

1 LAS VEGAS, CLARK COUNTY, NEVADA
2 THURSDAY, NOVEMBER 2, 2006, 9:06 A.M.

3 * * * * *

4 THE BAILIFF: Your Honor, Chappell's ready on 3, I don't know
5 if you wanted to call that.

6 THE COURT: Are we gonna - are we going to litigate that
7 today?

8 MR. PATRICK: We're ready to, Your Honor; I don't know if -

9 THE COURT: The only thing is, I wanna talk - I want talk to
10 Judge Herndon as to whether he - I'm not gonna hear this trial, and there's
11 no reason for me to hear pretrial motions if I'm not gonna hear the trial, and
12 I want to see if I can get the case transferred right away to him. So I want
13 a chance to be able to talk to Judge Herndon.

14 MR. PATRICK: That's fine, Your Honor. Either way, Your
15 Honor. We were ready to argue today, or if you want to wait, that's fine
16 also.

17 THE COURT: These are motions that I filed my whole career, so
18 I'm very familiar with these motions; I know which ones probably I would
19 grant and which I would deny. But let me talk to Judge Herndon. Let me
20 continue this matter for a couple weeks 'til I get to talk to him. I don't even
21 know if he's gonna have his calendar at 8:30 or not; that's why I want to
22 get some information.

23 Let me just continue this for a couple of weeks -

24 THE CLERK: November 16th -

25 THE COURT: - for a status check.

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THE CLERK: November 16th at 8:30.

THE COURT: And I'll let you know whether I'm gonna hear 'em
or he's gonna hear 'em.

MR. PATRICK: At that time, Your Honor, or before that?

THE COURT: I'll let you know that day.

MR. PATRICK: Okay.

THE COURT: I just need some time to talk to him, and I'm sure
he'll want to think about it.

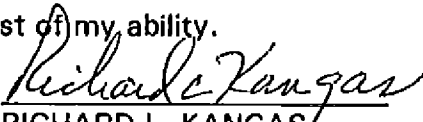
MR. PATRICK: All right. Thank you, Your Honor.

THE COURT: Thanks.

PROCEEDING CONCLUDED AT 9:07 A.M.

* * * * *

ATTEST: I do hereby certify that I have transcribed the audio-visual recording of
this proceeding in the above-entitled case to the best of my ability.


RICHARD L. KANGAS,
Court Recorder/Transcriber

ORIGINAL

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1 TRAN

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FEB 13 10 04 AM '07

DISTRICT COURT
CLARK COUNTY, NEVADA

Cheryl R. Smith
CLERK OF THE COURT

8
9 THE STATE OF NEVADA,
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11 Plaintiff
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13 vs.
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15 JAMES MONTELL CHAPPELL,
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17 Defendant.

CASE NO. C131341
DEPT. IX

BEFORE THE HONORABLE JENNIFER P. TOGLIATTI, DISTRICT COURT JUDGE
MONDAY, JULY 17, 2006

**RECORDER'S TRANSCRIPT OF HEARING RE:
STATE'S REQUEST PER SUPREME COURT REMITTITUR**

APPEARANCES:

For the State:	TRACEY BRIERLY, ESQ. Deputy District Attorney
For the Defendant:	DAVID M. SCHIECK, ESQ. Special Public Defender

RECORDED BY: KRISTEN LUNKWITZ, COURT RECORDER

RECEIVED

FEB 13 2007

CLERK OF THE COURT

2/13

Monday, July 17, 2006 at 9:04 a.m.

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3 THE COURT: Good morning. I'm going to call the lawyers in the order that
4 they signed in on the sign-in sheet except for one case that I know I'm not going to
5 hear. So, I'm going to call that first to get those lawyers out of here.

6 C131341; the State of Nevada versus James Chappell. He was not --

7 MR. SCHIECK: Mr. Chappell's still up in Ely, Your Honor.

8 THE COURT: All right. His appearance is waived today. Based upon
9 disclosures made in chambers, which I will now make on the record, I am recusing
10 from this case. Basically, I worked at the District Attorney's office eons ago when
11 this case was tried, which was in 1997 -- 6 --

12 MR. SCHIECK: We're all too old, Your Honor.

13 THE COURT: Okay. Anyway, when this case was tried, I worked in the
14 District Attorney's office. I have a great familiarity with the facts of this case. It was
15 Mel Harmon and now Municipal Court Judge Silver trying the case. I watched the
16 closing arguments. I'm familiar with the case from that aspect of it, in addition to
17 speaking to the lawyers in the case and because of my, what I would consider to be
18 extreme familiarity with it from the prosecution side, I've discussed with Mr. Schieck
19 this extreme familiarity. He feels, because it's a death case, that I should -- even
20 though he thinks I can be fair, and I think I can be fair, because it's a death case,
21 this is so important, that the Court should recuse to avoid the appearance of
22 impropriety and implied bias. I agree with him and so I recuse and order the matter
23 -- now here's my understanding. It's supposed to go to Judge Cherry's Department
24 because I'm recusing and, you know, he's gone in January. So, I don't know who
25 will have it ultimately, but --

[The clerk and the Court colloquy]

THE COURT: Can I see counsel at the bench?

[Bench conference]

THE COURT: All right. So, the matter will be assigned to Department 17 as is the normal practice when I have to recuse from a case or when he recuses from a case, it comes to me. And so, that'll be the order.

MR. SCHIECK: And we'll get a date from Department 17 then?

THE COURT: Yes.

MR. SCHIECK: Thank you, Your Honor.

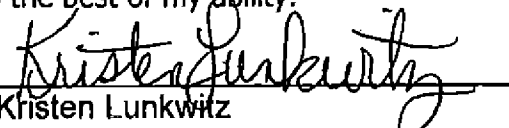
THE COURT: And if you don't have a date within a week, will you contact their Department just in case something happens?

MR. SCHIECK: Yes, Your Honor.

THE COURT: Like it slipped through the cracks. Thank you. Have a good day.

[Proceeding concluded at 9:07 a.m.]

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.


Kristen Lunkwitz
Court Recorder/Transcriber

ORIGINAL

NOTC

DAVID M. SCHIECK
SPECIAL PUBLIC DEFENDER
Nevada Bar No. 0824
CLARK W. PATRICK
Deputy Special Public Defender
Nevada Bar No. 9451
330 S. Third St., Ste. 800
Las Vegas NV 89155-2316
(702)455-6265
Attorneys for Defendant

FEB 15 1 41 PM '07

CD 16-25
CLK 16-25

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

vs.

JAMES CHAPPELL,
Defendant.

CASE NO. C 131341
DEPT. NO. III

DATE: N/A
TIME: N/A

NOTICE OF DEFENDANT'S EXPERT WITNESS
[NRS 174.089(2)]

TO: THE STATE OF NEVADA, Plaintiff, and

TO: DAVID ROGER, District Attorney, Attorney for Plaintiff

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that Defendant, JAMES CHAPPELL, by and through his attorneys, DAVID M. SCHIECK, Special Public Defender, and CLARK W. PATRICK, Deputy Special Public Defender, intends to call the following expert witnesses in his case in chief as follows:

1) Todd Cameron Grey, M.D., Medical Examiner's Office, State of Utah, 48 N. Medical Dr., Salt Lake City, UT 84113 - will testify regarding aspects of the case that may assist the jury in reaching a verdict, including but not limited to physical evidence of sexual assault and interpretation of the autopsy report, protocol, and

CLERK OF THE COURT

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SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

1 scene photographs.

2 A copy of his CV and his report are attached hereto.

3 2) Lewis M. Etcoff, Ph.D., 3885 S. Decatur Blvd., Ste. 1060, Las Vegas NV 89103 -
4 will testify regarding aspects of the case that may assist the jury in reaching a verdict, including
5 but not limited to forensic (criminal) psychological aspects of James Chappell and his
6 relationship with the victim and acclimation to prison.

7 A copy of his CV and report are attached hereto.

8 3) William G. Danton, Ph.D, 6490 S. McCarran, Ste. 25, Reno NV 89509 - will testify
9 regarding aspects of the case that may assist the jury in reaching a verdict, including but not
10 limited to domestic violence dynamics of long term relationships.

11 A copy of his CV is attached hereto. Should Dr. Danton provide a report to CHAPPELL,
12 same will be provided to the District Attorney.

13 DATED this 15 day of February, 2007.

14 RESPECTFULLY SUBMITTED

15 DAVID M. SCHIECK
16 SPECIAL PUBLIC DEFENDER'S OFFICE

17 

18 DAVID M. SCHIECK
19 CLARK W. PATRICK
20 330 S. Third St., 8th Floor
21 Las Vegas NV 89155-2316
22 (702)455-6265
23 Attorneys for CHAPPELL
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SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

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AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Notice of Defendant's Expert Witness filed in District Court Case number C131341 does not contain the social security number of any person.

DATED: 2/15/07

SPECIAL PUBLIC DEFENDER

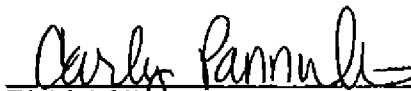
DAVID M. SCHIECK



Clark W. Patrick
Attorney for Chappell
330 S. Third Street, 8th Floor
Las Vegas NV 89155

RECEIPT OF COPY

RECEIPT OF COPY of the foregoing NOTICE OF DEFENDANT'S EXPERT WITNESS
is hereby acknowledged this 15 day of February, 2007.



District Attorney
200 Lewis Ave., 3rd Floor
Las Vegas, NV 89155
Attorneys for The State of Nevada

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

CURRICULUM VITAE

Todd Cameron Grey, M.D.

Address:

Work: Medical Examiner's Office
State of Utah
48 N. Medical Drive
Salt Lake City, Ut. 84113
(801)-584-8410
Fax: (801)-584-8435

Home: 652 N. Little Tree Circle
Salt Lake City, Ut. 84108

Pre-medical Education:

- Yale University - B.A. 1976 Anthropology

Medical Education:

- Dartmouth Medical School - M.D. June, 1980

Hospital Training:

- Intern Anatomic Pathology - U.C.S.D. 1980-1981
- Resident Anatomic Pathology - U.C.S.D. 1981-1982

Past Employment:

- Staff Anatomic Pathologist
Rehoboth McKinley Christian Hospital 1982-1985
- Designated Pathologist
Office of the Medical Investigator
McKinley County, New Mexico 1983-1985
- Associate Medical Examiner
Dade County M.E.'s Office 1985-1986
- Clinical Assistant Professor
University of Miami School of Medicine 1985-1986
- Assistant Medical Examiner and Deputy Director
Office of the Medical Examiner, State of Utah 1986-1988
- Clinical Assistant Professor
Dept. of Pathology, University of Utah School of Medicine 1986-1992

Current Employment:

- Chief Medical Examiner
Office of the Medical Examiner - State of Utah

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Curriculum Vitae - Todd C. Grey, M.D.

Page 2

- Clinical Associate Professor of Pathology
University of Utah School of Medicine

Certification:

- National Board of Medical Examiners, Diplomate, August 1, 1981 #238440
- Board Certified, Anatomic and Forensic Pathology, June 20, 1986

Licensure:

- State of Utah No. 86-17491-1205
- Previously licensed in California and New Mexico

Honors and Awards:

- B.A. cum laude with Honors in the major
- M.D. Dean's Honor Roll
- A.O.A. Honor Society

Professional Society Memberships:

- National Association of Medical Examiners
- American Academy of Forensic Sciences
- Utah Society of Pathologists
- Utah Forensic Science Association

Committees and Consultantships:

- Sudden Infant Death Syndrome Advisory Committee
Utah Department of Health, 1986 to present
- Vital Statistics Task Force-Death Certificate Revision Committee
Utah Department of Health, August-December 1987
- Department Improvement Committee
Utah Department of Health, April-August 1988
- Architect Selection Board for Medical Examiner Facility
Division of Facility and Construction Management, State of Utah, April-May 1988
- Information Technology Task Force
Assigned to review Dept. of Health data processing systems and make recommendations for improvement, July to December 1992
- Child Fatality Review Committee
Multi-Agency Board to review deaths of children in Utah, November 1991 to present
- Infant and Fetal Death Technical Review Committee
Utah Department of Health, Division of Family Health Services, August 1992 to September 1995
- Residency Committee
Department of Pathology, University of Utah School of Medicine, June 1990 to present

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Page 3

- Health Data Statute Review Committee
Tasked to rewrite various statutes concerning the collection and use of data by the state health department, August-September 1995
- Suicide Prevention Task Force
Legislatively mandated committee tasked with providing recommendations on ways to reduce the number of suicides that occur in Utah. July - November 1999
- Intermountain Tissue Center Scientific Advisory Board
Provides advice and expertise on issues related to tissue harvesting. October 2000 - present

Presentations:

- Grey, T.C. "Kearns Mid-Air Collision-The Role of the Medical Examiner in Aircraft Disasters" Aircraft Disaster Seminar, Jackson Hole, WY., October 1987
- Grey, T.C. "Preserving the Scene" and "Mechanisms of Injury"
Eighth Annual Life Flight Conference, SLC, Ut., March 1989
- Penny, J.A., Grey, T.C., and Sweeney, E.S. "Cause of Death: Venomous Snake Bite, Manner of Death: Homicide" Presented by Grey, T.C. at the 40th Annual Meeting of American Academy of Forensic Sciences, Philadelphia, Pa., February 1988
- Grey, T.C. and Schnittker, S.I. "A Fowl Death at the Aviary"
National Association of Medical Examiners 1989 Annual Meeting, Sanibel Island, FL, October 1989
- Grey, T.C. "Equivocal Deaths: 'What's the Manner With You?'"
5th Annual National Conference on Serial Murders, Unidentified Bodies and Missing Persons, Nashville, TN., March 1993
- Grey, T.C. "Mechanisms of Injury and Their Medicolegal Significance"
1993 Clinical Care Conference: Transport and Care of the Critically Injured, Snowbird, Ut., May 1993
- Grey, T.C. "Highway Accident Deaths: The Role of the Medical Examiner and: Plea to Change Utah Law"
Northwest Association of Forensic Sciences-Fall Meeting, SLC, Ut., October 1996
- Grey, T.C., "Sudden Infant Death Syndrome"
Family Practice Grand Rounds, Salt Lake Regional Medical Center, SLC, Ut., June 1997
Pediatric Grand Rounds, Primary Children's Medical Center, SLC, Ut., September 1997
- Grey, T.C. "The Pediatric Autopsy: Role of the Medical Examiner"

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Page 4

Panel Discussion-Pediatric Grand Rounds, Primary Children's Medical Center,
SLC, Ut., October 1997

Publications:

- Sweeney, E.S. and Grey, T.C. "Letter to the Editor-SIDS" New England Journal of Medicine Vol. 315, No. 26, Dec. 25, 1986.
- Grey, T.C. and Sweeney, E.S. "Physicians and the Death Penalty (letter)" West. J. Med. 1987, July 147:207.
- Sweeney, E.S. and Grey, T.C. "Cause of Death-Proper Completion of the Death Certificate (letter)" JAMA Vol. 258, No. 22, Dec. 11, 1987
- Grey, T., Mittleman, R., and Wetli, C.: "Aortoesophageal Fistulae and Sudden Death: A Report of Two Cases and Literature Review" Am. J. of Forensic Medicine and Pathology Vol. 9, No. 1, March 1988 pp 19-22.
- Andrews, J.M., Sweeney, E.S., and Grey, T.C. "Help, I'm Freezing to Death" . SCP Forensic Pathology Check Sample. F.P. 90-5 (Accepted April 8, 1988).
- Grey, T.C. and Sweeney, E.S. "Patient Controlled Analgesia (letter)" JAMA Vol. 259, No. 15, April 15, 1988.
- Andrews, J.M., Sweeney, E.S., Grey, T.C. and Wetzel, T. "The Biohazard Potential of Cyanide Poisoning During Postmortem Examination" J. of Forensic Sciences Vol. 34, No. 5, September 1989 pp 1280-1284.
- Grey, T.C. "Defibrillator Injury Suggesting Bite Mark" Am. J. of Forensic Medicine and Pathology Vol. 10, No. 2, June 1989 pp 144-145.
- Grey, T.C. "Book Review; Salamander: The story of the Mormon Forgery Murders, (Stiltoe and Roberts)" J. of Forensic Sciences Vol. 34, No. 4, July 1989 pp 10-4.
- Grey, T.C. "The Incredible Bouncing Bullet: Projectile Exit Through the Entrance Wound" J. of Forensic Sciences Vol. 28, No. 5, September 1993, pp 1222.
- Grey, T.C. "Shaken Baby Syndrome: Medical Controversies and Their Role in Establishing "Reasonable Doubt" Child abuse Prevention Council Newsletter, May 1998.
- CDC (Grey, T.C. - contributor) "Fatal Car Trunk Entrapment Involving Child in United States, 1997-1998" MMWR Vol. 47, No. 47, 1998 pp 1019-22
- Grey, T.C. "Unintentional and Intentional Injuries" in Understanding Pathophysiology

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Curriculum Vitae - Todd C. Grey, M.D.

Page 5

(Second Edition), McCance, K. L. and Huether, S. E., Mosby, St. Louis. 20().

Seminars and other training activities:

- "Determination of the Cause and Manner of Death" Presented July 1988 at Utah Peace Officers Association Annual Conference, Wendover, Nevada.
- "Injuries due to Gunfire, Sharp and Blunt Forces" Eight hour presentation to Wyoming Coroner's Basic Certification Course. Wyoming Law Enforcement Academy, Douglas, Wyoming, February 26, 1991, March 23, 1993 and June 17, 1996
- "Death Investigation" Eight hour course for law enforcement professionals on investigative techniques and pathologic findings.
Cedar City, Utah, April 5, 1991.
St. George, Utah, April 10, 1992.
Vernal, Utah, June 5, 1992.
- "Pathological Techniques for Discovering Non-Accidental Causes of Death in Children". Prosecution Council Training Seminar on Child Sexual Abuse and Child Fatalities, Snowbird, Utah, June 18, 1991.
- "Shaken Baby Syndrome-The Role of the Medical Examiner". Child Abuse Prevention Council of Ogden, Weber State University, Ogden, Utah, August 6, 1992.
- "Mechanism, Cause and Manner of Death: The Proper Completion of the Death Certificate" Pediatric Grand Rounds, University of Utah Medical Center, Salt Lake City, Utah, February 22, 1993.
- "S.I.D.S. and The Office of the Medical Examiner" Utah Department of Health Symposium on S.I.D.S. for Public Health Nurses, Salt Lake City, Utah, March 30, 1993.
- "Patterns of Injury: Investigative Challenges" Federal Bureau of Investigation-College of American Pathologists Course "Medicolegal Investigation of Death & Injury in Child Abuse and S.I.D.S." Salt Lake City, Utah. August 14, 1995.
- "Fire Related Deaths" Salt Lake City Fire Department, September 12, 1995. Also presented to Idaho Chapter, International Arson Investigators, November 7, 1996.
- "Forensic Medicine: The Vital Link in Organ/Tissue Donation" Intermountain Organ Recovery Systems Educational Symposium, Salt Lake City, Utah, May 6, 1997

Other Activities:

- Initial design development and participation in oversight of design and construction of a new 18,000 sq. ft. facility for the Office of the Medical Examiner, State of Utah. 1989-1991.

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*Curriculum Vitae - Todd C. Grey, M.D.**Page 6*

- Development, purchase and implementation of Macintosh® based computer system for the Office of the Medical Examiner, State of Utah, 1989-1991.
- Completion of Series I and II of Certified Public Manager's Course. University of Utah and Utah Department of Human Resource Management. November 1995.
- Development, purchase and implementation of MS Windows® based computer system for the Office of the Medical Examiner, State of Utah, 1996-1997.

Updated October 17, 2001

Tedd C. Grey, M.D.

652 N. Little Tree Circle
Salt Lake City, UT 84108
USA

Phone (801) 584-8410
Fax (801) 584-8435
Home Phone (801) 582-8664
Email toddgrey@utah.gov and/or toddgrey8664@msn.com

January 28, 2007

Clark W. Patrick
Office of the Special Public Defender
Clark Co. Nevada
330 S. Third Street, Suite 800
PO Box 552316
Las Vegas, NV 89155-2316

Re: NV v. Chappell

Dear Mr. Patrick,

Thank you for the opportunity to consult on this case. I have reviewed the following materials.

- 1) Autopsy report of examination of Deborah Ann Panos, performed by Dr. Sheldon Green on 9/1/95.
- 2) Investigative reports from Clark Co. Coroner's Office.
- 3) Cellmark Diagnostics report on DNA analysis of samples from victim and suspect
- 4) Transcript of Dr. Green's trial testimony.
- 5) Transcript of closing arguments of prosecution and defense.
- 6) Copies of ninety-four (94) photographs of death scene and autopsy.

From my review, it appears that the victim in this case was a 26 year old woman who was killed in her residence. The victim was found dead with evidence of multiple blunt force injuries of the head and extremities as well as thirteen (13) stab wounds of the head, neck and torso. Photos from the scene reveal the victim was lying on her back on the floor. Of note, the victim is fully clothed, except for her shoes. The clothing is not in disarray and does not have an appearance suggestive of post-mortem dressing.

In your letter, you asked me to consider whether there was any evidence that would support the state's contention that the victim was sexually assaulted during the killing. Analysis of the vaginal swabs collected at the autopsy revealed the presence of material consistent with having come from the suspect. While this evidence certainly supports the contention that the suspect and victim engaged in sexual intercourse, it says nothing as to whether these relations were consensual or not. The autopsy report describes the genitalia as being those of a normal adult female. No other description is given. In the description of injuries, no mention is made of any evidence of trauma to the vagina, anus or perineum. Specifically, there is no description of bruising, abrasion, laceration or any other type of injury that would suggest violent and forceful penetration. Unfortunately, no photographs detailing the appearance of the genitalia and anus were taken, raising the question as to whether the lack of a description of injury in this area was reflective of a true absence of injury or a failure to look for them. Beyond the fact that Dr. Green is an experienced board certified forensic pathologist who would not omit a careful examination of the genitalia and anus in a case of this kind, it is clear that the genital region had to have been examined by the fact that vaginal samples were collected and submitted for DNA analysis. While the absence of injury suggests that the intercourse may have been consensual, it only proves that no trauma was inflicted. Exactly what the victim's state of mind was concerning the sexual intercourse that occurred is unknowable based on the evidence I have reviewed.

What other evidence is there that may help answer the question as to whether the victim was sexually assaulted as part of the killing? I find the fact that the victim was found fully clothed to be much more helpful in answering this question. It is very unlikely that if the victim was being sexually assaulted and during this assault she was then beaten and stabbed, that one would find the body conventionally dressed in the manner depicted in the scene photographs.

The injuries present on the clothing indicate she was wearing both the shirt and the pants when she was stabbed. The locations of the injuries on the clothing correspond to the locations of the stab wounds on the body, indicating that the shirt was not pulled up nor the pants pulled down during the stabbing. I think this supports the suspect's claim that there was a hiatus between the sexual intercourse, during which victim got dressed, and the infliction of the stab wounds that caused her death. However, there is no way to say if the blunt force injuries happened before or after the couple had sex.

In conclusion, it is my opinion there is no pathologic evidence in the materials I have reviewed which would prove the victim was sexually assaulted. The evidence I have seen would suggest that no sexual assault occurred. Any opinion on the state of mind of the victim during the sex act would be conjectural and speculative.

Sincerely,

A handwritten signature in black ink, appearing to read 'Todd C. Grey', with a long horizontal flourish extending to the right.

Todd C. Grey, M.D.

CURRICULUM VITAE

NAME Lewis M. Etcoff, Ph.D.
ADDRESS 3131 La Canada, Suite #238
Las Vegas, Nevada 89109
PHONE (702) 876-1977
FACSIMILE (702) 876-0238
DATE OF BIRTH October 17, 1951

EDUCATION

1978-1983 Doctor of Philosophy in Clinical Psychology
University of Toledo, Toledo, Ohio (APA-approved)

1982-1983 Doctoral Internship in Clinical Psychology
Wright-Patterson Air Force Base Medical Center, Ohio (APA-approved)

1977-1978 Undergraduate Psychology Courses
University of Toledo, Toledo, Ohio

1973-1975 Master of Arts in Contemporary Jewish Studies
Lown School of Jewish Communal Service and
Florence Heller School for the Advanced Studies of Social Welfare
Brandeis University, Waltham, Massachusetts

1969-1973 Bachelor of Arts in Political Science, *cum laude*
Brandeis University, Waltham, Massachusetts

PROFESSIONAL EXPERIENCE

1995-present Reviewer, Archives of Clinical Neuropsychology.

1995-1997 Consulting Neuropsychologist, Children's Resource Bureau, State of Nevada

1994-1995 Professional Advisory Board, Las Vegas Center for Children.

1993-present Clinical Assistant Professor, Department of Family and Community Medicine, University of Nevada School of Medicine.
(Responsibilities include lectures to resident physicians in family practice and serving as an "internship site" for residents to observe my work in psychological/neuropsychological assessment.)

1992-1995 Consulting Neuropsychologist, Nevada Appellate and Postconviction Project.

- (Responsibilities included evaluating convicted murderers currently on Death Row, Nevada State Prison, Ely, Nevada, training local attorneys on the role of a neuropsychologist in Death Penalty cases, and providing competency-to-stand-trial evaluations for the Public Defender's Office and local criminal defense attorneys.)
- 1988-1997 Consulting Clinical Psychologist, Eighth Judicial District Family Court and Child Custody Division.
(Provided Court-appointed, impartial custody evaluations.)
- 1985-present Consulting Clinical Psychologist, Clark County School District and Seigle Diagnostic Center.
(Responsibilities include the provision of neuropsychological and clinical psychological assessments to children whose parents are seeking an independent evaluation via due process; and in-service education to school psychologists, teachers, and counselors.)
- 1991-1992 Consulting Neuropsychologist, Community Rehabilitation Service of Las Vegas.
(Responsibilities included providing neuropsychological evaluations to post-acute brain-injured adults in a transitional living situation and consultation with other treatment team members.)
- 1990-1991 Director of Psychological Services, HCA Montevista Hospital, Las Vegas, Nevada.
(Developed and monitored standards of care for psychological practice, quality assurance, and credentialing at a private psychiatric hospital.)
- 1989-1990 Director of Professional Development, Charter Hospital, Las Vegas, Nevada.
(Developed and provided continuing education courses to professional staff; Adolescent Unit program development.)
- 1985-1989 Chief, Adolescent Psychology, HCA Montevista Hospital.
(Responsibilities included performing psychological evaluations of most adolescents admitted to this inpatient unit, consulting with attending psychiatrists, unit nurses, and therapists to aid in the development of short- and long-term treatment goals for patients, and participating in unit program development.)
- 1985-1988 Consulting Clinical Psychologist to Jewish Family Service Agency.
(Provided weekly clinical supervision to two LCSWs.)
- 1985-present Guest lecturer, Departments of Special Education, Psychology, Counseling, and Educational Psychology, University of Nevada, Las Vegas.

- 1983-1985 Clinical Psychologist, United States Air Force Hospital, Nellis Air Force Base, Nevada.
- 1984-1985 Consulting Clinical Psychologist to Clark County Juvenile Court Services, Las Vegas, Nevada.

PROFESSIONAL CREDENTIALS

- 1996 Senior Disability Analyst and Diplomate, American Board of Disability Analysts
- 1995 Fellow, American College of Professional Neuropsychology
- 1992 Diplomate, American Board of Professional Neuropsychology
- 1992 Diplomate, American Board of Professional Disability Consultants
- 1991 Fellow and Diplomate, American Board of Medical Psychotherapists and Psychodiagnosticians

PROFESSIONAL MEMBERSHIPS

American Psychological Association, Divisions 12 (Clinical Psychology), 40 (Neuropsychology), and 41 (American Psychology and Law Society)

National Academy of Neuropsychology

National Register of Health Service Providers in Psychology #33910

Tourette Syndrome Association

Intermountain Neuropsychological Interest Group

PROFESSIONAL LEADERSHIP POSITIONS

- 1995-present Committee Member, Committee on Character and Fitness, State Bar of Nevada
- 1992-present State of Nevada Oral Licensing Test Examiner and Oral Licensing Test Developer for the Nevada State Board of Psychological Examiners
- 1992-present Examination Process Committee, American Board of Professional Neuropsychology
- 1996-97 President, Nevada State Psychological Association

- 1996 American Board of Disability Analysts, Professional Advisory Counsel (Honorary)
- 1995-96 President-Elect, Nevada State Psychological Association
- 1995-97 Board of Directors, Nevada State Psychological Association
- October 21, 1995 Chairperson, Nevada State Psychological Association Strategic Planning Session, Las Vegas, Nevada
- 1994 Nevada State Psychological Association Federal Advocacy Co-Chair
- 1993-94 Chairman, Nevada State Psychological Association 1994 Annual State Conference
- 1992-1993 Chairman, Public Education Committee, Nevada State Psychological Association

PUBLIC SERVICE RECOGNITION

- 1996 Nevada State Psychological Association
(Outstanding Contributor to the State Association [peer-elected])
- 1994 Nevada State Psychological Association
(Chaired the 1994 State Psychology Conference)
- 1993-94 American Academy of Family Physicians
(Participation as an Active Teacher in Family Practice)
- 1991 National Association of School Psychologists
(Trained approximately 100 Clark County School District School Psychologists in a 16-hour set of lectures (pro-bono) on the identification and evaluation of childhood neurodevelopmental and psychiatric disorders)

PUBLICATIONS

Etcoff, L.M., & Kampfer, K. (1996). Practical guidelines in the use of symptom validity and other psychological tests to measure malingering and symptom exaggeration in traumatic brain injury cases. Neuropsychology Review, 6, 171-202.

Etcoff, L.M. & Kampfer, K. (1996). Nonverbal learning disability. In K. Anchor (Ed.), Disability analysis handbook: Tools for independent practice (pp. 219-234). Iowa: Kendall/Hunt Publishing Company.

Etcoff, L.M. (1993). Sexual abuse allegations: Separating fact from fiction. Nevada Family Law Report, 8, 1-3.

PROFESSIONAL PRESENTATIONS

- January 21, 2000 Understanding Neuropsychology and the Use of a Clinical Neuropsychologist in the Examination of Personal Injury Litigants:
Presentation to Hutchison & Steffen law firm, Las Vegas, Nevada.
- December 4, 1999 Minor Head Trauma:
Presentation to National Associates of Rehabilitation Professionals in Private Practice; Bally's Hotel and Casino, Las Vegas, Nevada.
- October 22, 1999 Recent Updates in Attention-Deficit/Hyperactivity Disorder:
Presentation to New Horizons Academy faculty, Las Vegas, Nevada (with Michelle G. Carro, Ph.D.).
- September 30, 1999 The Basic Neuropsychological Exam:
Lecture to Family Practice Residency Program, University of Nevada School of Medicine, Las Vegas, Nevada.
- August 20, 1999 Understanding Neuropsychology and the Use of a Clinical Neuropsychologist in the Examination of Personal Injury Litigants:
Presentation to Thorndal, Armstrong, Delk, Balkenbush & Eisinger law firm, Las Vegas, Nevada.
- July 23, 1999 Recent Updates in Learning Disabilities:
Lecture to National Association of School Nursing annual conference, Las Vegas, Nevada.
- April 17, 1999 Attention-Deficit/Hyperactivity Disorder:
Lecture to Nevada State Audiological Associates.
- March 26, 1999 Assessment of Minor Head Trauma:
Presentation to the Clark County Organization of Legal Assistants, Las Vegas, Nevada.
- January 27, 1999 Assessment of Minor Head Trauma:
Presentation to EICON case managers, HealthSouth Rehabilitation Hospital, Las Vegas, Nevada.
- November 18, 1998 Attention-Deficit/Hyperactivity Disorder:
Keynote address to the Meadows School Parents' Association, Bellagio Hotel, Las Vegas, Nevada.

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- November 13, 1998 Understanding Neuropsychology and the Use of a Clinical Neuropsychologist in the Examination of Personal Injury Litigants:
Presentation to Edward M. Bernstein & Associates law firm, Las Vegas, Nevada.
- October 23, 1998 Understanding Neuropsychology and the Use of a Clinical Neuropsychologist in the Examination of Personal Injury Litigants:
Presentation to Greenman, Goldberg, Raby & Martinez law firm, Las Vegas, Nevada.
- October 9, 1998 Understanding Neuropsychology and the Use of a Clinical Neuropsychologist in the Examination of Personal Injury Litigants:
Presentation to Pearson, Patton, Shea, Foley & Kurtz law firm, Las Vegas, Nevada.
- October 3, 1998 Understanding Neuropsychology and the Use of a Clinical Neuropsychologist in the Examination of Personal Injury Litigants:
Presentation to Alverson, Taylor, Mortensen, Nelson & Sanders law firm, Las Vegas, Nevada.
- September 11, 1998 Understanding Neuropsychology and the Use of a Clinical Neuropsychologist in the Examination of Personal Injury Litigants:
Presentation to Pyatt & Silvestri law firm, Las Vegas, Nevada.
- September 10, 1998 Psychological Evaluations in Workers' Compensation Cases:
Mirage Hotel & Casino Workers' Compensation staff.
- August 20-21, 1998 The Use of a Psychological Expert in Child Criminal and Personal Injury Lawsuits:
Presentation and panel participation, sponsored by the State Bar of Nevada, Reno, Nevada and Las Vegas, Nevada.
- May 26, 1998 Recent Updates in Attention-Deficit/Hyperactivity Disorder:
Featured speaker for CHADD, Las Vegas, Nevada.
- May 2, 1998 Determining the Validity of a Closed Head Injury Case:
Presentation to Nevada State Psychological Association/State Bar of Nevada Annual Conjoint Conference, Las Vegas, Nevada.
- April 30, 1998 Recent Empirical Research in Learning Disabilities:
Keynote speaker, Clark County School District, northwest area elementary school teachers, Las Vegas, Nevada.
- October 23, 1997 How to Recognize ADHD Learning Disabilities and Emotional Disturbances in Your Students:

- Presentation to the Meadows School teaching faculty, Las Vegas, Nevada
(with Caron Whipple, Ph.D. and Karen Sims, M.A.).
- August 20, 1997 How to Recognize ADHD Learning Disabilities and Emotional Disturbances in Your Students:
Presentation to Jewish Community Day School teaching staff, Las Vegas, Nevada (with Caron Whipple, Ph.D.).
- May 30, 1997 Co-Leader: Ethics Presentation to Nevada State Psychological Association Annual Conference, Reno, Nevada.
- April 14, 1997 Attention-Deficit/Hyperactivity Disorder in the Schools:
Presentation sponsored by Human Behavior Institute for Clark County School District personnel, Las Vegas, Nevada.
- April 10, 1997 Case Study: Transient Ischemic Attacks and Their Effect Upon Vocational Functioning:
Presentation to Nevada State Psychological Association, Las Vegas, Nevada.
- January 14, 1997 Signs of Symptom Exaggeration:
Presentation to the Nevada Association of Physical Therapists, Las Vegas, Nevada.
- May 14, 1996 Nonverbal Learning Disabilities:
Lecture to Nevada State Physical Therapy Association.
- May 5, 1996 Practical Solutions for Children with Neurodevelopmental, Behavioral, or Emotional Problems:
Program coordinator and presenter at Nevada State Psychological Association Annual Conference, Las Vegas, Nevada.
- May 3, 1996 Ethics for Mental Health Practitioners:
Program coordinator and presenter at Nevada State Psychological Association Annual Conference, Las Vegas, Nevada.
- February 29, 1996 Introduction to Intelligence Testing:
Lecture to graduate students in the Departments of Counseling and Educational Psychology, University of Nevada, Las Vegas.
- November 30, 1995 Using the Conners' Rating Scales in the Medical Management of ADHD:
Presentation to the Family Practice Residency, University of Nevada, Reno School of Medicine.
- September 20, 1995 Introduction to the Diagnosis and Classroom Management of ADHD:
Presentation to Paul Culley Elementary School faculty.

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- September 18, 1995 Expert witness in mock trial on sexual discrimination:
Inns of Court, Nevada State Bar Association.
- August 12, 1995 Symposium: Forensic Neuropsychology—Detecting Malingering and
Coping with Cross-Examination:
American Psychological Association annual convention, New York City,
New York (sponsored by Divisions 42, 22, and 18).
- May 19, 1995 Understanding Neuropsychology and the Use of a Clinical Neuropsychologist in the Examination of Personal Injury Litigants:
Presentation to Rawlings, Olson, Cannon, Gormley, and Desruisseaux law firm, Las Vegas, Nevada.
- February 23, 1995 Understanding WISC-III and WAIS-R Profiles:
Lecture to graduate students in the Departments of Counseling and Educational Psychology, University of Nevada, Las Vegas.
- February 4, 1995 Introduction to Attention-Deficit/Hyperactivity Disorder:
Presentation to Las Vegas Pediatric Society, Las Vegas, Nevada.
- May 26, 1994 Use of a Neuropsychologist in a Criminal Evaluation:
Presentation to the Federal Public Defender's Office, Las Vegas, Nevada.
- April 17, 1994 Understanding Dyslexia:
Las Vegas Pediatric Society, Las Vegas, Nevada.
- March 17, 1994 Psychological Problems of Children:
Presentation to First Presbyterian Academy Parents Association, Las Vegas, Nevada.
- March 4, 1994 Attention-Deficit/Hyperactivity Disorder: Diagnostic Issues for Teachers:
Presentation to St. Anne Catholic School faculty, Las Vegas, Nevada.
- November 20, 1993 Neuropsychological evaluations of Attention-Deficit Disordered Children:
Presentation to Montevista Hospital staff, Las Vegas, Nevada.
- November 18, 1993 Introduction to Attention-Deficit Disorders in Children:
Presentation to the Special Education Parent's Advisory Committee, Clark County School District, Las Vegas, Nevada.
- October 8, 1993 Assessment and Classroom Reintegration Issues with Traumatically Brain-injured Children:
Presentation to Clark County School District school psychologists, Las Vegas, Nevada.

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- October 3, 1993 Nonverbal (Right Hemisphere) Learning Disabilities:
Presentation to Nevada Association of Occupational Therapists, Las Vegas, Nevada.
- October 3, 1993 Screening the Elderly for Symptoms of Dementias:
Presentation to Nevada Association of Occupational Therapists, Las Vegas, Nevada.
- September 29, 1993 Recognizing Attention-Deficit Disorders in Adults:
Panel discussion and presentation to the ADHD Support Group, Las Vegas, Nevada.
- September 27, 1993 Attention-Deficit Disorders in Children:
Presentation to the Division of Child and Family Services, State of Nevada, Las Vegas, Nevada.
- July 22, 1993 Neurocognitive Screening Examination:
Presentation to Family Practice Residency, University of Nevada School of Medicine, Las Vegas, Nevada.
- April 24, 1993 Recognizing Learning Disabilities in Elementary School Children:
Nevada Alliance of Dyslexics, Las Vegas, Nevada.
- March 25, 1993 Attention-Deficit/Hyperactivity Disorder:
Presentation to Family Practice Residency, University of Nevada School of Medicine, Las Vegas, Nevada.
- February 11, 1993 Signs and Symptoms in the Classroom of Emotional, Behavioral, and Neurodevelopmental Disorders:
Lecture to Clark County School District Special Educators, Woodbury Junior High School, Las Vegas, Nevada.
- January 21, 1993 Neuropsychological Evaluations in Death Penalty Cases:
Presentation to Death Penalty Defense Seminar, Nevada Appellate and Postconviction Project, Las Vegas, Nevada.
- December 11, 1992 Postconcussion Syndrome:
Presentation at University Medical Center Grand Rounds, Las Vegas, Nevada.
- August 20, 1992 Attention-Deficit Disorders in Children:
Lecture to Estes McDoniel Elementary School faculty.
- May 28, 1992 Attention-Deficit Disorders in Children:
Lecture to Doris French Elementary School faculty.

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- May 14, 1992 The Uses of Psychological Evaluations in Child Custody Cases:
Presentation to the Child Custody Division, Eighth Judicial District Court,
Las Vegas, Nevada.
- May 7, 1992 Dyslexia:
Presentation to Doris French Elementary School faculty.
- April 3, 1992 The Role of the Clinical Psychologist in Child Custody Evaluations:
Presentation to Family Law Section, Nevada State Bar, Tonopah, Nevada.
- March 28, 1992 Dyslexia:
Presentation for the Nevada Alliance of Dyslexics, Las Vegas, Nevada.
- March 26, 1992 Learning Disabilities and Their Relationship to Conduct Disordered
Adolescents:
Presentation to the Court Appointed Special Advocates, Eighth Judicial
District Court, Las Vegas, Nevada.
- February 25, 1992 Attention-Deficit Disorders:
Lecture to the Las Vegas Day School faculty, Las Vegas, Nevada.
- February 19, 1992 The Interface Between Community and School Psychologists:
Panel Member, Clark County school psychologists, University of Nevada,
Las Vegas.
- February 1991 Interviewing Children and Adolescents:
Lecture to Clark County school psychologists, Las Vegas, Nevada.
- February 1991 Anxiety Disorders of Children and Adolescents:
Lecture to Clark County school psychologists, Las Vegas, Nevada.
- October 3, 1990 Tourette's Disorder: Diagnostic Issues and Interfacing with School District
Personnel:
Tourette's Disorder Support Group, Las Vegas, Nevada.
- September 13, 1990 Traumatic Brain Injury and Alcohol Abuse:
Presentation to Association of Certified Substance Abuse Counselors,
Charter Hospital, Las Vegas, Nevada.
- May 19, 1989 Conduct Disorders:
Lecture to pediatricians and family practitioners, Humana Hospital
Sunrise, Las Vegas, Nevada.
- April 7, 1989 Conduct Disorders:
Lecture to St. Frances de Sales faculty, Las Vegas, Nevada.

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- February 28, 1989 Conduct Disorders:
Lecture to Clark County School District teachers, K-6 grades, HCA
Montevista Hospital, Las Vegas, Nevada.
- February 23, 1989- Psychological and Developmental Disturbances of Childhood and
May 25, 1989 Adolescence:
16-hour seminar presentation to Meadows School faculty, Las Vegas,
Nevada.
- February 7, 1989 Symptoms of Emotional Disorders in Childhood:
Lecture to Clark County School District teachers, K-6 grades, HCA
Montevista Hospital, Las Vegas, Nevada.
- January 15, 1989 Signs and Symptoms of Psychiatric Illness:
Lecture to Nellis Air Force Base clergy, HCA Montevista Hospital, Las
Vegas, Nevada.
- January 12, 1989 Childhood and Adolescence:
Chair, panel discussion to parents of Meadows School children, Las
Vegas, Nevada.
- November 30, 1988 Neurocognitive Disorders: ADHD and Learning Disabilities Subtypes:
Chair, panel discussion, HCA Montevista Hospital, Las Vegas, Nevada.
- March 12, 1988 Attention-Deficit/Hyperactivity Disorder:
Lecture to Clark County School District teachers, HCA Montevista
Hospital, Las Vegas, Nevada.
- August 8, 1987- Child and Adult Neurocognitive Disorders:
October 21, 1987 12-week course presentation to community professionals at HCA Monte-
vista Hospital, Las Vegas, Nevada.
- June 15-19, 1987 Clinical Neuropsychology:
15-hour course presentation to Family Service of America, Asilomar Con-
ference Center, Monterey, California.

CONTINUING EDUCATION WORKSHOPS AND CONFERENCES

- April 6, 2000 Employment Discrimination and Sexual Harassment: Forensic Concepts
and Assessment (Herbert N. Weissman, Ph.D., A.B.P.P.):
American Academy of Forensic Psychology, Tuscon, Arizona (7 hours
CE).
- February 17-20, 2000 Advanced Forensic Psychology Practice: Issues and Applications:
American Academy of Forensic Psychology (24 hours CE).

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- January 20, 2000 Ethics, Law, and Avoiding Liability in the Practice of Psychology:
Association of State and Provincial Psychology Boards (6 hours CE).
- May 21-23, 1999 An Addicted Society? Methodologies in the Treatment of Substance
Abuse and Other Addictions:
Nevada State Psychological Association (4 hours CE/Ethics).
- May 1-3, 1998 Psychology and the Law Conference:
Nevada State Psychological Association (4.5 hours CE and 4.5 hours
CE/Ethics).
- November 11, 1997 A Scientific Approach to Forensic Neuropsychology
(Glenn J. Larrabee, Ph.D.):
National Academy of Neuropsychology, Las Vegas, Nevada (3 hours CE).
- November 10, 1997 Forensic Neuropsychology Update
(Robert Sbordonne, Ph.D., ABPN; Arnold Purisch, Ph.D., ABPN):
American College of Professional Neuropsychology, Las Vegas, Nevada
(2 hours CE).
- November 10, 1997 Using the MMPI-2 in Neuropsychology (Lloyd Cripe, Ph.D., et. al.):
National Academy of Neuropsychology, Las Vegas, Nevada (3 hours CE).
- October 4, 1997 Wechsler Adult Intelligence Scale—Third Edition (David Tulsky, Ph.D.):
Distance Learning Network, San Diego, California (2.5 hours CE).
- October 4, 1997 Wechsler Memory Scale—Third Edition (Mark Ledbetter, Ph.D.):
Distance Learning Network, San Diego, California (2.5 hours CE).
- September 26, 1997 Worry: When It Gets Too Much and Attention-Deficit/Hyperactivity
Disorder in Adolescents and Adulthood (Edward Hallowell, M.D.):
Developmental Pediatric Educational Seminars, Las Vegas, Nevada (6
hours CE).
- May 31, 1997 The Elder Boomers—Assessment and Psychotherapy of the Older Client:
Nevada State Psychological Association Annual Conference, Reno,
Nevada (6 hours CE).
- May 30, 1997 Ethics, Board of Psychological Examiners Review Process:
Nevada State Board of Psychological Examiners and Nevada State
Psychological Association, Reno, Nevada (3 hours CE).
- April 4, 1997 Criminal Responsibility Assessment: A Practical Guide
(Charles Clark, Ph.D., ABPP):
American Academy of Forensic Psychology, San Francisco, California (6
hours CE).

