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1 married?
 2 A. No, I'm not.
 3 Q. Do you have any children?
 4 A. No, I do not.
 5 Q. While James was in the room with you,
 6 did you or Mr. Martinez ever ask him if he was
 7 either under the influence of alcohol or drugs at
 8 the time?
 9 A. No, I did not.
 10 Q. Do you know if Mr. Martinez did?
 11 A. I don't recall if he did or not. I
 12 don't believe he did.
 13 Q. Okay. Did the police officer that
 14 came, do you know if he did?
 15 A. I don't recall if he did or not.
 16 Q. Now, you said that when James was in
 17 there, he gave you a name that was not James
 18 Chappell?
 19 A. Right.
 20 Q. Is that correct?
 21 And do you -- and I believe you said
 22 the name was --
 23 A. Ivory Morrell.
 24 Q. At any time did you ever make a
 25 connection with who that name may have belonged to?

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1 A. No.
 2 Q. So as far as you knew it was just a
 3 name that James either pulled out of the air or
 4 somebody he knew?
 5 A. Yeah. I don't know where -- I don't
 6 know why he stated that. We asked -- he didn't
 7 appear to have I.D. We asked him what his name and
 8 that's what he told us. I don't know how he came
 9 up with it.
 10 Q. Do you know how the whoever determined
 11 what his real name was?
 12 A. I believe the officers did.
 13 Q. And do you have any idea how they did
 14 that?
 15 A. I believe I think that the officer
 16 recognized the Social Security card in the thing
 17 and kind of suspected who he was at that point.
 18 MR. PATRICK: All right. Thank you,
 19 ma'am. We have nothing further.
 20 (Whereupon Mr. Patrick
 21 concluded his cross-examination
 22 at 4:58 p.m.)
 23 THE COURT: Thank you. Ms. Weckerly?
 24 MS. WECKERLY: No redirect.
 25 THE COURT: Thank you. Ms. Sempson,

1 thank you very much, ma'am. You may step down.
 2 (Whereupon Kimberly Sempson
 3 was excused from the
 4 witness stand at 4:59 p.m.)
 5 THE COURT: All right. Ladies and
 6 gentlemen, we'll go ahead and take our evening
 7 recess. During this recess, it is your duty not to
 8 converse among yourselves or with anyone else on
 9 any subject connected with the trial or to read,
 10 watch or listen to any report of or commentary on
 11 the trial by any person connected with the trial or
 12 by any medium of information, including, without
 13 limitation, newspaper, television, radio, and the
 14 internet, and you are not to form or express an
 15 opinion on any subject connected with this case
 16 until it is finally submitted to you, under
 17 instructions by me.
 18 We'll be in recess. We'll probably
 19 start tomorrow morning at 10:30. Hopefully we
 20 won't have any technical problems in the morning
 21 and can get started on time. Thank you very much.
 22 (Whereupon, the jury
 23 retired from the courtroom
 24 and the following proceedings
 25 took place outside their

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1 presence:)
 2 THE COURT: Does anybody have anything
 3 outside the presence?
 4 MR. SCHIECK: No, Your Honor.
 5 MR. OWENS: No, Your Honor.
 6 THE COURT: Okay.
 7 (Whereupon the proceedings
 8 concluded at 5:01 p.m.)
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REPORTER'S CERTIFICATE

1
2
3 STATE OF NEVADA } ss
4 COUNTY OF CLARK)

5
6 I, Cheryl Gardner, RMR-RPR, CCR 230,
7 do hereby certify that I took down in Stenotype all
8 of the proceedings had in the before-entitled
9 matter at the time and place indicated and that
10 thereafter said shorthand notes were transcribed
11 into typewriting by me and that the foregoing
12 transcript constitutes a full, true and accurate
13 record of the proceedings had.

14 IN WITNESS WHEREOF, I have hereunto
15 set my hand and affixed my official seal of office
16 in the County of Clark, State of Nevada, this
17 15th day of March, 2007.



18
19
20
21
22
23 CHERYL GARDNER, RMR-RPR, CCR 230
24
25

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AFFIRMATION
Pursuant to NRS 239B 030

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2
3
4 The undersigned does hereby affirm that the
5 preceding transcript filed in District Court Case
6 No. C131341 does not contain the social security
7 number of any person.

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Dated this 15th day of March
2007.

Cheryl Gardner, CCR 230, RPR, RMR

CHERYL GARDNER, CCR 230, RPR, RMR

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1 CASE NO. C131341
2 SEPT. NO. III

3 STATE OF NEVADA
4 CLARK COUNTY, NEVADA

5 STATE OF NEVADA,
6 Plaintiff,
7 vs. CASE NO. C131341
8 JAMES M. CHAPPELL
9 Defendant. AFTERNOON
10 SESSION
11 MAR 16 2007 20
12 CLERK OF THE COURT
13 BY Carol Donahoe
14 CAROL DONAHOE DEPUTY
15 BEFORE THE HON. DOUGLAS W. HERNDON, DISTRICT JUDGE
16 THURSDAY, MARCH 15, 2007
17 2:39 p.m.

18 APPEARANCES:

19 For the State: CHRIS J. OWENS, Esq.
20 Chief Deputy District
21 Attorney
22 PAM WECKERLY, Esq.
23 Deputy District Attorney

24 For the Defendant: DAVID H. SCHIECK, Esq.
25 CLARK W. PATRICK, Esq.
Special Public Defenders

Reported by: CHERYL GARDNER, RMR-RPR
CCR NO. 230

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1 LAS VEGAS, CLARK COUNTY, NV, THURS. MAR 15, 2007
2 2:39 p.m.
3 -oOo-

4 THE COURT: All right. Folks, welcome
5 back. We will be back on the record in C131341,
6 State of Nevada versus James Chappell. The record
7 will reflect the presence of Mr. Chappell with his
8 attorneys, the State's attorneys. We are in the
9 presence of the jury. It's my understanding that
10 we are going to call another witness out of order
11 for the defense case in chief, right?

12 MR. SCHIECK: That's correct, you
13 were.

14 THE COURT: Who would that be?

15 MR. SCHIECK: We would call Dr. Todd
16 Grey, Your Honor.

17 TODD CAMERON GREY, M.D.
18 having been first duly sworn to testify to the
19 truth, the whole truth and nothing but the truth,
20 was examined and testified as follows:

21

22

23 THE CLERK: State and spell your name
24 for the record.

25 THE WITNESS: Todd Cameron Grey,

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1 G-R-E-Y.
2 THE COURT: Mr. Schieck.
3 MR. SCHIECK: Thank you, Your Honor.
4

5 DIRECT EXAMINATION
6 BY MR. SCHIECK:
7 Q. Dr. Grey, could you tell us how you're
8 currently employed.
9 A. I'm the chief medical examiner for the
10 state of Utah.
11 Q. And how long have you held that
12 position?
13 A. I've been the chief medical examiner
14 since 1988.
15 Q. And could you give us a little bit of
16 your educational background.
17 A. Certainly. I received an
18 undergraduate degree in 1976 from Yale University.
19 I received my medical degree from Dartmouth Medical
20 School in 1980. I was trained in anatomic
21 pathology at the University of California in San
22 Diego and then trained in forensic pathology at the
23 Dade County Medical Examiner's office in Miami,
24 Florida.
25 Q. And are you board certified in any

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1 CASE NO. C131341
2 DEPT. NO. 117

3 STATE OF NEVADA
4 CLARK COUNTY, NEVADA

5 STATE OF NEVADA,)
6 Plaintiff,)
7 vs.) CASE NO. C131341
8 JAMES M. CHAPPELL,)
9 Defendant,) AFTERNOON
10) SESSION
11
12
13
14
15 BEFORE THE HON. DOUGLAS M. HERNDON, DISTRICT JUDGE
16 THURSDAY, MARCH 15, 2007
17 2:39 p.m.

18 APPEARANCES:

19 For the State: CHRIS J. OWENS, Esq.
20 Chief Deputy District
21 Attorney
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Reported by: CHERYL GARDNER, RMR-RPR
CCR NO. 230

Page 3

1 LAS VEGAS, CLARK COUNTY, NV. THURS. MAR 15, 2007
2 2:39 p.m.
3 -oOo-

4 THE COURT: All right. Folks, welcome
5 back. We will be back on the record in C131341,
6 State of Nevada versus James Chappell. The record
7 will reflect the presence of Mr. Chappell with his
8 attorneys, the State's attorneys. We are in the
9 presence of the jury. It's my understanding that
10 we are going to call another witness out of order
11 for the defense case in chief, right?

12 MR. SCHIECK: That's correct, you
13 were.

14 THE COURT: Who would that be?

15 MR. SCHIECK: We would call Dr. Todd
16 Grey, Your Honor.

17
18 TODD CAMERON GREY, M.D.,
19 having been first duly sworn to testify to the
20 truth, the whole truth and nothing but the truth,
21 was examined and testified as follows:

22
23 THE CLERK: State and spell your name
24 for the record.
25 THE WITNESS: Todd Cameron Grey,

Page 2

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1 G-R-E-Y.
2 THE COURT: Mr. Schieck.
3 MR. SCHIECK: Thank you, Your Honor.
4
5 DIRECT EXAMINATION
6 BY MR. SCHIECK:
7 Q. Dr. Grey, could you tell us how you're
8 currently employed?
9 A. I'm the chief medical examiner for the
10 state of Utah.
11 Q. And how long have you held that
12 position?
13 A. I've been the chief medical examiner
14 since 1988.
15 Q. And could you give us a little bit of
16 your educational background?
17 A. Certainly. I received an
18 undergraduate degree in 1976 from Yale University.
19 I received my medical degree from Dartmouth Medical
20 School in 1980. I was trained in anatomic
21 pathology at the University of California in San
22 Diego and then trained in forensic pathology at the
23 Dade County Medical Examiner's office in Miami,
24 Florida.
25 Q. And are you board certified in any

Page 5

Page 7

1 areas?

2 A. Yes. I'm board certified in anatomic
3 and forensic pathology.

4 Q. Okay. And what is forensic pathology?

5 A. Forensic pathology is a subspecialty
6 of medicine focused on the investigation and
7 examination and understanding of sudden and
8 unexpected death.

9 Q. And how long have you been board
10 certified in forensic pathology?

11 A. I was board certified in 1986.

12 Q. So over 20 years now?

13 A. Yes.

14 Q. And as in your position as medical
15 examiner for the state of Utah, what are your
16 duties?

17 A. The main duty I have is to work as a
18 forensic pathologist examining people whose deaths
19 fall under the jurisdiction of the medical
20 examiner's office in coming to a conclusion about
21 how they died.

22 Q. And have you been called upon to
23 testify in courts of law concerning the areas as a
24 pathologist in forensic pathology?

25 A. Yes, I have.

Page 6

1 Q. On approximately how many occasions?

2 A. Several hundred.

3 Q. And in what jurisdictions?

4 A. Mostly in Utah but I've testified
5 around the west, so Nevada, Arizona, California,
6 Wyoming, Florida, a number of different
7 jurisdictions.

8 Q. And so we're clear, even though you're
9 employed by the state of Utah as the Utah state
10 medical examiner, you're allowed to do private
11 contract cases.

12 A. Yes. I take vacation time and work
13 privately on some cases.

14 Q. And that's allowed in your employment?

15 A. Yes.

16 Q. And you in fact were contacted or
17 retained by our office with respect to the case of
18 James Chappell.

19 A. That's correct.

20 Q. Were you provided with certain
21 information?

22 A. Yes.

23 Q. Okay. Can you tell the ladies and
24 gentlemen of the jury what you were provided to
25 review with respect to this case.

1 A. Certainly. I was given an autopsy

2 report concerning the examination of Deborah

3 Panos. I also received investigative reports from

4 the Clark County Coroner's Office. I reviewed

5 photographs taken of Ms. Panos's body at the scene

6 of death as well as at the autopsy; a transcript of

7 testimony of the doctor who did the autopsy on

8 Ms. Panos at trial as well as transcripts of

9 closing arguments by the prosecution and defense in

10 the original trial.

11 Q. And were you offered the opportunity

12 to view anything else you felt necessary to review

13 by our office?

14 A. For the question that I was asked to

15 answer I didn't think I needed anything more, no.

16 Q. And what question were you asked to

17 answer?

18 A. The question I was specifically asked

19 to consider was whether there was any evidence that

20 would support the State's contention that the

21 victim was sexually assaulted during her killing.

22 Q. And you indicated that you had

23 reviewed the autopsy report, reports from the

24 coroner's office, as well as crime scene and

25 autopsy photographs.

Page 8

1 In making that review, were you able

2 to determine whether or not a cause of death was

3 determined?

4 A. Yes.

5 Q. Okay. And what was the cause of death

6 based on those reports?

7 A. It was very clear that Ms. Panos died

8 as a result of multiple stab wounds.

9 Q. And you did not obviously perform the

10 autopsy.

11 A. No, I did not.

12 Q. You're basing your opinions solely

13 upon what you've been provided in the report of the

14 previous pathologist.

15 A. That is correct.

16 Q. In forming your opinion, what factors

17 did you take into account on the question that was

18 posed to you?

19 A. The information that I considered was

20 first a finding of DNA material from the suspect

21 recovered from the vagina of the victim. I also

22 considered the autopsy report and specifically any

23 descriptions of the vaginal area, the perineum, or

24 the anal region. I also considered the autopsy

25 photographs of the victim's body and the injuries

Page 9

1 depicted there.

2 Q. In reviewing those items, did you find
3 any physical evidence that would support sexual
4 assault during the course of the homicide?

5 A. No.

6 Q. Did you note an absence of any such
7 findings?

8 A. Yes.

9 Q. What findings would you normally be
10 looking for in making such an assessment?

11 A. The things you would look for first,
12 is there any direct trauma on the vagina, the
13 perineum, or the anus, and in this case there was
14 neither a description of any such injuries nor
15 documentation of that injuries photograph -- such
16 injuries photographically.

17 I would also look for any evidence of
18 injuries in areas that might be damaged if the
19 person was trying to gain access to the vagina or
20 anus, so scratches on the inner surfaces of the
21 thighs, something on the buttocks like they would
22 be pulled apart. I saw, again, saw no evidence of
23 any such injury.

24 Q. Are you familiar with Dr. Sheldon
25 Green and his work?

Page 10

1 A. Yes.

2 Q. Do you have an opinion as to the
3 thoroughness of his work?

4 A. He is an experienced and competent
5 forensic pathologist.

6 Q. Did his report denote any such
7 findings?

8 A. No.

9 Q. If such findings were present, would
10 it be something that a competent pathologist would
11 note in his report?

12 A. Certainly.

13 Q. Is it something that's likely to be
14 missed during an autopsy done by a competent
15 pathologist?

16 A. I would hope not.

17 Q. When you say you would hope not, is
18 there a protocol?

19 A. Any murder victim, female murder
20 victim, you are certainly going to want to look at
21 those areas of the body to see if there is any
22 evidence that would support such a contention.
23 That would be very standard practice for any
24 experienced and competent pathologist.

25 Q. In addition to the autopsy photographs

Page 11

1 and the findings from the autopsy, you said you

2 also reviewed crime scene photographs, photographs
3 taken prior to the autopsy.

4 A. That is correct.

5 Q. Was the victim depicted in those
6 photographs?

7 A. Yes. I saw a number of photographs
8 that showed Ms. Panos's body at the scene of death.

9 Q. Anything about those photographs that
10 factor into the opinion that you've rendered to the
11 question asked?

12 A. Yes.

13 Q. And what is that?

14 A. The photographs of the victim at the
15 scene show her lying on her back on the floor with
16 bloodstains around her. She is completely
17 clothed. She has a top on. She has her pants on.
18 The only thing which seems to have been taken off
19 the body is she is not wearing shoes.

20 The clothing is on her in a way that
21 is what you would describe as conventional like
22 somebody who would normally dress would appear if
23 they were lying there.

24 Q. Did you note the presence or absence
25 of any knife markings or wounds to the body that

Page 12

1 corresponded to the clothing?

2 A. Yes.

3 Q. And what did you note in that respect?

4 A. The pants and underpants had a stab
5 wound in the right groin region and there was a
6 surrounding bloodstain corresponding to that stab
7 wound. This injury to the clothing is directly
8 over an area of stabbing injury on the body.

9 Q. Okay. What does that indicate?

10 A. That would indicate that the pants
11 were worn again in a conventional fashion. They
12 were not twisted so that they were pulled out of
13 normal position. They were present, pulled up
14 around the waist when the stab wound was inflicted
15 in the groin region.

16 Q. Were you able to form an opinion from
17 the items that you reviewed as to whether or not
18 the stab wounds appeared to be contemporaneous in
19 nature?

20 A. All of the injuries that were
21 described in Dr. Greens's report as well as
22 photographically appear to be fresh injuries. None
23 of them in his report appear to be post-mortem
24 injuries so that somebody was killed, some time
25 went by, and then another injury was inflicted.

Page 13

1 Q. Now, you indicated that you had
2 reviewed some reports concerning the presence of
3 DNA.

4 A. Yes.

5 Q. Okay. Did you form any conclusion
6 from those reports?

7 A. That there was material, genetic
8 material from the suspect present within the vagina
9 of the victim.

10 Q. Did you form any conclusion or
11 opinions based on the items you reviewed concerning
12 whether or not there was a gap between the period
13 of time of the DNA and the infliction of the knife
14 wounds?

15 A. The timing of when that material from
16 the suspect got in, was put into the victim, I
17 don't know how long it had been there. There
18 certainly did not seem to be any evidence that this
19 per -- the victim was killed while being raped.

20 Q. And you didn't find any physical
21 evidence that there was in fact a sexual assault?

22 A. Assault, no.

23 Q. Okay. Now, there were in addition to
24 the stab wounds other injuries; is that correct?

25 A. Yes.

Page 14

1 Q. Okay. Can you describe those injuries
2 for us.

3 A. In addition to the stabbing injuries
4 that caused her death, the victim had multiple
5 blunt force injuries. These are injuries that
6 happened as a result of an impact of some kind
7 whether a person is being struck or if they are
8 being driven into something.

9 She had bruising and scraping on both
10 sides of her face involving her ears as well. She
11 had a scrape on her chin. She had bruising on her
12 arm, scraping on her elbow, scraping on her knee
13 and bruising of her hand, her right hand, and a
14 scrape on the back of her left hand.

15 Q. And was there bruising associated with
16 any of those injuries?

17 A. All of those injuries were both
18 bruises as well as scrapes.

19 Q. And the -- you indicated that there
20 were a number of stab wounds. Can you tell us
21 where the stab wounds were and whether they were
22 incised or puncture wounds.

23 A. Certainly. The victim had a grouping
24 of about, of nine wounds over a fairly
25 circumscribed area on the right side and center of

Page 15

1 her neck. These were all stabbing injuries meaning
2 that they were narrow and were deeper than they
3 were long. They were not slashing type injuries.

4 She also had a stab wound on the left
5 side of her neck, two stab wounds in the left upper
6 chest, a single stab wound right by her belly
7 button, and then a final or a last wound in her
8 right groin region.

9 Q. Now, we have the wounds up toward the
10 upper part of her body then we see two additional
11 stab wounds; is that correct?

12 A. There were the group on the neck, the
13 two just in the upper left chest region, one by the
14 umbilicus or belly button, and one in the groin.

15 Q. Is that in the vagina?

16 A. No. This is what technically is
17 called the inguinal area. It's that crease where
18 your thigh and abdomen are and just to the right of
19 the middle of the body, not the vagina, not the
20 perineum.

21 Q. And that was just a single injury?

22 A. That was a single injury, yes.

23 Q. And could you tell if that injury
24 appeared to be contemporaneous in time to the other
25 stab injuries you described?

Page 16

1 A. It certainly was an injury that was
2 inflicted on a person who still had blood pressure,
3 was alive, certainly could be considered
4 contemporaneous with all of the other injuries.

5 Q. And that was through the clothing?

6 A. Yes.

7 Q. In fact, through two items of
8 clothing?

9 A. Through the pants and the underpants.

10 Q. And the wounds lined up with both of
11 the cuts in both of those garments?

12 A. Yes. As if the pants were being
13 conventionally worn, not turned down, not twisted.

14 Q. And with respect to what you called
15 the bruising injuries which were the blunt force
16 injuries you talked about, any opinions you were
17 able to formulate as to the timing of those with
18 relation to the stab type injuries?

19 A. The bruising injuries are clearly
20 fresh injuries. They aren't something that
21 happened a day before or two days before. There is
22 some swelling associated with them which means that
23 there had to be a period of time while the heart
24 was beating and blood was flowing through that area
25 of damaged tissue specifically though I cannot tell

Page 17

1 you if it's a matter of 15 minutes, an hour or
2 more. They are fresh injuries, but I can't give
3 you a very narrow window of time for them.

4 Q. And did you prepare a report in this
5 case?

6 A. I wrote a letter stating my opinions,
7 yes.

8 Q. And when was that?

9 A. I believe that was dated the 28th of
10 January of this year.

11 Q. And you have that in front of you now?

12 A. Yes, I do.

13 Q. Are you aware whether or not that's
14 been provided to the State?

15 A. I have no knowledge about that.

16 MR. SCHIECK: Okay. Thank you, that's
17 all I have, Your Honor.

18 (Whereupon Mr. Schieck
19 completed his direct
20 examination at 2:56 p.m.)

21 MR. OWENS: Thank you. We did get a
22 copy of that and we appreciate it.

23 ///

24 ///

25 ///

Page 18

1 CROSS-EXAMINATION

2 BY MR. OWENS:

3 Q. Dr. Grey, how are you?

4 A. Good.

5 Q. You appeared in another case a couple
6 of years ago.

7 A. Yeah, I remember you.

8 Q. You sat through the testimony of
9 Dr. Green and then they decided not to call you.
10 Is that the one?

11 A. Yeah.

12 Q. Your day job, so to speak, is in Utah?

13 A. That's correct.

14 Q. Do they pay you very well in Utah?

15 A. Okay.

16 Q. They're kind of notorious for not
17 paying well.

18 A. Forensic pathologist is one of the
19 higher remunerated areas of medicine.

20 Q. So this is kind of moonlighting for
21 you?

22 A. Yes.

23 Q. The state allows to you make a little
24 extra money?

25 A. The rules are as long as it doesn't

Page 19

1 interfere with my duties as the chief medical
2 examiner and as long as I'm not getting private
3 income for work that I did for the state.

4 Q. Right. As long as it's like a
5 separate thing.

6 A. Yes.

7 Q. Which is what this is.

8 A. That is correct.

9 Q. We've been talking about what's a
10 sexual assault and what's not a sexual assault. To
11 talk about that you really need to know what the
12 definition of a sexual assault is in the State of
13 Nevada, wouldn't you?

14 MR. SCHIECK: I'm going to object,
15 Your Honor. I didn't ask him any questions about
16 the definition of sexual assault. I asked him
17 about physical evidence of injuries associated with
18 that.

19 THE COURT: I'll overrule the
20 objection. I think the question is whether there
21 are any injuries consistent with sexual assault.

22 MR. OWENS: Right.

23 Q. I think all through your report you
24 referenced in your testimony a moment ago whether
25 this was sexual assault physical evidence of sexual

Page 20

1 assault. When you're using that term, what do you
2 mean it to --

3 A. What I would say is I'm using a
4 medical definition which would be forceful
5 penetration.

6 Q. Okay. So your definition of sexual
7 assault is a woman's got to take a few hits before
8 it's a sexual assault.

9 A. No, no. I'm not saying that. I'm
10 saying that for me to diagnose sexual assault, I
11 would want to see evidence of traumatic injuries
12 consistent with a forceful penetration.

13 Q. Okay. And if the woman's got a knife
14 at her throat, she doesn't resist, you're not going
15 to see those injuries?

16 A. I may not.

17 Q. So that's not going to meet your
18 definition, is it?

19 A. No.

20 Q. The definition in the State of Nevada
21 is any sexual penetration however slight that's not
22 one the consent of the woman. It doesn't require
23 any injuries. Are you aware of that?

24 A. That's a legal definition and I'm not
25 use ago legal definition, solely a medical

Page 21

1 definition.

2 Q. So if a woman's got a knife at her
3 throat, then that's not something that you factored
4 in.

5 A. Not something that I could say has any
6 medical evidence to support or refute.

7 Q. Or if your assailant said, "You need
8 to submit to this or I'm going to beat you," that's
9 not something you factored in either.

10 A. Again nothing medically would allow me
11 to support or refute such a contention.

12 Q. All right. Let's talk about some
13 medical things for a few minutes. For the record.
14 You looked at the autopsy photos.

15 A. Yes.

16 Q. I'm going to put Exhibit No. 42 and I
17 apologize in advance for the graphic nature of
18 this. Looking at your screen looking at the
19 picture of Debbie Panos. You're talking about
20 physical injury. On first blush when you look at
21 this, you've got to be thinking physical injuries?

22 A. Of course.

23 Q. So we've clearly got some physical
24 injuries in this particular case, right?

25 A. Of course.

Page 22

1 Q. And we've clearly got sexual
2 penetration, don't we?

3 A. We have evidence of sexual activity,
4 yes.

5 Q. Well, I mean what kind of sexual
6 activity? We've got semen in the vaginal vault.

7 A. That would be sexual activity.

8 Q. So that would be evidence?

9 A. Yes.

10 Q. And so we've got a woman with the
11 defendant's semen in her vaginal vault and we've
12 got extreme injuries to her, don't we?

13 A. Yes.

14 Q. So what you're talking about isn't,
15 you're not saying there wasn't force used in this
16 incident.

17 A. That is correct.

18 Q. You're just talking about the timing
19 of these events. Whether the force was connected
20 with the sexual assault, whether it came later,
21 whether it came before. That's what the issue is
22 for you right here, isn't it?

23 A. Let me sec.

24 Q. Let me back up.

25 A. Can I break it down?

Page 23

1 Q. Yeah.

2 A. The issue, there's two issues. One is
3 is there evidence of forcible sexual penetration as
4 evidenced by injury either in the vagina, perineum,
5 or anus. That would be the first thing that I
6 looked at and thought about and there was no
7 evidence of that.

8 Q. That is not my question.

9 A. Oh, okay.

10 Q. We've got force here. We've got
11 sexual penetration.

12 A. Right.

13 Q. What you seem to be saying is you're
14 not associating this force, this injury with the
15 sexual penetration.

16 A. This, when you say this injury, if
17 you're talking about the blunt force injuries.

18 Q. I'm talking about all of the
19 injuries.

20 A. Okay. Well, then you will need to
21 specifically separate two types of injuries that
22 this woman has.*

23 Q. You do, don't you? Because we've got
24 two arenas of injuries for her, don't we?

25 A. Yes.

Page 24

1 Q. Okay. The first one being the
2 bruising, contusions, abrasions and the second
3 area --

4 A. Blunt force injuries, yes.

5 Q. The second area being the knifing?

6 A. Correct.

7 Q. So we've had two incidents or
8 groupings of violence against this woman Debbie
9 Panos.

10 A. Two different modalities of injury,
11 yes.

12 Q. And there's a time interval between
13 them?

14 A. More likely than not, yes.

15 Q. And you mentioned a few minutes ago
16 probably at least 15 minutes?

17 A. I'm saying I don't know for sure but
18 probably a number of minutes in order for that
19 bruising and swelling to show up.

20 Q. Probably about 15.

21 A. That would be one reasonable estimate.

22 Q. All right. Because we know that the
23 bruising occurs before the knifing which caused her
24 death.

25 A. Yes.

Page 25

1 Q. So from 15 minutes to maybe even an
2 hour before that she is subjected to a vicious
3 beating, isn't she?
4 A. She has blunt force injuries
5 inflicted. How they were inflicted I cannot tell
6 you. Whether they were beating or slamming is -- I
7 cannot tell you.
8 Q. All right. Well, not to be too
9 technical, her face and her body came with force
10 against some object?
11 A. That is correct.
12 Q. Could it have been the defendant's
13 fist?
14 A. That's one possibility.
15 Q. He could have picked up something and
16 hit her?
17 A. Yes.
18 Q. He could have slammed her into
19 something?
20 A. Yes.
21 Q. But somehow that's how she got it.
22 And it was at least 15 minutes later thereabouts
23 that then the mortal blows are given with the
24 knife?
25 A. More likely than not, yes.

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1 Q. Okay. You said that you reviewed
2 everything that you thought it was necessary to
3 review in order to come to your conclusion.
4 A. Yes.
5 Q. Your conclusion being the definition
6 about sexual assault that's different than what
7 we're looking at here in this case.
8 A. That is medical rather than legal,
9 yes.
10 Q. Okay. You're aware that we talked
11 about that she had semen, the defendant's semen in
12 the vaginal vault.
13 A. That is correct.
14 Q. You said you had an opportunity to
15 review some of the documents and some of the
16 testimony from the prior proceeding.
17 A. I reviewed the Clark County Coroner's
18 investigative report and Dr. Green's testimony.
19 Q. You're aware that the defendant said
20 when he testified at the prior hearing that he did
21 not ejaculate into the victim. Were you aware of
22 that?
23 A. No.
24 Q. So you don't know that he just said
25 that it was oral sex?

Page 27

1 A. I don't know.
2 Q. Okay. Well, in light of what you read
3 about the findings, the DNA samples that were done,
4 clearly this was not just oral sex if oral sex even
5 happened. There was vaginal sex.
6 A. There was depositing of his genetic
7 material in her vagina. The specifics as to
8 whether sperm was scene or not I do not know.
9 Q. You don't know that?
10 A. No. I did not see any report. I just
11 saw the DNA report.
12 Q. So you didn't read the report that
13 talks about the presence of sperm as well --
14 A. I did not see that.
15 Q. But that would be conclusive that
16 there was ejaculation?
17 A. Yes.
18 Q. Did you read the reports about the
19 gathering of the evidence and defendant's testimony
20 about a supposed fight that occurred over some
21 letter that he found out in the car?
22 A. I read no investigative reports of
23 that. That information was provided in a cover
24 letter that I received from Mr. Chappell.
25 Q. So you were told that there was some

Page 28

1 sort of a fight that occurred outside in the car
2 over a piece of paper?
3 A. Yes.
4 Q. And that is based on what the
5 defendant's version of events were?
6 A. Again, the specifics of how that
7 information was gathered I do not know.
8 Q. So you didn't look at the actual
9 photographs or look at the evidence that was seized
10 from the scene in order to come to your conclusion?
11 A. The only pictures I saw were the ones
12 related to the victim's position.
13 Q. Were you aware of the telephone call
14 that the victim had made to a day care worker from
15 the scene pleading for help because she was afraid
16 of the defendant?
17 A. Again, through the cover letter I was
18 aware of that, that that had been reported.
19 Q. That wasn't something that you
20 factored in.
21 A. In terms of my assessment as to
22 whether there was evidence of a sexual assault on
23 the victim, I did not factor that in.
24 Q. How about the letter that he sent to
25 the victim before his appearance at her home, "One

Page 29

1 day soon I'll be at that front door and what in
 2 God's name will you do then?"
 3 Were you aware of that threat?
 4 A. No.
 5 Q. Were you aware that the day before --
 6 MR. SCHIECK: I'm going to object.
 7 This is beyond the scope, Your Honor.
 8 MR. OWENS: I'm entitled to --
 9 THE COURT: Let him ask the question
 10 first.
 11 MR. OWENS:
 12 Q. Were you aware that the day before the
 13 murder of Debbie Panos that she was at a court
 14 hearing where the defendant turned to her and said,
 15 "I'm going to kill you"?
 16 A. No.
 17 THE COURT: For the record I'll
 18 overrule the objection.
 19 MR. OWENS:
 20 Q. Did you read anything in the defense's
 21 summary that just minutes before she went back to
 22 her home there where she was confronted by the
 23 defendant she was shaking, afraid, and in a fetal
 24 position on the sofa at a friend's home?
 25 A. No.

Page 30

1 Q. And the defendant's direct threats
 2 were not something that you even factored in or
 3 considered in your opinion then?
 4 A. In terms of the issue of sexual
 5 assault, no.
 6 Q. But these would have been events that
 7 occurred prior to the sexual assault or the sexual
 8 contact let's call it and you think that those
 9 would be relevant in determining if this sexual
 10 contact was consensual or not.
 11 A. The issue of consent and whether
 12 consent was coerced or not I cannot answer.
 13 Q. Let's take a look at a couple other
 14 pictures here. Up, we're looking at the -- we've
 15 got the one up here right now, No. 42, and if we
 16 can I want to kind of zoom in a little bit there.
 17 We talked about some of those injuries down around
 18 the neck area there what you see.
 19 A. If you have a question.
 20 Q. Can you describe those injuries around
 21 the neck area.
 22 A. Those are stab wounds. You can see
 23 one, two, three, four, five.
 24 THE COURT: You can touch the screen,
 25 Doctor.

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1 THE WITNESS: Thanks. Single stab
 2 wound, three stab wounds, three stab wounds,
 3 another stab wound there.
 4 MR. OWENS:
 5 Q. What other injuries are visible there?
 6 A. There is an area of what looks like
 7 slight scraping there and then throughout here you
 8 see bruising and scraping.
 9 Q. So when you say scraping, you would
 10 call that an abrasion also?
 11 A. That's an abrasion, yes.
 12 Q. What would cause an abrasion like
 13 that?
 14 A. Something rough being either pushed
 15 across the skin or the skin being pushed across a
 16 rough surface.
 17 Q. Okay. How about this area up
 18 underneath her neck, what's that?
 19 A. I'm not sure what you're referring
 20 to.
 21 THE COURT: If you can point on the
 22 pictures, Mr. Owens, it will --
 23 MR. OWENS:
 24 Q. This area right up here.
 25 A. This area looks like a little bit of a

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1 bruise and possibly another scrape. It may be one
 2 of the stab wounds. I'm not sure.
 3 Q. So we have bruising and an abrasion in
 4 the neck area.
 5 A. Yup.
 6 Q. Up under the chin we have a spot.
 7 A. There's an abrasion on the chin there
 8 and again an abrasion there.
 9 Q. Okay. Let's take another look at that
 10 a little different angle here, No. 40. Are you
 11 able to see that there? Can you identify that area
 12 of abrasion again.
 13 A. The large area of scraping on the chin
 14 is here. I do not see what we saw on the other
 15 side. It may possibly be hidden by this crease or
 16 fold. We have one of the stab wound there, a stab
 17 wound and three stab wounds there, the two stab
 18 wounds of the upper chest, and then bruising on the
 19 left side of the neck.
 20 Q. So that area that you've identified
 21 there you called bruising or contusions, that's
 22 right on that left, that would be the victim's left
 23 side; is that correct?
 24 A. That is the left side of the victim's
 25 neck.

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1 Q. Right on the neck. And what kind of a
2 force or trauma would cause that type bruising or
3 abrasion on the left side of her neck?
4 A. This is again a blunt force injury
5 meaning that there has been an impact. Whether
6 that's a blow landing or the victim being slammed
7 into something, there has been enough force
8 delivered to this area so that blood vessels
9 underneath the skin actually rupture and blood
10 leaks out. That's what a contusion or bruise is.
11 Q. And that could be a grabbing of her
12 neck forcefully as well, couldn't it?
13 A. Yes.
14 Q. You mentioned some bruising that was
15 on the forearms. Let's take a look at what's
16 marked as Exhibit No. 43 now. This would be the
17 right arm that we're looking at.
18 A. Yes.
19 Q. Can you tell us what we're seeing
20 there.
21 A. There is a large zone of bruising on
22 the outer surface of the arm, some bruising more
23 towards the shoulder region.
24 Q. Once again, this is the result of
25 trauma from a striking or a grabbing and rupture of

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1 capillaries in that area.
2 A. Some sort of impact causing the
3 rupture of vessels underneath the skin, yes.
4 Q. And all of the bruising that we've
5 identified up in that neck area and on the arm
6 area, these are things -- these are injuries that
7 occurred some 15 minutes or more before the fatal
8 stab wound that she received.
9 A. Yes.
10 Q. Do you have any idea of context in
11 which she received these injuries 15 minutes before
12 the fatal stabbing?
13 A. I don't understand the question.
14 Q. Do you know how specifically she would
15 have received these injuries 15 minutes before?
16 A. You mean the process of however she
17 was injured?
18 Q. Yeah.
19 A. As I said, it could be impacts, a
20 perpetrator was striking her. It could be that she
21 was thrown into something or thrown down onto
22 something. I cannot tell you specifically from the
23 injuries how they occurred. All I can say is they
24 are blunt force.
25 Q. Okay. So you're just giving us

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1 different ways but you don't have anything really
2 specific as to how she got them.
3 A. No.
4 Q. Were you aware or were you made aware
5 in that report that you got from the defense
6 attorneys of something kind of similar to this that
7 occurred about two months earlier between the
8 defendant and the victim here?
9 A. Specifically no. I know that there
10 was an ongoing history of domestic violence in the
11 relationship.
12 Q. Were you told about an incident on
13 June 1st when he held her down and confined her
14 arms and held a knife to her throat but then was
15 interrupted by a roommate?
16 You didn't hear?
17 A. No, not specifically.
18 Q. You didn't hear anything about that?
19 A. No specifically.
20 Q. Certainly grabbing somebody by the
21 throat could leave injuries.
22 A. Yes.
23 Q. Grabbing somebody by the arms could
24 create injuries like we're seeing here.
25 A. Yes.

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1 Q. In fact, the defendant testified
2 that's what he did on this occasion. Are you aware
3 of this?
4 A. Which occasion?
5 Q. The occasion of the murder.
6 A. No. I did not read his testimony.
7 Q. They didn't send that to you?
8 A. I did not read that testimony.
9 MR. OWENS: If I may, Your Honor, I'd
10 like to refer to page 82 of the defendant's
11 testimony in the prior hearing.
12 THE COURT: Okay.
13 MR. SCHIECK: Your Honor, I'm going to
14 object on relevance grounds. This is not medical
15 testimony. He's reading some other witness's
16 testimony.
17 THE COURT: To the extent you're
18 reading the portion of the defendant's testimony
19 that describes the day of the murder.
20 MR. OWENS: Yes.
21 THE COURT: And his interaction with
22 the victim.
23 MR. OWENS: Right.
24 THE COURT: Okay. Overruled.
25 ///

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1 MR. OWENS:
 2 Question: So after you had put her
 3 on the bed, did you get up and straddle
 4 her and pin her arms down with near her
 5 knees?
 6 Answer: I got on top of her, yes,
 7 sir.
 8 Question: Did you pin her arms down
 9 with your knees?
 10 Well, hold on a second, Your Honor. I
 11 think that was the June incident. Yeah, I'm going
 12 to go over to page 102.
 13 MR. SCHIECK: For the record, the
 14 previously testimony you read was related to the
 15 June 1st incident.
 16 MR. OWENS: June 1st incident, yeah.
 17 Q. And we're over on page 102. So you've
 18 told us when you detected that something was
 19 different. You got up and grabbed her.
 20 Answer: Yes, I did.
 21 Question: Grabbed her how?
 22 Answer: I put my hand in this area
 23 right here.
 24 Question: This area meaning in the
 25 area of her neck.

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1 Answer: Yeah.
 2 Question: Did you begin to choke her,
 3 Mr. Chappell?
 4 Answer: I didn't choke her that she
 5 couldn't say nothing, nothing like that, she
 6 couldn't breathe. It wasn't nothing like
 7 that.
 8 Question: With both hands did you
 9 begin to choke her, sir?
 10 No, no. With only one hand. One
 11 hand, sir.
 12 (Remarks off the record.)
 13 MR. OWENS:
 14 Question: With both hands did you
 15 begin to choke her, sir.
 16 Answer: No, no.
 17 Question: With only one hand.
 18 Answer: One hand, sir.
 19 Question: Which hand?
 20 Answer: My right hand, sir.
 21 Question: Did you grasp her neck
 22 with your right hand? Did you take a hold
 23 of her neck with her right hand?
 24 Answer: She was laying down. I was
 25 on top of her holding her like onto her

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1 neck. I wasn't squeezing it, nothing like
 2 that.
 3 Question: She was still laying on the
 4 sofa.
 5 Answer: Yes, sir.
 6 Question: But you were standing at
 7 that time.
 8 Answer: I was like on my knees on top
 9 of her. I wasn't standing up yet.
 10 Question: Pinning her down?
 11 Answer: If you call just holding on
 12 to the front of her neck pinning her down,
 13 yes, sir.
 14 Q. You didn't have a chance to review
 15 that as part of the materials that were given.
 16 A. No.
 17 Q. So you don't know that it was after
 18 that that the defendant in his prior testimony said
 19 that she willingly performed oral sex on him?
 20 A. No.
 21 Q. Grabbing her by the neck is certainly
 22 something that could have produced the injuries
 23 that we see here.
 24 A. Certainly.
 25 Q. But that doesn't fit the definition

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1 you were looking at of sexual assault.
 2 A. Again, the medical definition of
 3 sexual assault, it does not.
 4 Q. Because you're looking for something
 5 below the waist?
 6 A. Yes.
 7 Q. So if he was pinning her down and
 8 forcing himself on her leaving these bruises, that
 9 would have been 15 minutes or more before the
 10 attack with the knife.
 11 A. Yes.
 12 Q. But that doesn't fit your definition
 13 of sexual assault. That's not what you were asked
 14 to do.
 15 A. No. The question I was asked was
 16 there evidence of sexual assault during her
 17 killing.
 18 Q. Well, it wasn't during the killing,
 19 was it?
 20 A. No, it was not.
 21 MR. OWENS: Thank you.
 22 (Whereupon Mr. Owens
 23 concluded his cross-examination
 24 at 3:19 p.m.)
 25 THE COURT: Mr. Schieck.

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1 REDIRECT EXAMINATION
 2 BY MR. SCHIECK:
 3 Q. You were asked a very specific
 4 question when you were retained, correct?
 5 A. That was correct.
 6 Q. That had to do with medical evidence?
 7 A. That is correct.
 8 Q. And that's what you're here to testify
 9 about today.
 10 A. That is correct.
 11 Q. And your training is all in medical
 12 areas.
 13 A. Yes.
 14 Q. And in your training in medical area
 15 as a pathologist and a forensic pathologist, can
 16 you tell us whether the cause of death was
 17 choking.
 18 A. There was no evidence that this victim
 19 was strangled to death, no.
 20 Q. Were the bruises to the arms the cause
 21 of death?
 22 A. No.
 23 Q. Were the blunt face trauma to the face
 24 the cause of death?
 25 A. No.

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1 Q. The cause of death was the stabbing
 2 type injuries.
 3 A. That is correct.
 4 Q. And you looked for evidence with
 5 relation to the stabbing type injuries and the
 6 cause of death in making your analysis and
 7 answering the question posed to you.
 8 A. That is correct.
 9 Q. And you said in your opinion it's at
 10 least a 15-minute interval between any of the
 11 bruising type injuries and the injuries related to
 12 the stabbing which was the cause of death.
 13 A. I said that there was -- it's likely
 14 that 15 minutes could have passed if not longer,
 15 yes.
 16 Q. And none of the information that was
 17 read to you or recited by Mr. Owens during his
 18 cross-examination change your medical findings with
 19 respect to this case.
 20 A. No.
 21 Q. You weren't asked to make any factual
 22 findings.
 23 A. No.
 24 MR. SCHIECK: Thank you. No further
 25 questions, Your Honor.

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1 (Whereupon Mr. Schieck
 2 concluded his redirect
 3 examination at 3:21 p.m.)
 4 THE COURT: Mr. Owens.
 5 MR. OWENS: Nothing further.
 6 THE COURT: No questions from the
 7 jurors. Dr. Grey, you may step down.
 8 THE WITNESS: May I be excused?
 9 THE COURT: You are excused.
 10 (Whereupon Todd Cameron
 11 Grey, M.D., was excused
 12 from the witness stand
 13 at 3:22 p.m.)
 14 THE COURT: The State may call its
 15 next witness. We're going back to the State's case
 16 now, ladies and gentlemen.
 17
 18 CHARMINE SMITH,
 19 having been first duly sworn to testify to the
 20 truth, the whole truth and nothing but the truth,
 21 was examined and testified as follows:
 22
 23 THE CLERK: Would you state and spell
 24 your name for the record.
 25 THE WITNESS: Charmaine Smith, common

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1 spelling.
 2
 3 DIRECT EXAMINATION
 4 BY MS. WECKERLY:
 5 Q. Ma'am, how were you employed back in
 6 1995?
 7 A. As an adult parole and probation
 8 officer.
 9 Q. Adult parole and probation officer?
 10 A. Yes.
 11 Q. And how many years did you work in
 12 that capacity?
 13 A. I'm currently employed --
 14 Q. Okay.
 15 A. -- with parole and probation.
 16 Q. As of 1995 how many years had you
 17 worked in that capacity?
 18 A. I started in '89 so about seven.
 19 Q. Okay. And what are your job duties or
 20 what were your job duties back in 1995?
 21 A. I supervise parolees and probationers.
 22 Q. Okay. And what did the supervision
 23 entail?
 24 A. We made court -- after the Court
 25 sentenced him, we make referrals to counseling. We

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1 supervise the individuals that were just recently
 2 paroled out of prison.
 3 Q. What's the difference between parole,
 4 someone who is on parole versus someone who is on
 5 probation?
 6 A. A parolee is in prison and they are
 7 released to the community. Probation is in lieu of
 8 jail or prison. They're granted a term of
 9 probation.
 10 Q. Okay. So they're out of custody but
 11 under the supervision of a parole or probation
 12 officer?
 13 A. Yes.
 14 Q. Okay. Did you ever supervise an
 15 individual by the name of James Chappell?
 16 A. Yes.
 17 Q. And what date did he come under your
 18 supervision?
 19 A. The date of is sentencing. I believe
 20 he was assigned to me which was 4/27/95.
 21 Q. So April the 27th of '95?
 22 A. Yes.
 23 Q. And when someone comes under your
 24 supervision, that was the result of a sentencing
 25 decision made by a judge to grant someone probation

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1 rather than send them to jail or prison?
 2 A. Yes.
 3 Q. And that's what happened to this
 4 individual James Chappell?
 5 A. Yes.
 6 Q. What was the offense that he was being
 7 sentenced for?
 8 A. He pled guilty to possession of
 9 burglary tools, a gross misdemeanor.
 10 Q. And can you explain to the members of
 11 the jury what a gross misdemeanor is as opposed to
 12 a felony.
 13 A. A gross misdemeanor is an offense, a
 14 lesser offense than a felony and is punishable by
 15 jail time where felonies are punishable by prison
 16 time.
 17 Q. So under a gross misdemeanor you can
 18 serve up to a year in the county jail as part of
 19 your punishment?
 20 A. Yes.
 21 Q. Or you could be granted probation.
 22 Would that be correct?
 23 A. Yes.
 24 Q. And then a felony is greater than a
 25 year of prison time or you could be granted

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1 probation on that as well?
 2 A. Yes.
 3 Q. And he was actually being sentenced
 4 for a gross misdemeanor or he was sentenced for a
 5 gross misdemeanor?
 6 A. Yes.
 7 Q. Do you recall or were you provided at
 8 the time any circumstances of the underlying
 9 offense that he was charged with.
 10 A. He was originally arrested for
 11 burglary, felony; under the influence of a
 12 controlled substance, felony; and possession of
 13 burglary tools, gross misdemeanor.
 14 Q. Okay. So he was actually originally
 15 arrested for two felonies and one gross
 16 misdemeanor?
 17 A. Yes.
 18 Q. And to your knowledge how was it that
 19 he was being sentenced on the gross misdemeanor?
 20 Was there a plea negotiation or what happened?
 21 A. Yes. He was allowed to plead to a
 22 lesser offense.
 23 Q. Okay. And then the two felony charges
 24 were dismissed?
 25 A. Yes.

