

1 Q. Were you responsible for arranging that?
 2 A. Uh-huh.
 3 Q. Is that "yes"?
 4 A. Yes.
 5 Q. You had to make arrangements to move her
 6 body from Las Vegas to Michigan?
 7 A. Right.
 8 Q. Did you incur all of the expenses for
 9 that?
 10 A. Yes.
 11 Q. I assume you and the three children went
 12 back for the service?
 13 A. Yes.
 14 Q. Did you pay for that?
 15 A. Yes.
 16 Q. How did you pay for all of that?
 17 A. I borrowed on my life insurance, got money
 18 out of my savings, different places.
 19 Q. Since Debbie was killed, you've had the
 20 children with you?
 21 A. Yes.
 22 Q. You raised them for the last ten years?
 23 A. I sure did.
 24 Q. Let's talk about JP. He's the oldest son?
 25 A. Yes.

229

1 Q. How did he react initially after his Mom was
 2 killed by James?
 3 A. He kept a lot of things in. When we first
 4 got him he said to me one night, he wanted sleeping pills.
 5 He said he couldn't sleep.
 6 Q. He was about 8 years old at the time?
 7 A. Yes. I said you'll be okay. I says,
 8 grandpa is going to be right here and I won't leave you.
 9 I said, I check on you all night long -- which I did with
 10 all the kids, because I couldn't sleep.
 11 And Anthony, who was 5, he would say things about
 12 Mom, but he just -- he wasn't registering everything.
 13 Q. What about Chantelle?
 14 A. Chantelle, she said she wanted to die so she
 15 could go to heaven and be with her Mom. And every night I
 16 used to -- I would rock her, read a story to her, she
 17 would always want me to sing to her about Mommy, tell her
 18 about her Mom.
 19 Q. JP, now is a young man, right?
 20 A. Yes. He graduated from high school. And he
 21 got a scholarship to go to community college in Tucson.
 22 Q. What does he like to do?
 23 A. JP taught himself to play guitar through the
 24 internet. He writes his own music. He has his own band.
 25 He taught Anthony how to play base guitar. And he is into

230

1 music.
 2 Q. What is Anthony doing now?
 3 A. Anthony likes video games, and he likes to
 4 skateboard. Stuff like that.
 5 Q. He is about 15 now?
 6 A. Yeah. Chantelle, she's -- Anthony is 17
 7 now. JP will be 19 next month. Chantelle is 15 now. And
 8 she does teenage girl things. She likes the fashions and
 9 talking on the phone with her girlfriends and things like
 10 that.
 11 Q. Do they know that -- do they say anything
 12 about their father, James Chappell?
 13 A. She don't want -- they don't want any
 14 mention of him. They get angry. When JP turned 18,
 15 through an attorney Mr. Chappell tried to contact JP
 16 through attorney with a letter, saying he wanted to start
 17 a relationship up with him now that he's an adult. I told
 18 JP that it was his choice. He just looked at me and said
 19 he didn't want to talk about it grandpa. He signed a
 20 letter, he wanted no contact and nothing at all, never.
 21 Q. Since in the time immediately following
 22 Debbie's death, did you have time as a mother to grieve
 23 yourself?
 24 A. No. I had -- I was just getting over my
 25 husband's death who died suddenly. I just shut myself in

231

1 my home because I missed him so much. We did everything
 2 together. And then I lost Debbie. And I had very little
 3 time because I had to concentrate on the kids and getting
 4 a pediatrician for them and getting them registered in
 5 school. I had very little time.
 6 Q. You did all of that?
 7 A. Yes.
 8 Q. Now, they seem to be doing well. Ones
 9 graduated?
 10 A. They're great kids. They don't get into
 11 trouble. No trouble at all with them going to school,
 12 very well-mannered. People tell me that all the time.
 13 Q. You're proud of them?
 14 A. Uh-huh.
 15 Q. Is that "yes"?
 16 A. Yes.
 17 Q. Ma'am, I'm putting on the overhead some
 18 photos that you provided to us of Debbie.
 19 The first one -- it's a group of photos, for the
 20 record, that's been marked a 136 -- State's 136, which
 21 we'd ask to admit.
 22 THE COURT: Any objection.
 23 MR. SCHIECK: No, your Honor.
 24 THE COURT: Those will be admitted.
 25 BY MS. WICKERLY:

232

1 Q. If you can describe the setting?
 2 A. This is Debbie and her girlfriends -- some
 3 friends.
 4 Q. When she was growing up?
 5 A. Yes.
 6 Q. What about this photo?
 7 A. This is Debbie's graduation from high
 8 school. And that's her cousin Tina.
 9 This is a picture of Debbie, and myself, and her
 10 grandfather -- my mother.
 11 This is a picture of Debbie and myself and my
 12 husband.
 13 That's a school photo of Debbie.
 14 Q. Grade school?
 15 A. Yes. That's another one.
 16 Q. These would have been when you she was
 17 living in Michigan?
 18 A. Yes. This is when we were -- I can't
 19 remember if that was in the upper peninsula. This was
 20 just an outing.
 21 Q. Family outing?
 22 A. Yes.
 23 Q. That's you and Debbie?
 24 A. Uh-huh.
 25 Q. Is that "yes"?

233

1 A. Yes, sorry. This is on Halloween. Debbie
 2 collected clowns. She loved clowns.
 3 Q. So that's her?
 4 A. This is Halloween dressed up as a clown.
 5 This is just a picture taken at home.
 6 Q. When she was a young girl?
 7 A. Yes. That's a picture of her and JP, yes.
 8 This was another outing that we had together.
 9 Q. That's you and your husband and Debbie?
 10 A. Yes.
 11 Q. Ma'am, did you prepare a statement for
 12 today's testimony?
 13 A. Yes.
 14 Q. Could you read that.
 15 A. "My name is Norma Penfield, and I live in
 16 Tucson, Arizona with my three grandchildren, Chantelle,
 17 JP, and Anthony."
 18 Debra Panos was my only child. We loved her so
 19 much, and we miss her dearly every day. In August of
 20 1995, I had just begun the grievance over losing my
 21 husband Dale, who passed away suddenly in 1993. He was my
 22 partner and my best friends, and it was devastating when I
 23 lost him. I closed myself in my home for almost two years
 24 grieving over his loss."
 25 "When I was contacted on August 31, 1995, that my

234

1 only child had been murdered, I thought someone was
 2 playing a really, really bad joke. I couldn't stay on the
 3 line to find out any details they could provide. All I
 4 knew was that someone said my daughter was dead."
 5 "My thoughts went to my grandchildren and I prayed
 6 to God to give me strength and energy I would need to
 7 endure this great tragedy"
 8 "But even with all of the energy and strength I
 9 had, I knew I would have to have a lot of help. I had to
 10 go to court to be granted legal guardian of the children
 11 to be able to bring them back to Arizona to reside with
 12 me. As not a young person at age 58, I only hoped I could
 13 give them the home and up bringing they deserved to have.
 14 I knew I had to be a parent, a grandparent, and more
 15 importantly now, their best friend. A friend they could
 16 trust and console with and be assured no harm would ever
 17 come to them."
 18 "I was fortunate to have my sister and her
 19 husband living in Tucson also. I don't know what I would
 20 have done without them. They were my left arm all the way
 21 through this tragedy. Their support and comfort and still
 22 is ever so greatly appreciated."
 23 "Debbie was so young and her death was
 24 brutal and senseless. I remember special instructions from
 25 the funeral home about appeal they needed so the wounds

235

1 did not show. I just can't imagine how one human being
 2 could be so harmful to another."
 3 "My family kept most of the details of her
 4 death to spare me further grief. Knowing my only child
 5 was gone was more than I thought I could possibly endure."
 6 I had some questions that ran through my
 7 mind daily, what and how can I explain to tell any of this
 8 to my grandchildren. How do you tell them they won't see
 9 their Mommy any more because something bad that had
 10 happened."
 11 "My granddaughter was only three at the
 12 time she lost her Mom and never understood where she went
 13 and why she couldn't see her anymore."
 14 "When she was told her Mom was dead, she
 15 believed she could resolve the problem by somehow dying
 16 herself and that she could go to heaven to see her."
 17 This isn't in the statement, but her
 18 brothers tried to tell her why she didn't want to die.
 19 "Debra was such a caring person about
 20 others. She loved her job as a 911 operator. She also
 21 had a special place in her heart for her grandfather who
 22 lived with her also. She had a feel for older people and
 23 children that I can't explain. There is so many ways that
 24 we all miss her so much. From a very young age where she
 25 was captured on the video along with her cousins and

236

1 family, it's hard to believe she is not with us."
2 "These videos and pictures are memories
3 saved for her children. The happy times and the sad times
4 they've had through their young lives. Without her, no
5 words can ever express."

6 "I am here in this court today on behalf
7 of myself and my grandchildren, and my family, and
8 Debbie."

9 MS. WICKERLY: Thank you, ma'am. No other
10 questions.

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

12 MR. SCHIECK: No questions, your Honor.

13 THE COURT: Thank you. Questions,
14 Leslie.

15 Would counsel approach, please.
16 (Discussion held at the bench.)

17 THE COURT: Did Debbie tell you or how did
18 you know that James was here in Las Vegas with her?

19 THE WITNESS: I really don't -- I can't
20 remember. I know it wasn't right away that I found out,
21 but I really can't remember.

22 THE COURT: What conversation did you have
23 with her about her safety.

24 THE WITNESS: I used to tell her all the
25 time when she would -- I -- in the back of my mind I knew

237

1 stuff was happening, and things she would say. I said,
2 Debbie, you're not going to change him. You have to do
3 something to get out. She would just say, Mom, his
4 grandmother kicked him out. There was always some excuse
5 she had to help him. I tried to tell her, he just had to
6 get away, get out, but she didn't listen.

7 THE COURT: All right. Thank you.

8 MS. WICKERLY, any questions.

9 MS. WICKERLY: No, your Honor.

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

11 MR. SCHIECK: No, your Honor.

12 THE COURT: Thank you. You may step
13 down.

14 The State have any other witnesses?

15 MR. OWENS: No further witnesses, your
16 Honor. We're resting with some reservation until we have
17 a chance to look at the evidence chart and make sure we
18 have everything in. I know 137 needs to be admitted.

19 THE COURT: All right. Any objection to
20 137, the packets of photographs and letters.

21 MR. OWENS: The letters.

22 MR. SCHIECK: No objection, your Honor.

23 THE COURT: 137 will be admitted.

24 THE COURT: We're back into the defense's
25 case in chief, ladies and gentlemen.

238

1 the defense may call a witness.

2 MR. SCHIECK: Thank you, your Honor. We
3 call Rick Chappell.

4 THE CLERK: You do solemnly swear the
5 testimony you are about to give in this action shall be
6 the truth, the whole truth, and nothing but the truth, so
7 help you God.

8 THE WITNESS: I do.

9 THE CLERK: State and spell your name for
10 the record.

11 THE WITNESS: Willy Chappell,

12 C-H-A-P-P-E-L-L.

13 DIRECT EXAMINATION

14 BY MR. SCHIECK:

15 Q. Where do you reside?

16 A. Lansing, Michigan.

17 Q. How long have you lived in Lansing?

18 A. All my life.

19 Q. You're related to James Chappell?

20 A. Yes, he's my brother.

21 Q. Older or younger?

22 A. Young.

23 Q. He's younger than you?

24 A. Yes.

25 Q. How old are you now?

239

1 A. 39.

2 Q. What year were you born?

3 A. '68 -- 1968.

4 Q. You were born in Lansing?

5 A. Yes.

6 Q. Do you recall when James was born?

7 A. Yes, '69.

8 Q. So he's a year younger than you?

9 A. Yes.

10 Q. And do you recall your mother at all?

11 A. Vaguely.

12 Q. Was there a point in time when your mother
13 was killed?

14 A. Yes.

15 Q. Do you recall when that was?

16 A. Not exactly, but I know it was in '73 --
17 1973.

18 Q. How old would you have been?

19 A. Close to three-and-a-half.

20 Q. James would have been a year younger?

21 A. Yes.

22 Q. Were you ever told of the circumstances
23 under which she was killed?

24 A. That she was hit by a sheriff's department
25 officer.

240

1 Q. In an automobile?
 2 A. Yes.
 3 Q. Automobile pedestrian conclusion?
 4 A. Yes.
 5 Q. Were you young enough to really know any of
 6 the details?
 7 A. No. I was kind of separated from those
 8 types of details.
 9 Q. Do you have any other brothers and sisters?
 10 A. Yes. I have an older brother and two older
 11 sisters, and one younger sister.
 12 Q. Your last name is Chappell?
 13 A. Yes.
 14 Q. Did you know your father?
 15 A. Yes and no, but --
 16 Q. When did you first meet your father?
 17 A. We were young. He just wasn't around
 18 much.
 19 Q. Did you reside with him?
 20 A. No. When I was younger before I could -- as
 21 far as my memory was concerned, I don't remember staying
 22 with him. I remember people telling us at one point in
 23 time I stayed with him.
 24 Q. Before your mother was killed?
 25 A. Yes.

241

1 Q. What about after your mother was killed, did
 2 you ever live with your father?
 3 A. No. I stayed with my grandmother.
 4 Q. What about James, did he ever live with his
 5 father?
 6 A. ~~A.~~ No.
 7 Q. Where did he live after your mother was
 8 killed?
 9 A. With our grandma.
 10 Q. You said you had an older sister?
 11 A. Yes.
 12 Q. And her name is?
 13 A. Carla.
 14 Q. Was she residing there also?
 15 A. Yes.
 16 Q. And the younger sister?
 17 A. Yes.
 18 Q. And where did she reside?
 19 A. My grandmother's house also.
 20 Q. You said you had two other older brothers?
 21 A. No. One older brother and older sister.
 22 Q. Were they by Mr. Chappell or different
 23 fathers?
 24 A. One was by my father, Mr. Chappell, and one
 25 was just with another mother (sic).

242

1 Q. When your mother was killed, was it the four
 2 children that went to live with your grandmother?
 3 A. Yes.
 4 Q. And do you remember where it was that your
 5 grandmother resided?
 6 A. Yes.
 7 Q. Where was that?
 8 A. 1527 Neller Court.
 9 Q. In Lansing?
 10 A. Lansing, Michigan.
 11 Q. How long did you continue to live with your
 12 grandmother?
 13 A. Up until I was about 14 -- I believe 14.
 14 Q. James would have been 13 then?
 15 A. Yes.
 16 Q. Where did you go when you were 14?
 17 A. I went to a boys camp.
 18 Q. Were you getting in trouble as a
 19 youngster?
 20 A. Yes.
 21 Q. What type of trouble did you get into that
 22 caused you ultimately to end up in a boys camp?
 23 A. Breaking and entering.
 24 Q. Boys camp, is that like a juvenile
 25 facility?

243

1 A. State facility.
 2 Q. What type of discipline was used in your
 3 grandmother's house growing up before you went to boys
 4 camp?
 5 A. Very abusive.
 6 Q. Give us some examples.
 7 A. Broom sticks, bed board, extensions cords,
 8 hands.
 9 Q. Corporal punishment, you were actually
 10 stricken with those items?
 11 A. Yes.
 12 Q. Were any of the children stricken more than
 13 other children?
 14 A. Yeah.
 15 Q. Who was that?
 16 A. Me.
 17 Q. You were acting out, though?
 18 A. Yes.
 19 Q. Was there any male figure at all in the
 20 household where your grandmother lived?
 21 A. There was no figures, but not real
 22 examples.
 23 Q. What adult figures were there?
 24 A. A couple of uncles.
 25 Q. How were you doing in school up to the point

244

1 where you went to boys camp?
 2 A. Fair. Not really good.
 3 Q. Was your grandmother helpful in your
 4 schooling?
 5 A. No.
 6 Q. How was James doing in school, do you
 7 know?
 8 A. He didn't do as well either in school. He
 9 went to another type of school, special ed school at that
 10 point.
 11 Q. Do you recall when he first started going to
 12 the special ed school?
 13 A. I think it was late elementary, I believe.
 14 Q. You recall what elementary school James went
 15 to?
 16 A. I don't know the name of the school.
 17 Q. What Elementary school did you go to?
 18 A. Morris Park Elementary.
 19 Q. Did James originally go to Morris Park
 20 also?
 21 A. Yes.
 22 Q. Then you said he went to a different
 23 school?
 24 A. Yes.
 25 Q. That school you don't know the name of?

245

1 A. No.
 2 Q. Did you ever help him with his school
 3 work?
 4 A. No.
 5 Q. You were his older brother.
 6 A. Well, I needed too much help with mine for
 7 me the help someone else. It really wasn't --
 8 Q. Say that again.
 9 A. I didn't too much help with mine, so I
 10 really --
 11 Q. Was your grandmother trying to help you with
 12 your homework?
 13 A. No. I asked her one time and she kind of
 14 called me niger or get your bad ass over there and sit at
 15 the table, and you already know how to do it, don't play
 16 with me, you do your own homework.
 17 Q. Were all the children treated that way with
 18 regard to their homework?
 19 A. Some more than others, but I think my little
 20 sister probably got more of the help than either one of
 21 us.
 22 Q. More of the help?
 23 A. Yeah.
 24 Q. What is the little sister's name?
 25 A. Mia.

246

1 Q. I'm showing you what has been marked as
 2 Defendant's E, and ask if you recognize what is depicted
 3 in "F"?
 4 A. Yeah, that's the school.
 5 Q. Is that the elementary school you and James
 6 attended?
 7 A. Yes.
 8 Q. James attended initially?
 9 A. Yes.
 10 Q. Is that the front of the school?
 11 A. Yes.
 12 Q. What's directly behind the school?
 13 A. The Board or Water and Light and a swimming
 14 pool.
 15 Q. Board of Water and Light?
 16 A. It's like an electrical, something to do
 17 with power in Lansing.
 18 Q. It's a power generating plant?
 19 A. Yes.
 20 Q. Are those pipes for the smoke stacks for the
 21 generating plant directly behind the elementary school?
 22 A. Yes.
 23 Q. This neighborhood on Nellers Court where you
 24 first lived with your grandmother along with your brothers
 25 and sisters, what kind of housing is that?

247

1 A. It was multi-cultural, but low income.
 2 Q. Was it well-kept?
 3 A. Some houses were. A lot of them wasn't.
 4 Q. Were there any vacant houses?
 5 A. Eventually it became a lot of vacant
 6 houses.
 7 Q. How did that come to pass?
 8 A. I guess really nobody wanted to live in that
 9 neighborhood, I suppose.
 10 Q. Did you guys continue to live in that
 11 neighborhood?
 12 A. I left first, because I went to a home.
 13 Later on my grandmother was forced to kind of move out, so
 14 to speak, because the state bought the property.
 15 Q. Was Nellers Court condemned?
 16 A. Yes, eventually.
 17 Q. You talked about various items that were
 18 used as punishment there in the house by your grandmother.
 19 You said extension cords?
 20 A. Yes.
 21 Q. Was James, to your knowledge, ever beaten
 22 with extension cords?
 23 A. Not to my knowledge. It's a possibility.
 24 Q. Were you?
 25 A. Yes.

248

1 Q. What other items?
 2 A. Bed boards, branches or switches, belts.
 3 Q. Was James beaten with those items?
 4 A. Yes, I believe so. Yes.
 5 Q. What about your sisters?
 6 A. Sometimes.
 7 Q. Would you say that was a nurturing
 8 environment that you were growing up in?
 9 A. No.
 10 Q. What about for James?
 11 A. Not really for the first three, basically.
 12 More for Mia.
 13 Q. Anything you attribute that to?
 14 A. Excuse me?
 15 Q. Anything you attribute that to?
 16 A. Just my own behavior really, my rebellious
 17 behavior.
 18 Q. Besides his difficulty in school due to his
 19 learning disability, did James have any other problems you
 20 were aware of?
 21 A. Yeah. As a youngster, I mean, dealing with
 22 his urine and stuff like that.
 23 Q. He had problems with his development?
 24 A. Yes.
 25 Q. After age 14, when you went off to the boys'

249

1 home, did you ever live again with James?
 2 A. No. I came back for visits, that's it.
 3 Q. So you had -- did you have any involvement
 4 in his growing up in his -- from the time you went to the
 5 boys' home?
 6 A. No. Just when we were there, you know. We
 7 just kind of helped each other, kind of grow up, so to
 8 speak. We had each other. My grandma worked a lot. She
 9 had a lot of other personal time to herself doing other
 10 things.
 11 Q. She paid a lot of attention to raising the
 12 children?
 13 A. Just when it came to needing certain things,
 14 so to speak, as far as like shelter, food, clothing. But
 15 as far as communication, no.
 16 Q. He didn't talk with the kids?
 17 A. No.
 18 Q. She didn't help with school work?
 19 A. No.
 20 Q. She got involved in any of their
 21 activities?
 22 A. No.
 23 Q. Did she get involved with any of their
 24 friends?
 25 A. Friends, no.

250

1 Q. Did -- while you were still there at the
 2 house, did Jim have friends?
 3 A. Yes.
 4 Q. Do you recall any of them?
 5 A. Yeah, Chris Ford, Fred Dean. It was one
 6 young guy he used to hang with that went to Morris Park.
 7 I can't remember his name. I used to take him -- James
 8 over to his house sometimes after school.
 9 Q. Were there drugs in the neighborhood?
 10 A. Yes.
 11 Q. Did you get involved with drugs?
 12 A. Yes, I did.
 13 Q. How old were you when you got involved with
 14 drugs?
 15 A. Probably 6th grade, 9 years old.
 16 Q. What about James?
 17 A. No.
 18 Q. Did you ever know him to become involved in
 19 drugs while you were still there?
 20 A. Not while I was there, no.
 21 Q. There were drugs in the neighborhood?
 22 A. Yes.
 23 Q. How do you know that?
 24 A. Because I knew pretty much everybody that
 25 stayed in the neighborhood.

251

1 Q. Were drugs sold in that neighborhood?
 2 A. Yes.
 3 Q. After you had went to the boys' home, you
 4 had some other problems in life as you matured?
 5 A. Yes.
 6 Q. In fact, you're a convicted felon?
 7 A. Yes.
 8 Q. When were you convicted?
 9 A. As far as the second time or --
 10 Q. Tell me your felony convictions?
 11 A. UDA, I drove away in a stolen vehicle. I
 12 think -- another was armed robbery was my last one.
 13 Q. You're on parole now?
 14 A. Yes.
 15 Q. How long did you serve in prison?
 16 A. 12 years.
 17 Q. Did you have such contact with James during
 18 that period of time?
 19 A. No. Just authorization through letters.
 20 Q. So you corresponded with him?
 21 A. Yes.
 22 Q. Did you know Debbie Panos?
 23 A. Yes.
 24 Q. Do you recall when you first met Debbie
 25 Panos?

252

1 A. Yes, just vaguely, you know. Jim went to
2 introduce her to me and that was it really.
3 Q. Did you get to observe the relationship
4 between James and Debra at all?
5 A. Yeah. They hung out a lot together, pretty
6 much.
7 Q. Did they get along?
8 A. Yes.
9 Q. Did you ever see problems between James and
10 Debra there in Lansing?
11 A. I didn't know.
12 Q. Did you ever see him be violent with her
13 there in Lansing?
14 A. No.

15 MR. SCHIECK: Court's indulgence,
16 please.

17 THE COURT: All right.

18 BY MR. SCHIECK:

19 Q. When -- while you were still living in the
20 house there on Nellers Court, or with your grandmother,
21 was there much supervision around the house, adult
22 supervision for the children?
23 A. Not really. Sometimes, but not really. Not
24 really.
25 Q. Can you be more descriptive?

253

1 A. Sometimes my uncles stayed there. They'd
2 leave and sometime we'd have to sit there and baby sit
3 ourselves.
4 Q. Which uncles would have been there?
5 A. Rodney something. In the beginning it was
6 Uncle Rodney, Uncle Anthony, before he got killed, and
7 Aunt Betty.
8 Q. You said your Uncle Anthony was killed?
9 A. Yes.
10 Q. Do you recall how old you were when he was
11 killed?
12 A. Not exactly.
13 Q. Was it before you went to boys' home?
14 A. Yes.
15 Q. Had he assumed -- was he performing any of
16 the adult male roles in the household for the kids?
17 A. To his ability, so to speak.
18 Q. He was trying?
19 A. Yeah.
20 Q. Do you recall how old James was when he was
21 killed?
22 A. He was young. I don't know exactly as far
23 as dates, ages.
24 Q. Were you able to tell whether or not the
25 death of your Uncle Anthony affected James?

254

1 A. It affected all of us really, because he
2 tried to be close to us the best that he could.
3 Q. So then he was taken away from you also?
4 A. Yes.
5 Q. Did that affect James?
6 A. Yeah, like I said it affected all of us
7 really.
8 Q. Did James talk about his mother?
9 A. Conversation about our mother wasn't really
10 a topic around the household, so to speak. I mean, it
11 just wasn't nothing to really be speaking about.
12 Q. Did your grandmother speak about it?
13 A. No. I would ask questions, but I was told
14 to shut up sometimes. I didn't remember -- I didn't know
15 nothing.
16 Q. So she didn't tell you anything about your
17 mother?
18 A. No.
19 Q. Did you learn things about your mother,
20 however?
21 A. I had to find out in the streets, so to
22 speak.
23 Q. What kind of things did you find out about
24 your mother?

25 A. That she was loving. She did care. She had
255
1 drug problems. She hung out a lot.

2 Q. She had a drug problem?
3 A. Yes.
4 Q. That's something you learned from people on
5 the street?
6 A. Yes.
7 Q. What about your father, was there any
8 discussion about your father in your grandmother's
9 house?
10 A. Yeah, real negative, no good niger. He was
11 always a liar. He was no good. You're going to be just
12 like your Dad. That type of stuff.
13 Q. Who was saying those types of things about
14 your father?
15 A. My grandmother. My auntie and my
16 grandmother.
17 Q. Did you ever hear them saying anything good
18 about you and James' father?
19 A. No.
20 Q. Did you ever hear them say anything good
21 about you and James' mother?
22 A. She wasn't really a topic, you know. I
23 mean, just the past five years that I really got to
24 understand you know, about my Mom, which I'm not clear on
25 some of those areas.

255

1 Q. You sister Carla, how is she doing?
 2 A. She's doing good right now. She's supposed
 3 to be going into rehab right now.
 4 Q. Does she have problems during her
 5 lifetime?
 6 A. Yes.
 7 Q. Drug problems?
 8 A. Yes.
 9 Q. Any other substance abuse problems?
 10 A. Just basically, cocaine.
 11 Q. Did you -- you had a substance abuse problem
 12 also?
 13 A. Yes. Marijuana, alcohol, and cocaine.
 14 Q. What about Mia?
 15 A. Mia was basically alcohol and marijuana, as
 16 far as I know. I have heard -- I heard that she did try
 17 cocaine. I'm not for sure. I haven't had a chance to ask
 18 if it's true or not. I heard about it.
 19 Q. The four children that were the children of
 20 your mother, your mother's name was Shirley, correct?
 21 A. Yes.
 22 Q. The four children of Shirley that were
 23 raised by your grandmother, you all had substance and drug
 24 and/or alcohol problems?
 25 A. Yes. To me it was like if you didn't have

257

1 drugs or did drugs you wasn't normal to me.
 2 Q. That's what came out of that household off
 3 of Neller Court?
 4 A. Yes.
 5 Q. Do you feel you have matured now?
 6 A. Yes.
 7 Q. Are you able to recognize the problems that
 8 you had in your childhood?
 9 A. Yes.
 10 Q. Do you feel that those are factored into the
 11 problems you got into?
 12 A. Yes. In a lot of ways how I thought about
 13 myself, about how you thought about society, and my
 14 upbringing because I was very angry. I was a very lonely
 15 individual. So a lot of my decisions played off of those
 16 emotional things that I had been through throughout my
 17 life.
 18 Q. Did you see that type of anger in James or
 19 did he deal with the situation differently?
 20 A. I think his was more of an internal anger
 21 that really needed to -- took a lot for him to really get
 22 angry or express it.
 23 Q. So he internalized a lot of his feelings?
 24 A. Yes. He wasn't really a communicative
 25 individual to express ourselves so, you know, we done it

258

1 in other ways.
 2 Q. Was he the kind of brother that would come
 3 to you and talk about his problems or be able to express
 4 his problems to you?
 5 A. No.
 6 Q. He would just hold it in?
 7 A. That was more like the whole household,
 8 whether it was grandmother, uncles, there was no
 9 expression of -- no one to go to, if we did have a
 10 problem.
 11 MR. SCHIECK: That's all I have.
 12 THE COURT: Cross.
 13 MS. WICKERLY: Thank you, your Honor.
 14 CROSS-EXAMINATION
 15 BY MS. WICKERLY:
 16 Q. Sir, you said you have three adult felony
 17 convictions?
 18 A. Yes.
 19 Q. Do you know the years you got those?
 20 A. I know like 1987, '86. Then there was 1990
 21 and 1994.
 22 Q. The first one in 1986, how old were you
 23 then, do the think?
 24 A. I just graduated.
 25 Q. So 18?

259

1 A. Yes.
 2 Q. James is younger than you, correct?
 3 A. Yes.
 4 Q. So about 15, maybe?
 5 A. 17.
 6 Q. But you said that you left home when you
 7 were 14?
 8 A. Yes.
 9 Q. Did you have a lot of contact with the
 10 family once you left home?
 11 A. Yeah. I mean, I would have like weekend
 12 visits, so-called furloughs to go to my grandmother's
 13 house and stay the weekend. But I had to return.
 14 Q. What about once you were 18, or a little
 15 older than that?
 16 A. I stayed with my aunt. And, I mean, I saw
 17 my brothers and sisters periodically.
 18 Q. When you say periodically, how often are you
 19 talking about?
 20 A. When I'd go over there or when we were out
 21 gathering we'd see each other.
 22 Q. Would it be a much as once a month or
 23 more?
 24 A. More than that, three or four times a month
 25 maybe.

260

1 Q. Your last conviction was for armed
2 robbery?
3 A. Yes.
4 Q. You went to prison for that?
5 A. Yes.
6 Q. When did you go into custody?
7 A. 1994.
8 Q. 1994.
9 A. October I believe.
10 Q. Were you -- had you ever visited James prior
11 to that in Tucson?
12 A. No. He came to me and stayed with me and my
13 wife at that time for a couple of weeks.
14 Q. Were you ever in Tucson with him and
15 Debbie?
16 A. No.
17 Q. I assume because of the date of your
18 conviction you were never around them in -- when they were
19 in Las Vegas?
20 A. No.
21 Q. Your testimony is that you never saw any
22 problems with them -- the two of them?
23 A. No. I mean, not really. I talked to Debbie
24 a few times. I talked with James a lot. I talked to them
25 both. Everybody has disagreements, but as far as I see,

261

1 no.
2 Q. You weren't aware of problems?
3 A. No.
4 MS. WICKERLY: Thank you.
5 THE COURT: Mr. Schieck.
6 MR. SCHIECK: If I could, your Honor.
7 REDIRECT EXAMINATION
8 BY MR. SCHIECK:
9 Q. You had made mention that at one point in
10 time James and Debbie were there in Lansing and stayed
11 with you and your wife?
12 A. No, James did. He stayed for a couple of
13 weeks. Debbie would call. She sent him some money down
14 to him and asked him to come back to Arizona.
15 Q. So James had already been to Tucson and came
16 to stay with you, and Debbie was calling him at your
17 house?
18 A. Yes.
19 Q. They were talking?
20 A. Yes.
21 Q. Then James went back to Tucson?
22 A. Yes.
23 Q. You said something about Debbie sent him
24 money to come back?
25 A. Yes.

262

1 Q. You're personally aware of that?
2 A. Yes.
3 Q. Do you have an estimate or recollection of
4 approximately what year that was?
5 A. My daughter was two, so that was -- she was
6 born in '92, so that was probably about -- I mean, she was
7 about a year old, about '93.
8 Q. JP was already born?
9 A. Yes.
10 Q. And do you know whether Anthony had been
11 born yet?
12 A. No, not that I know of. I learn about him
13 later.
14 MR. SCHIECK: That's all I have.
15 THE COURT: Ms. Wickerly.
16 MS. WICKERLY: Nothing further.
17 THE COURT: Thank you for your time Mr.
18 Chappell. You are excused.
19 THE WITNESS: Thank you.
20 THE COURT: Defense may call their next
21 witness.
22 MR. SCHIECK: We call Fred Dean.
23 THE CLERK: You do solemnly swear the
24 testimony you are about to give in this action, shall be
25 the truth, the whole truth, and nothing but the truth, so

263

1 I help you God.
2 THE WITNESS: I do.
3 THE CLERK: State and spell your name for
4 the record.
5 THE WITNESS: Fred Scott Dean, D-E-A-N.
6 DIRECT EXAMINATION
7 BY MR. SCHIECK:
8 Q. How old are you?
9 A. Currently 37. I'll be 38 next month.
10 Q. Where do you reside?
11 A. Currently Southfield, Michigan.
12 Q. Is that anywhere near Lansing?
13 A. An hour away. Basically the suburbs of
14 Detroit.
15 Q. Where did you grow up?
16 A. Lansing, Michigan.
17 Q. What was your address?
18 A. 147 East Barnes Avenue.
19 Q. Barnes Avenue?
20 A. Yes.
21 Q. B-A-R-N-E-S?
22 A. Yes.
23 Q. Did you know James Chappell?
24 A. Yes, I did.
25 Q. Do you see him here in court?

264

1 A. Yes, sir.
 2 Q. Where did James live in relation to you at
 3 your earliest recollection?
 4 A. Basically it was over the hill across the
 5 tracks from me, I would say about a block in walking
 6 distance. But we always cut through a pathway to get to
 7 his house.
 8 Q. So you said it's over a little hill and then
 9 across the railroad tracks?
 10 A. There was like homes, but we cut through the
 11 homes. Go over the top of the hill across the railroad
 12 tracks onto his street -- Nellers Court.
 13 Q. When you say a hill, we're not talking by a
 14 real hill are we?
 15 A. A hump type.
 16 Q. Do you recall the name of the street that
 17 was over that hump across the tracks?
 18 A. Nellers Court.
 19 Q. So how old were you in relation to James?
 20 Was he older, younger, or the same age?
 21 A. No, actually I was probably about 8 months
 22 older than James.
 23 Q. Were you in the same grade in school with
 24 James?
 25 A. Yeah. We were like the same grade pretty

265

1 much. We weren't in the same class.
 2 Q. Why weren't you in the same class?
 3 A. I guess, they pretty much basically
 4 differentiated between -- some people were able to be in
 5 certain grades or classes based on education or
 6 understanding comprehension. I don't know. Sometimes 5th
 7 and 6th grades together or just 5th grade. So just
 8 pretty much how they determined who they wanted where.
 9 Q. Were you ever aware of James being in
 10 special education classes?
 11 A. Yes.
 12 Q. You recall which school that was at?
 13 A. I think probably I know Morris Park. I
 14 believe it was Morris Park. And I can't say for sure, I
 15 think it was Briteless (ph) also. But I can't recall for
 16 sure. But those are two schools that we attended, Morris
 17 Park elementary and Briteless Junior High.
 18 Q. You went to Morris Park?
 19 A. Yes.
 20 Q. But you weren't in the same classes as James
 21 at Morris Park?
 22 A. No.
 23 Q. This has been admitted as Defendant's
 24 Exhibit F. Do you recognize what is depicted in that?
 25 A. Yes, sir, I do.

266

1 Q. Is that Morris Park Elementary?
 2 A. Yes, sir.
 3 Q. Does it appear about the same way it did
 4 when you went to Morris Park?
 5 A. Pretty much so.
 6 Q. Including the snow?
 7 A. That's Michigan.
 8 Q. You are familiar with the type of
 9 photographs they took when you were attending school in
 10 Michigan?
 11 A. Yes.
 12 Q. They took class -- pictures of the class and
 13 gave them to you every year?
 14 A. Yes, sir.
 15 Q. I'll show you what's been marked as
 16 Defendant's Exhibit G, H, and I. I'll ask if you
 17 recognize what these items are.
 18 A. Yes. These are classroom pictures.
 19 Q. That's G, H -- are you familiar with
 20 Forestview School?
 21 A. Yeah. That was a different type of school
 22 versus Morris Park.
 23 Q. What type of school was Forestview?
 24 A. Part of the special ed class, if I recall
 25 right.

267

1 Q. Then Defendant's "I" you're familiar with
 2 Maple Grove?
 3 A. I'm familiar with the school, but I don't
 4 know much about Maple Grove.
 5 Q. Did you attend that school?
 6 A. No.
 7 Q. You stayed at Morris Park?
 8 A. Yes. Kindergarten through 6th grade.
 9 Q. You recognize these as standard school
 10 photographs from the Lansing, Michigan area?
 11 A. Yes, sir.
 12 Q. You recognize those three schools?
 13 A. Yes, sir.
 14 Q. Did you recognize James in these
 15 photographs?
 16 A. Yes.
 17 MR. SCHIECK: I move for admission of G,
 18 H, and I.
 19 THE COURT: Any objection.
 20 MR. OWENS: No, your Honor.
 21 THE COURT: Those will be admitted.
 22 BY MR. SCHIECK:
 23 Q. I'm going to put "G" up here. Appears to be
 24 from Morris Park for 1979 to 1980. Do you recognize the
 25 principal at all?

268

1 A. Yeah.
 2 Q. He was principal when you were there too?
 3 A. Yes, sir.
 4 Q. Do you recognize James in these group
 5 photographs?
 6 A. And a few other people now that you put it
 7 up there.
 8 Q. Let's stay on James, okay. Which is James?
 9 A. That looks like James.
 10 Q. Let me focus in a little bit. It will be
 11 easier to do it this way.
 12 A. There he is.
 13 Q. So the lower right-hand corner is James?
 14 A. Correct.
 15 Q. Then that was Morris Park which would have
 16 been the same school you were attending?
 17 A. Correct.
 18 Q. For the '79 and '80 school year?
 19 A. Correct.
 20 Q. I'll show you Defendant's "H". This refers
 21 to the Forestview school. You said you thought that was
 22 the special education school?
 23 A. Yes.
 24 Q. Is James also depicted in that?
 25 A. Yep.

269

1 Q. You never attended Forestview School?
 2 A. No, sir.
 3 Q. Is James depicted in that photograph?
 4 A. Yes, sir.
 5 Q. Is this him at the bottom?
 6 A. Right next to Mike Williams.
 7 Q. Well --
 8 A. James.
 9 Q. Okay. Then Maple Grove Elementary School,
 10 you attended also in the years '81, '82 school year?
 11 A. Yes, sir.
 12 Q. You never went to Maple Grove?
 13 A. No, sir.
 14 Q. Do you know why James would have attended
 15 three different elementary schools in three different
 16 school years if he was still living there in Sellers
 17 Court, a block away from you?
 18 A. I can't say specifically why, no. I
 19 couldn't tell you.
 20 Q. Do you know if it relates to his special
 21 education classes?
 22 A. That is what we assumed because everybody
 23 else attended Morris Park. So we assumed.
 24 Q. Did you hang out with James?
 25 A. Yes, sir.

270

1 Q. How often would you see him during that
 2 period of time while you were living on Barnes and he was
 3 on Sellers Court?
 4 A. Pretty much daily.
 5 Q. What type of things would you guys do?
 6 A. At what stage, because as you can see from
 7 the childhood up to about teenage years, high school we
 8 were friends and hung out together. So at what stage,
 9 because different stages we did different things.
 10 Q. Just during the elementary school years,
 11 what kind of things did you do?
 12 A. Typical stuff, hang out, play, have fun,
 13 just typical kid stuff.
 14 Q. Were you -- he lived with his grandmother,
 15 correct?
 16 A. Yes, sir.
 17 Q. Were you over at his house -- his
 18 grandmother's house often?
 19 A. Just about every day.
 20 Q. Was his grandmother home when you were over
 21 there?
 22 A. No, sir.
 23 Q. Why not?
 24 A. That wasn't allowed.
 25 Q. What do you mean it wasn't allowed?

271

1 A. I mean, pretty much they weren't allowed to
 2 have company until she wasn't there.
 3 Q. What would you do when you would go over
 4 there when she wasn't there?
 5 A. Move the furniture out, break dance, just --
 6 as we got older, drink, party, teenage growing up
 7 things.
 8 Q. Was there any supervision for the kids in
 9 the neighborhood that would come over there when
 10 grandma wasn't present?
 11 A. No, because we weren't supposed to be there,
 12 so we were our own supervision.
 13 Q. Was there anybody there supervising James or
 14 his sisters for awhile his brother?
 15 A. I guess Ricky was the supervision, or Willy
 16 his brother -- older brother.
 17 Q. Is that the gentleman that just left?
 18 A. Yes, sir.
 19 Q. So as far as you could tell Ricky was the
 20 supervision that was supposed to be watching his younger
 21 brother and younger sister at the house?
 22 A. Yeah. They have an older sister Carla, but
 23 it was pretty much Ricky.
 24 Q. Was Carla around much during that period of
 25 time?

272

1 A. No. She's a little older, so she was pretty
2 much doing her own thing.
3 Q. Other than what supervision was being
4 provided by Rick, was there any other adult supervision
5 around?
6 A. No, sir.
7 Q. Were there any adult males that were in the
8 household that were there to make sure things were going
9 okay?
10 A. No. He had an uncle that come around from
11 time to time, not on a regular basis.
12 Q. What about his father, ever see his father
13 over there?
14 A. No, sir.
15 Q. Were you aware that his mother had been
16 killed when James was young?
17 A. Yes, sir. We didn't talk about that much,
18 but, yeah, I was aware of it. I tried to stay away from
19 that.
20 Q. You said the uncles came by occasionally.
21 Do you recall their names?
22 A. Some of them.
23 Q. Which do you recall?
24 A. Rodney, Phillip. He had an aunt named Ray.
25 And he had another uncle, but I don't recall much of him

273

1 because I was kind of young when he was killed.
2 Q. Was he killed there in the neighborhood?
3 A. I believe it was one street behind Mellers
4 Court. Herbert Street, if I recall correctly.
5 Q. To your knowledge was that a natural cause
6 of death or was that a violent death?
7 A. It was -- if I recall right, he was stabbed
8 to death.
9 Q. That's when you were how old?
10 A. I was young. I didn't remember much about
11 it. My older brothers, they knew more about it. I mean
12 far as me, I didn't remember much about the stabbing.
13 Q. You had talked about you weren't supposed to
14 be over there when grandma wasn't home?
15 A. Yes.
16 Q. You know what would happen if you got caught
17 over there?
18 A. I mean, pretty much she'd call my mom, and
19 I'd get in trouble, and he'd get in trouble from her.
20 Q. Did you ever see him get in trouble or hear
21 him get in trouble from his grandmother?
22 A. I heard about it. I didn't see it, but I
23 mean sometimes we'd even joke about it.
24 Q. About what?
25 A. About him getting whooped. That's what we'd

274

1 call it.
2 Q. Any particular type of item used to whip
3 him?
4 A. Extension cords, some of the electrical
5 extension cords, something like that. I said I didn't see
6 it so I couldn't tell you.
7 Q. You didn't stick around?
8 A. No, sir.
9 Q. Would Jim talk about that?
10 A. I think pretty much we all used to talk
11 about it -- a little about what was going on in each
12 household. It was mentioned, but not something like a
13 favor topic of ours.
14 Q. Was Jim a good talker during that period of
15 time?
16 A. What do you mean by that.
17 Q. Did he verbalize a lot of thing to you, sit
18 down and have a detailed conversation with you about what
19 was going on?
20 A. No, no. Like I said we pretty much didn't
21 try to -- just pretty much have fun, that was pretty much
22 our lifestyle.
23 Q. We talked about junior high school, getting
24 into high school years, what kind of things did you guys
25 do?

1 A. Pretty much tried to get some alcohol
2 illegally and marijuana.
3 Q. Was that going on?
4 A. Yeah.
5 Q. On Mellers court?
6 A. Yep. That was our main task.
7 Q. Even during the school year?
8 A. Yes, sir.
9 Q. Do you know how Jim was doing in school
10 during that period of time?
11 A. Grades really wasn't discussed. We knew he
12 was going to school, but we didn't get into, hey, I got an
13 A, you got a B. We went to school, pretty much just was
14 trying to graduate.
15 Q. Did Jim actually go to school on a regular
16 basis?
17 A. I mean, pretty much from what I recall.
18 Q. What about things that would go on during
19 school, was he doing anything inappropriate at school that
20 you can recall?
21 A. I can't say I can recall anything off the
22 top of my head that sticks out. Typically, I can't think
23 of anything at this point.
24 Q. Did there come a point in time when you
25 became acquainted with Debra Panos?

275

1 A. Yes, sir.
 2 Q. You recall when approximately?
 3 A. They moved from Nellers Court to South
 4 Lansing.
 5 Q. When you say they, who do you mean?
 6 A. Him, his sister Mira, and his grandmother,
 7 Rick is brother didn't move with them. Also I believe his
 8 uncle Rodney moved in with them at that time in the
 9 basement.
 10 Q. Do you know where they moved to?
 11 A. South side of Lansing, more middle class
 12 area call Wedgewood I believe was the name of the
 13 street.
 14 Q. How far was that from Nellers Court?
 15 A. It was pretty much considered the other side
 16 of town. Maybe a 15 minute drive, no more than that.
 17 Q. Did you still see James on a regular basis
 18 after he moved there?
 19 A. Yep.
 20 Q. How often would you see him?
 21 A. How much as I can get over there.
 22 Q. Would he still come over to the old
 23 neighborhood?
 24 A. Yes.
 25 Q. Was there a group of friends that sort of

277

1 hung out that started their in the old neighborhood and
 2 continued after James moved?
 3 A. Yes.
 4 Q. Who are the other guys that you pretty much
 5 hung out with?
 6 A. In the beginning just James Chappell, James
 7 Ford, myself, a couple other people, Terry Wallace, Terry
 8 Sanston, you know, just name a few.
 9 Q. What about Ivory Morrell?
 10 A. Ivory came later. He wasn't initially when
 11 they first moved over there, but he started hanging
 12 there.
 13 Q. He became one of the group also?
 14 A. Yeah. That was kind of -- Ivory kind of
 15 came in when I was going out.
 16 Q. You said that it was after grandpa and James
 17 and Mira moved over to Wedgewood that you first met
 18 Debra?
 19 A. Yes.
 20 Q. Do you recall where you met her at?
 21 A. I can't say exactly where I met her at. I
 22 couldn't say for sure exactly where it was.
 23 Q. Do you know whether she and James were
 24 seeing each other?
 25 A. I think that's why I met her. I didn't have

278

1 no knowledge of her before James.
 2 Q. Would you ever socialize with them?
 3 A. With James and Debbie?
 4 Q. Yes.
 5 A. Yeah.
 6 Q. What type of things were they doing
 7 together?
 8 A. Pretty much just hanging out. She was like,
 9 kind of became, I don't know, just a regular face around
 10 you know. She was around him so if we were around she was
 11 around. She would just be apart of the crew, pretty
 12 much.
 13 Q. She became like a steady girlfriend to
 14 James?
 15 A. Yes, sir.
 16 Q. Where were you guys hanging out at that
 17 point in time?
 18 A. Somewhat his house, then he would come back
 19 to the old neighborhood with her.
 20 Q. So she was hanging around with James in the
 21 old neighborhood also?
 22 A. Yeah.
 23 Q. Same group of friends?
 24 A. Yes, sir.
 25 Q. Any problems?

279

1 A. In what regard?
 2 Q. With James and Debra that you ever
 3 observed?
 4 A. Then together?
 5 Q. Yes.
 6 A. No, sir.
 7 Q. Did they have transportation?
 8 A. The city bus.
 9 Q. What about you, did you have
 10 transportation?
 11 A. Yes, sir.
 12 Q. Did you ever provide transportation for
 13 them?
 14 A. Well, mostly it would be for Debbie if like
 15 she stayed over in our old neighborhood with James and
 16 it's too late for the bus I would -- he'd ask me to give
 17 her a ride back to her house. And the majority of the
 18 time either he didn't go back home, he would stay over
 19 there in the neighborhood, James house -- James Ford's
 20 house, or I'd give him and Debbie a ride back. But
 21 sometimes just Debbie. I'd drop her off at home.
 22 Q. At her parent's house?
 23 A. Yes, sir.
 24 Q. Would you ever drop James off there also?
 25 A. Her parent's house?

280

1 Q. Yes.
 2 A. No, sir.
 3 Q. Would you ever give them a ride to Wedgewood
 4 where his grandma was living at?
 5 A. I think so. I can't, you know, say for
 6 certain. But I know I would give them rides after the
 7 city bus would stop running. There may have been one or
 8 two occasions, I can't say for sure, for definitely.
 9 Q. Were they still going to high school at this
 10 point in time when you were giving them rides?
 11 A. It was either -- I'm thinking it was still
 12 in high school towards the end of high school year. I
 13 think pretty much probably where.
 14 Q. Did James complete high school to your
 15 knowledge?
 16 A. Not that I know of.
 17 Q. Did you know him to have jobs there in
 18 Lansing?
 19 A. I can't recall if he did or not.
 20 Q. Did there come a point in time when you sort
 21 of drifted away from that group of friends?
 22 A. Yes, sir.
 23 Q. When approximately was that?
 24 A. It was pretty much towards the end of the
 25 high school years. I graduated in 1987, and I started

281

1 getting involved with other people and into different
 2 things.
 3 Q. In '97?
 4 A. '87. I graduated in '87, and before that
 5 in -- towards and after that, I started getting involved
 6 with other people, doing some different things, that James
 7 weren't doing at the time.
 8 Q. You stopped hanging out with them?
 9 A. I would still see him, but I was -- wasn't
 10 as frequent.
 11 Q. Were you still seeing them at all when their
 12 first child was born, JP?
 13 A. Not that I recall.
 14 Q. You were pretty much out of the picture by
 15 then?
 16 A. My recollection, I can't -- I don't recall
 17 anything with their child or children at all.
 18 Q. You have been convicted of a felony,
 19 correct?
 20 A. Yes, sir.
 21 Q. What were you convicted of?
 22 A. Drug possession, and also -- basically it
 23 was two cases in one. It was state level and federal
 24 level also. But drug possession and also federal level,
 25 it was interstate drug trafficking.

282

1 Q. You became involved in drugs?
 2 A. Yes, sir.
 3 Q. And you have been in prison?
 4 A. Yes, sir.
 5 Q. And you are out of prison and employed
 6 now?
 7 A. Yes, sir.
 8 Q. And how are things going along now?
 9 A. I would call it a success story, in my
 10 personal opinion. I spent 12 years incarcerated in
 11 Michigan Department of Correction. I have been out four
 12 years now. I've been working at a job for a little less
 13 than three years. I have had three promotions. I am
 14 currently the supervisor for the Pontiac G-6.
 15 Q. You've got two brothers here?
 16 A. Yes, sir.
 17 Q. What are their names?
 18 A. Benjamin Dean and Charles Dean.
 19 Q. Do they still reside in Lansing?
 20 A. Yes, sir.
 21 Q. You are here to testify for James?
 22 A. Yes, sir.
 23 MR. SCHIECK: Thank you. Nothing
 24 further.
 25 THE COURT: Cross.

283

1 CROSS-EXAMINATION
 2 BY MR. OWENS:
 3 Q. You graduated from high school?
 4 A. Yes, sir.
 5 Q. Do you go to college?
 6 A. Briefly, after I was released from
 7 incarceration.
 8 Q. So when did you get incarcerated?
 9 A. 1991.
 10 Q. You have been out of high school since
 11 '87?
 12 A. Yes, sir.
 13 Q. What were you doing during that three or
 14 four year period before you were incarcerated?
 15 A. Before I was incarcerated?
 16 Q. Before you were incarcerated?
 17 A. Pretty much selling drugs, hanging out. I
 18 also had a job so I worked for Myers Store.
 19 Q. What kind of store?
 20 A. Myers grocery store. That's a big grocery
 21 clothing and different items of that nature. I actually
 22 worked for that like it was part of a high school co-op
 23 program so I was in high school and I would work -- go to
 24 school half the day and work half the day.
 25 Q. What did you do at the grocery store?

284

1 A. I first started as a bag boy, then I ended
2 up working in the grocery department.
3 Q. So you kind of moved up in there?
4 A. Yes, sir.
5 Q. You were selling drugs at the time you were
6 doing that?
7 A. Yes, sir.
8 Q. Were you able to hold down your and you were
9 involved in drugs?
10 A. Well, I wasn't working that much. Probably
11 basically six hours a week. It was part of a school work
12 program.
13 Q. Well, after high school were you still in
14 the school cooperative program?
15 A. No, sir.
16 Q. Were you still working at the grocery
17 store?
18 A. Yes, sir.
19 Q. How long did you work there?
20 A. I would say right to the time I got in
21 trouble.
22 Q. When you got caught?
23 A. Yes, sir.
24 Q. So for three or four years you were doing
25 things at the grocery store. What was your position

286

1 there?
2 A. Just grocery clerk, I guess, is what it was
3 called.
4 Q. Checking people through the line?
5 A. No, sir.
6 Q. Doing what?
7 A. Tagging, pricing, stocking -- stocking
8 clerk.
9 Q. At one point the defendant testified in this
10 case and said the reason he got back on drugs is because
11 of his friends. Are you one of the friends that got him
12 going on drugs again?
13 A. No, sir.
14 Q. That wasn't you?
15 A. Not to my knowledge. I didn't personally
16 hand him drugs.
17 Q. Which friend was it that got him going on
18 drugs?
19 A. I have no knowledge of that, sir.
20 Q. You don't know who he was talking about?
21 A. No, sir.
22 Q. How long were you in prison for?
23 A. 12 years.
24 Q. That's a long time?
25 A. Yes, sir.

286

1 Q. What kind of charges?
2 A. Like I said drug possession and the other
3 one was interstate drug trafficking.
4 Q. Were there other charges that were dismissed
5 as part of your deal there?
6 A. There was no pretty much deal. That was
7 just -- it was pled to the lesser charge versus the charge
8 that I was charged with, yes.
9 Q. So you pled to a lesser charge?
10 A. Yes.
11 Q. And the lesser charge was --
12 A. 12 to 30 -- well, it was 20 to 30, the judge
13 sentenced me to the 12 to 30.
14 Q. And that was a drug charge?
15 A. Yes, sir.
16 Q. What was the more serious charge that was
17 reduced?
18 A. I was trying to think of how they titled it,
19 possession of drugs over 650 grams.
20 Q. Was this cocaine?
21 A. Yes, sir.
22 Q. 650 grams is a lot of cocaine?
23 A. Yes, sir.
24 Q. So this was a trafficking quantity?
25 A. Yes, sir.

287

1 Q. And the minimum sentence would have been a
2 lot more severe if you hadn't done the deal?
3 A. When you say deal, what do you mean by that?
4 Q. Taken the lesser plea?
5 A. I would have been worse, yes sir.
6 Q. The neighborhood that you grew up in was
7 Sellers Court?
8 A. The street he actually lived on was Sellers
9 Court.
10 Q. What was the neighborhood call there?
11 A. I'm not sure what you mean by that.
12 Q. You didn't have a name for the neighborhood
13 area where you guys lived?
14 A. Not in particular that I can think of at
15 this point. It was just the neighborhood.
16 Q. What kind of neighborhood was it when you
17 were growing up?
18 A. A bunch of families, children. The
19 neighborhood that James lived in after they moved off of
20 there was lower income neighborhood.
21 Q. Sorry?
22 A. Basically a lower income neighborhood, based
23 on the neighborhood that he moved to versus the neighbor I
24 was in. It was considered a lower income neighborhood.
25 Q. The neighborhood that you were you in,

288

1 showing you Exhibit G -- defense exhibit, school photo
2 there. He moved into a better neighborhood after this
3 one?
4 A. After this grade, yes, sir.
5 Q. How old was he when he moved into the better
6 neighborhood?
7 A. I wouldn't know exactly how old he was. He
8 was older. He had to be at least high school, if I can
9 recall correctly.
10 Q. So it was quite a bit later?
11 A. Yes, sir.
12 Q. He was going to a regular high school when
13 he met Debbie?
14 A. Yeah, Lansing Sexton.
15 Q. Sorry?
16 A. Lansing Sexton.
17 Q. But it was not special education?
18 A. No. You don't have special education for
19 high schools.
20 Q. And the photo I've got up her, this was the
21 class that the Defendant was in back around 1979, 1980?
22 A. Yes, sir.
23 Q. This came out of the neighborhood that you
24 grew up in?
25 A. Yes, sir.

289

1 Q. What kind of neighborhood was that?
2 A. You asked me that before. I'm not sure
3 what -- I said just a family neighborhood.
4 Q. You said the one he moved into was nicer,
5 but this was not a bad neighborhood that he lived in?
6 A. The houses was low income.
7 Q. What were the people like?
8 A. Give me some particular, when you say what
9 were the people like.
10 Q. Well, they all grew up to be criminals?
11 A. I couldn't tell that you.
12 Q. Most of them grow up to be criminals?
13 A. You got to ask me about people I know.
14 Q. Was there a lot of drugs and violence and
15 things going on in the neighborhood?
16 A. On his street there was four drug houses on
17 the street, four weed houses. Yes, sir.
18 Q. What about the neighborhood that all these
19 kids went to school in, were there drug houses four to a
20 neighborhood?
21 A. Not in that area where the school is
22 located, no, sir.
23 Q. Was it just in the neighborhood on the
24 street where the Defendant lived that there were four drug
25 houses per street?

290

1 A. It was the next street over from me. There
2 was probably two weed house or marijuana houses.
3 Q. How many did you have on your street?
4 A. On my street, none.
5 Q. You got to admit the kids in the photo look
6 fairly happy?
7 A. Yes, sir.
8 Q. They look like fairly regular kids, don't
9 they?
10 A. Yes, sir.
11 Q. You talked about his grandmother. His
12 grandmother raised him?
13 A. Yes, sir.
14 Q. His sister, is that an older sister, Sheri?
15 A. No, sir, not that I know of. His sister --
16 he had a younger sister Mia, and an older sister Carla.
17 Those are the only two I'm familiar with. If there is
18 someone else, it's someone that wasn't around much.
19 Q. Well, his grandmother's name -- do you
20 remember his grandmothers name?
21 A. Clara Axam.
22 Q. Clara Axam, A-X-A-M?
23 A. Appears to sound right.
24 Q. She was pretty strict with him?
25 A. Yes, sir.

291

1 Q. He had a lot of rules?
2 A. Yes, sir.
3 Q. When she wasn't there, if there wasn't adult
4 supervision you moved the furniture?
5 A. Yes, sir.
6 Q. You'd have parties?
7 A. Yes.
8 Q. There would be rugs there?
9 A. Yes, sir.
10 Q. She didn't want his friends coming over
11 unless there was adult supervision?
12 A. Well, she didn't want his friends around
13 period. When she was there we didn't come over there.
14 Q. Okay. And the times you were there it was a
15 party, drugs, and things like that?
16 A. For the most part yes, sir.
17 Q. She didn't seem to think that was a really
18 good idea for him?
19 A. She didn't know about that.
20 Q. So why did she have that rule?
21 A. Why did she have what rule?
22 Q. About friends being over?
23 A. Because she didn't want her house tore up
24 apparently. That was just it. I couldn't tell you. I
25 couldn't speak for her.

292

1 Q. Did you know that she spoke for herself one
2 time in this case?

3 A. I think I was incarcerated, I think.

4 Q. So you weren't aware she testified
5 previously?

6 A. I knew she was out here. I don't know the
7 extent of that. I was incarcerated at that point, sir.

8 Q. And she had some rules that she applied in
9 her home, you're aware of that?

10 A. I'm aware all homes have rules, for that
11 matter, like I said.

12 Q. One of the rules is she didn't want his
13 friends coming over there at the house?

14 A. Obviously, so.

15 Q. Where did she work?

16 A. I want to say she worked in food services at
17 the Michigan State Police Post.

18 Q. She worked for the State Police Academy in
19 the State of Michigan?

20 A. It has something to do with the state
21 police.

22 Q. She was trying to raise her grand children,
23 right?

24 A. Yeah obviously so, sir.

25 Q. Because of her job she couldn't be home

293

1 during the day, right?

2 A. If you say so, sir. You wanted me to say --
3 are you telling me to say this or are you --

4 Q. I'm asking do you know this is true?

5 A. I know she had a job. I know that she was
6 raising her grand children, yes, sir.

7 Q. Did James have an aunt named Sheri?

8 A. Sheri, I mean, I hear the name Sheri, but
9 she's not one that was familiar with me. Like I said, I
10 can name other people in her family, Aunt Louise, and all
11 the other people, but Sheri is not somebody that was
12 around for the most part or a name that sounds familiar.

13 Q. Well, the Defendant's grandmother was asked
14 who would care for James while you were at work and it was
15 her testimony that her daughter Sheri would take care of
16 James?

17 A. I'm not familiar with Sheri.

18 Q. It's not ringing a bell. The Defendant's
19 grandmother, Clara Axam called your mother when you would
20 have these parties.

21 A. Is that so.

22 Q. You said that a few minutes ago?

23 A. I said what?

24 Q. She would call your mother?

25 A. I told you she would call my mother?

294

1 Q. When you have these parties sometimes.

2 A. I just told you that?

3 Q. Well, a few minutes ago?

4 A. What was the question?

5 Q. You remember saying that a few minutes
6 ago?

7 A. What was the questions? How did we lead up
8 to that?

9 Q. That was questioning for Mr. Schieck,
10 talking about these parties you would have and she could
11 come home and she was upset and she would call your
12 mother?

13 A. Yes. She would say something to my mother.
14 My mom and her were best friends, for that matter.

15 Q. She would call your mother and that would
16 get you in trouble?

17 A. I do remember that now.

18 Q. So she didn't just ignore the situation when
19 she found out about things, she did something about it?

20 A. Or if she found out about us being over,
21 yeah.

22 Q. She was kind of watching out for you too?

23 A. Yes, sir.

24 Q. Did you get in trouble?

25 A. I got in trouble many a time.

295

1 Q. How would you get in trouble?

2 A. How did I get in trouble. Typical
3 household, I'd get whooped.

4 Q. You'd get whooped, like the Defendant got
5 whooped?

6 A. Extension cords, the works.

7 Q. How did your parents do it?

8 A. How did my Mom do it?

9 Q. Yeah.

10 A. My mom raised me. She whooped me. That's
11 it. I don't understand.

12 Q. She use a hand?

13 A. I just said she used an extension cord,
14 whatever.

15 Q. Where would she whoop you?

16 A. My legs, my butt.

17 Q. Your backside?

18 A. Pretty much, if you're moving around you
19 subject to getting your backside hit.

20 Q. Was it doing any good with you?

21 A. Far as what?

22 Q. Her whooping you?

23 A. At the time it did.

24 Q. Did it help you to stay out of trouble, more
25 than you would have gotten into?

296

1 A. I couldn't say, sir. I ended up in prison.
 2 So I can't say that was the case.
 3 Q. You blame your mother for that?
 4 A. No, sir. I blame myself for that.
 5 Q. You think she didn't do a good enough job
 6 with you?
 7 A. I did think she did a great job, considering
 8 she's a single parent.
 9 Q. She did the best she could?
 10 A. Yes, sir.
 11 Q. You made some choices that she wasn't happy
 12 about?
 13 A. That is what it was.
 14 MR. OWENS: I don't have anything
 15 further.
 16 THE COURT: Mr. Schieck.
 17 REDIRECT EXAMINATION
 18 BY MR. SCHIECK:
 19 Q. Mr. Owens put up a picture of Morris Park
 20 from 1979 to 1980, how far is Morris Park Elementary
 21 School from Nellers Court?
 22 A. Distance, minutes, whatever, blocks?
 23 Q. Blocks, if you know?
 24 A. I would say roughly ten blocks.
 25 Q. Isn't it true that City of Lansing condemned

297

1 Nellers Court and tore it down?
 2 A. Yes.
 3 Q. There's not a single house there right
 4 now?
 5 MR. OWENS: Object, foundation.
 6 THE COURT: Overruled.
 7 MR. SCHIECK: Thank you. That's all I
 8 have, your Honor.
 9 THE COURT: Mr. Owens,
 10 BY MR. OWENS:
 11 Q. When did they condemn in and tear it down?
 12 A. I was incarcerated when it occurred. It
 13 started -- they would like slowly but surely there were
 14 houses that was being knocked down and you might have a
 15 house here and there. When it actually was totally
 16 condemned I was incarcerated.
 17 Q. How many years ago that was?
 18 A. I couldn't tell you. I would have no
 19 knowledge. I was incarcerated.
 20 Q. So you don't know when they started to tear
 21 it down?
 22 A. I was around when they started tearing it
 23 down. It was like a house here, and there might be like a
 24 house missing here, go down four blocks, a houses is
 25 missing there. So it was like it wasn't all once, but a

298

1 little at a time. Then when I left, I guess, that is when
 2 they told me they did away with it.
 3 Q. What's there now?
 4 A. What's there now?
 5 Q. Yes.
 6 A. Nothing but like a field like -- just pretty
 7 much a field I think. An empty field. The area that was
 8 behind Nellers Court, they did something with a parking
 9 lot. Nellers is empty at this point, if I recall.
 10 MR. OWENS: Nothing further.
 11 THE COURT: Mr. Schieck.
 12 MR. SCHIECK: No.
 13 THE COURT: All right. Hold on a second,
 14 sir.
 15 Counsel approach.
 16 (Discussion held at the bench.)
 17 THE COURT: Let me ask you, are you
 18 referring to back when the witness was growing up there,
 19 grade school age?
 20 IMPANELED JUROR: Yes.
 21 THE COURT: The question is -- let's see
 22 how much you paid attention in school.
 23 Do you know what the population of
 24 Lansing, Michigan was?
 25 THE WITNESS: When I was growing up?

299

1 THE COURT: Grade school age.
 2 THE WITNESS: No, sir.
 3 THE COURT: Do you have an estimate.
 4 THE WITNESS: Population of Lansing, as a
 5 whole, I wouldn't give a guess.
 6 THE COURT: Okay. Mr. Schieck, do you
 7 have any questions based upon mine?
 8 BY MR. SCHIECK:
 9 Q. I guess East Lansing is a separate portion
 10 of Lansing, is that fair?
 11 A. Yes.
 12 Q. That's where Michigan State is at?
 13 A. Yes, sir.
 14 Q. Without including East Lansing as part of
 15 that question, would you have an answer to that?
 16 A. I mean, it's hard to put a number on that
 17 based on just -- you got -- you got, like four high
 18 schools, a bunch of elementary schools. At the time you
 19 had four junior high schools, that's just children. You
 20 want the population. What, do you want me to throw a
 21 number out.
 22 MR. SCHIECK: Don't guess.
 23 THE WITNESS: I won't be able to say.
 24 THE COURT: Okay. Mr. Owens.
 25 MR. OWENS: No.

300

1 THE COURT: Mr. Dean, appreciate your
2 time. You may step down.
3 Defense -- actually approach real quick.
4 Sorry.
5 I should have asked you when you were up
6 here a moment ago.
7 We'll take a quick recess before we have a
8 couple more witnesses to get through this evening before
9 we break.
10 But I know we have been going on a couple
11 hours now. We'll recess and let you stretch and use the
12 restroom, then we'll finish up.
13 JURY ADMONITION
14 During the recess, ladies and gentlemen,
15 you are admonished not to converse among yourselves or
16 with anyone else, including, without limitation, the
17 lawyers, parties and witnesses, on any subject connected
18 with this trial, or any other case referred to during it,
19 or read, watch, or listen to any report of or commentary
20 on the trial, or any person connected with this trial, or
21 any such other case by any medium of information
22 including, without limitation, newspapers, television,
23 internet or radio.
24 You are further admonished not to form or
25 express any opinion on any subject connected with this

301

1 A. Benji. That's what they used to call me
2 growing up.
3 Q. Or Ben?
4 A. Yes.
5 Q. May I call you Ben?
6 A. Yes.
7 Q. Ben, do you know James Chappell?
8 A. Yes.
9 Q. Did you know him by another name growing
10 up?
11 A. Jimbo.
12 Q. That was his nickname?
13 A. Yes.
14 Q. Your -- are you brothers with Fred that was
15 just in here?
16 A. Yes.
17 Q. Are you older or younger than Fred?
18 A. Younger -- older than Fred.
19 Q. Do you remember when it was you met Jimbo?
20 A. I met him in elementary school.
21 Q. About the same time your brother did?
22 A. Yep.
23 Q. And you all lived right around the corner?
24 A. Yes.
25 Q. At that time he was living on Nellers

303

1 trial until the case is finally submitted to you.
2 (Brief recess take.)
3 THE COURT: Back on the record in
4 C-131341, State of Nevada versus James Chappell.
5 The record will reflect the presence of
6 Mr. Chappell, with his attorneys, the State's attorneys,
7 and our full jury.
8 We'll continue on with defense case in
9 chief.
10 Defense may call their next witness.
11 MR. PATRICK: We call Benjamin Dean, your
12 Honor.
13 THE COURT: Thank you.
14 THE CLERK: You do solemnly swear the
15 testimony you are about to give in this action, shall be
16 the truth, the whole truth, and nothing but the truth, so
17 help you God.
18 THE WITNESS: Yes.
19 THE CLERK: Be seated. State and spell
20 your name for the record.
21 THE WITNESS: Benjamin Dean, D-E-A-N.
22 DIRECT EXAMINATION
23 BY MR. PATRICK:
24 Q. Good afternoon, Mr. Dean. What -- do you go
25 by another name besides Benjamin?

302

1 Court?
2 A. Yes.
3 Q. Could you kind of explain Nellers Court for
4 us?
5 A. Nellers Court was a dead end street, and
6 basically it was surrounded by railroad track on both
7 sides, and also it you used be an old diamond real plant
8 that was over there that made the diamond real trucks.
9 But it was out of business, so basically just a big vacant
10 building and stuff.
11 Q. Do you remember what the houses were like?
12 A. There was a lot of abandoned houses, because
13 most of the residents there started to move out and stuff
14 because the houses were in bad condition and stuff so they
15 started moving out and going to different areas of the
16 city.
17 Q. Do you know what eventually happened to
18 Nellers Court?
19 A. They ended up just demolishing the whole
20 street.
21 Q. Do remember about when that was, what
22 year?
23 A. I'm not exactly sure what year it was.
24 Q. Now, you were part of group with your
25 brother and Jimbo and everybody that would hang out at

304

1 Jimbo's house?
 2 A. Yes.
 3 Q. Why Jimbo's house?
 4 A. Basically because there was no adult there,
 5 so we knew that we could party and hang out there and
 6 stuff like that and we didn't have to worry about somebody
 7 coming in and out, somebody grown coming in and out and
 8 stuff.
 9 Q. What about James' grandmother?
 10 A. We basically knew what time she went to work
 11 or what time she went to play bingo or to the track and
 12 stuff, we pretty much knew her schedule so we knew what
 13 time to be over there and what time to get out of there.
 14 Q. So she would go to work, then would she come
 15 home after work?
 16 A. Yeah. She'd come home, then I guess she'd
 17 do what she had to do, then go to the -- play bingo. She
 18 played bingo a lot.
 19 Q. How much nights a week would you think?
 20 A. Probably maybe four times a week, something
 21 like that.
 22 Q. Then you also mentioned the track. Could
 23 you explain what you mean by that?
 24 A. The railroad tracks.
 25 Q. No. You said grandma would play bingo and

305

1 go to the track?
 2 A. To the horse races. Jackson used to have
 3 the harness horse races.
 4 Q. Do you have any idea how many nights a week
 5 she would be gone for that?
 6 A. I'm not sure about that horse races --
 7 MR. OWENS: I'll object at this point.
 8 THE COURT: Sustained. Get more
 9 foundation.
 10 BY MR. PATRICK:
 11 Q. So you said you'd party at James' house?
 12 A. Yes.
 13 Q. And you said that was why, because there was
 14 no adult supervision?
 15 A. Yes.
 16 Q. What time period was this -- what grades
 17 were you in?
 18 A. Like around 7th grade, 8th grade, 9th
 19 grade.
 20 Q. How old were you all?
 21 A. 13, 14, 12, we all were like different ages
 22 and stuff.
 23 Q. So James was a little younger than you?
 24 A. Yes.
 25 Q. Do you know about how much younger?

306

1 A. Well, he's like three years younger, so he
 2 is probably about maybe -- he would probably been maybe
 3 12, or something like that.
 4 Q. You would be 15?
 5 A. Yes.
 6 Q. Then during this time that's when James'
 7 grandmother would spend nights at bingo or the horse
 8 track?
 9 A. Yes.
 10 Q. During this time when she was at bingo or
 11 the horse track, would there be any adults around the
 12 house?
 13 A. No.
 14 Q. And is that why you ~~was~~ hang out there and
 15 party?
 16 A. Yes.
 17 Q. Could you give us kind of an idea of what
 18 the partying would consist of?
 19 A. We'd basically smoke weed. And, you know, I
 20 mean we wasn't big drinkers but we drink now and then,
 21 basically played the Atari video games, watch MTV, watch
 22 music videos and stuff, you know, just goof around up in
 23 there.
 24 Q. Now, did you go to Morris Park Elementary
 25 School?

307

1 A. Yes.
 2 Q. But would not be in the same grade as
 3 James?
 4 A. No.
 5 Q. Showing you what is Defendant's Exhibit G,
 6 do you recognize James in this picture?
 7 A. Yes.
 8 Q. Could you point him out to us in this
 9 picture?
 10 A. Right there.
 11 Q. That is from '79 and '80. He was in third
 12 grade?
 13 A. Yes.
 14 Q. What grade would you have been in that
 15 year?
 16 A. 6th.
 17 Q. So you were about ready to leave Morris
 18 Park?
 19 A. Yep.
 20 Q. Then -- are you familiar with Forestview
 21 School?
 22 A. Yeah, I've heard of it.
 23 Q. Do you know what kind of school it was?
 24 A. I guess it was like in a better area, but
 25 it's an elementary school.

308

1 Q. Was there anything special about it being an
2 elementary school?

3 A. Not that I can think of.

4 Q. Were you ever aware of James being in any
5 special ed type classes?

6 A. Yes.

7 Q. Would you happen to know what years during
8 school he was in special ed?

9 A. I know he was in like a special ed class in
10 like elementary school.

11 Q. Would you know if Forestview would be a
12 special education type school or anything like that?

13 A. I have no knowledge of that.

14 Q. Now, again, this is Defense Exhibit R. And
15 this is school pictures from Forestview School. Do you
16 recognize James in that picture?

17 A. Yes.

18 Q. This is from 1990, '91?

19 A. Yes.

20 Q. So that would be -- he would be in 5th grade
21 then?

22 A. I believe so.

23 Q. And you had already been in junior high?

24 A. Yes.

25 Q. You didn't go to school with James that year?

309

1 A. No.

2 Q. Do you know either James Ford or Ivory
3 Morrell?

4 A. Yes.

5 Q. How do you know them?

6 A. James Ford, me and him went to school
7 together. And he grew up right across the street from me.
8 I met Ivory Morrell as I got older, like during my high
9 school years. I met Ivory through James Ford.

10 Q. Now did you and James Ford live on the same
11 street?

12 A. Yes.

13 Q. How close was that to Nellers Court?

14 A. About a block over.

15 Q. And during the time that you and James Ford
16 lived on the same street was Jimbo living on Nellers
17 Court?

18 A. Yes.

19 Q. Were the three of you pretty close
20 friends?

21 A. Yes.

22 Q. Do you know -- did you ever meet Debbie?

23 A. Yes, I did.

24 Q. How did you get to meet and know her?

25 A. I met her over to James Ford's house. That

310

1 is where I would see her the majority of the time would be
2 over at James Ford's house.

3 Q. Do you know why the majority of time you
4 would see her over at James Ford's house?

5 A. No. I just -- that's where I would see her
6 all the time, and, you know, James and Jimbo were really
7 close, so, you know, she would go over there with him and
8 stuff.

9 Q. Do you know if Jimbo and Debbie ever lived
10 at the Ford house?

11 A. I have heard that they did, that they stayed
12 there for awhile.

13 Q. Would you have any idea about what time
14 period this would and how old Jimbo was or what years?

15 A. No.

16 Q. Do you know any specifics about that?

17 A. No.

18 Q. Do you know about what age Jimbo was when he
19 started getting into drugs?

20 A. Probably like about 13, 14, somewhere like
21 that.

22 Q. At that point were you also doing drugs with
23 Jimbo?

24 A. Yes.

25 Q. What kind?

311

1 A. Marijuana.

2 Q. Did you guys spend a lot of time around
3 Jimbo and Debbie?

4 A. Just like I said, he would -- they would be
5 up at James Ford's house and, you know, I would be around
6 them then. But as far as like spending time outside that
7 area, no.

8 I used to work for this law school -- Cooley Law
9 School and Debbie worked somewhere downtown. I think it
10 was a utility company someplace like that. And James
11 would stop down sometimes and talk to me, because he would
12 be going down to take her -- take her some lunch or
13 something like that, take her food or whatever, so he
14 would stop down there and talk to me sometimes?

15 Q. Do you remember what year that would be?

16 A. I don't remember right off hand.

17 Q. Maybe how old you would have been?

18 A. Let me see, probably like around 20, 21, 22,
19 something like that.

20 Q. So that would have made James -- Jimbo
21 around 17 to 19?

22 A. Somewhere like that.

23 Q. From what you saw of Jimbo and Debbie
24 together how would you characterize their relationship?

25 A. I didn't see any problems with them, you

312

1 know, while I seen them together. I didn't see any
 2 problems.
 3 Q. Did -- at this time had JP been born, do you
 4 remember?
 5 A. Yes, uh-huh.
 6 Q. How were they as a family together from what
 7 you remember?
 8 A. She -- I know she would be over to James
 9 Ford's sometime. She'd have the baby in a stroller and
 10 stuff. I remember that much about it.
 11 Q. Now, growing up when you and Jimbo were in
 12 school, even though you didn't go to the same class, do
 13 you know what kind of reputation Jimbo had in grade school
 14 or junior high?
 15 A. I know he was always like -- like goofy
 16 like. Me, you know, got kind of like a little slow.
 17 Q. When you saw goofy, can you explain?
 18 A. I mean, he just, you know he was always
 19 doing like goofy stuff, like he would make up nicknames
 20 and stuff for everybody, for all have of us. We all had
 21 nicknames he would make up, goofy nicknames and stuff.
 22 Q. Would you characterize that -- say maybe a
 23 class clown?
 24 A. Yeah.
 25 Q. Now about Jimbo's temperament, did you see

313

1 him angry or violent?
 2 A. No. He was always like, I said, real goofy
 3 and just like doing stuff like that, you know. He was
 4 always like doing something to make people laugh and stuff
 5 like that, you know. Even way he used to dance, stuff
 6 like that, we used to watch MTV all the time and he could
 7 emulate Michael Jackson, Prince. He can sit there and do
 8 all their moves to the exact "T". He was just -- that's
 9 just how he was.
 10 MR. PATRICK: Court's indulgence.
 11 BY MR. PATRICK:
 12 Q. Did you know Jimbo to have any jobs?
 13 A. I was going to say he was cooking or doing
 14 something somewhere, but I'm sure. I want to say cooking
 15 somewhere.
 16 Q. But you don't remember whether -- or what
 17 time period that would have been?
 18 A. No.
 19 MR. PATRICK: That's all I have, your
 20 Honor.
 21 THE COURT: Cross.
 22 CROSS-EXAMINATION
 23 BY MR. OWENS:
 24 Q. It was your opinion, wasn't it, that Debbie
 25 was very controlling and demanding of Jim?

314

1 A. No, I never said that.
 2 Q. You felt she was very manipulative of him?
 3 A. I've never said that.
 4 Q. After their first child she didn't like for
 5 him to be around his old friends?
 6 A. I've never said that either.
 7 Q. Wasn't it your opinion that she wanted to
 8 keep James away from his friends in order to control
 9 him?
 10 A. Are you asking me how did I feel about the
 11 situation?
 12 Q. No. I'm asking you wasn't that your
 13 opinion?
 14 A. I've never said that.
 15 Q. Didn't think that she was often verbally
 16 abusive of James?
 17 A. I've never said that.
 18 Q. May I approach, your Honor?
 19 THE COURT: Yes.
 20 BY MR. OWENS:
 21 Q. Showing you the affidavit you signed in
 22 March 2003. Showing you the last page. You recognize
 23 your name there?
 24 A. Yes.
 25 Q. And the date?

315

1 A. Yes.
 2 Q. You signed that?
 3 A. Yes.
 4 Q. That was notarized?
 5 A. Yes.
 6 Q. Correct?
 7 A. Yes.
 8 Q. In that document you said that Debbie was
 9 controlling and demanding of him; isn't that true?
 10 A. That's what it says.
 11 Q. You also said in the affidavit that she was
 12 very manipulative of him, especially after the first
 13 child. Isn't that what you said?
 14 A. That's what it says.
 15 Q. You said that she did not like for him to be
 16 around his old friends. Isn't that what you said?
 17 A. Where -- yeah, that's what it said.
 18 Q. You said that she would often verbally abuse
 19 him; isn't that right?
 20 A. That's what it says.
 21 Q. Was that your affidavit?
 22 A. That was 2000 and something. I don't
 23 remember that, but --
 24 Q. You don't remember doing the affidavit?
 25 A. I remember speaking with a gentleman that

316

1 came and asked us questions about the case and stuff,
 2 but —
 3 Q. You signed it right?
 4 A. Yes, uh-huh.
 5 Q. That was your affidavit back in 2003?
 6 A. Okay.
 7 Q. Well, was it?
 8 A. Yeah.
 9 Q. It's not a forgery or something, is it?
 10 A. No.
 11 Q. That's it?
 12 A. Yep.
 13 MR. OWENS: That's all I have.
 14 THE COURT: Thank you. Mr. Patrick.
 15 MR. PATRICK: Nothing further, your
 16 Honor.
 17 THE COURT: Thank you, Mr. Dean. We
 18 appreciate your time, sir. You may step down.
 19 Defense may call their next witness.
 20 MR. PATRICK: We call Mira Chappell your
 21 Honor.
 22 THE COURT: Thank you.
 23 THE CLERK: You do solemnly swear the
 24 testimony you are about to give in this action, shall be
 25 the truth, the whole truth, and nothing but the truth, so

317

1 help you God.
 2 THE WITNESS: I do.
 3 THE CLERK: Be seated. State and spell
 4 your name for the record.
 5 THE WITNESS: Mira King, K-I-N-G.
 6 DIRECT EXAMINATION
 7 BY MR. SCHUECK:
 8 Q. Mrs. King, where do you reside?
 9 A. At 1216 West Ottawa Street, Lansing,
 10 Michigan.
 11 Q. How long have you lived in Lansing?
 12 A. All my life.
 13 Q. Are you related to James Chappell?
 14 A. Yes, sir.
 15 Q. How are you related to James?
 16 A. He's my brother.
 17 Q. Is James here in court today?
 18 A. Yes, sir.
 19 Q. Are you older or younger than James?
 20 A. Younger than James.
 21 Q. How much younger?
 22 A. I have believe two years.
 23 Q. When were you born?
 24 A. January 15, 1972.
 25 Q. When did your mother die?

318

1 A. I believe 1973. I was a year old.
 2 Q. Would it be fair to say you never met your
 3 mother?
 4 A. Yes, sir.
 5 Q. Not that you can recall?
 6 A. Yes, sir.
 7 Q. Where were you raised?
 8 A. 1527 Neller Court.
 9 Q. There in Lansing?
 10 A. Yes, sir.
 11 Q. Whose house was that?
 12 A. My grandmother's.
 13 Q. How long did you continue to live with your
 14 grandmother on Nellers Court?
 15 A. Until I was 12, then we moved.
 16 Q. Where did you move to?
 17 A. 3821 Wedgewood Drive.
 18 Q. While you were living on Nellers Court, who
 19 was residing in that household?
 20 A. Me, and James, Rick, and I do believe my
 21 sister Carla. But as we got older, I do believe she left
 22 the house.
 23 Q. Do you recall how old she was when she left
 24 the house?
 25 A. I do believe 16.

319

1 Q. How much older is she than you are?
 2 A. Five years. She's like 39.
 3 Q. Anyone else living in the house, besides the
 4 four children and grandmother?
 5 A. No, sir.
 6 Q. Any male figure living in the house?
 7 A. No, sir.
 8 Q. Did you have an uncle by the name of
 9 Rodney?
 10 A. Yes. But I do believe that -- I don't
 11 recall if my uncle Rodney lived there.
 12 Q. What became of uncle Anthony?
 13 A. He got killed.
 14 Q. Do you recall how old were when he got
 15 killed?
 16 A. I do believe I was 7 or 8.
 17 Q. Can you describe what it was like growing up
 18 in your grandmother house on Nellers Court when you and
 19 James were growing up?
 20 A. We didn't have to worry about clothes or
 21 food or lights and heat, but it was not an affectionate or
 22 attention house where a mother will kiss a child or say I
 23 love you or tuck you in bed or nothing like that. We
 24 never had that. She was very rarely there, because she
 25 worked a lot and when she didn't work she went to the

320

1 horse races or bingo, so we were primary there by
2 ourselves.

3 Q. Who was watching you, who was supposed to be
4 watching you?

5 A. We had one babysitter by the name of Marge,
6 but I do believe that my mother fired her so it was like
7 basically on our own.

8 Q. Is that pretty much the situation the whole
9 time I lived there on Nellers Court with your
10 grandmother?

11 A. Yes, sir.

12 Q. Now you said she did provide necessities for
13 the children?

14 A. Yes, sir.

15 Q. And she worked in order to do that?

16 A. Yes, sir.

17 Q. Did you have clothing?

18 A. Yes. But it was like the only time we did
19 get clothing was when it was like school or when summer
20 came around she might take us to get summer clothes, but
21 never like, I'm going to go out and buy you a shirt today,
22 because I seen something nice for you, No.

23 Q. What was the neighborhood -- what was the
24 neighborhood like on Nellers Court while you were growing
25 up with James?

321

1 A. Primarily kids did basically what they
2 wanted to do. I mean that was basically we all hung
3 together. We all did what we wanted to do basically.

4 Q. What were the conditions of the houses on
5 Nellers Court?

6 A. They were run down.

7 Q. You say run down, can you be more
8 descriptive?

9 A. I just -- I called it the hood. I mean,
10 basically every house had roaches. Basically every house
11 was run down, no good siding, no good paint in side the
12 homes, nothing.

13 Q. Were any of the homes empty and abandoned?

14 A. Yes, most of them. Yeah.

15 Q. Was this like a dead end or a cul-da-sac
16 type of --

17 A. Yes, you only get out one way.

18 Q. What was it the other way?

19 A. Like once we left our house you go to the
20 end of the road, but wasn't nothing there but trees and
21 brush. Then we can out to the right and go over the hill
22 be on the next street.