- April 3, 1997 Achieving Expertise in Child Custody Evaluations
(Beth Clark, Ph.D., ABPP):
American Academy of Forensic Psychology, San Francisco, California (6
hours CE).
- February 13, 1997 The Role of the Licensed Professional Counselor in Nevada
(Tom Sexton, Ph.D.):
Nevada State Psychological Association, Las Vegas, Nevada (1 hour CE).
- January 30, 1997 Autism; 1997 Strategies for Success
(Gary Mesibov, Ph.D. and Raun Melmed, M.D.):
Developmental Pediatric Education, Las Vegas, Nevada (3 hours CE).
- May 4-5, 1996 Clinical Practice Innovations: Partners in Healthcare:
Nevada State Psychological Association, Las Vegas, Nevada (6.5 hours
CE).
- May 3, 1996 Clinical Practice Innovations: Ethics for Mental Health Practitioners:
Nevada State Psychological Association, Las Vegas, Nevada (7 hours
CE).
- April 20, 1996 Recent Legal, Ethical, and Professional Developments in Forensic Practice
(Stephen L. Golding, Ph.D., ABPP):
American Academy of Forensic Psychology, Las Vegas, Nevada (6 hours
CE).
- April 19, 1996 Preparing for the Diplomate Examination in Forensic Psychology:
(Robert G. Meyer, Ph.D. ABPP):
American Academy of Forensic Psychology, Las Vegas, Nevada (6 hours
CE).
- March 2-4, 1996 Psychology and Community: Creating Connections for Health:
American Psychological Association Practice Directorate, State
Leadership Conference, Washington, D.C. (7.5 hours CE).
- November 4, 1995 Neuropsychological Assessment of Malingering and Functional Disorders
(Lawrence Binder, Ph.D.):
Annual meeting of the National Academy of Neuropsychology, San
Francisco (3 hours CE).
- November 3, 1995 Identification of Malingering and Symptom Exaggeration:
Annual meeting of the National Academy of Neuropsychology, San
Francisco (3 hours CE).
- September 28- The Brain Injury Case: What the Trial Lawyer Needs to Know:

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- 30,1995 Brain Injury Association, Colorado Springs, Colorado (14 hours CE).
- May 5-7, 1995 New Perspectives on Clinical Practice with Couples and Children, Treatment Efficacy, and More:
Nevada State Psychological Association Fourth Annual State Conference, Incline Village, Nevada (12.5 hours CE).
- March 4-7, 1995 Empowering Psychologists: Striking a Balance in a Changing Healthcare Environment: State Leadership Conference, American Psychological Association Practice Directorate (9.5 hours CE).
- May 22, 1994 Attention-Deficit Disorders With and Without Hyperactivity
(Arthur Anastopoulos, Ph.D.):
Nevada State Psychological Association Annual Conference, Las Vegas, Nevada (3 hours CE).
- May 22, 1994 Psychology, Healthcare Reform, and Beyond
(Russ Newman, Ph.D., J.D.):
Nevada State Psychological Association Annual Conference, Las Vegas, Nevada (3 hours CE).
- May 21, 1994 Psychopharmacology for Mood Disorders (David Osser, M.D.):
Nevada State Psychological Association Annual State Conference, Las Vegas, Nevada (1.5 hours CE).
- May 21, 1994 Treatment of Adult Depressive Disorders without Medication
(David Antonuccio, Ph.D., ABPP):
Nevada State Psychological Association Annual Conference, Las Vegas, Nevada (1.5 hours CE).
- May 21, 1994 The Change Process in Psychotherapy (James Prochaska, Ph.D.):
Nevada State Psychological Association Annual Conference, Las Vegas, Nevada (3 hours CE).
- May 20, 1994 Avoiding Liability in Mental Health Practice (Randolph R. Reaves, J.D.):
(Executive Officer and General Counsel, Association of State and Provincial Psychology Boards) (7 hours CE).
- November 5-6, 1993 Statement Validity Assessment (SVA): Psychological Methods For Investigating Sexual Allegations by Children and Adults
(David C. Raskin, Ph.D. and Phillip Esplin, Ph.D.):
University of Utah (13 hours CE).
- October 30, 1993 Forensic Neuropsychology: Criminal Issues
(Theodore Blau, Ph.D., ABPP):

- National Academy of Neuropsychology Annual Conference, Phoenix, Arizona (3 hours CE).
- October 28, 1993 Oft-Neglected Issues in Forensic Neuropsychology
(William Miller, Ph.D. and Paul Lees-Haley, Ph.D.):
National Academy of Neuropsychology Annual Conference, Phoenix, Arizona (3 hours CE).
- October 28, 1993 Changes Associated With Dementia Versus Normal Aging
(Alfred Kazniak, Ph.D.):
National Academy of Neuropsychology Annual Conference, Phoenix, Arizona (3 hours CE).
- May 21-23, 1993 Assessing Victims of Abuse: Methodologies for the '90s
(Robyn Dawes, Ph.D., Bill Friedrich, Ph.D., David Raskin, Ph.D.):
Nevada State Psychological Association, Lake Tahoe, California (9.5 hours CE).
- February 23, 1993 The Psychopathic Personality (Reid Meloy, Ph.D., ABPP) (6.5 hours CE).
- February 22, 1993 Assessment of Violence Potential (Reid Meloy, Ph.D., ABPP) (6.5 hours CE).
- January 16-17, 1993 Forensic Neuropsychology: Going Beyond the Test Data
(Arnold Purisch, Ph.D., ABCN, ABPN, and Robert Sbordone, Ph.D., ABCN, ABPN): (12 hours CE).
- January 9, 1993 MMPI-A (James Butcher, Ph.D. and John Graham, Ph.D.):
University of Minnesota, Phoenix, Arizona, 6 hours CE.
- March 15, 1992 Forensic Assessment of Criminal Psycho-Legal Issues
(Alan M. Goldstein, Ph.D.):
American Academy of Forensic Psychology, San Diego, California (6 hours CE).
- March 14, 1992 Clinical Assessment of Malingering and Deception
(Phillip Resnick, M.D. and Richard Rogers, Ph.D.):
American Academy of Forensic Psychology, San Diego, California (6 hours CE).
- March 12, 1992 Forensic Practice and Personal Injury Evaluation
(Stuart Greenberg, Ph.D. and Herbert Weisman, Ph.D.):
American Academy of Forensic Psychology, San Diego, California (6 hours CE).

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- August 1991 Review of Psychopharmacology for Psychologists
(Neil Kirschner, Ph.D.):
American Psychological Association Division 12, San Francisco,
California (7 hours CE).
- August 1991 Attention-Deficit/Hyperactivity Disorder (Russell Barkley, Ph.D.):
American Psychological Association Division 12, San Francisco,
California (7 hours CE).
- June 1991 Advanced Workshops in Clinical Neuropsychology: Neurological
Inference (Ralph Reitan, Ph.D.):
Beverly Hills, California (21 hours CE).
- November 1990 Learning Disabilities (George Hynd, Ph.D.):
National Academy of Neuropsychology, Reno, Nevada (3 hours CE).
- November 1990 The Spectrum of Mild Head Injury (Jeffrey Barth, Ph.D.):
National Academy of Neuropsychology, Reno, Nevada (3 hours CE).
- November 1990 Memory Function Following Traumatic Brain Injury
(Harvey Levin, Ph.D.):
National Academy of Neuropsychology, Reno, Nevada (3 hours CE).
- January 5-6, 1990 Introducing the MMPI-II (Keith Moreland, Ph.D.):
San Francisco, California (12 hours CE).
- November 17-
18, 1989 Custody Litigation for Lawyers and Psychologists (State Bar of Arizona):
Phoenix, Arizona (9 hours CE).
- June 14 and 16, 1989 The Disturbed and Disturbing Child (University of Minnesota):
Minneapolis, Minnesota (18 hours CE).
- May 1988 The Neuropsychology of Memory, Attention, and Judgment
(California Neuropsychological Associates):
Chicago, Illinois (18 hours CE).
- March 1988 Attention-Deficit/Hyperactivity Disorders in Children and Adolescents
(University of Minnesota):
Phoenix, Arizona (16 hours CE).
- October 29, 1986 Use of Neuropsychological Data in Implementing Head-Injured Treatment
Plans (Charles Long, Ph.D.):
National Academy of Neuropsychology, Las Vegas, Nevada (2 hours CE).
- May 17, 1986 The Boston Process Approach to Neuropsychological Assessment
(Edith Kaplan, Ph.D.):

Los Angeles, California (7 hours CE).

April 1986 National Head Trauma Conference: San Jose, California (25 hours CE).

January 1986 Introduction to the Luria-Nebraska Battery (Child and Adult)
(Arnold Purisch, Ph.D. and Greta Wilkening, Ph.D.):
Las Vegas, Nevada (18 hours CE).

February 1984 Clinical Workshop in Child Neuropsychology (Byron Rourke, Ph.D.):
San Diego, California (12 hours CE).

July 1983 Ralph Reitan Workshop in Human Clinical Neuropsychology (Basic
Training): Chicago, Illinois (25 hours CE).

Updated: 04/18/00

Lewis M. Etcoff, Ph.D., A.B.P.N.

Nevada Licensed Psychologist No. 129

Diplomate, American Board of Professional Neuropsychology #257
Diplomate, American Board of Professional Disability
Consultants, P4-536
Fellow and Diplomate, American Board of Medical
Psychotherapists, 1805-1990

Karen Kampfer, M.A.
Associate

REFERRAL INFORMATION: James Montell Chappell is a 26-year-old, single, African American male presently incarcerated in the Clark County Detention Center and charged by the State of Nevada with Murder with a Deadly Weapon, Grand Larceny Auto, and Burglary relating to an 08/31/95 alleged crime in which the victim, Deborah Ann Panos was the 10-year girlfriend of the defendant and mother of his three children. I was asked to evaluate Mr. Chappell by Deputy Public Defender Howard S. Brooks on April 23, 1996. Mr. Chappell was evaluated on June 11, 1996.

TEST BATTERY:

REVIEW OF RECORDS:

1. LAS VEGAS METROPOLITAN POLICE DEPARTMENT RECORDS
2. VOLUNTARY STATEMENT OF LISA ANN DURAN
3. LETTERS APPARENTLY FROM THE DEFENDANT TO DEBORAH PANOS
4. LANSING MICHIGAN SCHOOL RECORDS

PSYCHOLOGICAL TESTS:

1. WECHSLER ADULT INTELLIGENCE SCALE - REVISED
2. WIDE RANGE ACHIEVEMENT TEST - 3
3. MILLON CLINICAL MULTIAXIAL INVENTORY - II
4. FORENSIC LIFE HISTORY QUESTIONNAIRE (ADMINISTERED BY HOWARD BROOKS)
5. TWO-HOUR FACE-TO-FACE CLINICAL INTERVIEW OF MR. CHAPPELL

CONSENT TO EVALUATE: Mr. Chappell was mailed a written Consent to Evaluation form in which I explained the purposes of this evaluation. In addition, before beginning the face-to-face evaluation, Mr. Chappell and I discussed that this evaluation was ordered by Mr. Brooks, his Deputy Public Defender, for purposes of helping the jury understand Mr. Chappell as a human being. I informed Mr. Chappell that anything he said to me could be used in my report and that information is, therefore, not confidential in the traditional sense. I told Mr. Chappell that his attorney might find my report not beneficial to his case and that the report might not ever be made public. On the other hand, I also warned Mr. Chappell that the report could be made public and

FORENSIC (CRIMINAL) PSYCHOLOGICAL EVALUATION

that I could be cross-examined by the District Attorney in court on the basis of my report. I warned Mr. Chappell that his Miranda Rights apply in this situation and that he should tell me if he felt uncomfortable answering any particular question I asked him. He stated that he understood these instructions, and the evaluation proceeded.

CLIENT PRESENTATION: Mr. Chappell presented as an appropriately attired, clean in appearance, African American male, appearing his stated age. He was cooperative throughout the evaluation and was particularly open about the relationship that he had with his former girlfriend, Ms. Panos. He showed normal motor behavior. His speech was normal in rate, organized, and free of articulation disturbance. His mood was nervous during intellectual and educational testing manifested by nervous laughter. His mood during my interview with him was appropriate to the content of our conversation. He became extremely sad and cried when recounting his killing of his girlfriend. His remorse was very credible and very sincere, in my opinion. He showed anger in a realistic sense in describing how he felt during the time in which he was incarcerated at the Detention Center and Ms. Panos was thought by Mr. Chappell to be going out on him. Mr. Chappell appeared straightforward and credible in his presentation of his family history and his life history. Mr. Chappell is certainly not evidencing any psychotic symptoms. He is intelligent enough to understand right from wrong. He did not appear to evidence any suicidal or homicidal ideation or any form of delusion or obsessive thinking, but was ruminating about his having killed the woman who he felt that he loved so deeply. Intellectual and educational test results appear valid as do personality test results.

TEST SCORES:

WECHSLER ADULT INTELLIGENCE SCALE - REVISED

<u>SUBTEST</u>	<u>SCALED SCORE</u>	<u>PERCENTILE</u>
VERBAL SUBTESTS		
Information	4	2
Digit Span	8	25
Vocabulary	5	5
Arithmetic	6	9
Comprehension	5	5
Similarities	8	25
PERFORMANCE SUBTESTS		
Picture Completion	6	9
Picture Arrangement	8	25
Block Design	12	75
Object Assembly	9	37
Digit Symbol	8	25

Verbal IQ = 77; borderline range (6th percentile)
Performance IQ = 91; average range (27th percentile)
Full Scale IQ = 80; low-average range (9th percentile)

FORENSIC (CRIMINAL) PSYCHOLOGICAL EVALUATION

WIDE RANGE ACHIEVEMENT TEST - 3

<u>SUBTEST</u>	<u>STANDARD SCORE</u>	<u>PERCENTILE</u>	<u>GRADE EQUIV.</u>
Reading	88	21	H.S.
Spelling	89	23	8
Arithmetic	67	1	4

INTELLECTUAL TEST RESULTS: Mr. Chappell received a WAIS-R Full Scale IQ of 80, suggesting that his overall intellectual abilities fall at the bottom of the low-average range and in the 9th percentile. This means that 91 out of 100 people his age show superior intellectual capabilities in comparison to Mr. Chappell.

Mr. Chappell's visual-spatial thinking skills, as represented in his Performance IQ, are average.

Mr. Chappell's language skills are below-average and measured in the 6th percentile, meaning that his abilities to understand words and concepts as well as express himself using words in logical fashion is worse than 94 out of 100 people his age. It is important to note that there is a strong correlation in the psychiatric and learning disabilities literature suggesting that children as well as adults who have early language problems tend to be overrepresented in groups of adolescents who get into trouble with the law and tend to be overrepresented in groups of aggressive adults. This implies that language deficits may have a very pronounced effect on a person's capability to think things through rather than act feelings out under significant stress. I bring this to the Court's attention because I believe that it has direct bearing on, and explains at least part of the reason why, Mr. Chappell was prone to acting out in a completely self-destructive as well as criminal fashion in the killing of his girlfriend.

ACADEMIC SKILLS: Mr. Chappell's reading and spelling skills fall in the low-average range. He is certainly literate enough to read a newspaper. His spelling is measured at an eighth grade level. My review of his notes to his girlfriend, while containing spelling errors, were essentially quite well-written and expressed well his thoughts and feelings.

Mr. Chappell very obviously has a significant learning disability in the area of arithmetic which he has had his entire life. His arithmetic skills are measured at a fourth grade level, worse than 99 out of 100 adults.

CHILDHOOD/FAMILY HISTORY: I relied upon Mr. Chappell for information in this section of the report and in subsequent sections of the report, as his mother (who I otherwise would have interviewed) died in a tragic accident when Mr. Chappell was two and a half years of age. Mr. Chappell's father has never been available in his life and did not live with Mr. Chappell at any point during his life and, so, could not provide relevant information about Mr. Chappell's upbringing. Mr. Chappell's grandmother who raised him is presently hospitalized, according to Mr. Chappell, suffering broken bones.

Mr. Chappell stated that his biological father, Richard Chappell, presently lives in Lansing, Michigan. Mr. Chappell believes that his father and mother were married at the time of his

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conception. Mr. Chappell doubts that his father ever lived for any length of time with his mother following Mr. Chappell's birth. Mr. Chappell stated that he never lived with his father and remembers first seeing his father at age 10 on one specific day when his father happened to visit. Mr. Chappell's father apparently did not contact his son prior to that visit nor contact his son following that visit except once when Mr. Chappell told me that his father promised to visit him on Christmas but didn't show up, which Mr. Chappell still remembers as a very significant and sad day in his life. Mr. Chappell mentioned that he next saw his father perhaps at age 16 or 17 when his father attended Mr. Chappell's great-grandmother's funeral in Lansing, Michigan. Mr. Chappell told me that he spent approximately two hours at that time with his father and perhaps an hour here and there on several other occasions over the next few months. Mr. Chappell stated that he never spent any significant time with his father.

Mr. Chappell explained that as far as he knows from what his grandmother has told him, his father has been "in and out of prison a lot. He always did drugs. He ran the streets. Even two months ago, my grandmother said he's still using drugs and had a heart attack." Mr. Chappell seemed dejected when he told me that his father "hasn't written or called me even though I'm in jail. It really hurts."

I asked Mr. Chappell to describe the emotional effect on him of not having a father. He answered, "A lot. We had no male role model in the house. We were raised by a woman. Now I don't have the skills to get jobs -- mechanical, construction. I moved to cookin'. I had lots of restaurant jobs." Mr. Chappell stated that he was both sad and angry at his father for not having any real involvement in his life. He gave me an example of one event that occurred at the time that his father was visiting for Mr. Chappell's great-grandmother's funeral. Mr. Chappell stated that he and his father were going to the bank where Mr. Chappell was going to cash his paycheck. Mr. Chappell told me that his father actually asked him to rob the bank with him which Mr. Chappell said he thought was ridiculous and refused to go through with this. He then stated that his father asked him for money which he knew was for drugs. Mr. Chappell said that he gave his father the money anyway, and his father asked him for more. Mr. Chappell said to me, "He just wasn't no good. He let me and my mother down."

Mr. Chappell became very sad as he told me that one of his greatest regrets is not having "had the guts" to ask his grandmother about his father and mother's relationship. He still wants to know what his mother was like and how his mother and father got along.

Mr. Chappell described his mother as someone whom he has no recollection of, as she died in a freeway accident when she was hit by a sheriff's car. Mr. Chappell's grandmother allegedly said to him that there was some financial compensation given to Mr. Chappell's father to help raise the four children who no longer had a parent to raise them. Mr. Chappell stated that his grandmother told him that she believed that his father kept all of the money and certainly gave none of it to the grandmother to help raise his four children.

Mr. Chappell's grandmother received custody of all four children. His grandmother's name is Clara Axam, and she works for the Michigan State Police Department, according to Mr. Chappell, in a decent job. When asked to describe his grandmother as a parent figure, he stated, "She spanked us with switches a lot but took care of us and gave us food and clothing." Mr. Chappell stated that he didn't really feel loved because his grandmother never gave any of the children birthday parties. She played Bingo on the weekends and came home late at night. She

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apparently used physical punishment a great deal, with most of the worst punishment saved for older brother Ricky, age 28, who is presently in prison in Muskegon, Michigan and Carla, the oldest daughter, presently age 30, who is apparently living on the streets, according to Mr. Chappell. Both Carla and Ricky are said to have been hit with extension cords and sticks. On one occasion, Mr. Chappell remembers Carla telling him, "I'll find a place for us all. We'll do this and that. I'll find daddy," meaning that she wanted to escape from grandmother's home where she was being physically abused and where the other kids were all getting hit. James and Myra, age 24, were less ill-behaved than Carla and Ricky, according to Mr. Chappell.

Mr. Chappell denied any specific problems getting along with any of his siblings. He stated that Ricky was "in trouble all the time. He came in late. He took money from my grandmother's purse. He was in Juvey a few times and then some camps, foster homes, jail, and prison."

Mr. Chappell was asked to describe what he was like as a student during elementary school and as a child during those years. He stated, "I was all right." He remembered being in one of several elementary schools and stated that he was sent to the Principal's Office and kicked out of his first elementary school for some form of misbehavior. He thought he might have been a hyperactive child, but, on further questioning, it isn't at all clear that he had Attention Deficit Hyperactivity Disorder. Mr. Chappell believes that he was placed in a special school for which he was picked up in a private bus in second grade at Cavanaugh Elementary School in Lansing, Michigan. He stated that he took some teasing from kids that age who said he was retarded because he was going to a special school. I asked him what effect this teasing had on his development. He answered, "That really hurt."

Mr. Chappell told me that he was placed in special educational classes in seventh grade through the time in which he left high school, following the tenth grade. He attended seventh and eighth grades at Dwight Rich Junior High School and ninth and tenth grades at Sexton High School, both in Lansing, Michigan. He believed that he was a C and D student. He earned no specific honors or awards during those years. He found math to be his hardest subject and was pulled out of regular classes for help in math, reading, and writing, to the best of his recollection.

Mr. Chappell denied being a troublemaker either in elementary school or junior high or high school. He said that he had absolutely no fights in elementary school that he could recall. I asked him when he began to misbehave. He answered that at about 12 or 13 years of age, the kids in the neighborhood introduced him to marijuana, and "I began smoking weed, drinkin' a little bit." He remembered one occasion in which his sister, cousin, and a friend ransacked a house down the street for no particular reason. They were caught by the police. He went to Juvenile Court and was incarcerated for one week, after which he was placed on probation. His sister, Myra, got in trouble while incarcerated and had to stay longer. The next time he was in trouble was apparently when he was 16 years of age when he was arrested for trespassing at the high school.

Mr. Chappell denied any arrests prior to age 13.

LANSING, MICHIGAN EDUCATIONAL RECORDS REVIEW: On November 12, 1986, while at Sexton High School in Lansing, Michigan, a Social Work Evaluation was conducted by Theresa Abed, MSW, School Social Worker. The social worker gave a history of the first couple of years of James' life which is useful to reprint herein. Ms. Abed writes, "Before James' natural mother died, he and his siblings spent much of their time at their grandmother's house and, in

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fact, were already living with her at the time of his mother's death; however, Mother had frequently visited the children and was especially close to James. Her death was a very difficult adjustment for the children and, in particular, James. He was only two and a half years old at the time. James does not have contact with his natural father except for the times he has seen him on the street. His father is frequently in jail for drugs and other violations."

In the school year 1977-78 (grade two), James' teacher wrote, "James is often reminded to get busy, often given extra time to complete work, especially reading packet, often talks with those around him. James changes moods very quickly, needs to rely on himself more." In grade three, his teacher wrote, "He is easily distracted and is late getting his work in often. James needs to show work on listening when others are talking."

In grade four, James' teacher wrote, "James is not applying himself. He has real difficulty in math but should be doing much better in reading. He is overly disruptive in class and needs to be encouraged to be more respectful and considerate. Suspended for disruptive behavior February 15, 1980."

In a school Social Work Evaluation, conducted in grade four, Donovan Dosey, Jr., CSW, School Social Worker, noted in the Problems section of this report that James had been originally referred on June 13, 1977 because James was wetting and sucking his fingers. Since that time, teachers have recognized, "His actions and reactions are very slow. He asks unrelated questions and will not respond when spoken to. He is in the fourth grade and functioning at a second grade level." Despite a normal developmental history, the loss of James' mother when he was two and a half years of age was significant, according to the social worker, in that "James would not talk to anyone. His grandmother enrolled him in Head Start where he would not play with anyone or talk to anyone. He finally built a relationship with a new teacher, and when she left suddenly, he regressed to his old behavior, not talking to anyone." This social worker notes that none of the services provided to James in the early years were effective, and "his behavior seems to be deteriorating. James is in constant conflict with several of the other students and is quite often isolated to get his work done and to keep him away from the other boys. James has had a great deal of difficulty adjusting in school, both socially and academically. I feel that he has a great deal of difficulty forming meaningful relationships and recommend that he be placed in a smaller classroom situation and should receive individual therapy outside the school setting."

As a result of this evaluation, James was placed in a SLD (severely learning disabled) classroom in the school year 1980-81 where he still exhibited problems with self-control. Teachers were also concerned with his being withdrawn from other people, having a very low self-concept, and having trouble verbalizing his concerns to others. *(COMMENT: As a result of the lack of James' mother as well as neurologically-based learning disabilities, James, during elementary school, probably met present diagnostic criteria for an Attention Deficit Hyperactivity Disorder and Oppositional Defiant Disorder. Although grandmother and the School District in Lansing, Michigan attempted to help James, he seemed unable to profit from special educational assistance and apparently was never examined by a physician to see whether or not he did have Attention Deficit Hyperactivity Disorder.)*

In high school, his Achievement Test results in the Lansing School District are very poor. For example, in 1985, James scored the lowest possible stanine of one in Reading Comprehension

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and in Math. Below-average stanines of two were found in English and Spelling. A stanine of three, still below-average, was found in the area of Reading Vocabulary.

On October 23, 1986, when James was 16 years/9 months of age and in an emotionally handicapped special educational setting at Sexton High School, the school psychologist, Lutie Papesh, wrote a two-page updated report in which she stated, "The extensive interview revealed a youngster who seems to feel he has little hope of succeeding in life, especially as it relates to academic achievement. He did not appear to have many coping skills to deal with problems he encounters and tries to endure whatever comes his way by purse pointing action. He tends to withdraw and avoid when he encounters problems and often takes what appears to him to be the easy way out. Compared to the evaluation done three years ago, James does not appear to have made much progress. The result of this evaluation indicates James continues to meet eligibility requirements as an Emotionally Impaired student. His emotional problems appear to interfere with his ability to learn. Psychotherapeutic intervention is strongly recommended for him." This school psychologist specifically noted the emotional problems as "low self-concept, depressed, distrusting, few coping skills, low self-image, poor problem-solving skills, difficulty completing assignments, past history of problems with attendance, low motivation."

Last but not least, in high school, during ninth and tenth grades, James' report card of 01/28/87 was reviewed. He had carried 20 credits during those two school years and earned only 7 of those credits with an accumulative GPA of 0.65 and a class rank of 584 out of 607 students, essentially at the very bottom of his high school class.

LEGAL HISTORY: Since age 13, Mr. Chappell admitted to being arrested approximately 15 times. I did not inquire as to the nature of all of these arrests, as I am certain that the Court will have this history available to it.

SUBSTANCE ABUSE HISTORY: Mr. Chappell told me that he began using marijuana at age 12 or 13 and used it continually at about age 13 or 14, approximately four joints per day. He told me that he remembers that each joint cost \$1.00 and, so, they were affordable. He said that there was no supervision at home and that he and his siblings and friends were able to essentially smoke marijuana around the home. He stated that he did cut back from this intensity of use at about age 16 or 17 when he began smoking every other day or only on weekends.

His major drug of choice was cocaine. He began using cocaine at 18 years of age when a friend "rolled a rock into a joint." He stated that the habit of using cocaine began around 1991, when he was approximately 22 years of age and living in Arizona. Someone introduced him to smoking cocaine out of a pipe which he described as a "very high high. I used it daily after awhile in 1992 in Arizona." I asked him what the effects of the cocaine were, as he recalled them. He replied, "You don't feel like being bugged. It's like a paranoid high. You can get really ticked off. I liked to get high by myself late at night when my girlfriend and the kids were asleep." Mr. Chappell denied ever behaving violently as a result of smoking cocaine. He told me that he only stopped using cocaine several days in a row, at most since 1992. As soon as he had enough money, he would purchase more cocaine. He appears to have developed a cocaine dependence which is a severe substance abuse disorder.

PSYCHIATRIC HISTORY: Mr. Chappell stated that he had no significant psychological problems in the form of acute symptoms throughout his childhood and adolescence. He stated

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that it was only about four months before he murdered his girlfriend that he had thought about suicide frequently. The reason for his suicidal thoughts had to do with his belief that his girlfriend and he were drifting apart, and his increasing belief that she had begun to see other men. This belief is clearly elaborated in the letters that I reviewed that Mr. Chappell apparently wrote to Ms. Panos while he was incarcerated at the Clark County Detention Center on shoplifting charges. Mr. Chappell denied any history of psychiatric treatment, psychiatric hospitalization, or the use of psychotropic medications.

MR. CHAPPELL'S RELATIONSHIP WITH MS. PANOS: In regard to Mr. Chappell beginning to have suicidal thoughts while incarcerated at CCDC, he associated to the fact that his suicidal thinking was brought on by what he perceived to be his girlfriend drifting apart from him. He told me, "I loved this woman more than anybody I ever loved in my whole life. More than even my grandmother. She did many things for me. She had a lot of control over me. She was a friend and a lover." He and Ms. Panos had lived together eight of the ten years that they had dated and bore three children. He stated that they planned to marry. I asked him why he killed her, and he responded, "I found out she was cheating on me." He explained that he, she, and the kids moved to Las Vegas in October 1994. He stated that he was placed in jail on February 28, 1995, charged with shoplifting, and stayed in jail until May 10, 1995, when he was released. He stated that Ms. Panos visited him frequently in jail during this period, brought the kids for visits, gave him money, and accepted his telephone calls.

The problems that eventually led to Ms. Panos' murder began, according to Mr. Chappell, on May 10, 1995 when two of Ms. Panos' female friends moved into the apartment. Mr. Chappell said that things were "cool for two weeks" until one of her friends began bringing different men into the home every night. He stated that he didn't like the different strange men in the home and that he talked to Ms. Panos about the situation, but she apparently didn't rectify the situation. Mr. Chappell was disgusted that these men would leave cigarette butts on the floor when he and Ms. Panos didn't smoke. He found beer bottles littering his apartment. He became very angry with the strangers, and he would usually be, at the same time, either high or drunk. He stated, "I tried to take control of the situation," but apparently he and one of his female friends, by the name of Claire, got into an argument, and Claire called the police to the home. The police apparently asked Mr. Chappell to leave his own home. According to Mr. Chappell, eventually Claire was able to place Ms. Panos in the middle of this disagreement with Mr. Chappell. Mr. Chappell admitted that he took Claire's radio from her to "piss her off" so that she would move out of the home. Instead, apparently Ms. Panos backed up her girlfriend which "frustrated me even more. Debbie started hanging out with Claire. I'd be sitting home with the three kids. She wouldn't return until 3:00 or 4:00 in the morning. Didn't call all night. I'm sitting up all night worrying. It's getting to me," stated Mr. Chappell.

To make a long story short, Mr. Chappell stated that Debbie began going out at night with her girlfriends and coming home early in the morning on a regular basis which made Mr. Chappell wonder what she was doing. She apparently denied doing anything to endanger their relationship, but the effect of Debbie's behavior at this point, according to Mr. Chappell, was to make him somewhat paranoid, mistrustful of her intentions and motives, and fearful of their relationship (which he was enormously psychologically dependent upon) coming to an end.

Mr. Chappell told me of the past difficulties that the two of them had together. Her family is of white Italian heritage; apparently, they were not very happy that their daughter, Debbie, was fall-

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ing in love with an African American male. Mr. Chappell told me that he was "called a nigger for a few years." Several years of enmity ensued between Mr. Chappell and Debbie's parents. Mr. Chappell admitted that he had slapped Ms. Panos a few times and was once arrested for domestic violence in Arizona. He stated that she had also hit him and come after him with scissors and a knife on one occasion. He stated that Ms. Panos never required medical attention in Arizona as a result of him hitting her.

In any event, in or around June of 1995, Mr. Chappell stated that Debbie stopped coming home and stayed away for two weeks, with him counting the days. Apparently, she was staying at her friend Lisa's apartment with the children, usually. Apparently, Debbie told her friend that she was afraid of Mr. Chappell, according to what he subsequently heard.

Mr. Chappell went on to tell me that, quite by accident, he received a call from Debbie one evening and hit the redial button. He called back the number from which she had called him and found out that it was from Motel 6. She had told him that she was babysitting for a friend. He stated the motel operator confirmed that a Ms. Panos had stayed at Motel 6 the night before. Mr. Chappell said, "I was cryin', nervous, hurt... totally blown away." He stated that shortly thereafter, Debbie returned, took her clothes and the children and left for a week before he saw her again. Mr. Chappell reacted to this possible loss of someone upon whom he depended so much by getting high on cocaine "to get it out of my head. I didn't want to focus on her sleeping around Las Vegas."

It was on June 26, 1995 that Mr. Chappell was placed again in jail for shoplifting when he was attempting to take what would be a present for his three-year-old daughter's birthday. He was in jail for about a week when someone answered the phone at his home, and he didn't know who the gentleman was. Mr. Chappell became quite "stressed out" and said, "I could feel her being touched. I had dreams of her messing with people." To make Mr. Chappell even more anxious, insecure, and paranoid, he stated that Debbie never visited him in jail throughout the summer, never gave him any money, never took the kids to visit him, and all the while he was writing her cards everyday. On a rare occasion that the two of them did make contact with one another, he stated that Debbie always told him that she loved him and denied that she was sleeping around.

Mr. Chappell told me that he agreed to attend drug rehabilitation, which he recognized he needed, and he was about to be released from jail to enter a drug rehabilitation program when he called home and a man by the name of Willie allegedly answered, saying that he was watching Mr. Chappell's children while Debbie was at work and wouldn't return until 9:00 p.m. Mr. Chappell became incensed and felt that this was clear evidence that Debbie was cheating on him.

On the day that Mr. Chappell got out of jail and on the day that he killed Debbie Panos, he told me that he first drank a couple of beers with the guys at his old hangout, took a bicycle and rode over to his home where he climbed into a bedroom window (because he didn't have a key to the front door). He was met at the window by Debbie Panos, who he says assisted him through the window and asked him why he hadn't knocked on the door. He explained to her that he didn't know she was home. He stated that they began to have sex, and "when I enter her, her vagina is all loose. It wasn't right. I instantly got up. The smell on her wasn't good. I said, 'You been fuckin' huh?' She says, 'No.' I was cryin' and pacin'. She performs oral sex on me. Then I found men's boxers on the bedroom floor. She says it must be Claire or Lisa's friends. I'm really pissed. My mind's spinnin'. We're walkin' out the door, get in the car. I see two boxes with

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cheap beer cans. I asked her whose been drinkin'. She says, 'Lisa and Claire.' The car's trashy -- beer cans on the floor. It's pissing me off. The light's broke off. The ceiling upholstery is ripped. She's blamin' the kids. The gearshift was broke. The air-conditioning was broke. All my tapes were gone. Then I found a letter in the car to her from some guy. He talking about, 'I love the way you did this to me...' This feeling came inside me. She sees me reading the note. All I could picture was my lady in bed with someone else. I got out, grabbed her, took her in the house. She's on the floor at the front door."

Mr. Chappell began to cry uncontrollably as he recollected his murdering his girlfriend. He continued by saying, "She just laid on the floor and covered her face. I still to this day don't remember everything I did to her. It happened so quick. Then I panicked and left." This explanation took a few minutes, as Mr. Chappell was crying profusely and exhibited definite remorse and an enormous feeling of guilt and sorrow for this impetuous and horrible act.

Mr. Chappell admitted that he felt abandoned by Debbie Panos. He believes that she lied to him about not having seen other men. Subsequent to the murder, Mr. Chappell says that he knows that she was seeing three different men. He stated that her friend, Lisa, told the police that Mr. Chappell had said to her, "If I couldn't have her, then nobody else could." Mr. Chappell denied that he ever said anything of the sort to Lisa.

In summary, Mr. Chappell appeared enormously remorseful that he impetuously killed the very person who he thinks he loved so deeply but who, in reality, he was probably extremely dependent upon. His explanation of how his relationship with Ms. Panos deteriorated during spring and summer of 1995 hold together logically and seem credible to me. At the same time, I don't doubt that his depiction of the relationship as being a solid one prior to this time is not completely accurate. I am also certain that Ms. Panos probably left Mr. Chappell for what she felt to be good reason. Whether or not she was cheating on him, I have no idea, but I certainly believe that Mr. Chappell believed that his girlfriend was cheating on him -- a feeling that, while incarcerated, was enormously hard for him to accept.

PERSONALITY TEST RESULTS: The Millon Clinical Multiaxial Inventory - II (MCMI-II) is an excellent objective personality test that Mr. Chappell was administered via audiotape in order to work around his reading difficulties. The MCMI-II measures abnormal clinical personality traits, severe personality traits, and acute psychiatric disorders. Mr. Chappell's MCMI-II is valid and reliable. It suggests that he is dysthymic in mood as a result of feeling personally inadequate, worthless, and guilt-ridden. The MCMI-II depicts him as a socially awkward and introverted man, shy, apprehensive, sensitive to humiliation, and especially sensitive to public humiliation and rejection (which is very relevant to the motive for his murdering his girlfriend).

The MCMI-II depicts Mr. Chappell as having four significant abnormal personality characteristics: avoidant, borderline, schizoid, and self-defeating characteristics. The MCMI-II depicts Mr. Chappell as an intensely mistrustful man who has very strong needs to be dependent upon someone else due to his feeling that he cannot function independently. *(COMMENT: This descriptor of Mr. Chappell is enormously important in regard to his motives for this murder, as it depicts him as both very mistrustful and enormously dependent simultaneously. And, so, if he actually felt that his girlfriend was cheating on him, then he would be frightened that he might lose her*

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[due to his dependency needs and difficulty functioning autonomously] and, at the same time, prone to mistrust her, whether or not the mistrust was justified.)

Additionally, Mr. Chappell appears to have some cognitive eccentricities to the point that he may at times become so anxious that he loses sight of his identity. He is very socially uncomfortable and depends upon others to assume responsibilities that he should shoulder. He avoids social and personal obligations because commitments constitute a threat to his security. He likely felt a conflict between becoming too detached from Debbie and too close to Debbie, as neither closeness was tolerable emotionally to him nor detachment for fear of losing someone who he depended upon so enormously. (COMMENT: This dependency need probably derives from the fact that he lost his mother at age two and a half, never had a father figure in his life, and was raised by a less-than-adequate parent figure in his grandmother.)

Mr. Chappell would be the type of individual to feel persecuted, humiliated, and disparaged by others because his own self-image is one of weakness and ineffectuality. At times, Mr. Chappell can become so self-absorbed that his daydreams blur fantasy with reality. He is also the type of person who wishes to avoid emotional experiences (e.g., his incessant drug use) and also to suppress any event in his life that might evoke disturbing memories and feelings. These defensive efforts would obstruct his having positive social experiences. Others might see him as a socially peculiar individual whose occasional autistic or magical thinking might alienate others. All of this would lead him to maintain a depressive, socially anxious, detached, and ineffectual life pattern.

Most importantly, Mr. Chappell's personality test results suggest that his lack of initiative, self-deprecatory attitude, and avoidance of assertive behaviors lead him to lead a passively dependent lifestyle in which he would be the type of person to attach to someone, like a girlfriend, in order to make him feel safe and secure.

DIAGNOSTIC IMPRESSION: (DSM-IV):

- AXIS I:** COCAINE DEPENDENCE.
RECEPTIVE LANGUAGE DISORDER.
DYSTHYMIC DISORDER (PROBABLY LIFELONG).
ARITHMETIC DISORDER.
MARIJUANA ABUSE.
ATTENTION DEFICIT HYPERACTIVITY DISORDER (PROBABLE).
- AXIS II:** BORDERLINE PERSONALITY DISORDER WITH AVOIDANT, SELF-DEFEATING, AND SCHIZOID PERSONALITY FEATURES.
- AXIS III:** PER PHYSICIANS.

SUMMARY AND CONCLUSIONS: In terms of potential mitigating factors, the death of Mr. Chappell's mother when he was two years of age is a significant factor in his life. A second factor of importance is that he never had any involvement of his father throughout his life. Third, his grandmother appears to have been a somewhat inadequate and physically abusive parent figure who unfortunately may not have helped Mr. Chappell develop a sense of self-

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worth. Fourth, Mr. Chappell has a neurologically-based receptive language disorder which has been found in psychiatric and psychological literature to correlate with aggressive acting-out behaviors in children and teens as well as in adults. Fifth, Mr. Chappell developed feelings of low self-worth and personal inadequacy which has resulted in his having a Borderline Personality Disorder due to a combination of factors: the death of his mother and the absence of his father, an inadequate parenting figure (his grandmother), school failure due to language and arithmetic disorders of neurological origin, and the absence of timely or effective treatment of these academic problems. Sixth, the development of Mr. Chappell's Borderline Personality Disorder with avoidant and self-defeating features are a result of his low self-worth, some humiliating childhood experiences (especially in school), and the absence of normal adult role models during his childhood. Seventh, Mr. Chappell's cocaine dependence is an understandable occurrence because he used dependence on a substance like cocaine as a means to escape his feelings of inadequacy and low self-worth. Eighth, as a result of cocaine dependence, Mr. Chappell was unable to have the normal opportunities to learn how to cope with his many problems and to find some successes in his life which would have led to greater self-worth and less anxiety concerning the loss of a loved one. Finally, if Ms. Panos was in fact seeing other men while Mr. Chappell was incarcerated (or even if she wasn't, but Mr. Chappell sincerely believed that she was seeing other men), Mr. Chappell became so fearful and anxious of losing the one person he needed desperately to support him that he was less able to think logically and rationally which contributed to his impetuously taking Ms. Panos' life.

Mr. Chappell's Borderline Personality Disorder was contributing to his unstable mood and difficult interpersonal relationships, and his poor self-image was manifested within his intense, interpersonal relationships characterized by the extremes of over-idealizing Ms. Panos and devaluing Ms. Panos. Secondly, the Borderline Personality Disorder contributed to Mr. Chappell's exploiting Ms. Panos via his own misbehavior. It also contributed to Mr. Chappell's affective instability with his marked shift between normal moods, depressive moods, anxiety, and irritability. The Personality Disorder was manifested in inappropriate intense anger and lack of control of anger, (e.g., the impetuous murder of his girlfriend) and the anger that he felt in the months previous to the time of the murder when he believed that he was losing the one source of strength in his life.

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Born: Los Angeles, California, October 1, 1943. Married, two children.

Education History

Los Angeles City College, Los Angeles, California. 9/61 - 1/66, A.A.
Major Area: Psychology

California State University, Northridge, California. 2/66 - 6/68, B.A.
Major Area: Psychology

University of Houston, Houston, Texas. 9/71 - 8/74, M.A.
Major Area: Clinical Psychology

University of Houston, Houston, Texas. 8/74 - 8/75, Ph.D.
Dissertation: A figure-ground model of cognitive balance
Major Area: Clinical Psychology

1976 California License PL 4851

1977 Nevada License PSY 054

May 2003-
Present

Clinical Director, Dynamic Resource Group, Reno, NV. Private practice.

May 1997-
May 2003

Associate Chief of Staff, Mental Health Service Line, Department of Veterans Affairs Sierra Nevada Health Care Network, Reno, Nevada. Supervised 45
Page: 2967

employees of the Mental Health Service Line. MH Service Line is the product of the reorganization of Psychiatry, Psychology, Social Work, and Chaplain services. Service included a medical primary care team and was named one of 12 "Innovative Programs" by DVA.

May 1997-
Present

Clinical Professor of Psychiatry and Behavioral Sciences, University of Nevada, Reno, School of Medicine.

Apr 1985-
May 1997

Chief, Psychology Service, Veterans Administration Medical Center Reno, Nevada.

Associate Professor Psychiatry and Behavioral Sciences, University of Nevada, Reno, School of Medicine.

Nov 1984-
Apr 1985

Acting Chief, Psychology Service, Veterans Administration Medical Center, Reno, Nevada.

Aug 1975-
Nov 1984

Coordinator, Mental Hygiene Clinic, Veterans Administration Medical Center, 1000 Locust Street, Reno, Nevada.

Dec 1976-
Present

*Private Practice, South Lake Tahoe, California,
Administrator and service provider for Employee Assistance Program, City of South Lake Tahoe (since 1983).*

Sep 1978-
Present

Private Practice, 1350 Haskell Street, Reno, Nevada.

Mar-Sep
1978

Private Practice, Nims Associates, 100 North Arlington, Suite 200, Reno, Nevada.

Jun 1974-
Jun 1975

San Francisco Veterans Administration Hospital, 42nd and Clement Sts., San Francisco, California: Psychology trainee

Jun 1973

*Texas Research Institute of Mental Sciences, 1300 Moursund Avenue, Houston, Texas
Program co-designer and clinical Staff, Ingrando Residential Growth Center for Adolescents.*

1972
Duties:

*University of Houston, Houston, Texas
Co-trainer T-Group lab for University of Houston Law Students and Rice University Architecture Students.*

Summer
1971
Duties:

*Penny Lane, Van Nuys, California; California State University, Northridge, California
Assistant Group Trainer for a human relations training class; Assistant Group Trainer for a community workshop and for deaf adults; Volunteer ed at Penny Lane counseling delinquent girls.*

1968-1971 United States Navy, Active Duty
1968 Navy Officer Candidate School, Newport, R. I.
1969 U. S. Navy School of Deep Sea Diving, Washington, D. C.
Duties: Ship's Salvage Officer (Primary); Line Supply Officer (Secondary);
Communications/Cryptographics; Electronics Maintenance Officer;
Education-Safety Officer; one tour in Vietnam.

1967-1968 San Fernando Valley State Child Study Center
Duties: Research assistant (Work-Study Program) to Dr. Samuel Pinneau;
Programmer statistical analysis programs (Fortran IV; IBM 360/20);
developed an independent study project

Mar-Apr Advanced Clinical Biofeedback & Case Studies in Biofeedback.
1975 Biofeedback Institute of San Francisco, California

Dec 16-20 Hypnotherapy supervision with Milton Erickson, M. D.,
1977 Phoenix, Arizona

Dec 4-9 International Congress on Ericksonian Approaches to Hypnosis and
psychotherapy, Phoenix, AZ.

Aug 22-27 International Congress on Hypnosis and Psychosomatic Medicine
1982 (with Advanced Hypnotherapy Workshop), 32.5 hours, Glasgow,
Scotland

Dec 4-12 The Fourth Scientific Meeting of the Pacific Rim Psychiatric Association:
1988 Transcultural Mental Health; 18 hours; Hong Kong

Plus a variety of continuing educational experiences including hypnosis,
biofeedback, psychopharmacology, P.T.S.D. and family therapy.

1972-1973 Who Cares? A Houston drug crisis intervention organization. Psychologist
on a drug crisis intervention team for various area rock concerts, etc.

1973 Teenline. A weekly youth-oriented problem column in The Houston Post.
Consultant.

1974-1975 Comprehensive Group Practice, San Francisco Veterans Administration
Hospital (a pilot primary care program). Psychological Consultant.

1976 Nevada Lung Association, Reno, Nevada. Consultation and program design
for a Stop-Smoking Program.

Sep-Dec 1980	Disabled American Veterans Vietnam Veterans Outreach Program Program design, implementation.
Dec 1980-1999	Veterans Administration Vietnam Outreach Center, Reno, Nevada. Clinical supervision of team leader, weekly case conferences with staff.
May 1981	Veterans Administration, Content Expert, Task Force for Job Analysis for Psychology (SFVAMC).
May 1982	Veterans Administration, Content Expert, for production of mediated package on Management of the Violent Patient: "Words Away from Violence" (Salt Lake City, IRMEC). Content Expert for mediated package on suicide: "The Prevention of Suicide", VAMC, St. Louis, MO--Winner of Health Sciences Television, "Best of Show", Elmer Friman Award.
July 1984-present	Psychological Consultation for City of South Lake Tahoe; Consultation to City Council and Department Heads (special emphasis on Police and Fire Departments).
Aug-Sep 1984	Consultant/interviewer for Veterans Administration Office of Program Planning and Evaluations Client Impact Study, Vietnam Veterans Outreach Program (Washington, D.C.).
Present	Reviewer for <i>American Family Physician</i> .

