

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

ORIGINAL

FILED IN OPEN COURT

March 21 2007

CHAF. ES. J. SHORT
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 HEARING

BEFORE THE HONORABLE DOUGLAS HERNDON
DISTRICT COURT JUDGE

DATED: TUESDAY, MARCH 20, 2007

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

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

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

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9 STATE OF NEVADA,)
10 Plaintiff,) REPORTER'S TRANSCRIPT
11) OF
12 vs.) PENALTY HEARING
13 JAMES M. CHAPPELL,)
14 Defendant.)

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18 DISTRICT COURT JUDGE

19 DATED: TUESDAY, MARCH 20, 2007

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

1 APPEARANCES:

2 For the State: CHRISTOPHER OWENS, ESQ.
3 PAM WECKERLY, ESQ.

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

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13 * * * * *

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20 * * * * *

1 LAS VEGAS, NEVADA; TUESDAY, MARCH 20, 2007

2 10:00 A.M.

3 PROCEEDINGS

4 * * * * *

5
6 THE COURT: On the record in C-131341,

7 State of Nevada versus James Chappell.

8 The record will reflect the presence of
9 Mr. Chappell, with his attorneys, the State attorneys, and
10 our full jury panel.

11 We'll continue on with the defense case in
12 chief. Mr. Patrick, Mr. Schleck, you all can call your
13 next witness.

14 MR. PATRICK: We call Marabel Rosales.

15 THE CLERK: You do solemnly swear the
16 testimony you are about to give in this action, shall be
17 the truth, the whole truth, and nothing but the truth so
18 help you God.

19 THE WITNESS: Yes.

20 THE CLERK: Be seated and spell your name
21 for the record.

22 THE WITNESS: Marabel Rosales,

23 R-O-S-A-L-E-S.

24 DIRECT EXAMINATION

25 BY MR. PATRICK:

1 Q. Good morning.
 2 A. Good morning.
 3 Q. How are you employed?
 4 A. I work for the special public defender's
 5 office.
 6 Q. What are your duties there?
 7 A. I'm a mitigation investigator. I assist the
 8 attorney for finding mitigation in murder and capital
 9 murder cases.
 10 Q. Have you worked on James' case?
 11 A. Yes.
 12 Q. And did you have an opportunity to travel to
 13 Lansing earlier this year?
 14 A. Yes.
 15 Q. While you were there did you perform any
 16 interviews with witnesses?
 17 A. Yes.
 18 Q. Would two of those witnesses be Ivory
 19 Morrell and James Ford?
 20 A. Correct.
 21 Q. I'm going to show you what's been marked as
 22 Defendant Exhibit Q. Do you recognize these two
 23 gentlemen?
 24 A. Yes.
 25 Q. Could you tell us who they are?

5

1 A. This is James Ford. And this is Ivory
 2 Morrell.
 3 Q. Now, were Mr. Ford Mr. Morrell, did they
 4 travel to Las Vegas to testify in this matter?
 5 A. Yes.
 6 Q. And do you know when they got to Las
 7 Vegas?
 8 A. Last Tuesday.
 9 Q. When did they leave?
 10 A. Saturday.
 11 Q. Are you aware of the circumstances under
 12 which it was that they had to leave us?
 13 A. Yes. They -- we made every attempt to have
 14 them stay through the trial to testify, but Ivory had
 15 commitments in Lansing and had to get back to work on
 16 Monday. James, we called his employer to see if he could
 17 stay through today, possibly, and we basically got a call
 18 back from his job Friday evening and they said that if he
 19 want at work Monday morning he would be fired.
 20 Q. Now, did they travel to Las Vegas willingly
 21 to testify?
 22 A. Absolutely.
 23 Q. How did they feel when they had to go home
 24 before they had that opportunity?
 25 A. They were very upset and very disappointed

6

1 that they come here to testify to the jury.
 2 Q. As we previously talked about, you had the
 3 opportunity to talk to both of these gentlemen while in
 4 Lansing?
 5 A. Correct.
 6 Q. If you could, could you give a summary of
 7 what they told you and what they would have testified to
 8 had they had the opportunity?
 9 A. Sure. Well, it was actually through James,
 10 this gentleman that I was able to coordinate all the
 11 meetings with all of rest of the family and the friends
 12 that we met with. And he was very willing to talk to us.
 13 He coordinated -- it was actually a Tuesday night that we
 14 got into Lansing. He coordinated the rest of the group to
 15 meet there.
 16 We had several hours of delay in Chicago, and they
 17 still stayed in the home where they were meeting us. And
 18 while we were there we talked about their up-bringing and
 19 as you have already heard, this was a very close-knit
 20 community. They're just friends. They're not blood
 21 related. At least Ivory and James to James. And they
 22 were willing to help. They were willing to talk to us.
 23 And they grew up in the same general area. They
 24 knew -- their mothers know each other and are close
 25 friends. The parents still live in the same neighborhood

7

1 as they lived growing up.
 2 We talked about how they would hang out at James'
 3 grandmother's house and how James was such a wonderful
 4 cook, and how they would know grandma's time of leaving
 5 work or coming home from bingo games, and they would
 6 just -- they know the times so when grandma was around the
 7 corner they all leave. It was just -- that's what we
 8 initially started to talk about was their childhood.
 9 Q. Did either one of them tell you any stories
 10 about James as they were growing up?
 11 A. Yeah, I mean, the way that they hung out.
 12 How they met while they were very little and since
 13 elementary school and junior high school. How they grew
 14 up in the same neighborhood.
 15 Specifically, I remember Ivory said that when they
 16 would go to school dances when they were in junior high
 17 school Ivory, maybe kids were picking fights with them and
 18 it was always James who would try and calm the situation
 19 down or remove his friends from the fights.
 20 Q. Did either one of them know Debbie?
 21 A. Both of them did.
 22 Q. Were either of them around Debbie and James
 23 as they were growing out together?
 24 A. Yeah. They knew Debbie. They used to
 25 double date with Debbie and James. And they knew her

8

1 since James and Debbie started to go out.

2 Q. Did they tell you anything about the
3 relationship that James and Debbie had?

4 A. Well, when they were going out, I believe it
5 was just a normal teenage relationship, other than there
6 was a lot of sneaking that was occurring because,
7 according to them there was great animosity from Debbie's
8 parents because James was black. And they had to almost
9 assist with sneaking to do the double dates and to --
10 James recalls that they would drive by Debbie's house and
11 if Debbie would come to the window that was the clue that
12 he could come in.

13 But James also recalls that James was afraid
14 because if they found out that James was in the home her
15 parent would call the police.

16 Q. Was there ever a time that you learned about
17 James and Debbie living with one of these gentlemen?

18 A. Yes. I believe it was after JP was born and
19 Debbie was kicked out of her home, they actually lived in
20 James' house. And also I believe they lived in James'
21 sister's home for awhile.

22 Q. And did either of them have anything to say
23 about how James was with JP?

24 A. According to all of them, he was a great
25 father to JP. He was just -- just loved his son. He took

9

1 care of him, made sure that he was fed, layered if it was
2 cold outside, pretty much lived for his son.

3 Q. Did either of them give you any idea as to
4 James, how he acted in Lansing versus how he acted in
5 Tucson and Las Vegas?

6 A. When we explained everything that had
7 happened when he was in Tucson and Las Vegas, they said
8 that is not the James that we knew in Lansing.

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

10 THE COURT: Mr. Owens, Ms. Weckerly.

11 CROSS-EXAMINATION

12 BY MR. OWENS:

13 Q. You reviewed the affidavit of James Ford?

14 A. Yes.

15 Q. And it was his opinion, according to his
16 affidavit, that Debra was very controlling and jealous of
17 James, correct?

18 A. Yeah, according to the affidavit, yes.

19 Q. Wouldn't let him go out with the guys?

20 A. Correct.

21 Q. And would often verbally abuse him?

22 A. Right. And James did tell me about a

23 situation where James was in Tucson and he was in Lansing,
24 and he could hear them -- James had called him, and he
25 could hear Debbie in the background arguing, screaming,

10

1 calling him the "N" word.

2 Q. Debbie was?

3 A. Yeah.

4 Q. So did you -- you were here when we were
5 looking at the testimony, we read the testimony of the
6 Defendant?

7 A. I'm not sure if I was in the courtroom that
8 day.

9 Q. Do you remember his testimony in the prior
10 proceeding that it was his friends back in Lansing that
11 got him involved in drugs again?

12 A. No, I'm sorry. I don't recall that.

13 Q. You don't remember anything about that?

14 A. Sorry, no.

15 Q. James Ford was one of his close friends?

16 A. Correct.

17 Q. Was he -- did he tell you that he was
18 selling dope back there?

19 A. No.

20 Q. Did you talk to him about his criminal
21 history?

22 A. No.

23 Q. But his opinion of the relationship was that
24 Debbie screamed?

25 A. It was during that one particular phone

11

1 conversation. I don't think it was in general.

2 Q. And she was controlling?

3 A. I don't know, screaming at him while they
4 are arguing.

5 Q. That's what he said in his affidavit?

6 A. If that's what he said in his affidavit.

7 Q. Controlling, Debbie was jealous. Is that
8 what he said?

9 A. According to the affidavit, yeah.

10 Q. Debbie was a bigot or racist?

11 A. According to what he told me that had

12 occurred during that phone conversation, she referred to
13 him using the "N" word.

14 Q. And her family?

15 A. Right.

16 Q. That was James Ford's opinion of the
17 relationship?

18 A. Right.

19 MR. OWENS: That's all I have.

20 THE COURT: Mr. Patrick.

21 MR. PATRICK: Briefly, your Honor.

22 REDIRECT EXAMINATION

23 BY MR. PATRICK:

24 Q. Were you present at James last trial?

25 A. No.

12

1 Q. Were you present on the trip to Lansing when
2 those affidavits were made out?

3 A. No.

4 Q. Were you involved in any way in writing
5 those affidavits?

6 A. Not at all, no.

7 MR. PATRICK: That's all.

8 THE COURT: Anything further Mr. Owens.

9 MR. OWENS: No, your Honor.

10 THE COURT: Any questions from the jury.

11 Okay.

12 Counsel approach.

13 (Discussion held at the bench.)

14 THE COURT: Let me ask you a couple of
15 questions.

16 First off, repeat what your title is.

17 THE WITNESS: Mitigation investigator.

18 THE COURT: To your knowledge has either
19 Mr. Ford or Ivory Morrell been incarcerated?

20 THE WITNESS: To my knowledge, no.

21 THE COURT: Mr. Patrick.

22 MR. PATRICK: No, your Honor.

23 THE COURT: Mr. Owens.

24 MR. OWENS: Nothing further.

25 THE COURT: Thank you. You may step

13

1 down.

2 You may call your next witness.

3 MR. SCHIECK: Your Honor, at this time I
4 believe the defense will rest their case in chief, subject
5 to Mr. Chappell making an allocution statement.

6 I would inquire, I believe there was a
7 total of three of the school photographs that we had
8 marked. And the record indicates that we only offered
9 one. I intended to offer all three of those.

10 THE CLERK: F, H, and I.

11 MR. SCHIECK: F is the picture of the
12 elementary school.

13 MS. WECKERLY: No objection.

14 THE COURT: All right. Counsel will you
15 approach real quick.

16 The exhibits introduced -- Defense
17 Exhibits F, H and I, all of the defense exhibits are in
18 now.

19 THE CLERK: Correct.

20 THE COURT: Ladies and gentlemen, for the
21 record, Mr. Chappell has a right to make an unsworn
22 statement to you all. It's a statement that's not subject
23 to cross-examination, and he's going to do that at this
24 time.

25 Mr. Chappell.

14

1 THE DEFENDANT: Thank you.

2 Ladies and gentlemen of the jury, I have
3 been offered the option the of reading you guys a personal
4 statement. When I started this statement I made it to 23
5 pages, because there was so much I wanted to express. But
6 everything I wrote in it couldn't be allowed, so I wrote a
7 another one, it's shorter. I'm sorry, but all of it is
8 honest and personal as I could get.

9 I would like to thank you for your genuine
10 and collective attention in this case, your
11 inquisitiveness and curiosity and interest throughout this
12 serious and tragic proceeding, and for the time out of
13 each of your lives the past two weeks. I personally
14 appreciate it. And may be you'll be able to see the facts
15 and truth when you go do your deliberations.

16 I'm profoundly and sincerely sorry and
17 remorseful about this whole situation. It was not a
18 random act towards someone I did not know.

19 I'm sorry for all of the pain and
20 frustration I have caused Debbie's family, my family, and
21 our children.

22 It will forever be difficult to live with
23 this as part of who I am and will become in the future.
24 It has been education, unconditional support from my
25 family, and the opportunity to help others that's kept me

15

1 going the last two years of my life. Everything from my
2 childhood experiences on up to my faults in adulthood, my
3 teenage years contributed today the wrong choices I have
4 made in life.

5 But as long as I have life, I will
6 continue to work better and improve myself internally and
7 externally and use what I can build from that to help
8 others for the rest of the days of my life.

9 Thank you.

10 THE COURT: Thank you. Defense rests?

11 MR. SCHIECK: Yes.

12 THE COURT: Does the State have any
13 rebuttal.

14 MR. OWENS: I know we haven't gone really
15 long this morning, but can we have about five minutes to
16 look and see what we've got.

17 THE COURT: We'll take a quick recess,
18 ladies and gentlemen, before we finish up with the State's
19 rebuttal case.

20 JURY ADMONITION

21 During the recess, ladies and gentlemen,
22 you are admonished not to converse among yourselves or
23 with anyone else, including, without limitation, the
24 lawyers, parties and witnesses, on any subject connected
25 with this trial, or any other case referred to during it,

16

1 or read, watch, or listen to any report of or commentary
2 on the trial, or any person connected with this trial, or
3 any such other case by any medium of information
4 including, without limitation, newspapers, television,
5 internet or radio.

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

9 On the record, outside the presence of
10 the jury. There's an issue about a couple of exhibits the
11 State wants to introduce as part of its rebuttal case.

12 They are pre-sentence investigative
13 reports from this case, back when Mr. Chappell was
14 originally sentenced. As well as a pre-sentence
15 investigative report from -- what case number is on the
16 other one?

17 THE CLERK: 126882.

18 THE COURT: C-126882.

19 With regard to the gross misdemeanor, does
20 the defense have an objection to that pre-sentence
21 investigative report being introduced as an exhibit.

22 MR. SCHIECK: No objection.

23 THE COURT: All right. Exhibit 140 will
24 be introduced. Thank you -- admitted rather.

25 Then as to the pre-sentence investigative

1 who decline to give statements on the basis of an appealed
2 conviction and so forth and so on. Sometime they do give
3 statement.

4 But I do agree that it is a voluntary
5 process. You're interviewed by the Department of Parole
6 and Probation and asked whether or not they want to make a
7 statement, whether or not they want to make a written
8 statement. They're given a form to ask them about the
9 circumstance of their offense or what your feelings are
10 about your situation and why you may be suitable for
11 probation, et cetera. A copy of the statement will be
12 sent to the judge. That's all on the form that's given to
13 them. And they can choose to write a statement or not
14 write a statement, depending on what they want to do.

15 It's not the type of situation that gives
16 rise to Miranda warning. It's much like the sworn
17 testimony from the prior proceed, the statement the
18 Defendant wrote out for the Department of Parole and
19 Probation that was part of this case earlier on, I think
20 would be admissible in this proceeding as well.

21 So I'll allow the statement that's
22 attached to the PSI to be introduced. I will note that we
23 did redact on the pre-sentence report, there was a -- the
24 very last two sentences of page 7, which is where it got
25 to the recommendation. It referred to the fact that jury

17

19

1 report for the instant case back from when formal
2 sentencing was pronounced, does the defense have an
3 objection to that.

4 MR. SCHIECK: Your Honor, I understand the
5 court has redacted the typed portions of that to remove
6 all reference to the sentence imposed by the jury in that
7 case.

8 With respect to the typed portion, we have
9 no objection to the redactions. We do object to the
10 admissions of the Defendant's statement, which was
11 handwritten for the Department of Parole and Probation
12 after the jury had sentenced him to death.

13 Our contention is, one, it's a Mirandized
14 statement. It should not be able to be used against him
15 at this point in time. And that given the circumstances
16 it was given, it's unfair to introduce it at this time as
17 part of these sentencing proceedings.

18 THE COURT: The State.

19 MR. OWENS: Your Honor, the Miranda issue
20 is only an issue if the Defendant wasn't Mirandized and
21 the Defendant was Mirandized. It also requires
22 interrogation anyway, and there's nothing interrogating
23 about this particular process with the Defendant. This
24 was a voluntary statement.

25 THE COURT: Well, I often see defendants

1 returned a verdict of death.

2 So we whited out those two sentences and
3 in actuality it doesn't appear that anything is whited out
4 because it's the last two sentences on the page. You
5 really can't tell.

6 We also redacted -- there was an error in
7 the pre-sentence report where it indicated that Mr.
8 Chappell pled guilty to felony offenses, so we whited that
9 out and put in there was found guilty.

10 Then we removed the last page of the
11 pre-sentence report, where it reflected P&P sentencing
12 recommendations. I didn't think that was appropriate
13 either.

14 All right. So that PSI, in the instant
15 case be admitted as State's Exhibit 141.

16 All right, ready to get started.

17 MS. WICKERLY: Yes.

18 THE COURT: Back on the record in
19 C-131341, State of Nevada versus James Chappell.

20 The record will reflect Mr. Chappell is
21 present, with his attorneys, State's attorneys, in the
22 presence of the jury.

23 The State may present their rebuttal
24 case.

25 MR. OWENS: The State would like to call a

18

20

1 reader for reading of testimony of the witness that
 2 testified for the defense at the hearing ten years ago,
 3 Clara Axam, the Defendant's grandmother.
 4 THE COURT: Okay.
 5 THE CLERK: You do solemnly swear to
 6 faithfully and accurately read the response set forth in
 7 this transcript so help you God.
 8 THE READER: Yes.
 9 THE CLERK: Thank you.
 10 THE COURT: We'll do this the same way you
 11 did the previous one with Mr. Schieck or Mr. Patrick.
 12 BY MR. SCHIECK:
 13 Q. Clara, will you please state your name and
 14 spell you last name for the record?
 15 A. Clara Axam, A-X-A-M.
 16 Q. Clara, where do you live?
 17 A. In Lansing, Michigan.
 18 Q. How long have you lived there?
 19 A. Life.
 20 Q. Your entire life?
 21 A. Yes.
 22 Q. Do you know James Chappell?
 23 A. Yes, I do.
 24 Q. How do you know James?
 25 A. He's my grandson.