23 Q. Is that street where the Fords and the Deans
24 lived?

25 A. Yes, sir.

322

1 Q. Were there railroad tracks in the
2 neighborhood?

3 A. Sat right behind our house.

4 Q. Right behind your house, how close behind
5 your house?

6 A. Like right behind the house. If the train
7 comes by the house, you can feel the house vibrating.
8 That's how close it was.

9 Q. Were there trains that went by often?

10 A. Yeah. Primarily in the day, but not like
11 every hour. Maybe 4 to 5 hours, yeah.

12 Q. Was there one set of railroad tracks or more
13 than one?

14 A. I really can't say. The only thing I would
15 say is the railroad tracks went around by our house,
16 around the corner, and down wherever it went. So I say
17 one way, because they go this way, some come this way. But
18 not a double track like this, two tracks.

19 Q. You said that your grandmother worked and
20 provided with heat, clothing, and food for the house, but
21 the house was in bad shape, is that a fair statement?

22 A. That's a fair statement. But it was
23 clean.

24 Q. Who kept the house clean?

25 A. We did.

323

1 Q. What would take place while your grandpa was
2 at work or bingo somewhere else?

3 A. We probably be having music blasting
4 watching MTV. All the kids be at our house. It was like
5 a hangout house. Smoking weed, drinking, whatever we --
6 whatever we wanted to do.

7 Q. Did you have ever see James get any
8 affection or hugs from your grandmother?

9 A. None of us did.

10 Q. What about discipline, how did discipline
11 take place in the house there on Nellers Court?

12 A. I know James and my sister Carla and brother
13 Rick would get whooped by extension cords or switches.
14 She had us go get our own switches, or -- that's basically
15 it. She never really whooped me with an extension cord,
16 it was always a switch.

17 Q. When she would whip the others with
18 extensions cords, would that leave marks?

19 A. Yes, sir.

20 Q. You'd have to go to school with the marks?

21 A. Yes, sir.

22 Q. How often would that happen?

23 A. Whenever she felt like they were being
24 disciplined. If we got into her stuff, or if they did
25 something and it got reported to her. Other than that she

324

1 want there to really discipline you. If we got caught
2 doing something, yeah.

3 Q. What about verbal abuse, verbal discipline,
4 how would that go?

5 A. I don't think she ever had anything nice to
6 say, always stupid or idiot, or can't you do something
7 right. ~~Se was never the type of grandmother where if you~~
8 came in and said I have a good job, she wouldn't be like
9 that's good. She would be like, well, how long do you
10 think you're going to have it and stuff like that.

11 Q. How did James do in school.

12 A. I believe we all -- I know for a fact we all
13 did poorly in school.

14 Q. Who was the best in school out of the four
15 of you?

16 A. I really can't say because I know my brother
17 Rick did some college. I did some college, but it was
18 after the fact that I dropped out of 12th grade and went
19 back and got my GED. I really can't say who's the
20 smartest.

21 Q. Did Jim have problems in school?

22 A. Yes. I do believe that he was in special
23 ed.

24 Q. How did he handle that?

25 A. Uh, just like a normal kid. I mean, you

325

1 have no other choice to be where you are placed. ~~He~~
2 didn't like it because our friends would tease him because
3 we were all in regular classes.

4 Q. What kind of teasing would he get?

5 A. Called slow, or he just wasn't as smart as
6 everybody else was.

7 Q. What about your grandmother, how would she
8 refer to him?

9 A. Sometimes she call him stupid, or when it
10 was time for a conference to go to see his teachers she
11 never really had time to go to any of our conferences, so
12 I guess she just -- I can really say how she felt. But I
13 know that I don't think she put as much effort into it as
14 a mother should.

15 Q. Was it hard on her raising four kids at her
16 age?

17 A. From our point of view, I believe so. But I
18 don't think that it's that hard. I have six children of
19 my own and I love each one of my children. I tell them I
20 love them. I don't want them to be raised like I was
21 raised. I can't say if it was that hard for her.

22 Q. What about doing homework did she help with
23 homework?

24 A. No.

25 Q. Do you know where she worked at?

326

1 A. She work at Michigan State Police

2 Department. She was a cook.

3 Q. And did she continue to work there during
4 the entire time that you were living at home?

5 A. Yes, sir.

6 Q. What age did you move out of that
7 household?

8 A. I went to a girl's home at 14. I came home
9 when I was like 16. And I do believe I moved out when I
10 was 22. I had two kids and I move out and had my own
11 place.

12 Q. Did you have plans or hopes to move out
13 before than?

14 A. I can't really say. I just -- might have
15 had a thought and wishes that we can have a different type
16 of environment, or a different type of parent that raised
17 us with love and affection. I had no other place to go,
18 so that was the place I went.

19 Q. Did -- while you were growing up with James
20 there on Wellers Court, did you see him have problems with
21 being violent?

22 A. No.

23 Q. What kind of things would he be doing?

24 A. The same thing that we all be doing, acting
25 a fool, smoking, drinking, swimming. We did things that

327

1 regular kids, as far as that goes, but we misbehaved like
2 all kids do.

3 Q. Was there drug usage going on in the home?

4 A. Yes, sir.

5 Q. Was there anybody around to stop it?

6 A. No, sir.

7 Q. When did you come to realize that your
8 mother had been killed when you were very young?

9 A. I had to be like 15, because I was -- I
10 would hear things, but, you know, when you're young you
11 just hear, you don't -- but I was going through my
12 grandmother dressers one day, and I found the medical
13 thing, however it is, and I sat and read it. She never
14 gave us the details -- well, never gave me the details of
15 what transpired or how it transpired, whatever so when I
16 read the paper I knew for myself.

17 Q. She was killed in a -- she was a pedestrian
18 killed by a highway patrol car?

19 A. Yes, sir.

20 Q. Did your grandmother ever talked about your
21 mother or tell you about your mother?

22 A. No, sir.

23 Q. Was she ever even mentioned?

24 A. Very rarely. My aunt and uncle would
25 mention her, or, you know, my sister whatever. There were

328

1 pictures on the wall. I recall one picture because I had
2 that picture to this day. She never sat us down and said
3 this is your mom, she did this or done that. No.

4 Q. Is that the only picture you have of your
5 Mom?

6 A. Yes.

7 Q. Do you have a picture of your grandmother
8 also?

9 A. Yes, sir.

10 MR. SCHIECK: If I can approach, your
11 Honor.

12 THE COURT: Yes.

13 BY MR. SCHIECK:

14 Q. I'll hand you what's been marked as Exhibit
15 L?

16 A. That's my Mother.

17 Q. Is that the only picture you have of your
18 mother?

19 A. Yes.

20 Q. What about James, do you know if he has got
21 a picture of your mother?

22 A. No, sir. I'm only one who has this
23 picture.

24 MR. SCHIECK: I move for admission of L,
25 your Honor.

329

1 MR. OWENS: No objection.

2 THE COURT: Exhibit L will be admitted.

3 BY MR. SCHIECK:

4 Q. You know anything at all about the picture
5 other than it's a picture you have?

6 A. Nope. I couldn't tell you where she was,
7 what she was doing. I just happen to have that picture.
8 When my grandmother passed away, I took the picture.

9 Q. Do you have pictures of you and your
10 brothers and sister?

11 A. I have a big picture in the house I also
12 took when my grandmother passed away of all of us at Cedar
13 Point. I looked real young then, so I couldn't tell you
14 when it was taken.

15 MR. SCHIECK: Could I approach with them,
16 your Honor.

17 THE COURT: You may.

18 BY MR. SCHIECK:

19 Q. What is that?

20 A. Me, Rick, James, and Carla.

21 Q. Where was that picture taken?

22 A. Cedar Point.

23 Q. What is Cedar Point?

24 A. Like an amusement park with rides like Six
25 Flags. Just a big amusement ark.

330

1 Q. Is that the only picture you have with the
2 four of you?

3 A. Yes, sir.

4 MR. SCHIECK: I move for admission of M,
5 your Honor.

6 THE COURT: Any objection to M.

7 MS. WICKERLY: No objection.

8 THE COURT: M is admitted.

9 BY MR. SCHIECK:

10 Q. You are going to have to help me there,
11 touch the screen. Which one are you?

12 A. Right here.

13 Q. James?

14 A. Here.

15 Q. And Rick?

16 A. Here.

17 Q. And Carla?

18 A. Here.

19 Q. Any idea at all when this was taken?

20 A. No, sir.

21 Q. Was it after your mother's death?

22 A. Yes.

23 Q. Do you have recollection of going to Cedar
24 Point with your brothers and sisters?

25 A. No, sir.

331

1 Q. All you have is the picture?

2 A. Yes.

3 Q. And is this picture behind a glass plate
4 that you framed?

5 A. Yes.

6 Q. This is a picture of the picture?

7 A. Yes.

8 Q. Did -- you said that you'd gone to a girl's
9 school when you were how old?

10 A. 14.

11 Q. Where was James living at that time?

12 A. Still at home.

13 Q. Had you moved on to Wedgewood at that
14 point?

15 A. Yes, sir.

16 Q. Do you know whether or not he'd met Debra
17 Pano at that time?

18 A. I could not tell you.

19 Q. Do you recall when you met Debra?

20 A. I do believe I had to be 17, because I
21 didn't have no kids then.

22 Q. So before you had any children?

23 A. Yes, sir.

24 Q. And after you got out of girl's home?

25 A. Yes, sir.

332

1 Q. And do you recall where you met her at?
 2 A. At school.
 3 Q. What school?
 4 A. Sexton High School.
 5 Q. You were going to high school?
 6 A. Yes. I was a freshman.
 7 Q. Do you know what year she was?
 8 A. No.
 9 Q. She wasn't a freshman, was she?
 10 A. No, sir.
 11 Q. What about James, was he going to high
 12 school then?
 13 A. Yes, sir.
 14 Q. You know what grade he was in?
 15 A. No, sir.
 16 Q. Did you hang around much with James and
 17 Debra?
 18 A. No, sir.
 19 Q. Did you see them together on occasion?
 20 A. Yes, sir.
 21 Q. How often while you were in high school did
 22 you see them together?
 23 A. Probably during lunch breaks or something
 24 like that. But other than that, I had my friends, they
 25 did what they did.

333

1 Q. You didn't hang out much with your older
 2 brother and his girlfriend?
 3 A. No.
 4 Q. What about after high school, did you spend
 5 much time with them?
 6 A. I didn't know that -- she lived at our
 7 grandmothers house for awhile, but I still didn't hang
 8 with them, you know. I still communicated with them
 9 because we all lived in the same household, but as far as
 10 hanging with them, no.
 11 Q. Your grandmother is deceased; is that
 12 right?
 13 A. Yes, sir.
 14 Q. Do you know when she passed away?
 15 A. November 5, 2002, I do believe.
 16 Q. And you indicated there was one point in
 17 time when Debra and James lived in your grandmothers house
 18 on Wedgewood?
 19 A. Yes, sir.
 20 Q. Were you living there also, or were you
 21 living somewhere else?
 22 A. I was living there.
 23 Q. Did they live with you anyplace else?
 24 A. No, sir.
 25 Q. What about your sister Carla, did they ever

334

1 live with Carla?
 2 A. I don't know.
 3 Q. You know where Carla is at now?
 4 A. Last I spoken to her she was living in
 5 Lansing on Baker Street.
 6 Q. How is she doing?
 7 A. Last I talked to her she was supposed to be
 8 going to rehab when we got back. Other than that, she
 9 is -- I still believe she is on drugs myself.
 10 Q. Has that been a problem in her life?
 11 A. Yes, sir.
 12 Q. To your knowledge was that a problem in
 13 James' life?
 14 A. Yes, sir.
 15 Q. What about Ricks?
 16 A. Yes, sir.
 17 Q. What about yours?
 18 A. Yes, sir.
 19 Q. There a lot of drugs in the household
 20 growing up?
 21 A. Just marijuana and drinking.
 22 Q. What about the neighborhood there on Mellers
 23 Court?
 24 A. Marijuana. We had like two marijuana
 25 housing on our block.

335

1 Q. Now after -- are you aware that James has
 2 got three children?
 3 A. Yes, sir.
 4 Q. Have you ever met JP, the oldest?
 5 A. Only once.
 6 Q. Can you recall when you met him?
 7 A. He had to be like one or two. That's my
 8 last memories of him.
 9 Q. And after your grandmother passed, did you
 10 come into possession of some photographs that she had in
 11 her possession?
 12 A. Yes, sir.
 13 Q. And where did she keep those?
 14 A. On the wall.
 15 Q. And did you provide us with some photographs
 16 of James?
 17 A. Yes, sir.
 18 Q. Where did they come from?
 19 A. Off the wall at my house.
 20 MR. SCHIECK: May I approach.
 21 THE COURT: You may.
 22 BY MR. SCHIECK:
 23 Q. I'll show you Defendant's Proposed J, and
 24 ask if you recognize that photograph?
 25 A. Yes, sir.

336

1 Q. Who is it?
 2 A. James and JP.
 3 Q. Do you know where that photograph was
 4 taken?
 5 A. I don't if it was taken in Arizona, but I do
 6 believe it was taken in Arizona.
 7 Q. That's a photograph that your grandmother
 8 had when she passed?
 9 A. Yes, sir.
 10 Q. You now have possession of that?
 11 A. Yes, sir.
 12 Q. I'll show you K, do you recognize that?
 13 A. Yes, sir.
 14 Q. Who is in K?
 15 A. James and JP and me.
 16 Q. That was in your grandmother's possession
 17 also?
 18 A. Yes, sir.
 19 Q. With respect to J, do know when that was
 20 taken?
 21 A. No, I don't.
 22 Q. But you do know it's James and JP?
 23 A. Yes, sir.
 24 Q. And K, do you know when that was taken?
 25 A. No, sir.

337

1 my grandmother more than me, because I wasn't usually
 2 there.
 3 Q. What about half he got to Las Vegas?
 4 A. Not that often. But I would talk to him,
 5 but not as often as I did when they were in Arizona.
 6 Q. Did you ever go out to visit them?
 7 A. No.
 8 Q. Did you ever have — were around them when
 9 they came back to Lansing at any point after JP was
 10 born?
 11 A. I don't remember. I know James came home
 12 and I do know for sure that it was for the winter, because
 13 they had new coats out and me and James both got one for
 14 Christmas from my grandmother. I do know it was winter.
 15 Q. Did you ever see James around JP?
 16 A. Yes, sir.
 17 Q. How was he with his son?
 18 A. Very loving. He always cooked for them,
 19 always bathed them, always watched them. Debbie worked a
 20 lot and when she would come home she'd be tired, so
 21 basically he had them.
 22 Q. When was this — you observed this?
 23 A. When they lived with us.
 24 Q. That would have been before Anthony was
 25 born?

339

1 MR. SCHIECK: Move or admission of J and
 2 K, your Honor.
 3 THE COURT: Any objection.
 4 MS. WICKERLY: No objection.
 5 THE COURT: J and K will be admitted.
 6 Thank you.
 7 BY MR. SCHIECK:
 8 Q. That's James and JP?
 9 A. Yes, sir.
 10 Q. Is this a photograph you recognize also?
 11 A. Yes, sir.
 12 Q. That's James and his boys?
 13 A. Yes, sir.
 14 Q. During the you've been around James growing
 15 up, did you see him violent at all?
 16 A. No. Argumentative, but not violent.
 17 Q. You're aware at one point in time James
 18 moving to Tucson then to Las Vegas?
 19 A. Yes, sir.
 20 Q. Did you stay in touch with him while he was
 21 in Tucson?
 22 A. When he called if I was there, I would talk
 23 to him.
 24 Q. How often would you talk to him out there?
 25 A. Maybe twice a month. But he would talk to

338

1 A. Yes, sir.
 2 MR. SCHIECK: Court's indulgence.
 3 THE COURT: Okay.
 4 BY MR. SCHIECK:
 5 Q. Do you know whether your mother was -- had
 6 you heard your mother was involved with drugs also?
 7 A. Yes, sir.
 8 Q. When did you learn that?
 9 A. As I got older my Aunt Sharon would always
 10 talk about it, and she would always say that's probably
 11 where -- that the road my sister Carla is going down and
 12 so she'd say things about it.
 13 Q. There is a similarity between what's
 14 transpired in Carla's life and your mother's life?
 15 A. Yes, sir.
 16 MR. SCHIECK: Thank you. That's all the
 17 questions I have, your Honor.
 18 THE COURT: State.
 19 CROSS-EXAMINATION
 20 BY MS. WICKERLY:
 21 Q. Ms. King, you testified a couple minutes ago
 22 that there was a time period when James and Debbie were
 23 living with you and your grandma?
 24 A. Yes, ma'am.
 25 Q. Do you recall the date of that or

340

1 approximately how long that was that they were there?
 2 A. I don't recall. I know it was not that long
 3 because it was only JP. I don't know the ages between the
 4 two, but when Debbie had Anthony she wasn't around.
 5 Q. Do you think it would have been a couple of
 6 months or less than a year.
 7 A. Like four or five months. It wasn't a long
 8 time. Not to my knowledge.
 9 Q. So your recollection is it's less than 6
 10 months?
 11 A. Yes, to my recollection.
 12 Q. You also said that when James was living in
 13 Tucson, he'd call home and sometimes catch you because you
 14 were there?
 15 A. Yes.
 16 Q. But his primary purpose it sounds like was
 17 to talk to your grandmother?
 18 A. Yes, ma'am.
 19 Q. He was letting her know how things were
 20 going?
 21 A. Yes.
 22 Q. So he was still communicating with her?
 23 A. Yes, ma'am.
 24 Q. You mentioned when you were talking to Mr.
 25 Schieck that you were in a girl's home at 14?

341

1 A. Yes, sir.
 2 Q. How were you when you got out?
 3 A. I was 16.
 4 Q. 16?
 5 A. Yes.
 6 Q. And at that point you moved back in with
 7 your grandma?
 8 A. Yes, ma'am.
 9 Q. I think you said you finally moved out of
 10 house when you were 22?
 11 A. Yes, ma'am.
 12 Q. So from, if I'm understanding correctly,
 13 from 16 to 22 you were staying with your grandmother?
 14 A. Yes, ma'am.
 15 Q. She was working still, providing household
 16 for you?
 17 A. Yes, ma'am. I was at that time I had two
 18 children, so I was getting help from the State to take
 19 care of them and put food in the house.
 20 Q. Would she have been helping you to support
 21 your two kids at that time?
 22 A. Not financially, no.
 23 Q. But a place to stay?
 24 A. Yes, ma'am.
 25 Q. And you were getting a little assistance?

342

1 A. Yes, ma'am.
 2 Q. I think you said -- I'm trying to understand
 3 the sequence. After age 22, you went and got your GED or
 4 was it before that?
 5 A. It was 1996 that I got my GED.
 6 Q. So you went back and finished high school?
 7 A. Huh-uh.
 8 Q. Is that, yes?
 9 A. No. I went and got my GED.
 10 Q. Just so you know the lady in front of you
 11 can't take down uh-huh or huh-uh?
 12 A. Okay.
 13 Q. So you got your GED and you also said you
 14 took some courses or --
 15 A. Got my GED in '96, then I went back to LCD
 16 and got certified in phlebotomy. Then two year after that
 17 I went to Ross Medical and got my MA certificate.
 18 Q. So you are able to complete these
 19 educational programs, and assume I that would have helped
 20 your employment process?
 21 A. Yes, ma'am.
 22 Q. You are able to do that by yourself?
 23 A. Yes, ma'am.
 24 Q. You mentioned that your grandma was pretty
 25 strict?

343

1 A. Yes, sir.
 2 Q. Very strict?
 3 A. Yes.
 4 Q. That sometime she would discipline your
 5 brothers and sisters with an extension cord or by hitting
 6 them?
 7 A. With a switch.
 8 Q. A switch?
 9 A. Yes, ma'am.
 10 Q. What would cause her to do that? Was it
 11 these parties you were talking about?
 12 A. Yes. I remember one time she caught us --
 13 it's like we always knew what time she left and we always
 14 knew what time she came home from work. It's the same
 15 Monday through Friday. So one time she had a friend take
 16 her car and she walked around the back so when we seen the
 17 car pull up we thought it was her so we had everybody run
 18 out the back and she was standing right there.
 19 Q. I take it she didn't like these parties and
 20 everybody hanging out?
 21 A. No.
 22 Q. That's a sort of what made her discipline you
 23 all?
 24 A. She didn't drink or smoke. She just
 25 bothered and cursing, but she didn't drink nor smoke.

344

1 Q. She didn't believe in any of that?
 2 A. No.
 3 Q. You said though that she was pretty good at
 4 providing shelter, clothes, food that kind of thing?
 5 A. Yes.
 6 Q. Was that yes?
 7 A. Yes. Sorry.
 8 Q. That's okay. Would you say that she
 9 provided you a good family life?
 10 A. To my opinion, no, because I have six
 11 children and I do things with my kids. We go out to
 12 restaurants. We eat. We sit around watch movies. We hang
 13 each other. We love each other. None of that.
 14 Q. You do things differently?
 15 A. Yes.
 16 Q. Would it surprise you that your brother
 17 James said that your grandmother provided a good family
 18 life for you?
 19 A. Maybe that might be his opinion, but it's
 20 not mine.
 21 Q. Possibly you have two different opinions?
 22 A. Yes.
 23 Q. Did you have an aunt named Sheri?
 24 A. Sharon.
 25 Q. Did she ever baby sit you kids?

345

1 A. Yes.
 2 Q. You were probably very young, but do you
 3 know how old you were when this was going on?
 4 A. No. I know she used to always tease me
 5 because when she got ready to leave I would hold onto her
 6 leg because I wouldn't want her to go, so I had to be
 7 smaller.
 8 Q. So if she was watching you she would have
 9 been watching your brothers and sisters?
 10 A. I do believe so.
 11 Q. And if you're holding onto her leg, you
 12 probably liked her?
 13 A. Yes. She is my favorite aunt.
 14 MS. WICKERLY: Thank you.
 15 THE COURT: Mr. Schieck.
 16 MR. SCHIECK: Thank you.
 17 REDIRECT EXAMINATION
 18 BY MR. SCHIECK:
 19 Q. To your knowledge, did your Aunt Sharon also
 20 have some abuse problems?
 21 A. Yes.
 22 Q. What substances?
 23 A. Yes.
 24 Q. What substances, do you know?
 25 A. I do believe crack cocaine, marijuana, and I

346

1 know she's an alcoholic.
 2 Q. Did she have those unfortunate problems even
 3 back when you guys were growing up?
 4 A. Yes, sir.
 5 Q. She was around occasionally to help out in
 6 the household?
 7 A. Yes, sir.
 8 Q. Apparently to the point that when she would
 9 come over you wouldn't want her to leave because of the
 10 affection you were getting from her?
 11 A. Yes, sir.
 12 Q. You have a recollection of that?
 13 A. No, sir.
 14 Q. She teases you about that?
 15 A. Yes.
 16 Q. That's why you were living with your
 17 grandmother?
 18 A. Yes, sir.
 19 Q. Sharon, was she living there or would
 20 visit?
 21 A. Just visit, because to my recollection they
 22 lived like a mile away. I'm not even going to say a mile,
 23 if you go to the end of our block that's Baker. You might
 24 have to walk a couple of three blocks, four blocks and
 25 you'd be at her house.

347

1 Q. Would she do drugs there at the house when
 2 your grandma was gone too?
 3 A. I have no recollection, if she did.
 4 Q. What about your Uncle Rodney?
 5 A. Yes. We'd smoke with my uncle.
 6 Q. When he would come over?
 7 A. Yes, sir.
 8 Q. That was at your grandmother's house which
 9 was his mother's house?
 10 A. Yes, sir.
 11 MR. SCHIECK: Thank you. That's all I
 12 have.
 13 MS. WICKERLY: Nothing else, your Honor.
 14 THE COURT: Hold on a minute, ma'am.
 15 Counsel approach.
 16 (Discussion held at the bench.)
 17 THE COURT: Ms. King, when you say
 18 argumentative, how was James argumentative.
 19 THE WITNESS: Like say, he might -- I
 20 don't know to everybody else, but to me like he loves to
 21 eat so he would always fix these big plates of fries and I
 22 would always take them, or like if he go gets the phone
 23 I'll take them and we will always argue about me going to
 24 fix my own fries instead of taking his. But never to the
 25 point where he would call me names or nothing like that.

348

1 Just argumentative.

2 THE COURT: How long would the arguments
3 last.

4 THE WITNESS: Not that long, because I
5 would just get the flies and leave.

6 THE COURT: Mr. Schieck, any questions.

7 MR. SCHIECK: No.

8 THE COURT: Ms. Weckerly.

9 MS. WICKERLY: No, your Honor.

10 THE COURT: Ma'am, thank you for your time
11 We appreciate it. You may step down.

12 Defense may call their next witness.

13 MR. SCHIECK: We'll go ahead and break for
14 today.

15 THE COURT: So you understand, ladies and
16 gentlemen, we generally try to get folks done, they have
17 to get on planes. If somebody needs to leave --

18 MR. SCHIECK: I'll be real quick, your
19 Honor, I promise.

20 THE CLERK: You do solemnly swear the
21 testimony you are about to give in this action, shall be
22 the truth, the whole truth, and nothing but the truth, so
23 help you God.

24 THE WITNESS: Yes.

25 THE COURT: State and spell your name for

349

1 the record.

2 THE WITNESS: Charles Bernard Dean,
3 D-E-A-N.

4 DIRECT EXAMINATION

5 BY MR. SCHIECK:

6 Q. Mr. Dean, you reside in Lansing, Michigan?

7 A. Yes, sir.

8 Q. Your two brothers just testified; is that
9 correct?

10 A. Yeah, Fred and Ben.

11 Q. Yes. Are you older than them?

12 A. Yes, oldest.

13 Q. You are familiar with the area known as
14 Wellers Court?

15 A. Yes, sir.

16 Q. Was it condemned?

17 A. Yes, it is.

18 Q. Do you recall when it was finally totally
19 condemned?

20 A. Well, it was a process. They started taking
21 houses down. As they went, they ended up selling that
22 little area to the company. And I'm not for sure what
23 date they did condemn every house on there. There's
24 nothing there now at this point in time.

25 Q. Do you recall yourself and Mr. Patrick coming

350

1 to Lansing to look for Wellers Court?

2 A. Yes, sir.

3 Q. Did you show us around?

4 A. Yes, sir.

5 Q. Did you show us where Wellers Court used to
6 be at?

7 A. Yes.

8 Q. You recall we took photographs?

9 A. Yes.

10 Q. Would you recognize the area where Wellers
11 Court is at if I showed you the photographs?

12 A. Yes.

13 MR. SCHIECK: May I approach, your Honor,
14 with O and P.

15 THE COURT: Yes.

16 BY MR. SCHIECK:

17 Q. Is this -- can you tell us what those are?

18 A. This here is where Wellers Court used to
19 be.

20 Q. That would be O. Is that you in the
21 photograph?

22 A. That's me. And here, that's Wellers Court.
23 This is the back of Wellers Court and the railroad tracks
24 run through -- behind Wellers Court.

25 Q. Is that where James Chappell resided at?

351

1 A. Yes.

2 Q. Do you see James in court here today?

3 A. Yes.

4 Q. Did the tracks run behind his house?

5 A. Yes.

6 Q. That's the tracks shown on P?

7 A. Yes, sir.

8 Q. Move the admit O and P, your Honor?

9 MR. CHAPPELL: No objection, your Honor.

10 THE COURT: O and P will be admitted.

11 Thank you.

12 BY MR. SCHIECK:

13 Q. Can you show us on this photograph, which is
14 P, where Wellers Court would sit in the photograph. You
15 can touch the screen.

16 A. This right here, you had at one point in
17 time before it got really run down you could -- Wellers
18 Court was more in like in this area -- well, this is the
19 track that goes all behind Wellers Court, and there's a
20 track that goes right here.

21 Where all those trees are right here, those were
22 houses on this side and on this side. And James lived
23 like back up in here. I have a picture where I'm standing
24 where he stayed at.

25 Q. The other picture?

352

1 A. Yes, sir.
 2 Q. Showing you Q?
 3 A. And right here this is the picture of me and
 4 right here is where James' house was right here.
 5 Q. The tracks ran off to your right-hand
 6 side?
 7 A. Yes. The railroad tracks ran right off in
 8 this area.
 9 Q. There's a lot of snow in Lansing at the time
 10 of this photograph. What's under the snow?
 11 A. Right now you can -- it's like a lot of kids
 12 back there play football and run around now. But it's
 13 like, you know, grass and you can see -- actually see
 14 where the street used to be and they had like you can see
 15 the sewer and all of that where there was a street
 16 there.
 17 Q. Wellers Court got pretty bad before they
 18 tore all the houses down?
 19 A. Yeah.
 20 Q. Was it pretty bad when James was living
 21 there?
 22 A. Well, it was the neighbor. It was kind of
 23 one of the worse off neighborhood areas.
 24 Q. Do you know who Keisha Axon is?
 25 A. Yes.

353

1 Q. Who is that?
 2 A. That's James' cousin.
 3 Q. She didn't come here to Las Vegas for this
 4 hearing?
 5 A. No. She wasn't able to come because of
 6 she's off work now because she's --
 7 MR. SCHIECK: Approach.
 8 THE WITNESS: That's me and Keisha at his
 9 grandma's funeral.
 10 BY MR. SCHIECK:
 11 Q. You were starting to say why Keisha couldn't
 12 come to testify?
 13 A. She's having complications with her
 14 pregnancy now, and they wouldn't allow her to come. So
 15 they took her off work and stuff like that. She wasn't --
 16 she's been having complications with her pregnancy.
 17 Q. To your knowledge does she want to come?
 18 A. Yes, she really does. It's just
 19 unfortunately her doctor wasn't going to allow her to do
 20 that and took her off work and she's been stressed out
 21 about this situation as well as the baby. This is her
 22 first child.
 23 MR. SCHIECK: Move to admit N, your
 24 Honor.
 25 MR. OWENS: No objection.

354

1 THE COURT: N will be admitted.
 2 BY MR. SCHIECK:
 3 Q. Was she fairly close to James?
 4 A. Yes. That's James' grandmother's funeral,
 5 and we all went to the funeral together. Like I said the
 6 whole neighborhood is family.
 7 Q. Do you know James Ford and Ivory Morrell?
 8 A. Yes.
 9 Q. They been here in Las Vegas to testify and
 10 had to go home?
 11 A. Right.
 12 Q. Showing you Q, can you identify who is in
 13 Q?
 14 A. This is James Ford. This is Ivory Morrell
 15 right there.
 16 Q. To your knowledge, were they close friends
 17 with James Chappell?
 18 A. Yeah. Well, people thought they were like
 19 family, you know, because they were real close together.
 20 I mean, all those guys hung out all the time.
 21 MR. SCHIECK: Move to admit Q, your
 22 Honor.
 23 THE COURT: Any objection.
 24 MR. OWENS: No objection.
 25 THE COURT: Q will be admitted. Thank

355

1 you.
 2 BY MR. SCHIECK:
 3 Q. Which one is James and which is Ivory?
 4 A. This is James. And this is Ivory.
 5 Q. That's James Ford and Ivory Morrell?
 6 A. Yes.
 7 Q. Where did James Ford live while he and was
 8 growing up in neighborhood?
 9 A. In fact, he lived right across the street
 10 from us. And he moved up the street. His address was
 11 like 145 Barnes, right up the street from my Mom. They
 12 all lived right in that area.
 13 Q. You're aware that James and his grandmother
 14 and his siblings moved to Wedgewood?
 15 A. Yes.
 16 Q. Did you spend much time around them after
 17 they moved to Wedgewood?
 18 A. Yes. His grandma and my Mom are best
 19 friends. They were best friends until she died.
 20 MR. SCHIECK: That's all I have, your
 21 Honor.
 22 THE COURT: State.
 23 MR. OWENS: Nothing, your Honor.
 24 THE COURT: All right. No questions.
 25 Mr. Dean, thank you. You may step down.

356

1 Ladies and gentlemen, we'll take our
2 evening recess.

3 JURY ADMONITION

4 During the recess, ladies and gentlemen,
5 you are admonished not to converse among yourselves or
6 with anyone else, including, without limitation, the
7 lawyers, parties and witnesses, on any subject connected
8 with this trial, or any other case referred to during it,
9 or read, watch, or listen to any report of or commentary
10 on the trial, or any person connected with this trial, or
11 any such other case by any medium of information
12 including, without limitation, newspapers, television,
13 internet or radio.

14 You are further admonished not to form or
15 express any opinion on any subject connected with this
16 trial until the case is finally submitted to you.

17 Try and be back tomorrow morning. I have
18 a lengthy calendar, we'll be back here at 10:45 and we'll
19 get started as quick as we can right around there.

20 We will not go late tomorrow tonight.

21 We'll break by 5:00 o'clock.

22 Thank you.

23 * * * * *

1 CERTIFICATE
2 OF
3 CERTIFIED COURT REPORTER

4 * * * * *

5 I, the undersigned certified court reporter in and for the
6 State of Nevada, do hereby certify:

7
8
9
10
11 That the foregoing proceedings were taken before me at the
12 time and place therein set forth; that the testimony and
13 all objections made at the time of the proceedings were
14 recorded stenographically by me and were thereafter
15 transcribed under my direction; that the foregoing is a
16 true record of the testimony and of all objections made at
17 the time of the proceedings.

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25
Sharon Howard
C.C.R. #745

*one 151:20 125:8, 123:15, 15 72:13, 91:14,
F745 1:42, 125:15, 125:16, 176:7, 187:3,
358:27, 125:16, 357:18, 187:13, 187:15,
*68 240:3, 357:18, 231:5, 251:7,
*69 240:7, 10th 102:2, 102:9, 277:16, 307:4,
*73 240:16, 141:3, 1527 243:8,
*79 269:18, 11 160:25, 319:8,
308:11, 11:00 90:11, 158 3:27,
*8 270:10, 90:11, 15th 51:19,
282:4, 11:3 135:21, 118:11,
*80 263:18, 135:21, 135:23, 16 43:15, 319:25,
308:11, 135:23, 327:9, 342:3,
*81 309:18, 11:30 28:23, 342:4, 342:13,
*82 270:10, 28:23, 135:23, 1658 19:20,
166 259:20, 135:23, 19:23,
*87 282:4, 11:35 135:21, 16th 13:8, 13:9,
284:11, 135:21, 17 12:19, 231:6,
*88 48:19, 12 3:6, 127:25, 260:5, 312:21,
*9 263:6, 160:25, 219:7, 1707 219:16,
343:15, 252:16, 283:10, 18 211:22,
*91 54:16, 286:23, 287:12, 259:25,
*93 263:7, 287:13, 307:3, 180 93:10,
*94 61:19, 1216 318:9, 188 3:28,
*95 66:6, 125 38:16, 59:22, 19 231:7,
193:11, 128:12, 129:5, 312:21,
*97 282:3, 12:00 136:6, 1901 159:23,
*98 48:19, 136:6, 1920 216:2,
1 61:9, 73:16, 12th 325:19, 193 3:32,
231:14, 249:25, 13 162:1, 162:19, 1959 156:23,
260:4, 260:14, 174:19, 174:20, 196 159:16,
306:21, 306:21, 232:20, 238:20, 1963 159:6,
306:21, 311:20, 243:14, 1968 240:3,
311:20, 319:15, 130 93:16, 197 3:33,
328:9, 332:20, 135 169:16, 289:21,
10 40:24, 66:12, 191:13, 191:14, 1973 240:17,
87:5, 87:11, 191:16, 319:1,
91:14, 136 216:11, 1975 159:20,
10:00 125:9, 232:20, 1979 268:24,
125:9, 125:10, 137 216:13, 297:20,
125:10, 149:15, 238:18, 198 3:34, 259:20,
149:15, 239:23, 259:22, 281:25,
10:08 38:14, 14 28:7, 197:3, 309:18,
38:14, 187:13, 187:15, 1980 268:24,
10:30 135:19, 243:13, 243:13, 289:21,
135:19, 243:16, 260:7, 297:20,
10:35 135:19, 327:8, 332:10, 1998 44:7,
135:19, 341:25, 199 24:15, 38:14,
10:4 135:18, 140 161:16, 66:18, 99:1,
135:18, 145 356:11, 309:20, 121:8,
10:45 125:8, 147 264:18, 198:14, 193:11,

357

359

225:9, 234:20, 104:15, 320:2,
1980 51:19, 24-hour 211:23, 3:00 103:21,
259:20, 25 15:25, 26:13, 103:21,
1981 284:9, 26:15, 26:15, 4 52:29, 108:10,
1993 234:21, 259 4:13, 135:17, 180:15,
1994 12:24, 60:3, 25th 93:21, 101:2, 181:19,
99:11, 104:15, 24 68:21, 159:22, 182:14, 182:25,
259:21, 261:7, 160:10, 215:3, 183:16, 184:6,
1994, 261:8, 219:8, 185:19,
1995 28:9, 28:12, 262 4:14, 323:11,
65:5, 70:20, 264 4:19, 4,202 217:14,
117:3, 151:18, 26th 66:21, 66:25, 217:14,
1995, 150:12, 94:1, 102:3, 40 126:10,
1996 349:5, 102:9, 103:3, 42 3:22,
1:00 74:14, 74:14, 123:2, 45 71:20,
137:16, 127:16, 28 3:10, 184:17,
127:16, 284 4:20, 4:00 103:22,
127:16, 28th 93:22, 103:22,
1:30 153:3, 3 1:3, 56:16, 4th 222:2,
153:3, 85:15, 85:23, 5 40:24, 43:17,
1st 38:14, 59:25, 126:10, 178:16, 161:15, 161:15,
61:19, 65:5, 179:18, 170:25, 170:25,
66:6, 66:18, 287:12, 230:11, 235:12,
93:23, 99:1, 30 9:20, 125:14, 323:11,
103:3, 109:20, 176:7, 287:12, 5:4 93:12,
117:3, 121:8, 30, 287:13, 5:5" 93:12,
2 26:15, 48:18, 303 4:24, 5-and-a-half
48:19, 50:13, 30th 70:19, 71:7, 38:10, 38:12,
51:8, 65:27, 120:23, 121:11, 50 71:20,
72:12, 84:16, 122:7, 124:11, 135:17,
84:20, 93:3, 124:22, 150:11, 500 135:14,
99:13, 123:3, 151:18, 587 102:20,
158:15, 312:18, 31 85:19, 51:05 17:12,
312:18, 312:18, 122:22, 56 140:8,
343:3, 314 4:25, 58 220:17,
20 12:19, 12:21, 318 4:29, 5:00 357:21,
15:24, 75:9, 31st 66:24, 67:2, 357:21,
123:3, 287:12, 68:21, 71:7, 5:3 78:17,
2009 316:22, 124:18, 125:4, 78:17,
2001 160:12, 125:11, 5:30 78:16, 78:16,
2003 317:5, 151:18, 137:15, 137:15,
203 4:2, 32 86:2, 137:16,
208 161:19, 33 3:11, 137:16,
21:28 25:23, 340 4:30, 5:35 137:13,
25:23, 35 3:12, 150:17, 137:13,
22 327:10, 342:10, 350 4:33, 5th 5:22, 118:11,
342:13, 37 264:9, 266:6, 266:7,
223 4:7, 38 3:16, 264:9, 309:20,
239 4:12, 3821 319:17, 6 9:8, 140:9,
23rd 12:24, 44:7, 39 180:5, 240:1, 341:9,

350

360

62 221:13, 125:12, 211:18, 211:19,
64 6:17, 6:20, 125:12, 221:14, 221:19,
10:6, 9:2 28:2, 26:2, 227:13, 227:18,
65 10:6, 9:30 13:14, 13:14, 235:11, 254:24,
650 287:19, 26:1, 26:1, 258:7, 258:3,
287:22, 26:2, 26:2, 266:4, 285:8,
68 112:21, 146:2, 26:11, 26:11, 300:23, 343:18,
186:2, 125:9, 125:9, 343:22, 354:5,
68 185:24, 125:10, above 166:6,
6th 251:15, 266:7, 125:10, 174:7,
268:8, 308:16, 9:45 125:14, abrasion 162:14,
7 9:21, 108:10, 126:14, 162:18, 171:15,
149:21, 150:1, 9th 28:12, 115:23, 171:17, 172:3,
320:16, 306:18, 172:19, 178:1,
7/11 58:13, 179:7, 180:11,
74 160:20, 181:5, 181:12,
75 149:22, < A >, 183:20,
7:30 137:18, A-1 112:21, Abrazions 162:9,
137:18, 137:19, 146:2, 162:10, 162:12,
137:19, A-131301 157:19, 171:21, 172:1,
7th 66:19, 93:24, A-J-Q 13:10, 172:1, 172:5,
306:18, A-X-M 291:22, 172:9, 173:12,
8 19:21, 86:23, a.m. 125:8, 173:13, 173:18,
149:21, 150:1, A.M. 5:3, 178:24, 179:12,
230:6, 265:21, 125:16, 180:20,
320:16, abandon 70:18, 190:13,
80 19:24, abandoned 149:11, Absolutely 35:14,
839 28:13, 38:15, 304:12, 67:25, 71:9,
89:22, 72:20, 322:13, 75:5, 76:23,
122:16, 127:25, abdomen 162:5, 83:16, 87:21,
128:12, 129:4, 162:25, 163:8, 89:17, 94:23,
8th 306:18, 163:9, 163:15, 127:8, 134:8,
9 34:22, 125:14, 163:23, 164:8, 212:5,
214:18, 164:18, 176:18, abuse 257:9,
251:15, 161:20, 257:11, 316:16,
91 139:12, 212:14, abdominal 163:9, 325:3, 346:20,
212:21, 213:6, 163:10, 174:9, abusive 244:5,
911 23:10, 23:15, 176:22, 177:4, 915:16,
38:15, 64:14, 181:25, Academy 160:4,
64:24, 108:14, ability 62:18, 293:18,
149:17, 215:8, 100:17, 300:20, accept 67:2,
219:6, 236:20, 188:6, 188:6, 95:22, 96:5,
92 212:14, 254:17, 96:13, 97:14,
212:21, able 96:25, 97:17, acceptable
93 227:21, 97:23, 97:24, 17:10,
94 227:25, 124:20, 164:5, accepted 110:21,
9:00 5:3, 5:3, 170:17, 178:17, Accepting 56:7,
16:24, 16:24, 188:2, 220:23,
26:6, 26:6, 189:9, 196:23, access 34:6,
26:7, 26:7, 206:16, 211:12, accidentally

361

64:22, 104:2, 101:2,
accidents 173:2, 210:24,
according 106:2, 111:22, 131:1,
131:4,
account 18:18,
accounted 165:5,
account 194:4,
accountably 11:23,
37:20, 42:5,
92:21,
accuse 134:12,
accused 138:7,
147:7,
accusing 147:6,
acquainted 376:25,
across 31:6,
107:12, 143:10,
170:25, 194:13,
265:4, 265:9,
265:11, 265:17,
310:7, 356:9,
act 15:21, 26:3,
95:18,
acted 15:9,
acting 115:24,
137:22, 244:17,
327:24,
action 27:20,
158:2, 177:18,
185:6, 192:23,
202:3, 203:5,
223:7, 239:5,
263:24, 302:15,
317:24,
349:21,
actions 117:6,
active 160:4,
215:5,
actively 211:7,
activities 250:21,
activity 159:24,
acts 19:13,
106:3,
actual 16:16,
26:3,
Actually 13:15,
21:17, 25:8,
42:18, 58:23,
90:4, 130:8,
153:15, 197:22,
244:9, 265:21,
276:15, 284:21,
288:8, 298:15,
301:3, 353:13,
add 8:4, 110:20,
addition 16:6,
156:10,
additional 136:9,
Additionally 6:16,
address 16:20,
19:19, 20:25,
264:17,
356:10,
107:12, 143:10,
170:25, 194:13,
265:4, 265:9,
265:11, 265:17,
310:7, 356:9,
admission 17:11,
181:12, 268:17,
329:24, 331:4,
338:1,
admissions 22:8,
admit 8:1, 37:3,
106:16, 117:15,
232:21, 291:5,
352:8, 354:23,
353:21,
admitted 7:25,
36:24, 191:16,
332:24, 238:18,
238:23, 266:23,
268:21, 330:2,
331:8, 338:5,
352:10, 355:1,
355:23,
admission 10:15,
200:1,
admitted 9:18,
91:19, 92:3,
152:15, 152:24,
199:12, 199:21,
301:15, 301:24,
357:5, 357:14,
admonishment 108:9,
ADMINISTRATION 91:17,
152:13, 199:10,
301:13, 357:3,
adn't 286:2,
adoption 48:3,
adult 46:2, 46:18,
222:16, 224:21,
231:17, 244:23,
253:21, 258:16,
259:16, 273:4,
273:7, 292:3,
292:11, 305:4,
306:14,
adults 307:11,
adventurous 217:5,
advise 23:10,
advised 13:24,
15:12, 23:12,
225:24,
affect 7:17,
100:20, 166:3,
167:1, 167:17,
167:19, 168:9,
173:16, 194:13,
255:5,
affected 254:25,
255:1, 255:6,
affection 107:14,
328:8, 327:17,
347:10,
affectionate 320:21,
affidavit 315:21,
316:11, 316:21,
316:24, 317:5,
affirmed 8:18,
9:14, 9:12,
afford 54:5,
85:19, 98:16,
154:10,
afford 16:8, 20:7,
68:11, 68:12,
68:14, 143:4,
afternoon 95:20,
137:20, 148:1,
197:7, 197:8,
302:24,
afterwards 145:15,

362

176:13, Ajo 13:8, 13:11, American 160:4,
age 156:11, 19:20, 19:23, among 91:19,
156:16, 156:16, alcohol 257:13, 152:15, 199:12,
217:1, 219:8, 257:15, 257:24, 301:15, 357:5,
220:17, 221:2, 276:11, amount 40:18,
221:11, 235:12, alcoholic 347:1, 165:4, 168:13,
236:24, 249:25, alive 55:2, 172:16, 175:2,
265:20, 299:19, allegation 65:4, 184:24,
300:1, 311:18, 117:2, amounts 102:14,
326:16, 327:6, alleged 14:19, 182:5,
343:3, 16:21, amusement 330:24,
agency 28:25, Allen 3:15, 38:1, 330:25,
ages 221:20, 38:2, 41:16, an injury 167:5,
228:3, 254:23, 115:8, 182:3,
306:21, 341:3, allocation 201:14, analyst 169:10,
age 98:13, 178:4, 202:13, anatomical
194:2, 203:20, allow 8:7, 9:14, 170:2,
211:10, 212:24, 53:19, 154:1, and/or 202:13,
294:22, 296:3, 154:18, 154:22, 257:24,
295:6, 298:17, 354:14, Anderson 159:8,
301:6, 340:21, 354:19, 159:12,
agree 8:6, allowed 6:5, 8:11, Angel 138:13,
agreed 9:17, 271:24, 271:25, anger 196:19,
10:22, 138:23, 272:1, 258:18,
139:1, allowing 8:15, 258:20,
ahead 29:1, 65:23, Almost 33:3, angle 170:11,
98:20, 169:20, 81:22, 142:13, 172:6, 180:21,
171:20, 188:18, 164:21, 179:25, angry 39:14,
200:1, 213:2, 183:24, 209:23, 132:4, 134:16,
213:11, 216:16, 219:7, 234:21, 147:17, 195:6,
216:19, alone 32:11, 231:14, 258:14,
349:13, 108:25, 164:2, 258:22, 314:1,
shold 133:12, 218:11, animal 100:25,
194:7, 226:22, announce 32:12,
AIDS 119:20, already 29:2, announced 21:11,
120:3, 120:5, 118:25, 151:8, 32:18, 109:12,
ain't 76:20, 194:18, 195:6, another, 236:2,
Air 60:7, 246:15, 262:15, Answer 7:3, 7:7,
168:15, 263:9, 309:23, 68:5, 74:10,
air-conditioner Although 217:13, 97:22, 100:1,
80:21, altogether 30:15,
air-conditioning 204:14, answered 67:14,
141:13, balance 29:5, 73:6, 114:18,
airline 50:23, 29:12, 29:13, 130:7, 131:7,
Airlines 50:24, 29:14, 29:16, 207:25,
airplane 211:24, 29:18, 31:20, engineering 67:17,
airway 165:21, 33:6, 34:5, 67:23, 68:8,
165:22, 168:13, 35:2, 64:24, 136:17,
168:17, 175:9, Amendment 5:23, 136:22,
175:15, America 160:1, answers 114:17,

363

Anthony 50:4, appearance 29:20, 173:22, 181:5,
51:11, 51:21, 70:24, 177:16, 256:28, 304:15,
220:24, 225:19, APPEARANCES 2:1, 353:23,
827:23, 230:11, appeared 21:20, argue 54:10,
230:29, 231:2, 39:5, 54:10, 348:23,
231:3, 231:6, Appears 186:11, argued 59:2,
254:6, 254:6, 268:23, 113:23,
254:25, 263:10, argues 177:18,
320:12, 339:24, appellate 7:17, arguing 65:12,
341:4, applications 105:2,
Anthony, 234:17, 93:21, argument 8:14,
antibiotics applied 162:6, 39:12, 39:13,
164:5, 293:8, 63:20, 105:3,
Anybody 11:3, appointed 106:2, 109:21,
36:9, 67:10, 159:12, Argumentative
79:12, 172:21, appreciate 8:6, 338:16, 348:18,
175:11, 202:18, 157:2, 301:1, 349:1,
272:13, 328:5, 317:18, argument 200:21,
anyone, 236:13, 349:11, 349:2,
anyplace 334:23, appreciated, Arizona 12:24,
Anytime 226:18, 235:22, 48:4, 48:6,
228:22, apprehended 48:13, 48:14,
Anyway 77:20, 208:19, 48:16, 48:21,
137:21, 139:4, 208:21, 48:24, 50:5,
160:6, 163:22, Approach 29:10, 50:7, 51:1,
179:3, 36:20, 42:1, 60:14, 63:2,
apart 182:24, 149:17, 190:9, 65:18, 68:16,
279:11, 212:15, 212:17, 74:1, 98:6,
apartment 52:10, 237:15, 299:15, 203:14, 218:3,
53:2, 126:21, 301:3, 315:18, 227:16, 234:16,
149:11, 329:10, 330:15, 235:11, 262:14,
Apartments 72:2, 336:20, 348:15, 337:5, 337:6,
72:4, 73:5, 351:13, 354:7, 339:5,
88:23, 102:19, approached 21:5, ark 330:25,
apologize 51:12, appropriate 184:7, 184:9,
apologized 9:13, 184:7, 184:9,
120:21, Approximately 184:18, 185:9,
Apparently 9:21, 13:12, 16:23, 235:20,
15:16, 19:5, 34:22, 38:10, 235:20,
25:3, 25:18, 38:14, 40:24, armed 252:12,
150:14, 292:24, 48:17, 65:22, 261:1,
347:8, 67:4, 72:12, arma 39:15,
99:16, 137:3, 111:16, 111:19,
159:15, 263:4, 111:20,
277:2, 281:23, 171:10,
341:1, arrangements
April 44:7, 209:2, 209:12,
area 184:5, 229:5,
161:20, 170:8, arranging 229:1,
171:7, 171:12, arrest 15:15,

364

152:25, 199:14,
199:17, 199:22,
301:17, 301:20,
301:25, 357:7,
357:10,
357:15.
connection 16:21,
22:10.
consciousness
166:13, 187:2,
187:13, 187:14,
188:13.
consensual
77:11.
consequences
10:16.
consider 101:17,
149:5, 163:24.
considerable
165:3.
considerably
163:20.
considered 117:6,
277:15,
288:24.
considering
297:7.
consist 307:18.
consisted 218:5.
consistent 186:15,
186:9.
console 81:11,
141:16,
235:16.
constantly
156:5.
constitution
200:10,
200:11.
constitutional
6:1.
consume 127:6.
contact 13:2,
13:5, 13:13,
13:22, 14:14,
19:4, 21:2,
22:19, 23:9,
29:16, 31:17,
31:25, 32:2,
38:25, 39:4,
39:24, 45:8,
45:10, 45:11,
109:4, 156:5,
172:10, 194:9,
231:15, 231:20,
252:17, 260:9.
contacted 14:17,
18:23, 20:15,
25:18, 29:15,
184:4, 234:25.
contained 7:23.
container
107:14.
contemporaneous
177:12.
contemporary
156:11.
contention 6:1,
7:10, 8:1,
concerns 185:24.
context 168:10.
continue 11:14,
18:15, 31:15,
32:18, 203:1,
243:11, 248:10,
302:8, 319:13,
327:3.
continued 278:2.
continues
166:14.
contribute
100:6.
contributed
220:22.
control 60:19,
116:24, 116:25,
117:1, 313:8.
controlling
314:25, 316:9.
contusions 170:9,
176:12.
convalesce
119:25.
Conversation
14:13, 33:3,
43:17, 63:1,
139:7, 237:22,
255:9, 275:10.
conversations
208:16.
converse 91:19,
152:15, 199:12,
301:15, 357:5.
convicted 95:24,
96:3, 96:5,
96:11, 96:13,
252:6, 252:8,
282:10,
282:21.
conviction 9:5,
261:1, 261:18.
convictions
252:10,
259:17.
convince 154:1.
convinced
194:18.
cook 217:8,
327:2.
cooked 339:18.
cookies 215:15.
cooking 55:9,
314:13,
314:14.
cooly 312:8.
cooperative 35:15,
288:14.
copies 42:10.
cops 66:1.
copy 10:7, 10:14,
10:19, 217:24.
cord 296:13.
cords 244:7,
248:19, 248:22,
275:4, 275:5,
296:6, 324:13,
324:18.
corner 75:19,
183:25, 215:14,
269:13, 303:23,
323:16.
Corner 158:15,
160:7, 160:9,
161:4.
Corporal 244:9.
Correction
263:11.
corrective
202:3.

373

correctly 274:4,
289:9, 342:12.
corresponded
252:20.
correspondence
119:20.
cost 62:6.
couch 21:13, 23:7,
63:22, 74:22,
75:14, 75:15,
75:17, 134:5,
194:14, 198:2,
199:5.
cough 101:5.
Counsel 5:3, 6:4,
6:11, 7:17,
7:18, 36:23,
118:17, 122:11,
155:11, 190:9,
212:17, 232:15,
299:15,
348:15.
count 160:17.
County 1:7, 28:15,
38:21, 129:23,
123:24, 124:4,
125:13, 141:3,
158:15, 159:16,
159:21,
159:22.
course 77:13,
85:3, 87:21,
97:11, 98:3,
106:17, 132:6,
132:6, 141:12,
195:18, 309:9.
courses 343:14.
courtroom 115:18,
120:10, 121:15,
145:6.
courtroom
199:25.
courts 22:21,
160:15.
cousin 205:11,
213:16, 217:17,
233:8, 354:2.
cousins 208:8,
210:13, 213:18,
224:15,
226:25.
cover 145:1.
covered 29:25,
30:9, 144:11.
covering 64:3,
170:23.
crack 103:8,
104:8, 346:25.
cracked 80:22.
crashed 81:22.
crease 164:8,
174:7.
create 164:11.
creeps 196:15.
crew 279:11.
crime 36:8, 121:8,
169:9, 189:13,
189:24.
criminal 201:7.
criminals 290:10,
290:12.
crippencracking
175:15.
CROSS-EXAMINATION
3:11, 3:28,
3:33, 4:13,
4:20, 4:25,
4:30, 6:18, 9:8,
10:25, 33:15,
42:22, 92:23,
188:23, 197:5,
200:17, 200:19,
202:5, 259:14,
284:1, 314:22,
340:19.
crowd 151:1.
cry 16:2, 17:16,
214:24,
216:21.
crying 15:22,
16:1, 16:6,
18:18, 25:8,
25:10, 25:11,
31:3, 39:6,
39:7, 116:14,
121:21, 121:22,
219:16.
cull-da-sac
322:15.
cup 30:25, 34:8,
34:10, 63:25,
64:21, 65:3,
101:3, 107:1,
107:12, 107:14,
107:17, 108:5,
108:6, 116:1.
cups 63:25.
current 24:17.
Currently 264:9,
264:11,
283:14.
cursing 344:25.
cursory 22:16.
custody 22:17,
34:1, 71:8,
71:10, 71:13,
94:3, 94:22,
151:17, 220:18,
227:15, 261:6,
287:15, 287:21,
89:5, 165:14,
165:17, 166:3,
167:21, 176:4,
187:5, 265:6,
266:10,
322:21.
cute 205:24,
206:3, 220:23.
cute' 219:3.
cute. 219:1.
cutting 173:22,
174:4, 176:12,
202:4.
< D >
D-9 36:24.
D-E-A-W 264:5,
302:21, 350:3.
Ded 52:1,
256:12.
Daddy 228:23.
daily 36:8,
102:10, 102:10,
236:7, 271:4.

374

Delta 210:1,
210:25,
234:21.
damage 107:17,
131:2, 131:3,
131:9, 131:12,
131:13, 165:23,
166:15, 167:20,
168:6, 175:14,
180:3, 181:6.
damaged 130:23,
130:24.
Dan 3:9, 28:1.
dance 272:5,
314:5.
dancing 89:19.
Daniel 108:17,
115:19.
date 6:8, 13:1,
28:12, 37:3,
37:4, 93:4,
93:13, 123:1,
123:16, 124:7,
150:8, 150:12,
150:14, 154:13,
261:17, 315:25,
340:25,
350:23.
DATED 1:31,
216:6.
dates 118:15,
234:13,
254:23.
dating 69:10,
69:11.
daughter 18:2,
56:8, 105:8,
207:1, 211:25,
214:22, 235:4,
263:5, 294:15.
DAVID 2:6.
day. 220:13.
days 24:12,
102:14, 110:6,
118:10, 150:17,
164:4, 183:23,
204:5, 206:13,
209:13,
217:14.
dead 148:17,
176:14, 207:13,
219:17, 226:23,
236:14, 304:5,
322:15.
dead. 235:4.
deal 160:1, 196:1,
258:19, 287:5,
287:6, 288:2,
288:3.
dealers 47:8.
dealing 209:16,
209:19,
249:21.
Dean 4:18, 4:23,
4:32, 155:8,
156:10, 156:15,
251:5, 263:22,
264:5, 283:18,
243:18, 301:1,
302:11, 302:21,
302:24, 317:17,
350:2, 350:6,
356:25.
Deans 322:23.
dearly 230:19.
death. 220:20.
Deb 213:14,
213:20, 213:21,
213:23, 214:6,
214:9, 219:12,
215:15,
215:23.
Debbie. 214:15,
237:8.
deceased 334:11.
decent 210:22.
decided 59:7,
160:18.
decision 61:2,
95:9, 129:20,
154:18, 154:22,
202:12.
decisions
258:15.
declaration
34:2.
deep 180:13,
183:22,
215:23.
deepest 180:7,
defend 188:7.
Defense 9:2, 10:9,
10:23, 17:4,
36:23, 104:14,
200:2, 238:24,
239:1, 263:20,
289:1, 301:3,
302:8, 302:10,
309:14, 317:19,
349:12.
defensive 185:6,
185:17.
definitely 179:14,
184:23, 281:8,
degrading 69:25,
118:2, 118:7,
120:17.
degree 53:25,
95:25, 96:7,
96:11, 150:21.
deliberate
42:12.
demanding 314:25,
316:9.
democrat 22:22,
31:2, 36:12,
39:3.
demolishing
304:19.
daniel 7:18.
Department 12:17,
12:18, 12:24,
24:10, 36:5,
38:8, 40:17,
108:17, 113:15,
115:20, 159:17,
159:18, 208:17,
240:24, 283:11,
285:2, 327:2.
depend 167:3.
dependent 211:3.
depends 24:13.
depicted 140:8,
247:2, 266:24,
269:24, 270:13.
DEPOSITION 3:5,
3:15.
depressed 70:16,
118:19.
depression

375

154:4.
DEPT. 1:3.
deputy 159:19,
200:18, 200:20,
200:25, 202:6.
Describe 15:9,
29:20, 33:1,
39:3, 40:6,
50:2, 112:5,
204:7, 210:4,
233:1, 320:17.
described 18:3,
173:24,
197:15.
description
90:18.
descriptions
214:13.
descriptive
253:25, 322:6.
deserved 235:13.
desk 196:4.
detailed 275:19.
details 143:19,
208:8, 239:3,
236:3, 241:6,
241:8, 328:14,
328:14.
detected 132:18.
detectives
90:24.
Detention 141:3.
determination
27:5.
determine 15:13,
26:23, 189:10.
determined
266:8.
Detroit 50:22,
264:14.
devastated 70:17,
82:9, 118:19,
142:20.
devastating
234:22,
develop 176:5.
development
249:23.
dialed 136:17.
diameter 162:3,
170:20, 171:4.
diamond 304:7,
304:8.
dictated 34:2.
die 730:14,
236:18,
318:25.
died 61:6, 61:19,
168:23, 198:2,
206:16, 223:24,
223:25, 231:25,
356:19.
Diagnosis 108:17,
115:19, 116:7.
difference 26:19,
177:11.
different 24:13,
53:24, 57:3,
57:5, 67:17,
85:7, 85:10,
102:13, 102:14,
110:19, 124:3,
132:19, 170:3,
170:6, 229:18,
242:22, 245:22,
267:21, 270:15,
270:15, 271:9,
271:9, 282:1,
282:6, 284:21,
304:15, 306:21,
327:15, 327:16,
345:21.
differentiated
266:4.
differently
258:19,
345:14.
difficult
221:25.
difficult.
217:2.
difficulty 154:21,
188:11,
249:18.
bing 62:25, 63:6,
63:10, 115:14,
dining 63:18.
dinners 215:18.
direction
358:13.
directly 60:8,
247:12,
247:21.
dirt 88:20.
disability
249:19.
disagreements
261:25.
disappear 173:3.
discharged 27:11,
41:10.
discipline 244:2,
324:10, 324:10.
325:1, 325:3,
344:4, 344:22.
disciplined
324:24.
discoloration
178:22, 179:3,
183:7.
discuss 201:16,
discussed 202:9,
276:11.
discussing 37:5,
Discussion 42:3,
190:10, 202:15,
212:19, 237:16,
256:8, 299:16,
348:16.
discussions
192:19.
disease 120:2.
dishwasher
52:18.
dismissed 287:4.
dispatched 28:12,
29:2, 38:15.
display 84:20.
Distance 15:10,
15:16, 15:20,
164:25, 167:2,
265:6, 297:22.
distraught 31:5.
DISTRICT 1:6,
1:28, 153:25,
200:18, 200:20,
200:25, 202:6.
divisions 38:11.
divulge 114:3.
Doctor 107:21,

376

377

37A

379

380

66:16, 66:17. fine 218:15, focus 269:10,
fence 207:4, finger 82:21, folder 88:6,
few 128:13, 150:6, 89:5, 132:13, folks 157:15,
164:4, 186:4, finish 198:8, 349:16,
188:13, 192:14, 301:12, followed 59:11,
193:25, 204:5, finished 134:24, 147:12,
206:17, 208:13, 195:23, 214:14, following 122:7,
211:1, 261:24, 343:6, 125:4, 159:11,
289:6, 278:8, finishing 46:4, 193:25,
294:22, 295:3, fire 29:2, 231:21,
295:5, fired 62:10, follows 12:3,
fiver 189:19, 154:2, 321:6, food 101:13,
field 35:18, fire 15:12, 101:15, 250:14,
38:19, 159:1, 125:19, 161:12, 293:16, 312:13,
289:6, 299:7, 208:24, 320:21, 323:20,
299:7, 248:12, 342:19, 345:4,
fifteen 89:1, fist 30:13, 173:7, food 327:25,
fight 17:24, 173:10, 179:11, foot 93:7, 130:21,
30:23, 85:4, 180:10, 181:13, 130:22,
fighting 81:25, 184:14, football 353:12,
82:1, flow 165:14, force 169:4,
figure 74:2, 204:12, 212:6, forced 123:6,
111:12, 244:19, 212:7, 214:21, 196:5, 248:13,
320:6, 217:9, 218:13, forceful 172:10,
figured 139:17, 224:17, 256:23, Ford 153:10,
figures 244:21, 320:2, 341:7, 153:25, 154:1,
244:23, five-foot 207:4, 154:9, 154:10,
rifting 6:12, fix 348:21, 155:3, 155:16,
rin 208:3, 348:24, 156:1, 156:21,
final 200:21, flags 330:25, 157:8, 251:5,
finally 21:12, flat 182:22, 278:7, 280:19,
92:5, 153:1, flew 60:7, 60:8, 310:2, 310:6,
174:17, 199:23, flies 349:5, 310:9, 310:10,
210:2, 302:1, floor 18:5, 67:20, 310:15, 310:25,
342:9, 350:18, 80:20, 81:8, 311:2, 311:4,
357:16, 83:13, 84:17, 311:10, 312:5,
financial 96:11, 86:24, 355:7, 355:14,
131:14, 87:7, 87:24, 356:5, 356:7,
financially 100:6, funds 313:9,
342:22, 322:23, forecast 114:2,
find 9:10, 24:20, 144:3, 144:5, foregoing 358:11,
53:20, 59:19, 144:7, 145:1, 358:15,
59:23, 61:22, 145:19, 148:9, 358:15,
98:18, 113:14, 166:25, 183:12, forehead 107:11,
141:21, 162:9, 220:9, 226:24, 107:13, 107:15,
163:5, 207:2, Eleasus 214:23, 170:18, 176:6,
207:19, 208:15, Eluid 164:4, 180:5, 180:9,
209:16, 221:4, 172:15, Powniec 160:2,
235:3, 255:21, fly 50:21, 50:25, 160:2, 160:5,
255:23, 211:23, Forestview 267:20,

381

267:23, 269:21, from 17:10, function 19:8,
270:1, 308:20, 187:4, 24:14, 172:17,
309:11, framed 332:4, funeral 209:1,
309:15, 159:5, 235:25, 354:9,
forgery 317:9, 358:4, 355:5,
forgot 63:18, Fred 4:18, 156:10, furloughs
220:6, 221:10, 251:8, 263:22, 260:12,
forgot 94:11, 264:5, 303:14, furnished 52:9,
99:23, 303:17, 303:18, furniture 272:5,
forgotten 130:4, 350:10, 292:4,
form 92:3, 152:24, Free 102:16, Future 201:23,
199:21, 301:24, 138:21,
357:14, Freeman 62:25,
formally 5:16, 63:7, 115:14, < G >,
formed 159:10, frequent 282:10, G-6 283:14,
former 41:22, Freshmen 333:6, G-I-E-R-S-O-O-R-F
forth 11:23, 333:9, 282:2,
37:20, 42:5, Friday 153:22, G-R-S-E-N 158:9,
158:12, 153:25, 195:23, gaduful 98:7,
fortunate 210:22, 344:15, 99:18, 100:1,
235:18, friend 65:11, gal 204:23,
found 7:24, 9:22, 65:25, 126:24, 205:9,
18:1, 84:25, 235:15, 235:15, game 176:23,
86:7, 86:11, 286:17, games 101:1,
141:15, 141:19, 344:15, 101:1, 231:3,
150:11, 165:6, friendly 195:13, 307:21,
189:18, 194:23, friendship 207:7,
226:14, 237:20, 195:20, 207:8, 219:12,
295:19, 295:20, Fries 348:21, gash 64:5,
328:12, 348:24, gate 207:5, 207:7,
Foundation 16:11, Frighten 39:5, 207:9, 219:12,
16:13, 16:15, front 21:18, 219:14,
298:5, 306:9, 21:21, 30:9, gated 207:4,
Four 150:18, 63:6, 63:10, gathering
163:16, 163:17, 65:1, 73:12, 260:21,
165:1, 166:14, 74:21, 79:25, gatherings
181:7, 221:9, 82:12, 108:8, 218:8,
243:1, 257:19, 139:22, 148:19, gave 23:23, 43:18,
257:22, 260:24, 149:25, 151:21, 57:7, 68:6,
283:13, 284:14, 179:6, 181:10, 99:15, 110:19,
285:24, 290:16, 247:10, 129:4, 153:16,
290:17, 290:19, 343:10, 221:15, 267:13,
290:24, 298:24, Fry 13:7, 328:14,
300:17, 300:19, Frys 13:18, 14:18, 328:14,
305:20, 320:4, 16:24, 19:1, gear 80:21,
325:14, 326:15, 19:6, 20:4, GED 46:5, 325:19,
331:2, 341:7, Full 74:23, 80:8, 343:3, 343:5,
347:24, 302:7, 343:9, 343:13,
fourteen 166:12, fun 271:12, 343:25,
fracture 191:24, 215:21, generally 160:3,

382

349:16, 215:5, 224:1, Grade 231:14,
generating 247:18, 224:2, 224:12, 251:15, 265:23,
247:21, 231:8, 234:16, 265:25, 266:7,
generous 204:21, 327:8, 332:8, 268:8, 289:4,
225:2, 332:24, 289:19, 300:1,
gentleman 40:8, 341:25, 306:18, 306:18,
72:17, girlfriend 116:22, 306:19, 306:19,
316:25, 126:22, 279:13, 308:12, 308:14,
gentlemen 11:8, 334:2, 309:20, 313:13,
56:17, 91:30, girlfriends 231:9, 325:18,
91:38, 94:11, 233:2, 333:14,
108:9, 152:14, girls 213:24, Grades 266:5,
198:11, 238:25, 215:10, 266:7, 276:11,
301:14, 348:16, given 7:8, 20:25, 306:16,
357:1, 357:4, 95:10, graduate 45:22,
gasline 20:9, gives 172:13, 276:14,
get-togethers 18:16, giving 18:16, graduated 222:12,
204:15, 204:20, 42:9, 204:21, 230:20, 232:9,
214:1, 217:7, 204:25, 259:24, 281:23,
218:7, 218:10, 281:10, 282:4, 284:3,
224:18, glad 55:1, 75:4, graduation
gets 173:15, gland 185:21, 233:7,
185:9, 219:9, glass 332:3, grams 287:19,
349:22, God 11:24, 27:22, 287:22,
getting 5:13, 37:21, 42:6, grand 220:19,
23:10, 46:5, 76:20, 151:21, 226:5, 227:2,
55:15, 60:19, 158:4, 192:25, 227:2, 227:21,
104:8, 120:2, 203:7, 223:9, 283:22, 294:6,
121:24, 122:2, 235:6, 239:7, grandchildren
122:4, 122:14, 264:1, 302:17, 234:16, 235:8,
124:8, 183:14, 310:1, 349:23, 236:8, 237:7,
170:24, 208:23, gold 132:12, granddaughter
210:2, 210:2, goaf 307:22, 236:11,
231:24, 232:3, goody 313:15, grandfather 221:8,
232:4, 243:18, 313:17, 313:19, 221:18,
274:25, 275:23, 313:21, 314:2, granda 206:3,
282:1, 282:5, gotten 30:23, 219:3, 225:22,
296:19, 311:19, 39:11, 52:9, 230:8, 231:19,
342:18, 342:25, 156:4, 196:20, 242:9, 250:8,
347:10, 220:15, 272:10, 274:14,
ghost 207:10, 296:25, 278:16, 281:4,
Gloria 3:9, grab 81:25, 305:25, 324:1,
28:1, 109:3, 111:10, 143:1, 340:23, 342:7,
gift 205:11, 186:3, 343:24, 348:2,
222:14, Grabbed 18:25, 354:9, 356:18,
gifted 205:9, 76:18, 77:1, grandmothers
222:15, 79:24, 81:18, 291:20, 334:7,
Giles 158:8, 82:16, 86:14, 334:17,
girl 71:23, 116:12, 132:19, grandparent
103:12, 132:14, 132:21, 134:3, 235:14,

383

granted 235:10, 304:24, guys 52:7, 54:20,
granting 9:10, Grove 268:2, 59:7, 59:14,
grasp 133:11, 268:4, 270:9, 74:18, 248:10,
grass 353:13, 270:12, 271:5, 275:24,
grave 76:20, 216:23, 212:6, 221:23, 278:4, 278:16,
216:23, 250:7, 264:15, 288:13, 307:14,
216:23, 290:12, 312:2, 347:3,
355:20,
great 175:4, growing 204:17, < H >,
222:12, 224:19, 219:9, 221:10, H. 309:14,
232:10, 235:7, 221:25, 233:4, had 214:11,
297:7, 244:3, 249:8, 250:4, 272:6, 221:20,
greatly 235:22, 268:17, 299:18, 299:25, 303:2, hair 30:1,
Green 3:26, 303:9, 313:11, half 16:23, 30:9,
157:24, 158:9, 320:17, 320:19, 32:7, 62:4,
169:20, 180:25, 321:24, 327:19, 91:11, 136:2,
190:8, 180:12, 336:20, 338:14, 165:15, 171:25,
192:5, 347:3, 356:8, 180:1, 284:24,
greeted 135:9, 284:24, 339:3, 284:24, 339:3,
grow 153:19, 224:20, 288:6, guardian 270:18, ball 182:16,
153:3, 156:13, 289:24, 290:10, 235:10, Halloween 234:1,
218:14, 219:5, 310:7, guardianship 234:4,
224:20, 288:6, 289:24, 290:10, 310:7, 208:25,
gray 40:8, grief 236:4, 227:16, hand 64:5, 132:22,
grief 236:4, 227:16, 133:7, 133:8,
grievance 234:20, 227:16, 133:9, 133:10,
grievance 234:20, 234:20, 65:11, 75:23, 133:11, 133:12,
grievance 220:20, 113:13, 125:4, 124:4, 134:4,
231:22, 130:14, 136:1, 134:5, 160:5,
grieving 210:2, 195:16, 248:8, 161:25, 171:11,
234:23, 266:3, 272:15, 184:19, 184:24,
grocery 13:8, 286:2, 299:1, 185:13, 205:23,
197:19, 284:20, 300:5, 300:9, 206:23, 218:25,
284:20, 284:25, 300:22, 305:16, 218:25, 286:16,
285:2, 289:16, 308:24, 296:12, 312:16,
285:25, 286:2, 326:12, 329:14,
groin 162:16, guilt 201:17, hand-held 101:1,
163:3, 163:8, guilty 66:3, 71:4, handed 140:6,
164:7, 164:13, 121:5, 121:8, handle 221:25,
174:6, 176:18, 123:18, 325:24,
182:15, 123:25, handling 188:11,
182:16, guitar 230:23, hands 73:11, 89:4,
ground 83:11, 230:25, 89:5, 133:4,
group 155:4, 230:25, 244:8,
156:12, 156:16, gurney 29:18, handwriting
193:33, 197:12, quishing 64:13, 149:23,
232:19, 249:4, gut 313:16, 150:12,
277:25, 278:13, guy 82:6, 127:13, hang 103:25,
278:23, 281:21, 142:15, 251:6, 251:6, 270:24,

384

271:12, 304:25, Harris 159:16,
305:5, 307:14, hats 45:2, 45:3,
333:16, 334:1, hated 45:1,
334:7, hateful 120:17,
hanging 47:5, Raven 227:11,
62:15, 68:8, 228:8,
151:8, 278:11, hazards
279:8, 279:16, 175:16,
279:20, 282:8, head 30:2, 30:19,
284:17, 334:10, 64:1, 81:3,
344:20, 84:17, 89:3,
hangout 324:5, 166:2, 166:25,
happen 39:18, 167:4, 167:14,
58:13, 58:17, 171:8, 185:22,
79:22, 103:23, 190:22,
130:2, 117:25, 276:22,
126:23, 180:12, heal 190:19,
188:15, 206:11, Health 159:7,
209:13, 274:16, healthy 144:19,
309:7, 324:22, hear 67:20, 67:21,
390:7, 73:12, 78:9,
happened 220:5, 78:12, 78:13,
236:10, 78:15, 130:20,
happening 70:15, 194:21, 208:4,
117:23, 219:20, 208:5, 211:13,
220:12, 238:1, 227:15, 236:17,
happens 74:17, 256:20, 274:20,
happier 196:16, 294:8, 328:10,
happy 71:22, 328:11,
130:1, 222:5, heard 56:23,
222:6, 237:3, 58:11, 63:15,
291:6, 297:11, 78:16, 108:19,
hard 26:21, 31:7, 137:13, 139:8,
31:10, 91:13, 153:16, 194:8,
160:19, 172:17, 194:13, 207:14,
172:18, 184:1, 215:22, 225:1,
190:16, 190:19, 257:16, 257:16,
308:10, 215:2, 257:18, 274:22,
220:12, 221:18, 308:22, 311:17,
221:22, 223:4, 340:6,
224:25, 226:4, HEARING 1:14, 8:2, her 215:13,
237:1, 300:16, 9:1, 11:2, 236:16,
326:15, 326:18, 11:18, 121:11, Herbert 274:4,
326:21, 153:21, 154:25, hereby 358:9,
harder 184:4, 155:10, 155:21, HERNDON 1:27,
hardly 213:13, 156:3, 156:8,
harm 175:4, 156:23, 156:24,
235:16, 189:5, 212:21, 144:14, 145:1,
harmful 236:2, 214:19, 216:5, 204:22, 205:4,
harness 306:3, 354:4, 209:24, 236:16,

ideas 217:23, identify 13:2,
identification 169:16, 21:3, 40:12,
identified 13:2, 149:25,
173:21, identify 19:10,
170:8, 171:20, 174:4, 174:23,
355:12, idiot 325:6,
ignore 148:23, 295:18,
ignored 10:16, illegally 276:2,
imagine 210:5, 210:6, 220:3,
236:1, immediately 20:3,
76:12, 110:25, 111:1, 154:13,
231:21, impact 173:14,
173:14, 192:15, 196:13, 210:10,
210:15, 217:21, incident 22:6,
33:9, 33:25,
impairment 166:17, 35:25, 37:4,
IMPACTED 40:22, 104:14,
299:20, 115:9, 116:1,
implied 7:12, 116:13,
important 156:15, 211:23,
164:10, 165:23, include 25:14,
221:17, 202:4,
includes 87:6, including 91:20,
92:1, 152:16, 152:22, 166:10,
189:14, 193:13, 199:19, 267:6,
300:14, 301:16, 301:22, 357:6,
357:12, income 248:1,
388:20, 288:22, 288:24, 290:6,
incur 229:8, incurred 185:6,
inaccurate 106:10, indicate 17:10,
25:9, 26:24,
inappropriate indicated 5:21,
116:21, 64:17, 109:24,
276:19, 154:10, 172:9,
394:16,
incarcerated 94:24, 123:2,
283:10, 284:8, 284:14, 284:15,
284:16, 293:3, 293:7, 298:12,
298:16, 298:19, incarceration 154:17, 284:7,
191:15, 298:15, 298:25,
inch 171:25, 172:4, 172:4,
inch-and-a-half 171:3,
inches 161:15, 162:3, 163:16,
163:17, 164:9, 165:1, 170:12,
170:20, 170:25, 171:1, 174:7,
179:25, 184:12, incident 22:6,
33:9, 33:25, 35:25, 37:4,
40:22, 104:14, 115:9, 116:1,
116:13, 211:23, include 25:14,
202:4,
includes 87:6, including 91:20,
92:1, 152:16, 152:22, 166:10,
189:14, 193:13, 199:19, 267:6,
300:14, 301:16, 301:22, 357:6,
357:12, income 248:1,
388:20, 288:22, 288:24, 290:6,
incur 229:8, incurred 185:6,
injure 144:20, injuries 30:4,
31:10, 144:22, 161:20, 175:22,
176:11, 178:20, 180:6, 185:5,
185:11, 187:20, 187:23, 190:22,
191:24, injury 30:6,
30:16, 31:6, 31:13, 107:20,
164:1, 166:21, 167:21, 168:6,
168:9, 169:8, 172:20, 173:4,
173:6, 181:10, 182:1, 185:2,
185:17, 191:22, inseparable 197:16,
inside 14:22, 21:7, 21:9,
21:10, 21:16, 31:25, 32:9,
64:12, 74:3, 82:18, 83:18,
84:11, 87:23, 90:20, 108:25,
100:25, 109:1, 109:13, 116:12,
116:12, 117:25, 130:3, 130:13,
130:19, 148:13, 149:11, 175:17,
180:2, 210:5, inspect 189:22,
instead 308:24, Institute 159:8,
instruct 201:5, instructions 235:24,
instrument 186:9,
insurance 229:17, intending 52:4,
interest 98:1, 159:2, 185:3,

inaccurate 106:10, indicate 17:10,
25:9, 26:24,
inappropriate indicated 5:21,
116:21, 64:17, 109:24,
276:19, 154:10, 172:9,
394:16,
incarcerated 94:24, 123:2,
283:10, 284:8, 284:14, 284:15,
284:16, 293:3, 293:7, 298:12,
298:16, 298:19, incarceration 154:17, 284:7,
191:15, 298:15, 298:25,
inch 171:25, 172:4, 172:4,
inch-and-a-half 171:3,
inches 161:15, 162:3, 163:16,
163:17, 164:9, 165:1, 170:12,
170:20, 170:25, 171:1, 174:7,
179:25, 184:12, incident 22:6,
33:9, 33:25, 35:25, 37:4,
40:22, 104:14, 115:9, 116:1,
116:13, 211:23, include 25:14,
202:4,
includes 87:6, including 91:20,
92:1, 152:16, 152:22, 166:10,
189:14, 193:13, 199:19, 267:6,
300:14, 301:16, 301:22, 357:6,
357:12, income 248:1,
388:20, 288:22, 288:24, 290:6,
incur 229:8, incurred 185:6,
injure 144:20, injuries 30:4,
31:10, 144:22, 161:20, 175:22,
176:11, 178:20, 180:6, 185:5,
185:11, 187:20, 187:23, 190:22,
191:24, injury 30:6,
30:16, 31:6, 31:13, 107:20,
164:1, 166:21, 167:21, 168:6,
168:9, 169:8, 172:20, 173:4,
173:6, 181:10, 182:1, 185:2,
185:17, 191:22, inseparable 197:16,
inside 14:22, 21:7, 21:9,
21:10, 21:16, 31:25, 32:9,
64:12, 74:3, 82:18, 83:18,
84:11, 87:23, 90:20, 108:25,
100:25, 109:1, 109:13, 116:12,
116:12, 117:25, 130:3, 130:13,
130:19, 148:13, 149:11, 175:17,
180:2, 210:5, inspect 189:22,
instead 308:24, Institute 159:8,
instruct 201:5, instructions 235:24,
instrument 186:9,
insurance 229:17, intending 52:4,
interest 98:1, 159:2, 185:3,

inaccurate 106:10, indicate 17:10,
25:9, 26:24,
inappropriate indicated 5:21,
116:21, 64:17, 109:24,
276:19, 154:10, 172:9,
394:16,
incarcerated 94:24, 123:2,
283:10, 284:8, 284:14, 284:15,
284:16, 293:3, 293:7, 298:12,
298:16, 298:19, incarceration 154:17, 284:7,
191:15, 298:15, 298:25,
inch 171:25, 172:4, 172:4,
inch-and-a-half 171:3,
inches 161:15, 162:3, 163:16,
163:17, 164:9, 165:1, 170:12,
170:20, 170:25, 171:1, 174:7,
179:25, 184:12, incident 22:6,
33:9, 33:25, 35:25, 37:4,
40:22, 104:14, 115:9, 116:1,
116:13, 211:23, include 25:14,
202:4,
includes 87:6, including 91:20,
92:1, 152:16, 152:22, 166:10,
189:14, 193:13, 199:19, 267:6,
300:14, 301:16, 301:22, 357:6,
357:12, income 248:1,
388:20, 288:22, 288:24, 290:6,
incur 229:8, incurred 185:6,
injure 144:20, injuries 30:4,
31:10, 144:22, 161:20, 175:22,
176:11, 178:20, 180:6, 185:5,
185:11, 187:20, 187:23, 190:22,
191:24, injury 30:6,
30:16, 31:6, 31:13, 107:20,
164:1, 166:21, 167:21, 168:6,
168:9, 169:8, 172:20, 173:4,
173:6, 181:10, 182:1, 185:2,
185:17, 191:22, inseparable 197:16,
inside 14:22, 21:7, 21:9,
21:10, 21:16, 31:25, 32:9,
64:12, 74:3, 82:18, 83:18,
84:11, 87:23, 90:20, 108:25,
100:25, 109:1, 109:13, 116:12,
116:12, 117:25, 130:3, 130:13,
130:19, 148:13, 149:11, 175:17,
180:2, 210:5, inspect 189:22,
instead 308:24, Institute 159:8,
instruct 201:5, instructions 235:24,
instrument 186:9,
insurance 229:17, intending 52:4,
interest 98:1, 159:2, 185:3,

385

387

260:9, 293:1, hopes 201:22,
222:13, 327:13, has 240:8,
highlight 10:19, horror 219:23,
highway 328:16, 222:18,
hill 265:4, 265:8, horse 306:2,
265:11, 265:13, 306:3, 306:6,
265:14, 307:7, 307:11,
322:21, 321:1,
him 215:25, Hospital 44:11,
hindered 100:17, 108:21, 158:25,
hip 173:5, 158:4, 158:8,
hits 173:1, 158:13,
hitting 26:4, hospitalized
59:1, 145:8, 164:3,
344:5, hot 250:11,
hold 85:13, 107:3, hotel 52:16,
122:13, 171:19, hour 16:23,
190:8, 253:6, 125:15, 136:3,
285:8, 298:13, 264:13,
346:3, 348:14, 323:11,
holding 25:15, House 103:6,
133:14, 133:22, 149:12, 285:11,
179:22, 215:21, 301:11,
346:11, 323:11,
holds 185:2, household 112:12,
185:8, 146:6, 224:5,
holidays 218:9, 244:20, 254:16,
221:24, 255:10, 258:2,
hollered 344:25, 259:7, 273:8,
Hollis 214:17, 275:12, 296:3,
homes 265:10, 318:19, 327:7,
334:9, 335:19, 221:6, 221:12,
365:11, 293:10, 223:24, 273:4,
322:12, 342:15, 347:6,
322:13, houses 103:8,
homework 246:12, 141:22, 141:23,
246:16, 246:18, 248:3, 248:4,
326:22, 248:6, 280:6,
326:23, 290:16, 290:17,
handcuffs 169:1, 290:19, 290:25,
189:12, 291:2, 298:14, hysterics
189:12, 298:24, 304:11, 207:18,
304:12, 304:14, -
HONESTLY 63:5, 322:4, 350:21,
HONORABLE 1:27, 352:22,
Honored 97:21, 353:18,
97:22, 97:23, housing 247:25,
honors 222:13, 335:25,
hood 116:19, 322:9,
hope 214:8, Houston 159:6,
hoped 235:12, 159:17,
Howard 1:42,

358:26, hug 346:12,
huge 154:5, 178:22,
hugged 147:13, hugs 324:8,
Hub-uh 343:7, 343:11,
hub 150:24, human 236:1,
hump 265:15, 265:17,
hundreds 101:19, 160:18,
hung 253:5, 256:1,
271:8, 278:1,
278:5, 322:2, 355:20,
hurried 84:9, hurt 49:1, 68:11,
70:16, 108:13,
118:19, 144:20, 182:7, 195:8,
husband 207:8, 208:9, 209:22,
210:11, 210:15, 210:25, 218:12,
219:12, 220:6,
220:16, 220:25, 221:6, 221:12,
223:24, 273:4, 228:11, 231:23,
233:12, 234:9, 234:21,
235:15, hysterically 219:16,
hysteresis 207:18,
-
< I >,
I 215:17, 267:16,
idea 68:9, 190:3,
292:18, 306:4,
307:17, 311:13,
331:19,

interfere 58:6, 62:18, 62:21,
interfere 58:6, 62:18, 62:21,
internal 161:8, 163:2, 163:6,
164:15, 165:12, 165:14, 165:16,
168:19, 176:23, 171:10,
interferable 166:15,
288:23, 288:23,
Internally 164:17, 165:9, 167:9,
167:25, 168:3, 169:4,
Internet 92:2, 152:23, 199:20,
230:24, 301:23, 357:13,
244:10, 248:17,
249:1, 249:3, 287:17,
284:21, interrupt 73:15,
117:22,
intersection 13:13,
Interstate 282:25, 287:3,
interval 177:17, intervals 175:25,
179:24,
Interview 14:24, 16:2, 17:19,
20:1,
introduce 253:2, introduced 11:1,
61:5, 64:17, 314:7,
introducing 5:26,
investigation 15:14, 16:21,
153:13, 155:22, 157:7,
investigator 157:5,
involved 6:12, 43:23, 161:7,
210:20, 211:7, 250:20, 230:23,
251:11, 251:13, 251:16, 282:3,
282:5, 283:1,

285:9, 340:6, involuntarily 250:3,
involving 8:20, irregular 31:4,
irregular 171:10,
irreversible 166:15,
issues 6:7, 6:17, 7:23, 9:7,
9:11,
Issues 8:20, 202:10,
item 186:5, 186:5, items 270:8,
244:10, 248:17, 249:1, 249:3,
287:17, 284:21, Ivory 153:15,
278:9, 278:10, 278:14, 310:2,
310:8, 310:9, 355:7, 355:14,
356:3, 356:4, 356:5,
J > J >,
J-E-R-I 12:1, 12:9,
Jackson 81:6, 103:9, 306:2,
314:7, janitorial 46:11,
January 28:8, 28:12, 115:24,
Jaw 172:6, 180:21,
jealous 113:21, 147:19,
Jenna 214:22, Jennifer 151:10,
Jeri 3:5, 11:18, 12:1, 12:7,
12:9, 104:19, Jim 251:2, 253:1,

386

388

275:9, 275:14, Judge 1:20, 7:19, 221:12, 225:21,
276:9, 276:15, 8:21, 9:3, 9:9, 315:8, 336:13.
314:25, 37:10, 37:13, Keeping 46:28,
325:21, 41:11, 152:4, 47:3, 54:20,
Jimbo 303:11, 223:9, 287:12, 54:22, 55:1,
303:19, 304:25, judging 150:21, 309:24,
305:1, 305:3, judgment 119:14, Neeps 54:7,
310:16, 311:6, Jugular 165:14, Keisha 253:24,
311:9, 311:14, 167:12, 167:13, 354:8,
311:10, 311:23, 167:21, 168:10, kept 206:17,
312:3, 312:20, 175:7, 206:28, 214:6,
312:23, 313:11, July 150:11, 219:18, 226:24,
313:13, 313:25, 151:17, 230:3, 236:3,
314:12, jump 221:14, 323:24,
Job 215:9, jumped 207:17, Keisha 354:11,
Jobs 46:6, 46:9, June 38:14, 48:19, key 74:3, 128:19,
46:10, 47:4, 55:5, 66:6, 128:21, 128:24,
56:25, 56:25, 66:18, 66:18, 140:15,
57:3, 57:5, 66:20, 66:25, 140:17,
62:7, 98:4, 68:21, 93:23, kepts 20:13, 140:6,
154:10, 215:21, 93:24, 94:1, 149:6,
201:17, 102:3, 102:9, klick 106:7, 106:9,
314:12, 103:2, 103:3, 106:11, 106:12,
John 218:12, 103:24, 109:20, 106:13,
Johnson 62:16, 117:3, 121:8, 106:14,
72:2, 72:3, 123:2, Kicked 18:9,
72:10, 73:5, Junior 52:22, 52:23, 106:12,
88:23, 89:19, 266:17, 275:23, 106:15, 190:14,
90:13, 102:10, 300:19, 309:23, 238:4,
102:20, 125:22, 313:14, Kicking 106:12,
126:8, 127:7, jurisdiction 190:16,
135:20, 135:24, 156:7, Kid 271:13,
136:11, 149:8, JUMOR 289:20, 325:25,
joined 159:16, jurors 9:21, kill 112:22,
joins 102:11, 199:1, 118:13,
Joke 238:2, just-because Killing 83:15,
274:23, 218:9, 91:5, 220:4,
Joseph 159:4, Justice 7:19, Kindergarten
JP 48:10, 220:24, juvenile 243:24, 268:8,
225:19, 227:23, kindhearted
229:24, 230:19, 225:2,
230:23, 231:7, < K >, kinds 59:7,
231:14, 231:15, K-I-O-G 318:5, 174:23,
231:18, 234:7, keep 48:8, 49:4, 206:10,
234:17, 263:9, 52:19, 69:9, King 46:22, 318:5,
242:12, 218:3, 81:9, 81:11, 118:8, 340:21,
336:4, 337:2, 160:5, 160:6, 348:17,
337:15, 337:22, 160:18, 166:6, Miss 131:16,
339:8, 339:9, 206:17, 206:18, 320:22,
339:15, 341:3, 218:19, 221:3, kissed 75:11.