Teaching

1. Community lectures and local media presentations on hypnosis, stress reduction, weight loss, smoking control, management of violent patient, treatment of anxiety.
2. Introduction to Clinical Medicine (an introductory course for medical students teaching interviewing, assessment and physical examination procedures), School of Medicine, University of Nevada, Reno.
3. Training and supervision of biofeedback program, Mental Health Clinic, VAMC, Reno.
4. Yearly lectures on hypnosis, biofeedback, pain control and treatment of eating and smoking problems, non drug treatment of anxiety, post-traumatic stress syndrome, management of the violent patient, etc. Human Behavior Blocks, Clerkship Lecture Series, and fourth-year electives. School of Medicine, University of Nevada, Reno, Nevada.
5. Dealing with Violent Patients, a three-hour training workshop presented at various Department of Veterans Affairs Medical Centers and at various other state and community mental health programs. Chairperson, Behavioral Emergency Training Committee, VAMC, Reno.
6. Faculty, National Judicial College (American Bar Association); Lectures on various mental

health topics, Reno, Nevada.

7. Master Trainer for Total Quality Improvement program, VAMC, Reno, NV.
8. Certification and Approved Consultant in Clinical Hypnosis, American Society Of Clinical Hypnosis.
9. Bayer Certified Trainer

Dean's List, California State University, Northridge: 1966, 1967, 1968.

National Institute of Mental Health Fellowship: 1971-1973.

Veterans Administration Stipend: 1974-1975.

Collaborative Research Grant: School of Medical Sciences, University of Nevada, Reno, Nevada, and Veterans Administration Hospital, Reno, Nevada. Clinical comparison of the effectiveness of deep muscle relaxation, nitrous oxide administration and a combination of the two procedures: 1977.

Certificate of Dedication for Continuous Volunteer Community Service, Speaker's Bureau, University of Nevada, Reno, Nevada: 1977. Certificates of Appreciation 1978-91.

Performance Awards (quality increases) Veterans Administration: 1/14/79, 5/3/81, 8/13/83, 6/5/84, 10/15/91; Merit Pay Increases 1987, 1989, 1991, 1992, 1993.

Certificate of Appreciation, Disabled American Veterans, for establishing a D.A.V. Outreach program for Vietnam Veterans in Reno: 10/1/80.

Certificate of Appreciation, Veterans Administration Medical Center, Reno, Nevada, for leadership in early development and organization of the Veterans Outreach Center: 1980.

Certificate of Appreciation, Department of Psychiatry and Behavioral Sciences, School of Medicine, University of Nevada, Reno

Commendation Award for outstanding contributions to planning, teaching and evaluation of continuing education offerings, Interwest Regional Medical Education Center, Salt Lake City, Utah.

Special Contribution Award, V.A.M.C., Reno, Nevada: 1986.

Veterans Affairs Research Grant, 1991: A comparison of peer and professional counselors for AIDS education with veterans in rural Nevada.

Outstanding Psychologist (James Mikawa Award) 2001, Nevada State Psychological Association.

Congressional Recognition, Congresswoman Shelley Berkley, Nevada's First Congressional District, May 19, 2001

Chairman, Northern Nevada Association of Certified Psychologists, Task Force to Review the Nevada Board of Psychological Examiners, 1980

Member, Mental Health Advisory Committee Interwest Regional Medical Education Center, Salt Lake City, Utah, 1981

Member, Readjustment Counseling Service, Evaluation and Review Committee, VAMC, Reno

Member, Geriatrics Program Review Committee, V.A.M.C., Reno

Program Chairman, Combined Federal Campaign, V.A.M.C., Reno

Medical Executive Board, VASNHCS

Chair, Mental Health Council, VASNHCS

Chair, Marketing Committee

Member, Partnership Council VASNHCS

President, Nevada State Psychological Association, 2004-2005

1. American Psychological Association

- a. Division 18, Psychologists in Public Service**
- b. Division 30, Psychological Hypnosis**
- c. Division 42, Psychologists in Independent Practice**

2. Western Psychological Association

3. California State Psychological Association (inactive)

4. Nevada State Psychological Association

5. American Society of Clinical Hypnosis (Consultant status)

6. International Society of Hypnosis (inactive)

7. Reno Area Federal Executive Council

8. Listed: National Register for Health Care Providers in Psychology (inactive).
9. Biofeedback Supervisor (Biofeedback Certification Institute of America).

Danton, W., Reccius, N. and Weckler, N. Perception of interpersonal relationships in triadic social situations. Presented at meetings of the Western Psychological Association, San Francisco, California, 1971.

Danton, W. Design and use of a hypnotically presented cognitive reframing paradigm. Invited address. Division 30 Symposium: Theoretical approaches to psychotherapy. Meetings of the American Psychological Association, San Francisco, California, January 13, 1977.

Danton, W. Dealing with the violent patient. Invited address. Veterans Administration Interwest Regional Medical Education Center, San Francisco, California, September 1978.

Danton, W., May, J. and Lynn, E. Psychological and physiological effects of relaxation, body awareness training and nitrous oxide training. Presented at the meetings of the Western Psychological Association, Sacramento, California, April 1982.

Danton, W. (Discussant). Comparative efficacy of psychological and pharmacological treatments for major psychopathology. (Antonuccio, D. and Ward, C., Chairs.) Symposium conducted at the Combined Annual Meetings of the Western Psychological Association and the Rocky Mountain Psychological Association, Reno, NV, April 1989.

Danton, W. and Antonuccio, D. Advocating the non-drug treatment of anxiety and depression. Presented at the Mid-winter Meetings, Divisions 29, 42 and 43 of the American Psychological Association, Amelia Island Plantation, FL, February 1992.

Danton, W. A comparison of peer counselors and nurse educators in the delivery of aids education to rural Nevada veterans. Presented at the meetings of the Office of Academic Affairs, Department of Veterans Affairs, Washington D.C., March 1993.

Denelsky, G., Danton, W. and Antonuccio, D. Non-drug treatment of anxiety and depression: superior to pharmacotherapy? Presented at the Mid-winter Meetings, Divisions 29, 42 and 43 of the American Psychological Association, San Diego, CA, March 1993.

Denelski, G., Danton, W. and Antonuccio, D. Non-drug treatment of anxiety and depression: superior to pharmacotherapy? Presented at the Annual Meetings of the American Psychological Association, Toronto, Canada, August 1993.

Denelsky, G., Danton, W., Antonuccio, D. and Caron, B. Non-drug treatment of anxiety, depression and schizophrenia: superior to pharmacotherapy? Presented at the Meetings of the American Psychological Association, Los Angeles, CA, August 1994.

Danton, W. and Antonuccio, D. Challenging the conventional wisdom about drug treatment for depression and anxiety. Paper presented at the 1994 Conference of Hospital and Community Psychiatry, Division of the American Psychiatric Association, San Diego, CA, 1994.

Danton, W. The case for non-drug treatment of Anxiety. Paper presented at Psychiatry Education Series, University of Nevada School of Medicine, Reno, NV June 1, 1994.

Danton, W. Non-drug treatment of Anxiety. First Northern Nevada Conference: A forum on Mental Illness Issues, 1994.

Danton, W. Psychotherapy vs. medication in the treatment of anxiety: Challenging the conventional wisdom. Symposium paper presented at the Convention of the western Psychological Association, Kona, HA, 1994.

Danton, W., DeNelsky, G., Greenberg, R. Etc. Non-drug treatment of anxiety. Paper presented at the Midwinter meetings of the American Psychological Association, New Orleans, LA March 9, 1995.

Danton, W., Antonuccio, D. and DeNelsky, G. Non-drug treatment of anxiety and depression. Paper presented at The IV European Congress of Psychology. Athens, Greece. July 1995.

Danton, W., Antonuccio, D. and DeNelsky, G. Psychotherapy: Treatment of choice in the community. Midwinter Meetings of the American Psychological Association, Phoenix, AZ. March 30, 1996.

Danton, W. Psychotherapy for Anxiety: Treatment of choice. Presented at the annual meeting of the American Psychological Association, Toronto, Canada. August 1996.

Danton, W. Psychotherapy for anxiety: Treatment of choice. Paper presented at the 5th European Congress of Psychology, Dublin, Ireland.

Danton, W. Comparing psychotherapy and drug treatments for anxiety. Paper presented at the annual meeting of the American Psychological Association, San Francisco, CA. August 1998.

Danton, W. Panel Discussion (with Hinitz, D., Loftus, E., Kimerer, M.): Ethical implications for clinical practice and the courtroom (repressed memory). Paul McReynolds Lecture and Workshop Series, University of Nevada, Reno, NV. September 12, 1998.

Danton, W. No need to panic. Paper presented at the annual meeting of the Western Psychological Association, Maui, Hawaii, March 2001

Danton, W. Comparative effectiveness of anxiolytics pharmacotherapy and psychotherapy. Paper to be presented at the annual meeting of the American Psychological Association, San Francisco, California, August 2001.

Workshops

Workshop leader for Interwest Regional Medical Education Center, Vietnam Veteran's Readjustment Counseling Program and University Speaker's Bureau on topics such as hypnotherapy, conflict resolution, personality disorders, stress, etc. Workshops have included Team Building and Violent Patient workshops for the Veterans Administration in Honolulu, DSM diagnostic workshop for the Readjustment Counseling Program, Hypnosis in Psychotherapy, Sheridan VAMC, Bayer communication skills training for primary care physicians, and wellness workshops for the City of South Lake Tahoe.

Danton, W. Sections on hypnosis, weight control and control of smoking behavior for J. Altrocchi's *Abnormal Behavior*. New York, Harcourt, Brace and Jovanovich, 1980.

Danton, W., May, J. and Lynn, E. Psychological and physiological effects of relaxation and nitrous oxide training. *Psychological Reports*, 1984, 55, 311- 322.

Antonuccio, D., Danton, W., Tearman, B., and Alberding, K. Pathological lying: An important, no, the most important clinical problem facing mental health professionals. *Journal of Polymorphous Perversity*, 1987, 4(1), 15-16

Antonuccio, D., Danton, W. and DeNelsky, G. Psychotherapy vs. medication for depression: Challenging the conventional wisdom. Reno, NV: University of Nevada School of Medicine. (ERIC Document Reproduction Service No. ED 371 263), 1993.

Antonuccio, D., Danton, W. and DeNelsky, G. Psychotherapy for depression: No stronger medicine. *NOVA Psi Newsletter*, 12(2), 11-13. 1994

Antonuccio, D., Danton, W. Depression Dont's. *The APA Monitor*. 1993.

Danton, W. and Antonuccio, D. Think twice about anxiolytic therapy. *VA Practitioner*, July 1993.

Danton, W., Altrocchi, J., Antonuccio, D. and Basta, R. Non-drug treatment of anxiety. *American Family Physician*, 1994.

Antonuccio, D., Danton, W. and DeNelsky, G. Psychotherapy vs. medication for depression: challenging the conventional wisdom with data. *Professional Psychology: Research and Practice*. 1995.

Antonuccio, D.O., Danton, W.G. & DeNelsky. Depression: psychotherapy is the best medicine. *The Therapist*, 4(3), 30-40. 1997.

Antonuccio, D.O., Thomas, M. & Danton, W.G. A cost-effectiveness analysis of cognitive behavior therapy and fluoxetine (Prozac) in the treatment of depression. *Behavior*
Page: 2975

Therapy, 28, 187-210. 1997.

Danton, W.G., Antonuccio, D.O. & Rosenthal, Z. No need to panic: non-drug treatment of anxiety. The Therapist, 4(4), 38-41. 1997.

Danton, W.G. & Antonuccio, D.O. A focused empirical analysis of drug treatments for anxiety disorders. In S. Fisher & R. Greenberg (eds.) From Placebo to Panacea: Putting Psychiatric Drugs to the Test. New York: John Wiley & Sons. 229-280, 1998.

Antonuccio, D.O., Thomas, M. & Danton, W.G. A cost-effectiveness model: is pharmacotherapy really less expensive than psychotherapy for depression? In S. Hayes and Heiby (eds.) Prescription Privileges for Psychologists: A Critical Analysis. Context Press 1998.

Antonuccio, D.O., Danton, W.G., DeNelsky, G.Y., Greenberg, P.P., & Gordon, J.S. Raising questions about antidepressants. Psychotherapy and Psychosomatics, 68, 3-14; 1999.

Antonuccio, D.O., Burns, D., Danton, W.G., & O'Donohue, W. (2000). The rumble in Reno: The psychosocial perspective on depression. Psychiatric Times, 17, 10-13.
<http://www.psychiatryonline.org/doi/10.1097/01.PT.0000077782.11111.1f>

Antonuccio, D.O. & Danton, W.G. (1999). Adding Behavioral Therapy to Medication for Smoking Cessation. JAMA, 281, 1983-1984.

Antonuccio, D.O., Danton, W.G. & McClanahan, T.M. Psychology in the prescription era: Building a firewall between marketing and science. The American Psychologist, 58(12), 1028-1043. 2003

Promotional tape: The research relation between Veterans Administration Medical Center and the Medical School. Department of Educational Support Communications, University of Nevada, Reno. April 1977.

Progressive Muscle Relaxation: A videocassette series, co-produced with J.May, Ph.D. Used by The U.S. Olympic Ski Teams.

Media training packages on hypnosis, psychopathology of everyday life violence, and suicide.

Keeping the Promise. A promotional tape for VA Sierra Nevada Health Care System. 2000.

Hypnosis for Golfers. A DVD for golfers designed to improve their mental game. 2002.

Tools For the Mental Game. A DVD for golfers. 2004

Special Interests

Brief therapy, hypnosis and treatment of anxiety disorders.

Thomas Barcia, M.D., Chief of Staff, Department of Veterans Affairs Medical Center,
Reno, Nevada, 89520.

David Antonuccio, Ph.D., Professor of Psychiatry and Behavioral Sciences, School of Medicine,
University of Nevada, Reno, Nevada, 89502.

Jerry May, Ph.D., Professor of Psychiatry and Behavioral Sciences, School of Medicine,
University of Nevada, Reno, Nevada, 89502.

Updated 2/05

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CLERK OF THE COURT

NOTC
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
PAMELA WECKERLY
Deputy District Attorney
Nevada Bar #006163
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

-vs-

JAMES MONTELL CHAPPELL,
#1212860

Defendant.

CASE NO: C131341

DEPT NO: III

**NOTICE OF EXPERT WITNESSES
[NRS 174.234(2)]**

TO: JAMES MONTELL CHAPPELL, Defendant; and

TO: SPECIAL PUBLIC DEFENDER, Counsel of Record:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF
NEVADA intends to call the following witnesses in its case in chief:

MARC WASHINGTON - This witness is an expert in the field of crime scene
analysis, including the collection and preservation of evidence and is expected to testify
thereto.

MICHAEL PERKINS - This witness is an expert in the field of crime scene
analysis, including the collection and preservation of evidence and is expected to testify
thereto.

MONTE SPOOR This witness is an expert in the field of crime scene analysis,
including the collection and preservation of evidence and is expected to testify thereto.

1 **TERRY COOK OR DESIGNEE** – This witness is an expert in the field of DNA
2 analysis and comparison and is expected to testify thereto.

3 **ROBERT REES OR DESIGNEE** – This witness is an expert in the field of latent
4 fingerprint analysis and comparison and is expected to testify thereto.

5 **DR. SHELDON GREEN OR DESIGNEE** – This witness is expected to testify
6 regarding cause and manner of death of the victim.

7 **LINDA EBBERT OR DESIGNEE** -- This witness is expected to testify as to the
8 findings of the sexual assault examination.

9 The substance of each expert witness' testimony and a copy of all reports made by or
10 at the direction of the expert witness has been provided in discovery.

11 A copy of each expert witness' curriculum vitae, if available, is attached hereto.

12
13
14 BY 
15 DAVID ROGER
16 DISTRICT ATTORNEY
17 Nevada Bar #002781

18 **CERTIFICATE OF FACSIMILE TRANSMISSION**

19 I hereby certify that service of the above and foregoing, was made this 16th day of
20 February, 2007, by facsimile transmission to:

21 SPECIAL PUBLIC DEFENDER
22 FAX#455-6273

23
24 BY /s/ M. Beaird
25 Employee of the District Attorney's Office

26
27
28 mb

Curriculum Vitae

Las Vegas Criminalistics Bureau Statement of Qualifications

Name: Marc Washington

P# 4725

Date: 8-28-03

CURRENT CLASSIFICATION		
	Classification	Minimum Qualifications
	Crime Scene Analyst I	AA Degree with major course work in Criminal Justice, Forensic Science, Physical Science or related field, including specialized training in Crime Scene Investigation.
	Crime Scene Analyst II	18 months - 2 years continuous service with LVMPD as a Crime Scene Analyst I.
X	Senior Crime Scene Analyst	Two (2) years as a Crime Scene Analyst II to qualify for the promotional test for Senior Crime Scene Analyst.
	Crime Scene Analyst Supervisor	Four (4) years continuous service with LVMPD and completion of probation as a Senior Crime Scene Analyst. Must have the equivalent of a Bachelor's Degree from an accredited college or university with major course work in Criminal Justice, Forensic Science, Physical Science or related field.

FORMAL EDUCATION		
Institution	Major	Degree/Date
UNLV	Criminal Justice	Degree 1991

TESTIMONY		
Yes	No	

EMPLOYMENT HISTORY		
Employer	Title	Date
LVMPD	Sr. Crime Scene Analyst	1994

WASHINGTON, MARC

PH 4725

CRIMINALISTICS

BUREAU - FIELD

SENIOR CSA

SS#: 563-04-5327

DOH: 07-05-94

DATE	CLASS TITLE	AGENCY	CREDIT HOURS
1991	Criminal Justice	UNLV	Degree
07-16-94	NCIC Phase I Certification - Video	LVMPD	20 Min.
08-02-94	New Civilian Employee Orientation	LVMPD	7
09-01-94	Driver Training - Level 2	LVMPD	8
09-94	Bloodborne Pathogens - Video	LVMPD	2
02-14-94	Latent Print Development Techniques	LVMPD	7
02-17-95	Latent Print Development Techniques	LVMPD	21
03-17-95	Personal Protection & Self-Defense	LVMPD	4
03-31-95	Duty Weapon Qualification	LVMPD	1
04-11-95	Patrol Response to Clandestine Labs & Biker Gangs	LVMPD	7
05-13-95	Forensic Science (Youngsville, NC)	American Institute of Applied Science	260
08-04-95	Contemporary Issues/Use of Force	LVMPD	7
09-30-95	Duty Weapon Qualification	LVMPD	1
10-16-95	Verbal Judo	LVMPD	7
03-31-96	Duty Weapon Qualification	LVMPD	1
04-15-96	Combat Shooting Simulator/FATS	LVMPD	1
06-06 to 06-07-96	Interview and Interrogation	LVMPD	14
06-11-96	CAPSTUN Training	LVMPD	1.5
07-22-96	Gunshot & Stab Wounds: A Medical Examiner's View	Barbara Clark Mims Associates	8
10-07 to 10-11-96	Fingerprint Classification	Law Enforcement Officers Training School	40
09-23 to 09-27-96	Crime Scene Technology II	Northwestern University, Traffic Institute	40
06-30-96	Duty Weapon Qualification	LVMPD	2
09-30-96	Duty Weapon Qualification	LVMPD	2
10-11-96	Fingerprint Classification		8
01-14, 15, & 01-16-97	Top Gun Training	LVMPD	21
02-27-97	Moot Court - Video	LVMPD	2

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DATE	CLASS TITLE	AGENCY	CREDIT HOURS
03-12 to 03-14-97	Practical Homicide Investigation	P.H.I., Investigative Consultants, Inc.	21
03-13-97	Ultraviolet (UV) Light Orientation and Safety Presentation	LVMPD	1
03-19, 20, & 03-26-97	Civilian Use of Force & Firearm Training	LVMPD	21
03-30-97	Duty Weapon Qualification	LVMPD	2
06-12-97	Critical Procedures Test	LVMPD	
06-13-97	NCIC Phase I - Video	LVMPD	20 Min.
11-21-97	Alternate Weapon Qualification	LVMPD	
11-24-97	Driver Training - Class I	LVMPD	24
12-16-97	Backup Weapon Qualification	LVMPD	
12-19-97	NIK Poly Certification/Academy	LVMPD	4
12-19-97	Completed Basic Police Training Academy - LVMPD Police Officer from 12-97 to 04-98	LVMPD	
01-01-98	NCIC Recertification 2/Guide	LVMPD	1
01-02-98	Evidence Impound	LVMPD	2
03-31-98	Duty Weapon Qualification	LVMPD	2
06-30-98	Duty Weapon Qualification	LVMPD	2
08-24 to 08-28-98	Bloodstain Evidence Workshop I	Northwestern University, Traffic Institute	40
09-21 to 09-25-98	Investigative Photography I	Northwestern University, Traffic Institute	40
09-29-98	Backup Weapon Qualification	LVMPD	
10-06-98	Critical Procedures Test	LMVPD	2
12-04-98 1999	Active Member in the IAI - Member # 16576 Active Member in the IAI - Member # 16576	IAI IAI	
12-17-98	Duty Weapon Qualification	LVMPD	2
01-13-99	Training - Motor Home Driving	LVMPD	4
03-30-99	Duty Weapon Qualification	LVMPD	2
04-28 to 04-30-99	First Annual Educational Conference JFK-MLK Evidence - NSDIAI	NSDIAI	2
"	Laboratory Photography	NSDIAI	2
"	DNA Evidence	NSDIAI	2

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DATE	CLASS TITLE	AGENCY	CREDIT HOURS
"	Latent Prints on Skin	NSDAI	2
05-24-99	Critical Procedures Test	LVMPD	2
06-18-99	Duty Weapon Qualification	LVMPD	2
06-30-99	Optional Weapons	LVMPD	15
08-23 to 08-27-99	Bloodstain Evidence Workshop 2	Northwestern University, Traffic Institute	40
08-3 to 09-01-99	Clandestine Laboratory Safety Certification Course, Occasional Site Worker	LVMPD	24
09-21-99	Duty Weapon Qualification	LVMPD	2
02-16 to 02-18-00	Shooting Incident Reconstruction	Forensic Identification Training Seminars	24
02-21-01	Cultural Awareness	LVMPD	7
04-11 to 04-13-01	NSDAI - 3 rd Annual Educational Conference Florazinc	NSDAI	2
"	Bloodstain Report Writing	"	2
"	Footwear Recovery	"	2
10-15-01	Bloodstain Pattern Analysis - Angle of Impact Proficiency Exercise - Certificate #17	LVMPD Criminalistics Bureau	3
02-06-02	Certified as Senior Crime Scene Analyst	International Association for Identification (IAI)	
03-30-02	Documentation of Footwear & Tire Impressions	LVMPD	1
04-02-02	Objective Approach to the Crime Scene	LVMPD	1
04-08-02	Clandestine Laboratory Safety - Fingerprint Processing	LVMPD	1
07-29-02	Write Right Seminar	LVMPD	6
07-30-02	Grammar Follow-up	LVMPD	6
08-04 to 08-10-02	87 th International Educational Conference - See below	IAI	
"	W-39: Intermediate Dye Staining Workshop	"	2
"	W-57: Examination of Bloodstained Clothing	"	4
"	W-60: Impact Pattern Reconstruction	"	2
01-20 to 01-24-03	Ridgeology Science Workshop - Forensic Identification Training Seminars	LVMPD	40
03-03	Accident Photography (Fatal Detail)	LVMPD	
06-04-03	Evidence Impounding - Areas of Concern	LVMPD	3

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DATE	CLASS TITLE	AGENCY	CREDIT HOURS

Curriculum Vitae

Las Vegas Criminalistics Bureau Statement of Qualifications

Name: Michael Perkins

P# 4242

Date: 10-16-03

CURRENT CLASSIFICATION		
	Classification	Minimum Qualifications
	Crime Scene Analyst I	AA Degree with major course work in Criminal Justice, Forensic Science, Physical Science or related field, including specialized training in Crime Scene Investigation.
	Crime Scene Analyst II	18 months - 2 years continuous service with LVMPD as a Crime Scene Analyst I.
	Senior Crime Scene Analyst	Two (2) years as a Crime Scene Analyst II to qualify for the promotional test for Senior Crime Scene Analyst.
X	Crime Scene Analyst Supervisor	Four (4) years continuous service with LVMPD and completion of probation as a Senior Crime Scene Analyst. Must have the equivalent of a Bachelor's Degree from an accredited college or university with major course work in Criminal Justice, Forensic Science, Physical Science or related field.

FORMAL EDUCATION		
Institution	Major	Degree/Date
Pima Comm. College	Criminal Justice	88 Semester Hours
U of Arizona	Forensic Pathology	2 Semester Hours

TESTIMONY		
Yes	No	

EMPLOYMENT HISTORY		
Employer	Title	Date
LVMPD	Crime Scene Analyst Supervisor	9-1991

PERKINS, MICHAEL
CSA SUPERVISOR

P# 4242
SS#: 526-63-0199

CRIMINALISTICS BUREAU - FIELD
DOH: 09-09-91

DATE	CLASS TITLE	AGENCY	CREDIT HOURS
Fall 1978	Photography 1	Pima Comm. College	3
Fall 1989	Criminal Law	Pima Comm. College	3
Fall 1989	Rules of Evidence	Pima Comm. College	3
Fall 1989	Intro. To Admin. of Justice	Pima Comm. College	3
Spring 1990	Forensic Pathology	University of Arizona	2
Summer 1990	Business and Professional Communication	Pima Comm. College	3
Fall 1990	Fire Investigation; Origins - Arson	Pima Comm. College Tucson Fire Department	3
Fall 1990	Intro. To Public Administration	Pima Comm. College	3
Spring 1991	Criminal Procedures	Pima Comm. College	3
Spring 1991	Police Community and Human Relations	Pima Comm. College	3
Spring 1991	Crime and Delinquency	Pima Comm. College	3
Spring 1991	Criminal Investigation and Report Preparation	Pima Comm. College	3
Spring 1991	Legal Environment of Business	Pima Comm. College	3
(GPA of above classes - 3.87)			
09-19 to 09-23-88	Fingerprint Classification	Law Enforcement Officers Training School/FBI	40
10-11-88	Terminal Operator Certification - Arizona Dept. Of Public Safety	Arizona Criminal Justice Information System (ACJIS) Division	
12-12 to 12-16-88	Advanced Latent Fingerprint Techniques	Law Enforcement Officers Training School/Tucson Police Dept./FBI	40
05-28-89	International Association for Identification - Member	IAI	
07-21-89	Forensic Crime Scene Investigation.	Tucson Police Dept	40
08-07-89	Forensic Science	American Institute of Applied Science	260
06-25-90	Crime Scene Technician - Certification	International Association for Identification	
10-24-90	Footwear and Tire Track Identification	Southwestern Association of Forensic Scientists	16
10-27-90	Death Investigation and Latent Print Techniques	Arizona State Division, IAI, Mesa, AZ	8
1989 to 1991	Criminal Justice	Pima Community College	90 Credit hours
07-03-91	Gunshot Wounds - Video	LVMPD	1
09-12-91	Combat Shooting Simulator - FATS	LVMPD	1

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DATE	CLASS TITLE	AGENCY	CREDIT HOURS
09-17-91	NCIC Level III - Video	LVMPD	
09-16 to 09-20-91	ID Specialist I Orientation - LVMPD	LVMPD	34
09-30-91	Duty Weapon Qualification	LVMPD	1
12-31-91	Duty Weapon Qualification	LVMPD	1
02-06-92	Driver's Training - Level 2	LVMPD	8
03-11-92	Footwear Evidence/Recovering Firearms	LVMPD	7
03-23 to 03-27-92	Advanced Latent Fingerprint Techniques (Chemical Processing)	Law Enforcement Officers Training School/FBI	40
03-31-92	Duty Weapon Qualification	LVMPD	1
05-05-92	NCIC Phase I - Miscellaneous Updates	LVMPD	10 Minutes
06-08-92	New Civilian Employee Orientation Training	LVMPD	7
06-30-92	Duty Weapon Qualification	LVMPD	1
07-92	In-Service Training Video - New Pursuit Policy	LVMPD	1
09-11-92	Bloodborne Pathogens - Video	LVMPD	2
09-30-92	Duty Weapon Qualification	LVMPD	1
12-31-92	Duty Weapon Qualification	LVMPD	1
01-27-93	Combat Shooting Simulator - FATS	LVMPD	1
02-02-93	Auto Theft	LVMPD	2
02-26-93	Polilight Laser Photography & Chemical Techniques	LVMPD	8
03-15-93	NCIC Video Tape	LVMPD	20 Minutes
03-31-93	Duty Weapon Qualification	LVMPD	1
06-30-93	Duty Weapon Qualification	LVMPD	1
09-30-93	Duty Weapon Qualification	LVMPD	1
09-30-93	Optional Weapon	LVMPD	
12-06 to 12-08-93	Practical Homicide Investigation	Public Agency Training Council	24
12-31-93	Duty Weapon Qualification	LVMPD	1
01-03-94	Hazardous Materials Awareness - Level I	LVMPD	8
02-11 02-15-94	Advanced Latent Print Techniques	FBI	40
03-04-94	Off-Duty Weapon Qualification	LVMPD	
03-31-94	Duty Weapon Qualification	LVMPD	1
06-30-94	Duty Weapon Qualification	LVMPD	1

DATE	CLASS TITLE	AGENCY	CREDIT HOURS
09-30-94	Duty Weapon Qualification	LVMPD	1
10-21-94	Bloodborne Pathogens (Video)	LVMPD	20 Minutes
10-21-94	Cultural Awareness	LVMPD	6
11-09 & 11-10-94	Officer Involved Shooting Investigations.	International Law Enforcement Training & Consulting, Inc	16
01-09-95	Communication Skills	LVMPD	7
03-31-95	Additional Duty Weapon Qualification	LVMPD	1
06-30-95	Duty Weapon Qualification	LVMPD	1
07-12-95	Driver's Training - Level 2	LVMPD	8
09-07-95	Time Management	LVMPD	4
08-11-95	Self-Discipline & Emotional Control	LVMPD	7
09-09-95	Verbal Judo	LVMPD	7
09-30-95	Duty Weapon Qualification	LVMPD	1
10-30-95	Management Problems of the Technical Person in a Leadership Role	Fred Pryor Seminars	7
11-02-95	Stress Management	LVMPD	4
12-01 to 12-05-95	Instructor Development	LVMPD	40
12-04 to 12-08-95	Bloodstain Pattern Analysis Workshop	Metropolitan Police Institute, Dade County, FL (Miami, FL)	40
01-12-96	The Bombing of the Alfred P. Murrah Federal Building	Northwestern University, Traffic Institute	8
03-30-96	Duty Weapon Qualification	LVMPD	1
03-31-96	Off-Duty Weapon Qualification	LVMPD	
04-18-96	Performance Appraisal	LVMPD	2
06-18-96	Oleoresin - Civilian (CAPSTUN)	LVMPD	2
06-30-96	Duty Weapon Qualification	LVMPD	2
7-16-96	How to Organize Life/Get Rid of Clutter	CareerTrack	3
07-22-96	Gunshot and Stab Wounds: A Medical Examiner's View	Barbara Clark Mims Associates	8
08-14-96	Forensic Technology for Law Enforcement (Video)	LVMPD	2
08-19 & 08-20-96	Police Supervisor, Management, Leadership & Liability	Public Agency Training Council	16
09-05-96	Performance Appraisal	LVMPD	2
09-05-96	Combat Shooting Simulator/FATS	LVMPD	1
09-27-96	Off-Duty Weapon Qualification	LVMPD	

DATE	CLASS TITLE	AGENCY	CREDIT HOURS
09-30-96	Duty Weapon Qualification	LVMPD	2
11-27-96	Ultraviolet (UV) Light Orientation and Safety Presentation	LVMPD	1
12-11-96	Duty Weapon Qualification	LVMPD	2
01-16-97	Top Gun Training - Class Instructor	LVMPD	21
01-21 to 01-24-97	Development Seminar for New Supervisors (Civilian)	LVMPD	28
01-30-97	Top Gun Training - Class Instructor	LVMPD	21
02-13-97	Top Gun Training - Class Instructor	LVMPD	21
08-22-96	Gunshot & Stab Wounds		8
02-20-97	Top Gun Training - Class Instructor	LVMPD	21
02-27-97	Moot Court - Video	LVMPD	2
03-06-97	Top Gun Training - Class Instructor	LVMPD	21
03-21-97	How to Supervise People	Fred Pryor Seminars	7
03-26-97	Civilian Use of Force & Firearm Training	LVMPD	21
03-30-97	Duty Weapon Qualification	LVMPD	2
04-03-97	Top Gun Training - Class Instructor	LVMPD	21
04-10-97	Top Gun Training - Class Instructor	LVMPD	21
05-08-97	Top Gun Training - Class Instructor	LVMPD	21
05-22-97	Top Gun Training - Class Instructor	LVMPD	21
05-29-97	Top Gun Training - Class Instructor	LVMPD	21
06-05-97	Top Gun Training - Class Instructor	LVMPD	21
04-97	Conflict Resolution and Confrontation Skills	CareerTrack	7
06-13-97	NCIC - Phase I Video	LVMPD	20 Minutes
07-97	Assertiveness Skills for Managers	Fred Pryor Seminars	7
07-02-00	Duty Weapon Qualification	LVMPD	2
07-15-00	Off-Duty Weapon Qualification	LVMPD	
07-24-97	Advanced Supervisory Module IV - Decision Making	LVMPD	7
07-30-00	Assertiveness Skills for Managers	LVMPD	6
08-97	Hazardous Materials Incident Management	International Association of Firefighters	16
08-01-97	Advanced Supervisory Module VII - Leadership	LVMPD	8
08-20-97	Advanced Supervisory Module III - Critical Incidents	LVMPD	7
09-97	Train the Trainers	LVMPD	21
09-30-97	Duty Weapon Qualification	LVMPD	2

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DATE	CLASS TITLE	AGENCY	CREDIT HOURS
10-28-97	Advanced Supervisory Module V - Administrative	LVMPD	7
10-30-97	Advanced Supervisory Module X - Civil Liability & Legal Issues	LVMPD	9
10-97	Bloodstain Evidence Workshop 2	Northwestern University, Traffic Institute	40
11-24-97	Excelling as First-Time Supervisor	LVMPD	8
12-10-97	Post Blast Investigation School	Bureau of Alcohol, Tobacco and Firearms, Depart. of the Treasury	40
12-31-97	Duty Weapon Qualification	LVMPD	2
02-12-98	Combat Shooting Simulator - FATS	LVMPD	1
02-23-98	Domestic Violence	LVMPD	1
02-26-98	Clandestine Lab Dangers - Video	LVMPD	30 Min.
03-31-98	Duty Weapon Qualification	LVMPD	2
05-26-98	Duty Weapon Qualification	LVMPD	2
06-22-98	Trauma Shooting - Video	LVMPD	30 Min.
06-22-98	Secondary Devices - Video	LVMPD	30 Min.
09-98	Investigative Photography 1	Northwestern University, Traffic Institute	40
09-25-98	Optional Weapon	LVMPD	
11-24-98	Life Balance & Stress Reduction Solutions	Rockhurst College	7
12-98	Criticism & Discipline Skills for Managers	CareerTrack	6
12-98	Universal Precautions for HIV/HBV Handling	American Red Cross	2
12-04-98	Duty Weapon Qualification	LVMPD	2
12-09-98	Training - Motor Home Driving	LVMPD	4
01-08-99	Combat Shooting Simulator - FATS	LVMPD	1
02-18-99	Driver Training - Class II	LVMPD	8
03-17-99	Award Presentation and PR Photography	LVMPD	2
03-30-99	Duty Weapon Qualification	LVMPD	2
04-99	Driver's Training	LVMPD	8
04-28 to 04-30-99	First Annual Educational Conference - NSDIAI - Unabomber	NSDIAI	2
"	Bombing Scenes	NSDIAI	2
"	Laboratory Photography	NSDIAI	2
"	DNA Evidence	NSDIAI	2

DATE	CLASS TITLE	AGENCY	CREDIT HOURS
"	JFK-MLK Death Investigation	NSDIAI	2
"	Death Investigations	NSDIAI	2
04-18-99	Discrimination & Sexual Harassment Legal Updates	LVMPD	7
04-19-99	Conducting Internal Investigations	LVMPD	7
05-18-99	Discrimination, Sexual Harassment Updates	LVMPD	7
05-19-99	Advanced Supervisory Module VIII - EEO Seminar	LVMPD	9
06-18-99	Duty Weapon Qualification	LVMPD	2
06-30-99	Optional Weapon	LVMPD	15
07-15-99	Equal Employment Opportunity Issues	LVMPD	8
08-99	Performance Appraisals for Civilian Employees	LVMPD	2
08-30 to 09-01-99	Clandestine Laboratory Safety Certification Course, Occasional Site Worker	LVMPD (Narcotics)	24
09-01-99	Advanced Supervisory Module - Ethics & Policing	LVMPD	7
09-08 to 09-10-99	8 th Western States Sexual Assault/Abuse Seminar	LVMPD (Sexual Assault Investigative Team)	24
09-13 to 09-17-99	Crime Scene Technology 2	Northwestern University, Traffic Institute	40
09-27 to 10-01-99	1 st Annual Advanced Crime Scene Reconstruction Invitational Workshop - Hosted by LVMPD	Institute of Applied Forensic Technology	40
09-28-99	Off-Duty Weapon Qualification	LVMPD	
09-30-99	Duty Weapon Qualification	LVMPD	2
10-01-99	Police Involved Incidents		40
10-11-99	Advanced Supervisory Module I - Ethics/Policing	LVMPD	7
12-29-99	Criticism & Discipline - Skills for Managers	CareerTrack	6
02-16 to 02-18-00	Shooting Incident Reconstruction	Forensic Identification Training Seminars	24
06-19 to 06-23-00	Advanced Ridgeology Comparison Techniques	Forensic Identification Training Seminars, LLC	40
09-14-00	Firearms Training Simulator	LVMPD	1
09-21-00	Haz-Mat Responder Awareness (Train the Trainer)	LVMPD	2
09-07-02	Firearms Qualification 2 - Recert.	LVMPD	2
10-01-01	Use of Force - Video	LVMPD	15 Min.
10-08-01	Bloodstain Pattern Analysis - Angle of Impact Proficiency Exercise - Certificate # 10	LVMPD - Criminalistics Bureau	3
10-17-01	Essentials of Self-Management	LVMPD	6
02-26-02	Handgun Qualification 1 - Recert.	LVMPD	1

DATE	CLASS TITLE	AGENCY	CREDIT HOURS
12-21-01	Handgun Qualification 4 - Recert.	LVMPD	1
04-04-02	Chemical Enhancements of Bloodstains, Preliminary Steps	LVMPD - Criminalistics Bureau	2
04-04-02	Objective Approach to the Crime Scene	LVMPD - Criminalistics Bureau	1
04-04-02	Criminal Law	LVMPD	2
04-04-02	Forensic Anthropology	LMVPD - Criminalistics Bureau	1.5
04-25-02	Clandestine Laboratory Safety - Fingerprint Processing	LVMPD - Criminalistics Bureau	1
04-25-02	Firearms Training Simulator - Recert.	LVMPD	1
05-16-02	Employee Drug & Alcohol Abuse Rec/Crisis Inter.	LVMPD	4
05-31-02	Documentation of Footwear & Tire Impressions	LVMPD - Criminalistics Bureau	1
06-14-02	Handgun Qualification 2 - Recert.	LVMPD	1
08-04 to 08-10-02	87 th International Educational Conference - See below	IAI	
"	Triple Murders in the City of Los Angeles: The Trial in Indonesia	IAI	1
"	Bloodstain Imagery Made Simple	"	1.45
"	Resolution Capabilities and Limitations of Digital Imaging Used for Footwear Impression Photography	"	1
"	Investigative Leads for Footwear and Tire Track Impression Evidence: Databases and Web Resources	"	1
"	Using Image-Pro® Plus 4.0 to Rectify Improperly Photographed Footwear Impressions	"	30 Min.
"	Gizmos and Gadgets	"	2 hours
"	Footwear Workshop	"	4 hours

Curriculum Vitae

**Las Vegas Criminalistics Bureau
Statement of Qualifications**

Name: Monte Spoor

P# 3856

Date: 10-01-03

CURRENT CLASSIFICATION		
	<i>Classification</i>	<i>Minimum Qualifications</i>
	Crime Scene Analyst I	AA Degree with major course work in Criminal Justice, Forensic Science, Physical Science or related field, including specialized training in Crime Scene Investigation.
	Crime Scene Analyst II	18 months - 2 years continuous service with LVMPD as a Crime Scene Analyst I.
X	Senior Crime Scene Analyst	Two (2) years as a Crime Scene Analyst II to qualify for the promotional test for Senior Crime Scene Analyst.
	Crime Scene Analyst Supervisor	Four (4) years continuous service with LVMPD and completion of probation as a Senior Crime Scene Analyst. Must have the equivalent of a Bachelor's Degree from an accredited college or university with major course work in Criminal Justice, Forensic Science, Physical Science or related field.

