#45	TELEPHONE CALL FROM BROOKS	75.00		
12/13/99	DMS / RVW	1.00	75.00	
#46	REVIEW ROA	75.00		
12/13/99	DMS / C	0.50	37.50	
#47	CONFERENCE WITH BROOKS	75.00		
12/14/99	DMS / RVW	1.00	75.00	
#48	REVIEW ROA	75.00		
12/15/99	DMS / CC	1.50	112.50	
#49	CONFERENCE WITH CLIENT	75.00		
12/17/99	DMS / RVW	1.50	112.50	
#50	REVIEW ROA	75.00		
12/18/99	DMS / RVW	1.50	112.50	
#51	REVIEW TRANSCRIPTS	75.00		
12/18/99	DMS / PM	1.50	112.50	
#52	PREPARE MOTION FOR INVESTIGATOR	75.00		
12/22/99	DMS / RVW	0.50	37.50	
#53	REVIEW PHOTOS	75.00		
12/22/99	DMS / C	0.20	15.00	
#54	CONFERENCE WITH BROOKS	75.00		
1/8/00	DMS / RVW	1.00	75.00	
#55	REVIEW RECORDS	75.00		
1/19/00	DMS / CASH	1.00	75.00	
#56	COURT APPEARANCE - STATUS HEARING	75.00		
1/23/00	DMS / RVW	1.00	75.00	
#57	REVIEW TRIAL DOCUMENTS	75.00		
1/29/00	DMS / RVW	2.00	150.00	
#58	REVIEW TRANSCRIPTS	75.00		

Date 12/10/02
Time 3:19 pm

DAVID M. SCHIECK
Client Billing Worksheet

Page 3

CHAPPELL.PCR :JAMES CHAPPELL, #52338 (continued)

Date/Slip#	Description	HOURS/RATE	AMOUNT	TOTAL
1/31/00 #59	DMS / TCT TELEPHONE CALL TO BROOKS	0.20 75.00	15.00	
2/1/00 #60	DMS / RC REVIEW CORRESPONDENCE	0.20 75.00	15.00	
2/1/00 #61	DMS / RVW REVIEW TRANSCRIPTS	2.00 75.00	150.00	
2/10/00 #62	DMS / CC CONFERENCE WITH CLIENT	2.00 75.00	150.00	
3/10/00 #100	DMS / RC REVIEW CORRESPONDENCE	0.20 75.00	15.00	
3/10/00 #101	DMS / LC LETTER TO CLIENT	0.20 75.00	15.00	
3/16/00 #106	DMS / RVW REVIEW TRANSCRIPTS	1.00 75.00	75.00	
3/17/00 #103	DMS / RVW REVIEW TRANSCRIPTS	1.00 75.00	75.00	
3/29/00 #114	DMS / RC REVIEW CORRESPONDENCE	0.20 75.00	15.00	
5/27/00 #131	DMS / RVW REVIEW TRANSCRIPTS/RECORD	3.00 75.00	225.00	
5/28/00 #132	DMS / P PREPARE SUPP P&A'S	2.50 75.00	187.50	
6/4/00 #145	DMS / P PREPARE SUPP P/A'S	2.00 75.00	150.00	
6/7/00 #142	DMS / P PREPARE SUPP P/A'S	2.00 75.00	150.00	
6/16/00 #140	DMS / P PREPARE SUPP P/A'S	2.00 75.00	150.00	
6/27/00 #168	DMS / CA COURT APPEARANCE - RESET BRIEFING SCHEDULE	1.00 75.00	75.00	
9/1/00 #204	DMS / RVW REVIEW TRIAL TRANSCRIPTS	2.00 75.00	150.00	

Date 12/10/02
Time 3:19 pm

DAVID M. SCHIECK
Client Billing Worksheet

Page 4

CHAPPELL.PCR :JAMES CHAPPELL, #52338 (continued)

Date/Slip#	Description	HOURS/RATE	AMOUNT	TOTAL
9/3/00 #228	DMS / RVW REVIEW/SUMMARIZE TRANSCRIPTS	2.00 75.00	150.00	
9/7/00 #226	DMS / RVW REVIEW TRANSCRIPTS	1.50 75.00	112.50	
9/8/00 #222	DMS / P PREPARE SUPP P/A'S	2.00 75.00	150.00	
9/16/00 #249	DMS / RVW REVIEW FILE RE: STATUS	1.00 75.00	75.00	
11/1/00 #307	DMS / RVW REVIEW TRANSCRIPTS	2.50 75.00	187.50	
11/2/00 #309	DMS / RVW REVIEW TRANSCRIPTS	1.50 75.00	112.50	
11/3/00 #310	DMS / RVW REVIEW TRANSCRIPTS	2.00 75.00	150.00	
11/4/00 #333	DMS / RVW REVIEW TRANSCRIPTS	1.00 75.00	75.00	
11/6/00 #335	DMS / CASH COURT APPEARANCE - STATUS HEARING	1.00 75.00	75.00	
11/6/00 #336	DMS / R RESEARCH IMPROPER CLOSING ARGUMENT	1.00 75.00	75.00	
11/8/00 #342	DMS / RC REVIEW CORRESPONDENCE	0.20 75.00	15.00	
11/8/00 #343	DMS / LC LETTER TO CLIENT	0.20 75.00	15.00	
11/9/00 #322	DMS / RVW REVIEW TRANSCIRPTS	1.00 75.00	75.00	
11/12/00 #348	DMS / P PREPARE SUPP P/A'S	2.00 75.00	150.00	
11/14/00 #352	DMS / RVW REVIEW CLOSING ARGUMENT TRANSCRIPT	1.50 75.00	112.50	

Date 12/10/02
Time 3:19 pm

DAVID M. SCHIECK
Client Billing Worksheet

Page 5

CHAPPELL.PCR :JAMES CHAPPELL, #52338 (continued)

Date/Slip#	Description	HOURS/RATE	AMOUNT	TOTAL
11/20/00 #359	DMS / R RESEARCH OBJECTION	1.00 75.00	75.00	
11/25/00 #364	DMS / RVW REVIEW TRANSCRIPTS	2.00 75.00	150.00	
12/1/00 #379	DMS / LC LETTER TO CLIENT	0.20 75.00	15.00	
12/7/00 #404	DMS / CC CONFERENCE WITH CLIENT	2.00 75.00	150.00	
12/13/00 #389	DMS / RC REVIEW CORRESPONDENCE	0.20 75.00	15.00	
12/13/00 #390	DMS / LC LETTER TO CLIENT	0.20 75.00	15.00	
12/20/00 #407	DMS / RC REVIEW CORRESPONDENCE	0.20 75.00	15.00	
12/20/00 #408	DMS / LC LETTER TO CLIENT	0.20 75.00	15.00	
1/27/01 #466	DMS / RVW REVIEW BROOKS DOCUMENTS	2.00 75.00	150.00	
1/27/01 #467	DMS / LC LETTER TO CLIENT	0.20 75.00	15.00	
1/27/01 #468	DMS / P PREPARE CLIENT'S BOX	0.50 75.00	37.50	
2/6/01 #497	DMS / TCFC TELEPHONE CALL FROM CLIENT	0.20 75.00	15.00	
2/12/01 #502	DMS / CASH COURT APPEARANCE - STATUS HEARING	1.00 75.00	75.00	
3/8/01 #544	DMS / P PREPARE REVISED SUPP P/A'S	2.00 75.00	150.00	
3/19/01 #577	DMS / RC REVIEW CORRESPONDENCE	0.20 75.00	15.00	
3/20/01 #585	DMS / P PREPARE SUPP P/A'S	2.00 75.00	150.00	

Date 12/10/02
Time 3:19 pm

DAVID M. SCHIECK
Client Billing Worksheet

Page 6

CHAPPELL.PCR :JAMES CHAPPELL, #52338 (continued)