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1 Q. So sort of a reduction in the original
 2 charges?
 3 A. Yes.
 4 Q. What date was it that he entered his
 5 plea?
 6 A. March 28, 1995.
 7 Q. Okay. And then he was sentenced in
 8 April and on the sentencing date he was granted
 9 probation. ; is that correct?
 10 A. Yes.
 11 Q. When someone is granted probation or
 12 was granted probation at that time, once the judge
 13 grants them that sentence of probation, how is it
 14 that they get in contact with their supervising
 15 probation officer?
 16 A. They're directed at the time of
 17 sentencing they are directed to report to the
 18 division of parole and probation and attend, at
 19 that time attend an orientation and fill up a
 20 report and then the case is assigned to an officer.
 21 Q. And the orientation tells the
 22 probationer what, how to do probation. Can you
 23 explain that?
 24 A. Yes. The basic rules.
 25 Q. And one of those rules would be to

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1 remain in contact with their officer?
 2 A. Yes.
 3 Q. Are other conditions of probation not
 4 committing new crimes?
 5 A. Yes.
 6 Q. And any other conditions that might be
 7 associated with their probation?
 8 A. Yes.
 9 Q. Okay. As to the individual that we're
 10 speaking of James Chappell, after he was sentenced
 11 on April the 27th of '95, are you aware of whether
 12 or not he went to the orientation about how to do
 13 probation?
 14 A. He didn't attend the orientation.
 15 Q. Okay. Did he make contact with you
 16 the person who was assigned to supervise this case?
 17 A. No.
 18 Q. So what did you do to attempt to make
 19 contact with him?
 20 A. I did a home visit attempt. The first
 21 home visit attempt was on 5/8/95 at which time I
 22 had contact with a baby-sitter and left a business
 23 card with reporting instructions on it for him.
 24 Q. To report to you?
 25 A. Yes.

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1 Q. Okay. Did he contact you after you
 2 went out there on I think you said it was May?
 3 A. No, he didn't. I believe I spoke with
 4 him once on the phone, and I think at that time I
 5 told him to report and he did not.
 6 Q. Okay. Who contacted you after you
 7 attempted that home visit?
 8 A. Deborah Panos called me on 6/12/95.
 9 Q. And did you have a conversation with
 10 her about James Chappell the person that you were
 11 looking for to supervise?
 12 A. Yes.
 13 Q. Explain that conversation.
 14 A. She advised me that she gave the
 15 business card and reporting instructions to
 16 Mr. Chappell and she stated that he had stated that
 17 he was not going to report.
 18 Q. Did you have any further conversation
 19 with Deborah Panos?
 20 A. I had approximately three or four
 21 phone conversations with her and I saw her in
 22 person also.
 23 Q. Okay. The first conversation it
 24 sounds like you were discussing just sort of the
 25 whereabouts of James Chappell.

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1 A. Yes.
 2 Q. Did she indicate to you whether or not
 3 he was living with her at her home?
 4 A. She advised that he frequented that
 5 residence but that he didn't actually stay there.
 6 Q. Okay. So he just came there from time
 7 to time?
 8 A. Yes.
 9 Q. The subsequent conversations that you
 10 had with her, what were those concerned with?
 11 A. She was having problems with him
 12 coming into the residence, you know, uninvited,
 13 coming in through the window and stealing
 14 appliances. I think one time she said a TV.
 15 Q. And she was reporting that to you?
 16 A. Yes.
 17 Q. You said you met with her in person as
 18 well.
 19 A. She came into my office.
 20 Q. When she came into your office, what
 21 was her demeanor like at that point?
 22 A. She was very emotional and crying.
 23 Q. And what was she upset about?
 24 A. She was -- I can't tell you exactly
 25 her words, but she was in fear for her life.

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1 Q. And who did she perceive to be the
 2 threat to her life?
 3 A. James Chappell.
 4 Q. And how long was your discussion with
 5 her when she came into your office?
 6 A. My supervisor and I spoke with her
 7 between 30 and 40 minutes I think.
 8 Q. Okay. And I assume she discussed her
 9 relationship with James Chappell and problems she
 10 was having with him?
 11 A. Yes.
 12 Q. Did you make any suggestions to her
 13 about how to kind of address these problems?
 14 A. Yes. My supervisor and I recommended,
 15 strongly recommended that she move from that
 16 residence and she said that wasn't really an option
 17 for financial reasons and we also recommended maybe
 18 she possibly go back to her mother, 'cause her
 19 mother I believe lived in Arizona.
 20 Q. When you were having this discussion
 21 with her, did she ever describe particular specific
 22 acts of violence that he had committed against her?
 23 A. Yes. She told of one incident where
 24 Mr. Chappell took her into I believe it was a
 25 bedroom area and straddled her and held a knife

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1 over her.
 2 Q. And from speaking with her, I mean did
 3 you take her seriously? Were I trying to help her
 4 with this problem?
 5 A. Yes.
 6 Q. And that's why you made the suggestion
 7 maybe move from the trailer or go back to Arizona.
 8 A. Yes.
 9 Q. And was your supervisor at least in
 10 agreement with these sort of suggestions?
 11 A. Yes.
 12 Q. Did there come a point in time when
 13 you filed what's called a revocation report against
 14 James Chappell?
 15 A. Yes.
 16 Q. And can you explain the members of the
 17 jury what that is.
 18 A. A violation report is completed. It's
 19 a document to advise the Court or the parole board
 20 depending if it's a parolee or probationer of any
 21 rules that had been violated.
 22 Q. Okay. So in this case James Chappell
 23 was on probation as of April and so you submitted a
 24 report to advise that judge who placed him on
 25 probation that he wasn't replying.

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1 A. Yes.
 2 Q. And what was his noncompliance? What
 3 was the basis?
 4 A. The charge was rule 8 laws and
 5 conduct.
 6 Q. What does that mean?
 7 A. It means that he had violated, he had
 8 actually committed new offense and had outstanding
 9 bench warrants since the grant of probation.
 10 Q. Okay. When he was first sentenced to
 11 probation, did the judge give him a condition of
 12 probation related to drug treatment?
 13 A. Yes.
 14 Q. And at the time he was sentenced in
 15 April with that sort of condition, he was supposed
 16 to have completed some sort of drug treatment
 17 program. Would that be correct?
 18 A. Yes.
 19 Q. Was that drug treatment program
 20 completed at the time you filed your revocation
 21 report?
 22 A. No.
 23 Q. Had he done anything in terms of
 24 probation at the time you filed your revocation
 25 report?

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1 A. No.
 2 Q. The only new thing being some
 3 additional crimes.
 4 A. Yes.
 5 Q. Did you go before the judge or did his
 6 case go before the judge for revocation?
 7 A. Yes.
 8 Q. And what happened at that point?
 9 A. It was on 8/1/95. The Court
 10 reinstated Mr. Chappell with an added condition
 11 that he enroll and successfully complete an
 12 inpatient substance abuse program.
 13 Q. Okay. When someone goes before a
 14 Court for revocation, does that mean basically the
 15 Court can revoke their probation and put him in
 16 jail if it's a gross misdemeanor?
 17 A. Yes.
 18 Q. But in this case that didn't happen.
 19 He got a more lenient treatment.
 20 A. Yes.
 21 Q. And what do you mean by reinstated?
 22 What does that mean?
 23 A. Allowed to continue on community
 24 supervision probation and imposing the same or the
 25 original special conditions of counseling and he

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1 had a couple other ones, community service work and
 2 adult he had.
 3 Q. Okay. But the condition this time was
 4 supposed to be an inpatient treatment program.
 5 A. Yes.
 6 Q. And did the judge order him to be
 7 released only to the department of parole and
 8 probation and then the department was to take him
 9 to the inpatient treatment program?
 10 A. Yes.
 11 Q. After that reinstatement occurred, did
 12 you ever have a discussion with Deborah Panos about
 13 the judge's decision to send him to an in patients
 14 treatment program?
 15 A. Yes. I believe I saw her in court in
 16 the courthouse and I advised her that the division
 17 was recommending he do an inpatient.
 18 Q. Would that be a 90-day type program
 19 type of thing?
 20 A. 90 days.
 21 Q. And that was the day she was actually
 22 in court herself?
 23 A. I believe so.
 24 Q. And you advised her he's going to have
 25 to do a 90-day treatment program?

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1 A. Yes.

2 Q. When someone is sentenced on a gross
3 misdemeanor or felony charge, the Department of
4 Parole and Probation prepares a sentencing report
5 for the judge to review.

6 A. Yes.

7 Q. And does part of that report include a
8 statement by the defendant if they want to write
9 one?

10 A. Yes.

11 Q. Ma'am, I'm showing you what's been
12 admitted as State's Exhibit 90. Is that big enough
13 for you to read? Does that appear to be the
14 statement that James Chappell wrote in connection
15 with his gross misdemeanor charge?

16 A. Yes.

17 Q. Can you read that out loud for the
18 members of the jury what he wrote about that charge
19 at that time.

20 A. I'm pleading guilty to burglary
21 tools. I was charged with burglary under the
22 influence, burglary tools. The burglary is false.
23 The under the influence controlled substance is
24 false, and the burglary tools is false too, but I
25 took the plea because the other two charges were

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1 felonies.

2 I have never been convicted of a
3 felony and never will be. I am not a bad person
4 and I never was. I'm a brand new resident of Las
5 Vegas and I feel real bad about myself. I haven't
6 been in jail this long in about six years. The
7 longest I've ever been in jail is six months and I
8 won't ever commit another crime in my life. I
9 can't deal with this type of life.

10 I stole four cassette tapes and a \$10
11 shirt and \$10 pants. It only added up to no more
12 than \$60. I committed petty larceny but I ran into
13 the wrong Metro officer so she treated me very
14 bad.

15 I'm in the best city in the world and
16 look at me now. I know now that Las Vegas is not
17 putting up with any broken laws and I can -- I can
18 something here again. I've only been here four
19 months. I'm gonna' get a something.

20 Q. A job?

21 A. And stay out of any trouble. I
22 promise, and he signed it and dated it March 30,
23 1995.

24 MS. WECKERLY: Thank you. I'll pass
25 the witness, Your Honor.

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1 (Whereupon Ms. Weckerly
2 concluded her direct examination
3 at 3:39 p.m.)

4 THE COURT: Mr. Schieck or
5 Mr. Patrick.

6 MR. SCHIECK: Thank you, Your Honor.

7

8 CROSS-EXAMINATION

9 BY MR. SCHIECK:

10 Q. Let me go over some dates with you.
11 Do you have your file with you or some
12 documentation with you --

13 A. Yes.

14 Q. -- that will help you recall some
15 different dates.

16 You indicated that he pled guilty to
17 the -- to the possession of burglary tools charge
18 on March 28, 1995.

19 A. That's what the presentence report
20 lists, yes.

21 Q. And it shows that he was originally
22 arrested for burglary and under the influence
23 additionally?

24 A. I'm sorry. What?

25 Q. When he was arrested on that case, he

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1 was originally arrested on burglary, under the
2 influence and possession of burglary tools.

3 A. Yes.

4 Q. And the burglary would be for entering
5 the store where the items were stolen.

6 A. Yes.

7 Q. And that was a Kmart?

8 A. I believe so.

9 Q. And under the influence would be that
10 he was under the influence of an illegal substance;
11 is that correct?

12 A. Yes.

13 Q. And both of those charges as part of
14 the plea negotiation were dismissed.

15 A. Yes.

16 Q. And the burglary tools that he was
17 charged with, does your report indicate what the
18 tools were?

19 A. I believe it was a pair of pliers.

20 Q. So basically what we have is a
21 situation where he apparently went into Kmart with
22 the intent to steal and took a pair of pliers and
23 from his statement apparently opened some CD cases
24 and stole CDs?

25 A. Yes.

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1 Q. And was under the influence when he
2 did it.
3 A. Yes.
4 Q. And that's the offense that you've
5 read his statement from a minute ago?
6 A. Well, I read the offense report.
7 That's what it had stated.
8 Q. Okay. And then he was sentenced on
9 that charge on April 27, 1995.
10 A. Yes.
11 Q. Okay. And at that point in time he
12 received a suspended sentence and was placed on
13 probation.
14 A. Yes.
15 Q. And was given certain conditions to
16 follow. When -- when did you do the home visit
17 that you referred to?
18 A. The home visit attempt I completed
19 on -- I'm sorry -- May 8, 1995.
20 Q. So about ten days or so after he was
21 sentenced, he hadn't reported so you attempted a
22 home visit?
23 A. Yes.
24 Q. And what location did you go for that
25 home visit?

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1 A. I went on the address that was listed
2 on the presentence report, 831 North Lamb, No. 125,
3 Las Vegas.
4 Q. And that's where you had contact with
5 a baby-sitter at that location?
6 A. Yes.
7 Q. And were there children present at
8 that location?
9 A. I think that there were.
10 Q. If there was a baby-sitter there, it's
11 fair to assume that kids were there.
12 A. Yes.
13 Q. Would that be a fair recommendation?
14 A. Yes.
15 Q. And when someone is given probation,
16 you prepare a presentence report that you give to
17 the Court, correct?
18 A. Yes.
19 Q. And in that report it's going to list
20 the address where they're going to be living if
21 they receive probation?
22 A. Yes.
23 Q. And that's the address that would have
24 been given to you as his home address?
25 A. Yes.

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1 Q. And that's the address you did the
2 home visit at?
3 A. Yes.
4 Q. And it was confirmed that he lived
5 there but he just wasn't present and you left your
6 card with the baby-sitter.
7 A. Yes.
8 Q. Then later you indicate you received a
9 call from Deborah Panos and I believe you said that
10 was on June 12, 2005, that she called you?
11 A. '95.
12 Q. I'm sorry. 1995.
13 A. Yes.
14 Q. Which would have been over a month
15 after you left your card for the home visit?
16 A. I can't you.
17 Q. There was no home contact in between
18 that month period?
19 A. I really don't remember.
20 Q. Would you have noted that in your
21 file?
22 A. Probably.
23 Q. Okay. There's no notations in your
24 file.
25 A. Yeah. I have very few documents.

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1 Q. Okay. But there's nothing in the
2 documents you do have that shows there was a call
3 in between.
4 A. No.
5 Q. And again this was a gross misdemeanor
6 probation as opposed to a felony probation?
7 A. Yes.
8 Q. What was the underlying sentences that
9 was given that was suspended?
10 A. I believe it was one year.
11 Q. Which is the maximum for a gross
12 misdemeanor.
13 A. Yes.
14 Q. Then you indicated that you had some
15 additional contact from Ms. Panos after the first
16 phone call?
17 A. Yes.
18 Q. When was it that she came down and
19 speak with you and your supervisor?
20 A. June 15, 1995.
21 Q. And when was it that you filed your
22 violation report?
23 A. The violation report I completed is
24 dated June 30, 1995.
25 Q. And as of that date he still had not

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1 reported.
 2 A. Yes. I mean no he had not reported.
 3 Q. And so it was nearly two months after
 4 he was originally given the probation on April 27th
 5 that you filed your violation report.
 6 A. Yes.
 7 Q. As a condition of being on probation
 8 in Clark County, is the person required to come in
 9 and provide you with a your analysis?
 10 A. We drug test as deemed necessary.
 11 Q. Was there any requirement in his
 12 conditions of probation that he submit to such
 13 testing?
 14 A. Yes.
 15 Q. Okay. And if someone comes in and
 16 they test positive for a controlled subject
 17 assistants while they're on probation, would that
 18 prompt you then to file a violation report?
 19 A. It just depends on the situation.
 20 Q. Now, you indicated that sometime after
 21 you filed the violation report that you went before
 22 the judge and I believe you said that was on
 23 August 1st of 1995?
 24 A. Yes.
 25 Q. And at that time the conditions of

1 filing a violation report?
 2 A. Yes.
 3 Q. So would it be fair to assume your
 4 supervisor had input into that recommendation that
 5 Mr. Chappell receive inpatient drug treatment
 6 counseling?
 7 A. Well, actually the violation report
 8 didn't recommend the inpatient. The Court did. We
 9 recommended that he be revoked.
 10 Q. You indicated earlier you told
 11 Ms. Panos the department was recommending. Do you
 12 mean the Court was ordering it?
 13 A. Yes.
 14 Q. So the Court reviewed everything that
 15 you gave them, all the information about
 16 Mr. Chappell?
 17 A. Yes.
 18 Q. And it was the Court that recommended
 19 inpatient?
 20 A. Yes.
 21 Q. When the Court makes a recommendation,
 22 how is it that -- Mr. Chappell was in custody on
 23 August 1, 1995; is that correct?
 24 A. Yes.
 25 Q. How does a person in custody -- when

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1 probation were modified.
 2 A. Yes.
 3 Q. And at some point in time you ran into
 4 Ms. Panos at the courthouse to your recollection.
 5 A. Yes.
 6 Q. You told her that the department was
 7 recommending an inpatient program for
 8 Mr. Chappell.
 9 A. I believe so, yes.
 10 Q. And by the department I mean the
 11 department of parole and probation would come into
 12 court and recommend to the judge this man needs
 13 inpatient counseling for drug problems.
 14 A. Yes.
 15 Q. And that would have been the
 16 recommendation of the department based on the
 17 information in your files.
 18 A. Yes.
 19 Q. And your supervisor was even involved
 20 in the conversation with Ms. Panos, correct?
 21 A. Yes. Not in court, no.
 22 Q. Okay. But at your office.
 23 A. Yes.
 24 Q. And do your recommendations go through
 25 your supervisor when you make recommendations after

1 the Court says you need inpatient drug treatment
 2 counseling, how does he get to his inpatient drug
 3 treatment counseling?
 4 A. Well, I believe he was to remain in
 5 custody until he was on a waiting list and at that
 6 time officers would take a representative from the
 7 inpatient program to the jail took interview the
 8 person, the probationer or parolee to get them on
 9 the list for inpatient treatment.
 10 Q. And after that point in time then
 11 they're sent when a bed opens up to the inpatient
 12 drug treatment program?
 13 A. Yeah.
 14 Q. Was there a particular program that
 15 was in place in 1995 that did the inpatient?
 16 A. I believe it was EOB.
 17 Q. Is it still EOB?
 18 A. I don't know.
 19 MR. SCHIECK: Thank you, that's all I
 20 have, Your Honor.
 21 (Whereupon Mr. Schieck
 22 concluded his cross-examination
 23 at 3:48 p.m.)
 24 THE COURT: Ms. Weckerly.
 25 MS. WECKERLY: Two questions, Your

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1 Honor.

2

3 REDIRECT EXAMINATION

4 BY MS. WECKERLY:

5 Q. Ma'am, the date he was reinstated on
6 probation in order to do the inpatient program,
7 that was August the 1st he went back to court on
8 that date?

9 A. Yes.

10 Q. And it's sometime after that that you
11 see Deborah Panos in court. Were you both there at
12 the courthouse? I mean you weren't there on a
13 particular case. You just ran into her?

14 A. Yes.

15 Q. And you recognized her from your prior
16 meetings with her?

17 A. Yes.

18 Q. And that's when you advised her he
19 would be doing a 90-day program?

20 A. Yes.

21 MS. WECKERLY: Thank you.

22 (Whereupon Ms. Weckerly
23 concluded her redirect
24 examination at 3:59 p.m.)

25 THE COURT: Mr. Schieck.

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1 RECROSS-EXAMINATION

2 BY MR. SCHIECK:

3 Q. Do you recall which court you ran into
4 her at?

5 A. I can't recall.

6 Q. Back in 1995 municipal court, Justice
7 Court and District Court were different places. Do
8 you remember?

9 A. Yes.

10 Q. Do you remember which courthouse it
11 was?

12 A. It was the old one, 300 Carson Street
13 is it?

14 THE COURT: South Third Street.

15 MR. SCHIECK: Thank you. That's all I
16 have, Your Honor.

17 (Whereupon Mr. Schieck
18 concluded his
19 recross-examination at
20 4:00 p.m.)

21 MS. WECKERLY: Nothing else, Your
22 Honor.

23 THE COURT: Just a minute, ma'am.

24 THE COURT: Counsel approach.

25 (Whereupon, counsel approached

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1 the bench, and after a
2 discussion outside the hearing
3 of the court reporter, the
4 following proceedings took
5 place:)

6 THE COURT: I'd like to ask you a
7 question, Ms. Smith. Why if Ms. Panos seemed so
8 scared on June 15, 1995, did parole and probation
9 wait 15 days to file the revocation report but
10 recommend to her to move her residence?

11 THE WITNESS: Can you repeat that.

12 THE COURT: Why if Ms. Panos seemed so
13 scared on June 15, '95, did parole and probation
14 wait 15 days to file the revocation report but
15 recommend to her to move her residence?

16 THE WITNESS: We submit -- I submitted
17 the violation report and I don't remember -- oh, he
18 was in custody. When he was in custody, then I had
19 something to charge him on. He was a absconder j.
20 We didn't know where he was.

21 THE COURT: Okay.

22 THE WITNESS: But because he was
23 detained in the detention facility, then we put a
24 hold on him and that resulted in my report. What I
25 would have done, I would have done an absconder

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1 violation report requesting a bench warrant.

2 THE COURT: All right. So is it your
3 testimony that on or around June 15, 1995, he was
4 already in custody on a charge and you did a
5 violation report putting a hold on him for the
6 charge he was in custody on?

7 THE WITNESS: I believe so. June 1,
8 1995, he was -- let me see. Yes. June 26th he was
9 in custody.

10 THE COURT: Does it say there when he
11 was arrested?

12 THE WITNESS: Let me look. June 26,
13 1995. Yes. Our hold was placed on the 27th.

14 THE COURT: Okay. All right.

15 Ms. Weckerly do you have any questions based upon
16 mine?

17 MS. WECKERLY: No, Your Honor. Thank
18 you.

19 THE COURT: Mr. Schieck.

20 MR. SCHIECK: Yes, Your Honor.

21 THE COURT: Okay.

22

23 RECROSS-EXAMINATION (further)

24 BY MR. SCHIECK:

25 Q. Just so I'm clear on that follow-up

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1 question, you saw Deborah Panos on June 15, 1995,
 2 with your supervisor in the office.
 3 A. Yes.
 4 Q. Correct?
 5 A. Yes.
 6 Q. And Mr. Chappell was out of custody at
 7 that time and you didn't file your violation report
 8 at that time.
 9 A. Right.
 10 Q. He was arrested on June 26th and at
 11 that time the revocation hold was placed on him.
 12 A. Yes.
 13 Q. So you basically were waiting for him
 14 to come into custody before you filed anything.
 15 A. No. That was just the time frame that
 16 it fell. I wasn't waiting for him to go to jail.
 17 Q. Well, he was arrested on the 26th and
 18 you put the hold on the 27th.
 19 A. We didn't want -- we wanted a detainer
 20 on him so he couldn't leave.
 21 Q. And then it was a couple days later
 22 after that before you filed the revocation, the
 23 violation report on June 30th.
 24 A. Yes.
 25 MR. SCHIECK: Thank you. That's all I

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1 have, Your Honor.
 2 (Whereupon Mr. Schieck
 3 concluded his further
 4 recross-examination at
 5 3:53 p.m.)
 6 THE COURT: Ms. Weckerly, anything?
 7
 8 REDIRECT EXAMINATION (further)
 9 BY MS. WECKERLY:
 10 Q. Just to be clear so he was out of
 11 custody at the time she came to see you on the
 12 15th?
 13 A. Yes.
 14 MS. WECKERLY: All right.
 15 THE COURT: All right. Ms. Smith,
 16 you're excused. Thank you very much.
 17 (Whereupon Charmaine Smith
 18 was excused from the
 19 witness stand at 3:53 p.m.)
 20 THE COURT: Let's take a quick break
 21 now and we'll finish up before we finish at 5:00.
 22 We are going to take a recess. During this recess,
 23 it is your duty not to converse among yourselves or
 24 with anyone else on any subject connected with the
 25 trial or to read, watch or listen to any report of

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1 or commentary on the trial by any person connected
 2 with the trial or by any medium of information,
 3 including, without limitation, newspaper,
 4 television, radio, and the internet, and you are
 5 not to form or express an opinion on any subject
 6 connected with this case until it is finally
 7 submitted to you, under instructions by me.
 8 We'll be in recess for hopefully about
 9 ten minutes.
 10 (Whereupon a recess was
 11 taken at 3:54 p.m. and
 12 the proceedings resumed
 13 at 4:14 p.m.)
 14 THE COURT: All right. We'll be back
 15 on the record in C131341, State of Nevada versus
 16 James Chappell. The record will reflect the
 17 presence of Mr. Chappell with his attorneys;
 18 State's attorneys. We're in the presence of the
 19 jury. The State may call their next witness.
 20 MS. WECKERLY: Thank you, Judge.
 21 Clair McGuire.
 22
 23 CLAIR MCGUIRE,
 24 having been first duly sworn to testify to the
 25 truth, the whole truth and nothing but the truth,

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1 was examined and testified as follows:
 2
 3 THE CLERK: State and spell your name
 4 for the record.
 5 THE WITNESS: Clair McGuire, C-L-A-I-R
 6 M-C-G-U-I-R-E.
 7
 8 DIRECT EXAMINATION
 9 BY MS. WECKERLY:
 10 Q. Ms. McGuire, back in the 1990s, did
 11 you know a lady by the name of Deborah Panos?
 12 A. Yes, I did.
 13 Q. What city were you living in when you
 14 met her?
 15 A. In Tucson, Arizona.
 16 Q. An and what were the circumstances?
 17 How did you meet her?
 18 A. We met at work.
 19 Q. Where were you two working at?
 20 A. We were working in the city of Tucson
 21 the basement of City Hall.
 22 Q. And what kind of work were you doing?
 23 A. Were we were data entry personnel.
 24 Q. Okay. Did you two become friends
 25 after a while?

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1 A. Yes, we did.
 2 Q. And at that time did Deborah have
 3 kids?
 4 A. Yes, she had two.
 5 Q. And did you have children at that
 6 point?
 7 A. I did.
 8 Q. And what sort of things would you two
 9 do together as friends?
 10 A. We went to the circus. We went to the
 11 park. We went to each others houses.
 12 Q. Stuff with your children as well?
 13 A. Yes, definitely.
 14 Q. At some point later on did she have a
 15 third child?
 16 A. Yes, she did.
 17 Q. And that's her daughter Chantel?
 18 A. Chantel.
 19 Q. And after you met Deborah Panos, did
 20 you ever meet someone by the name of James
 21 Chappell?
 22 A. Yes.
 23 Q. And what were the circumstances under
 24 which you met him?
 25 A. He was her boyfriend living at the

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1 apartment where she was living.
 2 Q. So you met him through Debbie?
 3 A. Yes.
 4 Q. When you and Debbie were friends and
 5 going to the Circus, the park and that sort of
 6 thing, how often were you seeing each other?
 7 A. We saw each other every day at work
 8 and also after work. I would give her rides to
 9 work and home a lot and also on the weekends so we
 10 saw each other quite frequently.
 11 Q. To your knowledge did she only much
 12 the data input job at the city or was she ever
 13 working some other jobs?
 14 A. No. She always had two or three jobs.
 15 Q. What other sort of places did she
 16 work?
 17 A. Gosh, I know after the city of Tucson
 18 or she still stayed with the city of Tucson but she
 19 went to become a 9-1-1 operator after the position
 20 she was at with me.
 21 Q. Okay. Did she ever work for entities
 22 other than the city?
 23 A. Yes. She worked at Wal-Mart or
 24 Kmart. I believe it was Wal-Mart and Sears. She
 25 worked at quite a few places. I can't remember.

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1 Q. Okay. So she was hard working, had a
 2 couple jobs.
 3 A. Uh-huh.
 4 Q. Is that yes?
 5 A. Yes, it is.
 6 Q. Lady in front of you is taking down
 7 what we're saying so you can't nod or say uh-huh.
 8 A. Okay.
 9 Q. Okay. During the time that you knew
 10 Debbie, did you ever see signs that indicated that
 11 she was being abused?
 12 A. Yes.
 13 Q. What sort of things would you see?
 14 A. I saw bruises but I also saw when he
 15 would push her or trip her walking nearby, when
 16 walking nearby in the house.
 17 Q. Now, you mentioned two things. You
 18 mentioned you'd actually see the signs of abuses on
 19 Debbie's body.
 20 A. Bruises, yes.
 21 Q. Where were they typically on her body?
 22 A. She had them in various places on her
 23 arms, her face, on her head and her neck.
 24 Q. Did she ever do anything to try to
 25 cover them up?

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1 A. She wore a lot of makeup all the time.
 2 Q. And you mentioned that you actually
 3 saw her getting abused. Is that true?
 4 A. Well, I saw tripping and pushing into
 5 the wall or something as somebody he would walk by
 6 or she would walk by.
 7 Q. Okay. Who are we talking about? Who
 8 is pushing or tripping somebody?
 9 A. James was tripping Debbie.
 10 Q. Okay. And who was pushing who into a
 11 wall?
 12 A. James would push Debbie into the wall.
 13 Q. And you witnessed that?
 14 A. Yes.
 15 Q. How many times did you see him do that
 16 sort of thing to her?
 17 A. Numerous times maybe ten, 15 times
 18 while we were in Tucson.
 19 Q. During that time period do you
 20 remember whether or not James was working? Did he
 21 ever hold a job?
 22 A. I only remember him having one job.
 23 Q. You said that -- and how long -- where
 24 was that, the one job?
 25 A. At Bob's Big Boy restaurant. It's

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1 pretty close to where they had lived.
 2 Q. Okay. Do you know about how long he
 3 worked for that restaurant?
 4 A. A very small amount of time.
 5 Q. Like less than six months or --
 6 A. Definitely. Less than a month.
 7 Q. Okay. You mentioned that you worked
 8 for the city and then Debbie worked for the city
 9 and you guys were doing data input but then she
 10 moved on to be a 9-1-1 operator.
 11 A. Yes.
 12 Q. Did you stay in your data input job or
 13 did you move on as well?
 14 A. I moved on as well. I worked for the
 15 fire department and then I worked for the court
 16 system.
 17 Q. Okay. When you were working for the
 18 fire department or the court system, did you ever
 19 become aware of Debbie having to go to the hospital
 20 as a result of an injury?
 21 A. Oh, yes. When I was at the fire
 22 department I would key in the paperwork from the
 23 personnel from the field. They would write up the
 24 paperwork and they will bring it into the office
 25 and I would type it up and I noticed her name at

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1 least three times on papers.
 2 Q. Okay. And when you noticed her name
 3 three times on papers, what are these incidents
 4 that you're looking at? What are they documenting?
 5 A. Injuries to her that she had sustained
 6 that they had to treat or that she had gone to the
 7 hospital.
 8 Q. Okay. So medical injuries to Debbie?
 9 A. Yes.
 10 Q. Did there come a point in time when
 11 she left her job as a 9-1-1 operator in Tucson?
 12 A. Yes.
 13 Q. And do you know the circumstances why
 14 she left?
 15 A. She said she had to leave because she
 16 was involved with James and that he was around
 17 quite often and because of her job she was not
 18 allowed to hang around with people who had any
 19 criminal record or things, bad things to do with
 20 the police department.
 21 Q. Okay. So she was working for the
 22 police department. That's not a good situation for
 23 her to be working for the police department when
 24 he's everything negative contact.
 25 A. Correct.

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1 Q. Did there come a point in time when
 2 she moved from Tucson to Las Vegas?
 3 A. Yes.
 4 Q. And during the time period that she
 5 moved, did you stay in contact with her?
 6 A. Yes.
 7 Q. And did you guys call each other on
 8 the phone?
 9 A. Yes, we called each other on the
 10 phone.
 11 Q. How often would you say you talked?
 12 A. Several times a week.
 13 Q. And were they long conversations?
 14 A. Sometimes they were short depending on
 15 the, you know, I had to go to work or she had to go
 16 to work but we definitely had lengthy
 17 conversations.
 18 Q. Okay. Did there come a point in time
 19 where you ever started visiting her after she moved
 20 to Las Vegas?
 21 A. Yes.
 22 Q. Do you recall when that was
 23 approximately?
 24 A. It was a few months after she left. I
 25 would say March probably.

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1 Q. And so that would be March of 1995.
 2 A. Yes.
 3 Q. And did you go to her residence when
 4 you came to visit?
 5 A. Yes, I did.
 6 Q. And was that a trailer or mobile home?
 7 A. It was yeah, a mobile -- I guess
 8 whatever you call it mobile home or a trailer.
 9 Q. Did you stay with her at her
 10 residence?
 11 A. I did.
 12 Q. And did you notice anything different
 13 about how her residence in Las Vegas looked versus
 14 how her home in Tucson looked?
 15 A. She didn't have very much furniture.
 16 Q. Okay.
 17 A. Basically.
 18 Q. Did she say why?
 19 A. She had said that James had taken it
 20 out of the house.
 21 Q. Okay. He had taken some furniture out
 22 of the home?
 23 A. Yes.
 24 Q. Did she say what he did with it?
 25 A. She said it just disappears, that he

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1 keeps taking furniture and that she had assumed
2 that he was using it to exchange for drugs or
3 other -- she didn't really know what he was doing
4 'cause he wasn't at the house.

5 Q. Do you recall her discussing him
6 taking anything besides furniture?

7 A. Yes, jackets from before I moved here,
8 she had told me that he had taken their jackets.

9 Q. Whose jackets?

10 A. The kids. She had bought jackets for
11 the kids.

12 Q. What were the circumstances of that?
13 Where did the jackets come from? Like had she just
14 bought them?

15 A. Yes. She had just bought them.

16 Q. And what happened to them?

17 A. She said they just disappeared. They
18 still had the tags on them and everything. She
19 didn't have the coats to take the kids to school on
20 today care.

21 Q. As you were visiting her in March of
22 1995 did you notice anything different about how
23 her face looked?

24 A. Yes. She had a scar on her nose she
25 did not have when she was in Tucson.

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1 Q. Did there ever come a point in time
2 when you moved to Las Vegas?

3 A. Yes.

4 Q. When was that approximately?

5 A. I moved in May, April or May I started
6 moving my stuff there and then in June the first
7 week of June I moved to Las Vegas with my daughter.

8 Q. Okay. When you say you moved your
9 stuff there, are you talking about to Debbie's
10 home?

11 A. Yes.

12 Q. And did you occupy one of the bedrooms
13 in the home?

14 A. Yes, I did.

15 Q. And you had your stuff there. What
16 kind of stuff are we talking about?

17 A. Oh, I had all of my stuff. I had
18 furniture, clothes, my daughter's toys, basically
19 everything. I was just -- I had moved everything
20 out of my house to her house. The only reason why
21 I hadn't physically stayed there is because my
22 daughter was still in school in Arizona.

23 Q. Were you ever kind of going back and
24 forth between the two cities?

25 A. Yes.

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1 Q. Did you have a stereo at Debbie's
2 trailer?

3 A. I did.

4 Q. Did you ever return from Tucson and
5 notice anything different about your property or
6 the stuff you brought?

7 A. Yes. One time I returned and all of
8 my stuff had been searched through, all the boxes
9 were open. It was just -- it wasn't a complete
10 mess in my room but I could definitely tell that
11 everything had been go through.

12 Every time I opened a box, it just
13 wasn't the way that I pack it and things were
14 opened and some things were missing.

15 Q. What kind of things were missing?

16 A. My daughter had a Jeep that she would
17 drive around in. That was missing. I had jewelry
18 missing and honestly I can't remember what else I
19 had missing.

20 Q. Did you have a stereo missing?

21 A. I don't remember -- I had a stereo, a
22 TV and a VCR that was missing. I don't remember if
23 that was before I moved there or right after.

24 Q. Did you ever have a discussion with
25 anyone about your missing property?

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1 A. With James.

2 Q. And what did you discuss?

3 A. Oh, we -- I discussed why, where the
4 property was. He said, "Don't worry about it," and
5 he said, you know, basically if I paid him, that he
6 would go and get it 'cause he knew where it was and
7 that he would be able to return it to me for a
8 small fee.

9 Q. Okay. And so if you gave him a little
10 more, money he'll go track down your TV or
11 whatever?

12 A. He would bring it back.

13 Q. Did you give him more money?

14 A. No, I did not.

15 Q. During the time that you were living
16 with Debbie, to your knowledge did James Chappell
17 have a key to the residence?

18 A. I never remember him having a key.

19 Q. But you said he was able to get inside
20 the residence and get your property at least.

21 A. Well, yes.

22 Q. How did he get inside to your
23 knowledge?

24 A. He was staying there off and on so
25 either he was already in the apart -- the trailer

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1 or he would break in the trailer.
 2 Q. Did Debbie ever change the locks on
 3 the windows and doors?
 4 A. I don't recall if she did or not.
 5 Q. Okay. Were you ever home with Debbie
 6 at a time in the trailer where James was trying to
 7 get in?
 8 A. Yes.
 9 Q. And how would she react to that? Was
 10 it something that she was happy about?
 11 A. No. She definitely wasn't happy about
 12 it. She was frightened and did not want him to
 13 come into the house.
 14 Q. So it upset her?
 15 A. Definitely.
 16 Q. How long or when was it do you think
 17 that you stopped living with her at the trailer?
 18 A. July, the end of July.
 19 Q. Okay. And that would have been in
 20 1995?
 21 A. Yes.
 22 Q. During the time that you were staying
 23 there, did you ever have an encounter with James
 24 when you were home by yourself in the trailer?
 25 A. Yes, I did.

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1 Q. Would you describe that.
 2 A. Okay. Debbie had called me and said
 3 that he had, I believe he had just returned, he had
 4 just gotten out of jail and they were speaking over
 5 the phone and he told her that she needed to come
 6 home and she said she's not going to be coming
 7 home. She was at a friend's house.
 8 Q. Okay. Let me stop you there.
 9 A. Yes.
 10 Q. You were at Debbie's trailer and at
 11 that time you were living there; is that right?
 12 A. I was.
 13 Q. Okay. Where was Debbie when you were
 14 having this conversation?
 15 A. Debbie was at a friend's house.
 16 Q. So she called you at her residence or
 17 your residence?
 18 A. Yes.
 19 Q. And she said that James had just
 20 called her.
 21 A. We used to have pagers then so I
 22 believe -- I don't know the circumstances of how,
 23 you know, he had gotten in touch with her. She had
 24 just spoken with him.
 25 Q. And what information did she relate to

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1 you?
 2 A. She said that he was on the way to the
 3 house, that if she wasn't there, that he would rape
 4 me and he would burn the house down so that she did
 5 not have a house to come home to.
 6 Q. And so why was she calling you?
 7 A. To tell me the information because she
 8 said that he was probably on the way to the house.
 9 Q. To warn you?
 10 A. Yes.
 11 Q. Did he come to the house and knock on
 12 the front door and you let him in?
 13 A. No. I locked all the doors and
 14 windows in the house and then I was still on the
 15 phone with Debbie when I heard him trying to come
 16 in so then I went into my bedroom and locked the
 17 door and stayed in the bedroom.
 18 Q. When you said you heard him trying to
 19 come in the trailer, how was it that he was trying
 20 to get in? Where was it?
 21 A. I don't know if he originally tried to
 22 come in through the door or not but he was trying
 23 to -- he was coming in through the window in the
 24 front.
 25 Q. And the window in the front, is a

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1 window into which room?
 2 A. Into Debbie's bedroom.
 3 Q. So you heard that and then you went in
 4 your own bedroom and locked the bedroom door?
 5 A. Yes.
 6 Q. Okay. What happened after that?
 7 A. I -- we had three-way calling at the
 8 time and I called 9-1-1 and Debbie and the 9-1-1
 9 operator kept asking me questions that I could say
 10 yes or no to basically, and James came in and he
 11 came into my door and he didn't break the door
 12 down. I don't really know how he got in because I
 13 did lock it but he came in and he kept asking me if
 14 that was Debbie on the phone and if it was that he
 15 wanted to talk to her, but I just didn't answer
 16 until they, the 9-1-1 operator -- 9-1-1 operator
 17 said that the police were at the door and they
 18 could not come in because the door was locked.
 19 Q. Were you scared?
 20 A. Definitely.
 21 Q. Was he upset when he was asking you if
 22 that was Debbie on the phone?
 23 A. Yes, he was. I could tell he was
 24 upset. He was pacing back from my room to the
 25 bathroom.

1 Q. Okay. And someone on the phone or the
2 9-1-1 operator tells you that officers are there
3 but they can't get inside?
4 A. Yes.
5 Q. What did you do at that point?
6 A. Then I let him speak with Debbie on
7 the phone and I gave him the phone and I went out
8 and unlocked the door for the police officers. I
9 waited in the livingroom while they went into the
10 bedroom and arrested him.
11 Q. Okay. After they arrested him, did
12 you ever go back in your room?
13 A. Yes. They brought him out into the
14 livingroom and then they brought me back into my
15 bedroom.
16 Q. And was there anything different about
17 your bedroom at that point?
18 A. Yes. There was a knife next to my
19 bed.
20 Q. Had that knife been there before James
21 was there?
22 A. No.
23 Q. Do you recall an incident that
24 occurred in June of 1995 where you summoned the
25 police for Debbie?

1 A. Yes.
2 Q. Can you describe that.
3 A. Yes. She -- I was sitting at the
4 dining room table and she was sitting on the couch
5 in the livingroom, in the front livingroom, and he
6 was pacing back and forth in between the bedroom,
7 her bedroom and the livingroom and kept asking her
8 to come into the bedroom because he wanted to talk
9 to her alone and she was very frightened.
10 She was crying and saying, you know,
11 if he wants to say anything, just say it and, you
12 know, what is wrong with you, why are you doing
13 this and finally --
14 Q. Was he angry?
15 A. He was agitated. I have no idea. He
16 wouldn't say anything at the time. He just kept
17 telling her to come into the bedroom.
18 Q. But she seemed scared to you?
19 A. Definitely. She was crying.
20 Q. And she didn't want to go in the
21 bedroom?
22 A. And then when she went into the
23 bedroom, she told me to call 9-1-1 and when he came
24 back out, she finally went into the bedroom with
25 him and he closed the door. Somebody closed the

1 door.
2 Q. So there was a point when she went
3 into the bedroom that she asked you to call 9-1-1?
4 A. Uh-huh.
5 Q. Is that yes?
6 A. Yes.
7 Q. And there was a point where she
8 finally goes back in that bedroom with him?
9 A. Yes.
10 Q. And when she was back in the bedroom
11 with him, could you hear anything?
12 A. No. I was on the phone with the 9-1-1
13 operator and I was trying to hear something at the
14 door and I couldn't hear anything.
15 Q. Okay. But you called the police?
16 A. Yes, I did.
17 Q. And did they come to the residence?
18 A. They did.
19 Q. Once they got there, were you the
20 person who let them inside the door?
21 A. I imagine. To be honest I can't
22 remember.
23 Q. Okay. Did you go over to the door,
24 the bedroom door where Debbie and James had gone
25 inside?