FORMAL EDUCATION		
<i>Institution</i>	<i>Major</i>	<i>Degree/Date</i>
U of Wyoming	General Studies	30 Cr. Hours
UNLV	Criminal Justice	92 Cr. Hours

TESTIMONY		
<i>Yes</i>	<i>No</i>	

EMPLOYMENT HISTORY		
<i>Employer</i>	<i>Title</i>	<i>Date</i>
LVMPD	Sr. Crime Scene Analyst	12-4-89

SPOOR, MONTE
SENIOR CSA

P# 3856
SS#: 530-04-8532

CRIMINALISTICS BUREAU - FIELD
DOH: 12-04-89

DATE	CLASS TITLE	AGENCY	CREDIT HOURS
12-90	Forensic Science	American Institute of Applied Science	160
12-22-90	LVMPD Drug Testing Film	LVMPD	25 Min.
09-08-90	Firearms Training	LVMPD	8
09-28-90	Stress Management	LVMPD	4
07-11-90	New Employee	LVMPD	24
01-02-91	Driver's Training - Level 02	LVMPD	8
01-15-91	Gangs in Clark County	LVMPD	4.5
02-28-91	NCIC Level III - Video	LVMPD	
07-03-91	Gun Shot Wounds - Video	LVMPD	1
09-30-91	Duty Weapon Qualification	LVMPD	1
12-21-91	Duty Weapon Qualification	LVMPD	1
01-16-92	Firearms, Toolmarks, and Documents	LVMPD	8
02-18-92	Footwear Evidence/Recovering Firearms	LVMPD	7
03-31-92	Duty Weapon Qualification	LVMPD	1
05-05-92	NCIC Phase I - Miscellaneous Updates	LVMPD	10 Min.
06-30-92	Duty Weapon Qualification	LVMPD	1
06-30-92	Additional Duty Weapons Qualification	LVMPD	
07-92	In-Service Training Video - New Pursuit Policy	LVMPD	1
09-08-92	Asian Gangs	LVMPD	3
09-09-92	Bloodborne Pathogens - Video	LVMPD	25 Min.
09-30-92	Duty Weapon Qualification	LVMPD	1
12-31-92	Duty Weapon Qualification		
02-26-93	Polilight Laser Photography & Chemical Techniques	LVMPD	8
03-10-93	NCIC Phase I - Videotape	LVMPD	20 Min.
03-26-93	Off-Duty Weapon Qualification	LVMPD	

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DATE	CLASS TITLE	AGENCY	CREDIT HOURS
03-26-93	Back-up Weapon Qualification	LVMPD	
03-31-93	NCIC Phase I - Video	LVMPD	20 Min.
03-31-93	Duty Weapon Qualification	LVMPD	1
06-30-93	Duty Weapon Qualification	LVMPD	1
09-30-93	Duty Weapon Qualification	LVMPD	1
12-31-93	Duty Weapon Qualification	LVMPD	1
03-03-94	Driver's Training	LVMPD	8
03-10-94	Det. Tactics (PR24) - Recertification		4
03-11-94	Back-up Weapon Qualification	LVMPD	
03-15-94	Asian Gangs	LVMPD	3
03-31-94	Duty Weapon Qualification	LVMPD	1
08-01-94	Abuse/Neglect of Elderly	LVMPD	2.5
09-30-94	Optional Weapon	LVMPD	
09-30-94	Duty Weapon Qualification	LVMPD	1
09-94	Bloodborne Pathogens - Video	LVMPD	
10-17-94	Air Smuggling	LVMPD	7
12-02-94	Gangs in Clark County	LVMPD	7
03-31-95	Duty Weapon Qualification	LVMPD	1
06-30-95	Duty Weapon Qualification	LVMPD	1
09-30-95	Duty Weapon Qualification	LVMPD	1
03-26-96	(A) Back-up Weapon Qualification & (B) Off-Duty Weapon Qualification	LVMPD	
03-31-96	Duty Weapon Qualification	LVMPD	1
06-30-96	Duty Weapon Qualification	LVMPD	2
07-09-96	Critical Procedures Test	LVMPD	
07-22-96	Gunshot & Stab Wounds: A Medical Examiner's View	Barbara Clark Mims Associates	8
09-23 to 09-27-96	Crime Scene Technology II	Northwestern University, Traffic Institute	40

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DATE	CLASS TITLE	AGENCY	CREDIT HOURS
09-30-96	Duty Weapon Qualification	LVMPD	2
02-04, 05, & 02- 06-97	Top Gun Training	LVMPD	21
02-27-97	Moot Court - Video	LVMPD	2
03-10, 11, & 03- 12-97	Practical Homicide Investigation	Public Agency Training Council - Public Safety Continuing Education	24
03-13-97	Ultraviolet (UV) Light Orientation and Safety Presentation	LVMPD	1
03-30-97	Duty Weapon Qualification	LVMPD	2
04-16-97	Conflict Resolution and Confrontation Skills	ETC W/CareerTrack Seminar	7
04-23, 24, & 04- 30-97	Civilian Use of Force & Firearm Training	LVMPD	21
06-13-97	NCIC Phase I - Video	LVMPD	20 Min.
07-02-97	Duty Weapon Qualification	LVMPD	2
07-21-97	Critical Procedures Test	LVMPD	
08-27, 28, & 08- 29-97	Train the Trainers - F.T.E.P	LVMPD	21
09-15 to 09-19-97	Bloodstain Evidence Workshop I	Northwestern University, Traffic Institute	40
09-30-97	Duty Weapon Qualification	LVMPD	2
10-06 to 10-10-97	Investigative Photography 1	Northwestern University, Traffic Institute	40
11-26-97	International Assoc. For Identification (IAI), Member # 15832	IAI	
12-04-97	Stress Management	LVMPD	4
12-31-97	Duty Weapon Qualification	LVMPD	2
02-04-98	Certificate of Appreciation - United Way of Southern Nevada		

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DATE	CLASS TITLE	AGENCY	CREDIT HOURS
02-14-98	Trauma Shooting - Video	LVMPD	30 Min.
02-19-98	Combat Shooting Simulator (FATS)	LVMPD	1
02-23-98	Domestic Violence - Video	LVMPD	1
03-04-98	Clandestine Lab Dangers - Video	LVMPD	30 Min.
03-05-98	Secondary Devices - Video	LVMPD	30 Min.
03-31-98	Duty Weapon Qualification	LVMPD	2
04-08-98	Critical Procedures Test	LVMPD	
04-30-98	Class II - Driver Training	LVMPD	8
06-16-98	Duty Weapon Qualification	LVMPD	2
10-30-98	Nevada State Division of the International Association for Identification (NSDIAI) - Active Charter Member, Certificate #00069	NSDIAI	
12-04-98	Duty Weapon Qualification	LVMPD	2
12-07 to 12-11-98	Advanced Practical Homicide Investigation	Public Agency Training Council, National Crime Justice, Public Safety Continuing Education	40
01-15-99	Training - Motor Home Driving	LVMPD	4
03-22-99	Award Presentation and PR Photography	LVMPD	2
03-30-99	Duty Weapon Qualification	LVMPD	2
04-22-99	Latent Fingerprint Workshop of Cyanoacrylate Techniques	Detecto Print	6
04-28 to 04-30-99	First Annual Educational Conference - Unabomber	NSDIAI	2
"	Bombing Scenes	NSDIAI	2
"	Polly Klass	NSDIAI	2
"	Footwear/Tire Tracks	NSDIAI	2
"	DNA Evidence	NSDIAI	2
"	Child Abuse	NSDIAI	2
"	J. Edgar Hoover	NSDIAI	2
"	Disaster Preparedness	NSDIAI	2

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DATE	CLASS TITLE	AGENCY	CREDIT HOURS
08-23 to 08-27-99	Bloodstain Evidence Workshop 2	Northwestern University, Traffic Institute	40
09-27-99	Duty Weapon Qualification	LVMPD	2
09-27 to 10-01-99	1 st Annual Advanced Crime Scene Reconstruction Invitational Workshop - "Police-Involved Incidents" - hosted by LVMPD	Institute of Applied Forensic Technology	40
10-28-99	Combat Shooting Simulator - FATS	LVMPD	1
01-19-00	Latent Fingerprint Development Workshop	U.S. Secret Service	8
03-06 to 03-07-00	Hate Crimes and Extremist Groups	Public Agency Training Council, National Crime Justice	16
04-10 to 04-12-00	LVMPD Clandestine Laboratory/Safety Certification Course	LVMPD	24
12-11-00	How to Write User Manuals: A Technical-Writing Workshop	Padgett-Thompson	6 (0.6 CEUs)
01-17-01	Courtroom Testimony for Police Officers	State of Nevada Commission on Peace Officers' Standards and Training	4
02-27-01	The Grammar and Usage Seminar	Fred Pryor Seminars	6
04-11 to 04-17-01	Instructor Development	LVMPD	40
07-22 to 07-28-01	International Association for Identification - 86 th International Educational Conference (see below)	IAI	(see below)
"	Investigating Occult Crime	"	8
"	Killer on the Railcar	"	1.5
"	Unique Applications for Alternate Lights and Lasers	"	1
"	Specialized Photography: Techniques to Reveal Hidden Evidence	"	30 Min.
"	John Gacy, Serial Murderer	"	30 Min.
"	Photographic Identification of Clothing from Wear and Tear and Manufactured	"	1

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DATE	CLASS TITLE	AGENCY	CREDIT HOURS
	characteristics - The Band-Aid Bandit Case		
01-15-02	Bloodstain Pattern Analysis - Certificate # 037 - completed proficiency exercises - Given by Criminalistics Bureau	LVMPD Criminalistics Bureau	3
04-03-02	Documentation of Footwear & Tire Impressions	LVMPD	1
04-04-02	Criminal Law	LVMPD	2
08-04 to 08-10-02	87 th International Educational Conference - See below	IAI	
"	The Luck Factor	"	.5
"	Animation in Your Crime Scene - Utilization of 3-D	"	1
"	Courtroom or Classroom? Demonstrative Evidence	"	2
"	Fingerprint Evidence in the Danielle Van Damme Trial	"	1
"	Blood Reagents: Is it Really Blood?	"	1
"	Physical Evidence - Definitions and Uses	"	1
"	Latest Development in Vacuum Metal Deposition	"	1
01-20 to 01-24-03	Ridgeology Science Workshop - Forensic Identification Training Seminars	LVMPD	40
02-03 to 02-05-03	Shooting Incident Reconstruction - Forensic Identification Training Seminars	LVMPD	24

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**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
FORENSIC LABORATORY
STATEMENT OF QUALIFICATIONS**

Date: 5-12-03

Name: Cook, Terry L. P#: 2545 Classification: Criminalist II

Current Discipline of Assignment: DNA Analysis

EXPERIENCE IN THE FOLLOWING DISCIPLINE(S)			
Controlled Substances	X	Blood Alcohol	X
Toolmarks		Breath Alcohol	X
Trace Evidence	X	Arson Analysis	
Toxicology		Firearms	
Latent Prints		Crime Scene Investigations	
Serology	X	Clandestine Laboratory Response Team	X
Document Examination		DNA Analysis	X
Quality Assurance		Technical Support /	

EDUCATION			
<i>Institution</i>	<i>Dates Attended</i>	<i>Major</i>	<i>Degree Completed</i>
Washburn University	1976 - 1978	Chemistry	BA
Kansas State University	1979 - 1980		
University of Kansas	1975 - 1976		

ADDITIONAL TRAINING / SEMINARS		
<i>Course / Seminar</i>	<i>Location</i>	<i>Dates</i>
Biochemical Method of Bloodstain Analysis	FBI, Quantico, VA	7/85
Semen Analysis	Seri, Emeryville, CA	6/86

ADDITIONAL TRAINING / SEMINARS		
Course / Seminar	Location	Dates
Hair and Fiber Examination	FBI, Quantico, VA	6/87
Advanced Electrophoresis	Seri, Emeryville, CA	10/87
Bomb Crime Scene	FBI, Quantico, VA	6/88
DNA Extraction and Quantification	CCI, Sacramento, CA	1/96
PM / DOA1	Biosystems, Foster City, CA	1/96
Basic DNA Analysis	FBI, Quantico, VA	10/96
Statistics Analysis	Las Vegas, NV	10/99
Perkin Elmer CE 310 ABI Workshop	Portland, OR	1/98
Expert Witness Testimony Workshop	Coronado Springs Resort	10/98
STR Educational Forum	Las Vegas, NV	4/01
12 th International Symposium on Human Identification (Promega)	Biloxi, MS	10/01
PowerPoint	Las Vegas, NV	4/03
COURTROOM EXPERIENCE		
Court	Discipline	Number of Times
Justice / Grand Jury	(all areas)	230
District	Serology/DNA (serology 230 / DNA 25)	255
District	Blood alcohol	1
Federal	Clandestine methamphetamine lab	1
District	Narcotics analysis	80
EMPLOYMENT HISTORY		
Employer	Job Title	Date
LVMPD	Criminalist II	3/83 -

EMPLOYMENT HISTORY		
<i>Employer</i>	<i>Job Title</i>	<i>Date</i>
		present
Kansas Bureau of Investigation	Criminalist I / II	1/81 - 3/83
Kansas Dept. Of Health and Environment	Chemist I (temp)	5/80 - 11/80

PROFESSIONAL AFFILIATIONS	
<i>Organization</i>	<i>Date(s)</i>
Midwestern Association of Forensic Science	1984 - 2000

PUBLICATIONS / PRESENTATIONS:

OTHER QUALIFICATIONS:

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
FORENSIC LABORATORY
STATEMENT OF QUALIFICATIONS**

Date: 4-16-03

Name: Robert J. Rees P#: 2332 Classification: Latent Print Examiner II
Current Discipline of Assignment: Latent Prints

EXPERIENCE IN THE FOLLOWING DISCIPLINE(S)			
Controlled Substances		Blood Alcohol	
Toolmarks		Breath Alcohol	
Trace Evidence		Arson Analysis	
Toxicology		Firearms	
Latent Prints	X	Crime Scene Investigations	X
Serology		Clandestine Laboratory Response Team	
Document Examination		DNA Analysis	
Quality Assurance		Technical Support /	
EDUCATION			
<i>Institution</i>	<i>Dates Attended</i>	<i>Major</i>	<i>Degree Completed</i>
University of Nevada, Las Vegas	Graduated 1986	Criminal Justice	BA
ADDITIONAL TRAINING / SEMINARS			
<i>Course / Seminar</i>	<i>Location</i>	<i>Dates</i>	
Fingerprint Classification	Las Vegas	6/81	
Advanced Fingerprint Techniques	Las Vegas	3/82	
Advanced Crime Scene Techniques	Las Vegas	11/82	
Advanced Palm Print Symposium	Denver, CO	10/94	
Advanced Ridgeology Comparison	Mesa, AZ	4/96	
Advanced Ridgeology Comparison	Mesa, AZ	4/97	
Crime Scene Technology Workshop 2	Las Vegas, NV	9/97	
Expert Witness Testimony (CAT/NWAFS/SWAFS/SAT)	Las Vegas, NV	11/97	

ADDITIONAL TRAINING / SEMINARS		
<i>Course / Seminar</i>	<i>Location</i>	<i>Dates</i>
Latent Print Comparisons	Santa Ana, CA	4/98
NV State Division for the International Association for Identification Conference	Las Vegas, NV	4/99
CA State Division for the International Association for Identification Conference	Laughlin, NV	5/00
Digital Imaging Workshop	Las Vegas, NV	9/01
Digital Imaging Workshop	Las Vegas, NV	10/01
ABFDE Daubert Seminar	Las Vegas, NV	6/02
International Association for Identification - 87 th International Educational Conference	Las Vegas, NV	8/02
Courtroom Testimony Techniques	Downey, CA	9/02

COURTROOM EXPERIENCE		
<i>Court</i>	<i>Discipline</i>	<i>Number of Times</i>
Clark County Justice Court	Crime Scene Analyst	_ 150
Clark County District Court	Crime Scene Analyst	_ 75
Clark County Justice Court	Latent Fingerprint Examiner	_ 40
Clark County District Court	Latent Fingerprint Examiner	_ 50

EMPLOYMENT HISTORY		
<i>Employer</i>	<i>Job Title</i>	<i>Date</i>
LVMPD	Latent Fingerprint Examiner	10/93 - present
LVMPD	Senior Crime Scene Analyst	1986 - 10/93
LVMPD	Crime Scene Analyst	1/81 - 1986

PROFESSIONAL AFFILIATIONS	
<i>Organization</i>	<i>Date(s)</i>
International Association for Identification	1993 - present

PROFESSIONAL AFFILIATIONS	
Organization	Date(s)

PUBLICATIONS / PRESENTATIONS:

OTHER QUALIFICATIONS:

Curriculum Vitae
GILES SHELDON GREEN

NAME Giles Sheldon Green

PLACE AND DATE OF BIRTH Sandpoint, Idaho, October 21, 1928

HOME ADDRESS 5700 Mello Ave.
Las Vegas, Nevada 89106

BUSINESS ADDRESS Office of the Coroner-Medical Examiner
1704 Pinto Lane
Las Vegas, Nevada 89106

MARITAL STATUS Married to Celine Nydia Partridge
June 21, 1958

CHILDREN

Geoffrey Sheldon Green, October 30, 1959
John Edward Green, March 20, 1961
Melissa Louise Green, September 5, 1962
Michelle Celine Green, June 19, 1964
Deborah Anne Green, March 26, 1966
Esther Phoebe Green, May 14, 1970

EDUCATION

Willamette University, Salem, Oregon, 1952

B.A. / M.D.

University of Oregon Medical School, Portland, Oregon, 1959

PROFESSIONAL APPOINTMENTS

1959-1960 – Internship, St. Mary's Hospital, San Francisco, California

1960-1961 – Resident in Obstetrics and Gynecology, San Francisco Catholic Hospitals (St. Mary's Hospital)

1961-1963 – Resident in Pathology, St. Joseph's Hospital, San Francisco

GILES SHELDON GREEN
Curriculum Vitae
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1963-1966 – Fellow in Pathology, The University of Texas M.D. Anderson Hospital and Tumor Institute, Houston, Texas

1966-1968 – Assistant Pathologist, Section of Anatomical Pathology and Assistant

Professor of Pathology, The University of Texas, M.D. Anderson Hospital and Tumor Institute, Houston, Texas

1968-1974 – Assistant Medical Examiner, Office of the Harris County Medical Examiner, Houston, Texas

1975 – Deputy Chief Medical Examiner, Office of the Harris County Medical Examiner, Houston, Texas

1975 – Asst. Coroner-Chief Medical Examiner, Office of the Clark County Coroner-Medical Examiner, Las Vegas, Nevada

ACADEMIC APPOINTMENTS

1968-1975 – Clinical Assistant Professor Of Pathology, University of Texas Dental Branch, Houston, Texas

1968-1975 – Consultant in Pathology, University of Texas M.D. Anderson Hospital and Tumor Institute, Houston, Texas

1974-1975 – Clinical Assistant Professor of Pathology, Baylor University College of Medicine, Houston, Texas

1974-1975 – Clinical Assistant Professor of Pathology, University of Texas School of Medicine, Houston, Texas

MEDICAL LICENSURE

California, 1960

Texas, 1966

Nevada, 1975

BOARD CERTIFICATION

American Board of Pathology

Pathologic Anatomy 1965

Clinical Pathology 1965

Forensic Pathology 1974

GILES SHELDON GREEN
Curriculum Vitae
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MEDICAL AND SCIENTIFIC SOCIETIES

American Academy of Forensic Sciences
American Association for Automotive Medicine International Association for
Accident and Traffic Medicine International Association of Coroners And Medical
Examiners Aerospace Medical Association

GRANTS AND CONTRACTS

Project Supervisor, Contract PH43-66-937, NIC, NIH, USPHS, "Procurement of
Human Neoplastic Serum", 1966-1967

Project Co-Director, Contract PH43-68-631, NCI, NIH, "Procurement of Specific
Human Neoplastic Tissues and Serum", 1967-1968

BIBLIOGRAPHY

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Green, G. S.: Determination of Non-Fibrin Protein in Fibrin Clots Utilizing I^{131} -
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de Jongh, D. S., Loftis, J. W., Green, G. S., Shively, J. A., & Minckler, T. M.:
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49:424-428 (Mar) 1968.

Lynch, H. T., & Green, G. S.: Wilm's Tumor and Congenital Heart Disease.
Am. J. Dis. Children 115:723-727 (June) 1968.

Green, G. S., Leary, W. V., & Sanchez, G.: Disseminated North American
Blastomycosis: Report of a Fatal Case of Four Week's Duration, Imitating
Bronchogenic Carcinoma. So. Med. J. 62:202-206 (Feb) 1969.

Rodriquez, V., Green, G. S., & Body, G. P.: Serum Electrolyte Abnormalities
Associated with the Administration of Polymyxin B in Febrile Leukemic Patients.
Cl. Pharmacol. Therap. 11:106-111 (Jan-Feb) 1970.

Green, G. S.: Two Shots Do Not a Murder Make. Technicon Quarterly 4:10-16,
1972.

GILES SHELDON GREEN
Curriculum Vitae
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Green, G. S.: The Phenomenon of the Solo Traffic Accident. Presented: Ann. Seminar, International Association of Coroners & Medical Examiners, Las Vegas, 1979. Condensed: Proc. Intrnatl. Assn. Coroners & Medical Examiners. 1979, 1980, 1981. pp.28-32.

Green, G. S., & Good, R.: Homicide by Use of a Pellet Gun. Am. J. Forensic Med. Path. 3 (4): 361-365 (Dec) 1982.

Brooks, S., & Green, G. S.: Problems of Individual Identification. Presented: Ann. Mtg. Am. Acad. Forensic Sci., Cincinnati (Feb) 1983.

GILES SHELDON GREEN
Curriculum Vitae
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Curriculum Vitae
LINDA L. EBBERT R.N. S.A.N.E.
3655 S. Decatur Blvd., #14-149
Las Vegas, Nevada 89103

EXPERIENCE

Sexual Assault Nurse Examiner
Rose Heart Inc.
3655 S. Decatur Blvd. #14-149
Las Vegas, NV 89103

Years Employed 1995-present

Co-owner and President of Rose Heart, Inc. Responsible for administration and daily business tasks. Function actively as a sexual assault nurse examiner. Over 550 sexual assault examinations completed in the past four years. Appear in court as expert witness and present testimony regarding forensic evidence collected and interpretation of results of examinations.

Registered Nurse
University Medical Center
Emergency Dept.
1800 W. Charleston Blvd.
Las Vegas, NV 89102

Years Employed 1990-present

Work full time as R.N. caring for patients in the Fast Track area of the E.R.

Northeastern Ohio General Hospital
Ob/Gyn as Labor and Delivery Nurse
Supervision As Shift Supervisor and as Coordinator E.R.

Years Employed 1993-1988

Lake Hospital System
Emergency Room Staff Nurse
Coordinator Emergency Room...Lake Medical Center Madison

Madison Clinic Ambulance Service
5 years
Experience in Transporting Critical Patients

EDUCATION

Meadville Area Senior High School
Meadville, PA 16335
High School Diploma

1957-1960

LINDA L. EBBERT, R.N.
CURRICULUM VITAE

- 1 -

Meadville City Hospital School of Nursing
Graduate Diploma School of Nursing
Registered Nurse Program – 3 Year Program

1960-1963

Urseline College
Pepper Pike, Ohio
Majoring in Humanities for B.A. In Health Care Administration

1987-1989

CREDENTIALS / CERTIFICATION

R.N.	Registered Nurse
A.C.L.S.	Advanced Life Care Support, Successful Completion of all Course Requirements
T.N.C.C.	Trauma Nurse Course, Successful Completion of all Course Requirements
S.A.N.E.	Sexual Assault Nurse Examiner, Successful Completion of all Course Requirements

LINDA L. EBBERT, R.N.
CURRICULUM VITAE

- 2 -

CASE NO. C-131341

DEPT. NO. 3

FILED

FEB 20 10 26 AM '07

ORIGINAL

CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

STATE OF NEVADA,
PLAINTIFF,
-VS-
JAMES CHAPPELL,
DEFENDANT.

REPORTER'S TRANSCRIPT
OF
HEARING
RE: PRE-PENALTY PHASE MOTIONS

BEFORE THE HONORABLE DOUGLAS HERNDON
DISTRICT COURT JUDGE

DATED: THURSDAY, JANUARY 11, 2007

REPORTED BY: SHARON HOWARD, C.C.R. NO. 745

RECEIVED

FEB 20 2007

CLERK OF THE COURT

1 APPEARANCES:

2 FOR THE STATE:

PAMELA WECKERLY, ESQ.

3

4

5

6

7 FOR THE DEFENDANTS:

DAVID SCHIECK, ESQ.

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CLARK PATRICK, ESQ.

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1 LAS VEGAS, NEVADA; THURSDAY, JANUARY 11, 2007

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

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4
5 THE COURT: Page 11, James Chappell,
6 C-131341.

7 The record will reflect the absence of
8 Mr. Chappell, in the Nevada Department of Prisons.
9 Mr. Schieck and Mr. Patrick on his behalf, Ms. Weckerly on
10 behalf of the State.

11 I have a number of motions on today. The
12 first one I have is defense motion to remand the case for
13 consideration by the DA's Death Review Committee.

14 Mr. Schieck.

15 MR. SCHIECK: Yes, your Honor.

16 This is a motion that we filed to, more or
17 less, preserve the record on this for some ongoing litigation
18 concerning the manner and method used by the district
19 attorney's office for seeking the death penalty in their
20 cases. And as your Honor is aware, they have the Death
21 Review Committee.

22 This case was never reviewed by that
23 committee because it was a decision to seek the death penalty
24 before that committee was in place, because this case is so
25 old.

1 What we're seeking is that it be remanded
2 over to death penalty cases, and the Committee be given the
3 opportunity to go back and review it. They are allowing us
4 now to appear to make recitations before the Committee to
5 determine whether or not it's an appropriate case to utilize
6 our resources in trying it as a capital case or a non-capital
7 case.

8 THE COURT: All right. Ms. Weckerly.

9 MS. WECKERLY: Your Honor, the State's
10 position is that the district attorney's office has
11 discretion, according to the statutes, of course, of whether
12 or not to make a case capital or not, and there's no basis
13 for remanding this to the Death Review Committee at this
14 point.

15 MR. SCHIECK: To be candid with the court,
16 your Honor, I did raise this issue in the Marlo Thomas case.
17 The Supreme Court said, just recently, on December 23th, that
18 it was a discretionary decision by the district attorney's
19 office. So there is a four to three majority right now that
20 says you don't have to remand it. The court should be aware
21 of that.

22 THE COURT: That's what my understanding
23 was.

24 Obviously, I have to follow whatever the
25 Supreme Court is telling me right now. And I do agree that

1 it's a discretionary function at the DA's office whether they
2 have the Committee, and what the Committee reviews and what
3 the Committee allows you to do. So I'll deny that motion.

4 The next one that I have in my stack here is
5 defense motion to allow a jury questionnaire. I don't
6 generally have any problem with that. I didn't understand
7 the representation in the State's opposition that it's
8 already been decided by the court.

9 Is that a reference to -- was there one in
10 the first trial?

11 MS. WECKERLY: Yes.

12 THE COURT: I'll grant that motion, that the
13 defense can prepare a jury questionnaire and submit it to the
14 State. If you can't agree on it, let me know and we can all
15 get together and go through it. And I would like that it be
16 finalized at least a week-and-a-half, two weeks prior to the
17 date set for the penalty hearing so we can get it to the
18 prospective panel.

19 MR. SCHIECK: We have a number of ones in
20 our office we've used with the majority of the violator's
21 team. We'll work one out.

22 THE COURT: Defendant's motion to strike
23 sexual assault aggravator within the State's notice.

24 MR. PATRICK: Yes, your Honor.

25 Your Honor, at the first penalty hearing in

1 the first trial sexual assault was not charged by the State.
2 There was no evidence presented during trial of sexual
3 assault. The only evidence that came in was during the
4 State's closing arguments. That's in clear -- he was never
5 charged with it. He never had an opportunity to defend
6 himself on it. I think it's bad precedence to allow the
7 State to be judge, jury, and executioner on their closing
8 arguments alone, without having proven any of the elements of
9 sexual assault, and then using them as an aggravator to
10 impose the death penalty.

11 Also if the court is disinclined to allow
12 that, then we should be allowed to offer up evidence to
13 defend sexual assault.

14 The Supreme Court in Mucack actually laid
15 out a three-part test on this very thing. And they said that
16 while sentencing, traditionally, concerns whether the
17 defendant committed the crime, not how. They also mention
18 whether the parties previously litigated the issue and the
19 negative impact of a rule restricting the defendant's ability
20 to introduce news evidence.

21 Well, in this case nothing was litigated.
22 Mr. Chappell had no opportunity to provide any evidence of
23 his innocence, because the State never charged sexual
24 assault.

25 So if you're not going to strike it

1 altogether, which would be the most fair thing to do to
2 Mr. Chappell, then we should at least be allowed to introduce
3 evidence of his innocence of sexual assault.

4 THE COURT: Didn't the Supreme Court's
5 opinion, though, kind of maintain the viability of sexual
6 assault?

7 MR. PATRICK: Your Honor, that was in the
8 section of McConnell, and they were talking about McConnell.
9 And under McConnell, sexual assault may still be viable, but
10 that's -- it was Dicta, and they were using McConnell when
11 they struck the other two aggravators. I don't think they
12 looked at this on its own.

13 THE COURT: Ms. Weckerly.

14 MS. WECKERLY: I think that Supreme Court,
15 at least, implicitly addressed that this is still a viable
16 aggravator in this case. They specifically said, based on
17 the record before us, we conclude that the aggravator based
18 upon sexual assault remains viable.

19 Now, whether or not they're going to be
20 precluded, or the extent to which they are allowed, if the
21 court is not going to strike the aggravator, to go into
22 whether a sexual assault occurred or not, I think it's really
23 dictated by the terms of the penalty hearing where we're not
24 relitigating guilt.

25 So if the court was going to allow them some

1 discretion or some reason to go into those issues, again, I
2 would just ask that ahead of time we have a hearing or have
3 some notice of what they are planning on presenting. But I
4 think at this point, based on the order of affirmance, this
5 is still clearly a valid aggravator in this case.

6 THE COURT: I'll deny the motion to strike
7 the aggravator. But I think they're entitled to challenge
8 the validity of the aggravator, just like they challenge the
9 validity of any other aggravator at the time of trial, unless
10 it's something that's substantially decided by guilt in the
11 underlying -- like, whether there was a risk of death of more
12 than one person, and they argue and present evidence that
13 nobody else was around when somebody was shot, things like
14 that.

15 There are certain parameters, obviously,
16 they're entitled to defend against the aggravators trying to
17 disprove them and make the case not ripe for the imposition
18 of the death penalty.

19 But to the extent that the parties haven't
20 exchanged discovery, we can talk about that prior to the
21 hearing, or limitation, if any, that should be imposed.

22 The defense motion to dismiss the State's
23 notice of intent to seek the death penalty, alleging that the
24 statute is unconstitutional.

25 MR. SCHIECK: We want to preserve that

1 statute for further proceedings.

2 THE COURT: I understand.

3 I'll deny that motion. I find that the
4 current case law has upheld the constitutionality -- facial
5 constitutionality of the death penalty statutes.

6 I have a defense motion to limit the penalty
7 hearing in two areas. One is in regards to the incident that
8 was testified about by an officer in the first penalty
9 hearing regarding an apparent Michigan arrest and conviction
10 for assault and battery, as well as a second issue of the
11 testimony of Ms. Monson, in terms of what she stated in her
12 victim statement in the first penalty hearing.

13 THE COURT: Mr. Schieck or Mr. Patrick.

14 MR. PATRICK: Yes, your Honor.

15 On the first part, the assault and battery,
16 that's an 18-year-old case. It's an unrelated crime and had
17 nothing to do with the crime that Mr. Chappell was on trial
18 for. The only evidence presented was a police officer who
19 has -- shows an indicia of authority, so, of course, he's
20 going to be more prejudicial to Mr. Walker (sic) than
21 probative on an 18-year-old case.

22 There was no conviction in this case. I
23 know the State says there was, but according to Mr. Chappell
24 and anything we can find, there was never a conviction in
25 this case, which makes it even more prejudicial to

1 Mr. Chappell.

2 As far as the second part about what the
3 witness said, as far as, Mr. Chappell should be put to death.
4 The Supreme Court specifically said that that was not
5 allowable.

6 The only thing we're concerned about in that
7 is that when the witness gets on the stand she'll blurt it
8 out, or say it, and there's no way to close that barn door
9 once the horse is out. So we would ask the court to tell the
10 State, please, tell your witnesses not to do that. And
11 knowing that if it is blurted out, we'll have to look back at
12 that, and it's reason for reversal again.

13 THE COURT: Ms. Weckerly.

14 MS. WECKERLY: Your Honor, certainly with
15 regard to the victim impact statement, we'll advise the
16 witness as to what's appropriate.

17 With regard to the conviction, I mean, I
18 think it's sort of up to the jury. If we can establish a
19 conviction, it really doesn't matter if it's 18-years-old or
20 not, it's all relevant evidence in a penalty hearing at this
21 point.

22 I understand there is a disagreement as to
23 whether there was a conviction or not. It's the State's
24 position that there was one. And the fact of how old the
25 conviction is really doesn't matter in a penalty hearing. It

1 would still come in as evidence.

2 THE COURT: I'll deny the motion in limine
3 as to limiting the testimony about the Michigan incident. I
4 think it's appropriate testimony for a penalty hearing. And
5 if the State wants to swear the officer in, he can testify as
6 to what he knows about it. Anybody that wants to dispute
7 that or confirm it with documentary evidence is free to do
8 so.

9 Regarding Ms. Monson's testimony, yes, I
10 will order that the State talk with her, certainly, if
11 necessary. And while I understand the emotions of a victim
12 impact statement, she still needs to understand the
13 legalities of what she can and cannot say. Like everybody
14 else, she doesn't want to make this come back for a third
15 phase.

16 The defendant's motion to bifurcate the
17 penalty phase.

18 MR. SCHIECK: Your Honor, the Supreme Court
19 has not ruled that bifurcation is mandated in capital cases.
20 There are some departments that have bifurcate penalty
21 hearings, and in this case I think that it's even more
22 crucial that this penalty hearing be bifurcated, because the
23 State is down to one single aggravating circumstance of
24 sexual assault, which there is not a conviction of.

25 The State has the burden of establishing the

1 existence of sexual assault during the perpetration of the
2 homicide in order to have the aggravator. They have to prove
3 that beyond a reasonable doubt.

4 It's our position they can't use any of the
5 character evidence, other bad-act evidence, any of that other
6 evidence that exists as to the other crime, or previous crime
7 with Mr. Chappell in proving up the sexual assault case.

8 And until such time as they have
9 established, beyond a reasonable doubt, and the jury is found
10 that he's ineligible for the death penalty because there is
11 an aggravator, they shouldn't be allowed to introduce any
12 other evidence. Therefore, bifurcation seems to be more than
13 appropriate in this case.

14 THE COURT: Ms. Weckerly.

15 MS. WECKERLY: Your Honor, the plain
16 language of the statute doesn't say that there should be
17 bifurcation at all in a penalty hearing.

18 In the Weber case, the Supreme Court said
19 that bifurcation is unnecessary. In all penalty hearings the
20 jury is instructed over, and over, and over again about the
21 different hurdles that the State must meet before they can
22 consider the death penalty as a potential sentence.

23 We all presume that juries follow those
24 instructions, so there's really no need for the court to
25 bifurcate, or no legal basis for the court to bifurcate the

1 penalty hearing in this case, as opposed to any other case.

2 THE COURT: I'm going to deny the motion to
3 bifurcate the penalty hearing.

4 I agree that the penalty is to occur in one
5 fashion, but the jurors are instructed, fairly explicitly at
6 the trial about the penalty phase in a murder case about how
7 they're supposed to work through evidence, consider things
8 separately. Often times you have multiple charges in a case
9 for the penalty phase, multiple aggravators, multiple issues
10 in litigation. They're instructed on what they need to do in
11 finding aggravators and finding that they're not outweighed
12 by mitigating factors to impose the death penalty, if
13 appropriate.

14 We have to assume that the jurors are going
15 to follow the legal instructions that they're given. I don't
16 think this case is any different from any other in that
17 regard, in terms of what they have to rely on and instruct
18 the jury on the law.

19 The last one I have is a defense motion for
20 discovery of potential penalty hearing evidence.

21 MR. SCHIECK: Your Honor, this motion is
22 primarily addressed -- we recognized there was previously a
23 penalty hearing in this case, and we don't expect the State
24 to dig up anything new prior to the time of that trial. If,
25 however, they have specific things they intend to introduce

1 that have happened since Mr. Chappell has been
2 incarcerated -- we have his prison records and we know what's
3 in the prison records -- but if there's any other information
4 they have they intend to introduce at the penalty hearing, we
5 would like discovery on that as soon as possible.

6 Additionally, your Honor, because the sexual
7 assault charge was not tried before the jury during the guilt
8 phase, there is no forensic evidence in the file or in the
9 record concerning sexual assault or injuries to the victim
10 that would prove a sexual assault. If the State is doing any
11 additional testing, or has any evidence at all that they
12 claim that they're now going to present to support this was a
13 sexual assault as opposed to a consensual sexual encounter,
14 we need to have that right away so our experts can look at
15 it.

16 Those are the primary areas that we really
17 need to focus on in order to keep this hearing date.

18 THE COURT: Ms. Weckerly.

19 MS. WECKERLY: Your Honor, I ask that the
20 court hold us to the rules about noticing experts, and the
21 rules of 250, which explain when we're supposed to give
22 notice of what evidence we'll present at the penalty
23 hearing.

24 The State fully plans to adhere to all the
25 rules in the notice of experts. The defense, as always, is

1 welcomed to review our complete file. We'd ask you to hold
2 us to what we're expected to do under the law, and certainly
3 beyond that, we'll let them review anything that we have.

4 THE COURT: All right. Well, I'm going to
5 deny the motion, but here -- I'll deny the motion because of
6 what the statute says.

7 Here's what I'll say. If there is
8 anything -- doing two years of civil law, what's it's taught
9 me is the time periods imposed should be revisited greatly.
10 There is a great majority of cases continued because we have
11 very short time periods that things have to be disclosed
12 prior to time of trial, that doesn't give people, especially
13 in cases like this, the appropriate amount of time to get
14 ready for something.

15 So even though all I can do, pursuant to the
16 law, is hold you to those time periods. And the sooner that
17 things can be turned over the better, in terms of allowing
18 them to prepare for the March 12th, hearing.

19 So I would just ask and implore the State to
20 turn over whatever they have. Sit down with counsel or get
21 on a phone conference, if necessary, as soon as you can put
22 something together so they can begin doing what they need to
23 do to prepare as well.

24 MS. WECKERLY: We'll do that, your Honor.

25 MR. SCHIECK: Two housekeeping matters.

1 We have the penalty hearing date set for
2 March 12, set by Judge Cherry. We have numerous out of state
3 witnesses testifying for the defense in this case. We need
4 to know if that date is still a viable date.

5 THE COURT: It is. It's the first week of
6 my next criminal stack. I'm guessing there isn't a case
7 older than this one.

8 MR. SCHIECK: There is some more coming
9 along.

10 THE COURT: That may be true as well. But
11 as far as I was concerned, it's the only one I know of on the
12 stack that takes precedence over everything else.

13 What's your best estimate of time.

14 MS. WECKERLY: Four days.

15 THE COURT: I'll consider it number one for
16 that stack on March 12. What I would say is that what we are
17 going to need to do in terms of the jury questionnaire,
18 generally, I think jury services likes to have that --

19 MR. PATRICK: I believe it's 21 days, your
20 Honor.

21 THE COURT: That would be great. They'll
22 give you a little less than that. If you want to say 21,
23 that's fabulous.

24 MR. SCHIECK: We'll do it right away.

25 MS. WECKERLY: Thank you.

1 MR. SCHIECK: The other thing, just for the
2 record, because this is a capital case that's come back, we
3 want the record to be clear on all possible issues.

4 Judge, the case was originally, when it came
5 back, was assigned to Judge Togliatti, who recused herself
6 because she had been with the district attorney's office and
7 actually shared office space with Ms. Silver when she
8 litigated this case at the first trial and felt that that
9 knowledge of the case she probably would be better off not to
10 hear it. We just want to be sure -- you were at the district
11 attorney's office in that unit for a period of time. I don't
12 know if it was during a period of time that Mr. Chappell was
13 litigated, whether your Honor had any --

14 THE COURT: When was the original trial?

15 I mean, I recognize the name, but I think
16 that's more from the case has been kicking around for so
17 long.

18 MR. PATRICK: It was '95.

19 THE COURT: Was it part of the sexual
20 assault unit?

21 MR. SCHIECK: It was Mel Harmon's last
22 murder case. Ms. Silver did the case with Mr. Harmon.

23 THE COURT: It was part of NVU? I was
24 never on NVU. I did some NVU cases for some of the attorneys
25 that were assigned to that unit, but I didn't have any

1 contact with Mr. Chappell's case while I was in that
2 office.

3 MS. WECKERLY: We haven't seen anything to
4 indicate that.

5 MR. SCHIECK: I just wanted to make the
6 record clear on that.

7 THE COURT: Thank you.

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25

CERTIFICATE
OF
CERTIFIED COURT REPORTER

* * * * *

I, THE UNDERSIGNED CERTIFIED COURT REPORTER IN AND FOR THE
STATE OF NEVADA, DO HEREBY CERTIFY:

THAT THE FOREGOING PROCEEDINGS WERE TAKEN BEFORE ME AT THE
TIME AND PLACE THEREIN SET FORTH; THAT THE TESTIMONY AND ALL
OBJECTIONS MADE AT THE TIME OF THE PROCEEDINGS WERE RECORDED
STENOGRAPHICALLY BY ME AND WERE THEREAFTER TRANSCRIBED UNDER
MY DIRECTION; THAT THE FOREGOING IS A TRUE RECORD OF THE
TESTIMONY AND OF ALL OBJECTIONS MADE AT THE TIME OF THE
PROCEEDINGS.



SHARON HOWARD
C.C.R. NO. 745

AFFIRMATION

PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the
proceeding

State v. Chappell,
filed in District Court Case No. C-131341,

☒ Does not contain the social security number of any
person.

☐ Contains the social security number of a person as
required by:

(A) NAC 656.350

-or-

(B) For the administration of a public program or for
an application for a federal or state grant.

Sharon Howard

Sharon Howard, CCR #745

2/18/07

Date

248

**E-FILE LITE
ORIGINAL**

Chris [Signature]
CLERK OF THE COURT

NISD
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
PAMELA WECKERLY
Chief Deputy District Attorney
Nevada Bar #006163
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

JAMES MONTELL CHAPPELL,
#1212860
Defendant.

Case No. C131341
Dept No. III

**NOTICE OF EVIDENCE IN SUPPORT OF
AGGRAVATING CIRCUMSTANCES**

COMES NOW, the State of Nevada, through DAVID ROGER, Clark County District Attorney, by and through PAMELA WECKERLY, Chief Deputy District Attorney, pursuant to Supreme Court Rule 250, NRS 175.552 and NRS 200.033, and declares its intention to present the following evidence in support of aggravating circumstance at a penalty hearing:

Evidence and Testimony at the Trial Phase

Counsel for the Defendant have the preliminary hearing transcript, preliminary hearing exhibits and evidence, impounded evidence, witness notices, pretrial motions, discovery, police reports, prior trial and penalty hearing transcripts and court documents regarding the defendant's conduct during this incident. The State will be relying on this evidence and testimony for the purpose of establishing the character of the defendant for penalty purposes.

1 The State also reserves the right to present any and all evidence previously presented
2 either through witnesses, documents or physical evidence at the prior trial, penalty hearing,
3 or post-conviction proceedings regarding Defendant Chappell. Defendant Chappell is on
4 notice of all of these items as they are contained in the Record on Appeal. The State may
5 also present evidence regarding all incidents referred to in a Presentence Investigation
6 Report dated 12-5-96, including admission of the report itself.

7 The State may introduce statements of the defendant from the prior trial and penalty
8 phase as well as any statement he made in court or to a law enforcement official during his
9 prior contacts with law enforcement.

10 Aggravating Circumstance

11 1. Furthermore, the following evidence pertaining to the Defendant will be used
12 as character evidence during the penalty phase.

13 In support of the allegation pertaining to NRS 200.033 (4), the murder was committed
14 during the perpetration of a sexual assault, an aggravating circumstance set for in the Notice
15 of Intent to Seek Death Penalty, filed November 8, 1995. To establish this aggravating
16 circumstance, the State will present evidence that establishes that Defendant Chappell
17 sexually assaulted Deborah Panos on August 31, 1995. In order to do this, the State will
18 present evidence from Lisa Duran, Dina Freeman, and Tonya Hobson who will describe the
19 nature of the relationship between Panos and Chappell on the date of the murder. Witnesses
20 Clare McGuire, Michelle Mancho, and Michael Pollard will be called to illustrate the state of
21 mind of Deborah Panos shortly before Chappell murdered her. In addition, the State will
22 present the testimony of Sherry Smith who spoke to Panos shortly before Chappell murdered
23 her. The State will also present evidence of how the crime scene appeared through Detective
24 James Vaccaro, Officers Heimer and Lee, Crime Scene Analysts Washington, Perkins, and
25 Spoor. The State will present evidence regarding the collection and testing of DNA
26 evidence from Terry Cook or a Designee. This includes all prior DNA testing as well as any
27 on-going DNA testing. The State will also admit Defendant Chappell's testimony from the
28 trial. Finally, the State present evidence from Dr. Sheldon Green regarding the injuries

1 sustained by Panos on August 31, 1995 and may seek to admit the testimony of Sexual
2 Assault Nurse Linda Ebbert who will testify in general terms regarding medical findings of
3 sexual assault. The State may present additional evidence and/or any information adduced
4 from previously provided discovery, motions, or prior proceedings regarding this incident.

5 The Criminal History of the Defendant

6 2. The State will call Officer Paul Weidner or John Priebe of the Lansing,
7 Michigan Police Department who will testify about an incident that occurred on August 18,
8 1998. The victim in this incident was Kenneth Gay who also may be called as a witness. In
9 this incident, defendant Chappell got into an argument with Gay along with some other
10 individuals. During the course of this incident, defendant Chappell hit Gay with a brick.
11 The case number for this incident is C840510 and defendant's conviction was for Battery.
12 The State may also seek to introduce evidence regarding this incident through court
13 documents and/or a Judgment of Conviction and/or testimony from a Lansing, Michigan
14 prosecutor who is familiar with the case and/or any information adduced from previously
15 provided discovery, motions, or prior proceedings regarding this incident.

16 3. The State may also present evidence of incidents where Defendant Chappell
17 beat or struck Deborah Panos. Specifically, on February 1994, in Tuscon Arizona, Officers
18 Earnst and Vernon of the Tuscon Police Department responded to an incident where
19 Defendant Chappell and Deborah Panos had gotten into an argument because he sold her
20 child's furniture for drugs. In the course of the argument, Defendant Chappell beat and
21 kicked Panos. The State may also present additional evidence and/or any information
22 adduced from previously provided discovery, motions, or prior proceedings regarding this
23 incident.

24 4. Through witness Lisa Duran, the State will establish that in December 1994
25 while Panos was a co-worker of Duran's, Duran observed Panos and defendant Chappell
26 engage in a discussion at her workplace. During that encounter, defendant Chappell slapped
27 Panos in the face. The State will also elicit testimony from Duran that there were other
28 occasions when she observed Panos to be bruised and injured. Finally, the State will present

1 testimony from Duran about Panos's feelings about her relationship with Chappell shortly
2 before he murdered her. The State may also present additional evidence and/or any
3 information adduced from previously provided discovery, motions, or prior proceedings
4 regarding this incident.

5 5. Through witness Officer Giersdorf, the State will establish that on January 9,
6 1995, defendant Chappell hit Deborah Panos in the nose with a cup, disfiguring her. The
7 State may also elicit testimony from Dr. McCourt who treated Panos to describe the extent of
8 the injury. The State will also present evidence of defendant Chappell's demeanor during
9 this incident. The State may also present additional evidence and/or any information
10 adduced from previously provided discovery, motions, or prior proceedings regarding this
11 incident.

12 6. Through witness Dina Freeman and/or Laura Berfield and/or Claire McGuire,
13 the State will present evidence regarding threats and comments Freeman and/or Berfield
14 and/or McGuire heard Defendant Chappell say with regard to Deborah Panos and Panos's
15 reaction to such comments. The State will also seek to elicit testimony from Freeman and/or
16 Berfield and/or McGuire regarding their observations of other instances when Defendant
17 Chappell abused Panos and/or instances where they had contact with Defendant Chappell
18 and summoned the police. The State may also present additional evidence and/or any
19 information adduced from previously provided discovery, motions, or prior proceedings
20 regarding this incident.

21 7. The State will present evidence from January 10, 1995 and June 1, 1995 when
22 Defendant Chappell violated of protective orders through witnesses A. Williams and K.
23 Veillon of the Las Vegas Metropolitan Police Department as well as through documentary
24 evidence surrounding the temporary protective order itself and the offense of battery. The
25 State may also present additional evidence and/or any information adduced from previously
26 provided discovery, motions, or prior proceedings regarding this topic.

27 8. The State will present evidence regarding Defendant Chappell's release from
28 custody on August 31, 1995. The State will present evidence that at that time, defendant

1 Chappell was under the supervision of the Department of Parole and Probation. Through
2 Chappell's Probation Officer Chermaine Smith and or Larry Arve and or Mike Compton or a
3 Designee, the State will present evidence of Chappell's progress on probation regarding this
4 and other incidents. Ms Smith and her supervising officer, Paul Ellis, will also testify
5 regarding conversations she had with Deborah Panos before her murder. The State may also
6 present additional evidence and/or any information adduced from previously provided
7 discovery, motions, or prior proceedings regarding this topic.

8 9. The State will present evidence that on February 18, 1995, Metro Police
9 arrested Defendant Chappell at 5050 East Charleston at a K-Mart. In that incident he was
10 charged with burglary, under the influence of a controlled substance, and possession of
11 burglary tools. In addition to the witnesses at the incident which include Metro Officer
12 Cashton. The State may also present photographic evidence to illustrate this incident for the
13 jury as well as court documents and/or a Judgment of Conviction. In addition, the State will
14 present evidence regarding how this case was negotiated and that Chappell ultimately
15 entered a guilty to plea to Possession of Burglary Tools. Through documentary evidence or
16 the testimony of Detective Vaccaro and/or a representative of the Department of Parole and
17 Probation, the State will establish that on April 27, 1995, Chappell was given a suspended
18 sentence and placed on probation with the condition of drug counseling.

19 The State will present Defendant Chappell's statement to the Department of Parole
20 and Probation regarding this incident. The State may also present additional evidence and/or
21 any information adduced from previously provided discovery, motions, or prior proceedings
22 regarding this incident.

23 A hearing on August 1, 1995 took place regarding Defendant Chappell violating the
24 terms of his probation, wherein the court directed Defendant Chappell reinstated on
25 probation with the condition that he be released to the Department of Parole and Probation
26 who would transport him to an in-patient drug treatment facility. Officer William Duffy will
27 testify that he met with Chappell on August 31, 1995 and Defendant Chappell assured him
28 that he would go directly to the drug treatment facility.

1 10. Through witnesses Lawrence Martinez, Kimberly Simpson, and Officer
2 Osuch, the State will present evidence regarding Defendant's behavior after murdering
3 Panos. The State may also present additional evidence and/or any information adduced from
4 previously provided discovery, motions, or prior proceedings regarding this topic.

5 11. The State may also present evidence of an arrest of defendant by Officer
6 McGrath, P#4347 for under the influence of a controlled substance which occurred on
7 January 1, 1995, an arrest by Officer Szeles, P#3526 for the same charge on November 14,
8 1994, a citation by Officer Dickens P#4008 for petit larceny on June 26, 1995 as well as an
9 arrest for the under the influence of a controlled substance, a citation by Officer Dickens for
10 possession of drug paraphernalia on May 29, 1995. This evidence may also introduce in the
11 form of testimony or documentary evidence.

12 Other Evidence

13 12. The testimony of the Custodian of Records of the Nevada Department of
14 Prisons regarding the disciplinary record of the Defendant while he was in the care and
15 custody of the Nevada Department of Prisons and/or certified copies of such records and/or
16 prison disciplinary records previously furnished to defendant Chappell pursuant to a court
17 order issued during post-conviction proceedings.

18 13. The testimony of the Custodian of Records of the Clark County Detention
19 Center regarding the disciplinary record of the Defendant while in the care and custody of
20 the Clark County Detention Center and/or certified copies of such records.

21 14. The testimony of family members of victim Deborah Panos, including her
22 mother, Norma Pennfield, her aunt and uncle, Carol Monson and Maynard Monson, and her
23 children James Panos, Anthony Panos, and Chantel Panos. Other family members include
24 Al Granger, Christina Rees, and Doris Wichtoski. Exhibits will include photographs and
25 memorabilia regarding the life of Deborah Panos, including playing a videotape of the
26 victim.

27 //

28 //

15. Statements of the defendant in the form of phone calls made from the Nevada Department of Prisons and/or the Clark County Detention Center which demonstrate his character and attitudes towards violence and the criminal justice system.

DATED this 23rd day of February, 2007.