Date/Slip#	Description	HOURS/RATE	AMOUNT	TOTAL
3/26/01 #635	DMS / RC REVIEW CORRESPONDENCE	0.20 75.00	15.00	
5/1/01 #742	DMS / CASH COURT APPEARANCE - STATUS HEARING	1.00 75.00	75.00	
5/8/01 #796	DMS / R RESEARCH SUPP P/A'S	1.50 75.00	112.50	
6/7/01 #1059	DMS / CC CONFERENCE WITH CLIENT	2.00 75.00	150.00	
6/7/01 #1060	DMS / RVW REVIEW TRANSCRIPTS	1.00 75.00	75.00	
6/12/01 #1082	DMS / CASH COURT APPEARANCE - STATUS HEARING	1.00 75.00	75.00	
6/26/01 #1170	DMS / RC REVIEW CORRESPONDENCE	0.20 75.00	15.00	
7/5/01 #1220	DMS / R RESEARCH SUPP PETITION	2.00 75.00	150.00	
7/25/01 #1360	DMS / R RESEARCH CLOSING ARGUMENT	0.50 75.00	37.50	
7/26/01 #1364	DMS / CASH COURT APPEARANCE - STATUS HEARING	1.00 75.00	75.00	
8/23/01 #1480	DMS / CA COURT APPEARANCE - STATUS HEARING	1.00 75.00	75.00	
9/13/01 #1605	DMS / CASH COURT APPEARANCE - STATUS HEARING	1.00 75.00	75.00	
11/1/01 #1916	DMS / CASH COURT APPEARANCE - STATUS HEARING	1.00 75.00	75.00	
12/13/01 #2064	DMS / CASH COURT APPEARANCE - STATUS	1.00 75.00	75.00	

Date 12/10/02
Time 3:19 pm

DAVID M. SCHIECK
Client Billing Worksheet

Page 7

CHAPPELL.PCR :JAMES CHAPPELL, #52338 (continued)

Date/Slip#	Description	HOURS/RATE	AMOUNT	TOTAL
#2064..	HEARING			
1/17/02	DMS / RVW	2.00	150.00	
#2157	REVIEW FILES	75.00		
1/17/02	DMS / R	1.00	75.00	
#2158	RESEARCH ISSUES	75.00		
1/17/02	DMS / P	2.00	150.00	
#2159	PREPARE SUPP P/A'S	75.00		
1/17/02	DMS / R	1.00	75.00	
#2161	RESEARCH ISSUES	75.00		
1/17/02	DMS / P	2.00	150.00	
#2162	PREPARE SUPP P/A'S	75.00		
2/5/02	DMS / CASH	1.00	75.00	
#2414	COURT APPEARANCE - STATUS HEARING	75.00		
3/5/02	DMS / CASH	1.00	75.00	
#2638	COURT APPEARANCE - STATUS HEARING	75.00		
3/5/02	DMS / P	1.50	112.50	
#2639	PREPARE SUPP P/A'S	75.00		
3/6/02	DMS / C	0.20	15.00	
#2654	CONFERENCE WITH BROOKS	75.00		
3/6/02	DMS / P	2.00	150.00	
#2655	PREPARE SUPP P/A'S	75.00		
3/6/02	DMS / R	2.00	150.00	
#2656	RESEARCH SUPP P/A'S	75.00		
3/6/02	DMS / P	2.50	187.50	
#2660	PREPARE SUPP P/A'S	75.00		
3/26/02	DMS / CASH	1.00	75.00	
#2836	COURT APPEARANCE - STATUS HEARING	75.00		
4/8/02	DMS / P	2.00	150.00	
#3061	PREPARE SUPP P/A'S	75.00		

Date 12/10/02
Time 3:19 pm

DAVID M. SCHIECK
Client Billing Worksheet

Page 8

CHAPPELL.PCR :JAMES CHAPPELL, #52338 (continued)

Date/Slip#	Description	HOURS/RATE	AMOUNT	TOTAL
4/9/02	DMS / CASH	1.00	75.00	
#3062	COURT APPEARANCE - STATUS HEARING	75.00		
4/11/02	DMS / P	2.00	150.00	
#3044	PREPARE SUPP P/A'S	75.00		
4/11/02	DMS / P	2.00	150.00	
#3048	PREPARE SUPP P/A'S	75.00		
4/13/02	DMS / P	2.00	150.00	
#3015	PREPARE AMD REVISE SUPP P/A'S	75.00		
4/15/02	DMS / R	2.00	150.00	
#3024	RESEARCH RACIAL ISSUES	75.00		
4/15/02	DMS / TCT	0.20	15.00	
#3025	TELEPHONE CALL TO FED. PUBLIC DEFENDER	75.00		
4/15/02	DMS / P	4.00	300.00	
#3026	PREPARE SUPP P/A'S	75.00		
4/17/02	DMS / RVW	1.00	75.00	
#3030	REVIEW FILES	75.00		
4/17/02	DMS / C	1.00	75.00	
#3031	CONFERENCE ELY STATE PRISON (REFUSED)	75.00		
4/18/02	DMS / CASH	1.00	75.00	
#3005	COURT APPEARANCE - STATUS HEARING	75.00		
4/18/02	DMS / P	2.00	150.00	
#3006	PREPARE AND REVISE SUPP P/A'S	75.00		
4/18/02	DMS / LC	0.20	15.00	
#3007	LETTER TO CLIENT	75.00		
4/30/02	DMS / RC	0.20	15.00	
#3142	REVIEW CORRESPONDENCE	75.00		
4/30/02	DMS / LC	0.20	15.00	
#3143	LETTER TO CLIENT	75.00		
6/20/02	DMS / RVW	0.50	37.50	
#3611	REVIEW STATE'S OPPOSITION	75.00		

Date 12/10/02
Time 3:19 pm

DAVID M. SCHIECK
Client Billing Worksheet

Page 9

CHAPPELL.PCR :JAMES CHAPPELL, #52338 (continued)

Date/Slip#	Description	HOURS/RATE	AMOUNT	TOTAL
6/20/02	DMS / C	0.20	15.00	
#3626	CONFERENCE WITH BROOKS	75.00		
6/24/02	DMS / LC	0.20	15.00	
#3649	LETTER TO CLIENT	75.00		
7/24/02	DMS / TCT	0.20	15.00	
#3908	TELEPHONE CALL TO BROOKS	75.00		
7/25/02	DMS / P	1.00	75.00	
#3911	PREPARE ARGUMENT	75.00		
7/25/02	DMS / TCT	0.20	15.00	
#3912	TELEPHONE CALL TO BROOKS	75.00		
7/25/02	DMS / CA	1.00	75.00	
#3913	COURT APPEARANCE - ARGUMENT	75.00		
7/25/02	DMS / P	0.50	37.50	
#3914	PREPARE ORDER TO TRANSPORT	75.00		
7/25/02	DMS / LC	0.20	15.00	
#3915	LETTER TO CLIENT	75.00		
7/30/02	DMS / TCF	0.20	15.00	
#4003	TELEPHONE CALL FROM BROOKS	75.00		
7/30/02	DMS / P	0.20	15.00	
#4004	PREPARE SUBPOENAS	75.00		
7/30/02	DMS / L	0.20	15.00	
#4005	LETTER TO BROOKS AND EWING	75.00		
8/7/02	DMS / CC	1.50	112.50	
#4071	CONFERENCE WITH CLIENT	75.00		
8/24/02	DMS / RC	0.20	15.00	
#4198	REVIEW CORRESPONDENCE	75.00		
8/24/02	DMS / P	1.00	75.00	
#4199	PREPARE QUESTIONS FOR BROOKS	75.00		
9/10/02	DMS / P	2.00	150.00	
#4367	PREPARE FOR EVID/HEARING	75.00		
9/11/02	DMS / RVW	2.00	150.00	
#4342	REVIEW TRANSCRIPTS AND BRIEFS	75.00		

Date 12/10/02
Time 3:19 pm

DAVID M. SCHIECK
Client Billing Worksheet

Page 10

CHAPPELL.PCR :JAMES CHAPPELL, #52338 (continued)

Date/Slip#	Description	HOURS/RATE	AMOUNT	TOTAL
9/12/02 #4344	DMS / TCF TELEPHONE CALL FROM BROOKS (2 TIMES)	0.40 75.00	30.00	
9/13/02 #4354	DMS / P PREPARE FOR EVID/HEARING	1.50 75.00	112.50	
9/13/02 #4355	DMS / CA COURT APPEARANCE - EVID/HEARING	3.00 75.00	225.00	
9/14/02 #4377	DMS / LC LETTER TO CLIENT	0.20 75.00	15.00	
9/16/02 #4380	DMS / TCF TELEPHONE CALL FROM BROOKS	0.20 75.00	15.00	
9/17/02 #4426	DMS / PM PREPARE MOTION FOR INVESTIGATOR	1.50 75.00	112.50	
9/17/02 #4427	DMS / L LETTER RE: TRANSCRIPTS	0.20 75.00	15.00	
9/17/02 #4428	DMS / RC REVIEW CORRESPONDENCE	0.20 75.00	15.00	
9/24/02 #4473	DMS / TCF TELEPHONE CALL FROM REEFER	0.20 75.00	15.00	
9/26/02 #4493	DMS / RC REVIEW CORRESPONDENCE	0.20 75.00	15.00	
9/26/02 #4494	DMS / LC LETTER TO CLIENT	0.20 75.00	15.00	
9/28/02 #4522	DMS / LC LETTER TO CLIENT	0.20 75.00	15.00	
TOTAL BILLABLE TIME CHARGES		148.50	18.4 HRS	\$11,137.50