21

1 Q. Do you recognize him in court today?
 2 A. Yes, I do.
 3 Q. Can you point to him and describe an article
 4 of clothing he's wearing?
 5 A. Right there. I can't describe it because I
 6 can't see, you know, colors that far away. But that's
 7 James right there with the glasses on.
 8 Q. Will the record reflect the identification,
 9 your Honor?
 10 THE COURT: Yes.
 11 BY MR. SCHIECK:
 12 Q. Do you recall who James lived with when he
 13 was born?
 14 A. Yes. He lived with his mother and father.
 15 Q. What was his mother's name?
 16 A. Shirley Chappell.
 17 Q. Is this your daughter?
 18 A. Yes.
 19 Q. How long did she reside with her?
 20 A. Two years.
 21 Q. Was she killed?
 22 A. Yes.
 23 Q. How was she killed?
 24 A. She got killed in a car accident. Hit by a
 25 car.

22

1 Q. After her death, did you assume
 2 responsibility of raising James?
 3 A. Yes, I did.
 4 Q. How did James react to the death of his
 5 mother?
 6 A. Well, he was young, but very hard. Very
 7 hard like he wouldn't communicate with anybody.
 8 Q. How long?
 9 A. Like he wouldn't talk.
 10 Q. How long a period of time passed before he
 11 would talk?
 12 A. Probably a year or more.
 13 Q. How was James as a child, how did he treat
 14 you?
 15 A. He treated me fine. He had problems, you
 16 know. He was slow. But he treated me all right. Had no
 17 problems. He wasn't a violent child. He was an easy
 18 going child.
 19 Q. What do you mean by he was slow?
 20 A. Like in he didn't learn things as fast as a
 21 normal child. He didn't understand things.
 22 Q. Did that continue until he was in school?
 23 A. Yes.
 24 Q. What kind of student was he?
 25 A. Up until -- he went to normal school up

23

1 until the fifth grade. Then they put him in special
 2 education classes.
 3 Q. 5th grade?
 4 A. Yes.
 5 Q. How did he respond to those special
 6 education classes?
 7 A. Well, he went to school and everything. He
 8 went to special education classes all the way up to high
 9 school.
 10 Q. Did he graduate from high school?
 11 A. No.
 12 Q. Now, you worked during the time that you
 13 were raising James, correct?
 14 A. Yes.
 15 Q. Where did you work?
 16 A. For the State Police Academy in the State of
 17 Michigan.
 18 Q. Who would care for James while you were at
 19 work?
 20 A. My daughter Sheri.
 21 Q. Do you know Debra Panos?
 22 A. Yes, I did.
 23 Q. How did you feel about Debra Panos?
 24 A. A nice lady, very nice.
 25 Q. Do you feel like James should be punished

24

1 for what happened on August 31st?

2 A. Yes, I do.

3 Q. Do you want James to continue to be a part
4 of your life?

5 A. Yes.

6 Q. Would you like to be able to correspond with
7 him?

8 A. Yes.

9 MR. SCHIECK: That's the last question.

10 THE COURT: State had no questions.

11 MR. OWENS: Correct, your Honor.

12 THE COURT: Thank you. Appreciate your
13 time.

14 The State may call the next witness.

15 MR. OWENS: If I can address the court on
16 a couple of documents.

17 THE COURT: Okay. During the recess we
18 had marked as State's Proposed Exhibit No. 140, a
19 certified copy of the pre-sentence investigation report
20 utilized by the judge in the gross misdemeanor case
21 C-126882, State versus James Chappell, and moved for its
22 admission and the court admitted it at that time.

23 THE COURT: That was admitted as Exhibit
24 140.

25 MR. OWENS: Correct.

25

1 Then we had the document pertaining to
2 this case, pre-sentence investigation report that was done
3 back in December of 1996, which we had marked as Exhibit
4 141 for identification. Once again a certified copy of
5 that particular document.

6 THE COURT: All right. That will be
7 admitted as 141.

8 MR. OWENS: All right. And if we may
9 approach on another related matter.

10 THE COURT: Sure.

11 (Discussion held at the bench.)

12 MR. OWENS: We've marked as number 138, a
13 copy of the prison visitation logs for James Chappell for
14 the last few years. It's a certified copy, your Honor.
15 We move for its admission at this time.

16 THE COURT: Any objection.

17 MR. SCHIECK: No, your Honor.

18 THE COURT: 138 will be admitted. Thank
19 you.

20 The State may call the next witness.

21 MS. WECKERLY: The next witness, your
22 Honor, is Norma Penfield.

23 THE COURT: If you would come back up here
24 please.

25 THE CLERK: You do solemnly swear the

26

1 testimony you are about to give in this action shall be
2 the truth, the whole truth, and nothing but the truth so
3 help you God.

4 THE WITNESS: I do.

5 THE CLERK: Be seated. State and spell
6 your name for the record.

7 THE WITNESS: Norma Penfield,

8 P-E-N-F-I-E-L-D.

9 DIRECT EXAMINATION

10 BY MS. WECKERLY:

11 Q. You testified before you're Debbie Panos'
12 mother?

13 A. Yes.

14 Q. We heard testimony this morning that you
15 were not happy that Debbie was dating James Chappell. And
16 we heard testimony this morning that the reason for that
17 was because of his race. Was that the case?

18 A. No.

19 Q. What was the reason that you didn't like
20 your daughter being involved with James Chappell?

21 A. For the reason of the way -- the treatment
22 that he had given Debbie. He didn't support her. He
23 didn't support the kids, his actions.

24 Q. Was that the case also when you all were
25 living in Lansing?

27

1 A. Yes.

2 Q. You didn't like how he treated her?

3 A. Right. I knew he was stocking around the
4 house when he would go to pick up Debbie at work. The
5 city building, he was around. I told Debbie over and over
6 again when we would have discussions, I -- as true as I'm
7 sitting here, I don't care if he's green, black, red, what
8 color, as long as you are treated the way you should be
9 treated.

10 Q. You didn't think she was treated how she
11 should be treated?

12 A. No. No.

13 MS. WECKERLY: Thank you. No other
14 questions, your Honor.

15 THE COURT: Mr. Schieck, Mr. Patrick.

16 CROSS-EXAMINATION

17 BY MR. SCHIECK:

18 Q. Just a couple. Ms. Penfield, when was it
19 that you moved the Tucson?

20 A. Right after -- it wasn't long after Dale
21 retired. We had been in Tucson for 20 years.

22 Q. Do you recall the year though, was it
23 1994?

24 A. No. It was earlier than that. It was
25 around '88, '87, something like that.

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1 MR. SCHIECK: That's all I have, your
2 Honor.
3 THE COURT: Ms. Weckerly.
4 MS. WECKERLY: Nothing else. Thank you,

5 your Honor.
6 THE COURT: Ms. Penfield, thank you for
7 your time.

8 THE WITNESS: Thank you.

9 THE COURT: Does the State have any
10 further witnesses.

11 MR. OWENS: Subject to discussions at the
12 bench the State rests the case and rebuttal.

13 THE COURT: All right. Any rebuttal from
14 the defense at this time.

15 MR. SCHIECK: No, your Honor.

16 THE COURT: We'll take a lunch recess.
17 I'll work with the attorneys to get the jury instructions
18 all worked out so when we come back we can move into
19 closing arguments.

20 JURY ADMONITION

21 During the recess, ladies and gentlemen,
22 you are admonished not to converse among yourselves or
23 with anyone else, including, without limitation, the
24 lawyers, parties and witnesses, on any subject connected
25 with this trial, or any other case referred to during it,

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1 or read, watch, or listen to any report of or commentary
2 on the trial, or any person connected with this trial, or
3 any such other case by any medium of information
4 including, without limitation, newspapers, television,
5 internet or radio.

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

9 We'll be in recess. Try be back here
10 at -- we'll give you a longer time so that we have time to
11 do the jury instructions.

12 We'll try to get started at 2:00
13 o'clock.

14 Thank you very much.

15 (Lunch recess taken.)

16 THE COURT: Outside the presence.

17 You want to make a record of the prison
18 violation report you want to offer as an exhibit.

19 MR. OWENS: Yes, your Honor. It's a
20 violation report for an incident occurring in the fall --
21 summer and fall of last year, 2006, where the defendant
22 was corresponding with a woman from the midwest, that was
23 rebuffing his intentions towards her and he kept obsessing
24 and writing to her in letters with a similar tone to those
25 that were involved between the defendant and the victim in

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1 this case. To the point where she contacted the warden of
2 the Nevada State Prison system and asked him to terminate
3 her -- the Defendant's communication abilities with regard
4 to her, because she was afraid for herself and afraid of
5 him.

6 This is offered by the State as a rebuttal
7 of the Defendant's recent testimony that we heard in
8 particular about how it was the victim that was
9 controlling, and the victim that was the one that kept
10 coming back to the Defendant and obsessing over the
11 Defendant.

12 And there's testimony throughout the
13 trial, particularly with Dr. Etcoff, that this was a
14 perfect storm or an isolate incident in the Defendant's
15 life.

16 In fact, it's not an isolated incident.
17 It's a part of a pattern of conduct. I know that it seems
18 a little odd when you think about it in the context of
19 this case and the timing because Etcoff testified in the
20 middle of our case. But if you assume Etcoff testified at
21 the appropriate time and got up and said what -- about how
22 this was a misalignment of the stars between these two
23 people, then we would be coming in with this document
24 immediately afterwards to say, no, it wasn't. This is how
25 the Defendant does business and here's the proof of it.

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1 And it's for that rebuttal purpose that
2 we're offering that, this series of documents, which
3 culminated in a disposition in the prison system, your
4 Honor.

5 THE COURT: Mr. Schieck.

6 MR. SCHIECK: Your Honor, we object. The
7 court sustained that objection to admitting it as rebuttal
8 evidence.

9 We intentionally stayed away from prison
10 records, prison information just to avoid any semblance of
11 this type of thing having to be litigated because it has
12 nothing to do with this case. I can represent to the
13 court I was aware of this situation before the records
14 were even generated of the situation because of my contact
15 with Mr. Chappell and with the prison system. It is a
16 much broader story than is contained in -- certainly the
17 disciplinary papers and the one correspondence that's
18 attached to that.

19 This lady apparently had contacted other
20 people that were corresponding with other inmates in the
21 prison and information was being passed back and forth.
22 It was a long, long situation that developed before there
23 was ever any discipline for it. It certainly wasn't any
24 way near compared to his ten year relationship with Debra
25 and the three children and the correspondence that he had

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1 with her while he was briefly incarcerated in the county
2 jail.

3 So number one, it's not proper rebuttal to
4 anything we opened the door to. Dr. Etcoff made reference
5 to the perfect storm type setting was referring to a
6 number of factors having to do -- I'm not sure it was
7 Dr. Etcoff, as opposed to Dr. Danton that used the phrase
8 perfect storm -- but irrespective of that, he was talking
9 about someone that has attachment disorder, a learning
10 disability, and is unable to verbally communicate because
11 his verbal IQ is so low, and being in a relationship with
12 a lady that may have some problems that foster that type
13 of relationship. I think Dr Danton was the one that
14 talked about that.

15 So it has really nothing to do with
16 repeating a course of conduct. Mr. Chappell was in prison
17 with no chance of getting out of prison, I don't now how
18 he could possibly be conceived to be writing threats, even
19 if you think that the letters to Debbie contained threats.
20 Certainly, he was no threat to this individual.

21 So for all of those reasons, the court was
22 correct in sustaining the objection and not letting those
23 records in.

24 And, again, I can say -- tell this court
25 that we have Mr. Chappell's prison records, and in order

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1 to avoid this type of situation, these records being --
2 opening the door to these records coming in, didn't put in
3 his prison records. He has a very good prison record.
4 This is like the major disciplinary thing he ever had, and
5 to me it's not a major thing. We wanted to avoid that and
6 that's why we didn't bring them in.

7 THE COURT: All right.

8 MR. SCHIECK: We concur with the court's
9 ruling.

10 THE COURT: I think that obviously that
11 the conduct alleged in here in the letters attached to
12 this packet is concerning. Do I think it has some
13 relevance to a sentencing hearing, yes. Do I think the
14 State would have been entitled to bring it in in its case
15 in chief, yeah, probably so.

16 My main concern in terms of admissibility
17 is having to look at it in the narrow vision of where we
18 are now, which is in rebuttal case. And the main reason
19 it's being brought in rebuttal is it seems to be two-fold.
20 One, to rebut some things that the psychologist or
21 psychiatrist said. And I don't think there was sufficient
22 things raised with them for this rebuttal -- for this to
23 come in as rebuttal evidence.

24 Secondly, it's being offered to rebut the
25 allegation that the defense was making -- or the

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1 allegation, as the State puts it, the defense was making
2 that Ms. Panos was the controlling force within this
3 relationship. I don't think the defense put fourth that
4 evidence.

5 The defense witnesses came in to say
6 Ms. Panos was the controlling person and was the abusive
7 person, or anything. That was brought out by the State in
8 cross-examination of these folks in terms of things that
9 are apparently in affidavits of some of these folks may
10 have given previously.

11 So I don't think the State can
12 cross-examine these witnesses and bring out these things
13 and try and use this to support what the State was trying
14 to bring out in the affidavit on cross-examination. The
15 defense didn't approach any of these issues.

16 So out of an abundance of caution I don't
17 think it would be appropriate to bring these in in
18 rebuttal at this time. So I'm denying the State's effort
19 to admit the prison violation report.

20 For the record it's dated September,
21 October 2006.

22 All right. I will mark it as a court
23 exhibit, however, if you want me to.

24 MR. OWENS: Yes, please.

25 THE CLERK: It's marked as 139.

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1 THE COURT: We'll mark it as 139, but it's
2 not admitted. Anything else?

3 MR. OWENS: No.

4 THE COURT: All right. We'll be in
5 recess.

6 We'll stick around and talk about jury
7 instructions.

8 (Brief recess taken.)

9 THE COURT: Back on the record in
10 C-131341, State of Nevada versus James Chappell.

11 The record reflect the presence of
12 Mr. Chappell, with his attorneys, State attorneys. We're
13 outside the presence of the jury. Does the State have a
14 copy -- let me go through the instructions first.

15 Instruction number 1, members of the jury
16 it is my duty as judge -- 2, if in these instructions --
17 3, hearsay evidence at a penalty hearing -- number 4, the
18 jury shall fix punishment of a person convicted of murder
19 in the first degree -- 5, life imprisonment with
20 possibility of parole -- 6, the State alleged what
21 aggravating circumstances is present in this case -- 7,
22 you are instructed the following factors or circumstances
23 by which murder in the first degree may be aggravated --
24 8, a person who subjects another person to sexual
25 penetration -- 9, physical force is not a necessary

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1 ingredient -- 10, the victim of a sexual assault -- 11,
2 there is no consent when a victim is induced -- 12,
3 mitigating circumstances are those factors which -- 13, in
4 determining whether mitigating circumstances exist -- 14,
5 there are certain circumstance which may be considered as
6 mitigating -- 15, a reasonable doubt -- 16, a jury is
7 instructed that in determining the appropriate sentence --
8 17, in deciding on an appropriate sentence -- 18, in your
9 deliberation -- 19, credibility or believability of a
10 witness -- 20, although you are to consider only the
11 evidence -- 21, during your deliberation -- 22, the court
12 has submitted three sets of verdicts to you -- 23, now you
13 will listen to arguments of counsel.

14 Does the State have a copy of those 23
15 proposed instructions.

16 MS. WECKERLY: Yes.

17 THE COURT: Do you object to the giving of
18 any of those instructions.

19 MS. WECKERLY: No.

20 THE COURT: Any additional to have marked
21 as court exhibits.

22 MS. WECKERLY: No, your Honor.

23 THE COURT: Does the defense have a copy
24 of the proposed 23 instructions.

25 MR. SCHIECK: Yes, your Honor.

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1 THE COURT: Do you object to the giving of
2 any of those 23.

3 MR. SCHIECK: No, your Honor.

4 THE COURT: Do you have any additional
5 ones to offer as proposed instructions.

6 MR. SCHIECK: No, your Honor.

7 THE COURT: You all each I believe have
8 copies of the verdict forms, as well.

9 MS. WECKERLY: That's being copied now.

10 THE COURT: We fixed the one typo on there
11 and put some more lines on mitigating circumstance verdict
12 form, but other than those being copied right now you have
13 seen copies of the verdict forms.

14 MS. WECKERLY: Yes.

15 THE COURT: You're in agreement with
16 that.

17 MS. WECKERLY: Yes.

18 THE COURT: Defense has seen copies, as
19 well.

20 MR. SCHIECK: Yes, your Honor.

21 THE COURT: You're in agreement with
22 them.

23 MR. SCHIECK: Yes, your Honor.

24 THE COURT: All right.

25 We will go get those and we'll get

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1 started.

2 Back on the record in C-131341, State of
3 Nevada versus James Chappell.

4 The record will reflect the presence of
5 Mr. Chappell with his attorneys, the State attorneys, in
6 the presence of our jury.

7 Ladies and gentlemen, we've reached a
8 point where I get to read to you some jury instructions
9 now. Each of you has a packet that was left in your
10 chair. The instructions aren't too lengthy, but I think
11 it's much easier if you all read along as I read them to
12 you so you can see what I'm talking about.

13 You'll be able to take the packet back
14 with you when you go to deliberate. To the extent during
15 my reading of the instructions or during the arguments of
16 the attorneys you want to make notes on a particular
17 instruction, by all mean, do that. You get to keep your
18 individual packet when you go back to deliberate.

19 All right, Instruction No. 1, instructions
20 to the jury, members of the jury, it is now my duty as
21 judge to instruct you on the law that applies to this
22 penalty hearing. It is your duty as jurors to follow
23 these instruction and to apply the rules of law to the
24 facts as find them from the evidence.