389

341:6, 341:9, 152:23, 199:13, 11:10, 14:20,
Lessor 287:7, 189:14, 301:16, 19:2, 21:2,
287:9, 287:11, 301:22, 357:6, 28:22, 28:8,
288:4, 357:12, 302:24, 167:3,
Letter 214:7, limited 166:11, Lock 49:6, 49:8,
Letters 69:15, limiting 202:4, lonely 70:16,
69:16, 69:19, line 5:25, 97:12, 118:18,
70:1, 70:2, 108:10, 235:3, 258:14,
66:10, 66:15, 286:4, long-term 55:17,
66:16, 66:24, lines 10:12, longer 136:12,
66:24, 87:7, Lisa 153:10, 160:7, 166:19,
118:3, 118:7, 193:25, 194:8, 167:22, 220:22,
118:9, 119:12, 194:22, 221:23,
118:14, 118:18, 194:24, 222:16,
120:20, 147:1, listed 157:5, Look 21:21, 26:22,
147:3, 148:4, listed 91:23, 32:6, 39:4,
149:22, 212:10, 182:19, 199:16, 81:6, 84:8,
212:23, 238:20, 238:6, 301:19, 112:22, 135:11,
238:21, 357:9, 148:19, 148:22,
252:19, listened 19:19, 148:25, 149:1,
letting 341:19, listening 42:14, 165:2, 186:5,
Lavel 29:24, 65:2, 203:16, 186:10, 196:3,
282:23, 282:24, Literally 218:25, 219:1,
282:24, 160:17, 238:17, 291:5,
Liar 115:15, Live 27:16, 48:9, 291:8, 351:1,
115:20, 115:25, 56:20, 65:21, looked 21:9, 30:9,
116:7, 116:8, 99:8, 193:8, 59:18, 59:18,
256:11, 203:14, 210:13, 64:11, 64:11,
Lia 106:17, 223:20, 224:16, 60:7, 60:19,
106:18, 106:19, 234:15, 242:2, 67:24, 90:22,
150:25, 242:4, 242:7, 137:24, 141:22,
Lied 63:14, 243:2, 243:11, 161:14, 169:17,
115:23, 248:4, 248:10, 231:18,
Lise 222:7, 250:1, 265:2, 330:13,
lifestyle 310:10, 319:13, looking 37:3,
275:22, 334:23, 335:1, 81:7, 90:14,
lifetime 257:5, 356:7, 164:19, 176:7,
light 90:23, Live-in 17:24, 178:19, 179:16,
209:25, 222:2, 30:24, 181:2, 181:4,
247:13, lives 60:19, 182:25, 183:16,
247:15, 103:12, 103:13, 184:12, 184:17,
lights 320:21, 210:12, 213:17, 184:23,
libely 154:11, 220:15, 237:4, Looks 30:2,
175:23, loaded 29:13, 149:21, 190:17,
180:23, 29:17, 228:5, 269:9,
Likes 231:3, locate 34:10, loose 76:7,
231:3, 231:8, 192:11, 131:24,
limit 98:6, located 290:22, Loss 52:21,
imitation 91:20, location 13:15, 128:24, 153:23,
92:1, 152:16, 13:25, 14:1, 154:10, 154:17,

391

lit 169:9, 108:8, 152:14, laugh 314:4,
Kitchen 75:20, 199:11, 239:25, Law 5:25, 8:7,
112:17, 146:7, 301:14, 349:15, 12:19, 17:8,
knee 171:16, 357:1, 357:4, 125:7, 135:13,
171:18, 171:24, Lockdown 303:9, 201:6, 312:8,
183:1, 183:2, Lady 17:1, 78:19, 312:8,
183:13, 78:20, 78:22, lawyers 91:21,
knees 59:15, 103:13, 104:18, 152:17, 199:14,
74:21, 114:17, 123:13, 126:19, 301:17, 357:7,
111:19, 133:19, 132:9, 132:11, laying 29:25,
162:11, 137:14, 138:13, 63:23, 133:13,
knackknack 151:11, 161:14, 133:16, 147:7,
206:13, 218:15, 148:16,
knock 39:20, 343:10, KCO 343:15,
39:22, 67:19, laid 63:22, 144:9, load 295:7,
74:9, 106:5, 144:11, 145:1, leak 172:13,
129:8, 129:13, 206:24, leaked 172:14,
130:5, 131:7, Lamb 28:13, 38:15, learn 16:20,
Knocked 18:4, 59:22, 71:16, 19:16, 255:19,
18:7, 21:14, 71:20, 72:20, 263:12, 340:0,
32:5, 32:18, 102:21, 122:17, learned 19:23,
65:16, 117:17, 125:25, 127:25, 256:4,
117:21, 131:5, 128:12, 129:5, Learning 218:16,
190:7, 298:14, 135:15, 249:19,
Knocking 32:12, 135:16, least 146:19,
Knowing 236:4, landed 107:13, 185:22, 187:4,
knowledge 156:14, languages 120:17, 187:8, 289:8,
240:21, 240:23, lap 82:15, leave 53:11, 58:7,
274:5, 279:1, large 30:7, 175:1, 79:23, 81:3,
281:15, 286:15, 203:16, 217:9, 80:13, 123:9,
286:19, 298:19, 218:5, 124:20, 136:21,
309:13, 315:12, largely 177:12, 202:14, 207:10,
341:8, 346:19, larger 93:17, 230:8, 254:2,
354:17, 170:23, 308:17, 324:18,
355:16, largest 159:9, 346:5, 347:9,
known 7:4, 95:5, larynx 163:22, 349:5, 349:17,
350:13, 175:10, leave 219:14,
knows 150:25, late 103:16, leaving 122:9,
103:20, 103:20, Leg 18:10, 18:10,
104:3, 197:24, 18:12, 27:3,
245:13, 260:16, 346:6, 346:11,
Lab 189:13, 357:20, legal 208:25,
189:24, Later 6:9, 6:14, 220:18, 227:16,
223:10,
Laceration 30:16, 89:9, 137:20, legs 296:16,
107:15, 153:3, 169:10, 168:14, 192:12, lengthy 357:19,
lack 8:22, 16:11, 207:1, 208:21, leniency 201:22,
16:14, 208:13, 263:13, Leslie 237:14,
Ladies 11:8, 278:10, less 36:5, 176:9,
56:16, 91:10, 289:10, 218:22, 283:12,
91:18, 94:11,

390

154:20, 154:21, lovers 44:1, 68:1, 68:3,
167:15, 167:15, loose 348:20, mail 49:10,
177:6, 187:2, looking 217:4, 49:11,
187:2, 188:6, 255:25, mailbox 49:7,
188:6, 188:6, 319:18, 49:9,
Loss 166:4, low 246:1, main 216:6,
losing 166:13, 290:6, mainly 161:21,
234:20, lower 88:20, 160:6,
Loss 196:1, 210:2, 164:6, 162:23, major 163:24,
216:21, 216:25, 163:7, 164:7, 163:25, 165:23,
220:16, 176:17, 269:13, 167:13, 168:14,
Loss 234:24, 289:20, 289:22, 171:7, 182:1,
lost 58:6, 62:5, 289:24, 185:20, 220:14,
74:4, 98:20, Lucky 90:1, 221:24,
98:23, 100:2, 153:17, majority 280:17,
101:9, 128:21, Lunch 152:12, 311:1, 311:3,
188:13, 209:11, 157:17, 312:12, male 32:6, 66:15,
209:22, 210:1, 333:23, 170:3, 244:19,
210:3, 220:16, Lung 164:20, 254:16, 320:6,
232:2, 234:23, 164:24, 165:2, males 273:7,
236:12, 174:14, 175:1, wall 49:14, 49:16,
Lots 80:15, 80:15, 181:1, 181:9, 214:25,
81:8, 105:13, LUMPED 28:5, 224:23,
166:24, 166:24, lying 65:2, 84:16, man 72:8, 85:2,
170:3, 214:2, 179:2, 97:4, 132:8,
224:13, 135:13,
loud 32:15, 230:19,
78:8, < M >, manipulative
Louise 294:10, M-O-N-S-O-N 315:2, 316:12,
lousy 57:7, 203:11, sensor 20:10,
Love 44:16, 44:18, M. 1:17, 2:6, 168:25,
77:5, 205:21, 61:25, 98:8, manslaughter
217:6, 217:15, 200:2, 95:24,
320:23, 326:19, MA 343:17, manually 207:6,
326:20, 327:17, Ma'am 27:13, Maple 268:2,
345:13, 28:17, 29:7, 268:4, 270:9,
loved 69:21, 76:4, 31:15, 31:22, 270:12,
120:11, 121:23, 222:24, 226:20, Marabel 157:6,
124:23, 195:12, 232:17, 234:11, Marge 321:5,
204:19, 205:25, 237:9, 340:24, Marjanna 47:13,
206:9, 206:13, 341:18, 341:23, 57:23, 101:22,
213:25, 214:9, 342:8, 342:11, 101:23, 102:5,
215:8, 215:12, 342:14, 342:17, 102:8, 257:13,
215:16, 215:18, 342:24, 343:1, 257:15, 276:2,
215:20, 216:25, 203:21, 343:23, 291:2, 312:1,
218:9, 218:17, 344:9, 348:14, 335:27, 335:24,
219:4, 222:1, 349:10, 335:24,
224:22, 224:24, machine 136:17, 346:25,
234:2, 234:18, 136:22, marital 114:22,
236:20, mad 58:24, 67:13, Mark 20:19,

392

216:12.
 Marked 41:15,
 180:4, 181:19,
 182:25, 212:14,
 216:11, 232:20,
 247:1, 267:15,
 329:14.
 marker 216:24.
 marks 150:18,
 324:18,
 324:20.
 marriage 129:3,
 129:5, 210:17,
 210:20,
 213:21.
 married 55:13,
 55:14, 55:15,
 56:20, 114:20,
 223:22.
 marry 114:24.
 wart 326:5.
 Mary 158:29.
 master 75:21,
 77:1, 86:11,
 87:15, 87:16.
 math 205:8.
 matter 8:17,
 41:23, 95:23,
 96:1, 96:4,
 96:10, 97:6,
 204:14, 205:5,
 207:12, 217:1,
 293:11,
 293:14.
 matters 96:2.
 matured 252:4,
 258:5.
 maximum 172:4.
 MD 159:8.
 meaning 132:23,
 190:23.
 means 112:3.
 meant 69:22,
 86:20, 148:5,
 151:3.
 meat 64:12.
 mechanism 172:8,
 173:10,
 184:14,
 wed 28:12.
 medial 184:22.
 Medical 18:13,
 26:16, 26:20,
 26:20, 26:25,
 27:1, 27:4,
 29:2, 36:25,
 36:25, 64:16,
 107:23, 146:18,
 158:16, 159:18,
 159:19, 159:21,
 184:10, 182:11,
 378:12,
 343:17.
 Medicine 101:5,
 158:21, 158:22,
 160:2.
 median 91:25,
 152:21, 199:18,
 301:21,
 357:11.
 meet 43:8, 60:15,
 215:22, 241:16,
 310:22.
 member 159:25.
 members 210:11,
 211:11,
 211:17.
 memories 214:15,
 216:3, 237:2,
 336:8.
 memory 219:9,
 241:21.
 men 67:23, 67:24,
 68:9, 69:7,
 76:15, 119:21.
 mention 25:8,
 34:23, 94:11,
 137:13, 231:14,
 262:9, 328:25.
 mentioned 20:6,
 30:15, 60:22,
 137:12, 162:19,
 169:6, 172:15,
 176:17, 180:10,
 182:1, 275:12,
 305:22, 328:23,
 341:24,
 343:24.
 Merozy 34:4.
 meric 9:10.
 mess 81:7,
 101:25.
 message 31:6,
 136:17,
 136:21.
 messed 141:11.
 messing 69:6,
 70:5, 76:13,
 76:14, 79:10,
 126:23,
 139:18.
 met 36:9, 43:14,
 43:16, 129:23,
 131:4, 135:13,
 195:16, 195:17,
 197:9, 214:3,
 262:24, 278:17,
 278:20, 278:21,
 278:25, 289:13,
 303:19, 303:20,
 310:8, 310:9,
 310:24, 310:25,
 319:2, 332:16,
 332:19, 333:1,
 336:4, 336:6.
 metric 179:23.
 Metro 28:6,
 28:8.
 Metropolitan 38:8,
 115:19.
 Mexican 55:7.
 Mla 246:25,
 249:12, 257:14,
 257:15,
 291:16.
 Michael 3:31,
 31:21, 81:6,
 214:7.
 Michigan 214:17,
 216:3.
 mid 29:24,
 161:15.
 middle 81:9, 99:9,
 100:4, 104:6,
 178:7, 277:11.
 Mike 192:12,
 193:4, 270:6,
 343:24.
 Mike 347:22,
 347:22.
 military 25:25.

393

229:5, 248:13,
 268:17, 272:5,
 277:7, 304:13,
 319:16, 327:6,
 327:10, 327:12,
 329:24, 331:4,
 338:1, 352:8,
 354:23,
 355:21.
 moves 314:8.
 movies 213:19,
 345:12.
 moving 81:5,
 145:17, 226:2,
 296:18, 304:13,
 338:18.
 Mr. Schueck 4:33.
 MNY 307:21, 314:6,
 324:4.
 much 213:25,
 217:16, 222:1.
 muffled 31:11.
 multi-cultural
 248:1.
 multiple 161:25,
 179:14.
 murder 95:24,
 95:25, 96:6,
 96:11.
 murdered 208:7,
 226:21, 235:1.
 music 67:22,
 230:24, 231:1,
 307:22, 324:3.
 Myers 284:18,
 284:20.
 myself 145:8,
 145:11, 149:5,
 231:25, 233:9,
 233:13, 234:23,
 237:7, 258:13,
 278:7, 297:4,
 328:16, 335:9,
 350:25.
 < N >.
 N-I-E-D-R-O-W-S-K-
 I 14:8.
 named 72:8,
 229:5, 248:13,
 268:17, 272:5,
 277:7, 304:13,
 319:16, 327:6,
 327:10, 327:12,
 329:24, 331:4,
 338:1, 352:8,
 354:23,
 355:21.
 nature 167:3,
 187:22,
 264:21.
 naval 162:6,
 naval 174:8,
 181:23.
 nd 71:13.
 na 41:9.
 Near 6:23, 20:5,
 186:4, 264:12.
 necessarily
 182:20.
 necessary 155:15,
 228:12.
 necessities
 321:12.
 necklace 206:23.
 need 5:16, 9:25,
 58:22, 131:13,
 140:23, 192:17,
 201:13, 213:11,
 238:6.
 needed 14:1,
 15:13, 23:13,
 23:19, 56:21,
 98:13, 205:2,
 205:11, 210:7,
 221:7, 221:20,
 226:10, 226:10,
 226:11, 226:14,
 226:18, 235:25,
 246:6, 258:21.
 needing 250:13.
 needs 8:8, 73:12,
 238:18,
 349:17.
 negative 256:10.
 negotiation
 156:6.
 neighbor 52:24,
 207:21, 208:5,
 268:23,
 333:22.
 neither 51:23.
 Neller 243:8,
 258:13, 319:6.
 Necropolis 101:4.
 Nervous 137:24,
 138:3, 138:4,
 138:5, 139:16,
 139:16, 211:5,
 Nevada 1:7, 1:10,
 5:1, 5:6, 5:20,
 11:9, 28:16,
 38:22, 92:14,
 153:7, 157:19,
 156:6, 200:4,
 200:11, 202:22,
 302:4, 358:9.
 new 18:1, 98:19,
 127:2, 339:13,
 news 90:12.
 newspaper 90:5.
 newspapers 92:1,
 152:22, 199:13,
 301:22,
 357:12.
 nice 321:22,
 325:5.
 niece 290:4.
 nicked 181:1.
 nicknames 303:12,
 nicknames 313:19,
 313:21,
 343:21.
 niece 216:6.
 niece, 218:4.
 Nledkowski 14:6,
 20:4, 25:19.
 Nledkowski
 15:12.
 Nledkowski 14:5.
 niger 246:14,
 256:10.
 night 13:14,
 28:23, 35:4,
 45:15, 45:16,
 45:19, 90:6,
 103:8, 103:14,
 103:16, 103:17,
 103:18, 203:20,
 125:12, 127:16,
 127:16, 136:6,
 149:15,
 157:21.
 nise 30:8, 30:10,
 30:12, 31:14,
 63:16, 64:4,
 64:7, 64:22,
 64:23, 101:3,
 101:4, 106:23,
 107:7, 107:16,
 107:20, 107:20,
 107:24, 108:13,
 116:2.
 notarized 316:4.
 notations 10:15.
 note 8:17, 22:16,
 81:14, 81:16,
 81:16, 81:25,
 81:25, 82:1,
 142:6, 143:13,
 192:20.
 noted 178:13.
 notice 10:3,
 10:11, 161:17.
 notified 81:24,
 notified 208:21,
 226:20.
 NSS 17:11.
 Number 19:20,
 23:14, 23:23,
 38:16, 43:18,
 49:20, 61:13,
 110:6, 110:14,
 177:22, 184:17,
 185:22, 186:2,
 207:24, 300:16,
 300:21.
 numbered 149:21.
 Numerous 67:17,
 88:16, 120:18,
 121:6, 121:25,
 144:18.
 nurturing 249:7.
 < O >.
 o'clock 16:24,
 26:6, 26:7,
 74:14, 125:11,
 125:12, 127:16,
 127:16, 136:6,
 149:15,
 157:21.
 O. 63:3, 63:9,
 351:20.
 oath 63:14,
 92:21.
 Object 5:17, 35:6,
 15:10, 15:14,
 17:4, 172:12,
 172:23, 173:9,
 179:11, 179:11,
 181:18, 183:24,
 184:4, 184:15,
 186:8, 230:15,
 306:7.
 Objection 5:19,
 178:12, 379:13,
 191:14, 192:18,
 232:22, 238:19,
 238:22, 268:13,
 330:1, 331:6,
 331:7, 338:3,
 338:4, 352:9,
 354:25, 355:23,
 355:24.
 objections 9:25,
 10:1, 172:24,
 358:13,
 358:16.
 obligations
 211:25.
 observe 21:10,
 21:14, 189:1,
 253:3.
 observed 20:10,
 189:9, 280:3,
 339:22.
 obstetrics
 159:1.
 obvious 161:19,
 178:21.
 Obviously 16:4,
 28:15, 30:3,
 42:13, 98:16,
 134:11, 120:14,
 124:1, 172:10,
 185:7, 293:14,
 293:24.

395

million 76:3.
 mind 25:2, 25:4,
 26:19, 36:1,
 36:7, 54:11,
 83:19, 83:23,
 84:14, 120:3,
 127:21, 139:20,
 145:7, 196:15,
 236:7, 237:25.
 mine 27:4, 53:2,
 191:10, 220:25,
 246:6, 246:9,
 300:7, 345:20.
 minimal 188:4.
 minimize 96:17.
 minimized 96:17.
 minimum 176:5,
 176:8, 288:1.
 minute 43:17,
 199:6, 277:16,
 348:14.
 minutes 15:23,
 17:1, 17:5,
 25:24, 26:13,
 26:15, 40:24,
 71:20, 71:20,
 72:13, 75:9,
 89:1, 91:15,
 126:10, 131:16,
 135:17, 136:12,
 166:14, 176:7,
 199:24, 294:22,
 295:3, 295:5,
 297:22,
 340:21.
 Mira 4:28, 155:18,
 277:6, 278:17,
 317:20, 318:5.
 misbehaved
 328:1.
 missed 69:21,
 121:22, 214:9,
 221:21, 222:3,
 232:1.
 missing 298:24,
 298:25.
 mistake 207:15,
 219:19,
 219:22.
 mistaken 59:25.
 misunderstood
 207:23,
 219:19.
 mitigation
 157:6.
 Mobilia 28:13,
 28:18, 31:24,
 31:24, 38:18,
 115:24, 125:18,
 128:14, 135:8,
 136:11, 138:1,
 143:23, 148:13,
 178:15.
 necessary
 190:18.
 Man 50:6, 52:1,
 56:13, 205:19,
 215:11, 215:12,
 215:23, 222:1,
 222:14, 228:4,
 230:1, 230:12,
 230:15, 230:18,
 236:12, 236:14,
 238:3, 256:24,
 274:18, 295:14,
 296:8, 296:10,
 329:3, 329:5,
 356:11,
 356:18.
 moment 36:19,
 143:14, 158:19,
 172:7, 204:7,
 219:23, 301:6,
 moments 196:16.
 Mommy 230:17,
 236:8.
 Monday 1:31, 5:1,
 344:15.
 money 37:14,
 58:21, 58:22,
 104:24, 105:16,
 105:21, 105:24,
 126:4, 131:9,
 139:22, 139:25,
 226:11, 226:15,
 249:17, 262:13,
 262:24.
 Hanson 4:1, 203:3,
 203:11, 218:2.
 Monte 44:9.
 month 62:4,
 103:23, 231:7,
 260:22, 260:24,
 264:9, 338:25.
 month-and-a-half
 99:16.
 monthly 154:15.
 months 48:11,
 48:18, 48:19,
 50:13, 51:8,
 52:20, 65:22,
 102:1, 173:3,
 265:21, 348:6,
 341:7, 343:10.
 monumental
 182:8.
 morning 11:8,
 11:16, 33:17,
 33:18, 103:21,
 103:22, 125:10,
 357:17.
 Marshall 153:15,
 154:9, 185:4,
 155:8, 185:16,
 156:1, 156:21,
 157:8, 278:9,
 310:3, 310:9,
 355:7, 355:14,
 356:5.
 Morris 245:18,
 245:19, 251:6,
 266:15, 266:14,
 266:16, 266:18,
 266:21, 267:1,
 267:4, 267:22,
 268:7, 268:24,
 269:15, 270:23,
 287:19, 297:20,
 307:24,
 308:17.
 mostly 280:14.
 motor 173:2.
 mouth 73:12,
 Move 48:3, 59:8,
 59:23, 60:16,
 116:18, 144:10,
 157:8, 166:7,
 175:15, 191:12,
 200:2, 226:3.

394

149:16, 153:21,
 197:22, 197:24,
 230:4, 230:9,
 230:15.
 nightmares
 208:10.
 nightmares
 220:10.
 nights 24:23,
 305:18, 306:4,
 307:7.
 nightstand 130:8,
 130:14.
 nin 204:17.
 nine 118:10.
 Nobody 68:12,
 69:12, 69:12,
 73:6, 76:19,
 76:20, 98:17,
 130:7, 131:7,
 136:9, 248:8.
 noise 83:9.
 non-payment
 154:11.
 non-reversal
 9:2.
 None 33:7, 78:15,
 86:20, 136:20,
 192:1, 221:2,
 291:4, 324:9,
 345:13.
 noon 136:5,
 136:6.
 Nope 330:6.
 nor 344:23.
 Norma 4:6, 204:3,
 204:4, 207:12,
 218:7, 219:16,
 219:19, 223:5,
 223:13,
 234:15.
 normal 164:17,
 164:19, 166:10,
 166:11, 189:11,
 258:1, 325:25.
 normally 35:19.
 Names 207:16.
 North 28:13,
 38:15, 59:22,
 72:20, 102:20,
 122:16, 125:25,
 127:25, 128:12,
 128:4, 135:14,
 160:1.
 nose 30:8, 30:10,
 30:12, 31:14,
 63:16, 64:4,
 64:7, 64:22,
 64:23, 101:3,
 101:4, 106:23,
 107:7, 107:16,
 107:20, 107:20,
 107:24, 108:13,
 116:2.
 notarized 316:4.
 notations 10:15.
 note 8:17, 22:16,
 81:14, 81:16,
 81:16, 81:25,
 81:25, 82:1,
 142:6, 143:13,
 192:20.
 noted 178:13.
 notice 10:3,
 10:11, 161:17.
 notified 81:24,
 notified 208:21,
 226:20.
 NSS 17:11.
 Number 19:20,
 23:14, 23:23,
 38:16, 43:18,
 49:20, 61:13,
 110:6, 110:14,
 177:22, 184:17,
 185:22, 186:2,
 207:24, 300:16,
 300:21.
 numbered 149:21.
 Numerous 67:17,
 88:16, 120:18,
 121:6, 121:25,
 144:18.
 nurturing 249:7.
 < O >.
 o'clock 16:24,
 26:6, 26:7,
 74:14, 125:11,
 125:12, 127:16,
 127:16, 136:6,
 149:15,
 157:21.
 O. 63:3, 63:9,
 351:20.
 oath 63:14,
 92:21.
 Object 5:17, 35:6,
 15:10, 15:14,
 17:4, 172:12,
 172:23, 173:9,
 179:11, 179:11,
 181:18, 183:24,
 184:4, 184:15,
 186:8, 230:15,
 306:7.
 Objection 5:19,
 178:12, 379:13,
 191:14, 192:18,
 232:22, 238:19,
 238:22, 268:13,
 330:1, 331:6,
 331:7, 338:3,
 338:4, 352:9,
 354:25, 355:23,
 355:24.
 objections 9:25,
 10:1, 172:24,
 358:13,
 358:16.
 obligations
 211:25.
 observe 21:10,
 21:14, 189:1,
 253:3.
 observed 20:10,
 189:9, 280:3,
 339:22.
 obstetrics
 159:1.
 obvious 161:19,
 178:21.
 Obviously 16:4,
 28:15, 30:3,
 42:13, 98:16,
 134:11, 120:14,
 124:1, 172:10,
 185:7, 293:14,
 293:24.

396

occasion 13:1,
197:24, 203:23,
333:19.
occasionally
273:20, 347:5.
occasions 160:15,
281:8.
occupation 12:13,
381:5.
occur 187:12.
occurred 15:4,
16:22, 26:4,
40:22, 42:10,
104:15,
280:12.
October 59:25,
61:10, 98:25,
99:9, 100:4,
225:9, 261:9.
off-duty 13:25,
14:14, 14:19,
19:2, 19:5.
off-hand 39:23.
offer 23:20,
121:10, 205:4.
offered 108:16.
offering 154:25.
office 52:25,
125:13, 135:13,
136:16, 159:15,
160:7, 160:9,
161:5.
offices 20:16,
20:16, 131:2.
offices 170:2.
often 67:4,
189:15, 260:18,
273:1, 271:10,
277:20, 315:15,
316:19, 323:9,
324:22, 333:21,
339:24, 339:4,
339:5.
oldest 211:21,
222:12, 229:24,
336:4, 350:12.
Once 5:23, 47:13,
70:17, 72:17,
95:9, 146:22,
173:4, 184:14,
225:21, 227:7,
260:10, 260:14,
298:23, 322:19,
336:5.
ones 260:22.
one-to-one
15:20.
ones 42:17, 86:17,
118:16, 127:3,
174:23, 177:2,
177:4, 184:10,
227:8.
open 32:5, 32:6,
64:11, 109:18,
117:24, 185:24,
207:5, 209:25.
opened 81:14,
81:18, 81:21,
109:19, 116:11,
198:7, 207:7,
219:12.
opening 69:14,
146:12, 167:5,
202:5.
operator 236:20.
operator. 219:6.
opinion 92:4,
152:25, 156:22,
169:1, 187:3,
199:22, 283:10,
381:25, 314:24,
315:7, 315:13,
345:10, 345:19,
357:15.
opinions 345:21.
opportunity 35:17,
189:1,
oral 77:8, 77:11,
134:21, 147:4,
orange 171:19,
171:21.
order 205:4,
210:22, 216:12,
315:8, 321:15.
Oregon 158:22.
organizations
160:1.
organs 163:11,
169:3.
oriented 204:10,
originally 43:4,
245:19,
others 215:13,
219:6, 236:20,
246:19,
324:17.
Ottawa 318:9,
caught 189:25.
ourselves 180:7,
220:27, 254:3,
258:25, 321:2.
outfit 100:24,
305:22.
outfits 94:9.
outgoing 195:12.
outing 233:20,
233:21, 234:8.
Outside 5:11,
14:22, 14:23,
17:7, 29:12,
65:24, 66:1,
92:7, 109:8,
121:15, 159:10,
156:7, 175:17,
200:7, 312:6.
outstanding
218:21.
overhead 227:20,
232:17.
overlapping
175:6.
Overruled 298:6.
own 8:10, 54:23,
140:17, 200:15,
204:12, 209:24,
211:20, 212:1,
212:6, 214:21,
220:20, 225:25,
230:24, 230:24,
246:16, 249:16,
272:12, 273:2,
321:7, 324:14,
326:19, 327:10,
348:24.
own. 218:13.
owned 132:16.
OWNES 158:11.
oxygen 166:9,
166:11, 166:12,
188:6.

397

32:7, 56:7,
221:11, 296:7.
Park 28:19, 31:24,
36:19, 136:11,
245:19, 245:19,
251:6, 266:13,
266:14, 268:17,
268:18, 268:21,
267:1, 267:4,
267:22, 268:7,
268:24, 269:15,
270:23, 297:19,
297:30, 307:24,
308:18,
330:24.
packed 15:2,
81:20, 84:16,
145:15, 155:10,
164:24, 169:2,
203:17, 267:24,
284:22, 285:11,
287:5, 292:15,
294:12, 300:14,
304:24.
partial 166:5.
particular 5:24,
19:8, 186:10,
275:2, 280:14,
290:8.
particularly
161:22, 171:6,
parties 80:15,
91:21, 152:17,
199:14, 215:18,
292:6, 294:20,
295:1, 295:10,
301:17, 344:11,
344:19, 357:7,
partner 234:22.
parts 161:20,
166:9, 170:4.
party 272:6,
292:15, 305:5,
306:11,
307:15.
partying 307:18.
pass 33:12, 91:8,
186:22, 206:17,
249:7.
passed 16:15,
40:15, 84:12,
234:21, 330:8,
330:12, 334:14,
336:9, 337:8,
passenger 82:15.
past 24:21,
256:23.
patch 178:22,
patchy 171:10.
pathologist
158:17, 139:13,
185:1.
pathology 169:3,
159:4, 159:14.
pathway 265:6.
Patrick 2:7, 3:11,
3:33, 4:24,
33:13, 33:16,
35:21, 36:17,
37:9, 37:10,
41:8, 42:10,
42:23, 188:21,
197:3, 197:4,
197:6, 198:15,
237:11, 238:10,
302:11, 302:23,
306:10, 314:10,
314:11, 314:19,
317:14, 317:15,
317:20,
350:25.
Patrol 38:7,
39:13, 328:10.
patrolman 29:3,
pattern 176:21,
185:15.
pay 94:17, 101:6,
101:10, 131:9,
paying 54:7,
74:13.
payment 140:23,
226:14,
226:15.
payments 140:20.
Payton 236:2.
peace 215:25.
pearl 206:23.
pedestrian 241:3,
328:17.
pediatrician
232:4.
pen 174:3,
174:24.
PENALTY 1:14, 8:2,
8:19, 8:25, 9:1,
9:5, 11:1, 97:5,
154:24, 155:9,
155:21, 156:3,
156:8, 156:21,
156:24.
penetrate
163:22.
penetrated 163:9,
164:9, 164:22,
174:7.
Penetration
165:2.
Perfield 4:6,
204:3, 223:5,
223:13,
234:15.
peninsula
233:19.
Pennsylvania
210:14.
per 290:25.
percent 101:19.
perform 35:17.
performed 77:8,
77:11, 134:21,
147:4, 160:24,
161:2, 188:25.
performing
754:15.
perhaps 99:9,
100:4, 100:5,
267:10, 309:15,
329:1, 330:9.
pie 149:14.
piece 64:12,
85:16, 85:16,
85:24.
pieces 85:8,
85:10, 143:16.
pillow 20:2.
pills 230:4.
pin 111:16,
111:19,
111:20.
pinch 203:25,
219:2.
pink 206:22,
206:22, 206:23,
206:24.
planned 65:13.
Planning 39:15,
133:21, 133:23,
134:1, 134:2.
pipes 247:20.
Place 54:23,
59:19, 59:21,
64:25, 72:11,
79:21, 73:23,
74:3, 103:11,
103:15, 116:16,
122:3, 127:1,
216:2, 216:23,
226:14, 236:21,
324:1, 324:11,
327:11, 327:17,
327:18, 342:23,
358:12.
placed 79:25,
326:1.
places 47:1,
214:5, 229:18.
plains 182:23,
Plaintiff 1:12.
plan 55:10,
55:17.
Plans 50:18,
54:4.
planes 349:17.
planned 55:15.
planning 55:22,
157:4.
102:9, 125:10,
136:5, 161:15,
165:1, 180:1,
183:25.
period 7:1, 7:11,
56:25, 95:2,
159:24, 160:14,
167:22, 252:18,
271:2, 272:24,
275:14, 276:10,
284:14, 292:13,
306:16, 311:14,
314:17,
340:22.
periodically
260:17,
260:18.
Perkins 46:6.
permanently
35:23.
pamplion 105:18,
169:19, 185:23,
212:15, 213:2.
pamit 200:25.
pamitted 202:2.
personal 250:9,
283:10.
personality
224:21.
personally 6:12,
263:1, 285:15.
perusal 9:24.
petition 7:18,
ph 154:13,
266:15.
phase 8:19, 8:20,
8:22, 8:25, 9:3,
9:4, 9:5.
Phillip 273:24.
phlebotomy
343:16.
Phoenix 51:1,
51:2.
phone 43:18, 63:1,
67:2, 67:14,
67:18, 67:19,
67:19, 67:23,
69:5, 68:8,
69:2, 70:17,
74:10, 75:2,
plans 46:7,
201:22,
327:12.
plant 247:18,
247:21, 304:7.
plaster 162:17,
162:17.
plastic 88:10,
107:1.
plate 332:3.
plates 348:21.
play 221:13,
224:18, 230:23,
230:25, 246:15,
271:12, 305:11,
305:17, 305:25,
353:12.
played 31:9,
258:15, 305:18,
307:21.
playing 235:2.
plex 121:4,
288:4.
plead 66:3, 71:4,
121:7, 123:10,
123:25.
pleas 201:22.
Pleas 12:6, 12:8,
14:6, 43:2,
96:9, 152:4,
169:21, 190:13,
212:18, 213:10,
214:14, 222:25,
237:15,
253:16.
pled 287:7,
267:9.
plenty 105:12.
plot 228:25,
plus 12:19,
12:21.
pocket 126:4,
128:19.
poin 113:22,
147:15, 293:7,
299:9.
Pointing 177:7.
Pollard 3:31,
192:12, 193:4,
193:15, 197:7.
Bonchos 55:7.
Ponderosa 46:17.
Pontiac 283:14.
pool 247:14.
pooling 197:18.
poorly 325:13.
Population 289:23,
300:4, 300:20.
porch 79:25.
portion 10:4,
300:9.
portions 9:17,
9:23, 94:12.
Portland 158:23.
position 17:5,
48:10, 111:13,
117:12, 122:15,
158:20, 159:22,
167:4, 285:25.
positively
191:5.
possession 262:22,
282:24, 287:2,
287:19, 336:10,
336:11, 337:30,
337:16.
Possibility 97:7,
122:21, 173:10,
173:11, 191:1,
246:23.
Possible 88:15,
89:20, 173:8,
173:20, 181:15,
185:5, 214:14.
Possibly 179:5,
184:5, 236:5,
345:21.
Post 61:9,
253:17.
post-conviction
6:11, 7:18,
7:20, 8:19,
8:21, 9:10,
16:10, 153:14,
155:17,
155:22.
post-graduate
158:25, 159:3.
potentially
189:12.

398

400

pounds 93:10, 93:16, 161:16.
pours 172:15.
power 247:17, 247:18.
prayed 235:5.
preceded 176:11.
precisely 145:13.
predict 167:6.
predominant 30:6.
prefer 97:19.
pregnancy 354:14, 354:16.
pregnant 44:14, 50:6, 51:16, 55:23, 56:1.
Prep 55:9.
preparation 157:14, 216:4.
prepare 7:11, 234:11.
presence 5:9, 5:11, 11:11, 11:13, 92:7, 92:15, 92:17, 109:13, 133:8, 153:10, 157:20, 200:5, 200:7, 202:19, 202:23, 202:24, 302:5.
poasant 11:13, 14:15, 96:16, 156:23, 166:21, 200:7, 272:10.
presented 156:18, 156:24.
preserve 6:2, 6:7, 6:15, 7:22, 178:12, 182:18.
pressure 119:3, 163:20, 166:6, 168:3, 168:4, 177:6, 177:9, 188:5.
pressured 77:13.
presumption 201:8.
previous 65:6, 156:3, 192:18, 197:14.
previously 7:14, 51:12, 120:21, 293:5.
Price 99:22, 99:24.
pricing 286:7.
Primarily 322:1, 323:10.
Primary 171:12, 184:19, 184:23, 321:1, 341:16.
Primes 314:7.
principal 269:25, 269:2.
print 130:17, 130:21, 130:22, 190:16.
Prior 5:21, 8:8, 10:19, 11:10, 11:19, 25:24, 29:13, 40:22, 40:25, 177:25, 203:22, 261:10.
priorities 220:23.
prison 156:2, 252:15, 261:4, 283:3, 283:5, 286:22, 297:1.
private 15:3, 60:19, 60:20.
problem 47:3, 100:16, 100:19, 169:14, 189:5, 206:4, 236:15, 256:2, 257:11, 259:10, 335:10, 335:12.
problems 47:2, 39:3, 160:2, 160:8, 224:3, 249:19, 249:23, 252:4, 253:9, 256:1, 257:4, 257:7, 257:9, 257:24, 258:7.
258:11, 259:3, 259:4, 261:22, 262:2, 279:25, 312:25, 313:2, 325:21, 327:20, 346:20, 347:2.
proceed 5:16, 8:18.
proceeded 20:24.
processing 6:6, 6:13, 6:14, 7:21, 8:8, 8:11, 212:24.
proceedings 204:5, 358:11, 358:13, 358:17.
proceeds 7:8.
process 141:20, 343:20, 350:20.
produce 182:1, 182:5, 184:1.
products 182:21.
productivity 196:5.
professional 160:1.
professor 159:13, 159:24.
proficiency 42:17.
profits 166:22.
program 284:23, 285:12, 285:14.
programs 343:19.
progress 176:20.
project 72:2, 89:19.
projects 62:16, 102:20, 125:22, 126:9, 135:14, 136:18, 149:8.
prominent 172:3.
promise 349:19.
promotions 283:13.
properly 19:21.
property 248:14.
propose 11:19.

401

Proposed 336:23.
protect 144:14, 185:10.
protective 227:10.
proud 215:12, 232:13.
provide 100:20, 155:15, 210:21, 220:18, 221:1, 235:13, 280:12, 321:12, 336:15.
provided 23:13, 155:1, 156:17, 232:18, 273:4, 323:20, 345:9, 345:17.
providing 101:17, 156:19, 218:3, 342:15, 345:4.
Public 159:7.
puffy 171:5, 180:20.
Pull 81:4, 170:7, 179:9, 207:6, 219:12, 344:17.
pulled 29:24, 39:16, 66:1, 142:22, 143:2.
pales 148:11.
pumping 166:7.
punishment 95:21, 96:7, 96:13, 97:3, 244:9, 248:18.
purchased 104:23.
purple 184:20.
purpose 13:22, 113:7, 156:8, 341:16.
purposes 5:24, 41:14, 179:23.
pursue 15:14.
pushed 130:11.
putting 117:20, 151:12, 169:23, 178:18, 206:4, 227:20, 232:17.
< Q >.
qualifications 158:20.
qualities 234:21.
quantity 287:24.
quart 164:21.
quarters 172:4.
Question 5:24, 6:20, 35:11, 96:15, 98:6, 118:4, 120:9, 131:6, 150:18, 151:5, 201:11, 295:4, 299:21, 300:15.
questioning 6:25, 295:9.
Questions 9:7, 27:7, 37:8, 41:8, 70:11, 110:13, 110:14, 110:15, 113:19, 115:5, 152:4, 190:7, 190:12, 191:10, 191:17, 192:2, 192:15, 222:23, 236:6, 237:10, 237:12, 237:13, 238:6, 253:13, 295:7, 300:7, 317:1, 340:7, 349:6, 354:24.
Quick 84:14, 88:15, 94:10, 99:5, 145:9, 192:6, 187:11, 212:18, 301:3, 301:7, 348:18, 357:19.
quickly 25:7, 81:23, 98:24, 98:3, 116:19, 142:8, 177:9, 220:10.

Quite 6:13, 7:4, 96:5, 109:25, 164:21, 165:24, 181:15, 183:7, 193:25, 289:10.
quitting 196:2.
copies 46:19.
< R >.
races 306:2, 306:3, 306:6, 321:1.
radio 92:2, 132:23, 189:20, 301:23, 357:13.
railroad 265:9, 265:11, 304:6, 305:24, 323:1, 323:12, 323:15, 351:23, 353:7.
raise 6:10, 220:19, 293:22.
raised 6:8, 6:9, 6:13, 6:14, 7:16, 8:16, 9:9, 201:8, 210:14, 229:22, 257:23, 291:12, 296:10, 319:7, 326:20, 326:21, 327:16.
raises 57:7.
raising 211:8, 250:11, 294:6, 328:15.
ran 64:2, 64:3, 87:24, 138:1, 142:13, 236:6, 353:5, 353:7.
random 10:12.
rank 43:21.
ransack 87:16.
ransacked 87:15.
rapid 177:18, 188:16.
rapidly 182:5,

187:2.
rately 320:24, 328:24.
rate 154:8.
rather 165:4, 173:25, 191:1, 191:3.
reach 113:4.
react 44:24, 82:8, reacting 63:16, 230:1.
reacted 59:1.
reaction 172:15, 183:20.
REAGERS 11:18, 11:25, 37:16, 37:22, 41:23, 42:7, 84:22, 85:21, 86:4, 87:3, 92:22.
readily 164:11.
reading 5:17, 9:14, 9:17, 10:4, 10:4, 10:24, 10:25, 22:7, 27:15, 42:20, 81:24, 91:12, 92:10, 142:6.
ready 5:13, 79:23, 308:17, 346:5.
real 25:6, 84:14, 94:10, 212:18, 244:21, 256:10, 265:14, 301:3, 304:7, 304:8, 314:2, 330:13, 349:18, 355:19.
reality 216:24.
realize 84:7, 328:7.
realized 65:14, 65:14.
realizes 11:4.
Recreated 94:1.
reason 10:20, 36:6, 36:11, 60:18, 105:1, 105:14, 105:15, 155:7, 206:15, 206:15, 226:1, 286:10.
reasons 94:14.
rebellious 249:16.
receive 225:6.
received 6:3, 150:21.
receiving 63:16.
recently 156:5.
recess 8:22, 56:15, 91:14, 91:18, 92:10, 92:12, 108:9, 152:12, 152:14, 153:2, 157:14, 157:17, 199:9, 199:11, 199:24, 301:7, 301:11, 301:14, 302:2, 357:2, 357:4.
recognize 84:18, 84:24, 158:9, 247:2, 258:7, 266:24, 267:17, 268:9, 268:12, 268:14, 268:24, 269:4, 308:6, 309:16, 315:23, 316:24, 337:12, 338:10, 351:10.
recollection 263:3, 265:3, 282:16, 331:23, 341:9, 341:11, 347:12, 347:21, 348:3.
reconcile 97:24.
reconciled 53:15.
recorded 358:14.
records 33:25, 34:4, 64:16.
recover 186:24, 189:14.
recovered 186:4.
recovery 166:19.
red 172:14, 174:3, 174:24, 178:22, 180:19, 184:9, 184:20.
REDIRECT 3:12, 3:14, 4:14, 27:8, 27:9, 35:23, 152:1, 198:18, 262:7, 297:17, 346:17.
reduced 287:17.
Reese 213:7, 214:16, 216:17, 217:17.
refer 40:19.
reference 7:10, 7:12.
referred 69:18, 91:22, 152:18, 199:15, 301:18, 357:8.
referring 128:12, 299:18.
refers 268:20.
reflect 5:9, 11:11, 17:6, 40:12, 92:15, 153:8, 157:20, 162:16, 200:5, 202:23, 302:5.
refund 104:24, 105:19.
refused 18:13, 26:16, 26:25.
refusing 26:20.
regard 160:15, 192:15, 246:10, 280:1.
regarding 5:13, 22:6, 33:25, 58:12, 63:15, 116:24, 157:1.
regardless 8:12.
registered 232:4.
registering 230:12.
regret 210:18.
regular 273:11, 276:15, 277:17,

403

279:9, 289:12, 291:8, 326:3, 328:1.
regularly 101:13, 101:23, 101:23, 101:23.
rehab 122:3.
rejected 134:15, 134:17.
relate 155:25.
related 15:5, 15:8, 31:16, 106:9, 115:9, 203:25, 239:19, 318:13, 318:15.
relates 270:20.
relating 14:16, 201:17.
relation 265:2, 265:19.
relationship 34:22, 44:25, 45:2, 55:2, 56:8, 62:21, 67:7, 67:11, 116:22, 195:14, 195:19, 197:15, 198:20, 198:21, 204:8, 224:7, 231:17, 253:3, 312:24.
relatives 218:6.
released 67:1, 71:8, 71:10, 71:13, 91:24, 94:4, 125:5, 125:6, 125:16, 227:13, 227:13, 284:6.
relevance 94:16.
relief 7:20, 9:11.
religious 115:14.
rally 24:24.
remain 5:23, 7:13, 154:2.
remained 94:3, 159:15, 159:21.
remains 216:22.
remark 64:17, 205:24.
remembered 25:13.
remembering 145:22.
remembrance 222:3.
remind 92:20.
remorse 201:21.
removed 60:5, 149:22, 189:16.
removing 143:24.
Remo 60:17.
rent 101:6, 101:11, 138:16.
rented 128:14.
repeat 96:9, 147:8.
repeated 177:19.
replied 32:23.
report 22:7, 22:17, 25:7, 25:8, 25:11, 25:14, 26:24, 27:1, 34:3, 40:19, 91:23, 107:23, 152:19, 199:16, 301:19, 357:9.
REPORTED 1:42, 324:25.
REPORTER 358:3, 358:8.
REPORTER'S 1:12.
reporters 94:13.
reports 24:24.
represent 10:19.
representative 123:11, 125:7.
representing 120:10.
reproductive 169:3.
reputation

313:13.
request 200:15, 201:6.
requested 9:22.
require 27:1, 27:3.
required 211:23, 221:7.
requiring 26:20.
research 159:10.
reservation 238:16.
reserve 166:12.
reside 218:3, 223:17, 235:11, 239:15, 241:19, 242:18, 264:10, 283:19, 318:8, 350:6.
resided 156:12, 243:5, 331:25.
residence 23:6, 35:3, 126:17.
residences 14:1.
resident 126:21.
residents 304:13.
residing 242:14, 319:19.
residual 166:17.
resolve 236:15.
respect 68:6, 337:19.
resposed 14:2, 19:23, 26:25, 64:19.
responded 14:18, 24:16, 24:18, 24:20, 25:1, 29:14.
response 11:23, 95:21.
responses 37:20, 42:5.
responsibility 169:13, 220:23.
responsible 91:3, 91:5, 229:1.
rest 9:14,

402

404

91:15.
restaurant 46:10, 46:12, 46:29, 46:19.
restaurants 46:15, 46:15, 46:15, 46:15.
resting 230:16.
restraints 29:29.
restroom 301:12.
result 14:13, 19:32, 131:10, 144:23, 168:23, 173:14.
resulted 165:3.
resulting 176:24.
results 153:12.
resuscitate 166:16.
revised 150:12, 159:22, 160:12.
retrieves 206:17.
return 153:24, 154:22, 214:14, 260:13.
returned 52:8, 58:18, 58:19.
returning 156:18, 167:13.
reversal 9:1, 9:5.
reverse 8:24, 82:11.
reversed 8:19, 8:25.
review 33:21, 33:24, 34:4, 177:25, 194:1.
reviewed 34:1, 178:3.
rib 164:23, 164:24.
rbs 174:14.
Rick 156:2, 239:3, 273:4, 277:7, 319:20, 324:13, 325:17, 330:20, 331:15.
Ricks 335:15.
Ricky 272:15, 272:19, 273:23.
ride 136:10, 290:17, 290:20, 291:3.
rides 156:17, 156:19, 291:6, 291:10, 330:24.
right-band 269:13, 353:5.
rights 6:1.
ring 114:24, 115:1, 132:13.
ringing 294:18.
rip 85:11, 85:12.
ripped 80:22, 85:14.
Rice 99:22, 99:24.
ranches 327:10.
road 78:24, 322:20, 340:11.
robbery 252:12, 261:2.
rock 230:16.
Rockey 254:5, 254:6, 273:24, 277:8, 320:9.
role 221:7, 221:16, 221:22.
roles 221:9, 254:16.
romantic 198:21.
room 10:14, 32:7, 63:18, 86:13, 86:16, 86:23, 87:17, 87:20, 109:8, 109:9, 116:6, 146:9, 147:2, 147:5, 151:11, 178:10, 258:12, 270:15, 289:19, 300:18, 300:19, 300:19.
Science 160:3, 160:5.
scores 114:2.
Scott 264:5.
scrap 178:7, 193:10, 193:21, 193:23.
scrapes 183:2.
scrapes 180:8.
scrapping 162:14, 170:21, 173:15, 180:6, 180:20, 226:25.
screen 130:11, 130:13, 130:15, 130:15, 130:18, 130:18, 130:23, 131:2, 131:3, 131:10, 131:13, 178:7, 178:10, 178:17, 179:18, 180:15, 182:19, 227:20, 331:11, 352:15.
Se 325:7.
seat 81:7, 88:5, 173:4, 188:19.
seated 27:24, 203:9, 223:11, 302:19, 316:3.
seats 81:10, 141:18.
secon 299:13.
second 6:24, 8:1, 19:5, 51:10, 51:15, 51:18, 62:25, 73:16, 90:6, 95:25, 136:21, 164:23, 180:8, 252:9.
seconds 165:12, 187:3, 187:13, 187:15, 188:4, 188:14.
secure 208:25.

separated 241:7.
sequence 187:20, 188:16, 343:3.
serious 144:22, 165:2, 169:13, 176:19, 180:25, 287:16.
serve 252:15.
served 158:24, 159:17.
Service 99:22, 159:7, 209:5, 229:12.
services 293:16.
session 123:4.
set 11:23, 37:20, 42:5, 152:7, 323:12, 358:12.
setting 233:1.
Seven 57:2, 57:3, 153:11, 159:10, 165:22.
several 18:9, 124:4, 165:23, 179:6, 181:6.
severance 166:5.
severe 288:4.
severed 182:23.
sewer 353:15.
sex 75:14, 75:18, 75:24, 76:1, 77:8, 77:11, 77:14, 78:2, 82:6, 84:1, 131:19, 131:21, 134:21, 142:16, 142:18, 147:4.
Sexton 43:9, 289:14, 289:16, 333:4.
sexual 169:9.
sexually 77:4.
shall 27:20, 158:2, 162:23, 203:5, 223:7, 239:8, 263:24, 302:15, 317:24, 349:21.
shame 214:10.
shape 182:18, 323:21.
share 104:11.
shared 72:22, 104:12, 205:10.
Sharon 142, 340:9, 345:24, 346:19, 347:19, 358:26.
sharp 182:4.
She'd 103:9.
121:21, 151:6, 151:6, 197:19, 206:3, 226:13, 274:18, 305:16, 305:16, 313:9, 339:20, 340:12.
sheet 29:24.
Sheldon 3:26, 158:8.
shelter 23:18, 250:14, 345:4.
Shari 138:12, 139:6, 291:14, 294:7, 294:8, 294:8, 294:11, 294:15, 294:17, 345:23.
sheriff 240:24.
shifr 80:21.
Shirley 259:20, 259:22.
shirt 40:9, 321:21.
shock 219:8.
shocked 82:9, 123:17, 142:19.
shoe 130:18.
shoes 126:16, 126:25, 127:2, 190:16, 190:18, 228:14.
shoplift 94:8, 104:11, 104:13.
shoplifted 90:1, 100:14.
shoplifting 153:17.
shopping 213:19.
short 15:9, 15:16, 15:19, 162:16, 189:9.
Shortly 24:17, 136:8, 200:2, shot 207:22, 208:6.
shoulder 161:24.
show 20:12, 25:6, 53:19, 61:4, 61:5, 73:16, 84:15, 85:15, 85:23, 86:22, 87:5, 114:12, 170:4, 181:23, 184:6, 235:1, 267:15, 268:20, 336:23, 337:12, 351:3, 351:5, 352:13.
showed 65:3, 65:13, 90:13, 111:23, 112:2, 113:2, 115:3, 115:6, 117:10, 351:11.
showar 139:4, 198:6, 198:7, 198:7, 198:10, 198:12.
Showing 85:18, 86:1, 87:1, 87:10, 113:7, 114:4, 180:4, 186:2, 247:1, 289:1, 308:5, 315:21, 315:25, 353:2, 355:17.
show 16:12, 36:23, 352:6.
shows 84:16.
shrmp 149:13.
shut 154:5, 231:23, 255:14.
shuttle 51:3.
siblings 356:14.

405

407

saved 218:18, 237:3.
savings 229:18.
saw 29:21, 29:22, 80:12, 89:19, 120:25, 124:10, 141:6, 151:3, 162:19, 169:8, 178:5, 182:21, 210:13, 260:16, 261:21, 312:23, 313:17.
saying 17:22, 63:2, 64:20, 78:9, 82:5, 109:18, 103:9, 308:4, 129:23, 145:10, 150:10, 219:13, 219:17, 219:19, 226:24, 231:16, 256:13, 256:17, 295:5.
says 22:8, 59:10, 230:7, 316:10, 316:14, 316:20.
scale 179:23.
scar 183:2, 183:4, 183:6.
scored 78:13, 79:1, 79:2, 79:5, 79:6, 117:11, 117:13, 137:22, 137:25, 137:25, 138:2, 139:12, 139:13, 139:14, 139:16, 210:24, 215:24.
Scattered 161:20, 161:24, 180:8, 184:20.
score 29:4, 169:10, 186:4.
schedule 305:12.
scholarship 230:21.
Schooling 205:9, 222:15, 245:4.
schools 266:16, 268:12, 270:15, security 88:7, seeing 68:12, 108:3, 122:18, 145:11, 145:18, 180:16, 181:22, 183:19, 186:6, 218:24, 220:9, 278:24, 282:11.
seek 220:17.
seen 20:9, 21:23, 23:5, 79:1, 209:16, 209:19, 225:6, 232:8, 292:17.
seemed 217:11.
seems 17:9, 213:15.
seen 43:19, 47:14, 56:12, 80:2, 88:14, 103:10, 109:24, 110:2, 112:21, 116:13, 117:15, 120:24, 121:2, 122:23, 130:25, 140:6, 148:9, 157:11, 173:2, 206:12, 313:1, 321:22, 344:16.
selling 284:17, 285:5, 350:21.
semi-comma 211:22.
send 69:16.
sense 177:12.
sensed 69:8.
senseless 217:1, 220:5, 235:24.
sent 48:13, 50:8, 69:15, 119:3, 226:15, 262:13, 262:23.
sentence 96:20, 96:22, 96:23, 97:20, 288:1.
sentenced 123:18, 123:22, 123:24, 124:1, 287:13.
separate 300:9.

sic 90:1, 119:25, 242:25.
sides 304:7.
siding 322:11.
signed 216:19, 231:19, 315:21, 316:2, 317:3.
significance 185:3.
significant 158:25, 163:11, 183:9, 184:11.
silent 5:23, 7:13.
similar 186:8.
similarity 340:13.
simple 21:18.
simply 120:25, 162:14.
Simpson 63:3, 63:9.
sing 230:17.
single 297:8, 298:13.
sir 7:3, 7:7.
sisters 207:17, 213:18, 241:9, 241:11, 247:25, 249:5, 260:17, 272:14, 331:24, 344:5, 346:9.
sit 95:20, 116:14, 148:10, 148:19, 148:25, 195:23, 203:19, 246:14, 254:2, 254:2, 275:17, 314:7, 345:12, 345:25, 352:14.
sitters 68:16.
sitting 21:7, 21:10, 21:21, 32:7, 32:22, 57:6, 67:19, 74:22, 109:4, 109:7, 116:4, 116:9, 121:15, 121:16, 151:11, 203:16, 204:4, situation 23:18, 56:24, 57:6, 106:23, 116:23, 119:23, 148:23, 153:23, 187:18, 258:19, 295:18, 315:11, 321:8, 354:21, 354:21.
Six 93:7, 295:11, 326:18, 330:24, 343:10.
sixth 204:11, 212:7, 217:10, 218:12.
size 30:13, 162:4, 184:13, 184:21.
skateboard 231:4.
skidding 172:20.
skids 173:14.
skin 26:22, 172:11, 172:11, 173:1, 173:15, 181:6, 181:15.
skip 9:17, 9:22, 56:14.
skull 191:23, 191:25.
slammed 64:23, 109:10, 116:15.
slapped 116:19.
slashing 173:25, 174:1.
sleep 230:5, 230:10.
sleeping 103:10, 119:20, 120:4, 230:4.
sleeves 162:16.
slender 186:8.
slept 103:17.
slid 164:22, 174:13.
sliding 172:20, 179:1.
slightly 12:18, 121:16, 151:11, 22:6.

406

408

116:17.
sofa 133:16.
soft 190:18.
sold 18:1, 228:23.
253:1.
sole 156:7.
190:19.
solemnly 11:22.
27:19, 37:19.
158:1, 192:22.
203:4, 223:6.
235:4, 263:23.
302:14, 317:23.
349:20.
solid 172:25.
173:1, 183:24.
Somebody 59:10.
69:11, 87:24.
84:1, 89:19.
126:14, 134:13.
148:18, 179:22.
294:11, 305:6.
305:7, 349:17.
somehow 226:19.
236:15.
someone 29:1.
116:22, 120:11.
137:13, 204:22.
205:2, 203:6.
205:21, 206:3.
207:20, 217:4.
219:20, 235:1.
235:4, 246:7.
291:18.
291:19.
someplace 206:12.
312:10.
Sometime 54:16.
96:25, 97:24.
104:11, 254:2.
313:9, 344:4.
Sometimes 67:6.
67:18, 68:17.
91:13, 103:21.
104:10, 104:12.
104:13, 185:6.
185:7, 186:20.
249:6, 251:8.
253:23, 254:1.
255:14, 266:6.
274:23, 280:21.
295:1, 312:11.
312:14, 326:9.
341:13.
Somewhat 279:18.
Somewhere 65:9.
89:14, 136:5.
138:22, 146:14.
176:8, 215:6.
311:20, 312:9.
312:22, 314:14.
314:15, 324:2.
334:21.
son 48:22, 48:25.
116:13, 211:21.
229:24.
339:17.
soon 20:1, 151:20.
167:23.
some 18:10.
18:12.
Sorry 13:11.
26:14, 51:18.
64:23, 65:23.
73:11, 130:19.
120:19, 135:22.
135:23, 189:5.
205:14, 206:7.
208:4, 209:19.
211:13, 311:15.
222:10, 234:1.
289:21, 289:15.
301:4, 345:7.
Sort 14:24, 155:4.
174:23, 182:2.
195:9, 195:22.
208:12, 226:8.
277:25, 281:20.
344:22.
sorts 218:18.
sound 31:12.
127:21.
291:23.
sounds 294:12.
341:16.
South 214:16.
277:3, 277:11.
Southfield
264:11.
Southwest 50:24.
space 19:28.
19:24, 38:16.
59:22, 127:25.
128:12, 129:5.
175:14.
spare 236:4.
Sparrow 44:11.
speaking 17:1.
31:1, 32:15.
32:25, 255:11.
316:25.
special 25:1.
185:2, 346:12.
218:20, 222:2.
238:24, 238:21.
243:9, 245:12.
266:10, 267:24.
269:22, 270:20.
289:17, 289:18.
309:1, 309:5.
309:8, 309:9.
309:12.
325:22.
specific 18:4.
Specifically 19:3.
22:11, 155:19.
201:6, 470:18.
specifics 22:10.
311:16.
spell 12:8, 13:20.
14:6, 20:23.
27:24, 43:2.
158:6, 193:2.
203:9, 223:12.
239:9, 260:3.
302:19, 318:3.
349:25.
spend 15:23.
45:16, 45:19.
66:7, 197:22.
307:7, 312:2.
334:4, 356:16.
spending 312:6.
spent 102:23.
102:24, 102:25.
159:3, 209:23.
283:10.
spirit 217:5.
spoiled 224:9.
spoke 14:3.

409

328:5.
stopped 39:21.
82:11, 282:8.
stopping 197:19.
stops 177:10.
Store 13:16.
14:19, 14:22.
14:23, 19:6.
49:15, 58:19.
104:23, 105:19.
284:18, 284:25.
285:17.
285:25.
story 13:8.
219:23, 230:16.
283:9, 284:19.
284:20.
straddle 111:16.
straight 19:1.
69:10, 128:11.
strepped 29:22.
streets 255:21.
strength 221:4.
235:6, 235:8.
stressed 354:20.
stretch 301:11.
stretched
182:19.
stream 86:11.
stricken 244:10.
244:12.
strict 291:24.
343:25, 344:2.
strictly 19:8.
strike 107:3.
107:9, 108:5.
145:12, 164:9.
striking 172:11.
172:12.
181:18.
stroller 313:9.
strong 119:4.
210:8.
struck 185:9.
structures
191:24.
structures 165:12.
165:24.
175:14.
struggle 144:23.
328:5.
suffer 144:22.
suffered 161:19.
suggested 60:21.
109:3, 148:4.
suggests 178:25.
suicide 215:11.
suit 40:8.
206:24.
sun 214:7.
summer 66:7.
66:25, 68:19.
217:8, 321:19.
321:20.
summed 39:8.
Sunday 150:11.
Sunrise 72:11.
Sunset 62:2.
supermarket
13:7.
supervising
272:13.
supervision
201:24, 253:21.
253:22, 272:8.
272:12, 272:15.
272:20, 273:9.
273:4, 292:4.
292:11.
153:1, 199:23.
302:1, 357:16.
supper 154:19.
subsequent 5:22.
8:8.
subsequently
44:3.
substance 257:9.
257:11.
257:23.
substances 346:22.
346:24.
substantial 7:1.
95:2.
substantially
93:17.
suburb 264:13.
success 293:9.
suddenly 231:25.
234:21.
Sue 126:19.
126:20.
126:25.
surfer 144:22.
suffered 161:19.
suggested 60:21.
109:3, 148:4.
suggests 178:25.
suicide 215:11.
suit 40:8.
206:24.
sun 214:7.
summer 66:7.
66:25, 68:19.
217:8, 321:19.
321:20.
summed 39:8.
Sunday 150:11.
Sunrise 72:11.
Sunset 62:2.
supermarket
13:7.
supervising
272:13.
supervision
201:24, 253:21.
253:22, 272:8.
272:12, 272:15.
272:20, 273:9.
273:4, 292:4.
292:11.
153:1, 199:23.
302:1, 357:16.
supper 154:19.
subsequent 5:22.
8:8.
subsequently
44:3.
substance 257:9.
257:11.
257:23.
substances 346:22.
346:24.
substantial 7:1.
95:2.
substantially
93:17.
suburb 264:13.
success 293:9.
suddenly 231:25.
234:21.
Sue 126:19.
126:20.
126:25.
surfer 144:22.
suffered 161:19.
suggested 60:21.
109:3, 148:4.
suggests 178:25.
suicide 215:11.
suit 40:8.
206:24.
sun 214:7.
summer 66:7.
66:25, 68:19.
217:8, 321:19.
321:20.
summed 39:8.
Sunday 150:11.
Sunrise 72:11.
Sunset 62:2.
supermarket
13:7.
supervising
272:13.
supervision
201:24, 253:21.
253:22, 272:8.
272:12, 272:15.
272:20, 273:9.
273:4, 292:4.
292:11.
153:1, 199:23.
302:1, 357:16.
supper 154:19.
subsequent 5:22.
8:8.
subsequently
44:3.
substance 257:9.
257:11.
257:23.
substances 346:22.
346:24.
substantial 7:1.
95:2.
substantially
93:17.
suburb 264:13.
success 293:9.
suddenly 231:25.
234:21.
Sue 126:19.
126:20.
126:25.
surfer 144:22.
suffered 161:19.
suggested 60:21.
109:3, 148:4.
suggests 178:25.
suicide 215:11.
suit 40:8.
206:24.
sun 214:7.
summer 66:7.
66:25, 68:19.
217:8, 321:19.
321:20.
summed 39:8.
Sunday 150:11.
Sunrise 72:11.
Sunset 62:2.
supermarket
13:7.
supervising
272:13.
supervision
201:24, 253:21.
253:22, 272:8.
272:12, 272:15.
272:20, 273:9.
273:4, 292:4.
292:11.
153:1, 199:23.
302:1, 357:16.
supper 154:19.
subsequent 5:22.
8:8.
subsequently
44:3.
substance 257:9.
257:11.
257:23.
substances 346:22.
346:24.
substantial 7:1.
95:2.
substantially
93:17.
suburb 264:13.
success 293:9.
suddenly 231:25.
234:21.
Sue 126:19.
126:20.
126:25.
surfer 144:22.
suffered 161:19.
suggested 60:21.
109:3, 148:4.
suggests 178:25.
suicide 215:11.
suit 40:8.
206:24.
sun 214:7.
summer 66:7.
66:25, 68:19.
217:8, 321:19.
321:20.
summed 39:8.
Sunday 150:11.
Sunrise 72:11.
Sunset 62:2.
supermarket
13:7.
supervising
272:13.
supervision
201:24, 253:21.
253:22, 272:8.
272:12, 272:15.
272:20, 273:9.
273:4, 292:4.
292:11.
153:1, 199:23.
302:1, 357:16.
supper 154:19.
subsequent 5:22.
8:8.
subsequently
44:3.
substance 257:9.
257:11.
257:23.
substances 346:22.
346:24.
substantial 7:1.
95:2.
substantially
93:17.
suburb 264:13.
success 293:9.
suddenly 231:25.
234:21.
Sue 126:19.
126:20.
126:25.
surfer 144:22.
suffered 161:19.
suggested 60:21.
109:3, 148:4.
suggests 178:25.
suicide 215:11.
suit 40:8.
206:24.
sun 214:7.
summer 66:7.
66:25, 68:19.
217:8, 321:19.
321:20.
summed 39:8.
Sunday 150:11.
Sunrise 72:11.
Sunset 62:2.
supermarket
13:7.
supervising
272:13.
supervision
201:24, 253:21.
253:22, 272:8.
272:12, 272:15.
272:20, 273:9.
273:4, 292:4.
292:11.
153:1, 199:23.
302:1, 357:16.
supper 154:19.
subsequent 5:22.
8:8.
subsequently
44:3.
substance 257:9.
257:11.
257:23.
substances 346:22.
346:24.
substantial 7:1.
95:2.
substantially
93:17.
suburb 264:13.
success 293:9.
suddenly 231:25.
234:21.
Sue 126:19.
126:20.
126:25.
surfer 144:22.
suffered 161:19.
suggested 60:21.
109:3, 148:4.
suggests 178:25.
suicide 215:11.
suit 40:8.
206:24.
sun 214:7.
summer 66:7.
66:25, 68:19.
217:8, 321:19.
321:20.
summed 39:8.
Sunday 150:11.
Sunrise 72:11.
Sunset 62:2.
supermarket
13:7.
supervising
272:13.
supervision
201:24, 253:21.
253:22, 272:8.
272:12, 272:15.
272:20, 273:9.
273:4, 292:4.
292:11.
153:1, 199:23.
302:1, 357:16.
supper 154:19.
subsequent 5:22.
8:8.
subsequently
44:3.
substance 257:9.
257:11.
257:23.
substances 346:22.
346:24.
substantial 7:1.
95:2.
substantially
93:17.
suburb 264:13.
success 293:9.
suddenly 231:25.
234:21.
Sue 126:19.
126:20.
126:25.
surfer 144:22.
suffered 161:19.
suggested 60:21.
109:3, 148:4.
suggests 178:25.
suicide 215:11.
suit 40:8.
206:24.
sun 214:7.
summer 66:7.
66:25, 68:19.
217:8, 321:19.
321:20.
summed 39:8.
Sunday 150:11.
Sunrise 72:11.
Sunset 62:2.
supermarket
13:7.
supervising
272:13.
supervision
201:24, 253:21.
253:22, 272:8.
272:12, 272:15.
272:20, 273:9.
273:4, 292:4.
292:11.
153:1, 199:23.
302:1, 357:16.
supper 154:19.
subsequent 5:22.
8:8.
subsequently
44:3.
substance 257:9.
257:11.
257:23.
substances 346:22.
346:24.
substantial 7:1.
95:2.
substantially
93:17.
suburb 264:13.
success 293:9.
suddenly 231:25.
234:21.
Sue 126:19.
126:20.
126:25.
surfer 144:22.
suffered 161:19.
suggested 60:21.
109:3, 148:4.
suggests 178:25.
suicide 215:11.
suit 40:8.
206:24.
sun 214:7.
summer 66:7.
66:25, 68:19.
217:8, 321:19.
321:20.
summed 39:8.
Sunday 150:11.
Sunrise 72:11.
Sunset 62:2.
supermarket
13:7.
supervising
272:13.
supervision
201:24, 253:21.
253:22, 272:8.
272:12, 272:15.
272:20, 273:9.
273:4, 292:4.
292:11.
153:1, 199:23.
302:1, 357:16.
supper 154:19.
subsequent 5:22.
8:8.
subsequently
44:3.
substance 257:9.
257:11.
257:23.
substances 346:22.
346:24.
substantial 7:1.
95:2.
substantially
93:17.
suburb 264:13.
success 293:9.
suddenly 231:25.
234:21.
Sue 126:19.
126:20.
126:25.
surfer 144:22.
suffered 161:19.
suggested 60:21.
109:3, 148:4.
suggests 178:25.
suicide 215:11.
suit 40:8.
206:24.
sun 214:7.
summer 66:7.
66:25, 68:19.
217:8, 321:19.
321:20.
summed 39:8.
Sunday 150:11.
Sunrise 72:11.
Sunset 62:2.
supermarket
13:7.
supervising
272:13.
supervision
201:24, 253:21.
253:22, 272:8.
272:12, 272:15.
272:20, 273:9.
273:4, 292:4.
292:11.
153:1, 199:23.
302:1, 357:16.
supper 154:19.
subsequent 5:22.
8:8.
subsequently
44:3.
substance 257:9.
257:11.
257:23.
substances 346:22.
346:24.
substantial 7:1.
95:2.
substantially
93:17.
suburb 264:13.
success 293:9.
suddenly 231:25.
234:21.
Sue 126:19.
126:20.
126:25.
surfer 144:22.
suffered 161:19.
suggested 60:21.
109:3, 148:4.
suggests 178:25.
suicide 215:11.
suit 40:8.
206:24.
sun 214:7.
summer 66:7.
66:25, 68:19.
217:8, 321:19.
321:20.
summed 39:8.
Sunday 150:11.
Sunrise 72:11.
Sunset 62:2.
supermarket
13:7.
supervising
272:13.
supervision
201:24, 253:21.
253:22, 272:8.
272:12, 272:15.
272:20, 273:9.
273:4, 292:4.
292:11.
153:1, 199:23.
302:1, 357:16.
supper 154:19.
subsequent 5:22.
8:8.
subsequently
44:3.
substance 257:9.
257:11.
257:23.
substances 346:22.
346:24.
substantial 7:1.
95:2.
substantially
93:17.
suburb 264:13.
success 293:9.
suddenly 231:25.
234:21.
Sue 126:19.
126:20.
126:25.
surfer 144:22.
suffered 161:19.
suggested 60:21.
109:3, 148:4.
suggests 178:25.
suicide 215:11.
suit 40:8.
206:24.
sun 214:7.
summer 66:7.
66:25, 68:19.
217:8, 321:19.
321:20.
summed 39:8.
Sunday 150:11.
Sunrise 72:11.
Sunset 62:2.
supermarket
13:7.
supervising
272:13.
supervision
201:24, 253:21.
253:22, 272:8.
272:12, 272:15.
272:20, 273:9.
273:4, 292:4.
292:11.
153:1, 199:23.
302:1, 357:16.
supper 154:19.
subsequent 5:22.
8:8.
subsequently
44:3.
substance 257:9.
257:11.
257:23.
substances 346:22.
346:24.
substantial 7:1.
95:2.
substantially
93:17.
suburb 264:13.
success 293:9.
suddenly 231:25.
234:21.
Sue 126:19.
126:20.
126:25.
surfer 144:22.
suffered 161:19.
suggested 60:21.
109:3, 148:4.
suggests 178:25.
suicide 215:11.
suit 40:8.
206:24.
sun 214:7.
summer 66:7.
66:25, 68:19.
217:8, 321:19.
321:20.
summed 39:8.
Sunday 150:11.
Sunrise 72:11.
Sunset 62:2.
supermarket
13:7.
supervising
272:13.
supervision
201:24, 253:21.
253:22, 272:8.
272:12, 272:15.
272:20, 273:9.
273:4, 292:4.
292:11.
153:1, 199:23.
302:1, 357:16.
supper 154:19.
subsequent 5:22.
8:8.
subsequently
44:3.
substance 257:9.
257:11.
257:23.
substances 346:22.
346:24.
substantial 7:1.
95:2.
substantially
93:17.
suburb 264:13.
success 293:9.
suddenly 231:25.
234:21.
Sue 126:19.
126:20.
126:25.
surfer 144:22.
suffered 161:19.
suggested 60:21.
109:3, 148:4.
suggests 178:25.
suicide 215:11.
suit 40:8.
206:24.
sun 214:7.
summer 66:7.
66:25, 68:19.
217:8, 321:19.
321:20.
summed 39:8.
Sunday 150:11.
Sunrise 72:11.
Sunset 62:2.
supermarket
13:7.
supervising
272:13.
supervision
201:24, 253:21.
253:22, 272:8.
272:12, 272:15.
272:20, 273:9.
273:4, 292:4.
292:11.
153:1, 199:23.
302:1, 357:16.
supper 154:19.
subsequent 5:22.
8:8.
subsequently
44:3.
substance 257:9.
257:11.
257:23.
substances 346:22.
346:24.
substantial 7:1.
95:2.
substantially
93:17.
suburb 264:13.
success 293:9.
suddenly 231:25.
234:21.
Sue 126:19.
126:20.
126:25.
surfer 144:22.
suffered 161:19.
suggested 60:21.
109:3, 148:4.
suggests 178:25.
suicide 215:11.
suit 40:8.
206:24.
sun 214:7.
summer 66:7.
66:25, 68:19.
217:8, 321:19.
321:20.
summed 39:8.
Sunday 150:11.
Sunrise 72:11.
Sunset 62:2.
supermarket
13:7.
supervising
272:13.
supervision
201:24, 253:21.
253:22, 272:8.
272:12, 272:15.
272:20, 273:9.
273:4, 292:4.
292:11.
153:1, 199:23.
302:1, 357:16.
supper 154:19.
subsequent 5:22.
8:8.
subsequently
44:3.
substance 257:9.
257:11.
257:23.
substances 346:22.
346:24.
substantial 7:1.
95:2.
substantially
93:17.
suburb 264:13.
success 293:9.
suddenly 231:25.
234:21.
Sue 126:19.
126:20.
126:25.
surfer 144:22.
suffered 161:19.
suggested 60:21.
109:3, 148:4.
suggests 178:25.
suicide 215:11.
suit 40:8.
206:24.
sun 214:7.
summer 66:7.
66:25, 68:19.
217:8, 321:19.
321:20.
summed 39:8.
Sunday 150:11.
Sunrise 72:11.
Sunset 62:2.
supermarket
13:7.
supervising
272:13.
supervision
201:24, 253:21.
253:22, 272:8.
272:12, 272:15.
272:20, 273:9.
273:4, 292:4.
292:11.
153:1, 199:23.
302:1, 357:16.
supper 154:19.
subsequent 5:22.
8:8.
subsequently
44:3.
substance 257:9.
257:11.
257:23.
substances 346:22.
346:24.
substantial 7:1.
95:2.
substantially
93:17.
suburb 264:13.
success 293:9.
suddenly 231:25.
234:21.
Sue 126:19.
126:20.
126:25.
surfer 144:22.
suffered 161:19.
suggested 60:21.
109:3, 148:4.
suggests 178:25.
suicide 215:11.
suit 40:8.
206:24.
sun 214:7.
summer 66:7.
66:25, 68:19.
217:8, 321:19.
321:20.
summed 39:8.
Sunday 150:11.
Sunrise 72:11.
Sunset 62:2.
supermarket
13:7.
supervising
272:13.
supervision
201:24, 253:21.
253:22, 272:8.
272:12, 272:15.
272:20, 273:9.
273:4, 292:4.
292:11.
153:1, 199:23.
302:1, 357:16.
supper 154:19.
subsequent 5:22.
8:8.
subsequently
44:3.
substance 257:9.
257:11.
257:23.
substances 346:22.
346:24.
substantial 7:1.
95:2.
substantially
93:17.
suburb 264:13.
success 293:9.
suddenly 231:25.
234:21.
Sue 126:19.
126:20.
126:25.
surfer 144:22.
suffered 161:19.
suggested 60:21.
109:3, 148:4.
suggests 178:25.
suicide 215:11.
suit 40:8.
206:24.
sun 214:7.
summer 66:7.
66:25, 68:19.
217:8, 321:19.
321:20.
summed 39:8.
Sunday 150:11.
Sunrise 72:11.
Sunset 62:2.
supermarket
13:7.
supervising
272:13.
supervision
201:24, 253:21.
253:22, 272:8.
272:12, 272:15.
272:20, 273:9.
273:4, 292:4.
292:11.
153:1, 199:23.
302:1, 357:16.
supper 154:19.
subsequent 5:22.
8:8.
subsequently
44:3.
substance 257:9.
257:11.
257:23.
substances 346:22.
346:24.
substantial 7:1.
95:2.
substantially
93:17.
suburb 264:13.
success 293:9.
suddenly 231:25.
234:21.
Sue 126:19.
126:20.
126:25.
sur

37:25, 104:20, 154:23, 156:8.
 testing 169:10.
 tests 35:18, 35:19.
 Texas 159:6, 159:14.
 That's 344:22, 348:11.
 them 220:1, 221:17, 235:17.
 themselves 176:16.
 then 151:21.
 there 217:12, 219:17.
 thereafter 398:14.
 therein 358:12.
 thermal 63:25, 107:1, 107:19.
 they've 157:10, 237:4.
 thigh 164:8.
 thin 181:16.
 thinking 28:15, 83:22, 139:20, 139:21, 241:11.
 third 56:3, 56:20, 66:21, 309:11.
 third-degree 151:4.
 thirdly 42:16.
 thirteen 146:19.
 thirty 17:1, 17:5.
 though 8:9, 10:25, 78:10, 89:8, 201:24, 204:16, 212:7, 218:10, 219:10, 244:17, 313:12, 345:3.
 thoughts 219:24, 220:3, 235:5.
 thousand 140:23, 140:24, 160:25.
 thousands 76:2, threaten 63:6, 115:4, 115:6, 117:4.
 threatened 79:16, 115:10, 138:10.
 threatening 39:17, 39:19, 117:6, 164:12, 176:18, 182:8, 187:19, 187:25.
 threats 117:5, 117:7.
 three-and-a-half 162:3, 165:1, 173:3, 240:19.
 threw 39:18, 64:1, 64:20, 86:18, 86:25, 107:1, 107:5, 107:6.
 throat 39:16.
 throughout 36:2, 17:18, 204:4, 258:16.
 throw 300:20.
 throwing 69:9, 108:4, 144:2.
 thyroid 165:21.
 ticket 50:19.
 tight 225:7, 149:15.
 time-wise 176:2.
 timing 176:21.
 time 233:8.
 times 339:20.
 tissue 167:5, 173:15, 172:16, 182:23.
 tissues 168:5.
 titled 287:18.
 today 7:1, 9:6, 33:22, 35:5, 40:1, 45:3, 120:10, 234:12, 237:6, 318:17, 321:21, 349:14, 352:2.
 today, 221:5.
 toll 121:22, 210:20.
 toll 221:9.
 tomorrow 122:4, 122:14, 122:19, 124:12, 357:17, 357:20.
 tonight 357:20.
 took 9:18, 46:2, 50:3, 63:25, 64:25, 66:13, 66:19, 82:16, 83:18, 84:9, 85:16, 99:6, 104:23, 116:16, 123:4, 135:17, 173:3, 210:19, 221:3, 224:6, 228:13, 258:21, 267:9, 267:12, 330:8, 330:12, 343:14, 351:8, 354:15, 354:20.
 Top 30:16, 39:15, 81:16, 56:16, 64:1, 77:2, 77:4, 77:5, 77:6, 111:18, 111:21, 111:22, 113:1, 114:12, 117:9, 120:15, 133:13, 133:19, 134:12, 147:7, 174:12, 265:11, 276:22.
 topic 255:10, 256:22, 275:13.
 tone 85:10, 292:23, 298:1, 353:18.
 tone 85:7, 143:16.
 tossed 147:3.
 Total 12:19, 162:1, 162:20, 164:25, 166:14, 174:10, 174:19, 174:20.
 totally 134:20,