Date/Slip#	Description	QTY/PRICE	
7/13/00 #179	DMS / \$X PHOTOCOPIES	18 0.10	1.80
12/20/00 #422	DMS / \$X PHOTOCOPIES (DIAL REPROGRAPHICS)	1 257.29	257.29

Date 12/10/02
Time 3:19 pm

DAVID M. SCHIECK
Client Billing Worksheet

Page 11

CHAPPELL.PCR :JAMES CHAPPELL, #52338 (continued)

Date/Slip#	Description	QTY/PRICE	
1/29/01 #481	DMS / \$PO POSTAGE (UPS)	1 9.16	9.16
2/6/01 #607	DMS / \$LDTC LONG DISTANCE TELEPHONE CALL	1 2.69	2.69
5/17/01 #1020	DMS / \$X PHOTOCOPIES	28 0.10	2.80
6/6/01 #1026	DMS / \$C COST FOR TRAVEL EXPENSES (ROOM, CAR, GAS)	1 112.76	112.76
6/11/01 #1206	DMS / \$X PHOTOCOPIES	13 0.10	1.30
4/11/02 #2888	DMS / \$X PHOTOCOPIES	36 0.10	3.60
4/17/02 #3305	DMS / \$C COST FOR TRAVEL EXPENSES (CAR, ROOM, GAS)	1 79.00	79.00
4/30/02 #2891	DMS / \$X PHOTOCOPIES	148 0.10	14.80
6/25/02 #3683	DMS / \$X PHOTOCOPIES	40 0.10	4.00
7/5/02 #3963	DMS / \$X PHOTOCOPIES	40 0.10	4.00
7/31/02 #3974	DMS / \$X PHOTOCOPIES	119 0.10	11.90
8/5/02 #4266	DMS / \$C COST FOR TRAVEL EXPENSES	1 125.26	125.26
			141.16
TOTAL BILLABLE COSTS			\$630.36
TOTAL NEW CHARGES			\$11,767.86
PAYMENTS/REFUNDS/CREDITS			
10/26/00 Payment - thank you		(2,872.50)	
7/23/01 Payment - thank you		(3,023.44)	

Date 12/10/02
Time 3:19 pm

DAVID M. SCHIECK
Client Billing Worksheet

Page 12

CHAPPELL, PCR : JAMES CHAPPELL, #52338 (continued)

5/8/02 Payment - thank you	(2,002.50)
5/20/02 Payment - thank you	(619.36)
8/29/02 Payment - thank you	(1,728.90)

TOTAL PAYMENTS/REFUNDS/CREDITS	(\$10,246.70)
--------------------------------	---------------

NEW BALANCE

New Current period	1,521.16
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TOTAL NEW BALANCE	\$1,521.16
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4 HRS IN CT
14.4 HRS OUT CT
EXP

300 -
1080.00
141.16

\$ 1521.16

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ORDR
DAVID M. SCHIECK, ESQ.
Nevada Bar No. 0824
302 E. Carson, #600
Las Vegas, NV 89101
702-382-1844

FILED

Nov 29 4 02 PM '99

DISTRICT COURT
CLARK COUNTY, NEVADA

Whitley L. Runyon
CLERK

* * *

THE STATE OF NEVADA,

Plaintiff,

vs.

JAMES M. CHAPPELL,

Defendant.

CASE NO. C131341
DEPT. NO. VII

AMENDED ORDER
APPOINTING COUNSEL

DATE: 11-15-99
TIME: 9:00 a.m.

The above entitled matter having come before the Court on the 15th day of November, 1999, DAVID M. SCHIECK, ESQ. appearing, and a representative of the District Attorney's Office appearing on behalf of The State of Nevada, the Court being fully advised in the premises, and good cause appearing therefor,

IT IS HEREBY ORDERED that DAVID M. SCHIECK, ESQ. be appointed to represent CHAPPELL for post conviction relief.

IT IS FURTHER ORDERED that the Public Defender turn over all files including attorney work product to David Schieck.

DATED AND DONE: 11-29-99

MARK GIBSON

DISTRICT COURT JUDGE

SUBMITTED BY:

By:

David M. Schieck
DAVID M. SCHIECK, ESQ.

1 EXPR
 2 DAVID M. SCHIECK, ESQ.
 Nevada Bar No. 0824
 3 302 E. Carson Ste. 600
 Las Vegas, NV 89101
 4 702-382-1844
 Attorney for CHAPPELL

FILED

DEC 12 3 32 PM '02

Shirley B. Pangloss
 CLERK

DISTRICT COURT

CLARK COUNTY, NEVADA

* * *

8 THE STATE OF NEVADA,)
 9)
 10 Plaintiff,)
 11 vs.)
 12 JAMES M. CHAPPELL,)
 13 Defendant.)

CASE NO. C 131341
 DEPT. NO. XI

ORDER GRANTING INTERIM
 PAYMENT OF EXCESS
 ATTORNEY'S FEES

DATE: N/A
 TIME: N/A

14 Based upon the Ex Parte Motion for Interim Payment of
 15 Excess Attorney's Fees in Post Conviction Proceedings (a copy
 16 of which is submitted herewith), the Court being fully advised
 17 in the premises, and good cause shown, it is hereby

18 ORDERED, ADJUDGED AND DECREED that interim payment of
 19 excess attorneys fees is granted in the amount of \$1,521.16.
 20

21 DATED and DONE: December 12, 2002

22 SUBMITTED BY:

23 *David M. Schieck*
 24 DAVID M. SCHIECK, ESQ.
 25
 26
 27
 28

Shirley B. Pangloss
 DISTRICT COURT JUDGE *Jan*

David M. Schieck
 Attorney At Law
 302 E. Carson Ave., Ste. 600
 Las Vegas, NV 89101
 (702) 382-1844

12-11-02 P03:07

DEC 12 2002

RECEIVED

CLERK

CRIMINAL

FILED

DEC 23 1 18 PM '02

Shirley S. Thompson
CLERK

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)	
)	
Plaintiff,)	
	)	Case No. C131341
vs.	)	Dept. No. VII
	)	Docket No. P
JAMES MONTELL CHAPPELL, #1212860)	
)	
Defendant.)	

Before the Honorable Mark Gibbons

Monday, November 6, 2000, 9:00 a.m.

Reporter's Transcript of Proceedings

HEARING: WRIT

APPEARANCES:

For the State:	LYNN ROBINSON, ESQ. Deputy District Attorney 200 South Third Street Las Vegas, Nevada 89155
----------------	------------------------------------------------------------------------------------------------------

For the Defendant:	DAVID SCHIECK, ESQ. Attorney at Law 302 East Carson Las Vegas, Nevada 89101
--------------------	--------------------------------------------------------------------------------------

REPORTED BY: Renee Silvaggio, C.C.R. No. 122

RECEIVED
DEC 23 2002
COUNTY CLERK

1 Las Vegas, Nevada, Monday, November 6, 2000, 9:00 a.m.

2
3 * * * * *

4
5 THE COURT: Page 15, Case Number C131341,
6 the State of Nevada versus James Chappell.

7 Let the record reflect the presence of David
8 Schieck, representing Mr. Chappell. He's in state prison,
9 so we'll waive his appearance.

10 Lynn Robinson, deputy District Attorney,
11 representing the State.

12 This is on for hearing for a writ.

13 Okay. We did set a briefing schedule, Mr.
14 Schieck, so I assume that wasn't able to be complied with.

15 So if you could tell me what the status is.

16 MR. SCHIECK: The status is that I'm
17 principally ready to file it. I need to make it back up to
18 Ely State Prison to have the defendant sign it.