25 You must not be concerned with the wisdom

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1 of any rule of law stated in these instructions.
2 Regardless of any opinion you may have as to what the law
3 ought to be, it would be a violation of your oath to base
4 a verdict upon any other view of the law than that given
5 in the instructions of the court.

6 Number 2, if in these instructions any
7 rule, direction, or idea is repeated or stated in
8 different ways no emphasis thereon is intended by me and
9 none may be inferred by you.

10 For that reason you are not to single out
11 any certain sentence or any individual point or
12 instruction and ignore the others, but you are to consider
13 all the instructions as a whole and regard each in the
14 light of all the others.

15 Number 3, in the penalty hearing evidence
16 may be presented concerning aggravating and mitigating
17 circumstances relative to the offence. Hearsay is
18 admissible in a penalty hearing.

19 Number 4, the jury shall fix the
20 punishment for every person convicted of murder of the
21 first degree. The jury shall fix the punishment at (1) a
22 definite term of one hundred years imprisonment with
23 eligibility for parole when a minimum of 40 years has been
24 served; (2) life imprisonment with eligibility of parole
25 beginning when a minimum of 40 years has been served; (3)

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1 life imprisonment without the possibility of parole, or
2 (4) death.

3 Number 5, life imprisonment with the
4 possibility of parole is a sentence of life imprisonment
5 which provides that a defendant would be eligible for
6 parole after a period of 40 years. This does not mean he
7 will be paroled after 40 years, but only that he may be
8 eligible after that period of time.

9 Life imprisonment without the possibility
10 of parole means exactly what it says. The Defendant shall
11 never be paroled. If you sentence a defendant to death,
12 you must assure that the sentence will be carried out.

13 Number 6, the State has alleged that one
14 aggravating circumstance is present in this case. The
15 Defendant has alleged certain mitigating circumstances are
16 present in this case. It shall be your duty to determine
17 (a) whether the aggravating circumstances found to exist,
18 and (b) whether a mitigating circumstance or circumstances
19 are found to exist, and (c) based upon these findings,
20 whether the defendant should be sentenced to a definite
21 term of one hundred years imprisonment, life imprisonment
22 with or without the possibility of parole, or death.

23 The jury may consider a sentence of death
24 only if, (1) the jurors unanimously find at least one
25 aggravating circumstance has been established beyond a

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1 reasonable doubt, and (2) the jurors unanimously find
2 there that are no mitigating circumstances sufficient to
3 outweigh the aggravating circumstance or circumstances
4 found.

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

11 Otherwise, the punishment imposed shall be
12 imprisonment in the state prison for a definite term of
13 one hundred years imprisonment with eligibility for parole
14 beginning when a minimum of 40 years has been served or
15 life without the possibility of parole.

16 Number 7, you are instructed that the
17 following factors are circumstance by which murder of the
18 first degree may be aggravated.

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

21 Number 8, a person who subjects another
22 person to sexual penetration against the victims will or
23 under conditions which the perpetrator knows or should
24 know that the victim is mentally or physically incapable
25 of resisting or understanding the nature of his conduct,

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1 is guilty of sexual assault.

2 Sexual penetration includes, any
3 intrusion, however slight, of any part of a person's body,
4 or any object manipulated or inserted by a person into the
5 genital or anal openings of the body of another;
6 including, sexual intercourse in its ordinary meaning.
7 Evidence of omission is not necessary.

8 Sexual intercourse is the placing of the
9 penis of the perpetrator into the vagina of the victim.
10 fellatio is the placing of the penis of the perpetrator
11 into the mouth of the victim.

12 Number 9, physical force is not a
13 necessary ingredient in the commission of the crime of
14 sexual assault. The question is not whether the victim
15 was penetrated by physical force, but whether the act was
16 committed without her consent and/or under conditions in
17 which the defendant knew or should have known the victim
18 was incapable of giving her consent or understanding the
19 nature of the act.

20 Number 10, the victim of a sexual assault
21 is not required to do more than her age, strength,
22 surrounding facts and attending circumstances making it
23 reasonable for her to manifest her opposition.

24 Number 11, there is no consent where the
25 victim is induced to submit to sexual acts in fear of

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1 death or serious bodily injury.

2 Number 12, mitigating circumstances are
3 those factors which, while they do not constitute a legal
4 justification or excuse for the commission of the offense
5 in question, may be considered in the estimation of the
6 jury in fairness and mercy as extenuating or reducing the
7 degree of a defendant's moral culpability. Any aspect of
8 the defendant's character or record, or any of the
9 circumstances of the offense, including any desire you may
10 have to extend mercy to the defendant may be considered by
11 you as a mitigating factor.

12 In balancing aggravating and mitigating
13 circumstance, it is not the mere number of aggravating
14 circumstance or mitigating circumstance that control.

15 Number 13, in determining whether
16 mitigating circumstances exist, jurors have an obligation
17 to make an independent and objective analysis of all the
18 relevant evidence. Arguments of counsel or a party do not
19 relieve jurors of this responsibility. Jurors must
20 consider the totality of circumstances of the crime and
21 the defendant as established by the evidence presented in
22 the guilty penalty phases of the trial.

23 Neither the prosecution nor the
24 defendant's insistence on the existence or nonexistence of
25 mitigating circumstances is binding upon the jurors.

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1 Number 14, there are certain circumstances
2 which may be considered as mitigating the crime of murder
3 in the first degree, even though mitigating circumstances
4 is not sufficient to constitute a defense or reduce the
5 degree of the crime.

6 In this case the defense alleges that the
7 following mitigating circumstances are present:

8 1. James Chappell suffered from substance
9 abuse addictions.

10 2. James Chappell attempted to be a good
11 father.

12 3. James Chappell's mother was killed
13 when he was very young.

14 4. James Chappell has had no father figure
15 in his life.

16 5. James Chappell was raised in an abusive
17 household.

18 6. James Chappell was the victim of
19 physical abuse as a child.

20 7. James Chappell was the victim of mental
21 abuse as a child.

22 8. James Chappell was born to a
23 drug/alcohol addicted mother.

24 9. James Chappell suffered a learning
25 disability.

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1 10. James Chappell was raised in a
2 depressed housing area.

3 11. James Chappell was involved in a
4 racially tense relationship.

5 12. James Chappell was taken away from his
6 support system by his relationship with Debra Panos.

7 13. Any other mitigating circumstances.

8 15, a reasonable doubt is one based on
9 reason. It is not mere possible doubt, but is such a
10 doubt as would govern or control a person in the more
11 weighty affairs of life.

12 If the minds of the jurors, after the
13 entire comparison and consideration of all the evidence
14 are in such a condition that they can say they feel an
15 abiding conviction of the truth of the charge, there's not
16 a reasonable doubt.

17 Doubt to be reasonable must be actual, not
18 mere possibility or speculation.

19 16, the jury is instructed that in
20 determining the appropriate sentence in this matter that
21 it may consider all evidence introduced at both the
22 penalty hearing phase of these proceedings and at the
23 trial of this matter.

24 17, in deciding on appropriate sentence
25 for the defendant, you will consider three types of

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1 evidence: Evidence relevant to the existence of
2 aggravating circumstances, evidence relevant to the
3 existence of mitigating circumstances, and other evidence
4 presented against the defendant.

5 You must consider each type of evidence
6 for its appropriate purposes. In determining unanimously
7 whether any aggravating circumstance has been proven
8 beyond a reasonable doubt, you are to consider only
9 evidence relevant to that aggravating circumstance. You
10 are not to consider other evidence against the
11 defendant.

12 In determining individually whether any
13 mitigating circumstances exists, you are to consider only
14 evidence relevant to that mitigating circumstance. You
15 are not to consider other evidence presented against the
16 defendant.

17 In determining individually whether any
18 mitigating circumstances outweigh any aggravating
19 circumstances, you are to consider only evidence relevant
20 to any mitigating and aggravating circumstance. You are
21 not to consider other evidence presented against the
22 defendant.

23 If you find unanimously and beyond a
24 reasonable doubt that at least one aggravating
25 circumstance exists, and each of you determines that any

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1 mitigating circumstances do not outweigh the aggravated
2 circumstances the defendant is eligible for any death
3 sentence.

4 At this point you are to consider all
5 three types of evidence, and you still have the discretion
6 to impose a sentence less than death. You must decide on
7 a sentence unanimously. If you do not decide unanimously
8 that at least one aggravating circumstance has been proven
9 beyond a reasonable doubt, or if at least one of you
10 determines that the mitigating circumstances outweigh the
11 aggravating, the defendant is not eligible for a death
12 sentence.

13 Upon determining that the defendant is not
14 eligible for death, you are to consider all three types of
15 evidence in determining a sentence other than death, and
16 you must decide on such a sentence unanimously.

17 18, in your deliberation you may not
18 discuss or consider the subject of guilt or innocence of
19 the defendant, as that issue has already been decided.

20 19, credibility of believability of a
21 witness should be determined by his manner upon the stand,
22 his relationship to the parties, his fears, motives,
23 interest, or feelings, his opportunity to have observed
24 the matter to which he testified, the reasonableness of
25 his statements, and the strength or weakness of his

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1 recollections.

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

6 Number 20, although you are to consider
7 only the evidence in the case in reaching a verdict, you
8 must bring to the consideration of the evidence your
9 everyday common sense and judgment as reasonable men and
10 women. Thus, you are not limited solely to what you see
11 and hear as the witnesses testify. You may draw
12 reasonable inferences from the evidence which you feel are
13 justified in the light of common experience. Keeping in
14 mind that such inferences should not be based on
15 speculation or guess.

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

20 21, during your deliberation you will have
21 all the exhibits which were admitted into evidence, these
22 written instructions and form of verdict, which have been
23 prepared for your convenience.

24 22, the court has submitted three sets of
25 verdicts to you. One set is for a determination of the

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1 existence of an aggravating circumstance. The second set
2 is for a determination of the existence of mitigating
3 circumstances. The third set is for a determination of
4 weight to be given the aggravating and/or mitigating
5 circumstances.

6 23, now you will listen to the arguments
7 of counsel who will endeavor to aid you to reach a proper
8 verdict by refreshing in your mind the evidence and the
9 application thereof to the law. But whatever counsel may
10 say, you will bear in mind that it is your duty to be
11 governed in your deliberation by the evidence as you
12 understand it and remember it to be, and by the law as
13 given to in these instructions, with the sole, fixed and
14 instead fast purpose of doing equal and exact justice
15 between the defendant and the State of Nevada.

16 You should also each have several forms of
17 verdict attached to the back of the instructions. I
18 believe it's about four or five pages. They're fairly
19 self-explanatory. The attorneys may discuss them further
20 during closing arguments.

21 All right. On behalf of the State.

22 MR. OWENS: Thank you, your Honor.

23 CLOSING SUMMATION

24 BY MR. OWENS:

25 Debbie loved life. She loved life. She

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1 loved people, but she was afraid. She was very scared and
2 had a lot of reason to be afraid.

3 Look how she chose to live her life over
4 that ten years of what was a living hell with the
5 defendant. This thing of weekly beatings by him, the
6 pain, the concern for her children. She had every reason
7 to want to give up. She had every reason to take it out
8 on other people, but how did she respond to that. I don't
9 think of all of the misery, but the beauty that still
10 remains. A quote from a young woman that lived decades
11 ago that suffered a lot of pain and anguish and fear for
12 an extended period of time, as well.

13 And yet the beauty that still remains.
14 You know it really is a matter of perspective. It's a
15 matter of how people pick themselves up and go on with
16 their lives. And we've got the whole spectrum of that in
17 this case. The whole spectrum.

18 We have in Debbie Panos an individual who
19 had every reason to be bitter and dysfunctional. Yet,
20 what did we hear about her. She not only was up, she was
21 a person that other people loved to be around. She loved
22 people. She worked at jobs. She worked two jobs.
23 Sometime she worked three jobs to take care of her family,
24 her three little children that she dearly loved.

25 She was enough of a giver beyond this,

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1 outside of this sphere and difficulty she had, that people
2 liked being around her. How did they describe her. That
3 she was giving. That she was compassionate. That she
4 would do anything for other people.

5 It was just the way that Debbie was. That
6 was how she chose to be in her life. She was even a
7 giving person with regard to the defendant, Mr. Chappell,
8 the person that killed her, the person that took her life.
9 And what a difference we see there. He is the total
10 opposite end, because he chose evil. He chose evil.

11 He chose, rather than to make the best of
12 his situation, to love other people, to be kind to other
13 people, he chose to abuse other people, to take advantage
14 of them. He chose to only think of himself. And in the
15 end he chose to take the life of Debbie Panos.

16 There are heroes in these lives that we've
17 heard about. There are smaller heroes and there are
18 greater heroes. We heard about a grandmother who received
19 a call about the death of her daughter it cost her the
20 anguish in her heart to fall to the floor and began
21 screaming. Then picked herself up, went and got her three
22 little grandchildren and has raised them in a home of love
23 and compassion. And what is really a great tribute to the
24 life that Debbie led.

25 What an amazing difference of choices we

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1 have in this case, ladies and gentlemen. Debbie loved
2 clowns. That makes sense, doesn't it. She liked things
3 that made her happy. She liked things that made other
4 people happy.

5 We were told how she loved older people.
6 How she loved younger people. How she adored her own
7 children. We saw the pictures how she liked to dress up
8 like a clown. We heard about how she liked to collect
9 clowns. We heard about how she liked hanging out with
10 people from work. How she liked to take her children and
11 they would go on picnics, go the Disneyland and all the
12 other activities she had to work so hard as a single
13 mother to be able to provide for them. And still deal
14 with the things that the defendant put her through over
15 this entire time. It's just stunning, what she went
16 through.

17 And it's so important to think about this
18 whole picture of what Debbie went through as you are
19 approaching the task that you now have.

20 You heard from a number of her friends and
21 people from Tucson, from Las Vegas. We heard about how
22 down in Arizona she would come to work with the bruising
23 on her face, or maybe not on her face, about on her arms
24 and her neck area, and she put extra make up on it to try
25 and disguise it. We asked co-worker Dina, how often would

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1 see that. She said at least every couple of weeks for the
2 entire time she knew her. She knew Debbie for about five
3 years.

4 We heard about the thing with the dresser
5 and some of these other things that occurred that she had
6 the deal with. Dina talked about how she would get these
7 phone calls late at night from Debbie. She heard the
8 defendant's voice, Chappell's voice in the background,
9 don't ever "F" around my kids because I will kill your
10 ass, he's yelling. I'll do an O.J. Simpson on you.

11 We heard from Lisa Duran, Mike Pollard,
12 Michelle Mancha, friends that worked at G.E. Capital with
13 Debbie. Who is she laying underneath, the defendant
14 demands on the phone. She is not going have to any
15 friends. She's not going to have any life, and that
16 includes you. If I can't have her, no one will.

17 Mike Pollard talked about when he saw the
18 defendant take his hand and slap it across Debbie's face.
19 She got out of the car, trying not to cry, went into work.
20 Then he drove off in her car.

21 How he showed up at work trying to demand
22 money. It's just amazing. Little Debbie is going around
23 to her co-workers trying to beg money from them so that
24 she can get rid of him and get him out of the lobby.
25 Finally they have to have a rule that he's not allowed to

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1 come around work, and they have to post security there.

2 Michelle Mancha talked about the choke
3 marks that she saw on the neck area and how Debbie talked
4 to her about the knife that he held to her throat. Claire
5 talked about that incident, June 1st. The defendant held
6 a knife to Debbie's throat and demanded things from her
7 and if Claire hadn't gone up to the door it would have
8 progressed and gotten worse from there.

9 There was an interruption on June 1st,
10 1995. There was no interruption of his activities of
11 violence against Debbie August 31, 1995. There was no
12 Claire McQuire to knock on the door and interrupt him from
13 completing the desire of his heart. The desire of his
14 heart was a manifestation of his jealousy, his rage, his
15 selfishness, his greed, and his need to control Debbie.
16 Because his choices were all about himself and nobody
17 else.

18 We've listened to days now, from people
19 that knew him, both sides of this, and some people in the
20 middle of it, some people that just went out there. The
21 police, observed it. Weren't friends of Debbie. Weren't
22 friend of his. Other individuals that saw this thing, and
23 the way that he was acting and the way he was treating
24 Debbie. And there was nothing, nothing redeeming about
25 this man that came out.

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1 We had days to present that. He's a
2 despicable human being. We're talking about a guy that
3 sells his baby's diapers. It's just appalling. You've
4 got little children, they get some shoes from the shoe
5 store. And this guy is out there taking all the
6 children's shoes back. Their mother goes to Disneyland
7 and gets shirts for the kids. Takes them home. The
8 defendant takes the shirts out and sells them so he can
9 get money for himself, take care of his needs, because he
10 thinks he's more important and his needs should come
11 first.

12 It is not enough that he just abuses these
13 people. He now wants to hide behind them, and he wants to
14 portray himself as a good father. He wants to still use
15 them. He wants to still abuse them, even in this
16 proceeding, ten, eleven years later It's just
17 appalling.

18 Blame, we heard a lot about blame in this
19 case. Some of it was very up front, some of it was very
20 subtly hidden in a lot of questioning you heard. But
21 there was an attempt to place the blame in this case for
22 what happened everywhere but where it should be placed,
23 everywhere but where it should be placed.

24 What did we hear about. We heard that the
25 defendant -- and we got this from his testimony in the

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1 prior hearing. He said it to Dr. Etkoff, Dr. Etkoff's
2 report, things he told other people, his actions other
3 people witnessed, his actions that police witnessed, his
4 letters that he wrote. I mean, we heard a whole bunch of
5 different things, even people that we heard from yesterday
6 that knew him.

7 What do we hear, yeah, I had a lot of jobs
8 but it's not my fault, they wouldn't give me a raise. Or,
9 yeah, we had to leave Tucson because the job was getting
10 too much into our private lives. Debbie was coming into
11 the police department where she worked with bruises all
12 over her and the police were seeing her as a victim where
13 they would be pulled aside, talk to the officer at the
14 time of the dresser, and was pulled aside and the officer,
15 out of concern, asked her what it was about, and Debbie
16 broke down and started crying.