413

357:17.
 Trying 18:9, 31:5, 32:2, 32:20, 60:18, 85:13, 85:14, 88:17, 94:6, 111:12, 113:9, 113:11, 113:14, 113:17, 114:3, 143:13, 143:15, 185:10, 208:1, 208:2, 208:3, 246:11, 254:18, 276:14, 287:18, 293:22, 343:2.
 tuck 320:23.
 tucked 198:9.
 Tuesday 153:21.
 Tumor 159:8.
 turn 68:7, 80:20.
 turned 39:2, 36:10, 99:20, 231:14.
 turns 98:2.
 tutoring 205:8.
 TV 21:7, 21:10, 21:24, 32:8, 32:10, 109:8, 109:9, 116:5, 116:5, 116:9, 116:10.
 tw 263:5, 341:4.
 twenty 131:16.
 twice 73:1, 139:6, 338:25.
 two-and-a-half 184:12.
 types 110:15, 175:22, 241:9, 256:13.
 Typical 271:12, 271:13, 296:2.
 Typically 276:22.
 < U >.
 U-haul 60:13.
 UGA 252:11.
 Ultimately 108:17, 249:22.
 unbillous 162:5.
 UNC 36:25, 109:2.
 unable 192:11, 194:7, 212:1.
 Uncle 289:3.
 210:15, 254:6, 254:6, 254:8, 254:25, 273:10, 273:25, 277:8, 320:8, 320:11, 320:12, 328:24, 348:4, 348:5.
 unless 244:24, 254:1, 254:4, 259:8, 273:20.
 unconscious 190:23, 191:7.
 unconsciousness 191:10.
 underline 10:20, 10:21.
 underlined 10:4, 10:7, 10:8, 94:13, 94:15, 94:18.
 underlining 10:16.
 underlying 5:14, 8:15, 10:12.
 underneath 164:22, 172:13, 181:12.
 undersigned 358:8.
 understand 11:15, 200:9, 200:12, 200:22, 201:2, 201:19, 201:24, 202:7, 220:5, 221:18, 256:24, 296:11, 343:3, 349:15.
 understanding 16:25, 27:14, 224:4, 266:6, 342:12.
 understands 79:16, 106:3, 290:14.
 167:21, 175:7.
 vicious 168:3.
 Vera 62:13, 72:2, 72:3, 72:10, 73:9, 88:23, 89:19, 90:13, 102:18, 102:20, 125:22, 126:8, 127:7, 135:19, 135:24, 136:11, 149:8.
 verbal 325:3, 325:3.
 verbalize 150:21, 216:22, 339:6, 347:20, 347:21.
 visited 59:16, 261:10.
 visits 250:2, 260:12.
 visual 161:7.
 vital 163:11.
 voice 32:16, 33:4, 165:22.
 voices 67:22.
 voluntary 95:24, vs 1:15.
 vibrating 323:7.
 victim 14:1, 14:19, 17:6, 23:9, 27:2, 161:13, 179:16, 185:5, 186:4, 187:1, 187:10, 190:23.
 video 101:1, 101:1, 231:3, 236:25, 307:21.
 videos 237:2, 307:22.
 view 181:2, 181:19, 185:19, 326:17.
 violation 5:26, 141:23, 143:24, 173:2, 207:5, 252:11.
 41:3, 66:10,

415

298:15, 350:16.
 touch 23:10, 49:4, 54:20, 54:22, 87:17, 87:25, 189:19, 225:22, 331:11, 338:20, 352:15.
 touched 214:23.
 toward 145:17, 181:3, 184:22.
 towards 79:14, 80:1, 103:2, 117:7, 143:25, 281:32, 281:24, 282:5.
 towels 220:10.
 town 154:7, 277:16.
 Toyota 90:2, 141:10, 141:11.
 toys 226:9, 229:15, 229:21.
 trachea 168:6, 168:11, 168:13, 175:10, 187:7.
 tracheal 168:11.
 track 160:18, 304:6, 305:11, 305:12, 306:1, 307:8, 307:11, 329:18, 352:19, 352:20.
 tracks 265:5, 265:9, 265:12, 265:17, 305:24, 323:1, 323:12, 323:15, 323:18, 351:23, 352:4, 352:6, 353:5, 353:7.
 trafficking 282:25, 287:3, 287:24.
 tragedy 216:21, 219:10, 220:16, 235:7, 235:21.
 tragic 219:8, trailer 18:24, 20:5, 21:8, 21:15, 29:11, 31:24, 31:25, 32:4, 32:5, 32:10, 38:16, 58:13, 61:5, 61:6, 67:13, 68:10, 72:22, 73:8, 73:17, 87:23, 88:25, 90:8, 90:18, 90:20, 228:18.
 train 323:6.
 training 159:1, 159:4, 159:12, 195:17.
 trains 323:9.
 TRAN 1:1.
 transcribed 358:15.
 TRANSCRIPT 1:12, 10:19, 11:20, 11:24, 37:21, 37:24, 42:6, 42:9, 42:15, 91:12, 91:16, 92:18, 92:21, 94:12.
 transcripts 91:13.
 transpired 328:15, 324:15, 340:14.
 transport 41:5.
 transportation 280:7, 280:10, 280:12.
 trash 88:12.
 treashed 142:11.
 trashy 80:19.
 trauma 172:8, 176:10, 184:16, 191:20.
 traveled 52:3, 148:21, 153:2, 154:1, 160:5, 167:6, 175:16, 206:11, 237:16, 275:21, 349:16,

173:2, tried 47:13, 49:11, 53:20, 80:20, 81:24, 83:6, 85:11, 87:14, 144:14, 144:17, 145:1, 206:13, 207:18, 215:23, 221:1, 221:12, 228:4, 228:11, 231:15, 236:18, 238:5, 255:2, 273:18, 276:1.
 tales 14:10.
 trips 213:23, 217:11.
 trouble 31:5, 46:25, 232:11, 232:11, 243:18, 243:21, 274:19, 274:19, 274:20, 274:21, 285:21, 295:16, 295:24, 295:25, 296:1, 296:2, 296:24.
 troubles 215:27.
 trucks 304:8.
 true 59:11, 69:23, 97:3, 106:10, 109:15, 110:24, 113:12, 116:5, 117:18, 117:21, 122:10, 125:4, 143:20, 144:14, 145:24, 147:6, 147:17, 149:3, 194:4, 257:18, 294:4, 297:25, 316:9, 358:16.
 truly 219:5.
 trust 235:16.
 Try 54:11, 64:21, 83:9, 87:19, 136:14, 144:20, 148:21, 153:2, 154:1, 160:5, 167:6, 175:16, 206:11, 237:16, 275:21, 349:16,

414

185:21, 233:19.
 Upset 16:4, 16:7, 18:2, 21:23, 22:1, 31:3, 59:3, 60:20, 68:6, 70:16, 84:5, 113:24, 120:13, 120:14, 120:15, 120:16, 120:18, 132:5, 132:7, 132:9, 138:6, 147:18, 147:20, 147:22, 295:11.
 upside 179:21.
 upward 181:4.
 URSIA 154:13.
 urine 249:22.
 us 237:1.
 usage 328:3.
 using 47:9, 47:12, 47:15, 57:16, 101:21, 102:9.
 usual 219:11.
 utility 312:10.
 utterance 16:11, 17:7, 17:11.
 < V >.
 V-a-n-o-n 20:22.
 vacant 248:4, 248:5, 304:9.
 vagina 76:7, 131:24, 132:9, 138:5.
 Vaguely 240:11, 253:1.
 Valentine 100:24.
 variable 163:19.
 various 170:4, 248:17.
 vehicle 15:2, 116:19, 141:20, 141:23, 143:24, 173:2, 207:5, 252:11.
 vein 165:14, 167:12, 167:13, 167:21, 175:7.
 venous 168:3.
 Vera 62:13, 72:2, 72:3, 72:10, 73:9, 88:23, 89:19, 90:13, 102:18, 102:20, 125:22, 126:8, 127:7, 135:19, 135:24, 136:11, 149:8.
 verbal 325:3, 325:3.
 verbalize 150:21, 216:22, 339:6, 347:20, 347:21.
 visited 59:16, 261:10.
 visits 250:2, 260:12.
 visual 161:7.
 vital 163:11.
 voice 32:16, 33:4, 165:22.
 voices 67:22.
 voluntary 95:24, vs 1:15.
 vibrating 323:7.
 victim 14:1, 14:19, 17:6, 23:9, 27:2, 161:13, 179:16, 185:5, 186:4, 187:1, 187:10, 190:23.
 video 101:1, 101:1, 231:3, 236:25, 307:21.
 videos 237:2, 307:22.
 view 181:2, 181:19, 185:19, 326:17.
 violation 5:26, 141:23, 143:24, 173:2, 207:5, 252:11.
 41:3, 66:10,

415

74:8, 76:25, 130:8, 236:23, 318:9,
76:16, 79:23, 258:12, 259:1, wet 76:8,
80:7, 90:19, weak 219:9, 131:24,
108:24, 111:3, weapon 104:19, whatever 23:18,
111:5, 125:17, 175:21, 95:22, 96:4,
141:5, 141:6, wear 228:14, 96:13, 123:9,
147:8, 147:12, 351:18, 154:14, 166:25,
162:16, 198:8, wearing 40:9, 171:25, 172:18,
344:16, 132:12, 192:1, 206:12,
walking 76:25, 189:10, 221:1, 226:2,
80:1, 121:17, weather 114:2, 296:14, 297:22,
205:23, 218:24, wedding 213:21, 312:13, 324:5,
265:5, Wedgewood 277:12, 324:6, 328:15,
Wall 75:19, 81:6, 278:17, 281:3, 328:25,
90:22, 163:10, 319:17, 332:13, whatsover 33:7,
163:14, 163:15, 334:18, 356:14, wheel 81:22, 89:4,
163:23, 164:20, 356:17, 142:7, 142:10,
329:1, 336:14, weed 290:17, wheels 211:6,
336:19, 281:2, 307:19, whenever 95:9,
Wallace 278:7, 324:5, 324:23,
wanting 215:5, week 24:12, 59:16, wherever 323:16,
warrants 22:15, 102:2, 159:22, whether 8:12,
Waskowkai 194:8, 285:11, 15:14, 93:23,
214:20, 305:19, 305:20, 179:11, 186:17,
Waskowski 214:19, 306:4, 187:18, 189:10,
216:2, 216:18, weekend 260:11, 202:12, 217:7,
217:17, 260:13, 254:24, 259:8,
watch 53:3, 91:23, weekends 195:22, 267:10, 278:23,
98:13, 152:19, weeks 99:7, 314:16, 332:16,
199:15, 221:23, 118:13, 150:6, 340:5,
301:19, 307:21, 195:25, 261:13, whip 275:2,
307:21, 314:6, 262:13, 324:17,
345:12, 357:9, weigh 93:8, whole 29:23,
watched 56:11, weighed 93:13, 44:20, 207:10,
90:12, 339:19, 93:15, 219:16,
watching 21:7, welcome 222:21, whole 27:21,
21:10, 21:19, welcomed 186:3, 52:25, 40:8,
32:8, 32:10, welfare 104:3, 158:10, 170:21,
74:24, 98:19, well-developed 192:24, 203:6,
109:5, 116:4, 161:16, 209:23, 220:11,
116:9, 116:10, well-kept 248:2, 223:8, 239:6,
135:5, 205:21, well-mannered 259:7, 263:25,
272:20, 295:22, 232:12, 300:5, 302:16,
321:3, 321:4, well-nourished 304:19, 317:25,
324:4, 346:8, 161:16, 321:8, 349:22,
346:9, wept 220:11, 355:6,
Water 213:9, Weekowski 212:9, whom 218:13,
247:13, Weekowski-rease whoop 296:15,
247:15, 213:16, whooped 274:25,
ways 104:12, West 19:20, 19:29, 296:3, 296:4,

119:16, 119:17, 152:15, 199:12,
120:6, 301:15, 357:5,
written 22:17,
34:2, 118:9,
118:12, 118:14, < Dares >,
118:16, 142:16, 1/9/95 37:4,
147:1, 150:1, 12/27/69 93:5,
wrote 70:10, August 31, '95
86:15, 110:17, 93:0, 93:8,
119:12, 119:13, 93:8,
120:18, 150:4, August 31, 1995
150:6, 150:8, 234:25, 234:25,
150:14, 150:22, 234:25,
151:1, 151:16, February 28, 1995
151:23, 66:11, 66:11,
217:23, 66:12,
January 15, 1972
318:24, 318:24,
318:24,
< Y >,
yelling 99:13, January 9, 1995
207:8, 63:16, 63:16,
Yellow 40:10, 63:16, 106:23,
Yep 269:25, 276:6, 106:23,
277:19, 303:22, 106:24,
308:19, June 26, 1992
317:12, 56:4, 56:4,
yesterday 213:15, 56:4,
219:11, June 26, 1995
you 150:17, 129:2, 129:2,
Younger 155:19, 129:2,
221:14, 239:21, March 19, 2007
239:23, 240:8, 1:31, 1:31,
240:20, 241:11, 1:31, 5:1, 5:1,
241:20, 242:16, 5:1,
260:2, 265:20, March 2003 315:22,
272:20, 272:21, 315:22,
291:16, 303:17, May 10, '95 93:21,
303:18, 306:23, 93:21, 93:21,
306:25, 307:1, May 10, 1995
318:19, 318:20, 93:22, 93:22,
318:21, 93:22,
youngster 243:19, November 1994
249:21, 100:5, 100:5,
Your're 163:17, November 5, 2002
yourself 47:10, 334:15, 334:15,
57:14, 96:16, 334:15,
126:2, 224:8, September 1995
231:23, 161:1, 161:1,
343:22,
yourselves 91:19,

417

419

296:5, 296:10, 285:16,
324:13, 342:15,
324:15, 91:21, 152:11, works 13:25,
whooping 296:22, 152:17, 153:12, 171:20, 296:6,
whose 70:9, 119:9, 153:15, 155:1, world 69:22, 76:5,
120:11, 155:9, 155:14, 117:8, 119:25,
147:23, 155:15, 156:9, 159:10,
wife 108:13, 199:14, 238:14, worried 113:23,
173:4, 261:13, 239:15, 301:8, worry 9:25,
262:11, 301:17, 357:7, 163:11, 163:13,
William 3:15, woman 29:17, 305:6, 320:20,
37:17, 38:1, 30:20, 33:6, worse 172:16,
38:2, 41:16, 55:12, 97:4, 288:5, 353:23,
115:8, 117:3, 117:11, 120:9, would't 325:8,
270:6, 126:23, 145:12, would, 218:23,
Willly 4:11, 214:14, wound 162:14,
238:11, 224:20, 163:25, 164:7,
272:15, women 67:17, 164:21, 167:4,
window 73:14, wondered 201:8, 168:11, 173:25,
73:24, 73:25, wondered 213:24, 176:22, 179:4,
74:5, 74:7, 214:11, 180:1, 180:7,
74:15, 74:17, word 8:23, 101:24, 182:17,
80:23, 129:16, words 27:4, 63:24, 186:2,
129:17, 129:20, 69:13, 70:3, wounds 26:25,
129:22, 130:3, 75:21, 82:2, 162:1, 162:20,
130:9, 130:10, 122:20, 123:13, 163:7, 165:13,
131:4, 131:10, 124:13, 125:2, 168:23, 173:22,
130:11, 131:12, 130:2, 130:4, 173:24, 174:2,
135:8, 135:9, 148:6, 167:20, 174:4, 174:5,
windows 73:18, 237:5, 176:1, 176:2,
73:20, worked 19:2, 28:6, 176:3, 176:16,
windpipe 168:12, 38:11, 46:18, 176:20, 176:21,
187:7, 52:16, 98:10, 177:12, 179:6,
wined 59:14, 98:12, 99:15, 180:22, 181:7,
winter 339:12, 159:17, 193:14, 183:20, 185:22,
339:14, 193:15, 197:9, 186:5, 187:8,
wish 206:18, 214:5, 250:8, 233:25,
wishes 327:15, 284:18, 284:22, wrist 161:25,
Within 31:23, 293:16, 293:18, 171:12, 184:18,
31:24, 118:13, 312:9, 320:25, 184:21, 184:22,
187:3, 187:4, 321:15, 323:13, 184:25,
Without 90:20, 326:25, write 41:16,
92:1, 97:7, 339:19, 119:6, 119:8,
97:13, 152:16, worker 224:25, 119:10, 120:20,
152:22, 166:18, working 28:8, 180:23, 150:24,
195:4, 199:13, 53:4, 57:9, 151:14, 151:20,
199:19, 210:1, 62:7, 74:23, 151:22, 215:2,
223:1, 235:20, 117:15, 154:12, writes 230:24,
237:4, 300:14, 171:21, 283:12, writing 87:5,
301:16, 301:22, 285:2, 285:10, 87:7, 119:12,

418

AFFIRMATION

PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the
proceeding

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

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

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

(A) NAC 656.350

-or-

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

Sharon Howard

Sharon Howard, CCR #745

3/25/07

Date

255
1 VER

3:30 pm FILED IN OPEN COURT
March 21 20 07

CHARLES J. SHORT
CLERK OF THE COURT

BY Carol Green
DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,

8 Plaintiff,

9 -VS-

10 JAMES MONTELL CHAPPELL,

11 Defendant.

Case No. C131341

Dept No. III

14 SPECIAL VERDICT

15
16 We, the Jury in the above entitled case, having heard evidence in the above-
17 referenced matter in which the Defendant, JAMES MONTELL CHAPPELL has previously
18 been convicted of COUNT 3 - FIRST DEGREE MURDER WITH USE OF A DEADLY
19 WEAPON, designate that the aggravating circumstance or circumstances which have been
20 checked below have been established unanimously and beyond a reasonable doubt.

21
22 ☒ The murder was committed during the perpetration of a sexual assault.

23
24 DATED this 21 day of March, 2007.

25
26 [Signature]
FOREPERSON

311

256
1 VER

3:30 PM FILED IN OPEN COURT
March 21 2007

CHARLES J. SHORT
CLERK OF THE COURT

DISTRICT COURT BY
CLARK COUNTY, NEVADA

Carol Green
DEPUTY

7 THE STATE OF NEVADA,

8 Plaintiff,

9 -vs-

10 JAMES MONTELL CHAPPELL,

11 Defendant.
12
13

Case No. C131341

Dept No. III

14 SPECIAL VERDICT

15 We, the Jury in the above entitled case, having heard evidence in the above-
16 referenced matter in which the Defendant, JAMES MONTELL CHAPPELL has previously
17 been convicted of COUNT 3 - FIRST DEGREE MURDER WITH USE OF A DEADLY
18 WEAPON, find

19 ~~X~~ The mitigating circumstances DO NOT outweigh the aggravating
20 circumstance.

21 _____ The mitigating circumstances DO outweigh the aggravating circumstance
22

23 DATED this 21 day of March, 2007.

24 
25 FOREPERSON
26
27
28

118

257
1 VER

3:30pm
FILED IN OPEN COURT
March 21 2007

CHARLES J. SHOFT
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
Carol Green
DEPUTY

7 THE STATE OF NEVADA,

8 Plaintiff,

9 -vs-

10 JAMES MONTELL CHAPPELL,

11 Defendant.
12
13

Case No. CI31341

Dept No. III

14 SPECIAL VERDICT

15 We, the Jury in the above entitled case, having heard evidence in the above-
16 referenced matter in which the Defendant, JAMES MONTELL CHAPPELL, has previously
17 been convicted of COUNT 3 - FIRST DEGREE MURDER WITH USE OF A DEADLY
18 WEAPON, one or more of the jurors designate that mitigating circumstance or
19 circumstances which have been listed below have been established.

20 1. James Chappell suffered from substance abuse.

21 2. James Chappell has had no father figure in
22 his life.

23 3. James Chappell was raised in an abusive
24 household.

25 4. James Chappell was the victim of physical
26 abusive as a child.

27 5. James Chappell was born to a drug/alcohol
28

1 addicted mother.

2 6. James Chappell suffered a learning disability.

3 7. James Chappell was raised in a depressed
4 housing area.

5
6
7
8 DATED this 21 day of March, 2007.

9 
10 FOREPERSON
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258
1 VER

3:30pm
CLERK OF DISTRICT COURT
March 21 2007
CHARLES J. SHORT
CLERK OF THE COURT
BY Carol Green
DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

2 THE STATE OF NEVADA,

3 Plaintiff,

4 -vs-

5 JAMES MONTELL CHAPPELL,

6 Defendant.

Case No. C131341

Dept No. III

7
8
9
10
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12
13
14 VERDICT

15 The Defendant, JAMES CHAPPELL, having been found guilty of COUNT 3 -
16 MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY WEAPON, and we, the
17 Jury, having found that the aggravating circumstance outweighs any mitigating
18 circumstances, impose a sentence of

19 ☒ Death

20 ☐ Life in Nevada State Prison Without the Possibility of Parole

21 ☐ Life in Nevada State Prison With the Possibility of Parole

22 ☐ A definite term of 100 years imprisonment, with eligibility for parole beginning
23 when a minimum of 40 years has been served

24 DATED at Las Vegas, Nevada, this 21 day of March, 2007

25 
26 FOREPERSON

27 JUDGMENT ENTERED

28 MAR 22 2007 877

259
1 INST

DISTRICT COURT
CLARK COUNTY, NEVADA

3:30pm FILED IN OPEN COURT
March 21 2007

2
3
4
5 THE STATE OF NEVADA,

6 Plaintiff,

7 -vs-

8 JAMES MONTELL CHAPPELL,

9 Defendant.
10
11

CHARLES J. SHORT
CLERK OF THE COURT
Case No. C131341 DEPUTY
Carol Green

Dept No. III

12 INSTRUCTIONS TO THE JURY

13 (INSTRUCTION NO. 1)

14 MEMBERS OF THE JURY:

15 It is now my duty as judge to instruct you in the law that applies to this penalty
16 hearing. It is your duty as jurors to follow these instructions and to apply the rules of law to
17 the facts as you find them from the evidence.

18 You must not be concerned with the wisdom of any rule of law stated in these
19 instructions. Regardless of any opinion you may have as to what the law ought to be, it
20 would be a violation of your oath to base a verdict upon any other view of the law than that
21 given in the instructions of the Court.
22
23
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27
28

118

If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

In the penalty hearing, evidence may be presented concerning aggravating and mitigating circumstances relative to the offense.

Hearsay is admissible in a penalty hearing.

The jury shall fix the punishment for every person convicted of murder of the first degree.

The jury shall fix the punishment at:

1. A definite term of 100 years imprisonment, with eligibility for parole beginning when a minimum of 40 years has been served;
2. Life imprisonment with eligibility for parole beginning when a minimum of forty years has been served;
3. Life imprisonment without the possibility of parole; or
4. Death.

Life imprisonment with the possibility of parole is a sentence of life imprisonment which provides that a defendant would be eligible for parole after a period of forty years. This does not mean that he would be paroled after forty years, but only that he may be eligible after that period of time.

Life imprisonment without the possibility of parole means exactly what it says, that a defendant shall never be paroled.

If you sentence a defendant to death, you must assume that the sentence will be carried out.

The State has alleged that one aggravating circumstance is present in this case.

The Defendant has alleged certain mitigating circumstances are present in this case.

It shall be your duty to determine:

(a) whether the aggravating circumstance is found to exist; and

(b) whether a mitigating circumstance or circumstances are found to exist; and

(c) based upon these findings, whether the Defendant should be sentenced to a definite term of 100 years imprisonment, life imprisonment with or without the possibility of parole or death.

The jury may consider a sentence of death only if (1) the jurors unanimously find at least one aggravating circumstance has been established beyond a reasonable doubt and (2) the jurors unanimously find that there are no mitigating circumstances sufficient to outweigh the aggravating circumstance or circumstances found.

A mitigating circumstance itself need not be agreed to unanimously; that is, any one juror can find a mitigating circumstance without the agreement of any other juror or jurors. The entire jury must agree unanimously, however, as to whether the aggravating circumstances outweigh the mitigating circumstances.

Otherwise, the punishment imposed shall be imprisonment in the State Prison for a definite term of 100 years imprisonment, with eligibility for parole beginning when a minimum of 40 years has been served or life with or without the possibility of parole.

You are instructed that the following factors are circumstances by which Murder of the First Degree may be aggravated:

The murder was committed during the perpetration of a sexual assault.

A person who subjects another person to sexual penetration against the victim's will or under conditions in which the perpetrator knows or should know that the victim is mentally or physically incapable of resisting or understanding the nature of his conduct, is guilty of sexual assault.

"Sexual penetration" includes any intrusion, however slight, of any part of a person's body or any object manipulated or inserted by a person into the genital or anal openings of the body of another, including sexual intercourse in its ordinary meaning. Evidence of the emission is not necessary.

Sexual intercourse is the placing of the penis of the perpetrator into the vagina of the victim.

Fellatio is the placing of the penis of the perpetrator into the mouth of the victim.

Physical force is not necessary ingredient in the commission of the crime of sexual assault. The question is not whether the victim was penetrated by physical force, but whether the act was committed without her consent and/or under conditions in which Defendant knew or should have known, the victim was incapable of giving her consent or understanding the nature of the act.

The victim of a sexual assault is not required to do more than her age, strength, surrounding facts and attending circumstances make it reasonable for her to do to manifest her opposition.

INSTRUCTION NO. 11

There is no consent where the victim is induced to submit to sexual acts through fear of death or serious bodily injury.

Mitigating circumstances are those factors which, while they do not constitute a legal justification or excuse for the commission of the offense in question, may be considered, in the estimation of the jury, in fairness and mercy, as extenuating or reducing the degree of the Defendant's moral culpability.

Any aspect of the defendant's character or record and any of the circumstances of the offense, including any desire you may have to extend mercy to the defendant, may be considered by you as a mitigating factor.

In balancing aggravating and mitigating circumstances, it is not the mere number of aggravating circumstances or mitigating circumstances that controls.

INSTRUCTION NO. 13

In determining whether mitigating circumstances exist, jurors have an obligation to make an independent and objective analysis of all the relevant evidence. Arguments of counsel or a party do not relieve jurors of this responsibility. Jurors must consider the totality of the circumstances of the crime and the defendant, as established by the evidence presented in the guilt and penalty phases of the trial. Neither the prosecution's nor the defendant's insistence on the existence or nonexistence of mitigating circumstances is binding upon the jurors.

There are certain circumstances which may be considered as mitigating the crime of Murder of the First Degree, even though the mitigating circumstance is not sufficient to constitute a defense or reduce the degree of the crime.

In this case, the Defense alleges that the following mitigating circumstances are present:

- ① James Chappell suffered from substance abuse addictions;
2. James Chappell attempted to be a good father;
3. James Chappell's mother was killed when he was very young;
- ④ James Chappell has had no father figure in his life;
- ⑤ James Chappell was raised in an abusive household;
- ⑥ James Chappell was the victim of physical abuse as a child;
7. James Chappell was the victim of mental abuse as a child;
- ⑧ James Chappell was born to a drug/alcohol addicted mother;
- ⑨ James Chappell suffered a learning disability;
- ⑩ James Chappell was raised in a depressed housing area;
11. James Chappell was involved in a racially tense relationship;
12. James Chappell was taken away from his support system by his relationship with Deborah Panos;
13. Any other mitigating circumstances.

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2 A reasonable doubt is one based on reason. It is not mere possible doubt, but is such
3 a doubt as would govern or control a person in the more weighty affairs of life. If the minds
4 of the jurors, after the entire comparison and consideration of all the evidence, are in such a
5 condition that they can say they feel an abiding conviction of the truth of the charge, there is
6 not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or
7 speculation.
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INSTRUCTION NO.: 16

The jury is instructed that in determining the appropriate sentence in this matter that it may consider all evidence introduced at both the penalty hearing phase of these proceedings and at the trial of this matter.

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2 In deciding on an appropriate sentence for the defendant, you will consider three
3 types of evidence: evidence relevant to the existence of aggravating circumstances, evidence
4 relevant to the existence of mitigating circumstances, and other evidence presented against
5 the defendant. You must consider each type of evidence for its appropriate purposes.

6 In determining unanimously whether any aggravating circumstance has been proven
7 beyond a reasonable doubt, you are to consider only evidence relevant to that aggravating
8 circumstance. You are not to consider other evidence against the defendant.

9 In determining individually whether any mitigating circumstance exists, you are to
10 consider only evidence relevant to that mitigating circumstance. You are not to consider
11 other evidence presented against the defendant.

12 In determining individually whether any mitigating circumstances outweigh any
13 aggravating circumstances, you are to consider only evidence relevant to any mitigating and
14 aggravating circumstances. You are not to consider other evidence presented against the
15 defendant.

16 If you find unanimously and beyond a reasonable doubt that at least one aggravating
17 circumstance exists and each of you determines that any mitigating circumstances do not
18 outweigh the aggravating circumstances, the defendant is eligible for a death sentence. At
19 this point, you are to consider all three types of evidence, and you still have the discretion to
20 impose a sentence less than death. You must decide on a sentence unanimously.

21 If you do not decide unanimously that at least one aggravating circumstance has been
22 proven beyond a reasonable doubt or if at least one of you determines that the mitigating
23 circumstances outweigh the aggravating, the defendant is not eligible for a death sentence.
24 Upon determining that the defendant is not eligible for death, you are to consider all three
25 types of evidence in determining a sentence other than death, and you must decide on such a
26 sentence unanimously.

In your deliberation you may not discuss or consider the subject of guilt or innocence of a Defendant, as that issue has already been decided.

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

If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of his testimony which is not proved by other evidence.

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

A verdict may never be influenced by prejudice or public opinion. Your decision should be the product of sincere judgment and sound discretion in accordance with these rules of law.

INSTRUCTION NO. 21

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

INSTRUCTION NO. 22

The Court has submitted three sets of verdicts to you. One set is for a determination of the existence of an aggravating circumstance. The second set is for a determination of the existence of mitigating circumstances. The third set is for a determination of weight to be given the aggravating and/or mitigating circumstances.

INSTRUCTION NO. 22

The Court has submitted three sets of verdicts to you. One set is for a determination of the existence of an aggravating circumstance. The second set is for a determination of the existence of mitigating circumstances. The third set is for a determination of weight to be given the aggravating and/or mitigating circumstances.

64:15, 64:22,
 67:18, 73:17,
 87:9, 88:13,
 89:21, 90:21,
 90:22, 91:4,
 107:4, 115:6,
 124:22, 125:4,
 125:5, 126:7,
 135:7.
 kill 63:14, 73:14,
 106:22,
 119:13.
 killed 60:8,
 103:6, 129:23,
 130:2.
 killing 30:13,
 57:15, 62:21.
 kills 58:17.
 kind 12:1, 12:18,
 25:5, 49:13,
 50:13, 50:15,
 51:17, 51:21,
 53:22, 54:6,
 54:13, 56:15,
 59:8, 73:4,
 79:20, 87:22,
 95:4, 108:7,
 112:1, 113:14,
 133:10.
 kinds 11:11,
 75:1.
 knife 95:6, 98:6,
 103:14, 103:21,
 103:25, 104:2,
 117:12, 118:2,
 118:4, 119:7,
 119:20.
 knocked 60:19,
 104:3.
 knowledge 79:17,
 82:22.
 knows 28:6,
 60:5.
 .
 .
 < L >.
 ladies 19:16,
 67:25, 138:22.
 lady 61:21.
 laid 62:4.
 Lamb 11:17.
 language 41:5,
 42:15, 44:8,
 46:10, 46:11,
 46:13, 50:25.
 Lansing 27:21,
 34:18.
 larcenies 101:2.
 larger 51:19.
 Las 4:1, 20:10,
 20:25, 26:7,
 26:25, 27:18,
 28:14, 55:20,
 96:11, 97:20,
 100:4, 100:21.
 last 15:7, 16:12,
 49:19, 58:7,
 60:7, 80:10,
 84:3, 96:20,
 101:18, 104:13,
 104:25, 105:22,
 106:20, 111:11,
 114:12, 117:2,
 136:15.
 lasted 27:3.
 latch 52:13.
 late 35:10,
 87:11.
 later 15:9, 18:20,
 59:17, 60:3,
 77:22, 77:24,
 77:25, 91:12,
 112:21.
 law 71:13, 73:15,
 78:25, 126:12.
 lawyers 68:3,
 138:25.
 lay-persons
 62:12.
 lead 131:1, 131:6,
 131:10, 131:13,
 134:7.
 leading 58:2,
 127:16, 128:18,
 131:2, 131:21.
 learn 32:9.
 learned 37:14,
 42:24, 107:2.
 learning 21:25,
 25:19, 27:15,
 36:24, 36:25,
 42:13.
 least 13:11, 27:5,
 58:15, 85:6,
 99:18, 118:4,
 123:9, 128:3.
 leave 57:22,
 73:16, 120:4,
 125:17,
 125:21.
 leaving 73:14,
 94:21, 95:10,
 95:11.
 led 56:4, 59:8,
 95:6, 118:10,
 118:10.
 left 10:18, 36:9,
 36:14, 45:24,
 56:1, 56:7,
 56:8, 59:17,
 59:22, 59:22,
 86:5, 98:20,
 103:3, 126:2,
 133:24, 135:6.
 left. 62:7.
 legal 25:9,
 78:11.
 legitimate 86:7.
 lenient 124:24.
 less 46:5, 49:5,
 65:21, 69:18,
 69:19, 69:19,
 72:11, 72:12,
 72:15, 73:2,
 73:3, 73:5,
 76:5, 109:12,
 116:4, 116:6.
 lesser 51:15.
 letter 61:17,
 108:9, 108:12,
 108:19, 108:23,
 108:25, 109:10,
 109:23, 110:1,
 110:6, 110:8.
 letters 27:19,
 29:11, 76:24,
 77:2, 109:14,
 109:15.
 letting 112:2.
 level 36:6, 45:1,

65:17.	30:22, 37:20,	77:25.
Lewis 3:11, 19:18,	44:15, 45:9,	loose 60:21,
20:2.	45:9, 51:24,	132:2.
liar 113:5.	54:2, 54:15,	lose 92:3.
liars 116:14.	63:19, 67:6,	losing 63:18.
licensed 20:10,	76:10, 110:24,	loss 111:19,
21:3, 122:1.	111:3.	111:21, 112:7,
lie 49:3, 49:4,	live 33:21, 33:21,	130:1, 130:4.
134:7, 138:5,	133:19,	lost 56:10, 91:2,
138:7.	134:24.	92:13.
lied 138:5.	lived 66:22,	lots 32:7, 43:13,
lifestyle 133:6,	71:8.	43:24, 64:15,
133:10, 133:18,	lives 67:18,	64:15, 74:8,
133:24.	92:22, 115:7,	74:9, 74:9,
light 106:11.	125:16, 135:7.	74:21, 75:7,
lights 61:13.	living 45:6, 56:3,	92:17.
likelihood 39:20,	100:20, 133:18,	lousy 43:25,
43:21.	134:8, 136:21.	64:24, 64:25,
likely 49:5,	lobe 45:25.	135:1.
66:11.	location 14:2.	love 16:4, 54:11,
likes 79:20.	logical 73:10,	61:18, 87:8.
limitation 68:2,	95:9.	loved 55:14,
68:8, 138:24,	long 5:5, 16:11,	55:15, 55:23,
139:5.	16:14, 20:11,	58:15.
limitations 71:4,	27:2, 27:6,	loves 65:3.
71:9, 71:13,	51:24, 127:3,	loving 58:16.
71:17, 72:17,	127:6, 132:11.	Low 38:6, 38:7,
121:7, 121:9.	longer 22:11,	38:9, 42:7,
limited 21:13,	106:1.	43:7, 45:23,
66:13, 105:5,	look 14:15, 24:4,	48:20, 52:10,
121:10, 135:4.	47:16, 48:17,	53:7, 54:6,
line 6:12, 6:18,	53:11, 53:16,	54:7, 66:16,
6:19, 7:13,	54:24, 60:6,	66:16, 132:12.
130:21.	65:4, 79:1,	low/average
lines 130:20.	85:25, 90:25,	42:4.
Lisa 27:19, 27:19,	96:23, 100:18,	lower 41:20,
61:5, 61:11,	105:24, 108:15,	42:6.
104:16.	116:11, 116:20,	Lucky 113:13.
list 44:17,	117:11, 121:8,	lying 113:10,
128:9.	121:9, 121:10,	113:10, 113:11,
listed 13:6.	122:25.	113:12, 113:16,
listen 35:11,	looked 27:24,	114:13,
44:21, 68:5,	58:6, 130:13.	114:23.
139:2.	looking 10:22,	lying. 114:19.
listening 117:5.	14:17, 27:7,	.
literally 41:15.	34:1, 53:24,	.
literature 63:2.	81:8, 84:13,	< M >.
little 7:14,	89:3.	M. 1:17, 2:6.
10:20, 11:6,	Looks 35:22, 36:1,	machines 54:22.
12:1, 20:13,	37:12, 66:2,	mad 66:3, 73:13.

magazines 54:25.	measuring 41:6,	Michigan 27:21,
main 62:24.	51:25.	29:9, 32:6,
major 25:21,	mechanism 50:4,	87:15.
49:22, 51:14,	63:25.	mid 24:11.
51:14, 51:17,	Medical 76:10,	Mike 104:15.
53:3, 132:4.	76:14.	Milan 49:9.
majority 74:2.	medicine 21:21,	millions 120:11.
man 26:10,	76:15.	mind 57:5, 57:24,
74:20.	medium 68:7,	63:16, 72:21,
manage 82:6.	139:4.	73:9, 75:22,
manager 5:3.	meet 17:7.	82:9, 82:19,
mania 51:16.	member 10:3, 10:4,	95:13.
marijuana 39:2.	22:19, 22:21,	minds 57:7,
mark 99:14.	22:24, 23:9.	61:7.
marked 10:14,	members 10:1,	mine 136:11.
93:14, 99:10.	84:9, 85:10,	minute 31:7,
Marvin 3:11,	90:1, 90:4.	39:13, 113:25.
20:2.	memories 54:19,	minutes 45:10,
Massachusetts	63:18.	68:13, 106:24,
20:17.	memorized 59:11.	112:20, 118:1.
masters 20:16.	memory 21:25,	mischaracterizatio
match 124:9.	30:4, 62:23,	n. 114:15.
math 35:12, 42:9,	62:25, 84:2,	mischaracterizes
42:14.	84:3, 85:2,	128:4.
matter 9:9, 99:17,	85:5, 98:2,	misdemeanor
131:13.	111:1, 111:20,	94:2.
matters 79:11,	111:21, 111:22,	miserable 133:16,
79:14.	111:23, 112:7,	133:23.
MCMJ 49:10.	112:21, 112:24,	misery 133:13,
me. 61:3.	130:1, 130:4.	133:16.
Meaning 8:20,	men 55:25, 56:3,	misleading
21:14, 21:19,	61:4, 107:15,	101:1.
42:5, 59:7,	137:24.	mistake 105:21.
89:19.	mental 48:20,	mistrustful
meaningful	78:14, 103:25.	52:16.
36:20.	mentally 23:20,	mitigating 79:7.
means 18:2, 41:23,	23:20, 73:22.	mix 54:13.
42:15, 44:5,	mention 54:2.	mixed 42:14,
115:19.	mentioned 18:19,	45:7.
meant 13:21,	24:10, 26:2,	mobile 98:4.
93:5.	29:8, 40:2,	modern 41:2.
meant. 37:25.	85:16, 86:14,	mom 34:25.
meantime 9:3.	86:23, 95:23,	moment 6:6, 56:18,
measure 40:22,	97:22, 137:11.	69:24, 71:7,
42:3, 49:11,	met 60:18, 70:24,	71:23, 72:20,
51:20, 51:24.	85:12.	72:24, 74:20,
measured 42:10,	method 51:6.	76:3, 95:1,
42:20, 42:22,	Metropolitan	98:11, 112:20,
42:24.	27:18.	114:22,
measures 49:13.	Michelle 104:14.	115:22.

Moncha 104:14.	murdering 62:3.	17:18.
Monday 22:5.	music 117:5.	neurologists
money 59:15,	Myself 9:14,	79:6.
133:9.	45:20, 57:21,	neuropsychological
Montavista 21:11,	105:21.	21:17, 29:19.
21:12.	.	neuropsychologist
Months 13:11,	.	23:13.
23:4, 37:17,	< N >.	Neuropsychology
46:21, 59:4,	NAME 3:6, 3:11,	22:2, 22:23,
59:16, 60:3,	4:22, 4:23,	23:10, 23:11,
77:25, 78:1,	13:15, 13:16,	24:3, 26:14,
101:18, 102:2.	17:24, 19:25,	77:8, 123:4,
moody 35:9.	109:25.	123:6.
MORNING 1:30,	names 13:6,	Nevada 1:7, 1:10,
17:5, 20:6,	128:9.	4:1, 4:7, 22:24,
20:7, 32:11,	National 23:9,	24:14, 68:20,
60:13, 69:7,	23:11.	121:22,
69:8.	naturally 63:11.	121:25.
mostly 49:17,	nature 82:20,	new 36:8, 72:6,
49:17.	127:16.	101:17.
mother 12:24,	nearly 66:15.	news 81:16, 81:16,
28:5, 33:6,	necessarily 45:22,	122:21,
33:7, 33:12,	47:21, 85:1,	122:22.
34:4, 35:2,	89:10.	newspaper
56:8, 73:17.	neck 117:22.	113:14.
motivation.	need 9:1, 21:21,	newspapers 68:8,
38:10.	21:22, 23:21,	139:5.
motor 21:24, 33:8,	36:12, 70:19,	next 4:13, 8:16,
41:7.	74:18, 84:22,	10:4, 12:18,
move 92:21, 100:5,	84:24.	13:9, 19:11,
102:4.	needed 9:19,	99:10, 99:14,
moved 92:20.	35:11, 35:19,	127:14.
movement 119:4.	120:4.	nice 59:15.
Ms 3:7, 17:7,	needing 48:17,	night 8:10, 87:11,
18:22, 30:19,	52:4.	105:17, 105:19,
52:23, 92:2,	needs 56:17.	105:19, 126:3,
117:3, 117:3.	neglect 90:19,	126:8.
Multi-axial	135:3.	nine 23:4.
49:9.	Neglectful 34:1,	ninety 16:15.
murder 24:18,	89:14, 91:14,	ninth 42:4,
24:18, 30:11,	91:17, 124:12,	42:25.
47:8, 57:19,	124:14, 124:17,	ninty-one 42:6.
60:2, 74:6,	125:24, 125:25,	No. 1:2, 1:3,
78:20, 78:20,	126:4, 126:9.	10:15, 10:18,
78:25, 82:3,	neighborhood	14:15, 18:8,
82:3, 95:5,	126:7.	61:1, 72:17,
95:10, 102:2,	Nellis 20:24.	78:16, 90:2,
105:15,	nervous 59:23,	92:1, 95:7,
111:22.	59:25.	95:16.
murdered 57:16.	Nest 5:8, 5:10,	Nobody 16:23,

16:24, 44:17,	Objection 28:23,	12:7, 12:14,
54:23, 85:1.	29:2, 29:3,	31:1, 42:8,
None 84:10, 84:12,	93:18, 93:24,	53:4, 59:10,
134:4.	100:7, 101:9,	90:14, 101:23,
normal 46:9, 66:5,	110:11, 110:13,	104:3, 109:2,
66:8, 66:22,	127:21, 128:5,	125:6, 125:15,
72:16, 75:9.	128:18, 128:24,	127:8, 128:14,
normative 50:1.	131:2, 131:8,	129:11, 132:6,
normed 49:22.	131:21, 134:12,	136:10, 138:1.
North 11:17.	134:14.	old 33:10, 36:10,
nose 31:2.	objective 27:8.	37:17, 53:18,
not-going-his-way	observe 25:15.	125:5.
133:10.	obtain 122:5.	older 33:23,
note 61:21,	obtaining 84:13.	86:20, 87:13,
62:15.	obvious 33:15,	87:20, 83:25,
noted 35:2.	38:20.	89:1, 89:18,
Nothing 4:18,	Obviously 54:11,	90:12.
19:7, 19:22,	57:24, 116:1,	oldest 87:15.
37:10, 46:7,	132:22.	omission 98:11.
57:19, 88:12,	occasion 25:3,	Once 15:11, 17:12,
132:3, 134:16,	33:2, 104:6,	79:2, 79:15,
135:6.	120:20.	97:10.
notice 12:15,	occasions 97:20,	ones 64:16,
14:19, 47:5,	103:7.	132:5.
64:20, 106:3,	occupational	open 107:9.
108:18, 113:17,	134:3.	opinion 28:7,
117:22.	occur 121:7.	28:7, 34:8,
notifying 9:23.	occurred 30:23,	48:21, 50:21,
number 7:18,	59:13, 62:12,	52:19, 56:11,
11:13, 11:13,	81:14, 98:13,	58:4, 67:8,
11:17, 12:22,	108:25, 116:7.	67:12, 68:11,
12:22, 44:22,	occurs 64:6,	72:15, 84:22,
45:11, 51:19,	118:16.	84:23, 98:14,
69:12, 70:13,	odds 111:2.	99:2, 100:24,
71:8, 72:25,	offered 107:18,	101:8, 101:14,
83:17, 83:17,	107:19.	101:16, 102:19,
83:19, 95:23,	office 22:9, 23:5,	114:17, 129:18,
99:11, 100:16,	24:13, 24:14,	130:24, 131:6,
100:18, 101:1,	26:25, 27:9,	131:9, 139:8.
102:10.	48:1, 57:17,	opinions 28:21,
nut 71:24.	58:21, 79:16,	99:19, 99:24,
.	79:16, 83:22,	99:25, 102:24,
.	83:25, 84:5,	136:23.
< O >.	116:19.	opportunities
o'clock 139:11.	officers 104:17.	65:24.
oath 69:2.	offices 23:1.	opportunity 25:15,
object 28:21,	often 38:2, 54:22,	25:18, 26:20,
93:20, 100:25,	114:4, 126:19.	27:22, 29:14,
119:22,	Ohio 20:19.	31:25, 84:9,
127:15.	Okay 10:12, 11:16,	100:6.

opposed 101:2.	90:16.	91:20, 124:16,
oppositional	.	124:20,
64:18.	.	125:14.
options 66:22,	< P >.	parents 36:13,
70:18, 72:2,	pacing 60:25.	64:20, 65:1,
72:7, 72:12.	pacing. 61:2.	91:14, 97:24,
oral 61:3, 107:19,	Page 3:6, 3:11,	135:1.
110:25.	3:19, 12:18,	Parole 24:23,
order 6:10, 6:11,	12:19, 13:9,	79:4, 94:3.
6:13, 6:25,	15:7, 32:21,	part 24:16, 55:16,
7:25, 8:11,	35:22, 37:12,	74:12, 98:14,
8:11, 8:13,	39:6, 45:7,	118:7.
8:21, 8:25, 9:1,	51:8, 53:4,	partial 99:19.
9:3, 9:10, 10:2,	60:7, 86:22,	particular 35:5,
10:11, 12:25,	86:24, 86:24,	35:12, 52:20,
13:25, 14:12,	87:4, 87:16,	82:9, 82:21.
15:5, 15:11,	96:22, 98:1,	parties 68:3,
16:10, 16:12,	111:20, 113:24,	87:9, 139:25.
17:21, 17:25,	114:12, 114:13,	parts 114:18,
18:10, 18:25,	130:16.	114:19.
19:14, 19:16,	pages 87:1.	party 18:17.
99:10, 99:15.	paid 79:23,	passing 34:15.
Ordered 13:14.	122:10, 122:12,	past 22:8, 22:25,
orders 6:6,	122:13.	23:3, 23:4,
14:25.	painful 57:10,	38:4, 38:8,
organization	57:11.	55:17, 73:19,
76:13, 76:19.	PAM 2:3.	85:3.
oriented 81:3.	panicked 62:7.	Paterson 20:22.
others 38:6,	Panof 11:1.	patient 81:10,
53:6.	Panos 11:3, 11:17,	122:18.
Otherwise 9:18,	16:8, 17:7,	patients 21:11.
93:14.	18:22, 27:20,	pattern 41:9,
ourselves 43:18,	30:14, 30:19,	116:11.
73:20, 73:24,	52:23, 92:2,	paying 134:10.
76:1.	94:21, 97:2,	pediatrician
out-grow 35:16.	101:18, 102:12,	25:11.
out. 38:3.	104:5, 107:9,	pen 72:1, 72:2,
outcomes 135:10.	117:12.	72:4, 72:8,
outright 111:2.	paper 74:23.	74:19.
outside 28:7,	paragraph 35:23,	PENALTY 1:14,
36:22, 65:25,	39:7, 60:7,	24:21, 24:22,
68:15, 139:13.	130:18.	47:5, 47:10.
over-exaggeration	paranoid 39:20,	perceive 27:16,
50:13.	92:23, 137:1.	51:20, 63:13,
over-represented	paraphernalia	65:23, 136:25.
43:8, 44:5.	101:3.	percent 69:14,
overall 42:5.	parent 34:9,	70:17, 70:21,
overruled	34:12, 66:20,	135:13.
101:10.	91:6, 91:16,	percentage 69:20,
own 67:18,	91:17, 91:19,	69:21, 70:8,

71:2, 72:19.	photos 108:16,	13:15, 15:2,
percentages	108:17,	15:4.
45:9.	117:11.	play 126:3.
percentile 41:14,	phrase 87:17.	played 87:10.
41:17, 41:23,	phrased 93:21.	playing 36:7.
42:4, 42:10,	Physical 6:15,	Please 4:21,
42:21, 42:22,	33:24, 86:21,	41:12, 56:12,
42:24, 42:25,	86:22, 87:12,	129:10.
43:2, 44:25.	87:17, 87:18,	pleasing 56:14,
perfect 75:3,	87:18, 87:21,	56:15.
76:3, 76:5,	87:22, 88:8,	plus 85:1.
85:1, 85:5.	88:22, 88:24,	point 7:16, 38:11,
perform 26:17,	89:2, 89:4,	45:1, 63:17,
26:20, 49:6,	89:8, 89:10,	75:21, 93:15,
49:8.	90:19, 91:11,	107:17, 109:20,
performance 41:6,	106:4, 111:2.	120:23.
41:11, 41:22,	physically 15:1,	pointed 105:11,
45:19.	33:22, 71:16,	124:13.
performed 41:13,	86:13, 88:16,	pointing 37:24.
61:3.	88:18, 89:11,	Police 18:13,
perhaps 33:23.	89:20.	27:18, 48:25,
period 9:8, 43:15,	physician 81:7,	93:1, 93:7,
73:16, 100:19.	136:6.	93:11, 93:16,
permanent 137:6.	pick 50:14, 66:4,	94:6, 94:12,
perpetrator 9:4.	72:1, 75:21.	100:19, 102:14,
persecuted 53:6.	picture 61:21,	104:17, 105:24,
person-to-person	72:23, 73:1,	126:23.
40:21.	73:3, 116:10,	Pollard 104:15.
personal 22:13.	118:5, 121:8.	poor 38:6.
personality 21:8,	pictures 130:9.	population 41:2,
27:9, 48:4,	pieces 108:23.	41:16, 43:7,
49:6, 49:24,	pinned 31:5,	43:8, 43:13,
51:19, 51:22,	98:5.	44:6, 62:22.
51:25, 56:21,	pissed. 61:6.	portions 114:23.
65:23, 67:3,	pissing 61:13.	portrayed 116:7.
105:9, 118:12,	place 6:24, 7:5,	position 98:21,
123:5, 123:7,	7:14, 8:5,	107:3, 107:18,
125:5, 137:4.	10:17, 13:12,	114:7.
personally 40:6.	13:13, 26:24,	positive 36:9,
persons 114:3.	40:4, 57:5,	48:9.
perspective	60:2, 81:14,	possession
92:15.	89:19, 118:13,	101:2.
petty 101:1.	133:8.	possibilities
Ph.d 23:3.	placed 34:19,	134:3.
Ph.ds 23:16.	36:21, 36:25.	possibility
phone 7:3, 11:13,	Plaintiff 1:12,	79:3.
12:21, 17:9,	11:21, 11:22,	possible 28:15,
17:10, 18:17.	12:7, 12:9,	40:8, 40:12,
phonics 45:24,	12:10, 12:10,	45:11, 47:17,
45:24.	12:12, 13:11,	48:10, 50:12,

65:9, 79:1,	43:8, 43:12,	45:25, 112:11.
82:17, 99:7,	43:25, 44:6,	produce 29:18.
99:22, 116:18,	57:22, 73:17,	profession
124:16.	79:3, 82:4,	116:18.
possibly 35:15,	87:14.	professional 21:5,
65:13, 73:12,	private 20:9,	22:19, 48:21,
84:11.	21:2, 92:21.	81:7, 122:8.
post-conviction	probability	professionals
24:15.	7:17.	24:17, 122:13.
Posties 7:14.	Probably 21:6,	professions
pounce 53:25.	22:10, 25:20,	77:10.
power 63:15.	27:5, 33:13,	professor 23:2.
practical 42:21.	43:14, 47:12,	program 5:3.
practice 20:9,	51:23, 56:16,	programmed
21:2, 21:7,	57:8, 60:5,	53:12.
21:13, 21:16,	64:3, 70:8,	progress 38:4.
21:19, 23:12,	73:11, 93:14.	project 24:15.
25:14, 80:13,	Probation 94:3.	projecting
81:2, 81:4.	problem 38:7,	94:12.
predicaments	43:4, 43:17,	property 13:15.
126:20.	43:25, 51:18,	prosecution
preliminary 46:23,	55:18, 64:11,	128:13, 128:16,
46:25.	113:4.	129:22.
prepare 82:23.	problems 21:21,	prosecutors
presence 4:8,	21:23, 21:24,	75:20.
4:10, 68:15,	21:25, 22:4,	protect 9:8,
68:21, 68:23,	32:16, 36:2,	64:2.
139:13.	37:2, 37:22,	protection 13:1.
present 9:1, 50:8,	38:2, 38:8,	protective 6:5,
87:15.	38:9, 45:11,	6:10, 6:11,
presented 88:17.	49:23, 49:24,	6:13, 6:25,
presently 87:14.	50:9, 50:12,	7:24, 8:11,
president 22:25.	52:1, 52:25,	8:13, 8:21, 9:1,
pretty 23:7,	55:15, 64:16,	10:2, 13:25,
52:22, 74:5,	64:17, 70:3,	14:12, 16:10,
111:9, 124:24.	70:4, 90:13,	17:25, 18:25.
prevent 82:5.	102:2, 102:6,	protects 13:2.
previous 99:18.	127:10,	provide 25:24,
previously 24:10,	127:11.	99:6, 124:17.
26:7, 58:7,	procedure 28:1.	provided 34:22,
130:8.	proceeding 10:15,	84:10, 104:21.
price 134:10.	99:18.	provides 12:25.
primary 32:4.	proceedings 9:13,	proviso 121:6.
principals	99:7.	psychiatric 51:14,
25:12.	process 6:9, 8:16,	51:18, 70:3.
printed 86:25.	64:6, 64:7,	psychiatrist
prior 10:14, 59:4,	77:6, 77:8,	38:15, 123:24.
92:12, 96:6,	103:25,	psychiatrists
104:15.	127:25.	79:5.
prison 24:22,	processes 22:3,	Psychological

21:17, 22:22,	pushed 98:4.	37:18, 60:20,
22:24, 34:2,	put 11:3, 11:5,	61:18, 61:19,
37:6, 37:7,	13:21, 42:1,	87:5, 109:19,
79:17.	44:4, 44:23,	109:22.
psychologically	48:16, 69:12,	.
34:2, 39:22,	69:21, 70:13,	.
78:4, 78:6,	71:2, 71:17,	< R >.
112:23.	72:4, 72:6,	radio 68:9,
psychologist	72:18, 72:23,	139:6.
20:10, 20:22,	73:17, 73:18,	rage 108:11.
21:7, 21:10,	76:23, 79:3,	raise 90:13,
23:12, 28:4,	79:18, 83:18,	92:14.
37:13, 37:15,	91:24, 95:5,	ran 12:10.
37:16, 37:18,	103:14, 103:21,	range 41:13,
38:5, 80:11,	113:8, 125:13.	42:5.
81:5, 81:6,	puts 71:13,	ranked 38:12.
81:6, 81:7,	94:8.	rapidly 62:17.
81:19, 82:1,	Putting 41:7,	rate 83:11.
93:4, 95:8,	41:8, 70:8,	rates 135:12.
105:12, 118:15,	73:1.	rather 39:4, 44:9,
120:22, 121:24,	puzzles 41:8,	89:5, 89:5.
123:25, 124:1.	41:24.	rational 75:25.
psychologists	.	rationally
23:18, 23:19,	.	132:18.
25:2, 76:15,	< Q >.	raw 44:23,
79:5.	qualified 26:6.	45:12.
psychology 20:18,	question 29:6,	react 51:21.
22:23, 23:2,	72:13, 72:14,	Read 11:20, 32:11,
23:17, 24:4,	83:17, 83:19,	44:21, 45:15,
26:14, 76:12,	86:18, 93:21,	45:20, 49:16,
77:10.	95:3, 101:1,	61:25, 68:5,
Psychotherapist	104:8, 127:16,	83:10, 83:13,
76:11.	130:14,	90:18, 94:2,
Psychotherapists	135:25.	100:17, 103:22,
76:22.	questioning 63:21,	104:15, 108:15,
psychotherapy	84:8.	110:4, 117:1,
21:8, 77:1,	questionnaire	117:13, 128:9,
80:17.	50:1.	139:2.
psychotic 39:20,	questions 19:8,	reader 45:23,
39:25.	31:17, 51:2,	46:3, 46:6,
Public 22:9,	83:13, 85:2,	46:8, 46:9,
24:13, 24:13,	96:24, 106:7,	57:24.
28:12.	115:3, 124:11,	Reading 42:8,
punishment 87:12,	135:23,	44:16, 44:25,
87:13, 87:19,	136:11.	45:22, 45:24,
87:21, 87:22,	quick 62:7.	46:7, 46:10,
88:24, 88:25,	quiet 57:4.	46:12, 46:12,
114:8.	quite 26:3, 46:19,	50:24, 51:1,
purposely 98:17.	125:3.	61:21, 83:11,
purposes 32:16.	quote 36:19,	87:16, 89:16.

ready 53:25.	10:17, 20:1,	31:17.
real 34:3, 35:6,	32:15, 35:22,	regressed 36:10.
39:19, 39:25,	68:19, 68:21,	regularly 39:4,
55:18.	100:1, 101:9,	39:19.
reality 27:16,	109:4, 109:6.	rehab 118:21.
51:20, 54:4,	recorder 50:24,	reinforcements
136:20.	83:16.	53:20.
realize 64:16,	records 27:13,	reiterates
64:23, 71:8,	27:17, 27:21,	34:25.
94:15.	27:21, 29:9,	relate 32:25.
realizes 58:19.	32:7, 34:1,	related 32:15.
reason 16:7,	34:17, 37:3,	relates 37:21.
114:6, 114:8,	37:9, 38:14,	relationship 25:8,
138:7.	85:3, 85:7,	33:12, 36:8,
reasoning 42:21,	85:7, 85:16,	52:23, 55:10,
119:23.	85:22, 85:25,	55:13, 55:17,
reasons 119:25,	86:7, 86:12,	59:4, 99:2,
120:1.	86:19, 99:6,	128:6.
recall 17:20,	105:10, 123:22,	relationships
30:25, 31:6,	124:2, 124:4,	36:20.
33:14, 34:15,	124:9, 126:20.	release 110:2.
37:10, 106:2,	RECROSS-EXAMINATIO	relevance
106:16, 107:23,	N 3:16, 133:4.	128:25.
109:18, 113:22,	red 100:3.	relevancy 127:21,
119:11.	REDIRECT 3:15,	127:22, 129:1,
recalled 115:23.	101:11,	129:3.
receive 36:22.	121:19.	relevant 105:12,
received 20:16.	refer 30:4.	128:6.
receiving 99:20.	reference 8:4,	remarks 52:8.
recently 23:10,	76:24, 77:2.	remember 26:23,
29:24.	references	27:2, 27:6,
receptive 42:15.	76:24.	32:18, 38:24,
recess 67:22,	referrals 25:9,	40:6, 40:8,
67:25, 68:13,	25:11.	58:25, 62:5,
68:17, 68:18,	referred 25:3,	62:20, 62:25,
138:19, 138:22,	68:4, 113:9,	63:6, 63:8,
139:10,	139:1.	63:10, 78:7,
139:16.	referring 10:14,	80:15, 97:16,
recollected	30:6, 85:19,	109:19, 110:1,
62:3.	111:20, 113:23,	111:24, 111:25,
recollection	114:12.	112:1, 112:13,
32:10, 32:21,	reflect 4:8,	112:25, 113:1,
33:8, 33:9,	68:21.	113:7, 117:16.
109:17,	refrain 14:25,	Remembering
130:10.	118:14.	111:24.
recommend 36:21.	refresh 30:4,	remind 69:1.
reconstruct	98:1.	remorse 58:21,
59:12.	regard 114:23,	115:2, 115:20,
record 4:6, 4:8,	137:10.	116:9, 116:21,
4:22, 10:13,	regarding 30:19,	116:22.

Remorseful 57:17,	99:5.	5:14, 17:18,
67:13, 67:16,	rethink 114:17,	47:11.
95:14, 115:22,	114:24.	safest 136:8.
116:16, 117:6.	revealed 37:19.	saint 90:21.
render 136:23.	review 29:23,	saw 21:11, 32:12,
renormed 41:1.	37:4, 92:10,	32:19, 33:16,
replace 36:13.	100:24.	37:16, 67:16,
REPORTED 1:43,	reviewed 14:8,	109:15, 117:5,
100:16,	27:17, 27:20,	120:1, 130:8.
100:18.	111:15.	saying 24:15,
REPORTER'S 1:12.	reviewing 34:17,	44:11, 64:3,
reports 100:2,	38:14.	71:3, 71:4,
105:24, 106:8,	reviews 14:10.	71:12, 73:2,
108:15.	Revised 41:1.	73:21, 75:2,
representative	Richardson	76:5, 86:10,
62:11.	104:16.	90:25, 91:3,
represented	Ricky 87:14,	94:15, 106:22,
111:5.	89:1.	113:4, 113:7,
representing	rid 63:12, 63:16,	119:1, 119:6,
77:17.	64:11.	119:23,
repress 63:11.	ride 119:16.	121:12.
reprinted 34:23.	ridiculous 94:16,	says 11:20, 60:25,
reputation	94:17, 94:18,	61:1, 61:5,
93:15.	94:22, 94:25,	61:11, 89:17,
requesting 6:25.	95:4, 95:8.	90:20, 94:6,
research 63:2.	right. 60:21.	108:11,
reside 13:11.	rights 9:9.	120:25.
residence 15:2.	ripped 61:14.	Scale 40:25,
responding	rob 33:3.	50:19.
80:21.	rock 39:3.	scales 50:6,
responsibility	room 12:11, 45:4,	50:14, 50:16,
90:7, 94:13.	65:16, 83:16,	51:2, 51:18,
rest 53:23, 73:23,	84:5, 134:5.	51:20, 51:24,
74:1, 74:15.	rotten 53:19,	51:25.
result 22:15,	63:3.	scene 106:5.
22:17, 29:17,	row 44:22,	SCHIECK 2:6, 17:1,
29:21, 35:20,	83:10.	134:12.
36:24, 51:10,	ruining 48:1.	schools 7:15.
113:21, 114:2.	rule 54:20,	scoot 11:6.
resulted 94:2.	78:25.	score 41:15,
results 38:17,	run 107:4,	44:23, 44:23,
41:12, 49:25,	125:14.	45:12, 45:13.
52:5, 55:3,	rushing 62:14.	scored 27:9.
75:1, 105:8,	.	scores 42:1,
123:19, 123:19,	.	43:15.
137:4.	< S >.	screen 10:18.
retained 79:6,	sad 59:1.	Screwed 67:18,
79:10, 79:13,	sadness 132:1,	115:6, 115:9,
79:15, 82:2.	132:4.	115:15.
retains 81:15,	Safe 5:8, 5:10,	screwing 116:10.

seated 4:21.	send 7:1, 8:17,	124:23.
second 35:16,	14:1.	sheet 11:12.
36:6, 42:24,	sense 43:11, 85:8,	shell 71:25.
117:10, 129:7,	91:2, 92:1,	shelter 5:8, 5:12,
130:17,	95:9, 95:11,	124:17.
135:20.	106:18, 107:11,	shift 17:14,
section 89:16.	107:21, 107:25,	61:14.
seeing 53:11,	109:11, 109:12,	shoplifting 60:1,
55:24, 56:6,	110:9, 112:23,	113:13.
102:12, 118:4.	115:15,	short 9:8, 67:22,
seek 47:5.	116:19.	125:8.
seem 64:14,	sensitive 52:6.	shortly 13:18,
106:11.	sent 7:9, 47:19,	102:3.
seemed 52:22,	47:20, 119:10,	shouldn't 25:6.
62:11.	119:10.	show 9:15, 15:16,
seems 37:19,	series 5:17.	15:17, 15:22,
64:14, 74:21,	serious 26:4,	16:8, 18:22,
80:19.	35:14, 47:15,	40:20, 51:2,
seen 37:13, 44:18,	48:8, 114:4.	52:3, 53:25,
57:15, 67:15,	seriousness	57:12, 75:22,
85:12, 105:10,	47:13.	76:24.
106:6, 116:8,	served 9:3.	showed 11:16,
119:11, 123:23,	services 35:19.	16:23, 16:24,
136:19.	serving 12:15.	58:21, 108:2,
sees 61:20,	SESSION 1:30.	126:15.
62:15.	set 15:7, 18:20,	shown 16:11,
selective 111:22,	104:2, 108:10.	54:17.
111:23.	sets 14:10, 14:22,	shows 13:10,
self-absorbed	81:8.	50:16.
54:3.	setting 48:17.	shrink 135:12.
self-concept	setting. 36:23.	shrinks 135:11.
38:6.	several 22:10,	shy 52:17.
self-confidence	25:21, 28:2,	siblings 33:21,
52:14.	30:24, 31:10,	33:23, 34:13,
self-destructive	38:4, 44:24,	34:14, 34:16,
58:17.	97:20, 127:2,	35:1, 86:20,
self-employed	129:19.	87:20, 88:5,
20:9.	severely 36:24,	135:3.
self-esteem	36:25, 118:1.	side 18:10, 65:2,
52:10.	sex 60:20, 61:3,	65:5, 81:12,
self-image 38:7,	107:10, 107:18,	81:15, 81:16,
53:7.	107:19, 110:25,	81:21.
self-protective	137:12, 138:4.	signature 13:16.
114:10.	Sexton 34:22.	signed 15:12.
self-report	sexual 107:14.	significance
49:14.	shaking 107:3.	39:15, 60:9,
selfish 116:19.	shall 4:17,	62:9.
sell 13:14.	19:21.	significant
semen 108:2,	Sharon 1:43.	51:9.
108:5.	she'd 107:15,	signs 8:17.

silent 36:15.	83:18, 83:18.	40:10, 40:11,
similar 88:7.	sleeping 11:22,	40:22, 52:4,
simple 137:18.	12:7, 39:22,	53:16, 55:23,
simple/complex	55:25.	55:23, 61:22,
45:8.	slipping 56:6,	66:2, 66:16,
simplistically	56:10.	66:22, 66:24,
43:3, 43:4,	slot 54:22.	70:7, 79:2,
75:23.	slow 83:11.	79:18, 81:15,
simply 74:12,	small 126:2.	82:2, 84:25,
122:25.	smaller 36:21.	92:19, 93:9,
sincere 58:5,	smart 44:2, 46:8,	120:23, 132:2,
58:6.	46:9, 64:12,	138:4.
sinks 43:23.	65:6, 66:15,	sometime 77:21.
Sir 18:12, 20:8,	70:2, 71:24.	Sometimes 7:5,
69:2, 80:7.	smarter 64:10,	46:11, 46:12,
sister 28:5, 89:1,	64:13, 133:12.	47:24, 65:6,
89:18.	smell 60:22.	75:24, 91:11,
sit 40:22, 58:24,	smells 63:8.	127:20, 132:4.
82:13.	smoked 126:7,	somewhat 33:25,
sitting 57:21,	130:16.	54:10, 91:17.
83:17.	smoking 114:2,	somewhere 63:17,
situation 16:6,	131:11.	71:24, 113:23.
25:25, 36:21,	snap 62:18.	son 56:16.
43:20, 44:10,	snapped 62:17,	soon 63:15,
50:9, 63:22,	62:17.	109:24.
69:11, 70:2,	social 5:3, 34:21,	sophisticated
71:7, 75:18,	35:2, 35:24,	48:14, 48:24,
78:9, 98:3,	36:9, 38:15,	49:2, 49:4.
102:20,	81:5, 123:23.	sophistication
104:14.	socially 36:2,	48:13, 48:16,
situations 16:16,	36:7, 36:18.	48:22.
43:5, 43:18,	socket 125:14.	Sorry 59:20, 87:4,
43:22, 65:8,	sofa 11:22, 12:8,	109:5, 122:2,
67:6, 73:24,	107:3.	137:25.
104:18.	solemnly 4:16,	sort 6:16, 10:22,
sixth 41:14.	19:20.	32:11, 36:15,
skeptical 84:25.	solve 43:17.	52:9, 53:12,
skill 86:9.	solvers 43:25.	53:13, 53:18,
skills 37:22,	solving 43:5.	64:1, 65:8,
38:7, 38:7,	Somebody 7:18,	65:25, 105:2.
42:7, 42:9,	9:15, 18:5,	sorts 55:21,
42:21, 50:25,	19:16, 63:14,	59:23.
54:7, 65:22,	66:19, 67:2,	sound 34:10, 46:2,
118:11.	80:21, 80:24,	46:2, 88:11,
slap 31:8.	81:2, 81:19,	88:22, 92:15,
slapped 97:23,	114:7.	108:7, 115:20,
125:14,	Someone 21:19,	116:15.
127:24.	22:13, 23:25,	sounded 88:10,
SLD 36:25.	27:10, 27:13,	88:17, 129:16.
sleep 49:19,	28:5, 28:6,	Sounds 16:18,

16:19, 33:25,
 45:15, 45:25,
 63:8, 89:7,
 92:16, 92:23,
 133:15,
 133:16.
 source 32:4, 86:4,
 86:8, 124:5.
 sources 84:18,
 86:4.
 spank 125:4,
 125:6.
 spanked 87:6,
 88:1, 125:3.
 spanking 89:7,
 89:9, 125:1,
 125:18,
 125:21.
 spanning 102:13.
 Special 24:13,
 34:19, 37:5,
 37:7.
 special-ed 27:21,
 34:20.
 specialize
 81:20.
 specialties
 76:14.
 specific 78:10,
 125:9.
 specifically 27:6,
 39:16, 97:16,
 98:25.
 speculation
 110:14.
 spell 4:22, 19:25,
 45:2, 45:5,
 45:20.
 Spelling 42:8,
 45:2, 45:6,
 45:21.
 spend 22:5,
 23:4.
 spent 35:1,
 105:8.
 spin'n. 61:7.
 split 127:14.
 splitting 101:16,
 127:9.
 spoke 8:8, 29:1,
 30:24, 34:16,
 48:24, 52:22.
 spouse 28:10.
 stabbed 119:7.
 stack 126:15.
 staff 10:1, 10:3,
 10:4, 27:10,
 40:3.
 stand 45:14.
 standard 45:12.
 standardized
 41:2.
 stare 72:4.
 start 6:9, 56:24,
 63:18, 99:11.
 started 39:4,
 55:20, 61:25,
 62:2, 101:17,
 102:1, 117:9,
 139:11.
 starts 54:9.
 State 1:10, 2:2,
 4:7, 4:9, 4:12,
 4:13, 4:14,
 4:21, 19:11,
 19:25, 22:24,
 47:4, 47:10,
 68:20, 68:22,
 78:14, 121:22,
 121:25, 122:2,
 137:6.
 stated 53:5,
 132:17.
 statement 6:22,
 6:23, 8:1,
 28:24, 29:4,
 49:16, 58:10,
 93:7, 94:3,
 94:5, 94:10,
 94:11, 94:19,
 94:23.
 statements 27:19,
 49:15, 83:8,
 83:10, 99:7.
 States 20:20,
 41:18, 43:13.
 static 69:16.
 stationed 20:24.
 status 77:4.
 stay 5:15, 15:2,
 15:4, 137:6.
 stayed 103:3.
 steal 134:6.
 step 19:9, 65:24,
 138:17.
 sterling 93:15.
 stick 125:17.
 sticks 89:2,
 89:11.
 stomach 117:18.
 stop 74:18.
 story 18:11,
 32:25, 48:9,
 49:4, 62:10,
 106:4, 107:8,
 108:3, 108:6,
 109:9.
 street 45:3,
 125:14.
 stress 10:4,
 137:5.
 stresses 76:6.
 stressful 43:5,
 44:10.
 stricken 134:13,
 134:15.
 strictly 21:16.
 strike 28:24,
 29:4.
 stringent 77:7,
 77:9.
 strokes 24:1.
 strong 36:12.
 stuck 57:4.
 students 23:4,
 38:12.
 study 62:24.
 stuff 50:14,
 60:13, 99:23,
 112:2, 112:2,
 127:7.
 sub-test 42:18.
 subject 68:3,
 68:11, 73:4,
 86:22, 138:25,
 139:8.
 submitted 68:12,
 139:9.
 subpoenaed 9:17.
 subset 24:3.

substance 32:15,	switched 119:25,	45:10, 52:25,
38:22, 39:7,	switches 87:6,	68:13, 77:18,
39:19, 52:1,	87:19.	80:8, 84:4,
130:17.	switching 88:1.	96:18, 96:20,
substantiated	symptoms 51:13,	104:25, 105:6,
32:8.	51:15, 51:15,	111:12, 119:12,
subtraction	51:16, 51:16,	126:24.
45:8.	51:17.	tend 35:16, 52:12,
succeeding	synecdoche	130:10.
37:20.	44:19.	tendency 91:23.
successful 54:8,	system 24:6,	tends 38:1.
54:24.	25:23, 118:20.	tenth 93:16.
sucking 35:14.	.	term 15:5, 69:22,
sudden 112:21.	.	71:19, 86:21,
suddenly 36:9.	< T >.	87:18, 89:13,
sued 25:5.	T-A-N-Y-A 4:24.	136:16.
suffer 64:13,	TADV 5:19.	terms 62:13.
65:7, 67:8,	taken. 68:18.	terrible 42:10,
132:16.	talked 16:2, 17:9,	44:4, 46:8,
suffering 65:4.	17:16, 17:17,	53:10, 53:21,
sufficient 47:10,	34:14, 71:1,	62:14, 63:3,
52:14.	98:12, 115:2,	63:6, 63:10,
suggesting	123:8, 123:23,	63:14, 73:10,
137:5.	126:23,	75:10, 79:9,
suicidal 82:5.	134:21.	92:4, 111:17,
supervision	Talks 13:12,	121:13.
39:11.	13:13, 14:22.	tested 38:19,
support 53:3.	Tanya 3:6, 4:14,	44:24.
supposed 9:6,	4:23.	testified 26:10,
84:17, 118:20.	tape 50:23, 83:5,	39:12, 58:7,
supposedly	83:16.	92:6, 92:20,
108:25.	tapes 61:15.	96:9, 96:20,
suppress 54:18.	te 32:20.	99:17, 104:15,
surprise 126:12.	teach 23:6.	105:1, 106:21,
surprised 47:20.	teacher 36:8,	117:2, 125:1,
Suspicious 111:14,	36:14.	129:19, 130:7.
111:16,	teachers 25:11,	testify 88:14,
111:16.	64:20.	95:9, 128:16.
sustain 28:23,	team 24:16.	testifying 92:10,
134:14.	television 68:8,	105:4.
Sustained 29:3,	139:5.	testimony 4:17,
93:23, 110:13,	tells 62:20,	19:21, 68:25,
127:17, 128:5,	107:8.	80:8, 92:10,
128:19, 131:4,	tempers 74:14.	102:10, 103:22,
131:22.	temporal 45:25.	103:24, 104:16,
swear 4:16,	Temporary 5:8,	105:22, 111:11,
19:20.	5:12, 5:20,	111:15, 113:9,
sweet 56:17.	14:12, 17:25,	114:11, 114:20,
sweeter 56:17.	18:2, 18:25.	116:12, 117:1,
switch 88:2.	Ten 26:16, 32:24,	137:2.

testing 21:8,	73:9.	totally 101:5.
21:9, 21:9,	thousand 44:24.	touched 46:15,
41:5, 84:7,	thousands 49:22.	55:7.
123:3, 123:4,	threatened 98:6,	tough 66:7.
132:15.	106:21.	toward 52:20.
tests 27:3, 40:3,	threatening 15:1,	town 135:14.
40:7, 40:14,	103:15, 109:15,	track 12:16.
43:12, 49:6,	110:6.	trailer 103:13,
55:3, 71:2,	threats 96:25,	108:20, 129:14,
82:24, 83:4,	97:2, 119:10,	129:20.
84:5, 123:4,	119:10.	train 25:2,
123:5, 123:9,	three 13:4, 31:23,	125:11.
123:16, 123:16,	54:10, 73:16,	trained 20:21.
123:17,	98:20, 125:5.	training 23:3,
123:17.	throat 103:14,	23:22, 40:9,
thefts 94:1.	104:1.	40:10.
themselves 21:20,	throughout 32:13,	TRAN 1:1.
27:16, 47:16,	125:16.	TRANSCRIPT 1:12,
47:23, 48:3,	throw 72:5.	92:9, 96:19,
50:8.	throwing 74:19,	111:20.
then. 109:25.	95:5, 116:10.	trashy 61:12.
theoretically	thumb 54:20.	traumatic 62:23.
71:5.	Thursday 22:5.	treated 97:24.
therapy 21:15,	tickled 130:22.	Treatment 80:14,
21:22, 36:22,	tie 45:18.	80:16, 80:17.
37:8, 37:10,	tip 135:15.	trespasses
37:11, 82:4.	today 22:10, 30:1,	95:24.
thereabouts	30:7, 59:11,	trial 24:18, 58:8,
39:2.	67:19, 111:12.	68:4, 68:6,
Thereafter 20:20,	together 31:23,	68:6, 68:12,
63:15.	41:8, 41:8,	82:3, 90:24,
they'll 50:10.	42:2, 44:5,	103:16, 104:15,
They've 114:6,	53:1, 54:12,	111:11, 127:1,
114:8, 128:12.	72:23, 73:1.	139:1, 139:3,
thinking 41:7,	Toledo 20:19,	139:3, 139:9.
43:1, 43:19,	20:19.	tried 127:8.
53:14, 54:7,	Took 8:1, 8:4,	tries 37:23.
54:13, 76:2,	26:23, 50:18,	trouble 35:9,
118:11, 138:5.	50:22, 60:2,	36:18, 38:8,
thinks 28:10,	60:14, 61:23,	39:21, 90:9,
41:24, 43:3.	80:3, 81:14,	95:19, 126:12,
third 35:22.	87:6, 89:17,	126:23, 135:3.
Thirteen 39:1.	90:6, 91:4,	troubles 42:9.
thirty 16:15.	108:13, 115:10,	troubling 137:8.
Though 6:18,	116:19, 133:9.	True 49:17, 49:17,
70:20.	top 72:9, 98:5,	49:18, 49:20,
thoughts 39:24,	103:13,	49:20, 83:18,
56:24, 57:2,	114:12.	110:19, 110:20,
57:2, 57:3,	torn 108:20,	110:20, 110:22,
62:13, 62:14,	108:24.	112:12, 112:15,

114:3, 119:5,	two 10:10, 18:20,	95:2.
129:21, 133:17,	23:5, 25:2,	undo 58:11.
136:18.	27:8, 30:25,	undoubtedly
truly 67:12.	41:4, 42:1,	28:12.
trust 52:10,	46:13, 49:20,	unfortunately
52:11.	59:18, 61:10,	74:21, 126:21.
truth 4:18, 4:18,	71:1, 78:19,	unhappy 49:20,
4:18, 19:22,	83:1, 84:8,	64:22.
19:22, 19:22,	87:20, 130:20.	United 20:20,
85:4, 114:9,	two-hour 94:7,	41:18, 43:13.
123:13.	101:15.	University 20:17,
truthful 50:5,	type 6:14, 16:5,	20:19.
50:22, 56:5,	21:15, 48:22,	unjustifiable
85:1, 95:12,	48:24, 53:25,	120:22.
115:24.	56:11, 63:22,	unless 9:17, 45:5,
truths 114:14.	81:5, 81:22.	57:5, 113:7.
Try 18:9, 22:3,	types 35:17,	unlike 63:13.
22:6, 47:16,	126:20,	unlikely 44:18.
56:12, 72:23,	126:20.	ONLYV 23:2.
82:14, 82:18,	typical 15:24,	until 18:2, 21:6,
84:17, 87:2,	21:7.	44:22, 68:12,
114:4, 116:14,	typically 9:12,	135:12, 139:9.
139:10.	16:15, 110:21.	untrue 73:12,
trying 12:15,	.	85:15.
24:17, 47:21,	.	unusual 15:22,
47:22, 69:22,	< U >.	129:22, 130:6,
69:24, 71:20,	ultimately	130:7.
75:24, 79:18,	85:11.	up. 12:3.
81:10, 90:15,	unaware 96:25,	updated 41:1.
90:21, 95:8,	102:7.	upholstery
104:1, 118:20,	unbiased 25:24.	61:13.
120:23.	uncommon 43:24,	upset 55:22,
Tucson 100:3,	92:17, 92:18,	94:20, 120:3,
100:20.	120:9.	132:20.
tumors 24:1.	unconscious	useful 85:12.
turn 37:12, 53:4,	64:5.	using 6:9, 39:1,
58:11.	unconsciously	39:4, 40:1,
turned 33:22.	53:13.	54:11, 79:20,
Turner 117:3.	uncontrollable	94:24.
turns 99:23.	91:1.	usual 106:17.
tushe 125:15.	uncontrollably	.
TV 57:5.	62:2.	.
tw 34:21, 35:8,	understand 42:16,	< V >.
49:13, 83:19.	82:14, 90:23,	vacated 19:1.
twelfth 44:25.	93:9, 93:12,	vagina 60:21.
twenty-fifth	115:16, 119:1,	vaginal 108:2.
43:1.	121:12,	valid 50:19, 51:6,
twenty-seventh	135:24.	123:14, 123:17,
41:23.	understanding	123:18.
twice 83:10.	83:13, 89:22,	validity 50:6,

50:7, 50:14,
 50:16, 50:18,
 51:2, 123:9,
 135:25.
 validly 51:3.
 variable 79:1.
 variables 44:4,
 66:11, 70:5.
 various 22:25.
 vault 108:2.
 Vegas 4:1, 20:10,
 20:25, 26:7,
 27:1, 27:18,
 28:14, 55:20,
 96:11, 97:20,
 100:4, 100:21.
 vehicle 33:9.
 verbal 41:5, 41:5,
 41:10, 41:14,
 41:14, 41:15,
 42:18, 43:7,
 43:14, 43:16,
 48:20, 54:7,
 66:16.
 verbal/intellectua
 l 41:19.
 verbalize 45:16.
 version 48:9,
 86:5, 86:6,
 113:3.
 versus 4:7, 68:20,
 105:17.
 vicious 75:10.
 Victim 6:11, 6:19,
 6:20, 7:16, 8:4,
 9:10, 15:1,
 15:20, 15:21,
 15:22, 95:5,
 102:25, 108:3,
 108:4, 113:10,
 137:23.
 victims 7:2, 7:11,
 7:20, 16:1,
 16:6.
 view 65:25.
 violated 6:13.
 violations 35:7.
 Violence 5:9,
 5:13, 5:20,
 6:12, 7:21,
 30:19, 31:14,
 31:17, 97:7,
 97:10, 98:13,
 101:3, 101:5,
 102:11, 104:5,
 127:4, 127:6,
 131:1, 131:7,
 131:13.
 violent 89:5,
 113:20, 130:15,
 130:21.
 violently 114:1.
 visit 59:24.
 visited 35:3,
 59:14.
 visual 41:7, 41:7,
 41:24.
 vocabulary
 42:20.
 voice 51:1.
 void 16:10.
 volunteer 27:19.
 vs 1:15.
 .
 .
 < W >.
 W. 2:7.
 waffle 56:15.
 wake 8:10.
 walking 61:8.
 wanted 10:7,
 50:25, 89:19,
 90:4, 133:9,
 133:19, 133:21,
 133:22, 133:25,
 134:7.
 wanting 54:16,
 107:10.
 wants 133:9.
 watch 68:5,
 139:2.
 weak 53:7,
 94:14.
 weapon 47:9.
 WECKERLY 2:3.
 week 25:21, 54:21,
 84:3, 120:12.
 weekends 87:10.
 weekly 102:12.
 weeks 49:20,
 59:22, 110:2.
 weigh 110:22.
 welcoming 107:9.
 well-known
 40:24.
 well-used 40:25.
 welts 125:18,
 125:21.
 wetting 35:13.
 Wexler 40:25.
 whatever 16:7,
 18:17, 37:23,
 48:17, 60:16,
 82:15, 126:16,
 133:8, 133:18.
 whenever 133:9.
 Whereas 81:19.
 wherein 22:13.
 whether 24:21,
 25:6, 25:7,
 27:14, 33:14,
 34:10, 37:5,
 39:8, 46:22,
 50:4, 53:18,
 54:24, 56:5,
 70:3, 70:4,
 70:5, 70:22,
 77:1, 81:5,
 81:17, 85:12,
 85:14, 88:15,
 110:22,
 124:11.
 whoever 99:5.
 whole 4:18, 19:22,
 59:1, 81:8,
 99:13, 107:8,
 108:6, 109:9,
 109:14, 116:12,
 137:21.
 whom 49:22,
 50:1.
 wife 28:5, 124:23,
 127:13,
 127:19.
 window 60:17,
 60:19, 106:11,
 110:8, 110:25,
 119:19,
 129:14.
 wished 57:17.

withdraw 38:1,	56:1, 56:4,	53:23, 63:13,
55:19.	62:15, 78:19.	64:3, 64:3,
withdrawal	worker 5:3, 34:22,	64:12.
136:7.	35:2, 35:24,	yourselves 68:1,
withdrawing	36:10, 38:15,	138:23.
54:9.	123:24.	.
within 41:22.	working 5:7, 6:1,	.
without 24:22,	6:4, 104:2.	< Z >.
68:2, 68:8,	world 53:23,	zoom 10:20,
73:17, 79:3,	74:22, 114:6.	12:1.
86:3, 138:24,	worry 74:25.	.
139:5.	Worse 42:10, 55:1,	.
WITNESS 4:13,	122:25.	< Dates >.
4:20, 4:23,	worst 58:19,	1/9/95 11:8.
19:10, 19:12,	87:13, 88:25.	march 16, 2007
19:15, 19:24,	worthless 52:6,	1:32, 1:32,
20:2, 28:25,	52:17.	1:32, 4:1, 4:1,
29:5, 69:3,	wound 117:15,	4:1.
99:7, 101:12,	117:18.	
110:3, 128:21,	wounds 117:12,	
131:11, 136:2,	117:21.	
136:6.	wreck 57:17,	
witnesses 68:3,	57:18, 62:15.	
97:1, 128:12,	Wright 20:22.	
138:25.	write 45:15,	
woman 5:15, 33:22,	72:4.	
54:9, 54:10,	writing 11:24,	
73:11.	45:21.	
Word 3:21, 42:16,	written 29:11,	
43:19, 44:18,	77:3, 109:14,	
94:24, 95:1,	109:16.	
95:7, 106:15,	wrote 36:19,	
112:22,	37:18, 110:1,	
136:15.	115:23.	
words 41:25,	.	
42:17, 42:18,	.	
43:16, 43:19,	< Y >.	
44:17, 44:22,	year 13:19, 13:19,	
45:3, 45:4,	23:5, 102:7.	
54:8, 64:4,	yellow 100:4.	
73:8.	yells 53:17.	
work 5:18, 16:5,	Yep 130:19.	
17:14, 23:19,	young 53:18,	
23:24, 24:6,	90:10, 125:9.	
24:25, 35:10,	younger 64:17.	
36:16, 36:17,	youngster 37:19,	
54:21, 76:16,	39:5.	
83:7, 133:7.	yourself 49:16,	
worked 5:5, 5:18,	53:9, 53:10,	
17:19, 25:22,	53:13, 53:14,	

AFFIRMATION

PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the
proceeding

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

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

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

(A) NAC 656.350

-or-

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

Sharon Howard

Sharon Howard, CCR #745

3/17/07

Date

ORIGINAL

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DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,)

10 Plaintiff,)

11 -vs-)

12 JAMES MONTELL CHAPPELL,
13 #1212860)

14 Defendant.)

Case No. C131341X

Dept No. III

16 **ORDER**

17 Upon the ex parte application and representation of DAVID ROGER, Clark County
18 District Attorney, by and through CHRISTOPHER OWENS, Chief Deputy District
19 Attorney, that certain Pre-Sentence Investigation Report in Case No. C131341X and Case
20 No. C126882, held in the custody of the District Court Clerk needs to be released to a
21 CHRISTOPHER OWENS, Chief Deputy District Attorney of the Clark County District
22 Attorney's Office.