19 And, unfortunately, I'm starting a trial
20 next week and it's going to run through Thanksgiving, so I'm
21 not going to be able to be up there until the week after
22 Thanksgiving.

23 So I need another 30 days to get this done.

24 THE COURT: Okay. We'll pass the matter for
25 the opening brief for 30 days, which is --

1 THE CLERK: Do you want it on a Friday?

2 THE COURT: It doesn't matter; it's just for
3 filing.

4 THE CLERK: December 4th.

5 THE COURT: That's for filing the opening
6 brief.

7 The State's response then will be due about
8 30 days thereafter.

9 THE CLERK: That will be January 8th.

10 THE COURT: The defense response will be
11 about 30 days -- or the defendant's reply will be about 30
12 days after that.

13 THE CLERK: February 5th.

14 THE COURT: Okay. And then we'll put it on
15 for -- let's see. I don't know -- let's see.

16 I have my February -- why don't we put it on
17 for February 12th at 10:30 a.m. for argument on the hearing
18 on the writ.

19 MR. SCHIECK: Thank you, Your Honor.

20 THE COURT: Thank you.

21

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* * * * *

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5 ATTEST: Full, true and accurate transcript of proceedings.
6
7
8

Renee Silvaggio

9
10 RENEe SILVAGGIO, C.C.R. NO. 122
11 OFFICIAL COURT REPORTER
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(Chappell)

EXPT
DAVID M. SCHIECK, ESQ.
Nevada Bar No. 0824
302 E. Carson Ste. 600
Las Vegas, NV 89101
702-382-1844
Attorney for CHAPPELL

FEB 3 3 12 PM '03

Shirley...
CLERK

DISTRICT COURT

CLARK COUNTY, NEVADA

* * *

THE STATE OF NEVADA,	)	CASE NO. C 131341
	)	DEPT. NO. XI
Plaintiff,)	
)	
vs.)	
)	
JAMES M. CHAPPELL,)	
)	
Defendant.	)	DATE: N/A
	)	TIME: N/A

EX PARTE MOTION FOR INTERIM PAYMENT
OF EXCESS ATTORNEY'S FEES
IN POST CONVICTION PROCEEDINGS

COMES NOW, DAVID M. SCHIECK, ESQ., attorney for JAMES M. CHAPPELL, and moves this Court for an Order authorizing interim payment of attorney fees in excess of the statutory allowance.

This Motion is made and based on the provisions of NRS 7.125, the request of the State Public Defender, and the Affidavit of Counsel attached hereto.

Dated this 31 day of January, 2003.

RESPECTFULLY SUBMITTED:

BY 
DAVID M. SCHIECK, ESQ.

David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

COUNTY CLERK

RECEIVED
FEB 03 2003

S16

David M. Schieck
Attorney At Law
3002 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

Due to difficulty paying large sums at the completion of the case, the State Public Defender's Office has requested court appointed attorneys in post conviction proceedings submit bills on an interim basis every quarter.

This request for payment of attorney's fees and costs in the amount of \$6,625.90 is for two quarters (from July 1, 2002 through December 31, 2002). Counsel's billing is attached hereto and reflects attorneys fees in the amount of \$5,790.00 and costs in the amount of \$835.90.

The compensation for attorney's fees allowed in post conviction proceedings is not to exceed \$750.00 pursuant to statute.

NRS 7.125 provides, in pertinent part, as follows:

"1. ...an attorney other than a public defender appointed by a magistrate or a district court to represent or defend a defendant at any stage of the criminal proceedings from the defendant's initial appearance...through the appeal, if any, is entitled to receive a fee for court appearances and other time reasonably spent on the matter to which the appointment is made, \$75 per hour....

• • •

3. An attorney appointed by a district court to represent an indigent petitioner for a writ of habeas corpus or other post-conviction relief...is entitled to be paid a fee not to exceed \$750.

David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

1 4. If the appointing court because of:

2 (a) The complexity of a case of the number of
3 its factual or legal issues;

4 (b) The severity of the offense;

5 (c) The time necessary to provide an adequate
6 defense; or

7 (d) Other special circumstances,

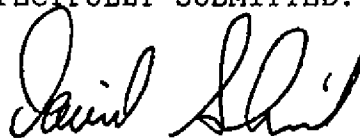
8 deems it appropriate to grant a fee in excess of the
9 applicable maximum, the payment must be made, but
10 only if the court in which the representation was
11 rendered certifies that the amount of the excess
12 payment is both reasonable and necessary and the
13 payment is approved by the presiding judge of the
14 judicial district in which the attorney was
15 appointed...."

16 CONCLUSION

17 It is respectfully requested that this Court certify that
18 the fees in excess of the statutory limit are reasonable, and
19 grant interim payment in the amount of \$6,625.90.

20 Dated this 31 day of January, 2003.

21 RESPECTFULLY SUBMITTED:

22 BY 
23 DAVID M. SCHIECK, ESQ.

David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

AFFIDAVIT OF DAVID M. SCHIECK

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

DAVID M. SCHIECK, being first duly sworn, deposes and
says:


That Affiant is an attorney duly licensed to practice law
in the State of Nevada and court appointed attorney for
CHAPPELL.

That statutory guidelines proscribe a cap of \$750.00 in
fees for post conviction proceedings. That the State Public
Defender's Office has requested that payment be made on a
quarterly basis instead of when the case is final.

That Affiant has submitted herewith a billing statement
for the third and fourth quarters of 2002 in the amount of
\$6,625.90.

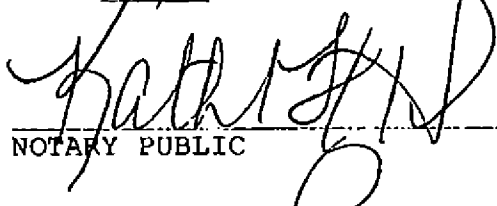
Therefore Affiant requests that this Court grant the
instant Motion for interim payment of excess fees.

Further Affiant sayeth naught.



DAVID M. SCHIECK

SUBSCRIBED and SWORN to before me
this 31 day of January, 2003.



NOTARY PUBLIC



1 ORDER
2 DAVID M. SCHIECK, ESQ.
3 Nevada Bar No. 0824
4 302 E. Carson, #600
5 Las Vegas, NV 89101
6 702-382-1844

FILED

Nov 29 4 42 PM '99

Shirley B. Rungius
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

* * *

8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 JAMES M. CHAPPELL,

12 Defendant.

CASE NO. C131341
DEPT. NO. VII

AMENDED ORDER
APPOINTING COUNSEL

DATE: 11-15-99
TIME: 9:00 a.m.

14 The above entitled matter having come before the Court on
15 the 15th day of November, 1999, DAVID M. SCHIECK, ESQ.
16 appearing, and a representative of the District Attorney's
17 Office appearing on behalf of The State of Nevada, the Court
18 being fully advised in the premises, and good cause appearing
19 therefor,

20 IT IS HEREBY ORDERED that DAVID M. SCHIECK, ESQ. be
21 appointed to represent CHAPPELL for post conviction relief.

22 IT IS FURTHER ORDERED that the Public Defender turn over
23 all files including attorney work product to David Schieck.

24 DATED AND DONE: 11-29-99

25
26 MARK GIBBONS

DISTRICT COURT JUDGE

27 SUBMITTED BY:

28 By:

David M. Schieck
DAVID M. SCHIECK, ESQ.

Date 1/30/03
Time 3:32 pm

DAVID M. SCHIECK
Client Billing Worksheet

Page 1

Selection Criteria

Date range : 7/1/02 through 12/31/02
Slip numbers : All
Timekeeper : All
Client : CHAPPELL.PCR
Activity : All
Custom Fields : All
Reference : All
Slip status : Billed slips and transactions excluded
Other options :
 Print Bills that are "paid in full" : Yes
 Include transactions outside date range : Yes
 Print Bills with no activity : Yes

Nickname 1 : CHAPPELL.PCR Nickname 2: 35
Address : JAMES CHAPPELL, #52338
 ESP
In reference to: CHAPPELL V. WARDEN
 PCR
 COURT APPOINTED
Rounding : None
Full Precision : No

Last bill :
Last charge : 12/24/02
Last payment : 8/29/02 Amount : \$1,728.90
Arrangement : Time Charges: From slips.
 Expenses: From slips.