17 Told how she just bought this dresser for
18 her daughter and the defendant had taken it back to get
19 money for himself.

20 But what's the problem with Tucson, not
21 the defendant we're told. The defendant tells Dr. Etkoff
22 in his testimony, well the job was just intruding into our
23 private lives. In other words, what I want to do is my
24 business. If I want to abuse my children or abuse my wife,
25 that's my private business. All of these people need to

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1 keep their nose out of it.

2 Well, our noses are in it now, ladies and
3 gentlemen. It was in it ten years ago when he was
4 arrested. It's too little too late for Debbie Panos.

5 But you can make some corrections now. We
6 can't bring Debbie back, but we can see that justice is
7 done. We're going to talk about justice in a few
8 minutes.

9 You heard about that cup beating incident
10 on January 9th of '95. The medical records are in
11 evidence. Take a look at those. She had a laceration
12 across her forehead. Her nose was broken and busted open.
13 He said he just through a cup at her and was as surprised
14 as anyone else when it happened to hit her nose. That's
15 not what she told the doctor. That's not consistent with
16 the injuries she received.

17 Once again he wants to blame somebody
18 else. He says the beating was an accident -- the cup
19 beating. It's an accident. These things happen.
20 Ignoring the fact that they happen to him and Debbie on a
21 weekly basis, this one just was an accident. It was
22 police abuse, he says. They were unfair to him. They
23 embarrassed him. They treated him poorly. What an
24 appalling perspective he has on himself and on life.

25 They arrested me in front of my children,

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1 how dare they do that. That K-Mart incident, the gross
2 misdemeanor -- by the way, we put that into evidence
3 today. It was one of the last exhibits. You can take a
4 look at that. It's a pre-sentence report. There's two of
5 them in there. One was prepared for that gross
6 misdemeanor conviction he suffered in the spring of 1995.
7 The other one was prepared in conjunction with this
8 case.

9 You'll see in there there's areas where
10 the -- Parole and Probation goes and they do background,
11 family information, things like that. Look at the one
12 involving that gross misdemeanor and you'll see in there
13 that he makes a promise to the court, just give me a
14 chance at probation. At first he says, I didn't do any of
15 this. I mean, they made it up. It's bogus, but since I
16 pled guilty, give me probation. Why? Because I promise
17 this will never happen again. I love my family, just give
18 me this one chance and I'll be good from now on. And the
19 court gave him a chance. Just like the system had always
20 given him a chance and given him a chance until they gave
21 him the chance to kill Debbie, ultimately.

22 What were they doing? What chance was he
23 getting, when he snuck off and went to Debbie's home,
24 instead of where he was supposed to be. It was drug
25 rehab. The system was trying to reach out to the

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1 defendant in his needs. And the consequence was death of
2 this nice young mother. Blame.

3 Then we heard from one of his friends
4 yesterday that said that Debbie -- well, actually it was
5 the -- we heard from the friend yesterday that Debbie was
6 the one that was controlling, and Debbie was the one that
7 was abusing the defendant throughout this relationship. I
8 mean, my goodness, just incredible.

9 But it was Dr. Etkoff that said how the
10 defendant told him he was upset at Debbie for leading him
11 to do this. Stabbing her fourteen times. Debbie's fault,
12 because she led him to do this. Blame.

13 Then we heard about the grandmother. Now
14 at the last hearing ten years ago the grandmother came in
15 and testified, and you hear her testimony today where she
16 came in and appealed on behalf of her grandson. She
17 talked about how she did her best to try to take care of
18 him and his siblings. She made a plea on his behalf.

19 What do we hear in this case. Despite the
20 fact that the defendant in those PSIs that you have,
21 characterizes his up bringing as good. He talks -- he
22 said he got whooped, but he says that he didn't want for
23 anything and he considered it to be good. Take a look at
24 those.

25 Remember what Dr. Etkoff said about that.

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1 He told Dr. Etooff the same thing about his grandmother.
2 What did we hear in court, blame the grandmother. She was
3 abusive. And we hear, my goodness, physical abuse. And
4 she -- it's child negligent. And it's the grandmother's
5 fault.

6 Then the last thing, and one of the more
7 amazing things in this whole case going all the way
8 through it now, just this morning we had the issue of race
9 injected into these proceedings. It's almost like an
10 afterthought. We hear that not only is the mother of the
11 deceased person, Debbie, she was a bigot, she was a
12 racist and that's part of the problem going in. But that
13 Debbie herself was a racist. We heard that from one of
14 the individuals.

15 Just amazing all the blame that's going
16 out every direction from the defendant, but back to where
17 it really needs to be in this case.

18 People aren't perfect. Systems aren't
19 perfect. But it's time, ladies and gentlemen, for the
20 blame to stop and for there to be accountability. Yes,
21 the defendant had difficulties in his early life. But
22 they're not uncommon things. A lot of people grow up
23 humbly. A lot of people grow up without a mother or a
24 father or some other parent. There's grandparents raising
25 kids all over the place these days.

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1 One commentator once said, pain is
2 inevitable, but suffering is optional. We come back to
3 the individuals we got in this case. In light of all
4 these circumstances, yes, pain is inevitable. Everybody is
5 going to have pain. Everybody is going to have
6 difficulty. But how do we address that. Do we go around
7 blaming everybody else and doing whatever we selfishly
8 want to do, or do we rise above it. Because it's possible
9 to become a better person, as a consequence of pain, not
10 just get through it. Everybody knows that. We know
11 that.

12 Those that have suffered through the
13 travails of life and risen above them and conquered them
14 know that you can become a better person. Debbie did
15 that.

16 Debbie was a great person, because she
17 dealt with her difficulty. The defendant, Mr. Chappell,
18 did not. He chose the easy course. He chose the selfish
19 course. He chose to not suffer. He chose to inflict
20 suffering on other people.

21 Dr. Victor Frankle (ph) has been around
22 for decades. He was a holocaust victim. A psychiatrist.
23 He lives in Vienna. He thought long and hard while he was
24 in the concentration camp -- he had lost his wife, lost
25 both parents to the fascists -- about the idea of life and

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1 its meaning, and how you can have meaning when you're so
2 confined and so restricted and so oppressed in a situation
3 like he was in. He watched other people. He counseled
4 people while he was in the concentration camp about
5 suicide and things of that nature.

6 It's important I think to take a look at
7 some of the differences in opinions in this profession.
8 Because we had Dr. Etooff come in. He did a two-hour
9 interview. He gave a few tests, and this is months and
10 months after the crime, that was based on a situation that
11 had been going on a dynamic for years, and he comes in and
12 basically has opinions where all he really did was
13 regurgitate some self-serving things the defendant told
14 him. What kind of analysis can you give the man.

15 It's not that psychiatrists don't have a
16 good role in helping people. They do great things. But
17 what we heard in this courtroom was only what the doctor
18 did not know. And it became so obvious to all of us who
19 have sat through this proceeding, you've heard the
20 evidence, the things that he didn't know, to come in and
21 give assessments based upon a two-hour interview, when you
22 see the enormity of what was going in this case, it just
23 doesn't cut it. It doesn't even come close.

24 We have Dr. Frankle talked about human
25 suffering, and said even in the most absurd, painful, and

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1 dehumanized situation, suffering is meaningful. A human
2 being is graced with the power of self-definition. His
3 path, his destiny, he decides himself. Even in
4 concentration camps, you can have people that chose to be
5 decent and people that chose to be not decent people, to
6 be evil people, basically.

7 We had Dr. Etooff talking about he has
8 less free will than the rest of us. You know, is there
9 anybody that has less free will than somebody who was in
10 one of the fascists concentration camps, where there was
11 psychological torture, physical torture, death, losing
12 loved ones. And we hear from a survivor of this, a
13 psychiatrist; both alternatives are hidden in a person,
14 and which will be realized depends on decisions and not on
15 conditions. Decisions, not conditions.

16 We've heard a lot about blame. We've
17 heard a lot about conditions from the defendant. Ladies
18 and gentlemen, what we need to sentence the defendant on
19 is decisions that he made, and he made them. He made them
20 one after another.

21 That shows his true intent. And that's
22 the fair basis for assessing the appropriate penalty in
23 this case.

24 Opposition is a principle that has always
25 been with us. And a lot of times, when you really think

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1 about it, it's the decisions we make against opposition
2 that really define us. Easy choices don't define us, do
3 they. It's choices that people make in times of
4 difficulty. Those are the people we call heroes. Like
5 the grandmother here, maybe both grandmothers, who stepped
6 in a situation that was thrust upon them and stood up and
7 did a very heroic thing for these children.

8 The ripple affect of the defendant's
9 actions are just amazing. I mean, it's more than just
10 Debbie's death and the horrible way she died. It's a
11 horror, that she was gurgling in her own blood. There is
12 no way to sugarcoat that. I don't care if it was 15
13 second of 15 minutes, it was a horror. And like her
14 mother said on the stand or her aunt, probably the last
15 thing she was thinking of was her children. What would
16 she be thinking. Who is going to take care of them. I'm
17 not going to be there to take care of them. I love them
18 so much -- the ripple affect.

19 It's the difficult decisions that define
20 our actions. We saw the time line. We talked about these
21 incidents. We hit the high points in our opening. You
22 heard a lot more details in between. We told Dr. Etcoff
23 about 15 arrests for breaking and entering and other
24 things that started when he was about thirteen years of
25 age, choices he made. You heard about the incident back

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1 in 1988, where he threw a brick at an individual and
2 struck him with it over a confrontation.
3 We heard about incidents that occurred
4 down in Arizona and Tucson. The time line talks about
5 some of the major ones, the notes and threats to kill her,
6 that were heard in the background by Dina. Selling the
7 dresser. Threatening to do an O.J. Simpson on Debbie
8 before they ever came to Las Vegas. But there were a lot
9 of other things that occurred in Tucson between that
10 You've got the records here in Exhibit No. 129, that
11 details some of these thing.

12 Now, the police weren't there every other
13 week when she was getting beaten like we've heard about.
14 But the time they were there, they were able to document
15 some of these incidents of theft, taking care of himself,
16 stealing things, and abusing the people around him
17 physically and emotionally and mentally.

18 Back in '92, there's documents of domestic
19 violence, laceration to the forehead. You'll see that
20 Debbie didn't want to report these as something he did.

21 She tried to make up excuses for him and cover for him.
22 '93 another domestic violence, another
23 disorderly conduct. We've got kicking from the defendant
24 when she confronted him about the chest. His response was
25 to throw her down and start kicking her.

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1 Theft of her dresser for the refund. The
2 phone call to co-worker. The defendant demanding the car
3 and money wanting the keys to the car or he was going to
4 do an O.J. Simpson on her.

5 Then we have that move to Las Vegas
6 because the police department in Tucson became involved
7 and that became bothersome to his way of life.

8 We talked about some of the bigger things
9 that happened here in Las Vegas that were documented by
10 the police. The broken nose that happened. The slap
11 across the face. The knife attack. The letters he sent
12 with the threats. The direct threat to her the day before
13 when she went to testify against him in court. There's a
14 lot of other things that went on there. And once again
15 they're documented in the book and in those two judgments
16 of conviction that go into it a little bit and the
17 history. And we see a lot of other thing that were going
18 on in between, vehicle stops, traffic warrants, petty
19 larceny -- even after that incident on June 1st, he's on
20 probation for a gross misdemeanor at that point in time.
21 He gives that beating on -- go to the next screen -- June
22 1st, and then on June 11th, he's back out and he's doing a
23 petty larceny and stealing a bunch of T-shirts.

24 Then he goes in for that and gets
25 arrested. He's back out on June 26th, committing a petty

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1 larceny where he's stealing clothing at K-Mart. It's at
2 that point in time when he goes back in they finally book
3 him for a probation violation. And he's got a hold on him
4 from city court, and that's when he starts writing the
5 letters to Debbie threatening her and demanding why she
6 isn't coming to see him, and who she has been seeing, and
7 all the other threatening things he said.

8 She's not going to have any friends in her
9 life. If I can't have her, no one will. And it's in the
10 confusion of the booking when the judge decides to give
11 him a chance at drug counseling without putting a detainer
12 on him, he goes to city on their warrants -- traffic
13 warrants -- they're reading to release him, because he's
14 done his time on those, and instead of sending back to
15 county they're dumping him on P&P. He's trying to find
16 out what's going on with him and they get their wires
17 crossed, and he sees this opportunity to get out and to
18 have his vengeance against Debbie, and that's exactly what
19 he does.

20 Those are the facts. That's the time
21 line. It's not one thing. It's not two things. Ladies
22 and gentlemen, we're not talking about a couple here that
23 had a disagreement and been fighting and drinking all
24 afternoon and one of them gets so upset at the other and a
25 knife is involved and one of them gets stabbed. That's

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1 the classic domestic violence we hear about.

2 Domestic violence can be repetitive
3 too. It can happen over a period of time. What we have
4 here when you look at these fact, is terror. It's terror.
5 And it's calculated. It's designed over years period of
6 time to give somebody selfish satisfaction. It's many,
7 many opportunities to reform, that are rejected.

8 The Defendant was a problem always, yet,
9 he's the one that call everyone else a liar. We talked
10 about this with Dr. Etkoff a little bit. He blamed
11 everyone else. He called everyone else a liar. He said he
12 didn't kick her at the dresser incident. He said he never
13 did that. He said Ms. Freeman is lying about the O.J.
14 comment. The victim is lying about getting kicked. The
15 victim is lying about the cup beating. That was just an
16 accident. He didn't do a dance, he didn't do a jig after
17 the murder. They're lying about that. He didn't go to
18 Lucky's to commit a shoplift. He just went over there to
19 buy a newspapers. He never told Lisa, if I couldn't have
20 her nobody else could. All these other people are
21 lying.

22 He's the one that's being truthful. All
23 these other people are to blame. He's the one that
24 doesn't have any blame. It's an accident. And yet, look
25 at his convenient memory. He comes up with excuses. He

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1 comes up with some sort of stories that don't make any
2 sense in light of the evidence -- and we'll talk about
3 that in a minute.

4 And he's the one when it actually comes
5 down to the point of the murder, all of a sudden has a
6 memory lapse so that he don't -- the last time he
7 testified doesn't have to explain what he's thinking of
8 and the impossible explanation of how he picked up that
9 knife and plunged it into her body in the way that he did.
10 How convenient. But he's not a liar, it's everybody
11 else.

12 Let's talk about the facts. You heard a
13 lot about the home. Let's put some of these together. You
14 heard about the location of things in the room. How he
15 crawled through that front window in the master bedroom
16 that had the bath attached to it. How Debbie's body was
17 found right inside the door to the living room. We had
18 all of these letters right down around the back wall of
19 that master bedroom, letters he had written.

20 We had the knife positioned right by the
21 top of Debbie's head. That's the knife used to kill her.
22 Then his -- or blood in the bathroom here, demonstrating
23 the clean up that occurred after. He says he panicked and
24 ran straight outside afterwards because he couldn't deal
25 with it. But the evidence says conclusively that he went

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1 into the bathroom and did a clean up after that occurred.
2 And then avails himself of her purse and
3 his own children's social security cards, which he tried
4 to dump at the Lucky store. He was trying to get rid of
5 those things. So we had the scene in the living room and
6 in the master bedroom.

7 We have these letters, threatening letters
8 he had write to her. And he says that he, when he went in
9 that room, didn't create that problem. He just grabbed
10 them later and threw them at her. That he wasn't going
11 through the letters. But we have Sheri Smith, Latrona
12 Smith -- is the name she goes by now -- heard her, the
13 victim on the phone, Debbie, asking her for help, begging
14 for help, asking to come up with a plan so she could
15 leave the residence and go get her kids and get away from
16 the defendant.

17 The defendant has this whole story about
18 how he finds this other letter in the car. There is
19 another letter, ladies and gentlemen, but he did not find
20 it in the car. Does it make sense that all the letters
21 are in one place in the bedroom here and they're disturbed
22 and thrown all over the floor, but the one letter that
23 they end up fighting over is in another location.

24 We know he's going through the room,
25 because he's heard by Sheri when she's on the phone with

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1 the victim demanding money. Well, at least she hears the
2 victim saying, I don't have any money. But the day care
3 worker can hear his voice in the back room.

4 We come back to the area of the scene.
5 There's a lot of physical evidence there that's important
6 to take a look at. The physical evidence, ladies and
7 gentlemen, does not lie. It is what it is. It is where
8 it was. We know from the DNA that he had vaginal sex with
9 Debbie and ejaculated. Yet, the story that we hear from
10 the defendant in his testimony and Dr. Etkoff, is that he
11 did not ejaculate during sexual intercourse. He comes up
12 with this whole thing that he thought she'd been with
13 other men. She's messy, and so he withdraws and walks
14 away. And she comes to him, because he's so lovable that
15 everybody always wants to keep him happy. I don't know if
16 you see that threat in the way he thinks about things.

17 But she wants to please him. And she
18 feels bad because she knows she got caught. So she offers
19 him oral sex. And that's how they consummate sex.

20 But you heard about the physical evidence
21 in the case. That's not what happened, plain and simple.
22 That did not happen. He came in and had sex, forced sex
23 with Debbie. And we know that for a lot of different
24 reasons. We know that she's in a fetal position in Mr.
25 Pollard's apartment only minutes before she tries to run

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1 back and get the kids thing. He can see her sitting there
2 at Mike's house. Mike wants me to wait. The longer I
3 wait the more the chance is he'll get there before me. If
4 I run back now, Mike's trying to get out of the shower.

5 You see why she takes off. So Debbie goes.

6 She goes over there. He's already there.
7 He's going through the letters. He's found the letter and
8 he's mad at her. She comes in, and the confrontation is
9 on. There's a beating that occurs we know 15 minutes or
10 more before the fatal wounds are given to her neck.

11 Why two episodes of physical violence
12 against her. Because there's compulsion. Thinks about
13 those injuries to that upper arm -- her upper arm. That's
14 the kind of injury you get when you're grabbing somebody
15 to try to get compliance for somebody. That's the kind of
16 injury that she would have received back in June when he
17 was kneeling on her arms, grabbing her arm and holding the
18 knife to her throat trying to get information about
19 boyfriends.