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RECEIVED

MAR 30 2007

CLERK OF THE COURT

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1 IT IS HEREBY ORDERED that the Pre-Sentence Investigation Report in the custody
2 of the District Court Clerk under Case No.C131341X and Case No. C1268820, consisting of
3 Pre-Sentence Investigation Reports be released to a CHRISTOPHER OWENS, Chief
4 Deputy District Attorney.

5 DATED this 20th day of March, 2006.

6
7 
8 DISTRICT JUDGE

9 DAVID ROGER
10 Clark County District Attorney
11 Nevada Bar #002781

12 BY 

13 CHRISTOPHER OWENS
14 Chief Deputy District Attorney
15 Nevada Bar #001190
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TRAN
CASE NO. C-131341
DEPT. NO. 3

ORIGINAL

FILED IN OPEN COURT

March 20 2007

CLERK OF THE COURT

DISTRICT COURT

BY

Carol Green

DEPUTY

CLARK COUNTY, NEVADA

* * * * *

STATE OF NEVADA,

Plaintiff,

vs.

JAMES M. CHAPPELL,

Defendant.

REPORTER'S TRANSCRIPT
OF
PENALTY HEARINGBEFORE THE HONORABLE DOUGLAS HERNDON
DISTRICT COURT JUDGE

DATED: MONDAY, MARCH 19, 2007

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

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1 TNAV
CASE NO. C-131341
2 DEPT. NO. 3

3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 * * * * *

8
9 STATE OF NEVADA,
10 Plaintiff,
11
12 vs.
13 JAMES M. CHAPPELL,
14 Defendant.

REPORTER'S TRANSCRIPT
OF
PENALTY HEARING

15
16
17 BEFORE THE HONORABLE DOUGLAS HERNDON
18 DISTRICT COURT JUDGE

19 DATED: MONDAY, MARCH 19, 2007

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21
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23
24
25 REPORTED BY: Sharon Howard, C.C.R. #745

1

1 APPEARANCES:

2 For the State: CHRISTOPHER OWENS, ESQ.
3 PAUL WICKERLY, ESQ.

4
5
6 For the Defendant: DAVID W. SCHIECK, ESQ.
7 CLARK W. PATRICK, ESQ.

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12 * * * * *

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1 INDEX
2 OF
3 WITNESSES

4		
5	NAME: DEPOSITION OF JERI EARNST	PAGE
6	Read into the record	12
7		
8	NAME: DAN GIESDORF	PAGE
9	Direct Examination By Ms. Weckerly	26
10	Cross-Examination By Mr. Patrick	33
11	Redirect Examination By Ms. Weckerly	35
12	NAME: DEPOSITION OF ALLEN WILLIAMS	PAGE
13	Read into the record	38
14		
15	NAME: TESTIMONY OF JAMES CHAPPELL	PAGE
16	Read into the record	42
17		
18	NAME: SHELTON GREEN	PAGE
19	Direct Examination By Mr. Owens	158
20	Cross-Examination By Mr. Schieck	188
21	NAME: MICHAEL ROLLARD	PAGE
22	Direct Examination By Mr. Owens	193
23	Cross-Examination By Mr. Patrick	197
24	Redirect Examination By Mr. Owens	199
25		

3

1	NAME: CAROL MONSON	PAGE
2	Direct Examination By Mr. Owens	203
3		
4	NAME: NORMA PENFIELD	PAGE
5	Direct Examination By Ms. Weckerly	223
6		
7	NAME: WILLY CHAPPELL	PAGE
8	Direct Examination By Mr. Schieck	239
9	Cross-Examination By Ms. Weckerly	259
10	Redirect Examination By Mr. Schieck	262
11	NAME: FRED DEAN	PAGE
12	Direct Examination By Mr. Schieck	266
13	Cross-Examination By Mr. Owens	284
14	NAME: BENJAMIN DEAN	PAGE
15	Direct Examination By Mr. Patrick	303
16	Cross-Examination By Mr. Owens	314
17		
18	NAME: MORA CHAPPELL-KING	PAGE
19	Direct Examination By Mr. Schieck	318
20	Cross-Examination By Ms. Weckerly	340
21	NAME: CHARLES DEAN	PAGE
22	Direct Examination By Mr. Schieck	350
23		
24		
25		

4

1 LAS VEGAS, NEVADA: MONDAY, MARCH 19, 2007

2 9:00 A.M.

3 PROCEEDINGS

4 * * * * *

5
6 THE COURT: Let's go on the record in
7 C-131341, State of Nevada versus James Chappell.

8 The record will reflect the presence of
9 Mr. Chappell, with his attorneys, the State's attorneys,
10 outside the presence of the jury.

11 Mr. Schieck, do you want to make a record
12 at all regarding -- I know we're getting ready to read in
13 Mr. Chappell's testimony from the underlying trial.

14 MR. SCHIECK: Yes, your Honor.

15 I need to make a record formally that we
16 will object to the reading of Mr. Chappell's testimony
17 from his first trial.

18 The basis of that objection -- I'll will
19 inform the court candidly that the Nevada Supreme Court
20 has indicated that prior sworn testimony is admissible in
21 a subsequent trial, and that the waiver of your 5th
22 Amendment right to remain silent, once waived, is always
23 waived for purposes of that particular testimony.

24 However, there is a line of case law that
25 talks about introducing that testimony in violation of

1 substantial period of time to think about today, haven't
2 you?"

3 Answer: "Yes, sir."

4 "You've known quite awhile, haven't you,
5 that at some point you'd take the witness stand and give
6 the jury your version of what happened?"

7 Answer: "Yes, sir."

8 And proceeds that he had given a lot of
9 attention to what he was going to say.

10 It's our contention that reference to the
11 fact that Mr. Chappell had a period of time to prepare
12 what he was going to say was an implied reference to his
13 right to remain silent, the fact that he had not
14 previously made a statement to authorities concerning the
15 information he was testifying to the jury about.

16 This was raised as a claim of ineffective
17 counsel on appeal in affect, assistance of appellate
18 counsel in our post-conviction and our petition was denied
19 by then Judge Douglas, now Justice Douglas, and was not a
20 basis for relief on appeal from the post-conviction
21 proceeding.

22 For the record, I wanted to preserve that
23 issue, still contained, his testimony we're going to read
24 to this jury, to the extent there is ever found to be
25 error that it was admitted at the first trial, it's our

5

7

1 other constitutional rights, and it's our contention, and
2 we would like to preserve for the record, that
3 Mr. Chappell received ineffective assistance of counsel at
4 the first trial when the trial counsel put Mr. Chappell on
5 the stand and allowed him to testify as he did during that
6 proceeding.

7 Again, this is just to preserve that issue
8 so that if at a later date it needs to be raised, it can
9 be raised.

10 We did not raise that as ineffective
11 assistance of counsel in our post-conviction in state
12 court that I personally was involved in filing. So to the
13 extent that it's raised in that proceeding, may, quite
14 candidly, was raised as part of our later proceeding. I
15 wanted to preserve that at this point in time.

16 Additionally, if I may proceed, your
17 Honor. There is an issue -- and this begins on page 64 of
18 the statement. This is on the State's cross-examination.
19 I was going to read it into the record.

20 THE COURT: Okay. Page 64?

21 MR. SCHIECK: Yes, your Honor.

22 THE COURT: Thank you.

23 MR. SCHIECK: Near the bottom:

24 Question: It's the second question from
25 the bottom, where the questioning begins -- "you had a

1 contention it's error to admit it at the second trial --
2 penalty hearing.

3 THE COURT: Mr. Owens or Ms. Weckerly.

4 MR. OWENS: We don't have anything to add
5 to that.

6 THE COURT: I do agree, and I appreciate
7 your candor, Mr. Schieck, that the case law does allow for
8 the use of prior testimony in a subsequent proceeding.
9 But even though the Defendant was called as a witness by
10 his own attorneys at the time trial, I think the State is
11 allowed to use that testimony in this proceeding
12 regardless of whether he's called to testify again or
13 not.

14 In terms of the ineffective argument for
15 allowing him to testify at the underlying trial, I know
16 that that was not raised and I do think that there is a
17 bar at this point in time. I'll also note the matter did
18 proceed up on direct appeal where it was affirmed, then on
19 post-conviction, where the penalty phase was reversed,
20 there were issues involving the trial phase that were
21 addressed in that post-conviction. And Judge Douglas
22 found that the trial phase was basically error, for lack
23 of a better word.

24 He didn't reverse the trial. He just
25 reversed the penalty phase. Then that went up on appeal

6

9

1 by the State as to the reversal of the penalty hearing and
2 the defense cross-appealed as to the non-reversal in the
3 trial phase, and on those appeals, Judge Douglas' rulings
4 were affirmed. So the trial phase stays with the
5 conviction, and the penalty phase stays with the reversal,
6 and that's why we're here today.

7 And the issue of the questions that were
8 just brought up on page 64, of State's cross-examination,
9 that was part of what was raised before Judge Douglas, and
10 he didn't find merit to granting any post-conviction
11 relief on that issue. And, again, it was appealed and
12 that was affirmed.

13 So I think it would be appropriate to
14 allow in the reading of that, along with the rest of
15 defendant's testimony.

16 MR. SCHIECK: Your Honor, we've also
17 agreed during the reading we would skip the portions where
18 the court took breaks on the record and admonished the
19 jury.

20 There's one on page 30 and there's another
21 one at page 77, where apparently one of the jurors had
22 requested a brief recess. And we're going to skip those
23 portions.

24 In my perusal of the testimony, I don't
25 see really any objections that we need to worry about. I

9

introduced during the State's case in chief at the penalty
hearing.

THE COURT: I will make sure the jury
realizes it's part of the State's case in chief.

Does anybody have anything else?

No. Okay.

(Jury brought in.)

Good morning, ladies and gentlemen.

On the record in C-131341 State of Nevada
versus James Chappell.

The record will reflect the presence of
Mr. Chappell with his attorneys, the State's attorneys are
present, we're in the presence of our jury.

We're going to continue on with the
State's case in chief. Mr. Owens, I understand we are
going to read some testimony this morning.

MR. OWENS: This is a witness from the
prior hearing, Jeri Earnst. I have a reader for her
testimony. And we propose to read that from the prior
transcript.

THE COURT: All right.

THE CLERK: You do solemnly swear to
faithfully and accurately read the response set forth in
this transcript, so help you God.

THE READER: I do.

11

1 didn't see any objections at all.

2 THE COURT: Okay.

3 MR. OWENS: I did notice when I was
4 reading that, that portion he was reading is underlined in
5 here.

6 THE COURT: 64 through 65.

7 MR. SCHIECK: It's underlined on my copy.
8 I assume that that was underlined by Mr. Brooks.

9 MR. OWENS: It could have been defense.

10 It was initial on post-conviction and this comes out of
11 the record on appeal. So I didn't notice a lot of other
12 underlying here. There's a couple of random lines.

13 If the court -- the jury is not going to
14 take a copy of this back to the jury room with them, if
15 the court could just admonish them that any notations are
16 to be ignored, underlining is of no consequence.

17 THE COURT: I will do that.

18 MR. SCHIECK: I can represent those are
19 prior to my having a copy of the transcript. I highlight,
20 not underline for the very reason you can't erase the
21 underline.

22 We've also agreed that as it is

23 Mr. Chappell was a defense witness that we would be
24 reading the direct examination and the State would be
25 reading the cross-examination, even though this is being

10

1 THE COURT: Jeri, J-E-R-N-I -- Earnst,
2 E-A-R-N-S-T, having been duly sworn testified as
3 follows.

4 Mr. Owens.

5 BY MR. OWENS:

6 Q. Will you state your name, please.

7 A. My name is Jeri Earnst.

8 Q. Please spell your name for the record.

9 A. Jeri, J-E-R-N-I, last name Earnst,

10 E-A-R-N-S-T.

11 Q. Are you employed?

12 A. Yes, I am.

13 Q. What is your business or occupation?

14 A. I'm a police officer with the City of

15 Tucson.

16 Q. Officer Earnst, how long have you been
17 employed with the Tucson Police Department?

18 A. With the Tucson police department, slightly
19 over 17 years, with a total of 20 years, plus, of law
20 enforcement now.

21 Q. 20 years, plus, in all?

22 A. Yes, sir.

23 Q. Were you an officer with the Tucson police
24 department in Tucson, Arizona on February 23rd, 1994?

25 A. Yes, I was.

12

1 Q. On that date did you have occasion in the
2 City of Tucson to make contact with a citizen identified
3 to you as Debra Panos?

4 A. Yes, I did.

5 Q. Where is it that you made contact with
6 Ms. Panos?

7 A. That would be at Fry's supermarket. A
8 grocery store at 16th and Ajo.

9 Q. 16th and?

10 A. A-J-O.

11 Q. Ajo, I'm sorry. I went to school there.

12 Approximately what time was it that you made
13 contact with Ms. Panos at that intersection?

14 A. That would be about 9:30 at night, when we
15 actually arrived at that location.

16 Q. You said it was at a store?

17 A. Yes.

18 Q. You said it was Frys?

19 A. Yes.

20 Q. Will you spell that also.

21 A. F-R-Y-S.

22 Q. What was your purpose of making contact with
23 Debra Panos?

24 A. I had been advised by an officer at that
25 works in an off-duty capacity at that location that he had

13

1 a domestic violence victim at that location that needed a
2 uniformed officer to respond.

3 Q. Who was the officer you spoke with that was
4 off duty?

5 A. That was Ed Niedkowski.

6 Q. Will you spell Niedkowski, please.

7 A. No.

8 Q. Would N-I-E-D-K-O-W-S-K-I be pretty close?

9 A. Okay.

10 THE COURT: Two tries is all that you
11 get.

12 BY MR. OWENS:

13 Q. As a result of conversation you had with the
14 off-duty officer did you then contact Ms. Panos?

15 A. Yes, I did. She was present when he was
16 relating the information to me as to what -- how he'd been
17 contacted by her.

18 Q. So you responded to the location of the Frys
19 store and an off-duty officer and the alleged victim were
20 both at that location?

21 A. Yes, sir.

22 Q. Inside or outside the store?

23 A. Outside the store.

24 Q. Did you then conduct some sort of interview
25 of Debra Panos?

14

1 A. Yes. I then walked her away from the crowd
2 and over to where I had parked my vehicle to speak with
3 her in private.

4 Q. Tell us what occurred at that time?

5 A. She related to me that --

6 MR. SCHIECK: Object.

7 BY MR. OWENS:

8 Q. Before you go into what she related, will
9 you describe how she acted when you walked the short
10 distance away?

11 A. She was standing off and not doing anything
12 at first, when Officer Niedkowski advised me of what had
13 happened I then needed to speak with her to determine
14 whether I had enough to pursue this for an investigation
15 or an arrest.

16 Q. So you apparently went off a short distance
17 with her?

18 A. Yes, I did.

19 Q. What I'm asking you is when you went a short
20 distance away and the two of you began to talk one-to-one,
21 how did she act?

22 A. She started crying.

23 Q. How long did you spend talking with her?

24 A. I was with her out there probably 20
25 minutes, maybe 25 before we went.

15

1 Q. You said that she started crying. Did she
2 cry throughout the interview?

3 A. Yes, she did.

4 Q. Was she, to you, obviously upset?

5 A. Yes, she was.

6 Q. What, if anything, in addition to the crying
7 caused you to conclude that this individual was upset?

8 A. She was afraid. She did not want to go
9 back. I asked her --

10 MR. SCHIECK: I'm going to object to
11 hearsay and to lack of foundation for excited utterance.

12 MR. OWENS: I think we have shown a
13 foundation, your Honor.

14 MR. SCHIECK: We object to lack of
15 foundation. We don't know how much time passed since the
16 actual event.

17 THE COURT: That would be my next
18 concern.

19 BY MR. OWENS:

20 Q. We will address that. Did you learn in
21 connection with the investigation when the alleged event
22 had occurred?

23 A. At approximately half hour before my arrival
24 at Frys, which makes it right around 9:00 o'clock.

25 Q. So it was your understanding that you were

16

1 speaking with a lady about thirty minutes after the event
2 had happened?

3 A. That's correct.

4 MR. SCHIECK: Defense would object. Our
5 position is that thirty minutes is clearly enough time for
6 the victim to reflect on what has happened, which takes
7 the statement that she makes outside the excited utterance
8 rule.

9 THE COURT: Case law seems to clearly
10 indicate that the time frame is acceptable for the
11 admission of a statement of excited utterance under NRS
12 51.095.

13 MR. OWENS: Thank you.

14 BY MR. OWENS:

15 Q. You testified when you began to talk with
16 her she started to cry?

17 A. Yes, she did.

18 Q. Was she emotional throughout the
19 interview?

20 A. Yes, she was.

21 Q. What did you ask her and what, if anything,
22 do you remember her saying to you?

23 A. I asked her what happened. She said that
24 she had a fight with her boyfriend. This was her live-in
25 boyfriend, father of her children. That she had come home

17

1 driven straight to Frys because of the fact that she knew
2 an off-duty officer worked at that location and that
3 specifically what she had done up there to do is go up
4 there and make contact with him.

5 Q. The off-duty officer apparently had a second
6 job at Frys store?

7 A. Yeah. They employ us in our police capacity
8 to work just strictly in that particular function that
9 evening.

10 Q. Did Ms. Panos identify to you the name of
11 her boyfriend?

12 A. She did.

13 Q. Who had committed the acts of violence upon
14 her?

15 A. Yes, she did.

16 Q. Did you learn where it was that they
17 lived?

18 A. Yes, I did.

19 Q. What was the address that you listened?

20 A. 1655 West Ajo, I think it was space number
21 80, if I recall properly.

22 Q. As a result of the information that you had
23 learned from Ms. Panos, did you respond to 1655 West Ajo,
24 space 80?

25 A. Yes, I did, along with another officer.

19

1 and found that he had sold the new dresser that she bought
2 for her daughter, and she was very upset about that and
3 confronted him about it. She had described him — that he
4 had hit her, not in any specific area, but had knocked her
5 to the floor.

6 Q. She told you that her boyfriend hit her and
7 knocked her down?

8 A. That's correct. Then she stated that when
9 she was trying to get up he kicked her several times in
10 the leg and her right leg was extremely sore.

11 Q. Did she complain to you at that time that
12 the leg was sore still?

13 A. Yes, she did. She did refused medical
14 attention.

15 Q. Did she continue to be emotional as she was
16 giving you this account?

17 A. Yes, she was.

18 Q. You said that she was crying?

19 A. Yes, she was.

20 Q. Did you see tears on her face?

21 A. Yes.

22 Q. Do you know how it happened that the police
23 were contacted?

24 A. She made — she had driven from the trailer.
25 When she grabbed the kids and got in the car and left, had

18

1 Q. How soon after the interview of Debra Panos
2 was it?

3 A. Immediately at the conclusion where I left
4 her with Officer Niedkowski there at Frys. She did not
5 want to go near the trailer while he was still there.

6 Q. You mentioned earlier she expressed being
7 afraid of the boyfriend?

8 A. That's correct.

9 Q. Did it seem to be genuine fear to you, as you
10 observed her manner?

11 A. Yes. She would not get in the car. I asked
12 her if she wanted to show me where it was or give me the
13 keys to get in the door, and she said that she would not
14 go back over there.

15 Q. You said that you were contacted by some
16 other officers or other officers?

17 A. One other officer.

18 Q. Who was the other officer?

19 A. Mark Vernon.

20 Q. Vernon?

21 A. Yes.

22 Q. V-e-r-n-o-n?

23 A. That one I can spell. Yes.

24 Q. I take it you and Officer Vernon proceeded
25 to the address she had given you?

20

1 A. That's correct.
 2 Q. Did you make contact at that location with
 3 an individual identified as James Chappell?
 4 A. Yes, I did.
 5 Q. Explain what happened when you approached
 6 the residence?
 7 A. He was sitting inside watching TV.
 8 Q. Could you see into the trailer?
 9 A. Yes, I could. And I looked inside to
 10 observe that he was sitting inside watching TV, and we
 11 knocked a couple of times first and announced we were the
 12 police and he finally said just come in. He didn't ever
 13 get up from the couch to come out and let us in.
 14 Q. Did you observe anyone else in the
 15 trailer?
 16 A. No, I did not.
 17 Q. Could you actually see that as you waited at
 18 the front door the individual that was inside was simply
 19 watching television?
 20 A. That's what it appeared that he was doing.
 21 The TV was on, and he was sitting in front of it looking at
 22 it.
 23 Q. Did Mr. Chappell seem to be upset?
 24 A. Well, he was when the police were there,
 25 but —

21

1 Q. Upset by the arrival of the police?
 2 A. That's correct.
 3 Q. Did you explain why you were there?
 4 A. Yes, I did.
 5 Q. Did he make any type of acknowledgment
 6 regarding the incident?
 7 A. When I was reading over my report on the
 8 slip that I had for the booking, it says admissions made,
 9 I've got, yes, circled. I don't recall what was said.
 10 Q. You do not recall the specifics?
 11 A. Not specifically.
 12 Q. Was he taken into custody?
 13 A. Yes, he was.
 14 Q. For what, domestic battery?
 15 A. Yes. And he also had two warrants.
 16 Q. And as far as you know from the cursory note
 17 written on your booking report, there was some
 18 acknowledgment by the defendant in connection with your
 19 contact with him that he had done something to her?
 20 A. That's correct.
 21 Q. May we have the court's indulgence.
 22 What do you remember about the demeanor of the
 23 about that you subject, Mr. Chappell, that evening?
 24 A. Extremely cocky.
 25 Q. You said what?

22

1 A. Extremely cocky.
 2 Q. What do you mean by that?
 3 A. It was like all right, your here, what do
 4 you got to do, you know, let's get it done and go away.
 5 No, it didn't seem there was any type of surprise that we
 6 were there. It was just like he didn't even care enough
 7 to get off the couch and let us in.
 8 Q. Officer Earnst, while you were still having
 9 contact with the victim, Debra Panos, did you give her any
 10 type of advice about calling 911, or he getting in touch
 11 with police?
 12 A. Yeah. I advised her that if she felt like
 13 she needed to talk she could call me. I provided her my
 14 pager number, which is always on and told her if she
 15 didn't want to call 911, based on the fact that's what she
 16 did for a living, that she could call me and I would see
 17 if there was something I could do to help her out or get
 18 her into a shelter away from the situation, whatever she
 19 needed.
 20 Q. So you certainly did offer help -- to help
 21 her out?
 22 A. Yes, sir.
 23 Q. You gave her your pager number?
 24 A. Yes, I did.
 25 Q. Did she ever call you back after that --

23

1 A. No, she didn't.
 2 Q. — and ask you to assist?
 3 A. No.
 4 MR. OWENS: Thank you. That concludes
 5 direct, your Honor.
 6 THE COURT: Cross.
 7 MR. SCHIBCK: Thank you.
 8 BY MR. SCHIBCK:
 9 Q. Officer Earnst, you're still with the Tucson
 10 Police Department?
 11 A. Yes.
 12 Q. And you work how many days a week?
 13 A. Kind of depends. I'm at a different
 14 function now.
 15 Q. Since this time back in 1994, when this
 16 happened, you have probably responded to how many calls?
 17 A. Shortly after that I went into the current
 18 assignment I'm in, so I haven't responded to that many
 19 call since.
 20 Q. Do you ever find that you have responded to
 21 so many calls in the past that they tend to run
 22 together?
 23 A. I have had those nights.
 24 Q. Do you rely a lot on your officer reports to
 25 remember what happened?

24

1 A. Some of it, unless there's something special
2 that stands out in my mind.

3 Q. Apparently this case stood out in your
4 mind?

5 A. She was one of our employees, yes.

6 Q. I would like to just show you one thing real
7 quickly. I think this is your report. Is there any
8 mention in your report that she was actually crying during
9 the time that you were talking her? It did indicate that
10 she was crying earlier when she got hit by James, is there
11 anything in your report about her crying at that time?

12 A. No.

13 Q. So this is something that you remembered,
14 but you do not include in your report?

15 A. I remember thinking how good she was holding
16 herself together while she was talking to the other
17 officer.

18 Q. So apparently she contacted Officer
19 Niedkowski first?

20 A. Right.

21 Q. And after she talked to the officer this
22 case, do you know how long she talked to him?

23 A. I believe he called us at 21:20. I think
24 that she must have got there about ten minutes prior.

25 Q. I don't think in military terms, like

1 require medical care in your report?

2 A. I said that she did not. The victim was
3 complaining of pain in her right leg, but do not require
4 medical attention. That's her words, not mine. I can't
5 make that determination for people.

6 MR. SCHIECK: Thank you very much. No
7 further questions.

8 THE COURT: Redirect.

9 MR. OWENS: No redirect, your Honor.

10 THE COURT: May this witness be
11 discharged?

12 All right. Thank you.

13 THE COURT: Thank you, ma'am. You may
14 step down. It's my understanding we're going to do
15 another reading at this time.

16 MS. WICKERLY: We have one live witness
17 we'll put on.

18 THE COURT: All right.

19 THE CLERK: You do solemnly swear the
20 testimony you are about to give in this action shall be
21 the truth, the whole truth, and nothing but the truth, so
22 help you God.

23 THE WITNESS: I do.

24 THE CLERK: Be seated. State and spell
25 your name for the record.

25

27

1 9:30?

2 A. 9:20, and I arrived at 9:30.

3 Q. So what time do you estimate the actual act
4 of hitting on her occurred?

5 A. Well, that's what she told me it was right
6 at 9:00 o'clock.

7 Q. Roughly 9:00 o'clock?

8 A. Right.

9 Q. So you started talking to her about what
10 time?

11 A. 9:30.

12 Q. How long did you talk to her?

13 A. Probably 25 minutes.

14 Q. I'm sorry?

15 A. About 25 minutes -- 20, 25.

16 Q. You testified here that she refused medical
17 care; is that correct?

18 A. That's correct.

19 Q. In your mind is there a difference between
20 refusing medical care and not requiring medical care?

21 A. It would be hard to tell. I have no way to
22 look below the skin, you know. That's something an
23 individual would have to determine.

24 Q. In your officer's report did you indicate
25 that she refused medical care, or her wounds did not

26

1 THE WITNESS: Officer Dan Glensdorf,
2 G-I-E-R-S-D-O-R-F.

3 BY MS. WICKERLY:

4 Q. How are you employed, sir?

5 A. I'm a police officer with GMPD.

6 Q. How long have you worked for Metro?

7 A. Just over 14 years now.

8 Q. And were you working for Metro in January of
9 1995?

10 A. Yes, I was.

11 Q. I would like to direct your attention to
12 January 9th of 1995. On that date were you dispatched to
13 a mobile home at 839 North Lamb?

14 A. Yes, I was.

15 Q. That's obviously in Las Vegas, Clark County,
16 Nevada?

17 A. Yes, ma'am.

18 Q. Would that have been the Ballerina Mobile
19 Home Park?

20 A. Yes, it was.

21 Q. Do recall about what time you arrived at the
22 location?

23 A. About 11:30 at night. Roughly in that

24 area.

25 Q. Were you the first agency to respond, or had

29

1 someone else responded ahead of you?

2 A. Fire and medical had already been dispatched
3 and arrived prior to me arriving. I was first patrolman
4 on the scene.

5 Q. So there was an ambulance there, I take
6 it?

7 A. Yes, ma'am.

8 Q. When you first got to the location what did
9 you do first?

10 A. Upon arrival it's a long approach to the
11 trailer where I was, and as I drove in I could see the
12 ambulance and I could see two med teches outside and a
13 female being loaded in the back of an ambulance. So when
14 I responded I drove right up to the ambulance and
15 contacted them first.

16 Q. When you made contact with the ambulance,
17 did you speak to the woman who was being loaded into the
18 ambulance, I guess, on a gurney?

19 A. Yes, I did.

20 Q. Can you describe her appearance physically
21 what you saw her?

22 A. When I saw her she was strapped down onto
23 the bed with the safety restraints on. She had the white
24 sheet pulled up to about mid level of her chest. She was
25 laying on her back. Her face was swollen and covered in

29

1 blood. And the same with her hair. It was all up over
2 her head on the pillow and it was soaked with blood.

3 Q. Could you see if she had -- obviously
4 there's blood -- but could you see what her injuries were
5 on her face?

6 A. Yes. She had two really predominant injury
7 on her face at the time. She had a large cut that was
8 over her eye and her nose was swollen to a point that it
9 looked like it just covered the front half of her face.

10 Q. So her nose would have been extremely
11 enlarged because of swelling?

12 A. Yeah. Her nose would have been about the
13 size of my closed fist at the time on her face. It was
14 that swollen.

15 Q. And also you mentioned there was a
16 laceration, a bleeding injury on the top of her eye?

17 A. Right. It was over -- I believe it was over
18 her right eye. There was a lot of blood coming out of her
19 head and face still.

20 Q. Did you speak with this woman?

21 A. Yes, I did.

22 Q. What did she tell you?

23 A. She stated that she had gotten into a fight
24 with her live-in boyfriend and that he had hit her in the
25 face with a cup.

30

1 Q. When she was speaking with you, what was her
2 demeanor emotionally?

3 A. She was extremely upset, crying, heavy
4 breathing, a bit irrational. You could tell she was
5 emotionally distraught. And she had trouble just trying
6 to get her message across to me.

7 Q. Was it hard for her to talk because of being
8 emotional or because of her injury?

9 A. The emotional played a part. But I believe
10 because of the injuries it made it hard to breathe and
11 speak and everything she said was muffled. Kind of a
12 small gurgle sound you get from that type of a face
13 injury.

14 Q. So from the bleeding from her nose?

15 A. Yes, ma'am.

16 Q. After she related to you that her boyfriend
17 had hit her, did you attempt to make contact with the
18 boyfriend?

19 A. Yes, I did.

20 Q. And was he out in the ambulance area at that
21 point with her?

22 A. No, ma'am. I asked her initially where he
23 was, and she said she believed he was still within the
24 mobile home -- in the trailer within the mobile home park.
25 At this time I made contact with him inside the trailer

31

1 still.

2 Q. How did you go about trying to make contact
3 with him?

4 A. Walked up to around the side of the trailer,
5 the door was open to the trailer. Knocked on the door and
6 you can look into the open door, and I could see the male
7 half sitting in the living room with his back to me
8 watching TV.

9 Q. Did he appear to be by himself inside the
10 trailer watching TV?

11 A. Yes, he was alone.

12 Q. When you were knocking did you announce you
13 were a police officer?

14 A. Yes.

15 Q. Were you speaking in a fairly audible loud
16 voice?

17 A. Yes.

18 Q. After you knocked and announced you were a
19 police officer, what did the individual do that you were
20 trying to talk to?

21 A. Initially, I stepped up to him and I asked
22 him what happened, and he was just sitting in his chair
23 eating a bowl of cereal. And he replied to me, something
24 to the effect, I hit that bitch in the face.

25 Q. When you were speaking to him, how would you

32

1 describe him emotionally?

2 A. Extremely turned off. Extremely calm and
3 cold. Almost like he was just -- a casual conversation to
4 him, but with no kind of emotion at all in his voice.

5 Q. Did he ever express to you concern about the
6 woman in the ambulance?

7 A. None whatsoever.

8 Q. I take it you arrested him for this
9 incident?

10 A. Yes, I did.

11 MS. WICKERLY: Thank you. Your Honor,
12 I'll pass the witness.

13 THE COURT: Thank you. Mr. Patrick or
14 Mr. Schieck.

15 CROSS-EXAMINATION

16 BY MR. PATRICK:

17 Q. Good morning, officer.

18 A. Good morning, sir.

19 Q. You testified at James' last trial?

20 A. Yes, I did.

21 Q. Did you have a chance to review your
22 testimony before today?

23 A. Yes.

24 Q. Did you have a chance to review any other
25 records regarding that incident?

33

1 A. I reviewed the temporary custody record, the
2 written declaration of arrest, and the dictated arrest
3 report.

4 Q. Did you review the records from Mercy
5 Ambulance?

6 A. No. I don't have access to those.

7 Q. Now, I believe you just said that Debra told
8 you that James hit her with a cup?

9 A. Yes.

10 Q. Did you locate a cup?

11 A. Yes, I did.

12 Q. That was booked into evidence?

13 A. I don't believe it was booked into
14 evidence.

15 Q. What did you do with it?

16 A. We just left it there.

17 Q. Did you ask Debbie how long her and James
18 had been together?

19 A. Yes, I did.

20 Q. What did she tell you?

21 A. She told me that they'd been together in a
22 relationship for approximately 9 years.

23 Q. Did she mention if they had any kids
24 together?

25 A. Yes, she did. She told me they had three

34

1 kids in common.

2 Q. Were the kids in the ambulance?

3 A. The kids weren't at the residence that
4 night.

5 Q. Now, you testified today that James told you
6 something about, he hit that bitch in the face?

7 A. Yes, sir, I did.

8 Q. That was not part of your testimony last
9 time, correct?

*10 A. I don't believe it was. I don't think I was
11 asked that question.

12 Q. Now, when you went in and talked to James
13 was he combative?

14 A. Absolutely not.

15 Q. He was cooperative?

16 A. Extremely.

17 Q. Did you have an opportunity to perform any
18 field sobriety tests on him?

19 A. We don't normally do field sobriety tests on
20 a domestic arrest.

21 MR. PATRICK: That's all I have.

22 THE COURT: Ms. Wickerly.

23 REDIRECT EXAMINATION

24 BY MS. WICKERLY:

25 Q. Sir, over the years did this incident stick

35

1 out in your mind?

2 A. Yes, it did, extremely.

3 Q. Why is that?

4 A. At the time of this arrest I had only been
5 on the department less than two years. I was only on the
6 street for a year. But the reason it sticks out so much
7 in my mind is because I make domestic violence arrests
8 pretty much daily. It's a really common crime. But I
9 have never met anybody that was so cold and emotionally
10 turned off over that type of battery in my life.

11 So the reason that this arrest sticks out the most
12 is the way his demeanor was, cold. He was -- it chilled
13 me, and I still think about it and still see it every
14 day.

15 MS. WICKERLY: Thank you. That's all,
16 your Honor.

17 THE COURT: Mr. Patrick.

18 MR. SCHIECK: Nothing else, your Honor.

19 MR. OWENS: Court's indulgence a moment.

20 MS. WICKERLY: May I approach, briefly.

21 THE COURT: Sure.

22 BY MS. WICKERLY:

23 Q. Sir, having shown defense counsel what's
24 been admitted as State's Exhibit D-9, does this appear to
25 be a medical record from UNC -- University Medical

36

1 Center?
2 A. That's what it looks like to me.
3 Q. Just looking at the admit date, does it
4 appear to be 1/9/95 the same date as this incident we've
5 just been discussing with you?
6 A. Yes, it does.
7 MS. NECKERLY: Thank you. No other
8 questions, your Honor.
9 THE COURT: Thank you, Mr. Patrick.
10 MR. PATRICK: No, Judge.
11 THE COURT: All right. Officer, thank you
12 for your time. You may step down.
13 THE WITNESS: Thank you, Judge.
14 THE COURT: The State may call their next
15 witness.
16 MR. OWENS: We have another reader for
17 Officer Williams, your Honor.
18 THE COURT: All right.
19 THE CLERK: You do solemnly swear to
20 faithfully and accurately read the responses set forth in
21 this transcript, so help you God.
22 THE READER: I do.
23 THE COURT: The name is not on this
24 transcript for the record. What's the name of the person
25 testifying.

37

1 MR. OWENS: Allen Williams.
2 THE COURT: Allen Williams. Thank you.
3 All right, Mr. Owens or Ms. Neckerly.
4 BY MR. OWENS:
5 Q. Sir, what is your occupation and
6 assignment?
7 A. I'm a police officer assigned to patrol with
8 the Las Vegas Metropolitan Police Department.
9 Q. How long have you been a police officer?
10 A. Approximately 5-and-a-half years.
11 Q. What divisions have you worked on in your
12 5-and-a-half years?
13 A. Patrol.
14 Q. On June 1st of 1995, at approximately 10:00
15 p.m., were you dispatched by a 911 call to 839 North Lamb,
16 space number 125?
17 A. Yes, I was.
18 Q. That's the Ballerina Mobile Home trailer
19 park?
20 A. Correct.
21 Q. That's here in Las Vegas, Clark County,
22 Nevada?
23 A. Yes.
24 Q. When you arrived at that location did you
25 come into contact with a person by the name of Debra

38

1 Panos?
2 A. Yes, I did.
3 Q. Can you describe what her demeanor was like
4 when you made contact?
5 A. She appeared to be pretty frighten and
6 crying.
7 Q. As she was crying did she tell you why she
8 summoned you?
9 A. Yes, she did.
10 Q. Why was that?
11 A. She stated that she had gotten into an
12 argument with her boyfriend. I don't recall what the
13 argument was over. He began yelling at her. He became
14 angry and threw her down on the bed. He then climbed on
15 top of her, pinning her arms down with his knees and
16 pulled out a knife and held it to her throat and began
17 threatening her with it.
18 Q. Did something happen that caused him to stop
19 threatening her with this knife?
20 A. She stated there was a knock on the door and
21 that's when he stopped.
22 Q. Was that a knock by her roommate?
23 A. I don't recall off-hand.
24 Q. Did you also come into contact with her
25 boyfriend?

39

1 A. Yes, I did.
2 Q. What was his name?
3 A. His name was James Chappell.
4 Q. You see him here in court today?
5 A. Yes, I do.
6 Q. Can you point to him and describe an article
7 of clothing for the record?
8 A. The gentleman in the grey suit.
9 Q. What color shirt is he wearing?
10 A. Yellow.
11 MR. OWENS: Your Honor, may the record
12 reflect the witness identified the defendant.
13 THE COURT: It will.
14 BY MR. OWENS:
15 Q. Did Debra tell you how much time had passed
16 between the time the call was made to the police
17 department and the time you arrived?
18 A. It was a brief amount of time. I would have
19 to refer to my report to tell you exactly.
20 Q. Would you like to refer to it --
21 A. Yes.
22 Q. -- for when the incident occurred prior to
23 your arrival?
24 A. Approximately 5 to 10 minutes.
25 Q. Prior to your arrival?

40

1 A. Yes.
 2 Q. Did you arrest the defendant for battery
 3 domestic violence?
 4 A. Yes, I did.
 5 Q. Did you transport him to the city jail?
 6 A. Yes, I did.
 7 Q. That would conclude direct, your Honor.
 8 MR. PATRICK: No questions, your Honor.
 9 THE COURT: All right. May the witness be
 10 discharged.
 11 MR. OWENS: Yes, Judge.
 12 THE COURT: The witness will be excused.
 13 Thank you, sir.
 14 THE COURT: For purposes of the record,
 15 the testimony will be marked as a court exhibit and I'll
 16 write Allen Williams name at the top of it so that we know
 17 who this is.
 18 MR. OWENS: Thank you.
 19 THE COURT: The State may call its next
 20 witness.
 21 MR. OWENS: The next thing we want to do
 22 is read the testimony of the Defendant from the former
 23 trial in this matter. We have a reader here to read the
 24 part of the Defendant.
 25 THE COURT: Come up Mr. Stanton.

41

1 MR. OWENS: May we approach, your Honor.
 2 THE COURT: Yes.
 3 (Discussion held at the bench.)
 4 THE CLERK: You swear to faithfully and
 5 accurately read the responses set forth in this
 6 transcript, so help you God.
 7 THE READER: I do.
 8 THE COURT: Let me clarify some things.
 9 This is a long transcript, that's why I'm giving you all
 10 copies so you can read along. It's not an exhibit at this
 11 time. It's not going to go back with the jury when you
 12 deliberate.
 13 So you are still going to obviously have
 14 to be listening to, if you're not going to have the
 15 transcript when you go back.
 16 Thirdly, the State is still in their case
 17 in chief here, so they're the ones proffering the use of
 18 this. But the testimony actually occurred with the
 19 defendant being examined first by his attorney, so
 20 Mr. Schleck or Mr. Patrick will be reading direct
 21 examination first and the State will read the
 22 cross-examination.
 23 Mr. Schleck or Mr. Patrick.
 24 MR. SCHLECK: Thank you, your Honor.
 25 BY MR. SCHLECK:

42

1 Q. James, could you state your name for the
 2 record and spell your last name, please.
 3 A. James Chappell, C-H-A-P-P-E-L-L.
 4 Q. James, where are you from originally?
 5 A. Lansing, Michigan.
 6 Q. Did you grow up in Lansing, Michigan?
 7 A. Yes, sir.
 8 Q. Where did you meet Debra Panos?
 9 A. J.W. Sexton High School.
 10 Q. You were a student there?
 11 A. Yes, sir.
 12 Q. Was she a student there?
 13 A. Yes, sir.
 14 Q. How old were you when you met her?
 15 A. 16.
 16 Q. What happened when you met her?
 17 A. We had about a 5 minute conversation. She
 18 gave me her phone number and that was it. The first time
 19 we seen each other.
 20 Q. What do you mean, that was it?
 21 A. The bill had rank for us to go to class, so
 22 we couldn't talk for that long.
 23 Q. Did you all become involved with each
 24 other?
 25 A. Yes, sir.
 1 Q. Did you become lovers?
 2 A. Yes, sir.
 3 Q. And you subsequently had children with
 4 her?
 5 A. Yes, sir.
 6 Q. When did you all have your first child?
 7 A. April 23rd, 1988.
 8 Q. What was the name of that child?
 9 A. James Monte Panos.
 10 Q. Where was that child born?
 11 A. Sparrow Hospital, in Lansing, Michigan.
 12 Q. Were you and Debra living together at that
 13 time?
 14 A. Not when she was pregnant and had the child,
 15 no.
 16 Q. Did you love her at that time?
 17 A. Yes, sir.
 18 Q. Did she love you?
 19 A. Yes, sir.
 20 Q. She was a white person, correct?
 21 A. Yes, sir.
 22 Q. And you're black?
 23 A. Yes.
 24 Q. How did her family react to your
 25 relationship with her?

43

44

1 A. They hated it.
 2 Q. Did they hate the relationship, or did they
 3 hate you, or both?
 4 A. Both.
 5 Q. Did you ever get along with them when they
 6 were in Lansing?
 7 A. Never.
 8 Q. Did you have much contact with her parents
 9 there in Lansing?
 10 A. We came in contact a couple of time.
 11 Q. What kind of contact would you have with her
 12 parents?
 13 A. They caught me in their house.
 14 Q. What were you doing in their house?
 15 A. Staying the night with Debbie.
 16 Q. Did Debbie want you to spend the night with
 17 her?
 18 A. Yes, sir.
 19 Q. And you wanted to spend the night with
 20 her?
 21 A. Yes.
 22 Q. Did you graduate from high school in
 23 Lansing?
 24 A. No, I did not.
 25 Q. What happened to your education?

45

1 A. I got suspended a couple of times and my
 2 grandmother took me out of there and made me go to adult
 3 education.
 4 Q. Did you ever end up finishing high school or
 5 getting a GED?
 6 A. No.
 7 Q. What were your plans in terms of a job?
 8 A. I had many jobs in Michigan.
 9 Q. What kind of jobs did you have?
 10 A. Most of them were restaurant jobs. I had a
 11 janitorial job at the high school at one time.
 12 Q. What kind of restaurant did you work -- did
 13 you do?
 14 A. Would you like me to name the
 15 restaurants.
 16 Q. If you can.
 17 A. I work at Taco Bell, Ponderosa Steak House.
 18 I worked in the cafeteria at the adult education high
 19 school, a restaurant called Quiles, a restaurant called
 20 Chedders.
 21 Q. These are all in Lansing?
 22 A. Burger King.
 23 Q. These are all in Lansing?
 24 A. Yes, sir.
 25 Q. Did you have trouble keeping your work at

46

1 these places?
 2 A. Yeah. I had some problems.
 3 Q. How come you had a problem keeping your
 4 jobs?
 5 A. I guess it was the friends I was hanging
 6 around with.
 7 Q. What kind of friends did you have?
 8 A. Most of them were drug dealers.
 9 Q. Were you using drugs during those times
 10 yourself?
 11 A. Yes, sir.
 12 Q. How about Debra, was she using drugs?
 13 A. She said she tried marijuana once, but she
 14 didn't like it and I've never ever seen her do no drugs.
 15 Q. Did she know that you were doing -- using
 16 drugs?
 17 A. Yes, she did.
 18 Q. Did her family know that you were doing
 19 drugs?
 20 A. I don't think in Michigan. I don't think
 21 they -- I don't think they knew that.
 22 Q. Now, her parents, both her mother and
 23 father, lived in Lansing, correct -- is that right?
 24 A. Yes, sir.
 25 Q. There came a time when her parents moved

47

1 away?
 2 A. Yes.
 3 Q. Where did her parents move to?
 4 A. Tucson, Arizona.
 5 Q. What did Debbie do -- Debra Panos do when
 6 they moved off to Arizona?
 7 A. She stayed with me because they wouldn't let
 8 her keep the child. They said if she didn't give up the
 9 child for adoption she couldn't live with them.
 10 Q. Did they stick with that position or not?
 11 A. For a couple of months.
 12 Q. Then what happened?
 13 A. They sent for her to come to Arizona.
 14 Q. Did she go to Arizona?
 15 A. Yes, sir.
 16 Q. Do you recall when she went to Arizona,
 17 approximately?
 18 A. JP was an infant, so about 2 months. He was
 19 about 2 months old, so it was about June of '98 -- '99, I
 20 mean.
 21 Q. How did you feel about her going to Arizona
 22 with your son?
 23 A. Pardon me?
 24 Q. How do you feel about her going to Arizona
 25 with your son?

48

1 A. I was extremely hurt, but I wanted the best
2 for her and him so I knew that they would be all right out
3 there with her mother.

4 Q. She moved to Tucson. Did she keep in touch
5 with you? And when I say she, I mean Debra Panos?

6 A. She had to sneak around. They put a lock
7 box on the mailbox.

8 Q. What do you mean they put a lock on the
9 mailbox?

10 A. She couldn't go to the mail box to get the
11 mail out. They were always around her when she tried to
12 do something.

13 Q. Could she talk to you on the telephone?

14 A. She would go to the mall and she would sneak
15 away from them while they were in the store and she would
16 call me from the mall.

17 Q. Would you ever call her at her house?

18 A. No.

19 Q. How come?

20 A. She wouldn't give me the number.

21 Q. Do you think she didn't want you calling
22 there when her parents were there?

23 A. Exactly. Yes, sir.

24 Q. There came a time when you went down to
25 Tucson and stayed with Debbie; is that right?

49

1 A. Yes.

2 Q. Describe how that happened?

3 A. Her mother and her step father took our two
4 children. Anthony was born when she came back to me,
5 after she had went out to Arizona the first time. She got
6 pregnant back there and she went back, her mom and her
7 step father drove from Arizona to Michigan with the two
8 children and she sent for me to come out there.

9 Q. So her parents weren't home?

10 A. No.

11 Q. How long were they gone from the house where
12 Debra lived?

13 A. He were gone for like 2 months.

14 Q. And you went out and stayed in that house
15 while they were gone?

16 A. Yes, sir.

17 Q. How did you get to Tucson?

18 A. Plane.

19 Q. Who paid for the ticket?

20 A. Debra Panos.

21 Q. Where did you fly out from?

22 A. Detroit.

23 Q. You recall the airline?

24 A. Southwest Airlines.

25 Q. Where did you fly to?

50

1 A. Phoenix, Arizona.

2 Q. How did you get from Phoenix to Tucson?

3 A. A shuttle bus.

4 Q. So you stayed in the Panos house -- excuse
5 me. So you stayed in the Panos' home in Tucson?

6 A. Yes, sir.

7 Q. How long did that go on?

8 A. For about 2 months.

9 Q. Did there come a time when you all -- when
10 you all had a second child?

11 A. She had Anthony in Tucson.

12 Q. I apologize, but did Debra previously come
13 back and visit you in Michigan?

14 A. Yes, she did.

15 Q. Is that when she got pregnant with your
16 second child?

17 A. Yes, sir.

18 Q. Sorry, when was your second child born?

19 A. February 15th, 1990.

20 Q. And that child's name?

21 A. Anthony Michael Panos.

22 Q. So you're staying in the house with Debra
23 and neither of your two kids are there; is that correct?

24 A. No, sir.

25 Q. Where are the two kids?

51

1 A. Her mom and step dad were on their way back
2 to Michigan with them. They traveled with the two
3 children.

4 Q. Were you intending to stay in Tucson with
5 Debra at this time or not?

6 A. Yes, sir.

7 Q. What did you guys do when her parents
8 returned?

9 A. He had gotten me a furnished studio
10 apartment before they arrived.

11 Q. And is that where you started living?

12 A. Yes, sir.

13 Q. Did you get any kind of job?

14 A. Yes, sir.

15 Q. Where did you work?

16 A. I worked at the Smugglers in the hotel.

17 Q. What did you do there?

18 A. I was a dishwasher and a busser.

19 Q. How long did you keep that job?

20 A. About 4 months.

21 Q. Why did you lose that job?

22 A. Because James junior told his grandmother
23 that I was out there and she kicked Debbie out and Debbie
24 came to stay with me at the studio, and a neighbor
25 downstairs told the office that there was a whole entire

52

1 family in the studio so we had to get a two bedroom
2 apartment. And Debbie's job was better than mine, so I
3 had to stay home and watch the children.

4 Q. Where was she working at that time?

5 A. The census bureau.

6 Q. Helping to take the census?

7 A. Yes, sir.

8 Q. Now there came a time when you left her,
9 didn't you, and went back to Michigan?

10 A. Yes, sir.

11 Q. Why did you leave?

12 A. Because her mother and her step father.

13 Q. What do you mean by that?

14 A. They were always in our business.

15 Q. Had you still not reconciled with them?

16 A. No.

17 Q. Did you ever go over and socialize with
18 them?

19 A. They wouldn't allow Debbie to show me where
20 they lived, and I never even tried to find out where they
21 lived.

22 Q. But you had stayed out there, didn't you?

23 A. They had moved after they came back. They
24 moved to a different house.

25 Q. So you eventually went back to Michigan?

53

1 A. Yes, sir.

2 Q. When you went back to Michigan, how did you
3 get their?

4 A. Plane.

5 Q. How did you afford that?

6 A. Debra paid for it.

7 Q. Why is it that Debra keeps paying for
8 things?

9 A. She would always say she was going to do it
10 and I didn't argue with her. I didn't argue with her and
11 try to change her mind.

12 Q. Did you go back to Tucson after awhile in
13 Michigan?

14 A. Yes, sir.

15 Q. Do you recall when you went back there?

16 A. It was in '91 sometime.

17 Q. And this time why did you go back there?

18 A. Because Debbie had begged me to come back
19 there.

20 Q. You guys were keeping in touch still?

21 A. Yes, sir.

22 Q. How were you keeping in touch?

23 A. She had her own place where she could call
24 any time she wanted to. She called a lot. We talked a
25 lot.

54

1 Q. Were you glad that she was keeping the
2 relationship alive?

3 A. Yes, sir, very much.

4 Q. When you went back what happened?

5 A. I got a job.

6 Q. Where at?

7 A. Ponchos Mexican Buffet.

8 Q. What were you doing there?

9 A. Prep cooking.

10 Q. What was your plan now that you were back in
11 Tucson again?

12 A. To be with my woman and my children and get
13 married.

14 Q. How come you didn't get married?

15 A. Because we planned on getting married in Las
16 Vegas.

17 Q. That was a long-term plan?

18 A. Yes, sir.

19 Q. Could you afford to just come up there to
20 Las Vegas and get married?

21 A. Not at that time.

22 Q. Were you planning on staying in Tucson, now,
23 permanently or not?

24 A. Yes, sir.

25 Q. How did you get Debra pregnant again --

55

1 excuse me. Did you get Debra pregnant again?

2 A. Yes, sir.

3 Q. When did she have her third child?

4 A. June 26, 1992.

5 Q. Which child was this?

6 A. Chantelle Panos.

7 Q. Had her parents become more accepting of
8 your relationship with their daughter after three
9 children?

10 A. I remember calling her mother after the
11 baby. I watched her have the baby. She was the only one
12 I'd seen come out. I called her mother and we talked for
13 a little while. Her mom came around after that.

14 MR. SCHIECK: We're going to skip the
15 recess.

16 THE COURT: Top of page 31, ladies and
17 gentlemen.

18 BY MR. SCHIECK:

19 Q. James, I think we have you in Tucson right
20 now. You had your third child with Debra, and you're live
21 with her there; is that right?

22 A. Yes, sir.

23 Q. Now we heard a lot of testimony during this
24 trial about your job situation. You testified you had
25 some jobs. Did you have jobs in Tucson during this period

56

1 of time?
 2 A. Seven exactly.
 3 Q. Seven different jobs?
 4 A. Yes, sir.
 5 Q. Why so many different jobs?
 6 A. Some because of our baby sitting situation,
 7 Some because they gave me lousy raises and a couple I just
 8 didn't like.
 9 Q. Was Debra working during this time?
 10 A. Yes, sir.
 11 Q. Did Debra pretty much always have a job?
 12 A. Yes, sir.
 13 Q. Was she the one that always brought in the
 14 money other than yourself?
 15 A. Yes, sir.
 16 Q. Were you using drugs while were you in
 17 Tucson?
 18 A. Yes, sir.
 19 Q. Were you doing drugs more when you were in
 20 Michigan or about the same?
 21 A. I would say about the same, sir.
 22 Q. You testified that you smoked, I think it
 23 was marijuana, in Michigan; is that correct?
 24 A. Yes, sir.
 25 Q. Had you been doing cocaine in Michigan?

57

1 A. I did it a couple of times, yes.
 2 Q. Did you start doing cocaine in Tucson?
 3 A. No. I did it in Michigan first.
 4 Q. But did you do it in Tucson also?
 5 A. Yes, sir.
 6 Q. Did this interfere much with your work?
 7 A. No.
 8 Q. You never lost a job because of your drug
 9 problems?
 10 A. No.
 11 Q. We heard testimony during the State's case
 12 regarding a battery in Tucson where you and Debra were
 13 living in a trailer and she went to either 7/11 or Circle
 14 K or something and told them that she had been beaten up
 15 and the police came and arrested you. Did that happen?
 16 A. Yes, sir.
 17 Q. Why did it happen?
 18 A. Because I had returned a dresser that she
 19 had bought, I returned it back to the store.
 20 Q. Why did you do that?
 21 A. Because I needed money at the time.
 22 Q. What did you need money for?
 23 A. For some drugs.
 24 Q. She got mad at you?
 25 A. Yes.

58

1 Q. And you reacted by hitting her?
 2 A. We argued for a little while, and she said a
 3 couple of things that made me upset.
 4 Q. How do you feel about the fact that you hit
 5 her?
 6 A. Extremely bad.
 7 Q. You guys eventually decided to leave Tucson
 8 a move to Las Vegas?
 9 A. Yes, sir.
 10 Q. Now somebody says that she came to Las Vegas
 11 and you followed her to Las Vegas, is that true or
 12 false?
 13 A. No, sir.
 14 Q. How did you guys wind up coming to Las
 15 Vegas?
 16 A. We came and visited first for a week. We,
 17 her, and Chantelle stayed at Circus Circus, and we both
 18 looked for a job. We both looked for a home together.
 19 Q. Did you all find a place to stay?
 20 A. Yes, sir.
 21 Q. Where did you find a place?
 22 A. 839 North Lamb, space 125.
 23 Q. When did you all actually move to Las
 24 Vegas?
 25 A. If I'm not mistaken it was October 1st,

59

1 exactly.
 2 Q. Of what year?
 3 A. Of 1994, sir.
 4 Q. Did you all come up here at the same time?
 5 A. Yes, sir.
 6 Q. How did you come up here?
 7 A. We flew out of Tucson on Reno Air.
 8 Q. You flew directly to Las Vegas?
 9 A. Yes, sir.
 10 Q. Did you have a car at that time?
 11 A. Yes, sir.
 12 Q. Where was the car?
 13 A. We had a couple drive our U-Haul, and the
 14 car was on the back of it. They drove it from Arizona to
 15 Las Vegas. They were supposed to meet us here.
 16 Q. Why did you all move to Las Vegas from
 17 Tucson?
 18 A. One reason was because her job. They
 19 started getting in our private lives, trying to control
 20 her private life. She was upset about that and her mother
 21 was the one that suggested coming to Las Vegas.
 22 Q. Do you know why Las Vegas was mentioned?
 23 A. We had two choices, Las Vegas or Lansing,
 24 Michigan.
 25 Q. Why Las Vegas?

60

1 A. Her mother talked her into coming to Las
2 Vegas. It was more her mother's decision than it was
3 hers.

4 Q. I'm going to show you a photograph the State
5 introduced as State's Exhibit No. 1. It show the trailer
6 where Debra died. Is that the trailer that you and she
7 lived together in?

8 A. Yes, sir.

9 Q. I think we're going to post the exhibits as
10 we go along, your Honor?

11 THE COURT: All right.

12 MR. SCHIECK: For the record, your Honor,
13 I'm going to put number one up.

14 THE COURT: Thank you.

15 BY MR. SCHIECK:

16 Q. Was that your home in Las Vegas?

17 A. Yes, sir.

18 Q. That's where you lived from roughly October
19 1st of '94 until the time that she died, except for the
20 times you were in jail?

21 A. Yes, sir.

22 Q. Did you find work in Las Vegas?

23 A. Yes, sir.

24 Q. Where did you work?

25 A. Ethel M. Chocolate Factory.

61

1 Q. Where is that?

2 A. Out there around Sunset.

3 Q. How long did you work out there?

4 A. About a month and a half.

5 Q. How come you lost that job?

6 A. Because day care had cost too much when we
7 first got here and Debra was working two jobs. I told her
8 I would stay home with the kids. I called them three
9 times and they terminated me.

10 Q. They fired you?

11 A. Yes, sir.

12 Q. Did you start doing drugs here in Las
13 Vegas?

14 A. Yes, sir.

15 Q. Did you start hanging out at the Vera
16 Johnson projects doing drugs there?

17 A. Yes, sir.

18 Q. Did that interfere with your ability to be a
19 good father?

20 A. No, it did not.

21 Q. Did it interfere much with your relationship
22 with Debra?

23 A. I'm sure it did close to the end, but not at
24 the beginning when we got here.

25 Q. Going back for just a second. Dina Freeman

62

1 testified about this phone conversation while you were
2 still living in Arizona where she's got you saying in the
3 background to Debra, I'm going to do an O.J. Simpson on
4 your ass. Did you ever say that?

5 A. Honestly, no. I did not say that.

6 Q. Did you ever threaten her in front of Dina
7 Freeman or on the telephone?

8 A. Never. Never. Never.

9 Q. Did you ever talk about O.J. Simpson in
10 front of Dina?

11 A. No, sir, I did not.

12 Q. So she's not telling the truth when she
13 testified to that?

14 A. No, she lied under oath, sir.

15 Q. You heard testimony regarding Debra
16 receiving a broken nose on January 9, 1995 here in Las
17 Vegas. Tell us what happened then.

18 A. We were both in the dining room. I forget
19 what we were talking about. We were talking about doing
20 something together and we got into an argument or
21 something. I'm not sure exactly what it was, and she had
22 went and laid down on the couch. And I was talking to her
23 as she was laying down and she said something back to me,
24 something smart. I don't remember her exact words, but I
25 took a cup. It was like one of those thermal coffee cups

63

1 and I threw it and it came over the top of her head and it
2 hit her right here. She got up and she ran to the
3 bathroom. I ran in there after her. She was covering her
4 face. She said I think my nose is broken. I said let me
5 see. She removed her hand and she had a gash right
6 here.

7 Q. Are you indicating the side of your nose?

8 A. Yes. Right here.

9 Q. Was she bloody?

10 A. It wasn't coming out at that time. It was
11 open, but when I looked at it it looked like it was just a
12 piece of meat right here. You could see in the inside.
13 No blood was gushing out at the time.

14 Q. Who called 911?

15 A. I did, sir.

16 Q. Now, the medical records that were
17 introduced by the State into evidence indicated a remark
18 by Debra Barnes that said, she had been beaten before, but
19 never like this. How you do respond to that?

20 A. I couldn't picture her saying that. I threw
21 a cup. That's all I did. I did not try to hit her in the
22 face. It accidentally hit her in her nose and broke her
23 nose. I'm sorry, but there's nothing I could do about it.
24 I called 911 and got the ambulance there. The police came
25 and they slammed me all over the place, took me to jail in

64

1 front of my children in my boxers and my socks. They
2 weren't even listening to me. They thought I was lying.
3 I showed them the cup.

4 Q. James, you have another allegation that you
5 attacked her on June 1st of 1995. You were arrested again
6 for domestic battery. What happened at that time?

7 A. Well, Debra had been gone all day the
8 previous day before that and she went to work the next
9 day. After she got off work she went somewhere else, so I
10 didn't see her for a long time. When she came home
11 another friend arrived. I guess they were talking about
12 doing something else. We started arguing and we went in
13 the bedroom and I pinned her down and I showed her a
14 knife. When I realized what -- and when I realized that
15 doing that wasn't going to get nothing out of her, I got
16 rid of it. Claire knocked on the door.

17 Q. Who is Claire?

18 A. One of her so-called friends from Arizona.

19 Q. Was she living with you?

20 A. Yes.

21 Q. How long did she live there?

22 A. I would say approximately 2 months, sir.

23 Q. Go ahead. I'm sorry.

24 A. I let Debbie up. She went outside with both
25 Claire and her other friend that was there. And then I

65

1 went outside. Then the cops pulled up, and I went to
2 jail.

3 Q. Did you plead guilty to domestic battery in
4 that case, eventually?

5 A. Yes, sir.

6 Q. That was June 1st of '95. How much of the
7 summer did you spend in jail?

8 A. Could I just tell you the first time I went
9 to jail when I got out when I went back.

10 Q. Sure, if you want to.

11 A. First time I went to jail was February 20,
12 1995. I stayed in jail until May 10. Debbie came and
13 picked me up, took me home. When I got out, there was two
14 friends living there.

15 Q. When you say two friends, male friends or
16 female friends?

17 A. Female friends. I went back to jail for
18 that domestic violence on June 1st, 1995, got out June
19 7th. Claire came and picked me up, took me back home.
20 And we were back together. Then I went back to jail June
21 26th on Chantelle's birthday -- her third birthday.

22 Q. When did you get out of jail that time?

23 A. I didn't get out of jail until August
24 31st.

25 Q. Now, from that summer, let's say June 26th,

66

1 when you got arrested until the time got released on

2 August 31st, did Debra accept your phone calls?

3 A. Yes, sir.

4 Q. How often would you call her, approximately,
5 if you can remember?

6 A. Sometimes a couple times a day.

7 Q. Did she ever tell you this relationship was
8 over?

9 A. Never. Never.

10 Q. Did anybody else ever tell you the
11 relationship was over?

12 A. No, sir.

13 Q. Did you ever call that trailer and get mad
14 because of who answered the phone?

15 A. Yes, sir.

16 Q. What was going on?

17 A. There was numerous different women answering
18 the phone. Sometimes the children would pick up the
19 phone, knock it over, and the phone would just be sitting
20 on the floor and I could hear stuff in the background.

21 Q. What would you hear?

22 A. Music, people, voices. Another time there
23 was men answering the phone.

24 Q. Did you know these men?

25 A. Absolutely not.

67

1 Q. Did that make you mad?

2 A. Yes, it did.

3 Q. Why did it make you mad?

4 A. Because when we moved here Debbie told me
5 that I couldn't answer the phone because her mother would
6 get upset about it. I gave her that respect. And then I
7 turn around and go to jail and there's all kinds of people
8 I don't even know answering our phone, hanging up on me.

9 Q. How did you feel about the idea of other men
10 being in the trailer when you called your home?

11 A. I was stunned, hurt, afraid.

12 Q. What were you afraid of?

13 A. My children.

14 Q. What were you afraid of about your
15 children?

16 A. We had numerous baby sitters in Arizona that
17 wouldn't feed our kids sometimes. Some even hit them.

18 Q. You say that you would talk to Debra on the
19 telephone. Did she ever come to visit you that summer in
20 jail?

21 A. Between June 26 and August 31st, is that
22 what you're talking about.

23 Q. Yes, sir.

24 A. No, she didn't.

25 Q. Do you know why she didn't come to visit

68

1 you?
2 A. No. Because she told me on the phone she
3 was going to come many times. I knew something had to be
4 going on at the house, but I didn't know what was going
5 on.

6 Q. Did you think he was messing around with
7 other men?

8 A. I sensed it, but I didn't know for sure, so
9 I couldn't keep throwing it in her face when I was talking
10 to her. I asked her straight out, if you're dating
11 somebody let me know. She said, no, I'm not dating
12 nobody. I'm not seeing nobody. I don't want nobody else.
13 That was her exact words to me.

14 Q. Now in the State's opening statement they
15 talked about some letters you sent to her from jail. Did
16 you send her letters from jail?

17 A. Many.

18 Q. The State referred to thing that you said in
19 those letters. What kind of things did you say to her?

20 A. I asked her how she was doing? How the kids
21 were doing. I told her I loved her, I missed her. I told
22 her she meant the world to me.

23 Q. Were those things true?

24 A. Yes, sir, very much.

25 Q. Did you also say degrading things to her in

69

1 those letters?

2 A. Like the last two letters I put some bad
3 words in there.

4 Q. Did you call her a slut?

5 A. I told her if she was out there messing
6 around --

7 Q. James, did you call her a slut?

8 A. Yes, I did.

9 Q. Did you call her a whore?

10 A. I wrote that, yes.

11 Q. Did you ask her questions like, are you
12 easy?

13 A. Yes.

14 Q. Why did you say these things to her?

15 A. Because so many things were happening while
16 I was in jail. I was very depressed, upset, lonely, hurt
17 devastated. She once told me on the phone that she would
18 never abandon me in Las Vegas.

19 Q. James, did you see her on August 30th,
20 1995?

21 A. Yes, sir.

22 Q. Where did you see her?

23 A. At the city court house.

24 Q. Did she come to your court appearance that
25 day?

70

1 A. Yes, sir.

2 Q. Did she testify against you?

3 A. No, sir.

4 Q. Did you plead guilty that day to domestic
5 battery?

6 A. Yes, sir.

7 Q. Do you know on August 30th or August 31st
8 that you would be released from custody?

9 A. Absolutely not.

10 Q. But you were released from custody, weren't
11 you?

12 A. Yes, sir.

13 Q. And when you were released from custody,
14 what did you do?

15 A. I walked from downtown to around Bonanza and
16 Lamb.

17 Q. How far is that, if you know, and how long
18 did it take you to walk out there?

19 A. From around Las Vegas Boulevard, and Bonanza
20 and Lamb, it would take about 45 minutes, 50 minutes.

21 Q. Why did you walk out there?

22 A. I was happy to be out. I just wanted to see
23 my girl and my children.

24 Q. Where were you going?

25 A. I didn't go home at first.

71

1 Q. Where did you go?

2 A. To Vera Johnson project apartments.

3 Q. What did you do there at the Vera Johnson
4 Apartments?

5 A. Went over there and just talked to a couple
6 of people.

7 Q. Who did you talk to?

8 A. Some man over there named Ben and a couple
9 other people.

10 Q. How far is Vera Johnson complex from where
11 you lived at the Ballerina Sunrise place, if you know?

12 A. It's only, like, 2 blocks, so approximately
13 it would take like probably 15 minutes to get from there
14 to home.

15 Q. Did you borrow a bicycle there?

16 A. Yes, I did.

17 Q. Once you had the bicycle what did you do?

18 A. I went home.

19 Q. Now when you went home, this is the home at
20 839 North Lamb?

21 A. Yes, sir.

22 Q. This is the trailer that you shared with
23 Debra?

24 A. Yes, sir.

25 Q. Did you expect her to be there?

72

1 A. No, I did not, because I called twice before
 2 I went home.
 3 Q. Where did you call from, if you recall?
 4 A. I called from downtown, and I called from
 5 Vera Johnson Apartments.
 6 Q. Nobody answered?
 7 A. No, sir.
 8 Q. So you arrived at the trailer and what do
 9 you do?
 10 A. I put the bike on the side of the house.
 11 Q. James, I'm sorry, but your hands are in
 12 front of your mouth and the jury needs to hear this.
 13 A. I put the bike on the side of house and went
 14 to the window.
 15 Q. James, I'm going to interrupt you for a
 16 second and show you a picture again, State's Exhibit 1,
 17 which is a picture of the trailer. Is one of those
 18 windows there where you went to?
 19 A. Yes.
 20 Q. Is one of these windows where you entered
 21 the place?
 22 A. Yes.
 23 Q. Why did you go into your place through the
 24 window?
 25 A. I had been through the window through many

73

1 of our residences in Arizona and Michigan, and I didn't
 2 figure nothing was wrong with that.
 3 Q. Did you have a key to get inside to place?
 4 A. I used to, but I lost it.
 5 Q. You started climbing in the window and what
 6 happened?
 7 A. I started climbing through the window and
 8 Debbie walked in the doorway and she asked me why didn't I
 9 knock at the door. I said I didn't know you were home. I
 10 said I just called, why didn't you answer the phone. She
 11 said I just got here.
 12 Q. Do you know what time this is?
 13 A. No, sir. I wasn't paying attention to the
 14 time. I know I had to be back downtown at 1:00 o'clock.
 15 Q. So you get in the window, right?
 16 A. Yes, sir.
 17 Q. What happens? You get into the window and
 18 do you guys talk or what?
 19 A. Yeah, we talked.
 20 Q. What else did you do?
 21 A. I got on my knees in front of her and she
 22 was sitting on the couch. I asked her what had she been
 23 doing while I was in jail. She said working full time and
 24 watching the kids.
 25 Q. What happened next?

74

1 A. We talked about a couple of things that was
 2 said over the phone. She told me about a couple of things
 3 that her friends did while I was in jail.
 4 Q. Were you glad to see her?
 5 A. Absolutely.
 6 Q. Did you think anything was okay?
 7 A. Yes.
 8 Q. How long did you all talk?
 9 A. About 20 minutes.
 10 Q. What did you all do then?
 11 A. We kissed a couple of times.
 12 Q. Then what happened?
 13 A. We started taking each other's clothes off.
 14 We began to have sex on the couch.
 15 Q. Where was the couch?
 16 A. Excuse me?
 17 Q. Where was the couch where were you having
 18 sex?
 19 A. It was along the wall right at the corner of
 20 the kitchen.
 21 Q. It was not in the master bedroom?
 22 A. No.
 23 Q. I guess it had been a long time since you
 24 had sex?
 25 A. A very long time.

75

1 Q. But you had sex with her probably hundreds
 2 of thousands of times with her before?
 3 A. A million, billions of times.
 4 Q. And you loved her?
 5 A. Extremely. She was the world to me.
 6 Q. What happened?
 7 A. When I entered her her vagina was all loose
 8 and wet and smelly and wasn't nothing like it used to
 9 be.
 10 Q. What did you think? What did that mean to
 11 you?
 12 A. I immediately thought that she had been
 13 messing around on me.
 14 Q. You thought she was messing around with
 15 other men?
 16 A. Yes, sir.
 17 Q. What did you do?
 18 A. I got up. I grabbed her and asked her who
 19 she had been with. She said nobody. She said I swear to
 20 God on my grandfather's grave I ain't been with nobody.
 21 That was her exact words.
 22 Q. Did you believe her?
 23 A. Absolutely not.
 24 Q. So what do you do then?
 25 A. I walked away from her and started walking

76

1 in the master bedroom. She came up behind me, she grabbed
2 me around my waist and she asked me could she get on top
3 of me.

4 Q. You mean get on top of you sexually?

5 A. Yeah. She know I used to love her on top of
6 me and she ask to get on top of me and I told her no.

7 Q. What happened next?

8 A. She performed oral sex on me.

9 Q. Had you hit her at all at of this point?

10 A. No, sir.

11 Q. This was consensual oral sex she performed
12 on you?

13 A. Of course. Yes, sir. I never pressured her
14 in having sex with me. Never. Never had to.

15 Q. What happened next?

16 A. She was done, got up and went into the
17 bathroom. I put my clothes back on. She went and got on
18 the phone. She said I'm going to call the day care and
19 see what time I have to pick up the children. I said,
20 okay, I want to see them anyway.

21 Q. Were you right by her when she was talking
22 to day care?

23 A. No, not at the beginning, sir. No.

24 Q. Where were you?

25 A. I was in the bathroom.

77

1 Q. Now, did she put her clothes back on after
2 the sex?

3 A. Yes, she did.

4 Q. You put your clothes back on?

5 A. Yes, sir.

6 Q. So you can't say exactly what she said to
7 the day care people?

8 A. No. She wasn't talking that loud so I
9 couldn't hear what she was saying. I knew she was talking
10 to the day care though.

11 Q. At that time when she called day care the
12 first time would you be surprised to hear that he said --
13 excuse me -- to hear that she was scared?

14 A. Yeah. When I read that I couldn't believe
15 that because I didn't hear her say none of that. When I
16 walked in there I heard her say 5:30. That -- did you
17 have to pick them up at 5:30, and she said okay. I told
18 her tell them that we're going to be there. And that's
19 when she told the lady.

20 Q. Now, the lady called back didn't she?

21 A. Yes.

22 Q. Were you there when she talked to the lady
23 at that time?

24 A. Yes, sir.

25 Q. How was Debra by then?

78

1 A. She didn't seem to me scared.

2 Q. Do you think she was scared the first time
3 she called them?

4 A. When I came in there, she did look like she
5 was scared the first time.

6 Q. You think she was scared of you?

7 A. I think that she knew she had got caught.

8 Q. When you say, got caught, got caught doing
9 what?

10 A. She knew I knew she had been messing around.
11 I know Debbie. I know Debbie better than probably
12 anybody.

13 Q. Now, when she called the day care center had
14 you done anything violent towards her that day?

15 A. No, sir.

16 Q. Had you threatened her with violence?

17 A. No, sir.

18 Q. Okay. They called. She talks to them. And
19 then what happened?

20 A. She said we're on our way. We're coming to
21 pick up the kids.

22 Q. So what happen next?

23 A. We got ready to leave. We walked out the
24 door. The bike I road over there, she grabbed the bike
25 and placed it in the front porch for me. We started

79

1 walking towards the car.

2 Q. Was this the Toyota that you've seen in
3 pictures here in court?

4 A. Yes, sir.

5 Q. Go on.

6 A. She asked me did I want to drive. I told
7 her, yes. We walked along to the car. I looked on the
8 side of the house, there was a whole box full of beer cans
9 and I asked her who was drinking all that beer.

10 Q. Now, did she drink?

11 A. No, she did not.

12 Q. So what did you think when you saw the beer
13 cans?

14 A. That there had to be some kind of little
15 parties going on there. There was lots of them. Lots of
16 them.

17 Q. Go on.

18 A. We got in the car and when I got in the car
19 I looked around and the car was all trashy, papers
20 everywhere, beer cans on the floor. I tried to turn the
21 air-conditioner on but it was broke. The gear shift was
22 cracked. The ceiling to the car was ripped all off. The
23 light in the back window was broke, busted. I asked her
24 who did all that. She said the kids did it. I started up
25 the car, backed out.

80

1 Q. Where were you going?
 2 A. We were going to pick up the kids.
 3 Q. Did you start to leave?
 4 A. Yes, I did. I pull out the driveway, put
 5 the car in drive, started moving. I asked her, I said
 6 look for my Michael Jackson, Off The Wall tape. She was
 7 looking up under the seat, going through all the mess that
 8 was on the floor and before I went to jail I had lots of
 9 tapes in the car and I would keep them in the middle of
 10 the seats.
 11 Q. Is that a console?
 12 A. Yes, sir.
 13 Q. Okay.
 14 A. I opened it up and there was a little note
 15 in there.
 16 Q. When you say a note, do you mean a note or a
 17 letter?
 18 A. A letter, sir. I grabbed the letter, opened
 19 it.
 20 Q. Did you read part of the letter?
 21 A. Yes, sir. I opened it up. I even let go of
 22 the steering wheel, almost crashed into a car that was
 23 parked. I was going through the letter as quickly as I
 24 could. When she noticed me reading the letter she tried
 25 to grab the note. She was fighting over the note -- we

81

1 was fighting over the note.
 2 Q. Could you read some of the words in the
 3 letter?
 4 A. Yes, sir.
 5 Q. What was it saying?
 6 A. Some guy talking about having sex with her.
 7 He said he had been with her and she was teasing him.
 8 Q. How did you react to that?
 9 A. I was shocked. I was devastated.
 10 Q. What did you do?
 11 A. I stopped the car, put it in reverse, backed
 12 it up and parked it in front of the house.
 13 Q. Go on.
 14 A. We got out of the car I went out on her
 15 side. I stepped over her lap, went out the passenger
 16 door. I grabbed her out of there, took her back in the
 17 house.
 18 Q. What did you do inside the house?
 19 A. I don't recall everything I did now.
 20 Q. Did you stab her?
 21 A. I didn't know until I had cut my finger.
 22 Q. Do you know how many times you stabbed
 23 her?
 24 A. No, I did not.
 25 Q. Do you know how many times you hit her?

82

1 A. No, I do not.
 2 Q. Do you know where you got the knife?
 3 A. No, I do not.
 4 Q. Why were you doing this?
 5 A. I don't know.
 6 Q. Did she run away from you?
 7 A. No.
 8 Q. What did she do?
 9 A. She didn't make no noise. She didn't try to
 10 run. She didn't do nothing.
 11 Q. Did she fall to the ground right there?
 12 A. She went in the door -- yes. She just fell
 13 on the floor and stayed there.
 14 Q. James, when you got out of the car, did you
 15 have any thought of killing her or hurting her?
 16 A. Absolutely not, sir.
 17 Q. What did you think you were going to do when
 18 you took her back inside the house?
 19 A. At the time I don't know. My mind just
 20 clicked and it was stuck. I couldn't think beyond that
 21 letter. I was stuck at this letter.
 22 Q. What were you thinking about? What was
 23 going on in your mind?
 24 A. Her doing what she done to me to somebody
 25 else.

83

1 Q. You mean having sex with somebody else?
 2 A. Yes, sir.
 3 Q. That's what was going on in your head?
 4 A. Exactly.
 5 Q. Were you upset?
 6 A. Very.
 7 Q. Did you realize you'd killed her?
 8 A. No, I did not. I couldn't look at her. I
 9 just hurried up and took off out the door and left.
 10 Q. From the time you got out of the car the
 11 time that this stuff happened inside, how much time
 12 passed, if you know?
 13 A. I don't know. It happened like that, sir.
 14 It happened real quick.
 15 Q. James, I'm going to show you a photograph,
 16 State's Exhibit 26, that shows part of Debra lying on the
 17 floor and right beside her head is a letter with blood on
 18 the letter. Do you recognize that letter?
 19 MR. SCHUECK: For the record, we're going
 20 to display 26, at this time.
 21 THE COURT: Thank you.
 22 THE READER: Yes, sir.
 23 BY MR. SCHUECK:
 24 Q. Why do you recognize that letter?
 25 A. It was the letter I found in the car.

84

1 Q. Was that the letter from what you think is
2 another man?

3 A. Of course. Yes, it is.

4 Q. Did you two fight over the letter in the
5 car?

6 A. Yes. She tried her best to get it from me.

7 Q. Was the letter torn up into many different
8 pieces?

9 A. Yes, sir.

10 Q. Who tore it up into many different pieces?

11 A. She tried to rip it, I know that.

12 Q. Did you rip some of it too?

13 A. I was trying to hold onto it. She was
14 trying to get it from me and it ripped.

15 Q. I'm going to show you Exhibit 31, a
16 photograph of a piece of a letter. Is that the piece of
17 that letter, do you think?

18 MR. SCHIECK: For the record I'm showing
19 31.

20 THE COURT: Yes, sir.

21 THE READER: Yes, sir.

22 BY MR. SCHIECK:

23 Q. I'm going to show you State's Exhibit 32,
24 another piece of the letter. Is that the letter as far as
25 you know?

85

1 MR. SCHIECK: For the record I'm showing
2 32.

3 THE COURT: Okay.

4 THE READER: Yes, sir.

5 BY MR. SCHIECK:

6 Q. When Officer Perkins testified, he testified
7 one letter was found right beside her, that's this letter
8 we're talking about?

9 A. Exactly, sir.

10 Q. He also testified that there were letters
11 found strewn about on the floor in the master bedroom.
12 How did they get there?

13 A. When me and Debbie was in the room when she
14 came in there and she had grabbed me by my waist, we was
15 in the room. Some of the letters that I wrote her was
16 beside the bed on the table. Some of the letters was up
17 on the entertainment center. The ones that was on the
18 side of the table, I took them, and I threw them at her
19 and I asked her, I said, these don't mean nothing to you,
20 none of this meant nothing to you, did it. That's exactly
21 what I said to her.

22 MR. SCHIECK: I'm going to show you
23 State's Exhibit 8, which is a photograph of that room and
24 there are letters on the floor. Are these the letters
25 that you threw at her.

86

1 MR. SCHIECK: For the record, I'm showing
2 Exhibit A.

3 THE READER: Exactly, sir, yes.

4 BY MR. SCHIECK:

5 Q. I'm going to show you State's Exhibit 10,
6 which includes -- you can see some of the writing on the
7 letters on the floor. Is that your writing on that
8 letter?

9 A. Yes, sir.

10 MR. SCHIECK: For the record, I'm showing
11 Exhibit 10, your Honor.

12 THE COURT: Thank you.

13 BY MR. SCHIECK:

14 Q. James, the State has tried to say in this
15 case that you ransacked the master bedroom. Did you
16 ransack that master bedroom?

17 A. I didn't touch nothing in that room, sir,
18 nothing.

19 Q. You didn't try to steal anything from that
20 room?

21 A. Of course not, sir. No. Absolutely not.

22 Q. After you killed Debra, did you steal

23 anything from inside the trailer?

24 A. I looked a Debbie on the floor and I ran out
25 the door, sir. I did not touch nothing in that house,

87

1 nothing.

2 Q. Where did you get the social security cards
3 from?

4 A. They were in the car up under the driver's
5 seat, sir.

6 Q. Were they there in this black folder that
7 one of the witnesses talked about?

8 A. No, they were not.

9 Q. Where were they?

10 A. They were in the plastic thing they were in,
11 and they were on the floor. There was so much stuff in
12 the car on the floor. There was trash everywhere, sir.