1 A. When, after the police officers were
2 there?
3 Q. Yes.
4 A. I don't remember the location where I
5 was. The kids were there as well so they could
6 have even opened the door. I could have opened --
7 I'm not really sure.
8 Q. Well, do you remember Debbie or James
9 coming out of the bedroom?
10 A. Yes, Debbie came out of the bedroom.
11 Q. And what did she look like?
12 A. She was very flushed, very red and she
13 had told me that he had her pinned down. He was
14 sitting on top of her chest area with her arms back
15 and his knees were on top of her elbows and he had
16 a knife up against her throat.
17 Q. After the police got there, I assume
18 they arrested James.
19 A. They did.
20 Q. And were all three children were home
21 at the time?
22 A. Yes, they were.
23 Q. So he gets taken into custody and
24 Debbie told you what happened.
25 A. Yes. I don't remember if it was

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1 right -- it was before they left that she had told
 2 me what happened.
 3 Q. Did you and Debbie ever go back in the
 4 bedroom and find the knife?
 5 A. The police did.
 6 Q. The police found the knife he had had?
 7 A. Yes. It was underneath her pillow.
 8 Q. If you moved out of there I think you
 9 said at the end of July of 1995 --
 10 A. I believe it was.
 11 Q. Okay. So that was about a month
 12 before she was murdered?
 13 A. Yeah.
 14 Q. Were you in close contact with her
 15 during the last month of her life?
 16 A. No.
 17 Q. Okay. How did you learn about her
 18 murder?
 19 A. On the news.
 20 Q. Were you still living in Las Vegas?
 21 A. I was.
 22 Q. And it just came on the news one day,
 23 one morning.
 24 A. Yes. My boyfriend was watching the
 25 news while we were getting ready for work and he

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1 called me out to the livingroom and I saw Debbie or
 2 it was James picture.
 3 Q. What was it like for you?
 4 A. I was very frightened. I was crying
 5 and I didn't go to work for a day or two. I just
 6 couldn't believe it.
 7 Q. Since that time how has her death
 8 impacted you?
 9 MR. SCHIECK: I'll object, Your Honor,
 10 relevance grounds.
 11 THE COURT: Overruled. You can answer
 12 the question.
 13 THE WITNESS: Answer it?
 14 THE COURT: You can answer, yes.
 15 THE WITNESS: Are you asking about
 16 myself personally?
 17 MS. WECKERLY:
 18 Q. Yeah.
 19 A. Well, it was a very frightening
 20 situation to go through and now looking back I just
 21 can't believe that I was even involved in a
 22 situation like that. I can't believe that anybody
 23 could be in that situation for such a long period
 24 of time. It was really hard and, you know, I
 25 just -- I just don't understand how somebody could

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1 do that especially when --
 2 MR. SCHIECK: I'm going to object,
 3 Your Honor. This is nonresponsive now.
 4 THE COURT: I'll sustain the
 5 objection.
 6 MS. WECKERLY: Let me ask you this.
 7 Q. What was Debbie like as a person?
 8 A. She was a fun person, a fun person to
 9 be around. Everybody loved being around her. She
 10 was definitely -- most of the time she was happy.
 11 I mean people who would just meet her would not be
 12 able to tell that, you know, anything was going on
 13 at home.
 14 Q. And how was she towards her children?
 15 A. She loved her kids. She did anything
 16 for her kids.
 17 Q. She did anything for her kids?
 18 A. Yes.
 19 MS. WECKERLY: Thank you. I'll pass
 20 the witness.
 21 (Whereupon Ms. Weckerly
 22 concluded her direct examination
 23 at 4:37 p.m.)
 24 THE COURT: Mr. Schieck or
 25 Mr. Patrick.

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1 CROSS-EXAMINATION
 2 BY MR. PATRICK:
 3 Q. Hi, Ms. McGuire.
 4 A. Hi.
 5 Q. You testified at the previous trial in
 6 this matter.
 7 A. I did.
 8 Q. And did you have a chance to review
 9 that testimony before you came in today?
 10 A. I did.
 11 Q. The incident where you were talking on
 12 the phone to Debbie and she relayed some threats
 13 that James allegedly made to you, can we talk about
 14 that for a second?
 15 A. Sure.
 16 Q. James came, actually came to the
 17 trailer that night.
 18 A. Correct.
 19 Q. And gained entry?
 20 A. Yes.
 21 Q. And came into your bedroom?
 22 A. Yes.
 23 Q. Okay. At any time did he ever
 24 threaten you?
 25 A. No.

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1 Q. He was asking you questions about
 2 Debbie and he wanted to talk to Debbie on the
 3 phone?
 4 A. Yes.
 5 Q. About but he never actually threatened
 6 you?
 7 A. No.
 8 Q. I think you said that after the please
 9 came and you went back in your room there was a
 10 knife on the floor?
 11 A. Yes.
 12 Q. Did you ever actually see James with
 13 that knife in his hand?
 14 A. No.
 15 Q. Did you tell the police about the
 16 knife?
 17 A. Well, they are the ones who told me
 18 about it. They saw it there.
 19 Q. Did they take took that into evidence?
 20 A. I don't recall.
 21 Q. And then the incident where James came
 22 over and asked Debbie to go in the bedroom --
 23 A. Yes.
 24 Q. -- and Debbie went into the bedroom
 25 with James.

1 knocked on the door.
 2 Q. Okay. But in any event, somebody
 3 knocked on the door. Debbie came out.
 4 A. Yes.
 5 Q. And then James was arrested.
 6 A. Yes.
 7 Q. Did Debbie talk to the police that
 8 night?
 9 A. Yes, she did.
 10 Q. Were you around when she was talking
 11 to them?
 12 A. No, I wasn't.
 13 Q. Did she tell you anything about her
 14 talking to the police?
 15 A. Oh, gosh, I can't remember. I mean
 16 about the conversations that she had with the
 17 police?
 18 Q. No, just about the whole incident.
 19 About James pinning her down on the bed.
 20 A. Yes, she told me about that.
 21 Q. Okay. Did she talk to the police
 22 about that?
 23 A. I don't know. I wasn't there.
 24 Q. But she talked as to the police that
 25 night?

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1 A. Yes.
 2 Q. And you said that you tried to listen
 3 but you couldn't hear anything coming from the
 4 bedroom.
 5 A. Yes.
 6 Q. So there was no yelling going on.
 7 A. No.
 8 Q. I'm sorry. If I can go back just one
 9 minute to that previous -- never mind.
 10 So you called the police. We're back
 11 at the incident where Debbie went in the bedroom.
 12 I'm sorry.
 13 You called the police.
 14 A. Yes.
 15 Q. And they arrived.
 16 A. Yes.
 17 Q. Now, did you knock on the bedroom door
 18 before or after the police arrived?
 19 A. I don't really know.
 20 Q. Okay. But it was you that knocked --
 21 A. I cannot remember that.
 22 Q. But you knocked on the door and Debbie
 23 came out.
 24 A. I don't remember. I don't recall if I
 25 had knocked on the door or if the police officers

1 A. Yes, she did.
 2 Q. Where had you gone to?
 3 A. I went outside because the kids were
 4 outside and I was trying to keep them away from all
 5 the commotion.
 6 Q. Were you aware that that night Debbie
 7 wrote out a handwritten statement to the police
 8 regarding that incident?
 9 A. Was I aware that she did that?
 10 Q. Yes.
 11 A. No. I'm not aware of it.
 12 Q. Okay. So you're not aware that when
 13 she wrote out this handwritten incident to the
 14 police she mentioned nothing about being held down
 15 with a knife at her throat?
 16 A. No.
 17 Q. So you didn't know that she mentioned
 18 nothing about a knife to the police about this.
 19 A. No.
 20 Q. Now, I believe you said that you moved
 21 in with Debbie about the first week of June.
 22 A. Physically yes.
 23 Q. Physically. That was '95?
 24 A. Yes.
 25 Q. And you stayed there until

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1 approximately the end of July.
 2 A. Yes.
 3 Q. Now, I'm sorry. Now, when Debbie
 4 called you and told you that James had made threats
 5 about you --
 6 A. Uh-huh.
 7 Q. -- where was she?
 8 A. She was at a friend's house.
 9 Q. Do you know what friend?
 10 A. Lisa.
 11 Q. Okay. So Lisa was not -- did Lisa
 12 ever live in the trailer at the same time you did?
 13 A. No. She didn't live there. She would
 14 stay there sometimes.
 15 Q. Okay. So Lisa moved in after you had
 16 already moved out?
 17 A. Possibly. I don't know because I
 18 really didn't speak with Debbie too much after I
 19 moved out.
 20 Q. And I believe you testified that you
 21 told people that it was fairly common for James to
 22 come and go through the bedroom window into the
 23 trailer.
 24 A. Yes.
 25 Q. That was because he never had a key.

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1 A. Yes.
 2 MR. PATRICK: That's all I have, Your
 3 Honor.
 4 (Whereupon Mr. Patrick
 5 concluded his cross-examination
 6 at 4:42 p.m.)
 7 THE COURT: Ms. Weckerly.
 8 MS. WECKERLY: Thank you.
 9
 10 REDIRECT EXAMINATION
 11 BY MS. WECKERLY:
 12 Q. You were asked a question about the
 13 incident where James held a knife on Debbie and she
 14 was in the bedroom and you were asked when you
 15 knocked on the door whether it was before the
 16 police arrived or after. Do you recall that?
 17 A. Yes.
 18 Q. Would looking at your testimony from
 19 over ten years ago help you refresh your memory on
 20 that issue?
 21 A. On knocking on the door?
 22 Q. On whether you knocked on the door
 23 before the police arrived or after.
 24 A. I could look at the testimony. I'm
 25 not sure.

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1 MS. WECKERLY: This is page 67.
 2 MR. PATRICK: I'm sorry, Pam.
 3 MS. WECKERLY: 67.
 4 Q. Did that refresh your memory as to
 5 whether the police had arrived before you decided
 6 to go knock on the door?
 7 A. The police had -- I stated the police
 8 had arrived and then I knocked on the door.
 9 Q. Okay. And so you probably told the
 10 two that the police were there at that point.
 11 A. Yes.
 12 MS. WECKERLY: Thank you.
 13 (Whereupon Ms. Weckerly
 14 concluded her redirect
 15 examination at 4:43 p.m.)
 16 THE COURT: Mr. Patrick.
 17 MR. PATRICK: No, Your Honor.
 18 THE COURT: Just hold on one second,
 19 ma'am.
 20 Counsel approach, please.
 21 (Whereupon, counsel approached
 22 the bench, and after a
 23 discussion outside the hearing
 24 of the court reporter, the
 25 following proceedings took

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1 place:)
 2 THE COURT: All right. Let me ask you
 3 a question if I could, please, Ms. McGuire. After
 4 James' arrest, did you move out of Debbie's
 5 apartment from fear for yourself or for other
 6 potential bad situations occurring?
 7 THE WITNESS: Both.
 8 THE COURT: Both. Okay.
 9 Ms. Weckerly,, do you have any questions based upon
 10 mine?
 11 MS. WECKERLY: No. Thank you, judge.
 12 THE COURT: Mr. Patrick.
 13 MR. PATRICK: No, Your Honor.
 14 THE COURT: Thank you very much,
 15 Ms. McGuire. You're excused. Step down, ma'am.
 16 (Whereupon Clair McGuire
 17 was excused from the
 18 witness stand at 4:45 p.m.)
 19 THE COURT: How long do you think the
 20 next witness might be?
 21 MR. OWENS: Well, we have a couple now
 22 that we'd be reading testimony so we can take
 23 whatever we can get through. I mean the next one
 24 we intend to read the testimony of Paul Weidner.
 25 THE COURT: Do you have copies of

1 those transcripts?

2 MR. OWENS: Yes.

3 THE COURT: Okay. Do you have a
4 reader?

5 MR. OWENS: Your Honor, I think she
6 went out to get one. Let me see what happened.

7
8 Whereupon an unidentified male,
9 having been first duly sworn to faithfully and
10 accurately read the responses set forth in the
11 transcript did so as follows:

12
13 THE COURT: All right. "Paul
14 Weidner," W-E-I-D-N-E-R, "having been first duly
15 sworn to tell the truth, the whole truth and
16 nothing but the truth, testified and said as
17 follows:" Mr. Owens.

18 MR. OWENS:

19 Q. "Will you state your name, please?"

20 A. "Paul Weidner."

21 Q. "Please spell your last name."

22 A. "W-E-I-D-N-E-R."

23 Q. "Is it Officer Paul Weidner?"

24 A. "Detective."

25 Q. "Detective Wiedner, what is your

1 business or occupation?"

2 A. "I'm a homicide investigator with the
3 city of Lansing Police Department, Lansing,
4 Michigan."

5 Q. "How long have you been in law
6 enforcement?"

7 A. "24 years."

8 Q. "How long with the Lansing Police
9 Department?"

10 A. "24 years."

11 Q. "Were you employed as either a
12 detective or police officer with the Lansing
13 Police Department on August the 18th, 1988?"

14 A. "Yes, I was."

15 Q. "What were your duties?"

16 A. "I was a uniform police officer at the
17 time assigned to the crime suppression
18 unit."

19 Q. "On August the 18th, 1998, at about
20 6:45 p.m., did you have occasion to respond
21 to the 1700 block of South Washington Street
22 in Lansing, Michigan?"

23 A. "Yes."

24 Q. "What was your reason for going to
25 that location?"

1 A. "My partner and I had been sent into
2 the area regarding a disturbance in the 1700
3 block of South Washington."

4 Q. "Identify for the record your
5 partner."

6 A. "Officer John Priebe."

7 Q. "Will you spell his name, please?"

8 A. "I believe P-R-I-E-B-E."

9 Q. "What happened after you arrived?"

10 A. "We made contact with the victim. He
11 stated that he had been assaulted. When we
12 first arrived, we exited our vehicle. We
13 encountered a subject that was standing at
14 his front porch with his shotgun that turned
15 out to be the victim of our crime."

16 Q. "You have just explained that he was
17 standing on his front porch."

18 A. "Yes, I believe so."

19 Q. "You are referring to the front porch
20 of his residence."

21 A. "Yes, 1705 South Washington Avenue."

22 Q. "Did you identify the victim by
23 name?"

24 A. "His name of Kenneth Gay."

25 Q. "G-A-Y?"

1 A. "G-A-Y."

2 Q. "Are you able to describe whether
3 Mr. Gay was armed in any fashion when you and
4 your partner, Officer Priebe, arrived?"

5 A. "According to my report it indicated
6 that Mr. Gay was armed with a shotgun."

7 Q. "Are you able to describe the demeanor
8 of the victim, Mr. Gay, at that time?"

9 A. "I recall that he was very upset. My
10 recollection is that there appeared to be a
11 lot of tension and the victim was very
12 upset."

13 Q. "Were there other subjects in the
14 area?"

15 A. Yes.

16 Q. "Did you have occasion to investigate
17 the allegations made by Kenneth Gay?"

18 A. "We interviewed Mr. Gay and upon
19 receiving his statement and information, we
20 subsequently made an arrest on two
21 individuals that evening for a assault."

22 Q. "What individuals did you arrest that
23 evening?"

24 A. "We arrested a James Montell Chappell
25 and also a -- I believe his name was Harold

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1 Smith."
 2 Q. "Did you obtain dates of birth for the
 3 two arrestees?"
 4 A. "Yes, we did."
 5 Q. "Let's start with Mr. Chappell, what
 6 was his date of birth?"
 7 A. "According to my police report,
 8 Mr. Chappell's date of birth was 12/27 of
 9 '69."
 10 Q. "What about the other subject, William
 11 Smith?"
 12 A. "It's Harold Smith."
 13 Q. "I'm sorry."
 14 A. "His date of birth was 10/30 of '66."
 15 Q. "You mentioned that you interviewed
 16 the complaining witness, Mr. Gay?"
 17 A. "Yes."
 18 Q. "Did he tell you what occurred?"
 19 A. "Yes, he did."
 20 Q. "What did he tell you?"
 21 A. "According to my report, Mr. Gay
 22 advised that he was coming home that etching
 23 in his vehicle. There is an alley that runs
 24 behind his house. He attempted to pull into
 25 the alley and encountered several subjects

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1 that were in the alley gelling and screaming
 2 at him. He stated to us that the subjects
 3 began pounding on his vehicle and a brick was
 4 thrown at his vehicle. He stated that he
 5 encountered these subjects after he got out
 6 of his vehicle and was struck in the back
 7 with what appeared to be a brick or a rock on
 8 the left side and he identified his assailant
 9 as Mr. Smith and Mr. Chappell."
 10 Q. "Did the complaining witness, Mr. Gay,
 11 identify Harold Smith and James Chappell as
 12 individuals who had participated in the
 13 assault?"
 14 A. "Yes. According to my report, he
 15 named them by name, that Smith and James
 16 Chappell had been involved in the assault."
 17 Q. "Did he say specifically whether
 18 anything, any object was thrown at him by
 19 James Chappell?"
 20 A. "He stated according to my report that
 21 he also observed Mr. Chappell -- he was hit
 22 on the left side of his back with a brick and
 23 stated that the subject Chappell threw the
 24 brick."
 25 Q. "Did you have occasion to examine the

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1 back of Kenneth Gay?"
 2 A. "Yes. He did receive some injury to
 3 the left side. There was an imprint of what
 4 appeared to be a brick on his shirt and also
 5 he sustained what appeared to be some
 6 bruising and some laceration."
 7 Q. "Do you happen to recall what type of
 8 shirt Mr. Gay was wearing?"
 9 A. "I believe it was a tee-shirt; a light
 10 colored tee-shirt to the best of my
 11 recollection."
 12 Q. "Now is it your testimony that his
 13 report to you was that the individual, who
 14 threw the brick which hit him in the area on
 15 the back where he was injured, was James
 16 Chappell?"
 17 A. "That is -- I'm referring to my police
 18 report and that's what my report reflects."
 19 Q. "Now, you've mentioned that the two
 20 subjects, Harold Smith and James Chappell,
 21 were arrested in connection with the
 22 incident?"
 23 A. "That is correct."
 24 Q. "On what charge?"
 25 A. "Felonious assault."

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1 Q. "Did you have occasion to interview
 2 Mr. Chappell, one of the arrestees, after you
 3 had commenced the investigation?"
 4 A. "My partner, once we arrived at the
 5 station, read the accused his Miranda
 6 warnings and then did take a statement from
 7 him."
 8 Q. "Did Mr. Chappell give a statement
 9 which was somewhat contradictory of the
 10 account given by the victim Kenneth Gay?"
 11 A. "Somewhat."
 12 Q. "What was the account provided by
 13 Mr. Chappell?"
 14 A. If "I may refer to my report."
 15 MR. OWENS: "May he do so, Your Honor,
 16 to refresh his memory?"
 17 THE COURT: "Yes."
 18 MR. OWENS:
 19 Q. "You may, sir."
 20 A. "Yes, sir. According to the statement
 21 here written by Officer Priebe, it stated
 22 that Mr. Chappell told Officer Priebe
 23 that we were standing in the alley when the
 24 car started driving up the alley. It wasn't
 25 going very fast, but it didn't honk and while

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1 I was getting out of the way, Harold yelled
 2 that he tried to run us over and so he threw
 3 a brick at the car as it went by. He didn't
 4 hit the car, but the white guy, complainant
 5 Gay, came out of his house with a baseball
 6 bat and under some derogatory statement
 7 made, if you'd like me to state those?"
 8 Q. "What were those statements?"
 9 A. "The victim stated, according to
 10 Mr. Chappell saying, 'Come on, you niggers,
 11 I'm not afraid of you.' Harold then threw a
 12 brick at the white guy and it knocked him
 13 down. The guy went into his house and Harold
 14 picked up the bat. The guy came onto the
 15 porch with a gun and one of the other guys
 16 threw a bottle at him, which hit him on the
 17 shoulder."
 18 "He continues with the police arrived
 19 and that the guy who threw the bottle ran off
 20 between the houses. There were four of us
 21 and I don't know the other two guys that
 22 left. They were Harold's friends. The one
 23 that threw the bottle was described as a
 24 black male, six foot, heavy build with a red
 25 shirt and blue jeans and he stays on Elm

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1 Street."
 2 Q. "I take it, from your description of
 3 Mr. Chappell's statement, that except for
 4 acknowledging his presence, he didn't admit
 5 to any active participating in the felonious
 6 assault?"
 7 A. "According to his statement, no."
 8 Q. "However, as you examined your report
 9 is it very clear that the victim, Mr. Gay,
 10 identified Chappell as one of the persons who
 11 had thrown and, in fact, hit him in the back
 12 with a brick?"
 13 A. "Yes, it is."
 14 Q. "Were you ever called upon to testify
 15 in court on this matter?"
 16 A. "No."
 17 Q. "Do you have a personal recollection
 18 now of the disposition of that charge?"
 19 A. "No, I do not. I have no idea what
 20 happened to the charge."
 21 MR. OWENS: "That concludes direct,
 22 Your Honor."
 23 THE COURT: "Thank you. Cross."
 24 MR. PATRICK:
 25 Q. "Officer, going back to this date,

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1 this occurred when again, please?"
 2 A. "It occurred on August 18, 1988."
 3 Q. "So that's what, almost eight, a
 4 little more than eight years ago?"
 5 A. "That is correct."
 6 Q. "Now, as far as what happened, you
 7 personally did not see anything, did you?"
 8 A. "No, we did not."
 9 Q. "All you did was talk to the victim
 10 and apparently a witness and apparently you
 11 talked to James?"
 12 A. "Yes. Upon our arrival, we conducted
 13 an investigation and talked with the people
 14 that were there."
 15 Q. "Do you recall if the victim -- can
 16 you describe the victim at all?"
 17 A. "I just recall him being an older
 18 white male. He was -- I remember him
 19 specifically being very irate, very upset,
 20 but anything else except for the police
 21 report I could tell you his date of birth and
 22 so on."
 23 Q. "And when you first saw him, he
 24 apparently had a shotgun out?"
 25 A. "Yes."

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1 Q. "And you learned, during the course of
 2 your talking to people, at one time he had a
 3 baseball bat out?"
 4 A. "He -- yes, he did."
 5 Q. "When you talked to him, he never
 6 admitted anything about calling these guys,
 7 'Come on you bunch of niggers'?"
 8 A. "If I could review my report
 9 quickly?"
 10 Q. "Go ahead."
 11 A. "No, I do not see anything in the
 12 report."
 13 Q. "And based on his statement, he did
 14 not indicate any responsibility on his part
 15 for starting any of this, did he?"
 16 A. "The only thing he indicated,
 17 according to the report, that he attempted to
 18 pull in the alley behind his house and he was
 19 confronted by several subjects in the
 20 alley."
 21 Q. "When apparently you guys arrested
 22 Mr. Smith and Mr. Chappell; is that
 23 correct?"
 24 A. Yes.
 25 Q. "Now, Mr. Smith was not cooperative,

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1 was he?"
 2 A. "According to the report, he was quite
 3 combative."
 4 Q. "He didn't give you a statement?"
 5 A. "No, he did not."
 6 Q. "Was Mr. Chappell cooperative?"
 7 A. "He gave us a statement."
 8 Q. "He was more cooperative than
 9 Mr. Smith?"
 10 A. "Well, it would appear so according to
 11 the report."
 12 Q. "And while he had not acknowledged
 13 throwing the brick, apparently the evidence
 14 is that both he and Smith both threw a brick
 15 at one point or another."
 16 A. "Yes."
 17 Q. "Do you recall who the other witness
 18 was that you interviewed who was not
 19 necessarily the victim?"
 20 A. "I have a name on my police report by
 21 the name of Dennis -- I think it's
 22 Werebicky."
 23 Q. "What did he say he observed?"
 24 A. "If I may refer to my report?"
 25 Q. "Go ahead."

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1 A. "He stated that he was out and about
 2 walking his dog when he observed the victims
 3 drive down the alley and was attacked by the
 4 black males. The witness stated he stated
 5 two accused subjects, along with other
 6 subjects, started beating on the victim's
 7 vehicle and started throwing rocks at the
 8 vehicle. He also observed the victim being
 9 struck with the bricks and observed accused
 10 Smith throw a brick and strike the victim."
 11 Q. "He doesn't actually say he observed
 12 Mr. Chappell throw a brick?"
 13 A. "That is correct."
 14 Q. "If you could, Officer, refer if you
 15 would to page 6 of your report, if you don't
 16 mind, look down in the lower right-hand
 17 corner."
 18 A. "Which would be page 6?"
 19 Q. "Mine just says page 6 of and I don't
 20 have the last part of that. I think it's the
 21 one that has all the little blanks to fill
 22 in."
 23 "May I approach, Judge?"
 24 THE COURT: "Yes."
 25 MR. PATRICK: Okay. I sec. Sorry.

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1 THE COURT: That's the witness.
 2 THE WITNESS: "Okay. I see it. Is it
 3 a descriptor?"
 4 MR. PATRICK:
 5 Q. "It has all the little numbers to fill
 6 in a report quickly. It says subject injury,
 7 how did your associate respond to that?"
 8 A. "Let me find that modus operandi page.
 9 Means of attack?"
 10 Q. "No, subject injury, down on the
 11 further right-hand side. This says the --
 12 Judge, may I approach?"
 13 THE COURT: "Yes."
 14 MR. PATRICK:
 15 Q. "This is the sheet on Harold Lee
 16 Smith, this one here."
 17 A. "Oh, okay. Let me see."
 18 Q. "How did you fill that out or how did
 19 you and your associate fill that out?"
 20 A. "It indicates no injury."
 21 Q. "Now that is speaking of Mr. Gay, the
 22 one who was hit by the brick?"
 23 A. "No, that's speaking of the
 24 arrestee."
 25 Q. "Oh, I see. That's probably Mr. Smith

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1 then."
 2 A. "Yes."
 3 Q. "Okay. Do you know if Mr. Gay had to
 4 go to the hospital at all?"
 5 A. "I do not recall."
 6 Q. "Would you guys have put that in the
 7 report someplace if he had sustained serious
 8 injuries of any kind?"
 9 A. "Yes. If we would have requested the
 10 Lansing Fire Department and Ambulance to
 11 arrive at the scene, it would be on the
 12 report. If he was seeking his own medical
 13 attention, it may not be."
 14 Q. "But there is no indication on the
 15 report that you guys called an ambulance?"
 16 A. "That is correct."
 17 Q. "You've indicated that you don't know
 18 exactly how this eventually got resolved; is
 19 that correct?"
 20 A. "You mean how the case was
 21 adjudicated?"
 22 Q. "Right."
 23 A. "No. I have no idea."
 24 Q. "Would it surprise you if I said there
 25 was no judgment of conviction for a felony in

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1 this case?"

2 A. "One way or the other, it wouldn't

3 because I have no idea."

4 MR. PATRICK: "Thank you. I have no

5 further questions."

6 MR. OWENS: "No redirect, Judge."

7 THE WITNESS: Thank you.

8 THE COURT: All right. Thank you very

9 much. All right. Ladies and gentlemen, we're

10 going to take our evening recess. During this

11 recess, it is your duty not to converse among

12 yourselves or with anyone else on any subject

13 connected with the trial or to read, watch or

14 listen to any report of or commentary on the trial

15 by any person connected with the trial or by any

16 medium of information, including, without

17 limitation, newspaper, television, radio, and the

18 internet, and you are not to form or express an

19 opinion on any subject connected with this case

20 until it is finally submitted to you, under

21 instructions by me.

22 We'll start back tomorrow at 9:00

23 o'clock. Okay.

24 (Whereupon the unidentified male

25 was excused from the

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1 witness stand at 5:01 p.m.)

2 (Whereupon, the jury

3 retired from the courtroom

4 and the following proceedings

5 took place outside their

6 presence:)

7 THE COURT: Anything outside the

8 presence?

9 MS. WECKERLY: No, Judge.

10 THE COURT: All right. Folks, I'll

11 see you in the morning. Thank you.

12 (Whereupon the proceedings

13 adjourned at 5:01 p.m.)

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1 REPORTER'S CERTIFICATE

2

3 STATE OF NEVADA } ss

4 COUNTY OF CLARK)

5

6 I, Cheryl Gardner, RMR-RPR, CCR 230,

7 do hereby certify that I took down in Stenotype all

8 of the proceedings had in the before-entitled

9 matter at the time and place indicated and that

10 thereafter said shorthand notes were transcribed

11 into typewriting by me and that the foregoing

12 transcript constitutes a full, true and accurate

13 record of the proceedings had.

14 IN WITNESS WHEREOF, I have hereunto

15 set my hand and affixed my official seal of office

16 in the County of Clark, State of Nevada, this

17 16th day of March,

18 2007.

19

20

21

22

23

24

25

Cheryl Gardner

CHERYL GARDNER, RMR-RPR, CCR 230

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1 AFFIRMATION

2 Pursuant to NRS 239B.010

3

4 The undersigned does hereby affirm that the

5 preceding transcript filed in District Court Case

6 No. CI31341 does not contain the social security

7 number of any person.

8

9

10

11

12

13 Dated this 16th day of March

14 2007.

15

16

17

18 Cheryl Gardner, CCR 230, RPR, RMR

19

20

21

22

23

24

25

Cheryl Gardner

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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 (Doc 20000)

Sharon Howard, CCR #745

3/14/07

Date

Page 1

1 CASE NO. C131341
2 DEPT. NO. III

3 STATE OF NEVADA
4 CLARK COUNTY, NEVADA

5 STATE OF NEVADA,
6 Plaintiff,
7 vs.
8 JAMES M. CHAPPELL
9 Defendant.

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ORIGINAL

CASE NO. C131341
AFTERNOON
SESSION

COURT
MAR 15 2007 20
DEPUTY

WEDNESDAY, MARCH 14, 2007
2:02 p.m.

APPEARANCES:

For the State: CHRIS J. OWENS, Esq.
Chief Deputy District
Attorney
PAM HECKERLY, Esq.
Deputy District Attorney

For the Defendant: DAVID M. SCHIECK, Esq.
CLARK W. PATRICK, Esq.
Special Public Defenders

Reported by: CHERYL GARDNER, RMR-RPR
CCR NO. 230

Page 3

1 LAS VEGAS, CLARK COUNTY, NEVADA, WED., MAR 14, 2007
2 2:02 p.m.
3 -oOo-
4 MR. OWENS: When we got back from
5 lunch, my secretary --
6 THE COURT: Hold on one second.
7 Officers, will one of you tell Leslie to hold on
8 one second, please. Thank you very much. All
9 right. We'll be on the record in C131341 outside
10 the presence of the jury. The record will reflect
11 Mr. Chappell is present with his attorneys, and the
12 State's attorneys. Mr. Owens.
13 MR. OWENS: Yeah. When we got
14 upstairs a little while ago, my secretary said Mike
15 Pollard --
16 (Remarks off the record.)
17 MR. OWENS: That Mike Pollard called.
18 We've been trying to contact him through his mother
19 and he hadn't been responding. I guess he just
20 climbed in a car and drove here so he's in town so
21 I offer that to the defense if they want to call
22 him for additional cross on any of the subjects
23 that we covered.
24 Other than that, there's a possibility
25 we may call him to make a statement about victim

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1 impact because I don't think they went into that
2 too much.
3 MR. SCHIECK: If I might, the need to
4 call him from victim impact ties into my objection
5 to the testimony of Ms. Mancho as to the victim
6 impact on her. It's our position that victim
7 impact is limited to actually the families of the
8 victim, not to everybody that knew the victim, and
9 that's why we object to the relevance. We would
10 object if they wanted to offer that through
11 Mr. Pollard also.
12 THE COURT: All right. What about as
13 to that issue, Mr. Owens?
14 MR. OWENS: Well, you know, in the
15 cases that I've read about victim impact it doesn't
16 seem to be limited to that at all. If a person
17 dies, it could have an impact on any number of
18 people not just close family members. At some
19 point the Court could restrict that but I mean I've
20 called coaches, friends, work, you know, people
21 from the workplace and even people in the community
22 if they had a larger community impact.
23 THE COURT: Well, I agree that it's
24 primarily something that pertains to the family. A
25 lot of times the victim impact is kind of crossing

Page 5

1 over between the affect on the person testifying as
2 well as to explain the person whose life was lost,
3 their impact on other people and the kind of person
4 they were but still I think it's primarily a family
5 thing and in terms of any further testimony from
6 Mr. Pollard along that line, we'll just kind of see
7 where we are.

8 If we've had a lot of other testimony
9 along victim impact lines, we can kind of address
10 it then.

11 MR. OWENS: If I can say one thing.
12 The Court is absolutely correct according to our
13 state statute as far as testimony that this Court
14 would normally hear on any sentencing, family is
15 fairly narrowly defined. I think there's even a
16 case on this where the defense tried to hold the
17 State to that and the supreme court said it's a
18 different standard and there is no statute on
19 that. If there is a law, I'd like to see it.
20 Maybe Mr. Schieck is aware of a case.

21 MR. SCHIECK: Perhaps we need to brief
22 it before we decide it any further. I mean the
23 closest I'm aware of is a case where there was a
24 previous homicide and they brought in victim impact
25 from the previous homicide in the capital case, and

Page 6

1 the supreme court said that was improper.

2 It should focus specifically on the
3 defendant in a capital sentencing and the victim,
4 not society at large otherwise we'll get in the
5 position --

6 THE COURT: All right. We're not
7 going to be calling Mr. Pollard today I take it.

8 MR. OWENS: No.

9 THE COURT: I'll ask my law clerk if
10 he'd go look and see if he can run up any cases on
11 victim impact testimony in capital cases.

12 MR. SCHIECK: The case I was referring
13 to was Sherman versus State where there was a
14 previous homicide and they brought in victim impact
15 from the previous homicide.

16 THE COURT: Do you know about when
17 that one was decided?

18 MR. SCHIECK: What year?

19 THE COURT: I know Sherman but I don't
20 recall when it was --

21 MR. SCHIECK: When did they start the
22 state public defender? I would guess '98, '97,
23 '98, somewhere in there.

24 THE COURT: All right. Thank you.
25 All right.

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1 (Whereupon, the jury
2 entered the courtroom and the
3 following proceedings took
4 place commencing at 2:08 p.m.):

5 THE COURT: All right. We're on the
6 record in C131341, State of Nevada versus James
7 Chappell. The record will reflect the presence of
8 Mr. Chappell with his attorneys, the State's
9 attorneys. We're in the presence of our jury.
10 Welcome back, ladies and gentlemen. We're going to
11 continue back with the State's case in chief. The
12 State may call their next witness.

13 MR. OWENS: The State calls Lisa
14 Duran.

15
16 LISA LARSEN,
17 having been first duly sworn to testify to the
18 truth, the whole truth and nothing but the truth,
19 was examined and testified as follows:

20 THE CLERK: If you'll please state
21 your name and spell your last name for the record.

22 THE WITNESS: Lisa Larsen,
23 L-A-R-S-E-N.

24 ///

25 ///

Page 8

1 DIRECT EXAMINATION

2 BY MR. OWENS:

3 Q. Are you formerly Lisa Duran?

4 A. Yes, sir.

5 Q. All right. Back in 1994/1995 you were
6 living in the Las Vegas community?

7 A. Yes, sir.

8 Q. You were working over at the GE
9 Capital?

10 A. Yes, sir.

11 Q. How long had you worked there at that
12 point?

13 A. I started in November of '94 and I
14 left in September -- I was there about three years.

15 Q. And is that where you met Debbie
16 Panos?

17 A. Yes, sir.

18 Q. What were the circumstances of meeting
19 her?

20 A. She and I were in the same training
21 class together.

22 Q. And what sort of relationship did you
23 have with her?

24 A. At first it was just, you know, your
25 basic coworker relationship, and then it pretty

Page 9

1 much progressed after that. We started hanging out
 2 together. Our kids would play together, things
 3 like that.
 4 Q. Did you become a little bit familiar
 5 with her situation, her family life?
 6 A. Yes, sir, I did.
 7 Q. And you became aware that she had
 8 moved to Las Vegas about the time that you met her?
 9 A. I believe she had moved there sometime
 10 before I met her.
 11 Q. Okay. It was a little bit before you
 12 met her?
 13 A. Uh-huh, yes, sir.
 14 Q. Were there some other people that
 15 worked there that were also friends eventually of
 16 Debbie?
 17 A. Yes, sir.
 18 Q. Who was in your group?
 19 A. There was Michelle Mancho and Mike
 20 Pollard.
 21 Q. What sort of things would the four of
 22 you do together?
 23 A. We'd go to Michael's house. We'd take
 24 the kids to the park. We'd have barbecues over at
 25 the house, over at Debbie's house.

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1 Q. How often would you see each other?
 2 A. Every day. I mean we all worked
 3 together and we all had different days off so we
 4 saw each other almost every day.
 5 Q. When you say take the kids to the
 6 park, who are you referring to?
 7 A. I'm referring to her three children
 8 and my daughter.
 9 Q. And the relationship that you had with
 10 each other was just a friendship relationship?
 11 A. I think it was a little bit more than
 12 that. I mean it was just the four of us. I mean
 13 there wasn't really anybody on the outside that,
 14 you know --
 15 Q. You would say close friends then?
 16 A. Yes.
 17 Q. There was a time at some point in the
 18 summer of 1995 when you actually moved into the
 19 trailer home of Debbie's?
 20 A. Yes, sir.
 21 Q. What was that situation? What was
 22 that about?
 23 A. Basically just, you know, I needed a
 24 place to be and she needed a roommate and we'd
 25 spent so much time together it just seemed like the

Page 11

1 logical thing to do.
 2 Q. Can you describe the trailer park area
 3 there where she lived and her home.
 4 A. There was only one way to go in and
 5 only one way to come out. It was fairly large and
 6 the houses were pretty much close together. I mean
 7 it wasn't spread out or anything, but it was large.
 8 Q. Can you describe the -- how you first
 9 learned about the abusive relationship that was
 10 going on with Debbie?
 11 A. It was a couple weeks before Christmas
 12 when I was getting ready to leave work and I was
 13 walking, proceeded to walk out of the office and I
 14 was standing between two double doors and I had
 15 seen her in an automobile arguing with a man and
 16 the argument got pretty intense and at one point
 17 she was hit in the face.
 18 Q. What did you see?
 19 A. I saw them arguing. I didn't, you
 20 know, I didn't hear anything and I really couldn't
 21 see but from what, you know, I could see, they were
 22 arguing and it was pretty intense and he hit her.
 23 Q. What happened next?
 24 A. The next thing she came in. I asked
 25 her if she was okay and she said yes, and I left.

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1 Q. Who was it that she was arguing with?
 2 A. Like I said, I couldn't see. I know
 3 it was another male. It was a male but I never
 4 asked her who it was. I never questioned her about
 5 it.
 6 Q. So you didn't have a conversation
 7 about that?
 8 A. No, sir.
 9 Q. And when is the next time you learned
 10 that there was an abuse situation going on?
 11 A. When she came to work and she had a
 12 broken nose.
 13 Q. How much later was that?
 14 A. I don't remember.
 15 Q. Was it months later, a few weeks
 16 later?
 17 A. I don't remember.
 18 Q. Okay. What happened when she came
 19 work and you noticed that? Was there something
 20 said?
 21 A. She came to work and I noticed her
 22 nose, and her eyes underneath were bruised. I
 23 asked her if she was okay, and she said to me yes
 24 and I said, "Well, what happened? Were you in an
 25 accident or what happened?" She said that James

Page 13

1 had hit her.
 2 Q. What else did she say?
 3 A. Just that she had gotten in an
 4 argument and he hit her.
 5 Q. Did you have a response to that?
 6 A. No.
 7 Q. What's the next thing that you became
 8 aware of?
 9 A. Just that things just got worse. They
 10 just started getting worse.
 11 Q. In what way?
 12 A. She'd come to work upset. She'd come
 13 to work crying, things of that nature.
 14 Q. Were there other injuries that you
 15 noticed on her?
 16 A. There were times she would come to
 17 work and she would try to wear shirts that went
 18 down to her elbow 'cause there sometimes was
 19 bruising where she had been grabbed.
 20 Q. You're indicating the upper arm area?
 21 A. Yes, sir. She was thin so you could
 22 see the bruises.
 23 Q. Okay. Did you have a discussion with
 24 her about what was going on at some point?
 25 A. I did.

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1 Q. Okay. What was said?
 2 A. I just asked her, I said, "Well, if
 3 things are so bad, just --" you know, "How come you
 4 just don't," you know, "you won't get out," and at
 5 that time I really didn't understand the dynamics
 6 of domestic violence and domestic abuse so I just
 7 told her, I said, you know, "Why not just get out,"
 8 and she said, "No, I can't do that. My kids need
 9 their father. He's their father. They need him."
 10 And I didn't pursue it anymore after that.
 11 Q. Around Memorial Day, was that the
 12 first time that you actually met this other
 13 individual?
 14 A. Yes, sir.
 15 Q. Okay. What happened?
 16 A. I had brought Debbie home. He was
 17 sitting in the livingroom, and she introduced the
 18 two of us and that was it, and I left.
 19 Q. Was that the first time you actually
 20 met James Chappell?
 21 A. Yes, sir.
 22 Q. Did he say anything?
 23 A. No, sir.
 24 Q. What did he do?
 25 A. He was just sitting on the couch

Page 15

1 watching TV, didn't say anything.
 2 Q. And had you seen him prior to that
 3 time?
 4 A. No, sir.
 5 Q. Did you see him after that time?
 6 A. Yes, sir.
 7 Q. And we're talking about the 31st of
 8 August.
 9 A. Yes, sir.
 10 Q. We'll come up to that in a minute.
 11 Prior to that time other than that time you met
 12 him, you hadn't really seen him involved in her
 13 life.
 14 A. No, sir. I mean I had just seen
 15 pictures around the house, but I mean face-to-face,
 16 no.
 17 Q. Over the summer of 1995 after you'd
 18 actually met the defendant, there was a period of
 19 time when he was incarcerated for most of that
 20 summer.
 21 A. Yes, sir.
 22 Q. And what sort of relationship was
 23 going on that you observed between him and Debbie
 24 at that time?
 25 A. Just that she was trying not to make

Page 16

1 him angry. She had just told me that if he called
 2 the house, to answer the phone, accept his phone
 3 calls so that he wouldn't be mad, and that's what I
 4 did.
 5 Q. And was she trying to keep track of
 6 whether he was still in custody or not?
 7 A. Yes, sir.
 8 Q. And what was she doing with regard to
 9 the relationship as far as trying to maintain it or
 10 not?
 11 A. In the beginning she was just trying
 12 to, you know, make sure that he wouldn't get angry,
 13 that he wouldn't be angry.
 14 Q. Were you ever aware of him being
 15 employed anywhere while he was in Las Vegas?
 16 A. No, sir.
 17 Q. And as far as you knew Debbie, she was
 18 working for GE Capital?
 19 A. Yes, sir.
 20 Q. Anyplace else?
 21 A. When I had first met Debbie, she was
 22 working three jobs.
 23 Q. She was working three different
 24 locations at the same time?
 25 A. Yes, sir. That's what she had told

1 me.

2 Q. How long did that go on for?

3 A. I'm not sure, not long.

4 Q. And you mentioned some phone calls
5 during the months of June and July and August,
6 those summer months of 1995. There were some times
7 when you would answer the phone and James Chappell
8 would be on it?

9 A. Yes, sir.

10 Q. Okay. About how many phone calls
11 would you get?

12 A. I think total there was about seven
13 phone calls between her house and an apartment I
14 had at the time but of all the seven, I talked to
15 him maybe five times. There was two occasions when
16 he had left messages.

17 Q. Okay. So was he calling your place or
18 her place?

19 A. He had called my place twice. One
20 instance I spoke to him. Another instance I hadn't
21 been home.

22 Q. Were you aware if Debbie was talking
23 to him or not or do you recall?

24 A. At that time I just conveyed to her
25 that he had called and we pretty much left it at

1 you had with him?

2 A. There was a phone call when I was at
3 her house and he had called. I answered the phone
4 and as she had stated to me before to accept the
5 charges from him if he had called so I accepted the
6 charges and he asked me where she was and I said
7 she's not here right now and he said, "Well, where
8 is she?" And I said, "Well, she asked me to keep
9 an eye on the kids. She used my car and she went
10 out."

11 Q. What did he say?

12 A. Can I repeat what he said?

13 THE COURT: Yes ma'am.

14 THE WITNESS: Okay. He then asked me
15 what other nigger she was laying up with
16 underneath.

17 MR. OWENS:

18 Q. What did you say?

19 A. And I just told him, I said, "Well,
20 I'm not going to tell you anything like that," and
21 he said, "Well, what kind of friend are you?" And
22 I said, "The kind that minds her own business."

23 Q. What did he say?

24 A. And then he just told me that I should
25 tell her that he called and that when he got out,

1 that.

2 Q. Okay. All right. Let's go on the
3 first phone call that you remember getting from
4 him. Do you remember that? It would have been
5 sometime in about July of '95 or was it sooner?

6 A. There was an incident when he called
7 my house looking for her and she had indicated to
8 him that, you know, she was on her way home, that
9 she was coming and she would be there 'cause we had
10 gone out the night before.

11 Q. And he was at her house?

12 A. Uh-huh, yes.

13 Q. Okay. And this would have been after
14 you formally met him or before?

15 A. This was before.

16 Q. How much before do you think?

17 A. Because like I said he -- well,
18 actually it was that same day because we had gone
19 out the day before and it was Saturday when I
20 brought her home.

21 Q. Okay. What happened in that phone
22 call?

23 A. She ended up speaking with him and
24 informed him she would be home.

25 Q. Okay. What's the next phone call that

1 that she wasn't going to have any kind of life or
2 anything, and that was it.

3 Q. Did he say anything about you or her
4 friends?

5 A. Not at that phone call, no.

6 Q. Was there a later phone call where you
7 had what you thought was a more direct threat.

8 A. Yes, sir. There was another phone
9 call where he indicated to me that once he got out,
10 that, you know, she wouldn't have any friends and
11 that included me. During that particular
12 conversation he had stated to me that he was very
13 upset because she had stopped accepting his calls.
14 She had stopped writing. He didn't get to see the
15 kids, and at that point he told me that when he got
16 out, she wouldn't have any friends and that
17 included me too.

18 Q. About when did that phone call occur?

19 A. I don't remember.

20 Q. In relation to her death, the date of
21 her death, would it have been a few weeks before
22 that?

23 A. It might have been. Again, I don't
24 remember.

25 Q. Was it that summer when he was in

Page 21

Page 23

1 custody?
 2 A. Yes, sir.
 3 Q. Okay. Now, there was some kind of a
 4 plan about moving?
 5 A. Yes, sir.
 6 Q. Were you involved in that?
 7 A. To some extent, yes.
 8 Q. All right. What did you know about
 9 that?
 10 A. I knew that she was in the process of
 11 packing up things at the house, getting things
 12 organized so that she could leave.
 13 Q. And the idea was for her to leave
 14 before he got out of custody?
 15 A. Yes, sir.
 16 Q. Did you have any part in that plan?
 17 A. No. Again, we had just discussed her
 18 moving out because at that time we were all under
 19 the assumption that he was waiting for a bed in
 20 rehabilitation to become available.
 21 Q. So you were thinking he wouldn't be
 22 getting out for a while?
 23 A. Yes, sir.
 24 Q. All right. Let's go to the evening
 25 before her death which would have been the 30th of

1 Q. What was the conversation you had with
 2 Debbie on the evening of the 30th?
 3 A. She had told me that she had gone to
 4 court that day appear she had told me they had a
 5 conversation. She told him it was done, it was
 6 over with. She just wanted to get on with her
 7 life.
 8 Q. And what happened?
 9 A. And we didn't discuss it anymore. I
 10 didn't ask her any questions.
 11 Q. Did you go to work on the 31st?
 12 A. Yes, sir.
 13 Q. And about what time did you get to
 14 work?
 15 A. About 8:00 okay in the morning.
 16 Q. Is this a shorter workday on the 31st?
 17 A. Yes, sir.
 18 Q. At that time as far as you knew the
 19 defendant was still in jail?
 20 A. Yes, sir.
 21 Q. And as far as Debbie knew to your
 22 knowledge he was still in jail?
 23 A. Yes, sir.
 24 Q. Did you have some plan since it was a
 25 shorter day of meeting up later?