20 That's exactly the kind of injury you
21 would see after finding the letter and confronting her,
22 fighting over the letter, and it gets torn up in this
23 room, ladies and gentlemen. But it gets torn up at a time
24 when the door is open. Right there at the door, not in
25 the car. There's no pieces of the letter that are in the

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1 car. The pieces are in this room right here by the
2 letter -- by her head, right outside by the door jam and
3 outside that door where she got the door open to try and
4 get away from the defendant. Maybe right before the
5 confrontation, maybe right at the time of the
6 confrontation, or right after tearing the letter, she
7 tried to get out the door.

8 One of her shoes is outside on the porch.
9 You'll see that in the photos. One of her shoes is
10 inside. When he dragged her back in and threw her on the
11 floor, all of those pieces and all of that evidence is
12 consistent with the attack occurring right there,
13 including the blood pattern evidence that we've talked
14 about. Nothing in the car is consistent with that story
15 the defendant tells.

16 So why does he tell it. Because he wants
17 to convince the police, the doctors, you, that the rape
18 was consensual and everything was just hunky-dory until a
19 certain point when he found that letter. Because he needs
20 a reason for going off, and that's what later sends him
21 into a rage.

22 Nothing in the physical evidence in this
23 case supports that version of events. It's simply not
24 true. Dr. Etcoff could see that as he was hearing the
25 evidence as well that he'd been coned and that essentially

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1 lied to by the defendant in his interview.

2 You can't see the red in this real well,
3 but you see in the photograph down on the floor here,
4 Detective Vaccaro talked about the blood pattern evidence.
5 How that would line up with her stomach.

6 It was at some point when she was stabbed,
7 we know the beatings are 15 minute before the fatal wounds
8 in the neck and the chest area. That wound there Dr.
9 Green testified would bleed for awhile. And it did bleed
10 for awhile, which it wouldn't have been able to do if it
11 had been administered at the same time as the neck
12 wound.

13 And if she had turned over with that
14 bleeding on her side to her front to try and crawl away,
15 or get away, or protect herself and he had to turn her
16 back over to get on her for the fatal stab, it would leave
17 that exact kind of pattern there on the floor and on the
18 chair from the arterial bleeding.

19 Remember the chart we had, Exhibit No.
20 135. This physical evidence is important here, ladies and
21 gentlemen, because the aggravating circumstance in this
22 case is that this crime occurred during the commission of
23 a sexual assault. And sexual assault is an unconsensual
24 sexual penetration, or sexual penetration under
25 circumstances where the assailant knew that his victim was

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1 incapable of resisting an assault. It doesn't require
2 damage to the vaginal area, anything of that nature, it's
3 non-consensual or under non-consensual circumstances.
4 That's the aggravating circumstance.

5 The defense in their open statement said
6 several times about, well, the state never charged that as
7 a crime in this case. Well, as the court has instructed
8 you the state is not required to allege it as a crime in
9 order to utilize it as an aggravating circumstance that
10 would merit the imposition at the death penalty hearing.

11 You have to remember in light of the facts
12 of this case, the DNA evidence, and the other evidence
13 they were getting developed wasn't known at the beginning
14 of the case when we filed the initial charges about the
15 robbery and some of the other things they knew about
16 initially, burglary and murder. It came along later after
17 a hearing and after the case progressed.

18 So the state made the sexual assault an
19 aggravating circumstance and didn't choose to include it
20 as one of the counts where it really wasn't -- when you've
21 got the murder and all the other things, it wasn't as
22 critical to charge it in the original plea.

23 But it is a decision that you have to make
24 in this case, beyond a reasonable doubt, that sexual
25 assault occurred. And that's why we're talking about it

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1 now. And that's why they emphasized that in their opening
2 statement.

3 But based upon the evidence in this case,
4 ladies and gentlemen, there's no question that a woman who
5 is in a fetal position shaking, who has been told the day
6 before he's going to kill her, who calls the jail every
7 day to see if he's gotten out, is planning on moving out
8 as soon as she can, who spent hours talking to is
9 probation officer telling her that she thinks he's going
10 to kill her, is not going to have consensual sex with this
11 man who crawls through her window while she's trying to
12 gatherer up clothes and get back to a place of safety.

13 If we didn't know anything else about all
14 of the physical evidence and his lies about how the rape
15 occurred, you'd know that this is a sexual assault that
16 occurred here. We look at the injuries to the victim.

17 See all of that bruising, abrasions up
18 around the head and chest area. We've got that shot to
19 the abdomen. There is a pattern here that really jumps
20 out. It really jumps out. Because when you look at the
21 spread of the knife wounds, you can think, well, you know,
22 maybe he's a bad aim. We've got one in the groin. We've
23 got one in the stomach. He's not a bad aim. He hits
24 exactly what he wants to hit. I mean, look at how
25 concentrated these are. They're so concentrated Dr. Green

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1 said that it was hard on the internal exam to tell which
2 direction each cut went. He just does a number on her
3 neck. No problem with his aim there.

4 So why do we have one down here and one
5 here random. This is a message, ladies and gentlemen.
6 This a message that he's giving to her in his rage. That
7 message is intended -- that shot in the abdomen in
8 intended to cause pain. And he hit right at the core of
9 her being and who she is and he put all of his anger into
10 that cut.

11 That shot down in the groin area, he
12 doesn't hit it exactly, but it definitely down in that
13 area, maybe she moved or twisted, it doesn't line up with
14 the bleeding we've got here on the floor, but that is a
15 symbol of his control over her that's so present and
16 visible throughout all of those letters that he sent to
17 her, all those phone calls about who are you with now, and
18 his desire to control her sexual, that's that shot that he
19 takes there.

20 He's got time to think about this, ladies
21 and gentlemen, before those fatal shots to her neck to
22 take her life span down to 15 seconds. It was a rape,
23 ladies and gentlemen. It was a sexual assault. And
24 that's the aggravator that we have in this case.

25 It's been proven beyond a reasonable

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1 doubt. And once it's proven beyond a reasonable doubt,
2 the next step you do is you balance the mitigators against
3 that aggravator, in this case, to see if that aggravator
4 is outweighed by the mitigator. There's a whole list of
5 mitigators that are being given to you by the defense
6 about how he grew up and this or that. These are sad
7 things that occur, some of them. But nothing in that list
8 outweighs the enormity of what they did to Debbie Panos on
9 August 31st, 2001.

10 So we're at the point where we always had
11 to be. You couldn't know that at the beginning of this
12 case, but the evidence here mandates it. It mandates that
13 you would always have this choice. You would come to the
14 point where death would be on the table.

15 It doesn't mean that you have to select
16 death, but there's no question that death is on the table
17 as an option in this case. That's why we ask so many
18 questions about this at the beginning.

19 I ask you to bear with me for a couple
20 more minutes while we talk about why death is the
21 appropriate and the fair consequence in light of all the
22 facts and circumstances of this case.

23 I had a little philosophical discussion
24 with Dr. Etcoff. I hope I didn't boor you. Maybe you got
25 fed up with it. We talked about free will, and choices,

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1 percentages. You know, our system of criminal justice,
2 ladies and gentlemen, is based on accountability. We can
3 say we're going to take the utilitarian approach. You
4 can't live in this society, we're not going to comment did
5 you do it, you didn't mean to do it, this is a proven
6 risk, to separate you from society. And that's it. Kind
7 of like no fault criminal law.

8 We could do that, but we don't. We could
9 say, well, you know, it's not very cost affective to
10 separate you from society. You know, why pay for that.
11 You can't function in society, why pay for that, we'll
12 just execute everybody and that way we won't have to pay
13 the cost. We can put it to work helping people that could
14 be helped that can live with other people, put them into
15 those kinds of things, people that can be saved. That's
16 the utilitarian approach. We don't have that.

17 We've got a fault based system. We have a
18 system that's based upon choices people make and being
19 held accountable for their choices. That's what we call
20 justice. Aristotle said that justice is giving to every
21 man their due -- what they're due. I'm not talking about
22 the defendant here just getting his due of an eye for an
23 eye, or a tooth for a tooth. He take a life, so we're
24 going to take a life. That's not the due.

25 Due means in light of all the circumstance

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1 of the case, what's fair, what's appropriate. It's
2 important to be that way. It's important to be that way,
3 because it needs to be a decision. It needs to be
4 something people can live with. People can be comfortable
5 with, so we feel good about ourselves and give society an
6 application of laws.

7 It's clear that everybody should be
8 entitled to protections of the law. It's clear that
9 everybody should be liable to the rules of law. We talk
10 about less free will or more free will, I mean, it's
11 something that kind of cuts at the heart of what we're
12 about in the criminal justice system. I mean, the intent
13 is the thing here. And that's what we look about in our
14 system of justice.

15 Merle's ghost told Scrooge on that first
16 night before Scrooge knew the enormity of what he was
17 getting into there, in the Christmas Carol, "I wear the
18 chain I forged in life, replied the ghost. I made it link
19 by link, and yard by yard. I girded on of my own free
20 will." Link by link and yard by yard, and we have that in
21 this case.

22 You don't see in this case just one narrow
23 spectrum of how he came and killed her. You've seen years
24 of abuse and horror and terror that he subjected this
25 woman to and her children. And you can consider that in

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1 assessing what is an appropriate penalty.

2 Each man his due, not for revenge, not by
3 default, those are poor reasons. Revenge is something you
4 feel good in the moment, but we don't impose the death
5 penalty because we are upset. There's a lot of reasons to
6 be upset in this case when you see what happened here and
7 just react. But that's not what we're about here. That's
8 why we take the time to look and examine and deliberate,
9 not for revenge. But not because it's the only choice
10 left, or it's maybe the easiest choice in some minds or
11 the hardest choice. But because it's the right choice.
12 That's the only test that is really going to be fairly
13 applied in this case.

14 We shouldn't impose a different sentence
15 then death because it's a little easier. It isn't as
16 difficult for us to do it and not as emotional. It's not
17 the right sense.

18 I submit, ladies and gentlemen, under the
19 entire facts of this case, life without the possibility of
20 parole is not enough. It's not enough for what he
21 subjected this woman to. It's not enough for the
22 intention of the act that occurred here, and the terror
23 that was involved, and the selfishness. Yes, good ol'
24 fashion motives that we're all familiar with: greed,
25 control, jealousy, a choice for selfishness.

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1 As Dr. Etcoff admitted in the end, he
2 chose evil. Is there a place for mercy in murder cases.
3 There is. There is. That's something that you need to
4 consider. Mercy is something that comes in sideways based
5 upon some circumstances, and then it's decided that it
6 will apply. And it will kind of take over the demands of
7 justice, which would normally be a life for a life.

8 But there are things that compel mercy.
9 What would those things be. A person recognizes what they
10 did was wrong, maybe. Somebody that really understands
11 the enormity of what they did. That really truly feels
12 bad about it. That feels remorseful, truly remorseful. I
13 don't mean just lip service after you're in trouble, but
14 true remorse.

15 And how do we know remorse. You look at a
16 person's conduct. You look how they acted right after the
17 event. And then some time later and you listen to them.
18 Anybody can get up and say I'm sorry, I wish I hadn't done
19 that. When you look at all the document in this case, and
20 when you look at the acts -- one said actions speak so
21 much louder than words -- you can't hear what you're
22 saying because you know your actions are in the way. They
23 really do. And when you look at the facts and
24 circumstance and actions of the defendant in this case,
25 that little jig that he danced at the end, his conduct

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1 right after, the way that even in the times he got caught
2 his intention to blame everybody else, blame everybody but
3 him. That's not true remorse.

4 There's nothing about this man that
5 recommends to you mercy in this particular case. He had a
6 mother that died at an early age. Are we prepared to
7 immunize everybody from the death penalty that had a
8 mother that died at an early age or didn't know their
9 father. Maybe he had a father that wasn't nice to them,
10 or say that's enough right there, not going to get the
11 death penalty.

12 Everybody has mothers. All mothers and
13 father are different. All grandmothers, grandfathers are
14 different. Some people have ups, some people have downs.
15 And it's what you do with it, that makes all of the
16 difference.

17 But those things do not recommend and
18 compel mercy. We have that phone off the hook. Debbie
19 tried to crawl or get over to that area again, maybe after
20 she set up the plan, she didn't get all the way outside
21 the door. The mercy the defendant gave her, the jury
22 trial the defendant gave her, the sentence the defendant
23 gave her, ladies and gentlemen, this is Debbie Panos'
24 parole eligibility right here, none.

25 What about her family. What about her

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1 little children. Her daughter said she wanted to die so
2 that she could be with her mother. The ripple affect in
3 this, where is the parole for the rest of her family.
4 They have no parole.

5 They can't go and visit Debbie in an
6 institution. They can't give her presents that she could
7 respond to. They can't have conversations with her. If
8 you put the defendant in jail or the rest of his life, his
9 family will still have those opportunities. We put the
10 visitations logs in pertaining to this defendant. There's
11 been just a few people that have come over the years to
12 visit with him, but he has that access in the prison
13 system. Where is that access for the family members that
14 are left picking up the pieces of their lives.

15 I don't care if it's ten minutes after the
16 crime, ten years after the crime, the enormity of what he
17 did is no different. Nothing has changed and we saw that
18 as these people were on the stand. We saw their anguish,
19 even after all this time they're living with in Tucson.
20 They keep her picture in the police department.

21 Some of these people held up well. Some
22 lost it right toward the end. It's amazing after this
23 much time this woman's life still has this kind of affect
24 on people. Made all the worse by the fact she was so
25 violently taken from them.

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1 We're back to blame. We're black,
2 hopefully, now to choice and accountability, because
3 that's what this is about. Choices the defendant made and
4 you're holding him accountable for those choices with the
5 ultimate punishment here, and that is the death penalty.
6 That is the penalty that is fair and appropriate. And
7 anything else is selling short what he did.

8 It's time to put the blame where the
9 defendant does not want to put it, to put it back on Mr.
10 James Chappell and nobody else. And your verdict of the
11 death penalty, will do that. And it will be a verdict
12 that speaks to fairness in this case, and a verdict that
13 speaks to equality under the law, and a verdict that
14 speaks to being balanced with the totality of what he did
15 in wrecking and destroying so many lives, and, yet, lives
16 so different from his, these people have been able to
17 stand up and do everything that he didn't do, and rise
18 above it.

19 Don't be coned. It's interesting, Dr.
20 Etcoff in the beginning of his testimony said, you know,
21 the defendant, he's just not sophisticated enough to lie.
22 I would know that. Then we heard on cross-examination all
23 of these things the defendant flat out lied to him about,
24 that the doctor didn't know. And here's a Ph.D person who
25 just got totally coned by the defendant, and he coned the

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1 system, and he coned Mr. Duffy, sat across from him for
2 two hours saying he really wanted to do something about
3 that drug problem enough that Duffy let him go, and he
4 went straight out over to kill Debbie.

5 He would like to see you coned in this
6 case, ladies and gentlemen. Don't be coned. Don't sell
7 it short. Please, don't go for the lesser things because
8 it's easier. Do the right thing, even though it's the
9 harder thing, and that would be an imposition of the death
10 penalty. Because ladies and gentlemen, the evidence in
11 this case indicates this is the appropriate penalty in
12 this case. It is the only appropriate penalty in this
13 case.

14 Thank you.

15 THE COURT: Thank you, Mr. Owens.

16 Mr. Schieck or Mr. Patrick.

17 CLOSING SUMMATION

18 BY MR. PATRICK:

19 All I have to say is Mr. Owens didn't get
20 one thing right. There is absolute nothing that compels
21 you to give the death penalty to James. Is not having a
22 mother or is not having a father enough to show mercy. Of
23 course, it is.

24 The judge told you that when he read the
25 instructions to you. Why are you here today. What is

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1 your job. Your job so to determine what punishment James
2 deserves for killing Debbie Panos.

3 His girlfriend of ten years. His lover,
4 His rock. His confidant. And the mother of his three
5 children. What you are not here to do is to determine if
6 James killed Debbie. You were told that over a week ago.
7 The State wants you to impose the death penalty on James.
8 In order to do this, as you've heard, you must find an
9 aggravating circumstance beyond a reasonable doubt. You
10 have to do that as a jury in a unanimous vote.

11 Now the only aggravator that we have for
12 you to consider is that the murder was committed during
13 the perpetration of a sexual assault. What you need to
14 ask yourself when you go back to the jury room is has the
15 state proved that.

16 Over the last week the State has proved to
17 you that James killed Debbie. But you already knew that.
18 The State has proved to you that James beat Debbie. You
19 already knew. They have proved to you that Debbie's death
20 was very tragic and it affected a lot of people. But you
21 knew that a week ago also. So what the State has proven
22 to you is nothing that you did not already know when you
23 first sat in those seats a week ago today.

24 So what they tried to do is to confuse
25 you, to mix it up and go off on tangents, because there

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1 was a lot of evidence presented that they could not
2 impeach. They tried to hide the ball from you, and
3 possibly the worst thing they did was they took every
4 opportunity they could to show you gruesome photographs,
5 gruesome photographs of the autopsy, and gruesome
6 photographs of Debbie laying on the carpet of her and
7 James' trailer house.

8 They didn't need to show you those. Those
9 are used to prove that James killed Debbie. But you knew
10 that.

11 Now, if you decide correctly that over the
12 last week the State has not proven to you the aggravator
13 that they've alleged, you don't even have to consider the
14 death penalty. That's the first thing you need to do as a
15 jury. Before you consider the history of domestic
16 violence, before you consider James' criminal arrest, you
17 need to determine if that aggravator has been proven and
18 if you even need to consider the death penalty.

19 If you don't find the State has proven
20 that, then you can give James a life sentence with parole
21 or without. And you're finished.

22 I'm going to talk to you about the State's
23 arguments, how they tried to hide the ball as it applies
24 to the doctors that the defense called and had you listen
25 to.

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1 We call Dr. Etcoff for a very specific
2 issue. He was here to explain to you James' personality,
3 his conditions, and possibly how he thinks and reacts.
4 Dr. Etcoff performed a forensic evaluation on James.
5 That's all he was asked to do. He was not asked to do
6 therapy. He was not asked to do anything else, but to
7 give a forensic evaluation to tell what's good about James
8 and what's bad about James no matter how the chips would
9 fall.