Respectfully submitted,

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781

BY /s/ PAMELA WECKERLY
PAMELA WECKERLY
Chief Deputy District Attorney
Nevada Bar #006163

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of the above and forgoing, was made this 23rd day of February, 2007, by facsimile transmission to:

SPECIAL PUBLIC DEFENDER
FAX#455-6273

BY /s/ M. Beaird
Employee of the District Attorney's Office

mb

**E-FILE LITE
ORIGINAL**

CR
CLERK OF THE COURT

NOTC
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
CHRIS J. OWENS
Chief Deputy District Attorney
Nevada Bar #001190
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

JAMES MONTELL CHAPPELL,
#1212860
Defendant.

CASE NO: C131341

DEPT NO: III

NOTICE OF WITNESSES
[NRS 174.234(1)(a)]

TO: JAMES MONTELL CHAPPELL, Defendant; and

TO: SPECIAL PUBLIC DEFENDER, Counsel of Record:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF
NEVADA intends to call the following witnesses in its case in chief:

<u>NAME</u>	<u>ADDRESS</u>
ADAMS, NORM	NEV. DEPT. OF PAROLE & PROB.
ARAVE, LARRY	NEV. DEPT. OF PAROLE & PROB.
AUSSERNS, P.O.	TUCSON POLICE DEPT., AZ
AYERS, LUANA	311 CRANE ST., PARK HILLS, MO
BERFIELD, LAURA	UNKNOWN ADDRESS, TUCSON, AZ
BURTON, M.	LVMPD #4961
COMPTON, MIKE	NEV. DEPT. OF PAROLE & PROB.

1	CONNELL, D.	LVMPD #298
2	COOK, TERRY	LVMPD #2545
3	COR	CCDC
4	COR	CITY OF NLV
5	COR	UMC
6	COTTON, ROBIN	CELLMARK, GERMANTOWN, MD
7	DICKENS, C.	LVMPD #4008
8	DUFFY, WILLIAM	NEV. DEPT. OF PAROLE & PROB.
9	DURAN, JOHN	251 ROCHELLE, HEND., NV
10	DURAN, LISA	251 ROCHELLE, HEND., NV
11	EARNST, J.	TUCSON POLICE DEPT., AZ
12	FOREMAN, LISA	CELLMARK, GERMANTOWN, MD
13	FREEMAN, DINA	TUCSON POLICE DEPT., AZ
14	GAY, KENNETH	5025 LANSING RD., CHARLOTTE, MI
15	GIERSDORF, D.	LVMPD #4521
16	GRANGER, AL	UNKNOWN ADDRESS
17	GREEN, DR. SHELDON	CORONER'S OFFICE
18	GROVE, WANDA	CP#253
19	HAGGERTY, P.O.	TUCSON POLICE DEPT., AZ
20	HANNERS, A.	LVMPD #4920
21	HEINER, DARREN	LVMPD #2609
22	HENDERSON, ED	NEV. DEPT. OF PAROLE & PROB.
23	HOBSON, TANYA	P.O. BOX 43264, LVN
24	JACKSON, LADONNA	2643 DONNA ST. #C, NLV, NV
25	KERNS, E.	LVMPD #4331
26	KLEIN, D.	LVMPD #3997
27	KNAPP, J.	LVMPD #3928
28	LATRONA, SHERELLE	4776 CESSNA #3, LVN

1	LEAVER, W.	LVMPD #759
2	LEE, R.	LVMPD #3290
3	MANCHA, MICHELLE	6615 NAVIO DR., LVN
4	MARTINEZ, LAWRENCE	1048 N. BENSON, ONTARIO, CA
5	MASTON, M.	LVMPD #2112
6	McCOURT, DR. JOHN	UMC
7	McGUIRE, CLAIR	UNKNOWN ADDRESS
8	McNITT, L.	TUCSON POLICE DEPT., AZ
9	MUNSON, CAROL	11880 PAJARO VERDE, TUCSON, AZ
10	NEIDKOWSKI, EDWARD	TUCSON POLICE DEPT., AZ
11	ORTIZ	LVFD
12	OSUCH, P.	LVMPD #2141
13	PENFIELD, NORMA	2041 DIAMON BAR LN., TUCSON, AZ
14	PERKINS, M.	LVMPD #4242
15	PETERSON, D.	LVMPD #4034
16	POLLARD, MIKE	4416 CHARNETA CT., LVN
17	PRIEBE, JON	LANSING POLICE DEPT., MI
18	RAMOS, P.	LVMPD #799
19	REES, ROBERT	LVMPD #2332
20	SEMPSON, KIMBERLY	2210 CARLISLE CIR., LA HABRA, CA
21	SMITH, CHERMAINE	NEV. DEPT. OF PAROLE & PROB.
22	SPOOR, M.	LVMPD #3856
23	STALLINGS, JOHN	CORONER'S OFFICE
24	STANSBURY, D.	LVMPD #3515
25	STONER, MATTHEW	TUCSON POLICE DEPT., AZ
26	SZELES, M.	LVMPD #3526
27	TURNER, DEBORAH	507 N. LAMB #6, LVN
28	VACCARO, J.	LVMPD #1480

1 VERNON, OFFICER

TUCSON POLICE DEPT., AZ

2 WASHINGTON, M.

LVMPD #4725

3 WIDNER, PAUL

LANSING POLICE DEPT., MI

4 WILDERSON, WENDY

CLARK COUNTY FAMILY COURT

5 WILLIAMS, A.

LVMPD #4083

6 WILTZ, WILLIE

1245 PACIFIC TERRACE, LVN

7 WINCHELLS, CAL

314 PINNACLE CT., HEND., NV

8 YADA, WILLIAM

LVMPD #2612

9 YATES, PAULA

CELLMARK, GERMANTOWN, MD

10 These witnesses are in addition to those witnesses endorsed on the Information and
11 any other witness for which a separate Notice has been filed.

14 BY

David Roger

15 DAVID ROGER
16 DISTRICT ATTORNEY
17 Nevada Bar #002781

18
19 CERTIFICATE OF FACSIMILE TRANSMISSION

20 I hereby certify that service of the above and forgoing, was made this 28th day of
21 February, 2007, by facsimile transmission to:

22 SPECIAL PUBLIC DEFENDER
23 FAX#455-6273

24
25 BY /s/ M. Beaird
26 Employee of the District Attorney's Office

27
28 mb

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FILED

MAR 1 3 03 PM '07

Chief Clerk
CLERK OF THE COURT

1 NOTC
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

12 DISTRICT COURT
13 CLARK COUNTY, NEVADA

14 ***

15 THE STATE OF NEVADA,
16 Plaintiff,
17 vs.
18 JAMES CHAPPELL,
19 Defendant.

CASE NO. C 131341
DEPT. NO. III

DATE: N/A
TIME: N/A

20 NOTICE OF DEFENDANT'S WITNESSES
21 [NRS 174.234(1)(b)]

22 TO: THE STATE OF NEVADA, Plaintiff, and

23 TO: DAVID ROGER, District Attorney, Attorney for Plaintiff

24 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the Defendant, JAMES
25 CHAPPELL, by and through his attorneys, DAVID M. SCHIECK, Special Public Defender, and
26 CLARK W. PATRICK, Deputy Special Public Defender intend to call the following witnesses
27 in its case in chief.

28 NAME

ADDRESS

29 James Ford

2371 Aurelius Road Apt. 28
Lansing, MI 48842

30 Ivri Marrell

1014 W. Edgewood Villas Apt 7
Lansing, MI 48911

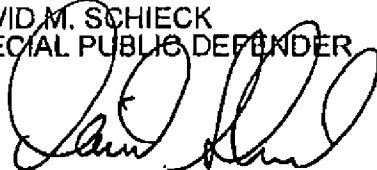
RECEIVED
SPECIAL PUBLIC
DEFENDER
CLARK COUNTY
NEVADA
MAR -1 2007

CLERK OF THE COURT

1	Ben Dean	6400 Norburn Way Lansing, MI 48911
2		
3	Charles Dean	6400 Norburn Way Lansing, MI 48911
4	Fred Dean	23710 Norcrest Southfield MI 48033
5		
6	Willie Richard Chappell	c/o Ms. Alice Jones, Parole Officer 524 South Pennsylvania Avenue Lansing, Michigan 48913
7		
8	Myra Chappell King	1829 W. Olds Avenue Lansing, MI 48915
9	Keisha Axam	7425 Chapel Hill Drive, #201 Lansing MI 48917
10		
11	Dennis Reefer, Investigator	c/o Office of Special Public Defender
12	Maribel Rosales, Investigator	c/o Office of Special Public Defender
13	COR	Clark County Detention Center 330 S. Casino Center Blvd. Las Vegas NV 89101
14		
15	COR	NV Dept. of Corrections Carson City NV 89702
16	Howard Brooks Deputy Public Defender	Public Defender's Office 309 S. Third Street Las Vegas NV 89155

DATED this 1 day of March, 2007.

DAVID M. SCHIECK
SPECIAL PUBLIC DEFENDER



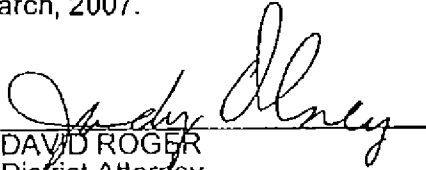
By: Clark Patrick
CLARK PATRICK
330 S. Third Street, Ste 800
Las Vegas, NV 89101
(702) 455-6265
Attorney for Defendant

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

RECEIPT OF COPY

RECEIPT OF COPY of the foregoing NOTICE OF WITNESSES is hereby
acknowledged this 7 day of March, 2007.


DAVID ROGER
District Attorney
200 Lewis Ave., 3rd Floor
Las Vegas, NV 89155
Attorneys for Plaintiff

SPECIAL PUBLIC
DEFENDER
CLARK COUNTY
NEVADA

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MAR 13 3 54 PM '07

DISTRICT COURT
CLARK COUNTY, NEVADA

Cliff Smith
CLERK OF THE COURT

STATE OF NEVADA

Plaintiff(s),

CASE NO. C131341

DEPT. NO. 3

-VS-

JAMES M. CHAPPELL

Defendant(s).

JURY

- | | |
|------------------------------|------------------------|
| 1. DEBORAH KALEIKINI-JOHNSON | 7. CHRISTINE BUNDREN |
| 2. JERRY TAYLOR | 8. ANGELO MORIN |
| 3. LARRY HENCK | 9. BLAYNE WHITE |
| 4. GEORGE SMITH | 10. DARLENE WASHINGTON |
| 5. CHERYL CARDILLO | 11. DUANE FEUERHAMMER |
| 6. DAVY ANN NOHR | 12. DAVID FORBES |

ALTERNATES

- | | |
|------------------|-----------------|
| 1. BRINNON SCOTT | 2. LAURA STALEY |
|------------------|-----------------|

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FILED

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Clerk

0001
 DAVID M. SCHIECK
 SPECIAL PUBLIC DEFENDER
 Nevada Bar No. 0824
 CLARK W. PATRICK
 Deputy Special Public Defender
 Nevada Bar No. 9451
 330 S. Third St., Ste. 800
 Las Vegas NV 89155-2316
 (702)455-6265
 Attorneys for Defendant

DISTRICT COURT
 CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
 Plaintiff,

vs.

JAMES CHAPPELL,
 Defendant.

CASE NO. C 131341
 DEPT. NO. XVII

DATE: N/A
 TIME: N/A

**MOTION TO STRIKE SEXUAL ASSAULT AGGRAVATOR OF THE
 STATE'S NOTICE OF INTENT TO SEEK THE DEATH PENALTY
 OR IN THE ALTERNATIVE, MOTION IN LIMINE TO ALLOW DEFENDANT
 TO INTRODUCE EVIDENCE IN DEFENSE OF SEXUAL ASSAULT**

COMES NOW, Defendant JAMES CHAPPELL, by and through his attorney DAVID M. SCHIECK, Special Public Defender and CLARK W. PATRICK Deputy Special Public Defender, and moves this Court to strike the sexual assault aggravator of the State's Notice of Intent to Seek the Death Penalty filed November 8, 1995 or, in the alternative, allow the defendant to introduce evidence in defense of sexual assault.

This Motion is made and based upon the attached Points and Authorities, all papers and pleadings on file herein and argument of counsel, if any, at the time of the hearing of said Motion.

MC

COUNTY CLERK

SEP 20 2006

RECEIVED

SPECIAL PUBLIC
DEFENDERCLARK COUNTY
NEVADA

1 **NOTICE OF MOTION**

2 TO: The State of Nevada, Plaintiff; and

3 TO: Clark County District Attorney, it's attorney:

4 YOU WILL PLEASE TAKE NOTICE that the undersigned will bring on the above and
5 foregoing MOTION on for hearing on the 3rd day of Oct, 2006, at the hour of 8:30
6 a.m., in Department No. XVII of the above-entitled Court.

7 **POINTS AND AUTHORITIES**

8 **STATEMENT OF THE CASE**

9 In 1995 JAMES CHAPPELL ("CHAPPELL") was charged with Burglary, Robbery with
10 the use of a Deadly Weapon, and First Degree Murder with the use of a Deadly Weapon. The
11 Clark County District Attorney's office filed a Notice of Intent to Seek Death Penalty listing the
12 following aggravating circumstances: (1) The murder was committed while the person was
13 engaged in the commission of or an attempt to commit any Robbery; (2) The murder was
14 committed while the person was engaged in the commission of or an attempt to commit any
15 Burglary and/or Home Invasion; (3) The murder was committed while the person was
16 engaged in the commission of or an attempt to commit any Sexual Assault; and (4) The
17 murder involved torture or depravity of mind.

18 CHAPPELL was convicted in 1996 on all counts. The jury found two mitigating
19 circumstances - murder committed while CHAPPELLI was under the influence of extreme
20 mental or emotional disturbance and any other mitigating circumstances and all four
21 aggravating circumstances. CHAPPELL was sentenced to death. On direct appeal the
22 Nevada Supreme Court struck the aggravator based on torture or depravity of mind, but
23 affirmed CHAPPELL'S conviction and sentence of death.

24 A proper person post conviction petition for a writ of habeas corpus was filed in the
25 District Court and counsel was appointed to represent CHAPPELL. Counsel filed a
26 supplement to the petition. After an evidentiary hearing, the District Court upheld
27 CHAPPELL'S conviction but vacated the death sentence and ordered a new penalty hearing.
28 The State filed an appeal from the granting of a new penalty hearing and CHAPPELL cross-

1 appealed from the District Court's denial of his claims of ineffective assistance of counsel with
2 respect to the guilt phase.

3 The Nevada Supreme Court issued an Order of Affirmance on April 7, 2006 affirming
4 the District Court's granting of a new penalty hearing and upholding its decision to not grant
5 a new guilt phase of the trial.

6 The Court goes on further to state:

7 "...we conclude that Chappell's McConnell claim has merit and that two of the
8 three aggravators pending against him violate the holding in McConnell as a
9 matter of law and cannot be realleged....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.....

10
11 Chappell was charged with open murder based upon the theories of
12 premeditated and deliberate murder and/or felony murder. The felonies
13 underlying the felony-murder theory were one count of burglary and/or one count
14 robbery with the use of a deadly weapon...We conclude that McConnell squarely
15 applies to Chappell's case and renders infirm the aggravators based on the
16 robbery and burglary, the predicate felonies that supported the felony-murder
17 theory. However, our conclusion does not extend to the aggravator based upon
18 sexual assault....."

19 The remanded penalty hearing is set for March 12, 2007.

20 STATEMENT OF FACTS

21 For purposes of this Motion, CHAPPELL will incorporate the Facts from the decision
22 of this Court on the direct appeal (Chappell v. State, 114 Nev. 1403, 972 P.2d 838 (1998)),
23 with the caveat that CHAPPELL has consistently maintained that no proper investigation was
24 conducted before the trial or penalty hearing and therefore the testimony presented was
25 virtually unopposed at trial and penalty hearing and does not accurately portray the facts of
26 the case:

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

1 The State filed an information on October 11, 1995, charging Chappell with
2 one count of burglary, one count of robbery with the use of a deadly weapon,
3 and one count of murder with the use of a deadly weapon. On November 8,
4 1995, the State filed a notice of intent to seek the death penalty. The notice
5 listed four aggravating circumstances: (1) the murder was committed during the
6 commission of or an attempt to commit any robbery; (2) the murder was
7 committed during the commission of or an attempt to commit any burglary
8 and/or home invasion; (3) the murder was committed during the commission of
9 or an attempt to commit any sexual assault; and (4) the murder involved torture
10 or depravity of mind.

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

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

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

20 ARGUMENT

21 A.

22 MOTION TO STRIKE SEXUAL ASSAULT AGGRAVATOR OF THE 23 STATE'S NOTICE OF INTENT TO SEEK THE DEATH PENALTY

24 The only remaining aggravating circumstance is Number 3, Sexual Assault. However,
25 CHAPPELL was not charged with sexual assault (see Exhibit 1 attached hereto, ,
26 Information) and the State did not present any evidence of sexual assault during the guilt
27 phase of CHAPPELL'S trial. The only time sexual assault was mentioned was in the State's
28 closing arguments during the penalty phase. Therefore, this Court should strike the sexual

1 assault aggravator and the State should not be allowed to mention sexual assault during the
2 new penalty phase.

3 The United States Constitution guarantees that a State shall not "deprive any person
4 of life, liberty, or property, without due process of law. "U.S. Const. amend. XIV, § 1. This
5 right is also guaranteed by the Nevada Constitution, "No person shall be deprived of life,
6 liberty, or property, without due process of law. Nev. Const. art. I, § 8.

7 The Fourteenth Amendment's guarantee of due process includes the presumption of
8 innocence in a criminal case, and the right of a defendant to present relevant and favorable
9 evidence regarding an element of the charged offense. First, a defendant must be presumed
10 innocent until the State has proven otherwise, beyond a reasonable doubt. We therefore will
11 not disturb the balance struck in previous cases holding that the Due Process Clause requires
12 the prosecution to prove beyond a reasonable doubt all of the elements included in the
13 definition of the offense of which the defendant is charged." Patterson v. New York, 432 U.S.
14 197, 210, 97 S. Ct. 2319 (1977). This also includes the mental element or *mens rea*. Clark
15 v. Arizona, 126 S. Ct. 2709, 2729 (2006). The Court continued:

16 Before the last century, the *mens rea* required to be proven for particular
17 offenses was often described in general terms like "malice." see e.g. In re
18 Eckart, 166 U.S. 481, 17 S.Ct. 638 (1897), 4 W. Blackstone, commentaries 21
("An unwarrantable act without a vicious will is no crime at all"), but the modern
tendency has been toward more specific descriptions. Id.

19 As applied to *mens rea* (and every other element). The force of the presumption
20 of innocence is measured by the force of the showing needed to overcome it,
21 which is proof beyond a reasonable doubt that a defendant's state of mind was
in fact what the charge states. See In re Winship, 397 U.S. 358, 361-63, 90 s.
Ct. 1068 (1970). Id.

22 The Nevada Supreme Court has also held that the prosecution has the burden of
23 proving both "act and intent beyond a reasonable doubt and that the prosecution must
24 establish proof of every element of the crime beyond a reasonable doubt." Chambers v. State,
25 113 Nev. 974, 983, 944 P.2d 805 (1997). The same reasoning applies to aggravating
26 circumstances.

27 The Sixth Amendment guarantees "In all criminal prosecutions, the accused shall enjoy
28 the right to a speedy and public trial, by an impartial jury of the State and district wherein the

1 crime shall have been committed...to be informed of the nature and cause of the accusation;
2 to be confronted with the witnesses against him..." U.S. Const. amend VI.

3 The right to be tried by a jury in criminal cases obviously means the right to have
4 a jury determine whether the defendant has been proved guilty of the crime
5 charged. And since all crimes require proof of more than one element to
6 establish guilt (involuntary manslaughter, for example, requires (1) the killing (2)
7 of a human being (3) negligently), it follows that trial by jury means determination
8 by a jury that *all elements* were proved. The Court does not contest this.

9 Neder v. United States, 527 U.S. 1, 119 S. Ct. 7827 (1999)(Scalia, j., concurring in part and
10 dissenting in part).

11 Therefore, in order to be convicted of a crime, the State, must prove *all elements* of the
12 crime beyond a reasonable doubt. In order to prove an aggravating circumstance the State
13 must meet the same burden. This places the burden of proof squarely on the State to present
14 evidence; not to simply mention a crime in their closing arguments and then ask a jury to find
15 an aggravating circumstance solely on the words of the prosecutor.

16 NRS 200.366 defines sexual assault as:

17 1. A person who subjects another person to sexual penetration, or who forces
18 another person to make a sexual penetration on himself or another, or on a
19 beast, against the will of the victim or under conditions in which the perpetrator
20 knows or should know that the victim is mentally or physically incapable of
21 resisting or understanding the nature of his conduct, is guilty of sexual assault.

22 In order to find the sexual assault aggravator, the State must prove beyond a reasonable
23 doubt: (1) forced sexual penetration (2) upon another person (3) against the will of the victim
24 (4) or that the victim is physically incapable of resisting or understanding the nature of his
25 conduct. Consent is recognized as a defense to a claim of sexual assault as it negates the
26 necessary elements of the offense.

27 In the instant matter, the State not only failed to prove any of the elements of a sexual
28 assault, the State did not even charge CHAPPELL with a sexual assault, or even mention
sexual assault until their closing argument at the penalty hearing. The State presented no
evidence at trial relating to a sexual assault, and CHAPPELL did not have the opportunity to
confront any witnesses or evidence relating to a sexual assault, or offer any rebuttal evidence
of his innocence. CHAPPELL testified at the trial that he had consensual intercourse with Ms.

1 Panos prior to the circumstances that led to her death.

2 Instead, the State acted as accuser, prosecutor, judge, jury and executioner, while not
3 allowing CHAPPELL to be heard. Instead of presenting evidence, the State chose to
4 unilaterally state CHAPPELL was guilty of a sexual assault, "or did, in fact, commit a sexual
5 assault." (Penalty Phase Transcript (PT) Vol. II p. 73). "So I submit to you that the third
6 aggravating circumstance (sexual assault) has, in fact, been proven and that you should mark
7 that off as well in your special verdicts." (PT. Vol. II p. 74). And "he raped her. He committed
8 the ultimate act of violence upon a woman besides murder and he raped her." (PT. Vol. II p.
9 79).

10 The State presented no evidence of a sexual assault, because they had none to
11 present. In fact, CHAPPELL and Ms. Panos had a ten (10) year relationship; they had three
12 (3) children together; CHAPPELL admitted that they had consensual sex; and Ms. Panos was
13 fully clothed when found. Therefore, the aggravator of sexual assault should be stricken.

14 **B.**

15 **MOTION IN LIMINE TO ALLOW DEFENDANT**
16 **TO INTRODUCE EVIDENCE IN DEFENSE OF SEXUAL ASSAULT**

17 As stated supra, the Sixth Amendment guarantees "In all criminal prosecutions, the
18 accused shall enjoy the right... to be confronted with the witnesses against him..." U.S. Const.
19 amend VI.

20 The sixth amendment right of an accused to confront the witnesses against him is a
21 fundamental right which is made obligatory on the states by the due process of law
22 clause of the fourteenth amendment to the United States Constitution. The primary
23 interest secured by, and the major reason underlying the confrontation clause, is the
24 right of cross-examination. This right of confrontation protected by cross-
25 examination is a right that has been applied to the sentencing process.

26 Walton v. State, 481 So.2d 1197, 1200 (Fla. 1986) cert. denied, 110 S. Ct. 759 (1990).

27 The California Supreme Court has reached the same conclusion, stating: "We agree
28 that Aranda [People v. Aranda, 407 P.2d 265 (1965)] and Bruton [Bruton v. United States,
391 U.S. 123 (1968)] apply to the penalty phase of a criminal proceeding. The importance

1 of the right to timely cross-examination has been sufficiently emphasized by this court and
2 the United States Supreme Court and requires no prolonged discussion." People v. Floyd,
3 464 P.2d 64, 80 (Cal. 1970)(en banc) cert. denied 406 U.S. 972 (1972). The Nevada
4 Supreme Court has agreed with the California Supreme Court "In accord with the California
5 Supreme Court, we conclude that the right of cross-examination and the need for accuracy
6 are as important, indeed more important, in the penalty phase than in the guilt phase." Lord
7 v. State, 107 Nev. 28, 44, 806 P.2d 548 (1991).
8

9 CHAPPELL was not given the opportunity to confront or cross-examine any
10 witnesses against him, relating to the charge of sexual assault, during his previous trial.
11 This was because the State did not present any evidence or witnesses for CHAPPELL to
12 confront. The State presented no evidence, because they had none. The State chose to
13 disregard CHAPPELL'S Constitutional rights and only mention the sexual assault in their
14 closing arguments at the penalty hearing. Therefore, if this Honorable Court does not strike
15 the sexual assault aggravator, the Court should allow CHAPPELL to present evidence that
16 disproves the State's blind allegations that he sexually assaulted Ms. Panos.
17
18

19 It is anticipated that the State will argue that CHAPPELL cannot present such
20 evidence because it would constitute a lingering doubt of his guilt of the charged offense.
21 The lingering doubt argument is simply not applicable in this case. The United States
22 Supreme Court ruled on this issue in Oregon v. Guzek, 126 S. Ct. 1226 (2006). The
23 question presented to the Court in Guzek was whether the State was allowed to limit the
24 innocence-related evidence a defendant could introduce during a penalty phase, to
25 evidence presented during the guilt phase.
26
27

28 The defendant in Guzek claimed he had the right to introduce additional alibi

1 evidence during the penalty phase of his trial. The Court held that the Eighth Amendment
2 insists that a sentencing jury should be allowed "to consider and give effect to mitigation
3 evidence" regarding a defendant's "character or record or the circumstances of the
4 offense". Guzek, at 1232 (citing Penry v. Lynaugh, 492 U.S. 302, 327-328 (1989)) The
5 Court continued that this does not stop the State from setting reasonable limits to what
6 evidence a defendant may submit. Id.

8 In determining that Mr. Guzek could not offer new alibi evidence during the penalty
9 phase, the Court set forth a three part test: (1) sentencing traditionally concerns how, not
10 whether, a defendant committed the crime; (2) the parties previously litigated the issue to
11 which the evidence is relevant; and (3) the negative impact of a rule restricting the
12 defendant's ability to introduce new evidence is minimized by the fact that the law allowed
13 the defendant the right to present all of the innocence evidence from the guilt phase to the
14 jury during the penalty phase. Id. at 1232-1233.

16 Applying the Guzek test to the case at bar, it is clear that CHAPPELL should be
17 allowed to present evidence of his innocence to the sexual assault aggravator. The State
18 contends that "how" CHAPPELL committed the crime was through a sexual assault, yet
19 they offered no evidence that a sexual assault occurred. The sexual assault was *not*
20 previously litigated by the parties. The State did not charge CHAPPELL with sexual
21 assault and he was, therefore, not able to present any exculpatory evidence. Since
22 CHAPPELL was not able to present any evidence of his innocence during the guilt phase
23 of the trial, the negative impact of not allowing CHAPPELL to admit evidence during the
24 penalty phase is maximized rather than minimized as in Guzek.

26 Should this Honorable Court not strike sexual assault as an aggravator, it is
27
28

1 requested that the Court allow CHAPPELL to present evidence of his innocence to sexual
2 assault during the remanded penalty hearing.

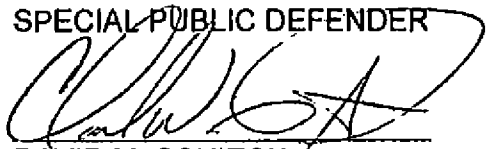
3
4 **CONCLUSION**

5 The Eighth Amendment to the United States Constitution insists upon "reliability in
6 the determination that death is the appropriate punishment in a specific case." Penry, at
7 328. The State must not be allowed to use as an aggravator, an offense that was not
8 alleged or proven at trial. If the State desires to use sexual assault as an aggravating
9 circumstance under the United States and Nevada Constitutions the State must prove
10 beyond a reasonable doubt the elements of the offense. The State must not be allowed to
11 be accuser, prosecutor, judge, jury and executioner, by throwing out a blind accusation and
12 hoping it will stick. The sexual assault aggravator cannot stand, or at the very least, JAMES
13 CHAPPELL must be allowed to present evidence of his innocence regarding sexual
14 assault.
15

16 It is respectfully requested that this Honorable Court strike the sexual assault
17 aggravator or, in the alternative, allow JAMES CHAPPELL to present evidence in defense
18 of the sexual assault aggravator.
19

20 DATED this 20 day of September, 2006.

21 RESPECTFULLY SUBMITTED:
22 DAVID M. SCHIECK
23 SPECIAL PUBLIC DEFENDER

24 
25 DAVID M. SCHIECK
26 CLARK W. PATRICK
27 330 S. Third Street, Ste. 800
28 Las Vegas, NV 89155
ATTORNEY FOR CHAPPELL

FILED

OCT 11 1 46 PM '95

Patricia L. Brown

CLERK

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

9 I.A. 10-18-95
10 9:00 A.M.
11 PD

DISTRICT COURT

CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,

13 Plaintiff,

14 -vs-

15 JAMES MONTELL CHAPPELL,
16 #1212860

17 Defendant.

CASE NO. 131341
431240

DEPT. NO. VII

DOCKET NO. P

INFORMATION

18 STATE OF NEVADA)

19 COUNTY OF CLARK)

ss:

20 STEWART L. BELL, District Attorney within and for the County
21 of Clark, State of Nevada, in the name and by the authority of the
22 State of Nevada, informs the Court:

23 That JAMES MONTELL CHAPPELL, the Defendant, having committed
24 the crimes of BURGLARY (Felony - NRS 205.060); ROBBERY WITH USE OF
25 A DEADLY WEAPON (Felony - NRS 200.380, 193.165) and MURDER (OPEN)
26 WITH USE OF A DEADLY WEAPON (Felony - NRS 200.010, 200.030,
27 193.165), on or about the 31st day of August, 1995, at and within
28 the County of Clark, State of Nevada, contrary to the form, force
and effect of statutes in such cases made and provided, and against
the peace and dignity of the State of Nevada,

CE11

CE31

CE31

CE31

EXHIBIT 1

000038

1 COUNT I - BURGLARY

2 did then and there wilfully, unlawfully, and feloniously
3 enter, with intent to commit larceny and/or assault and/or battery
4 and/or robbery and/or murder, that certain building located at 839
5 North Lamb Boulevard, Las Vegas, Clark County, Nevada, Space No.
6 125 thereof, occupied by DEBORAH PANOS.


7 COUNT II - ROBBERY WITH USE OF A DEADLY WEAPON

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

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

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

23 STEWART L. BELL
24 DISTRICT ATTORNEY
Nevada Bar #000477

25
26 BY 
27 MELVIN T. HARMON
28 Chief Deputy District Attorney
Nevada Bar #000862

1 The names of witnesses known to the District Attorney's Office
2 at the time of filing this Information are as follows:

3 ADAMS, NORM	DUFFY, BILL
4 PAROLE & PROBATION	PAROLE & PROBATION
5 LAS VEGAS, NV	LAS VEGAS, NV
6 ADKINS, K.	DURAN, JOHN
7 LVMPD #900	5143 EAST GREGG PLACE
8 CRIME LAB	LAS VEGAS, NV
9 ARAVE, LARRY	DURAN, LISA
10 PAROLE & PROBATION	5143 EAST GREGG PLACE
11 LAS VEGAS, NV	LAS VEGAS, NV
12 AYERS, LUANA DORENE	ERRICHETTO, LINDA
13 3070 S. NELLIS #3005	LVMPD #
14 LAS VEGAS, NV	CRIME LAB
15 BERFIELD, LAURA	GRABOWSKI, C.
16 POLICE DEPT.	BUNKER BROTHERS
17 TUCSON, AZ	LAS VEGAS, NV
18 BURTON, R.	GREEN, SHELDON
19 LVMPD #1149	1704 PINTO LN - CORONER
20 CCDC	LAS VEGAS, NV
21 CABRALES, AL	HANNERS, A.
22 LVMPD #2045	LVMPD #4920
23 CRIME LAB	FSD
24 CLAIRE (LNU)	HEINER, D.
25 PRICE RIGHT	LVMPD #2601
26 LAS VEGAS, NV	FSD
27 COMPTON, MIKE	HENDERSON, ED
28 PAROLE & PROBATION	PAROLE & PROBATION
29 LAS VEGAS, NV	LAS VEGAS, NV
30 CONNELL, DAN	JACKSON, LADONNA
31 LVMPD #	507 N. LAMB #6
32 CRIME LAB	LAS VEGAS, NV
33 COOK, TERRY	JOLLEY, G.
34 LVMPD #2545	LVMPD #475
35 CRIME LAB	HOMICIDE
36 CUSTODIAN OF RECORDS	KEETON, W.
37 TUCSON POLICE DEPT.	LVMPD #505
38 TUCSON, AZ	HOMICIDE
39 DICKENS, C.	KERNS, E.
40 LVMPD #4008	LVMPD #4331
41 FSD	FSD

1 LEAVER, BILL	RAMOS, PHIL
2 LVMPD #759	LVMPD #799
2 CRIME LAB	HOMICIDE
3 LEE, RUSSELL	REES, R.
4 LVMPD #3290	LVMPD #2332
4 FSD	CRIME LAB
5 MANCHO, MICHELLE	SEMPSON, KIMBERLY
6 G.E., 4440 E. TROPICANA	2210 CARLISLE CIR.
6 LAS VEGAS, NV	LA HABRA, CA
7 MARTINEZ, LAWRENCE	SHADLER, M.
8 12345 MONTE VISTA ST.	BUNKER BROTHERS
8 CHINO, CA	LAS VEGAS, NV
9 MASTON, M.	SMITH, LATRONA SHERELLE
10 LVMPD #2112	3301 CIVIC CENTER #9B
10 FSD	NORTH LAS VEGAS, NV 89030
11 MORRIS, K.	SMITH, CHARMAINE
12 1704 PINTO LN - CORONER	PAROLE & PROBATION
12 LAS VEGAS, NV	LAS VEGAS, NV
13 MUNSON, MAYNARD	SPOOR, MONTE
14 ADDRESS UNKNOWN	LVMPD #3856
14 TUCSON, AZ	CRIME LAB
15 ORTIZ,	STALLINGS, JOHN
16 LV FIRE DEPT.	1704 PINTO LN - CORONER
16 RESCUE 8	LAS VEGAS, NV
17 OSUCH, PAUL	TOWNSEND, K.
18 LVMPD #2141	NV DIV OF INVESTIGATION #259
18 FSD	LAS VEGAS, NV
19 PANOS, JAMES	TURNER, DEBORAH
20 2041 S. DIAMOND BAR LN	507 N. LAMB #6
20 TUCSON, AZ	LAS VEGAS, NV
21 PENFIELD, NORMA	VACCARO, JIMMY
22 2041 S. DIAMOND BAR LN	LVMPD #1480
22 TUCSON, AZ	HOMICIDE
23 PERKINS, M.	WASHINGTON, M.
24 LVMPD #4242	LVMPD #4725
24 CRIME LAB	CRIME LAB
25 PETERSON, D.	WILKINSON, WENDY
26 LVMPD #4034	COORDINATOR,
26 CRIME LAB	TEMPORARY PROTECTIVE ORDERS
27 POLLARD, MIKE	
28 G.E., 4440 E. TROPICANA	
28 LAS VEGAS, NV	

AMENDED BY ORDER OF THE COURT

LORETTA BOWMAN, CLERK

BY *David Brown* Deputy

JUL 13 1986

AMENDED BY ORDER OF THE COURT

LORETTA BOWMAN, CLERK

BY *David Brown* Deputy

1 WILTZ, WILLIE
1245 PACIFIC TERRACE DR.
2 LAS VEGAS, NV

3 WINCHELL, CALVIN
PAROLE & PROBATION
4 LAS VEGAS, NV

5 YADA, W.
LVMPD #2612
6 FSD

7 YATES, PAULA
CELLMARK DIAGNOSTICS
8 20271 GOLDENROD LANE
GERMANTOWN, MD 20876

9 FORMAN, LISA
10 CELLMARK DIAGNOSTICS
20271 GOLDENROD LANE
11 GERMANTOWN, MD 20876

12 WILLIAMS, ALAN
LVMPD #4083

13 STANSBURY, DAVID
14 LVMPD #3515

15 SZELES, MICHAEL
LVMPD #3526

16 GIERSDORF, DANIEL
LVMPD #4521

17 HOBSON, TANYA
P.O. BOX 43264
18 LAS VEGAS, NV

19 McCOURT, JOHN M.D.
UNIVERSITY MEDICAL CENTER
20 LAS VEGAS, NV

21 FREEMAN, DINA
TUCSON POLICE DEPT.
22 TUCSON, AZ

23 KNAPP
24 LVMPD #
25 CCDC

26 DA#95F08114X/kjh
LVMPD DR#9508311351
27 BURG;ROBB W/WFN;
MURDER W/WFN - F
28 (TKJ)

KLEIN, DOROTHY
LVMPD #3997

GROVE, W.
CITY INTAKE JAIL #253

McNITT, L.
TUCSON POLICE DEPT.
TUCSON, AZ

HAGGERTY
TUCSON POLICE DEPT.
TUCSON, AZ

EARNST, J.
TUCSON POLICE DEPT.
TUCSON, AZ

NEIDKOWSKI
TUCSON POLICE DEPT.
TUCSON, AZ

VERNON
TUCSON POLICE DEPT.
TUCSON, AZ

AUSSEBNS
TUCSON POLICE DEPT.
TUCSON, AZ

STONER
TUCSON POLICE DEPT.
TUCSON, AZ

GAY, KENNETH
1705 S. WASHINGTON
LANSING, MI

WIDNER, PAUL
LANSING POLICE DEPT.
LANSING, MI

PRIEBE, JON
LANSING POLICE DEPT.
LANSING, MI

GRANGER, AL
ADDRESS UNKNOWN

AMENDED BY ORDER OF THE COURT

LORETTA BOWMAN, CLERK

BY *[Signature]* Deputy

19 *[Signature]*

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CUSTODIAN OF RECORDS
LVMPD

CUSTODIAN OF RECORDS
CCDC

COTTON, ROBIN
OR DESIGNEE
CELLMARK DIAGNOSTIC
20271 GOLDENROD LN
GERMANTOWN, MD

WAHL, THOMAS
LVMPD #5019 (LAB)

95F08114X

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CLERK

0001
DAVID M. SCHIECK
SPECIAL PUBLIC DEFENDER
Nevada Bar No. 0824
CLARK W. PATRICK
Deputy Special Public Defender
Nevada Bar No. 9451
330 S. Third St., Ste. 800
Las Vegas NV 89155-2316
(702)455-6265
Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

vs.

JAMES CHAPPELL,
Defendant.

CASE NO. C 131341
DEPT. NO. XVII

DATE: N/A
TIME: N/A

**MOTION TO REMAND FOR CONSIDERATION
BY THE CLARK COUNTY DISTRICT
ATTORNEY'S DEATH REVIEW COMMITTEE**

COMES NOW, Defendant JAMES CHAPPELL, by and through his attorneys, DAVID M. SCHIECK, Special Public Defender and CLARK W. PATRICK, Deputy Special Public Defender, and requests this Court remand the instant case to the Clark County District Attorney's death review committee in order for the committee to consider whether to seek the death penalty on remand in light of the unpublished decision of the Nevada Supreme Court.

This Motion is based upon the Memorandum of Points and Authorities, portions of the record relevant to the determination of this Motion, and any argument should this Honorable Court order a hearing on this matter.

COUNTY CLERK

SEP 20 2006

RECEIVED

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

1 **NOTICE OF MOTION**

2 TO: STATE OF NEVADA, Plaintiff; and

3 TO: DAVID ROGER, District Attorney, Attorney for Plaintiff

4 YOU WILL PLEASE TAKE NOTICE that the undersigned will bring on the above and
5 foregoing **MOTION** on the 3 day of Oct, 2006, at the hour of 8:30 a.m., or as
6 soon thereafter as counsel may be heard.

7 **POINTS AND AUTHORITIES**

8 STATEMENT OF THE CASE

9 In 1995 JAMES CHAPPELL ("CHAPPELL") was charged with Burglary, Robbery with
10 the use of a Deadly Weapon, and First Degree Murder with the use of a Deadly Weapon. The
11 Clark County District Attorney's office filed a Notice of Intent to Seek Death Penalty listing the
12 following aggravating circumstances: (1) The murder was committed while the person was
13 engaged in the commission of or an attempt to commit any Robbery; (2) The murder was
14 committed while the person was engaged in the commission of or an attempt to commit any
15 Burglary and/or Home Invasion; (3) The murder was committed while the person was
16 engaged in the commission of or an attempt to commit any Sexual Assault; and (4) The
17 murder involved torture or depravity of mind.

18 CHAPPELL was convicted in 1996 on all counts. The jury found two mitigating
19 circumstances - murder committed while CHAPPELL was under the influence of extreme
20 mental or emotional disturbance and any other mitigating circumstances and all four
21 aggravating circumstances. CHAPPELL was sentenced to death. On direct appeal the
22 Nevada Supreme Court struck the aggravator based on torture or depravity of mind, but
23 affirmed CHAPPELL'S conviction and sentence of death. (Chappell v. State, 114 Nev. 1403,
24 972 P.2d 838 (1998)).

25 A proper person post conviction petition for a writ of habeas corpus was filed in the
26 District Court and counsel was appointed to represent CHAPPELL. Counsel filed a
27 supplement to the petition. After an evidentiary hearing, the District Court upheld
28 CHAPPELL'S conviction but vacated the death sentence and ordered a new penalty hearing.

1 The State filed an appeal from the granting of a new penalty hearing and CHAPPELL cross-
2 appealed from the District Court's denial of his claims of ineffective assistance of counsel with
3 respect to the guilt phase.

4 The Nevada Supreme Court issued an Order of Affirmance on April 7, 2006 affirming
5 the District Court's granting of a new penalty hearing and upholding its decision to not grant
6 a new guilt phase of the trial.

7 The Court further to stated:

8 "...we conclude that Chappell's McConnell claim has merit and that two of the
9 three aggravators pending against him violate the holding in McConnell as a
10 matter of law and cannot be realleged....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....

11 . . .

12 Chappell was charged with open murder based upon the theories of
13 premeditated and deliberate murder and/or felony murder. The felonies
underlying the felony-murder theory were one count of burglary and/or one count
14 robbery with the use of a deadly weapon...We conclude that McConnell squarely
applies to Chappell's case and renders infirm the aggravators based on the
15 robbery and burglary, the predicate felonies that supported the felony-murder
theory. However, our conclusion does not extend to the aggravator based upon
16 sexual assault...."

17 The remanded penalty hearing is set for March 12, 2007.

18 The manner in which this case was approved for death prosecution is unknown, as well
19 as whether the case went before a death review committee, and what factors were
20 considered. With the recent changes in the law regarding possible aggravators as well as the
21 changes in policy in allowing the defendant access to the death review committee, it would be
22 appropriate for the District Attorney's office to reconvene the matter to determine whether or
23 not a death prosecution is now warranted.

24 STATEMENT OF FACTS

25 For purposes of this Motion, CHAPPELL will incorporate the Facts from the decision
26 of this Court on the direct appeal (Chappell v. State, 114 Nev. 1403, 972 P.2d 838 (1998)),
27 with the caveat that CHAPPELL has consistently maintained that no proper investigation was
28 conducted before the trial or penalty hearing and therefore the testimony presented was

1 virtually unopposed at trial and penalty hearing and does not accurately portray the facts of
2 the case:

3
4 "On the morning of August 31, 1995, James Montell Chappell was mistakenly
5 released from prison in Las Vegas where he had been serving time since June
6 1995 for domestic battery. Upon his release, Chappell went to the Ballerina
7 Mobile Home Park in Las Vegas where his ex-girlfriend, Deborah Panos, lived
8 with their three children. Chappell entered Panos' trailer by climbing through the
9 window. Panos was home alone, and she and Chappell engaged in sexual
10 intercourse. Sometime later that morning Chappell repeatedly stabbed Panos
11 with a kitchen knife, killing her. Chappell then left the trailer park in Panos' car
12 and drove to a nearby housing complex.

13
14 The State filed an information on October 11, 1995, charging Chappell with
15 one count of burglary, one count of robbery with the use of a deadly weapon,
16 and one count of murder with the use of a deadly weapon. On November 8,
17 1995, the State filed a notice of intent to seek the death penalty. The notice
18 listed four aggravating circumstances: (1) the murder was committed during the
19 commission of or an attempt to commit any robbery; (2) the murder was
20 committed during the commission of or an attempt to commit any burglary
21 and/or home invasion; (3) the murder was committed during the commission of
22 or an attempt to commit any sexual assault; and (4) the murder involved torture
23 or depravity of mind.

24
25 Prior to trial, Chappell offered to stipulate that he (1) entered Panos' trailer
26 home through a window, (2) engaged in sexual intercourse with Panos, (3)
27 caused Panos' death by stabbing her with a kitchen knife, and (4) was jealous
28 of Panos giving and receiving attention from other men. The State accepted the
stipulations, and the case proceeded to trial on October 7, 1996.

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

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

1 **ARGUMENT**

2 According to Assemblyman Bernie Anderson, D-Sparks in testimony before the Nevada
3 State Senate Judiciary Committee, the potential cost when the State seeks a death penalty
4 is "between \$2.5 million and \$5 million for legal assistance for every inmate who fights a death
5 sentence". See, Death Penalty Opponents Testify Before Senate Panel, Ed Vogel, Las
6 Vegas Review-Journal, Thursday, March 13, 2003.

7 As there is no published policy or procedure by the Clark County District Attorney's
8 Office regarding the criteria for authorizing the assigned Deputy to seek the Death Penalty,
9 Counsel for CHAPPELL offers, as a standard of constitutionally correct procedure, that a
10 process for reconsideration be allowed. With no access to the internal workings of the
11 prosecutor's office, CHAPPELL can only seek redress through the Court.

12 There are compelling reasons for the District Attorney to revisit the previous decision
13 to seek death, as follows: (1) the jury found at least two mitigators to exist on behalf of the
14 defendant; (2) the mitigators available to the defendant at the present time are more
15 expansive than those previously considered by the previous jury as demonstrated by the
16 reversal and remand for a new penalty hearing; (3) the previously determined aggravators,
17 with the exception of one, have been ruled invalid by the Supreme Court, and cannot be
18 sought in the present case; and (4) the State may consider that the defendant has adjusted
19 well in prison and has not been the subject of any write-ups or disciplinary actions while in
20 custody.