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1 August of 1995. Do you remember getting together
 2 with her and talking about his situation there and
 3 his being in custody?
 4 A. Yes, sir.
 5 Q. She had been at court that day. She
 6 had made a court appearance.
 7 A. Yes, sir. That's what she told me.
 8 Q. Where did that conversation take
 9 place?
 10 A. In her home.
 11 Q. Was anyone else there at the time?
 12 A. No.
 13 Q. Just you and Debbie?
 14 A. Yes, and our children.
 15 Q. Okay. And you said you had the one
 16 child?
 17 A. I do.
 18 Q. Were you living there at the time?
 19 A. Yes.
 20 Q. A bedroom?
 21 A. Yes, sir.
 22 Q. And how long had you been staying at
 23 the trailer home there?
 24 A. It was a very short time. It was
 25 about a week.

1 A. Yes, we did.
 2 Q. What was that about?
 3 A. The night before we had discussed her
 4 meeting me at the house so that I could go get some
 5 of my things because I was leaving. It was Labor
 6 Day weekend, and I was leaving. I planned on
 7 leaving town so I wanted to come to the house and
 8 get some of my things and she agreed to meet me
 9 there.
 10 Q. What time did you leave work?
 11 A. 1:00 o'clock.
 12 Q. Where did you go?
 13 A. I went to my mother's house first.
 14 Q. And how long were you at your mother's
 15 house?
 16 A. About 10, 15 minutes.
 17 Q. What happened next?
 18 A. I had asked my mom if I could take her
 19 car over, back over to the trailer and she said
 20 yes, and I took my mom's car and drove over to the
 21 trailer.
 22 Q. I assume Debbie's trailer.
 23 A. Yes, sir.
 24 Q. And when you got there, what did you
 25 see?

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1 A. As I was pulling into the trailer
 2 park, again, there's only one way in and one way
 3 out so as, I was coming in, her car was coming out
 4 and I just proceeded to, into the park to go to the
 5 trailer.
 6 Q. What did you notice about her car?
 7 A. Well, for one thing that I noticed
 8 that it was her car and in the back the trunk was
 9 open and there was a bicycle in the trunk.
 10 Q. Who was driving her car?
 11 A. At that time I wasn't sure who was
 12 driving it and it wasn't until a few minutes later
 13 that I had gone to Mike's house and when I had gone
 14 there and I asked him where Debbie was, he said
 15 that she had just left and then he proceeded to
 16 tell me, "Well, did you know that Janes was out?"
 17 And then I just kind of sat there and
 18 I thought back in my head I saw me driving in and
 19 driving the car, her car coming out and when I
 20 looked again I thought to myself, oh my God, that's
 21 him. So I then went to the nearest store by Mike's
 22 house. I had made a phone call from the phone
 23 booth and I got no answer. All I got was voice
 24 mail.
 25 Q. What did you do next?

1 and without hesitation the officer said, "Fine."
 2 I'll follow you."
 3 Q. Why were you becoming afraid at this
 4 point?
 5 A. Because of things that he had said in
 6 the past to me, just all the abuse and I had just
 7 figured, you know, maybe she was right.
 8 Q. What do you mean?
 9 A. Well, about, I'd say about a month
 10 before it happened she and I were sitting around
 11 and we were just talking. She said, "You know,
 12 Lisa," she said, "he's going to get me. He's going
 13 to come for me. He's mad," and I said, "No.
 14 He's --" you know, "He's not going to do
 15 anything," but she said, you know, "When he does,"
 16 she said, "you'll be the one to find me and you'll
 17 have to tell. You'll have to say what he did," and
 18 it wasn't until I went through counseling and
 19 things that I understood, I understood what she was
 20 telling me about.
 21 Q. Is that something that you kind of
 22 suppressed up to that point?
 23 A. Yes, sir.
 24 Q. Was your concern also based partly on
 25 what you heard from the day care worker --

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1 A. After that I went back to the trailer
 2 again.
 3 Q. What did you do there?
 4 A. Again, I knocked on the door. I
 5 called her name. I just tried anything to get her
 6 to answer the door but nobody would. So then I
 7 went to the day care center not too far down the
 8 street where the kids were and I had a conversation
 9 with the lady at the desk.
 10 Q. Do you remember who was there?
 11 A. At the day care center?
 12 Q. Yeah.
 13 A. There was one lady that I spoke to at
 14 the desk.
 15 Q. You don't remember her name?
 16 A. Her name was Sharon I believe.
 17 Q. And what did you do next?
 18 A. After our brief conversation I became
 19 more afraid of what I thought was, what might have
 20 happen so then I went back to my mom's house and I
 21 got my mother, I got my mom, and I said, "I can't
 22 go back there," so we all jumped in the car and on
 23 the way back to the trailer I saw a police officer
 24 and I approached him and I said, "Can you please go
 25 with me. I think something happened to my friend,"

1 A. Yes, sir.
 2 Q. -- Sharon. All right. Let's go back
 3 to the second time you went to the trailer home
 4 there. You had an officer with you?
 5 A. That was the third time.
 6 Q. Third time. The first time is when
 7 you were passing the car.
 8 A. Yes, sir.
 9 Q. And the second time was?
 10 A. When I had just gotten back from
 11 Mike's and I tried to call and I didn't get any
 12 answer.
 13 Q. Okay.
 14 A. And I went back the second time.
 15 Q. So this would have been the third time
 16 with the police officer?
 17 A. Yes, sir.
 18 Q. What did you notice about the trailer
 19 home when you were there?
 20 A. From the outside when I was trying to
 21 knock on the door and it was locked obviously and I
 22 heard the TV and I heard the air-conditioner
 23 inside, and it wasn't like her to do that, to leave
 24 things on when nobody was there so in the past if
 25 somebody was in the far back part of the house, you

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1 I couldn't hear anybody knock on the front door so I
2 went around to the other side and the side door was
3 locked so then I left the side door and I went back
4 around the front and in the front of her house were
5 the windows to her master bedroom so at one point I
6 thought, well, because I didn't have a key that
7 maybe I would try to get in through a window but
8 then I noticed that something, something wasn't
9 right with the window and when I had gone back the
10 third time I pointed it out to the police officer
11 and that's how he got into the house is through the
12 window that I showed him.

13 Q. Okay. Did you take your brother with
14 you too when you went back over there?

15 A. Yes, sir.

16 Q. What's his name?

17 A. John.

18 Q. When you got there with the police
19 officer, what happened?

20 A. I showed him the window and, you know,
21 expressed my concern, and that's when he proceeded
22 to open the window, get the window open and before
23 he actually went inside, he had called for backup
24 and when the other police officer arrived, he
25 opened the window and he went inside and at this

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1 point I'm standing out.

2 I was on the street part but it was
3 very close to the porch and the officer had gone
4 inside and he opened the door and he told the other
5 officer -- I don't recall what he told him. He
6 just told him something. And at that point I
7 learned that she was gone.

8 Q. What did you see?

9 A. When he opened the door? I saw part
10 of her on the floor.

11 Q. What did you do next?

12 A. I just stood there and just, I started
13 crying. I started freaking out like anybody else
14 would.

15 Q. Did you go back over to the day care?

16 A. At that point no. I had only been to
17 the day care that one time.

18 Q. Were the children at the day care when
19 you went there?

20 A. Yes, sir. Later when I tried to go
21 back and get the kids, I was told that I could not
22 have them because they were already in the custody
23 of the state, that they were going to Child Haven.

24 MR. OWENS: Your Honor, I'm going to
25 refer to some photographs that were previously

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1 marked. I was wondering if the Court wanted to
2 explain to the jury about these were marked in a
3 prior proceeding. We'll be referring to them.

4 THE COURT: All right. Ladies and
5 gentlemen, there is evidence that obviously was
6 admitted in the trial in this matter. Those
7 matters already having evidence stinkers on them
8 will be referred to by what they were referred to
9 in that proceeding.

10 We will talk about things introduced
11 here and introduced in the prior proceeding, but
12 obviously you're allowed in terms of the evidence
13 to take things from the trial as well as whatever
14 evidence is introduced during the sentencing.

15 You can go ahead, Mr. Owens.

16 MR. OWENS: For the record I'm
17 referring to State's exhibit numbers 56 through 60
18 and I'm going to place Exhibit No. 56 on the
19 screen.

20 Q. Are you able to see that there?

21 A. Yes, sir.

22 Q. Okay. What are we looking at there?

23 A. What looks like an apartment building
24 and to the right of the picture is her automobile.

25 Q. Okay. Is that the car you were

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1 describing that she would drive?

2 A. Yes, sir.

3 Q. And showing you No. 57 now. This is a
4 closer version of the same.

5 A. Yes, sir.

6 Q. And No. 58.

7 A. Yes, sir.

8 Q. Just a different angle. When you saw
9 that on the 31st coming out of the, is it the
10 Ballerina Trailer Court?

11 A. Yes, sir.

12 Q. You said that there was something in
13 the trunk?

14 A. Yes, sir.

15 Q. And what was that?

16 A. It was a bicycle.

17 Q. And that sort of caught your
18 attention?

19 A. Yes, sir.

20 Q. Why?

21 A. Because in the past Debbie had told me
22 that that's how James got around was on a bicycle.

23 Q. And Exhibit No. 60 on the screen?

24 THE COURT: Folks over there at the
25 end, you can look up at the gallery monitor as

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1 well. That's a little better. I just turned that
2 on.
3 MR. OWENS:
4 Q. That's the same vehicle?
5 A. Yes, sir.
6 Q. Who was driving the vehicle when you
7 saw it leaving the Ballerina --
8 A. Mr. Chappell.
9 Q. By "Mr. Chappell," who are you
10 referring to?
11 A. The gentleman sitting right there in
12 the middle with the blue vest.
13 MR. OWENS: Thank you. Let the record
14 reflect she's identified the defendant, Your Honor.
15 THE COURT: The record will so
16 reflect.
17 MR. OWENS:
18 Q. When you first saw that car with
19 Mr. Chappell in it, you thought he was still in
20 custody?
21 A. Yes, sir.
22 Q. It was only later you kind of made
23 that connection?
24 A. Yes, sir.
25 Q. And then you knew that that was

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1 Mr. Chappell.
2 A. Yes, sir. Also when I was interviewed
3 at the scene, one of the detectives had come out of
4 the house and he showed me a picture of
5 Mr. Chappell.
6 Q. Is that one of the pictures that you'd
7 seen before in the house there?
8 A. Yes, sir.
9 Q. And was that the same person?
10 A. Yes, sir.
11 Q. I'm going to show you what's been
12 marked as Exhibit No. 1 now and if you can kind of
13 describe for us what we're looking at here.
14 A. The left window that's circled is the
15 window that I indicated to the officers that I
16 noticed there was something wrong with it. Both
17 windows were to her master bedroom but the window
18 on the left that's circled was the window that had
19 the problem.
20 Q. Okay. There's a couple things that
21 are circled on here. Did you make those circles?
22 A. Yes, I did.
23 Q. Was that in a prior proceeding?
24 A. Yes, sir.
25 Q. Do you remember doing that?

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1 A. Yes, sir. There's my initials on the
2 right-hand side.
3 Q. Okay. The right-hand corner of the
4 zoom in there. And so this is the window you were
5 saying seemed somewhat ajar?
6 A. Yes, sir.
7 Q. It doesn't look in this picture like
8 it did when you first saw it.
9 A. No, sir.
10 Q. Okay. What's different about it?
11 A. Well, when I first saw it.
12 Q. You can write right on the screen.
13 THE COURT: You can touch the screen.
14 THE WITNESS: This piece of the window
15 was up here but then when I looked at it, I noticed
16 that the screen was kind of, the screen was kind of
17 tilted a certain way and the window was a certain
18 way and that's when I pointed out, I pointed that
19 out to the police officer and like I said, that's
20 the window he used to again access into the house.
21 MR. OWENS: Okay.
22 Q. I'm going to show you Exhibit No. 4
23 now. It's a little bit closer to you. Is that the
24 way the window appeared after the officer had gone
25 in there?

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1 A. Yes, sir.
2 Q. Okay. Go back to the other general
3 view there, No. 1 -- I'm sorry, yeah, Exhibit No. 1
4 and I'm going to zoom out this time so we can get
5 the full sides of the trailer visible there. Would
6 you kind of tell us which side was the driveway,
7 where were the doors and which sides were being
8 used.
9 A. Off to the left here where you see the
10 stairs, the front door is right here and when you
11 go around to the right side, this is where the
12 driveway is. There is a carport, a covered carport
13 and to the side of that the left side of the
14 trailer there's another door that opened up into a
15 laundry room.
16 Q. Okay. Which doors were used?
17 A. Both of them.
18 Q. Okay. Is there one that was used more
19 than the other one?
20 A. No. I wouldn't say there was. They
21 were both used all the time.
22 Q. So you could go in or out either door?
23 A. Oh, sure.
24 Q. Okay. So the one on the right side
25 there, there was a laundry room right inside that

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1 door?
 2 A. Yeah, the one right here on the right.
 3 Q. And the other one kind of had a porch
 4 attached to it?
 5 A. It was a covered porch right here and
 6 then when you walked into the front door, there was
 7 a livingroom.
 8 Q. Okay.
 9 A. And then off to the right was her
 10 master bedroom.
 11 Q. When we're looking straight on in this
 12 picture as we are, the window that you saw and
 13 noticed was a little bit open you told the police
 14 about that, what is that room in the trailer? What
 15 kind of a room is that?
 16 A. That's the master bedroom. That was
 17 Debbie's room.
 18 Q. And how about that window to the right
 19 on the photograph here?
 20 A. That also was a window in her room.
 21 Q. Okay. So that was all master bedroom
 22 then?
 23 A. Yes, sir.
 24 Q. Where was your room located?
 25 A. When you walked in through the front

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1 door, like I said, there was like a livingroom and
 2 then there was the kitchen and then you walked in
 3 the back. On the right there was a family room and
 4 off to the left there were two small bedrooms and a
 5 bathroom in the middle.
 6 Q. Was there a time later when you went
 7 in there and were able to take a look at the inside
 8 of the trailer?
 9 A. Yes, sir. After they had taken
 10 Debbie's body out of the house, the officer told me
 11 that I could go inside and I could get some of my
 12 and my daughter's things because I wasn't allowed
 13 to stay there that night because it was a crime
 14 scene.
 15 Q. So you went in to get your things?
 16 A. Yes, sir.
 17 Q. What did you notice about the
 18 interior?
 19 A. It just looked like somebody had been
 20 through it.
 21 Q. What do you mean?
 22 A. Well, there were papers on the floor
 23 and, you know, you could tell something happened.
 24 There was blood. I saw blood on the rug.
 25 Q. When you say you could tell that

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1 something had happened and there was papers on the
 2 floor, I mean was the trailer kept really clean or
 3 really picked up all the time. Was it sometimes --
 4 A. It was in disarray for the most part
 5 because, you know, she had three kids.
 6 Q. How had it been affected by her
 7 decision to try to move out?
 8 A. As far as?
 9 Q. Was she in the process of packing
 10 things or washing things?
 11 A. Yes. There was boxes and things of
 12 that nature in the house but, you know, it wasn't
 13 like her to keep letters and papers all over the
 14 place.
 15 Q. So that was unusual?
 16 A. Yes, sir. She tried very hard to keep
 17 all of her personal papers and things together.
 18 She never carried around a purse so she had kind of
 19 like, like one of those organ thingies, those
 20 folders.
 21 Q. Okay. And so she would use that to
 22 keep her paperwork?
 23 A. Yes, sir.
 24 Q. So what you saw in the house with
 25 regard to paperwork and some of the other items was

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1 out of character for the way that the home appeared
 2 before?
 3 A. Yes, sir.
 4 Q. And you said your feeling it looked
 5 like somebody had kind of gone through it?
 6 A. Yes, sir.
 7 Q. Now, this thing that she kept personal
 8 things in, is this something that would have been
 9 kind of like a purse?
 10 A. Yes, sir.
 11 Q. She kept important paperwork in there?
 12 A. Yes, sir.
 13 Q. Were you familiar with the Social
 14 Security cards for her, for the children?
 15 A. Yes. She would hang on to them
 16 regularly. She was getting different funding and
 17 food stamps and help with day care. She always
 18 made sure that she had those things so when she
 19 went to, you know, reapply for something, she
 20 always had them.
 21 Q. So these were important to her?
 22 A. Yes, sir.
 23 Q. All right. I'm going to show you
 24 what's been marked as Exhibit No. 64, photocopies a
 25 series of Social Security cards. Can you see that

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1 up there the names on those?
 2 A. The top one is Debbie's, the middle
 3 one belongs to her oldest son, the next one belongs
 4 to her daughter, and the other one belongs to her
 5 youngest son.
 6 Q. Okay. How would she keep these
 7 cards? Where would she keep them?
 8 A. She would try to keep them in that
 9 folder that she carried around with her.
 10 Q. Okay. Can you describe that for us.
 11 A. Like I said, it was one of those
 12 accordion type things. It was small. I mean it
 13 wasn't really big like that, but it was small.
 14 Something she could carry round, you know, all the
 15 time.
 16 Q. And every time that you saw her with
 17 these cards, they would be in her possession in
 18 that little folder kind of thing?
 19 A. Yes, sir.
 20 Q. That's just where she always had
 21 them. All right. I wanted to show you what's been
 22 marked as Exhibit No. 66 and tell us what we're
 23 looking at here.
 24 A. This is Debbie's senior picture.
 25 Q. And did she look a little different

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1 from this when you knew her?
 2 A. She looked the same.
 3 Q. You don't have any problem recognizing
 4 her from this?
 5 A. No.
 6 Q. You had become aware at some point in
 7 these proceedings that there was a knife that had
 8 been used.
 9 A. Yes, sir.
 10 Q. You had an opportunity to look at the
 11 knife at some point?
 12 A. Yes, sir.
 13 Q. I'm going to show you what's been
 14 marked as Exhibit No. 21 and have you take a look
 15 at that. You were able to see this in a prior
 16 proceeding. You were shown that photograph.
 17 A. Yes, sir.
 18 Q. And when you last testified, I think
 19 it was probably about ten years ago.
 20 A. Yes, sir.
 21 Q. You were able to recognize that.
 22 A. Yes, sir, because there was a worn
 23 mark right up here on the top.
 24 Q. And that made it an individual item
 25 something you could identify?

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1 A. Yes, sir.
 2 Q. Where was this knife kept?
 3 A. The knives were kept -- there was the
 4 refrigerator and the stove and there was a small
 5 drawer between the refrigerator and the stove.
 6 Q. A little while ago you were telling us
 7 that you were in therapy at some point.
 8 A. Yes, sir, I was.
 9 Q. What was that about?
 10 MR. SCHIECK: I have an objection to
 11 that, Your Honor, on relevance.
 12 THE COURT: Mr. Owens.
 13 MR. OWENS: This is the matter we
 14 talked about before court today.
 15 THE COURT: I'll overruled the
 16 objection.
 17 THE WITNESS: I can answer your
 18 question?
 19 THE COURT: Yes.
 20 THE WITNESS: Okay. I had never had
 21 anything like this happen to me before so after it
 22 happened, basically I just shut down for a little
 23 bit and I went to therapy and I had gone to some
 24 domestic violence things so I could learn more
 25 about, because I mean at that point I myself kind

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1 of felt guilty because I didn't listen to her when
 2 she told me, you know, "He's going to get me," you
 3 know.
 4 I kind of felt guilty so I took it
 5 upon myself to go to therapy and learn about the
 6 domestic violence process and some of the issues
 7 relating to it.
 8 MR. OWENS:
 9 Q. How long were you in therapy?
 10 A. About a year.
 11 Q. How did it the sense of what happened
 12 to Debbie your friend affect you and your ability
 13 to function?
 14 A. When we -- at work we sat next to each
 15 other like right next to each other so at that
 16 point I just, you know, felt like I really
 17 couldn't -- I couldn't be in the house anymore. I
 18 couldn't be at work anymore because everywhere I
 19 went was a reminder of her, you know, work and my
 20 apartment and her trailer, everything was a
 21 reminder of her and I just -- I just broke down.
 22 Q. Did you have a fear?
 23 A. I did.
 24 Q. What was that about?
 25 A. The fear that, you know, he was going

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1 to get out again and, you know, because of our
 2 conversations in the past he was just -- he was so
 3 adamant and so angry that, you know, he was going
 4 to come after me because, you know, the way I see
 5 it if I had been driving my car that day, he might
 6 have -- he might have got me so yeah, I was afraid
 7 and I started, I mean I'm seeing a doctor and, you
 8 know, I went to therapy. I got on medication.
 9 Q. Did you miss some work?
 10 A. Yes, sir, I did.
 11 Q. How much work did you miss?
 12 A. All together I'd say about maybe
 13 seven, eight months all together because there was
 14 a time when the company was in transition and my
 15 doctor felt and the company felt that it was better
 16 if I waited till after we moved into our new
 17 offices for me to come back to work and have a
 18 fresh start and everything and then once the trial
 19 started and it all came back, I just, again I felt
 20 like I was kind of, you know, I was too afraid.
 21 Q. And the trial happened about a year
 22 after the incident.
 23 A. No, it wasn't that long.
 24 Q. Okay. But that had a cumulative
 25 impact.

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1 A. Most definitely, yes.
 2 Q. Do you feel like you've worked through
 3 a lot of that now?
 4 A. I have now I just -- I have anger
 5 issues.
 6 Q. What kind of person was Debbie?
 7 A. She was a lot of things to a lot of
 8 people. And, you know, to describe her she -- she
 9 had a different relationship with everybody. You
 10 know, the relationship she had with me was
 11 different than the one with Michael. The
 12 relationship she had with Michelle was different
 13 than the one she had with me or Michael so I mean
 14 to everybody she was, you know, -- she was
 15 somebody -- she was somebody special, but in her
 16 own way she was, you know, different to call of us.
 17 Q. What kind of qualities did she have
 18 that made her special?
 19 A. She loved to laugh. She just liked to
 20 go out and cut up and laugh. She liked to dance
 21 around. She liked to listen to music real loud and
 22 just, you know, she always -- she always tried to
 23 stay upbeat and happy. That's just the way she
 24 was.
 25 Q. How about as a mother?

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1 A. She was an amazing mother. Her --
 2 everything revolved around them, everything.
 3 Q. You've been holding something in your
 4 hand. What is it?
 5 A. The a pamphlet from her funeral.
 6 Q. Why did you have that with you?
 7 A. As a reminder so that certain people
 8 wouldn't forget.
 9 MR. OWENS: Thanks. That's all I
 10 have, Your Honor.
 11 (Whereupon Mr. Owens
 12 completed his direct
 13 examination at 2:56 p.m.)
 14 THE COURT: Thank you. Mr. Schieck,
 15 Mr. Patrick.
 16 MR. SCHIECK: Thank you, Your Honor.
 17
 18 CROSS-EXAMINATION
 19 BY MR. SCHIECK:
 20 Q. Ms. Duran, I'm going to ask you just a
 21 few questions. Okay?
 22 A. Can you speak up a little bit, please.
 23 Q. Yes.
 24 A. Thank you.
 25 Q. I'm going to ask you a few questions

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1 about your knowledge of the relationship between
 2 the two of them. You indicated that there was an
 3 incident in December of 1994 where you saw a slap;
 4 is that correct?
 5 A. Yes, sir.
 6 Q. As you were coming out of work?
 7 A. Yes, sir.
 8 Q. And it's your recollection it was the
 9 end of your workday?
 10 A. Yes, sir.
 11 Q. Late in the afternoon?
 12 A. Yes, sir.
 13 Q. Okay. It wasn't early in the morning?
 14 A. No, sir.
 15 Q. Okay. And the car that they were
 16 driving, was it the car that you were shown
 17 photographs of here or was it a different car?
 18 A. I do not recall. I was not paying
 19 attention to the car at the time.
 20 Q. Okay. So you don't recall as you
 21 testified today whether the car was the one that's
 22 depicted in the photograph that was shown?
 23 A. No, sir. I don't recall.
 24 Q. It could have been the same one. It
 25 could have been a different one?

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1 A. As I stated before, I was not paying
2 attention to the automobile.
3 Q. And you really couldn't recognize the
4 individual that was in the car with her. Is that
5 fair to say?
6 A. From what I could see it was a male
7 and as I stated before the argument was pretty
8 intense.
9 Q. Okay. When you say an intense
10 argument, both people were arguing.
11 A. Yes, sir.
12 Q. You couldn't hear what was being
13 said.
14 A. No, sir. I was too far away.
15 Q. Could you hear that there was words
16 being spoken back and forth, though?
17 A. No, sir. I couldn't hear anything.
18 Q. What makes you characterize it as an
19 intense argument?
20 A. Because the person was in her face.
21 Q. Okay. Both of them looked like they
22 were going at each other verbally?
23 A. Yes. I mean when you see two people
24 this close to each other, you know, there's
25 something going on and it's not nice.

1 A. Yes, sir.
2 Q. Did she get out of the car fairly
3 quickly?
4 A. I think at that point she was probably
5 stunned and, you know, didn't do it in a hurry but
6 then again she didn't do it very slow.
7 Q. Okay. That was the end of the
8 argument that you were observing. She got out and
9 came inside.
10 A. Yes, sir.
11 Q. And at that point in time there was no
12 mention of calling the police or calling 9-1-1 or
13 anything like that?
14 A. No, sir.
15 Q. Did you -- you were still inside when
16 you saw this.
17 A. Yes, sir. As I said before, there
18 was -- when you came out of the office, there was a
19 door that opened then like a little hallway and
20 then another door that opened.
21 Q. Were you in --
22 A. I was in between both doors.
23 Q. So you were in the little hallway in
24 sort of the --
25 A. Yes, sir.

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1 Q. And so the male individual was in the
2 driver's seat.
3 A. Yes, sir.
4 Q. Okay. And Debbie would have been in
5 the passenger seat?
6 A. Yes, sir.
7 Q. And they were turned toward each other
8 going at each other in an intense argument?
9 A. Yes, sir.
10 Q. And that's when the slap occurred?
11 A. Yes, sir.
12 Q. Okay. So they were both sort of
13 towards the center of the car when you saw the
14 slap?
15 A. Yes, sir. It's a very small car so
16 there wasn't a whole lot of room to be too far away
17 if each other.
18 Q. But it was certainly your opinion and
19 watching the situation that they were going at each
20 other at that point?
21 A. Yes, sir.
22 Q. And then the slap occurred and I take
23 it Debbie got out of the car at that point?
24 A. Yes, sir.
25 Q. Fairly soon after the slap occurred?

1 Q. -- coat room type of thing.
2 A. Yes, sir.
3 Q. And did you see whether the male
4 individual drove away or you were talking to Debbie
5 and didn't notice?
6 A. No. Because I waited for her to come
7 in and because I was standing in that little
8 hallway I waited for her and at that point I asked
9 her if she was okay because I knew nobody else
10 could hear us because the other door was behind me
11 and I asked her if she was okay and she had
12 indicated to me that she was.
13 Q. And at that point you left?
14 A. Yes, sir.
15 Q. Left work. Now, with respect to the
16 next incident you told us about had to do with
17 Debbie came to work and she had a bandage on her
18 face apparently from a broken nose.
19 A. Yes, sir.
20 Q. And you had asked her what happened.
21 She said she had been hit by James.
22 A. Yes, sir.
23 Q. Did she mention anything about being
24 hit with a thermal cup or some kind of a thermos?
25 A. No. She didn't indicate to me how it

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1 happened. She had just told me that he had done
 2 it.
 3 Q. Was that a fairly short conversation
 4 you had with her?
 5 A. Yes, sir, because at that point there
 6 were a lot of people staring and I didn't want to
 7 embarrass her any further so I left it at that.
 8 Q. And you're not sure of exactly when it
 9 was that that incident occurred when she came to
 10 work on the Band-Aid on?
 11 A. No, sir. As I stated before I didn't
 12 want to embarrass her any further so I didn't ask
 13 anymore questions.
 14 Q. Were you pretty good friends with her
 15 at that point or were you still developing your
 16 friendship with her?
 17 A. We were still in the developmental
 18 stages.
 19 Q. At that point in time had you been
 20 over to her house or to her trailer home?
 21 A. Yes, I had.
 22 Q. Just visiting?
 23 A. Yes.
 24 Q. And do you recall approximately when
 25 the first time you would have visited her at her

1 occasion?
 2 A. A minute. I left.
 3 Q. Now, at some point in time you
 4 indicated that you were -- you received some phone
 5 calls from James while he was in custody?
 6 A. Yes.
 7 Q. Do you recall when the first call
 8 would have been?
 9 A. No, sir, I cannot.
 10 Q. Was it before you met him in May or
 11 after you met him in May?
 12 A. This was after.
 13 Q. Okay. So sometime after May.
 14 A. Yes.
 15 Q. And you said two of the calls came to
 16 your house and he was calling there looking for
 17 Debbie; is that correct?
 18 A. Yes. The first phone call was before
 19 I had met him.
 20 Q. Okay. At your house?
 21 A. Yes.
 22 Q. And he was calling from actually their
 23 house.
 24 A. I do not know where he was calling
 25 from.

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1 home?
 2 A. No, sir, I don't.
 3 Q. Was it before or after the slapping
 4 incident, do you recall that?
 5 A. I don't recall.
 6 Q. And I believe you indicated that first
 7 time that you physically met Mr. Chappell was
 8 around Memorial Day?
 9 A. It was Memorial Day weekend.
 10 Q. And had Debbie taken you over to the
 11 house or had you come over to visit?
 12 A. I had taken her home.
 13 Q. And she invited you into the home?
 14 A. Yeah.
 15 Q. And when she invited you in, James was
 16 sitting in said in the front room area?
 17 A. Yes.
 18 Q. Okay. And she introduced you to him?
 19 A. Yes.
 20 Q. And that's the end of May of 1995 to
 21 your best --
 22 A. Whatever Memorial Day weekend is.
 23 Q. It's usually toward the end of May.
 24 A. Yes.
 25 Q. And how long did you stay on that

1 Q. But he was looking for Debbie?
 2 A. Yes, sir.
 3 Q. Is that the occasion where she said
 4 she was on her way home or was coming home then?
 5 A. Yes, sir.
 6 Q. Okay. Now, you had indicated that
 7 there was sort of a group of you there at GE that
 8 were sort of formed a clique or a group of
 9 friends.
 10 A. Yes, sir.
 11 Q. And it was Michelle and yourself?
 12 A. Yes.
 13 Q. And Mike?
 14 A. And Debbie.
 15 Q. And Debbie. Anybody else was sort of
 16 in that group or was it just the four of you?
 17 A. It was just the four of us.
 18 Q. Okay. Now, at some point in time you
 19 actually spent some time staying at Debbie's or at
 20 the trailer house?
 21 A. Yes.
 22 Q. And do you know if Michelle ever spent
 23 any time where she stayed at that trailer house
 24 also?
 25 A. Yes, she did on occasion, yes.

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1 Q. Okay. Can you recall when she stayed
2 there?
3 A. No, sir, I do not.
4 Q. Was she ever staying there at the same
5 time you were staying there?
6 A. There was a couple of times, yes.
7 Q. So it would be Debbie and her three
8 kids and yourself?
9 A. And my daughter and Michelle.
10 Q. Okay. Did Michelle have any kids at
11 that point in time?
12 A. She did but her daughter was somewhere
13 else.
14 Q. And you kind of described the bedroom,
15 the master bedroom where Debbie stayed at.
16 A. Yes.
17 Q. And the bedroom where you stayed at.
18 Where was Michelle staying at that time?
19 A. There were times she would sleep in
20 the front room on the couch.
21 Q. And what about Debbie's kids, where
22 were they?
23 A. The two boys had the bedroom next to
24 mine because as I stated there was two bedrooms and
25 there was a bathroom in between us and then the

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1 baby stayed with her.
2 Q. And if Michelle was there, she would
3 stay in the front room area?
4 A. Yes, sir.
5 Q. And you said that during the period of
6 time when you lived there or visited there, you saw
7 pictures of James around the trailer home?
8 A. Yes, I did.
9 Q. Okay. Where were they located, do you
10 recall?
11 A. In her bedroom.
12 Q. So they were displayed. They were
13 visible photographs that were out?
14 A. No. She just would have pictures in
15 her room, a pile of pictures.
16 Q. You were able to see them?
17 A. Yes, sir.
18 Q. And with three kids of those ages,
19 it's hard to keep up with all the clutter that kind
20 of gets spread around by kids. Would you agree
21 with that?
22 A. A three-, a five-, and a seven-year
23 old, yes.
24 Q. And that's kind of how you described
25 Debbie's house.

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1 A. Yes.
2 Q. About one step behind the youngest
3 sort of housekeeping?
4 A. Yes.
5 Q. Now, we had started talking about the
6 phone calls and you got the one at your house and
7 you're not sure where James was at when he called
8 in, but there were calls that came from the jail.
9 A. Yes, sir, when I was at her house.
10 Q. Okay. And Debbie had asked that you
11 go ahead and accept those calls?
12 A. Yes, sir.
13 Q. And when calls come in through the
14 jail there's the operator or the voice lady comes
15 on and says you have a call from the detention
16 center?
17 A. Yes, sir.
18 Q. And gives you directions on whether to
19 accept or deny?
20 A. Yes, sir.
21 Q. So you would accept those calls from
22 the jail --
23 A. Yes, sir.
24 Q. -- knowing that they were James?
25 A. Yes, sir, because she asked me to.

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1 Q. So she wanted to you take those calls?
2 A. I'm sorry.
3 Q. She wanted you to take those calls
4 from James?
5 A. Yes.
6 Q. Were there occasions where you were
7 there when calls would come in and she would
8 accept, herself would accept the calls from the
9 jail?
10 A. Yes.
11 Q. And she would talk to him on the
12 phone?
13 A. Yes.
14 Q. Did you stay in the room and listen to
15 those calls?
16 A. No, sir, I did not.
17 Q. So you gave them the privilege as of
18 her being able to speak on the phone?
19 A. Yes, sir, because it was her house.
20 Q. Thank you. Do you know how many of
21 those calls you would have been around for?
22 A. No, I do not.
23 Q. Would you say there was a lot of calls
24 or a few calls or --
25 A. When I was there, a few.

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1 Q. Now, you had -- were there times when
 2 Debbie had asked you not to give information to
 3 James when he would call like, "Don't tell him
 4 where I'm at," or anything like that?
 5 A. No. She just told me to accept his
 6 calls.
 7 Q. But she didn't give you any directions
 8 as if I'm not here and he calls, take the call and
 9 don't tell him where I'm at or anything like that?
 10 A. No. She just said to accept the call
 11 because she didn't want to make him angry.
 12 Q. And there was at least one call where
 13 he did become angry because you couldn't tell him
 14 where she was at. Is that --
 15 A. Yes, sir.
 16 Q. Did you know where she was at?
 17 A. Yes, sir, I did.
 18 Q. But you weren't telling James where
 19 she was at because you didn't make him angry?
 20 A. Well, that was Debbie's business.
 21 Q. Okay. Now, you had talked about that
 22 you were sort of part of this discussion that
 23 Debbie was going to move out of the trailer home --
 24 A. Yes, sir.
 25 Q. -- into another location?

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1 A. Yes, sir.
 2 Q. Did you know where she planned to move
 3 on?
 4 A. She planned on moving in with someone
 5 else.
 6 Q. Okay. Who was that?
 7 A. J.R.
 8 Q. Is that a male or female?
 9 A. It's a male.
 10 Q. Is that someone she had been seeing at
 11 that point in time?
 12 A. Yes, sir.
 13 Q. By seeing I mean sort of in a dating
 14 relationship?
 15 A. Yes, sir.
 16 Q. And this was while James was in
 17 custody?
 18 A. Yes, sir.
 19 Q. During the periods of that he would be
 20 calling and asking for her, during that period of
 21 time during that summer?
 22 A. Yes, sir.
 23 Q. But you never discussed that with
 24 James obviously.
 25 A. No, sir, I did not.

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1 Q. Now, you had also talked about Mike
 2 Pollard. Do you know where Debbie ever stayed over
 3 at his house on any occasions?
 4 A. Sure.
 5 Q. During that period of time do you
 6 recall, summertime, before summer or --
 7 A. There were numerous times.
 8 Q. And can you describe Mike for us.
 9 A. He's funny. He's just, he's funny.
 10 He's warm and he's bright and he was just a happy
 11 guy.
 12 Q. And did he have his own apartment or
 13 his own house?
 14 A. He had his own apartment.
 15 Q. Older guy, younger guy? Which is a
 16 bad question I know.
 17 A. As I recall we were all about the same
 18 age, but I think Mike may have even been a couple
 19 years older than me.
 20 Q. Now, and Mike worked there at GE also?
 21 A. Yes, sir.
 22 Q. Now, I, wanted to talk about the
 23 August 31st date. When you went over to the
 24 trailer house, you said as you were coming into the
 25 mobile home park you saw what you believed was

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1 Debbie's car leaving at the same time you were
 2 coming in.
 3 A. It was Debbie's car, yes.
 4 Q. And there was some distinctive things
 5 about it that you could recognize like it didn't
 6 have license plates.
 7 A. Yes, sir.
 8 Q. There was no doubt it was Debbie's
 9 car?
 10 A. No, sir. It was her car.
 11 Q. But at that point in time you didn't
 12 recognize who was driving the car?
 13 A. No, sir. I really didn't pay
 14 attention. At one point the sun was in my eyes and
 15 I put the visor down and I looked and I just kept
 16 driving. I really didn't think anything of it.
 17 Q. Did you think it was Debbie?
 18 A. I knew it wasn't Debbie because when I
 19 looked, it was a male.
 20 Q. But nonetheless you went ahead to
 21 Debbie's house and knocked on the door?
 22 A. Yes, sir.
 23 Q. Because you knew it wasn't her in the
 24 car.
 25 A. Yes, sir.

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1 Q. Did she have a routine where she would
2 let people borrow her car if they needed to go
3 somewhere and things of that nature?
4 A. Yes, sir.
5 Q. So it wouldn't have been out of the
6 ordinary to see her car leaving and still believe
7 that she would be home when you knocked on the
8 door?
9 A. Yes.
10 Q. That's why you went ahead and
11 proceeded in.
12 A. Yes, sir.
13 Q. And when she didn't answer the door,
14 correct me if I'm wrong, your thought process was,
15 well, maybe she's already gone over to Mike's.
16 A. Yes, sir.
17 Q. Now, if you'd seen her car leaving and
18 she wasn't in it, how dunk she got over to Mike's?
19 A. She just found another way to go over
20 there.
21 Q. That wouldn't have -- it's not unusual
22 for her to have gone over to Mike's at that point
23 in time.
24 A. No. Because she was, you know, always
25 with Michelle or --

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1 Q. But you had prearranged you were going
2 to come by to pick up some stuff so you could go
3 out of town for the Labor Day weekend.
4 A. Yes, sir.
5 Q. But she knew you were coming over but
6 you thought she might have gone over to Mike's?
7 A. Yes, sir.
8 Q. Now, when you said you were going out
9 of town for the labor day weekend was that just a
10 trip out of town or were you taking all your
11 belongings?
12 A. It was just a short trip out of town.
13 Q. So you were going to pick up some
14 clothes and things of that nature?
15 A. Yes, sir.
16 Q. You weren't moving furniture or
17 anything?
18 A. No, sir.
19 Q. Had you moved furniture into her house
20 when you started staying with her?
21 A. You mean for that week?
22 Q. Yes.
23 A. Yes. My bed was there. My dresser
24 was there.
25 Q. And that was in the back bedroom?

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1 A. Yes, sir.
2 Q. And when you knocked on the door on
3 the 31st, you said you heard the TV on.
4 A. Yes.
5 Q. And the air-conditioner running?
6 A. Yes. Because I had put my ear to the
7 door.
8 Q. To see if she was on the way to the
9 door to see what was going on?
10 A. Yes.
11 Q. And the TV was on loud enough you
12 could hear that it was on?
13 A. Yes, once I put my ear to the door.
14 Q. And the air-conditioning unit was loud
15 enough on the outside that you could hear that it
16 was running?
17 A. Yes, sir.
18 Q. At that point in time is that when you
19 thought that she'd gone over to Mike's house?
20 A. The first time?
21 Q. Yes.
22 A. Yes.
23 Q. Even though you heard the TV on and
24 the air-conditioning on you thought she might have
25 gone to Mike's?

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1 A. Yes because it wasn't that far away.
2 Q. How far away was Mike's?
3 A. About 15 minutes.
4 MR. SCHIECK: Can I have Court's
5 indulgence for one minute, Your Honor.
6 THE COURT: You may.
7 MR. SCHIECK:
8 Q. Debbie on occasions had told you that
9 she loved James; is that correct?
10 A. Yes.
11 Q. And you indicated that on the 30th of
12 August which is the day before, the 30th is the day
13 that she would have been in court.
14 A. Yes.
15 Q. Did you have a conversation with
16 Debbie when she came back to the trailer home.
17 A. Yes.
18 Q. And that's the point in time that she
19 indicated that she had told James that it was over,
20 that she wanted to fully and completely separate?
21 A. Yes.
22 Q. And that was pretty much the extent of
23 the conversation about what had happened.
24 A. Yes.
25 Q. Did she come directly from court back

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1 to the trailer home or do you know if she went to
 2 work and then home?
 3 A. I don't recall that. All I remember
 4 is me going to the trailer and she was already
 5 there.
 6 Q. So she'd already been to court and was
 7 back to court when you arrived?
 8 A. Yes.
 9 Q. And that's when you had the
 10 conversation?
 11 A. Yes.
 12 Q. Prior to that time had she ever
 13 indicated to you that she had told James that it
 14 was completely over between the two of them?
 15 A. There was an incident -- there was a
 16 conversation that I had had with the defendant that
 17 he expressed to me he was upset because she stopped
 18 accepting his phone calls. The letters stopped.
 19 He couldn't see the kids so this was an ongoing. I
 20 mean it's not like one day she just decided to tell
 21 him, "I'm done."
 22 Q. But this phone call was while he was
 23 in custody?
 24 A. Yes.
 25 Q. One of the calls you'd accepted?

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1 A. Yes.
 2 Q. And he expressed some anger to you
 3 that Debbie wasn't seeing him?
 4 A. Yes.
 5 Q. Or taking his calls or bringing the
 6 kids by to see him in the jail?
 7 A. Yes.
 8 Q. Was that getting close to the
 9 August 30th-31st time frame?
 10 A. That I do not recall.
 11 MR. SCHIECK: Thank you. That's all I
 12 have, Your Honor.
 13 (Whereupon Mr. Schieck
 14 concluded his cross-examination
 15 at 3:17 p.m.)
 16 THE COURT: Mr. Owens.
 17 MR. OWENS: Yes, Your Honor. Thank
 18 you.
 19
 20 REDIRECT EXAMINATION
 21 BY MR. OWENS:
 22 Q. At what point in that time frame that
 23 you've been talking about did it come to your
 24 attention that Debbie wanted to break things off
 25 with the defendant?

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1 A. When she had made definite plans to,
 2 you know, start packing up her things to move in
 3 with J.R.
 4 Q. When would that have been?
 5 A. I guess a few weeks before.
 6 Q. Was that the time frame when she
 7 didn't want to really take his calls anymore?
 8 A. That was before that I think. I'm not
 9 very sure.
 10 Q. Okay. You said that one of the
 11 reasons that she was taking phone calls is because
 12 she didn't want to make him angry.
 13 A. Yes.
 14 Q. What do you mean by that? What did
 15 she say?
 16 A. She just -- he got angry very easily
 17 and she just, she didn't want him to be angry.
 18 Q. So she told you to go ahead and take
 19 the call?
 20 A. Yes, sir.
 21 Q. When you get a call from the jail it's
 22 kind of you talked about accepting a call?
 23 A. Yes.
 24 Q. That's because there's a little
 25 process that happens there. A voice comes on and

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1 you're asked if you're willing to accept the call?
 2 A. Yes.
 3 Q. So you have an option to take the call
 4 or not.
 5 A. Yes.
 6 Q. This J.R., when did he become involved
 7 in Debbie's life?
 8 A. I guess a couple months before.
 9 Q. What was he like?
 10 A. He was nice. He was good to her and,
 11 you know, he had a nice house and he was just, he
 12 was fun to be around. I'd been to his house a
 13 couple of times. He was very nice.
 14 Q. Where had she met him?
 15 A. That I do not recall. I don't
 16 remember where they had met.
 17 Q. Do you think it was about maybe a
 18 couple months before her death?
 19 A. Yeah, because as I stated before they
 20 were together for about two or three months.
 21 MR. OWENS: Okay. All right. That's
 22 all I have, Your Honor.
 23 (Whereupon Mr. Owens
 24 completed his redirect
 25 examination at 3:20 p.m.)