10 Now the State had a copy of Dr. Etcoff's
11 report from ten years ago. They knew what his testimony
12 would be by this time, because it mirrors the testimony he
13 gave last time. Unfortunately, for the defense Dr. Etcoff
14 is a very busy man and his scheduling would not allow him
15 to testify when we would like him to and that's why you
16 heard him out of order.

17 But now after hearing from James' friends
18 and family, Dr. Etcoff's testimony should be clearer to
19 you. Everything James told Dr. Etcoff about his childhood
20 was validated not only by the school records that Dr.
21 Etcoff had that the State had, but by James' friends and
22 family on this stand over the last few days.

23 In fact, listening to the family and
24 listening to what James told Dr. Etcoff, it seems that
25 James actually down played how bad his childhood was to

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1 the doctor.

2 Now Dr. Etcoff also administered tests to
3 James. These tests were valid. We know that because the
4 tests have built in invalidity indicators. And all of
5 those indicators showed that James was honest and truthful
6 and he tried best when he took those tests. So the key
7 points you need to think about when you are thinking about
8 deliberating regarding Dr. Etcoff's testimony are these:
9 There's no reason to question the accuracy of James'
10 history that was given to you and Dr. Etcoff by James'
11 school records. The history given in those school records
12 was also confirmed by James' friends and family on the
13 stand.

14 The tests given by Dr. Etcoff to James in
15 forming his opinions were valid. And that Dr. Etcoff was
16 testifying to a very specific question posed to him by
17 James' defense, and that was to explain James, his
18 personality, and how his childhood would possibly affect
19 the rest of his life.

20 Now James' mother died very young. She
21 was run over by a police car. According to the State,
22 that's not uncommon to have your parents killed by the
23 cops. His mother was addicted to drugs and alcohol, and
24 it's quite possible that she was using either drugs and/or
25 alcohol while she was pregnant. James' father was never

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1 around. James first met his father when he was ten years
2 old. The most significant father son bonding incident was
3 when James' father asked him to rob a bank. And again as
4 the State just told you, that's not uncommon for your
5 father to ask you to help him rob a bank.

6 Luckily James denied his father's request
7 and did not help him rob that bank.

8 Next James turned to his older brother
9 Rick. You saw Rick testified. But unfortunately Rick was
10 not a good role model either. He grew up in the same
11 household, under the same circumstances that James did.
12 And James, Rick had problems with drugs and going to
13 prison.

14 The only other male role model James had
15 an attempt to bond with was his uncle Anthony. But his
16 uncle Anthony was brutally stabbed to death while James
17 was at a young age.

18 James and his three siblings were sent to
19 live with their grandmother. A grandmother who was both
20 verbally and physical abusive. Psychological torture,
21 physical torture, maybe, maybe not. Unfortunately, for
22 James, unlike the doctor that lived in a concentration
23 camp, he did not have the mental capability to pull his
24 way out of that and become a better person by the age of
25 26.

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1 Grandma constantly berated the kids in her
2 care. She would beat them with sticks and extension
3 cords. And while Dr. Etoeff said that spanking is fine,
4 but a beating with a stick or extension cord to the extent
5 it leaves marks, that sounds more like abuse than a
6 spanking.

7 Grandma leaves them at home alone for
8 hours. Because of this their house was the party house on
9 the block. All the kids in the neighborhood knew there
10 was no adult supervision. They knew they could go to the
11 house and partake in alcohol, do drugs, didn't matter what
12 their ages were, grandma was out playing bingo. They knew
13 when she would be back, they cleaned the house, out the
14 back door. Nobody was any the wiser.

15 Now, to their credit the Lansing School
16 District did try to help James. We learned from Dr.
17 Etoeff that as early as the fourth grade social workers
18 were involved with James' development. The report from
19 the fourth grade social worker noted that James would not
20 respond when spoken to. He was in the fourth grade, but
21 functioning at a second grade level. He had difficulty
22 forming meaningful relationships, and she thought he
23 should receive individual therapy outside the school
24 district. However, James never received that therapy.

25 After that James was placed in a severe

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1 learning disabled class, special education. The special
2 education teachers were concerned because of his low self
3 concept and his trouble verbalizing his concerns to
4 others. Somehow James made it to high school. At Sexton
5 High School he was seen again by a social worker, seen by
6 the school psychologist. That psychologist gave James an
7 extensive interview and revealed that James had little
8 hope of succeeding in life.

9 He does not have many copying skills. He
10 could not deal with problems. He would intend to withdraw
11 and avoid problems and would take the easy way out.
12 Compared to the evaluation given of James three years
13 earlier, James has made little progress. He still had the
14 low self concept. He was distrustful. Depressed, had
15 poor problem solving skills, and few copying skills.

16 Again, the psychologist recommended
17 psychotherapeutic intervention. And again James was not
18 afforded this help.

19 James also told Dr. Etoeff about his long
20 history with drug abuse. Starting with marijuana as a
21 young teenager, alcohol abuse before school, to finally
22 free basing or smoking crack cocaine by the time he was 18
23 years old.

24 When Dr. Etoeff learned from James and the
25 Lansing School District, Dr. Etoeff administered several

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1 tests. One that he talked about was the Wexler Adult
2 Intelligence Scale IQ test. On this test James scored
3 below average, borderline score on his verbal IQ of 77.
4 And Dr. Etoeff explained, that placed him in the 7th
5 percentile, which means that James' ability to understand
6 words, understand concepts, and to express himself with
7 words in a logical fashion is worse than 94 out of 100
8 people.

9 But the State tells us James is a genius
10 with words. He coned everyone. He coned Dr. Etoeff. A
11 well-known licensed psychologist with years of experience
12 dealing with people, just like James. Well, he coned
13 Mr. Duffy, the P&P officer. But James has trouble
14 explaining himself. How is he -- ask yourself, how is he
15 going to communicate in a way that is going to con people
16 who are used to dealing with people who are on probation,
17 and who used to deal with board a certified psychologist
18 with people just like him.

19 Next, Dr. Etoeff told you about James'
20 full scale IQ of 80. That falls at the bottom of the low
21 average range and places him in the 9th percentile. That
22 means that 91 out of 100 people of James' age will show
23 superior intellectual capabilities compared to James. So
24 what the State is telling you, that out of the 91 people
25 Dr. Etoeff and Mr. Duffy from P&P, aren't one of them.

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1 Dr. Etoeff also administered the Milan
2 Clinical Multi-axial Inventory II Personality test.
3 However, they do an anagram to that, I'd hate to say that
4 a bunch.

5 Now, James' test was found to be valid and
6 reliable. Now because of James' difficulty with reading
7 and words and comprehension Dr. Etoeff had to give him the
8 test via audio tape. From this test Dr. Etoeff told you
9 that you he found James to be sensitive to humiliation and
10 rejection. Simultaneously James would be very
11 distrustful, he would still have a strong need to be
12 dependant upon another person. This was due to his
13 feelings that he could not function independently.

14 Now in Dr. Etoeff's opinion, these traits
15 were enormously important in regards to James' motive for
16 killing Debbie. If he thought Debbie was leaving him, he
17 would be scared of losing her due to his dependency needs
18 that started all the way back when his mother was
19 tragically killed. He would have difficulty functioning
20 alone, but at the same time he would be prone to mistrust
21 her.

22 Dr. Etoeff also told you he found James to
23 be socially uncomfortable and he would depend on others to
24 assume responsibilities that James didn't feel he had the
25 ability to shoulder.

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1 He had a conflict between becoming to
2 detached from Debbie and being too close to her, because
3 neither the closeness nor the detachment for fear of
4 losing someone that he was dependant on was emotionally
5 tolerant for James. That sounds an awful like the
6 motorcycle syndrome that Dr. Danton talked about. The
7 need to need a relationship.

8 Dr. Etcoff told you about how James'
9 dependency issues again came from the loss of his mother
10 at a very young age. The fact that he never had a father
11 figure, whether it's his own dad or any other male
12 relatives. That he had a less than adequate parent figure
13 in grandpa.

14 As to James' drug use, we learned that the
15 cocaine dependency was understandable. As it was a way
16 for James to escape. It would help ease his feelings of
17 inadequacy and low self-worth.

18 As a result of the cocaine dependency
19 James was not afforded the opportunity to learn how to
20 cope with his many problems. Now, Dr. Etcoff ended his
21 testimony about statements about memory loss and free
22 will. James said he does not remember the actual events
23 of stabbing Debbie. Now as for you as a jury to decide
24 the weight and importance to give to that statement,
25 everyone has a tendency to block traumatic painful events

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1 from your memory. Either consciously or unconsciously.
2 Ask yourself if any of you have ever done that. Then ask
3 yourself an even more relevant question, does it matter.
4 James has always admitted that he killed Debbie.

5 That's not the question before you,
6 whether or not James killed her or whether he didn't kill
7 her. You heard that in Mr. Schieck's opening statement.
8 So what difference does it really make if he remembers the
9 actual stabbing.

10 Free will, Mr. Owens described it as a
11 philosophical discussion with Dr. Etcoff. But again, it's
12 an attempt by the State to hide the ball, go off on
13 tangent to get you to confused about what Dr. Etcoff was
14 truly testifying about. Dr. Etcoff did not once sit on
15 that stand and tell you that James did not have a choice
16 whether or not to kill Debbie. Everyone has an ability to
17 make choices. What he told you was the thought process in
18 making those choices or free will is different in
19 everyone. Under the same circumstances, you would not
20 necessarily make the same choice as a person sitting next
21 to you.

22 As Dr. Etcoff pointed out, this decision
23 making process or free will is influenced by many factors.
24 First one was a low verbal IQ. The ability not to be able
25 to sit and talk things out.

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1 A difficult and abusive childhood, with no
2 parents, no father figure, a less than adequate
3 grandmother as a primary care giver, constant drug use to
4 escape reality, and any number of the personality
5 disorders that Dr. Etcoff testified that James has. So
6 ask yourselves, does a person with a background such as
7 this have the same ability to make the same choices, have
8 the same free will, as you do. And if you take nothing
9 else from Dr. Etcoff's testimony, take one statement. He
10 said, I think he is one of the minority of people who
11 kill, who would actually do anything to turn back the
12 clock and undo what he did.

13 Dr. Etcoff testified to his opinions.
14 Opinions that he believed from tests, school records, and
15 talking to James. The State was unable to repudiate
16 Dr. Etcoff's findings. The findings of a well-respected
17 neuropsychologist with years of experience in dealing with
18 people exactly like James. So they went out on tangents
19 in cross-examination, simply trying to confuse the
20 situation and get you off point of why Dr. Etcoff was
21 hired and what he was telling you.

22 Dr. Denton came in and testified. He was
23 another psychologist that was hired by the defense team
24 for a very specific purpose. He was here to talk to you
25 about domestic violence in general and possibly give a

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1 little insight as to James and Debbie's relationship.

2 He talked about the domestic violence
3 cycle and how it is exactly that, a cycle. It goes from
4 good to, bad, back to good again. The cycle can be
5 entered into at any point, but once entered into it's
6 extremely difficult to break.

7 I think Dr. Denton summed it up
8 beautifully. Love the abuser, hate the abuse. Dr. Denton
9 also explained to you the motorcycle syndrome, how a
10 person needs to need the want of a relationship, and how a
11 person with attachment problems will be attracted to
12 somebody who is initially cold to them, but when the
13 relationship gets going, gets close, the person with the
14 motorcycle syndrome will start pushing away that person.
15 It's not the actual relationship they want, it's just the
16 need to need a relationship.

17 Ask yourself from what you know of how
18 James and Debbie fit into this. We just talked about
19 Dr. Etcoff pretty much summed up that James really fits
20 into that. Dr. Denton told that if Debbie happened to be
21 someone that had a strange relationship with her father or
22 step father figure, that she could fit into the classic
23 example of the motorcycle syndrome.

24 Next Dr. Denton gave you insight as to why
25 Debbie would consent to have sex with James, even after

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1 this domestic violence cycle had started. He mentioned
2 things like guilt, appeasement to decrease the threat,
3 learned helplessness, the Stockholm syndrome, and force.
4 Well, if Debbie was seeing other men, guilt would seem to
5 be a pretty powerful motivator. Appeasement, well, we
6 know from Mr. Stcoff, James had very limited verbal
7 skills. Dr. Denton, in what little time he was able to
8 spend with James confirmed this.

9 He told you that James would not be the
10 person to sit down and rationally talk out problems. He
11 didn't have that ability. James and Debbie, they both
12 thought would have the very physical relationship. They
13 would use sex to make up, sex to calm things down.

14 Now think about this, the day that Debbie
15 died. James was upset. Debbie hadn't visited him, hadn't
16 call him in jail. They started to fight. Debbie knows
17 that using sex has calmed him down in the past. James
18 does not have the capability to verbalize why he was mad.
19 So like always, Debbie would voluntarily use sex to calm
20 things down and make up, or simply to change the
21 subject.

22 If you really think about it, from all
23 you've heard over the last week, that's kind of a scenario
24 that would make the most sense.

25 Dr. Denton also told you a little about

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1 James' drug use. Now James would use drugs to control his
2 emotions and to hide from reality. This fits in with Dr.
3 Stcoff's assessment of low self-worth and abandonment
4 issues. The drugs would help the pain.

5 So not unexpectedly after the most painful
6 thing that's ever happened to James in his life, the first
7 thing he does is go to a place where he knows he can get
8 drugs.

9 Now, again, the State could not directly
10 attack Dr. Denton's professional findings. They had to
11 attack Dr. Denton. And, again, trying to deflect your
12 attention away from the facts. Then once again, the State
13 could provide no evidence to repudiate anything Dr. Denton
14 told you.

15 Dr. Denton spent a very short time with
16 James. That was because the specific reason he was here
17 was to talk more about domestic violence in general. What
18 he gave you about James and Debbie was just what he had
19 gleaned off a very short time of talking to him. But
20 again he wasn't here to give James a full and complete
21 psychological evaluation. He was here mostly to talk to
22 you about domestic violence in general. That's why
23 Dr. Denton did not go into every minute detail of James
24 and Debbie and their history of domestic violence. But
25 that in no way diminishes his testimony in regards to the

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1 domestic violence issues.

2 As with both the psychologist, we brought
3 Dr. Grey in to testify about a very specific finding, and
4 that was the fact that there was no physical evidence that
5 James sexually assaulted Debbie. Mr. Schieck will talk to
6 you in a minute about Dr. Grey. We brought him up to show
7 you once again the tactics used by the State to confuse
8 and mislead you and to get you off the testimony provided
9 by Dr. Gray.

10 Again, they could not repudiate Cr. Gray's
11 findings. Dr. Green was on the stand. He was called by
12 the State. He said nothing in his testimony to repudiate
13 what Dr. Gray told you regarding physical evidence of
14 sexual abuse. So essentially they couldn't tell you that
15 Dr. Gray's testimony was wrong, they simply used him as
16 another time to show you the gruesome photographs of
17 Debbie's autopsy. They did that simply for shock affect,
18 to hide the ball, because, again, you are not here to
19 determine if James killed Debbie, because you already knew
20 that.

21 So when you go back and deliberate,
22 please, just remember why you are here, and what your job
23 is. It's not to determine if James killed Debbie. It's to
24 determine what punishment James should receive for that
25 crime. No one is going to stand here and no one had told

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1 over the course of this trial that James should not be
2 punished for what he did. But what is appropriate.

3 The death penalty should only be used on
4 the worst of the worst. Ask yourselves, if what really
5 fits here. Certainly Debbie's death is tragic. It was
6 horrible. But for now and what you know about James and
7 his childhood, his lack of parents, lack of an adequate
8 parental figure, and his lack of a positive role model,
9 his learning disabilities, his low IQ, and his constant
10 drug usage from age 13, and probably most importantly, his
11 true regret and remorse, ask yourselves, is James Chappell
12 truly one of the worst of the worst.

13 You heard testimony from James' friends
14 and family. Most of them had drug problems. Most of them
15 had prison time. As they have matured, they of changed
16 their lives for the better and are trying to make better
17 lives for them and their family. The James that sits
18 before you today is not the James of 12 years ago. He is
19 not the 26-yearold kid that killed Debbie. James has
20 worked to better himself while he's been in prison, and he
21 would like to continue to do so.

22 James knows that no matter what sentence
23 you give him, it's very unlikely he will ever get out of
24 prison.

25 MS. WECKERLY: I object at this point

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1 There's no evidence in the record.

2 THE COURT: I'll sustain the objection.

3 Move on.

4 MR. PATRICK: Okay.

5 But what James does not deserve is to die
6 at the hands of the State. So just remember Dr. Etoeff's
7 assessment, James would turn back the clock on this and
8 undo it, if he could.

9 Thank you.

10 CLOSING SUMMATION

11 BY MR. SCHIECK:

12 Good afternoon, ladies and gentlemen. I'm
13 going to try not to be too long and certainly try not to
14 be repetitive.

15 In a case such as this the law allows for
16 both counsel to argue on behalf of the defendant, and in
17 so doing, Mr. Patrick and I try to divide up our argument
18 so we don't say the same things twice. As I'm going
19 second, I'm the one that's task with not repeating what
20 Mr. Patrick has said. I'm going to do my best not to do
21 so.

22 In any criminal case the State gets the
23 last argument. So after I'm done you'll hear from the
24 state. Ms. Weckerly will address you in rebuttal to any
25 thing we have said. So they get the last word. And in

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1 any criminal case, there are certain burdens that have
2 fallen upon the State in a penalty hearing, and one of
3 those burdens is to prove that there is an aggravating
4 circumstance to prove that to you beyond a reasonable
5 doubt. Because they have that burden, they get the last
6 word at this penalty hearing.

7 There are a number of instructions. I
8 know the judge read them to you. And you got to read
9 along. And you'll have those instructions back in the
10 jury room with you. I'm not going to boor you with
11 reading those instructions, I am going to go over quickly
12 the framework of what takes place at a penalty hearing
13 where the death penalty, at least, initially is an option
14 for the jury.

15 And these are rules of law that have been
16 set down by our legislature the court instructs you on so
17 that there is a structure to what takes place when you go
18 back to deliberate in a case like this.