21 **A.**

22 **THE FAILURE OF THE DEATH REVIEW COMMITTEE**
23 **TO CONSIDER THE MERITS OF SEEKING THE**
24 **DEATH PENALTY IN LIGHT OF NEW INFORMATION**
25 **AND PRECEDENT RENDERS THE PROCEDURE**
26 **UTILIZED BY THE STATE BOTH ARBITRARY AND CAPRICIOUS**

27 *The initial approval was obtained based upon inappropriate aggravators.*

28 In the present case, a new penalty hearing was granted on remand from the Nevada
Supreme Court, wherein previously approved and alleged aggravators have been struck,

1 and the jury specifically found mitigators on behalf of the defendant. The only remaining
2 aggravating circumstance is Number 3, Sexual Assault. However, Mr. Chappell was not
3 charged with sexual assault, and the State did not present any evidence during Mr.
4 Chappell's trial to support the aggravating circumstance of sexual assault. The only time
5 sexual assault was mentioned was in the State's closing arguments during the penalty
6 phase. Therefore, this Court should remand this matter to the death review committee for
7 review as to whether the death penalty is appropriate. A meaningful review of the case by
8 the Death Review Committee may be had, upon remand by the Nevada Supreme Court
9 before a re-trial and/or penalty hearing, and failure to reconsider this fact specific case
10 would prove the lack of a momentous procedure on the part of the prosecution in
11 determining which cases should be approved for the death penalty. The lack of a
12 balanced procedure for such a presentation, or representation, would establish
13 conclusively that there has been a violation of the defendant's Due Process rights under
14 the Fourteenth Amendment of the United States.

15 The administrative decision of the Death Review committee is reviewable and the
16 Court has the authority to grant the relief sought.

17 In reviewing an administrative decision, the court must "review the evidence
18 presented to the agency in order to determine whether the agency's decision was arbitrary
19 or capricious and was thus an abuse of the agency's discretion." An abuse of discretion
20 occurs when the decision is not supported by substantial evidence. "Substantial evidence
21 is that which 'a reasonable mind might accept as adequate to support a conclusion.'" State
22 Emp. Security V. Hilton Hotels, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986). Where the
23 potential damage to the defendant as well as the continuing extraordinary expense to the
24 State has not yet been fully incurred, the Court, in overseeing the orderly processing of
25 criminal cases, has the authority to remand the matter back to the administrative body. In
26 Pertgen v. State, 100 Nev. 554 875 P.2d 1361 (1994) the Nevada Supreme Court seemed
27 to indicate that the trial Court must oversee both the cases and manner in which the Death
28 Penalty may be offered to the jury. Furman v. Georgia, 408 U.S. 238, 33 L.Ed. 2d 346, 92

1 S.Ct. 2726 (1972). "The channeling and limiting of the sentencer's discretion in imposing
2 the death penalty is a fundamental constitutional requirement for sufficiently minimizing the
3 risk of wholly arbitrary and capricious action."

4 B.

5
6 **THE STATE'S FAILURE TO RECONSIDER IT'S
7 APPROVAL OF THE CASE FOR THE DEATH PENALTY
8 IS VIOLATIVE OF THE DEFENDANT'S DUE PROCESS RIGHTS**

9 In the case of Boss v. Pierce, 263 F.3d 734, 740, (U.S. app 7th Cir 2001), the Court
10 reaffirmed the requirement that the State bears the burden to present both exculpatory as
11 well as inculpatory evidence in critical stages of the prosecution. "Under Brady v.
12 Maryland, supra, and its progeny, the prosecution has an affirmative duty to disclose
13 evidence that is both favorable to the defense and material to either guilt or punishment"
14 Kyles v. Whitley, 514 U.S. 419, 432-34, 131 L. Ed. 2d 490, 115 S.Ct. 1555 (1995). In fact,
15 the Court went on to state quite emphatically that "[t]he suppression of such evidence
16 deprives the defendant of a fair trial and thus violates due process." (emphasis
17 added). The procedure and manner in which this Defendant was initially prosecuted
18 resulted in a reversal based upon improper aggravators. Now, prior to the remanded
19 penalty hearing, the State is faced with a critical stage of the prosecution, specifically
20 whether the State should revisit its previous decision to seek the death penalty. All the
21 aggravators listed in the original Notice of Intent to Seek the Death Penalty have been
22 struck by the Nevada Supreme Court save one: sexual assault. There was no evidence
23 presented at trial in support of sexual assault as an aggravator. Judicial economy and due
24 process considerations warrant the matter being returned before the Death Review
25 Committee for reconsideration of the death penalty.

26 The finding of the previous jury of evidence of Mental Stress clearly is favorable to
27 the defense, and is material to the issue of whether death may be a proper penalty to be
28 sought. Additionally, the finding of "other" mitigators In the present case by the previously
empaneled jury, warrant consideration as to the efficacy of seeking the death penalty a

1 second time.

2 Just as the State has a duty to present known exculpatory evidence, see Brady v.
3 Maryland, 373 U.S. 83 (1963), the State should consider appropriate mitigators that the
4 jury will be required to consider in determining whether or not to approve a Deputy's
5 request to seek the death penalty. In Washington v. State Personnel appeal Board, 92
6 Wn. App. 484; 967 P.2d 6; (1998 Wash. App.) the Court noted that arbitrary and capricious
7 action has been defined as "willful and unreasoning action, without consideration and in
8 disregard of facts and circumstances". In the case at bar, the facts are clear that the State
9 now has a full record that the jury found the mitigators mental stress and "other" mitigators;
10 and only the aggravator of sexual assault has not been struck.

11 The severity of the death penalty, as well as the State's authorizing the same
12 against this Defendant at a time when constitutionally impermissible aggravators were
13 being considered by the Prosecutor's office, warrants a reconsideration by the State
14 whether or not the death penalty should be sought a second time. Upon remand by the
15 Supreme Court, when the very basis upon which the Death penalty was sought, the failure
16 of the District Attorney's office to remand this case to the Death Review committee, is
17 violative of JAMES CHAPPELL'S rights.

18 CONCLUSION

19 JAMES CHAPPELL respectfully requests that this Court remand the instant case to
20 the Clark County District Attorney's death review committee in order for the committee to

21 ...

22 ...

23 ...

24 ...

25

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27

28

1 consider whether to seek the death penalty in light of the unpublished decision of the
2 Nevada Supreme Court.

3 Dated this 20 day of September, 2006.

4 RESPECTFULLY SUBMITTED:

5 DAVID M. SCHIECK
6 SPECIAL PUBLIC DEFENDER

7 

8 DAVID M. SCHIECK
9 CLARK W. PATRICK
10 330 S. Third Street, Ste. 800
11 Las Vegas, NV 89155
12 ATTORNEY FOR CHAPPELL
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SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

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DAVID M. SCHIECK
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330 S. Third St., Ste. 800
Las Vegas NV 89155-2316
(702)455-6265
Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

JAMES CHAPPELL,

Defendant.

CASE NO. C 131341
DEPT. NO. XVII

NOTICE OF MOTION AND MOTION
FOR DISCOVERY OF POTENTIAL
PENALTY HEARING EVIDENCE

DATE: N/A
TIME: N/A

TO: THE STATE OF NEVADA, Plaintiff and

TO: DISTRICT ATTORNEY'S OFFICE, its counsel:

56
PLEASE TAKE NOTICE that on the 3 day of Oct, 2006, at the hour of
8:30 a.m., Defendant JAMES CHAPPELL, by and through his attorney DAVID M.
SCHIECK, Special Public Defender and CLARK W. PATRICK, Deputy Special Public
Defender, will move this Court for an Order for discovery requiring the District Attorney's Office
to supply or make available the following:

1. Any and all evidence the State intends to introduce at the penalty hearing in this matter should one be necessary. This specifically includes any "victim impact" evidence to be introduced.
2. The names and addresses of all witnesses the State intends to call at the penalty hearing.
3. A description and copy of all "character evidence" the State intends to introduce at

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SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

1 the time of the penalty hearing should one be necessary.

2 STATEMENT OF THE CASE

3 In 1995 JAMES CHAPPELL ("CHAPPELL") was charged with Burglary, Robbery with
4 the use of a Deadly Weapon, and First Degree Murder with the use of a Deadly Weapon. The
5 Clark County District Attorney's office filed a Notice of Intent to Seek Death Penalty listing the
6 following aggravating circumstances: (1) The murder was committed while the person was
7 engaged in the commission of or an attempt to commit any Robbery; (2) The murder was
8 committed while the person was engaged in the commission of or an attempt to commit any
9 Burglary and/or Home Invasion; (3) The murder was committed while the person was
10 engaged in the commission of or an attempt to commit any Sexual Assault; and (4) The
11 murder involved torture or depravity of mind.

12 CHAPPELL was convicted in 1996 on all counts. The jury found two mitigating
13 circumstances - murder committed while CHAPPELL was under the influence of extreme
14 mental or emotional disturbance and any other mitigating circumstances and all four
15 aggravating circumstances. CHAPPELL was sentenced to death. On direct appeal the
16 Nevada Supreme Court struck the aggravator based on torture or depravity of mind, but
17 affirmed CHAPPELL'S conviction and sentence of death.

18 A proper person post conviction petition for a writ of habeas corpus was filed in the
19 District Court and counsel was appointed to represent CHAPPELL. Counsel filed a
20 supplement to the petition. After an evidentiary hearing, the District Court upheld
21 CHAPPELL'S conviction but vacated the death sentence and ordered a new penalty hearing.
22 The State filed an appeal from the granting of a new penalty hearing and CHAPPELL cross-
23 appealed from the District Court's denial of his claims of ineffective assistance of counsel with
24 respect to the guilt phase.

25 The Nevada Supreme Court issued an Order of Affirmance on April 7, 2006 affirming
26 the District Court's granting of a new penalty hearing and upholding its decision to not grant
27 a new guilt phase of the trial.

28 The Court goes on further to state:

1 "...we conclude that Chappell's McConnell claim has merit and that two of the
2 three aggravators pending against him violate the holding in McConnell as a
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4 at the time Chappell filed his petition below, and that decision renders two of the
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9 underlying the felony-murder theory were one count of burglary and/or one count
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11 applies to Chappell's case and renders infirm the aggravators based on the
12 robbery and burglary, the predicate felonies that supported the felony-murder
13 theory. However, our conclusion does not extend to the aggravator based upon
14 sexual assault....."

15 The remanded penalty hearing is set for March 12, 2007.

16 STATEMENT OF FACTS

17 For purposes of this Motion, CHAPPELL will incorporate the Facts from the decision
18 of this Court on the direct appeal (Chappell v. State, 114 Nev. 1403, 972 P.2d 838 (1998)),
19 with the caveat that CHAPPELL has consistently maintained that no proper investigation was
20 conducted before the trial or penalty hearing and therefore the testimony presented was
21 virtually unopposed at trial and penalty hearing and does not accurately portray the facts of
22 the case:

23 "On the morning of August 31, 1995, James Montell Chappell was mistakenly
24 released from prison in Las Vegas where he had been serving time since June
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26 Mobile Home Park in Las Vegas where his ex-girlfriend, Deborah Panos, lived
27 with their three children. Chappell entered Panos' trailer by climbing through the
28 window. Panos was home alone, and she and Chappell engaged in sexual
intercourse. Sometime later that morning Chappell repeatedly stabbed Panos
with a kitchen knife, killing her. Chappell then left the trailer park in Panos' car
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The State filed an information on October 11, 1995, charging Chappell with
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and/or home invasion; (3) the murder was committed during the commission of
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1 Prior to trial, Chappell offered to stipulate that he (1) entered Panos' trailer
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3 caused Panos' death by stabbing her with a kitchen knife, and (4) was jealous
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4 Chappell took the witness stand on his own behalf and testified that he
5 considered the trailer to be his home and that he had entered through the
6 trailer's window because he had lost his key and did not know that Panos was
7 at home. He testified that Panos greeted him as he entered the trailer and that
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10 jury returned a sentence of death on the murder charge, finding two mitigating
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14 court sentenced Chappell to a minimum of forty-eight months and a maximum
of 120 months for the burglary; a minimum seventy-two months and a maximum
of 180 months for robbery, plus an equal and consecutive sentence for the use
of a deadly weapon; and death for the count of murder in the first degree with
the use of a deadly weapon. The district court ordered all counts to run
consecutively. Chappell timely appealed his conviction and sentence of death."

15 POINTS AND AUTHORITIES

16 ARGUMENT

17 The defense is entitled to any and all evidence in the possession of the State that may
18 be used at the penalty hearing including any evidence that mitigates the severity of the
19 sentence.

20 When the State intends to seek the death penalty in the event of a first degree murder
21 conviction, Supreme Court Rule 250(4)(f) provides:

22 "(f) **Filing of notice of evidence in aggravation.** The state must file with the
23 district court a notice of evidence in aggravation no later than 15 days before
24 trial is to commence. The notice must summarize the evidence which the state
25 intends to introduce at the penalty phase of trial, if a first-degree murder
26 conviction is returned, and identify the witnesses, documents, or other means
27 by which the evidence will be introduced. Absent a showing of good cause, the
28 district court shall not admit evidence not summarized in the notice. If the court
determines that good cause has been shown to admit evidence not previously
summarized in the notice, it must permit the defense to have a reasonable
continuance to prepare to meet the evidence."

Most recently the Nevada Supreme Court considered the interpretation and failure to

1 comply with the Notice requirements of Rule 250. In State v. District Court, 116 Nev. 953, 11
2 P.3d 1209 (2000) the En Banc Court upheld an order of the Second District Court denying
3 Motions to file untimely notices of intent to seek the death penalty. In State v. District Court
4 the prosecution was untimely in filing the Notice of Intent within 30 days of the filing of the
5 Information under Supreme Court Rule 250(4)(c) and (d). SCR 250 (4)(d) allows a late filing
6 upon a showing of "good cause", the same language used in 250(4)(f) to excuse the filing of
7 the Notice of evidence of aggravation. The Court found that "the workload of the prosecutor
8 and the complexity of the case did not constitute good cause" and that "mere oversight on the
9 part of the prosecutor does not constitute good cause."

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


15 The Nevada Supreme Court has held that "[c]onsistent with the constitutional
16 requirements of due process, defendants should be notified of any and all evidence to be
17 presented during the penalty hearing." Emmons v. State, 107 Nev. 53, 62, 807 P.2d 718
18 (1991). More than one day's notice is necessary to satisfy due process requirements. Id.

19 Wherefore, it is respectfully requested that the State immediately supply to CHAPPELL
20 "any and all evidence" to be presented at the penalty hearing.

21 Dated this 18 day of September, 2006.

22 RESPECTFULLY SUBMITTED:

23 SPECIAL PUBLIC DEFENDER

24 
25 DAVID M. SCHIECK
26 CLARK W. PATRICK
27 330 S. Third Street, Ste. 800
28 Las Vegas NV 89155
Attorney for CHAPPELL

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

ORIGINAL

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(702)455-6265
Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

JAMES CHAPPELL,

Defendant.

CASE NO. C 131341
DEPT. NO. XVII

DATE: N/A
TIME: N/A

**MOTION IN LIMINE TO LIMIT PENALTY HEARING
EVIDENCE TO AVOID VIOLATION OF THE EIGHTH
AMENDMENT AND DUE PROCESS RIGHT TO A
FUNDAMENTALLY FAIR PENALTY HEARING**

COMES NOW, Defendant, JAMES CHAPPELL, by and through his attorneys DAVID M. SCHIECK, ESQ., the Special Public Defender and CLARK W. PATRICK, and moves this Court to limit penalty hearing evidence to avoid violation of the Eighth Amendment and due process right to a fundamentally fair penalty hearing.

This Motion is made and based upon the Points and Authorities attached hereto, all the documents and pleadings on file herein and such argument as the Court may allow at the hearing of the Motion.

RECEIVED
SEP 20 2006
COUNTY CLERK

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

1 NOTICE OF MOTION

2 TO: THE STATE OF NEVADA, Plaintiff; and

3 TO: THE DISTRICT ATTORNEY'S OFFICE, its counsel:

4 YOU WILL PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion
5 on for hearing before the above-entitled Court on the 3 day of Oct, 2006 at the
6 hour of 8:30 a.m., or as soon thereafter as counsel can be heard.

7 STATEMENT OF THE CASE

8 In 1995 JAMES CHAPPELL ("CHAPPELL") was charged with Burglary, Robbery with
9 the use of a Deadly Weapon, and First Degree Murder with the use of a Deadly Weapon. The
10 Clark County District Attorney's office filed a Notice of Intent to Seek Death Penalty listing the
11 following aggravating circumstances: (1) The murder was committed while the person was
12 engaged in the commission of or an attempt to commit any Robbery; (2) The murder was
13 committed while the person was engaged in the commission of or an attempt to commit any
14 Burglary and/or Home Invasion; (3) The murder was committed while the person was
15 engaged in the commission of or an attempt to commit any Sexual Assault; and (4) The
16 murder involved torture or depravity of mind.

17 CHAPPELL was convicted in 1996 on all counts. The jury found two mitigating
18 circumstances - murder committed while CHAPPELL was under the influence of extreme
19 mental or emotional disturbance and any other mitigating circumstances and all four
20 aggravating circumstances. CHAPPELL was sentenced to death. On direct appeal the
21 Nevada Supreme Court struck the aggravator based on torture or depravity of mind, but
22 affirmed CHAPPELL'S conviction and sentence of death.

23 A proper person post conviction petition for a writ of habeas corpus was filed in the
24 District Court and counsel was appointed to represent CHAPPELL. Counsel filed a
25 supplement to the petition. After an evidentiary hearing, the District Court upheld
26 CHAPPELL'S conviction but vacated the death sentence and ordered a new penalty hearing.
27 The State filed an appeal from the granting of a new penalty hearing and CHAPPELL cross-
28 appealed from the District Court's denial of his claims of ineffective assistance of counsel with

1 respect to the guilt phase.

2 The Nevada Supreme Court issued an Order of Affirmance on April 7, 2006 affirming
3 the District Court's granting of a new penalty hearing and upholding its decision to not grant
4 a new guilt phase of the trial.

5 The Court goes on further to state:

6 "...we conclude that Chappell's McConnell claim has merit and that two of the
7 three aggravators pending against him violate the holding in McConnell as a
8 matter of law and cannot be realleged....However, McConnell was not decided
9 at the time Chappell filed his petition below, and that decision renders two of the
10 three aggravators invalid as a matter of law.....

9

10 Chappell was charged with open murder based upon the theories of
11 premeditated and deliberate murder and/or felony murder. The felonies
12 underlying the felony-murder theory were one count of burglary and/or one count
13 robbery with the use of a deadly weapon...We conclude that McConnell squarely
14 applies to Chappell's case and renders infirm the aggravators based on the
15 robbery and burglary, the predicate felonies that supported the felony-murder
16 theory. However, our conclusion does not extend to the aggravator based upon
17 sexual assault....."

18 The remanded penalty hearing is set for March 12, 2007.

15

16 STATEMENT OF FACTS

17 For purposes of this Motion, CHAPPELL will incorporate the Facts from the decision
18 of this Court on the direct appeal (Chappell v. State, 114 Nev. 1403, 972 P.2d 838 (1998)),
19 with the caveat that CHAPPELL has consistently maintained that no proper investigation was
20 conducted before the trial or penalty hearing and therefore the testimony presented was
21 virtually unopposed at trial and penalty hearing and does not accurately portray the facts of
22 the case:

22

23 "On the morning of August 31, 1995, James Montell Chappell was mistakenly
24 released from prison in Las Vegas where he had been serving time since June
25 1995 for domestic battery. Upon his release, Chappell went to the Ballerina
26 Mobile Home Park in Las Vegas where his ex-girlfriend, Deborah Panos, lived
27 with their three children. Chappell entered Panos' trailer by climbing through the
28 window. Panos was home alone, and she and Chappell engaged in sexual
intercourse. Sometime later that morning Chappell repeatedly stabbed Panos
with a kitchen knife, killing her. Chappell then left the trailer park in Panos' car
and drove to a nearby housing complex.

28 The State filed an information on October 11, 1995, charging Chappell with

1 one count of burglary, one count of robbery with the use of a deadly weapon,
2 and one count of murder with the use of a deadly weapon. On November 8,
3 1995, the State filed a notice of intent to seek the death penalty. The notice
4 listed four aggravating circumstances: (1) the murder was committed during the
5 commission of or an attempt to commit any robbery; (2) the murder was
6 committed during the commission of or an attempt to commit any burglary
7 and/or home invasion; (3) the murder was committed during the commission of
8 or an attempt to commit any sexual assault; and (4) the murder involved torture
9 or depravity of mind.

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

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

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

20 POINTS AND AUTHORITIES

21 (A) THE TRIAL COURT SHOULD NOT ADMIT INADMISSIBLE 22 EVIDENCE OF PRIOR BAD ACTS DURING THE PENALTY PHASE

23 There are competing and irreconcilable principles at work in the current capital
24 sentencing procedures in Nevada. Specifically, NRS 175.552 provides that at a penalty
25 hearing virtually everything is admissible:

26 "In the hearing, evidence may be presented concerning aggravating and
27 mitigating circumstances relative to the offense, defendant or victim and on any
28 other matter which the court deems relevant to sentence, whether or not the
evidence is ordinarily admissible. Evidence may be offered to refute hearsay
matters. No evidence which was secured in violation of the Constitution of the
United States or the constitution of the State of Nevada may be introduced."

1 This is to be contrasted to the plain meaning of the holdings in a number of
2 cases that:

3 Evidence of unrelated crimes for which a defendant has not been
4 convicted is inadmissible during the penalty phase if it is dubious
5 or tenuous, or if its probative value is outweighed by danger of
6 unfair prejudice, confusion or issues, misleading the jury, undue
7 delay, waste of time, or needless presentation of cumulative
8 evidence."

9 Jones v. State, 107 Nev. 632, 636, 817 P.2d 1179 (1991). See *a/so*, Allen v. State, 99 Nev.
10 485, 665 P.2d 238 (1983) and Hollaway v. State, 116 Nev. 732, 6 P.3d 987 (2000).

11 CHAPPELL contends that the State intends to offer evidence at his penalty hearing of
12 an unrelated crime for which he has not been convicted, which is tenuous, whose probative
13 value is outweighed by the danger of unfair prejudice, will mislead the jury and is a waste of
14 time.

15 Officer Paul Weidner testified about arresting CHAPPELL regarding a disturbance call
16 that he responded to on August 18, 1988. (Penalty Phase Transcript [PT] Volume I, page 22).
17 Officer Weidner testified that when he and his partner arrived at the scene, they encountered
18 the alleged victim armed with a shotgun. (PT. Vol. I p. 22). The victim said he had been
19 assaulted by Harold Smith and James Chappell. The victim stated he was hit in the back by
20 a brick that was thrown at him, by Mr. Chappell. (PT. Vol. I p. 25). Officer Weidner also
21 testified about the interview of a disinterested third party witness, Dennis Werabicky. (PT. Vol.
22 I p. 31). Mr. Werabicky saw Harold Smith throw a brick that struck the victim, not Mr. Chappell.
23 (PT. Vol. I p. 32). Officer Weidner stated the victim was not injured and no medical assistance
24 was requested. (PT. Vol. I p. 34). Finally, Officer Weidner testified that he did not know how
25 the case had been adjudicated, but that he would not be surprised to hear there was not a
26 judgment of conviction regarding Mr. Chappell in this case. (PT. Vol. I p. 34).

27 The incident, in which Officer Weidner testified about is clearly an unrelated crime for
28 which Mr. Chappell was not convicted. Mr. Chappell's involvement is dubious since there is
conflicting witness accounts on who threw the brick. Clearly the State desired to bolster their
position that CHAPPELL was deserving of death by placing a law enforcement officer with the
indicia of authority in front of the jury. In their unbridled enthusiasm to achieve a conviction

1 of death, the State reached back to an event that occurred eighteen (18) years ago, and
2 presented the jury with an authority figure who testified that CHAPPELL was a bad person
3 deserving of the death penalty. This type of evidence and questionably relevant testimony has
4 no probative value is highly prejudicial and misleads the jury and propels them into returning
5 a verdict of death.

6 Therefore, this Court should not allow the testimony of Officer Weidner, or any other
7 reference to the incident involving Mr. Chappell occurring on August 18, 1988.

8 (B) THE STATUTORY SCHEME ADOPTED BY
9 NEVADA LIMITS VICTIM IMPACT STATEMENTS

10 At the penalty hearing in the case at bar the State presented testimony from Carol
11 Monson, who read a prepared statement. (PT. Vol. II p. 7). In her statement Ms. Monson
12 asked the jury "to give James what he gave Debbie, death." This statement was improper. The
13 Nevada capital statutory scheme imposes a limit on the presentation of victim impact
14 testimony.

15 The Nevada Supreme Court has cautioned the State "to prevent such inflammatory
16 testimony in the new hearing." Chappell v. State, Unpublished Opinion No. 43493, April 7,
17 2006. As a basis for this caution, the Court relied upon the holding of Witter v. State, 112 Nev.
18 908, 922, 921 P.2d 886, 896 (1996) receded from on other grounds by Byford v. State, 116
19 Nev. 215, 994 P.2d 700 (2000). "[W]hile a victim may address the impact that the crime has
20 had on the victim and the victim's family, a victim can only express an opinion regarding the
21 defendant's sentence in non capital cases." Randell v. State, 109 Nev. 5, 846 P.2d 278
22 (1993).

23 Therefore, the inflammatory statement by Ms. Monson asking the jury to impose the
24 death penalty cannot be used.

25 CONCLUSION

26 CHAPPELL respectfully requests that this Court limit the evidence to be presented by
27 ...
28 ...

1 the State at the penalty hearing and not allow inadmissible evidence of prior bad acts and
2 inflammatory victim impact statements.

3 Dated this 18 day of September, 2006.

4 RESPECTFULLY SUBMITTED:

5 DAVID M. SCHIECK
6 SPECIAL PUBLIC DEFENDER

7 

8 DAVID M. SCHIECK
9 CLARK W. PATRICK
10 330 S. Third Street, Ste. 800
11 Las Vegas, NV 89155
12 ATTORNEY FOR CHAPPELL
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SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

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(702)455-6265
Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

vs.

JAMES CHAPPELL,
Defendant.

CASE NO. C 131341
DEPT. NO. XVII

DATE: N/A
TIME: N/A

MOTION TO ALLOW JURY QUESTIONNAIRE

COMES NOW, Defendant JAMES CHAPPELL, by and through his attorneys DAVID M. SCHIECK, Special Public Defender and CLARK W. PATRICK, Deputy Special Public Defender, and moves this Court to require prospective jurors to complete a juror questionnaire in advance of in-court questioning so that defense counsel will obtain information necessary to effectuate CHAPPELL'S rights to a fair and impartial jury while drastically reducing the court time needed to conduct voir dire.

This Motion is made and based on the Points and Authorities stated herein, the pleadings and papers on file in this matter, and any argument as may be had by counsel at the time of hearing of this Motion.

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SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

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YOU WILL PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion on for hearing before the above-entitled Court on the 3 day of Oct September, 2006 at the hour of 8:30 a.m.

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1 respect to the guilt phase.

2 The Nevada Supreme Court issued an Order of Affirmance on April 7, 2006 affirming
3 the District Court's granting of a new penalty hearing and upholding its decision to not grant
4 a new guilt phase of the trial.

5 The Court goes on further to state:

6 "...we conclude that Chappell's McConnell claim has merit and that two of the
7 three aggravators pending against him violate the holding in McConnell as a
8 matter of law and cannot be realleged....However, McConnell was not decided
at the time Chappell filed his petition below, and that decision renders two of the
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10 Chappell was charged with open murder based upon the theories of
11 premeditated and deliberate murder and/or felony murder. The felonies
12 underlying the felony-murder theory were one count of burglary and/or one count
13 robbery with the use of a deadly weapon...We conclude that McConnell squarely
14 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....."

15 The remanded penalty hearing is set for March 12, 2007.

16 STATEMENT OF FACTS

17 For purposes of this Motion, CHAPPELL will incorporate the Facts from the decision
18 of this Court on the direct appeal (Chappell v. State, 114 Nev. 1403, 972 P.2d 838 (1998)),
19 with the caveat that CHAPPELL has consistently maintained that no proper investigation was
20 conducted before the trial or penalty hearing and therefore the testimony presented was
21 virtually unopposed at trial and penalty hearing and does not accurately portray the facts of
22 the case:

23 "On the morning of August 31, 1995, James Montell Chappell was mistakenly
24 released from prison in Las Vegas where he had been serving time since June
25 1995 for domestic battery. Upon his release, Chappell went to the Ballerina
26 Mobile Home Park in Las Vegas where his ex-girlfriend, Deborah Panos, lived
27 with their three children. Chappell entered Panos' trailer by climbing through the
window. Panos was home alone, and she and Chappell engaged in sexual
intercourse. Sometime later that morning Chappell repeatedly stabbed Panos
with a kitchen knife, killing her. Chappell then left the trailer park in Panos' car
and drove to a nearby housing complex.

28 The State filed an information on October 11, 1995, charging Chappell with

1 one count of burglary, one count of robbery with the use of a deadly weapon,
2 and one count of murder with the use of a deadly weapon. On November 8,
3 1995, the State filed a notice of intent to seek the death penalty. The notice
4 listed four aggravating circumstances: (1) the murder was committed during the
5 commission of or an attempt to commit any robbery; (2) the murder was
6 committed during the commission of or an attempt to commit any burglary
7 and/or home invasion; (3) the murder was committed during the commission of
8 or an attempt to commit any sexual assault; and (4) the murder involved torture
9 or depravity of mind.

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

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

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

20 POINTS AND AUTHORITIES

21 Courts across the country have recognized the value of jury questionnaires and have
22 allowed them in numerous cases (see e.g., United States v. Fishback, Crim No. CR-83-169C
23 (W.D. Washington, 1983); United States v. DiFranco, No. 81-230-CR-JAW (S.D. Florida,
24 1982); United States v. Loughton, Crim. No. CR-80-416-RFP (North Dakota, Cal, 1981); and
25 United States v. Warren, Crim. No. 76-371 (M.D. Georgia, 1978).

26 Because of the height and degree of reliability in capital cases, juror questioning must
27 be extensive in order to ensure that Defendant receives an unbiased jury, both as to guilt and
28 penalty. A large portion of the inquiry necessary to effect this constitutional mandate may be

1 provided for expeditiously and effectively through the use of juror questionnaire that the jurors
2 can fill out privately in advance of in-court questioning. Most importantly, the large number of
3 routine questions that normally must be asked verbally of each and every juror can be
4 eliminated through the use of the questionnaire. The court and counsel can then focus oral
5 questions in the areas of the case that are material and controversial and which may invoke
6 bias, prejudice or other strong feelings on the part of prospective jurors. The use of the
7 questionnaire can therefore effectuate the goal of the legislature, the people of the State of
8 Nevada and the local judiciary to expedite the jury selection process without compromising the
9 need of defense counsel to obtain the information necessary to challenge for cause those
10 jurors who cannot fairly and impartially sit in judgment of the Defendant.

11 CONCLUSION

12 JAMES CHAPPELL respectfully requests that this Court allow a jury questionnaire to
13 be prepared by Defendant and submitted to the District Attorney's Office in order for the
14 parties to reach a mutual agreement.

15 Dated this 18 day of September, 2006.

16 RESPECTFULLY SUBMITTED:

17 DAVID M. SCHIECK
18 SPECIAL PUBLIC DEFENDER

19 

20 DAVID M. SCHIECK
21 CLARK W. PATRICK
22 330 S. Third Street, Ste. 800
23 Las Vegas, NV 89155
24 ATTORNEY FOR CHAPPELL
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SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

ORIGINAL

FILED

2006 SEP 20 P 2: 06

Shirley A. King
CLERK

0001
DAVID M. SCHIECK
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Nevada Bar No. 0824
CLARK W. PATRICK
Deputy Special Public Defender
Nevada Bar No. 9451
330 S. Third St., Ste. 800
Las Vegas NV 89155-2316
(702)455-6265
Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

vs.

JAMES CHAPPELL,
Defendant.

CASE NO. C 131341
DEPT. NO. XVII

DATE: N/A
TIME: N/A

MOTION TO BIFURCATE PENALTY PHASE

COMES NOW, the Defendant, JAMES CHAPPELL, by and through his attorneys DAVID M. SCHIECK, Special Public Defender and CLARK W. PATRICK, Deputy Special Public Defender and respectfully moves this Court for an Order bifurcating the penalty phase set to commence on March 12, 2007.

This Motion is based upon the attached Points and Authorities, on all papers and pleadings on file herein, and on any oral argument allowed at the time of the hearing on this Motion.

NOTICE OF MOTION

TO: STATE OF NEVADA, Plaintiff; and

TO: DAVID ROGER District Attorney, Attorney for Plaintiff

YOU WILL PLEASE TAKE NOTICE that the undersigned will bring on the above and foregoing MOTION TO BIFURCATE PENALTY PHASE on the 3 day of Oct.

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

1 2006, at the hour of 8:30 a.m., in Department No. XVII of the above-entitled Court, or as soon
2 thereafter as counsel may be heard.

3 **STATEMENT OF THE CASE**

4 In 1995 JAMES CHAPPELL ("CHAPPELL") was charged with Burglary, Robbery with
5 the use of a Deadly Weapon, and First Degree Murder with the use of a Deadly Weapon. The
6 Clark County District Attorney's office filed a Notice of Intent to Seek Death Penalty listing the
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9 committed while the person was engaged in the commission of or an attempt to commit any
10 Burglary and/or Home Invasion; (3) The murder was committed while the person was
11 engaged in the commission of or an attempt to commit any Sexual Assault; and (4) The
12 murder involved torture or depravity of mind.

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14 circumstances - murder committed while CHAPPELL was under the influence of extreme
15 mental or emotional disturbance and any other mitigating circumstances and all four
16 aggravating circumstances. CHAPPELL was sentenced to death. On direct appeal the
17 Nevada Supreme Court struck the aggravator based on torture or depravity of mind, but
18 affirmed CHAPPELL'S conviction and sentence of death.

19 A proper person post conviction petition for a writ of habeas corpus was filed in the
20 District Court and counsel was appointed to represent CHAPPELL. Counsel filed a
21 supplement to the petition. After an evidentiary hearing, the District Court upheld
22 CHAPPELL'S conviction but vacated the death sentence and ordered a new penalty hearing.
23 The State filed an appeal from the granting of a new penalty hearing and CHAPPELL cross-
24 appealed from the District Court's denial of his claims of ineffective assistance of counsel with
25 respect to the guilt phase.

26 The Nevada Supreme Court issued an Order of Affirmance on April 7, 2006 affirming
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1 The Court goes on further to state:

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and/or home invasion; (3) the murder was committed during the commission of
28 or an attempt to commit any sexual assault; and (4) the murder involved torture

1 or depravity of mind.

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

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

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

16 POINTS AND AUTHORITIES

17 Under the Nevada death penalty scheme, like the death penalty schemes of other
18 states, the jury may impose a sentence of death only if it finds at least one aggravating
19 circumstance and further finds that there are no mitigating circumstances sufficient to outweigh
20 the aggravating circumstance or circumstances found. NRS 175.554(3).

21 Although Defendant believes that it is unconstitutional and a violation of Nevada statute
22 to introduce "character", "bad act" or other evidence suggesting that he is a bad person that
23 is not relevant to the statutory aggravating circumstances, He is aware that such evidence is
24 often admitted during a capital penalty phase. See, Allen v. State, 99 Nev. 485, 488, 665 P.2d
25 238, 240 (1983) (citing NRS 175.552(3). In the event that such evidence is permitted to be
26 introduced by the prosecution in this case, it must not be heard by the jurors prior to the time
27 that they determine whether CHAPPELL is eligible for the death penalty.

28 The "aggravating circumstances/mitigating factors" scheme for determining death

1 eligibility is essential to the process of narrowing the class of defendants who are death
2 eligible. Arave v. Creech, 507 U.S. 463, 470-74, 113 S.Ct. 1534, 123 L.ED.2d 188 (1993);
3 Middleton v. State, 114 Nev. Adv. Op. 120, 968 P.2d 296, 314 (1998). Character evidence
4 must not be used to determine whether a defendant is death eligible. The Nevada Supreme
5 Court "did not hold in Allen that evidence outside the purview of NRS 200.033 could serve to
6 render a defendant death eligible. Only enumerated aggravating circumstances pursuant to
7 NRS 200.033 can do this." Id.

8 Only after the jury has determined that a defendant is death eligible – after considering
9 the statutory aggravating circumstances and mitigating factors – may the jury consider
10 character evidence against the defendant. Middleton, 968 P.2d at 314. "At this final stage,
11 evidence presented pursuant to NRS 175.552(3) can influence the decision to impose death,
12 but this comes after the narrowing to death eligibility has occurred." Id.

13 Support for a bifurcated penalty phase is also found in a decision by the United States
14 Supreme Court. In Buchanan v. Angelone, 522 U.S. 269, 118 S.Ct. 757, 760, 139 L.Ed.2d
15 702 (1998), the Court explained as follows:

16 Petitioner initially recognizes, as he must, that our cases have distinguished
17 between two different aspects of the capital sentencing process, the eligibility
18 phase and the selection phase. Tuilaepa v. California, 512 U.S. 967, 971, 114
19 S.Ct. 2630, 2634, 129 L.Ed.2d 750 (1994). In the eligibility phase the jury
20 narrows the class of defendants eligible for the death penalty, often through
21 consideration of aggravating circumstances. Id. at 971, 114 S.Ct., at 2634. In
22 the selection phase, the jury determines whether to impose a death sentence
23 upon an eligible defendant. Id. at 972, 114 S.Ct. at 2634-2635.

24 The law in this area has become even more clear since Mr. Chappell's first penalty
25 hearing. Our Nevada Supreme Court addressed this issue in Evans v. State, 28 P.3d 498,
26 117 Nev. Adv. Op. 50 (2001), as follows:


27 To determine that a death sentence is warranted, a jury considers three types
28 of evidence: evidence relating to aggravating circumstances, mitigating
circumstances, and any other matter which the court deems relevant to
sentencing. The evidence at issue here was the third type, other matter
evidence. In deciding whether to return a death sentence, the jury can consider
such evidence only after finding the defendant death eligible, i.e., after it has
found unanimously at least one enumerated aggravator and each juror has
found that any mitigators do not outweigh the aggravators. Of course, if the jury
decides that death is not appropriate, it can consider other matter evidence in
deciding on another sentence. Id. at pg. 515

1
2 **CONCLUSION**

3 JAMES CHAPPELL respectfully requests that if this Court permits the State to
4 introduce character evidence that is not relevant to the statutory aggravating circumstance of
5 sexual assault, the penalty phase be bifurcated into an "eligibility" phase and a "selection"
6 phase.

7 DATED this 18 day of September, 2006.

8 RESPECTFULLY SUBMITTED:
9 DAVID M. SCHIECK
10 SPECIAL PUBLIC DEFENDER

11 
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13 CLARK W. PATRICK
14 330 S. Third Street, Ste. 800
15 Las Vegas, NV 89155
16 ATTORNEY FOR CHAPPELL
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SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

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Clerk

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10 (702)455-6265
11 Attorneys for Defendant

12 DISTRICT COURT
13 CLARK COUNTY, NEVADA

14 ***

15 THE STATE OF NEVADA,
16 Plaintiff,

17 vs.

18 JAMES CHAPPELL,
19 Defendant.

CASE NO. C 131341
DEPT. NO. XVII

DATE: N/A
TIME: N/A

20 MOTION TO DISMISS STATE'S NOTICE OF INTENT
21 TO SEEK DEATH PENALTY BECAUSE NEVADA'S
22 DEATH PENALTY STATUTE IS UNCONSTITUTIONAL

23 COMES NOW Defendant JAMES CHAPPELL, by and through his attorneys, DAVID
24 M. SCHIECK, Special Public Defender and CLARK W. PATRICK, Deputy Special Public
25 Defender, and moves this Court to dismiss the State's Notice of Intent to Seek Death Penalty
26 which was served on Defendant in this case.

27 This motion is made and based upon the attached Memorandum of Points and
28 Authorities, the papers and pleadings on file in this case, and any argument deemed
necessary by this Court.

NOTICE OF MOTION

TO: THE STATE OF NEVADA, Plaintiff, and

TO: DISTRICT ATTORNEY'S OFFICE, Plaintiff's attorneys:

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

1 YOU WILL PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion
2 on for hearing before the above-entitled Court on the 3 day of Oct, 2006 at
3 the hour of 8:30 a.m., or as soon thereafter as counsel can be heard.

4 STATEMENT OF THE CASE

5 In 1995 JAMES CHAPPELL ("CHAPPELL") was charged with Burglary, Robbery with
6 the use of a Deadly Weapon, and First Degree Murder with the use of a Deadly Weapon. The
7 Clark County District Attorney's office filed a Notice of Intent to Seek Death Penalty listing the
8 following aggravating circumstances: (1) The murder was committed while the person was
9 engaged in the commission of or an attempt to commit any Robbery; (2) The murder was
10 committed while the person was engaged in the commission of or an attempt to commit any
11 Burglary and/or Home Invasion; (3) The murder was committed while the person was
12 engaged in the commission of or an attempt to commit any Sexual Assault; and (4) The
13 murder involved torture or depravity of mind.

14 CHAPPELL was convicted in 1996 on all counts. The jury found two mitigating
15 circumstances - murder committed while CHAPPELLI was under the influence of extreme
16 mental or emotional disturbance and any other mitigating circumstances and all four
17 aggravating circumstances. CHAPPELL was sentenced to death. On direct appeal the
18 Nevada Supreme Court struck the aggravator based on torture or depravity of mind, but
19 affirmed CHAPPELL'S conviction and sentence of death.

20 A proper person post conviction petition for a writ of habeas corpus was filed in the
21 District Court and counsel was appointed to represent CHAPPELL. Counsel filed a
22 supplement to the petition. After an evidentiary hearing, the District Court upheld
23 CHAPPELL'S conviction but vacated the death sentence and ordered a new penalty hearing.
24 The State filed an appeal from the granting of a new penalty hearing and CHAPPELL cross-
25 appealed from the District Court's denial of his claims of ineffective assistance of counsel with
26 respect to the guilt phase.

27 The Nevada Supreme Court issued an Order of Affirmance on April 7, 2006 affirming
28 the District Court's granting of a new penalty hearing and upholding its decision to not grant

1 a new guilt phase of the trial.

2 The Court goes on further to state:

3 "...we conclude that Chappell's McConnell claim has merit and that two of the
4 three aggravators pending against him violate the holding in McConnell as a
5 matter of law and cannot be realleged....However, McConnell was not decided
6 at the time Chappell filed his petition below, and that decision renders two of the
7 three aggravators invalid as a matter of law.....

8 Chappell was charged with open murder based upon the theories of
9 premeditated and deliberate murder and/or felony murder. The felonies
10 underlying the felony-murder theory were one count of burglary and/or one count
11 robbery with the use of a deadly weapon...We conclude that McConnell squarely
12 applies to Chappell's case and renders infirm the aggravators based on the
13 robbery and burglary, the predicate felonies that supported the felony-murder
14 theory. However, our conclusion does not extend to the aggravator based upon
15 sexual assault....."

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

17 STATEMENT OF FACTS

18 For purposes of this Motion, CHAPPELL will incorporate the Facts from the decision
19 of this Court on the direct appeal (Chappell v. State, 114 Nev. 1403, 972 P.2d 838 (1998)),
20 with the caveat that CHAPPELL has consistently maintained that no proper investigation was
21 conducted before the trial or penalty hearing and therefore the testimony presented was
22 virtually unopposed at trial and penalty hearing and does not accurately portray the facts of
23 the case:

24 "On the morning of August 31, 1995, James Montell Chappell was mistakenly
25 released from prison in Las Vegas where he had been serving time since June
26 1995 for domestic battery. Upon his release, Chappell went to the Ballerina
27 Mobile Home Park in Las Vegas where his ex-girlfriend, Deborah Panos, lived
28 with their three children. Chappell entered Panos' trailer by climbing through the
window. Panos was home alone, and she and Chappell engaged in sexual
intercourse. Sometime later that morning Chappell repeatedly stabbed Panos
with a kitchen knife, killing her. Chappell then left the trailer park in Panos' car
and drove to a nearby housing complex.

The State filed an information on October 11, 1995, charging Chappell with
one count of burglary, one count of robbery with the use of a deadly weapon,
and one count of murder with the use of a deadly weapon. On November 8,
1995, the State filed a notice of intent to seek the death penalty. The notice
listed four aggravating circumstances: (1) the murder was committed during the
commission of or an attempt to commit any robbery; (2) the murder was
committed during the commission of or an attempt to commit any burglary

1 and/or home invasion; (3) the murder was committed during the commission of
2 or an attempt to commit any sexual assault; and (4) the murder involved torture
or depravity of mind.

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

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

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

17 18 POINTS AND AUTHORITIES

19 *"Under contemporary standards of decency, death is viewed as an inappropriate*
20 *punishment for a substantial portion of convicted first-degree murderers."*

21 Woodson v. North Carolina, 428 U.S. 280, 296, 96 S.Ct. 2978, 2987, 49 L.Ed.2d 944 (1976).

22 Despite this clear statement of the United States Supreme Court, Nevada law permits
23 imposition of the death penalty for virtually any and all first-degree murderers. CHAPPELL
24 contends that the Notice of Intent to Seek Death Penalty, which was filed against him by the
25 State of Nevada, must be dismissed because the Nevada death penalty statutes, and case
26 law interpreting those statutes, does not sufficiently narrow the number of people eligible for
27 the death penalty, and are therefore unconstitutional.

Nevada Has More Citizens On Death Row Per Capita Than Any Other State

It is undisputed that Nevada has more persons on death row per capita than any other state in this country - by far:

Rank	State	1996 Population	1996 Inmates on Death Row	Persons on Death Row Per 100,000 Residents
1.	Nevada	1,603,000	81	5.05
2.	Oklahoma	3,301,000	133	4.02
3.	Alabama	4,279,000	151	3.52
4.	Arizona	4,428,000	121	2.73
5.	Florida	14,400,000	373	2.59
6.	Texas	19,128,000	438	2.28
7.	North Carolina	7,323,000	161	2.19
8.	South Carolina	3,699,000	68	1.83
9.	Missouri	5,359,000	93	1.73
10.	Tennessee	5,320,000	91	1.71
11.	Pennsylvania	12,056,000	203	1.68
12.	Ohio	11,173,000	170	1.52
13.	Louisiana	4,351,000	63	1.44
14.	California	31,878,000	454	1.42
15.	Illinois	11,847,000	161	1.35
16.	Georgia	7,353,000	96	1.30
17.	Mississippi		57	

The statistics are even more disturbing when a comparison is made of states in the western United States:

Rank	Western State	1996 Population	1996 Inmates on Death Row	Persons on Death Row Per 100,000 Residents
1.	Nevada	1,603,000	81	5.05
2.	Arizona	4,428,000	121	2.73

3.	Idaho	1,189,000	19	1.59
4.	California	31,878,000	454	1.42
5.	Montana	879,000	6	.68
6.	Oregon	3,204,000	20	.62
7.	Utah	2,000,000	10	.50
8.	New Mexico	1,713,000	3	.17
9.	Washington	5,533,000	9	.16
10.	Colorado	3,823,000	4	.10
11.	Wyoming	481,000	0	0

The explanation for this great disparity exists in the fact that neither the Nevada statutes defining eligibility for the death penalty nor the case law interpreting these statutes sufficiently narrows the class of persons eligible for the death penalty.

Nevada's Death Penalty Scheme is Established in Chapter 200 of the Nevada Revised Statutes

NRS 200.030(1) defines the crime of first degree murder, and NRS 200.030(4) specifies the penalties for first degree murder. The death penalty is one of four possible punishments for first degree murder.