13 Q. Why did you get in the car and leave?

14 A. When I seen her like that, sir, I panicked.
15 I just had to get out of there as quick as possible.

16 Q. You obviously didn't think about calling the
17 police or trying to get attention for her, no?

18 A. No, sir.

19 Q. How did you feel about what you did?

20 A. Extremely bad, lower than dirt. If I could
21 give up my life for hers, I would, in a heartbeat,

22 Q. Where did you go, James, in the car?

23 A. I went to the Vera Johnson Apartments.

24 Q. That's how far away is that from the
25 trailer?

88

1 A. About fifteen minutes.
 2 Q. What did you do when you got down there?
 3 A. I parked the car and sat there with my head
 4 in my hands on the steering wheel. There was blood on my
 5 hands, and my finger was cut.
 6 Q. Did you get high?
 7 A. Not for awhile, sir.
 8 Q. You eventually got high, though?
 9 A. Later on, yes, I did.
 10 Q. Did you get high on cocaine?
 11 A. Yes, sir.
 12 Q. Why did you get high on cocaine?
 13 A. Because I felt bad. And when you are on
 14 cocaine it makes your mind go somewhere else, sir.
 15 Q. When you killed her were you high on
 16 cocaine?
 17 A. Absolutely not. No, I was not. No.
 18 Q. There's been some testimony that while you
 19 were at the Vera Johnson project somebody saw you dancing
 20 around. Is that possible?
 21 A. No. I don't recall doing that at all, sir.
 22 No.
 23 Q. But you did get high?
 24 A. Yes, I did.
 25 Q. There's been testimony that the next day you

89

1 went shoplifted (sic) at Lucky's; is that right?
 2 A. Yes, sir.
 3 Q. Why were you stealing there the next day?
 4 A. Actually I went over there to get a
 5 newspaper.
 6 Q. Let me go back for a second. That night
 7 after this had happened, did you ever go back to the
 8 trailer where Debra was?
 9 A. Yes, I did go back.
 10 Q. What time did you go back, if you know?
 11 A. It was between 11:00 -- it was after I had
 12 watched the news, sir, over at Bridgett's house over at
 13 the Vera Johnson.
 14 Q. Did you see they were looking for you?
 15 A. They showed my picture and gave a
 16 description of the car and everything.
 17 Q. So how did you get back over there to the
 18 trailer?
 19 A. I walked.
 20 Q. Did you go inside the trailer again?
 21 A. No. I just stood on the other side of the
 22 wall and looked at the house.
 23 Q. Were the police still there?
 24 A. There was detectives there.
 25 Q. You knew that taking her car was wrong,

90

1 didn't you?
 2 A. Yes.
 3 Q. You know that you're responsible for that?
 4 A. Yes, sir.
 5 Q. You know you're responsible for killing
 6 her?
 7 A. Yes, sir.
 8 MR. SCHIECK: We'll pass the witness, your
 9 Honor.
 10 THE COURT: Ladies and gentlemen, before
 11 we keep going, we're about half way through the
 12 transcript. I think I know when we're reading the
 13 transcripts it's a little hard sometimes.
 14 We'll take a recess now for 10, 15
 15 minutes, and we'll continue with the rest of the
 16 transcript.
 17 JURY ADJOURNMENT
 18 During the recess, ladies and gentlemen,
 19 you are admonished not to converse among yourselves or
 20 with anyone else, including, without limitation, the
 21 lawyers, parties and witnesses, on any subject connected
 22 with this trial, or any other case referred to during it,
 23 or read, watch, or listen to any report of or commentary
 24 on the trial, or any person connected with this trial, or
 25 any such other case by any medium of information

91

1 including, without limitation, newspapers, television,
 2 internet or radio.
 3 You are further admonished not to form or
 4 express any opinion on any subject connected with this
 5 trial until the case is finally submitted to you.
 6 Thank you, very much.
 7 Anything the outside the presence?
 8 MR. OWENS: No.
 9 MR. SCHIECK: No, your Honor.
 10 THE COURT: We'll be in recess. Thank
 11 you.
 12 (Brief recess taken.)
 13 THE COURT: Back on the record in
 14 C-131341, State of Nevada versus Chappell.
 15 The record will reflect the presence of
 16 Mr. Chappell with his attorneys, the State's attorneys, in
 17 the presence of our jury.
 18 We'll continue reading the transcript of
 19 Mr. Chappell's trial testimony.
 20 Mr. Stanton, I'll remind you you are still
 21 under oath to accurately read the transcript.
 22 THE READER: Yes, sir, your Honor.
 23 MR. OWENS: Cross-examination is
 24 beginning.
 25 Mr. Owens.

92

1 BY MR. OWENS:

2 Q. How old are you, Mr. Chappell?

3 A. 26, now, sir.

4 Q. What is your date of birth?

5 A. 12/27/69.

6 Q. How tall are you?

7 A. About six foot, sir.

8 Q. On August 31, '95, about how much did you
9 weigh?

10 A. About a 180 pounds, sir.

11 Q. Do you know how tall Debbie Panos was?

12 A. Not exactly. I would say 5'4", 5'5".

13 Q. Do you know how much she weighed on the date
14 she was killed?

15 A. I read in the papers. They say she weighed
16 130 pounds, sir.

17 Q. So you are substantially larger than her,
18 weren't you?

19 A. Yes, sir.

20 Q. You told us you were in jail from February
21 25th until May 10, '95?

22 A. February 28th until May 10, 1995, sir.

23 Q. You said you were arrested on June the 1st,
24 and released on June the 7th?

25 A. Yes, sir.

94

1 Q. Rearrested on June 26th?

2 A. Yes, sir.

3 Q. And remained in custody until the day you
4 were released and you killed Debra Panos, correct?

5 A. Yes, sir.

6 Q. Why were you arrested on Chantelle's
7 birthday?

8 A. I was trying to shoplift Chantelle a couple
9 of outfits for her birthday.

10 THE COURT: Let me stop you real quick,
11 Mr. Owens. Ladies and gentlemen, I forgot to mention to
12 you, there are portions of the transcript where there's
13 things underlined. Court reporters, attorneys, the court,
14 a lot of times there's reasons that people might go
15 through and underlined things.

16 It's of no relevance to anything for you
17 all to pay any more attention to something that's
18 underlined or not.

19 Mr. Owens.

20 MR. OWENS: Thank you, your Honor.

21 BY MR. OWENS:

22 Q. Do you like being in custody?

23 A. Absolutely not, sir.

24 Q. It's not much of a life to be incarcerated,
25 is it?

94

1 A. No, sir.

2 Q. You've had a substantial period of time to
3 think about today, haven't you?

4 A. Yes, sir.

5 Q. You've known for quite awhile, haven't you,
6 that at some point you would take the witness stand and
7 give the jury your version of what happened?

8 A. Yes, sir.

9 Q. Once you had made that decision, whenever it
10 was, you've given a lot of attention to what you would
11 tell the jury?

12 A. I didn't make up anything, sir.

13 Q. I didn't say you made up anything,

14 Mr. Chappell. Have you thought a lot about what you would
15 tell the jury?

16 A. No.

17 Q. Have you thought a lot about how you would
18 act on the witness stand?

19 A. No, sir.

20 Q. As you sit here this afternoon, are you
21 concerned about punishment?

22 A. No, sir. Whatever I get, I'll accept it.

23 Q. It doesn't matter to you whether you are
24 convicted of voluntary manslaughter, or murder of the
25 second degree, or murder of the first degree?

95

1 A. Does it matter? Is that what you said?

2 Q. I'm asking you if it matters which you are
3 convicted of?

4 A. No, it doesn't matter, sir. Whatever I'm
5 convicted of, I'll accept it.

6 Q. You are not concerned if it's murder of the
7 first degree that the punishment be minimized to some
8 extent?

9 A. Could you please repeat that, sir.

10 Q. You said it really doesn't matter to you
11 what you're convicted of. If it's first degree murder,
12 you will except that. Is that what you said, basically?

13 A. Yes. Whatever I'm convicted of, I'll accept
14 it, sir.

15 Q. My question therefore, was so there isn't
16 some effort on the witness stand to present yourself in
17 such a way that you will minimize your punishment?

18 A. No, sir.

19 Q. You don't care if you get a death
20 sentence?

21 A. Yes, I do care if I get the death
22 sentence.

23 Q. So you don't want to get a death sentence?

24 A. I have three children, sir. I want to see
25 them and be able to do something with them sometime in my

96

1 life.
 2 Q. So we have established that it is a
 3 punishment that you want to avoid; is that true?
 4 A. Yes, sir. I'm pretty sure any man or woman
 5 would want to avoid the death penalty.
 6 Q. Are you telling us it doesn't matter that
 7 it's life with the possibility of parole, or life without
 8 parole, you don't care?
 9 A. I do care, but --
 10 Q. What do you mean, you do care?
 11 A. Of course, I'm going to care, you know.
 12 Q. The bottom line is you don't want to get
 13 life without parole either, do you, Mr. Chappell?
 14 A. If I get it, I will accept it, sir.
 15 Q. Is that what you want?
 16 A. No. I have three children, and I want to see
 17 my three children and be able to do something with them in
 18 their life. I never had no father, sir.
 19 Q. So you certainly prefer life with a parole
 20 sentence?
 21 A. I would be honored to have life with.
 22 Q. Honored, is that your answer?
 23 A. I would be honored to be able to get out at
 24 sometime in my life and be able to reconcile with my
 25 children.

97

1 Q. So you do have an interest in how this case
 2 turns out?
 3 A. Of course. Yes.
 4 Q. You were asked about jobs that you held. I
 5 don't want to go back to Lansing, Michigan or Tucson,
 6 Arizona, I want to limit the question about employment,
 7 gainful employment, to Las Vegas. You said you had a job
 8 at Ethel M. Chocolate?
 9 A. Yes, sir.
 10 Q. You worked there a month-and-a-half?
 11 A. Yes, sir.
 12 Q. Then you said because Debra worked that you
 13 needed to watch the children?
 14 A. No, I didn't say it that way.
 15 Q. How did you say it?
 16 A. We couldn't afford day care at that time,
 17 sir. We didn't know nobody in Las Vegas, yet, so we
 18 couldn't find no babysitter and me staying home with the
 19 children, watching the kids wasn't nothing new, so I went
 20 ahead and did it again and I lost my job.
 21 Q. After a month-and-a-half?
 22 A. Yes. I called them three times, sir, and
 23 lost my job.
 24 Q. How quickly after you had moved to Las
 25 Vegas, which as I remember you said it was around October

98

1 the 1st, 1994, was it that you got the job at Ethel M?
 2 A. When was it when I got the job at Ethel M?
 3 Q. How quickly after you arrived in Las
 4 Vegas?
 5 A. Very quick. Because Debbie was going to
 6 work there too. We both went there and took the test.
 7 Probably about two weeks after we arrived here, sir, to
 8 live here.
 9 Q. So perhaps the middle of October?
 10 A. Yes, sir.
 11 Q. Of 1994?
 12 A. Yes, sir.
 13 Q. About 2 years ago?
 14 A. Yes, sir.
 15 Q. And as you just explained, you worked for
 16 approximately a month-and-a-half?
 17 A. Yes, sir.
 18 Q. Now, where is it that you next had gainful
 19 employment in Las Vegas?
 20 A. We and Debbie went out together and I turned
 21 in applications, but I didn't get no response. And I went
 22 to a temporary service to get a job at a Price Rite at
 23 Bonanza -- and I forgot the other name of the street --
 24 but Price Rite on Bonanza. And I was supposed to take my
 25 drug test, you know, and I didn't make it there.

99

1 Q. Is the answer you didn't ever have gainful
 2 employment after you lost your job at Ethel M?
 3 A. No, sir.
 4 Q. So after perhaps the middle of October --
 5 perhaps after what, the first of November 1994, you didn't
 6 ever contribute financially to the support of Debra Bancos
 7 and your children?
 8 A. I got some things for my children. I also
 9 got some things for Debbie, but I didn't -- but I did
 10 not --
 11 Q. How sir?
 12 A. How?
 13 Q. How.
 14 A. As you know I shoplifted a couple of times,
 15 sir.
 16 Q. Were you asked earlier if your drug problem
 17 had hindered your ability to be a good father, in this
 18 case, a good boyfriend to Debra. Are you still saying
 19 while you lived in Las Vegas that your drug problem didn't
 20 affect you ability to provide for your family?
 21 A. No. I was doing drugs, sir, and I did bring
 22 things home for my children and Debbie.
 23 Q. What things?
 24 A. I brought Debra an outfit home. Valentine's
 25 Day I got her a card, stuffed animal. I got my kids some

100

1 video games, hand-held video games. And Debbie and I had
2 accidentally -- when Debbie and I had accidentally broke
3 her nose with the cup I sent and stole her some bandages
4 and Band-Aids and stuff and Neosporin for her nose. Got
5 cough medicine for the children.

6 Q. Did you ever help pay for the rent?

7 A. Around that time, no, sir.

8 Q. Around what time?

9 A. After I lost my job at Ethel M.

10 Q. Any time after that, did you pay for the
11 rent?

12 A. No.

13 Q. Did you regularly put food on the table to
14 feed your children?

15 A. I brought food home a couple of times,
16 sir.

17 Q. You consider a couple of times providing for
18 your kids?

19 A. Not hundred percent, but I was doing
20 something. I just didn't --

21 Q. What drugs were you using in Las Vegas?

22 A. Marijuana and cocaine, sir.

23 Q. How regularly did you use marijuana and
24 cocaine?

25 A. When we first moved here I didn't mess

101

1 around for like about two months. Then after that, a
2 couple of time a week. Then around -- between May 10th
3 and around June 26th, I did it a lot, probably every day,
4 sir.

5 Q. Are we talking about marijuana or cocaine or
6 both?

7 A. Both.

8 Q. How much marijuana, if as you said from
9 perhaps May the 10th until June 26th, you were using
10 daily, how much on a daily basis?

11 A. Probably about two joints a day.

12 Q. How much cocaine?

13 A. I'm not exactly sure. There was different
14 amounts on different days, sir.

15 Q. How would you ingest the cocaine?

16 A. Smoke it. Free base it, sir.

17 Q. Where would you get it?

18 A. From people who lived over at Vera Johnson
19 Apartments, sir.

20 Q. Is Vera Johnson projects at 507 North
21 Lamb?

22 A. Yes, sir.

23 Q. You spent a lot of time over there?

24 A. I spent some time over there.

25 Q. What does that mean, I spent some time?

102

1 A. At the beginning, no, I wasn't staying over
2 there a lot. Towards the end, around -- between like June
3 1st and June 26th, I was over there a lot.

4 Q. Every day?

5 A. Yes.

6 Q. For hours every day?

7 A. Yes.

8 Q. Stayed over night at crack houses?

9 A. No. I remember LaDonna Jackson saying she'd
10 seen me sleeping over there, I don't recall.

11 Q. Bridgett's place? Who is Bridgett?

12 A. Bridgett, a girl that lives over there.

13 Some lady that lives over there.

14 Q. Did you stay over night at Bridgett's
15 place?

16 A. No. I'd be there late at night, but I never
17 went there and slept there all night and stayed there all
18 night and got up the next day and went home or nothing
19 like that. It wasn't like that.

20 Q. How late is late at night?

21 A. I'd be there sometimes 3:00 in the morning.
22 4:00 in the morning. Something like that.

23 Q. Did that happen regularly during the month
24 of June?

25 A. No. I didn't hang out at Bridgett's house

103

1 all the time. No.

2 Q. Well, were you concerned that you would stay
3 out very late about Debra's welfare, those of your
4 children?

5 A. I would talk to her. I would call her and
6 talk to her, or I would go home in the middle of the day
7 and let her know what I was doing or where I was.

8 Q. How were you getting the crack that you were
9 smoking?

10 A. Sometimes it was people over there that had
11 it and would share. Sometime I would shoplift to get it.
12 Both ways. Sometimes people had it. They shared.

13 Sometimes I would shoplift and I'd get some.

14 Q. The defense asked you about this incident
15 which occurred in Tucson on February 23rd, 1994 when the
16 police came.

17 A. Yes.

18 Q. You may remember that the lady officer from
19 Tucson, Jexi Earnst, testified.

20 A. Yes, I remember her testifying.

21 Q. Now as I remember you said on direct
22 examination that you had taken a dresser that Debra had
23 purchased, and you took it back to the store and got
24 refund money?

25 A. Yes, sir.

104

1 Q. And it was for that reason that the two of
2 you were arguing?
3 A. That's how the argument started out then
4 it --
5 Q. Whose dresser was it?
6 A. I know she bought it.
7 Q. But didn't she buy it for Chantelle, your
8 little daughter?
9 A. I'm not sure she bought it for Chantelle. I
10 don't think that's true. I don't think -- I don't think
11 it was for Chantelle. I don't think so. I don't recall
12 her buying no dresser for Chantelle. We had plenty of
13 dressers in the house. We had lots of them.
14 Q. But she bought it for some reason?
15 A. Right. She bought it for some reason.
16 Q. With her money?
17 A. Right.
18 Q. Did you get her permission to take it back
19 to the store and get a refund?
20 A. No, sir. No, I did not.
21 Q. What did you do with the money? Did you get
22 Debra an outfit or bandages?
23 A. I don't recall exactly what I did do with
24 the money, sir. I know that I had to make up for it,
25 because there would be times that --

106

1 Q. We've had testimony from Officer Earnst that
2 this argument, according to Debra, concluded with you
3 engaging in acts of domestic violence. What did you do?
4 A. I don't recall everything I did.
5 Q. Did you knock her to the floor?
6 A. I don't remember doing that.
7 Q. Did you kick her?
8 A. I did not kick her, sir.
9 Q. So if that's what she related tearfully and
10 emotionally to the officer, that would be inaccurate?
11 A. I did not kick her, sir. I do not recall
12 kicking her, so I know I did not kick her. If I kicked
13 her, I would know. I did not kick her that day, sir. I
14 did not kick her at all.
15 Q. Well, if you kicked her when she was down,
16 would you admit it?
17 A. Of course. I'm not going to lie about
18 nothing. I'm not going to lie about nothing.
19 Q. You wouldn't lie about anything here on the
20 witness stand, would you?
21 A. No, sir.
22 Q. You were asked on direct examination about
23 the situation where Debra's nose was broken January 9,
24 1995 here in Las Vegas?
25 A. Yes.

106

1 Q. You said you threw a plastic thermal cup?
2 A. Yes, sir.
3 Q. You didn't hold it and strike her with it?
4 A. No.
5 Q. You just threw it?
6 A. I threw it.
7 Q. And you said it hit her on the nose?
8 A. Yes, sir.
9 Q. You didn't strike her in any other way?
10 A. No, I did not.
11 Q. You didn't hit her in the forehead?
12 A. No, sir. The cup came across this way, so
13 it could have hit her forehead and landed right here.
14 Q. It could have been a cup, thermal container
15 that caused the laceration on the forehead and also on the
16 side of her nose?
17 A. The cup caused the damage to her face, sir.
18 Yes, it did.
19 Q. Well, during your direct you talked about
20 the injury to the nose. The nose was broken, correct?
21 A. Yes, sir. That's what the doctor said.
22 Yes.
23 Q. And the medical report in evidence indicates
24 stitch were taken on the bridge of her nose?
25 A. Yes, sir.

107

1 Q. There was also a naming stitch taken in the
2 right eyebrow area?
3 A. Yes. I remember seeing that, sir.
4 Q. But you're saying it was all from throwing
5 the cup. You didn't strike her there?
6 A. She got hit with the cup, and that was it,
7 sir.
8 THE COURT: Ladies and gentlemen, there's
9 another recess and admonishment.
10 We're up to page 79, line 4.
11 BY MR. OWENS:
12 Q. Mr. Chappell, was it your testimony during
13 direct examination that after you hurt your wife's nose
14 you called 911?
15 A. Yes, sir.
16 Q. Do you recall the testimony that was offered
17 by Daniel Diersdorf of the police department that the call
18 came from Debra?
19 A. No. I heard him say that, but he was false.
20 He was wrong.
21 Q. She was taken to the hospital, wasn't she?
22 A. Yes, she was.
23 Q. Did you go along?
24 A. No, I did not. I walked with her to put her
25 inside the back. The three kids were alone inside, and I

108

1 went back inside. And they said she was going to go to
2 LMC.

3 Q. The testimony by Giersdorf suggested when
4 they got there and made contact with you, you were sitting
5 calmly and watching television?

6 A. That was false also, sir. The TV was in the
7 bedroom at that time. The three children were sitting in
8 the front of the TV. I was outside in the living room
9 sitting in the chair. The TV wasn't even in the room at
10 that time, sir. They came in and they slammed me all
11 around like I just testified, told my attorney about.

12 Q. They said they came up and announced their
13 presence. They could see inside. And you didn't even get
14 up?

15 A. That's not true. I let them in. He did
16 just come --

17 Q. Ultimately?

18 A. He didn't just come in and open the door. I
19 got up and opened the door for him, sir.

20 Q. On June the 1st, 1995, we've had testimony
21 that there was another argument between you and Debra
22 Paros?

23 A. Yes, sir.

24 Q. You indicated that you hadn't seen her for
25 quite awhile?

109

1 A. Exactly.

2 Q. How did it happen that you hadn't seen
3 her?

4 A. I don't remember why, but I know she was
5 gone.

6 Q. Had she been gone for a number of days?

7 A. She was gone all day the day before that
8 day, sir.

9 Q. Did you become concerned about where she was
10 and what she was doing, and who she was doing it with?

11 A. Yes, sir.

12 Q. So when she came home you started to ask a
13 lot of questions; is that correct?

14 A. I asked her a number of questions, yes.

15 Q. What types of questions?

16 A. I don't remember. I remember asking her
17 where she had been.

18 Q. Does she tell you where she's been?

19 A. He gave me many excuses, different excuses.
20 They all didn't add up together.

21 Q. They were not excuses you accepted; is that
22 correct?

23 A. No.

24 Q. So you got rough with her; is that true?

25 A. Not immediately, sir.

110

1 Q. Well, if not immediately, at a certain point
2 did you take her into the bedroom?

3 A. I didn't take her in there. We both walked
4 in the bedroom.

5 Q. After you walked into the bedroom, did you
6 become physical with her?

7 A. Yes. I put her on the bed.

8 Q. Does that mean, yes, I put her on the bed?

9 A. That's what I did.

10 Q. Did you grab her?

11 A. I don't remember exactly.

12 Q. I'm trying to figure out how she got from a
13 standing position to on the bed?

14 A. I don't remember, sir.

15 Q. So after you put her on the bed, did you get
16 up and straddle her and pin her arms down with your
17 knees?

18 A. I got on top of her, yes, sir.

19 Q. Did you pin her arms down with your knees?

20 A. I'm not sure about pin her arms down. I was
21 on top of her, sir. I know that.

22 Q. So while you were on top of her, according
23 to your testimony on direct examination, you said I showed
24 her a knife?

25 A. Yes, I did.

111

1 Q. Now, Mr. Chappell what does that mean, I
2 showed her a knife?

3 A. That means I held it up like this and I
4 asked her where she had been.

5 Q. Describe the knife you held up like that?

6 A. I don't remember, sir.

7 Q. Where did you get the knife?

8 A. The knife was on the dresser.

9 Q. On the dresser in the bedroom?

10 A. Yes, sir.

11 Q. Whose knife was it?

12 A. It belonged to the household.

13 Q. It was Debra's knife.

14 A. If you want to say that, yes.

15 Q. I'm asking you. Whose knife was it?

16 A. It belonged to both of us, sir.

17 Q. Was it a kitchen knife?

18 A. Yes, sir.

19 Q. Steak knife?

20 A. I'm not sure if it was a steak knife, sir.

21 Q. You've seen the knife in court, 68 A-1, that
22 you used to kill her. Did it look like that knife?

23 A. No, it did not.

24 Q. Was it the same type of knife?

25 A. No, it was not.

112

1 Q. So when you're on top of her, you say you
2 showed her this knife?
3 A. Yes.
4 Q. What did you do, reach over and take it off
5 the table?
6 A. Yeah.
7 Q. What was your purpose in showing her the
8 knife?
9 A. I was trying to get information out of her.
10 That's it.
11 Q. You were trying to use the knife to coerce
12 information out of her, is that true, Mr. Chappell?
13 A. Yes. I guess so, sir.
14 Q. You were trying to find out if she had a
15 boyfriend?
16 A. I didn't ask her that.
17 Q. What type of information were you trying to
18 get out?
19 A. I don't remember what questions I asked her.
20 I know I asked her where she had been.
21 Q. You were jealous?
22 A. No. Not at that point, no. I was just
23 concerned and she had me worried. And when we argued
24 about it she said a couple of things that I got upset
25 about.

113

1 Q. You weren't concerned about the baseball
2 scores were you, or the weather forecast. What type of
3 information were you trying to get her to divulge by
4 showing her a knife?
5 A. I just wanted to know where she had been.
6 That's it.
7 Q. Did you feel you were entitled to know where
8 she had been?
9 A. She asked me every time when I was gone
10 where I had been.
11 Q. Well, obviously, if you had to put her down
12 on the bed and get on top of her and show her a knife, she
13 didn't want to tell you what you wanted to know. Is that
14 safe assumption?
15 A. That could be.
16 Q. Do you feel like you are entitled to get
17 answers from her?
18 A. I answered her when she asked me, so I
19 expected the same thing.
20 Q. You weren't married, were you?
21 A. No. We didn't make it, sir.
22 Q. She hadn't made any marital commit to you,
23 had she?
24 A. She told me, you get me a ring, I'll marry
25 you. That's what she told me.

114

1 Q. Did you ever get her a ring, Mr. Chappell?
2 A. No, I did not, sir.
3 Q. You say you showed her the knife. Did you
4 threaten her with the knife?
5 A. No. I just was asking questions and just
6 showed her the knife. I didn't threaten her. I didn't do
7 nothing with the knife. No, sir.
8 Q. Officer Allen Williams testified about this
9 incident and said it was related to him by Debra that she
10 had been threatened?
11 A. No.
12 Q. With the knife.
13 A. He was false also, sir.
14 Q. Dana Freeman the employee with the Tucson
15 Police Department is a liar. Is that what you're telling
16 us?
17 A. What she said in her testimony in this
18 courtroom was false.
19 Q. Daniel Diersdorf from the Metropolitan
20 Police Department is a liar?
21 A. I don't remember everything he said. I
22 remember exactly everything she said.
23 Q. Well, you said he lied about how you were
24 acting when they came to the mobile home on January the
25 9th. He's a liar?

115

1 A. Are you talking about the cup incident.
2 Q. I'm talking about the day that Debra's nose
3 was broken by you.
4 A. Yeah. He said I was sitting there watching
5 TV. That's not true. The TV was not in the living
6 room.
7 Q. So Diersdorf also is a liar?
8 A. I can't call him no liar. But when he said
9 I was sitting there watching TV, that was false.
10 Q. So you were standing watching TV?
11 A. No. When they opened the door, I sat down.
12 He came inside -- two of them came inside and they grabbed
13 me. My son James Panos seen the entire incident and was
14 crying and screaming, and they were telling him to go sit
15 down. Everything would be okay. They slammed me all over
16 the place and took me to jail in my boxers, sir, and my
17 socks. That's it. I didn't even get a chance to talk.
18 They came in. They roughed me up and move me
19 quickly to the vehicle and slapped me on the hood and put
20 me in the car.
21 Q. You thought that was inappropriate police
22 conduct regarding someone battering his girlfriend?
23 A. In that situation, yes. They were out of
24 control. Yes, they were.
25 Q. You hadn't been out of control?

116

1 A. They were out of control that day.
 2 Q. And furthermore, is your allegation that on
 3 June 1st, 1995 Officer Williams got information which was
 4 false. You did not threaten Debra Panos with a knife?
 5 A. No. I didn't say no threats to her. She
 6 might have considered my actions as threatening, but I
 7 didn't say no threats towards her. No, I did not.
 8 Q. Why in the world would she think that, just
 9 because you put her down on the bed and got on top of her
 10 and showed her a knife?
 11 A. I'm pretty sure any woman would be scared in
 12 that position, sir.
 13 Q. You wanted her to be scared, didn't you?
 14 A. I just wanted to get information from her.
 15 I admit I seen that it wasn't working so I got rid of the
 16 knife, sir. And I let her up.
 17 Q. After her roommate knocked on the bedroom
 18 door, isn't that true?
 19 A. No, no. No, because I had -- I remember
 20 putting the knife on the dresser. I was not even on the
 21 bed when she knocked on the door. No, that's not true.
 22 Q. Didn't Claire interrupt what was
 23 happening?
 24 A. No. Claire did not open the door and come
 25 inside or nothing. That did not happen, sir.

117

1 Q. While you were asked on direct examination
 2 if you had said some degrading things to Debbie Panos in
 3 letters you sent from jail, do you remember that
 4 question?
 5 A. Yes, sir.
 6 Q. Do you remember stating that in the last two
 7 letters you said some degrading things?
 8 A. Yes.
 9 Q. When were the last two letters written?
 10 A. I stayed in the city nine days, so it was
 11 before that. Between August 5th and August 15th.
 12 Q. So we're talking about letters written
 13 within a few weeks before you kill her; is that correct?
 14 A. That was the last letters I written, sir. I
 15 am not sure of the exact dates, but they were the last
 16 ones I written.
 17 Q. And you told your counsel that you wrote the
 18 letters because you were feeling lonely, and you were very
 19 depressed, and you were hurt, and you were devastated.
 20 A. Right. Exactly.
 21 Q. Why, Mr. Chappell, why did you have those
 22 feelings?
 23 A. Because the things she was telling me on the
 24 phone.
 25 Q. You already suspected her of being

118

1 unfaithful, didn't you?
 2 A. I asked her and she told me no. So I didn't
 3 pressure her about that.
 4 Q. Well, you had some pretty strong suspicions.
 5 Didn't you call her a slut?
 6 A. I did write that, yes, sir.
 7 Q. Didn't you call her a bitch?
 8 A. I did write that, yes, sir.
 9 Q. Did you call her a whore?
 10 A. I did write that, yes, sir.
 11 Q. You called her stupid?
 12 A. I don't remember writing that. If I wrote
 13 it -- if I wrote it --
 14 Q. You even made a religious judgment. You
 15 said she was going to hell; is that correct?
 16 A. I don't recall writing that, sir.
 17 Q. You don't recall writing that?
 18 A. No.
 19 Q. Did you ask her at any time in your
 20 correspondence if she had AIDS yet from sleeping around
 21 with other men?
 22 A. All through our relationship, you know, we
 23 would talk about that situation. Talking about people
 24 being unfaithful and we would just -- we just would
 25 converse (sic) about what was going on around the world

119

1 and with other people and how everybody around in our
 2 community and stuff was getting that disease. I just
 3 wanted to put AIDS in her mind, and let her know that
 4 sleeping around wasn't good, if she was doing it, sir.
 5 Q. Did you ask her if she had AIDS yet?
 6 A. I remember writing something like that,
 7 yes.
 8 Q. Now, why would you ask that type of
 9 question, and why would you call this woman that you're
 10 representing to us here today in this courtroom as being
 11 someone you loved, why would you call her a whore, and a
 12 slut, and a bitch?
 13 A. I was upset at that time, sir.
 14 Q. Obviously very upset?
 15 A. I was upset.
 16 Q. What made you so upset that you would
 17 characterize her in very hateful, degrading language?
 18 A. I was upset about numerous things. I wrote
 19 those things, and I'm sorry. I told her I was sorry. We
 20 talked about them letters before I got out of jail, sir.
 21 And I apologized to her over the phone.
 22 Q. You said you talked to Debra Panos the day
 23 before you killed her, August 30th?
 24 A. I seen her at court, yes, sir.
 25 Q. So you didn't talk with her, you simply saw

120

1 her?

2 A. I did to talk to her. I seen her and talked
3 to her, sir.

4 Q. That was the day you entered a plea of
5 guilty to the domestic battery charge?

6 A. Numerous charges that day.

7 Q. The domestic battery to which you plead
8 guilty was the June 1st, 1995, crime?

9 A. Yes, sir.

10 Q. Did Debra Panos offer testimony at any type
11 of hearing on August the 30th against you?

12 A. No, sir. No, she did not.

13 Q. Explain what enabled you to speak with
14 her?

15 A. I was sitting outside the courtroom. I was
16 sitting right here. The officer was sitting right here,
17 and she came up walking through the door. She was talking
18 to me right here and she was like right in my face right
19 here.

20 Q. What did you say to her?

21 A. I asked her how she'd been. I was crying.
22 She told me to stop crying. She told me she missed me.
23 She told me he loved me. She said the kids had been
24 asking about you. She said -- she asked me was I getting
25 out. She asked me that numerous times.

121

1 Q. What did you tell her?

2 A. I said I'm pretty sure I'm getting out, but
3 I said, you know, I'm supposed to go to the rehab place.
4 But I told her, yes, I should be getting out tomorrow.
5 She said okay.

6 Q. You're telling us that you knew on August
7 30th, that you were going to get out the following day?

8 A. They wasn't supposed to let me go, sir. So I
9 didn't know I was leaving that day, sir.

10 Q. Well, that must be true, because explained
11 earlier to your counsel that you didn't know when you were
12 going to get out?

13 A. No. I just told her what happened in court,
14 and she asked me, was I getting out tomorrow.

15 Q. And you certainly weren't in the position to
16 tell her, yes, I'm going to see you out at 839 North
17 Lamb?

18 A. I told her, I said, I should be seeing you
19 and the children tomorrow. I told her that. Those are my
20 exact words to her, sir.

21 Q. Who had told you there was any possibility
22 you would get out on August 31?

23 A. EOB came and seen me in jail, and they
24 said.

25 Q. When did they come and see you?

122

1 A. I don't know the exact date, but when I was
2 incarcerated between June 26th and August, before I went
3 to the city, August 20 or 21, between that time, they came
4 and had a little session with me. I took a little test
5 and they talked to me and told me that when I do get out
6 that they said you're not going to be forced to stay
7 there. They said you want to come there and take care of
8 your business and you can do that. But they said if I
9 wanted to leave and go home, or whatever, I can also do
10 that.

11 Q. The representative of EOB said when you get
12 out?

13 A. That wasn't the lady's exact words.

14 Q. That's what you just said, that they didn't
15 tell you when that was he, did they?

16 A. No. They didn't give me no exact date. I
17 was shocked when the city came and got me.

18 Q. You were sentenced after you plead guilty to
19 domestic battery, weren't you?

20 A. Right.

21 Q. Didn't EOB come by to see you even before
22 you were sentenced?

23 A. They came by, come to the county before I
24 was sentenced in the county, not in the city. No.

25 Q. They came to see you before you plead guilty

123

1 and that was, obviously, before you were sentenced. So
2 they certainly didn't tell you when?

3 A. I had two different case, sir. I had a case
4 in county and several cases in the city.

5 Q. I'm asking you if EOB told you when you were
6 going to get out?

7 A. No, they didn't know the exact date I was
8 getting out. No.

9 Q. Furthermore, you didn't tell Debra Panos
10 when you were going to get out when you saw her August
11 30th, because you didn't know?

12 A. I told her I should get out tomorrow. That
13 was my exact words to her, sir.

14 Q. Upon what did you base that statement to
15 her?

16 A. Pardon me?

17 Q. Why did you think you were going to get out
18 on the 31st?

19 A. Because EOB told me when I do get out, they
20 said that I would be able to leave some time from that
21 facility and go home.

22 Q. You said that Debra told you on the 30th she
23 loved you?

24 A. Yes, sir.

25 Q. She didn't tell you it was over between the

124

1 two of you?

2 A. She never said them words to me, sir. No.

3 Q. So you're telling us that, in fact, your
4 guess came true the following day August 31st, you were
5 released?

6 A. I was released, yes, sir.

7 Q. And you talked with a representative of Law
8 enforcement at about 10:45 a.m?

9 A. Not from about 9:30 till 10:00 something.

10 Q. From perhaps 9:30 in the morning until 10:00
11 o'clock something on August 31st?

12 A. They let me out at 9:00 o'clock. Went to
13 the county jail and then we went to his office. So it had
14 to be around 9:30, 9:45. I stayed there until about
15 10:45. I was there about an hour.

16 Q. After about 10:45 a.m., you were released.
17 And that's when you said you walked back out to the area
18 of Debra's mobile home?

19 A. I didn't go home first, sir.

20 Q. I said to the area?

21 A. Yes.

22 Q. You told us that the Vera Johnson projects
23 area is just a couple blocks away?

24 A. Yes.

25 Q. Also on North Lamb?

125

1 A. Yes, sir.

2 Q. You were by yourself?

3 A. Yes, sir.

4 Q. Did you have any money in your pocket?

5 A. No.

6 Q. You were broke, weren't you?

7 A. Yes, sir.

8 Q. How long did you stay at the Vera Johnson
9 projects area?

10 A. About 30, 40 minutes.

11 Q. Where — why did you go there first?

12 A. I had some belongings over there. I was
13 going over there to get them. But the person wasn't home,
14 so I couldn't get them.

15 Q. What belongings?

16 A. I had a pair of shoes over at somebody's
17 house.

18 Q. At whose house?

19 A. It as this lady by the name of Sue.

20 Q. Who is Sue?

21 A. A resident over in them apartment.

22 Q. A girlfriend of yours?

23 A. I wasn't messing with any other woman, no,
24 sir. She was just a friend.

25 Q. How did your shoes happen to be at Sue's

126

1 place?

2 A. I got some new shoes one day, and I left my
3 old ones over at her house. That was before I went to
4 jail. And they were at her house the entire time I was in
5 jail.

6 Q. You consume any drugs while you were at the
7 Vera Johnson area?

8 A. Absolutely not, sir.

9 Q. Have anything to drink?

10 A. No.

11 Q. Haven't you said before you had a couple of
12 beers?

13 A. There was a guy over there that had some
14 beer and he asked me, did I want some, and I told him not
15 right now. I told him that I had to go back downtown at
16 1:00 o'clock — be back downtown at 1:00 o'clock.

17 Q. So you didn't drink any beers?

18 A. No, I did not.

19 Q. Didn't use any dope?

20 A. No, sir. I did not.

21 Q. You were certainly of sound mind, that is,
22 you knew what you were doing?

23 A. I was sober, sir.

24 Q. Then you borrowed the bicycle and you went
25 on over to 839 North Lamb, space 125, is that correct?

127

1 A. I was sober, and I went home. Yes, sir.

2 Q. Were you aware of who you were?

3 A. Yes.

4 Q. Did you know where you were going?

5 A. Yes, sir.

6 Q. Did you know why you were going there?

7 A. Yes, sir.

8 Q. You said you borrowed the bicycle and went
9 home?

10 A. Yes, sir.

11 Q. I want to get something straight. By home
12 you're referring to 839 North Lamb, space 125?

13 A. Yes, sir.

14 Q. Was the mobile home rented in your name?

15 A. No, it was not.

16 Q. Had you paid any of the rent at that
17 residence?

18 A. No, I did not.

19 Q. Did you have a key in your pocket that was
20 going to enable you to get into your home?

21 A. I lost my key, sir.

22 Q. Did you get another one from Debra?

23 A. No, I did not.

24 Q. When did you lose your key?

25 A. Right before I went to jail, sir.

128

1 Q. Which time?
2 A. Before June 26, 1995, sir.
3 Q. Did you have a marriage certificate on your
4 person that gave you entitlement to go into 839 North
5 Lamb, space 125?

6 A. No, I did not have no marriage
7 certificate.

8 Q. When you got there, did you knock on the
9 door?

10 A. No, I did not.

11 Q. Is there a door bell?

12 A. No, there is not.

13 Q. You didn't knock?

14 A. No, sir.

15 Q. You elected to go through a bedroom
16 window?

17 A. I went through that window many times, sir.
18 That wasn't the first time.

19 Q. I didn't ask you how many times it has been.
20 Your decision was to get in by going in through a window,
21 is that your testimony?

22 A. Yes. I went through the window, sir.

23 Q. And you're saying she was in there and met
24 you as you were coming in?

25 A. Yes, sir.

129

1 Q. You said she was happy to see you?

2 A. I told you her exact words when I went
3 inside the window, sir.

4 Q. I've forgotten her exact words.

5 A. She asked me why didn't I knock at the door.
6 I told her I did not know you was home. I just called two
7 times and nobody answered the phone. She came over and
8 actually moved the nightstand, moved it a little ways away
9 from the window for me, sir, and I claimed in the
10 window.

11 Q. When did the screen get pushed down and
12 bent?

13 A. I put the screen inside so when she moved
14 the nightstand, I guess I must have went -- some of it got
15 on the top of the screen, because I didn't take the screen
16 and put it up under there, you know.

17 Q. The testimony is been that the print of a
18 shoe was on the screen. You had to walk on the screen you
19 put inside to get in?

20 A. Well, if I stepped on it, I don't remember
21 doing that. But if there -- but if there was a foot print
22 on it, my foot print must have been on it.

23 Q. The screen is damaged?

24 A. No, it he wasn't damaged the last time I
25 seen it.

130

1 Q. It's bent, sir, according to the photographs
2 taken by the officers. You didn't damage the screen?

3 A. No, I did not damage the screen, sir.

4 Q. So according to you you met at the window
5 and she asked why you hadn't knocked. That was a good
6 question, wasn't it?

7 A. I didn't knock because nobody answered the
8 phone when I called her.

9 Q. Did you have the money to pay for any damage
10 to the window or the screen as a result of entering
11 through a window?

12 A. I didn't damage the window. And I didn't
13 damage the screen. So there wouldn't be no need for no
14 financial assistance.

15 Q. You said the two of you talked for about
16 twenty minutes, you began to kiss, and you started taking
17 each other's clothes off?

18 A. Exactly.

19 Q. And you began to have sex?

20 A. Yes, sir.

21 Q. You said you began to have sex?

22 A. Yes, sir.

23 Q. As a remember you said when you entered her
24 her vagina was all loose and wet and smelly?

25 A. Exactly.

131

1 Q. You said it was nothing like it used to
2 be?

3 A. Nothing. Never like that, never.

4 Q. That made you angry?

5 A. Of course I would be upset.

6 Q. What do you mean, of course, I would be
7 upset?

8 A. Any man would be upset if they came home to
9 their lady and she wasn't the way -- her vagina was the
10 way Debbie's was that day.

11 Q. Mr. Chappell, you're calling her your lady,
12 was she wearing a little gold band you had bought for her
13 on her left ring finger?

14 A. She told me that she was my girl, and I'm
15 going to go by that, sir.

16 Q. Did you think you owned her, sir?

17 A. No, I did not.

18 Q. You told us when you detected that something
19 was different, you got up and grabbed her?

20 A. Yes, I did.

21 Q. Grabbed her how?

22 A. I put my hand in this area right here.

23 Q. This area meaning the area of her neck?

24 A. Yeah.

25 Q. Did you begin to choke her, Mr. Chappell?

132

3 I had to get out of there, sir. I couldn't look at her.

4 Q. You didn't climb on your bicycle, you stole
5 her car, isn't that true?

6 A. If you want to call it stealing it, I don't
7 consider myself stealing it, sir.

8 Q. Were the keys still in the car?

9 A. I don't remember, sir.

10 Q. And you drove to the Vera Johnson projects
11 in the car and you got high?

12 A. No, I did not get high. I parked the car.
13 I went inside an abandoned apartment and stayed there
14 about three hours, sir.

15 Q. Is that where you got the shrimp and the
16 pie?

17 A. I didn't get that till like 10:00 o'clock at
18 night, sir.

19 Q. May I approach the witness, your Honor?

20 THE COURT: Yes.

21 BY MR. OWENS:

22 Q. Mr. Chappell, this is a couple of pages. It
23 looks like they're numbered 7 and 8, which have been
24 removed from letters taken from the bag, Exhibit 75. Is
25 that your handwriting?

26 A. Yes, sir.

27 Q. So both on the front, which is identified as

149

1 page 7, and on the back, page 8, this a letter written by
2 you?

3 A. Yes, sir.

4 Q. You wrote this from the jail?

5 A. Yes, sir.

6 Q. And you wrote this a few weeks before you
7 killed her?

8 A. I don't know the exact date I wrote the
9 letter, sir.

10 Q. You began this page of the letter by saying,
11 "hello sweetie, found some more paper, Sunday, July 30th,
12 1995." Is that date in your handwriting?

13 A. Yes, sir.

14 Q. So is that apparently the date you wrote
15 this?

16 A. Yes, sir.

17 Q. You say, "been here 35 days, where are you."
18 And you have four question marks.

19 A. Yes.

20 Q. You go on to write, "you must be terrified
21 to visit me, huh?"

22 A. Yes, I wrote that.

23 Q. Did you further write, "you know I'll put
24 you on the witness stand, huh." Did you write that?

25 A. Yes. She knows she can't lie to my face,

150

1 sir. That's why I wrote that. I'd know if she was
2 telling the truth.

3 Q. You meant when you saw her you were going to
4 give her the third-degree, didn't you?

5 A. I was going to question her, yes.

6 Q. About where she'd been, and who she'd been
7 with?

8 A. I already knew who she was hanging with.

9 Q. Who?

10 A. Lisa Duran and Claire and Jennifer. The
11 lady that was sitting in the back of the court room.

12 Q. And now after you talked about putting her
13 on the witness stand, did you say, and you can't face it
14 or me, huh. Is that what you write. And you can't face
15 it or me, huh.

16 A. I wrote that, yes, sir.

17 Q. You didn't get out of custody between July
18 the 30th, 1995 and August 31st, did you?

19 A. No.

20 Q. You then write, "One day soon I'll be at
21 that front door, and what in God's name will you do then."
22 Did you write that, sir?

23 A. Yeah, I wrote that.

24 MR. OWENS: That's all we have, your

25 Honor.

151

1 THE COURT: Redirect.

2 MR. SCHIECK: Court's indulgence, your

3 Honor.

4 We have no questions, Judge.

5 All right.

6 THE COURT: Thank you, very much.

7 The State may — you all can set those

8 down by your chairs right now, if you would, please.

9 The State may call their next witness.

10 MR. OWENS: I think we have exhausted our
11 supply of witnesses now.

12 THE COURT: We'll take our lunch recess.

13 JURY ADMONITION

14 During the recess, ladies and gentlemen,

15 you are admonished not to converse among yourselves or

16 with anyone else, including, without limitation, the

17 lawyers, parties and witnesses, on any subject connected

18 with this trial, or any other case referred to during it,

19 or read, watch, or listen to any report of or commentary

20 on the trial, or any person connected with this trial, or

21 any such other case by any medium of information

22 including, without limitation, newspapers, television,

23 internet or radio.

24 You are further admonished not to form or

25 express any opinion on any subject connected with this

152

1 trial until the case is finally submitted to you.
2 We'll be in recess. Let's try and be back
3 so we can get started no later than 1:30.

4 Okay.

5 Thank you, very much.

6 THE COURT: Back on the record in
7 C-131341, State of Nevada versus James Chappell.

8 The record will reflect the presence of
9 Mr. Chappell, with his attorneys, the State's attorneys,
10 outside the presence of the jury.

11 SCHIECK: Your Honor, we had seven
12 witnesses here from Lansing, Michigan that were results of
13 some pretty extensive investigation we had done both on
14 post-conviction and getting preparation for this trial.

15 Two of the witnesses Ivory Morrell, whose
16 name we actually heard in here because James gave his name
17 when he was arrested at the Lucky's shoplifting. And the
18 other is James Ford, who lived up the block from where Mr.
19 Chappell grew up in Lansing.

20 Both of those individuals had been here
21 since Tuesday night. We expected the trial -- the hearing
22 was going to last one week, and come Friday they were both
23 in a situation that they would lose their employment if
24 they did not return to work. They had been -- in fact, we
25 had talked to Mr. Ford's district supervisor on Friday

153

1 evening to try to convince him to allow Mr. Ford to
2 remain, and basically was told, be here or be fired.

3 When we were back in Lansing, I was
4 impressed with the employment depression in the area.
5 There are huge parking areas surrounding shut down
6 factories in Lansing due to the state of the automobile
7 industry. Lansing is basically an automobile town. The
8 unemployment rate is extremely high there.

9 Both Mr. Ford and Mr. Morrell could not
10 afford to lose their jobs. In fact, Mr. Ford indicated
11 that he would likely be going to jail for non-payment of
12 child support if he did not get back and start working
13 immediately, because there's a date he's due in URESA (ph)
14 court -- whatever they call that -- the court for child
15 support. He's on a monthly thing, if you don't pay when
16 you come to court, you go to jail. So he was not only
17 facing loss of employment, he was facing incarceration.

18 It was our decision to allow them -- we
19 had them here and we could have enforced the subpoena on
20 them, causing them to lose their work and causing
21 difficulty with our client, and causing them to lose their
22 work, and we made the decision to allow them to return to
23 Michigan, so they will not be testifying.

24 We will be, because it is a penalty
25 hearing, be offering information that they would have

154

1 provided through other witnesses because hearsay is
2 admissible. We do have still here three other individuals
3 that grew up along with Mr. Chappell, along with Mr. Ford,
4 and along with Mr. Morrell. They were sort of a group of
5 individuals. So all of the same testimony is still
6 available.

7 The reason I wanted to make a clear record
8 on this is because Mr. Morrell and Mr. Dean were two of
9 the witnesses that were not called at the first penalty
10 hearing and formed part of the basis of our claim of
11 ineffective assistance of counsel.

12 I don't want the record to appear that I'm
13 building an ineffective assistance in this record by not
14 calling those two witnesses. We are confident that our
15 other witnesses will provide the necessary testimony that
16 Mr. Morrell and Mr. Ford talked about on
17 post-conviction.

18 Specifically we now have Mira available to
19 testify. That's a younger sister of Mr. Chappell, who was
20 also a witness that was not available, or was not called
21 in the first penalty hearing and was not available at the
22 post-conviction investigation because of her circumstances
23 back in Lansing at that time.

24 We also have available here to testify,
25 Mr. Chappell's older brother who can relate a lot of the

155

1 family background that Mr. Morrell and Mr. Ford knew, will
2 be Rick Chappell, who was in prison at the time of the
3 previous penalty hearing.

4 In fact, has just gotten out on parole
5 very recently. In fact, we've been constantly in contact
6 and negotiation with his parole officer that he is here
7 outside his parole jurisdiction in Michigan for the sole
8 purpose of testifying in this penalty hearing.

9 So those additional witnesses -- in
10 addition to that, we also have Fred Dean, who is the
11 closest contemporary in age to Mr. Chappell, from the
12 group of individuals that resided in the Lansing area
13 where Mr. Chappell grew up that has a lot of the same
14 knowledge of Mr. Chappell and Ms. Panos, which we thought
15 was important to be presented, because Mr. Dean was the
16 same age group -- was closest in age to Mr. Chappell.

17 In fact, at times provided rides to
18 Ms. Panos, returning her to her parent's house, picking
19 her up, providing rides for her and Mr. Chappell.

20 So I just want to make it clear the fact
21 the Mr. Morrell and Mr. Ford are not going to testify, in
22 no way, in my opinion, effects the testimony in evidence
23 that we can present at this penalty hearing, that wasn't
24 presented at the first penalty hearing.

25 THE COURT: Okay. Does the State have

156

1 anything you want to put on the record regarding that.
 2 MR. OWENS: I appreciate the record.
 3 THE COURT: Okay.
 4 MR. SCHIECK: In fact, we are planning on
 5 calling our investigator who is listed as a witness,
 6 Karabel Rosales, who was back doing some mitigation
 7 investigation in Lansing and has a photograph of
 8 Mr. Morrell and Mr. Ford that we're going to move into
 9 evidence.

10 They've been here, been around, the jury
 11 has seen them. So -- and explain the circumstances why
 12 they're not here to testify, so the jury understands
 13 that.

14 THE COURT: All right. We'll be in recess
 15 folks.

16 MR. SCHIECK: Thank you, your Honor.
 17 (Lunch recess taken.)

18 THE COURT: We'll be back on the record in
 19 A-131341, State of Nevada versus James Chappell.

20 The record will reflect the presence of
 21 Mr. Chappell, with his attorneys, State's attorneys, and
 22 our jury.

23 The State's next witness is going to be
 24 Dr. Green, correct?

25 MR. OWENS: Correct.

157

1 THE CLERK: You do solemnly swear the
 2 testimony you are about to give in this action, shall be
 3 the truth, the whole truth, and nothing but the truth, so
 4 help you God.

5 THE WITNESS: I do.

6 THE CLERK: State and spell your last name
 7 for the record.

8 THE WITNESS: My name is Giles Sheldon
 9 Green, G-R-E-E-N.

10 DIRECT EXAMINATION

11 BY MR. OWENS:

12 Q. You're retired now?

13 A. That is correct.

14 Q. Back in 1995, you were employed with the
 15 Clark County Coroner's office?

16 A. Correct.

17 Q. And you worked as a pathologist?

18 A. Yes.

19 Q. Would you take a moment and explain your
 20 qualifications for that position?

21 A. Okay. I received my degree of doctor of
 22 medicine from the University of Oregon School of Medicine
 23 in Portland in 1969.

24 I served one year of internship in St. Mary's
 25 Hospital in San Francisco. Then one year of post-graduate

158

1 training in the field of obstetrics.

2 The end of that year I changed my area of interest
 3 to pathology. I spent the next two years in post-graduate
 4 training in pathology at St. Joseph's Hospital in San
 5 Francisco.

6 In 1963 I moved to Houston, Texas. And had three
 7 year with the United States Public Health Service
 8 fellowship at MD Anderson Hospital in Tumor Institute. So
 9 you may recognize that as one of the largest cancer
 10 research centers in the world.

11 Following completion of that fellowship and
 12 training, I was appointed to the staff of Anderson
 13 Hospital as assist pathologist and assist professor of
 14 pathology in the University of Texas system.

15 I remained on the staff for approximately 2 years.
 16 Then in 1967, I think, I joined the Harris County Medical
 17 Examiner's Department in Houston, and served with that
 18 department for seven years, first as assist medical
 19 examiner and deputy chief medical examiner.

20 In 1975 I moved here to Las Vegas to become chief
 21 medical examiner for Clark County. I remained in that
 22 position with the county for 26 years. I retired in
 23 2001.

24 I was, during that period, professor of activity
 25 and a member of virtually all of the significant

159

1 professional organizations in North America, which deal
 2 with the problems of forensic medicine and forensic
 3 science generally.

4 I'm still an active fellow of the American Academy
 5 of Forensic Science. I try to keep my hand in a little
 6 bit, keep the brain stirred up anyway.

7 But I no longer work with the coroner's office, but
 8 am on call for problems.

9 Q. So you were in the coroner's office for
 10 about 26 years?

11 A. Yes.

12 Q. You retired in 2001?

13 A. Correct.

14 Q. Over that period of time about how many
 15 occasions did you testify in courts with regard to cause
 16 of death?

17 A. I don't have a count, but literally
 18 hundreds. There was one year that I decided to keep track
 19 and believe it or not, I still have a hard time with this,
 20 74 times.

21 Q. It was testimony in one year?

22 A. Yes.

23 Q. How many autopsies do you think you
 24 performed?

25 A. Something between 11 and 12 thousand.

160

1 Q. On the first day of September 1995, you
2 performed an autopsy on Debra Panos?

3 A. Correct.

4 Q. And that was done over at the coroner's
5 office?

6 A. Yes.

7 Q. And your autopsy usually involved a visual
8 examination, external examination, and internal
9 examination?

10 A. That's correct.

11 Q. I would like to take those one at a time, if
12 you would. First, if you would give us the physical
13 characteristics of the victim in this case?

14 A. The body of this lady, she looked fairly
15 young, mid 20s perhaps, about 5 feet 5 inches tall, 140
16 pounds, well-developed, well-nourished.

17 Q. What did you notice in your external
18 examination of Debbie Panos?

19 A. First it was very obvious she had suffered
20 injuries to the neck and scattered areas of other parts of
21 the body. Mainly concentrated in the neck area. There was
22 a lot of bruising, particularly of the face. Some
23 bruising around the neck also.

24 Scattered bruises on the right arm, shoulder, right
25 hand, back of the right wrist. She also had multiple stab

1 right groin.

2 Q. Did you conduct an internal examination
3 then?

4 A. Yes.

5 Q. What did you find out when you conducted the
6 internal exam?

7 A. Let's take care of those two wounds lower
8 down, one in the abdomen, one in the groin. The one in
9 the abdomen had penetrated through the abdominal cavity to
10 the back wall of the abdominal cavity, but it didn't hit
11 anything significant. No vital organs. There was bleeding
12 around that area.

13 Q. So it went all the way through to the back
14 wall?

15 A. To the back wall of the abdomen. That's not
16 very far, three or four inches.

17 Q. You're indicating three or four inches.

18 Okay.

19 A. But that's variable because you can compress
20 that considerably with not much pressure.

21 Q. Okay.

22 A. So anyway, this one did penetrate to the
23 back wall of the abdomen, but as I said, didn't hit
24 anything major, some bleeding. I would not consider it a
25 really major wound.

163

1 wounds, a total of 13.

2 Ten were concentrated in the neck and upper chest
3 area, over about three-and-a-half inches in diameter,
4 roughly the size of my palm.

5 One in the abdomen right next to the umbilicus or
6 naval. Another lower down in the right groin area, and
7 one -- a small one over here on the left side of the neck,
8 below and behind the left ear.

9 Q. Did you also find evidence of abrasions?

10 A. Abrasions on the face. I think one on one
11 of the knees, a very small one.

12 Q. When you say abrasions, what is that
13 exactly?

14 A. An abrasion is simply a scraping wound.
15 We've all had them at one time or another. For example,
16 if we have short sleeves on walked down a hall with rough
17 plaster and banged the elbow into the rough plaster you're
18 going to get an abrasion.

19 Q. You mentioned that you saw evidence of 13
20 stab wounds total, most of them were in the upper chest
21 and neck area?

22 A. Correct.

23 Q. How about lower on her body, what did you
24 see?

25 A. One in the abdomen, and one down in the

162

1 Q. So a person could survive that injury
2 alone?

3 A. Yes. I think if you were hospitalized for a
4 few days, put a drain in it so any fluid can escape,
5 antibiotics, you'd be able to walk home.

6 Q. What else did you see?

7 A. In the wound in the lower groin, right in
8 the crease between the abdomen and the thigh, this is
9 penetrated about two inches. Again, did not strike
10 anything important, very little bleeding. Another one you
11 could create very readily and not worry about it.

12 Q. So there was nothing life threatening about
13 the stab to the groin area?

14 A. No.

15 Q. What else did you see on your internal
16 exam?

17 A. Internally everything looked normal,
18 certainly in the abdomen. The right side of the chest,
19 the heart was normal and healthy. Looking at the left
20 side of the chest between the lung and the chest wall had
21 quite a bit of blood, almost a quart. The stab wound had
22 penetrated just underneath the left collar bone and slid
23 in between the first and the second rib, went through the
24 upper part of the left lung, hit a rib in the back of the
25 chest cavity. Total distance probably not more than

164

1 three-and-a-half, four inches, perhaps.

2 Penetration of the lung didn't look very serious,
3 but it was. It resulted in very considerable bleeding. I
4 was rather surprised at the amount of bleeding.

5 Q. That's what accounted for the blood you
6 found in the left side of the chest cavity?

7 A. Yes.

8 Q. Okay. What else?

9 A. Internally, that was about it until you get
10 to the neck.

11 Q. Tell us about the neck?

12 A. Okay. In examining the internal structures
13 of the neck, we have these ten stab wounds in here. We
14 have one that cut the right internal jugular vein, about
15 half into.

16 One that hit the right internal right common
17 carotid artery in here. Cut it, but not completely
18 through.

19 Other one did the same thing on the left on the
20 left common carotid artery. We had one that hit the
21 thyroid gland and went in through the airway, went through
22 the larynx -- the voice box. Again, into the airway. So
23 we have major damage to several very, very important
24 structures here.

25 Q. What are the carotid arteries?

165

1 A. The carotid is the artery with supplies
2 blood to the head and most of the brain.

3 Q. So what is the affect of having that cut?

4 A. The brain loses its blood supply because
5 with a partial or complete severance of the artery, there
6 is no blood pressure above that point. The heart may keep
7 pumping for a little bit, but you can't move blood to the
8 brain.

9 Blood carries the oxygen to all parts of our body,
10 including the brain. If the brain doesn't get a normal
11 blood supply, normal oxygen supply it has a very limited
12 oxygen reserve. On average it's got fourteen seconds
13 before the person losing consciousness.

14 If that continues for a total four to five minutes,
15 we begin to get irreversible cellular damage to the brain
16 and even if we were to resuscitate this individual, there
17 would be some residual brain impairment.

18 If we go on without establishing circulation of
19 much longer than that, there is no chance of recovery.

20 Q. What kind of arterial bleeding would be
21 present with this type of injury?

22 A. It would be very profuse.

23 Q. Can you explain that for us?

24 A. Lots and lots of blood around the neck,
25 head, floor, carpet whatever she was on.

166

1 Q. Would you have that affect of the spurting
2 of the blood out for a distance?

3 A. This would depend on the location, nature of
4 the wound, position the head is in, if it's compressing
5 the tissue around an injury, or it's opening it up. I
6 wouldn't try to predict.

7 Q. But you could have that kind of bleed?

8 A. Yes.

9 Q. There would be bleeding internally as
10 well?

11 A. Yes.

12 Q. What about the jugular vein?

13 A. The jugular, this is a major vein returning
14 blood from one side of the head and upper neck back to the
15 heart. Lose this, and you're going to lose a lot of blood
16 too.

17 Q. What would the affect of that be on the
18 brain?

19 A. It would not be as much of an affect as the
20 arterial damage. In other words, the brain -- if this was
21 the only injury we have, one jugular vein cut, the brain
22 would have a much longer period of survival because the
23 artery is coming not back to the heart, but pretty soon
24 you have heart failure and death.

25 Q. You would have bleeding both internally and

167

1 externally?

2 A. Externally there would be a little bleeding.
3 Internally not much pressure in the venous system, very
4 minimal pressure, so it's not going to force blood out
5 into the tissues.

6 Q. You mentioned the trachea had been injury as
7 well?

8 A. Yes.

9 Q. What would be the affect of that injury in
10 the context of the jugular and carotid arteries?

11 A. The tracheal wound, the trachea being the
12 windpipe, is a serious thing. And in this case we have a
13 fair amount of blood in the trachea blocking the airway.
14 So that's a major problem.

15 Q. So she would have had blood in her air
16 system?

17 A. In her upper airway, yes.

18 Q. Based upon the examination that you
19 conducted, external and internal, did you come to a
20 conclusion about the cause of Debra Parks' death?

21 A. Yes.

22 Q. What is that?

23 A. She died as a result of stab wounds to the
24 neck.

25 Q. And the manner of death being?

168

1 A. In my opinion homicide.
 2 Q. You also, as a part of your examination,
 3 would have examined the reproductive organs externally and
 4 internally?
 5 A. Yes.
 6 Q. You didn't see any evidence of damage or
 7 anything unusual there?
 8 A. I saw no injury.
 9 Q. A sexual assault kit was taken by crime
 10 scene analyst for later testing?
 11 A. I believe it was. That is their job. I
 12 will assist or do what I can to help them, but it's
 13 basically their responsibility.
 14 Q. Okay.
 15 MR. OWENS: I ask that the next exhibit be
 16 135 for identification.
 17 THE COURT: Sure.
 18 MR. OWENS: If I could, with the court's
 19 permission, have the doctor to step down.
 20 THE COURT: Dr. Green, go ahead and step
 21 down, please, sir.
 22 BY MR. OWENS:
 23 Q. This chart that I'm putting up, you are
 24 familiar with this. This is a chart you use quite a
 25 bit?

169

1 A. This is an enlargement of the standard
 2 anatomical chart that we use. Many, many offices use the
 3 same thing. There's lots of different charts, male body,
 4 various body parts, and so on. We use these to show
 5 external changes.
 6 Q. We have three different colors, I think that
 7 you have got before court. Pull out the brown one, what
 8 I'd like to have you do is identify the areas of bruising
 9 or contusions on the body of the Debra Ramos on this
 10 chart.
 11 MR. Schieck: Your Honor, could we angle
 12 it about three inches more and we'd be able to see it.
 13 MR. OWENS: How's that?
 14 MR. Schieck: Is it okay from over there?
 15 THE COURT: Thank you.
 16 MR. Schieck: Thank you, very much.
 17 THE WITNESS: Okay, bruises.
 18 Let's start with the forehead. We had an
 19 area of bruising here. We have an area of bruising up in
 20 here a couple of inches or so in diameter.
 21 A little bit of scraping, not a whole
 22 lot.
 23 The larger bruise covering much of the
 24 right temple area, getting down on the right cheek bone on
 25 the right cheek, this is about 5 inches across here, 5

170

1 inches up and down.
 2 Bruising over here on the right cheek.
 3 Something that I recall about an inch-and-a-half in
 4 diameter. A lot of bruising on the right ear. That's
 5 really puffy.
 6 Bruising of the neck, particularly, I
 7 think something in here. Those are the major areas of
 8 bruising on the head.
 9 Now, we also have some bruising on the
 10 right upper arms, kind of patchy and irregular. Some
 11 bruising on the back of the right hand and over here on
 12 the wrist as well. Those are the primary areas of
 13 bruising.
 14 BY MR. OWENS:
 15 Q. There was one bruise or abrasion to the
 16 knee?
 17 A. That was a little abrasion on -- I think it
 18 was on the left knee.
 19 Q. Hold off on that. You've got the orange
 20 one. We'll see if that works. Go ahead and identify, if
 21 the orange one is working, the area of abrasions?
 22 A. Okay.
 23 Q. If not I have a back up here.
 24 A. Let's see here. On the left knee -- and
 25 this wasn't very big, half an inch whatever.

171

1 Abrasions -- let's see. We had some abrasions up
 2 here in association with a bruise. We had a very
 3 prominent abrasion at the point of the chin here. That
 4 would be three quarters of an inch to an inch maximum.
 5 Yes, we had abrasions over here, about the
 6 angle of the right jaw.
 7 Q. If you can take a moment and explain what
 8 type of a mechanism would cause the type of trauma you've
 9 indicated here, this bruising and abrasions?
 10 A. A bruise, obviously, is forceful contact
 11 between our skin and something either striking the skin or
 12 we're striking the object. The fact is we break a lot of
 13 little capillaries underneath. We leak blood. That gives
 14 us the red color. If they leaked very much, we get
 15 swelling. The tissue reaction is more fluid pour out of
 16 the tissue and makes the swelling worse. The amount of
 17 color change is pretty much a function of how hard you
 18 were hit, or how hard we hit whatever it is.
 19 The abrasion I mentioned earlier is a
 20 skidding, sliding type of injury. The bruises, we've all
 21 had them. Anybody not have a bruise? You all know what
 22 I'm talking about.
 23 Q. The bruising, can be caused by what kinds of
 24 objections?
 25 A. Any solid object, you name it. If it's

172

1 solid and it hits the skin, it can cause a bruise. We see
2 tremendous bruising in motor vehicle accidents. I've seen
3 bruises that took three-and-a-half months to disappear. I
4 know, my wife had one once -- seat belt injury to her
5 hip.

6 Q. Bruising from this kind of injury could have
7 been caused by a fist?

8 A. Possible.

9 Q. Or some other blunt object?

10 A. A fist is a good possibility. But I
11 couldn't say it's the only possibility.

12 Q. How about the abrasions?

13 A. The abrasions may come in conjunction with
14 or as a result of the impact. The impact skids a little
15 bit, it may take some skin off and gets a scraping
16 affect.

17 Q. So in this case it could be the same type of
18 mechanism that caused both the abrasions and the
19 bruising?

20 A. That's possible, certainly.

21 Q. You also identified and talked about certain
22 areas of cutting -- the stab wounds?

23 A. Yes.

24 Q. And the wounds you have described, were
25 these all stabbing rather than the slashing type wound?

173

1 A. Correct. We don't have any slashing
2 wounds.

3 Q. Okay. If you could get your red pen out.
4 I'll have you identify the knife wounds or the cutting
5 wounds you saw.

6 A. Okay. We have this one in the groin, just
7 above the crease. That penetrated a couple of inches.

8 We have one by the navel. That's the one that went
9 into the abdominal cavity.

10 We have a total of ten up here in the neck, from
11 the neck and the upper chest. But the chest we have one
12 right about here, right over the top of the breast bone.

13 Another one right here. This is the one that slid
14 in between the two ribs and got the left lung.

15 We have one over here. A couple up here. Three
16 there. A couple over in here.

17 And finally, there's a little one in the left side
18 of the neck, just below the ear.

19 I think we have a total of 13.

20 Q. You've got 13 total on there, doctor?

21 A. I believe we did.

22 Q. If you can kind of stand out to the side and
23 sort of identify which ones they are that you've drawn in
24 the red pen.

25 A. Okay. These we have talked about. This is

174

1 the one that got the left lung and caused that large
2 amount of bleeding in the left side of the chest cavity.

3 This one here over the breast bone didn't do any
4 great harm.

5 Those you can't really tell which one did which.

6 They are so close together and overlapping, but one of
7 these got the right external jugular vein. One got the
8 right carotid artery. One of these over here got the left
9 carotid artery. One or two of these bled into the airway,
10 larynx, trachea. Which one did which, I don't think we
11 can -- anybody could do it.

12 Q. What do you mean by that?

13 A. When they are crisscrossing in a small
14 space, you've got damage to multiple structures, which are
15 pretty mobile. The airway, for example, we can move that
16 around. It would be pretty hazardous to try and say this
17 one on the outside did this on the inside, when you've got
18 a bunch in there.

19 Q. These were fairly concentrated?

20 A. They were, yes.

21 Q. What kind of a weapon would cause these
22 types of injuries?

23 A. Most likely a knife with a -- probably a
24 fairly narrow blade.

25 Q. What can you tell us about the intervals of

175

1 the wounds that you put up here, the bruising, the
2 contusions and the knife wounds, time-wise?

3 A. Well, the knife wounds in the neck are the
4 clear cut cause of death. The bruises take some time to
5 develop. I would think, to put a minimum time, between
6 the bruises, say, on the forehead and the face and the
7 time of death, we're looking probably at 15 to 30 minutes
8 minimum. Somewhere in that ballpark. It could be a
9 little more. Probably not much of any less.

10 Q. The bruising -- the bruising trauma would
11 have preceded the injuries to the neck caused by the
12 cutting?

13 A. Yes. Because it couldn't come afterwards.
14 You can't bruise a dead body. You can hit it, it won't
15 bruise. It won't give you anything you can see.

16 Q. What about the knife wounds themselves. You
17 mentioned there were a couple down lower on the body, the
18 abdomen and the groin area that were not life threatening.
19 Can you tell anything about those, and the other serious
20 knife wounds up around the neck as far as the progress of
21 those wounds or pattern of timing?

22 A. The wound to the abdominal cavity may well
23 have been early in the game here. We have some internal
24 hemorrhage resulting from this. If this had been
25 inflicted at or after the time of death you would not have

176

1 had any hemorrhage. So I think this one came earlier,
2 then the ones which killed her.

3 Q. Why wouldn't you have hemorrhaging in the
4 abdominal one if it was at the same time as the ones on
5 the neck?

6 A. We're going to lose blood pressure here.

7 Q. Pointing to the neck area?

8 A. The neck area. If you get the carotid
9 artery, the pressure goes down very, very quickly and
10 circulation essentially stops.

11 Q. Other than that time difference, is it your
12 sense that the knife wounds were largely contemporaneous
13 with each other?

14 A. Those in the neck, yes.

15 Q. Why would you say that?

16 A. The appearance of them. There's certainly
17 not a long time interval between any two of them. They're
18 clustered very close together, which argues for rapid
19 repeated action of the assailant.

20 So I think it's safe to assume that these came at
21 or about the same time.

22 Q. All right. There a number of photos that
23 were taken at the autopsy of this case.

24 A. Yes.

25 Q. You have had a chance to review those prior

177

1 to your testimony?

2 A. Yes.

3 Q. You reviewed them when you testified ten
4 years ago, as well?

5 A. Probably did.

6 Q. If I can have you step over here in the
7 middle between the chart and the screen there, Doctor.

8 A. Okay.

9 Q. I'll pull this chart this way and give you
10 some room. If I can direct your attention to the screen.

11 MR. SCHIECK: For the record, we have an
12 objection we'd like to preserve on that.

13 THE COURT: Objection noted for the
14 record.

15 BY MR. COWENS:

16 Q. For the record, I'm putting Exhibit No. 31,
17 on the screen. Are you able to see that, Doctor?

18 A. Yes.

19 Q. If you can tell us what we're looking at
20 here as far as the injuries on your chart?

21 A. Here is a very obvious bruise of her left
22 cheek. See all this red discoloration, huge patch here,
23 extends up into the temporal. We have this brownish area,
24 these are abrasions. They're dry.

25 So we have a combined effort and this suggests some

178

1 kind of abrasion or sliding over here. It may have been
2 due to some fabric she had been lying on?

3 Anyway we have some bruising here, discoloration.
4 We don't see -- we don't see that little stab wound to the
5 neck. That's possibly back here?

6 We do see several of the stab wounds in front of
7 the neck and just barely you can see this abrasion, scrap
8 of the chin. I think that's pretty much what we have
9 here.

10 Q. It's your testimony, Doctor, that the same
11 object, whether it be a fist or some other blunt object
12 could have caused the abrasions as well as the bruises
13 that we see here?

14 A. Yes, definitely.

15 Q. Let me put another -- for the record we're
16 looking in this photo of the left side of victim's face.

17 A. Right.

18 Q. We'll put Exhibit No. 38, on the screen now.
19 Still the left side but a little further down the neck is
20 visible?

21 A. It's essentially upside down. Here we have
22 the left ear. Somebody holding a ruler. And the ruler
23 here is for photographic purposes. The scale is metric.
24 You have one centimeter intervals. One centimeter being
25 almost exactly two inches. And here is the little stab

179

1 wound to the neck, half a centimeter long, perhaps.

2 This one went inside and really didn't do
3 a lot of damage.

4 Q. Showing you what is marked as Exhibit No.
5 39. This is the left forehead area.

6 A. Yes, yes. Mainly the scraping injuries.
7 This is the deepest wound that we had. Again there's
8 scattered scrapes and bruising. You see the bruise -- big
9 bruise on the forehead in this picture.

10 Q. You say a fist is capable of causing that
11 type of abrasion?

12 A. It can happen. It's kind of surprising to
13 see one this deep, but not impossible.

14 Q. Going over to the other side now. The right
15 side of the face, Exhibit No. 42, on the screen. What are
16 we seeing in this one, Doctor?

17 A. Here we have the right side of the face.
18 The right ear. I think I mentioned earlier a lot of
19 bruising of this right ear. It's red. It's a little
20 puffy. We have combined scraping, abrasions and bruising
21 here going around the angle of the jaw.

22 You can see some of the other stab wounds of the
23 neck. A little bruise down here. Here are the two in the
24 chest. This is the one that just hit the breastbone and
25 didn't do anything serious. This is the one that went in

180

1 and nicked the left lung.

2 Q. We have a view now in Exhibit 40, looking up
3 toward the face and chest area.

4 A. Here we are looking upward at the face.
5 This is a big abrasion of the chin. The other areas of
6 damage on the skin. And here we have several of these
7 wounds of the neck. Four here. Two here. One here.

8 I think we have some over here. We don't see the
9 one -- we've got the one that got the left lung. That's
10 the best picture we have of the injury to the front of the
11 neck.

12 Q. The abrasion underneath the chin, that's
13 something that could be caused by a fist is your
14 testimony?

15 A. Quite possible. The skin at this point is
16 fairly thin. There's not a lot of padding under here at
17 this point of the chin, so that can't get compressed
18 between striking an object and the bone very well.

19 Q. Then the exhibit marked No. 46, a view of
20 the abdomen area?

21 A. Yes.

22 Q. What are we seeing in this one, Doctor?

23 A. Here we have the navel. It doesn't show
24 really well. This is the stab wound right next to it.
25 This is the one that went into the abdominal cavity I

181

1 mentioned earlier, but did not produce any major injury.

2 Q. What sort of pain would be associated with
3 an injury like that?

4 A. I don't know. A really sharp knife very
5 rapidly used doesn't produce enormous amounts of pain, not
6 like if it was slowly applied. But a quick stab, yes,
7 you'd know it. It would hurt a little bit. You wouldn't
8 think of it as a monumental life threatening thing. You'd
9 know it happened, yes.

10 Q. But if you were a medical person -- if you
11 weren't a medical person, you might think that was more
12 fatal?

13 A. Sure, you'd worry about it.

14 Q. Exhibit No. 47, on the screen now, the one
15 of the groin area.

16 A. Yeah. Here's the right groin area here.
17 Here is the stab wound.

18 Q. That doesn't reflect the shape of the knife,
19 it's been stretched a little?

20 A. Not necessarily. Because basically the
21 knife blade produces a slit, like you saw in the neck.
22 Initially we have the same thing, yet, the body is flat
23 and the tissue plains have been severed, they're going to
24 fall apart.

25 Q. Marked now as Exhibit No. 48, looking at the

182

1 knee area.

2 A. The left knee, a little scrape here, a scar
3 here.

4 Q. That's an older scar?

5 A. Pardon me.

6 Q. Older scar?

7 A. For quite awhile. A little discoloration.

8 I'm not sure what that is. This is, I think, the only
9 significant thing, that's a very small thing.

10 Q. What would cause a scrap like that?

11 A. Again, bumping into anything. Dropping to
12 the floor.

13 Q. So if you fell down, your knee could rub
14 against the surface?

15 A. Yes.

16 Q. Exhibit No. 44, now, looking at, I think,
17 the right elbow area. See that?

18 A. Yes.

19 Q. What are we seeing there?

20 A. A little abrasion here. A little reaction
21 around it. Not much color change, small scrap, fairly
22 deep. Probably close to the time of death.

23 Q. What would cause that kind of a scrap?

24 A. Almost any solid object. You think it might
25 perhaps have a corner to it, like you have right here. If

183

1 you hit that hard enough it can produce a thing like
2 that.

3 Q. If a person were falling down and their arm
4 contacted a harder object it could cause that?

5 A. Possibly.

6 Q. I would like to show you Exhibit 43, the
7 upper right arm area of Debbie Panos. What is visible in
8 this. What can we see?

9 A. The upper arm, here's a big red bruise and a
10 smaller one. Little big ones around these. I think this
11 is very significant. This is a pretty good size bruise
12 here. We're looking at two-and-a-half, maybe three inches
13 across.

14 Q. Once again same type of mechanism a fist or
15 blunt object?

16 A. Some kind of blunt trauma.

17 Q. Number 45 now. We're looking at the right
18 wrist and arm.

19 A. Okay. Primary thing here is the right hand
20 has a red, purple bruising. Scattered small bruises.
21 Pretty good size one here on the right wrist. A little
22 over here toward the medial aspect of the wrist. This is
23 the primary thing you're looking at. So you definitely do
24 have a fair amount of bruising on this right hand and
25 wrist.

184

1 Q. As a pathologist with many years of
2 experience, this type of injury holds a special
3 significance or interest for you?

4 A. In a case like this where there has been an
5 assault on a victim we think of these as possible injuries
6 incurred in some kind of defensive action. Sometimes they
7 obviously are, sometimes they're not so clear. But this
8 is the kind of a thing we would expect a person holds up
9 an arm and gets struck.

10 Q. Trying to protect their body from other
11 injuries?

12 A. Yes.

13 Q. So the bruise ends up on their hand or
14 arm?

15 A. It's a fairly common pattern. I think the
16 chances are very good that this can be classified as a
17 defensive injury.

18 Q. All right. Now, I'll put the last photo up
19 here, Doctor. Exhibit No. 41, which is an over all view
20 of the major knife wounds, is that correct?

21 A. Yes. We have the right upper body. You can
22 see a fair number of these head wounds, at least seven.

23 Q. Okay. With the court's permission I want to
24 open the contents of Exhibit No. 68.

25 THE COURT: Okay.

185

1 BY MR. OWENS:

2 Q. I'm showing you number 68. And, Doctor,
3 you're are welcomed to grab that. This being the knife
4 recovered from the scene near the victim. If you take a
5 look at that item, is that item consistent with the wounds
6 that we're seeing in the photographs you testified to?

7 A. It could have been caused by this or any
8 similar object. We have a very slender blade. It's
9 entirely consistent with an instrument like this.

10 Q. When you look at this particular knife it
11 appears like the blade has been bent a little bit?

12 A. It has.

13 Q. You know what caused that bending?

14 A. No.

15 Q. You don't know how that could have
16 happened?

17 A. No, because we don't know whether it
18 happened at the time of death or a year before.

19 Q. Okay. In your experience it's not unusual
20 to see knife blades being bent sometimes in attacks on
21 people?

22 A. I'll pass on that. Most of the time we
23 don't see the knife at all.

24 Q. You don't recover it?

25 A. No, that's a police job.

186

1 Q. All right. You talked about how the victim
2 would lose blood rapidly and lose consciousness. I think
3 you said within 14 or 15 seconds in your opinion?

4 A. Within that time frame, with at least one,
5 if not both, carotid arteries being cut, yes.

6 Q. You said there would be blood that would get
7 into the windpipe and trachea?

8 A. Yes. From at least two of the wounds.

9 Q. What type of death would that be for the
10 victim?

11 A. Very quick.

12 Q. So you think the death would occur in about
13 14 or 15 seconds time or consciousness?

14 A. Consciousness would, yes.

15 Q. And during that 14 or 15 seconds the person
16 would be aware?

17 A. Certainly be aware of a very unpleasant
18 situation, but whether they're not aware that it's life
19 threatening, we don't really know because we don't know
20 the sequence of these injuries. I'm sure it would be a
21 fearful thing.

22 Q. So they would be aware of the nature of the
23 injuries?

24 A. Yes.

25 Q. That it's life threatening?

187

1 A. Yes.

2 Q. How would they be able -- would they be able
3 to breathe, what would they be going through in those last
4 few seconds?

5 A. As the pressure falls off the brain starts
6 to lose oxygen, lose the ability to -- lose the ability to
7 defend ourselves.

8 Q. At that point in time just before that, she
9 would have been aspirating some blood?

10 A. Yes.

11 Q. She would have had difficulty breathing?

12 A. Yes.

13 Q. She would have lost consciousness a few
14 seconds later?

15 A. Yes. It would all happen in very, very
16 rapid sequence.

17 Q. All right.

18 MR. OWENS: Thank you, Doctor. Go ahead
19 and have a seat again.

20 That's all I have, your Honor.

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

22 MR. Schieck: Thank you, your Honor.

23 CROSS-EXAMINATION

24 BY MR. SCHIECK:

25 Q. Dr. Green, when you performed this autopsy,

188

1 did you have the opportunity to observe the clothing that
2 was on the individual?

3 A. What?

4 Q. Clothing?

5 A. Sorry, I've got a hearing problem.

6 Q. Which side is better. Is over here
7 better?

8 A. Yes.

9 Q. When you observed the body, were you able to
10 determine whether or not she was wearing clothes?

11 A. I don't recall. The normal way of handling
12 a homicide case or one that's potentially a homicide, we
13 have the people from the crime lab there first. They
14 recover any and all evidence, including clothing. I don't
15 often see the body until after everything has been
16 removed.

17 I talk to the people. They tell me about what they
18 found. But if it's evidence that's impounded and the
19 fewer people that touch it the better.

20 Q. It's not your job to impound the clothing?

21 A. No. Not in a case like this.

22 Q. It's not your job to inspect the clothing
23 for any evidence that may be on the clothing?

24 A. If there is something that the crime lab
25 people think I ought to see or want to ask something

189

1 about, I will, yes. I don't always.

2 Q. Did you do it in this case?

3 A. I have no idea.

4 MR. SCHIECK: Nothing else, your Honor.

5 Thank you.

6 THE COURT: Mr. Owens.

7 MR. OWENS: No further questions.

8 THE COURT: Hold on a second Dr. Green.
9 Counsel approach.

10 (Discussion held at the bench.)

11 THE COURT: Let me ask a couple of
12 questions, if I could, please, Dr. Green.

13 Could any of the bruising or abrasions
14 come from being kicked?

15 THE WITNESS: If the individual doing the
16 kicking had hard shoes on, I would say no. It's very
17 unlikely. We don't see anything that looks like a boot
18 print. If they didn't, if they had moccasins, soft shoes
19 of some kind that doesn't have a hard sole or heel,
20 maybe.

21 THE COURT: Thank you. Also, judging by
22 the injuries to the head and the temple area, would she --
23 meaning the victim -- most likely be unconscious at the
24 time of the stabbing or not?

25 THE WITNESS: I don't think we can say yes

190

1 or no. Possibility is there. I would think rather
2 doubtful.

3 THE COURT: Rather doubtful --

4 THE WITNESS: I don't think she would
5 have, but I can say positively one way or the other.

6 THE COURT: You don't think she would have
7 been unconscious?

8 THE WITNESS: That's correct, sir.

9 THE COURT: Mr. Owens, do you have any
10 questions based on mine?

11 MR. OWENS: No, your Honor.

12 We move for the admission of Exhibit

13 135.

14 THE COURT: Any objection to 135.

15 MR. SCHIECK: No, your Honor.

16 THE COURT: 135 will be admitted, Mr.
17 Schieck, do you have any questions?

18 MR. SCHIECK: Just on the unconsciousness.

19 Did you see any subdural or subarachnoid bleeding associated
20 with the trauma.

21 THE WITNESS: No. There was no evidence

22 of injury to the brain.

23 MR. SCHIECK: And no evidence of skull

24 fracture or any other injuries to the structure of the
25 skull.

191

1 THE WITNESS: No. None whatever.

2 MR. SCHIECK: No further questions.

3 THE COURT: Mr. Owens.

4 MR. OWENS: Nothing further, your Honor.

5 THE COURT: Dr. Green, thank you for your
6 time, sir. You're excused.

7 THE WITNESS: Thank you, sir.

8 THE COURT: The State may call its next
9 witness.

10 MR. OWENS: Your Honor, earlier in the
11 case we read some testimony. We were unable to locate Mr.
12 Mike Bolland. Later that day he -- we got a call from him
13 so he's available.

14 We would like to call him for a few brief
15 questions with regard to impact.

16 THE COURT: All right.

17 MR. SCHIECK: At this time we need to
18 preserve our objection to that testimony based on previous
19 discussions.

20 THE COURT: I'll note that for the
21 record.

22 THE CLERK: You do solemnly swear the
23 testimony you are about to give in this action, shall be
24 the truth, the whole truth, and nothing but the truth so
25 help you God.

192

1 THE WITNESS: I do.
2 THE CLERK: State and spell your name for
3 the record.

4 THE WITNESS: Mike Pollard,
5 P-O-L-L-A-R-D.

6 DIRECT EXAMINATION

7 BY MR. OWENS:

8 Q. You don't live in the Las Vegas area
9 anymore?

10 A. No, sir.

11 Q. You were living here back in 1994, '95?

12 A. Yes, sir.

13 Q. What did you do here?

14 A. I worked for G.E. Capital.

15 Q. You worked with Debra Pollard?

16 A. Yes, I did.

17 THE COURT: Debra Panos.

18 THE WITNESS: Yes.

19 BY MR. OWENS:

20 Q. And some other individuals, you were all
21 friends together?

22 A. Yes.

23 Q. Who was in your group have of friends
24 there?

25 A. Me, Debra, Lisa -- quite a few of us.

193

1 Q. Did you have a chance to review your
2 testimony in this case from about ten years ago?

3 A. Yes, I went over it.

4 Q. And is that a true and accurate testimony
5 about what you recall and what happened in this case?

6 A. Yes, it is.

7 Q. We were unable to get ahold of you last
8 week. You heard about us through Lisa?

9 A. Her mother. Her mother contact my mother.

10 Q. And you just came over?

11 A. Came down for this.

12 Q. What I would like to ask you about is how
13 you heard about the death of Debra Panos, and its affect
14 on your life. She had been at your house on the couch?

15 A. Right.

16 Q. And you wanted her to wait?

17 A. Right.

18 Q. When you came back out she had already
19 gone?

20 A. She left.

21 Q. How did you hear about her death?

22 A. Lisa called me on the phone and told me that
23 she had found Debra's body.

24 Q. Lisa Duran?

25 A. Yes.

194

1 Q. How did you feel at that point?

2 A. Well, at first I felt -- I didn't want to
3 believe it at first. Then I felt saddened. Especially
4 for Debra and her kids. They had to grow up without a
5 mother.

6 Then I got angry because I already knew who had
7 done it, probably. And then I felt like pain, like in my
8 chest. I kind of felt like my heart hurt, you know what I
9 mean. Sort of like -- I can't explain it.

10 Q. What kind of person was Debra Panos?

11 A. She was a very sweet person. She was a
12 person who loved her children. She was outgoing. She was
13 very, very friendly. Just a good person.