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1 THE COURT: Mr. Schieck, anything
2 further?
3
4 RECROSS-EXAMINATION
5 BY MR. SCHIECK:
6 Q. Your best estimate is two or three
7 months she'd been dating J.R. --
8 A. Yes.
9 Q. -- prior to her death.
10 And do you know does J.R. Stand for
11 junior or is that his initials?
12 A. That I do not know, sir.
13 Q. Do you know his name?
14 A. No, sir. I do not. He went by J.R.
15 Q. But you'd been to his house --
16 A. Yes.
17 Q. -- with Debbie?
18 A. Yes.
19 MR. SCHIECK: Thank you. That's all I
20 have, Your Honor.
21 (Whereupon Mr. Schieck concluded
22 his recross-examination at
23 3:20 p.m.)
24 THE COURT: Mr. Owens?
25 MR. OWENS: Nothing further.

1 THE WITNESS: No. She never did.
2 THE COURT: Okay. Mr. Owens, do you
3 have any questions based upon my questions?
4 MR. OWENS: No, Your Honor.
5 THE COURT: Mr. Schieck.
6 MR. PATRICK: No, Your Honor.
7 THE COURT: All right. Thank you very
8 much, Ms. Larsen. You're excused. Thank you for
9 your testimony.
10 (Whereupon Lisa Larsen
11 was excused from the
12 witness stand at 3:23 p.m.)
13 THE COURT: How long is the State's
14 next witness?
15 MS. WECKERLY: Maybe 15 minutes.
16 THE COURT: All right. Go ahead and
17 call your next witness.
18 MS. WECKERLY: It's Officer Lee.
19
20 RUSSELL LEE,
21 having been first duly sworn to testify to the
22 truth, the whole truth and nothing but the truth,
23 was examined and testified as follows:
24
25 THE CLERK: If you'll please state

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1 THE COURT: Mr. Taylor has a question
2 I believe. Counsel approach, please.
3 (Whereupon, counsel approached
4 the bench, and after a
5 discussion outside the hearing
6 of the court reporter, the
7 following proceedings took
8 place.)
9 THE COURT: Let me just clarify one
10 thing. I think this is Juror Ms. Staley. In terms
11 of photographs, are you referring to in the house?
12 JUROR: Yes.
13 THE COURT: Let me ask you a couple
14 questions, Ms. Larsen.
15 THE WITNESS: Okay.
16 THE COURT: In Debbie's home trailer
17 were there family and friend photos displayed not
18 in piles I guess on the walls or shelves where
19 people could see.
20 THE WITNESS: Yes. The children --
21 from what I remember there were photos of the kids
22 displayed.
23 THE COURT: Okay. And did Debbie ever
24 talk with you about having consensual sex with
25 James prior to the murder?

1 your name and spell your last name for the record.
2 THE WITNESS: Russell Lee, L-E-E.
3
4 DIRECT EXAMINATION
5 BY MS. WECKERLY:
6 Q. And how are you employed, sir?
7 A. I'm a detective with the Las Vegas
8 Metropolitan Police Department.
9 Q. How long have you worked for Metro?
10 A. 20 years.
11 Q. And so were you working for Metro back
12 on August the 31st of 1995?
13 A. Yes, I was.
14 Q. Do you recall where your assignment
15 was on that date?
16 A. I was assigned to the northeast part
17 of town in parole at that time. It's kind of
18 toward Lake Mead and Nellis area.
19 Q. Okay. And when you were working
20 patrol, do you just respond generally for any kind
21 of calls for service?
22 A. Yeah, usually we're dispatched for
23 calls for service there.
24 Q. Okay. You were working on August the
25 31st of 1995?

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1 A. Yes, I was.

2 Q. Do you recall if you were dispatched
3 to the Ballerina Mobile Home Park on that date?

4 A. I wasn't dispatched. Another unit was
5 and he asked for an additional unit to go with him,
6 and I heard him on the radio and I volunteered to
7 go with him.

8 Q. Okay. And so I take it you were in a
9 separate car and just heard it over the police
10 radio?

11 A. Yes.

12 Q. And why was it that you said that you
13 could go to that locations?

14 A. I was close to the area.

15 Q. And so you just thought you could help
16 him out?

17 A. Yeah.

18 Q. Do you recall who that officer was
19 that responded with you?

20 A. It was Darren Heiner.

21 Q. Okay. So I take it you went to the
22 Ballerina Mobile Home Park at that point?

23 A. Yes, I did.

24 Q. Do you recall what time of day it was
25 approximately when you got there?

1 another latch above that that locked it into
2 place.

3 On the very front of the trailer on
4 the street side of the trailer there was one window
5 that had just a little bit of a crack at the bottom
6 just raised up just a little bit and we decided to
7 make entry that way to go through that window to
8 get in the trailer.

9 Q. And you and the other officers had
10 checked all the other doors and windows around this
11 trailer?

12 A. Yes, we did.

13 Q. And aside from the one that you
14 described as being at the front of the trailer all
15 of those appeared to be locked or you couldn't move
16 them anymore to get access inside the trailer?

17 A. Right.

18 Q. So was a decision made about how to
19 make entry into the trailer at that point?

20 A. Well, I had my car keys that have a
21 little round metal thing on them I tried to pry the
22 window up to see if it would slide up. It did
23 start moving up. It started to fall in the trailer
24 and I grabbed it and pulled it out, set it outside
25 the trailer and then I was boosted through that

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1 A. Around 3:00, 3:30-ish.

2 Q. Okay. So in the afternoon?

3 A. In the afternoon.

4 Q. When you got there, had the other
5 officer arrived?

6 A. He had arrived right before he did. I
7 just followed him into the trailer park.

8 Q. Okay. And what did you two do first
9 once you got to that location?

10 A. I spoke with Officer Heiner for a few
11 minutes to find out what was going on. I knew it
12 was some kind of domestic situation and he had
13 requested another unit.

14 Q. And did you guys walk around the
15 trailer at all that was the subject of the inquiry?

16 A. Yeah. We attempted to gain entry into
17 the mobile home and we had to walk around the whole
18 thing a couple times trying to find away to get
19 into it.

20 Q. And what did you find as you tried to
21 get into this trailer?

22 A. All the windows on the whole trailer
23 were shut and locked. They all had screens on
24 them. The back door which is on the driveway side
25 of the trailer was up a little bit but it had like

1 window.

2 Q. Boosted through by the other officer?

3 A. Yes.

4 Q. And what was your purpose in going
5 inside there?

6 A. It was a domestic situation and from
7 what I recall the person who called the police said
8 that she was going to move into this trailer with
9 the other woman who was living there. She knew
10 that she had some problems with an old boyfriend or
11 with a boyfriend and that when she went to the
12 mobile home to begin moving in, she saw the girls,
13 the other roommate's car driving out with her old
14 boyfriend driving the car or boyfriend.

15 Q. And so this person was concerned about
16 the welfare of the girlfriend?

17 A. It was a welfare check. She was
18 concerned about the girlfriend.

19 Q. So I take it you went inside the
20 trailer to check to see if anybody was hurt?

21 A. That's why I went inside. We normally
22 wouldn't go in but they felt something was wrong.

23 Q. The first room that you went into was
24 it a bedroom or livingroom?

25 A. On the street side of the trailer on

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1 the front it's a bedroom.
 2 Q. And did you walk through other rooms
 3 in the trailer or, I mean how did you proceed?
 4 A. I went through the window and there
 5 was a nightstand against the bed. I climbed over
 6 that and went into the bedroom. There was a
 7 bathroom to the left-hand side. I just kind of
 8 checked in there to make sure nobody was in there
 9 then I opened the door to the livingroom and walked
 10 in.
 11 Q. What did you see when you got to the
 12 livingroom?
 13 A. There was a white female laying on the
 14 ground on the floor of the trailer on her back with
 15 her feet kind of, her body was parallel to the side
 16 of the trailer and her feet were closest to the
 17 door.
 18 Q. And did you go up close to this woman
 19 and try to make an assessment about whether she was
 20 alive or not?
 21 A. Yes, I did. Yes. When I saw her she
 22 was laying on her back. Her arms were kind of
 23 spread out to the side. Her head was turned a
 24 little bit to one side. There was a lot of blood
 25 on her face and on her hair. It had kind of

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1 dried. I noticed she was wearing some stretch
 2 nylon slacks and there was like a brown spot, dried
 3 blood, that had a puncture in it. I thought it was
 4 a bullet hole at first. Her eyes were cloudy and
 5 partially open and cloudy and she wasn't breathing.
 6 Q. Okay. So obviously she looked very
 7 injured to you. There was a lot of blood and she
 8 didn't appear to be alive.
 9 A. Correct.
 10 Q. After you made that assessment as to
 11 her condition, what did you do next?
 12 A. I knew that Officer Heiner and my
 13 Sgt. Yada had arrived also. They were standing on
 14 the porch waiting for me to come out. I opened
 15 that door and stepped out and closed the door
 16 behind him and told them what I saw inside.
 17 Q. So that would be the front door of the
 18 trailer?
 19 A. The front door of the trailer.
 20 Q. Once you advised them as to what you
 21 found on the inside of the trailer, what did you
 22 three decide to do next?
 23 A. Well, I went back inside just to make
 24 sure she wasn't alive. I got a little closer and
 25 looked a little closer then when I went back

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1 outside, we secured the trailer and called for a
 2 homicide unit.
 3 Q. Okay. When you said you went back
 4 inside to make sure that she wasn't alive, how did
 5 you do that? Did you touch her or did you watch
 6 her?
 7 A. I never pushed her but her shirt was
 8 pulled up to about the bottom of her rib cage. I
 9 was watching for any heart beat or if her abdomen
 10 was moving up and down like she was breathing.
 11 Q. Okay. You said you saw blood on her.
 12 You initially thought she had been shot. You were
 13 making just a quick assessment?
 14 A. Yes.
 15 Q. He just saw blood. You didn't know
 16 how she had been injured?
 17 A. Correct.
 18 Q. After you determined sort of for the
 19 second time for sure that this lady wasn't alive,
 20 what did you do next?
 21 A. I walked out, closed the door behind
 22 me and we called for homicide to arrive. We waited
 23 there until they arrived.
 24 Q. Okay. Made sure, of course, no one
 25 went inside the trailer?

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1 A. Yes.
 2 Q. Once the homicide detectives responded
 3 to that scene, would it be fair to say that they'd
 4 be in charge of the investigation at that point?
 5 A. Yes, it would.
 6 Q. Sir, I'm putting on that monitor in
 7 front of you at State's 1, State's Exhibit 1 and
 8 there's some markings on the picture done by a
 9 prior witness. The circled window on that exhibit,
 10 is that the one that you climbed in as well?
 11 A. Yes.
 12 Q. And just below the window to the left
 13 there appears to be like a window pane.
 14 A. Yes. That's the one that once I
 15 started raising it, it fell inside and I had to
 16 pull it out. It's on the ground.
 17 Q. Okay. So you actually removed that?
 18 A. Yes.
 19 Q. And this was the window that you were
 20 boosted through?
 21 A. Yes.
 22 Q. Sir, now I'm putting on the monitor
 23 State's Exhibit 5. Can you describe for the
 24 members of the jury what we're looking at in that
 25 photograph.

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1 A. That's looking out the window that I
2 was boosted through. That's the nightstand that
3 was right below the window and there's a screen
4 there. When I initially tried to go through, I
5 tried to move the screen away but it was underneath
6 the nightstand.
7 Q. Okay. And was the screen, was that
8 bent by you or was that in that condition?
9 A. No, it was in that condition.
10 Q. And once you kind of boosted there i--
11 and I guess you were on top of that nightstand?
12 A. Yes.
13 Q. Then you proceeded into the residence
14 to do the welfare check?
15 A. Yes.
16 Q. Now, I'm showing you State's 19. Does
17 that look familiar to you?
18 A. Yes.
19 Q. And is this the lady that you saw when
20 you were doing the welfare check?
21 A. Yes.
22 Q. Now, you mentioned on your first entry
23 through before you opened the front door you made
24 an assessment as to whether or not she had any
25 vital signs?

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1 A. Yes. Without touching her.
2 Q. Okay. How did you get to her?
3 A. I was standing probably under her arm
4 that's out and looked down towards her face, and
5 that's about as close as I got.
6 Q. That's when you noticed her eyes were
7 cloudy?
8 A. Yes.
9 Q. And there was a substantial amount of
10 blood?
11 A. Yes.
12 Q. And you mentioned you went out the
13 door to go out and discuss what you had seen with
14 your sergeant and the other officer?
15 A. Yes.
16 Q. Is that the door we see depicted in
17 the photograph?
18 A. Yes.
19 Q. Putting back on the monitor State's 1,
20 that is the door also that we see.
21 A. That's the porch. The door's right
22 where that porch is at.
23 Q. Okay. When you went inside and saw
24 this woman and went out to inform your sergeant and
25 the other officer as to what you'd found, nothing

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1 was moved or altered inside the trailer accept for
2 that one window pane. Would that be correct?
3 A. That would be correct, yes.
4 MS. WECKERLY: Okay. Thank you.
5 (Whereupon Ms. Weckerly
6 concluded her direct examination
7 at 3:34 p.m.)
8 THE COURT: Mr. Schieck.
9 MR. SCHIECK: Thank you.
10
11 CROSS-EXAMINATION
12 BY MR. SCHIECK:
13 Q. Detective Lee, when the window that
14 you went through, that's a window that's right on
15 the street there in the mobile home park?
16 A. Yes. The road is right in front of
17 that window.
18 Q. Anybody coming in and out of that
19 window would be clearly visible from that street?
20 A. Yeah, I would imagine.
21 Q. I mean there's no trees or bushes or
22 anything blocking anything?
23 A. No.
24 Q. And when you made your first look
25 around the houses, was -- we see that the screen is

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1 inside the window now. Correct?
2 A. Yes.
3 Q. Was it in that position when you first
4 looked in?
5 A. Yes.
6 Q. Okay. So you didn't move that at all?
7 A. No.
8 Q. Okay. All you moved was what's been
9 circled here which was the actual glass frame
10 inside the frame?
11 A. Yes. I tried to push it away but it
12 was behind the night stand.
13 Q. Kind of behind the nightstand?
14 A. Kind of underneath it. It was like
15 stuck.
16 Q. Did you have to sort of shimmy around
17 it. Tell me how you went around it?
18 A. I went around the screen.
19 Q. Okay. Stepped on the nightstand?
20 A. Kind of stepped on my knees.
21 Q. And you were careful to not disturb
22 anything?
23 A. Yeah, the bedroom was kind of
24 dishevelled.
25 Q. There was nothing on the nightstand

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1 that you had to move or put on the side in order to
 2 step in?
 3 A. No.
 4 Q. And there appears to be a roll top
 5 desk over here. That's the way it appeared when
 6 you came in.
 7 A. Yes.
 8 Q. It appears that the roll portion of
 9 the roll top is in the down position.
 10 A. Yes.
 11 Q. Is that a fair statement? Do you know
 12 what that's called?
 13 A. Roll top desk with the roll portion
 14 down.
 15 Q. And then there appears to be some
 16 items on top of the roll top desk?
 17 A. Yes, I didn't notice them then.
 18 Q. Some type of little box with drawers
 19 on it.
 20 A. That's what it looks like, yes.
 21 Q. It appears those drawers are closed?
 22 A. Yes.
 23 Q. It doesn't appear -- well, they're not
 24 open, correct?
 25 A. Yes.

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1 Q. And there appears to be something even
 2 on top of that. Did you notice what that was when
 3 you came in?
 4 A. No, I didn't.
 5 Q. That really wasn't your job. Your job
 6 was just to go in and do a safety check and then
 7 once you had found the individual to call in
 8 homicide?
 9 A. Then my job was to just secure the
 10 scene and to make sure no one else goes inside and
 11 then I called homicide.
 12 Q. How long did you remain there on the
 13 scene?
 14 A. A few hours. I don't recall exactly
 15 how long we were there.
 16 Q. And other than the appropriate police
 17 personnel, no one else was allowed into the she
 18 know while you were there?
 19 A. Correct.
 20 MR. SCHIECK: Nothing further. Thank
 21 you, detective.
 22 (Whereupon Mr. Schieck
 23 concluded his cross-examination
 24 at 3:38 p.m.)
 25 THE COURT: Ms. Weckerly.

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1 MS. WECKERLY: Nothing else.
 2 THE COURT: Thank you for your time,
 3 sir. You may step down.
 4 (Whereupon Russell Lee
 5 was excused from the
 6 witness stand at 3:39 p.m.)
 7 THE COURT: All right. Let's take a
 8 quick afternoon recess for about ten minutes.
 9 Ladies and gentlemen, we are going to
 10 take a recess. During this recess, it is your duty
 11 not to converse among yourselves or with anyone
 12 else on any subject connected with the trial or to
 13 read, watch or listen to any report of or
 14 commentary on the trial by any person connected
 15 with the trial or by any medium of information,
 16 including, without limitation, newspaper,
 17 television, radio, and the internet, and you are
 18 not to form or express an opinion on any subject
 19 connected with this case until it is finally
 20 submitted to you, under instructions by me.
 21 (Whereupon the jurors exited
 22 the courtroom at 3:38 p.m.)
 23 THE COURT: Anything outside the
 24 presence? No? We'll be in recess. Thank you.
 25 (Whereupon a recess was

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1 taken at 3:39 p.m. and
 2 the proceedings resumed
 3 at 3:56 p.m.)
 4 THE COURT: Let me do something
 5 outside the presence. Let me go on the record in
 6 C131341, State of Nevada versus James Chappell.
 7 The record will reflect the presence of
 8 Mr. Chappell with his attorneys, Ms. Weckerly.
 9 We're outside the presence of the jury.
 10 Mr. Patrick, Mr. Schieck, I would like one of you
 11 when we get the next break to talk to the lady that
 12 is wearing pink.
 13 I assume it's one of Mr. Chappell's
 14 relatives let her know if she continues to make
 15 facial gestures or make remarks under her breath,
 16 the next time it happens she's going to be
 17 removed. My bailiff has already talked to her.
 18 She's pretty much ignored her. I've instructed
 19 Leslie to take her out.
 20 MR. SCHIECK: I have not seen that,
 21 Your Honor. I apologize and we'll take care of
 22 that.
 23 THE COURT: You don't have to
 24 apologize. I don't feel the need to bring her in
 25 and lash out. Even if you guys prefer to do it

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1 right now --

2 MR. SCHIECK: We'll do it right now.
3 (Whereupon a recess was
4 taken at 3:57 p.m. and
5 the proceedings resumed
6 at 4:01 p.m. in the presence
7 of the jury.)

8 THE COURT: All right. We're back on
9 the record on C131341, State of Nevada versus James
10 Chappell. Let the record reflect the presence of
11 Mr. Chappell with his attorneys, the State's
12 attorneys. We are in the presence of jury. You
13 may call your next witness.

14 MS. WECKERLY: Thank you, Your Honor.
15 The State calls Sherry Smith.

16 LATRONA SMITH,
17
18 having been first duly sworn to testify to the
19 truth, the whole truth and nothing but the truth,
20 was examined and testified as follows:

21
22 THE CLERK: Please state your name and
23 spell your last name.

24 THE WITNESS: Latrona Smith.

25 THE COURT: Spell your name for us.

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1 THE WITNESS: L-A-T-R-O-N-A.

2 THE COURT: And spell your last name
3 for the record.

4 THE WITNESS: S-M-I-T-H.

5

6 DIRECT EXAMINATION

7 BY MS. WECKERLY:

8 Q. Ma'am, do some people call you Sherry?

9 A. Yes.

10 Q. Back on August 31st of 1995, where
11 were you employed?

12 A. At Angel Care.

13 Q. Angel Care?

14 A. Uh-huh.

15 Q. And what type of business is that?

16 A. It's a day care facility.

17 Q. And how long had you worked there as
18 of '95, August of '95?

19 A. It was like four or five years.

20 Q. Four or five years?

21 A. Uh-huh.

22 Q. What were your job duties there?

23 A. I was a supervisor, I answered the
24 phone, helped the employees as far as to make sure
25 they did their duty, take payment.

1 Q. As the supervisor or one of the
2 supervisors at Angel Day Care and you said you
3 answered the phone, were you at a front desk type
4 area at the day care?

5 A. Yes.

6 Q. Did you work with the children as well
7 or were you primarily managing other employees?

8 A. As far as a supervisor I was mainly
9 managing employees.

10 Q. Okay. And then sometimes answering
11 the phone?

12 A. Yes.

13 Q. Did you have contact in that capacity
14 to interact with the children's parents who were
15 using the day care center?

16 A. Yes.

17 Q. Did you recall back in 1995 knowing a
18 lady by the name of Deborah Panos?

19 A. Yes.

20 Q. Does she have children enrolled at
21 Angel Care?

22 A. Uh-huh. She had three.

23 Q. Okay. Do you recall -- you probably
24 don't recall their names ten years later, but do
25 you recall if they were boys, girls?

1 A. Two boys and a girl.

2 Q. Okay. As far as your knowledge when
3 you were working at Angel Care, was Debbie Panos
4 the person who dropped off and picked up those
5 children?

6 A. Yes.

7 Q. Did you ever see anybody else do that?

8 A. No.

9 Q. On August the 31st of 1995 did you
10 receive a phone call from Debbie Panos?

11 A. Yes.

12 Q. In that phone call did she identify
13 herself or did you somehow recognize her voice from
14 your prior interactions with her?

15 A. I recognize her voice from prior
16 interactions.

17 Q. Okay. What time was it do you think
18 that she made that call?

19 A. Roughly 12:30, 1:00 o'clock.

20 Q. Okay. Did you fill out a voluntary
21 statement on the day this incident occurred?

22 A. Yes.

23 Q. And it's been ten years. Would
24 looking at that statement refresh your recollection
25 as to the time of the call?

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1 A. Yes.
 2 Q. Ma'am, having looked at that voluntary
 3 statement, do you recall what time it was
 4 approximately that she called?
 5 A. 12:30.
 6 Q. Okay. When you answered the phone,
 7 what did she first say to you if you recall?
 8 A. She asked me what time did she need to
 9 pick her children up.
 10 Q. Okay. On that date did you have one
 11 conversation with her or more than one
 12 conversation?
 13 A. On that day I had two conversations
 14 with her.
 15 Q. Okay. And the first call you had was
 16 at 12:30?
 17 A. Uh-huh.
 18 Q. Is that yes?
 19 A. Yes.
 20 Q. This lady in front of you is taking
 21 down what we say.
 22 And when she called you initially in
 23 the first call she asked you what time she needed
 24 to pick up her children?
 25 A. Yes.

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1 Q. Did she say anything else?
 2 A. She asked me to call her back and that
 3 she was scared.
 4 Q. Okay. You had talked to her before on
 5 days prior to this day I assume when she was
 6 picking up her kids?
 7 A. Yes.
 8 Q. Was there anything about her voice
 9 that you noticed that made you think that she was
 10 scared?
 11 A. She was crying at this point on the
 12 phone she was talking to me.
 13 Q. She was crying so you knew she was
 14 upset obviously?
 15 A. Yes.
 16 Q. And you said that she asked you to
 17 make another call for her. Can you explain that?
 18 A. She had told me that she was scared
 19 and she had asked me to call her back to make up
 20 some kind of excuse as far as for her to be able to
 21 leave the house.
 22 Q. Okay. Was there ever a point during
 23 the conversation where she was whispering to you?
 24 A. Yes. She did state that she was
 25 scared to me on the phone.

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1 Q. Okay. But there was a point where she
 2 would lower her voice a little bit and whisper?
 3 A. Yes.
 4 Q. As you were talking to her on the
 5 phone, could you hear anything in the background of
 6 where Debbie was, where she was calling?
 7 A. I heard a television and I did hear a
 8 gentleman talking in the background.
 9 Q. Okay. Were you able to make out what
 10 the man you were hearing, what he was saying?
 11 A. No, but she made the comment on the
 12 phone while we were on there that she didn't have
 13 any money.
 14 Q. And she wasn't saying that to you?
 15 A. No, she wasn't.
 16 Q. Did it seem like she was trying to
 17 pacify or kind of placate this individual when she
 18 was saying she didn't have any money?
 19 A. Yes.
 20 Q. And when you were everything that
 21 conversation with her, you said that you guys sort
 22 of were making up a reason for her to leave the
 23 house.
 24 A. Yes.
 25 Q. Can you explain why it was that you,

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1 you know, from your conversation with her, why that
 2 seemed necessary.
 3 A. From the tone of her voice I knew that
 4 she was scared so I was trying to think of some
 5 kind of reason for some kind of way for her to be
 6 able to get out of the house by herself.
 7 Q. Okay. Did she indicate to you in that
 8 first call when she thought she would be able to
 9 get out of the house by herself?
 10 A. She stated that she wouldn't be able
 11 to get out of the house by herself, that he would
 12 come with her to pick the children up.
 13 Q. So what was kind of decided between
 14 you two to kind of go about getting her out of the
 15 house by herself?
 16 A. She asked me to call her back in five
 17 minutes. When I did call her back in five minutes,
 18 I told her it was time for her to pick the kids up
 19 and she needed to come pick them up.
 20 Q. Was that technically the case, did she
 21 need to?
 22 A. No. She still had plenty of time for
 23 them to be there.
 24 Q. So that was the made up story?
 25 A. Yes.


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1 Q. And the second phone call, did she
2 answer to you and say okay, she was coming?
3 A. Yes, she did. She said she was on her
4 way.
5 Q. After she said that she was on her
6 way, I assume she never arrived at the day care?
7 A. No, she didn't.
8 Q. Okay. At some point you became aware
9 that something had happened to Debbie.
10 A. Yes.
11 Q. Was it first through police officers
12 or did another individual come to the day care and
13 ask about the kids?
14 A. No, the police officer came.
15 Q. Okay.
16 A. Picked me up.
17 Q. Do you remember whether or not one of
18 Debbie's friends came and asked you about the Panos
19 children on that day?
20 A. Yes.
21 Q. Okay. Was that prior to the police
22 officer coming?
23 A. Yes, it was.
24 Q. And she was just asking if the kid
25 were there and if they were okay?

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1 A. Correct.
2 Q. Do you recall if the children were
3 there or if they were in school or where they were?
4 A. The two older boys were at school but
5 the youngest daughter she was still at day care.
6 Q. And they were fine in your care or in
7 your center's care?
8 A. Yes.
9 Q. Prior to this date, was Debbie Panos
10 the type of parent who was pretty responsible about
11 dropping off and picking up the kids on time?
12 A. Yes, she was.
13 Q. Okay. And did they seem to be in good
14 care when they were dropped off at the center?
15 A. All the time, yes.
16 Q. You didn't have any problems with her
17 or her children?
18 A. No.
19 Q. Prior to this day when she called
20 asking you for help, had you ever observed injuries
21 on Debbie Panos?
22 A. Yes. She wore sunglasses and she did
23 state to her me that her nose was broken.
24 Q. And were you able to observe that when
25 she had her nose broken?

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1 A. Yes, her nose was swollen because I
2 had asked her what had happened and she had she had
3 been hit.
4 Q. And did she tell you who hit her or
5 did you have any sense of that?
6 A. She didn't say his name but I assumed
7 that it was the children's father.
8 Q. Okay. Did you ever see him come pick
9 up the kids?
10 A. No.
11 MS. WECKERLY: Thank you, ma'am. I
12 pass the witness, Your Honor.
13 (Whereupon Ms. Weckerly
14 concluded her direct examination
15 at 4:11 p.m.)
16 THE COURT: Mr. Schieck or
17 Mr. Patrick.
18 MR. SCHIECK: Thank you, Your Honor.
19
20  CROSS-EXAMINATION
21 BY MR. SCHIECK:
22 Q. Ms. Smith, when if you can recall did
23 the Panos children start coming to the Angel Care
24 Day Center?
25 A. They'd been there for several years

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1 but I can't recall exactly.
2 Q. So it's your testimony that prior to
3 August 31st of '95 they'd been coming there for
4 several years?
5 A. Yes.
6 Q. And had you been employed there for
7 several years?
8 A. Yes.
9 Q. And so you would have had dealings
10 with those three kids for several years as of
11 August 1995?
12 A. Yes.
13 Q. And were you always in that capacity
14 during that several year period as being I think
15 you said a supervisor?
16 A. Before I started off as a regular
17 attendant where I watched the children as well as I
18 had been the cook for the center and I got promoted
19 to the supervisor.
20 Q. And when someone that has their
21 children there at Angel Care Day Care comes in, do
22 they sign their children in? Is there a book or a
23 procedure that you follow?
24 A. There is a book where they have to
25 sign their children in and out every day.

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1 Q. And if they have more than one child,
2 they would list each child that they brought and
3 the time they were dropping them off?
4 A. Yes.
5 Q. Was there a rule in place there, at the
6 day care on how long your children could be at the
7 day care?
8 A. There was an eight-hour limit as far
9 as if they went over the eight hours they were
10 charged a late fee.
11 Q. But they could leave them over the
12 eight hours but they would get charged a late fee?
13 A. Yes, if not another daily rate for the
14 extra time.
15 Q. Okay. And was, would Ms. Panos always
16 pick them up within that eight hours or would she
17 go over do you recall?
18 A. No. She would always pick them up
19 within the eight hours.
20 Q. Okay. And when she called that first
21 phone call you had with her, did she ask you what
22 time she needed to pick the kids up?
23 A. Yes, she did.
24 Q. Okay. Was that the first thing that
25 she had asked you?

1 set in the background?
2 A. Uh-huh, yes.
3 Q. And could you tell what was on TV or
4 just you could hear the noises of the TV?
5 A. I could hear the noise.
6 Q. And you said you heard a male voice
7 also?
8 A. Yes.
9 Q. The voice wasn't yelling but you could
10 tell it was a male voice?
11 A. Yes.
12 Q. Could you tell what the male voice was
13 saying at all?
14 A. No.
15 Q. You could just hear that there was
16 some talking going on?
17 A. Yes.
18 Q. About the same as the television or
19 louder or not as loud?
20 A. He was a little bit louder than the
21 television.
22 Q. How long did this first conversation
23 you had with Ms. Panos last, do you recall?
24 A. Maybe approximately ten minutes.
25 Q. So you're on the phone with her ten

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1 A. Yes.
2 Q. So did you pick up the phone or was it
3 transferred back to you or how did that work?
4 A. No. I answered the phone.
5 Q. So you answered the phone. She
6 identified herself and said, "What time do I need
7 to pick up my kids today?"
8 A. Yes.
9 Q. Okay. You checked the sign-in book?
10 A. Correct.
11 Q. And what time, do you recall?
12 A. I think it was around 7:30 when she
13 had signed them in.
14 Q. So she had brought them by about 7:30
15 which means she would have had to pick them up what
16 is that 4:30 in the afternoon would be their pick
17 up time then?
18 A. Roughly 5:30, yes.
19 Q. Did you tell her that?
20 A. Yes.
21 Q. Okay. And is it then that the
22 conversation went on and she talked about started
23 whispering to you?
24 A. Yes.
25 Q. Okay. You said you heard a television

1 minutes talking back and forth; is that correct?
2 A. Yes.
3 Q. And then you complied with her request
4 and called her back about five minutes later?
5 A. Yes.
6 Q. And she was able to answer the phone
7 at that time?
8 A. Yes.
9 Q. Okay. Did you hear the TV during that
10 second call?
11 A. I'm sorry. I don't recall.
12 Q. Did you hear any other voice during
13 that second call?
14 A. No.
15 Q. And all she said was that she was on
16 her way?
17 A. Yes.
18 MR. SCHIECK: Thank you. That's all I
19 have, Your Honor. Oh, excuse me. No further
20 questions.
21 (Whereupon Mr. Schieck
22 concluded his cross-examination
23 at 4:15 p.m.)
24 THE COURT: Ms. Weckerly.
25 MS. WECKERLY: Just one question.

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1 REDIRECT EXAMINATION
 2 BY MS. WECKERLY:
 3 Q. Ma'am, when you heard the male voice,
 4 can you describe the demeanor of that voice that
 5 you heard.
 6 A. It didn't sound like he was mad or
 7 upset but he was talking a little loud.
 8 Q. Talking loud?
 9 A. Yes.
 10 Q. Do you recall testifying over ten
 11 years ago about this incident?
 12 A. Yes.
 13 Q. Would looking at your testimony maybe
 14 refresh your recollection about what you said about
 15 the voice at that time?
 16 A. Yes.
 17 Q. Ma'am, having looked at some prior
 18 testimony that you gave about this matter, does
 19 that refresh your recollection as to whether or not
 20 that male voice sounded upset?
 21 A. Yes.
 22 Q. And what did you say then?
 23 A. That it sounded like he was yelling
 24 and he was upset.
 25 Q. And he was upset but not yelling?

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1 A. Yes.
 2 Q. And I assume ten years ago was a lot
 3 maybe fresher in your mind than now?
 4 A. Yes.
 5 MS. WECKERLY: Thank you.
 6 (Whereupon Ms. Weckerly
 7 concluded her redirect
 8 examination at 4:17 p.m.)
 9 THE COURT: Mr. Schieck.
 10
 11 RECROSS EXAMINATION
 12 BY MR. SCHIECK:
 13 Q. Was the point that caused you to
 14 believe that he might be upset because his voice
 15 was raised a little bit?
 16 A. Yes.
 17 Q. That's the only thing about his voice
 18 that would cause you to believe he was upset?
 19 A. Yes.
 20 MR. SCHIECK: Okay. Nothing further,
 21 Your Honor.
 22 MS. WECKERLY: Nothing else.
 23 THE COURT: Anything from the jurors?
 24 Ms. Smith, thank you for your time.
 25 (Whereupon Latrona Smith

1 was excused from the
 2 witness stand at 4:15 p.m.)
 3 THE COURT: The State may call their
 4 next witness.
 5 MR. OWENS: The next two are going to
 6 be readers from prior testimony. I think we've
 7 supplied transcripts to the Court. The first one
 8 will be Deborah Turner.
 9
 10 Whereupon an unidentified female,
 11 having been first duly sworn to faithfully and
 12 accurately read the responses set forth in the
 13 transcript read as follows:
 14 MR. OWENS: Your Honor, I'm going to
 15 start on the top of page 14 if that's all right.
 16 THE COURT: That's fine.
 17 MR. OWENS:
 18 Q. Would you state your name for the
 19 record.
 20 A. "Deborah Turner, D-E-B-O-R-A-H,
 21 T-U-R-N-E-R."
 22 Q. "And, Deborah, how old are you?"
 23 A. "19."
 24 Q. "And on August 31st of 1995, did you
 25 know someone by the name of James?"

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1 A. "Yes."
 2 Q. "Do you see him here in court today?"
 3 A. "Yes, I do."
 4 Q. "Can you please point to him and tell
 5 us what he is wearing."
 6 A. "He's wearing a suit with a yellow
 7 shirt, with a tie, gray suit."
 8 MR. OWENS: "Your Honor, may the
 9 record reflect that the witness has
 10 identified the defendant."
 11 THE COURT: "Yes."
 12 MR. OWENS:
 13 Q. "Did you also call him Hip Hop?"
 14 A. "Yes."
 15 Q. "Why did you call him that?"
 16 A. "Because he danced around with his
 17 radio."
 18 Q. "Where would you generally see the
 19 defendant?"
 20 A. "In the apartments on Las Vegas -- I
 21 mean on Lamb and Bonanza."
 22 Q. "What's that area known as?"
 23 A. "The Rayson --"
 24 Q. "Is that a series of projects?"
 25 A. "It's a project housing."

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1 Q. "And how long before August 31st of
2 1995 had you known him? How long before
3 that?"
4 A. "Approximately six to eight months."
5 Q. "And during that time period, how
6 often would you see him around the complex?"
7 A. "All the time. He was there hanging
8 out most of the time."
9 Q. "Would it be fair to say almost every
10 day if not every day?"
11 A. "I seen him every day that I was out
12 hanging out. He was there."
13 MR. OWENS: Hold on a second. I think
14 we have some parts there.
15 THE COURT: Do you want the objection
16 for the record?
17 MR. SCHIECK: It was overruled.
18 MR. OWENS: Okay. We'll just do the
19 ones that weren't. That's fine.
20 Q. "Did you live in that complex?"
21 A. "At that time, yes."
22 Q. "Now, during that time, to your
23 knowledge did he have a job?"
24 MR. SCHIECK: "Objection,
25 irrelevant."

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1 THE COURT: "Overruled."
2 THE WITNESS: "Not to my knowledge,
3 no."
4 MR. OWENS:
5 Q. "To your knowledge, did he have a
6 vehicle?"
7 A. "No, he didn't have one personally,
8 but he was driving his girlfriend's car."
9 Q. "Did you ever see that girlfriend?"
10 A. "No."
11 Q. "I'd like to show you what's been
12 marked for identification purposes as State's
13 Proposed Exhibit 56 and ask you if this is
14 the car you recall the defendant in
15 possession of?"
16 A. "Yes, ma'am."
17 Q. "Had you ever seen his children
18 before?"
19 A. "Yes, on several times."
20 Q. "Now, on August 31st of 1995, do you
21 recall seeing the defendant?"
22 A. "On that day?"
23 Q. "Let me ask you this. You recall one
24 day speaking to homicide detectives,
25 correct?"

1 A. "Oh, yes."
2 Q. "The evening before do you recall
3 seeing the defendant?"
4 A. "Oh, yes."
5 Q. "Was that approximately August 31st of
6 1995?"
7 A. "It was that night."
8 MR. OWENS: If we could go outside the
9 transcript for a minute, Your Honor, we've got a
10 copy of Exhibit 56 if I can put that on the
11 screen. We had a reference to it a moment ago.
12 THE COURT: All right.
13 MR. OWENS:
14 Q. "Okay. And was it dark out?"
15 A. "It was --"
16 Q. "When you saw the defendant -- or was
17 it light?"
18 A. "It was dark outside."
19 Q. "Do you know the exact time when you
20 first saw him?"
21 A. "No, it was just -- I just know it was
22 dark."
23 Q. "And did you see the vehicle that you
24 just identified in State's Proposed Exhibit
25 No. 56. Did you see it?"

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1 A. "Yeah, it was in the projects."
2 Q. "And where was he next to where the
3 car was?"
4 A. "He was in the area the last spot I
5 seen him."
6 Q. "And what was he doing when you saw
7 him?"
8 A. "He had shrimp and pie and he was
9 going door to door trying to sell it."
10 Q. "Did he approach you as well?"
11 A. "Yes."
12 Q. "And did you buy something from him?"
13 A. "I bought the shrimp and the pie and
14 rented the car."
15 Q. "And how much did you rent the car and
16 buy the shrimp and the pie for?"
17 A. "\$15."
18 Q. "What did he say to you before he sold
19 these items to you?"
20 A. "Well, when he approached me, he just
21 said -- he called me -- he called me over.
22 He know my name. 'He was like, Dee Dee, come
23 here. You want this?' I looked in the bag
24 and told him, 'Yes,' but after he left and
25 came back, he asked me about the car and I

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1 told him, 'Yeah. I wanted to rent it.'
 2 That's when I added on the additional \$10."
 3 Q. "Did you have to negotiate with him on
 4 a price for all of those three items?"
 5 A. "To a certain extent, but he was
 6 freely to let me drive the car, like no limit
 7 really. He just told me --"
 8 Q. "Did he give you the keys to the
 9 car?"
 10 A. "Yes."
 11 Q. "And did he tell you what to do with
 12 the vehicle when you were done?"
 13 A. "To park it in the back by my house,
 14 like in the back of the apartments."
 15 Q. "Did he hand over the shrimp to you?"
 16 A. "Did he hand --"
 17 Q. "Did he give you the bag of shrimp?"
 18 A. "And the pie together."
 19 Q. "With the keys?"
 20 A. "Not at the same time. When he came
 21 back, he did."
 22 Q. "And what did you give him after he
 23 gave you these items, the keys, and the
 24 shrimp, and the pie?"
 25 A. "Gave him the money."

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1 Q. "And how much again was that?"
 2 A. "\$15."
 3 Q. "And let me ask you this. Did the
 4 defendant -- how was he acting at that time?"
 5 A. "Just like he always be. Just Hip
 6 Hop. He just -- like everyday, hip hop which
 7 is dancing and just doing his thing."
 8 Q. "Did he seem sad?"
 9 A. "He didn't seem nothing. He was just
 10 the normal way. He always be happy and
 11 goofing around."
 12 Q. "So he was not sad."
 13 THE COURT: "Witness shook her head
 14 negatively."
 15 MR. OWENS:
 16 Q. "Is that answer no? You have to say
 17 yes or no."
 18 A. "No. It wasn't no sadness. I
 19 wouldn't think there was anything wrong."
 20 Q. "He didn't seem upset?"
 21 A. "No."
 22 Q. "You said you generally saw him
 23 dancing around. Did you see him dancing
 24 around that evening, do you recall?"
 25 A. "For just a little bit after he got

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1 the radio out of the car. You know, his
 2 little radio. After a while I sat out there
 3 for a little bit and he was goofing around
 4 dancing, and then we joked for a little bit
 5 and we got in the car and I picked up my
 6 friend and we left."
 7 Q. "What kind of dancing was he doing?"
 8 A. "Just break dancing, just dancing. No
 9 particular dancing, just dancing."
 10 Q. "Was anyone dancing with him?"
 11 A. "No."
 12 Q. "And as he was dancing, did he seem
 13 sad?"
 14 A. "No."
 15 Q. "What did you do with the vehicle?
 16 What did you do with the car?"
 17 A. "I picked up my friend and drove."
 18 Q. "Who was your friend?"
 19 A. "Ladonna Jackson. I picked her up and
 20 we went driving around."
 21 Q. "Were you driving the car?"
 22 A. "Yes."
 23 Q. "Where was she sitting?"
 24 A. "In the passenger seat."
 25 Q. "Where all did you go?"

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1 A. "I went over to my God mama's house.
 2 Man, we just drove round the streets and took
 3 off kind of late and we came back home."
 4 Q. "Where did you park the car?"
 5 A. "On the side in back of my house."
 6 Q. "And was that in a parking lot area?"
 7 A. "It was on top of grass behind the
 8 building."
 9 Q. "If you were on the street, could you
 10 have seen where that car was?"
 11 A. "No."
 12 Q. "And did you park it at the same
 13 location that the defendant told you to park
 14 it in?"
 15 A. "Yes."
 16 Q. "What did you do with the keys?"
 17 A. "Put them underneath the seat,
 18 underneath the seat back or whatever that
 19 thing is."
 20 Q. "And then you left the car?"
 21 A. "Went into my house."
 22 Q. "Do you recall about what time this
 23 was?"
 24 A. "It was like approximately like about
 25 3:00 and 5:00 in the morning, but it was

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1 before the sun came up."
 2 Q. "So that would have been 3:00 to 5:00
 3 in the morning on September 1st of 1995?"
 4 A. "Right, the next day."
 5 Q. "Going in from the time that you --"
 6 A. "That night."
 7 Q. "-- rented this vehicle into the
 8 early morning hours?"
 9 A. "Right."
 10 Q. "Did you ever see the defendant again
 11 after that?"
 12 A. "No."
 13 Q. "Did there come a time the next day
 14 that you saw some people around that
 15 vehicle?"
 16 A. "Yeah, I was in my bed and my friend
 17 told me that the police was at the car. So I
 18 came out and they were fingerprinting the
 19 stuff and the car and he was asking people
 20 and I didn't really want to say nothing until
 21 I found out who it was. I thought I was in
 22 trouble but --"
 23 Q. "Who was asking people things?"
 24 A. "The detectives and they told me --
 25 after they told me, I mean, what he did --"

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1 Q. "Let me ask you this. Were you giving
 2 the police information initially about what
 3 was going on?"
 4 A. "As far as I knew, I just told them I
 5 drove the car and it was me and --"
 6 Q. "Why did you tell the police -- why
 7 did you give the police information?"
 8 A. "I'm not no snitch or nothing, but I
 9 mean I don't know what I'm suppose to say,
 10 but I know them kids, I feel for them kids.
 11 I seen them kids in the apartments and I just
 12 feel that it was wrong what he did and I
 13 don't really like to snitch on nobody or
 14 nothing like that, but I just feel it was
 15 wrong. Them kids -- I just -- I just don't
 16 know."
 17 Q. "Okay."
 18 A. "I work way too hard for my mom and I
 19 have been in the states and stuff."
 20 Q. "Okay. Let me ask you the next
 21 question. Did you take -- do you recall
 22 taking a taped statement from the police or
 23 handwritten statement or did they just talk
 24 to you?"
 25 A. "They -- they did -- they talked to me

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1 and did a written. Wrote some of the stuff
 2 down on his pad or whatever."
 3 MR. OWENS: "Court's indulgence."
 4 Thank you. That concludes direct examination."
 5 THE COURT: "Cross."
 6 MR. SCHIECK:
 7 Q. "Ms. Turner, you just testified that
 8 James was dancing around that evening,
 9 correct?"
 10 A. "Yes."
 11 Q. "He was dancing around because he was
 12 high on cocaine; isn't that correct?"
 13 A. "I didn't see him do any cocaine."
 14 Q. "Did he do cocaine in the projects?"
 15 A. "From what I have known, he was -- he
 16 was a crack head from what I know."
 17 Q. "He was a crack head. And that's why
 18 he was selling the shrimp and the car to get
 19 money for drugs?"
 20 A. "I don't know what he was doing it
 21 for."
 22 Q. "Does that make sense, though?"
 23 MR. OWENS: "I'm going to object as to
 24 speculation."
 25 THE COURT: "Overruled."