Date/Slip#	Description	HOURS/RATE	AMOUNT	TOTAL
7/24/02	DMS / TCT	0.20	15.00	
#3908	TELEPHONE CALL TO BROOKS	75.00		
7/25/02	DMS / P	1.00	75.00	
#3911	PREPARE ARGUMENT	75.00		
7/25/02	DMS / TCT	0.20	15.00	
#3912	TELEPHONE CALL TO BROOKS	75.00		
7/25/02	DMS / CA	1.00	75.00	
#3913	COURT APPEARANCE - ARGUMENT	75.00		
7/25/02	DMS / P	0.50	37.50	
#3914	PREPARE ORDER TO TRANSPORT	75.00		
7/25/02	DMS / LC	0.20	15.00	
#3915	LETTER TO CLIENT	75.00		

Date 1/30/03
Time 3:32 pm

DAVID M. SCHIECK
Client Billing Worksheet

Page 2

CHAPPELL.PCR :JAMES CHAPPELL, #52338 (continued)

Date/Slip#	Description	HOURS/RATE	AMOUNT	TOTAL
7/30/02 #4003	DMS / TCF TELEPHONE CALL FROM BROOKS	0.20 75.00	15.00	
7/30/02 #4004	DMS / P PREPARE SUBPOENAS	0.20 75.00	15.00	
7/30/02 #4005	DMS / L LETTER TO BROOKS AND EWING	0.20 75.00	15.00	
8/7/02 #4071	DMS / CC CONFERENCE WITH CLIENT	1.50 75.00	112.50	
8/24/02 #4198	DMS / RC REVIEW CORRESPONDENCE	0.20 75.00	15.00	
8/24/02 #4199	DMS / P PREPARE QUESTIONS FOR BROOKS	1.00 75.00	75.00	
9/10/02 #4367	DMS / P PREPARE FOR EVID/HEARING	2.00 75.00	150.00	
9/11/02 #4342	DMS / RVW REVIEW TRANSCRIPTS AND BRIEFS	2.00 75.00	150.00	
9/12/02 #4344	DMS / TCF TELEPHONE CALL FROM BROOKS (2 TIMES)	0.40 75.00	30.00	
9/13/02 #4354	DMS / P PREPARE FOR EVID/HEARING	1.50 75.00	112.50	
9/13/02 #4355	DMS / CA COURT APPEARANCE - EVID/HEARING	3.00 75.00	225.00	
9/14/02 #4377	DMS / LC LETTER TO CLIENT	0.20 75.00	15.00	
9/16/02 #4380	DMS / TCF TELEPHONE CALL FROM BROOKS	0.20 75.00	15.00	
9/17/02 #4426	DMS / PM PREPARE MOTION FOR INVESTIGATOR	1.50 75.00	112.50	
9/17/02 #4427	DMS / L LETTER RE: TRANSCRIPTS	0.20 75.00	15.00	
9/17/02 #4428	DMS / RC REVIEW CORRESPONDENCE	0.20 75.00	15.00	

CHAPPELL.PCR :JAMES CHAPPELL, #52338 (continued)

Date/Slip#	Description	HOURS/RATE	AMOUNT	TOTAL
9/24/02	DMS / TCF	0.20	15.00	
#4473	TELEPHONE CALL FROM REEFER	75.00		
9/26/02	DMS / RC	0.20	15.00	
#4493	REVIEW CORRESPONDENCE	75.00		
9/26/02	DMS / LC	0.20	15.00	
#4494	LETTER TO CLIENT	75.00		
9/28/02	DMS / LC	0.20	15.00	
#4522	LETTER TO CLIENT	75.00		
10/1/02	DMS / CASH	1.00	75.00	
#4544	COURT APPEARANCE - STATUS HEARING	75.00		
10/8/02	DMS / RC	0.20	15.00	
#4584	REVIEW CORRESPONDENCE	75.00		
10/9/02	DMS / C	0.50	37.50	
#4611	CONFERENCE WITH REEFER	75.00		
10/11/02	DMS / PM	1.00	75.00	
#4637	PREPARE MOTION TO CHANGE INVESTIGATOR	75.00		
10/14/02	DMS / TCT	0.20	15.00	
#4660	TELEPHONE CALL TO DEFT'S GRANDMOTHER	75.00		
10/14/02	DMS / R	1.00	75.00	
#4661	RESEARCH WITNESS ADDRESSES	75.00		
10/14/02	DMS / RVW	0.20	15.00	
#4662	REVIEW CLIENT CORRESPONDENCE	75.00		
10/17/02	DMS / LC	0.20	15.00	
#4714	LETTER TO CLIENT	75.00		
10/18/02	DMS / L	0.20	15.00	
#4725	LETTER TO REEFER	75.00		
10/18/02	DMS / P	1.50	112.50	
#4736	PREPARE WITNESS SUMMARIES	75.00		
10/21/02	DMS / C	0.30	22.50	
#4754	CONFERENCE WITH REEFER	75.00		

Date 1/30/03
Time 3:32 pm

DAVID M. SCHIECK
Client Billing Worksheet

Page 4

CHAPPELL.PCR :JAMES CHAPPELL, #52338 (continued)

Date/Slip#	Description	HOURS/RATE	AMOUNT	TOTAL
10/23/02	DMS / RVW	1.00	75.00	
#4770	REVIEW BROOKS' INV. FILES	75.00		
10/24/02	DMS / CC	1.50	112.50	
#4774	CONFERENCE WITH CLIENT	75.00		
10/29/02	DMS / RVW	0.20	15.00	
#4808	REVIEW INV. MEMO	75.00		
10/30/02	DMS / RVW	0.50	37.50	
#4817	REVIEW NOTES AND REPORTS	75.00		
10/30/02	DMS / L	0.20	15.00	
#4818	LETTER TO REEFER	75.00		
10/30/02	DMS / P	0.30	22.50	
#4819	PREPARE WITNESS SUMMARY	75.00		
10/30/02	DMS / C	0.50	37.50	
#4835	CONFERENCE WITH REEFER	75.00		
11/1/02	DMS / R	1.00	75.00	
#4850	RESEARCH LANSING WITNESSES	75.00		
11/4/02	DMS / TCT	0.20	15.00	
#4941	TELEPHONE CALL TO REEFER	75.00		
11/4/02	DMS / RVW	0.50	37.50	
#4942	REVIEW INV. REPORTS - MICHIGAN WITNESSES	75.00		
11/4/02	DMS / RVW	0.20	15.00	
#4943	REVIEW TUCSON MAPS	75.00		
11/5/02	DMS / P	1.00	75.00	
#4960	PREPARE AFFIDAVIT DRAFTS	75.00		
11/6/02	DMS / RVW	1.00	75.00	
#4970	REVIEW WITNESS LOCATIONS/SCHEDULE	75.00		
11/6/02	DMS / TCTI	0.20	15.00	
#4971	TELEPHONE CALL TO INVESTIGATOR	75.00		
11/7/02	DMS / TR	6.00	450.00	
#4972	TRAVEL TIME TO MICHIGAN	75.00		

Date 1/30/03
Time 3:32 pm

DAVID M. SCHIECK
Client Billing Worksheet

Page 5

CHAPPELL.PCR :JAMES CHAPPELL, #52338 (continued)

Date/Slip#	Description	HOURS/RATE	AMOUNT	TOTAL
11/7/02	DMS / TCT	1.00	75.00	
#4973	TELEPHONE CALLS TO WITNESSES (7 TIMES)	75.00		
11/8/02	DMS / C	2.00	150.00	
#4974	CONFERENCE WITH CLARA & RODNEY AXAM	75.00		
11/8/02	DMS / C	1.50	112.50	
#4975	CONFERENCE WITH SHARON AXAM	75.00		
11/8/02	DMS / C	2.00	150.00	
#4976	CONFERENCE WITH BARBARA DEAN	75.00		
11/8/02	DMS / C	1.50	112.50	
#4977	CONFERENCE WITH SHIRLEY SORRELL	75.00		
11/8/02	DMS / C	2.00	150.00	
#4978	CONFERENCE WITH FIRD, DEAN AND MARREL	75.00		
11/8/02	DMS / TCT	0.20	15.00	
#4979	TELEPHONE CALL TO BEN DEAN	75.00		
11/8/02	DMS / TCT	0.20	15.00	
#4980	TELEPHONE CALL TO JAMES FORD	75.00		
11/8/02	DMS / TCT	0.20	15.00	
#4981	TELEPHONE CALL TO BARBARA DEAN	75.00		
11/9/02	DMS / TR	6.00	450.00	
#4982	TRAVEL TIME TO LAS VEGAS FROM MICHIGAN	75.00		
11/9/02	DMS / RVW	2.00	150.00	
#4983	REVIEW NOTES AND PREPARE AFFIDAVITS	75.00		
11/10/02	DMS / RC	0.20	15.00	
#4984	REVIEW CORRESPONDENCE	75.00		
11/10/02	DMS / RVW	0.50	37.50	
#4985	REVIEW TUCSON MAPS OF DEFENDANT	75.00		
11/12/02	DMS / TCTI	0.20	15.00	
#5002	TELEPHONE CALL TO INVESTIGATOR	75.00		