19 The first instruction that really gets
20 into that is Instruction No. 6, which tells you really
21 what your need to find in a case to determine what
22 possible sentences you can impose. The first thing that
23 you have to decide is whether or not there is an
24 aggravating circumstance that's been proven beyond a
25 reasonable doubt. You have to make that decision

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1 collectively, all 12 jurors, unanimously. If one juror
2 does not believe the State has proven the aggravating
3 circumstance, it is not present, and the death penalty is
4 not an option. I'll address whether they have proven an
5 aggravating circumstance in a moment.

6 If you find there's an aggravating
7 circumstance, then you have to go to the next step, which
8 is to determine mitigating circumstances. And as you
9 pretty much can guess, mitigating circumstances are the
10 things that defense asserts are present in the case that
11 mitigate against the aggravating circumstance.

12 And when deciding mitigating
13 circumstances, your job is just a little different then an
14 aggravating circumstances, in that you don't have to make
15 that finding beyond a reasonable doubt. That's not a
16 burden that's put on the defendant. You can individually
17 make that decision. You don't have to have all 12 agree
18 that there is a mitigating circumstance in order to
19 consider that circumstance.

20 For instance, an we've listed a number of
21 possible mitigating circumstances. Some of you or any one
22 of you could find that the fact that James had an obvious
23 addiction to controlled substances, in this instance
24 cocaine, as a factor to mitigate against the aggravating
25 circumstance. Others of you may find, I don't believe

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1 that should be used as mitigation, but that one juror can
2 use that fact as mitigation when they reach the next
3 step.

4 Likewise, you could find the fact that his
5 mother was taken away from him at a very young age and
6 without that mother figure, even though there was a
7 maternal grandmother present that provided a lot of the
8 basic needs for a child, didn't provide that nurturing we
9 come to expect from a mother type figure in the life of a
10 young child.

11 You may find somewhere, all of you, that
12 that is a mitigating circumstance. You don't all have to
13 find it. You don't all have to find it beyond a
14 reasonable doubt. But it's a factor that you can
15 consider. So if you do find the aggravator, and you get
16 to the mitigators, you each have to make that decision and
17 discuss it among yourselves as what you believe is
18 mitigation and what maybe the others believe is
19 mitigation.

20 Then you take one aggravator that you
21 found under this scenario, and you take the mitigators
22 that each of you found, and you weigh those. And this is
23 where the law sort of becomes vague, for lack of a better
24 word, it doesn't tell you how to weigh those. It doesn't
25 say one aggravator two mitigators, the mitigators

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1 outweigh. One aggravator can outweigh two mitigators.
 2 One aggravator can outweigh five mitigators. That's up to
 3 you to decide the weight to give the aggravator, and the
 4 weight to give mitigators.

5 So this weighing process is very
 6 subjective for each juror. What comes out of this
 7 weighing process however has to be a conclusion reached by
 8 the entire jury beyond a reasonable doubt, unanimously,
 9 that the aggravator outweighs the mitigator, or the
 10 mitigators don't outweigh the aggravator, before you know
 11 whether or not the death penalty is available and you go
 12 to the next step. Or you go to the next step and only
 13 have three other options.

14 So there's that process you must go
 15 determine if there is an aggravator, if not you just go
 16 consider the three forms of punishment. If you find there
 17 is an aggravator you go to mitigators, consider those,
 18 decide what weight to apply to them in weighing against
 19 the aggravators. If you decide the mitigators outweigh,
 20 then you only have the three options available. If you
 21 decide that the aggravator outweighs any of the mitigators
 22 that you each found, you have all four options available.

23 Then you go to the last step, which is the
 24 step where you decide what punishment to choose from those
 25 available to you. When you get to that last step, you're

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1 going to either have three punishments available to you,
 2 that being 40 years minimum to a hundred year maximum in
 3 prison, or life in prison with parole eligibility no
 4 sooner than 40 years, or life without parole under one
 5 scenario. And if you made it through all the steps and
 6 get to the point where death is an option, then the fourth
 7 option would be the death penalty.

8 That's sort of the break down of the
 9 procedures you go through.

10 Now, we have to factor into that the
 11 information that you can consider of each step of the
 12 process, and that's spelled out for you in Instruction No.
 13 17, which tell you there's three types of evidence for you
 14 to consider at a penalty hearing.

15 There is first, the evidence that's
 16 relevant to the aggravating circumstance. That's only
 17 that evidence that relates to this case, whether or not
 18 there was a sexual assault during the perpetration of the
 19 murder. So you can consider only those facts that relate
 20 to the aggravator in deciding whether they have proven the
 21 aggravator.

22 You then have evidence of mitigators. You
 23 can only consider the evidence of mitigators in support of
 24 mitigation in the case. That's the second thing.

25 The third type of evidence is called a

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1 variety of things, but it's really other evidence.
 2 Evidence in this case that would consist of other acts
 3 such as doing illegal drugs, shoplifting, acts of domestic
 4 violence, which are misdemeanors that James was arrested
 5 for, possession of drug paraphernalia, the other acts you
 6 heard about from the various witnesses called by the
 7 State. That other evidence, that body of evidence that
 8 relates to -- and Mr. Owens, in his presentation put up
 9 the two screens, on of them had the incidents in Tucson,
 10 they had the dates highlighted in blue, then the letter in
 11 white. It broke down the various events, shoplifting, the
 12 traffic violations, the incident where the police were
 13 call from the convenience store because James sold the
 14 dresser. That other type of evidence, you don't consider
 15 that evidence in deciding whether or not the aggravator is
 16 present, because it doesn't go to prove anything to do
 17 with the aggravator. It doesn't go to prove anything
 18 about the sexual assault. So you have to hold all of that
 19 body of information to the side while you decide whether
 20 or not the aggravator is present, the mitigators are
 21 present. And in weighing those, they don't go into the
 22 weighing process.

23 You don't say, we've got this aggravator
 24 and we found our mitigators now let's weigh, and in doing
 25 the weighing less consider the fact that James was caught.

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1 with drugs, James was caught with paraphernalia, James was
 2 a shoplifter. That doesn't go into weighing process. You
 3 have to weigh and reach the last step before you use this
 4 other evidence.

5 I know it sound difficult. The law
 6 sometimes is difficult. But that's the procedure you must
 7 go through. And that's these instructions try to tell
 8 you, which, over the years, have been written to the best
 9 of legal ability so that people like yourselves on juries
 10 can understand what you need to go through in order to
 11 decide a sentence in a particular case.

12 Now I'm going to go back, now that you
 13 understand sort of the procedure you must go through, I'm
 14 going to walk through those steps with you as quickly as I
 15 can, highlighting certain factors that we feel you should
 16 consider in making those decisions.

17 First is whether or not an aggravating
 18 circumstance has been proven in this case. Mr. Owens, in
 19 his presentation, talked a lot and he had the photograph
 20 up of Debra in the mobile home, horribly tragically
 21 deceased. A terrible act. Shouldn't have happened. But
 22 they needed to show you some of those in order that you
 23 understand what had transpired. And he kind of -- when
 24 talking about sexual assault, came up with a theory that,
 25 well, the letter must have been with the other letters and

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1 always in the house and this going out to the car never
2 happened. And if you'll look at the photograph, you'll
3 see there's a shoe outside and there's a shoe inside.

4 You've got the photographs. They're in
5 evidence. You can look and see the shoes that are there,
6 and buy looking at those you'll find that the shoe that's
7 outside doesn't match the shoes that's inside next to
8 Debra's body. It's not any evidence of anything taking
9 place, as the State would have you speculate.

10 That's the thing you don't want to do in a
11 case like this is engage in speculation or guess, or maybe
12 it happened this way, or it could have happened this way,
13 when you're considering the aggravating circumstance,
14 because that's the fact in this case. They must prove to
15 you beyond a reasonable doubt based on the evidence of
16 sexual assault. What is the evidence of sexual assault.

17 The evidence in the case from Dr. Gray was
18 there is no physical evidence to support, per se, sexual
19 assault. The type of things you would expect to see if
20 there was forced intercourse. The bruising of the legs or
21 areas below the waist, things that would indicate that
22 there was trauma inflicted during the perpetration of some
23 act of sex by force. You do't see those.

24 Dr. Gray said he didn't see them. He
25 complimented Dr. Green as being a very fine pathologist.

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1 Dr. Green was in here and gave you his findings. He
2 didn't relate anything that said this shows me there was
3 sexual assault. We have the presence of DNA that shows
4 there was sexual contact of some nature between James and
5 Debbie, but nothing that would show that it was sexual
6 assault as defined in the instruction given to you.

7 Now, the State says, we've got all these
8 bruises -- and we've left this chart up here,
9 intentionally left it up here, because we can talk about
10 those bruises. We have bruises on the hands, the arms,
11 contusions to the face. There were blows struck. She was
12 hit at some point, and Dr. Gray said at least 15 minutes
13 prior to the stabbing. Dr. Green, I believe was a little
14 hit longer. He said 15 to thirty minutes before the
15 stabbing.

16 Why is that important in considering the
17 aggravating circumstance in this case. It's important
18 because the aggravating circumstance is sexual assault
19 during the perpetration of the killing. The killing was
20 the stabbing. What happened thirty minutes before was not
21 during the perpetration of the killing. Use your common
22 sense in looking at the aggravating circumstance, the way
23 it's worded. It's during the perpetration of the killing.
24 The killing took place after the bruises were inflicted by
25 fifteen to thirty minutes, at least, said Dr. Green.

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1 There is an interval in between the
2 killing and the bruising. We submit, that the evidence
3 does not support that there was any sexual assault. There
4 was an altercation. There was domestic violence. But no
5 indication of sexual assault as part of that altercation
6 or as part of those bruising. In other words, there's
7 nothing to tie the bruising to the sexual assault.

8 If you accept the State's sort of theory
9 that the bruising was part of a beating that was part of a
10 sexual assault, that was not the act of killing. The
11 bruising did not cause the death, contusions did not cause
12 the death, the knife wounds caused the death.

13 What do we know about those knife wounds.
14 They are inflicted while she was fully clothed, because we
15 have the knife wound -- certainly this one -- goes through
16 both her stretch black pants -- you've see them in the
17 photographs -- and her under garments. And they line up
18 directly with the stab wounds. She was fully clothed at
19 the time she was stabbed. Anything that happened of a
20 sexual nature took place before she was ever stabbed.
21 Obviously, while she was undressed, because of the
22 presence of DNA, indicating vaginal contact.

23 So she had already gotten dressed after
24 any form of sexual contact had occurred, prior to being
25 stabbed. She was not killed as part of a sexual assault.

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1 Even if you believe there was a sexual assault it was not
2 during the act of killing, therefore there is no
3 aggravating circumstance.

4 As horrible as the case may be, as
5 tremendous and wrong as those injuries were, the law tells
6 us there's not an aggravating circumstance here. That
7 should be your first and last step in that analysis.
8 Finding that there was not a killing during the
9 perpetration of a sexual assault, the only aggravating
10 circumstance set forth by the State. In the absence of
11 that aggravating circumstance you then proceed to choose
12 between the three remaining punishments available to
13 you.

14 And as Mr. Owens told you, you need to
15 make the right decision in deciding that. We will leave
16 that to you, based on James' past, based on the history
17 between the two of them, based on all the factors in this
18 case to decide the appropriate punishment when you get to
19 that point and there's only three available to you.

20 You can certainly reassert that the
21 evidence doesn't support the aggravator, and you'll never
22 have to consider the death penalty in this case.

23 However, I would be remiss if I didn't
24 continue to argue to you concerning the other factors that
25 you need to consider, should you not agree with my

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1 discussion concerning the aggravating circumstances.

2 And that is the mitigating circumstances.

3 A mitigating circumstance is sort of a concept that

4 depends on every different case and every different jury.

5 And they're defined for you in Instructions 12, 13, and

6 14. You need to understand, mitigating circumstance is

7 not offered by the defense in this case as a justification

8 for having committed first degree murder. It's not

9 justification for first degree murder. It's not an excuse

10 for first degree murder. It's not a defense for first

11 degree murder. They're just factors that the jury needs

12 to have in order to make the appropriate decision as to
13 penalty in any case.

14 And they're defined for you as factors,

15 while they do not constitute a legal justification or

16 excuse, may be considered in the estimation of the jury in

17 fairness and mercy as extenuating or reducing the degree

18 of moral culpability.

19 You are also told that in determining

20 whether mitigating circumstances exist, jurors -- and this

21 is Instruction 13 -- jurors have an obligation to make an

22 independent and objective analysis of all the relevant

23 evidence. Arguments of counsel do not relieve jurors of

24 their responsibilities. Jurors must consider the totality

25 of the circumstances of the crime, and the defendant. And

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1 neither the prosecution nor the defendants insistence on
2 the existence or non-existence is binding on the jury.

3 Number 13 basically tell you you can find

4 whatever you want to find or not find in this case as a

5 mitigating circumstance. With that in mind, Instruction

6 14, lists a number of factors in this case that are

7 present, or may be present in the opinions of some of you

8 for you to consider. The last one of those -- and it goes

9 from James' substance abuse problems to his relationship

10 with his children, or at least with JP, with the loss of

11 his mother, the absence of the father, the household, all

12 those factors are listed as possible mitigating

13 circumstances.

14 The last one is any other mitigating

15 circumstance. And that relates back to the previous

16 instruction. Instruction No. 13, actually corresponds to

17 mitigating circumstance 13, which is any other mitigating

18 circumstance. Which means anything you find is a

19 mitigating circumstance, you can rely upon.

20 On the verdict forms -- you'll have these

21 back there with you. The verdict forms go through the

22 same process I've just gone through with you. The first

23 one is whether or not you find the aggravating

24 circumstance. That's the step one I just went through.

25 If you don't find the presence of an

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1 aggravating circumstance, you don't have to do the

2 weighing. You can skip to the last verdict form, which is

3 the three possible forms of punishment.

4 One of the verdict -- special verdict

5 forms has lines for you to list the mitigating

6 circumstances that you find. Whoever is selected as the

7 foreman in the case should fill that in on whatever

8 mitigating circumstance or circumstances are found. And

9 if you need more room or more pages, I'm sure the court

10 would assist you in that. But there are plenty of blank

11 spaces to fill in.

12 Then the third verdict form would be, do

13 to mitigators outweigh or do the aggravators outweigh,

14 which is the third step I talked to you about. So the

15 special verdict form pretty much mirrors the order that

16 we've discussed the evidence in the case.

17 Now the State and Mr. Patrick touched upon

18 this a little bit as it portrayed James as being able to

19 con Dr. Etcoff and conning Mr. Duffy and asked that he not

20 con you, that you not somehow fall victim to a con. But

21 in analyzing the evidence in this case, there are some

22 factors you need to take into account in really

23 determining that James was not of the sophisticated nature

24 to be able to perpetrate this crime and come up with a

25 scenario that somehow explains away his conduct, that

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1 explains the fact that he had gone out to the car and the

2 note was in the car. That he was able to come up with

3 this scheme to make it look other than exactly as it is,

4 which is they did go out to the car and found the note,

5 which explains why the note is outside and in different

6 condition in different rooms than the other letters that

7 were found.

8 They want you to believe he is

9 sophisticated enough to con Mr. Duffy, yet, in making up

10 this story he doesn't -- in his testimony -- he didn't say

11 I went and got drunk and I was so high I didn't know what

12 I was doing. In fact, he testified he was sober and he

13 denied he had done any drugs. He had the opportunity to

14 say, yes, there was beer there and I had the beer. He

15 denied having beer. So this individual who they want to

16 say is sophisticated enough to con everybody in this case,

17 isn't so sophisticated as not to say I wasn't intoxicated,

18 I was sober. I didn't drink, and I didn't have drugs at

19 the time. But I did become enraged, uncontrollably

20 enraged.

21 And those wounds don't show anything other

22 than uncontrolled rage. There's no pattern there.

23 There's no -- if you'll look in the photographs, Dr. Green

24 sort of drew them in. But if you look at the photographs,

25 you'll see the angles and how frenzied it must have been

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1 in a very sort period of time. Not a thinking act. Not a
2 premeditated act. An act of uncontrollable rage that
3 factored in all of his shortcoming in his life, his
4 disabilities, his inability to cope with situations that
5 involve loss of loved one, attachment disorders, learning
6 disabilities, inability to verbalize what he's feeling,
7 the fear of loss of a loved one, all those thing that
8 factored into frenzied unthinking conduct that we see in
9 this case.

10 This sophisticated person at was conning
11 everyone takes the car and drives to a location where he's
12 well-known then has contact with people and rents the car
13 out in order to get money for cocaine to these two ladies.
14 You heard their testimony read from the previous trial.
15 That's how sophisticated he was. He ran to the nearest
16 place where everybody would know him, so he could get
17 caught quickly I suppose. There's no conning going on
18 there. It's, at that point, self-medication is what he
19 needed.

20 He needed to hide from himself because of
21 what he had done and knew he had done. And he went to the
22 one place he knew he could get what he needed at that
23 point in time and that was something to make him not
24 remember what he had done.

25 What does he do the next day. He goes to
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1 the lucky store that's right there in the neighborhood and
2 commits some shoplifting. You'll see the photographs of
3 the things he was shoplifting. Clearly was an invitation
4 to get caught with the items that he had. And he does so,
5 carrying the names on he social security cards of Debra
6 and the children to be sure that if he is caught
7 shoplifting he could be linked to the homicide that just
8 happened the day before just up the street.

9 Now, is that a sophisticated person with
10 the ability to con anyone by his conduct or by his words,
11 or, again, someone looking to get the necessary quick
12 money to continue to self-medicate to calm what he must be
13 feeling for what he had done.

14 You'll have the letters he wrote to Debra
15 in there from the jail. And they only highlighted some of
16 the bad thing that were in those letters. I tried to
17 bring out some of the things that he was writing to Debra,
18 I love you, I myself you, I need you. Then the next
19 sentence is calling her a slut.

20 Look at those and consider how
21 sophisticated and how conwise this individual was, as
22 opposed to very confused, very afraid young man, that
23 didn't want to lose probably the longest relationship he
24 had in his life at that point with an adult person, that
25 being with Debra. They'd been together for nine or ten

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1 years at that point in time. And the fear and the anger
2 and the need for love that he expresses in those letters
3 is what you need to consider is in his mind when these
4 terrible events happened.