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1 MR. SCHIECK:
 2 Q. "You may answer the question."
 3 A. "Oh. It makes sense, but I wouldn't
 4 just pinpoint it."
 5 Q. "But you didn't see him using drugs
 6 that night?"
 7 A. "I didn't see him do drugs at all that
 8 night."
 9 Q. "But you have seen him doing drugs on
 10 other occasions?"
 11 A. "Have I seen him personally?"
 12 Q. "Yeah."
 13 A. "I don't know what he done behind
 14 closed doors. I have been in the same house
 15 with him, but I never saw him do it."
 16 Q. "You say he hangs out there quite
 17 often?"
 18 A. "Yes."
 19 Q. "Did he hang out with you?"
 20 A. "No."
 21 Q. "Who did he hang out with?"
 22 A. "His friends."
 23 Q. "Who were his friends there?"
 24 A. "He had a friend named Bridget, CC,

1 just some other people that hang out in the projects."
 2 Q. "Did you ever get high with him?"
 3 A. "No."
 4 Q. "Was that the only time you ever used
 5 his girlfriend's car?"
 6 A. No, I have used it once before.
 7 Q. "Have you seen him with that car over
 8 there many times before?"
 9 A. "I wouldn't say many times, but every
 10 so often."
 11 Q. "So he would use the car occasionally
 12 and bring it over to those apartments?"
 13 A. "Yes."
 14 MR. SCHIECK: "Thank you. No further
 15 questions."
 16 THE COURT: "Redirect?"
 17 MR. OWENS: "Yes."
 18 Q. "Did the defendant spend the night
 19 over there in the complex?"
 20 A. "Yes."
 21 Q. "And whose apartment would he spend
 22 the night at?"
 23 A. "Bridget's."
 24 Q. "That's a female?"
 25 A. "Yes."

1 Q. "Did he rent the car out to other
 2 people as well as yourself, for money?"
 3 A. "Yes. He rented it out to several
 4 people in the projects."
 5 Q. "For what does he rent it out for?"
 6 A. "For money for like an hour or two
 7 hours."
 8 Q. "Does he rent it out for other
 9 things?"
 10 A. "Like --"
 11 Q. "For rock cocaine?"
 12 A. "Yeah, he does it for that too, but I
 13 mean never to another person's knowledge
 14 because everybody doesn't do everything in
 15 the open, I guess, but I have dealt with him
 16 on a different level."
 17 MR. OWENS: "Court's indulgence.
 18 Thank you. That would conclude my
 19 redirect."
 20 MR. SCHIECK: "No questions, Your
 21 Honor."
 22 THE COURT: "May this witness be
 23 discharged?"
 24 MR. OWENS: "Yes."
 25 THE COURT: "Thank you, ma'am. You

1 may step down."
 2 (Whereupon the unidentified
 3 female was excused from the
 4 witness stand at 4:30 p.m.)
 5 MR. OWENS: Once again we'd ask that
 6 these be marked for the record.
 7 THE COURT: They will.
 8 MR. OWENS: The next one is going to
 9 be LaDonna Jackson.
 10 THE COURT: Ms. Digiacom, raise your
 11 right hand for me, please.
 12
 13 SANDRA K. DIGIACOMO,
 14 having been first duly sworn to faithfully and
 15 accurately read the responses set forth in the
 16 transcript read as follows:
 17
 18 THE COURT: "LaDonna Jackson, having
 19 been first duly sworn to tell the truth, the
 20 whole truth, and nothing but the truth
 21 testified and said as follows:" Mr. Owens.
 22 MR. OWENS:
 23 Q. "Can you please state your name and
 24 spell it for the record."
 25 A. "LaDonna Jackson, L-A-D-O-N-N-A,

1 J-A-C-K-S-O-N."
 2 Q. "Ms. Jackson, how old are you?"
 3 A. "I'm 27."
 4 Q. "Do you have any children?"
 5 A. "Yes, I have a ten year old."
 6 Q. "Where do you live?"
 7 A. "I live at 507 North Lamb, apartment
 8 6."
 9 Q. "Is that also known as the Vera
 10 Johnson Housing --"
 11 MS. DIGIACOMO: Yes.
 12 Q. "-- Complex?"
 13 A. "Yes, it is."
 14 Q. "That's here in Las Vegas, Clark
 15 County, Nevada?"
 16 A. "Yes, it is."
 17 Q. "On August 31st of 1995, did you know
 18 someone by the name of James?"
 19 A. "Yes."
 20 Q. "Do you see him here in court?"
 21 A. "Yes, I do."
 22 Q. "Can you please point to him and
 23 describe what he is wearing."
 24 A. "The man in the gray suit with the
 25 glasses."

1 MR. OWENS: "Your Honor, may the
2 record reflect that the witness has
3 identified the defendant?"
4 THE COURT: "Yes."
5 MR. OWENS: "Thank you, Your Honor."
6 Q. "Does he also go by the name of Hip
7 Hop?"
8 A. "Yes."
9 Q. "And why is that?"
10 A. "He listens to a lot of music and he
11 use to dance around all the time, so we gave
12 him the name Hip Hop."
13 Q. "When you say we gave him the name,
14 would that be fair to say the people in the
15 complex?"
16 A. "Everybody over in the complex."
17 Q. "Is he well known over there?"
18 A. "Yes."
19 Q. "About when was it that you met him
20 prior to August 31st of 1996."
21 A. "About five or six months ahead of
22 time."
23 Q. "And would it be fair to say he
24 generally hung out there at the complex?"
25 A. "Yeah. He was there day in, day out.

1 He was there."
2 Q. "Do you know whether or not he had a
3 job?"
4 MR. SCHIECK: "Objection."
5 THE COURT: "The objection is
6 overruled."
7 THE WITNESS: "No."
8 MR. OWENS:
9 Q. "He did not have a job --"
10 A. "No."
11 Q. "-- to your knowledge. How many
12 hours a day would you see him hanging around
13 over there?"
14 A. "All day, just all day."
15 Q. "To your knowledge, did he have a
16 car?"
17 A. "Yes."
18 Q. "To your knowledge, do you know whose
19 car it was?"
20 A. "It was his, well, I thought she was
21 his wife. It was his girlfriend's car."
22 Q. "And had you ever seen this girlfriend
23 before?"
24 A. "Yes."
25 Q. "I'd like to show you what's been

1 marked for purposes of identification as
2 State's Proposed Exhibit 56. What is this a
3 picture of?"
4 A. "Our apartment complex and the car
5 parked on the side of the apartment."
6 Q. "And, in fact, it says 507 right there
7 on the building?"
8 A. "Right. I live in apartment 6."
9 Q. "And showing you what's been
10 marked for identification purposes as State's
11 Proposed Exhibit No. 66, is this the woman
12 you knew as his wife or girlfriend?"
13 A. "Yes."
14 Q. "That you've just described?"
15 A. "Yes."
16 Q. "About how many times prior to
17 August 31st of 1995 did you see this
18 girlfriend?"
19 A. "It wasn't often. I seen her twice;
20 like two or three times. I never seen her as
21 much as I did him."
22 Q. "What was she doing when she came to
23 the complex?"
24 A. "Once, when I was coming -- walking
25 down the sidewalk, she was telling him

1 something about the car, she was coming to
2 get the car and I overheard them arguing
3 about the car and I kept walking. So."
4 Q. "And what about the other time?"
5 A. "Another time, she was just sitting in
6 the car, her and the kids. I seen the kids
7 in the car too. They were just in the car."
8 Q. "About how many times had you seen his
9 children?"
10 A. "Just twice. Once when she was with
11 them in the car and once he came through
12 there with the kids in the car. It was the
13 first time I had seen his kids."
14 Q. "Do you know how many kids he had?"
15 A. "He had two toddlers -- well, not
16 even -- like maybe four, five year old, a
17 toddler, and a newborn I believe it was or
18 they might not have been that young, but
19 there were three kids."
20 Q. "You stated that the defendant was at
21 the complex all the time. Would he often
22 spend the night in the area?"
23 A. "Yes, he spent the night over there,
24 yes."
25 Q. "And whose apartment did he spend the

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1 night at?"

2 A. "Bridget. This girl named Bridget."

3 Q. "On August 31st of 1995, did you see

4 the defendant?"

5 A. "Yes."

6 Q. "And where -- what was the defendant

7 doing when you first saw him?"

8 A. "When we first seen him, he was just

9 pulling into the complex and my sisters and I

10 were on our way from the store because

11 there's a Lucky's right across the street and

12 we seen him pulling in and we went on to the

13 house. We spoke. He spoke and we went on to

14 the house."

15 Q. "So you actually saw him pulling up

16 into the complex?"

17 A. "Yes."

18 Q. "Was he -- what kind of -- what

19 vehicle was he driving?"

20 A. "The little bluish gray Toyota."

21 Q. "The same vehicle that you just

22 described in State's Exhibit No. 56?"

23 A. "Yes."

24 Q. "And when he pulled up into the

25 complex in that car and you spoke with him,

1 when you first saw him pulling up?"

2 A. "During the evening time."

3 Q. "Let me ask you this."

4 A. "The sun was almost going down at that

5 time."

6 Q. "But you can't give an exact time?"

7 A. "I don't have an exact time. I can't

8 remember now."

9 Q. "Did there come a time when you met

10 with Deborah Turner?"

11 A. "Yes."

12 Q. "And how did that come about?"

13 A. "About an hour after we had saw him

14 come into the complex, about an hour later,

15 Deborah came to the back and she was like, 'I

16 got the car, come on, let's go,' you know, to

17 talk about whatever and I was like -- you

18 know, I didn't want to go and she was like,

19 'Come on,' but he had given her the car to

20 go."

21 Q. "And did you get into the car?"

22 A. "Yes, I did."

23 Q. "And were you the driver?"

24 A. "No."

25 Q. "Or passenger?"

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1 how was he acting?"

2 A. "Like James."

3 Q. "What do you mean like James?"

4 A. "Hip Hop, James. Just hi, hi or

5 what's up. That's it. Just James."

6 Q. "Did he seem sad at all?"

7 A. "No."

8 Q. "Did he seem like he had been upset

9 about anything?"

10 A. "No, he wasn't nervous or anything.

11 He was just James like we usually see him."

12 Q. "Would you have ever suspected that

13 anything was wrong?"

14 A. "Absolutely not, no."

15 Q. "How long would you say you talked

16 with him while you were with your sisters?"

17 A. "We just spoke. It was not even --

18 you know, just hi and hi and we went on to

19 the back. Hey, James. Hey. That was it."

20 Q. "Were there other people in the area

21 as well?"

22 A. "No, it was me and my sisters. Like I

23 said, he had just pulled up and gotten out of

24 the car and we were walking through there."

25 Q. "Do you recall about what time it was

1 A. "I was the passenger."

2 Q. "Do you recall where you went that

3 evening in the vehicle?"

4 A. "We went to Taco Bell and we just rode

5 around for a minute and then we came back to

6 the house."

7 Q. "Do you remember about what time it

8 was when you came home?"

9 A. "It was late. Maybe between 12:00 or

10 1:00. It was late."

11 Q. "The early morning hours?"

12 A. "Early morning hours, yes."

13 Q. "You were sitting there looking at the

14 time when you got home?"

15 A. "No."

16 Q. "And when you came home to the

17 complex, did you or did Deborah park the

18 vehicle?"

19 A. "Deborah parked it. She let me out

20 in front of the door, which is right beside

21 that window there, and she told me she had to

22 park it on the side of the building and I

23 asked her why and she said because he asked

24 her to park it, you know, I guess where

25 nobody could see it. So she parked it on the

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1 side of the building."
 2 Q. "Did you watch her park it there?"
 3 A. "I stood outside while she parked the
 4 car. I mean that building and where is the
 5 car is parked, there's my apartment door
 6 right there."
 7 Q. "I've shown you this exhibit, State's
 8 Exhibit No. 56. Do you recall is that about
 9 where she parked the vehicle?"
 10 A. "Yep. This is where she parked it.
 11 The night we were done, this is where she
 12 parked it."
 13 Q. "What did you do after you watched her
 14 park the vehicle?"
 15 A. "We went into the house and went to
 16 bed."
 17 Q. "When you got up the next day, do you
 18 recall the vehicle still being there like
 19 this?"
 20 A. "It was still there. Yes, it was
 21 still there."
 22 Q. "Would this be a fair and accurate
 23 depiction of the way the vehicle looked on
 24 the date of September 1st of 1995?"
 25 A. "Yes, yes. That's exactly how she

1 hello, did he seem upset at all?"
 2 A. "No."
 3 Q. "Did he seem sad?"
 4 A. "No."
 5 Q. "Could you tell whether or not
 6 anything was wrong?"
 7 A. "No. No."
 8 Q. "After you saw him go towards the
 9 Lucky store, did you ever see him again after
 10 that?"
 11 A. "No."
 12 Q. "Did there come a time, after you saw
 13 him going towards Lucky's, that the police
 14 came to the complex?"
 15 A. "About I'll say like prior to an hour
 16 afterwards, a detective came and he was
 17 looking for the car. So we were all standing
 18 out there; nonchalantly, we don't know. We
 19 knew where the car was, but we weren't saying
 20 anything."
 21 Q. "Why weren't you saying anything when
 22 the police were looking for the car?"
 23 A. "Because that's just how it is over
 24 there where we live. Nobody opens their
 25 mouth about anything. We said we don't

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1 parked it."
 2 MR. OWENS: "Your Honor, at this time
 3 I would move to admit State's Proposed
 4 Exhibit 56."
 5 MR. SCHIECK: "No objection."
 6 THE COURT: "All right, same will be
 7 received in evidence."
 8 MR. OWENS:
 9 Q. "Now, the next morning, September 1st
 10 of 1995, did you have an occasion to see the
 11 defendant again?"
 12 A. "Yeah. He was on his way to Lucky's,
 13 but we had seen him before he was on his
 14 way. I seen him twice. Earlier I had seen
 15 him and we were all standing out and standing
 16 around. Then we seen him like about 30
 17 minutes later crossing the street on his way
 18 to Lucky's. We knew where he was going."
 19 Q. "Now, let me ask you this. When you
 20 say you saw him earlier that morning, how
 21 long did you talk with him?"
 22 A. "We never talked to James that long.
 23 Like maybe five minutes. Hey, James. Hi.
 24 That's all we ever did is say hi, you know."
 25 Q. "And when you talked with him and said

1 know. We thought maybe something was wrong
 2 or something -- maybe she had reported the
 3 car stolen or something. So we were like we
 4 don't know."
 5 Q. "So you were protecting him?"
 6 A. "Protecting who?"
 7 Q. "Protecting James at the time?"
 8 A. "No. We were looking out for
 9 ourselves. We weren't protecting James."
 10 Q. "You just didn't want to get
 11 involved?"
 12 A. "No. You don't get involved with
 13 things like that over there. You just don't get
 14 involved, you know. We don't know where the car is
 15 and that's when he told us, 'Here's my card. In
 16 case someone sees the car, give me a call.'"
 17 Q. "What was his name?"
 18 A. "I think it was kind of like an
 19 Italian name."
 20 Q. "Was it Detective James Vaccaro?"
 21 A. "That's his name, with the mustache."
 22 Q. "After he gave you the card, what
 23 happened?"
 24 A. "He told us that he was looking for
 25 the car because the guy that drives the car

1 had just stabbed his girlfriend to death and
2 we were all like panicked. We were like --
3 and I told him, well -- I said, 'The car is
4 around the corner.' I told him exactly where
5 it was at that time because that scared me
6 and then he told us what he had done and we
7 took him straight to the car. That's how he
8 got the car."

9 MR. OWENS: "Thank you. That would
10 conclude my direct examination."

11 MR. SCHIECK:

12 Q. "Ms. Jackson, I'm curious. James hung
13 around there a lot, didn't he?"

14 A. "A lot."

15 Q. "And he had the car a lot there as
16 well."

17 A. "Pretty much. Yeah, he -- well, not
18 all the time, but the majority of the time,
19 yes, he did have the car."

20 Q. "Had you ever used the car before
21 yourself?"

22 A. "Yes."

23 Q. "And he had rented the car out to
24 other people, didn't he?"

25 A. "Yes."

1 Q. "He used it as sort of a way to make a
2 little money on the side there."

3 A. "Yeah, that's what he was doing."

4 Q. "Is it fair to say there are a lot of
5 people who hang around that place and do
6 drugs?"

7 A. "Yeah, it is."

8 Q. "Is it fair to say that there are some
9 apartments that are known as crack houses?"

10 A. "Yes."

11 Q. "Is it fair to say Bridget's place was
12 a crack house?"

13 A. "Yes."

14 Q. "And James used to hang out at
15 Bridget's crack house, didn't he?"

16 A. "Yes."

17 Q. "James was a crack head, wasn't he?"

18 A. "I have seen worse. I mean he's
19 not -- he wasn't just totally cracked out to
20 where he just lost it, but, yeah, he was
21 doing crack pretty bad."

22 Q. "He did crack there a lot, didn't
23 he?"

24 A. "Well, yeah, he did, but like I have
25 said, I have seen worse."

CHERYL GARDNER, CCR 230, RPR, RMR

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Q. "On August 31st, I may have missed
this, did you say you saw him actually pull
up and an arrive or not?"

A. "We seen him pull into the complex."

Q. "You saw him. What time did he pull
in?"

A. "This is like -- I'm not sure; during
the early morning time. May have been the
afternoon time."

Q. "You are not sure of the time?"

A. "I'm not sure."

Q. "How far are you, at the Vera Johnson
Projects --"

A. "Uh-huh."

Q. "-- Vera Johnson Projects, how far
are you from Lucky's?"

A. "It's like a two, three minute walk.
We are right across the street."

Q. "Okay."

A. "Right across the street."

MR. SCHIECK: "No further questions.
Pass the witness."

THE COURT: Redirect?

MR. OWENS: "Yes."

Q. "Defense counsel asked you whether or

1 not the defendant would rent out this car for
2 money?"

3 A. "Right?"

4 Q. "A way to make a little money?"

5 A. "Right."

6 Q. "What did he do with that money?"

7 A. "Buy crack with it."

8 Q. "He didn't -- you never saw him buy
9 anything for his family, did you?"

10 A. "No, no. We all knew that he wanted
11 the money for and that's the reason why he
12 was one of the main sources of getting a car
13 when you needed a car to do anything."

14 Q. "What were the other ways HE MADE HIS
15 money?"

16 A. "Stealing."

17 MR. SCHIECK: "Objection. Move to
18 strike."

19 THE COURT: "Overruled."

20 MR. OWENS:

21 Q. "And what do you mean by that? What
22 was his other name in the complex?"

23 A. "Regulator."

24 Q. "What does that mean, The
25 Regulator?"

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1 A. "That when you call on the regulators
2 around there, that means they can go to the
3 store and get anything you want. Anything."
4 MR. SCHIECK: "Object, move to strike,
5 Your Honor."
6 THE COURT: "Overruled."
7 MR. OWENS:
8 Q. "Once they get something from that
9 store, what store are you talking about?"
10 A. "It doesn't matter, Lucky's,
11 wherever. He had transportation. He can go
12 to different stores."
13 Q. "And once he got the items, what would
14 he do with them over there at the complex?"
15 A. "Sell them. He'd sell them."
16 Q. "For the money for the drugs?"
17 A. "For the money or the drugs. Both.
18 Didn't make any difference. He was trying to
19 do both. If they gave him money, he would
20 use the money for crack. If not, he would
21 sell it to the people for crack."
22 Q. "And when you saw his girlfriend a
23 couple of times over there in the complex,
24 did she seem happy about the fact that he had
25 her car?"

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1 A. "No. I mean who would be happy.
2 No."
3 Q. "Why do you say that?"
4 A. "Well, because she knew what he was
5 doing, you know. I mean everybody --"
6 Q. "Did she need to go somewhere?"
7 MR. SCHIECK: "Objection,
8 speculation."
9 THE WITNESS: "She had to go to
10 work."
11 THE COURT: "Overruled. You have got
12 to wait until I rule on the objection."
13 THE WITNESS: "Oh, I'm sorry."
14 THE COURT: "That's okay."
15 THE WITNESS: "Yeah."
16 MR. OWENS:
17 Q. "Did you hear her say that?"
18 A. "I heard her yell, like I said, when I
19 heard the earlier statement, when I saw those
20 two there, I saw her coming and retrieving
21 the car and I heard her say something about
22 work and day care."
23 Q. "Taking her children to the day
24 care?"
25 A. "Taking her kids to the day care."

1 Q. "He didn't watch the children during
2 the day?"
3 A. "He couldn't watch them over there at
4 Vera Johnson's."
5 Q. "This crack house of Bridget's, did
6 you ever actually see the defendant sleeping
7 there as well?"
8 A. "Yes."
9 Q. "So he didn't actually do drugs there,
10 you saw him sleep there?"
11 A. "I saw him sleep there. I came there
12 a couple of times because she also does nails
13 and I get my nails done there and he was
14 passed out on the couch."
15 Q. "Did you ever see him selling any of
16 his children's things?"
17 MR. SCHIECK: "Objection.
18 Irrelevant."
19 THE COURT: "Overruled."
20 THE WITNESS: "Diapers."
21 MR. OWENS:
22 Q. "How do you know he was selling his
23 children's diapers?"
24 A. "Well, I'm not exactly sure, but I do
25 know he went to the car and got them. When

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1 he would steal from Lucky's, he would be
2 stealing stuff out of his clothes. He got
3 those diapers out of the car. So I assumed
4 those are probably one of his kid's diapers."
5 Q. "And he would sell those diapers?"
6 A. "Yeah, he would sell them."
7 MR. OWENS: "Thank you. I don't have
8 anything further."
9 MR. SCHIECK:
10 Q. "He would sell these diapers as"
11 Mr. Owens "said because he wanted drugs?"
12 A. "Yes."
13 Q. "He would do all the stuff apparently
14 to get drugs?"
15 A. "Yes."
16 Q. "And, as far as you can tell, his
17 girlfriend, the mother was children, knew
18 what was going on?"
19 A. "I'm sure she had a pretty good idea
20 about what was going on. I mean that's her
21 kids' father. Any woman who know what's
22 going on."
23 Q. "And she would come over there to get
24 her car back?"
25 A. "She would have no choice if she

1 wanted to go to work."
2 Q. "How long had she been coming over
3 there" to "get her car back?"
4 A. "She never came over there that much.
5 Like I said, I seen her two, maybe three
6 times like I said. She never came over there
7 that often, but he had the car the majority
8 of the time."
9 Q. "Okay. Thank you very much."
10 A. "Thank you."
11 THE COURT: "May this witness be
12 discharged?"
13 MR. OWENS: "Yes, Your Honor."
14 THE COURT: "Thank you, ma'am. You
15 may step down."
16 (Whereupon Sandra Digiacomo,
17 Esq., was excused from the
18 witness stand at 4:47 p.m.)
19 THE COURT: Good place to break for
20 the night?
21 MR. OWENS: I don't know if the Court
22 can accommodate us. We have one witness that we'd
23 say is probably about a ten-minute witness.
24 THE COURT: Does the defense know
25 which witness it is?

1 MR. SCHIECK: We're not going to be
2 too long with her.
3 THE COURT: Okay. Let's go ahead and
4 try to get her.
5 MS. WECKERLY: Thank you, Judge. The
6 witness is Kimberly Sempson.
7
8 KIMBERLY SEMPSON,
9 having been first duly sworn to testify to the
10 truth, the whole truth and nothing but the truth,
11 was examined and testified as follows:
12
13 THE CLERK: If you'll please state
14 your name and spell your last name for the record.
15 THE WITNESS: Kimberly Sempson,
16 S-E-M-P-S-O-N.
17
18 DIRECT EXAMINATION
19 BY MS. WECKERLY:
20 Q. And, ma'am, how were you employed back
21 on September the 1st of 1995?
22 A. I was employed by Lucky Stores as loss
23 prevention agent.
24 Q. And how long had you worked in that
25 capacity?

1 A. About six years.
2 Q. Were you working at a particular
3 store?
4 A. Yes.
5 Q. And where was it located
6 approximately?
7 A. Bonanza, ~~East Bonanza~~.
8 Q. Okay. And as a loss prevention
9 officer I assume you are making sure people didn't
10 shoplift out of the store?
11 A. Yes.
12 Q. Were you actually in charge of
13 watching people as they moved throughout the store
14 or did you have another job?
15 A. Yeah. We were watching, we were
16 undercover shoppers looking for shoplifters.
17 Q. Okay. At that time did you work a
18 particular shift, a dayshift or a nightshift?
19 A. It was a dayshift.
20 Q. And do you recall becoming involved in
21 a shoplifting investigation on that date?
22 A. Yes.
23 Q. When you and your other loss
24 prevention officers find someone who has been
25 shoplifting, what steps do you take after you

1 notice that?
2 A. We stop the person and bring them back
3 to whatever office we're going to use in the back,
4 usually in the back somewhere of the store.
5 Q. Okay. And that's what you did on this
6 day?
7 A. My partner did that, yes.
8 Q. Who was your partner on that day?
9 A. Larry Martinez.
10 Q. So you actually detained an individual
11 he suspected of shoplifting?
12 A. Yes.
13 Q. And he would have brought that
14 individual to the back part of the store?
15 A. Yes.
16 Q. And that's where you were?
17 A. Yes.
18 Q. Do you recall what the individual
19 looked like that he brought back?
20 A. African-American male and he was
21 wearing I believe a white tee-shirt and jeans or
22 something similar.
23 Q. And after Officer Martinez brought
24 this individual back to that back room, did you or
25 the other officer call a police officer?

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1 A. Yes.
 2 Q. And did an officer respond?
 3 A. Yes.
 4 Q. From between the time you have the
 5 individual at the back of the store and this
 6 officer responded, what do you and the other
 7 security officer do while you're waiting for the
 8 cops?
 9 A. We're back there with the person that
 10 we stopped. My partner whoever stopped the person
 11 or observed and detained them would write the
 12 report. My partner was writing his report, and I
 13 was back there with him and the suspect.
 14 Q. Back with the suspected shoplifter?
 15 A. Yeah.
 16 Q. At that time or sometime soon
 17 thereafter did a Metro officer arrive to assist you
 18 two?
 19 A. Yes.
 20 Q. And when the Metro officer arrived,
 21 what did he do in terms of this investigation?
 22 A. He then asked the suspect for his
 23 information. The suspect really wasn't talking
 24 very much. The officer then was interested in the
 25 information we had in the report.

1 A. They didn't leave the room. It was
 2 like the whole big back room and within that back
 3 room there was a little, another little room like
 4 glass windowed room where the receiver's desk was.
 5 That's where the suspect was sitting.
 6 I was standing kind of in the doorway
 7 of that little room and they were just outside from
 8 where I was still in the back room area where they
 9 could see me and I could see them.
 10 Q. Okay. And who were you watching?
 11 A. I was watching the suspect.
 12 Q. And what did you see him do at that
 13 point?
 14 A. He started to fidget while sitting in
 15 the chair.
 16 Q. And when you say fidget, can you
 17 describe for us what you mean by that.
 18 A. Well, instead of sitting here like I
 19 am right now, he started kind of moving around like
 20 this and he had his hands handcuffed behind his
 21 back and he started kind of moving his hand like
 22 this.
 23 Q. Okay. And just for the record you're
 24 sort of moving or shifting your weight from side to
 25 side.

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1 Q. Okay.
 2 A. And then walked over to where my
 3 partner was writing the report.
 4 Q. Okay. The officer who arrived at the
 5 store, do you recall if he patted the suspected
 6 shoplifter down for weapons?
 7 A. Yes, he did.
 8 Q. And did you visually observe that on
 9 that date?
 10 A. Yes, I did.
 11 Q. And you said that the officer got some
 12 information from the shoplifter.
 13 A. I believe he asked him his name.
 14 Q. Okay. And do you recall ten years
 15 later what the name was?
 16 A. It was I think Ivory Morrell.
 17 Q. Okay. It wasn't James Chappell?
 18 A. No, it was not.
 19 Q. And once the officer got the name, you
 20 said he spoke to Security Officer Martinez and
 21 asked him some information?
 22 A. Yes.
 23 Q. Was there ever a point when Security
 24 Officer Martinez and the police officer left the
 25 room that you and the suspect were in?

1 A. Yes.
 2 Q. And you gestured with your hand behind
 3 you?
 4 A. Yes.
 5 Q. And you observed all this?
 6 A. Yes.
 7 Q. Did you see him do anything or what
 8 happened as you were watching this?
 9 A. I continued to watch him. At one
 10 point his hands appeared from behind him kind of
 11 like this.
 12 Q. You mean from the side?
 13 A. Yeah, from the side.
 14 Q. Okay.
 15 A. And it appeared he had a clear plastic
 16 item that had some cards or something in it and he
 17 was attempting to place that card into a box that
 18 was sitting on a flat cart next to him. The box
 19 was taped shut with clear tape and so it appeared
 20 to have a gap where the two flaps met and I, it
 21 appeared that he didn't realize that it was taped
 22 'cause it was clear and he tried to put it in
 23 there and it didn't and I asked him at that time I
 24 said, "What are you doing?" And it startled him,
 25 and he dropped the little plastic cardholder.

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1 Q. Okay.
 2 A. And when I bent down to pick it up, he
 3 put his foot on it.
 4 Q. To cover it?
 5 A. Yes.
 6 Q. And if I'm understanding you, you sort
 7 of gestured and removed that plastic cardholder
 8 from somewhere on his person?
 9 A. Somewhere from behind his person, yes.
 10 Q. Okay. And there was apparently a box
 11 or something, some kind of container next to him
 12 that he seemed to kind of like to put the
 13 cardholder in?
 14 A. Yes.
 15 Q. But instead it fell to the floor?
 16 A. Yes, as I said, I asked him what he
 17 was doing.
 18 Q. Okay. And that's when he put his foot
 19 on it?
 20 A. Yes.
 21 Q. Did he ever lift up his foot so you
 22 could see what was there?
 23 A. I asked him to move away and he moved
 24 away removing his foot and I picked up the little
 25 cardholder.

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1 Q. And when you picked up the cardholder,
 2 could you see what was inside of it?
 3 A. Yes.
 4 Q. What was that?
 5 A. What I saw was a Social Security card.
 6 Q. And could you tell if it was just one
 7 card or more than one card?
 8 A. There was more things underneath that,
 9 yes.
 10 Q. What did you do with that object once
 11 you got it out from under the defendant's foot?
 12 A. At that time the officer had walked
 13 back over to where I was. He heard me ask the guy
 14 what he was doing and at that point I handed it to
 15 the officer.
 16 Q. Ma'am, I'm showing you State's
 17 Exhibit 55. It's on the screen in front of you.
 18 At the top of that exhibit there appears to be a
 19 plastic holder containing a security, Social
 20 Security card.
 21 Does that appear to be the object that
 22 you saw that suspect manipulating?
 23 A. Yes.
 24 Q. And were you able to see -- I think I
 25 asked you this but just to make sure, you were able

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1 to see that there was more than one card in there?
 2 A. Yeah, you could tell when you were
 3 holding it that there was a Social Security card
 4 and then several other items in there appearing to
 5 be the same, about the same size as the Social
 6 Security card.
 7 MS. WECKERLY: Thank you. I'll pass
 8 the witness, Your Honor.
 9 (Whereupon Ms. Weckerly
 10 concluded her direct examination
 11 at 4:56 p.m.)
 12 THE COURT: Okay. Mr. Schieck or
 13 Mr. Patrick.
 14 MR. PATRICK: Thank you, Your Honor,
 15 Court's indulgence.
 16
 17 CROSS-EXAMINATION
 18 BY MR. PATRICK:
 19 Q. Good afternoon, ma'am.
 20 A. Good afternoon.
 21 Q. I believe you stated that you were
 22 working with Mr. Martinez.
 23 A. Yes.
 24 Q. And Mr. -- did you or Mr. Martinez do
 25 a search of James?

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1 A. I believe Mr. Martinez did do a
 2 patdown cursory thing on him, make sure he didn't
 3 have any weapons on him.
 4 Q. And in the I think Mr. Martinez had
 5 him empty out his pockets; is that correct?
 6 A. Yes.
 7 Q. And are the rest of these items in
 8 this picture the items that were in Mr. Chappell's
 9 pockets?
 10 A. Yes.
 11 Q. And I know this is a very terrible
 12 picture but this, that thing right there, do you
 13 know what that is?
 14 A. It appears to be like a small metal
 15 pipe or type of tube.
 16 Q. Okay. And would you be familiar as to
 17 what that might be used for?
 18 A. I kind of think it's probably used to
 19 smoke some type of drug.
 20 Q. Possibly crack?
 21 A. Yes.
 22 Q. But you have no experience with that
 23 yourself, correct?
 24 A. No.
 25 Q. Ma'am, if I may ask you, are you

TRAN
CASE NO. C-131341
DEPT. NO. 3

FILED IN DISTRICT COURT
MAR 15 2007 20

ORIGINAL

Carol Donahoe
CAROL DONAHOE DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

* * * * *

STATE OF NEVADA,)
)
Plaintiff,)
)
vs.)
)
JAMES M. CHAPPELL,)
)
Defendant.)
_____)

REPORTER'S TRANSCRIPT
OF
PENALTY HEARING

BEFORE THE HONORABLE DOUGLAS HERNDON
DISTRICT COURT JUDGE

MORNING SESSION

DATED: WEDNESDAY, MARCH 14, 2007

REPORTED BY: Sharon Howard, C.C.R. #745

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1 APPEARANCES:

2 For the State: CHRISTOPHER OWENS, ESQ.

3 PAM WECKERLY, ESQ.

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5
6 For the Defendant: DAVID M. SCHIECK, ESQ.

7 CLARK W. PATRICK, ESQ.

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1 LAS VEGAS, NEVADA; WEDNESDAY, MARCH 14, 2007

2 10:30 A.M.

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

4 * * * * *

5
6 THE COURT: On the record in C-131341,
7 outside the presence of the jury. The record will reflect
8 the presence of Mr. Cappell with his attorneys,
9 Mr. Schieck and Clark Patrick.

10 You had an issue you wanted to bring up.

11 MR. SCHIECK: Yes, your Honor. For the
12 record, rather than objecting to various pieces of
13 evidence as they come in on the basis of the Sixth
14 Amendment confrontation clause issue, which was decided by
15 our Supreme Court in Marlo Thomas and Dante Johnson case
16 on December 28th, the court ruled that hearsay is
17 admissible at penalty hearing in a capital case, and the
18 Sixth Amendment protections of confrontation don't apply
19 at that proceeding.

20 However, for the record, we want to
21 preserve that we are objecting on those bases to any
22 hearsay or similar testimony by way of documentary
23 evidence coming in in this case.

24 THE COURT: I'll note that objection and
25 preserve it for the record.

1 MR. OWENS: If I can make a comment
2 also.

3 The facts underlying the aggravator that's
4 remaining in this case were approved of by direct evidence
5 and non-proffered evidence at the original trial of this
6 matter. It's true that we may be reading some transcripts
7 from prior testimony, but it's testimony that they had a
8 full right of confrontation on during the original trial
9 on this matter.

10 So I don't anticipate anything that's
11 going to be a problem with Crawford, even if it's coming
12 in in this hearing in a hearsay form. It was presented in
13 the prior proceedings. But I recognize their continuing
14 objection.

15 THE COURT: All right.

16 Back on the record in C-131341, State of
17 Nevada versus James Cappell. The record will reflect the
18 presence of Mr. Chappell and his attorneys. The State's
19 attorneys are present. We're in the presence of our jury.

20 Ladies and gentlemen, welcome back this
21 morning. Let me apologize to you. Technology is a great
22 thing, as we all know. Sometimes it doesn't work as we
23 would like it to, so the delays this morning aren't
24 occasioned by any of the attorneys. I'd ask you not to
25 hold it against them. We had some electronic glitches, so

1 to speak, in terms of how things get displayed on the
2 monitors and wiring and that took us time to work it out.
3 I think that's all resolved now.

4 We're going to proceed, as I said
5 yesterday, to the opening statements of the attorneys, so
6 Mr. Owens or Ms. Weckerly.

7 MS. WECKERLY: Thank you, your Honor.

8 OPENING STATEMENT

9 BY MS. WECKERLY:

10 In July and August of 1995, the Defendant,
11 James Cappell was in custody. And while he was in custody
12 he would write letters to his ex-girlfriend, Debra
13 Panos.

14 "Hello, greetings, Sweetheart, can you
15 come and visit some day. Still waiting. James Cappell."

16 "Hello Debra Ann, so what's up, slut.
17 You're going lower and lower. Are you easy, Debbie. How
18 many sweet talked you, used lines on you. How many have
19 dropped your panties. Is your representation good now."

20 "Hello once again Debbie. You have become
21 such a liar. Your friends are teaching you how to lie
22 better. Who you been kissing. Who you been holding. Do
23 you have HIV or AIDS yet."

24 And on July 30th of 1995, he gave he a
25 sort of warning. "Hi Sweetie. You must be terrified to

1 visit me, uh. One day soon, I'll be out that door and
2 what in God's name will you do then."

3 Debra Panos took this warning very
4 seriously, but this is a case, tragically, where the
5 criminal justice system let her down.

6 Slightly over a month later after he wrote
7 those words about appearing on her doorstep, he did just
8 that. He appeared on her doorstep and within an hour of
9 her arrival, she was dead. He has stabbed her to death.

10 Back in 1996, members of the community,
11 like yourself, twelve members, heard the trial of State of
12 Nevada versus James Cappell, and they all agreed, after
13 hearing the evidence and deliberating that that man over
14 there was guilty of murder of the first degree with use of
15 a deadly weapon against Debra Panos.

16 Actually, by the time James Cappell
17 murdered Debbie, he had already committed several crimes
18 against her. In fact, he had terrorize her for years.
19 You will hear that James Cappell met Debra Panos when the
20 two were 16 years old and in high school. They lived in
21 Lansing, Michigan. Debbie lived with her parents when she
22 met James. He was doing drugs at the time. She wasn't.
23 And her parents weren't exactly thrilled with this
24 relationship.

25 Debra soon became pregnant with their

1 first child. It was a son. His name is James. He's
2 called J P. Eventually Debra's parents move to Tucson,
3 Arizona and Debra eventually followed after them.

4 While she was living in Arizona the
5 Defendant was still back in Michigan. There was some
6 contact between the two, and Debbie became pregnant again
7 and had another son, whose named Anthony.

8 Eventually the Defendant followed Debbie
9 out to Tucson, Arizona, and while they are living there
10 Debbie had a third child, a daughter named Chantelle.

11 The two were living in Tucson for the
12 years of 1990 to 1994. And once they were living in the
13 same city with three small children, the Defendant was
14 repeatedly abusive to Debbie.

15 While in Tucson Debbie work several jobs
16 to support her family. She worked as a 911 call operator.
17 She worked at a pizza restaurant at one time. She worked
18 for the census. She paid for their food. She paid for
19 their rent on the trailer that they lived in. And she
20 paid for items that the Defendant and the children
21 needed.

22 During this time period, the Defendant was
23 working intermittently, at best, and he wasn't bringing in
24 regular paychecks to support the family. Instead, what he
25 was spending his money on was drugs.

1 While Debbie was working as a 911 operator
2 she became friends with a co-worker of hers. A lady by
3 the name of Dina Freeman. And Dina would observe the
4 interaction between James Cappell and Debbie Panos. And
5 she observed that Debbie was afraid of the Defendant. The
6 Defendant was in charge of this relationship, and it was
7 basically what he said was the way things were going to
8 be.

9 Sometimes Dina would see Debbie come to
10 work, she saw bruises on her, and she saw her wearing
11 heavy makeup to cover marks on her. That didn't always
12 work. She could see through it.

13 Eventually Debbie Panos confided in her
14 friend Dina that the relationship that she had with James
15 Cappell was abusive. Dina learned that the Defendant
16 would call Debbie Panos names, such as, slut, whore, or
17 bitch. He was always insinuating that Debbie Panos was
18 cheating on him, or that she was being unfaithful.

19 Sometimes Debbie would actually call her
20 friend Dina during an altercation with the Defendant.
21 There was one time that Dina Freeman recalled where the
22 Defendant had returned home from a trip to Michigan and
23 Debbie called her on the phone because the Defendant was
24 angry and Debbie was afraid. She was calling a friend for
25 support.

1 And Dina could actually hear the words
2 this defendant was saying in the background. She could
3 hear him calling Debbie names. And she could hear him
4 saying that if Debbie fucked around on him in front of his
5 kids, he'd kill her.

6 Dina was also aware that the Defendant was
7 prone to taking stuff out of the house and selling it so
8 she could use money for drugs. And so when Debra Panos
9 got anything new or anything that was important to her,
10 she would keep it at her friend Dina's house.

11 An incident, similar to this, took place
12 on February 23rd, of 1994. At that time Debbie had just
13 purchased a dresser for holding clothing for her
14 daughter -- her baby daughter Chantelle. On the 23rd of
15 1994, Debra Panos went to the supermarket and contacted an
16 off-duty police officer. Because she was working as a 911
17 operator, she had knowledge of where some of them worked
18 off duty.

19 That off-duty contacted an on-duty officer
20 who interviewed Debbie about what had happen that evening.
21 And Debbie explained to the officer that she had purchased
22 this dresser for her daughter and that she came home and
23 found it missing. And what had happened was the Defendant
24 had taken it back and taken the money.

25 Debbie confronted the Defendant with this.

1 She was upset with this dresser that she had bought for
2 her daughter had been taken back. And he got angry at
3 her, and the anger turned to violence, and he knocked her
4 to the floor and he kicked her. After the police spoke to
5 Debbie Panos, they went to the residence where the
6 Defendant was.

7 From outside, as they were knocking on the
8 door they could see the defendant inside. But he wouldn't
9 get up to answer the door. He was sitting there watching
10 television. So eventually they made entry and placed him
11 under arrest.

12 After this incident another similar
13 incident took place around Memorial Day of 1994. During
14 that time period Debbie and her friend Dina went to San
15 Diego for a girl's weekend. While there Debbie bought
16 some souvenir T-shirts for her children. She brought them
17 back to them in Arizona. And the Defendant took them and
18 sold them.

19 By August and September of 1994, Debbie
20 and the Defendant and the three kids were still living in
21 Tucson but things were getting worse and worse for Debbie.
22 During that time period, Debbie would spend a considerable
23 amount of time at her friend Dina in order to avoid being
24 in the same trailer as the Defendant.

25 During one of the times when she was

1 actually home, she made another call to Dina during the
2 fight she was having with the Defendant. And, of course,
3 Dina, again, could hear what the Defendant was saying to
4 Debbie, because she was on the open phone line. And what
5 the Defendant told Debbie was, Debbie, you either give me
6 the car or give me some money because I know you are
7 fucking around on me. You're not going to Dina's house
8 every day for nothing. I'm going to do an O.J. Simpson on
9 you.

10 By September, October of 1994, Debra Panos
11 decided that she needed something of a fresh start and she
12 decided that she and her children would move to Las Vegas.
13 Things had gotten a little tense for her working as a 911
14 operator, because of the Defendant's contact with law
15 enforcement, and she thought she needed to leave and start
16 over.

17 The Defendant followed her, and for a time
18 Debbie thought that it would be sort of a fresh start for
19 all of them. She thought things would get better. She
20 thought things would change. They didn't.

21 Once she got to Las Vegas, Debbie
22 immediately started working. During some points in time
23 she didn't have a car, so she would take the bus to work.
24 Eventually she got a car and was able to work a couple
25 different jobs to support her family.

1 As I said, the Defendant treated her no
2 better in Las Vegas than he had in Arizona. In fact,
3 during Thanksgiving of 1994, Debbie Panos was in Las Vegas
4 and she made a call to her friend Dina again, and Dina
5 again heard the Defendant threaten Debbie that he was
6 going to do an O.J. Simpson on her.

7 One of the jobs that Debbie Panos had when
8 she was living in Las Vegas was working at a collection
9 agency called G.E. Capital. She worked at that job to
10 support her children. And she got somewhat close to her
11 co-workers there and became close friends with about three
12 or four of them. Those co-workers observed an incident of
13 abuse between the Defendant and Debbie pan in December of
14 1994.

15 On that date, the Defendant and Debbie
16 arrived at the parking lot of G.E. Capital. Debbie was in
17 the passenger side of the car. The Defendant was driving.
18 And the co-workers couldn't hear what was said, but they
19 saw the Defendant slap Debbie across the face. She was
20 sort of shaken and got out of the car. But she pulled
21 herself together and went into work. The Defendant drove
22 off.

23 In January of 1995, things got worse.
24 Around midnight of January the 9th of 1995, an ambulance
25 was summoned to the trailer that Debbie was living in on

1 North Lamb here in Las Vegas. When the police got there,
2 as well as the ambulance, they found Debbie Panos. She
3 was laying on a gurney in the back of the ambulance. Her
4 nose was swollen up to the size of a fist. She was
5 bleeding profusely. She had a laceration to her eye.
6 There was blood in her hair. And she was having trouble
7 speaking because of the blood and the swelling on her
8 face.

9 On that occasion she explained to an
10 officer that the Defendant had hit her with an object in
11 the face, but she didn't know what it was. The officers
12 approach the Defendant, who was sitting inside the
13 trailer. He was not out with Debbie. And he explained to
14 them that he had thrown a cup at her, or maybe just hit
15 her one time in the face. He was arrest for battery,
16 domestic violence on that occasion.

17 Of course, Debra Panos went to the
18 hospital after this incident, and she was left with
19 basically a scar on her face. There was a mark that
20 didn't go away. After this incident Debbie contacted an
21 assistant center for battered women. She got what's
22 called a temporary restraining order against the
23 Defendant, where he was ordered to stay away from the
24 residence -- the trailer park, where she was working, and
25 the day care where the children were.

1 But for whatever reason Debbie let that
2 temporary restraining order lapse. She didn't follow
3 through, and so the order wasn't in affect after a short
4 period of time.

5 Things with the Defendant still did not
6 improve. A significant event occurred on February 18th of
7 1995. On that date the Defendant was arrested at a K-Mart
8 store for petty larceny and burglary. As a result of his
9 conduct, he was facing a felony charge of burglary But he
10 got a break from the State of Nevada and his case was
11 negotiated down or plea bargained, and the felony charges
12 were dropped and he was just required to plead guilty to
13 what's called a gross misdemeanor. He pled to that.

14 When you plead guilty to a gross
15 misdemeanor, the court has a sentencing option of giving
16 you up to a year in the Clark County Detention Center or
17 placing a person on probation. And the Defendant got
18 another break in sentencing. He wasn't sentenced to jail
19 time. He was given the privilege of being on probation.

20 The Defendant made a statement when he was
21 sentenced on that gross misdemeanor charge. He said that
22 he would do better, and he wouldn't commit a felony in the
23 State of Nevada or the City of Las Vegas. This turned out
24 to not be true.