Date 1/30/03
Time 3:32 pm

DAVID M. SCHIECK
Client Billing Worksheet

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CHAPPELL.PCR :JAMES CHAPPELL, #52338 (continued)

Date/Slip#	Description	HOURS/RATE	AMOUNT	TOTAL
11/12/02	DMS / C	0.20	15.00	
#5003	CONFERENCE WIITH REEFER	75.00		
11/12/02	DMS / P	1.50	112.50	
#5004	PREPARE TUCSON MAPS AND LETTER	75.00		
11/16/02	DMS / LC	0.20	15.00	
#5050	LETTER TO CLIENT	75.00		
11/16/02	DMS / PM	1.50	112.50	
#5051	PREPARE MOTION TO UNSEAL PSI	75.00		
11/16/02	DMS / RVW	0.50	37.50	
#5052	REVIEW CLIENT TUCSON LETTERS	75.00		
11/18/02	DMS / P	1.50	112.50	
#5067	PREPARE DRAFT OF AFFIDAVITS OF MICHIGAN WITNESSES	75.00		
11/23/02	DMS / RC	0.20	15.00	
#5110	REVIEW CORRESPONDENCE	75.00		
12/3/02	DMS / CASH	1.00	75.00	
#5241	COURT APPEARANCE - STATUS HEARING	75.00		
12/9/02	DMS / TCT	0.20	15.00	
#5289	TELEPHONE CALL TO REEFER	75.00		
12/9/02	DMS / RVW	1.00	75.00	
#5290	REVIEW TUCSON INFORMATION/REPORTS	75.00		
12/9/02	DMS / L	0.20	15.00	
#5291	LETTER TO REEFER	75.00		
12/12/02	DMS / RVW	2.00	150.00	
#5355	REVIEW CLIENT SUMMARY	75.00		
12/12/02	DMS / L	0.20	15.00	
#5356	LETTER TO REEFER	75.00		
12/12/02	DMS / C	0.50	37.50	
#5357	CONFERENCE WITH REEFER	75.00		
12/14/02	DMS / P	1.50	112.50	
#5365	PREPARE (DRAFT) AFFIDAVITS	75.00		

Date 1/30/03
Time 3:32 pm

DAVID M. SCHIECK
Client Billing Worksheet

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CHAPPELL.PCR :JAMES CHAPPELL, #52338 (continued)

Date/Slip#	Description	HOURS/RATE	AMOUNT	TOTAL
12/16/02 #5374	DMS / C CONFERENCE WITH REEFER	0.20 75.00	15.00	
12/16/02 #5375	DMS / L LETTER TO REEFER	0.20 75.00	15.00	
12/17/02 #5320	DMS / RVW REVIEW REPORTS, PREPARE TUCSON MEMO	1.50 75.00	112.50	
12/18/02 #5404	DMS / TCF TELEPHONE CALL FROM REEFER	0.20 75.00	15.00	
12/19/02 #5405	DMS / R RESEARCH TUCSON INFORMATION	1.00 75.00	75.00	
12/19/02 #5410	DMS / TCF TELEPHONE CALL FROM REEFER	0.20 75.00	15.00	
12/20/02 #5326	DMS / TCF TELEPHONE CALL FROM REEFER	0.20 75.00	15.00	
12/20/02 #5327	DMS / TCTI TELEPHONE CALL TO INVESTIGATOR	0.20 75.00	15.00	
12/20/02 #5328	DMS / TCT TELEPHONE CALL TO GREEN	0.50 75.00	37.50	
12/20/02 #5329	DMS / TCTI TELEPHONE CALL TO INVESTIGATOR	0.20 75.00	15.00	
12/21/02 #5443	DMS / P PREPARE GREEN AFFIDAVIT	1.00 75.00	75.00	
12/23/02 #5448	DMS / TCF TELEPHONE CALL FROM REEFER	0.20 75.00	15.00	
12/23/02 #5449	DMS / C CONFERENCE WITH REEFER	0.50 75.00	37.50	
12/23/02 #5450	DMS / LC LETTER TO CLIENT	0.20 75.00	15.00	
12/24/02 #5456	DMS / L LETTER TO REEFER	0.20 75.00	15.00	

Date 1/30/03
Time 3:32 pm

DAVID M. SCHIECK
Client Billing Worksheet

Page 8

CHAPPELL.PCR :JAMES CHAPPELL, #52338 (continued)

TOTAL BILLABLE TIME CHARGES 77.20 \$5,790.00

Date/Slip#	Description	QTY/PRICE	
10/15/02	DMS / \$X	141	14.10
#4867	PHOTOCOPIES	0.10	
10/23/02	DMS / \$C	1	77.26
#4880	COST FOR TRAVEL EXPENSES (ROOM, CAR & GAS)	77.26	
11/7/02	DMS / \$TT	1	734.22
#5477	TRAVEL EXPENSES - ROOM, CAR, GAS, PARKING, FLIGHT (WITH CHANGE OF TICKET COST)	734.22	
11/18/02	DMS / \$C	1	4.82
#5166	COST FOR PHOTOS	4.82	
11/18/02	DMS / \$X	8	0.80
#5182	PHOTOCOPIES	0.10	
12/11/02	DMS / \$X	36	3.60
#5195	PHOTOCOPIES	0.10	
12/12/02	DMS / \$X	11	1.10
#5198	PHOTOCOPIES	0.10	

TOTAL BILLABLE COSTS \$835.90

TOTAL NEW CHARGES \$6,625.90 ✓

PAYMENTS/REFUNDS/CREDITS

10/26/00	Payment - thank you	7/00	(2,872.50)
7/23/01	Payment - thank you	5/01	(3,023.44)
5/8/02	Payment - thank you	4/02	(2,002.50)
5/20/02	Payment - thank you	4/02	(619.36)
8/29/02	Payment - thank you	7/02	(1,728.90)

TOTAL PAYMENTS/REFUNDS/CREDITS

6 HRS IN CT x \$75 = 450-
71.2 HRS OUT CT x \$75 = \$5340-
COST: 835.90

Outstanding 6/02 (\$10,246.70)
\$1521.16

\$ 6625.90 Page 2667

RENTAL: 11/07/02 18:00 LANSING, MI
RETURN: 11/09/02 11:12 LANSING, MI

92950-01 #01 RM
92950-01

TRAVERSE CITY LEASING
Hertz System Licensee FT:
(517) 321-1449

SCHIECK/DAVID

#1: 001650932 GDP: 00130000

OWN/VEH: 92954/0790014 02 TAURUS FORD 4DR LIC: MI 9XC215

VEH CLASS: F

LOW DECLINED
EIS DECLINED
PAL/PEC DECLINED
FPO DECLINED - FUEL & SVC APPLIED
\$ 4.99 GL TK CAP: 18.00
FUEL OUT: 8/8 FUEL IN: 0/8

MILEAGE IN: 13096
MILEAGE OUT: 14982
MILES DRIVEN: 1114
TR-1 MILES DRIVEN: 0
MILES ALLOWED: 0
MILES CHARGED: 0

ADDITIONAL CHARGES:

PLAN IN: LDUB \$ 61.99 / DAY
PLAN OUT: LDUB \$ 21.00 / EX HOUR
RATE CLASS: C \$ 61.99 / EX DAY
\$ 0.00 / EX WEEK
\$ 21.00 / XDAY HR
\$ 0.00 / MILE

DAYS 2 (TX) \$ 123.98
EX HOURS (TX) \$.00
EX DAYS (TX) \$.00
XDAY HRS (TX) \$.00
MILEAGE CHG (TX) \$.00
SUBTOTAL \$ 123.98