NRS 200.030(4)(a) specifies that a jury may impose a penalty of death, when the jury has found the defendant guilty of first degree murder, if "one or more aggravating circumstances are found and any mitigating circumstance or circumstances which are found do not outweigh the aggravating circumstance or circumstances."

Specific aggravating circumstances are defined in NRS 200.033.

Possible mitigating circumstances are defined in NRS 200.035. The list of mitigating circumstances is not considered exclusive. The statute specifically provides that "any other mitigating circumstance" may be considered by a jury. NRS 200.035(7).

NRS 200.030(4)(b) provides alternatives other than death as possible penalties where a jury convicts a defendant of first degree murder. The statute specifically states that these alternatives (life in prison with the possibility of parole, life in prison without the possibility of

1 parole, and a fixed term of 50 years in prison with a possibility of parole) may be considered
2 without any "determination of whether aggravating circumstances exist." NRS 200.030(4)(b).

3 A "penalty hearing" wherein a jury determines the sentence after a conviction for first
4 degree murder is authorized by NRS 175.552 through 175.562.

5 **This Court Has the Discretion, Authority, and Obligation to Consider Whether a**
6 **Particular Statutory Punishment Is Constitutional**

7 For eighty-eight years Courts have affirmatively considered the constitutionality, under
8 federal law, of punishments adopted by the legislative branch, and have struck down those
9 punishments deemed unconstitutional. Weems v. United States, 217 U.S. 349 (1910) (first
10 time that the U.S. Supreme Court invalidated a penalty prescribed by a legislature for a
11 particular offense).

12 By 1947, eight members of the United States Supreme Court considered the law well
13 established that state criminal penalties must pass muster under federal constitutional
14 standards. Louisiana ex rel. Francis V. Resweber, 329 U.S. 459 (1947).

15 A foundation for this Motion is the premise that this Court has the discretion, authority,
16 and obligation to examine that part of Nevada's statutory penalty for murder which imposes
17 a penalty of death, and determine whether that penalty as administered under Nevada's
18 statutory scheme, is constitutional under the Eighth and Fourteenth Amendments to the United
19 States Constitution and Article 1 of the Nevada Constitution. Furthermore, because the
20 constitutional prohibition against cruel and unusual punishment is "not a static concept, but
21 one that must be continually re-examined in the light of contemporary human knowledge,"
22 Robinson v. California, 370 U.S. 660 (1962), CHAPPELL urges this Court to not defer to
23 historic rulings of constitutionality by the Nevada Supreme Court, but rather conduct a fresh
24 appraisal of the validity of this part of Nevada's law. "A penalty that was permissible at one
25 time in our . . . history is not necessarily permissible today." Furman v. Georgia, 408 U.S. 238,
26 329 (1972). "[S]tare decisis" should "bow to changing values, and the question of the
27 constitutionality of capital punishment at a given moment" should always "remain open." 408
28 U.S. at 330.

1 **Death Penalty Statutory Schemes Must Truly Narrow the Class of Persons Eligible**
2 **for the Penalty**

3 In 1972, the United States Supreme Court declared Georgia's death penalty statutory
4 scheme to be unconstitutional. Furman v. Georgia, 408 U.S. 238 (1972). In Furman, two
5 justices wrote that the death penalty always violated the Eighth Amendment; four justices
6 declared that the death penalty was not per se unconstitutional under the Eighth Amendment;
7 and three justices wrote that the death penalty statute in question in that particular case
8 violated the Eighth Amendment. The precise holding of Furman is difficult to determine
9 because the justices filed six separate opinions in that case.

10 Four years later, in Gregg v. Georgia, the United States Supreme Court upheld
11 Georgia's revised death penalty statutory scheme. Gregg v. Georgia, 428 U.S. 153 (1976).
12 Gregg is crucial to death penalty law because the Court took the six separate opinions
13 rendered in Furman and explained precisely what the holding in Furman happened to be:

14 While Furman did not hold that the infliction of the death penalty per se violates
15 the Constitution's ban on cruel and unusual punishments, it did recognize that
16 the penalty of death is different in kind from any other punishment imposed
17 under our system of criminal justice. Because of the uniqueness of the death
18 penalty, Furman held that it could not be imposed under sentencing procedures
19 that created a substantial risk that it would be inflicted in an arbitrary and
20 capricious manner. Mr. Justice White concluded that "the death penalty is
21 exacted with great infrequency even for the most atrocious crimes and . . . there
22 is no meaningful basis for distinguishing the few cases in which it is imposed
23 from the many cases in which it is not." 408 U.S. at 313, 92 S.Ct., at 2764
(concurring). Indeed, the death sentences examined by the Court in Furman
were "cruel and unusual in the same way that being struck by lightning is cruel
and unusual. For, of all the people convicted of (capital crimes), many just as
reprehensible as these, the petitioners (in Furman were) among a capriciously
selected random handful upon whom the sentence of death has in fact been
imposed. . . . (T)he Eighth and Fourteenth Amendments cannot tolerate the
infliction of a sentence of death under legal systems that permit this unique
penalty to be so wantonly and so freakishly imposed." Id., at 309-310, 92 S.Ct.,
at 2762 (Stewart, J., concurring). (FN36)

24 Furman mandates that where discretion is afforded a sentencing body on a
25 matter so grave as the determination of whether a human life should be taken
26 or spared, that discretion must be suitably directed and limited so as to minimize
the risk of wholly arbitrary and capricious action.

27 Gregg, 428 U.S. 188-89.

28 The most important concept in Furman and Gregg is that the sentencing jury's

1 discretion must be limited. That discretion must be limited because a sentencing jury "will
2 have had little, if any, previous experience in sentencing," 428 U.S. at 192, and therefore, any
3 killing, any murder, may seem horrendous to a group of people not experienced in evaluating
4 killings. Realistically, the only way that the jury's discretion can be "limited," as clearly required
5 by the Constitution pursuant to Furman and Gregg, is for aggravating circumstances to be
6 interpreted in a genuinely restrictive way.

7 Since 1976, the requirements of Furman and Gregg have provided the chief test for
8 determining whether state death penalty statutory schemes are constitutional. In Godfrey v.
9 Georgia, 446 U.S. 420 (1980), the Supreme Court struck down a Georgia death sentence
10 because the aggravating circumstance was vague and failed to guide a jury in distinguishing
11 which cases deserved the death penalty. The Court noted that under Georgia law, "[t]here is
12 no principled way to distinguish this case, in which the death penalty was imposed, from the
13 many cases in which it was not." 446 U.S. at 433.

14 In Zant v. Stephens, 462 U.S. 862 (1983), the U.S. Supreme Court reaffirmed that "an
15 aggravating circumstance must genuinely narrow the class of persons eligible for the death
16 penalty and must reasonably justify the imposition of a more severe sentence on the
17 defendant compared to others found guilty of murder." 462 U.S. at 877.

18 In summary, Furman and Gregg express concern about the freakish and inconsistent
19 imposition of capital punishment. These cases seek to make the death penalty less arbitrary
20 by requiring states to implement carefully drafted statutes that direct the discretion of juries
21 and limit that discretion in such a way that the majority of murder cases, where the death
22 penalty is not appropriate, can be identified and separated from the small minority of murder
23 cases where the death penalty is appropriate.

24 **Nevada's Death Penalty Statutory Scheme, as Adopted by the Legislature, Is**
25 **Unconstitutional Because It Fails to Narrow the Categories of Persons Eligible for the**
26 **Penalty**

27 Nevada's legislature has specified that fifteen "circumstances" may be considered
28 "aggravating," and that the existence, beyond a reasonable doubt, of one circumstance in a

1 particular first degree murder case renders that defendant eligible for the death penalty.

2 NRS 200.033 specifies the fifteen aggravating circumstances:

- 3 1. The murder was committed by a person under sentence of imprisonment.
4 2. The murder was committed by a person who, at any time before a
penalty hearing is conducted for the murder pursuant to NRS 175.552,
is or has been convicted of:

5 (a) Another murder and the provisions of subsection 12 do not
otherwise apply to that other murder; or

6 (b) A felony involving the use or threat of violence to the
person of another and the provisions of subsection 4 do not
otherwise apply to that felony.

7 For the purpose of this subsection, a person shall be deemed to have
8 been convicted at the time the jury verdict of guilt is rendered or upon
pronouncement of guilty by a judges or judges sitting without a jury.

- 9 3. The murder was committed by a person who knowingly created a great
10 risk of death to more than one person by means of a weapon, device or
course of action which would normally be hazardous to the lives of more
than one person.

- 11 4. The murder was committed while the person was engaged, alone or with
others, in the commission of or an attempt to commit or flight after
12 committing or attempting to commit, any robbery, arson in the first
degree, burglary, invasion of the home or kidnaping in the first degree,
13 and the person charged:

14 (a) Killed or attempted to kill the person murdered; or

(b) Knew or had reason to know that life would be taken or
lethal force used.

- 15 5. The murder was committed to avoid or prevent a lawful arrest or to effect
an escape from custody.

- 16 6. The murder was committed by a person, for himself or another, to receive
money or any other thing of monetary value.

- 17 7. The murder was committed upon a peace officer or fireman who was
killed while engaged in the performance of his official duty or because of
18 an act performed in his official capacity, and the defendant knew or
reasonably should have known that the victim was a peace officer or
19 fireman. For the purposes of this subsection, "peace officer" means:

20 (a) An employee of the Department of Corrections who does
not exercise general control over offenders imprisoned
within the institutions and facilities of the Department, but
21 whose normal duties require him to come into contact with
those offenders, when carrying out the duties prescribed by
the Director of the Department.

22 (b) Any person upon whom some or all of the powers of a
peace officer are conferred pursuant to NRS 289.150 to
23 289.360, inclusive, when carrying out those powers.

- 24 8. The murder involved torture or the mutilation of the victim.

- 25 9. The murder was committed upon one or more persons at random and
without apparent motive.

26 Despite the fact that Nevada has the highest per capita death rate in the United States,
27 the Nevada Legislature has in the last few years continued to expand the aggravators by
28 adding additional aggravating circumstances to the statute:

- 1 10. The murder was committed upon a person less than 14 years of age.
2 11. The murder was committed upon a person because of the actual or
3 perceived race, color, religion, national origin, physical or mental disability
4 or sexual orientation of that person.
5 12. The defendant has, in the immediate proceeding, been convicted of more
6 than one offense of murder in the first or second degree. For the
7 purposes of this subsection, a person shall be deemed to have been
8 convicted of a murder at the time the jury verdict of guilt is rendered or
9 upon pronouncement of guilt by a judge or judges sitting without a jury.
10 13. The person, alone or with others, subjected or attempted to subject the
11 victim of the murder to nonconsensual sexual penetration immediately
12 before, during or immediately after the commission of the murder. For
13 the purposes of this subsection:
14 (a) "Nonconsensual" means against the victim's will or under
15 conditions in which the person knows or reasonably should
16 know that the victim is mentally or physically incapable of
17 resisting, consenting or understanding the nature of his
18 conduct, including, but not limited to, conditions in which
19 the dead person known or reasonably should know that the
20 victim is dead.
21 (b) "Sexual penetration" means cunnilingus, fellatio, or any
22 intrusion, however slight, of any part of the victim's body or
23 any object manipulated or inserted by a person, alone or
24 with others, into the genital or anal openings of the body of
25 the victim, whether or not the victim is alive. The term
26 includes, but is not limited to, anal intercourse and sexual
27 intercourse in what would be its ordinary meaning.
28 14. The murder was committed on the property of a public or private school,
at an activity sponsored by a public or private school or on a school bus
while the bus was engaged in its official duties by a person who intended
to create a great risk of death or substantial bodily harm to more than one
person by means of a weapon, device or course of action that would
normally be hazardous to the lives of more than one person. For the
purposes of this subsection, "school bus" has the meaning ascribed to it
in NRS 483.160.
15. The murder was committed with the intent to commit, cause, aid, further
or conceal an act of terrorism. For the purposes of this subsection, "act
of terrorism" has the meaning ascribed to it in NRS 202.4415.

Even if these fifteen aggravators are applied with the most restrictive interpretation possible, they fail to honor the spirit of Furman and Gregg by not channeling the jury's discretion in such a way as to separate "compellingly bad" murder cases from those that are less offensive. Moreover, it is interesting that the Nevada Legislature continues to add aggravators to its list, thereby expanding the number of persons eligible for the death penalty, in spite of the Supreme Court's admonishments in Furman and Gregg. See 2001 Special Session, 229, 2007, 2945.

Nevada's statutory scheme is so arbitrary and "freakish" that it serves no useful purpose

1 in channeling a jury's discretion to distinguish the few cases where the penalty is appropriate
2 from the many cases where the death penalty is not appropriate. Under this statutory scheme,
3 virtually all people who kill are eligible for the death penalty. The final decision regarding who
4 should die and who should live is arbitrary and capricious.

5 Based on the foregoing, CHAPPELL submits that Nevada's statutory scheme for
6 imposing the death penalty is unconstitutional pursuant to Furman and Gregg, and the Notice
7 of Intent in this case should be dismissed.

8 **Nevada Caselaw Has Affirmatively Expanded the Ambit of the Aggravators,**
9 **Rendering the Statutory Scheme Unconstitutional**

10 When the United States Supreme Court upheld Georgia's death penalty in Gregg v.
11 Georgia, the Court relied on Georgia's statute, which guided and limited a jury's discretion in
12 imposing the death penalty, and the Supreme Court also relied on the Supreme Court of
13 Georgia interpreting the aggravators in such a way that the jury's discretion was not expanded
14 so as to make the aggravators meaningless. See Gregg v. Georgia, 428 U.S. 153, 202
15 (1976). Justice Stewart cited with approval a specific example of Georgia's Supreme Court
16 acting in a very conservative way to maintain the integrity and restrictiveness of an
17 aggravator's definition. Id. Based on the reasoning of Gregg, any analysis of whether
18 Nevada's statutory scheme is constitutional must take into account how the Nevada Supreme
19 Court has interpreted the aggravators promulgated by the legislature. To comply with the spirit
20 of Gregg and Furman, the Nevada Supreme Court must take a restrictive view of the
21 aggravators. Unfortunately, as will be shown in the following pages, the Nevada Supreme
22 Court has ignored Furman and Gregg, and interpreted the aggravators expansively, thereby
23 rendering the aggravators meaningless in limiting the scope and applicability of Nevada's
24 death penalty. The interpretations by Nevada's highest court guarantee that Nevada's death
25 penalty statutory scheme does not accomplish what it was intended to accomplish, and is
26 therefore unconstitutional.

27
28 **Expanding the Scope of "Under the Sentence of Imprisonment"**

1 NRS 200.033(1) provides the following aggravating circumstance:

2 1. The murder was committed by a person under sentence of imprisonment.

3 This aggravator is common in most of the 38 states that have a death penalty, and the
4 purpose of the aggravator is to discourage acts of violence by inmates of jails and prisons
5 against other inmates or the personnel of the state who work at the institutions. State v.
6 Libberton, 141 Ariz. 132, 685 P.2d 1284 (1984) (finding that this aggravator did not apply
7 where the defendant was on a secured work furlough status from a correctional facility, and
8 therefore not incarcerated, when he allegedly murdered someone). One commentator has
9 noted that these provisions appear designed to deter homicidal violence against persons
10 especially important to the protection of society, such as correctional officers, or persons
11 unusually at risk from murder, including prisoners as well as their guards, on the assumption
12 that individuals with a motive to kill such persons already face severe sanctions for past
13 criminality and might otherwise have little to lose by the act. Ledowitz, "The New Role of
14 Statutory Aggravating Circumstances in American Death Penalty Law," 32 Duquesne L. Rev.
15 317 (1984) cited in Annotation, "Sufficiency of Evidence, for Purposes of Death Penalty, To
16 Establish Statutory Aggravating Circumstance that Defendant Committed Murder While Under
17 Sentence of Imprisonment, In Confinement Or Correctional Custody, and the Like--Post-Gregg
18 Cases," 67 A.L.R. 4th 943 (1989).

19 The "Under Sentence of Imprisonment" aggravator could conceivably be applied to five
20 circumstances: to a defendant who is incarcerated in prison or jail; to a defendant who should
21 be incarcerated with the department of prisons, but has escaped; to a defendant who is
22 incarcerated with the department of prisons, but who has been released to a work camp or
23 halfway house; to a defendant who has already served time in prison, but has been released
24 on parole; or to a person who has been sentenced to prison, but the sentence has been
25 suspended and the defendant placed on probation.

26 A restrictive reading of the aggravator, in the spirit of Furman and Gregg, should limit
27 the aggravator to individuals who are incarcerated, whether it be in jails, prisons, or work
28 camps, see Leonard v. State, 114 Nev. 639, 958 P.2d 1220 (1998), and to those who have

1 escaped, see Sonner v. State, 114 Nev. 321, 955 P.2d 673 (1998). A restrictive reading of
2 the aggravator would certainly exempt persons who are on probation, Peek v. State, 395 So.
3 2d 492 (Fla. 1980), cert. denied 451 U.S. 964 (an individual on probation and not incarcerated
4 is not under a sentence of imprisonment), Kaplan v. Hecht, 24 F.2d 664 (2d Cir. 1928)
5 (Probation is not intended to be the equivalent of imprisonment).

6 Despite the clear opportunity to interpret this aggravator in a restrictive manner, the
7 Nevada Supreme Court has chosen to read this aggravator expansively by concluding that
8 it applies to a person on probation. Parker v. State, 109 Nev. 383, 393, 849 P.2d 1062 (1993).
9 (citing Adams v. Warden, 97 Nev. 171, 626 P.2d 259 (1981)). Likewise, in another context,
10 the Nevada Supreme Court has held that the "suspension of a sentence" which characterizes
11 a grant of probation is actually a "suspension of the execution of a sentence," meaning a
12 probationer is still "under a sentence of imprisonment." Grant v. State, 99 Nev. 149, 659 P.2d
13 878 (1983).

14 Virtually all the Nevada cases dealing with this aggravator have concerned defendants
15 who were on parole. When provided the opportunity to limit and restrict this aggravator, the
16 Nevada Supreme Court has always refused to do so, finding that persons on parole are under
17 a sentence of imprisonment, Geary v. State, 110 Nev. 261, 871 P.2d 927 (1994), aff'd in
18 relevant part, 114 Nev. 100, 952 P.2d 431 (1998); McNelson v. State, 111 Nev. 900, 900 P.2d
19 934 (1995); Jones v. State, 107 Nev. 632, 817 P.2d 1179 (1991), and further finding that a
20 person who was not incarcerated because he walked away from a juvenile facility, Nevius v.
21 State, 101 Nev. 238, 699 P.2d 1053 (1985), was also under a sentence of imprisonment.

22 Therefore, based on Nevada's expansive view of this aggravator, this aggravator
23 applies to all defendants on probation, on parole, or incarcerated.

24 **Expanding the Scope: Murder Committed By Person With Violent Past**

25 NRS 200.033(2) provides:

26 The murder was committed by a person who, at any time before a penalty
27 hearing is conducted for the murder pursuant to NRS 175.552, is or has been
28 convicted of:

- (a) Another murder and the provisions of subsection 12 do not otherwise

1 apply to that other murder; or

2 (b) A felony involving the use or threat of violence to the person of another
3 and the provisions of subsection 4 do not otherwise apply to that felony.

4 For the purpose of this subsection, a person shall be deemed to have been convicted
5 at the time the jury verdict of guilt is rendered or upon pronouncement of guilty by a
6 judges or judges sitting without a jury.

7 The most common legal questions concerning this aggravator address the issue of
8 timing: can the aggravator be applied where the defendant killed someone after killing the
9 victim in the instant case. The answer in Nevada is yes. In fact, the Nevada Legislature
10 amended NRS 200.033(2) to reflect that the aggravator could apply to convictions obtained
11 for murders and crimes of violence after the murder at issue in the instant case and prior to
12 the penalty hearing. See also Calambro v. State, 114 Nev. 106, 952 P.2d 946 (1998); Gallego
13 v. State, 101 Nev. 782, 711 P.2d 856 (1985). The reasoning for this view is clear: the
14 sentencing jury has the right to know about the character of the defendant as of the time of
15 sentencing, not just at the time of the crime.

16 Beyond the timing issue, Nevada jurisprudence has taken this aggravator and
17 expanded it in such a way that renders the death penalty scheme unconstitutional because
18 the jury's discretion in imposing the penalty of death is not limited at all, but expanded
19 dramatically, in violation of Furman and Gregg.

20 In Riley v. State, 107 Nev. 205, 808 P.2d 551 (1991), the Nevada Supreme Court ruled
21 that a defendant with multiple prior felonies involving violence is subject to one aggravating
22 circumstance per each prior incident of violence. Without citing any authority, the Court said
23 the legislative intent must have been to allow multiple aggravators where a defendant had
24 multiple prior violent felonies. The Riley decision ignores the plain language of the statute,
25 ignores the rules of statutory construction, and further ignores the common historic application
26 of this aggravator in Nevada and elsewhere.

27 First, the plain language of the statute suggests that if the defendant has one or more
28 felonies involving violence, then the killing is aggravated. Nothing suggests in plain language
that more than one prior felony means multiple aggravators. And when the language is clear

1 and unambiguous, the plain language of the statute should be followed. Glegola v. State, 110
2 Nev. 344, 871 P.2d 950 (1994); Ogden v. State, 96 Nev. 258, 607 P.2d 576 (1980).

3 Assuming for the sake of argument that the statute is unclear, which it is not, then the
4 law mandates that any ambiguity be resolved in favor of the criminal defendant. Demosthenes
5 v. Williams, 97 Nev. 611, 637 P.2d 1203 (1981), Sheriff v. Smith, 91 Nev. 729, 542 P.2d 440
6 (1975). Therefore, assuming the statute is not clear, then without some clear statement that
7 multiple aggravators are intended, then the defendant should get the benefit of the doubt and
8 only one aggravator should be established.

9 This issue is not one that has attracted much judicial interest because the history of this
10 aggravator clearly reflects a concern with the character of the defendant: is the defendant a
11 person with a violent past? If yes, then the crime is aggravated. If no, then the crime is not
12 aggravated. Many states have specifically drafted the statute for this aggravator to apply to
13 the defendant's criminal history in general, suggesting the aggravator either applies (one time)
14 or does not apply. See generally Annotation, "Sufficiency of Evidence, for Purposes of Death
15 Penalty, to Establish Statutory Aggravating Circumstance that Defendant Was Previously
16 Convicted of or Committed Other Violent Offense, Had History of Violent Conduct, Posed
17 Continuing Threat to Society, and the Like-Post-Gregg Cases," 65 ALR 4th 838 (1988).

18 States with statutes like Nevada's also generally use this aggravator one time, even if
19 the defendant has multiple prior violent felonies. In State v. Steelman, 126 Ariz. 19, 612 P.2d
20 475 (1980), the Arizona Supreme Court held that this aggravator was properly applied (one
21 time) to a defendant who had committed nine first degree murders and five first degree
22 robberies. There was no discussion of any possibility that the aggravator should be applied
23 fourteen times, as Nevada would apparently attempt to do. The Steelman case is cited as
24 authority, for different reasons, by the Nevada Supreme Court in Crump v. State, 102 Nev.
25 158, 162, 716 P.2d 1387, 1389 (1986).

26 Similarly, in State v. Tison, 124 Ariz. 526, 633 P.2d 335 (1981) the court held that the
27 aggravator was valid one time for 17 prior violent crimes and in People v. Hendricks, 43 Cal.
28 3d 584, 238 Cal. Rptr. 66, 737 P.2d 1350 (1987), after finding that the Defendant had been

1 previously convicted of two first degree murders, the court applied the aggravator one time.

2 A prior Nevada decision also exists where the Court affirmed the aggravator being
3 applied one time when the Defendant had a long record. In Crump v. State, 102 Nev. 158,
4 716 P.2d 1387 (1986), the defendant had seven murders, seven attempt murders, and
5 numerous robberies: the aggravator was applied one time.

6 Likewise, this statute, and the Nevada cases interpreting this statute, fail to limit the
7 number of persons eligible for the death penalty because there is no time limitation on
8 application of the aggravator. For example, in Chambers v. State, 113 Nev. 974, 944 P.2d
9 805 (1997), the Nevada Supreme Court affirmed the application of this aggravator to a robbery
10 conviction that occurred 18 years before the murder at issue.

11 The expansion of this aggravator by the Nevada Supreme Court ignores the plain
12 language of the statute, ignores the intent of the statute, and ignores the mandates of
13 constitutional law set forth in Furman and Gregg. The expansion of this aggravator adds fuel
14 to the argument that Nevada's death penalty scheme is unconstitutional.

15 **Expanding the Scope: Risk of Harm to More Than One Person**

16 NRS 200.033(3) provides:

17 The murder was committed by a person who knowingly created a great risk of
18 death to more than one person by means of a weapon, device or course of
action which would normally be hazardous to the lives of more than one person.

19 In Gregg v. Georgia, Justice Stewart expressed concern that Georgia's aggravator,
20 creating a risk of harm to more than one person, might be subject to overly broad
21 interpretations. But in affirming Georgia's statutory scheme, Stewart noted that Georgia's
22 Supreme Court had not construed this aggravator in an overly broad way, and the aggravator
23 was therefore constitutional:

24 While such a phrase might be susceptible of an overly broad interpretation, the
25 Supreme Court of Georgia has not so construed it. The only case in which the
26 court upheld a conviction in reliance on this aggravating circumstance involved
27 a man who stood up in a church and fired a gun indiscriminately into the
28 audience. See Chenault v. State, 234 Ga. 216, 215 S.E.2d 223 (1975). On the
other hand, the court expressly reversed a finding of great risk when the victim
was simply kidnaped in a parking lot. See Jarrell v. State, 234 Ga. 410, 216
S.E.2d 258, 269 (1975).

1 Justice Stewart's opinion emphasizes the importance of a Supreme Court's
2 interpretation of an aggravator, especially here where the aggravator "might be susceptible of
3 an overly broad interpretation." 428 U.S. at 202.

4 The Nevada Supreme Court's interpretation of this aggravator has expanded rather
5 than limited the reach of this aggravator. Under Nevada's interpretation, which is clearly
6 unconstitutional, if the defendant fires a gun and more than one person is nearby, then the
7 defendant has knowingly created a risk of harm to more than one person. See Lisle v. State,
8 113 Nev. 540, 937 P.2d 473 (1997) (aggravator affirmed whether defendant fired his gun at
9 the driver of another vehicle from a fairly close range while the two vehicles were moving);
10 Moran v. State, 103 Nev. 138, 734 P.2d 712 (1987) (firing a gun at the victim with another
11 person nearby did satisfy the requirements of the aggravator); Nevius v. State, 101 Nev. 238,
12 669 P.2d 1053 (1985) (aggravator upheld where defendant fired shot at victim with victim's
13 wife in the same room).

14 This analysis and application by the Nevada Supreme Court is far too general and
15 ignores the essential issue of who is in the actual zone of danger. In State v. Smith, 707 P.2d
16 289 (Ariz. 1985), an Arizona appellate court noted that firing a gun in a public place does not
17 necessarily equate to risk of harm to more than one person. There mere fact that other
18 persons could have been shot is not sufficient. The murderous act itself must actually put
19 others in the zone of danger.

20 Most courts considering the issue have focused on the nature of the murderous act, the
21 actual proximity of other people to the victim, the actual zone of danger, the defendant's intent
22 to harm one person or more than one person, the defendant's knowledge of other people
23 nearby, whether other people were actually hurt, or whether other people were threatened.
24 Annotation, "Sufficiency of Evidence, for Purposes of Death Penalty, to Establish Statutory
25 Aggravating Circumstance that in Committing Murder, Defendant Created Risk of Death or
26 Injury to More than One Person, to Many Persons, and the Like-Post-Gregg cases.," 64 ALR
27 4th 837, 847 (1988).

28 Despite the clear opportunity to read this aggravator in a restrictive manner, and

1 thereby limit the number of persons eligible for the death penalty, the Nevada Supreme Court
2 has chosen to broaden the scope of this aggravating circumstance.

3 **Expanding the Scope: Commission of an underlying felony**

4 NRS 200.033(4) states:

5 The murder was committed while the person was engaged, alone or with others,
6 in the commission of or an attempt to commit or flight after committing or
7 attempting to commit, any robbery, arson in the first degree, burglary or
8 kidnapping in the first degree, and the person charged:

9 (a) Killed or attempted to kill the person murdered;
10 or

11 (b) Knew or had reason to know that life would be
12 taken or lethal force used.

13 The Nevada Supreme Court has held that each, enumerated crime committed during
14 a murder constitutes a separate aggravating circumstance and that when the defendant is
15 convicted of felony-murder, the underlying felony does not merge and can be used as an
16 aggravator. Farmer v. State, 101 Nev. 419, 421, 705 P.2d 149 (1985); Miranda v. State, 101
17 Nev. 562, 569, 707 P.2d 1121 (1985). It has also held that a defendant need not be charged
18 with or convicted of one of the enumerated felonies before the jury may find the aggravator
19 applicable. Rippo v. State, 113 Nev. 1239, 946 P.2d 1017 (1997).

20 Under Nevada law, all murder that occurs in the perpetration of robbery or another
21 enumerated felony is murder of the first degree. Echavarria v. State, 108 Nev. 734, 839 P.2d
22 589 (1992); State v. Williams, 28 Nev. 395, 82 P. 353 (1905); State v. Sala, 63 Nev. 270, 169
23 P.2d 524 (1946). Accordingly, this aggravator permits imposition of the death penalty on
24 defendants who did not premeditate, deliberate, or intend the death of the victim. Petrocelli
25 v. State, 101 Nev. 46, 692 P.2d 503 (1985).

26 The result of this expansive interpretation is to make every felony murder situation
27 eligible for the death penalty. And that expansive interpretation combined with the fact that
28 most killings in Nevada are alleged as felony murder killings, renders Nevada's scheme
meaningless for restricting a jury's discretion in imposing the death penalty.

1 **Expanding the Scope: Avoid Lawful Arrest**

2 NRS 200.033(5) states:

3 The murder was committed to avoid or prevent a lawful arrest or to effect an
4 escape from custody.

5 The Nevada Supreme Court has interpreted this to mean that the aggravating
6 circumstance applies if the murder was committed to avoid some eventual, theoretical arrest.
7 The "arrest" need not be "imminent" and the person murdered need not be "effectuating the
8 arrest" in order for the aggravator to apply. Cavanaugh v. State, 102 Nev. 478, 486, 729 P.2d
9 481 (1986); see also Williams v. State, 103 Nev. 227, 232, 737 P.2d 508 (1987) (avoiding
10 arrest aggravator applies to killing of sleeping victim who was unaware that defendant was
11 burglarizing house).

12 The truly bizarre nature of this aggravator can be found in Canape v. State, 109 Nev.
13 864, 859 P.2d 1023 (1993). In Canape, the victim ran out of gas while driving his car, asked
14 the defendant for a ride to a gas station, and was robbed and killed by the defendant.
15 Because the defendant robbed the victim and because the victim could identify the defendant,
16 the Nevada Supreme Court held that sufficient evidence existed to prove the aggravator that
17 the defendant killed the victim to avoid arrest. In other words, in any situation where a
18 defendant kills a victim, and the victim would have knowledge of any crime by the defendant,
19 Nevada jurisprudence assumes the killing occurred to stop a lawful arrest.

20 **Expanding the Scope: Killing for money**

21 NRS 200.033(6) states:

22 The murder was committed by a person, for himself or another, for the
23 purpose of receiving money or any other thing of monetary value.

24 This aggravator is nothing more than a duplicate circumstance in all cases where the
25 murder was committed during the course of a robbery or burglary, and perhaps kidnapping.
26 See Lane v. State, 114 Nev. 299, 956 P.2d 88 (1998) (aggravator applies if the defendant can
27 be charged with two offenses based on the facts, but not in limited circumstances where the
28 defendant commits robbery and receives money directly from the robbery) (citing Guy v. State,
108 Nev. 770, 839 P.2d 578 (1992) (evidentiary basis existed for both the robbery and

1 receiving money aggravating circumstances), cert. denied, 507 U.S. 1009 (1993) and Bennett
2 v. State, 106 Nev. 135, 787 P.2d 797 (concluding that if both aggravators can be charged as
3 separate crimes, then each crime can be used as an aggravating circumstance), cert. denied,
4 498 U.S. 925 (1990). As such, this aggravator in no fashion provides any "meaningful basis
5 for distinguishing the few [murder] cases in which [the death penalty] is imposed from the
6 many in which it is not." Godfrey, 446 U.S. 420, 427-8, 100 S.Ct. 1759, 1764. "The pecuniary-
7 gain aggravating circumstance, accordingly, fails to accomplish the narrowing or distinguishing
8 objective set out in Godfrey." Woodward v. Sargent, 806 F.2d 153, 156 (8th Cir. 1986).

9 **Enlarging the Scope: Killing a Peace Officer**

10 NRS 200.033(7) states:

11 The murder was committed upon a peace officer or fireman who
12 was killed while engaged in the performance of his official duty or
13 because of an act performed in his official capacity, and the
14 defendant knew or reasonably should have known that the victim
15 was a peace officer or fireman. For the purposes of this
16 subsection, "peace officer" means:

17 (a) An employee of the department of prisons who does
18 not exercise general control over offenders
19 imprisoned within the institutions and facilities of the
20 department but whose normal duties require him to
21 come into contact with those offenders, when
22 carrying out the duties prescribed by the director of
23 the department.

24 (b) Any person upon whom some or all of the powers of
25 a peace officer are conferred pursuant to NRS
26 289.150 to 289.360, inclusive, when carrying out
27 those powers.

28 Included within the ambit of this aggravator would be murders committed on sheriffs
and their deputies, firemen, marshals and police officers, the chief and agents of the
investigation division of the Department of Motor Vehicles, all "personnel" of the Highway
Patrol, and all employees of the Department of Prisons.

25 **Expanding the Scope: Torture or mutilation**

26 NRS 200.033(8) states:

27 The murder involved torture or the mutilation of the victim.

28 A review of Nevada case law addressing this aggravator reveals that the Nevada

1 Supreme Court has been very inconsistent. On the one hand, the Nevada Supreme Court has
2 ruled that torture exists only if there is a specific intent to inflict pain for pain's sake or for
3 punishment or sadistic pleasure. Dominguez v. State, 112 Nev. 683, 917 P.2d 1364, cert.
4 denied, 117 S.Ct. 396 (1996). Mutilation has been defined as the cutting off or permanently
5 destroying a limb or essential part of the body or to cut off or alter radically so as to make
6 imperfect. Jones v. State, 113 Nev. Adv. Op. 48 (1997); Smith v. State, 114 Nev. 33, 953 P.2d
7 264 (1998).

8 However, the court has taken the plain language of the statute for this aggravator and
9 expanded it in Robbins v. State, 106 Nev. 611, 798 P.2d 558 (1990). In Robbins, the court
10 construed NRS 200.033(8) to require "torture, mutilation or other serious and depraved
11 physical abuse beyond the act of killing itself."

12 Factually, the court has applied this aggravator to situations not involving torture and
13 mutilation. See, e.g., Jones v. State, 113 Nev. 454, 937 P.2d 55 (1998) (majority, over strong
14 dissents, affirms application of aggravator based upon multiple stab wounds); Browne v. State,
15 113 Nev. 305, 933 P.2d 187 (1987) (Blunt trauma which destroys the brain sufficient to support
16 finding of mutilation); Wesley v. State, 112 Nev. 503, 916 P.2d 793 (1996) (The aggravator exists
17 where the victim's skull was chipped by the stabbing).

18 **Expanding the Scope: Random Murder**

19 NRS 200.033(9) provides as follows:

20 The murder was committed upon one or more persons at random
21 and without apparent motive.

22 There is little question that this aggravator has been greatly expanded in its application
23 by the Nevada Supreme Court. Indeed, the Court routinely applies this aggravator to
24 numerous situations where it is obvious that the murder is neither random nor without
25 apparent motive. Because of the expansive interpretation of this aggravator, it could be
26 applied to every case in which the murder is not deemed necessary, or in other words, to
27 every murder.

28 The Nevada Supreme Court has held that this aggravating circumstance applies where

1 the defendant is also convicted of robbery of the murder victim, thereby establishing a motive
2 for the murder. Moran v. State, 103 Nev. 138, 734 P.2d 712 (1987). See also, Lane v. State,
3 114 Nev. 299, 956 P.2d 88 (1998) (affirming robbery and random aggravators); Calambro v.
4 State, 114 Nev. 961, 952 P.2d 946 (1998) (affirming random aggravator where accomplice
5 had motive to kill victim and murder was committed during the course of a robbery); Leslie v.
6 State, 114 Nev. 8, 952 P.2d 966 (1998) (affirming aggravator of random and motiveless, and
7 also affirming aggravator of murder committed during the course of a robbery or burglary or
8 during flight after robbery or burglary because defendant received money from store clerk and
9 could have left store unfettered, but killed the clerk anyway); Nika v. State, 113 Nev. 1424, 951
10 P.2d 1047 (1997) (affirming aggravator, over strong dissent, where defendant was angry with
11 victim and where defendant incapacitated victim with blows from a crowbar and did not have
12 to fire fatal shot in order to take the victim's car). The random and motiveless aggravator has
13 been interpreted by the Supreme Court as applying whenever the killing is "not necessary" to
14 accomplish the defendant's purpose. Bennett v. State, 106 Nev. 135, 143, 787 P.2d 797
15 (1990). This interpretation makes every murder a capital one, except those in which the killing
16 of the victim is a necessary precondition to the accomplishment of the defendant's purpose,
17 as in a killing in order to collect insurance proceeds. (That situation would be covered by the
18 pecuniary gain aggravator).

19 Nevada appears to be the only state in the country that employs this aggravator. See
20 Nika v. State, 113 Nev. 1424, 951 P.2d 1047, 1058 n.1 (1997) (Springer, C.J. dissenting).
21 This aggravator alone is sufficient to find that Nevada's death penalty scheme is
22 unconstitutional because it fails to narrowly define the few individuals who are eligible for the
23 death penalty, and instead permits the State to seek the death penalty against all persons
24 accused of first degree murder.

25 **Expanding The Scope: Murder of person less than 14 years of age.**

26 Like felony-murder, Nevada law provides that a person may be convicted of first degree
27 murder when a homicide occurs as the result of child abuse, even if the defendant does not
28 intend to kill the child. "The child-abuse murder statute is analogous to felony murder in that

1 it is particularized and eliminates the traditional elements of first-degree murder: premeditation
2 and deliberation. Not until 1989, when the legislature amended NRS.200.508(1)(b), did
3 child-abuse murder become first-degree murder without the necessity of proving 'willfulness,
4 deliberation or premeditation.' After passage of the amendment, all child abuse which results
5 in death is, without more, first-degree murder. Child abuse, according to NRS 200.508 is
6 committed by willfully causing a child to suffer unjustifiable physical pain or mental suffering
7 or willfully placing a child 'in a situation where the child may suffer physical pain or mental
8 suffering as the result of abuse and neglect.'" Labastida v. State, 112 Nev. 1502, 931 P.2d
9 1334, 1348-49 (1996) (Springer, J. dissenting). See also Williams v. State, 110 Nev. 1182,
10 1188, 885 P.2d 536, 540 (1994) ("Any person of ordinary intelligence who contemplates
11 causing the purposeful, or non-accidental, injury of a child should be readily aware, based
12 upon a plain reading of NRS 200.030(6)(a), that such conduct constitutes child abuse, and,
13 if the abuse results in the death of the child, could subject the perpetrator to a conviction of
14 first-degree murder.").

15 The application of this aggravator, which permits imposition of the death penalty where
16 the victim is under the age of 14, when applied to NRS 200.030, which permits a finding of
17 first-degree murder in child abuse and neglect cases where the defendant did not intend the
18 death of the victim, results in a system which permits the ultimate penalty for a unintentional
19 murder. Moreover, because NRS 200.030 permits a finding of first degree murder even if the
20 defendant was not the actual abuser, this aggravator permits imposition of the death penalty
21 upon a defendant who does not actually ever physically harm the child in any manner, but
22 merely fails to prevent another from harming the child.

23 **Failure To Limit Imposition Of The Death Penalty On Children and Mentally**
24 **Retarded Adults Further Enhances The Broad Scope of The Death Penalty Scheme In**
25 **Nevada**

26 Despite repeated requests from persons sentenced to die, the Nevada Supreme Court
27 has refused to limit the application of the death penalty to adults and mentally competent
28 defendants. For example, in Domingues v. State, 114 Nev. 783, 961 P.2d 1279 (1998), the

1 Nevada Supreme Court concluded that a defendant who was 16 years old at the time of his
2 offense could be executed, despite an international treaty that was signed by the United States
3 which prohibited the execution of children who committed an offense while under the age of
4 18. In Hill v. State, 114 Nev. 169, 953 P.2d 1077 (1998), the Nevada Supreme Court
5 concluded that the execution of a mentally retarded defendant was not cruel and unusual
6 punishment.

7 **The Cumulative Effect of the Expansion of These Aggravators is to Render**
8 **Nevada's Death Penalty Scheme Arbitrary.**

9 As can be seen from the aggravating circumstances set forth above, it is difficult to see
10 what murder would not qualify for imposition of the death penalty. In addition, the vagueness
11 of the statutory scheme invites abuse of all vague enactments, which is arbitrary and
12 capricious enforcement: since every murder can be a capital one, both charging decisions,
13 and ultimate penalty decisions are likely to be affected by arbitrary and discriminatory factors,
14 because that discretion is not subjected to any real standards. As such, Nevada's death
15 penalty scheme fails to narrow the class of eligible defendants and is impermissibly vague,
16 and is unconstitutional.

17 **Nevada's Death Penalty Statute is Unconstitutionally Vague Since it Allows the**
18 **use of Unspecified Non-Statutory Aggravating Circumstances.**

19 The defense asserts that use of non-statutory aggravating circumstances violates the
20 Defendant's rights under the Due Process Clause and the Eighth Amendment. At trial, the jury
21 will be instructed that they may consider **all** of the evidence that was presented at trial- during
22 either the guilt or penalty phases. The jury is not advised as to what is and is not appropriate
23 aggravating circumstances.

24 The defense asserts that the failure to instruct the jury as to what does and does not
25 constitute aggravating circumstances renders Nevada's death penalty statutes
26 unconstitutionally vague and results in cruel and unusual punishment.

27 Additionally, the failure to instruct the jury as to the procedure for considering non-
28 statutory aggravating circumstances also renders the statute vague. The Nevada Supreme

1 Court has repeatedly held that the jury must first consider whether there are statutory
2 aggravating circumstances present sufficient to outweigh any mitigating circumstances prior
3 to the consideration of any non-statutory aggravating circumstances. See e.g., Gallego v.
4 State, 101 Nev. 782, 791, 711 P.2d 856 (1985) ("If the death penalty option survives the
5 balancing of aggravating and mitigating circumstances, Nevada law permits consideration by
6 the sentencing panel of other evidence relevant to sentence.") Since the statutes do not
7 provide adequate guidance, the death penalty charge must be stricken.

8 The defense asserts that the failings evident in the statutes, and the application of the
9 statutes, violate the Due Process Clause and the Eighth Amendment.

10 **NRS 200.033 Plainly States That Only the Aggravating Circumstances Set Forth**
11 **in the Statute May Be Used as Aggravating Circumstance and Evidence at Trial Should**
12 **Be Restricted to Those Circumstances.**

13 NRS 200.033 states that "The only circumstances by which murder of the first degree
14 may be aggravated are: 'the circumstances enumerated therein.'" The Nevada Supreme
15 Court has held that NRS 200.033 does not mean what it says and should be read *in pari*
16 *materia* with NRS 175.552. The Court has held that NRS 175.552 allows "any other matter
17 which the court deems relevant to sentence" to be admitted during the penalty hearing. The
18 defense asserts that the Court's holding is contrary to the plain language of NRS 200.033. He
19 further asserts that the Court's holding violates his right to Due Process under the United
20 States Constitution.

21 In addition, the Nevada statute, as interpreted by the Supreme Court, permitting
22 introduction at the penalty phase of "evidence outside the [] areas of aggravating
23 circumstances," Allen v. State, 99 Nev. 485, 488, 665 P.2d 239, 240 (1983), is
24 unconstitutionally vague. The Supreme Court has held that "dubious, tenuous" evidence
25 should not be admitted, *id.*, and has held that an informer's testimony of an alleged admission
26 by the defendant that he committed another murder, of which there was no other evidence,
27 should not be admitted. D'Agostino v. State, 107 Nev. 1001, 823 P.2d 283, 284-285 (1991).
28 Otherwise, the trial court has standardless discretion to admit "any ... matter which the court

1 deems relevant to sentence, whether or not the evidence is ordinarily admissible," NRS
2 175.552; Allen v. State, supra, 99 Nev. at 488, 665 P.2d at 240, which the jury may then weigh
3 in making its penalty determination.

4 In Stringer v. Black, 503 U.S. 222 (1992), the Supreme Court held that aggravating
5 factors used in the jury's determination of the appropriate penalty cannot be unconstitutionally
6 vague:

7 "Although our precedents do not require the use of aggravating factors, they
8 have not permitted a State in which aggravating factors are decisive to use
9 factors of vague or imprecise content. A vague aggravating factor employed for
10 the purpose of determining whether a defendant is eligible for the death penalty
11 fails to channel the sentencer's discretion. A vague aggravating factor used in
12 the weighing process is in a sense worse, for it creates the risk that the jury will
13 treat the defendant as more deserving of the death penalty than he might
14 otherwise be by relying upon the existence of an illusory circumstance."

15 Id. at 231.

16 The vague, standardless and open-ended discretion of the trial court to admit evidence
17 in the penalty phase results in the same violation of due process and of the right to a reliable
18 sentence which arises from a vague aggravating circumstance used to establish death
19 eligibility. See Maynard v. Cartwright, 486 U.S. 356, 363 (1988). See also Cartwright v.
20 Maynard, 822 F.2d 1477, 1491 (10th Cir. 1987), aff'd, 486 U.S. 356 (1988). Accordingly, the
21 Nevada statute, as interpreted by the Supreme Court, is unconstitutional, and the death
22 penalty cannot be imposed upon the defendant.

23 **The Defendant's Right to Due Process Is Violated by the Failure to Require the**
24 **Jury to Specify Which Mitigating Circumstances Set Forth in Penalty Phase Jury**
25 **Instructions Were Considered and Rejected since this Deprived the Defendant of**
26 **Effective Appellate Review.**

27 CHAPPELL asserts that the failure to require the jury to specify which mitigating
28 circumstances, if any, it considered in his favor violates his right to effective appellate review.
As such his rights under the Due Process Clause and the Eighth Amendment will be violated
unless such instructions are given.

He further asserts that the failure to require the jury to recite some indication that it has

1 considered the various possible mitigating factors deprives a defendant of due process and
2 meaningful appellate review. While there is no requirement that there be an exhaustive
3 memorialization of the jury's consideration, some documentation is required.

4 The due process clause does not require that the sentencing court exhaustively
5 document its analysis of each mitigating factor as long as a reviewing federal
6 court can discern from the record that the state court did indeed consider all
mitigating evidence offered by the defendant. Clark v. Ricketts, 958 F.2d 851,
859 (9th Cir. 1991)

7 Here, all the jury will be required to state is that they found that "there are no mitigating
8 circumstances sufficient to outweigh the aggravating circumstance or circumstances found."
9 The jury will not be required to state if they considered any mitigating circumstances.