25 On June 1st of 1995, while the Defendant

1 was on probation there was another incident of domestic
2 violence that he committed. As you might expect, when
3 you're on probation one of the conditions of being on
4 probation is that you not commit new crimes and you stay
5 out of trouble. The Defendant didn't abide by those rule.
6 He chose to continue his abuse with Debbie.

7 By this time period Debbie would sometimes
8 have adult women friends live with her inside the trailer
9 from time to time. It gave her a sense of security to
10 have someone else there. One of the friends she had
11 living with her is a lady by the name of Clairra McGuirre.
12 Claire was staying there on June 1st of 1995. And Claire
13 was the one who had to call the police on June 1st.

14 On this date the problem the Defendant had
15 was that Debbie was gone for a substantial portion of the
16 day and he wanted to know where she'd been and who she'd
17 been with, and she was a little afraid to discuss it with
18 him. He made her go into a bedroom. He threw her on the
19 bed and he got on top of her and straddled her and put his
20 knees on her arms to hold her down, and then he took out a
21 knife and questioned -- or threatened her about where
22 she'd been.

23 Claire knocked on the door while this was
24 going on and said the police had arrived, and the
25 Defendant was arrested on that night for another act of

1 battery domestic violence.

2 Since that incident occur the Defendant
3 has commented about it, and he said that he wasn't really
4 threatening her with a knife at all. He was just talking
5 to her, trying to find out where she'd been. From June
6 1995 through August 30th of 1995, the Defendant was in
7 custody, and he would write letters from the jail to
8 Debbie, and the content of those letters was generally his
9 anger that she wasn't visiting him, that she wasn't
10 putting money on his books, that she wasn't calling him,
11 that basically she was ignoring him, and this upset him.
12 He didn't like the prospect of the relationship ending.

13 In July of 1995, the Defendant made some
14 contact to some of Debbie's friends. One of them is a
15 lady by the name of Lisa Duran. And he would have
16 conversations with Lisa about where Debbie is and what is
17 Debbie doing. In one of those conversations he asked
18 Lisa, well just who is Debbie laying underneath. He also
19 had Lisa convey a message or asked her to convey a message
20 to Debbie, and that message was, you tell Debbie when I
21 get out I'm going to make sure she doesn't have any
22 friends. When I get out she won't be able to go out
23 anymore. I'll make sure of that.

24 And in another conversation with Lisa, he
25 told her if I can't have her no one can.

1 Obviously, these experiences were
2 extremely frightening for Debra Panos at the time, and she
3 became constantly vigilant about monitoring the
4 Defendant's custody status. She would call the jail from
5 work and ask how many days he had left to serve, and she
6 was keeping track of how long he would be in custody. And
7 she could discuss this with her friends about how many
8 days he had left to serve.

9 On August 30th of 1995, there was another
10 significant incident. On that date that was the
11 misdemeanor trial date of the June 1st incident. The one
12 where he held a knife on her. That went to misdemeanor
13 trial on August 30th. And Debra Panos left work early
14 that day, showed up on her subpoena, like she was supposed
15 to, and sat in court ready to testify against the
16 Defendant on that domestic violence incident.

17 After she returned from court, she told
18 her friend, Michele Mancha about her experience there.
19 She said that she saw the Defendant, and he told her that
20 he was going to kill her. Debbie was scared, but she knew
21 or believed at the time that the Defendant was still going
22 to be in custody. Because he had been on probation for
23 that gross misdemeanor charge, he had committed some new
24 offenses. And because he committed those new offenses, he
25 faced potential revocation of probation.

1 And the judge who sentenced him on that
2 gross misdemeanor charge had the Defendant in front of him
3 and ordered the defendant to attend an in-patient drug
4 counseling program, which would last 90 days. So Debra
5 Panos believed he was going to be in custody for 90 days.

6 During that time period, around August
7 30th when Debra Panos believed that she had 90 days to
8 reassess her life, she made some different decision about
9 things.

10 Originally she wanted to stay in her
11 trailer because she had invested time and money into her
12 residence. But by August 30th, 1995 she decide that she
13 needed to move for her own safety. And she believed, with
14 the Defendant being in custody for 90 days, she had a 90
15 day window to get herself located to another place where
16 he couldn't find her.

17 She didn't count, unfortunately, on the
18 Defendant being able to manipulate other people. And she
19 didn't count on the fact that a mistake was made. August
20 31st, was the last day of Debra Panos' life. On that day
21 she got up early and dropped her children off at Angel Day
22 care. She dropped them off at 7:30 in the morning. She
23 went to her friend's house and pick him up for work, and
24 they went to G.E. Capital.

25 On the last day of her life, Debra Panos'

1 oldest son was 7. Her middle child, Anthony, was 5. And
2 her daughter, Chantelle was 3. This was a normal day for
3 Debra Panos, except that she and her friends had planned
4 on leaving work early and doing a barbecue in the
5 afternoon at Lorency (ph) Park.

6 Debra Panos also had plans to meet her
7 friend Lisa Duran at the trailer at about 1:30, because
8 Lisa was going to be moving some property out of the
9 trailer. So Debbie Panos goes to work with her friend
10 Mike Pollard. She works there for a couple hours that
11 morning. And then they leave, and she drives back to Mike
12 Pollard's house to drop him off after work. And the plan
13 is they're going to meet up later and have this
14 barbecue.

15 Mike Pollard gets in the shower and Debra
16 Panos leaves, and she returns 20 minutes later and she is
17 in a panic. She's frightened. She tell her friend Mike
18 that James is out have of custody. And she doesn't know
19 how this occurred. And she sat on Mike's couch and
20 cowered and had her body in a ball because she was so
21 afraid of the prospect of him getting out of custody.

22 Debra Panos wanted to go back to the
23 trailer to get some items quickly for herself and her
24 children, and then just get out of there.

25 Her friend Mike told her, let me finish

1 getting out of the shower then I'll go with you to the
2 trailer. So he gets back in the shower and Debra Panos
3 made a bad decision at that point. She left by herself.

4 What happened with the Defendant. Well,
5 on the day of -- the morning of August 31st of 1995, he
6 met with his probation officer at about 9:30 in the
7 morning. This officer was supposed to take the Defendant
8 from jail into an in-patient drug treatment program. The
9 officer talked to the Defendant for about an hour. They
10 have discussions about how the Defendant has changed. How
11 he wants to make his life better. How he's going to do
12 better. How he can be responsible. And that he can get
13 himself to this drug treatment program.

14 So the officer, after about an hour,
15 decides to give the Defendant a little bit of a break and
16 let him walk himself to the drug treatment program.

17 The officer let's him leave the office at
18 about 10:45 in the morning, and the Defendant walked out
19 the door, turned the opposite direction of the drug
20 treatment program, and didn't look back.

21 He arrived at Debra Panos trailer at 839
22 North Lamb, and he climbed through a window and he waited
23 for her. The next person to hear from Debra Panos was a
24 lady who worked at Angel Day Care. She's a supervisor
25 there. And at about 12:30 in the afternoon she gets a

1 call from Debra Panos and Debbie is scared. She's
2 whispering, please, help me. The lady at the day care
3 could hear that there was a man in the background as Debra
4 Panos was on the phone with her, and she hear Debra answer
5 to this man, I don't have any money. She could hear Debra
6 trying to appease this person.

7 The lady at the day care asked her is
8 there a way you can get away, get out of that trailer by
9 yourself and Debbie says, no, there's no way I can get
10 away. So what Debbie asked her to do was sort of concoct
11 a reason for her to leave, and she asked the lady at the
12 day care will you call me back in five minutes and tell me
13 that I have to come pick up the children. The lady at the
14 dare care, says, okay, that's what I'll do. And she does
15 that. She hangs up the phone. She waits five minutes.
16 And she calls back and she tells Debbie, you need to come
17 pick up your kids now. And Debbie says, okay, and sounds
18 fine. I'll be there.

19 But the lady at the day care knew there
20 was a problem. She was expecting Debbie to arrive at the
21 day care and pick up those kids, but she never did.

22 By 1:30 in the afternoon Debbie's friend,
23 Lisa Duran had arrived at the trailer complex. She is the
24 lady who was getting some property out of the trailer and
25 she was supposed to meet Debbie there at 1:30. And as

1 she's driving in, she sees someone else driving Debbie's
2 car out the outside. It doesn't immediately register to
3 her who it is, except she knows it's not Debbie.

4 She goes over to the trailer, knocks on
5 the door, calls out Debbie's name, no answer. She notices
6 that the air-conditioning on the trailer is running. And
7 she thinks that's strange because Debbie wasn't -- she had
8 to be careful with her money, so she wouldn't have the
9 air-conditioning going if she wasn't home.

10 So this lady, Lisa, goes over to Mike's
11 house -- the friend that Debbie had driven to work -- and
12 she asked him, you know, where's Debbie, where has she
13 been. And Mike tells her, well, Debbie she left. And
14 then Mike also tells her something more alarming. Did you
15 know James got out. This sets off an alarm in Lisa
16 Duran.

17 She goes over to the day care to check on
18 Debbie's children, and she's convinced that something bad
19 has happened. And she was right. She goes home and tries
20 to get someone to come with her back to the trailer. And
21 as she does that, she finds an officer who is on duty and
22 talks him into coming back to the trailer with her to
23 check on her Friend Debbie.

24 When the patrol officers arrive at the
25 trailer with Lisa Duran, they too knock on the doors. No

1 one answers. They check all the windows of the trailer,
2 and they discover that the only window that has any damage
3 to it or that appears to be unlocked is one of the front
4 windows to the trailer.

5 One of the patrol officers climbs in that
6 window -- just like the Defendant did -- to see or check
7 on the welfare of Debra Panos.

8 As he goes through the trailer, he gets
9 into the living room area and he discovers Debra Panos
10 lying on the floor, and she's obviously been stabbed.

11 The patrol officer then notifies homicide
12 detectives and when they get there they notice a couple of
13 things immediately about the scene. Right next to, or
14 very close to where Debra Panos was laying was a knife
15 that had blood and hair on it. Also in that room they see
16 a telephone that was off the hook. In the master bedroom
17 of the residence, where that open window was, they find
18 some letters written by the Defendant, and the room
19 appeared to be ransacked, like there were papers all over
20 the place. And, of course, Debra Panos' car was gone.

21 Debbie's body, they noticed, had several
22 injuries in addition to the stab wounds. Se had an injury
23 to her face, to her arms. She had injuries on her neck
24 from stab wounds, and at autopsy they learned that she had
25 injuries -- a stab wound to her stomach area, and also a

1 stab wound to her groin or vaginal area. Just off to the
2 side.

3 During the autopsy samples -- DNA samples
4 were taken from Debra Panos' body, and one of those
5 samples includes a vaginal swab which collects DNA
6 evidence inside of Debra Panos. And later testing
7 revealed that the Defendant's DNA was inside of her
8 vagina.

9 After murdering, or stabbing to death
10 Debra Panos, the Defendant took her car and he drove to a
11 nearby apartment complex. And after a little while -- he
12 hung out with some friends. He did some drugs that night,
13 and he basically hung out for the evening.

14 The next day he was arrested on a petty
15 larceny charge. When he was arrested he gave a fake name,
16 and the patrol officer who responded to the petty larceny
17 searched him and when they searched him they discovered
18 that he had these social security cards with him. And
19 they were in the name of Debra Panos and her three
20 children.

21 And the officer, of course, had been
22 briefed about a homicide that had recently occur, and he
23 recognized the victim's name as being the victim of the
24 homicide that had recently occurred. That officer
25 notified the homicide detectives, who responded again to

1 the Defendant's location, and when they encountered him,
2 they check him for injuries and notice that he had cuts on
3 his hands, consistent with someone who had stabbed
4 somebody else.

5 Those officers also locate Debra Panos'
6 car. It was at the apartment complex where the Defendant
7 had been getting high the night before.

8 Since these events, this defendant, James
9 Cappell, has given his own version of events of what
10 happen that afternoon. And he says that this whole thing
11 was sort of a couple's reunion. It wasn't a crime at all.
12 Debra Panos wasn't afraid or scared when he crawled
13 through her bedroom window. In fact, she was happy to see
14 him.

15 In fact, she was so happy to see him, the
16 two had discussed and reminisced about old times, their
17 children, and then they had consensual sexual encounter.
18 And that during that sexual encounter, it occurred to him,
19 or he became aware that Debra Panos had been with somebody
20 else, besides him. Although this upset him, according to
21 the Defendant, he didn't kill her then. Instead they
22 engaged in what the Defendant described as another
23 consensual sexual act. And then they decided that the two
24 of them were going to go pick up their children from the
25 day care together, and at that point, according to the

1 Defendant, they went out to Debbie's car and he found a
2 note that he believed to be from another man and this
3 upset him so much that he forced Debbie out of the car,
4 somehow got her back in the trailer and kill her.
5 Although he really don't remember how.

6 You will learn when you are instructed at
7 the end of this case that some murders are more aggravated
8 than others. Murders which are committed in conjunction
9 with an act of sexual assault, that's a factor that makes
10 some murders more aggravated or worse than other
11 murders.

12 By August 31st of 1995, this defendant had
13 literally taken everything there was to take from Debra
14 Panos. He called her names. He took her dignity with
15 that degrading name calling. He left a scar on her face
16 from breaking her nose, altering her identity. He
17 constantly took her money, her property. He took away any
18 sense of security she had in a home that she was paying
19 for. He took away her ability to refuse him, and then he
20 took away her life. Then he drove off in her car and left
21 her bleeding to death on the floor of her residence.

22 She was only 26 by the time all this had
23 happened to her. And at the end of this proceeding, it
24 will be the State's possession that for all of his conduct
25 he deserves the most extreme punishment.

1 THE COURT: Thank you, Ms. Weckerly.
2 Mr. Schieck or Mr. Patrick.

3 MR. SCHIECK: Thank you, your Honor.

4 OPENING STATEMENT

5 BY MR. SCHIECK:

6 Good morning, ladies and gentlemen. This
7 is what is known as an opening statements, both from
8 Ms. Weckerly and myself. And I always remind my jurors of
9 one fact, and that is what the attorneys stand up here and
10 say to you is not evidence in this case.

11 The evidence in this case you are going to
12 hear from the witness stand and not from the recollections
13 and positions of the various attorneys as they stand up
14 here and argue to you. So take what -- everything that I
15 say and everything that the prosecutor said, as sort of a
16 map of where the proceedings are going, and what you can
17 expect to see during the proceedings. But understand,
18 that the State has the burden of presenting the evidence
19 here in court in order to convince you of any fact that is
20 relevant to your decision in this case.

21 There are certainly a lot of facts in this
22 case that aren't going to be contested. You have already
23 been told during the voir dire process that James Cappell
24 has been convicted by a jury of first degree murder. He
25 has been convicted of burglary for entering that mobile

1 home in the Ballerina Mobile Home Park. And he has been
2 convicted of robbery with use of a deadly weapon.
3 Specifically, the allegations were read to you, he was
4 convicted of robbery, based on the social security cards,
5 the car keys, and the car of Debra Panos.

6 Those facts are not going to be contested
7 in this case. You can accept those based on the previous
8 finding of the other jurors.

9 However, you will notice that when the
10 information was read to you by the court clerk that James
11 Chappell was not charged with sexual assault in the
12 criminal proceedings at the previous trial. He is not
13 convicted of sexual assault. In fact, there are no
14 allegations at all in that criminal information concerning
15 sexual assault. Two of the bases for seeking first degree
16 murder was that the murder was committed during the
17 perpetration of a kidnapping or during the perpetration of
18 a robbery. You heard that when the court clerk read you
19 the charging document. Sexual assault was not alleged as
20 a basis for a finding of first degree murder in this case
21 by the State.

22 So there has been no conviction of sexual
23 assault for you to follow in this case.

24 During the course of the penalty hearing,
25 at the end of the penalty hearing, the judge is going to

1 give you instructions on the law. But basically what you
2 will learn is that in order to be eligible to receive the
3 death penalty in the State of Nevada, the jury has to find
4 the existence of one or more aggravating circumstances
5 beyond a reasonable doubt, and that that finding has to be
6 unanimous by all twelve members of the jury.

7 If there are no aggravating circumstances
8 found beyond a reasonable doubt by unanimous verdict,
9 there are no aggravating circumstances, and the death
10 penalty is not an option for a first degree murder
11 conviction. That's what Md. Weckerly was referring to
12 when she talked about certain murders carry aggravating
13 circumstances with them.

14 In this case, the State has alleged one
15 aggravating circumstance, and that being that the murder
16 occurred during the attempt or perpetration of a sexual
17 assault.

18 The State has the burden during this
19 penalty hearing to prove that there was a sexual assault,
20 and you'll be instructed as to the definition of sexual
21 assault. They must prove that beyond a reasonable doubt,
22 and they must prove it unanimously. That is the first
23 decision that you're going to have to reach in this case
24 before you can consider what forms of punishment are
25 available. Even though we talked to all of you about

1 there being four forms of punishment for first degree
2 murder in the State of Nevada, it is possible that a jury
3 can find there are no aggravators, or there can be a
4 murder where there are no aggravators in which case
5 there's only three options.

6 It will be our position at the end of the
7 penalty hearing that the State has not proven any
8 aggravating circumstances, and we'll have three choices to
9 make, whether it's life without parole, life with parole
10 after 40 years, or a term of 40 to 100 years, with parole
11 eligibility at 40 years. That's what we will stand before
12 you and argue at the end of the penalty hearing.

13 That's sort of the factual/legal decision
14 you have to make in this case before you reach the
15 question of penalty -- of which penalty you can choose
16 from and which penalty to choose.

17 As I said, we're not going to be
18 contesting a lot of the information that you are going to
19 hear in this case. We are not going to be contesting that
20 James Cappell did not commit various acts of domestic
21 violence against Debra Panos. In fact, the State has
22 referred to Mr. Chappell making a statement about what
23 occurred, and you will find that he admitted to two acts
24 of domestic violence. He admitted to the incidents.

25 You will find that when he went to court,

1 for the most part, he pled guilty to those acts of
2 domestic violence and was punished for those acts with
3 incarceration. We're not going to contest that those took
4 place.

5 What we are going to be trying to do is
6 explain to you the entire dynamics of the relationship
7 that existed between James Cappell, Debra Panos from the
8 time they met in Michigan in the 80s, up to the time of
9 Debbie's death, obviously, in 1995.

10 It is that information that we feel you
11 need to have in order to make the decision as to which
12 sentence to choose in this case. That's really what this
13 penalty hearing is about.

14 You will also learn that James Cappell had
15 an addiction to controlled substances and that addiction
16 went back, or at least the usage of those substances, went
17 back to while he was still in Michigan. Debbie was aware
18 that he used drugs, was aware in Michigan that he used
19 drugs. She was aware when he lived in Tucson that he used
20 drugs. And she was aware when they were in Las Vegas that
21 he used drugs. And that he, in fact, developed an
22 addiction to crack cocaine. You will hear that evidence
23 through the various witnesses in the case.

24 You will hear that as an addict, a person
25 addicted to the high of crack cocaine that he did some

1 very unpleasant things and improper things including
2 taking furniture and returning it to the store in order to
3 get money so that he could buy drugs. He doesn't deny
4 that. We're not going to try and present evidence that
5 says that that didn't take place.

6 We're not going to be presenting any
7 evidence that shows he did not go into a variety of stores
8 and commit the act of shoplifting in order to sell the
9 items he stole in order to buy drugs. He was addicted to
10 crack cocaine.

11 And that was the huge portion of the
12 problem that went into this relationship that created the
13 dynamic that ended up where we are now, where they were on
14 August 31, 1995.

15 We're not going to try to soft-sell that
16 information to you during the presentation of the case.
17 But we are going to try and present to a variety of
18 factors concerning both James and Debra.

19 Ms. Weckerly referred to the children in
20 this case. There are three children. And she referred to
21 them as Debbie's children on a number of occasions. But,
22 in fact, they are James' children also. Three children
23 are the children of this relationship. As bad as the
24 relationship turn out to be by the end of -- by August of
25 1995, was a relationship that fostered the birth of three

1 children that had these two individuals struggling to
2 raise those three children, dealing with the problems
3 you're going to hear about. And those problems certainly
4 are going to include anger management, drug addiction, and
5 violence toward a significant-other in a relationship.
6 Not an uncommon factor that comes in when you have a
7 situation of low income, of drug addiction, of criminal
8 conduct, those things can take place.

9 But it's our position, and will be our
10 position at the end of the case, that you, in considering
11 those factors, will decide for a sentence less than the
12 most hash in this case.

13 The evidence that you will hear, and
14 you've seen some of the photographs, and it's regrettable
15 as it is it's necessary for the State to show photographs
16 of Debra after she's been stabbed, because they have a
17 burden of proving certain information to you in this
18 case.

19 And they have the necessity to show those
20 photographs in order to present their arguments as to what
21 the sentence should be in order to show the severity of
22 the injuries and the nature of the assault, the
23 aggravation that clearly you see the anger in the assault.

24 You are going to have to look at those,
25 but in looking at those you're going to see a number of

1 factors that we will argue to you and submit to the you
2 the evidence will show that there was no evidence to
3 support anything other than James' statement that this was
4 a consensual sexual act that took place. You're already
5 seen the photographs at the time of her death, Debra Panos
6 was fully dressed. She had her clothes completely on.
7 You will see that the clothes do not appear to be
8 disheveled, or put on to her afterwards.

9 You will see some of the stab wounds
10 actually go through the clothing into the wounds showing
11 that the clothing was on at the time of the attack that
12 caused her death. That there was no sexual assault during
13 the perpetration of the acts that caused the death that
14 constitutes first degree murder in the case.

15 Now you are going to hear testimony from a
16 doctor who is Dr. Etcough (ph) who is a neuropsychologist
17 that has completed some testing on James and will talk to
18 you about some of James' background and results of his
19 tests. His testing of James, you'll learn that his verbal
20 IQ is 77. His full performance IQ is 91. His scale range
21 is 80, which is in the 91 percentile, meaning that his IQ
22 is lower than 91 percent of the population.

23 The doctor, I believe, characterizes it or
24 will characterize it as falling in the very low average
25 range for IQ. So you see that that testing indicates that

1 James is not overly bright and certain that's going to
2 factor into some of the arguments that the State, we
3 expect, will be making to you and some of the evidence
4 they will present concerning James' release on August 31,
5 that he went and met with P&P because he's supposed to be
6 going to an in-patient program, that somehow he was able
7 to talk his way around being admitted into this in-patient
8 program, when, in fact, his IQ and verbal skills means he
9 wasn't able to talk anyone into anything, that there are
10 other factors that went into him not being immediately
11 placed into that program.

12 The fact that he can't escape the fact
13 that had he been placed into that in-patient program as
14 required certainly the rest of the events that transpire
15 on August 31st, wouldn't have happened. But he was
16 released and the events did happen, and we will deal with
17 them as they come up.

18 In addition to Dr. Etchough (ph) you'll
19 hear from a couple of doctors. One from the State, a
20 pathologist, Dr. Green, who will talk about the autopsy
21 and some of his findings, which again are relevant for
22 proving the States case. Some information that they have
23 to present in order to give you all the circumstances of
24 the death, we will be calling Dr. Grey, who is a
25 pathologist who will talk concerning his review of the

1 findings and photographs of the case.

2 You will hear from a Dr. Danton (ph), who
3 will discuss some general principles concerning domestic
4 violence and domestic violence relationships, why these
5 relationships occur, why they continue, why things just
6 don't ends before we get to the point where we are at
7 now.

8 You will hear from a number of witnesses
9 that we will call from Lansing, Michigan that know or are
10 related to James to talk about James and Debbie and their
11 time there in Michigan. Debbie knew all of these people.
12 They knew Debbie. They knew the relationship between
13 James and Debbie. They knew the difficulty with the
14 relationship in Lansing. They know and can testify
15 concerning the circumstances of Debra moving to Tucson.

16 You'll hear evidence that she moved -- her
17 parents actually moved to Tucson and she moved with or
18 shortly after her parents to Tucson. Then there was some
19 back and forth with James in Tucson.

20 Debra would go to Lansing and the
21 relationship continued, even though at some points it was
22 a long distance relationship. Eventually James moved to
23 Tucson, lived in an apartment with Debra in Tucson up
24 until 1994, when they both came here to Las Vegas and
25 lived in Las Vegas for a short period of time. From about

1 October 1994 until the end of August 1995. So less than a
2 full year.

3 You'll hear that James was in a great deal
4 of difficulty with the law because of his shoplifting and
5 domestic violence during those periods of time. In fact,
6 you'll learn that he was in custody for a great portion of
7 the 1995 year on a couple of the arrests.

8 You'll hear about these phone calls and
9 conversations with witnesses the State has referred to,
10 and those calls actually are coming from the jail to James
11 trying to call Debbie and talk to Debbie. And you'll see
12 in the letters and hear about the phone calls that there
13 was a degree of anger that built into the progression of
14 the phone calls as he is unable to get ahold of Debbie,
15 wonders what she is doing, wonders if she's in fact seeing
16 someone else, if she's going to leave him. This jealousy
17 factors in to really build into the relationship during
18 that period of time, which again builds into the anger
19 that we see on August 31, when he's released from
20 custody.

21 You'll hear about all of those. We're
22 certainly not trying to hide any of those from you. You
23 will hear, however, it goes from friends of Debbie because
24 Debbie, out in Tucson and in Las Vegas was working. She
25 was the primary income earner for the family. She

1 developed a number of friends.

2 You'll hear that James didn't have any
3 friends. He really only had one person to turn to in
4 Tucson where he was isolated from his family and friends
5 back in Lansing and in Las Vegas. He didn't have anyone
6 else.

7 Well, sure you're going to hear that he
8 had people that he knew that he sold things that he stole
9 in order to buy drugs and stayed at their house and smoked
10 crack cocaine, but not friends he can turn to when he's in
11 a crisis moment, as obviously he was with Debbie and their
12 relationship. But he had no friends.

13 And so out here you're going to hear from
14 her friends and their perspectives on the relationship.
15 And we're presenting witnesses from Michigan that can
16 present sort of the prospective from James' side as to
17 this relationship and the dynamics of this relationship.

18 And from that you will have what we
19 discussed during voir dire, as much information as we can
20 give to you in order that you make the right decision as
21 to the penalty in this case. And at the conclusion of the
22 penalty hearing Mr. Patrick and I will stand before you
23 and ask you on one of two bases not to impose a sentence
24 of death.

25 The first being that there is not an

1 aggravating circumstance proven, and therefore, death is
2 not an option.

3 And the second being, even if you find
4 that death may be an option in this case, that death is
5 not the appropriate punishment in this case.

6 Thank you very much for your attention.

7 THE COURT: Thank you, Mr. Schieck.

8 The State may call their first witness.

9 MR. OWENS: The State calls Michelle
10 Mancha, your Honor.

11 THE COURT: All right.

12 THE CLERK: You do solemnly swear the
13 testimony you are about to give in this action shall be
14 the truth, the whole truth, and nothing but the truth, so
15 help you God.

16 THE WITNESS: I do.

17 THE CLERK: Please be seated. State and
18 spell your name for the record.

19 THE WITNESS: Michele Mancha,
20 M-A-N-C-H-A.

21 DIRECT EXAMINATION

22 BY MR. OWENS:

23 Q. You live here in Las Vegas?

24 A. Yes.

25 Q. How long have you lived in the Las Vegas

1 area?

2 A. Now almost 20 years.

3 Q. 20 years?

4 A. Almost now, yes. 1988.

5 Q. So you've been here about 6 years when you
6 met Debra Panos?

7 A. Yes.

8 Q. How did you meet Debbie?

9 A. We worked at the same place at G.E.
10 Capital.

11 Q. What's G.E. Capital?

12 A. It was a collection agency.

13 Q. What kind of work did you do there?

14 A. We called on delinquent credit cards.

15 Q. Was that a 40-hour work week?

16 A. Yes.

17 Q. Was it an 8:00 to 5:00 type of workday?

18 A. They had two shifts, 8:00 to 5:00 and 12:00
19 to 9:00.

20 Q. What shift were you working back around 1994
21 when you met Debbie?

22 A. Days.

23 Q. Day shift. How about Debbie?

24 A. She was on a schedule I believe where she
25 worked two nights and three days, 12:00 to 8:00, then

1 12:00 to 9:00, two a days a week, then 8:00 to 5:00. They
2 started varying schedules on us.

3 Q. So she had kind of a half and half?

4 A. Uh-huh.

5 Q. Make sure you answer "yes" or "no" so she
6 can get it.

7 A. Yes.

8 Q. How did you happen to meet Debbie?

9 A. At work.

10 Q. Was that just like her first day on the job
11 you saw her?

12 A. Yeah, we all started talking.

13 Q. When you say we all started talking, who you
14 do mean?

15 A. Me, Debbie, Lisa, Mike. A bunch of us all
16 used to talk to her.

17 Q. Mike would be?

18 A. Mike Pollard.

19 Q. And when you say you were sort of a group,
20 did you guys hang out together, was there things you did
21 after work also?

22 A. Yes.

23 Q. Tell us about that?

24 A. We used to go to the park, throw barbecues.
25 We used to hang out, go to the movies. Me and Debbie went

1 to California a couple of times to get away, go to the
2 beach -- experience the ocean.

3 Q. How much time do you think you spent with
4 Debbie over that time, do you remember?

5 A. That I knew her?

6 Q. Yeah.

7 A. I saw her every day. We were together at
8 least once a week and weekends.

9 Q. When you first met her what was your
10 impression of her?

11 A. She was a nice person, giving person, funny,
12 sweet. She was a good person.

13 Q. Was there some point where you become
14 familiar with an individual named James Cappell?

15 A. Yes.

16 Q. And how did you get to know him?

17 A. Through Debbie.

18 Q. Tell us about that.

19 A. She would tell us things in reference to
20 him. I witnessed him coming up to my job a couple of
21 times, conversations over the phone, a lot of different
22 --different things that I heard from Debbie I saw
23 myself.

24 Q. What is the first thing you remember hearing
25 from her or seeing about Mr. Cappell?

1 A. She came to work one day and she was fine,
2 and the next day she came to work and she had a huge
3 things over her nose where she had told me that he busted
4 her in the face with a plastic cup and it broke her nose.
5 Her eyes were all black and blue.

6 Q. This would have been after you'd known her
7 maybe three months?

8 A. Yeah, maybe a little before then. But,
9 yeah, she started confiding in us -- in me and Lisa.

10 Q. Lisa being Lisa Duran?

11 A. Yes.

12 Q. What sorts of things would she tell you
13 then?

14 A. Things being missing out of the trailer.
15 We'd go see it and they would be gone. Threats, hitting,
16 fighting.

17 Q. Let's take those one at a time. You say
18 things would be missing out of the trailer. What would
19 she tell you about that?

20 A. All the TVs were gone, the microwave,
21 stereos, everything that was of value, with the exception
22 of the sofas was gone, was being stolen. Food. She would
23 go get food for the kids and all the meat would be gone
24 out of the freezer. There was nothing there but their
25 clothes.

1 Q. How many times did this happen?

2 A. Several. I mean every time she replaced a
3 TV it was gone.

4 Q. So she would earn money in her job there at
5 G.E. Capital? Yes?

6 A. Yes.

7 Q. She doesn't know what uh-huh means.

8 A. Sorry.

9 Q. You'd go and she would get a new TV or
10 something and it would be gone?

11 A. Yes.

12 Q. So she would buy food and go to fix dinner
13 and it would be gone?

14 A. Yes. We would go over there and it would be
15 gone.

16 Q. What would she tell you about what was
17 happening to these things?

18 A. That James was taking them. She said he was
19 coming through the windows and he was taking the items
20 from the house.

21 Q. What was -- what was the significance of him
22 coming through the windows?

23 A. He didn't have a key.

24 Q. Why was that?

25 A. She didn't want him too.

1 Q. Base upon things Debbie is telling you at
2 that point, what sort of sense did you get about the
3 relationship she had with James Chappell?

4 A. It was violent. It wasn't really a
5 relationship. She tried to completely distance herself and
6 get away from the whole situation.

7 Q. How do you know that she tried to do that,
8 what did you see or hear?

9 A. I know that she moved up here and he wasn't
10 supposed to know that she was up here in Las Vegas.

11 Q. Is that something she told you?

12 A. Yes.

13 Q. What else?

14 A. She would never go outside, like confront
15 him when he came to our job. She was basically afraid of
16 him. We kept her away from him as much as possible.

17 Q. Was there an incident that you became
18 familiar with where he had hit her or slapped her in the
19 face?

20 A. In the parking lot of G.E. Capital, yes.

21 Q. About when was that?

22 A. I want to say December, but I'm not sure.

23 Q. Would it have been December '94?

24 A. I think so, yes.

25 Q. When did that happen in relation to the

1 incident where he broke her nose with the cup? Before
2 that or after that?

3 A. I don't remember if it was before or after.
4 I do remember the consequences of that because she came to
5 work, she had no choice. But she came to work with that
6 thing on her face.

7 Q. You are talking about the cup incident?

8 A. Yes. She had to wear it on her nose, and
9 her eye was black and blue.

10 Q. Was that some kind of a bandage or
11 something?

12 A. Like a half cast or a thing across her nose
13 with tape. It was white.

14 Q. The incident with the slap, where were you
15 when that happened?

16 A. Right outside the door of G.E.

17 Q. What were you doing out there at the time?

18 A. Waiting for Debbie and Lisa so we could all
19 go into work.

20 Q. Was anyone else out with you that you
21 remember?

22 A. Not that I recall. There was people coming
23 and going.

24 Q. What happen?

25 A. I just saw him hit her in the face, and she

1 was all upset and crying. We all went in and we didn't go
2 back out.

3 Q. Where were they, James and Debbie, when you
4 saw them?

5 A. In the vehicle I believe.

6 Q. Did you see anything happening right before
7 he struck her?

8 A. No, just talking. I couldn't hear it, you
9 know. You can't hear from that far away. Their lips were
10 moving. They were talking.

11 Q. And then what happen next?

12 A. After he hit her, she got out of the car and
13 we went in because we had a security guard there who never
14 allowed him in the courtroom -- I mean, in the building,
15 ever. They knew what was going on.

16 Q. When you say they knew, the security
17 people?

18 A. Yeah, because he came up there several
19 times.

20 Q. What car were they in when he struck Debbie
21 in the face?

22 A. Hers.

23 Q. What happen after she got out of the car?

24 A. He left. She came in the building. We went
25 to work. We discussed it for a minute, then we went to

1 work.

2 Q. And what did he do?

3 A. I imagine he left. We didn't go back out
4 side after that.

5 Q. He was in her car at the time?

6 A. Yes.

7 Q. How did she normally get to work, was he
8 driving her to work? Is that a normal thing?

9 A. No. When she first got here she didn't have
10 a vehicle. She would walk her kids to day care and get on
11 a bus that took a couple hours to get to work and a couple
12 hours to get home every day.

13 Q. How long until she was able to save up
14 enough to get a car?

15 A. It was a couple of months that she did that.
16 I didn't live on the same side of town as her, but I knew
17 the bus took a long time for her to get to and from.

18 Q. You say after he slapped her she got out and
19 she came and discussed that with you. What did she tell
20 you about that?

21 A. Just that they had been arguing.

22 Q. Did you see any bruising or swelling later
23 on?

24 A. Not on that occasion.

25 Q. So the normal thing would be she would drive

1 herself to work?

2 A. Yes. That was her transportation for her
3 and the kids.

4 Q. Did she say anything to you about why he was
5 driving the car?

6 A. No.

7 Q. Let's go now to June of 1995, a few months
8 later. You noticed some signs of abuse you mentioned just
9 a moment ago?

10 A. Yes.

11 Q. Tell us about those?

12 A. She'd call me crying about 9:00, 10:00
13 o'clock at night saying that James choked her. She was
14 real upset. She was scared. And I talked to her and I
15 tried to calm her down as much as possible, and the next
16 day I saw the marks on her neck.

17 Q. You say she was really upset. What was she
18 doing?

19 A. Crying, talking to me on the phone, telling
20 me that they had a disagreement and once again it turned
21 violent and she was real upset. She was scared. But I
22 tried to calm her down as much as I could and told her I
23 would see her at work the next day. It was 10:00 o'clock
24 at night, my little one was asleep.

25 Q. How long did that conversation last?

1 A. About 20, 25, 30 minutes.

2 Q. What did she tell you he had done to her?

3 A. He choked her. Pushed her and choked her.

4 Grabbed her neck.

5 Q. Did she tell you what had happened after
6 that?

7 A. He left and she was upset and she was on the
8 phone.

9 Q. You know if she called the police?

10 A. No.

11 Q. She hadn't call, or you don't know?

12 A. I don't know. There were times when she
13 wouldn't out of fear.

14 Q. The next day you said you noticed some
15 injury to her?

16 A. Yes, she had marks on her neck.

17 Q. When you say marks, can you describe this to
18 us?

19 A. She had marks on her neck here. A thumb
20 print here. Two scratched down the side of her face.

21 Q. You're indicating a couple of scratches --
22 for the record -- down the left side of her face?

23 A. I don't remember if it was the left or
24 right, but she had four fingerprints, thumb print on one
25 side and two scratches on her face.

1 Q. A moment ago you put your hands up to your
2 throat, so he would have left the thumb print on one side
3 and four fingerprints on the other?

4 A. Yes.

5 Q. You could see those the next day?

6 A. Yes.

7 Q. Did she say anything about a knife at that
8 time when you were talking to her?

9 A. There was one incident.

10 Q. There are some Kleenexes there, if you need
11 that. If it would help there's some water.

12 A. I'm fine.

13 Q. Take a moment.

14 A. Okay.

15 Q. I know this isn't an easy thing to come talk
16 about. These things -- take your time. Collect your
17 thoughts on this. She said something about a knife?

18 A. Yes, she did. At that time she told me
19 about a situation with a knife

20 Q. When was that? Was that at that same
21 time?

22 A. That was in June. I think it was in June.

23 Q. What did she tell you?

24 A. That he sat on her and put his knees on her
25 shoulders and put the knife to her throat. And she was

1 deathly afraid of him.

2 Q. Let's talk about those summer months, June,
3 July, and August. It's been about ten years now.

4 A. Yeah, a little over.

5 Q. Notwithstanding that, it has been that
6 period of time in between, you obviously still have a lot
7 of emotion attached to your memories about this.

8 A. We tried everything in our power to help her
9 get away from him, and we had all these plans and the last
10 plan was we were going to vacate the trailer completely
11 and get her to a safe haven. We thought we had time
12 because of what had transpired at the court date on August
13 30th.

14 On August 30th when she went to court he was
15 supposed to go away for 90 days, so we were moving her out
16 of the trailer, and less than 24 hours later he got to
17 her.

18 We even offered him money. We were going to send
19 him back to Michigan to get better. He refused to go
20 unless he took his little girl. How can you take your
21 little girl when you're on drugs. We weren't going to
22 fess-up (ph) a two-year-old child, but we offered to help
23 her with the finances to get him there. We did everything
24 in our power to save her life, and it wasn't enough.

25 Q. Was there a time in the summer when you

1 began living with Debbie at the trailer home there?

2 A. Yeah. I lived there for approximately two
3 months.

4 Q. Was that that time period right before her
5 death?

6 A. Yes.

7 Q. You mentioned the children, can you tell us
8 about the children?

9 A. Chantelle was just a baby. I think James
10 was 7 or 8, and Anthony was 5.

11 Did they witness some violence, yes. Do they
12 remember it, yes. We had just had a little birthday get
13 together for Chantelle a week before Debbie died at the
14 park. We all got together at the park and that following
15 weekend when she died, we were all supposed to get
16 together again for another barbecue, because it was so
17 nice outside. The kids were scared. JP was only 7 or 8.
18 He thought he was a protector. How can you protect your
19 mom against someone that's twice her size.

20 Q. During that summer period when you were
21 trying to come up with a plan and you thought you had
22 time, that was because the Defendant was in custody at
23 that point?

24 A. Yes.

25 Q. So Debbie had a little bit of a break from

1 this daily --

2 A. Yes. She called every day to make sure he
3 was still in custody, because there was three kids and
4 her. There was a lot of clothes. We were trying to pack
5 up everything.

6 Q. So she was trying to get things washed and
7 packed up to move?

8 A. Yes. We were never going to go back to the
9 trailer.

10 Q. Now the situation with the trailer, that was
11 something she was trying to buy?

12 A. Yes, at first.

13 Q. Was it different to get her the leave the
14 trailer and leave that situation? What were her feelings
15 about that?

16 A. No, because she knew that it was in the best
17 interest of her and the kids. You could always sell the
18 trailer. That wasn't an issue. She could always rebuy
19 somewhere else.

20 Q. Did she express to you any concerns about
21 leaving him, about retaliation or him following her again
22 or --

23 A. We weren't too that degree because where we
24 were going to put her he had no idea. He had no clue, and
25 he would have never, never have found her here.

1 Q. Let's go to the day before Debbie was
2 killed. When you were at work or after work you had an
3 opportunity to talk to her about a court appearance she
4 had gone to. Remember that?

5 A. Yes, because she left work to go to it.

6 Q. She left work to go to court. What was the
7 purpose of that?

8 A. It was to testify about him -- about James.
9 I believe that was the incident when he choked her. And
10 the D.A. picked up the charges because she didn't want to
11 file charges. She did everything she was posed to do. By
12 that point we had a restraining order. She followed the
13 law.

14 Q. So the D.A. went forward with the charges?

15 A. Yes.

16 Q. She was subpoenaed to come to court?

17 A. Yes.

18 Q. Had that been a problem in the past where
19 she didn't want to prosecute?

20 A. Because the restraining order wasn't
21 working, obviously, he was never there by the time the
22 cops got there. Nothing seemed to be working. That was
23 done by law, so to what degree do you keep putting
24 yourself through that.

25 Q. So there were times when she didn't want to

1 go against him. Would it make him madder?

2 A. Mad, what else would happen, you know.

3 Q. Just keep getting back out?

4 A. That and harassment at the job. I mean
5 thank God we worked at a job where he couldn't get in the
6 building. I mean, how embarrassing is it when --

7 MR. SCHIECK: Objection, your Honor. This
8 is non-responsive.

9 THE COURT: I'll sustain it. Ask another
10 question, please.

11 BY MR. OWENS:

12 Q. She went to court that day. She got
13 subpoenaed?

14 A. Yes.

15 Q. Did she call you from court? Did she come
16 back to work?

17 A. No, we talked on the phone.

18 Q. What did she tell you?

19 A. That he threatened to kill her, that he was
20 supposed to go to a 90-day drug rehab thing and we had
21 time to get the rest of the stuff out of the trailer and
22 get I done and she would be safe. And she was tired of
23 running. She was tired of being scared. And that for
24 once it was going to be over.

25 Q. When she went to court he was in custody?

1 A. I believe so, yes.

2 Q. How did it happen that she could be
3 threatened by him?

4 MR. SCHIECK: Calls for speculation.

5 MR. OWENS: What did he say?

6 THE COURT: I'll overrule the objection.
7 You may answer the question.

8 BY MR. OWENS:

9 Q. Take us through that detail by detail, how
10 that happened.

11 A. How what happened?

12 Q. The threat in court?

13 A. All she told me was there were people there
14 and that he threatened to kill her. At that point in time
15 she was tired of running. She was tired of being scared,
16 and that it was over. We thought we had 90 days.

17 Q. Did she tell you that she told him it was
18 over?

19 A. Yes.

20 Q. And his response was?

21 A. I'm going to kill you.

22 Q. I'm going to kill you.

23 A. Yes.

24 Q. When she was telling you this, how did she
25 seem?

1 A. Upset, because once again her fear was
2 there. We were all upset. When I got off the phone with
3 her we were upset. We called, I did. I tried to call his
4 probation officer and tell her because -- Charlene
5 Summner, if I recall her name correctly -- because we were
6 scared.

7 Q. You wanted to tell her about the threat?

8 A. That and to test him again to see if we
9 could get him put back, because at that point in time we
10 knew -- we were all scared again.

11 Q. But you still thought you had this 90-day
12 period?

13 A. To finish getting everything out and get her
14 to a safe haven that we had establish for her.

15 Q. What was your understanding of how this 90
16 day thing was supposed to work?

17 A. My understanding was he was supposed to be
18 in-house for 90 days without being let out for rehab.

19 Q. So he would be doing rehab, but still be in
20 the facility?

21 A. In a facility for 90 days.

22 Q. Now, the next morning, August 31st, you saw
23 Debbie again. That was at work, briefly?

24 A. Briefly.

25 Q. What happen between you and Debbie at that

1 time?

2 A. We made plans to meet up for a barbecue to
3 be seen later. I told her I would page her later, call
4 her later. And we parted ways and I was supposed to see
5 her later.

6 Q. Did you see her again?

7 A. No.

8 Q. Did you hear from her again?

9 A. No.

10 Q. When you last saw Debbie, did she seem or
11 felt she was going to be safe because of this in-patient
12 thing?

13 A. Yes. We felt that we had enough time to
14 make her be safe and to stay away from that side of town
15 and never return to the trailer.

16 Q. Now, we've been referring to this person,
17 James Cappell. You keep looking over to that side of the
18 courtroom. Who are we talking about?

19 A. That gentleman in the blue vest --

20 MR. OWENS: May the record reflect the
21 identification of the Defendant.

22 THE WITNESS: -- and blue shirt.

23 THE COURT: It will.

24 MR. OWENS: Thank you.

25 BY MR. OWENS:

1 Q. I would like you to pause a minute and
2 collect your thoughts on how the death of Debbie has
3 affected you and impacted you in your life. Have you
4 thought about that?