DISCOUNT 05% \$ 6.20
SUBTOTAL \$ 117.78

AIRPORT USE FEE (TX) \$ 11.33
VEH LIC FEE (TX) \$ 1.32
LOW (TX) \$.00
EIS (TX) \$.00
PAL/PEC (TX) \$.00
FUEL & SVC (TX) \$.00

TAXABLE SUBTOTAL \$ 131.23
TAX: 08000 \$ 7.87
TOTAL CHARGES \$ 139.10

CHARGED ON MC \$ 139.10

MCCARRAN INT'L AIRPORT
P.O. BOX 11005 LAS VEGAS, NV 89111
PHONE: 702-261-5122

Holiday Inn
South/Convention Center

6820 S. Cedar St • Lansing, MI 48911
Phone (517) 694-8123 • Fax (517) 699-3753

CASHIER #50-H27445 235HYR NV

TICKET 04558400 11/ 9/02 19:24
ARRIVE 11/ 7/02 6:07

PARKING FEE \$ 30.00

AMOUNT PAID MASTER(\$ 30.00)
AMOUNT TENDERED \$ 30.00
AMOUNT CHANGE \$ 0.00

THANK YOU

3181 GRAND RIVER
LANSING MI

VISA
SCHIECK/DAVID M
REF # 9800010023 4
DATE 11/09/02 11:49

PUMP # 04
PRODUCT UNLD
GALLONS 5.711
PRICE/G: \$ 1.439
FUEL SALE \$ 8.22
APPROVAL # 509078

THANK YOU
HAVE A NICE DAY

& Address

SCHIECK
DAVID SCHIE

VE NV 89101-

Room 567-11
Arrive Date 11/07/02
Dept. Date 11/09/02
Folio # VIEW
Room Rate 89.00
Account 2-CRANK
Mx/Seq 4-ASE

Page 1

INDEPENDENTLY OWNED AND OPERATED BY L.C. LIMITED PARTNERSHIP

THE MANAGEMENT IS NOT RESPONSIBLE FOR ANY VALUABLES NOT SECURED IN SAFETY DEPOSIT BOXES PROVIDED AT THE FRONT OFFICE. The guest understands and agrees that personal liability for any charges incurred is not waived, and agrees to be held personally liable in the event the indicated person, company, or association fails to pay for any or the full amount of these charges. I also agree that any disputes of charges or requests for copies of charges must be made within five days after my departure. I also understand registration rates do not include applicable sales, occupancy, or other taxes. I also have requested weekday delivery of USA TODAY. If refused, a credit of \$5.00 will be applied to my account.

SIGNATURE

REFERENCE	I.D.	DESCRIPTION	CHARGE	PAYMENT	BALANCE
2253	YY1	GUEST MOVIES	12.71	.00	12.71
1107000	BME	DISCOUNT ROOM	88.20	.00	100.91
1107001	BME	STATE TAX	5.29	.00	106.20
1107002	BME	OCCUPANCY TAX	4.41	.00	110.61
1108000	LAH	DISCOUNT ROOM	89.00	.00	199.61
1108001	LAH	STATE TAX	5.34	.00	204.95
1108002	LAH	OCCUPANCY TAX	4.45	.00	209.40
TOTAL					\$ 209.40

Page 1 266



AMERICAN BAR ASSOCIATION

C10 010628 Page 1 of 2
SUD 6 7 20
5524 0004 1290 9300 01AD5524 25444

Account Statement Page 1 of 2
Statement Closing Date 06/28/01
New balance
Past due amount \$0.00
Minimum payment due \$0.00
Payment due date 07/23/01

Account Summary
Previous balance
Payments and credits
Purchases and advances
FINANCE CHARGE \$0.00
Debit adjustments \$0.00
New balance

Revolve Line
Available Revolve Line
Days in billing period 30

For customer service or to report a lost or stolen card,
call toll-free: 800-355-3343
International call collect: 1-302-451-6100
Send payments to: P.O. BOX 8024
SOUTH HACKENSACK, NJ 07608-8

World MasterCard™ for ABA Members



Transactions					
Trans	Post	Reference Number	Description		Amount
06/04	06/04	55410194WSZ9GZD87	CONTINEN 0057190089491 SAN ANTONIO TX		319.50
		0057190089491	SCHECK/D		
		06/25/01 1 CO B O	LAS VEGAS NEWARK		
		06/25/01-2 CO B O	NEWARK LAS VEGAS		
06/07	06/07				
06/11	06/11				
06/13	06/13				
06/14	06/14				
06/15	06/15				
06/20	06/20				

An amount followed by a minus (-) is a credit or credit balance.

***** TRAVELMILES POINT SUMMARY *****
PREVIOUS BALANCE 1,541 EXPIRED THIS MONTH 0
EARNED THIS MONTH 549 NEW BALANCE 2,090
POINTS USED 0

FOR TRAVELMILES INFORMATION, CALL 1-800-424-2FLY
(1-800-424-2359), 24 HOURS A DAY.

pd #4092



AMERICAN BAR ASSOCIATION

WC10 020930 Page 1 of 4
SUD 6 7 20
5524 0007 1290 9300 01A05524 31367

Account Statement	Page 1 of 4
Statement Closing Date	09/30/02
Account number	[REDACTED]
New balance	[REDACTED]
Past due amount	\$0.00
Minimum payment due	[REDACTED]
Payment due date	[REDACTED]

Account Summary	
Previous balance	[REDACTED]
Payments and credits	[REDACTED]
Purchases and advances	[REDACTED]
FINANCE CHARGE	[REDACTED]
Debit adjustments	[REDACTED]
New balance	[REDACTED]

Revolve Line \$16,400
Available Revolve Line \$16,082
Days in billing period 32

☎ For customer service or to report a lost or stolen card,
call toll-free: 800-555-5345
☒ International call collect: 1-302-451-8100
Send payments to: P.O. BOX 8034
SOUTH HACKENSACK, NJ 07609-8034

World MasterCard® for ABA Members

www.abacard.com

Transactions				
Trans	Post	Reference Number	Description	Amount
07/25	08/30	[REDACTED]	[REDACTED]	[REDACTED]
		954-4173	[REDACTED]	[REDACTED]
09/02	09/02	9543845L6MXH1A49H	[REDACTED]	[REDACTED]
09/06	09/06	9541019LAQ3Y62MZK	[REDACTED]	[REDACTED]
		02/10/05	[REDACTED]	[REDACTED]
		1 WN V	[REDACTED]	[REDACTED]
		2 WN V	[REDACTED]	[REDACTED]
09/06	09/06	9541019LAQ3Y62MZQ	[REDACTED]	[REDACTED]
		02/10/05	[REDACTED]	[REDACTED]
		1 WN V	[REDACTED]	[REDACTED]
		2 WN V	[REDACTED]	[REDACTED]
09/13	09/13	8530901LJ01K1ZLRA	[REDACTED]	[REDACTED]
09/14	09/14	7843286LH00694756	[REDACTED]	[REDACTED]
09/26	09/26	9541019LY88611V12	CONTINEN 0052166533499 HOME OFFICE TX	25.00
		0052166533499	SCHIECK/DAVID	
		11/07/02 1 CO QG X	LAS VEGAS CLEVELAND	
		11/07/02 2 CO QG X	CLEVELAND DETROIT	
		11/07/02 3 CO QG O	DETROIT LANSING	
		11/07/02 4 CO QG O	LANSING DETROIT	

An amount followed by a minus (-) is a credit or credit balance.

PR # 41534

Please detach bottom portion and return with your payment in the enclosed envelope.