10 Contrast the lack of any record here with that provided in Clark.

11 [t]he sentencing court acknowledged the existence of evidence in mitigation
12 concerning Clark's poor work history, poor heterosexual relations; a drug history;
13 heavy drinking with acting out; repeated arrests; excessive physical aggression;
14 sexual promiscuity; suicidal attempts; impulsive behavior with rage, blackouts;
15 severe school problems with acting out things; authority figures; vagrancy and
16 residential instability; magnitude of amniotic complaints that interfere[d] with
daily function frequently; pathological lying; lack of friends and close associates;
lack of guilt about exploits and crimes including lack of insight, correction, lack
of insight full corrective capacity; reckless use with early family indulgence in the
use of guns from age 4; and disintegrated brutalized family life.

17 Clark, at 858-9.

18 CHAPPELL asserts that the failure to require the jury to give some specificity as to the
19 mitigation evidence considered renders Nevada's death penalty statute unconstitutional. As
20 such, the death penalty cannot be imposed.

21 **The Death Penalty Is Cruel and Unusual Punishment in All Circumstances and Is**
22 **Prohibited by the Eighth Amendment to the United States Constitution.**

23 CHAPPELL recognizes, of course, that the United States Supreme Court has
24 repeatedly upheld the general constitutionality of the death penalty, as has the Nevada
25 Supreme Court. However, given the fact that the Supreme Court's present adherence to the
26 doctrine of *stare decisis* has become increasingly tenuous, see Walton v. Arizona, 497 U.S.
27 639, 670 (1990) (Scalia, J., concurring), the defendant asserts and preserves the argument
28 that the death penalty is in all circumstances a cruel and unusual punishment under the Eight

1 death penalty statutory scheme is unconstitutional, and he asks this Honorable Court to strike
2 the Notice of Intent to Seek the Death Penalty filed by the State.

3 Dated this 18 day of September, 2006.

4 RESPECTFULLY SUBMITTED:

5 DAVID M. SCHIECK
6 SPECIAL PUBLIC DEFENDER

7 

8 DAVID M. SCHIECK
9 CLARK W. PATRICK
10 330 S. Third Street, Ste. 800
11 Las Vegas, NV 89155
12 ATTORNEY FOR CHAPPELL
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SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

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Shirley L. Paragrine
CLERK

0001
DAVID M. SCHIECK
SPECIAL PUBLIC DEFENDER
Nevada Bar No. 0824
CLARK W. PATRICK
Deputy Special Public Defender
Nevada Bar No. 9451
330 S. Third St., Ste. 800
Las Vegas NV 89155-2316
(702)455-6265
Attorneys for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,
vs.
JAMES CHAPPELL,
Defendant.

CASE NO. C 131341
DEPT. NO. XVII

DATE: N/A
TIME: N/A

CERTIFICATE OF MAILING

I hereby certify that service of the following motions

1. Motion to Strike Sexual Assault Aggravator of the State's Notice of Intent to seek the Death Penalty or in the Alternative, Motion in Limine to Allow Defendant to Introduce Evidence in Defense of Sexual Assault;
2. Motion to Dismiss State's Notice of Intent to Seek Death Penalty Because Nevada's Death Penalty Statute is Unconstitutional;
3. Motion to Bifurcate Penalty Phase;
4. Motion to Allow Jury Questionnaire;
5. Motion in Limine to Limit Penalty Hearing Evidence to Avoid Violation of the Eighth Amendment and Due Process Right to a Fundamentally Fair Penalty Hearing;
6. Notice of Motion and Motion for Discovery of Potential Penalty Hearing Evidence;
7. Motion to Remand for Consideration by the Clark County District Attorney's Death Review Committee.


COUNTY CLERK
SEP 21 2006
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SPECIAL PUBLIC
DEFENDER
CLARK COUNTY
NEVADA

310

1 was made September 20, 2006, by depositing a copy in the U.S. Mail, postage prepaid,
2 addressed to: District Attorney's Office, 200 Lewis Ave., 3rd Floor, Las Vegas NV 89155.

3 DATED: 9/20/06

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6 An employee of the Special Public Defender
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SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

Shirley Branson
CLERK

1 **OPPS**
2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 CHRIS J. OWENS
6 Chief Deputy District Attorney
7 Nevada Bar #001190
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

7 DISTRICT COURT
8
9 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,)

10 Plaintiff,)

11 -vs-)

12 JAMES MONTELL CHAPPELL,
13 #1212860)

14 Defendant.)

CASE NO: C131341

DEPT NO: XVII

15 STATE'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS STATE'S NOTICE
16 OF INTENT TO SEEK DEATH PENALTY BECAUSE NEVADA'S DEATH PENALTY
17 IS UNCONSTITUTIONAL

18 DATE OF HEARING: 10/3/06
19 TIME OF HEARING: 8:30 A.M.

20 COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through
21 CHRIS J. OWENS, Chief Deputy District Attorney, and hereby submits the attached Points
22 and Authorities in Opposition to Defendant's Motion To Dismiss State's Notice Of Intent To
23 Seek Death Penalty Because Nevada's Death Penalty Is Unconstitutional.

24 This opposition is made and based upon all the papers and pleadings on file herein,
25 the attached points and authorities in support hereof, and oral argument at the time of
26 hearing, if deemed necessary by this Honorable Court.

27 //

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POINTS AND AUTHORITIES

ARGUMENT

The Constitutionality of Nevada death penalty law was previously raised by the Defendant in his Supplemental Petition for Writ of Habeas Corpus, originally filed October 19, 1999, Issue 22, and in his Notice of original petition filed January 17, 1997, Issue 8. It was rejected by the Supreme Court in its Order of Affirmance No. 43493, filed April 7, 2006. See also *Colwell v. State*, 112 Nev. 807, 814, 919 P.2d 403, 408 (1996). Furthermore, in the opinion deciding the Defendant's direct appeal, the Court specifically found that, "the death sentence Chappell received was not excessive considering the seriousness of his crimes and Chappell as a person." *Chappell v. State*, 114 Nev. 1403, 1411, 972 P.2d 838 (1998). Accordingly, the Defendant's Motion to Dismiss State's Notice of Intent to Seek Death Penalty should be denied.

DATED this 29th day of September, 2006.

Respectfully submitted,

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781

BY /s/ CHRIS J. OWENS
CHRIS J. OWENS
Chief Deputy District Attorney
Nevada Bar #001190

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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of the above and foregoing, was made this 29th day of
September, 2006, by facsimile transmission to:

SPECIAL PUBLIC DEFENDER
FAX#455-6273

BY /s/ M. Beaird
Employee of the District Attorney's Office

/mb

Shirley Blumstein
CLERK

1 **OPPS**
2 **DAVID ROGER**
3 **Clark County District Attorney**
4 **Nevada Bar #002781**
5 **CHRIS J. OWENS**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #001190**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

7 **DISTRICT COURT**
8
9 **CLARK COUNTY, NEVADA**

10 **THE STATE OF NEVADA,**
11 **Plaintiff,**

12 **-vs-**

13 **JAMES MONTELL CHAPPELL,**
14 **#1212860**
15 **Defendant.**

CASE NO: C131341

DEPT NO: XVII

16 **STATE'S OPPOSITION TO DEFENDANT'S MOTION TO REMAND FOR**
17 **CONSIDERATION BY THE CLARK COUNTY DISTRICT ATTORNEY'S DEATH**
18 **REVIEW COMMITTEE**

19 **DATE OF HEARING: 10/3/06**
20 **TIME OF HEARING: 8:30 A.M.**

21 **COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through**
22 **CHRIS J. OWENS, Chief Deputy District Attorney, and hereby submits the attached Points**
23 **and Authorities in Opposition to Defendant's Motion To Remand For Consideration By The**
24 **Clark County District Attorney's Death Review Committee.**

25 **This opposition is made and based upon all the papers and pleadings on file herein,**
26 **the attached points and authorities in support hereof, and oral argument at the time of**
27 **hearing, if deemed necessary by this Honorable Court.**

28 **//**

//

1 POINTS AND AUTHORITIES

2 ARGUMENT

3 Charging choices, including the decision to seek the death penalty, is a discretionary
4 function of the prosecution protected by the doctrine of Separation of Powers. Nev. Const.
5 art. 3, § 1, *Schoels v. State*, 114 Nev. 981, 966 P.2d 735 (1998). Accordingly, the
6 Defendant's attempt to control the process from other venues in his Motion to Remand for
7 Consideration by the Clark County District Attorney's Death Review Committee, should be
8 denied.

9 DATED this 29th day of September, 2006.

10 Respectfully submitted,

11 DAVID ROGER
12 Clark County District Attorney
13 Nevada Bar #002781

14
15 BY /s/ M. Beaird

16 CHRIS J. OWENS
17 Chief Deputy District Attorney
18 Nevada Bar #001190

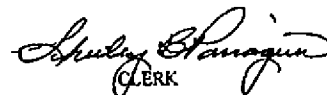
19 CERTIFICATE OF FACSIMILE TRANSMISSION

20 I hereby certify that service of the above and foregoing, was made this 29th day of
21 September, 2006, by facsimile transmission to:

22 SPECIAL PUBLIC DEFENDER
23 FAX#455-6273

24
25 BY /s/ M. Beaird
26 Employee of the District Attorney's Office

27 /mb
28


CLERK

OPPS

DAVID ROGER
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(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JAMES MONTELL CHAPPELL,
#1212860

Defendant.

CASE NO: C131341

DEPT NO: XVII

STATE'S OPPOSITION TO DEFENDANT'S MOTION

TO ALLOW JURY QUESTIONNAIRE

DATE OF HEARING: 10/3/06
TIME OF HEARING: 8:30 A.M.

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through
CHRIS J. OWENS, Chief Deputy District Attorney, and hereby submits the attached Points
and Authorities in Opposition to Defendant's Motion To Allow Jury Questionnaire.

This opposition is made and based upon all the papers and pleadings on file herein,
the attached points and authorities in support hereof, and oral argument at the time of
hearing, if deemed necessary by this Honorable Court.

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1 POINTS AND AUTHORITIES

2 ARGUMENT

3 The Defendant's request for a jury questionnaire has already been heard and
4 determined by the court. The current request is submitted to the discretion of the Court in
5 consideration of NRS 175.031 and Eighth Judicial District Court Rule 7.70.

6 DATED this 29th day of September, 2006.

7 Respectfully submitted,

8 DAVID ROGER
9 Clark County District Attorney
Nevada Bar #002781

10
11
12 BY /s/ CHRIS J. OWENS
13 CHRIS J. OWENS
14 Chief Deputy District Attorney
Nevada Bar #001190

15
16
17 CERTIFICATE OF FACSIMILE TRANSMISSION

18 I hereby certify that service of the above and foregoing, was made this 29th day of
19 September, 2006, by facsimile transmission to:

20 SPECIAL PUBLIC DEFENDER
21 FAX#455-6273

22
23 BY /s/ M. Beaird
24 Employee of the District Attorney's Office

25
26
27 /mb
28

Spuling Chappell
CLERK

1 **OPPS**
2 **DAVID ROGER**
3 **Clark County District Attorney**
4 **Nevada Bar #002781**
5 **CHRIS J. OWENS**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #001190**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,)

10 Plaintiff,)

11 -vs-)

12 JAMES MONTELL CHAPPELL,
13 #1212860)

14 Defendant.)

CASE NO: C131341

DEPT NO: XVII

15 STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR DISCOVERY OF
16 POTENTIAL PENALTY HEARING EVIDENCE

17 DATE OF HEARING: 10/3/06

18 TIME OF HEARING: 8:30 a.m.

19 COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through
20 CHRIS J. OWENS, Chief Deputy District Attorney, and hereby submits the attached Points
21 and Authorities in Opposition to Defendant's Motion For Discovery Of Potential Penalty
22 Hearing Evidence.

23 This opposition is made and based upon all the papers and pleadings on file herein,
24 the attached points and authorities in support hereof, and oral argument at the time of
25 hearing, if deemed necessary by this Honorable Court.

26 **POINTS AND AUTHORITIES**

27 **ARGUMENT**

28 The Defendant's request that the State "immediately supply to Chappell 'any and all

1 evidence' to be presented at the penalty hearing," is in direct violation of the plain language
2 of Supreme Court Rule 250, including the time constraints contained therein. Accordingly,
3 the Defendant's Motion For Discovery of Potential Penalty Hearing Evidence should be
4 denied.

5 DATED this 29th day of September, 2006.

6 Respectfully submitted,

7 DAVID ROGER
8 Clark County District Attorney
9 Nevada Bar #002781

10
11 BY /s/ CHRIS J. OWENS

12 CHRIS J. OWENS
13 Chief Deputy District Attorney
14 Nevada Bar #001190

15 CERTIFICATE OF FACSIMILE TRANSMISSION

16 I hereby certify that service of the above and foregoing, was made this 29th day of
17 September, 2006, by facsimile transmission to:

18 SPECIAL PUBLIC DEFENDER
19 FAX#455-6273

20
21 BY /s/ M. Beaird
22 Employee of the District Attorney's Office

23
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27 /mb
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DAVID ROGER
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(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JAMES MONTELL CHAPPELL,
#1212860

Defendant.

CASE NO: C131341

DEPT NO: XVII

STATE'S OPPOSITION TO DEFENDANT'S MOTION TO STRIKE SEXUAL ASSAULT
AGGRAVATOR OF THE STATE'S NOTICE OF INTENT TO SEEK THE DEATH
PENALTY OR, IN THE ALTERNATIVE, MOTION IN LIMINE TO ALLOW
DEFENDANT TO INTRODUCE EVIDENCE IN DEFENSE OF SEXUAL ASSAULT

DATE OF HEARING: 10/3/06
TIME OF HEARING: 8:30 a.m.

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through
CHRIS J. OWENS, Chief Deputy District Attorney, and hereby submits the attached Points
and Authorities in Opposition to Defendant's Motion To Strike Sexual Assault Aggravator
Of The State's Notice Of Intent To Seek The Death Penalty, Or, In The Alternative, Motion
In Limine To Allow Defendant To Introduce Evidence In Defense Of Sexual Assault.

This opposition is made and based upon all the papers and pleadings on file herein,
the attached points and authorities in support hereof, and oral argument at the time of
hearing, if deemed necessary by this Honorable Court.

1 POINTS AND AUTHORITIES

2 ARGUMENT

3 The Defendant's motion to strike the remaining sexual assault aggravator is in blatant
4 conflict with the ruling of the Supreme Court in this matter in its decision of April 7, 2006,
5 Case No. 43493, Order of Affirmance: "But most important, there is evidence in the record
6 that could support finding not only that Chappell committed a sexual assault but that he did
7 so with a criminal purpose distinct from the burglary and robbery. Therefore, based on the
8 record before us, we conclude that the aggravator based upon sexual assault remains viable."
9 At p. 13. The Court made an identical finding regarding the factual sufficiency of this
10 aggravator in the direct appeal as well. *Chappell v. State*, 114 Nev. 1403, 1411, 972 P.2d 838
11 (1998). Accordingly, the Defendant's Motion to Strike Sexual Assault Aggravator should be
12 denied.

13 DATED this 29th day of September, 2006.

14 Respectfully submitted,

15 DAVID ROGER
16 Clark County District Attorney
17 Nevada Bar #002781

18 BY /s/ CHRIS J. OWENS

19 CHRIS J. OWENS
20 Chief Deputy District Attorney
21 Nevada Bar #001190
22
23
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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of the above and foregoing, was made this 29th day of
September, 2006, by facsimile transmission to:

SPECIAL PUBLIC DEFENDER
FAX#455-6273

BY /s/ M. Beaird
Employee of the District Attorney's Office

/mb



CLERK

1 **OPPS**
 2 DAVID ROGER
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 9 Las Vegas, Nevada 89155-2212
 10 (702) 671-2500
 11 Attorney for Plaintiff

7 DISTRICT COURT
 8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,)

10 Plaintiff,)

11 -vs-)

12 JAMES MONTELL CHAPPELL,
 13 #1212860)

14 Defendant.)

CASE NO: C131341

DEPT NO: XVII

15 STATE'S OPPOSITION TO DEFENDANT'S MOTION TO
 16 BIFURCATE PENALTY PHASE

17 DATE OF HEARING: 10/3/06
 18 TIME OF HEARING: 8:30 A.M.

19 COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through
 20 CHRIS J. OWENS, Chief Deputy District Attorney, and hereby submits the attached Points
 21 and Authorities in Opposition to Defendant's Motion To Bifurcate Penalty Phase.

22 This opposition is made and based upon all the papers and pleadings on file herein,
 23 the attached points and authorities in support hereof, and oral argument at the time of
 24 hearing, if deemed necessary by this Honorable Court.

25 POINTS AND AUTHORITIES

26 ARGUMENT

27 The Defendant's request for a bifurcation of the penalty phase is in direct violation of
 28 the plain language of NRS 175.552, which mandates a single penalty hearing for the

1 presentation of all evidence. *Accord, Weber v. State*, 121 Nev., Advance Opinion 57 (2005).
2 Accordingly, the Defendant's Motion to Bifurcate Penalty Phase should be denied.

3 DATED this 29th day of September, 2006.

4 Respectfully submitted,

5 DAVID ROGER
6 Clark County District Attorney
7 Nevada Bar #002781

8
9 BY /s/ CHRIS J. OWENS
10 CHRIS J. OWENS
11 Chief Deputy District Attorney
12 Nevada Bar #001190

13 CERTIFICATE OF FACSIMILE TRANSMISSION

14 I hereby certify that service of the above and foregoing, was made this 29th day of
15 September, 2006, by facsimile transmission to:

16 SPECIAL PUBLIC DEFENDER
17 FAX#455-6273

18
19 BY /s/ M. Beaird
20 Employee of the District Attorney's Office

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27 /mb
28

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Shirley Blanton
CLERK

1 **OPPS**
2 **DAVID ROGER**
3 **Clark County District Attorney**
4 **Nevada Bar #002781**
5 **CHRIS J. OWENS**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #001190**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9	THE STATE OF NEVADA,)	
10)	
11	Plaintiff,)	CASE NO: C131341
12	-vs-)	DEPT NO: XVII
13	JAMES MONTELL CHAPPELL,)	
14	#1212860)	
	Defendant.)	

15 **STATE'S OPPOSITION TO DEFENDANT'S MOTION IN LIMINE TO LIMIT PENALTY**
16 **HEARING EVIDENCE TO AVOID VIOLATION OF THE EIGHTH AMENDMENT**
17 **AND DUE PROCESS RIGHT TO A FUNDAMENTALLY FAIR PENALTY HEARING**

18 **DATE OF HEARING: 10/3/06**
19 **TIME OF HEARING: 8:30 A.M.**

20 **COMES NOW**, the State of Nevada, by **DAVID ROGER**, District Attorney, through
21 **CHRIS J. OWENS**, Chief Deputy District Attorney, and hereby submits the attached Points
22 and Authorities in Opposition to Defendant's Motion In Limine To Limit Penalty Hearing
23 Evidence To Avoid Violation Of The Eighth Amendment And Due Process Right To A
24 Fundamentally Fair Penalty Hearing.

25 This opposition is made and based upon all the papers and pleadings on file herein,
26 the attached points and authorities in support hereof, and oral argument at the time of
27 hearing, if deemed necessary by this Honorable Court.

28 //

1 POINTS AND AUTHORITIES

2 Contrary to the Defendant's bald denial, he did suffer a conviction in Ingham County,
3 Lansing, Michigan District Court case number C840510, for Assault and Battery, receiving a
4 jail sentence. Evidence of this Michigan conviction was so obviously admissible in the prior
5 penalty hearing, that it was not challenged, or even mentioned, in over a dozen briefs filed
6 before trial, during trial, on direct appeal or during the eight year post conviction process.
7 On his direct appeal the Supreme Court specifically ruled that, "there is no evidence in the
8 record indicating that Chappell's death sentence was imposed under the influence of passion,
9 prejudice or any arbitrary factor." *Chappell v. State*, 114 Nev. 1403, 1411, 972 P.2d 838
10 (1998).

11 The case relied upon by the Defendant in the instant motion to exclude evidence of
12 his Battery charge in Michigan, eight years before he crawled through a window and stabbed
13 Deborah Panos to death on the floor of her own home, *Jones v. State*, 107 Nev. 632, 817
14 P.2d 1179 (1991), is misapplied. In that case the district court properly allowed evidence of
15 two other murders that Jones committed. There had been no conviction for those crimes. In
16 *Leonard v. State*, 114 Nev. 1196, 969 P.2d 288 (1998), evidence concerning a crime, for
17 which the defendant was not convicted, was properly admitted into evidence through the
18 testimony of a police detective. Even evidence of uncharged crimes may be considered in a
19 penalty hearing. *Riker v. State*, 111 Nev. 1316, 905 P.2d 706 (1995), *Witter v. State*, 112
20 Nev. 908, 921 P.2d 886 (1996).

21 Chappell's 1988 Battery conviction for striking Kenneth Gay in the back with a brick

22 //

23 //

24 //

25 //

26 //

27 //

28 //

1 in Ingham County, case number C840510, is properly admissible. Accordingly, his Motion
2 in Limine to Limit Penalty Hearing Evidence should be denied.

3 DATED this 29th day of September, 2006.

4 Respectfully submitted,

5 DAVID ROGER
6 Clark County District Attorney
Nevada Bar #002781

7
8
9 BY /s/ CHRIS J. OWENS
10 CHRIS J. OWENS
11 Chief Deputy District Attorney
Nevada Bar #001190

12 CERTIFICATE OF FACSIMILE TRANSMISSION

13
14 I hereby certify that service of the above and foregoing, was made this 29th day of
15 September, 2006, by facsimile transmission to:

16 SPECIAL PUBLIC DEFENDER
17 FAX#455-6273

18
19 BY /s/ M. Beaird
20 Employee of the District Attorney's Office

21
22
23
24
25
26
27
28 /mb

ORIGINAL

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

JAN 23 12 37 PM '07

CLERK OF THE COURT

12 DISTRICT COURT
13 CLARK COUNTY, NEVADA

14 ***

15 THE STATE OF NEVADA,
16
17 Plaintiff,
18
19 vs.

20 JAMES CHAPPELL,
21
22 Defendant.

CASE NO. C 131341
DEPT. NO. III

DATE: N/A
TIME: N/A

23 **EX PARTE APPLICATION AND ORDER**
24 **TO PREPARE TRANSCRIPTS**

25 COMES NOW, JAMES CHAPPELL, Defendant, by and through his attorneys, DAVID
26 M. SCHIECK, Special Public Defender, and CLARK W. PATRICK, Deputy Special Public
27 Defender, and requests this Honorable Court for an Order instructing the Court
28 Reporter/Recorder to provide daily transcripts of all hearings in the above stated matter
pursuant to Nevada Supreme Court Rule 250(5)(b) which states

(b) *Duties of court reporters.* Court reporters shall give priority to transcripts
of pretrial proceedings in capital cases. As prescribed by the district court,
reporters shall furnish such transcripts to the court and counsel prior to trial.
During trial or post-conviction proceedings, reporters shall prepare a daily
transcript of all proceedings and deliver it to the court and counsel.

This is a remanded penalty hearing wherein the State is seeking the death penalty
against Mr. Chappell therefore this is a capital case. The penalty hearing is set for March 12,

SPECIAL PUBLIC
DEFENDER


CLARK COUNTY
NEVADA

916

1 2007 and counsel requests that a transcript be prepared on a daily basis of all pre-trial and
2 penalty hearing proceedings.

3 DATED this 18 day of January, 2007.

4 SPECIAL PUBLIC DEFENDER
5 DAVID M. SCHIECK

6 
7 DAVID M. SCHIECK
8 CLARK W. PATRICK
9 330 S. Third Street, Ste. 800
10 Las Vegas, Nevada 89155-2316
11 Attorney for CHAPPELL

12 **ORDER TO PREPARE TRANSCRIPTS**


13 IT IS HEREBY ORDERED, ADJUDGED AND DECREED based on the foregoing
14 Application that the Court Reporter/Record for will prepare a daily transcript of all pre-trial and
15 penalty hearing proceedings in this matter and provide same to the counsel for James
16 Chappell and the State of Nevada.

17 DATED AND DONE: January 22nd, 2007

18 
19 DISTRICT COURT JUDGE

20 SUBMITTED BY:

21 SPECIAL PUBLIC DEFENDER

22 
23 DAVID M. SCHIECK
24 CLARK W. PATRICK
25 330 S. Third Street, No. 800
26 Las Vegas NV 89155
27 Attorney for CHAPPELL
28

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

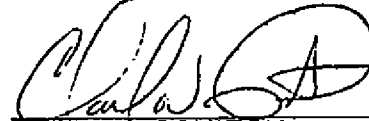
AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding APPLICATION AND ORDER
FOR TRANSCRIPTS filed in District Court Case number C131341 does not contain the social
security number of any person.

DATED: 1/18/07

SPECIAL PUBLIC DEFENDER

DAVID M. SCHIECK



DAVID M. SCHIECK
CLARK W. PATRICK
Attorney for Chappell
330 S. Third Street, 8th Floor
Las Vegas NV 89155

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

237

ORIGINAL

23

1 EXPR
2 DAVID M. SCHIECK
3 SPECIAL PUBLIC DEFENDER
4 Nevada Bar No. 0824
5 CLARK W. PATRICK
6 Nevada Bar No. 951
7 330 S. Third St., 8th Floor
8 Las Vegas NV 89155-2316
9 (702)455-6265
10 Attorneys for Defendant

JAN 25 2 57 PM '07

CR-235
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10
11 Plaintiff,

vs.

12 JAMES CHAPPELL,
13
14 Defendant.

CASE NO. C 131341
DEPT. NO. III

**APPLICATION AND ORDER TO
PRODUCE DEFENDANT CHAPPELL**

DATE: N/A
TIME: N/A

APPLICATION

15 COMES NOW, DAVID SCHIECK, Special Public Defender, and CLARK W. PATRICK,
16 Deputy Special Public Defender, and requests this Honorable Court for an Order directing Ely
17 State Prison, Ely, Nevada to transport James Chappell, No. 52338 to High Desert State
18 Prison, Indian Springs, Nevada, in order to be present for his calendar call set for March 8,
19 2007 and his penalty hearing set to commence March 12, 2007 in Department 3 of the Eighth
20 Judicial District Court, RJC, Las Vegas NV.
21

22 It is further requested this Court order that James Chappell remain housed at High
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SPECIAL PUBLIC
DEFENDER

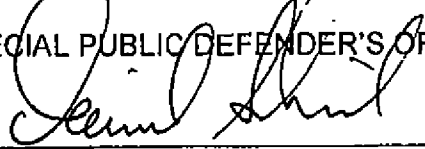
CLARK COUNTY
NEVADA

1 Desert State Prison and transported for Court hearings through the completion of the case.

2 DATED this 17 day of January, 2007.

3 RESPECTFULLY SUBMITTED:

4 SPECIAL PUBLIC DEFENDER'S OFFICE

5 
6 DAVID M. SCHIECK
7 CLARK W. PATRICK
8 330 S. Third St., Ste. 800
9 Las Vegas, Nevada 89155-2316
10 Attorneys for CHAPPELL

11 ORDER

12 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Ely State Prison, Ely,
13 Nevada will transport James Chappell, No. 52338 in order to be present at his Calendar Call
14 on March 8, 2007 in Department 3 of the Eighth Judicial District Court.

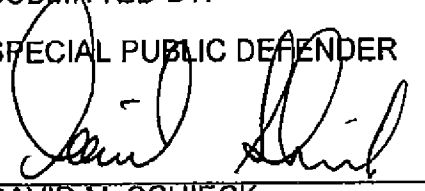
15 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that James Chappell will
16 remain housed at High Desert State Prison through completion of his District Court
17 proceedings.

18 DATED AND DONE: January 24, 2007

19 
20 DISTRICT COURT JUDGE

21 SUBMITTED BY:

22 SPECIAL PUBLIC DEFENDER

23 
24 DAVID M. SCHIECK
25 CLARK W. PATRICK
26 330 S. Third Street, 8th Floor
27 Las Vegas NV 89155
28 Attorney for CHAPPELL

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

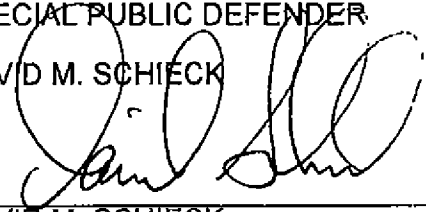
AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Application and Order to Transport Chappell filed in District Court Case number C131341 does not contain the social security number of any person.

DATED: 1/16/07

SPECIAL PUBLIC DEFENDER

DAVID M. SCHIECK



DAVID M. SCHIECK
Attorney for Chappell
330 S. Third Street, 8th Floor
Las Vegas NV 89155

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

238

21

1 **ORDR**
 2 DAVID ROGER
 3 Clark County District Attorney
 4 Nevada Bar #002781
 5 PAMELA WECKERLY
 6 Deputy District Attorney
 7 Nevada Bar #006163
 8 200 Lewis Avenue
 9 Las Vegas, NV 89155-2212
 10 (702) 671-2500
 11 Attorney for Plaintiff

JAN 29 4 47 PM '07

CRAL
CLERK OF THE COURT

8 DISTRICT COURT
 9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,
 11 Plaintiff,

12 -vs-

13 JAMES MONTELL CHAPPELL,
 14 #1212860

15 Defendant.

Case No. C131341
 Dept No. III

17 ORDER

18 DATE OF HEARING: 1/11/07
 19 TIME OF HEARING: 9:00 A.M.

20 THIS MATTER having come on for hearing before the above entitled Court on the
 21 11th day of January, 2007, the Defendant being present, DAVID SCHIECK, Special Public
 22 Defender and CLARK PATRICK, Deputy Special Public Defender, the Plaintiff being
 23 represented by DAVID ROGER, District Attorney, through PAMELA WECKERLY,
 24 Deputy District Attorney, and the Court having heard the arguments of counsel and good
 cause appearing therefor,

IT IS HEREBY ORDERED that the Defendant's Motion to Bifurcate, shall be, and it
 is denied.

IT IS FURTHER ORDERED that the Defendant's Motion for Jury Questionnaire,

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 JAN 29 2007
 CLERK OF THE COURT

1 shall be, and it is granted.

2 IT IS FURTHER ORDERED that the Defendant's Motion in Limine to Limit Penalty
3 Hearing Evidence to Avoid Violation of the Eighth Amendment and Due Process Right to a
4 Fundamentally Fair Penalty Hearing, shall be, and it is denied.

5 IT IS FURTHER ORDERED that the Defendant's Motion to Remand For
6 Consideration By the Clark County District Attorney's Death Review Committee, shall be,
7 and it is denied.


8 IT IS FURTHER ORDERED that the Defendant's Motion to Strike Sexual Assault
9 Aggravator of the State's Notice of Intent to Seek the Death Penalty, or, In the Alternative,
10 Motion in Limine to Allow Defendant to Introduce Evidence in Defense of Sexual Assault,
11 shall be, and it is denied.

12 IT IS FURTHER ORDERED that the Defendant's Motion to Dismiss State's Notice
13 of Intent to Seek Death Penalty Because Nevada's Death Penalty is Unconstitutional, shall
14 be, and it is denied.

15 DATED this 24th day of January, 2007.

16
17 
18 DISTRICT JUDGE
19

20 DAVID ROGER
21 DISTRICT ATTORNEY
22 Nevada Bar #002781

23 
24 PAMELA WECKERLY
25 Deputy District Attorney
26 Nevada Bar #006163
27
28

mb

ORIGINAL

NCA

DAVID M. SCHIECK
SPECIAL PUBLIC DEFENDER
Nevada Bar No. 0824
CLARK W. PATRICK
Deputy Special Public Defender
Nevada Bar No. 9451
330 S. Third St., Ste. 800
Las Vegas NV 89155-2316
(702)455-6265
Attorneys for Defendant

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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

vs.

JAMES CHAPPELL,
Defendant.

CASE NO. C 131341
DEPT. NO. III

REQUEST FOR PREPARATION
OF TRANSCRIPT OF PROCEEDINGS

DATE: N/A
TIME: N/A

TO: RICHARD KANGAS, Reporter/Recorder, Department XXIII
KRISTEN LUNKWITZ, Reporter/Recorder, Department IX
SHARON HOWARD, Reporter/Recorder, Department III

Defendant JAMES CHAPPELL, by and through his attorneys, DAVID M. SCHIECK,
Special Public Defender and CLARK W. PATRICK, Deputy Special Public Defender,
requests preparation of a transcript of the proceedings before the District Court, as follows:

- A. Minute Order on July 17, 2006 (KL)
- B. State's Request for Penalty Hearing on July 25, 2006 (RK)
- C. All Pending Motions on October 3, 2006 (RK)
- D. All Pending Motions on November 2, 2006 (RK)
- E. All Pending Motions on November 16, 2006 (RK)
- F. All Pending Motions on January 11, 2007 (SH)

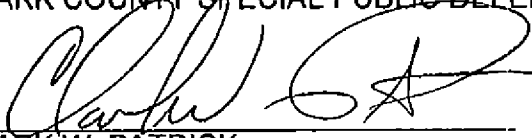
I hereby certify that I served a copy of this Request on the Court Reporter named

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SPECIAL PUBLIC DEFENDER
CLARK COUNTY
NEVADA
CLERK OF THE COURT

1 above with a copy of the Ex Parte Application and Order to Prepare Transcripts.

2 Dated this 2 day of February, 2007.

3 DAVID M. SCHIECK
4 CLARK COUNTY SPECIAL PUBLIC DEFENDER

5 By 
6 CLARK W. PATRICK
7 DEPUTY SPECIAL PUBLIC DEFENDER
8 330 S. THIRD ST., 8TH FLOOR
9 LAS VEGAS, NEVADA 89155-2316

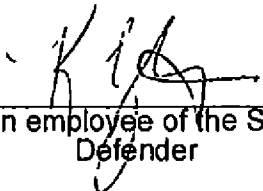
10 CERTIFICATE OF MAILING

11 The undersigned does hereby certify that on the 5 day of February, 2007, a copy
12 of the foregoing Request for Transcripts was deposited in the United States Post Office at
13 Las Vegas, Nevada, postage prepaid, addressed to the following:

14 Richard Kangas
15 Court Reporter/Recorder
16 District Court, Department 23
17 200 Lewis Ave.
18 Las Vegas NV 89155

19 Kristen Lunkwitz
20 Court Reporter/Recorder
21 District Court, Department 9
22 200 Lewis Ave.
23 Las Vegas NV 89155

24 Sharon Howard
25 Court Reporter/Recorder
26 District Court, Department 3
27 200 Lewis Ave.
28 Las Vegas NV 89155

29 
30 An employee of the Special Public
31 Defender

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

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

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Chaf
CLERK OF THE COURT

Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

11 THE STATE OF NEVADA,
12 Plaintiff,

13 vs.

14 JAMES CHAPPELL,
15 Defendant.

CASE NO. C 131341
DEPT. NO. III

DATE: N/A
TIME: N/A

**EX PARTE APPLICATION AND ORDER
TO PREPARE TRANSCRIPTS**

18 COMES NOW, JAMES CHAPPELL, Defendant, by and through his attorneys, DAVID
19 M. SCHIECK, Special Public Defender, and CLARK W. PATRICK, Deputy Special Public
20 Defender, and requests this Honorable Court for an Order instructing the Court
21 Reporter/Recorder to provide daily transcripts of all hearings in the above stated matter
22 pursuant to Nevada Supreme Court Rule 250(5)(b) which states


23 (b) *Duties of court reporters.* Court reporters shall give priority to transcripts
24 of pretrial proceedings in capital cases. As prescribed by the district court,
25 reporters shall furnish such transcripts to the court and counsel prior to trial.
During trial or post-conviction proceedings, reporters shall prepare a daily
transcript of all proceedings and deliver it to the court and counsel.

26 This is a remanded penalty hearing wherein the State is seeking the death penalty
27 against Mr. Chappell therefore this is a capital case. The penalty hearing is set for March 12,
28

1 2007 and counsel requests that a transcript be prepared on a daily basis of all pre-trial and
2 penalty hearing proceedings.

3 DATED this 18 day of January, 2007.

4 SPECIAL PUBLIC DEFENDER
5 DAVID M. SCHIECK

6 
7 DAVID M. SCHIECK
8 CLARK W. PATRICK
9 330 S. Third Street, Ste. 800
10 Las Vegas, Nevada 89155-2316
11 Attorney for CHAPPELL

12 **ORDER TO PREPARE TRANSCRIPTS**

13 IT IS HEREBY ORDERED, ADJUDGED AND DECREED based on the foregoing
14 Application that the Court Reporter/Record for will prepare a daily transcript of all pre-trial and
15 penalty hearing proceedings in this matter and provide same to the counsel for James
16 Chappell and the State of Nevada.


17 DATED AND DONE: _____

18 DOUGLAS W. HANSON

19 DISTRICT COURT JUDGE
20 

21 SUBMITTED BY:

22 SPECIAL PUBLIC DEFENDER

23 
24 DAVID M. SCHIECK
25 CLARK W. PATRICK
26 330 S. Third Street, No. 800
27 Las Vegas NV 89155
28 Attorney for CHAPPELL

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding APPLICATION AND ORDER
FOR TRANSCRIPTS filed in District Court Case number C131341 does not contain the social
security number of any person.

DATED: 1/18/07

SPECIAL PUBLIC DEFENDER

DAVID M. SCHIECK



DAVID M. SCHIECK
CLARK W. PATRICK
Attorney for Chappell
330 S. Third Street, 8th Floor
Las Vegas NV 89155

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Request for Preparation of Transcript of Proceedings filed in District Court Case number C131341 does not contain the social security number of any person.

DATED: 2/2/07

SPECIAL PUBLIC DEFENDER

DAVID M. SCHIECK



DAVID M. SCHIECK
CLARK W. PATRICK
Attorney for Chappell
330 S. Third Street, 8th Floor
Las Vegas NV 89155

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

240

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TRAN

ORIGINAL
DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

JAMES MONTELL CHAPPELL,

Defendant.

CASE NO. C131341

DEPT. NO. XVII

BEFORE THE HONORABLE MICHAEL A. CHERRY, DISTRICT COURT JUDGE

RECORDER'S TRANSCRIPT RE:

STATE'S REQUEST FOR PENALTY HEARING PER NEVADA SUPREME
COURT REMITTITUR

TUESDAY, JULY 25, 2006

APPEARANCES:

FOR THE STATE:

CRAIG L. HENDRICKS, ESQ.
Chief Deputy District Attorney

FOR THE DEFENDANT:

DAVID M. SCHIECK, ESQ.
Special Public Defender

RECORDER/TRANSCRIBER:

RICHARD L. KANGAS

1

CLERK OF THE COURT

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1 LAS VEGAS, CLARK COUNTY, NEVADA

2 TUESDAY, JULY 25, 2006, 8:39 A.M.

3 * * * * *

4 THE COURT: Let's see, Mr. Schieck, you got – yours is a
5 special unit.

6 MR. SCHIECK: Mr. Owens said the other Mr. Owens was gonna
7 come on it. This is just to reset the penalty hearing, however, and my trial
8 schedule is such that I can't do it 'til next year.

9 THE COURT: How did I end up with this case?

10 THE CLERK: Togliatti, Judge, prosecuted –

11 MR. SCHIECK: Judge, Judge Togliatti was a prosecutor in the
12 office with Abbi Silver who tried the case, and so she recused herself; she
13 had personal knowledge of the case.

14 THE COURT: Okay.

15 THE CLERK: So we cross-track –

16 THE COURT: Do we ever send her anything?

17 THE CLERK: No, never.

18 MR. SCHIECK: Well, you should've been –

19 THE COURT: Can we send her these petitions for writ of habeas
20 corpus where the special units are coming down?

21 THE CLERK: We'll send her everything in January when you're
22 gone.

23 THE COURT: All right, let's set this after the first of the year, I
24 really have no choice; that way I don't have to worry about it.

25 THE CLERK: Okay. What – I have January, and then I end up

1 going to March, so.

2 THE COURT: What's your pleasure?

3 MR. SCHIECK: Let's say March.

4 THE CLERK: Okay.

5 MR. SCHIECK: - because there are a number of out-of-state
6 witnesses from Michigan.

7 THE CLERK: Okay, let's do March 12th, that's the first of the
8 stack, at 10:00 a.m.; and your calendar call will be Thursday, March the
9 8th.

10 MR. SCHIECK: Thank you, Your Honor.

11 THE COURT: Okay.

12 PROCEEDING CONCLUDED AT 9:40 A.M.

13 * * * * *

14

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22 ATTEST: I do hereby certify that I have transcribed the audio-visual recording of
23 this proceeding in the above-entitled case to the best of my ability.

24

25

Richard L. Kangas
RICHARD L. KANGAS,
Court Recorder/Transcriber

ORIGINAL

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1 TRAN

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ORIGINAL
DISTRICT COURT OF THE

CLARK COUNTY, NEVADA

2
3
4
5 THE STATE OF NEVADA,)

6 Plaintiff,)

7 vs.)

8 JAMES MONTELL CHAPPELL,)

9 Defendant.)
10

CASE NO. C131341

DEPT. NO. XVII

11 BEFORE THE HONORABLE MICHAEL A. CHERRY, DISTRICT COURT JUDGE

12 RECORDER'S TRANSCRIPT RE:

13 STATUS CHECK RE HEARING OF DEFENDANT'S MOTIONS

14
15 THURSDAY, NOVEMBER 16, 2006
16
17

18 APPEARANCES:

19
20 FOR THE STATE:

BRETT O. KEELER, ESQ.
Deputy District Attorney

21
22 FOR THE DEFENDANT:

DAVID M. SCHIECK, ESQ.
Special Public Defender
CLARK W. PATRICK, ESQ
Deputy Special Public Defender

23
24
25 RECORDER/TRANSCRIBER:

RICHARD L. KANGAS

CLERK OF THE COURT

FEB 9 2007

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LAS VEGAS, CLARK COUNTY, NEVADA
THURSDAY, NOVEMBER 16, 2006, 8:56 A.M.

* * * * *

THE COURT: What about Chappell, what are we doing on Chappell?

MR. PATRICK: Your Honor, I don't know if Mr. Owens is coming for this or not.

THE COURT: Oh, I'm sure that he's not.

MR. KEELER: Mr. Owens is -

THE COURT: I'm sure he didn't check in, and I'm sure he didn't call.

MR. KEELER: No, he's not gonna be able to be here.

THE COURT: What are we doing on this?

MR. PATRICK: Well, Your Honor, I mean, we're still waiting to argue the motions, so it was in - it was up to you, you were gonna look and see if Judge Herndon was gonna look at all this, or -

THE COURT: I'm gonna set 'em over to Herndon.
Set 'em for Doug.

THE CLERK: Thursday, January 11th at 8:30.

MR. SCHIECK: Thank you, Your Honor.

MR. PATRICK: Thank you, Your Honor.

PROCEEDING CONCLUDED AT 8:57 A.M.

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ATTEST: I do hereby certify that I have transcribed the audio-visual recording of
this proceeding in the above-entitled case to the best of my ability.

Richard L. Kangas
RICHARD L. KANGAS,
Court Recorder/Transcriber

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TRAN

ORIGINAL
DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)	
)	CASE NO. C131341
Plaintiff,)	
vs.)	DEPT. NO. XVII
)	
JAMES MONTELL CHAPPELL,)	
)	
Defendant.)	

BEFORE THE HONORABLE MICHAEL A. CHERRY, DISTRICT COURT JUDGE

RECORDER'S TRANSCRIPT RE:

HEARING ON MOTIONS

TUESDAY, OCTOBER 3, 2006

APPEARANCES:

FOR THE STATE:	CHRIS J. OWENS, ESQ. Chief Deputy District Attorney
----------------	--

FOR THE DEFENDANT:	CLARK W. PATRICK, ESQ. Deputy Special Public Defender
--------------------	--

RECORDER/TRANSCRIBER:	RICHARD L. KANGAS
-----------------------	-------------------

CLERK OF THE COURT
FEB 9 2007
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1 LAS VEGAS, CLARK COUNTY, NEVADA
2 TUESDAY, OCTOBER 3, 2006, 9:20 A.M.

3 * * * * *

4 THE COURT: How about Chappell? I just – I just saw the
5 responses. We haven't had a chance to brief 'em, they just came in while
6 we were gone yesterday, so I need some time to review this. When's this
7 trial?

8 MR. OWENS: March or something, isn't it?

9 MR. PATRICK: Yeah.

10 THE COURT: Oh, okay.

11 MR. PATRICK: I believe it's the middle of March, Your Honor.

12 THE COURT: All right. I need some time on this; we just got
13 the oppositions. On Chappell.

14 He is here? He's in prison?

15 MR. PATRICK: Your Honor, he's in Ely, so.

16 THE COURT: All right. Let's set this over for – is thirty days
17 okay?

18 MR. OWENS: Whatever the Court wants to do.

19 MR. PATRICK: That's fine, Your Honor.

20 THE COURT: Thirty days. That'll give me a chance to bench
21 brief it.

22 MR. OWENS: Most of our oppositions are about a paragraph –

23 THE COURT: I know. I just – we weren't even here yesterday,
24 so. I know they came in –

25 MR. OWENS: That's fine.

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THE COURT: - but we weren't here to even look at 'em.

THE CLERK: Thursday, November 2nd at 8:30.


THE COURT: Thanks.

MR. OWENS: Thank you.

PROCEEDING CONCLUDED AT 9:21 A.M.

* * * * *

ATTEST: I do hereby certify that I have transcribed the audio-visual recording of
this proceeding in the above-entitled case to the best of my ability.


RICHARD L. KANGAS,
Court Recorder/Transcriber

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1 **TRAN**

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3 **ORIGINAL**
4 CLERK OF THE DISTRICT COURT

CLARK COUNTY, NEVADA

5 THE STATE OF NEVADA,)

CASE NO. C131341

6 Plaintiff,)

7 vs.)

DEPT. NO. XVII

8 JAMES MONTELL CHAPPELL,)

9 Defendant.)
10

11 BEFORE THE HONORABLE MICHAEL A. CHERRY, DISTRICT COURT JUDGE

12 RECORDER'S TRANSCRIPT RE:

13 HEARING ON DEFENDANT'S MOTIONS

14 THURSDAY, NOVEMBER 2, 2006
15
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18

19 **APPEARANCES:**

20 FOR THE STATE:

BRETT O. KEELER, ESQ.
Deputy District Attorney

21 FOR THE DEFENDANT:

CLARK W. PATRICK, ESQ
Deputy Special Public Defender

25 RECORDER/TRANSCRIBER:

RICHARD L. KANGAS

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JAMES CHAPPELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Electronically Filed
Nov 18 2013 02:22 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

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ATTORNEY FOR RESPONDENT

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IN THE SUPREME COURT OF NEVADA

JAMES CHAPPELL,

CASE NO. 61967

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on this 18th day of November, 2013. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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