5 A. Every day.

6 MR. SCHIECK: Objection, relevant
7 grounds.

8 THE COURT: Overruled. You the
9 question.

10 THE WITNESS: Thank you.

11 BY MR. OWENS:

12 Q. Let me ask you this, how did you find out
13 about Debbie and what happen?

14 A. I was sitting with a friend and the news
15 came on and I had my back to the TV, and it said mother of
16 three found dead, suspect James Cappell. I turned around
17 and his face was on TV. That is how I found out. I
18 started calling her home number, with no response but the
19 voice mail, because I didn't want to believe it was true.
20 Then I called the police and confirmed that that's what
21 happened.

22 Q. What sort of feelings did you have at that
23 time?

24 A. I went into hysterics because I was on the
25 other side of town and we were all supposed to have met

1 back over there. I didn't know what to do. I was in
2 hysterics. I tried to get ahold of Lisa and Mike to see
3 if they knew or to let them know what I had just found
4 out.

5 Q. In the days following this incident, how did
6 it affect you physically and emotionally?

7 MR. SCHIECK: Same objection, your
8 Honor.

9 THE COURT: Overruled.

10 THE WITNESS: I was a wreck. I couldn't
11 go to work for a couple of days after that because you
12 have to walk by where she sat to get there. My stuff was
13 still in the trailer. You call her voice mail because you
14 didn't want to believe it was true. It was awful.

15 It was -- here it's ten years later, it's
16 still awful. You can't forget something like that. With
17 time, pain heals, but you don't forget the type of person
18 she was. She'd give you the shirt off her back if you
19 asked her for it, even raising three kids by herself.

20 We miss her every day. I have her picture
21 still on my dresser, at work. You don't put her pictures
22 away because she's not here. It was awful.

23 BY MR. OWENS:

24 Q. You testified before in this case?

25 A. Yes, I did.

1 Q. I apologize you have to go through this
2 again at this point, but we appreciate it. Thank you.

3 MR. OWENS: I don't have anything
4 further.

5 THE COURT: Mr. Schieck, Mr. Patrick.

6 MR. PATRICK: Yes.

7 CROSS-EXAMINATION

8 BY MR. PATRICK:

9 Q. Would you like to take a minute to compose
10 yourself before we start?

11 A. No.

12 Q. Did Debbie discuss with you James' drug
13 problem?

14 A. Yes.

15 Q. And did she ever mention anything about
16 James was usually high when she saw him?

17 A. Yes.

18 Q. And did she ever indicate to you that maybe
19 the reason why he was stealing stuff out of the trailer
20 was to buy drugs?

21 A. Yes. But that goes to common sense.

22 Q. That's fine. Now, you said that James
23 usually entered the trailer through that window; is that
24 correct?

25 A. Yes.

1 Q. And you and Debbie talked about that?

2 A. Yes.

3 Q. Now, you kind of mentioned the group of
4 people you work with at G.E. Capital, Lisa Duran, Mike
5 Pollard.

6 A. Yes.

7 Q. And as a group you are all very close?

8 A. Yes.

9 Q. And Debbie was -- Debbie and Mike got along
10 real well?

11 A. Yes. They were good friends. We all
12 were.

13 Q. Did you ever get introduced formally to
14 Mr. Cappell?

15 A. No.

16 Q. Never met him face-to-face?

17 A. I seen him. I never met him.

18 Q. So you never talked to him?

19 A. Yeah, I talk to him on the phone.

20 Q. Talk to him on the phone?

21 A. Yes.

22 Q. You were talking about an incident outside
23 in front of G.E. Capital there where you said that James
24 slapped Debbie?

25 A. Yes.

1 Q. And at that time the two of them were in the
2 car?

3 A. Yes.

4 Q. And they were talking, but you could not
5 hear what they were saying?

6 A. I was by the front door. No. I didn't
7 approach the vehicle.

8 Q. So you had no idea what the conversation was
9 about?

10 A. No.

11 Q. What -- do you know how many times Debbie
12 filed for a restraining order or TPO against James?

13 A. No idea. I just know that she had one.

14 Q. Do you know how long that was in affect
15 for?

16 A. No.

17 Q. You met Debbie after she moved to Las Vegas,
18 so you did not know her when she was in Tucson?

19 A. No.

20 Q. You did not know her when she was in
21 Lansing?

22 A. No.

23 Q. Were you close to Debbie and James' kids?

24 A. Yes. I saw them all the time.

25 Q. When was the last time you saw them?

1 A. After the last court.

2 MR. PATRICK: Court's indulgence. That's
3 all I have, your Honor.

4 THE COURT: Thank you. Mr. Owens,
5 anything further.

6 MR. OWENS: No, thank you.

7 THE COURT: All right. Ma'am, thank you
8 for your time. You are excused.

9 We have -- hold on. Have a seat. We have
10 a question for you.

11 Counsel approach.

12 (Discussion held at the bench.)

13 THE COURT: Let me ask you a couple of
14 questions, if I could, please.

15 Do you recall about how far away you were
16 from the car when the slapping incident happened?

17 THE WITNESS: Not far. I was at the front
18 door. The car was here. I could see perfectly clear
19 through the window.

20 THE COURT: Can you look around the court
21 and say it is here to the table or the wall.

22 THE WITNESS: I was probably from here to
23 that lady in the -- with dark hair. I wasn't that far
24 from the car.

25 THE COURT: In the black jacket?

1 THE WITNESS: I was standing outside of
2 the door.

3 THE COURT: Okay.

4 MR. SCHIECK: For the record, she's
5 referring to someone in the front row of the courtroom.

6 THE COURT: That's correct.

7 Secondly, do you know, did Ms. Panos tell
8 you anything about whether or not Mr. Cappell accepted any
9 money for the return to Michigan?

10 THE WITNESS: He refused. Because he
11 would go on one condition, and that was if she gave him
12 her baby girl.

13 THE COURT: So as far as you know he did
14 not accept money to go back there?

15 THE WITNESS: He would not.

16 THE COURT: Mr. Owens, any questions based
17 upon mine?

18 MR. OWENS: No, your Honor.

19 THE COURT: Mr. Patrick?

20 MR. PATRICK: No, your Honor.

21 THE COURT: Thank you, ma'am. You may
22 step down.

23 The State may call its next witness.

24 MR. OWENS: The next witness -- there's
25 several witnesses that we're not unable to locate for this

1 proceeding, and this is one of them. What we are
2 proposing is to read his testimony from the prior
3 proceeding, if that's acceptable to the court.

4 We've furnished a copy to the defense. We
5 have an individual to read for Mr. Pollard.

6 So the next testimony would be that of
7 Mike Pollard.

8 THE COURT: Okay. Do you want the reading
9 of the transcript reported or mark as an exhibit?

10 MR. OWENS: Whatever is more convenient.

11 THE COURT: It's normally report, unless
12 you stipulate to just the reading.

13 MR. SCHIECK: It's easier if it's reported
14 so that it flows in the sequence of things as opposed to
15 having it as an exhibit, if that's okay.

16 THE COURT: Okay.

17 THE CLERK: Do you solemnly swear you
18 will faithfully and accurately read the response set forth
19 in the transcript so help you God.

20 MR. DIGIACOMO: I do.

21 MR. OWENS: Your Honor we can also have it
22 marked as an exhibit.

23 THE COURT: Mike Pollard, having been
24 first duly sworn to tell the truth and nothing but the
25 truth was examined and testify as follows.

1 Direct examination by the State.

2 Q. Can you please state your name and spell it
3 for the record.

4 A. My name is Mike pollard, P-O-L-L-A-R-D.

5 Q. And, sir, where are you employed?

6 A. General Electric.

7 Q. G.E. Capital?

8 A. G.E. Capital, yes.

9 Q. How long have you been employed there?

10 A. Two years, November 14th.

11 Q. Are you a resident of the Las Vegas
12 community?

13 A. Yes, ma'am, I am.

14 Q. How long have you lived here?

15 A. Just about two-and-a-half years.

16 Q. Where are you originally from?

17 A. I'm originally from Louisiana.

18 Q. Did you know a person by the name of Debra
19 Panos?

20 A. Yes, ma'am, I did.

21 Q. How was it that you knew her?

22 A. I first met Debra Panos in a training class
23 for G.E. Capital, approximately a year and seven, eight
24 months ago.

25 Q. Is that also around November of 1994?

1 A. Yes, ma'am, it was.

2 Q. Did you both start together?

3 A. Yes, we did.

4 Q. And how was it that you became friends?

5 A. Well, we had -- well, we were both coming
6 from Arizona for one thing. We started talking about
7 different places we had been, and when we came up with
8 Arizona she had just come from there and so had I. So
9 that started, sort of, the conversation off and as time
10 went on we just started to, you know, we became friends.
11 Close friends, I myself --

12 Q. Did you know her in Arizona?

13 A. No, I didn't.

14 Q. As you became co-workers together did you
15 share rides to work?

16 A. Yes, we did.

17 Q. How did that happen?

18 A. When we first started off neither one of us
19 had cars, so we start to carpool, myself. She got a car
20 first and she would pick me up, and we'd go to work, drop
21 the kids off, pick them up on the way back, and she would
22 drop me off at home.

23 Q. Where was it she would take the kids to and
24 from during work?

25 A. The kids go to day care, which was about two

1 or three block from the house.

2 Q. How would you describe your relationship
3 with Debbie throughout the months?

4 A. We were like inseparable. When you saw her,
5 you saw me. If you didn't see me, you didn't see her. As
6 a matter of fact people thought there was a relationship
7 there because of the fact that we were so close.

8 Q. You mean more than just friends?

9 A. Yes.

10 Q. Were you ever more than just friends?

11 A. No.

12 Q. During your friendship with Debra, did you
13 come to learn about a person by the name of James
14 Cappell?

15 A. Yes, I did.

16 Q. Did you ever formally meet him?

17 A. No, I didn't.

18 Q. Did you, however, see him?

19 A. Yes, I saw him on a couple of occasions.

20 Q. Do you recall how it was that you saw him?

21 A. Yes.

22 Q. Tell us about the first time you saw him?

23 A. The first time I saw him Debbie had drove
24 up. She drove you up to work and we were, like, standing
25 outside.

1 Q. Who is we?

2 A. Me and a couple of our other friends.

3 Because you couldn't smoke in the building so we had to
4 smoke outside, so usually we smoked in the front before
5 going in. And the first occasion I saw him was -- that
6 was the time he slapped her and took off in the car with
7 her purse.

8 Q. You stated that you actually saw her drive
9 up to work?

10 A. Well, he was driving. She was on the
11 passenger side. And the next thing you know he slapped
12 her and she jumps out of the car and he takes off.

13 Q. When you say he slapped her, did you see
14 this?

15 A. Yes, ma'am.

16 Q. Did he slap her with an open hand or closed
17 fist?

18 A. That I couldn't tell, you know. You could
19 just see the -- then the head jerk, and she jumps out of
20 the car and the car just speeds off real fast.

21 Q. Tell us what was your demeanor like when she
22 came up to all of you?

23 A. She was on the brink of tears. She was
24 about to cry. She was trying to hold it as best as she
25 could.

1 Q. What did she tell you the Defendant did to
2 her?

3 A. She said he took my purse. My purse is in
4 the car and he took my purse.

5 Q. Did she tell you problems she had had with
6 the Defendant? Let me ask you this when was this that he
7 slapped her on that you observed him slap her?

8 A. Okay. This was about, perhaps,
9 two-and-a-half months after he had broken her nose.

10 Q. So it was sometime after he'd broken her
11 nose?

12 A. Yes.

13 Q. If I were to tell you there were -- there
14 was testimony that he broke the nose somewhere around
15 January 9th of 1995, is it your testimony that it was
16 sometime after this?

17 A. Yes, it was.

18 Q. Had you ever gone over to where she lived?

19 A. Yes.

20 Q. When was it that you first went over where
21 she lived?

22 A. I would say about three -- about two or
23 three months, you know, after we started training.

24 Q. Who -- where was it that you went?

25 A. She lived in a trailer park.

1 Q. Is that Ballerina Mobile Home --

2 A. Yes, it is.

3 Q. Who lived there with her?

4 A. At that time it was Debra, she had the three
5 kids. And I think Lisa moved in with her.

6 Q. Now did you ever -- how often would you
7 visit Debbie at the trailer home?

8 A. I would say maybe sometimes twice a month.
9 Maybe, you know -- sometime we would -- since we were
10 closer to work to her house, a lot of times we'd stop in
11 there and, you know, pick up something for the kids or
12 something like that before she would take me home.

13 Q. Did you ever see the Defendant around when
14 you would go over?

15 A. Never.

16 Q. Did she -- do you recall a time at work when
17 Debra became upset regarding the Defendant?

18 A. Yes.

19 Q. Do you recall certain instances?

20 A. Well, I remember one instance when he was
21 like waiting in the lobby because there's a lobby where
22 you have to go past security in order to, you know, to get
23 into the actual work space. And she was showing us him
24 standing in the lobby talking about, he was going to get
25 her fired if she didn't give him the money, or something

1 like that. So she was in there trying to borrow money
2 from people to get him away from the property.

3 Q. So he was going to get her fired if he
4 didn't get money?

5 A. That's what she said. She said he's
6 standing out there, he says he's going to get me fire if I
7 don't give him money.

8 Q. How was she acting when she was asking
9 people for money?

10 A. She was all, like, you know, jittery,
11 nervous. Whenever it came to something like that, she was
12 always on the brink of crying, okay She was, like, always
13 upset, you know, at the demand for money.

14 Q. Did you actually see him there in the lobby
15 as well?

16 A. Yes, I did.

17 Q. When about was this?

18 A. I would say this was about six to seven
19 months after we started training.

20 Q. You're not sure of exact time periods when
21 I'm asking you these questions?

22 A. Yes, I'm not.

23 Q. You didn't sit and write these things down
24 as they were happening?

25 A. No, ma'am, I didn't.

1 Q. Do you recall another time when Debra got a
2 phone call at work regarding the children?

3 A. Yes.

4 Q. What was her demeanor like after receiving
5 this phone call?

6 A. I think she just lost it. She was so upset.
7 She -- she didn't even know where she was. She was just
8 really, really upset. She was trying to figure out what
9 to do.

10 Q. Was she crying?

11 A. Yes, she was. Part of the time she was
12 crying, part of the time she was trying to compose herself
13 to actually talk to whoever it was on the phone that she
14 needed to talk to.

15 Q. What did she tell you was happening, based
16 on the phone call?

17 A. It was something about her kids, they got
18 picked up, or her kids were in someplace where they
19 were.

20 Q. Is that Child Haven?

21 A. Yeah. There you go. It was a place --
22 well, it wasn't a day care, and it wasn't at home. It was
23 someplace where the protective services or something had
24 called.

25 Q. Child protective services had removed the

1 children?

2 A. They were letting her know that they had the
3 children.

4 Q. Why is it that Child Haven had her
5 children?

6 A. From what I understood, their father had
7 abandoned the kids or left the kids, whatever,
8 unattended.

9 Q. You're talking about the Defendant?

10 A. Yes.

11 Q. He left the children unattended?

12 A. Yes.

13 Q. Do you know where he had taken the kids from
14 before he left them unattended?

15 A. No, I don't.

16 Q. Based on this do you recall whether or not
17 Debra had to pick up the children from Child Haven?

18 A. Yes, she did.

19 Q. And base on her having to pick up the
20 children from Child Haven, did she do something at the day
21 care center?

22 A. What I remember is she had to leave work in
23 order to do that, and naturally I wasn't able to leave at
24 that time so she went without me. And I think I spoke to
25 her later that night and she told me that she had picked

1 the kids up, and, you know, everything was okay, and it
2 wouldn't happen again. That was basically that
3 conversation.

4 Q. Do you remember her going to day care
5 regarding the defendant?

6 A. Yes.

7 Q. What happen?

8 A. I remember her going there and having his
9 name removed from the pick-up list so far as being able
10 to, you know, receiving the kids from the day care.

11 Q. And why was that?

12 A. For some reason she was afraid of, you know,
13 what might happen. After all, he had already abandoned
14 them one time and she was afraid of that. And she didn't
15 know, you know, what sort of frame of mind this guy was in
16 or whatever. She just wanted her kids protected.

17 Q. When you say he abandoned the children, did
18 the police actually take custody of the children to book
19 them into Child Haven?

20 A. My understanding, yes.

21 Q. Did Debbie want to stay with this
22 defendant?

23 A. No, she didn't.

24 Q. How do you know this?

25 A. Because she kept -- she tried to stay aware

1 of where he was and how long he would be there, because we
2 had planned to move Debra, you know, before this guy got
3 out. That's why she kept abreast on, you know, how long
4 he was going to be in and when he would be released so she
5 could be gone from than. Because we'd already made other
6 attempts to, you know, remedy the situation, but they
7 didn't work.

8 Q. During the time period you started there at
9 G.E. Capital, would she cry to you often regarding things
10 the Defendant did to her and the children?

11 A. Yes.

12 Q. What types of things would she cry about?

13 A. Well, I remember once she had went to
14 Payless Shoe store and she brought the kids -- she bought
15 all the kids pairs of shoes and somehow that night the guy
16 came and he took the shoes back to the Payless to get the
17 money.

18 Q. Are you talking about the Defendant?

19 A. Yes.

20 Q. You're talking about James Cappell?

21 A. Yes.

22 Q. You see him in court today?

23 A. Yes.

24 Q. Can you point to him and describe an article
25 of clothing.

1 A. The gray jacket, striped shirt.

2 Q. May the record reflect the witness has
3 identified the Defendant, your Honor?

4 THE COURT: Yes.

5 Q. What would happen when she would get her
6 food stamps from the government to feed her children?

7 A. She would go -- usually she would go -- I
8 would take her to the store and she would buy groceries
9 for about a month. She would fill her refrigerator up and
10 everything, which should have lasted her quite awhile.
11 But in a day or two, he'd show up and all of the meats
12 would be gone. The whole freezer would be empty.

13 Q. Did she tell you what he would do with the
14 meats?

15 A. She said, he's probably going to sell them
16 and buy drugs.

17 Q. Do you recall this occurring at a certain
18 barbecue?

19 A. Yes.

20 Q. What happened?

21 A. Well, we came home from work and we were all
22 set to, you know, barbecue. I'm out on the front. I got
23 the grille going and everything, and they go to look in
24 the icebox and there's nothing in there.

25 Q. Who is they?

1 A. Debra, and I think it was Lisa at the
2 time.

3 Q. So people from work?

4 A. People from work, yes.

5 Q. You were having like a get together and
6 barbecue?

7 A. Yes, uh-huh.

8 Q. That was over at Debbie's?

9 A. That was going to be at Debbie's.

10 Q. She had bought meat for this barbecue?

11 A. Yes.

12 Q. There was nothing in the freezer?

13 A. There was nothing.

14 Q. How did Debbie react?

15 A. She was really angry at first, you know.
16 Then she started telling us, you know, probably this or
17 probably that happened, and -- which we couldn't figure
18 out anything else because no one else could, you know, get
19 into her place. So we figured that he had been there.

20 And then this had happen before, so we practically
21 knew what had happen.

22 Q. So did you ever see Debbie calling the jail
23 to see or make sure he was not going to be released?

24 A. Yes.

25 Q. About when was this prior to her death?

1 A. I'd say from the time -- about thirty days
2 on. From thirty days on. Because he was supposed to be
3 there for at least 90 or something like that. So for
4 thirty days on, towards the end of the 90, the last thirty
5 days, she started calling just about every day to make
6 sure he wasn't out or he was about to get out.

7 Q. Prior to his going to jail had Debra tried
8 to actually get the Defendant to leave the state?

9 A. Yes, ma'am.

10 Q. How did she do that?

11 A. Well, at one point she bought a ticket --
12 she bought a ticket one time and, you know, for him to go
13 back, and I think he cashed that one in. So that's how he
14 figured out that that wasn't going to work, you know, in
15 order to get him to go home, because he wasn't going to
16 go.

17 Q. Where was that ticket to, do you recall?

18 A. I think it was to Michigan.

19 Q. How was it that you convinced Debbie to
20 leave the residence as the Defendant was still in jail?

21 A. Well, we -- me and Debra would talk about it
22 a lot, you know, so far as how, you know, to make this
23 break. And she realized that buying him a ticket or
24 giving him money for a ticket was not going to work. So I
25 sort of, you know, convinced her to move. I said, well,

1 that would be best because the same time our job was about
2 to move too, so we wouldn't have been in the same building
3 and he wouldn't have known where to find her. And that's
4 the reason why she was checking on him so much.

5 Q. Was she reluctant to actually leave that
6 trailer?

7 A. She was at one time.

8 Q. Why was that?

9 A. Because she had so much money invested in
10 this trailer. She was buying it. And to just leave it,
11 you know, she would be leaving an investment. So she
12 wanted to really hang on to it if possible, but she was
13 convinced that she wouldn't be able to do both.

14 Q. I want to direct your attention to the date
15 of August 31st, of 1995. Do you recall that date?

16 A. Yes, I do.

17 Q. Do you recall seeing Debbie on that date?

18 A. Yes.

19 Q. What did you first -- when did you first see
20 Debbie?

21 A. She picked me up from work that morning.

22 Q. Where -- about what part of town do you
23 live, what are your cross streets?

24 A. Decatur and Vegas Drive.

25 Q. In the Northwest area of town?

1 A. Yes.

2 Q. How long would it take you generally to
3 drive from your house to Debbie's?

4 A. Approximately 15 to 20 minutes.

5 Q. It's not something that you would make a
6 trip walking?

7 A. No.

8 Q. Necessarily?

9 A. No.

10 Q. About -- I'm sorry. What time did she pick
11 you up?

12 A. She picked me up about 6:30.

13 Q. Did she have someone with her?

14 A. No, it was just her.

15 Q. Had she dropped the children off at day
16 care?

17 A. Yes.

18 Q. Where did you two go?

19 A. From their we went to work.

20 Q. G.E. Capital?

21 A. At G.E. Capital, yes.

22 Q. What happened once you were at work?

23 A. Once at work we went through the shift,
24 which the shift on that day happen to be a half-day shift.
25 So we were off about noon So since we got off early we

1 had decided to, you know, try another one of these
2 barbecues. So we got off around noon and we left around
3 12:10, 12:15. She brought me home and she said she was
4 going to go home, do a few things, we were all going to
5 meet up and go to the park.

6 Q. Is that Larency Park?

7 A. Yes, I think so. That's the closest to my
8 house.

9 Q. What happened?

10 A. Well, she left and all of a sudden, about
11 20, 25 minutes later she was back.

12 Q. ~~To your home?~~

13 A. Yes.

14 Q. What happened?

15 A. She was all scary. She was all real, real
16 nervous. At that time I was just like coming out of the
17 shower, I was wondering why she was back so fast.

18 Q. Can you describe what she was doing when she
19 was all scared and nervous?

20 A. She was sitting on my couch in a ball, like
21 holding her knees.

22 Q. ~~In a ball?~~

23 A. Yes.

24 Q. What was she doing?

25 A. Just shivering, like -- just like shaking.

1 Q. What did she tell you?

2 A. Said he's out. I said who's out. She said
3 James is out. And I said how do you know. She said
4 because he left a message on my voice mail.

5 So we started thinking about, well, the plan to
6 move was out, so what are we going to do next. So I told
7 her to wait a few minutes, let me get out of the shower
8 and I'll go home with her, because she got concerned about
9 the kids. She wanted to go home, pick up some clothes for
10 the kids, pick them up at day care, and then they were
11 going to come back to my house and stay, like, they
12 usually did, two or three days, sometimes, when he was
13 out.

14 Q. When he was out of jail, sometimes they
15 would stay with you?

16 A. Yes, ma'am.

17 Q. Why would see and her -- she and her stay
18 with you when he was out?

19 A. Because she was afraid.

20 Q. Why would she and her children stay with you
21 when he was out?

22 A. Because she was afraid.

23 Q. Had she told you he had been violent with
24 her in the past?

25 A. Yes.

1 Q. So her plan was to get the children's
2 clothes and the children and return to your house?

3 A. Yes.

4 Q. Did you tell her to wait?

5 A. Yes.

6 Q. And what did you do?

7 A. I went back in the shower to finish off and
8 when I came back out she was gone.

9 Q. Did you know where she went?

10 A. No, I didn't.

11 Q. Did you have any transportation to follow
12 her?

13 A. No, I didn't.

14 Q. What did you do?

15 A. I got on the phone. I tried calling
16 different places to see if she had perhaps went like to
17 Lisa's, or I called her house three or four times and
18 didn't get a response.

19 Q. When she was rolled up in a ball shivering,
20 was she crying?

21 A. Yes.

22 Q. Was she scared?

23 A. Yes.

24 Q. Was that the last time you had seen
25 Debbie?

1 A. That's the last time I saw Debra.

2 Q. Can you describe what type of person Debbie
3 was?

4 A. Debbie was a very friendly person. She was
5 very Friendly, very kindhearted. If she could do
6 something for you within her power, she would. She was
7 sort of happy-go-lucky, you know, never got into no
8 trouble, never, you know, messed with anybody. She was
9 just a nice girl. Just a very nice girl.

10 Q. What type of worker was she?

11 A. She was an excellent worker. As a matter of
12 fact, we -- at work she would just -- excuse me -- at work
13 she would just go along, do the job, you know, just like
14 everybody else. Couldn't wait for it to be over, you
15 know, but --

16 Q. What kind of mother was she to her three
17 children?

18 A. She loved her children. She loved her
19 children very much.

20 Q. What type of friend was she to you?

21 A. Well, as we went along we were real close,
22 you know. There were a lot of things in her life that we
23 would talk, you know. We just talked about different
24 things all the time. Especially things that distressed
25 her, you know.

1 Q. What distress her the most?

2 A. Well she regretted bringing this guy out
3 here anyways, because, you know, he came after she was
4 already here. She regretted that, but it was too late,
5 couldn't do nothing about that. So, you know, we were
6 always trying to convince her to just keep on going, keep
7 going with her life. And, you know, there were a lot of
8 problems in between times, you know, like whenever this
9 guy was out. That's one of the reasons I never met him,
10 because every time the chance would come for me to meet
11 him she would set up a meeting for me to meet this guy, he
12 was always back in jail or gone for two weeks and took
13 whatever he could, you know, and you would see him no
14 more, you know.

15 Q. When you say he would take whatever he
16 could, what are you talking about?

17 A. Well, I remember when I first met Debra she
18 had furniture and all kinds of nice stuff in her house.
19 And towards the end all of her TVs, VCRs, you know, just
20 about all of her furniture was gone. As a matter of fact,
21 I gave he a small black and white TV for the kids to watch
22 TV, because her color TV had been taken.

23 Q. Taken by who?

24 A. By James.

25 Q. Thank you. I will pass this witness.

1 THE COURT: Cross.

2 Q. You testified you knew Debbie for about two
3 years?

4 A. About a year and eight months.

5 Q. That's correct. You said two years from
6 November of this year is when you met her?

7 A. I'm sorry.

8 Q. You met her two years ago, November of this
9 year?

10 A. Right, uh-huh.

11 Q. And during that time you'd go to the trailer
12 a couple times a month?

13 A. Yes.

14 Q. But you never saw James?

15 A. Never saw him.

16 Q. This instance where you say you saw Debra
17 get slapped in the parking lot at work --

18 A. Right.

19 Q. -- would it be safe to say that was around
20 March of '95?

21 A. Yeah, that would be safe to say.

22 Q. Is there any chance that that slapping
23 incident could have occur before January of '95?

24 A. If I could take the incidence in order, sir,
25 I would probably say -- let's see. The nose breaking, the

1 slap was after that. I would say somewhere around March,
2 I would think.

3 Q. Do you recall what month it was when the
4 children were taken into protective custody by whomever
5 did it?

6 A. No, I don't.

7 Q. Was this before or after the slapping
8 incident in the parking lot?

9 A. I think that was after.

10 Q. Did you ever hear Debra having conversations
11 with James on the telephone?

12 A. I usually walked away on those occasions.

13 Q. So you never heard her have a conversation
14 with him on the telephone?

15 A. No.

16 Q. I don't have any other questions?

17 MR. OWENS: Nothing more.

18 THE COURT: May this witness be
19 discharged?

20 MR. OWENS: Yes.

21 THE COURT: Thank you, sir.

22 You may step down. Thank you, Mr.
23 DiGiacomo.

24 THE COURT: We'll go ahead and take the
25 lunch time recess.

JURY ADMONITION

During the recess, ladies and gentlemen, you are admonished not to converse among yourselves or with anyone else, including, without limitation, the lawyers, parties and witnesses, on any subject connected with this trial, or any other case referred to during it, or read, watch, or listen to any report of or commentary on the trial, or any person connected with this trial, or any such other case by any medium of information including, without limitation, newspapers, television, internet or radio.

You are further admonished not to form or express any opinion on any subject connected with this trial until the case is finally submitted to you.

You can leave your note pads and pencils on your chairs, make sure you keep your badges on so you can be easily identified as jurors.

We'll be back at, say, 2:00 o'clock. All right. Thank you very much.

Anything outside the presence?

MR. OWENS: No, your Honor.

MR. SCHIECK: No, your Honor.

THE COURT: Thank you, folks. See you back at 2:00 o'clock.

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. #745

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IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

JAMES CHAPPELL,

S.C. CASE NO. 61967

Appellant,

Electronically Filed
Nov 18 2013 02:24 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

vs.

THE STATE OF NEVADA,

Respondent.

APPEAL FROM DENIAL OF PETITION FOR WRIT OF HABEAS CORPUS
(POST-CONVICTION) AND SENTENCE OF DEATH
EIGHTH JUDICIAL DISTRICT COURT
THE HONORABLE JUDGE CAROLYN ELLSWORTH, PRESIDING

~~~~~  
APPELLANT'S APPENDIX TO THE OPENING BRIEF  
VOLUME XIII  
~~~~~

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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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| 2 | 9 | PETITION FOR WRIT OF HABEAS CORPUS (FILED 10/19/1999) | 2258-2316 |
| 3 | 10 | PETITION FOR WRIT OF HABEAS CORPUS MOTION FOR APPOINTMENT OF COUNSEL (FILED 10/19/1999) | 2317-2322 |
| 4 | 10 | PETITION FOR WRIT OF HABEAS CORPUS MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS (FILED 10/19/1999) | 2323-2323 |
| 5 | 10 | PETITION FOR WRIT OF HABEAS CORPUS MOTION TO PERMIT PETITION TO CONTAIN LEGAL CITATIONS (FILED 10/19/1999) | 2327-2327 |
| 6 | 11 | POST EVIDENTIARY HEARING BRIEF (FILED 7/14/2003) | 2693-2725 |
| 7 | 18 | PRE-SENTENCE INVESTIGATION REPORT NOT FILED (CONFIDENTIAL) | |
| 8 | 16 | PROPOSED JURY VERDICTS NOT FILED | |
| 9 | 20 | RECEIPT FOR DOCUMENTS (FILED 10/24/2012) | 4429-4429 |
| 10 | 20 | RECORDER'S TRANSCRIPT RE: EVIDENTIARY HEARING: ARGUMENT MONDAY, OCTOBER 19, 2012 (FILED 10/29/2012) | 4417-4428 |
| 11 | 20 | RECORDER'S TRANSCRIPT RE: STATUS CHECK WEDNESDAY, AUGUST 29, 2012 (FILED 1/15/2013) | 4413-4428 |
| 12 | 20 | REPLY TO STATE'S RESPONSES TO SUPPLEMENTAL BRIEF (FILED 7/30/2012) | 4491-4514 |
| 13 | 1 | REPORTER'S TRANSCRIPT OF OCTOBER 3, 1995 PRELIMINARY HEARING (FILED 11/14/1995) | 047-205 |
| 14 | 1 | REPORTER'S TRANSCRIPT OF MAY 1, 1996 TRIAL SETTING (FILED 5/9/1996) | 227-229 |
| 15 | 2 | REPORTER'S TRANSCRIPT OF OCTOBER 7, 1996 VOLUME 1- MORNING SESSION (FILED 10/8/1996) | 355-433 |

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| 1 | 2-3 | REPORTER'S TRANSCRIPT OF OCTOBER 7, 1996 VOLUME 1- AFTERNOON SESSION (FILED 10/8/1996) | 434-617 |
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| 3 | 3-4 | REPORTER'S TRANSCRIPT OF OCTOBER 8, 1996 VOLUME 2- MORNING SESSION (FILED 10/9/1996) | 717-842 |
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| 5 | 3 | REPORTER'S TRANSCRIPT OF OCTOBER 8, 1996 VOLUME 2-AFTERNOON SESSION (FILED 10/9/1996) | 618-716 |
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| 7 | 4 | REPORTER'S TRANSCRIPT OF OCTOBER 10, 1996 VOLUME 3-MORNING SESSION (FILED 10/11/1996) | 846-933 |
| 8 | | | |
| 9 | 4 | REPORTER'S TRANSCRIPT OF OCTOBER 10, 1996 VOLUME 3- AFTERNOON SESSION (FILED 10/11/1996) | 934-1067 |
| 10 | | | |
| 11 | 5 | REPORTER'S TRANSCRIPT OF OCTOBER 11, 1996 VOLUME 4- MORNING SESSION (FILED 10/14/1996) | 1082-1191 |
| 12 | | | |
| 13 | 5 | REPORTER'S TRANSCRIPT OF OCTOBER 11, 1996 VOLUME 4- AFTERNOON SESSION (FILED 10/14/1996) | 1192-1344 |
| 14 | | | |
| 15 | 6 | REPORTER'S TRANSCRIPT OF OCTOBER 14, 1996 VOLUME 5- MORNING SESSION (FILED 10/15/1996) | 1472-1529 |
| 16 | 6 | REPORTER'S TRANSCRIPT OF OCTOBER 14, 1996 VOLUME 5- AFTERNOON SESSION (FILED 10/15/1996) | 1351-1471 |
| 17 | | | |
| 18 | 6-7 | REPORTER'S TRANSCRIPT OF OCTOBER 15, 1996 VOLUME 6 (FILED 10/16/1996) | 1530-1700 |
| 19 | | | |
| 20 | 7 | REPORTER'S TRANSCRIPT OF OCTOBER 16, 1996 VOLUME 7 (FILED 10/17/1996) | 1750-1756 |
| 21 | | | |
| 22 | 7 | REPORTER'S TRANSCRIPT OF OCTOBER 21, 1996 PENALTY PHASE VOLUME 1- MORNING SESSION (FILED 10/22/1996) | 1757-1827 |
| 23 | | | |
| 24 | 8 | REPORTER'S TRANSCRIPT OF OCTOBER 21, 1996 PENALTY PHASE VOLUME 1- AFTERNOON SESSION (FILED 10/22/1996) | 1828-1952 |
| 25 | | | |
| 26 | 8 | REPORTER'S TRANSCRIPT OF OCTOBER 22, 1996 PENALTY PHASE VOLUME 2 (FILED 10/23/1996) | 1953-2061 |
| 27 | | | |
| 28 | 9 | REPORTER'S TRANSCRIPT OF OCTOBER 23, 1996 PENALTY PHASE VOLUME 3 (FILED 10/24/1996) | 2063-2122 |

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| 1 | 9 | REPORTER'S TRANSCRIPT OF OCTOBER 24, 1996 PENALTY PHASE VOLUME 4 (FILED 10/24/1996) | 2123-2133 |
| 2 | | | |
| 3 | 9 | REPORTER'S TRANSCRIPT OF DECEMBER 11, 1996 (FILED 12/12/1996) | 2172-2174 |
| 4 | 9 | REPORTER'S TRANSCRIPT OF DECEMBER 30, 1996 (FILED 12/31/1996) | 2179-2189 |
| 5 | | | |
| 6 | 10 | REPORTER'S TRANSCRIPT OF NOVEMBER 8, 1999 STATE'S MOTIONS (FILED 1/13/2000) | 2363-2365 |
| 7 | | | |
| 8 | 10 | REPORTER'S TRANSCRIPT OF NOVEMBER 15, 1999 (FILED 11/16/1999) | 2354-2356 |
| 9 | 10 | REPORTER'S TRANSCRIPT OF DECEMBER 15, 1999 (FILED 12/16/1999) | 2360-2362 |
| 10 | | | |
| 11 | 10 | REPORTER'S TRANSCRIPT OF JANUARY 19, 2000 STATUS CHECK (FILED 2/29/2000) | 2366-2370 |
| 12 | | | |
| 13 | 10 | REPORTER'S TRANSCRIPT OF JUNE 27, 2000 (FILED 6/28/2000) | 2371-2373 |
| 14 | 11 | REPORTER'S TRANSCRIPT OF NOVEMBER 6, 2000 HEARING: WRIT (FILED 12/23/2002) | 2651-2654 |
| 15 | | | |
| 16 | 10 | REPORTER'S TRANSCRIPT OF JUNE 12, 2001 (FILED 6/13/2001) | 2400-2402 |
| 17 | | | |
| 18 | 10 | REPORTER'S TRANSCRIPT OF JULY 26, 2001 STATUS CHECK ON BRIEFING SCHEDULE (FILED 8/28/2001) | 2403-2404 |
| 19 | | | |
| 20 | 10 | REPORTER'S TRANSCRIPT OF JULY 25, 2002 HEARING: WRIT (FILED 8/19/2002) | 2544-2549 |
| 21 | | | |
| 22 | 11 | REPORTER'S TRANSCRIPT OF SEPTEMBER 13, 2002 (FILED 9/24/2002) | 2554-2621 |
| 23 | 11 | REPORTER'S TRANSCRIPT OF APRIL 2, 2004 DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS (FILED 7/23/2004) | 2774-2779 |
| 24 | | | |
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| 26 | 12 | REPORTER'S TRANSCRIPT OF JULY 17, 2006 STATE'S REQUEST PER SUPREME COURT REMITTITUR (FILED 2/13/2007) | 2924-2926 |
| 27 | | | |
| 28 | 12 | REPORTER'S TRANSCRIPT OF JULY 25, 2006 (FILED 2/9/2007) | 2912-2914 |

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| 1 | 12 | REPORTER'S TRANSCRIPT OG OCTOBER 3, 2006 HEARING ON MOTIONS (FILED 2/9/2007) | 2918-2920 |
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| 3 | 12 | REPORTER'S TRANSCRIPT OF NOVEMBER 2, 2006 HEARING ON DEFENDANT'S MOTIONS (FILED 2/9/2007) | 2921-2923 |
| 4 | | | |
| 5 | 12 | REPORTER'S TRANSCRIPT OF NOVEMBER 16, 2006 RE: HEARING ON DEFENDANT'S MOTIONS (FILED 2/9/2007) | 2915-2917 |
| 6 | | | |
| 7 | 12 | REPORTER'S TRANSCRIPT OF JANUARY 11, 2007 PRE-PENALTY PHASE MOTIONS (FILED 2/20/2007) | 3012-3031 |
| 8 | | | |
| 9 | 16 | REPORTER'S TRANSCRIPT OF JANUARY 11 PRE-PENALTY MOTIONS (FILED 4/9/2007) | 3833-3853 |
| 10 | | | |
| 11 | 13 | REPORTER'S TRANSCRIPT OF MARCH 14, 2007 MORNING SESSION (FILED 3/15/2007) | 3047-3166 |
| 12 | | | |
| 13 | 13 | REPORTER'S TRANSCRIPT OF MARCH 14, 2007 AFTERNOON SESSION (FILED 3/15/2007) | 3167-3222 |
| 14 | | | |
| 15 | 14 | REPORTER'S TRANSCRIPT OF MARCH 15, 2007 MORNING SESSION (FILED 3/16/2007) | 3268-3404 |
| 16 | | | |
| 17 | 13 | REPORTER'S TRANSCRIPT OF MACH 15, 2007 AFTERNOON SESSION (FILED 3/16/2007) | 3223-3267 |
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| 19 | 14-15 | REPORTER'S TRANSCRIPT OF MARCH 16, 2007 MORNING SESSION (FILED 3/19/2007) | 3450-3627 |
| 20 | | | |
| 21 | 14 | REPORTER'S TRANSCRIPT OF MARCH 16, 2007 AFTERNOON SESSION (3/19/2007) | 3405-3449 |
| 22 | | | |
| 23 | 15 | REPORTER'S TRANSCRIPT OF MARCH 19, 2007 PENALTY HEARING (FILED 3/20/2007) | 3630-3736 |
| 24 | | | |
| 25 | 16 | REPORTER'S TRANSCRIPT OF MARCH 20, 2007 PENALTY HEARING (FILED 3/21/2007) | 3765-3818 |
| 26 | | | |
| 27 | 16 | REPORTER'S TRANSCRIPT OF MARCH 21, 2007 PENALTY HEARING VERDICT (FILED 3/22/2007) | 3819-3830 |
| 28 | | | |

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| 1 | 12 | REQUEST FOR PREPARATION OF TRANSCRIPT OF PROCEEDINGS (FILED 2/6/2007) | 2906-2911 |
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| 3 | 16 | REQUEST FOR PREPARATION OF TRANSCRIPT OF PROCEEDINGS (FILED 5/17/2007) | 3862-3866 |
| 4 | | | |
| 5 | 9 | SPECIAL VERDICT (FILED 10/24/1996) | 2168-2169 |
| 6 | 9 | SPECIAL VERDICT (FILED 10/24/1996) | 2170-2171 |
| 7 | | | |
| 8 | 15 | SPECIAL VERDICT (FILED 3/21/2007) | 3737-3737 |
| 9 | 15 | SPECIAL VERDICT (FILED 3/21/2007) | 3738-3738 |
| 10 | | | |
| 11 | 15 | SPECIAL VERDICT (FILED 3/21/2007) | 3739-3740 |
| 12 | 12 | STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR DISCOVERY OF POTENTIAL PENALTY HEARING EVIDENCE (FILED 9/29/2006) | 2888-2889 |
| 13 | | | |
| 14 | 12 | STATE'S OPPOSITION TO DEFENDANT'S MOTION IN LIMINE TO LIMIT PENALTY HEARING EVIDENCE TO AVOID VIOLATION (FILED 9/29/2006) | 2895-2897 |
| 15 | | | |
| 16 | 12 | STATE'S OPPOSITION TO DEFENDANT'S MOTION TO ALLOW JURY QUESTIONNAIRE (FILED 9/29/2006) | 2886-2887 |
| 17 | | | |
| 18 | 12 | STATE'S OPPOSITION TO DEFENDANT'S MOTION TO BIFURCATE PENALTY PHASE (FILED 9/26/2006) | 2893-2894 |
| 19 | | | |
| 20 | 12 | STATE'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS STATE'S NOTICE OF INTENT TO SEEK DEATH PENALTY (FILED 9/29/2006) | 2881-2883 |
| 21 | | | |
| 22 | 12 | STATE'S OPPOSITION TO DEFENDANT'S MOTION TO REMAND FOR CONSIDERATION BY THE CLARK COUNTY DISTRICT ATTORNEY'S DEATH REVIEW COMMITTEE (FILED 9/29/2006) | 2884-2885 |
| 23 | | | |
| 24 | 12 | STATE'S OPPOSITION TO DEFENDANT'S MOTION TO STRIKE SEXUAL ASSAULT AGGRAVATOR (FILED 9/29/2006) | 2890-2892 |
| 25 | | | |
| 26 | 20 | STATE'S OPPOSITION TO MOTION FOR LEAVE TO CONDUCT DISCOVERY | |
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| 1 | (FILED 5/16/2012) | 4479-4485 |
| 2 | 20 | |
| 3 | STATE'S OPPOSITION TO MOTION FOR AUTHORIZATION TO OBTAIN EXPERT SERVICES AND PAYMENT OF FEES (FILED 5/16/2012) | 4468-4473 |
| 4 | 20 | |
| 5 | STATE'S OPPOSITION TO MOTION FOR AUTHORIZATION TO OBTAIN SEXUAL ASSAULT EXPERT AND PAYMENT OF FEES, AND OPPOSITION TO MOTION FOR INVESTIGATOR AND PAYMENT FEES (FILED 5/16/2012) | 4474-4478 |
| 6 | | |
| 7 | 20 | |
| 8 | STATE'S RESPONSE TO DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS AND DEFENDANT'S SUPPLEMENTAL BRIEF (FILED 5/16/2012) | 4431-4467 |
| 9 | 10 | |
| 10 | STATE'S RESPONSE TO DEFENDANT'S SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS (FILED 6/19/2002) | 2481-2520 |
| 11 | 9 | |
| 12 | STIPULATION AND ORDER (FILED 5/27/1997) | 2207-2257 |
| 13 | 11 | |
| 14 | STIPULATION AND ORDER EXTENDING TIME (FILED 9/2/2003) | 2726-2727 |
| 15 | 1 | |
| 16 | STIPULATION REGARDING BRIEFING SCHEDULE (FILED 3/27/1996) | 208-209 |
| 17 | 4 | |
| 18 | STIPULATION TO CERTAIN FACTS (FILED 10/10/1996) | 844-845 |
| 19 | 2 | |
| 20 | SUMMARY OF JUROR QUESTIONNAIRE DEVELOPMENTS (FILED 10/4/1996) | 342-353 |
| 21 | 20 | |
| 22 | SUPPLEMENTAL BRIEF IN SUPPORT OF DEFENDANT'S WRIT OF HABEAS CORPUS (FILED 2/15/2012) | 4562-4643 |
| 23 | 9 | |
| 24 | SUPPLEMENTAL INSTRUCTION (FILED 10/24/1996) | 2165-2166 |
| 25 | 10 | |
| 26 | SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS (FILED 4/30/2002) | 2417-2480 |
| 27 | 9 | |
| 28 | VERDICT (FILED 10/24/1996) | 2167-2167 |
| | 15 | |
| | VERDICT (FILED 3/21/2007) | 3741-3741 |
| | 7 | |
| | VERDICT-COUNT I (FILED 10/16/1996) | 1747-1747 |
| | 7 | |
| | VERDICT- COUNT II (FILED 10/16/1996) | 1748-1748 |

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| 1 | 7 | VERDICT - COUNT III (FILED 10/16/1996) | 1749-1749 |
| 2 | 9 | WARRANT OF EXECUTION (FILED 12/31/1996) | 2193-2197 |
| 3 | | | |
| 4 | 16 | WARRANT OF EXECUTION (FILED 5/10/2007) | 3857-3859 |
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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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