ORIGINAL

FILED

FEB 4 4 07 PM '03

Lisley E. Longenecker
CLERK

1 EXPR
2 DAVID M. SCHIECK, ESQ.
3 Nevada Bar No. 0824
4 302 E. Carson Ste. 600
5 Las Vegas, NV 89101
6 702-382-1844
7 Attorney for CHAPPELL

DISTRICT COURT

CLARK COUNTY, NEVADA

* * *

9 THE STATE OF NEVADA,	)	CASE NO. C 131341
	)	DEPT. NO. XI
10 Plaintiff,)	
	)	ORDER GRANTING INTERIM
11 vs.	)	PAYMENT OF EXCESS
	)	ATTORNEY'S FEES
12 JAMES M. CHAPPELL,)	
)	
13 Defendant.	)	DATE: N/A
	)	TIME: N/A

14 Based upon the Ex Parte Motion for Interim Payment of
15 Excess Attorney's Fees in Post Conviction Proceedings (a copy
16 of which is submitted herewith), the Court being fully advised
17 in the premises, and good cause shown, it is hereby

18 ORDERED, ADJUDGED AND DECREED that interim payment of
19 excess attorneys fees and costs is granted in the amount of
20 \$6,625.90.
21

22 DATED and DONE: February 4, 2003

23 
24 DISTRICT COURT JUDGE

25 SUBMITTED BY:

26 
27 DAVID M. SCHIECK, ESQ.
28

David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

02-03-03 00:23

S16

FILED

MAR 7 10 02 AM '03

Shirley S. Rasmussen
CLERK

EXPR
DAVID M. SCHIECK, ESQ.
Nevada Bar No. 0824
302 E. Carson #600
Las Vegas, NV 891010
702-382-1844

ATTORNEY FOR CHAPPELL

DISTRICT COURT

CLARK COUNTY, NEVADA

* * *

JAMES MONTELL CHAPPELL,	)	CASE NO. C 131341
	)	DEPT. NO. XI
Petitioner,)	
)	
vs.)	
)	
THE STATE OF NEVADA,)	
)	
Respondent.	)	DATE: N/A
	)	TIME: N/A

AFFIDAVITS IN SUPPORT OF PETITION
FOR WRIT OF HABEAS CORPUS (POST CONVICTION)

See attached.

DATED: March 7, 2003.

RESPECTFULLY SUBMITTED:

David M. Schieck
DAVID M. SCHIECK, ESQ.

RECEIPT OF COPY

RECEIPT of a copy of the foregoing document is hereby
acknowledged.

DATED: *Mar. 7, 2003*

DISTRICT ATTORNEY'S OFFICE

Karen Miller
200 S. THIRD STREET
LAS VEGAS NV 89155

David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

RECEIVED

MAR 8 7 2003

COUNTY CLERK

518

AFFIDAVIT OF CLARA AXAM

STATE OF MICHIGAN)
) ss:
COUNTY OF EATON)

Clara Axam, being first duly sworn, deposes and says

I am the grandmother of JAMES CHAPPELL and I reside in Lansing, Michigan. I raised JAMES and his two sisters after their mother was killed in an automobile accident.

I testified at the penalty hearing on behalf of JAMES and was interviewed in Lansing before the trial. I was not asked to testify during the trial portion of the case, but would have been able to testify to various aspects of the relationship between JAMES and Debbie.

After the first child was born, Debbie was disowned by her family and had to move in and live with JAMES' sister Carla. Later Debbie move to Arizona and sent for JAMES to come and live with her. Debbie's mother got an apartment for Debbie and did not know that she had sent for JAMES.

I believed that JAMES had got involved with drugs after they moved to Las Vegas and that there were some incidents that occurred between them. Debbie would always take him back and it would have been entirely believable that after he got out of jail he would have returned to their house and believed they would get back together.

The attorney and investigator for JAMES did talk to me in Lansing and I gave him all of my information. He did not ask for any assistance in locating other witnesses. I would've been able to provide information to locate James Ford, Ivri

David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

1 Manell, and Ben Dean if I had been asked to do so.

2 JAMES really loved his children and he would always
3 babysit when Debbie was working. He never neglected the
4 children and I never saw him violent toward Debbie.

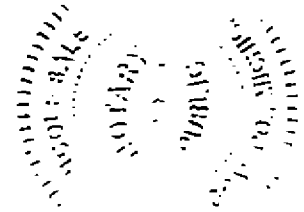
5 FURTHER, Affiant sayeth naught.

7 Clara Axam
8 CLARA AXAM

9 SUBSCRIBED AND SWORN to before me
10 this 26th day of February, 2003.

11 Nicole Baley
12 NOTARY PUBLIC

13
14 NICOLE BALEY
15 Notary Public, Ingham County, MI
16 My Comm. Expires June 17, 2004
17
18
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AFFIDAVIT OF BARBARA DEAN

STATE OF MICHIGAN)
) ss:
COUNTY OF EATON)

BARBARA DEAN, being first duly sworn, deposes and says
I reside in Lansing, Michigan.

I first met JAMES CHAPPELL when he was five years old and
I was working as a teacher's aid. He was a special education
student and I remember that he was always hungry and would eat
extra lunches and breakfasts at the school.

JAMES was friends with my sons, especially Benjamin, and
they hung out together all the time. During all that time I
never saw JAMES do anything violent.

I was aware of the relationship between JAMES and Deborah
Panos, and that they had gone to Arizona and then JAMES came
back. I believed that at that time he had started using drugs
and that he needed treatment. He should have received
treatment instead of being let out of jail. When he left to go
back to Arizona to Debbie he did not tell anybody, but rather
snuck off because everyone advised him not to go back to her.

I was aware that Debbie's family disowned her because of
her relationship with JAMES. To my knowledge the two of them
got along well and I was never aware of any violence while they
were together in Michigan.

JAMES worked at a couple of restaurants in Lansing that I
was aware of and lived with his grandmother. His mother had
been killed in a pedestrian-automobile accident when he was
very young and he was raised by his grandmother. JAMES did not

1 chase after Debbie to Arizona but rather she sent for him to go
2 out to her.

3 To my knowledge JAMES was a good father to their children
4 and took good care of the babies.

5 The investigator and attorney from the trial did come and
6 speak with me, and my son Benjamin took them around the
7 neighborhood to find other persons that knew JAMES and Debbie.

8 I would have been more than willing to assist the attorney
9 and investigator in contacting witnesses that could have
10 testified on behalf of JAMES. At the time my own health
11 condition would not have allowed me to travel to Las Vegas to
12 testify at the trial.

13 My daughter Meka also knew JAMES and Debbie and was nearer
14 to their same age and would have offered testimony about the
15 relationship. She was not interviewed by the attorney and
16 investigator but would have been readily available.

17 I know that it is a terrible thing that JAMES killed
18 Debbie but from what I knew the entire story of the
19 relationship and the way Debbie controlled him and the insults
20 he suffered from her family was never presented to the jury at
21 his trial. Additionally the jury was never presented with
22 witnesses concerning JAMES' early years after his mother's
23 death which I and others personally observed.

24 While JAMES obviously deserved punishment, he also needed
25

26 . . .

27 . . .

28 . . .

CHRISTOPHER R. ORAM, LTD.
520 SOUTH 4TH STREET | SECOND FLOOR
LAS VEGAS, NEVADA 89101
TEL. 702.384-5563 | FAX. 702.974-0623

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

JAMES CHAPPELL,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

S.C. CASE NO. 61967

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Clerk of Supreme Court

APPEAL FROM DENIAL OF PETITION FOR WRIT OF HABEAS CORPUS
(POST-CONVICTION) AND SENTENCE OF DEATH
EIGHTH JUDICIAL DISTRICT COURT
THE HONORABLE JUDGE CAROLYN ELLSWORTH, PRESIDING

~~~~~  
APPELLANT'S APPENDIX TO THE OPENING BRIEF  
VOLUME XI  
~~~~~

ATTORNEY FOR APPELLANT

CHRISTOPHER R. ORAM, ESQ.

Attorney at Law
Nevada Bar No. 004349
520 S. Fourth Street, 2nd Floor
Las Vegas, Nevada 89101
Telephone: (702) 384-5563

ATTORNEY FOR RESPONDENT

STEVE WOLFSON, ESQ.

District Attorney
Nevada Bar No. 001565
200 Lewis Avenue
Las Vegas, Nevada 89101

CATHERINE CORTEZ MASTO

Nevada Attorney General
Nevada Bar No. 0003926
100 North Carson Street
Carson City, Nevada 89701-4717

IN THE SUPREME COURT OF NEVADA

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on this 18th day of November, 2013. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

CATHERINE CORTEZ-MASTO
Nevada Attorney General

STEVE OWENS
Chief Deputy District Attorney

CHRISTOPHER R. ORAM, ESQ.

BY:

/s/ Jessie Vargas
An Employee of Christopher R. Oram, Esq.

CHRISTOPHER R. ORAM, LTD.
520 SOUTH 4TH STREET | SECOND FLOOR
LAS VEGAS, NEVADA 89101
TEL. 702.384-5563 | FAX. 702.974-0623