14 Q. How long did your relationship with her
15 last?

16 A. Well, I met her about a year -- I guess it
17 was close to two years. Because I met her at a training
18 course for G.E. and we became friends from then on.

19 Q. What kind of relationship did you have with
20 her, what kind of friendship was it?

21 A. She would pick me up and we'd go to work
22 together, like a carpool sort of thing. Like on weekends,
23 Friday, when we finished work, I'd baby sit the kids for
24 her. That kind of thing.

25 Q. In the days and weeks following her death,

195

1 how did you deal with the loss?

2 A. Well, I had -- I wound up quitting my job
3 because my concentration was gone. I couldn't look over
4 there and see her computer and desk empty. I couldn't
5 concentrate. My productivity went down. I was forced to
6 give that up. I just -- I moved out of Nevada.

7 Q. And you haven't -- you've stayed out of
8 state since that time?

9 A. Yes.

10 Q. It's been ten years since you testified in
11 this case?

12 A. Yes.

13 Q. Has her death left an impression or impact
14 on your life?

15 A. I still -- she creeps back in my mind, you
16 know, time to time. I still see her in happier moments.
17 I don't see -- I don't see I don't see, you know, I can't
18 see anything bad, I mean.

19 Q. You said that you had a lot of anger back
20 then. Has that gotten better as the years have gone by?

21 A. A little bit. A little bit, yeah. Because I
22 couldn't help but think if she would have waited for me, I
23 might have been able to save her. She just didn't wait
24 for me.

25 MR. OWENS: I don't have anything

196

1 further.

2 THE COURT: Thank you. Mr. Schleck,
3 Mr. Patrick.

4 MR. PATRICK: Thank you, your Honor.

5 CROSS-EXAMINATION

6 BY MR. PATRICK:

7 Q. Good afternoon, Mr. Rollard.

8 A. Good afternoon.

9 Q. You met Debra when you both worked at G.E.

10 Capital?

11 A. Yes.

12 Q. You became friends. Had a group of friends.

13 A. Yes.

14 Q. I believe in some of your previous testimony
15 you described your and Debbie's relationship as
16 inseparable?

17 A. Yeah, we were. We pretty much -- well, ever
18 since we started car pooling we pretty much did everything
19 together. Go help her grocery stopping. She'd help me.
20 She had a car, I didn't at the time.

21 Q. And I believe you said that Debra would
22 actually spend the night at your house?

23 A. Not her, but the children. Yeah, she did
24 too on occasion. But that was when it was so late at night
25 she didn't want to wake the kids up to take them home.

197

1 Q. Now, Mr. Owens asked you about the day
2 Debbie died and when she was on the couch?

3 A. Right.

4 Q. What were you doing when she was on the
5 couch?

6 A. Well, I got out of the shower. I was in the
7 shower. I opened the shower when she knocked on the door.
8 When she walked in I told her, let me finish all right.
9 She was, like, you got your feet tucked up --

10 Q. You were in the shower?

11 A. When she first arrived.

12 Q. Then you went back in the shower, and when
13 you came out she was gone?

14 A. She was gone.

15 MR. PATRICK: That's all I have, your
16 Honor.

17 THE COURT: Mr. Owens,

18 REDIRECT EXAMINATION

19 BY MR. OWENS:

20 Q. Your relationship with Debbie was not a
21 romantic kind of relationship?

22 A. No, sir.

23 Q. Just friends?

24 A. Yes, sir.

25 MR. OWENS: Nothing further.

198

1 THE COURT: Nothing from the jurors.

2 Thank you for your time. You are excused.

3 THE WITNESS: Thank you.

4 THE COURT: The State may call their next
5 witness.

6 MR. OWENS: Could we take a ten minute
7 break before we get to our last witness.

8 THE COURT: Sure.

9 We'll take a short recess.

10 JURY ADMONITION

11 During the recess, ladies and gentlemen,
12 you are admonished not to converse among yourselves or
13 with anyone else, including, without limitation, the
14 lawyers, parties and witnesses, on any subject connected
15 with this trial, or any other case referred to during it,
16 or read, watch, or listen to any report of or commentary
17 on the trial, or any person connected with this trial, or
18 any such other case by any medium of information
19 including, without limitation, newspapers, television,
20 internet or radio.

21 You are further admonished not to form or
22 express any opinion on any subject connected with this
23 trial until the case is finally submitted to you.

24 We'll be in recess for ten minutes.

25 (Jury escorted out of the courtroom.)

199

1 THE COURT: Let me go ahead and admonish
2 M. Chappell before we move to the defense case shortly.

3 We'll be on the record in C-131341, State
4 of Nevada versus James Chappell.

5 The record will reflect the presence of
6 Mr. Chappell, with his attorneys, the State's attorneys
7 are present. We're outside the presence of the jury.

8 Let me just inform you of a couple of
9 things, if I could, Mr. Chappell. You understand that
10 under the constitution of the United States and the
11 constitution of the State of Nevada, you cannot be
12 compelled to testify in this case. Do you understand
13 that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: You may, at your own request,
16 give up this right and take the witness stand and testify.
17 If you do you will be subject to cross-examination by the
18 deputy district attorneys and anything you may say, be it
19 on direct or cross-examination, will be the subject of
20 fair comment when the deputy district attorneys speak to
21 the jury in their final arguments.

22 Do you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: If you choose not to testify,
25 the court will not permit the deputy district attorneys to

200

1 make any comments to the jury because you have not
2 testified. Do you understand that?
3 THE DEFENDANT: Yes.
4 THE COURT: If you elect not to testify,
5 the court will instruct the jury, but only if your
6 attorneys specifically request, that the law does not
7 compel a defendant in a criminal case to take the stand
8 and testify and no presumption may be raised and no
9 inference of any kind may be drawn from the failure of a
10 defendant to testify.

11 Do you have any question about that?
12 THE DEFENDANT: No.
13 THE COURT: I also need to tell you that
14 if you choose to make a statement of allocution, you have
15 that right, which is an unsworn statement that you may
16 give to the jury. The State cannot discuss the facts or
17 circumstances relating to guilt or any exculpatory
18 evidence.

19 Do you understand that?
20 THE DEFENDANT: Yes.
21 THE COURT: You can express your remorse
22 or pleas for leniency and your plans or hopes for the
23 future in this brief unsworn statement. That statement is
24 subject to my supervision, though, do you understand that?
25 THE DEFENDANT: Yes.

201

1 THE COURT: If you go beyond the
2 boundaries of what is permitted in that unsworn statement,
3 I can subject you to some type of corrective action, which
4 could include limiting your statement or cutting it off,
5 or opening up your statement to cross-examination by the
6 deputy district attorney.

7 Do you understand that?
8 THE DEFENDANT: Yes.
9 THE COURT: You have discussed these
10 issues with your attorneys?

11 THE DEFENDANT: Yes.
12 THE COURT: The decision as to whether to
13 testify and/or give an unsworn statement of allocution,
14 I'll leave up to you and your attorneys, based on a
15 discussion you all have.

16 THE WITNESS: Thank you.
17 THE COURT: Thank you for your time.
18 Anybody have anything else out the
19 presence.

20 MS. MEUKERLY: No, your Honor.
21 THE COURT: Back on the record in
22 C-131341, State of Nevada versus James Chappell. The
23 record will reflect the presence of Mr. Chappell, with his
24 attorneys, the State's attorneys, and the presence of our
25 jury.

202

1 We'll continue with the State's case in
2 chief. The State may call their next witness.
3 MR. OWENS: We'll call Carol Monson.
4 THE CLERK: You do solemnly swear the
5 testimony you about to give in this action, shall be the
6 truth, the whole truth, and nothing but the truth, so help
7 you God.
8 THE WITNESS: I do.
9 THE CLERK: Be seated. State and spell
10 your name for the record.
11 THE WITNESS: Carol Monson, M-O-N-S-O-N.
12 DIRECT EXAMINATION

13 BY MR. OWENS:
14 Q. You live in Arizona?
15 A. Yes, I do.
16 Q. You have been sitting and listening to large
17 part of this trial?
18 A. Yes, I have.
19 Q. Did you sit through a lot of the trial they
20 held ten years ago?
21 A. Yes, I did.
22 Q. And in fact that you testified in the prior
23 trial on one occasion?
24 A. Yes, I did.
25 Q. How are you related to Debra Panos?

203

1 A. I'm her aunt. Her mother is my sister.
2 Q. Her mother's name is?
3 A. Norma Penfield.
4 Q. Norma has been sitting with you throughout
5 the proceedings the last few days?
6 A. Yes.
7 Q. Would you take a moment and describe what
8 kind of relationship you had with Debbie?
9 A. Debbie was an only child of my sister. And
10 we were very family oriented, very close-knit family.
11 Debbie was like a sixth child of my other sister
12 who had five children of her own. Kids did everything
13 together. It was just -- she was like one of anyone elses
14 family, no matter what we did, we were altogether. We
15 always did everything together.

16 So it was, even though she was an only child, it
17 was just like growing up with having nine, ten kids in one
18 family.

19 We had a lot of family get-togethers. Debbie loved
20 having family get-togethers. She was just a sweet person
21 and a very giving person, just generous. She would think
22 of someone else before she would think of herself. She
23 was just a kind little gal.

24 Q. Can you give us some examples of that, how
25 she was giving to other people?

204

1 A. Oh, she would -- there was times when she
2 would, if she knew someone else in the family needed some
3 help, if there was anything she could do, she was always
4 there. She would always offer herself in order to help.

5 It didn't matter what it was, she went out of her
6 way to help someone. And it wasn't just the family, it
7 was friends at school. She helped in one of the other --
8 one of her cousins in tutoring and helping them with math
9 because she was a very gifted gal. Schooling became very
10 easy for her. And she was very bright. And she shared
11 that gift with her cousin at times when they needed
12 help.

13 Q. She was a compassionate person?

14 A. Sorry.

15 Q. A compassionate person?

16 A. Yes, she was, very.

17 Q. How so?

18 A. She had lived with her -- she lived
19 with -- her grandmother lived with her mom and her step
20 father, and there was something about Debbie that she had
21 a love for watching elderly people and someone a lot older
22 than her. She could see an elderly couple on the street
23 and maybe they're walking hand in hand, and she would make
24 a remark and she just thought that was so cute. And she
25 loved her grandmother. She would go up and pinch her on

205

1 the cheek.

2 Q. Take your time.

3 A. She'd say, grandma you're so cute. She just
4 had a kind heart where she would have no problem putting
5 someone else before her.

6 Q. What were Debbie's favorite things?

7 A. Sorry.

8 Q. What were Debbie's favorite things?

9 A. Her favorite things. Debbie loved to
10 collect clowns of all kinds. She had a -- we'd buy her --
11 we knew that so we would try and buy her, when we were
12 someplace special, or whatever, if we seen a clown, some
13 little knickknack, she loved collecting clowns. We tried
14 to build her a collection of clowns.

15 There were some reason -- for some reason she
16 didn't have them all when she died, but we were able to
17 retrieve a few of them, which we kept to pass on to keep
18 for her children, if they wish to keep them.

19 Q. Some things that are boxed away for the
20 children?

21 A. Yes. Yes, a long with other things that
22 were hers. I had bought her a pink -- pink was one of her
23 favorite colors -- I bought her a pink pearl necklace and
24 earrings that went with her pink suit that we laid away.
25 I said I would buy it and put it on her and kept it for

206

1 her daughter Chantella later in life.

2 Q. How did you find out about Debbie's death?

3 A. I was coming home from work one day and we
4 have a five-foot high fence around our home that's gated.
5 And you have to get out of your vehicle and open the gate
6 and manually, it's not automatic, before you can pull into
7 the garage. And I got out and opened the gate, and I
8 wondered why my husband was in the garage and he came out
9 and he just started yelling, don't close the gate, we have
10 to leave. And he was just as white as a ghost.

11 And he didn't say anything. I said what's the
12 matter. And he said Norma had called and said Debbie was
13 dead.

14 I said no. You must have heard her wrong. There
15 has to be a mistake. He said, no, I don't think so. We
16 have to go to Norma's right away.

17 So we jumped back in the car and went to my sisters
18 And she was in hysterics. And I tried to get as much
19 information from her as I could to find out what happened
20 and she said someone from Las Vegas called, and I believe
21 at first she said it was a neighbor of Debbie's told her
22 that Debbie had been shot. I said, no, you must have
23 misunderstood. That can't be right.

24 So I called Debbie's house number and an officer
25 answered the phone. And I explained who I was, that we

207

1 were trying -- we were at Debbie's mother's house and
2 about the phone call she had, and said we're trying to --
3 I'm trying to find out what's going on, what's happened.

4 And he said, well, I'm sorry you had to hear it
5 that way -- she had to hear it that way from the neighbor,
6 but he said, no, she wasn't shot, but she has been
7 murdered.

8 I did not go into any details, because I had -- I
9 had to give the phone to my husband and he talked to the
10 officer. And from then it was just like a nightmare, just
11 something you don't ever expect to happen.

12 Q. What sort of things did you have to do over
13 the next few days?

14 A. The first thing we had to do was come pick
15 up the children. Find out where they were at. We did
16 find out through telephone conversations with the police
17 department that they were being taken care of in the care
18 of the state. But at that time they still hadn't
19 apprehended the person that killed her. So we had fear
20 that this person would be on their way to Tucson, until
21 later on when we were notified that they had apprehended
22 him.

23 So it was just getting our belongings together, at
24 first, to come and pick up the children. My sister had to
25 go to court to secure legal guardianship so we could take

208

1 then back to Tucson. And from their it was making funeral
2 arrangements to take Debbie to Michigan to be buried
3 beside her grandfather, her uncle, and her step father.

4 Q. That was back in Lansing?

5 A. Yes.

6 Q. Did you have a service for her?

7 A. Yes, we did.

8 Q. Where was that held?

9 A. It was very sad, of course, because she's so
10 young. And it was so hard and still is to believe that we
11 lost her. It was very, very heart breaking.

12 Q. Who was it that made the arrangements and
13 made all of these things happen in those days right after
14 her death?

15 A. I helped my sister make them.

16 Q. How did your sister seem to be dealing with
17 it?

18 A. Sorry.

19 Q. How did your sister seem to be dealing with
20 it?

21 A. She didn't at first. And I say that only
22 because she had just lost her husband two years before
23 that, and she had just spent those -- almost two whole
24 years keeping herself closed up in her own home. She
25 wouldn't even open a drupe to let in the light. She was

1 would do all of the driving, so there was a few years

2 before his death that she didn't do any driving at all,

3 because she just become so dependant on him doing the

4 driving. And she still is that way to this day. She can

5 drive some, but she's just very, very nervous and will not
6 do it. So we had to be her wheels.

7 Q. You have been very actively involved in the
8 raising of the children?

9 A. Yes.

10 Q. Now, when you testified ten years ago, there
11 were a couple of family members that didn't feel like they
12 would be able to come here and testify, why was that?

13 A. I'm sorry.

14 Q. Why was that?

15 A. I'm sorry. I didn't hear what you said
16 before.

17 Q. There were a couple of family members you
18 talked about that weren't able to come. Why weren't they
19 able to come?

20 A. They had families of their own. My sister
21 would have come, but she had her oldest son who was in a
22 semi-coma since he had been 18 years old in a bad car
23 incident, which required 24-hour care. And she won't fly.
24 You would not get her on an airplane.

25 Her daughter also had family obligations and young
211

1 just so lost without Dale. And she no more -- was
2 getting -- finally getting over grieving from his loss,
3 that she lost her child.

4 There's no way you can describe that. There's no
5 way I can imagine what she felt like inside, as close as
6 we are. I just cannot imagine.

7 Q. Did you feel that you needed to be the
8 strong one to help her?

9 A. You bet I did. Yes.

10 Q. What was the impact of Debbie's death on
11 your husband and other family members?

12 A. Well, a lot of the family lives -- most of
13 her cousins and our family live in Michigan. We still
14 have some in Pennsylvania where we were born and raised.
15 She had an uncle in Virginia. Our impact on my husband
16 and I was just like we had no -- from that time on, we
17 couldn't just think of the two of us as a marriage, or as
18 a couple to do what we wanted to do. Not that we regret
19 or ever would helping her in any way we could, but it took
20 a toll on our marriage too, because of the time involved,
21 that we also had to provide to her and to the children in
22 order to give them a decent up bringing.

23 She drove very little. She was in a couple of bad
24 car accidents, and it left her just scared to death to
25 drive a lot. And her husband, Dale, would just -- he

1 children of her own that she was unable to come out. So
2 we just asked them to make -- if they would just make
3 statements.

4 Q. Were they close to Debbie?

5 A. Absolutely. That was the family that my
6 sister had five children of her own and Debbie grow up
7 with those five children as though she was the sixth.

8 Q. What's the sister's name?

9 A. Doris Weskowski.

10 Q. So you read a couple of letters in last
11 time?

12 A. Yes.

13 MR. OWENS: Your Honor for the record, I
14 think those were marked as exhibits 91 and 92. With the
15 permission of the court, I would like to approach the
16 witness.

17 THE COURT: Yeah. Counsel approach the
18 bench real quick, please.

19 (Discussion held at the bench.)

20 MR. OWENS: I put before you exhibits from
21 the last hearing, Exhibits 91 and 92.

22 BY MR. OWENS:

23 Q. Are these the letters you read into the
24 proceeding ten years ago?

25 A. Yes, they are.

1 MR. OWENS: And with the court's
2 permission, I'd like to have her go ahead and read those
3 two into the record again.

4 THE COURT: Okay.

5 BY MR. OWENS:

6 Q. Why don't we start with Exhibit 91. This is
7 Christina Reese?

8 A. Right.

9 Q. Would you like some water?

10 A. Yes, please.

11 Q. Go ahead. Take your time, if you need to.

12 But read Christina's letter.

13 A. "There's hardly a day that goes by that I
14 don't think about Deb. It has been just over a year now,
15 but it seems like yesterday. My name is Christina
16 Waskowski-Reese, and I'm Debbie's cousin. We lived only
17 two blocks from each other most of our lives. We were
18 more like sisters than cousins. We did so many things
19 together. We went shopping together, movies, I even
20 remember teaching Deb how to drive. Debbie was my made of
21 honor at my wedding, and even after my marriage Deb still
22 did things with me and my children. We went on a lot of
23 trips together like Cedar Point. Deb just always liked to
24 do things. She was wonderful with my older girls, and
25 they loved her very much."

213

1 "Debbie enjoyed big family get-togethers
2 and having lots of people around. She was very much a
3 people person. I don't think I have ever met anyone that
4 did not like her. She still has good friends from school
5 and many of the places that she worked. She made friends
6 easily and kept them. There is so much to say about Deb,
7 that I can't sum it up in a letter."

8 "I hope that this helps in some way to
9 let you know how much Deb was loved and will be missed.
10 It's a shame that her children will never know the
11 wonderful person I had."

12 "Enclosed are some photos of Deb with our
13 family. On the back are descriptions and dates. If at all
14 possible, please return these to me when you're finished,
15 as these are my memories of Debbie."

16 "Thank you. Christina Reese, 1707 South
17 Hollie Way, Lansing, Michigan."

18 Q. The next letter is Exhibit No. 92, from the
19 last hearing, and this is Mrs. Doris Waskowski.

20 A. "My name is Doris Waskowski. Debbie's aunt
21 from Lansing, Michigan. I have five children of my own
22 and Debbie was especially close to my daughter Jenna"

23 "Debbie touched everyone's heart when you were
24 with her. I start to cry when I see a young woman with
25 her children on the street, or in the mall, because I

214

1 think of Debbie being with her children. There is so much
2 to tell about her, but it's hard to write it down on
3 paper. She was only 26 years young when her life was
4 taken from her. She had such a beautiful smile. Debbie
5 was an active girl, always doing something or wanting to
6 go somewhere. She would do anything you asked her to do.
7 She had many, many friends at school and at work. She
8 loved to talk, which with what she did so well in her 911
9 job."

10 "She talked many young girls out of committing
11 suicide. She would come home and tell mom all about, and
12 her mom would be so proud of her. Debbie loved helping
13 others. It came natural to her."

14 "Here in Michigan we lived around the corner from
15 each other. Deb and I were very close. She was a very
16 good student in school. She loved to bake cookies, and
17 she could clean house better than I."

18 "Debbie loved birthday parties, dinners, anything
19 that would bring the family together. Debbie had three
20 beautiful children. She loved them so much. One time I
21 remember her holding down three jobs at one time just to
22 make ends meet. I heard about Debbie's troubles through
23 her mom. I tried to talk to Deb about James, but deep
24 down in my heart I know she was just so scared. She is at
25 peace now, no more beatings from him."

215

1 "I miss Debbie very much and treasure my memories
2 of her. Mrs. Doris Waskowski, 1920 Bayton Place, Lansing
3 Michigan."

4 Q. In preparation for coming to Las Vegas for
5 this hearing the State asked you to see if you could get
6 an up dated letter from your sister and your niece?

7 A. Yes.

8 Q. Did you bring that with you?

9 A. Yes, I did.

10 MR. OWENS: Your Honor, for the record
11 that would probably be marked 136. It's the next --

12 THE COURT: We'll mark it next in order.

13 THE CLERK: 137.

14 MR. OWENS: Okay.

15 THE COURT: All right.

16 MR. OWENS: We'll have her go ahead and
17 read that. This is the letter from Christina Reese and
18 Doris Waskowski. The letter is together, and they both
19 signed it. Go ahead.

20 THE WITNESS: "When we think of Debbie we
21 smile, then we cry at our loss. The tragedy of her death
22 remains with us even after ten years. When we visit the
23 cemetery to place flowers on her grave and see her grave
24 marker the stark reality of her death comes rushing back."

25 "The loss of a loved one is never easy no

216

1 matter what the age, but when it's under such senseless
2 circumstances, makes it even more difficult."

3 "When we remember Debbie we remember
4 loving and caring person. She was someone who embraced
5 life with such enthusiasm. She had an adventurous spirit.
6 We will always remember her love of family. Family
7 get-togethers were one of her favorite things, whether it
8 was Christmas or birthdays, or just a summer cook out. We
9 had a large family, five children, Debbie was like the
10 sixth. She would to church with us, on family camping
11 trips, et cetera. It just seemed like she was always
12 there."

13 "Although many things after changed in our
14 family in the 4,202 days since Debbie's been gone, one
15 thing that is not, is that we love and miss her very
16 much."

17 "Christina Reese, cousin; Doris Maskowski,
18 aunt."

19 BY MR. OWENS:

20 Q. Thank you. Now when you were asked to and
21 express your feelings this time about the impact Debbie's
22 death has had in your life, you thought it might be
23 helpful if you wrote down some of your ideas. Do you have
24 a copy of that with you?

25 A. Yes.

217

1 Q. Would you like to read that at this time?

2 A. Yes. "My name the Caroline Monson, and I
3 work and reside in Tucson, Arizona. I'm providing this
4 statement on behalf of Debra Baros, who was my niece."

5 "Our family was large and consisted of many
6 close-knit relatives. Debbie was the only child of my
7 sister Norma. There were always family get-togethers
8 There were always family gatherings for birthdays,
9 holidays, or just-because events. Debbie loved to having
10 family get-togethers, and even though she was an only
11 child she was never alone in life. In fact, she was like
12 the sixth child of my sister Doris and her husband John,
13 whom had five children of their own."

14 "All of the kids grew up together and were very
15 close to each other. Debbie was a fine young lady who was
16 very bright and excelled in her school years. Learning
17 came easy for her. She loved to collect clowns of all
18 sorts. I think of Debbie any time I see one. We saved
19 what collection was left to keep for her children."

20 "Debbie had a special feeling for the elderly and
21 children. Probably her most outstanding virtue was that
22 she cared about people who were less fortunate than she.
23 If she could help them in any way she would."

24 "I can recall her seeing an elderly couple walking
25 along hand in hand, she would say to me, 'look Aunt Carol,

218

1 don't they look cute.' 'She would go up to her
2 grandmother and give her a pinch on the cheek and say,
3 'granma, you're so cute'."

4 "She loved her grandmother who lived with
5 her as she grew up. I truly believe Debbie's care to help
6 others was why she chose to be a 911 operator."

7 "It has been almost 12 years since
8 Debbie's death at age 26. Her death was a tragic shock to
9 our family. My memory gets weak at times growing older,
10 but I remember the tragedy as though it happened
11 yesterday. I came home from work at my usual time, but
12 when I opened our gate to pull in the garage my husband
13 came out running out of the door, saying not to close the
14 gate because we had to leave."

15 "I asked him what was wrong, and he was as
16 white as snow, he said, Norma called crying hysterically
17 saying Debbie is dead. We have to get over there."

18 "I didn't believe what he said. I kept
19 saying no, no, Norma made a mistake and misunderstood
20 someone, just could not believe this was happening to our
21 family."

22 "Unfortunately, it was not a mistake and
23 from that moment on it's like a horror story. Our first
24 thoughts and concerns where of the children, and where
25 they were, and who was caring for them. We knew we had to

219

1 get to Vegas to be with them."

2 "Debbie was so brutally killed I can't
3 even begin to imagine what her last thoughts were, but I'm
4 sure they would have been for her children. Her killing
5 was senseless and I just don't understand what happened."

6 "I still remember when my husband and I
7 were taken to Debbie's home where it happened to get
8 clothes and items for the kids. I will never forget
9 seeing the floor in her living room. The officer was most
10 kind to quickly pick up some towels and put them over the
11 stains. I wept the whole time I was there and it was so
12 hard to believe what was happening. Unfortunately, I
13 still have many, many nightmares of what I saw that day."

14 "Debbie's death has had such a major
15 change in our lives. My sister had just gotten over the
16 loss of her husband when this tragedy happened. She lost
17 her only child. At 58 years of age she chose to seek
18 court custody as their legal guardian to provide a home to
19 raise her three grand children. She had very little time
20 to grieve in her own way over Debbie's death."

21 "The energy and time all of us previously
22 contributed to ourselves was no longer ours. All our
23 priorities had now changed. Accepting the responsibility
24 to care for Chantelle, JP, and Anthony not only changed my
25 sister's life completely, but mine as well. My husband

220

1 and I have tried to provide whatever support and help we
2 could over the years. None of us were at the age that we
3 could keep up easily, and it took every bit of energy and
4 strength that we could find. And the same goes as of
5 today."

6 "My husband and I had to be the help my
7 sister needed and required, as she had to be the role of
8 mother, father, grandmother, and grandfather, so to speak.
9 And four roles from one body does take a toll."

10 "Children growing up forget that we are
11 not at an age that most parents of their years are usually
12 at. I can remember when my husband tried to keep up with
13 them, teaching them to play basketball. He was 62 years
14 old and not able to run, jump as a younger parent could,
15 but he gave it all he could at the time because he knew it
16 was all they had in the grandfather role and he knew it
17 was important to them."

18 "It was hard for them to understand why we
19 were not physically able to endure things as kids their
20 ages needed and should have had."

21 "We have all missed Debbie so much. It's
22 a very, very hard role to explain to small children why
23 they no longer have a mother around to watch them grow up.
24 All the birthday, holidays, school event major things that
25 happened in their growing years were difficult to handle

221

1 without their mom. She loved them so much."

2 "They light a special candle on May 4th,
3 every year in remembrance of her on her birthday. It's
4 hard to think of all of the family events that Debbie
5 missed over the years, which would have made her happy.
6 There is so much that could be said in this sad and happy
7 time of our life."

8 BY MR. OWENS:

9 Q. How are the children doing now?

10 A. Sorry.

11 Q. How have the children been doing?

12 A. They are doing great. The oldest graduated
13 last year with honors, attending college, is a very
14 bright -- he got his gift of brains from his Mom.
15 Schooling came very easy to him. He is a very gifted
16 child. But he's a young adult now, no longer a child.

17 Chantelle, was too young to remember. Maybe it's
18 just as well. She didn't see some of the horror things
19 that her brother had. They're doing good.

20 Q. Thank you for being here again.

21 THE WITNESS: You're welcome.

22 THE COURT: Mr. Schieck.

23 MR. SCHIECK: No questions.

24 THE COURT: Ma'am, thank you for your
25 time. Please, step down.

222

1 THE WITNESS: Thank you.

2 THE COURT: The State may call their next
3 witness.

4 MS. WICKERLY: Thank you, Judge. The next
5 witness is Norma Penfield.

6 THE CLERK: You do solemnly swear the
7 testimony you are about to give in this action, shall be
8 the truth, the whole truth, and nothing but the truth, so
9 help you God.

10 THE WITNESS: I do.

11 THE CLERK: Be seated. State your name
12 and spell it for the record.

13 THE WITNESS: Norma Penfield,
14 P-E-N-F-I-E-L-D.

DIRECT EXAMINATION

16 BY MS. WICKERLY:

17 Q. You reside in Tucson?

18 A. Yes.

19 Q. Before you moved to Tucson where did you
20 live?

21 A. Lansing, Michigan.

22 Q. Were you married ever?

23 A. Yes.

24 Q. And when was it that your husband died?

25 A. Two years before Debbie died.

223

1 Q. What was Debbie like as a young girl?

2 A. She was a good girl. She was a good baby,
3 never had any problems. She was good in school.

4 Q. You're Debbie's mother and our understanding
5 is your mother lived in the household as well?

6 A. I took care of my mother.

7 Q. Did Debbie have a close relationship with
8 her grandmother as well yourself?

9 A. Oh, yes. I always told her she spoiled
10 Debbie.

11 Q. What kind of things did she enjoy doing as a
12 young girl?

13 A. She enjoyed sports, competing, lots of
14 things.

15 Q. Was she close to her cousins?

16 A. Oh, yes. We didn't live very far from each
17 other. My sister had five children, and there was lot of
18 get-togethers. And they would play together and compete
19 in sports together, just had great times.

20 Q. As Debbie grew into being a young woman and
21 adult, what qualities did she have in her personality?

22 A. She loved older people. We used go walk in
23 the mall and point out people and how cute they were, you
24 know. And children, she loved children. And she was a
25 hard worker.

224

1 Q. We've heard testimony that she was also a
2 generous person or kindhearted?

3 A. Yes. She would do anything for anyone. We
4 used to talk about things and Debbie would go completely
5 out of her way to help anyone. But she said a lot with
6 her friends, she didn't seem to receive the same thing
7 back that when she was in a tight spot a lot of them let
8 her down.

9 Q. In about October of 1994, Debbie moved from
10 Tucson to Las Vegas?

11 A. Yes.

12 Q. You were still living in Tucson at the
13 time?

14 A. Yes.

15 Q. At that point in time she had three
16 children?

17 A. Yes.

18 Q. What are their names?

19 A. James -- we call him JP -- Anthony, and
20 Chantelle.

21 Q. Once Debbie moved to Las Vegas, did you keep
22 in touch with her or do things that a grandpa would do for
23 the three kids?

24 A. When she told me that the police advised her
25 she had to get out of state for her own safety, and for

225

1 some reason she picked to go to Las Vegas. So I helped
2 her with the moving expenses and do whatever I could so
3 that she could move there. And we talked on the phone all
4 the time, and it was hard to see her go.

5 Q. Did you give her stuff for the grand
6 children around that time?

7 A. All the time.

8 Q. What sort of things would you give them?

9 A. Clothes and toys, anything -- anything that
10 they needed or she needed help with. Any time she was
11 down and needed money for something, I always helped her
12 out.

13 When she moved to Las Vegas, she'd call and said
14 she found a place and she needed a down payment so I got
15 the money together and sent her the down payment for her
16 home.

17 Q. Did you help her get a car as well?

18 A. Yes, I did. Anytime she -- if she needed
19 anything, somehow I helped her out.

20 Q. Ma'am, how were you notified that Debbie had
21 been murdered?

22 A. I was home alone and I got a phone call and
23 they told me Debbie was dead. I just went down to the
24 floor. And then I just told him, I kept saying no, no,
25 no, what happened. And then I started screaming where

226

1 were the children, are they safe.

2 Q. The grand children, your grand children?

3 A. Yes. That was it. Then I called my sister.

4 She and her husband came right over to help me --

5 Q. Did you come to Las Vegas?

6 A. -- to come to Las Vegas. Yes.

7 Q. Were where the kids once you'd come to Las
8 Vegas?

9 A. I was told that they were in child

10 protective --

11 Q. Child Haven?

12 A. Yes.

13 Q. Were you able to get them released to you?

14 A. I had to -- eventually I had to go to court
15 hear to get them released in my custody, so that I could
16 take them back to Arizona to get legal guardianship of
17 them.

18 Q. You were able to do that?

19 A. Yes.

20 Q. I'm putting up on the overhead screen

21 State's 93. Are those the three grand children?

22 A. Yes.

23 Q. That would be JP, Anthony, and Chantelle?

24 A. Right.

25 Q. This is, for the record, States 94 This is
227

1 in our home in Tucson?

2 A. Yes.

3 Q. Is that about the ages the children were at
4 when their mom was killed?

5 A. I think -- I would, yeah. Looks like it,
6 yeah.

7 Q. When you got the three children out of Child
8 Haven, how did you get their clothes or what did you do?

9 A. They just had the clothes -- my sister tried
10 to get what she could, because I didn't go to the house.
11 My sister and her husband did. They tried to get what was
12 necessary, but they got very little. So we had to go,
13 before I even took them back to Michigan, we had to get
14 shoes and clothes to wear before we drove back.

15 Q. Did they have any toys?

16 A. They did, but there was nothing -- there
17 wasn't nothing there.

18 Q. You mean nothing in the trailer?

19 A. Yeah.

20 Q. Did they tell you at the time where their
21 toys went?

22 A. Anytime you ask them where this or that was,
23 they said Daddy sold them.

24 Q. Where is Debbie buried?

25 A. In the family plot in Michigan.

228

1 Doctor, I'll remind you you are still
2 under oath, sir.

3 THE WITNESS: Yes.

4 THE COURT: Mr. Owens.

5 CROSS-EXAMINATION

6 BY MR. OWENS:

7 Q. Good morning, Dr. Etcoff?

8 A. Good morning.

9 Q. How much free will do you have?

10 A. Depends upon the day, depends upon the
11 situation -- a lot.

12 Q. You can't put a number on it?

13 A. No.

14 Q. Say you are over 90 percent in the free-will
15 category?

16 A. I don't know of any static like that.

17 Q. You were talking about some people having
18 less free will than other people, and you said the
19 defendant has less free will, what do you mean by less
20 free will? What percentage are we talking about?

21 A. I can't put a percentage on it. I was just
22 trying to say that free will is a term that, you know,
23 depends on what your connotation is. How -- if what
24 you're trying to describe is at any given moment in your
25 life how in control are you of making a decision, those --

1 the amount of that control is different for you, depending
2 upon the situation, depending upon how smart you are,
3 depending upon whether you have psychiatric problems,
4 depending upon whether you have drug problems, depending
5 upon whether you have all of these different variables,
6 you just think, and think, and think.

7 So I don't know. I've never heard of someone
8 putting a percentage on free will. You've probably had
9 times where it's difficult for you to make a decision.
10 You're ambivalent. You go one way, you go another way.
11 It's hard to make a decision. You have free will, but
12 it's hard to make a decision. So it's a really hard thing
13 to put a number on.

14 Q. Well, then you're equating free will with
15 difficulty of making a decision?

16 A. Yeah, yeah.

17 Q. So I would say I've got a hundred percent
18 free will. There's no options that aren't available. I
19 may just need more time to do it. I can still choose,
20 though, right?

21 A. Well, I'm glad you've got a hundred percent
22 free will, but I doubt whether you really do.

23 Q. Where am I at?

24 A. I have no clue where you're at, I just met
25 you.

1 Q. If you talked to me for two hours, give me a
2 few tests, could you put a percentage on it?

3 A. That's what I'm saying. I can't -- all I'm
4 saying is there are limitations to making -- I mean, if
5 you want to talk theoretically we have -- everybody can
6 make -- have free will. Everyone can make a decision at
7 any moment in time in any situation, but if you're a human
8 being and you've lived any number of years, you realize
9 that although you have free will, there are limitations to
10 your ability to make a decision in a certain circumstance
11 at a certain time given what's going on in your life.
12 That's all I'm saying.

13 Q. Well, the law puts limitations on people
14 certainly?

15 A. Yes.

16 Q. And if you're confined physically that would
17 put limitations on you?

18 A. Yes.

19 Q. This is your term, free will. You're the
20 one that used that here. I'm trying to find out what you
21 mean by that.

22 A. I guess I mean the extent to which at any
23 moment in time you're able to make an adaptive decision
24 that is smart, good for you, gets you somewhere, in a nut
25 shell.

1 Q. You pick up a pen, I've got innumerable
2 options concerning this pen, don't I?

3 A. Yes.

4 Q. I can write with the pen, stare at it, put
5 it behind my ear, I can throw it across the courtroom, I
6 can take it apart and put some new cartridge in it. Can
7 you think of some options that are not available to me in
8 my free will concerning this pen?

9 A. Not off the top of my head, I mean -- no.

10 Q. Well, when we get down to the defendant at
11 the time of the crime, you said he had less free will, how
12 much less, what options didn't he have?

13 A. I can answer that question.

14 Q. Well, don't you have to answer that question
15 before you can come up with an opinion that he has less
16 than normal?

17 A. No. I said he had limitations on his
18 abilities to make adaptive decisions, but I can't put a
19 percentage on it and I can't tell you, I wasn't there at
20 that moment to know exactly what was going on in his
21 mind.

22 I can only talk generally about what he is like as
23 a human being and try to put together a picture of what it
24 must have been like at that moment for him, but I can give
25 you number.

1 Q. While we're putting together a picture for
2 us then, you're saying that he had less ability of free
3 will, but you can't say how it was less, so your picture
4 is kind of incomplete on that subject.

5 A. I can say how it was less.

6 Q. How?

7 A. He was, as I've already said, not too -- he
8 doesn't think well in words. He was having a good amount
9 of irrational chronic thoughts in his mind that made him
10 too emotional and not logical. He assumed terrible things
11 about this woman, many of which were probably -- or
12 possibly untrue. He didn't apparently have the capacity
13 to say, as mad at her as I am, or as frightened as I am
14 she's leaving me, I certainly can't kill her, because not
15 only would that be against the law and takes a person's
16 life, which is wrong, period, but it would leave my three
17 kids without a mother, and it will put me in prison, if
18 not put me to death.

19 So all of those things that most of us would never
20 ever, ever, ever find ourselves doing, some people end up
21 doing. And I guess that's my way of saying they're not
22 mentally equipped or emotionally equipped to make those
23 hard decisions that the rest of us could easily avoid
24 making and never get ourselves in those situations -- we
25 hope.

1 Q. The rest of us being?

2 A. The majority of human beings.

3 Q. People that don't commit crimes. Because
4 what you just described are people that commit crimes,
5 pretty much, haven't you?

6 A. Well, I was talking about murder.

7 Q. Right.

8 A. That crime. I mean there's lots of other
9 people with lots of IQs that commit lots of crime all the
10 time because they're greedy.

11 Q. So what we've got with people that commit
12 crimes, in part, is simply it's not that they're greedy,
13 it's not that they're maybe just jealous, it's not that
14 they don't want to control their tempers, it's just they
15 don't have as much free will as the rest of us?

16 A. If that they can't call it free will, I call
17 it -- they don't have the ability at the time that they
18 need to make this decision to stop them, to inhibit the
19 anger, or inhibit the action of throwing a pen at the jury
20 or at me, that was absent with this man at that moment,
21 and unfortunately it seems absent with lots of people all
22 around the world all the time, or there wouldn't be such
23 horrible headlines in the paper every day.

24 Q. Because if people really had free will then
25 we wouldn't have to worry about them making decisions like

1 this, we wouldn't see this kinds of results?

2 A. No, I'm not saying that. People have free
3 will, but they are not perfect in making -- it's not as if
4 I -- I guess you could say people have free will to be
5 evil.

6 Q. Some may choose evil?

7 A. Some may choose evil. There are lots of
8 examples of people who have a lot of in intelligence,
9 normal childhoods, that weren't addicted to drugs and
10 they're terrible human beings who have committed vicious
11 crimes and so we know of that.

12 Q. Choosing evil, that's a choice, is it not,
13 doctor?

14 A. It is a choice, yes.

15 Q. And a person has the will to make that
16 choice?

17 A. Yes, but not -- I'm not going to argue with
18 you. I have been -- I have been in this situation too
19 many times and have been through this too many times to
20 know that you will say, and prosecutors will say, that if
21 you are able to pick up a gun and point it, you had a
22 thought in your mind and that was enough to show intent.
23 Yeah, simplistically correct.

24 But all I'm trying to tell the jury is sometimes
25 the decisions that we make are not altogether rational and

1 good for ourselves or other people, because we can't apply
2 the right thinking and the inhibition of a behavior at
3 that moment. So I'm not sure we all have perfect free
4 will.

5 I'm just saying that people are less than perfect
6 and really at times under certain stresses are capable of
7 making horrible choices that they would take back in a
8 blink of an eye, if they could.

9 Q. Well, we'll come back to that in just a
10 little bit. What is the American Board of Medical
11 Psychotherapist?

12 A. It's a board on psychology diagnosticians.
13 It's a board -- it's an organization in which people who
14 are from different medical or allied health specialties,
15 like medicine, dentistry, chiropractors, psychologists
16 work and can join and go to conferences and earn a
17 diploma from.

18 Q. And you're a diplomat of this
19 organization?

20 A. Yes.

21 Q. How do you become a diplomat of the American
22 Board of Psychotherapists?

23 A. You put in an application. You give
24 references. You have reference letters. You show that
25 you have had certain experiences in diagnostics or

1 psychotherapy, and then the board decides whether your
2 experiences, letters of reference, and your degree, and
3 your written essays are good enough to be granted that
4 status.

5 Q. So it's not exactly a certification
6 process?

7 A. It's not. I wouldn't call it a stringent
8 certification process. My diplomat in neuropsychology was
9 a lot more stringent, but in this day in age there's a lot
10 more in psychology and different areas of professions
11 there are boards that are easier to become board certified
12 or diplomats in and boards that are extremely difficult to
13 be board certified in.

14 Q. This is one of the easier one?

15 A. Yes.

16 Q. You were asked to become involved in this
17 case by the defense attorneys that were representing the
18 defendant about ten years ago?

19 A. Yes.

20 Q. And you weren't brought in, of course,
21 around the time of that this happened it was sometime
22 later after the crime happened?

23 A. Yes.

24 Q. How much later?

25 A. Looks to be about eight months later.

1 Q. So eight months after the crime, you were
2 asked to come in. They were going to hire you to do
3 something for them?

4 A. To evaluated him psychologically, yes.

5 Q. Is that what they told you, evaluate the
6 defendant psychologically?

7 A. I mean, I don't remember exactly what they
8 said, but that's what any attorney would say in that
9 situation, so, yes.

10 Q. They didn't tell you anything more specific.
11 They didn't ask you to evaluate him for legal
12 competency?

13 A. I don't believe so.

14 Q. Or to evaluate his mental state at the time
15 of the crime?

16 A. No. I would have had that in the report.

17 Q. Just a general evaluation?

18 A. I believe that Mr. Brooks, at the time that
19 I worked with on I think one or two cases in the past knew
20 that this was a murder case, and in a murder case you guys
21 have to ask for a lot more information, a lot more
22 evaluations then you would in a case that isn't life and
23 death so to speak.

24 So I think it's just -- I don't know if there's a
25 law or rule that if you have a murder case you really have

1 to look into every possible variable that could make the
2 difference between someone who's, once they're convicted,
3 put to death or life in prison without the possibility of
4 parole.

5 So in those cases psychologists, psychiatrists, and
6 neurologists are commonly retained by, usually the
7 defense, to see if there are mitigating factors, something
8 that would explain why this person did something so
9 terrible.

10 Q. Are you usually retained by the defense in
11 criminal matters?

12 A. Yes.

13 Q. Are you always retained by the defense in
14 criminal matters?

15 A. I think that I may have once been retained
16 by the DA's office, but basically the DA's office to my
17 knowledge isn't very interested in psychological
18 functioning of someone they're trying to put in jail, and
19 the defense always is.

20 Q. Defense kind of likes using you?

21 A. They don't use me anymore, so I don't know
22 if they like me now.

23 Q. You were paid to come in on the case?

24 A. Yes.

25 Q. You didn't feel compelled to do it?

1 A. No.

2 Q. So exercising your free will at the time,
3 you took the assignment?

4 A. I agree.

5 Q. And have you done anything on this case
6 since your initial evaluation?

7 A. No, sir.

8 Q. You gave testimony back then, ten years
9 ago?

10 A. That was the last of it.

11 Q. Now, you're a clinical psychologist?

12 A. Correct.

13 Q. So your practice is focused upon the
14 treatment of individuals?

15 A. Um, remember when I was first introduced, I
16 evaluate, I don't do -- by treatment you mean counseling,
17 biofeedback, psychotherapy, I don't do that. Treatment
18 includes you come to me with your child and say Johnny is
19 doing bad in school and seems depressed, that I do. But I
20 call it evaluation.

21 Q. You are responding to somebody's concern
22 about an individual that they brought to you?

23 A. Yes.

24 Q. That's different then somebody that the
25 forensically certified?

1 A. Yes.

2 Q. Somebody that has a practice that is
3 forensically oriented, what's the difference?

4 A. If you are engaged in a forensic practice,
5 as any type of psychologist, whether you're a social
6 psychologist, developmental psychologist, clinical
7 psychologist, engineer, physician, any professional, then
8 you are -- there are whole sets -- you're looking
9 completely -- you're not an advocate for the person. You
10 are trying to -- that person isn't your patient, that
11 person is an examinee. Your job when you are hired
12 forensically -- which is always by one side or the other,
13 but that's irrelevant, hopefully -- to figure out how an
14 event took place and how it occurred, or what its effect
15 was on someone, and to give that side that retains you the
16 bad news and the good news for their side, depending on
17 whether they are going to like it or don't like it. So
18 you just give them everything.

19 Q. Whereas a clinical psychologist, somebody
20 that doesn't specialize in forensics generally, they are
21 hired to be an advocate for a side?

22 A. In a -- what type of case are you talking
23 about.

24 Q. In a case like this?

25 A. Well, there are -- in fact one of my former

1 employees does just that. She is a psychologist who will
2 be retained by someone's attorney to see a person who is
3 on trial for murder or as been convicted of murder, but
4 not yet in prison, to see them in counseling and therapy
5 to prevent them from becoming suicidal, or if they're very
6 depressed to manage them as human beings at the time they
7 are here in jail. But that -- I don't do that.

8 Q. Did you come into this case with a
9 particular frame of mind or a bias?

10 A. Well, I think I'm honest enough to say that
11 there's always a bias. We know -- you're always biased,
12 even if you don't know you're biased, you're biased. So
13 I'm not going to sit here and tell the jury that I don't
14 have a bias, but I try to understand that when I am asked
15 to do a case forensically I have to control whatever bias
16 I may have at that time and be as fair and balanced about
17 everything as I possible can. So that's what I attempt to
18 do. I may not always be great at it, but I try really
19 hard to keep that in mind.

20 Q. Was there anything about the nature of this
21 particular case that caused an ethical bias for you?

22 A. No, not to my knowledge.

23 Q. The things that you did to prepare your
24 evaluation included some tests that you described?

25 A. Yes.

1 Q. And a two hour interview with the
2 defendant?

3 A. Yes.

4 Q. And one of those tests was given, I think,
5 on a tape or something?

6 A. Yes.

7 Q. How did that work?

8 A. Well, let's say there were 150 statements on
9 that test. There would be a person who the test company
10 hired to read those statements off twice in a row at a
11 slow rate so that people who weren't capable of reading
12 could still take the test, because they were capable of
13 understanding the questions read to them. And that's what
14 Mr. Chappell's administration entailed.

15 Q. So how was that actually done?

16 A. In a room with a tape recorder and him
17 sitting there answering, number one -- question number
18 one, I sleep well, I sleep well, and he would put true or
19 false, and then question number two, and it would go like
20 that.

21 Q. Where were you at the time?

22 A. In my office.

23 Q. Which was?

24 A. At that time on Decatur Boulevard.

25 Q. Was he over in your office there?

1 A. I think he must have been, yes.

2 Q. You don't have a memory of that?

3 A. I don't have a memory of last week, I can't
4 tell you ten years ago. But he was -- everybody who takes
5 these tests are in my office. I can't tell you which room
6 he was in.

7 Q. So we had some testing that was done. We
8 had a two hour questioning that you did. Did you take an
9 opportunity to interview family members?

10 A. None were provided. It would have been
11 important, and possibly important, and I would have
12 enjoyed doing so, but none were around at that time.

13 Q. When you are looking at obtaining a family
14 history of an individual how important is that that you
15 get accurate information?

16 A. It is important.

17 Q. And you're supposed to try to get
18 independent sources for the information that you are
19 given, aren't you?

20 A. Yes.

21 Q. And I think you said on direct examination
22 that you need a collateral opinion on these things?

23 A. I don't know if it was a collateral opinion,
24 I just need -- when you're doing a forensic evaluation you
25 are skeptical because there's something in it for someone

1 not to be necessarily truthful, plus nobody has a perfect
2 memory. And if I talk to you and ask you questions about
3 your past, then I dug up records, you might be telling me
4 the truth, but inaccurate, because you don't have a
5 perfect memory.

6 So that's why at least I asked them to get
7 records they did get, which were all of the school records
8 which gave me a better sense of what he was like as a kid
9 from people who had evaluated him then.

10 But his family members weren't available
11 to me and that would have been important, or ultimately it
12 would have been useful to have met them and seen whether
13 they had said things about him that he said to me, or
14 whether they said, no, no, what he told you is completely
15 untrue.

16 Q. You mentioned school records, do you have
17 those with you?

18 A. No.

19 Q. You were referring to them earlier on direct
20 examination?

21 A. In my report.

22 Q. So you don't actually have the records?

23 A. Correct.

24 MR. OWENS: Your Honor, I'd make inquiry
25 if the records are available and to take a look at them.

1 Thank you.

2 BY MR. OWENS:

3 Q. While he's getting those, without the family
4 to be an independent source or other sources, you are
5 basically left with the defendant's version of events?

6 A. The defendant's version, and in this case
7 all of the school records. That was a legitimate
8 collateral source. If I had no collateral, you're right,
9 all I would have is the defendant and my clinical skill in
10 saying this is what he said to me, it's believable, it
11 isn't believable.

12 Q. What do the records say about his
13 grandmother being physically abusive?

14 A. I don't believe that's mentioned.

15 Q. But you said that on direct examination?

16 A. That's what I was told.

17 Q. Told by?

18 A. Good question, who was I told by. Either it
19 was in the school records or Mr. Chappell told me that she
20 was abusive more to his older siblings than to him.

21 Q. You used the term physical abuse, and it's
22 on page 6 of the report, discussing the subject. Physical
23 abuse is not mentioned in there, is it doctor?

24 A. If not on page 6, it's on another page.

25 Q. We printed it out with different computers

1 so our pages might not be right.

2 A. I can try to find it for you.

3 Q. Sure. I've got my copy.

4 A. I'm sorry, it was on page 4 of my report,
5 and in Mr. Chappell's interview with him he said, quote,
6 "she spanked us with switches a lot, took care of us and
7 gave us food and clothing."

8 He said he didn't feel love, because the
9 grandmother never gave the kids birthday parties.

10 And she played bingo on the weekends and came home
11 late at night.

12 She apparently used physical punishment a great
13 deal, with most of the worst punishment for older brother
14 Ricky, who's age 28, who's presently in prison in
15 Michigan, and Carla, the oldest daughter, present age 30.

16 Q. I'm reading from the same page you are.
17 Where do you get that phrase physical abuse?

18 A. Physical abuse, I use that term for physical
19 punishment as what Mr. Chappell told me, the switches that
20 his grandmother used and the two older siblings getting
21 physical punishment.

22 Q. What kind of physical punishment?

23 A. I don't know.

24 Q. There's no details in there?

25 A. Correct.

1 Q. So switching, you mean spanked them with a
2 switch?

3 A. Yes.

4 Q. And something else happened with the
5 siblings?

6 A. Yes.

7 Q. That was similar to that, and you're
8 characterizing that as physical abuse?

9 A. It appeared that's what I thought it was at
10 that time, yes. I mean, it sounded that to me.

11 Q. Does it sound that way now?

12 A. It could have -- yeah. There is nothing -- I
13 don't know what she did. If the kids are around and they
14 can come in and testify, then the jury will know. I don't
15 know if what grandma did and whether it was, in fact,
16 physically abusive. When Mr. Chappell told me about it it
17 sounded in a way -- he presented it in a way that made me
18 say physically abusive.

19 Q. Well, it doesn't come across that way in the
20 report, does it?

21 A. How is that?

22 Q. Well, does it sound like physical abuse the
23 way you say it in here?

24 A. I said, apparently used physical punishment
25 a great deal with most of the worst punishment with older

1 brother Ricky and older sister. They were hit with
2 extension cords and sticks. I guess that's physical abuse
3 in my way of looking at it.

4 Q. You have to agree that physical abuse is a
5 rather -- well, it has a rather violent connotation to it
6 and if you are talking about something essentially like
7 spanking is what it sounds like is that something what you
8 call physical abuse in the home?

9 A. I don't know. I wouldn't call spanking
10 necessarily physical abusive, but I would call being hit
11 with sticks and an extension cord physically abusive. I
12 might be wrong.

13 Q. You also use the term that she was
14 neglectful?

15 A. As Mr. Chappell described her.

16 Q. Reading from that same section there, it
17 says she took care of us and gave us food and clothing?

18 A. Yes. And his older sister said, I'll find a
19 place for us, I'll find daddy, meaning that she wanted to
20 get out of grandma's home where she was being physically
21 abused and where the other kids were getting hit. That is
22 my understanding from what Mr. Chappell said.

23 Q. That's what Mr. Chappell told you?

24 A. Yes.

25 Q. Because you didn't talk to any of the other

1 family members?

2 A. No. That's what Mr. Chappell told me
3 because that's what Mr. Chappell told me. The fact that I
4 didn't talk to any of the other family members -- I wanted
5 to. I would have had they been available.

6 Q. Now this was a grandmother that took over
7 responsibility for how many of her grandchildren?

8 A. I believe four.

9 Q. And the defendant was getting in trouble and
10 acting out from a young age?

11 A. Yes.

12 Q. And there was an older brother that was
13 having even more problems then the defendant?

14 A. Okay.

15 Q. And she was trying to raise them on her
16 own?

17 A. I think so.

18 Q. And you are characterizing what we just read
19 in here then as physical abuse or child neglect?

20 A. For those actions I'm not says that she
21 wasn't a saint for taking four kids in and trying her darn
22 best to give them a life, but -- and if the kids were that
23 badly behaved I can understand that. If she where on
24 trial for beating the crap out of them, I might be here
25 saying look what he had to go through. She was a grandma

1 taking care of four children. They were uncontrollable
2 and does it -- it makes sense that she lost control of
3 herself. I'm not calling her a bad person. I'm saying
4 she took four kids. She had good days and bad days and
5 that's it.

6 Q. Well, you just described about every parent
7 out there, didn't you?

8 A. Yeah.

9 Q. Good days and bad days?

10 A. Absolutely.

11 Q. More physical sometimes than they want to
12 be, feel bad about it later?

13 A. Yes.

14 Q. Neglectful parents?

15 A. Yeah.

16 Q. Abusive parent?

17 A. Every parent can be somewhat neglectful,
18 abusive, do the wrong things, yes, absolutely.

19 Q. Any parent can?

20 A. Any parent can.

21 Q. Even the defendant's grandmother?

22 A. Absolutely.

23 Q. Did you find a tendency in the defendant to
24 put the blame for his decisions on other people during
25 your interview?

1 A. Well, yes and no. Yes, in the sense that he
2 blamed Ms. Panos for dumping him or going out with other
3 guys and making him lose control of himself. And no,
4 because he, at the same time, essentially felt terrible
5 that he knew what he had done was horrible.

6 Q. Well, were you here when he testified
7 before?

8 A. No.

9 Q. Did you get a copy of the transcript of his
10 testimony to review before testifying here?

11 A. No.

12 Q. If he said in his prior interview that he
13 had a lot of different jobs that he lost, but it wasn't
14 his fault because they wouldn't give him a raise. Does
15 that sound about right for his perspective on life?

16 A. I don't know if that sounds right, but it
17 certainly not an uncommon thing I hear from lots of
18 people. It's not uncommon for human beings to blame
19 someone else when they're not making it.


20 Q. He testified that when he moved he had to
21 move because the job was getting into their private
22 lives?

23 A. Sounds paranoid.

24 Q. That during the cup beating accident, the
25 one that you alluded to back in January of '95, that that

1 was just an accident and it was the police's fault
2 afterwards for arresting him in front of his children?

3 A. Well, I don't know if you have to be a
4 psychologist to answer that one, but I think if I could
5 interpret what he meant by that is that -- I mean, if he
6 thought that that was accident then he's making excuses
7 for himself. But the statement the police were at fault
8 for arresting him in front of his children, you can
9 understand how someone, if they're going to be arrested,
10 would appreciate being arrested away from the children. I
11 still wouldn't blame the police. It's their job to arrest
12 him if he did an illegal act. But I can understand why he
13 said that.

14 Q. Because it probably marked his otherwise
15 sterling reputation he had with his children at that point
16 to see the police for the tenth time taking their father
17 off in handcuffs? 

18 MR. PATRICK: Objection, your Honor,
19 that's argumentative.

20 THE COURT: I'll object to the way the
21 question was phrased.

22 MR. OWENS: Let me ask --

23 THE COURT: I'll sustained the
24 objection.

25 BY MR. OWENS:

1 Q. On one of his thefts at the K-Mart incident
2 resulted in a gross misdemeanor. Did you read his
3 statement to the Department of Parole and Probation?

4 A. I wasn't given that.

5 Q. In that statement he denies doing anything
6 wrong, and says that the police are to be blamed because
7 they acted badly. Based upon your two-hour interview with
8 him, is that consistent with the way he puts blame on
9 everyone else for things that he does?

10 A. I would say that that statement is an
11 irresponsible statement for him to make. He's clearly
12 projecting blame onto the police for something that he
13 doesn't want to take responsibility for. And it is
14 consistent with him being so weak and ineffectual that he
15 doesn't even realize that saying something like that is
16 ridiculous.

17 Q. It is ridiculous, isn't it?

18 A. Of course it's ridiculous.

19 Q. But the statement you made on direct
20 examination about this crime that the defendant was upset
21 with her Debbie Panos for leaving him to do this. Well,
22 ridiculous doesn't even begin to talk about that
23 statement, does it?

24 A. I don't -- how are you using the word
25 ridiculous?

1 Q. You used the word a moment ago?

2 A. I know, but I'm not understanding your
3 question.

4 Q. This is beyond ridiculous, this kind of
5 blame throwing to put this on the murder victim, that she
6 led him to knife her like that?

7 A. No. That is -- you could use the word
8 ridiculous for that, but as a psychologist I'm just trying
9 to testify that it doesn't make logical sense. He can't
10 blame her for leaving him as a -- I can murder you,
11 because you're leaving me. That makes no sense. That's
12 irrational. It's wrong. It's not truthful. But in his
13 mind, he's so --

14 Q. Remorseful, doctor?

15 A. Not at the time.

16 Q. No.

17 A. Not at the time. And I never said he was.
18 Afterwards, yes.

19 Q. In fact, the Defendant was in trouble all
20 the time. He'd been involved in juvenile hearings,
21 camps, foster homes, jail. I think he said about 15
22 arrests as a juvenile. He told you about that?

23 A. He mentioned that number, yes.

24 Q. That included burglary, trespasses; is that
25 right?

1 A. I didn't inquire into all of the different
2 times he was arrested, so I don't know.

3 Q. This began back around the age of 13, these
4 are things he told you?

5 A. Yes.

6 Q. He only told you about one prior incident
7 where he hit her in Arizona?

8 A. Yes.

9 Q. When you testified on direct examination you
10 said that you were familiar with the incident in January
11 of '95 in Las Vegas, right?

12 A. I think so. Correct.

13 Q. He also told you about some other incidents,
14 including the June 1st incidents?

15 A. Yes.

16 Q. But he hadn't told you about that one, had
17 he?

18 A. I don't know. It's been ten years.

19 Q. Do you have a copy of transcript from the
20 last time you testified ten years ago?

21 A. I do.

22 Q. Let's go over to page 52. I believe it is.
23 It may assist you to look at that as I'm asking
24 questions?

25 You were unaware of the threats that other

1 witnesses described in which this defendant had directed
2 threats at Debbie Panos?

3 A. Yes.

4 Q. He did admit that he hit her?

5 A. I said, yes.

6 Q. So you were aware to some extent that there
7 was a history of domestic violence?

8 A. I said, correct.

9 Q. The defendant told you that he was arrested
10 once in Arizona. That was the only domestic violence
11 arrest that he explained to, wasn't it?

12 A. I believe it was.

13 Q. That is the only one that you alluded to in
14 your report; is that correct?

15 A. Yes.

16 Q. It is the only one you remember specifically
17 him advising you of?

18 A. Yes.

19 Q. Now, he told you -- or he didn't tell you he
20 was arrested in Las Vegas on several occasions, did he?

21 A. I don't believe he did.

22 Q. And the incident he had mentioned in Arizona
23 was he had slapped her a couple of times had arguments
24 about the way her parents treated him?

25 A. Yes.

1 Q. If we go over to page 54, just to refresh
2 your memory. That June 1st incident of 1995, where he
3 described -- he did not describe the situation where it
4 he'd gone into the bedroom of the mobile home, pushed her
5 down on the bed, got on top of her, pinned her arms down,
6 and threatened her with a knife?

7 A. Yes. He didn't say that.

8 Q. You were not aware of that incident at the
9 time?

10 A. Correct.

11 Q. Assuming for a moment that the omission by
12 the defendant when he talked to you describing the act of
13 domestic violence that occurred on June the 1st, was
14 deliberate on his part, would that affect your opinion
15 about how cooperative he was being and credible he is?

16 A. It very well could. But I want to also
17 inform the jury that I didn't, at the time, purposely ask
18 him to tell me about every time -- every time he had been
19 convicted or arrested of a crime. So had I and had he
20 left out three or four arrests or convictions, I would be
21 more -- I would be in a better position to say he didn't
22 want to tell me certain things, which is very common in
23 cases like this. And in other civil forensic cases people
24 will not tell you things that they don't want you to know,
25 even when you specifically ask.

1 Q. How important was it to know the full
2 history of their relationship in your opinion here,
3 doctor?

4 A. I think it would be a good thing to know the
5 full history. And I always ask, whoever retains me, to
6 provide as much -- as many records and as many documents
7 from court proceedings or witness statements as possible
8 so that I can get a good feel for the case.

9 MR. OWENS: We have documents I would like
10 to have marked as an exhibit, your Honor, next order.
11 They can start with a different number.

12 THE CLERK: All of them or just one?

13 MR. OWENS: The whole thing.

14 THE COURT: We'll mark the file next in
15 order.

16 BY MR. OWENS:

17 Q. As a matter of fact, you had testified in
18 the previous proceeding that you would agree that at least
19 partial opinions you formed would be invalidated if you
20 weren't receiving accurate information from the
21 defendant?

22 A. Yeah, that is very possible. If he told me
23 stuff that turns out to be wrong, then -- and I based my
24 opinions on believing something that is wrong, then I
25 would change my opinions given other information.

1 MR. OWENS: Your Honor, for the record
2 these are certified reports of incidents. We've heard
3 about a lot of them already. One is from Tucson in red,
4 chronologically backwards. And the yellow from Las Vegas.
5 And I would move for their admission at this time.
6 Counsel had the opportunity to see them.

7 MR. PATRICK: No objection, your Honor.

8 THE COURT: Those will be admitted as
9 exhibit --

10 THE CLERK: 129.

11 THE COURT: 129.

12 MR. OWENS: Thank you. If I may approach,
13 your Honor.

14 THE COURT: Yes.

15 BY MR. OWENS:

16 Q. These are a number of reported incidents, if
17 you could -- you don't have to read them. But just take a
18 look at the number of reported incidents, contacts with
19 the police over a period of only about, maybe, 2 years,
20 involving the defendant while they were living in Tucson
21 and in Las Vegas.

22 You were told about one incident. You think it
23 would have been helpful if you had all of these additional
24 incidents to review before formulating your opinion?

25 MR. PATRICK: I'll object, because the

1 question is misleading. A number of those involve petty
2 larcenies and such, as opposed to possession of drug
3 paraphernalia. They're not all domestic violence cases.

4 MR. OWENS: I never said they were
5 domestic violence totally. What I'm asking is about
6 criminal history of arrests. Wouldn't that have been
7 important to you to have before formulating your
8 opinion.

9 THE COURT: For the record the objection
10 is overruled. Any of those things can be cleared up on
11 redirect.

12 THE WITNESS: The answer is, yes.

13 BY MR. OWENS:

14 Q. Because in your report, in your opinion you
15 gave after this two-hour interview you gave the defendant,
16 you were of the opinion that this splitting up was
17 something that was new that just started happening in the
18 last few months before the death of Debbie Panos?

19 A. Yes.

20 Q. And, in fact, this was something that had
21 been going on, and on, and on, again, and again for
22 years?

23 A. Okay.

24 Q. That was information that you didn't have?

25 A. Yes.

1 Q. You said in your report that they started
2 drifting apart months before the murder. The problems
3 began just shortly before that when the girlfriends began
4 to move in?

5 A. That is what Mr. Chappell told me.

6 Q. But, in fact, there were problems that had
7 been going back for years and year, you were unaware of
8 that?

9 A. Correct.

10 Q. We've heard testimony from a number of
11 individuals that have cataloged domestic violence on a
12 weekly basis, seeing bruises on the body of Debbie Panos,
13 spanning half a decade or more where she didn't call the
14 police. These are incidents in addition to what you
15 didn't have in the exhibit. These were things you didn't
16 know about?

17 A. Correct.

18 Q. Important for you to know about those in
19 formulating your opinion about the defendant's conduct and
20 free will in this situation?

21 A. Correct.

22 Q. But you didn't know about them?

23 A. Yes, correct.

24 Q. A lot of your opinions about his conduct
25 here was based upon the fact that he felt the victim was

1 going to be deserting him?

2 A. Yes.

3 Q. But she had left or stayed away from him
4 before. You were not aware of that?

5 A. Correct.

6 Q. And he hadn't killed her on those
7 occasions?

8 A. Correct.

9 Q. That June 1st accident that he did not tell
10 you about, are you familiar with how close the facts of
11 that were to the facts in this case?

12 A. No.

13 Q. Same trailer, climbed on top of her, held
14 her arms down, put a knife to her throat, and was
15 threatening her. You've never heard those facts before?

16 A. I did at the trial.

17 Q. That was the first time you heard about
18 them?

19 A. Yes.

20 Q. And that time he exercised his free will to
21 put the knife down. Were you aware of that? You didn't
22 read his testimony?

23 A. I didn't.

24 Q. In his testimony he actually explained the
25 mental process that he went through when he held the knife

1 to her throat trying to find out information form her and
2 he decided that wasn't working so he set the knife down,
3 okay. When a girlfriend came in and knocked on the door
4 it interrupted him, and he was able to get off of Debbie
5 Panos and exist the bedroom. There wasn't any violence on
6 that occasion. Is that something that would have been
7 important for you to know in assessing his free will on
8 the date in question?

9 A. Yes.

10 Q. Which you didn't know that?

11 A. Correct.

12 Q. All of these other people that we've been
13 hearing from for the last few days, people that were
14 really close to the situation. We had Michelle Moncha,
15 Mike Pollard testified in the prior trial, we read his
16 testimony. Lisa Duran, we had Dina Richardson -- or Dina
17 Freeman. We heard from police officers that had contact
18 in these situations. Did you interview any of these
19 people about this background?

20 A. No.

21 Q. Were you provided by the defense, back then
22 when you were making the evaluation, any of this
23 information?

24 A. No.

25 Q. And in the ten years since you last

1 testified, have they given you additional information of
2 this sort?

3 A. No.

4 Q. So you are coming in and you're testifying
5 based upon what appears now to be very limited data that
6 you had ten years ago?

7 A. Yes. I mean, I -- my report was based upon
8 the time I spent with him, the test results about his
9 personality functioning, intellectual functioning and what
10 I had seen in his school records. But all of that other
11 information that you've just pointed out, which would be
12 relevant for a psychologist to see, wasn't available to
13 me.

14 Q. And the facts that he gave you about what
15 happened on the time of the murder, they're wrong, aren't
16 they, doctor?

17 A. The night versus day.

18 Q. That's just the beginning. He told you it
19 happened at night, it wasn't at night?

20 A. Could have been -- assuming, I might have
21 made that mistake myself.

22 Q. But that was your testimony last time?

23 A. I know.

24 Q. Did you look at the police reports in the
25 case?

1 A. Back then, but I no longer have them. So I
2 don't recall them.

3 Q. Didn't you notice the discrepancies between
4 the story the defendant was telling you and the physical
5 evidence at the scene?

6 A. I don't have -- it's been -- I haven't seen
7 him in years. I can't answer any questions about those
8 reports. I wouldn't know anything about what was in
9 them.

10 Q. How about the defendant climbing in through
11 a window, didn't that seem bizarre in light of what he
12 said, she was accepting him?

13 A. Yes.

14 Q. I mean, how did you deal with that. Did you
15 just accept his word for it?

16 A. I don't recall 11 years ago. But it was
17 definitely not usual.

18 Q. Didn't make sense, did it?

19 A. Not a lot.

20 Q. You're not aware that the last time you
21 testified that he had threatened her the day before in
22 court saying, I'm going to kill you?

23 A. I wasn't aware of that either.

24 Q. And that a few minutes before she went over
25 there and he caught her there, she had been over at a

1 friend's house where she was distressed having just
2 learned he'd gotten out of custody. She was in a fetal
3 position on his sofa shaking and crying about hearing
4 that, and was just going to run home and get some kids
5 clothes before he got there.

6 You weren't aware of that either?

7 A. Correct.

8 Q. Well, this whole story that he tells you
9 about coming in and Debbie Panos welcoming him with open
10 arms, wanting to have consensual sex with him, based upon
11 those facts, doesn't make sense, does it?

12 A. Yes. You're right.

13 Q. And he told you that he didn't like having
14 the sexual intercourse with her because he immediately
15 thought she'd been with other men?

16 A. He said that. That's correct.

17 Q. And so at that point in time he said that
18 she offered to give him sex in his favorite position, or
19 offered to give him oral sex?

20 A. That's what he said.

21 Q. And did that make sense to you at the
22 time?

23 A. I don't recall, but given everything you've
24 just said about what had been going on, it doesn't make
25 sense now.

1 Q. How about the fact that the DNA evidence in
2 this case showed that there was semen in the vaginal vault
3 of the victim. That would directly contradict his story
4 that he did not ejaculate in the victim. Wouldn't it?

5 A. Yes. If it was his semen. Yes.

6 Q. It makes that whole story afterwards just
7 sound kind of bogus?

8 A. Yes, it does.

9 Q. He told you about a letter that was found in
10 the car that was the thing that set him off. He said he
11 went into a rage or something, right? And he says they
12 began fighting over the letter in the car and that he
13 dragged her out and took her in the house?

14 A. Yes.

15 Q. Did -- you read the reports. Did you look
16 at the photos in this case?

17 A. I don't believe I was given photos.

18 Q. But you notice in the impound report where
19 he discussed that letter that was found on the floor that
20 it was torn up. That that was found inside the trailer
21 home, not out in the car. Were you aware of that?

22 A. No.

23 Q. And the pieces of the letter that were found
24 that were torn off, were found not in the car where
25 supposedly this fight over the letter occurred, but in the

1 home?

2 A. Okay.

3 THE COURT: Which exhibits are those, for
4 the record.

5 MR. OWENS: Sorry, your Honor. For the
6 record 26 and 31.

7 THE COURT: Thank you.

8 BY MR. OWENS:

9 Q. So this whole story about a fight over a
10 letter being found in the car, based upon these facts, it
11 is not making any sense, is it?

12 A. It's making less sense to me.

13 Q. And if you join that with the fact that
14 there were a whole lot of letters he written, and you're
15 familiar with those. You saw the threatening letters he
16 written to her?

17 A. If I did, I have no recollection now. I
18 don't -- I don't recall.

19 Q. You may remember this one quote, he said,
20 "at some point --

21 MR. PATRICK: Where are we at?

22 MR. OWENS: This is a quote on the
23 letter.

24 "One day soon I'll be at the front door
25 and what in God's name will you do then."

1 Do you remember that letter he wrote to
2 her a few weeks before his release?

3 THE WITNESS: I don't. But that doesn't
4 mean I didn't read it.

5 BY MR. OWENS:

6 Q. Well, those threatening letter were found in
7 a disheveled condition in the bedroom that he climbed
8 through the window in. So if he found the letter, it
9 makes more sense that's where he found it, then out in the
10 car?

11 MR. PATRICK: Objection, that calls for a
12 conclusion.

13 THE COURT: I'll sustained the objection
14 as calling for speculation.

15 BY MR. OWENS:

16 Q. But you were accepting at the time of your
17 evaluation, you were accepting the facts the defendant was
18 giving to you.

19 A. I -- it's not that I accepted them as true,
20 true, true. I accepted that that is what he was telling
21 me, but typically if I had other information I could then
22 weigh whether what he was telling me was true or not.
23 It's not as if I believed everything he said as he said it
24 because some of it was a little bizarre, like her giving
25 him oral sex and him coming through the window.

1 Q. Didn't you find his memory, other than
2 outright at odds with the physical evidence, which you now
3 know, a little convenient when it came to the actual
4 crime?

5 A. Well, if the facts are that he represented
6 what happened to me inaccurately, that, yeah. I mean, I
7 don't -- you all know what happened. I didn't. So if
8 that's -- if what he told me happened didn't happen the
9 way he said it happened, then that's pretty convenient
10 that he told me that way.

11 Q. Even during your testimony at the last trial
12 ten years ago, you didn't believe him. Now today you were
13 talking about how people can have blackouts, that can
14 happen. But you were suspicious of them back then. Have
15 you reviewed your testimony on that?

16 A. Yeah. Suspicious -- not like suspicious.
17 But I know that people don't forget terrible things they
18 do. It's still there.

19 Q. And you agreed that the defendant's loss of
20 memory -- referring to page 67 in your transcript
21 there -- that the defendant's loss of memory at the time
22 of murder could indicate selective memory. When we say
23 selective memory, what are we referring to?

24 A. Remembering what's easier to remember, what
25 you want to remember, and forgetting the things that

1 aren't in your best interest to remember. So kind of
2 letting the bad stuff go and keeping the good stuff
3 there.

4 Q. And you know when you're charged with a
5 crime where you maybe have a lot of explaining to do, you
6 get down to the actual core of what you did, it becomes a
7 lot easier if you have a memory loss there, doesn't it?

8 A. It could be helpful, if you don't -- yeah.

9 Q. Because then you don't have to explain
10 everything as to why you did everything and what your
11 thought processes were?

12 A. True.

13 Q. You can just say, I don't remember, I
14 blacked out?

15 A. True.

16 Q. It is a fairly common thing in the forensic
17 environment?

18 A. I think so.

19 Q. A lot of people that are charged with a
20 crime blacked out at the critical moment and a few minutes
21 later, all of a sudden, they got their memory back?

22 A. I'll take your word for that. I think that
23 makes sense psychologically.

24 Q. You thought he had a memory, but he just
25 didn't not want to remember the things. It's convenient

1 for him not to remember?

2 A. Yes.

3 Q. And despite his version of the facts not
4 fitting anything else, he doesn't have a problem saying
5 that everyone else is a liar. Did he do that with you
6 during the interview?

7 A. I don't remember him saying that, unless I
8 put it in my report.

9 Q. Well, during his testimony he referred to --
10 he said Freeman was lying, the victim was lying on the
11 dresser incident, they were all lying about the cup
12 incident, that they were lying about what he did
13 afterwards, there was no Lucky shoplifting, he was just
14 going over there to buy a newspaper. For having the kind
15 of distortion of facts, he doesn't have any hesitation for
16 finding other people that are lying around him all the
17 time. Did you notice that in your interview with him?

18 A. I didn't. We didn't go into that area, I
19 guess.

20 Q. He told you that he was never violent as a
21 result of his cocaine habit, didn't he?

22 A. I don't recall. Is that in my report
23 somewhere?

24 Q. Page 7 of my report. It may take you a
25 minute to find it.

1 A. Yes, he denied ever behaving violently as a
2 result of smoking cocaine.

3 Q. Isn't it true that persons who are charged
4 with serious crimes often try to justify what they did?

5 A. Yes.

6 Q. They've got every reason in the world,
7 especially somebody in the defendant's position facing
8 capital punishment. They've got every reason to make up
9 things and distorted the truth, don't they?

10 A. It would be self-protective.

11 Q. And I think that it was your testimony --
12 I'm referring to page 49 at the last hearing, top of the
13 page -- "if he was directly lying or telling you half
14 truths, then you would say corroboration would be a
15 mischaracterization."

16 And your answer was, "I would say I would have to
17 rethink by opinion. And I might have the say that in
18 certain parts of the interview he was cooperative, and in
19 certain parts of the interview he was lying."

20 Is that your testimony at the time?

21 A. Yes.

22 Q. And then -- we covered it just a moment
23 ago -- if he was lying to you with regard to portions of
24 interview, that might cause you the have to rethink your
25 conclusions in this case?

1 A. Correct.

2 Q. We talked about remorse on direct
3 examination. You had questions about that. I think you
4 had said that the defendant had told you, along with all
5 of these other things, he was telling you that he felt bad
6 for the way that he had screwed up Debra's life, the kids
7 lives, and his life, right?

8 A. Yes.

9 Q. Screwed up Debbie's life doesn't began to
10 say what he did, does it, he took her life?

11 A. Correct.

12 Q. Big difference?

13 A. Big difference.

14 Q. And him telling you that he felt bad that he
15 had screwed up her life, didn't that give you the sense
16 that he doesn't really understand the enormity of what he
17 had done there?

18 A. It might. I don't know now what that
19 means.

20 Q. Well, it doesn't sound like remorse, does
21 it?

22 A. He was remorseful at that moment, as I
23 recalled and wrote.

24 Q. But you thought he was being truthful with
25 you also, didn't you?

1 A. For some of it. But obviously I didn't
2 believe everything he said happened -- that happened at
3 the house.

4 Q. Well, you believe it a lot less now, don't
5 you?

6 A. I am definitely believing less about what he
7 portrayed to have occurred at that house then when I had
8 seen him. Absolutely.

9 Q. When he is talking about remorse when he is
10 throwing himself in the picture, feeling bad for screwing
11 up his life. Because when you look at the pattern here,
12 it's in your report, it's through his testimony, his whole
13 attitude is to blame everybody else, characterizing
14 everyone else as liars and to try to control other people.
15 That doesn't sound anything like what people would
16 consider to be remorseful, does it?

17 A. If that is accurate, then I would -- then
18 it's very possible that his profession of, or his crying
19 in my office was selfish, in the sense that, yes, I took
20 her life, but look at my life too.

21 Q. That's not really remorse?

22 A. It is not -- it is not much remorse for
23 sure, if that is correct.

24 Q. What about him dancing this jig?

25 A. What jig?

1 Q. Well, we heard some testimony read from a
2 couple of people that had testified last time. I think
3 Ms. Turner and Ms. Jackson, some people he knew. After
4 the crime he went over to their apartment complex and they
5 saw him listening to music, dancing and jigging and happy.
6 This isn't conduct as being remorseful, is it?

7 A. You are right.

8 Q. So we're back now to that issue that we
9 started with dealing with free will. So let's talk about
10 that for a second before we conclude. You said you didn't
11 have a chance to take a look at the autopsy photos. We
12 have over a dozen knife wounds in Debbie Panos. Did you
13 read about those?

14 A. Yes, I believe so.

15 Q. There was a wound to her groin area, do you
16 remember that?

17 A. Yes.

18 Q. There was a wound to her stomach area, her
19 abdomen?

20 A. Yes.

21 Q. All of the other wounds were centered right
22 up around her neck and chest area. Did you notice
23 those?

24 A. I see them.

25 Q. Were you aware that she had been beaten

1 severely before -- maybe 15 minutes or more before the
2 knife attack?

3 A. No.

4 Q. At least the knife attack that we're seeing
5 in the picture here. You weren't aware of that?

6 A. No.

7 Q. What part of what the defendant did here
8 wasn't free will?

9 A. I guess, what I said before, if he was -- if
10 he hadn't led the life he had led, and had better
11 intellectual and thinking skills, and wasn't as
12 personality disordered and drug dependant as he had been,
13 this never would have taken place. And that -- all of
14 those factors decreased his ability to refrain from doing
15 anything like that. That's a psychologist talking about
16 why something like this occurs.

17 Q. He had to go to her house, right?

18 A. Yes.

19 Q. That was a decision. He could have gone
20 where he was supposed to go, since the system was trying
21 to give him a chance at drug rehab?

22 A. Why.

23 Q. He made a decision there, didn't he?

24 A. Yes.

25 Q. He had one choice?

1 A. I think you understand what I'm saying.

2 Q. I'm not sure I do, doctor?

3 A. I think you do. If you want to say every
4 movement of the human body involves a conscious decision,
5 that's not true. We do a lot of things automatically.
6 All I'm saying is, yes, he did this. Had he -- and he had
7 to have taken the knife and stabbed all of those different
8 times, clearly that had to happen.

9 Q. We're not even there. I mean he had to --
10 he sent her threats, right, he sent her threats?

11 A. I don't -- I don't recall. I haven't seen
12 this in ten years. I don't know.

13 Q. He told her he was going to kill her the day
14 before?

15 A. Which is what you said.

16 Q. He had to get on his bicycle and ride over
17 there?

18 A. I know.

19 Q. He had to go get in the window. He had to
20 find a knife.

21 A. He was intent --

22 Q. He had to find a fist or an object and hit
23 her with it. You're saying each one -- he had reasoning
24 to do this. It wasn't that he thought his grandmother
25 switched him when he acted up. He told you about reasons.

1 You saw reasons in there, didn't you?

2 A. Yes. He thought that she was cheating on
3 him, and he was really upset, angry, and freaking out that
4 he would leave him when he needed her.

5 Q. Anger?

6 A. Anger.

7 Q. Jealousy?

8 A. Jealousy.

9 Q. These are not uncommon emotions?

10 A. Not at all.

11 Q. They are emotions that millions or billions
12 of us deal with every day of the week, aren't they?

13 A. Yes.

14 Q. And we make choices?

15 A. Yes.

16 Q. And as you said in the beginning some people
17 choose evil?

18 A. Yes.

19 Q. And the defendant chose evil here on this
20 occasion with Debbie, didn't he?

21 A. That's -- yeah. I mean, he did something
22 that is unjustifiable. All -- as a psychologist, all I'm
23 trying to explain is how could someone gets to a point of
24 doing something like that when everybody else and this
25 jury says I wouldn't do this to an animal. I mean, there

1 is just no way -- how do you explain this. And that's
2 what I have attempted to do.

3 Q. It is evil?

4 A. It is.

5 Q. And he chose it?

6 A. He chose it with the proviso that he has
7 limitations that made those choices occur.

8 Q. You know when you look at that picture,
9 doctor, does it look like he had a lot of limitations
10 there in his choice of conduct? Does that look limited
11 to you at all?

12 A. I think you understand what I'm saying.
13 That's terrible.

14 MR. OWENS: Thank you. That's all I have,
15 your Honor.

16 THE COURT: Thank you.

17 MR. PATRICK: Court's indulgence.

18 THE COURT: All right.

19 REDIRECT EXAMINATION

20 BY MR. PATRICK:

21 Q. Dr. Etcoff, are you board certified in the
22 State of Nevada?

23 A. No there no such thing.

24 Q. But you are certified to be a psychologist
25 in the State of Nevada?

1 A. It's called licensed.

2 Q. Sorry. That's something that the state
3 does?

4 A. Yes.

5 Q. And that's very difficult to obtain, isn't
6 it?

7 A. Well, yeah.

8 Q. You're a professional, correct?

9 A. Yes.

10 Q. You get paid to do what you do?

11 A. I do.

12 Q. I get paid to do what I do. Mr. Owens, we
13 are all professionals, we all get paid to do our jobs?

14 A. Yes.

15 Q. Now, when you evaluated James, were you
16 approaching this as a forensic evaluation?

17 A. Yes.

18 Q. And did you consider James a patient or a
19 examinee?

20 A. Examinee.

21 Q. So you would have given Mr. Brooks good news
22 or bad news?

23 A. I did, I think.

24 Q. So you weren't -- you did not askew your
25 report simply to make James look any better or worse than

1 he was?

2 A. No.

3 Q. Now, James was given IQ testing,
4 neuropsychology testing, and a few other tests --
5 personality tests?

6 A. Not neuropsychology, just IQ achievement and
7 personality.

8 Q. Thank you. And I think we talked about
9 before that at least one of those tests had a validity
10 indicator?

11 A. Yes.

12 Q. And that according to that James was telling
13 the truth on that test?

14 A. Yeah, depicting himself in a valid
15 fashion.

16 Q. Now, those tests, those tests just the
17 tests, do you still feel that the tests are valid?

18 A. Yeah, they're definitely valid.

19 Q. And that the results are results you can
20 believe?

21 A. Yes.

22 Q. Now, are -- in the school records that
23 you've got, I believe we talked, he was seen by a social
24 worker and a psychiatrist?

25 A. A school psychologist.

1 Q. School psychologist. There was some family
2 history in those school records?

3 A. Yes.

4 Q. Now, the school records would be -- would
5 you classify them as an independent source of
6 information?

7 A. Yes.

8 Q. And a lot of -- did a lot of what James tell
9 you match what you found in those school records?

10 A. Yes.

11 Q. Now there was some questions about whether
12 or not James' grandmother was neglectful. Mr. Owens
13 pointed out that she gave them food and clothing,
14 therefore she must not be neglectful?

15 A. Yeah.

16 Q. Is it possible that a parent can be
17 neglectful but still provide clothing, shelter, and
18 food?

19 A. Happens all the time.

20 Q. Are you a parent doctor?

21 A. Yes.

22 Q. And have you ever discipline your kids?

23 A. My wife is here. Well, she'd say not as
24 much as I should have. I'm pretty easy going and lenient,
25 maybe too much. So she was the heavy.

1 Q. And I think you testified that spanking is
2 not abuse?

3 A. Well, I was spanked quite a bit as a kid,
4 but I didn't spank my kids because that's not my
5 personality. And, you know, if you kids three years old
6 and about to jump on I-15, I think a spank is okay. But if
7 you are every time they cry you hit them, well, that is
8 abusive. So it's something to be used for a very short
9 duration of time when you're very young for very specific
10 dangerous behaviors they're going into.

11 As you would train a dog to not, you know, you
12 would -- not that I'm a dog expert -- but if they're about
13 to do something dangerous like put their finger in a
14 socket or run across the street, if a parent slapped on
15 the tushie, that's okay. But if you keep hitting them all
16 the time throughout their lives, that's abusive.

17 Q. Now if you beat them with a stick and leave
18 welts is that spanking or abuse?

19 A. That's abuse.

20 Q. If you hit them with an extension accord and
21 leave welts that they go to school with is that spanking
22 or abuse?

23 A. That's abuse.

24 Q. Could that be classified as neglectful?

25 A. Yeah. I mean, abusive, neglectful, wrong,

1 just not a good way of behaving.

2 Q. If you left four small children at home
3 alone at night so you could go play bingo, could you go
4 with that being neglectful?

5 A. Yes.

6 Q. If you were gone so much that the
7 neighborhood kids came over to your house and smoked drugs
8 all hours of the day and night, would that be
9 neglectful?

10 A. Yes.

11 Q. After the test and talking to James, does it
12 surprise you that he's been in trouble with the law most
13 of his life?

14 A. No.

15 Q. And Mr. Owens showed you a stack of arrests
16 for whatever, does that fit in with what you know about
17 James?

18 A. Yeah. I mean, people who grow up in the
19 circumstances he grew up in often are in exactly these
20 types of predicaments and have these types of records.
21 This is very common, very common, unfortunately.

22 Q. You were aware that James had been in
23 trouble with the police a great deal when you talked to
24 him ten years ago?

25 A. I didn't know the extent to which, I didn't

1 know the charges, I didn't know if he had gone to trial, I
2 knew he had been arrested several times.

3 Q. And you knew he had a long history of
4 domestic violence with Debbie?

5 A. I don't know if I knew. I don't believe I
6 knew he had a long history of domestic violence and what
7 it entailed. I don't believe I knew that stuff.

8 Q. Okay. Now, Mr. Owens tried to get us to
9 believe that they'd been splitting up for years, and that
10 they had problems for years and years. Couples have
11 problems, don't they?

12 A. Yeah.

13 Q. And if you have an argument with your wife,
14 does that mean you are going to split up the next day?

15 MR. OWENS: Your Honor, I object to the
16 leading nature of question.

17 THE COURT: Sustained.

18 BY MR. PATRICK:

19 Q. Do you argue with your wife?

20 A. Sometimes, yes.

21 MR. OWENS: Objection, relevancy.

22 THE COURT: What's the relevancy?

23 MR. PATRICK: Your Honor, it goes to the
24 fact that just because they had arguments or James slapped
25 her doesn't mean that they're in the process of breaking

1 up.

2 Mr. Owens said they were breaking up for
3 at least five years.

4 MR. OWENS: That mischaracterizes the --

5 THE COURT: I'll sustained the objection.
6 I don't think Dr. Etcoff's relationship is relevant to the
7 issues here.

8 BY MR. PATRICK:

9 Q. Now, Mr. Owens read you off a list of names
10 of friends of Debbie's?

11 A. Yes.

12 Q. And they've all been in here as witnesses
13 for the prosecution?

14 A. Okay.

15 Q. In your experience do people who come in and
16 testify for the prosecution, do they want to be helpful to
17 you to help the defendant?

18 MR. OWENS: Objection, leading.

19 THE COURT: Sustained.

20 BY MR. PATRICK:

21 Q. Have you ever had a witness for the
22 prosecution come in and tell you that they want to help
23 the defendant?

24 MR. OWENS: Objection, foundation,
25 relevance.

1 MR. PATRICK: Well, the relevancy, your
2 Honor, is Mr. Owens brought up all these people that Dr.
3 Etcoff didn't interview. And the relevancy is he didn't
4 get the interview them because they're not going to come
5 in and allow him to interview them because that would be
6 helping James.

7 THE COURT: Hold on a second. There is
8 not any evidence as to why he didn't talk to anybody. So
9 let's confine it to folks in this case and the facts of
10 this case, please.

11 MR. PATRICK: Okay.

12 BY MR. PATRICK:

13 Q. Now there was some talk about the fact that
14 James entered the trailer that day through the window?

15 A. Yes.

16 Q. You said that that sounded funny?

17 A. Yes.

18 Q. Would it change your opinion to know that
19 several people have testified and said that's the way
20 James always entered that trailer?

21 A. That's different. But if that's true, that
22 is unusual.

23 Q. Did James ever deny to you that he killed
24 Debbie?

25 A. No.

1 Q. Did he ever tell you he had a memory loss
2 that it was him that killed Debbie?

3 A. No.

4 Q. The only memory loss he had was of what?

5 A. Details.

6 Q. Do you find that unusual?

7 A. It's not unusual. As I testified
8 previously, to want to forget doing what you saw in those
9 pictures. But, again, when you do something bad like that
10 you tend to have some recollection of it. It may not be
11 everything you did, but you know you did it, you know you
12 were there, you know some of what you did, and you know
13 what it looked like.

14 Q. Going back to the question that Mr. Owens
15 asked you about the fact that James denied being violent
16 when he smoked cocaine. That was on page 7 of your report
17 under the heading of substance abuse history, second
18 paragraph.

19 A. Yep.

20 Q. About like two lines above where -- or the
21 line above where he said he denied ever being violent.
22 But he did say that you can get really tickled off?

23 A. Yes.

24 Q. And in your opinion would that be angry?

25 A. Yes.

1 Q. And that that could lead to violence?

2 MR. OWENS: Objection to leading, your
3 Honor.

4 THE COURT: Sustained.

5 BY MR. PATRICK:

6 Q. In your opinion could that lead to
7 violence?

8 MR. OWENS: Objection.

9 THE COURT: In your opinion, what could
10 that lead to, doctor?

11 THE WITNESS: Well, if you keep smoking
12 cocaine it's a very good chance you'll get irritated,
13 angry and lead to violence no matter who you are.

14 BY MR. PATRICK:

15 Q. Now, I think Mr. Owens was also talking
16 about people who -- people deal with jealousy and anger on
17 a daily basis?

18 A. Yes.

19 Q. And would you say that we all deal with that
20 on a daily basis?

21 MR. OWENS: Objection, leading.

22 THE COURT: Sustained.

23 BY MR. PATRICK:

24 Q. What are some of the emotions that people
25 have to deal with on a daily basis?

1 A. Frustration, sadness, happiness, anxiety, if
2 you loose someone, grief. But on a daily basis where
3 nothing horrible happens, irritability, frustration,
4 sadness, sometimes anxiety would be major, besides the
5 good ones.

6 Q. Okay. And if something horrible happened
7 what would be some of the emotions people have to deal
8 with on a daily basis?

9 A. It could be big anger, depression, grief,
10 being just really cognitively out of it.

11 Q. If a person had a long history of drug
12 abuse, if they had a bad childhood, if they had a low IQ,
13 would that affect how they deal with these things?

14 A. Yes.

15 Q. And in your testing and evaluation of James,
16 does he suffer from those?

17 A. As I stated before, he is intellectually not
18 well adapted to make good decisions, to think rationally.
19 His life events and life history have been just filled
20 with disappointment and frustration, anger, upset,
21 dependency. He has just had a lot of bad things happen in
22 his life, and obviously some he's made happened.

23 Q. Would that affect how he deals with those
24 emotions you were just talking about?

25 A. Yes.

1 MR. PATRICK: That's all I have, your
2 Honor.

3 THE COURT: Mr. Owens.

4 RECROSS-EXAMINATION

5 BY MR. OWENS:

6 Q. The lifestyle we heard in here on the
7 defendant was he was able to not have to go to work, was
8 taken care of, had a place to go to, and did whatever he
9 wants whenever he wanted to, took money from people all
10 the time. Is that the kind of not-going-his-way lifestyle
11 you're talking about?

12 A. He may be smarter than I thought.

13 Q. Yeah. If anybody was dishing out misery to
14 other people, it was the defendant, wasn't it?

15 A. Well, it sounds like he was dishing out
16 misery to people and it sounds like he was miserable
17 himself. Both are true.

18 Q. Well, he was living whatever lifestyle he
19 wanted to live, wasn't he?

20 A. I don't know if he was. I don't know if --
21 you know, if that's what he wanted to do, then you're
22 right. But if he wanted to do other things but was
23 frustrated he couldn't, then he was miserable and that's
24 the lifestyle that was left to him. I don't know.

25 Q. Did he tell you he wanted to do something

1 different?

2 A. We didn't have a discussion about future
3 occupational possibilities, given the fact that he had
4 none.

5 Q. So apparently having free room and board and
6 being able to get things from other people and steal and
7 lie and do dope, that was the life he wanted to lead and
8 he was living life, wasn't he?

9 A. I don't know.

10 Q. It was Debbie that was paying the price for
11 his enjoyment.

12 MR. SCHIECK: Objection, your Honor. I
13 ask that it be stricken.

14 THE COURT: I'll sustain the objection
15 stricken.

16 MR. OWENS: Nothing further.

17 THE COURT: Anything further, Mr.
18 Patrick.

19 MR. PATRICK: Just one, your Honor.

20 BY MR. PATRICK:

21 Q. We talked about all of the things you
22 discovered about James, would any of those affect the
23 things that Mr. Owens was just talking about, how he chose
24 to live his life?

25 A. It's really common for people, even children

1 who are doing lousy in school, who don't have parents at
2 home, where there's a lot going on and there's some
3 neglect or their siblings are in trouble, for them to have
4 limited aspirations for the future or believe that they
5 can't ever graduate high school or never have a good job
6 or there's nothing left for them but to be a failure. I
7 see it all the time in kids that have much better lives
8 then he ever had.

9 So it is very common when you are having bad things
10 happen early on in life that your outcomes or what your
11 aspirations or what you think you can do shrinks and
12 continues to shrink until you see drop-out rates in high
13 school over 25 percent. Which is amazing that only 75 out
14 of hundred graduate high school in this town. That's just
15 the tip of the iceberg.

16 MR. PATRICK: Thank you, doctor. That's
17 all I have.

18 THE COURT: Anything else.

19 MR. OWENS: No.

20 Hold on a second.

21 (Discussion held at the bench.)

22 THE COURT: Let me ask you a few
23 questions.

24 If Mr. Chappell did not understand a
25 question on the validity test, could he have asked for

1 help or more explanation?

2 THE WITNESS: Yes.

3 THE COURT: Can you have these delusions
4 from crack if you are not high on crack if you have been
5 addicted for years?

6 THE WITNESS: I am not a physician, so I
7 am not -- I think there are withdrawal if it hasn't
8 been -- you know what, I don't know. That's the safest
9 thing to say.

10 THE COURT: Okay. Mr. Patrick, any
11 questions based upon mine.

12 MR. PATRICK: No, your Honor.

13 THE COURT: Mr. Owens.

14 BY MR. OWENS:

15 Q. On the last one the word delusion in there.
16 That is a clinical term?

17 A. Yes. A delusion is a fixed irrational
18 belief that you believe is absolutely true, like you've
19 seen -- the CIA is after me. Well, you believe the CIA is
20 after you, but in reality it isn't. But you are darn well
21 convinced it is and you are living your life based upon
22 that. That is a delusion.

23 Q. You did not render any opinions about
24 delusions?

25 A. I didn't perceive -- I didn't diagnose him

1 with a paranoid delusional condition.

2 Q. So there wasn't any testimony about him
3 having delusional ideations?

4 A. There was personality test results
5 suggesting that in times of stress he could become
6 delusional, but that it didn't stay as a permanent state.
7 But that he would get delusional if there was enough going
8 on that was troubling him.

9 Q. But you didn't see evidence of that in your
10 examination with regard to this case?

11 A. I did. I mentioned -- I mean that is a hard
12 thing to talk about. When he said he had sex with her,
13 and he could tell that other people had been with her,
14 that's bizarre, delusional, crazy, disgusting,
15 delusional.

16 Q. So you see that as delusional?

17 A. Yes.

18 Q. Could it be simple fabrication?

19 A. I would bet anything that it is not
20 fabrication, that is just delusional.

21 Q. That whole thing that he said because that
22 goes back doctor to his claim that he did not ejaculate
23 into the victim, because she was -- he thought she had
24 been with other men?

25 A. Its delusional, sorry.

1 Q. Okay. So hes not making that up. He
2 ejaculated and was delusional about that?

3 A. The way he described how he knew she was
4 having sex with someone else was crazy, delusional
5 thinking and not a lie. He might have lied about other
6 things, but that was crazy.

7 Q. But he had a reason to lie about that at the
8 time?

9 A. If you say so.

10 Q. I'm asking you?

11 A. He was delusional.

12 MR. OWENS: I don't have anything
13 further.

14 THE COURT: Mr. Patrick.

15 MR. PATRICK: No, judge.

16 THE COURT: All right, Dr. Etcoff I
17 appreciate your time. You may step down. You are
18 excused.

19 THE COURT: We'll be in recess for the
20 afternoon.

21 JURY ADMONITION

22 During the recess, ladies and gentlemen,
23 you are admonished not to converse among yourselves or
24 with anyone else, including, without limitation, the
25 lawyers, parties and witnesses, on any subject connected

1 with this trial, or any other case referred to during it,
2 or read, watch, or listen to any report of or commentary
3 on the trial, or any person connected with this trial, or
4 any such other case by any medium of information
5 including, without limitation, newspapers, television,
6 internet or radio.

7 You are further admonished not to form or
8 express any opinion on any subject connected with this
9 trial until the case is finally submitted to you.

10 We'll be in recess. Try to get back and
11 we'll get started at 2:00 o'clock.

12 Thank you all.

13 Anything outside the presence.

14 MR. OWENS: No.

15 MR. PATRICK: No, judge.

16 THE COURT: We'll be in recess.

17 Thank you.

18
19
20 * * * * *

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

"one 109:24	100:19.	.
#745 1:43.	2-and-a-half 5:6,	.
'8 37:1.	33:10, 34:5.	< A >.
'83 20:23.	20 3:13, 26:15.	A.M. 4:2.
'85 21:1.	21 40:16, 40:16.	abdomen 117:19.
'9 30:9, 30:10,	25 135:13.	abilities 40:23,
51:4, 92:25.	26 109:6.	41:7, 41:20,
'95 59:18,	2:00 139:11,	42:3, 42:5,
96:11.	139:11.	72:18.
'96 51:4.	2nd 52:8.	ability 42:17,
--'82 20:23.	3 1:3.	44:9, 58:16,
.o 13:16.	30 26:11.	65:11, 66:17,
0.65 38:12,	30. 87:15.	71:10, 73:2,
38:12.	31 109:6.	74:17, 118:14.
1 35:22, 39:3,	3st1 60:2.	able 7:12, 28:15,
96:3.	4 3:7, 39:2,	28:17, 29:18,
10 51:9.	87:4.	33:11, 34:8,
11 18:20, 53:4,	40 26:11.	34:18, 37:3,
67:15, 106:16.	49 114:12.	46:1, 51:3,
11st 15:8.	4th 35:23, 36:5,	56:25, 71:23,
12 11:17.	52:8.	75:21, 104:4,
121 3:15.	5 98:1.	133:7, 134:6.
129 100:10,	50 41:17.	abnormal 51:25.
100:11.	52 96:22.	above 13:10,
133 3:16.	584 38:12.	130:20,
140 3:21.	6 13:11, 35:22,	130:21.
15 25:3, 40:16,	86:22, 86:24.	absent 74:20,
95:21, 118:1.	607 38:12.	74:21.
150 49:15, 49:21,	67 111:20.	absolute 58:19.
83:8.	69 3:14.	Absolutely 91:10,
16 37:17.	6th 45:1.	91:18, 91:22,
17 3:8.	7 37:12, 39:6,	116:8, 136:18.
197 20:17,	41:19, 113:24,	Abstract 43:1.
34:21.	130:16.	abuse 33:24,
1973 20:17.	75 65:2, 135:13.	38:22, 39:7,
1978 34:21.	77 41:15.	51:17, 52:1,
198 37:1.	8 23:4, 42:3.	55:16, 86:21,
1983 20:19,	80 64:22.	86:23, 87:17,
20:22.	81 10:15, 10:18.	87:18, 88:8,
1984 20:12.	82 10:15, 14:15.	88:22, 89:2,
1988 21:6.	839 11:16.	89:4, 89:8,
199 13:20, 21:16,	9 37:17, 41:22,	90:19, 125:2,
98:2.	60:7.	125:18, 125:19,
1990 21:11.	90 69:14.	125:22, 125:23,
1995 5:7, 11:9,	90s 24:11.	130:17,
13:20, 13:21.	92 54:21.	132:12.
1st 96:14, 98:2,	94 41:20.	abused 5:14,
98:13, 103:9.	99 42:11.	89:21.
2 35:22, 49:9,	9:00 4:2, 4:2.	abuser 6:13,
49:10, 87:14,	9th 11:9.	16:3.

abusers 5:16.	acting-out	138:21.
Abusive 33:22,	49:23.	adolescents
86:13, 86:20,	action 4:17, 19:3,	21:18.
88:16, 88:18,	19:21, 37:24,	adult 36:13,
89:10, 89:11,	74:19.	38:19.
91:16, 91:18,	actions 90:20.	adults 21:14,
125:8, 125:16,	actual 62:20,	21:18, 44:24.
125:25.	111:3, 112:6.	advanced 40:10.
academic 27:12,	actually 7:8,	advantage 55:25.
37:21, 42:7,	24:4, 37:13,	advising 97:17.
44:13.	39:24, 47:4,	advocate 81:9,
academically 36:2,	83:15, 85:22,	81:21.
36:18, 42:9.	103:24.	affect 15:11,
Academy 23:9,	acute 51:17.	27:15, 44:8,
23:11.	adapt 43:18.	98:14, 132:13,
accept 106:15.	adapted 132:18.	132:23,
accepted 51:5,	adapting 43:22.	134:22.
110:19,	adaptive 65:22,	affected 33:19,
110:20.	66:6, 71:23,	33:20, 58:23.
accepting 106:12,	72:18.	affects 24:5.
110:16,	addicted 39:17,	afternoon
110:17.	66:10, 75:9,	138:20.
access 57:1.	136:5.	Afterwards 93:2,
accident 22:15,	addition 45:8,	95:18, 108:6,
22:17, 28:10,	102:14.	113:13.
33:9, 92:24,	additional 13:25,	age 37:6, 38:25,
93:1, 93:6,	100:23, 105:1.	41:18, 41:21,
103:9.	address 11:13,	42:6, 42:11,
accord 125:20.	11:14, 11:16,	45:13, 64:17,
according	13:16.	77:9, 87:14,
123:12.	adequate 34:9,	87:15, 90:10,
accurate 28:17,	34:10.	96:3.
28:19, 38:19,	adjunct 23:2.	agency 6:2, 6:5.
56:22, 84:15,	adjusting 36:2,	ago 25:3, 26:16,
99:20, 116:17.	36:18.	27:6, 39:13,
accused 30:13.	adjustment 35:5.	77:18, 80:9,
achievement 27:12,	administer 40:7,	84:4, 95:1,
37:21, 44:13,	40:14, 44:12.	96:20, 105:6,
123:6.	administered	106:16, 111:12,
acronym 5:21,	27:11, 40:3.	114:23,
5:22, 5:24.	administration	126:24.
across 40:22,	83:14.	agree 47:17, 80:4,
72:5, 88:19,	admission 100:5.	89:4, 99:18.
125:14.	admit 97:4.	agreed 111:19.
act 44:9, 62:20,	admitted 55:16,	Air 20:20, 20:22,
63:23, 93:12,	100:8.	20:24, 21:1.
98:12.	admonished 68:1,	air-conditioning
acted 94:7,	68:10, 138:23,	61:15.
119:25.	139:7.	algebra 45:9.
acting 90:10.	ADMONITION 67:24,	allegations 18:7,

18:17.
 allied 76:14.
 allow 129:5.
 alluded 92:25,
 97:13.
 almost 53:11.
 alone 57:11,
 126:3.
 already 23:7,
 47:5, 73:7,
 100:3.
 Although 34:6,
 46:10, 71:9.
 altogether 26:12,
 45:21, 75:25.
 amazing 135:13.
 ambivalent
 70:10.
 ambulance 12:12.
 American 22:21,
 76:10, 76:21.
 among 68:1,
 138:23.
 amount 48:12,
 70:1, 73:8.
 and/or 21:22.
 anesthesia 57:4.
 anesthetic
 54:22.
 Anger 74:19,
 120:5, 120:6,
 131:16, 132:9,
 132:20.
 Angry 58:1, 58:1,
 64:17, 66:3,
 120:3, 130:24,
 131:13.
 animal 120:25.
 answer 29:5,
 31:16, 49:16,
 51:3, 72:13,
 72:14, 93:4,
 101:12, 106:7,
 114:16.
 answering 83:17.
 Anthony 13:8.
 anxiety 35:15,
 49:23, 51:16,
 132:1, 132:4.
 anxious 54:14,
 59:23, 59:25,
 64:18, 65:3.
 anybody 27:23,
 59:1, 129:8,
 133:13.
 apart 72:6,
 102:2.
 apartment 59:19,
 60:16, 117:4.
 apparently 73:12,
 87:12, 88:24,
 134:5.
 appear 8:22,
 37:21.
 APPEARANCES 2:1.
 appeared 28:25,
 88:9.
 appears 38:2,
 105:5.
 appellate 24:14.
 application 7:9,
 8:13, 10:11,
 14:5, 14:16,
 14:22, 17:25,
 18:6, 76:23.
 apply 7:24,
 76:1.
 applying 35:11.
 appreciate 93:10,
 138:17.
 apprehensive
 52:17.
 approach 100:12.
 approaching
 122:16.
 appropriate
 41:3.
 approximately
 26:9, 26:16.
 area 21:17, 22:9,
 41:5, 41:6,
 113:18, 117:15,
 117:18,
 117:22.
 areas 41:5, 49:13,
 62:24, 77:10.
 argue 75:17,
 127:19.
 argument 127:13.
 argumentative
 93:19.
 arguments 97:23,
 127:24.
 Arithmetic 42:25,
 45:7, 45:11.
 Arizona 96:7,
 97:10, 97:22.
 arms 98:5, 103:14,
 107:10.
 around 28:6,
 55:25, 74:22,
 77:21, 84:12,
 88:13, 96:3,
 113:16,
 117:22.
 arraigned 47:1.
 arrest 93:11,
 97:11.
 arrested 93:9,
 93:10, 96:2,
 97:9, 97:20,
 98:19, 127:2.
 arresting 93:2,
 93:8.
 arrests 95:22,
 98:20, 101:6,
 126:15.
 askew 122:24.
 aspirations 135:4,
 135:11.
 assessing 104:7.
 assessment
 25:24.
 assessments 21:14,
 23:8.
 assigned 35:13.
 assignment 80:3.
 assignments
 38:8.
 assist 96:23.
 Assistance 5:20.
 associated 63:9.
 associates
 40:13.
 Association 22:22,
 22:25.
 associations
 22:20.
 assumed 73:10.
 Assuming 98:11,

105:20.
 attached 39:16.
 attachment 35:15,
 52:20.
 attachments
 34:3.
 attack 118:2,
 118:4.
 attempt 82:17.
 attempted 121:2.
 attendance 38:9,
 38:9.
 attention 35:21,
 51:8.
 attitude 116:13.
 attorney 78:8,
 82:2.
 attorneys 4:9,
 4:9, 68:22,
 68:22, 77:17.
 August 60:2.
 automatically
 119:5.
 autopsy 117:11.
 available 28:13,
 33:16, 66:22,
 70:18, 72:7,
 85:10, 85:25,
 90:5, 105:12.
 average 38:11,
 41:15, 41:23,
 42:7.
 avoid 38:1, 54:16,
 73:23.
 aware 30:10,
 30:16, 30:18,
 31:10, 46:16,
 47:4, 97:6,
 98:8, 103:4,
 103:21, 106:20,
 106:23, 107:6,
 108:21, 117:25,
 118:5, 126:22.
 away 8:23, 15:2,
 15:4, 56:6,
 56:10, 93:10,
 103:3.
 awhile 21:10,
 46:20.
 .
 < B >.
 bachelors 20:16.
 background 20:14,
 44:4, 104:19.
 backwards 100:4.
 badly 90:23,
 94:7.
 balanced 82:16.
 bananas 62:12.
 bank 33:3.
 Base 20:22, 20:25,
 53:9.
 Based 94:7, 99:23,
 102:25, 105:5,
 105:7, 107:10,
 109:10, 136:11,
 136:21.
 basic 42:23.
 Basically 5:14,
 5:15, 12:23,
 18:16, 25:23,
 79:16, 86:5.
 basis 102:12,
 131:17, 131:20,
 131:25, 132:2,
 132:8.
 bathrooms 7:15.
 battered 13:1.
 battery 27:12.
 beat 125:17.
 beaten 117:25.
 beating 90:24,
 92:24.
 became 38:25,
 39:5, 39:13.
 become 23:18,
 39:25, 52:11,
 52:14, 54:3,
 64:17, 76:21,
 77:11, 77:16,
 137:5.
 becomes 16:10,
 112:6.
 becoming 82:5.
 bed 31:5, 61:22,
 98:5.
 bedroom 60:16,
 61:4, 98:4,
 104:5, 110:7.
 Beer 61:10,
 61:12.
 beers 60:14.
 began 39:1, 55:18,
 60:20, 96:3,
 102:3, 102:3,
 108:12, 115:9.
 begin 94:22.
 beginning 105:18,
 120:16.
 behaved 90:23.
 behaving 48:3,
 114:1, 126:1.
 behavior 23:24,
 48:1, 76:2.
 behavioral
 32:15.
 behaviors 35:17,
 36:10, 39:23,
 125:10.
 behind 35:12,
 72:5.
 beings 74:2,
 75:10, 82:6,
 92:18.
 belief 136:18.
 believable 86:10,
 86:11.
 believed 110:23.
 believing 99:24,
 116:6.
 bench. 135:21.
 besides 27:23,
 132:4.
 best 32:10, 32:20,
 33:9, 43:22,
 48:16, 58:16,
 90:22, 112:1.
 bet 137:19.
 better 21:22,
 35:11, 41:24,
 41:25, 45:16,
 48:14, 64:23,
 65:8, 66:6,
 85:8, 98:21,
 118:10, 122:25,
 135:7.
 beyond 95:4.
 bias 82:9, 82:11,
 82:14, 82:15,

82:21.	41:13.	< C >.
biased 82:11,	bottom 60:6.	C-131341 1:2, 4:7,
82:12, 82:12.	Boulevard 27:1,	68:20.
bicycle 119:16.	83:24.	call 4:13, 6:19,
Big 52:1, 52:1,	Box 13:17.	6:20, 7:12,
115:12, 115:13,	boxers 61:4.	7:18, 8:10,
132:9.	boxes 61:10.	9:20, 9:21,
bike 60:15.	boyfriend 11:15.	9:21, 10:2,
billions 120:11.	brain 22:3, 22:14,	10:3, 10:6,
bingo 87:10,	23:23, 23:25,	19:11, 19:16,
126:3.	23:25, 24:1,	19:18, 46:23,
biofeedback	24:4, 45:25,	65:13, 74:16,
80:17.	46:1, 63:4,	74:16, 77:7,
bipolar 51:16.	63:25, 64:1.	80:20, 89:8,
birth 11:14.	branding 63:4.	89:9, 89:10,
birthday 87:9.	Brandise 20:17.	102:13.
bit 10:20, 11:6,	breaking 127:25,	called 12:11,
12:1, 26:3,	128:2.	12:11, 17:13,
44:15, 76:10,	Brief 68:18.	17:15, 23:16,
125:3.	briefly 30:24.	40:25, 50:6,
bizarre 106:11,	bright 65:2, 65:5,	122:1.
110:24,	65:21.	calling 91:3,
137:14.	bring 12:4.	110:14.
blacked 112:14,	broadest 42:2.	calls 4:14, 6:12,
112:20.	broke 57:16,	18:5, 110:11.
blackouts	57:25, 61:13,	camps 95:21.
111:13.	61:15, 61:15.	cans 61:10,
blame 91:24,	broken 31:2.	61:12.
92:18, 93:11,	Brooks 28:13,	capable 76:6,
94:8, 94:12,	78:18, 122:21.	83:11, 83:12.
95:5, 95:10,	brother 28:5,	capacity 48:20,
116:13.	87:13, 89:1,	48:21, 73:12.
blamed 92:2,	90:12.	capital 114:8.
94:6.	brought 28:14,	car 61:12, 61:17,
blaming 61:14.	63:21, 77:20,	62:14, 108:10,
blaring 57:6.	80:22, 129:2.	108:12, 108:21,
blink 76:8.	bruises 102:12.	108:24, 109:10,
block 41:8.	bug 57:8.	110:10.
blur 54:4.	build 36:8.	car. 61:9.
Board 76:10,	built 50:2,	care 9:23, 37:6,
76:12, 76:13,	50:3.	37:7, 52:13,
76:22, 77:1,	bunch 22:8,	54:24, 87:6,
77:11, 77:13,	63:11.	89:17, 91:1,
121:21, 134:5.	burglary 55:19,	133:8.
boards 77:11,	59:14, 95:24.	Carla 87:15.
77:12.	burned 63:4.	cartridge 72:6.
body 6:15, 102:12,	business 11:13.	cases 16:17,
119:4.	buy 113:14.	27:14, 28:9,
bogus 108:7.	.	78:19, 79:5,
borderline	.	98:23, 98:23,

101:3.	28:18, 68:20,	chiropractors
cat 45:2, 45:3,	68:22, 83:14,	76:15.
45:3.	86:19, 87:5,	choice 75:12,
cataloged	87:19, 88:16,	75:14, 75:16,
102:11.	89:15, 89:22,	118:25,
category 69:15.	89:23, 90:2,	121:10.
Catholic 5:4.	90:3, 102:5,	choices 65:11,
caught 106:25.	135:24.	76:7, 120:14,
cause 28:10,	characteristics	121:7.
114:24.	48:5, 51:25.	choose 70:19,
caused 82:21.	characterizing	75:6, 75:7,
causes 22:18.	88:8, 90:18,	120:17.
ceiling 61:13.	116:13.	Choosing 75:12.
Center 12:21,	charge 55:19,	chose 120:19,
14:20.	60:1.	121:5, 121:6,
centered 117:21.	charged 26:4,	134:23.
certain 6:21,	30:10, 47:8,	CHRISTOPHER 2:2.
43:17, 44:22,	112:4, 112:19,	chronic 73:9.
48:12, 49:5,	114:3.	chronologically
66:2, 67:6,	charges 47:2,	100:4.
71:10, 71:11,	47:12, 47:15,	CIA 136:19,
76:6, 76:25,	48:8, 127:1.	136:19.
98:22, 114:18,	Charities 5:4.	circumstance
114:19.	Charter 21:12.	71:10.
certainly 34:1,	cheated 56:7.	circumstances
48:23, 71:14,	cheating 120:2.	16:20, 126:19.
73:14, 92:17.	cheep 61:10.	civil 28:9,
certification	chest 117:22.	98:23.
77:5, 77:8.	chief 4:12, 19:17,	claim 137:22.
certified 77:11,	21:10.	claiming 22:13.
77:13, 80:25,	child 21:20,	Claire 61:5.
100:2, 121:21,	22:11, 22:12,	Claire. 61:11.
121:24.	65:2, 65:2,	Clark 1:7, 2:7,
cetera 66:10,	80:18, 90:19.	24:7, 25:1.
66:10.	childhood 32:1,	class 35:13.
challenging	32:5, 66:19,	classes 34:19,
43:22.	66:23, 132:12.	34:21.
chance 16:5,	childhoods 75:9.	classified 36:24,
24:23, 29:23,	children 12:22,	125:24.
117:11, 118:21,	12:23, 13:2,	classify 124:5.
131:12.	13:2, 13:4,	classroom 36:21,
chances 48:1.	13:10, 15:4,	37:1, 37:18.
change 16:2,	21:14, 21:18,	clear 52:22.
23:25, 99:25,	21:23, 31:23,	cleared 101:10.
129:18.	53:1, 54:10,	clearly 94:11,
Chantelle 13:8.	58:20, 59:22,	119:8.
Chappell 1:17,	91:1, 93:2,	CLERK 4:16, 4:21,
4:7, 4:9, 27:8,	93:8, 93:10,	19:20, 19:25,
27:20, 27:23,	93:15, 126:2,	99:12, 100:10.
28:3, 28:16,	134:25.	client 14:11,

15:16, 15:17,	common 28:1,	102:24, 117:6,
15:20.	40:13, 43:11,	121:10.
climbed 60:15,	62:22, 98:22,	conferences
60:16, 103:13,	112:16, 126:21,	76:16.
110:7.	126:21, 134:25,	confine 129:9.
climbing 106:10.	135:9.	confined 71:16.
Clinical 20:18,	commonly 79:6.	conjunction 6:4.
20:21, 21:19,	communicate	connected 14:16,
22:23, 23:18,	45:16.	68:3, 68:6,
24:3, 49:9,	communications	68:11, 138:25,
63:1, 80:11,	21:24.	139:3, 139:8.
81:6, 81:19,	company 83:9.	connotation 69:23,
86:9, 136:16.	compare 49:25.	89:5.
clock 58:11.	comparing 41:17.	conscious 63:24,
close 33:12, 35:4,	compassionate	64:5, 64:7,
46:13, 61:19,	36:12.	119:4.
103:10,	compelled 79:25.	consensual
104:14.	competency	107:10.
clothes 107:5.	78:12.	consider 116:16,
clothing 89:17,	competent 52:12.	122:18.
124:13,	complain 50:10.	consistent 38:17,
124:17.	complete 45:10.	55:4, 62:21,
clothing. 87:7.	completed 45:12.	63:2, 94:8,
clue 37:24, 48:2,	completely 81:9,	94:14.
67:19, 70:24.	85:14.	constant 54:17,
cocaine 39:3,	completing 38:8.	66:24.
39:4, 39:5,	complex 44:22,	consulting
39:13, 39:18,	45:21, 117:4.	24:25.
54:12, 113:21,	complicated	contact 18:9,
114:2, 130:16,	65:20.	35:6, 104:17.
131:12.	computers 86:25.	contacts 7:2,
cognitive 22:14.	con 48:25,	100:18.
cognitively	48:25.	continue 4:11,
132:10.	concepts 42:16.	68:24.
cohort 41:18.	concern 80:21.	continues
collateral 28:7,	concerning 72:2,	135:12.
84:22, 84:23,	72:8.	contra 64:13.
86:8, 86:8.	conclude 117:10.	contradict
comes 37:23,	conclusion 37:4,	108:3.
41:10.	110:12.	control 39:23,
comfortable	conclusions	69:25, 70:1,
66:5.	114:25.	74:14, 82:15,
coming 54:12,	concoct 49:4.	91:2, 92:3,
56:3, 105:4,	concocting 55:21,	116:14.
107:9, 110:25.	55:24.	convenient 111:3,
commentary 68:5,	concussions	111:9, 112:25.
139:2.	24:2.	converse 68:1,
commit 74:3, 74:4,	condition 110:7,	138:23.
74:9, 74:11.	137:1.	converts 45:12,
committed 75:10.	conduct 102:19,	45:13.

convicted 24:18,	114:22.	22:11, 22:12,
79:2, 82:3,	crack 39:13,	24:11, 30:16,
98:19.	39:17, 39:18,	46:17, 46:19,
convictions	136:4, 136:4.	107:2.
98:20.	crap 90:24.	cuts 53:18.
convinced	crazy 33:4,	.
136:21.	137:14, 138:4,	.
cooperative 98:15,	138:6.	< D >.
114:18.	credibility	DA 79:16, 79:16.
copies 29:8.	28:22.	dad 32:17, 34:4,
coping 37:22,	credible 28:20,	35:6.
38:6, 38:7.	98:15.	daddy 89:19.
copy 8:18, 30:1,	credit 34:6.	daily 131:17,
87:3, 92:9,	cried 57:25.	131:20, 131:25,
96:19.	crime 72:11, 74:8,	132:2, 132:8.
cord 89:11.	74:9, 77:22,	damage 13:14,
corde 89:2.	78:1, 78:15,	23:25.
core 53:18,	94:20, 98:19,	dancing 116:24,
112:6.	111:4, 112:5,	117:5.
correctly 24:16,	112:20, 117:4.	dangerous 39:18,
45:5, 45:11,	crimes 26:4, 74:3,	57:22, 66:10,
54:14.	74:4, 74:12,	125:10,
correlated	75:11, 114:4.	125:13.
45:22.	criminal 22:12,	darn 90:21,
correlation 46:11,	24:12, 32:14,	136:20.
46:13, 64:8.	33:1, 79:11,	data 105:5.
corroboration	79:14, 101:6.	date 8:18, 8:19,
114:14.	crises 6:18,	8:20, 8:21,
Counsel 100:6.	7:13.	9:22, 10:6,
counseling 23:19,	criteria 7:23.	11:7, 11:14,
23:21, 80:16,	critical 112:20.	13:15, 13:21,
82:4.	criticizes	14:11, 14:11,
counterintuitive	53:17.	14:23, 15:15,
64:14.	cross 67:23.	15:15, 15:23,
County 1:7, 24:7,	CROSS-EXAMINATION	104:8.
25:1.	3:8, 3:14, 17:3,	DATED 1:32.
couple 8:23, 15:9,	69:5.	daughter 87:15.
32:12, 34:23,	crossed 45:3.	DAVID 2:6.
44:4, 59:16,	cry 50:13,	day 22:5, 22:6,
59:22, 60:2,	125:7.	27:5, 39:2,
60:14, 97:23,	crying 57:16,	54:3, 60:4,
117:2.	60:25, 61:2,	60:8, 60:14,
Couples 127:10.	62:2, 62:8,	62:5, 69:10,
course 23:24,	67:17, 107:3,	74:23, 77:9,
60:4, 65:12,	116:18.	105:17, 106:21,
77:20, 94:18.	cup 92:24,	109:24, 119:13,
courtroom 72:5.	113:11.	120:12, 126:8,
courts 26:7.	currently 5:2,	127:14,
cover 54:25.	20:8.	129:14.
covered 62:4,	custody 12:23,	days 8:23, 15:9,

16:15, 16:16,
 18:20, 91:4,
 91:4, 91:9,
 91:9, 104:13.
 deadly 47:9.
 deal 36:19, 37:22,
 65:7, 87:13,
 88:25, 106:14,
 120:12, 126:23,
 131:16, 131:19,
 131:25, 132:7,
 132:13.
 dealing 26:3,
 117:9.
 deals 132:23.
 death 24:22,
 33:18, 35:4,
 47:5, 47:10,
 58:22, 59:4,
 59:9, 67:13,
 73:18, 78:23,
 79:3, 101:18.
 Debbie 16:7,
 29:12, 31:2,
 31:5, 31:23,
 55:11, 56:12,
 58:22, 59:4,
 59:9, 59:21,
 60:8, 60:18,
 67:13, 94:21,
 97:2, 101:18,
 102:12, 104:4,
 107:9, 115:9,
 117:12, 120:20,
 127:4, 128:10,
 129:24, 130:2,
 134:10.
 Debra 10:25, 11:1,
 11:17, 27:20,
 30:14, 57:13,
 115:6.
 decade 102:13.
 Decatur 27:1,
 83:24.
 decide 24:20.
 decided 33:3,
 104:2.
 decides 77:1.
 decision 44:2,
 63:24, 66:14,
 69:26, 70:9,
 70:11, 70:12,
 70:15, 71:6,
 71:10, 71:23,
 74:18, 118:19,
 118:23, 119:4.
 decisions 44:3,
 66:7, 66:14,
 72:18, 73:23,
 74:25, 75:25,
 91:24, 132:18.
 decreased
 118:14.
 Defender 22:9,
 24:13, 24:14,
 28:12.
 Defense 19:17,
 63:25, 77:17,
 79:7, 79:10,
 79:13, 79:19,
 79:20, 104:21.
 defensive 50:17.
 deficit 44:8.
 Definitely 40:16,
 48:15, 67:7,
 67:16, 106:17,
 116:6, 123:18.
 definition 67:5.
 degree 20:18,
 47:19, 50:11,
 77:2.
 degrees 20:16,
 40:10.
 deliberate
 98:14.
 delusion 136:15,
 136:17,
 136:22.
 delusional 137:1,
 137:3, 137:6,
 137:7, 137:14,
 137:15, 137:16,
 137:20, 137:25,
 138:2, 138:4,
 138:11.
 delusions 39:21,
 136:3, 136:24.
 denied 114:1,
 130:15,
 130:21.
 denies 94:5.
 dentistry 76:15.
 deny 129:23.
 Department 25:10,
 27:18, 94:3.
 depend 56:9.
 Dependant 39:5,
 52:4, 52:11,
 52:12, 52:15,
 52:16, 52:24,
 53:2, 54:9,
 56:19, 118:12.
 depended 53:1,
 55:23.
 dependency 52:20,
 132:21.
 depending 50:9,
 56:17, 70:1,
 70:2, 70:3,
 70:4, 70:4,
 81:16.
 Depends 16:20,
 69:10, 69:10,
 69:23.
 depicting
 123:14.
 depressed 64:18,
 65:3, 80:19,
 82:6.
 depression 52:1,
 132:9.
 depressions
 49:23.
 depressive 51:14,
 51:15.
 DEPT. 1:3.
 depth 34:15.
 Deputy 28:12.
 describe 5:18,
 6:8, 8:2, 10:23,
 40:19, 55:13,
 69:24, 98:3.
 described 56:20,
 56:21, 74:4,
 82:24, 89:15,
 91:6, 97:1,
 98:3, 138:3.
 describing 62:19,
 98:12.
 deserting 103:1.

designs 41:8.
 desires 64:20.
 desk 40:22.
 despite 113:3.
 destain 54:1.
 destroy 13:14.
 destructive 39:22,
 58:18.
 detail 8:2,
 31:7.
 detailed 8:3,
 29:18.
 Details 87:24,
 130:5.
 Detention 12:21,
 14:19.
 determine 7:24,
 25:5, 33:11,
 34:18, 50:4.
 determined
 48:19.
 developed 50:2.
 developmental
 81:6.
 diagnose 136:25.
 diagnosed 42:14,
 67:2.
 diagnosticians
 76:12.
 diagnostics 21:9,
 76:25.
 died 33:8, 34:4,
 34:25.
 difference 23:15,
 46:5, 79:2,
 81:3, 115:12,
 115:13.
 different 41:4,
 46:2, 49:13,
 49:24, 51:22,
 64:19, 70:1,
 70:5, 76:14,
 77:10, 80:24,
 86:25, 92:13,
 96:1, 99:11,
 119:7, 129:21,
 134:1.
 difficult 35:5,
 45:4, 66:19,
 70:9, 77:12,
 122:5.
 difficulties
 21:25.
 difficulty 34:3,
 36:20, 70:15.
 Dina 104:16,
 104:16.
 diploma 76:17.
 diplomat 76:18,
 76:21, 77:8.
 diplomats 77:12.
 DIRECT 3:7, 3:13,
 4:25, 20:4,
 25:8, 25:9,
 35:21, 84:21,
 85:19, 86:15,
 94:19, 96:9,
 115:2.
 directed 97:1.
 directing 51:8.
 directly 25:4,
 108:3, 114:13.
 disabilities 22:1,
 25:19, 27:15.
 disabled 36:25,
 37:1, 42:13.
 disappointment
 132:20.
 discharged 21:1.
 discipline
 124:22.
 discovered
 134:22.
 discrepancies
 106:3.
 discuss 30:21,
 31:22, 31:24,
 31:25, 33:18.
 discussed 55:8,
 55:10, 108:19.
 discussing
 86:22.
 Discussion 134:2,
 135:21.
 disgusting
 137:14.
 disheveled
 110:7.
 dishing 133:13,
 133:15.
 dislike 53:22,
 53:24, 53:24.
 disorder 35:15,
 42:15, 51:15,
 51:15, 51:16,
 51:20, 65:23.
 disordered
 118:12.
 disorders 49:23,
 49:25, 51:23,
 67:3.
 disparaged 53:6.
 disrespect 54:1.
 disruptive
 35:12.
 distorted 65:24,
 65:25, 114:9.
 distortion
 113:15.
 distracted
 35:10.
 distressed
 107:1.
 District 1:6,
 1:28, 25:1,
 25:4, 25:14,
 25:22, 26:8.
 distrusts 38:6.
 disturbances
 51:14.
 disturbed 34:2.
 disturbing
 54:19.
 divided 41:4,
 51:13.
 division 45:8.
 divisions 22:22.
 DNA 108:1.
 Doctor 23:17,
 23:17, 32:23,
 47:19, 53:4,
 65:10, 67:11,
 67:20, 69:1,
 75:13, 86:23,
 95:14, 99:3,
 105:16, 119:2,
 121:9, 124:20,
 131:10, 135:16,
 137:22.
 doctoral 20:18.

doctorate 23:22,	57:16, 57:25,	20:3.
23:23.	72:10, 98:5,	ear 72:5.
document 10:13,	98:5, 103:14,	earlier 40:2,
10:24, 14:16,	103:21, 104:2,	85:19.
17:24.	112:6, 138:17.	early 34:3, 34:21,
documents 10:11,	dozen 117:12.	35:19, 135:10.
14:1, 27:23,	dozens 57:15.	earn 76:16.
29:17, 99:6,	dragged 108:13.	earth 44:18.
99:9.	draw 62:9.	ease 64:8.
dog 125:11,	dreams 54:3.	easier 12:15,
125:12.	dresser 113:11.	77:11, 77:14,
doing 20:11,	drifting 102:2.	111:24, 112:7.
24:11, 24:12,	drink 54:20,	easily 35:10,
33:4, 35:18,	66:3.	52:17, 73:23.
40:11, 40:15,	drink'n 61:11.	easy 38:2, 44:17,
43:21, 43:21,	drop-out 135:12.	54:23, 60:12,
44:3, 55:21,	drug 38:22, 39:16,	60:12, 60:13,
58:1, 64:23,	39:22, 54:17,	124:24.
64:24, 73:20,	55:8, 66:24,	EDD 23:17.
73:21, 80:19,	70:4, 101:2,	education 23:17,
84:12, 84:24,	118:12, 118:21,	34:19.
94:5, 118:14,	132:11.	educational
120:24, 130:8,	drugs 35:7, 38:25,	20:14.
135:1.	39:9, 54:21,	effect 66:17,
Domestic 5:8,	57:1, 66:10,	66:20, 66:25,
5:13, 5:20,	75:9, 126:7.	67:3, 67:7,
6:12, 7:20,	due 53:6.	81:14.
30:19, 31:14,	dug 85:3.	eight 77:25,
31:17, 97:7,	dull 65:9.	78:1.
97:10, 98:13,	duller 66:8.	Either 23:18,
101:3, 101:5,	dumping 92:2.	24:18, 27:10,
102:11, 127:4,	Duran 27:19,	49:17, 66:18,
127:6.	104:16.	106:23, 107:6.
done 21:15, 24:6,	duration 125:9.	ejaculate 108:4,
24:25, 25:7,	During 8:10, 15:5,	137:22.
36:17, 36:17,	17:15, 25:13,	ejaculated
58:18, 58:20,	67:25, 68:4,	138:2.
80:5, 83:15,	91:24, 92:24,	elected 23:10.
84:7, 92:5,	111:11, 113:6,	embarrassing
115:17.	113:9, 138:22,	63:12.
door 60:17, 61:24,	139:1.	emergency 13:25.
104:3, 109:24.	dysfunction	emotion 57:12.
door. 61:8.	24:5.	emotional 22:14,
dope 134:7.	dysfunctional	54:16, 58:3,
doubt 70:22.	25:15.	73:10.
DOUGLAS 1:27.	dyslexic 46:5.	emotionally 37:17,
down 11:19, 12:16,	.	73:22.
19:9, 31:5,	.	emotions 58:4,
35:23, 54:2,	< E >.	120:9, 120:11,
54:15, 54:21,	E-T-C-O-F-F	131:24, 132:7,

132:24.	Etcoff 3:11,	62:5, 62:15,
employed 5:2,	19:19, 20:2,	63:9, 63:15,
20:8.	20:6, 68:24,	65:23, 81:18,
employees 82:1.	69:7, 121:21,	82:17, 107:23,
employment 13:12,	128:6, 129:3,	110:23, 112:10,
13:13.	138:16.	112:10, 116:2,
encounters 37:23,	ethical 82:21.	130:11.
38:1.	evaluate 22:15,	evidence 106:5,
end 22:4, 43:25,	24:17, 25:15,	108:1, 111:2,
73:20.	25:18, 78:5,	129:8, 137:9.
endeavors 33:1.	78:11, 78:14,	evident 42:18.
endure 37:23.	80:16.	evil 48:5, 75:5,
engaged 81:4.	evaluated 30:9,	75:6, 75:7,
engineer 81:7.	35:23, 46:16,	75:12, 120:17,
enjoyed 84:12.	78:4, 85:9,	120:19, 121:3.
enjoyment	122:15.	evoke 54:19.
134:11.	evaluating 28:2.	exactly 6:24,
enormity 115:16.	evaluation 26:17,	26:1, 58:25,
enough 7:24, 8:2,	26:21, 26:23,	72:20, 77:5,
75:22, 77:3,	27:3, 28:17,	78:7, 126:19.
82:10, 137:7.	29:19, 37:15,	exaggerating
entailed 83:14,	38:16, 67:11,	50:17.
127:7.	78:17, 80:6,	EXAMINATION 3:7,
entered 60:21,	80:20, 82:24,	3:13, 3:15,
129:14,	84:24, 104:22,	4:25, 20:4,
129:20.	110:17, 122:16,	84:21, 85:20,
entire 43:12.	132:15.	86:15, 94:20,
entities 25:23.	evaluations 21:14,	96:9, 115:3,
environment	21:18, 22:8,	121:19,
112:17.	22:11, 22:12,	137:10.
equating 70:14.	22:13, 24:11,	Examinee 81:11,
equipped 73:22,	24:12, 78:22.	122:19,
73:22.	evening 17:15.	122:20.
equivalency	event 31:4, 62:23,	example 48:6.
45:13.	81:14.	examples 75:8.
equivalent	events 54:18,	exceptional
42:12.	59:3, 59:8,	63:7.
escape 55:1, 55:2,	86:5, 132:19.	excuse 60:24.
57:3.	eventually 60:1.	excused 19:9,
especially 25:4,	Everybody 63:5,	138:18.
35:4, 37:20,	65:20, 71:5,	excuses 93:6.
43:5, 44:10,	84:4, 116:13,	exercised
114:7.	120:24.	103:20.
ESQ 2:2, 2:3, 2:6,	Everyone 41:18,	exercising 80:2.
2:7.	49:5, 53:14,	Exhibit 10:18,
essays 77:3.	60:5, 65:16,	14:15, 99:10,
essentially 38:5,	71:6, 94:9,	100:9, 102:15.
38:13, 89:6,	113:5, 116:14.	Exhibits 10:14,
92:4.	everything 45:18,	109:3.
et 66:10, 66:10.	50:11, 53:20,	exist 104:5.

existence 66:23.	137:20.	55:24.
expecting 53:23.	face 12:10,	fantasy 54:4.
experience 21:5,	44:17.	far 64:7.
26:3, 63:2,	face. 62:4.	farther 54:2,
128:15.	faced 44:1.	54:15.
experiences 54:17,	facility 43:19.	fashion 35:18,
66:9, 76:25,	facing 47:13,	123:15.
77:2.	47:15, 48:8,	father 32:9,
expert 25:5, 26:6,	114:7.	32:11, 32:14,
26:13, 125:12.	fact 12:14, 22:16,	32:19, 32:25,
expertise 22:2.	33:15, 39:25,	33:2, 93:16.
explain 24:9,	43:12, 44:7,	fault 92:14, 93:1,
24:23, 36:4,	56:24, 60:6,	93:7.
37:14, 43:10,	81:25, 88:15,	favorite 107:18.
44:15, 51:12,	90:3, 95:19,	Fax 8:9, 8:13,
53:8, 54:4,	99:17, 101:20,	12:22, 14:13.
58:13, 59:6,	102:6, 102:25,	faxed 8:12,
60:9, 64:14,	108:1, 109:13,	14:5.
65:19, 79:8,	127:24, 129:13,	faxes 14:11.
112:9, 120:23,	130:15, 134:3.	federal 26:8.
121:1.	factors 79:7,	feel 16:2, 27:16,
explained 32:8,	118:14.	36:19, 37:20,
97:11, 103:24.	facts 103:10,	52:12, 53:5,
explaining 6:10,	103:11, 103:15,	53:9, 53:10,
112:5.	105:14, 107:11,	53:19, 64:25,
explanation	109:10, 110:17,	66:3, 79:25,
136:1.	111:5, 113:3,	87:8, 91:12,
express 42:17,	113:15, 129:9.	99:8, 123:17.
68:11, 139:8.	fail 44:22.	feeling 53:7,
expressive	failing 38:13.	57:20, 61:20,
42:15.	failure 135:6.	116:10.
extend 8:25.	fair 43:6,	fellow 23:10.
extended 9:10,	82:16.	felt 52:6, 92:4,
16:13, 16:14.	fairly 112:16.	102:25, 115:5,
extension 89:2,	faith 53:13.	115:14.
89:11, 125:20.	fall 16:6.	female 59:18.
extensive 37:19.	false 49:17,	fetal 107:2.
extent 71:22,	49:17, 49:18,	few 59:4, 71:2,
97:6, 126:25.	49:20, 83:19.	101:18, 104:13,
extra 23:24,	familiar 96:10,	106:24, 110:2,
35:19.	103:10,	112:20, 123:4,
extremely 53:2,	109:15.	135:22.
77:12.	families 25:16.	fewer 65:22,
eye 76:8.	family 25:23,	65:24, 66:8,
eyes 67:17.	25:25, 28:13,	66:15.
.	84:9, 84:13,	field 51:6.
.	85:10, 86:3,	fifth 42:21,
< F >.	90:1, 90:4,	42:22.
fabrication	124:1.	fight 66:4,
137:18,	fantasies 55:21,	108:25, 109:9.

fighting 108:12.	108:19.	110:6, 110:8,
figure 22:3, 22:6,	floor. 61:4.	110:9, 124:9.
34:9, 36:13,	fluent 46:5.	foundation
43:17, 46:1,	focused 80:13.	128:24.
53:3, 81:13.	folks 129:9.	four 90:8, 90:21,
figured 56:5.	food 87:7, 89:17,	91:1, 91:4,
figures 66:20.	124:13,	98:20, 126:2.
file 99:14.	124:18.	fourteen 39:1.
filed 47:5.	fool 64:12.	frame 82:9.
filing 8:21.	foot 48:16.	fraud 53:10.
fill 7:8, 8:9,	Force 20:20,	frazzled 39:21.
18:5.	20:22, 20:25,	freaking 120:3.
filled 10:24,	21:1.	free-will 69:14.
17:21, 18:16,	forces 54:12.	Freeman 104:17,
27:8, 132:19.	forensic 22:22,	113:10.
Finally 42:1,	24:12, 29:19,	frenzy 56:1,
67:11, 68:12,	81:4, 84:24,	56:5.
139:9.	98:23, 112:16,	frequently 35:3,
find 7:11, 7:14,	122:16.	35:7.
36:14, 71:20,	forensically	FRIDAY 1:32,
73:20, 87:2,	80:25, 81:3,	4:1.
89:18, 89:19,	81:12, 82:15.	friend 107:1.
91:23, 104:1,	forensics 81:20.	friends 56:2,
111:1, 113:25,	forget 63:20,	59:19, 66:4,
119:20, 119:22,	64:4, 111:17,	128:10.
130:6.	130:8.	friends. 61:5.
finding 64:11,	forgetting 63:23,	frightened
113:16.	111:25.	73:13.
findings 51:9.	form 14:5, 68:10,	front 48:17,
finds 55:2.	104:1, 139:7.	48:18, 60:12,
fine 32:23.	formed 99:19.	60:17, 61:24,
finger 125:13.	former 81:25.	93:2, 93:8,
fingers 35:14.	forming 34:3,	109:24.
first 11:11,	36:20.	frustrated
13:18, 32:19,	formula 44:24.	133:23.
34:23, 37:24,	formulating	Frustration 132:1,
39:7, 42:10,	100:24, 101:7,	132:3, 132:20.
59:13, 80:15,	102:19.	fuck'n 60:24.
103:17.	forth 24:2,	fulfilling
fist 119:22.	56:15.	64:19.
fit 38:16,	forthcoming	full 17:24, 35:22,
126:16.	31:13.	99:1, 99:5.
fitting 35:9,	forward 48:16.	full-scale 41:11,
113:4.	foster 95:21.	42:2.
five 128:3.	fotget 64:5.	function 27:14.
fixed 136:17.	found 24:20, 56:2,	functioning 24:1,
flexibility	61:4, 61:17,	28:8, 36:6,
67:6.	108:9, 108:19,	41:5, 62:25,
floor 61:12,	108:20, 108:23,	79:18, 105:9,
61:24, 62:4,	108:24, 109:10,	105:9.

fund 42:23.	55:20, 63:21,	50:24, 50:25,
funny 129:16.	69:24, 71:11,	63:7, 65:7,
future 134:2,	83:4, 84:19,	82:18, 87:12,
135:4.	94:4, 99:25,	88:25, 126:23.
.	105:1, 107:23,	greatest 34:5,
.	108:17, 122:21,	greedy 74:10,
< G >.	123:3, 134:3.	74:12.
gave 43:12, 50:23,	gives 12:20,	grew 126:19,
51:4, 55:4,	13:15, 14:19,	grief 132:2,
59:14, 80:8,	49:14.	132:9.
85:8, 87:7,	giving 44:20,	groin 117:15.
87:9, 89:17,	110:18,	gross 94:2.
101:15, 101:15,	110:24.	group 50:1.
105:14,	glad 70:21.	grow 126:18.
124:13.	glasses 11:25.	grown 52:9.
gear 61:14.	God 4:19, 19:23,	guess 26:16,
general 78:17.	109:25.	33:22, 55:14,
generally 51:5,	good. 60:23.	71:22, 73:21,
72:22, 81:20.	Gosh 59:10.	75:4, 89:2,
generated 27:7.	gotten 45:1,	113:19, 118:9.
gentlemen 19:16,	107:2.	guesstimate 26:11,
67:25, 138:22.	governmental 6:1,	26:12.
geometry 45:9.	6:5.	guilt-ridden 52:6,
gets 9:3, 71:24,	GPA 38:11.	52:18.
120:23.	grabbed 61:23.	guilty 24:20.
getting 25:5,	grade 34:21, 35:8,	gun 56:16,
35:10, 36:17,	35:16, 35:23,	75:21.
40:10, 86:3,	36:5, 36:6,	guy 48:25, 57:21,
87:20, 89:21,	38:11, 42:11,	57:22, 61:18.
90:9, 92:21.	45:1, 52:8,	guys 56:6, 57:6,
girlfriend 30:14,	52:8.	60:14, 78:20,
62:3, 104:3.	grading 45:13.	92:3.
girlfriends	graduate 135:5,	.
102:3.	135:14.	.
give 4:17, 8:4,	grandchildren	< H >.
16:5, 19:21,	90:7.	H-O-B-S-O-N
20:13, 21:4,	grandma 88:15,	4:24.
26:9, 34:6,	89:20, 90:25.	habit 113:21.
41:12, 44:16,	grandmother 33:21,	half 27:5, 102:13,
57:23, 71:1,	33:25, 34:5,	114:13.
72:24, 76:23,	34:9, 35:1,	hand 7:18.
81:15, 81:18,	86:13, 87:9,	handcuffs 93:17.
90:22, 92:14,	87:20, 90:6,	handicapped
107:18, 107:19,	91:21, 119:24,	37:18.
115:15,	124:12.	hands 57:9.
118:21.	grandmothers	handwriting
given 27:4, 30:22,	35:3.	17:22.
37:5, 37:9,	granted 77:3.	happen 53:21,
37:11, 40:17,	graveyard 17:14.	111:8, 111:14,
42:8, 51:10,	great 36:19,	119:8, 132:21,

135:10.	hearings 95:20.	Hold 129:7,
happened 8:3,	heart 16:2.	135:20.
10:8, 11:20,	heavy 124:25.	home 11:21, 39:9,
14:9, 15:15,	held 103:13,	60:15, 87:10,
16:9, 59:2,	103:25,	89:8, 89:20,
62:7, 63:6,	135:21.	98:4, 107:4,
77:21, 77:22,	hello 53:17.	108:21, 109:1,
88:4, 105:15,	help 4:19, 19:23,	126:2, 135:2.
105:19, 111:6,	24:20, 30:4,	homes 95:21.
111:7, 111:8,	33:1, 47:22,	honest 28:25,
111:9, 116:2,	48:2, 50:10,	82:10.
116:2, 132:6,	50:13, 54:18,	Honor 4:15, 67:21,
132:22.	128:17, 128:22,	85:24, 93:18,
happening 62:16,	136:1.	99:10, 100:1,
62:17, 101:17.	helped 60:18.	100:7, 100:13,
Happens 8:16,	helpful 100:23,	109:5, 121:15,
15:19, 63:3,	112:8, 128:16.	127:15, 127:23,
124:19, 132:3.	helping 40:11,	129:2, 131:3,
happiness 132:1.	48:3, 129:6.	133:2, 134:12,
happy 52:10,	her. 62:6.	134:19,
117:5.	HERNDON 1:27.	136:12.
harassing 15:1.	herself 91:3.	HONORABLE 1:27.
hard 12:2, 43:4,	hes 138:1.	honorably 21:1.
54:23, 70:11,	hesitation	hook 25:6.
70:12, 70:12,	113:15.	hooked 39:13.
73:23, 82:19,	hiding 5:15.	hope 37:20,
137:11.	High 34:22, 37:14,	73:25.
harder 57:3,	64:16, 135:5,	hopeful 63:18.
64:12, 66:21.	135:12, 135:14,	hopefully 81:13.
hardly 25:9.	136:4.	hoping 59:17.
head 24:2, 62:14,	hire 78:2.	horrible 74:23,
72:9.	hired 81:11,	76:7, 92:5,
heading 39:7,	81:21, 83:10.	132:3, 132:6.
130:17.	history 30:18,	Hospital 7:15,
headlines 74:23.	34:22, 39:7,	7:17, 12:13,
health 76:14.	84:14, 97:7,	21:11.
hear 12:9, 51:1,	99:2, 99:5,	hot 6:12, 6:18,
92:17.	101:6, 124:2,	6:18, 7:13.
heard 70:7, 100:2,	127:3, 127:6,	hour 83:1, 84:8.
102:10, 103:15,	130:17, 132:11,	hours 22:6, 27:8,
103:17, 104:17,	132:19.	54:21, 71:1,
117:1, 133:6.	hit 12:9, 31:8,	126:8.
HEARING 1:14,	54:21, 89:1,	house 5:14, 35:2,
14:23, 15:7,	89:10, 89:21,	61:23, 107:1,
15:14, 15:15,	96:7, 97:4,	108:13, 116:3,
16:8, 16:11,	119:22, 125:7,	116:7, 118:17,
18:3, 18:20,	125:20.	126:7.
18:23, 46:23,	hitting 125:15.	household 33:24.
46:25, 104:13,	Robson 3:6, 4:14,	Howard 1:43.
107:3, 114:12.	4:23.	huh. 60:24.

human 24:5, 24:24,	inaccurately	23:23.
51:1, 71:7,	111:6.	inform 98:17.
72:23, 74:2,	inadequate 52:6.	information 8:3,
75:10, 82:6,	inattentive	8:7, 11:11,
92:18, 119:4.	21:24.	11:19, 12:19,
humanly 50:12.	incident 8:3,	13:25, 22:3,
humiliated 52:17,	11:7, 13:22,	31:19, 32:4,
53:6.	94:1, 96:6,	32:7, 33:15,
humiliating	96:10, 97:22,	34:11, 42:23,
63:13.	98:2, 98:8,	68:7, 78:21,
humiliation	100:22, 113:11,	84:15, 84:18,
52:7.	113:12.	99:20, 99:25,
hundred 22:11,	incidents 30:25,	101:24, 104:1,
41:16, 41:17,	96:13, 96:14,	104:23, 105:1,
41:20, 42:6,	100:2, 100:16,	105:11, 110:21,
42:11, 70:17,	100:18, 100:24,	124:6, 139:4.
70:21, 135:14.	102:14.	infringes 6:14.
.	inclined 50:7.	inhibit 74:10,
.	included 82:24,	74:19.
< I >.	95:24.	inhibition 76:2.
I-15 125:6.	includes 80:18.	initial 80:6.
iceberg 135:15.	including 68:2,	initials 5:17.
idea 18:13, 18:15,	68:8, 96:14,	injured 7:16,
20:13, 21:4,	138:24, 139:5.	22:16.
26:9, 47:12.	incomplete 73:4.	injuries 22:14,
ideations 137:3.	increasingly	22:14, 22:15,
ill 23:20,	44:21, 45:4.	22:17, 24:2.
23:20.	independent 84:18,	injury 15:1,
illegal 93:12.	86:4, 124:5.	22:13.
image 63:16.	Index 3:21.	innumerable
images 41:24.	indicate 111:22.	72:1.
imagine 33:14.	indicated 52:5.	inquire 96:1.
immediately	indicative	inquiry 85:24.
107:14.	35:14.	inside 53:9,
Important 27:13,	indicator	53:19, 61:20,
84:11, 84:11,	123:10.	108:20.
84:14, 84:16,	indicators 50:7.	insisting 6:5.
85:11, 99:1,	individual 25:24,	instance 30:23,
101:7, 102:18,	36:22, 80:22,	31:2.
104:7.	84:14.	instances 31:11,
impound 108:18.	individuals 24:17,	31:14.
impression 47:21,	49:22, 80:14,	instantly 60:22.
47:24, 47:25,	102:11.	intellectual
57:23.	indulgence	27:13, 40:23,
impressive	121:17.	42:3, 42:5,
57:14.	ineffectual 53:8,	105:9, 118:11.
impulse 49:24.	94:14.	intellectually
in. 35:10, 78:2,	inflexible 51:21,	66:8, 132:17.
110:8.	67:5.	Intelligence
inaccurate 85:4.	influences	27:11, 40:25,

46:7, 64:9,	involvement	jigging 117:5.
75:8.	32:13.	jigsaw 41:8.
intended 40:19,	involves 119:4.	job 44:2, 81:11,
49:11.	involving	92:21, 93:11,
intent 33:4,	100:20.	135:5.
75:22, 119:21.	Iqs 43:14, 64:16,	jobs 92:13,
intents 32:16.	64:22, 74:9.	122:13.
intercourse	iron 63:4.	Johnny 80:18.
107:14.	irrational 56:5,	join 76:16,
interest 112:1.	73:9, 95:12,	109:13.
interested	136:17.	joints 39:2.
79:17.	irrelevant	Jones 40:25.
internet 68:9,	81:13.	JUDGE 1:28, 7:1,
139:6.	irreparably	8:9, 8:14, 8:17,
internship	67:19.	14:6, 14:8,
20:21.	irresponsible	14:10, 16:14,
internships	94:11.	68:16, 138:15,
23:7.	irritability	139:15.
interpret 93:5.	132:3.	jump 125:6.
interpreted	irritated	June 59:20, 59:20,
27:10.	131:12.	59:20, 59:21,
interrupted	isolated 36:16,	96:14, 98:2,
104:4.	36:16.	98:13, 103:9.
interview 27:22,	issue 117:8.	JURY 4:10, 24:20,
28:2, 28:14,	issued 14:13.	24:23, 48:25,
28:16, 29:14,	issues 128:7.	60:12, 63:5,
37:19, 55:4,	itself 63:25.	67:24, 68:23,
83:1, 84:9,	.	74:19, 75:24,
87:5, 91:25,	.	82:13, 88:14,
92:12, 94:7,	< J >.	98:17, 120:25,
101:15, 104:18,	Jackson 117:3.	138:21.
113:6, 113:17,	jail 12:14, 35:7,	justify 114:4.
114:18, 114:19,	56:2, 56:24,	juvenile 95:20,
114:24, 129:3,	56:25, 59:16,	95:22.
129:4, 129:5.	59:17, 59:20,	.
interviewed 27:7,	59:24, 60:1,	.
32:3.	79:18, 82:7,	< K >.
interviews 27:3.	95:21.	K-mart 94:1.
introduced 39:3,	jail. 12:13.	keep 82:19,
80:15.	jailed 55:19,	125:15,
invalidated	59:14, 59:21.	131:11.
99:19.	jails 7:15.	keeping 112:2.
Inventory 49:9,	January 11:9,	key 60:17.
49:14.	15:8, 18:20,	kid 34:2, 85:8,
investigation	92:25, 96:10.	125:3.
18:6.	jealous 74:13.	Kids 25:10, 25:10,
involve 101:1.	Jealousy 120:7,	34:6, 35:3,
involved 13:2,	120:8, 131:16.	35:5, 35:9,
38:25, 77:16,	jig 116:24,	35:15, 36:7,
95:20.	116:25.	54:11, 61:14,

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IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

JAMES CHAPPELL,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

S.C. CASE NO. 61967

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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

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APPELLANT'S APPENDIX TO THE OPENING BRIEF  
VOLUME XV  
~~~~~

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APPENDIX

<u>VOLUME</u>	<u>PLEADING</u>	<u>PAGE NO</u>
11	ACKNOWLEDGMENT AND WAIVER (FILED 9/26/2003)	2622-2622
11	AFFIDAVITS IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS (FILED 3/7/2003)	2672-2682
11	AFFIDAVITS IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS (FILED 3/10/2003)	2683-2692
8	AMENDED JURY LIST (10/23/1996)	2062-2062
10	AMENDED ORDER APPOINTING COUNSEL (FILED 11/29/1999)	2359-2359
2	ANSWER TO MOTION TO COMPEL DISCLOSURE BY THE STATE OF ANY AND ALL INFORMATION (FILED 9/11/1996)	306-308
12	APPLICATION AND ORDER FOR DEFENDANT CHAPPELL (FILED 1/25/2007)	2901-2903
9	CASE APPEAL STATEMENT (FILED 1/23/1997)	2202-2204
11	CASE APPEAL STATEMENT (FILED 6/18/2004)	2754-2756
11	CASE APPEAL STATEMENT (FILED 6/24/2004)	2759-2760
20	CASE APPEAL STATEMENT (FILED 10/22/2012)	4517-4519
11	CERTIFICATE OF MAILING	

1	12	(FILED 7/23/2004) CERTIFICATE OF MAILING (FILED 9/21/2006)	2780-2781 2879-2880
2	1	CRIMINAL BINDOVER (FILED 10/10/1995)	001-037
3	20	COURT MINUTES	4644-4706
4	10	DECLARATION IN SUPPORT OF MOTION TO PERMIT PETITION (FILED 10/19/1999)	2324-2326
5	10	DECLARATION IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS (FILED 10/19/1999)	2328-2332
6	9	DEFENDANT'S MOTION FOR STAT OF EXECUTION (FILED 12/27/1996)	2175-2177
7	2	DEFENDANT'S MOTION IN LIMINE REGARDING DETAILS OF DEFENDANT'S RELEASE (FILED 10/4/1996)	328-335
8	2	DEFENDANT'S MOTION IN LIMINE REGARDING EVENTS RELATED TO DEFENDANT'S ARREST FOR SHOPLIFTING ON SEPTEMBER 1, 1995 (FILED 10/4/1996)	336-341
9	2	DEFENDANT'S MOTION TO COMPEL PETROCELLI HEARING REGARDING ALLEGATIONS (FILED 9/10/1996)	297-302
10	5	DEFENDANT'S MOTION TO DISMISS ALL CHARGES BASED ON STATE'S VIOLATION (FILED 10/11/1996)	1070-1081
11	1	DEFENDANT'S MOTION TO STRIKE ALLEGATIONS OF CERTAIN AGGRAVATING CIRCUMSTANCES (FILED 7/30/1996)	250-262
12	1	DEFENDANT'S MOTION TO STRIKE STATE'S NOTICE OF INTENT TO SEEK DEATH PENALTY (FILED 7/23/1996)	236-249
13	1	DEFENDANT'S MOTION TO VACATE JUNE 3, 1996, TRIAL DATE AND CONTINUE TRIAL UNTIL SEPTEMBER (FILED 4/23/1996)	210-215
14	2	DEFENDANT'S OFFER TO STIPULATE TO CERTAIN FACTS (FILED 9/10/1996)	303-305
15	2	DEFENDANT'S OPPOSITION TO STATE'S MOTION TO ADMIT EVIDENCE OF OTHER CRIMES, WRONGS OR BAD ACTS (FILED 9/10/1996)	287-296
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			
27			
28			

1	12	DISTRICT COURT JURY LIST (FILED 3/13/2007)	3046-3046
2	20	DOCKETING STATEMENT (FILED 10/30/2012)	4520-4526
3			
4	9	ENTRY OF MINUTE ORDER (FILED 1/3/1997)	2199-2199
5	16	ENTRY OF MINUTE ORDER (FILED 5/10/2007)	3860-3860
6			
7	12	EX PARTE APPLICATION AND ORDER TO PREPARE TRANSCRIPTS (FILED 1/23/2007)	2898-2900
8			
9	11	EX PARTE APPLICATION AND ORDER TO PRODUCE DEFENDANT'S INSTITUTIONAL FILE (FILED 8/24/2007)	2798-2800
10			
11	2	EX PARTE APPLICATION FOR TRANSCRIPT (FILED 9/27/1996)	323-325
12	11	EX PARTE APPLICATION TO UNSEAL PSI (FILED 11/18/2002)	2629-2631
13			
14	11	EX PARTE MOTION FOR AN ORDER TO PRODUCE DEFENDANT'S INSTITUTIONAL FILE (FILED 4/8/2004)	2740-2743
15			
16	10	EX PARTE MOTION FOR APPOINTMENT OF INVESTIGATOR AND FOR EXCESS FEES (FILED 9/18/2002)	2550-2552
17			
18	11	EX PARTE MOTION FOR CHANGE OF INVESTIGATOR, EX PARTE MOTION FOR FEES IN EXCESS OF STATUTORY LIMIT, AND EX PARTE MOTION FOR CONTRACT VISITS (FILED 10/15/2002)	2623-2626
19			
20	10	EX PARTE MOTION FOR INTERIM PAYMENT OF EXCESS ATTORNEY'S FEES (FILED 7/13/2000)	2374-2381
21			
22	10	EX PARTE MOTION FOR INTERIM PAYMENT OF EXCESS ATTORNEY'S FEES (FILED 5/17/2001)	2385-2398
23			
24	10	EX PARTE MOTION FOR INTERIM PAYMENT OF EXCESS ATTORNEY'S FEES (4/11/2002)	2405-2415
25			
26	10	EX PARTE MOTION FOR INTERIM PAYMENT OF EXCESS ATTORNEY'S FEES (FILED 7/8/2002)	2521-2539
27			
28	11	EX PARTE MOTION FOR INTERIM PAYMENT OF EXCESS ATTORNEY'S FEES (FILED 12/11/2002)	2633-2649

1	11	EX PARTE MOTION FOR INTERIM PAYMENT OF EXCESS ATTORNEY'S FEES (FILED 2/3/2003)	2655-2670
2			
3	11	EX PARTE MOTION FOR INTERIM PAYMENT OF EXCESS ATTORNEY'S FEES (FILED 1/27/2004)	2728-2738
4			
5	10	EX PARTE MOTION FOR ORDER TO TRANSPORT PETITIONER (FILED 7/30/2002)	2541-2542
6			
7	11	EX PARTE MOTION FOR PAYMENT OF FINAL ATTORNEY FEES AND COSTS (FILED 7/6/2004)	2763-2772
8			
9	11	EX PARTE ORDER GRANTING CHANGE OF INVESTIGATOR, FEES IN EXCESS OF STATUTORY LIMIT, AND CONTACT VISIT (FILED 10/17/2002)	2627-2628
10			
11	11	EX PARTE ORDER TO PRODUCE INSTITUTIONAL FILE (FILED 4/12/2004)	2744-2744
12			
13	10	EX PARTE ORDER TO TRANSPORT PETITIONER (FILED 7/31/2002)	2543-2543
14	11	EX PARTE ORDER TO UNSEAL PSI (FILED 12/3/2002)	2632-2632
15			
16	11	FINDINGS OF FACTS, CONCLUSIONS OF LAW, AND ORDER (FILED 6/3/2004)	2745-2748
17			
18	20	FINDINGS OF FACTS, CONCLUSIONS OF LAW, AND ORDER (FILED 11/20/2012)	4527-4537
19			
20	1	INFORMATION (FILED 10/11/1995)	038-043
21	7	INSTRUCTIONS TO THE JURY (FILED 10/16/1996)	1701-1746
22			
23	9	INSTRUCTIONS TO THE JURY (FILED 10/24/1996)	2134-2164
24	15	INSTRUCTIONS TO THE JURY (FILED 3/21/2007)	3742-3764
25			
26	9	JUDGMENT OF CONVICTION (FILED 12/31/1996)	2190-2192
27	16	JUDGMENT OF CONVICTION (FILED 5/10/2007)	3854-3855
28			
	4	JURY LIST (FILED 10/9/1996)	843-843

1	1	MEDIA REQUEST (FILED 1/3/1996)	206-206
2			
3	5	MEDIA REQUEST (FILED 10/11/1996)	1068-1068
4	1	MOTION AND NOTICE OF MOTION TO ENDORSE NAMES ON INFORMATION	
5		(FILED 7/9/1996)	230-233
6	2	MOTION AND NOTICE OF MOTION TO ENDORSE NAMES ON INFORMATION	
7		(FILED 8/22/1996)	276-280
8	6	MOTION AND NOTICE OF MOTION TO ENDORSE NAMES ON INFORMATION	
9		(FILED 10/14/1996)	1347-1350
10	12	MOTION IN LIMINE TO LIMIT PENALTY HEARING EVIDENCE TO AVOID VIOLATION OF THE EIGHTH AMENDMENT	
11		(FILED 9/20/2006)	2831-2837
12			
13	20	MOTION FOR AUTHORIZATION TO OBTAIN A SEXUAL ASSAULT EXPERT	
14		(FILED 2/15/2012)	4556-4561
15	20	MOTION FOR AUTHORIZATION TO OBTAIN AN INVESTIGATOR AND FOR PAYMENT FEES	
16		(FILED 2/15/2012)	4550-4555
17	20	MOTION FOR AUTHORIZATION TO OBTAIN EXPERT SERVICES AND FOR PAYMENT FEES	
18		(FILED 2/15/2012)	4485-4490
19	12	MOTION TO ALLOW JURY QUESTIONNAIRE (FILED 9/20/2006)	2838-2842
20	12	MOTION TO BIFURCATE PENALTY PHASE (FILED 9/20/2006)	2843-2848
21			
22	2	MOTION TO COMPEL DISCLOSURE BY THE STATE OF ANY AND ALL INFORMATION RELATING TO AGGRAVATING OR MITIGATING FACTORS	
23		(FILED 7/31/1996)	263-270
24	2	MOTION TO COMPEL EXAMINATION OF DEFENDANT BY OPTOMETRIST AND OBTAIN EYE GLASSES IF NECESSARY	
25		(FILED 8/19/1996)	271-275
26			
27	12	MOTION TO DISMISS STAT'S NOTICE OF INTENT TO SEEK DEATH PENALTY	
28		(FILED 9/20/2006)	2849-2878

1	12	MOTION TO REMAND FOR CONSIDERATION BY THE CLARK COUNTY DISTRICT ATTORNEY'S DEATH REVIEW COMMITTEE (FILED 9/20/2006)	2817-2825
2			
3			
4	12	MOTION TO STRIKE SEXUAL ASSAULT AGGRAVATOR OF THE STATE'S NOTICE OF INTENT TO SEEK THE DEATH PENALTY (FILED 9/20/2006)	2801-2816
5			
6	10	NEVADA SUPREME COURT CLERK'S CERTIFICATE JUDGEMENT -AFFIRMED (FILED 11/4/1999)	2338-2353
7			
8	11	NEVADA SUPREME COURT CLERK'S CERTIFICATE JUDGEMENT-AFFIRMED (FILED 5/5/2006)	2782-2797
9			
10	9	NOTICE OF APPEAL (FIELD 1/17/1997)	2200-2201
11			
12	11	NOTICE OF APPEAL (FILED 6/18/2004)	2757-2758
13	20	NOTICE OF APPEAL (FILED 10/22/2012)	4515-4516
14			
15	9	NOTICE OF COMPLIANCE WITH SUPREME COURT RULE 250 (FILED 3/17/1997)	2205-2206
16			
17	11	NOTICE OF CROSS-APPEAL (FILED 6/24/2004)	2761-2762
18	12	NOTICE OF DEFENDANT'S EXPERT WITNESS (FIELD 2/15/2007)	2927-2977
19			
20	12	NOTICE OF DEFENDANT'S WITNESSES (FIELD 3/1/2007)	3043-3045
21	20	NOTICE OF DEFICIENCY (FILED 10/23/2012)	4430-4430
22			
23	11	NOTICE OF DECISION AND ORDER (FILED 6/10/2004)	2749-2753
24	20	NOTICE OF ENTRY OF FINDINGS OF FACT CONCLUSIONS OF LAW AND ORDER (FLED 11/20/2012)	4538-4549
25			
26	12	NOTICE OF EVIDENCE IN SUPPORT OF AGGRAVATING CIRCUMSTANCES (FILED 2/23/2007)	3032-3038
27			
28	12	NOTICE OF EXPERT WITNESSES (FILED 2/16/2007)	2978-3011

1	1	NOTICE OF INTENT TO SEEK DEATH PENALTY (11/8/1995)	044-046
2	12	NOTICE OF MOTION AND MOTION FOR DISCOVERY OF POTENTIAL PENALTY HEARING EVIDENCE (FILED 9/20/2006)	2826-2830
3			
4	1	NOTICE OF MOTION AND MOTION TO ADMIT EVIDENCE OF OTHER CRIMES, WRONGS OR BAD ACTS (FILED 5/9/1996)	217-226
5			
6	10	NOTICE OF MOTION AND MOTION TO APPOINT COUNSEL FOR CAPITAL MURDER DEFENDANT TO HELP (FILED 11/2/1999)	2334-2337
7			
8	10	NOTICE OF MOTION AND MOTION TO PLACE ON CALENDAR (FILED 4/17/2001)	2383-2384
9			
10	2	NOTICE OF MOTION AND SUPPLEMENTAL MOTION TO ADMIT EVIDENCE OF OTHER CRIMES, WRONG OR BAD ACTS (FILED 8/29/1996)	281-283
11			
12	12	NOTICE OF WITNESSES (FILED 2/28/2007)	3039-3042
13			
14	2	OPPOSITION TO MOTION FOR STRIKE ALLEGATIONS OF CERTAIN AGGRAVATING CIRCUMSTANCES (FILED 9/11/1996)	309-320
15			
16	2	ORDER (FILED 9/25/1996)	321-322
17			
18	2	ORDER (FILED 9/27/1996)	326-327
19	12	ORDER (FILED 1/29/2007)	2904-2905
20			
21	15	ORDER (FILED 3/20/2007)	3628-3629
22	10	ORDER APPOINTING COUNSEL (FILED 11/16/1999)	2357-2357
23			
24	10	ORDER APPOINTING INVESTIGATOR AND GRANTING EXCESS FEES (FILED 9/24/2002)	2553-2553
25			
26	16	ORDER FOR PRODUCTION OF INMATE (FILED 3/29/2007)	3831-3832
27	9	ORDER FOR STAY OF EXECUTION (FILED 12/30/1996)	2178-2178
28			
	2	ORDER FOR TRANSCRIPT (FILED 10/7/1996)	354-354

1	10	ORDER FOR TRANSCRIPT (FILED 11/19/1999)	2358-2358
2	11	ORDER GRANTING FINAL PAYMENT OF ATTORNEY'S FEES AND COSTS (FILED 7/12/2004)	2773-2773
3			
4	10	ORDER GRANTING INTERIM PAYMENT OF EXCESS ATTORNEY'S FEES (FILED 7/24/2000)	2382-2382
5			
6	10	ORDER GRANTING INTERIM PAYMENT OF EXCESS ATTORNEY'S FEES (FILED 6/7/2001)	2399-2399
7			
8	10	ORDER GRANTING INTERIM PAYMENT OF EXCESS ATTORNEY'S FEES (FILED 4/12/2002)	2416-2416
9			
10	10	ORDER GRANTING INTERIM PAYMENT OF EXCESS ATTORNEY'S FEES (FILED 7/10/2002)	2540-2540
11			
12	11	ORDER GRANTING INTERIM PAYMENT OF EXCESS ATTORNEY'S FEES (FILED 12/12/2002)	2650-2650
13			
14	11	ORDER GRANTING INTERIM PAYMENT OF EXCESS ATTORNEY'S FEES (FILED 1/28/2004)	2739-2739
15			
16	1	ORDER GRANTING PERMISSION OF MEDIA ENTRY (FILED 1/3/1996)	207-207
17			
18	5	ORDER GRANTING PERMISSION OF MEDIA ENTRY (FILED 10/11/1996)	1069-1069
19			
20	9	ORDER OF EXECUTION (FILED 13/31/1996)	2198-2198
21			
22	16	ORDER OF EXECUTION (FILED 5/10/2007)	3856-3856
23			
24	10	ORDER RE: PETITION FOR WRIT OF HABEAS CORPUS (FILED 10/20/1999)	2333-2333
25			
26	1	ORDER TO ENDORSE NAMES ON INFORMATION (FILED 7/15/1996)	234-235
27			
28	2	ORDER TO ENDORSE NAMES ON INFORMATION (FILED 9/4/1996)	284-286
	6	ORDER TO ENDORSE NAMES ON INFORMATION (FILED 10/14/1996)	1345-1346
	16	ORDER TO STAY EXECUTION (5/14/2007)	3861-3861

1	1	ORDER TO TRANSPORT (FILED 4/26/1996)	216-216
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

1	2-3	REPORTER'S TRANSCRIPT OF OCTOBER 7, 1996 VOLUME 1- AFTERNOON SESSION (FILED 10/8/1996)	434-617
2			
3	3-4	REPORTER'S TRANSCRIPT OF OCTOBER 8, 1996 VOLUME 2- MORNING SESSION (FILED 10/9/1996)	717-842
4			
5	3	REPORTER'S TRANSCRIPT OF OCTOBER 8, 1996 VOLUME 2-AFTERNOON SESSION (FILED 10/9/1996)	618-716
6			
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

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			
25			
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

1	12	REPORTER'S TRANSCRIPT OG OCTOBER 3, 2006 HEARING ON MOTIONS (FILED 2/9/2007)	2918-2920
2			
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
18			
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			

1	12	REQUEST FOR PREPARATION OF TRANSCRIPT OF PROCEEDINGS (FILED 2/6/2007)	2906-2911
2			
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	
27			
28			

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

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
5			
6			
7			
8			
9			
10			
11			
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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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