5 Mr. Owens talked about, with respect to
6 Debra, that she had been in a living hell, there were
7 weekly beatings. That she had tried to hide. We can't
8 ignore in considering what is the appropriate punishment
9 in this case, the real dynamics that this relationship
10 had. They had been together all this time. If it was a
11 living hell, they won't have been together all this time.
12 There was something there that kept them together, that
13 sired three children, that caused Debra to even -- when
14 she came to Las Vegas -- to tell -- I believe it was Dina
15 or maybe Lisa Duran -- that coming to Las Vegas was a
16 chance to have a fresh start with James. She wasn't
17 running from James. She was coming to Las Vegas with
18 James, still trying to make this relationship work,
19 despite what had happened in Tucson.

20 You can see that there was something in
21 this relationship that was more to the two of them than
22 just a living hell. And certainly I don't mean to down
23 play how difficult and wrongfully difficult it must have
24 been for Debra to deal with James' addictions and
25 shortcomings and his attachment disabilities and inability
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1 to hold a job. She had to deal with that. But there was
2 something there that caused them to, at least, want to try
3 to stay together.

4 Perhaps wrongfully and they shouldn't
5 have. But there was more to that than just saying this
6 was a living hell that she was subjected to on a constant
7 basis. She had the opportunities not to be with James,
8 must at some level, loved him in order to stay with him
9 through this and stay with him through all of the bad
10 things that he had done, and try to help him.

11 Certainly that doesn't mitigate James'
12 conduct. I don't mean to imply that it does. It sort of
13 explains the dynamics of this relationship when you're
14 considering what punishment are we going to give to James,
15 given that dynamic of that relationship, if you get to
16 that point. Is death really the appropriate punishment or
17 is life in prison a sufficient severe punishment for James
18 to deal with the relationship that had gone so terribly
19 wrong. But at one point, at least, was a relationship
20 that they desired to foster between themselves.

21 It goes without saying that my argument to
22 you is that the mitigators outweigh the aggravators, and
23 the conclusion of that was the dynamics of that
24 relationship is something to consider in deciding
25 punishment in this case as possible mitigation.

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1 I want to make clear in concluding that
2 nothing that we have done in this case was ever meant to
3 be harmful in portraying the relationship, and whether we
4 felt it was necessary to portray that entire relationship
5 to point out that it, for instance, in the same letters
6 where James said bad things, James says loving things and
7 conversational things about his daily existence there in
8 jail. That it's not necessary, and the right verdict is
9 not the death sentence in this case. If you even make it
10 to that point.

11 That in fact life in prison is severe
12 punishment for James. A punishment that should be imposed
13 in this case.

14 Thank you.

15 THE COURT: Thank you. Let's take a quick
16 recess.

17 JURY ADMONITION

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

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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 We'll take ten minutes.

7 (Recess taken.)

8 THE COURT: Back on the record in
9 C-131341, State of Nevada versus James Chappell.

10 The record will reflect the presence of
11 Mr. Chappell, with his attorneys, States attorneys, in the
12 presence of our jury.

13 We'll continue with closing arguments at
14 this time. Ms. Weckerly.

15 MS. WECKERLY: Thank you.

16 CLOSING SUMMATION

17 BY MS. WECKERLY:

18 When the defendant, James Chappell, was
19 convicted of burglary, robbery, and murder these were his
20 comments of remorse. "I have no comment on my case, but
21 to say that I got convicted of the wrong charges. I'm the
22 only one who knows what I did and to have these people
23 convict me on false charges hurts really bad. But what
24 can I do. No one ever has listened to me and never will.
25 I guess I'm going to have to write my on book some day. I

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1 went through so much shit that I'm surprised I lost
2 control in '95. I'm extremely sorry for what I've done,
3 but there's nothing I can do. The victim in my case meant
4 everything to me and meant the whole world to me, and she
5 knew that. But she still made a bad choice and got
6 caught. I guess she thought I would have let her get away
7 with it, since I let her get away with so much in the
8 past."

9 Those were his comments of remorse. She
10 got caught and he wasn't going to let her get away with
11 it. And he's going to write a book. Undoubtedly,
12 recounting all the wrong that have been done to James
13 Chappell over the years. It's offensive.

14 I plays into every extremely out-dated
15 sexist view of violence in life. There's a tendency to
16 down play this murder because they knew each other. It
17 was a domestic. And we've even shortened the phrase
18 throughout the trial, this was a DV. There was some
19 relationship, discord between the two. The two had a
20 troubled relationship.

21 The trouble in this relationship was, he
22 kept hitting her. The trouble in this relationship was he
23 broke her nose. The trouble in this relationship was he
24 killed her.

25 It's probably a certain prejudice that we

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1 all sort of internalize to some degree the idea that a
2 murder between two people who knew each other isn't that
3 bad. It's not as bad or scary as a stranger murder.
4 Because if a stranger had climbed through Debbie Penos'
5 window, raped her, had beat her up, stabbed her to death
6 and then stole her car, there wouldn't by a whole lot of
7 commentary about marijuana houses on the street he grew up
8 on. There wouldn't be a whole lot of commentary about,
9 well, maybe she liked him, or maybe she wanted him back.
10 Wouldn't we discussing that at all. We'd be discussing
11 the violence of the act of that day. And that's what this
12 case is about.

13 The fact that this defendant knew his
14 victim doesn't minimize what he did. It doesn't water down
15 what he did. It doesn't make it less violent. This
16 murder was torturous and it was cruel. It was an
17 outrage.

18 The fact that he knew who he was doing it
19 to, the person who had supported him for ten years. The
20 person who he had children with. The person who had given
21 him chance, after chance, after chance. What does he do,
22 that's the person he kills. It makes it worse. And he
23 knew, he knew when he did that who it would impact the
24 most, and he chose to do it anyway.

25 It was the ultimate act of selfishness If

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1 I can have her, no one can. That apparently included his
2 son JP, his son Anthony, and his daughter Chantelle.
3 Because they didn't get her either after the defendant was
4 done.

5 If Debbie was going to be out of his life,
6 she was going to be out of everybody's life, because he
7 had some hurt feelings. He felt abandoned. He had a
8 troubled childhood. He was confused. He was afraid.
9 Gosh, poor James. Why on earth would Debbie ever have
10 wanted to leave him. The guy who call her a slut. The
11 person who called her a whore. Why would she ever leave
12 this person. Why did she decide to move out that day.
13 Why would she have ever left the guy that pulled a knife
14 on her. The guy that broke her nose. What must she have
15 been thinking.

16 Mr. Patrick talked to you about the
17 psychologist that was called by the defense in this case,
18 Dr. Danton, who hypothesized that what happen in this case
19 was a situation of appeasement sex, or sex out of guilt.
20 Because certainly there's no indication that Debbie Panos
21 may have not wanted to have sex with the defendant that
22 day.

23 Dr. Danton was sort of a interesting
24 witness. He talked about the need to need a relationship.
25 He talked about this motorcycle syndrome, and maybe she

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1 had it, maybe he had it. But there was a sort of vague
2 quality about what he was saying throughout his testimony,
3 and they say the state is trying to hide the ball. It was
4 curious he formed this hypothesis about a ten year
5 relationship after a two-hour interview with the defendant
6 and after reviewing no police reports, no witness
7 statements, no interviews with her family, nothing but the
8 defendant's version of events. But it's the state,
9 according to Mr. Patrick who's trying to hide the ball.

10 How accurate could any assessment be by
11 this doctor who purposely shielded himself from all the
12 relevant evidence in the case. Like the crime scene
13 photos, like the autopsy photos, so he could assess
14 whether or not the defendant's version of events where he
15 offered up that this relationship was always, always
16 healed by sex, was truly what happened in this case.

17 He didn't review anything, and then when
18 confronted with his shortcomings, when confronted with the
19 fact that the version of events offered to him didn't
20 match the physical evidence of the scene, what was his
21 answer to that. Well, this is just a hypothesis. Well,
22 that's really convenient, this hypothesis that you throw
23 out there that doesn't match any of the evidence in the
24 case. The hypothesis that suggests that Debbie went from
25 being shaken and scared and rolled up in a ball on a couch

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1 and 20 minutes later was so excited that the defendant
2 showed up so she could have sex with him. This hypothesis
3 was meaningless. He didn't evaluate any of the evident,
4 and shouldn't be anything that you rely upon in deciding
5 what happened in the case.

6 Mr. Patrick made an interest comment. He
7 said, well, what happened in this case was that Debbie
8 tried to heal the relationship with sex, like she always
9 did. Do you recall the testimony of Dr. Danton. Even he
10 admitted that after a two-hour interview with the
11 defendant there wasn't a single incident where sex was
12 described as the healing force in the relationship.

13 When there was conflict in this
14 relationship, we all know what happened. He hurt Debbie,
15 and Debbie typically called for help. She called her
16 friends. She called the police. She left the house and
17 flagged down the police. There is no healing with sex
18 ever. This relationship had violent acts and Debbie asking
19 for help.

20 She call her Dina Freeman when the
21 defendant threatened to do an O.J. Simpson on her. When
22 they fought over the dresser, what did she do. Did she
23 heal the relationship with sex. No. She went down to
24 where she knew an off-duty officer was working and she
25 asked for help. When he slapped her in the face, did she

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1 heal the relationship by hugging him in the car, or trying
2 to be affectionate with him. No. She got out of the car
3 and ran to the safety of her co-workers.

4 How about the night he broke her nose.
5 Was that healing with sex. No. She got a restraining
6 order right after that incident occurred. And when he
7 dragged her into the bedroom, threw her on her bed and
8 straddled her and held a knife on her to, as he put it,
9 get some information out of her. Was that healed by sex.
10 No. That was healed by the police coming and Claire
11 knocking on the door. There should be no surprise to
12 anyone that on the day that Debbie Panos was murdered by
13 James Chappell, she made a call for help and that call was
14 to Latrona Smith, and you all heard her testify.

15 She wasn't healing anything with sex. She
16 was't trying to appease anyone. She was calling for help,
17 help. But all of this didn't fit in with Dr. Danton's
18 hypothesis, so when Mr. Patrick asked why the state chose
19 to cross-examine him, why state questioned the conclusions
20 he drew, it's because he didn't examine the evidence.
21 It's because he ignored the history of the relationship.
22 It's because his hypothesis didn't rely on any factual
23 information relevant to this case. But it's the state
24 that's hiding the ball.

25 We also heard from Dr. Etcoff. He did an

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1 examination of the defendant ten years ago, did some
2 psychological testing on him and asked James Chappell to
3 describe the events that occurred and came to the
4 conclusion that he had been truthful and honest with
5 him.

6 Mr. Owens asked Dr. Etcoff about free
7 will, the percentage of free will that we all have at
8 various moments. And Dr. Etcoff really didn't want to get
9 into that conversation, because he didn't want to concede
10 that really James Chappell had free will throughout his
11 life. He made decisions on the 31st. He made a decision
12 to threaten her on the 30th. He made a decision to give a
13 false name to the police on the first. He was always
14 acting with free will.

15 But it's the state that's hiding the ball.
16 Not Dr. Etcoff, who won't put a percentage on when you
17 have free will and when you don't. These sort of
18 amorphous theories about how in control or not in control
19 we all are of our own lives. Instead he makes excuses for
20 the defendant. He wasn't capable of making a positive
21 adaptive decision that day. Really. He was mad at Debbie
22 Panos for leaving him. He didn't want her to do that, and
23 so he killed her. He solved his problem on the 31st.

24 Dr. Etcoff also talked about the bad
25 childhood that James Chappell had, his father, apparently
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1 asked him to participate in criminal activity. We heard
2 from his brother, who had his own criminal history, and he
3 talked about an uncle who had been murdered. And
4 certainly there's no question that the defendant in this
5 case did not have an ideal childhood. He didn't have a
6 great experience growing up. But none of that outweighs
7 the violence that he inflicted on Debbie Panos on the
8 31st.

9 Dr. Etcoff talked about Mr. Chappell's
10 abusive grandmother, the corporal punishment that she
11 used. And certainly there's probably great debate about
12 the extent of corporeal punishment and how -- when it goes
13 over the line, or when it's appropriate and when it's
14 not.

15 But it's important to remember that this
16 crime wasn't done by a 9-year-old boy. This crime wasn't
17 done by a 10-year-old boy. This crime was done by a
18 26-year-old man, who wasn't living at home, who was living
19 with the mother of his three children. And this is done
20 by a 26-year-old man who had been given chance, after
21 chance, after chance in the criminal justice system. He
22 was arrested on felony charges. They got reduced to gross
23 misdemeanors. When he was getting sentenced on the gross
24 misdemeanor, he could have been sent to jail, could have
25 got probation, he got another chance.

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1 When he messed up on probation, he could
2 have been sent back to jail, but he got another chance. A
3 chance to go to drug counseling. These were decisions
4 that a 26-year-old man made on August 31st. He chose not
5 to go to the drug counseling program. He chose to make a
6 right turn and head for Debbie Panos' house.

7 We heard about the defendant who attended
8 special ed. We heard that to some extent the school
9 system seemed to address some of those issues. In fact,
10 he was going to a normal high school by the time he
11 reached that age. But that's when his drug problems
12 start.

13 Now certainly the fact that he had this
14 troubled up-bringing and he was in an environment that
15 apparently a lot of people were doing drugs than, would
16 make his life more difficult. But it doesn't erase what
17 he did on August 31st. And it doesn't mean that he didn't
18 have chance, after chance, after chance to address the
19 very drug problems that the defense now asks you to give
20 him some credit for.

21 It doesn't erase what he did. It's just
22 part of his background. And most of us have a background
23 that is less than ideal. Most of us have had parents or
24 were raised by people who didn't do a perfect job. But it
25 doesn't diminish what we do as adults. It doesn't take
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1 away his actions.

2 Mr. Patrick asked an interesting question.
3 He said the state spent all this time asking these two
4 doctors for the -- about the defendant's version of the
5 events. You recall that. We went through that with Dr.
6 Etcoff, as well as Dr. Danton. Step by step, minute by
7 minute how this murder occurred. And according to the
8 defense this was just a waste of time. Why on earth would
9 the state spend time on that. But the answer is
10 completely obvious.

11 If the defendant was not being honest
12 about what occurred, if he didn't describe events
13 accurately and honestly, how can you trust any of the
14 conclusions offered by these two doctors, who, of course,
15 relied solely on the defendant himself in making their
16 evaluations or these conclusions.

17 The issue is was he honest when he gave
18 those versions of events to the doctors. And you know by
19 now he was completely not honest. You know what he
20 described doesn't match the crime scene photos. So you
21 have to ask yourself, do you think Debbie Panos was truly
22 happy to see him on the 31st, when he climbed through that
23 window. Do you think Debbie Panos was truly waiting to
24 offer him oral sex after he accused her of being with
25 someone else and claims that, well, I sensed something

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1 different when I was having intercourse with her. Do you
2 think he was being truly honest when he said Debbie Panos
3 suggested that they two go get those kids together from
4 the day care. The place where she didn't have him on the
5 pick-up list.

6 You think he was being truthful when he
7 said he found this letter conveniently enough away from
8 every other letter in the car and that the two struggled
9 over it. You think he was truthful about that, the
10 struggle that occur in the car. It doesn't match the
11 physical evidence. That letter is not in the car. And
12 all the pieces are outside of it.

13 If he is not being truthful about what he
14 described to those doctors, then his version of events is
15 completely suspect and of course that relates to the
16 sexual assault.

17 The sexual assault in this case is a
18 really simple question. You know they had sex. His DNA
19 is found in her vagina. No questions about that. Sexual
20 intercourse occurred that day. So your duty, or your job
21 as jurors is to decide a really simple question. Do you
22 think she consented to it that day. Do you think Debbie
23 Panos went from Mike Pollard's couch into the arms of the
24 defendant thrilled to be having sex with him. The man who
25 threatened to kill her the day before. The one she was

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1 planning on leaving.

2 You think Debbie Panos changed her mind
3 that quickly, went from shaking in a ball on the couch to,
4 gee, I'm glad to see you honey. It's like a prom date, he
5 came through a window and surprised her. What a happy day
6 that must have been.

7 The defendant actually offered a version
8 of event that contradicts completely the physical evidence
9 in the case, because of course according to him he never
10 even ejaculated in her. Well, that doesn't match the
11 evidence at all. So could he be being honest. Is it
12 possible maybe he's describing something that didn't
13 occur, didn't occur how he described it.

14 The defendant says that Debbie Panos was
15 home when he got there. Detective Vaccaro testified about
16 the time it would take for him to walk from the Department
17 of Parole and Probation over to the Vera Johnson
18 apartments and get the bike. And you know of course that
19 Debbie Panos made a call at 12:30 in the afternoon. You
20 know where she was at about 12:00 o'clock. She was at
21 Mike Pollard's house.

22 So defendant got there before she did. He
23 surprised her and when she got there the fight was on. He
24 had gone through the letters. He was mad at her. He had
25 threatened to kill her. And he knew that he was losing

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1 control over her. He knew it was done and she was leaving
2 him.

3 The defendant says that when he got in the
4 car with Debbie Panos he was upset because there were beer
5 cans all over the inside of the car. Look at the photos.
6 You have the inside of the car films. It's has been
7 captured by the police. There's no beer can in there.
8 He's lying about that.

9 The defendant says that he was upset
10 because he saw this box of empty beer cans around the side
11 of the house. You have the crime scene photos. There is
12 no box. There's no box of beer cans. The defendant said
13 that he fought over the letter and Debbie Panos and he
14 struggled over it in car. She got ahold of it. But we
15 know the letter was not in the car. So nothing he is
16 describing is matching the physical evidence at the
17 scene.

18 So you have to wonder why it is he's
19 trying to account for a sexual contact with Debbie Panos.
20 And of course that's because he knew what the aggravating
21 circumstance was by the time he offered his version of
22 events. And he's trying to account for the evidence.

23 But he tells such a poor story, such an
24 incredible version of events, that even the defense
25 witnesses had to concede on cross-examination that that

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1 does sound a little odd. You bet it does.

2 Someone does go from being petrified and
3 afraid of someone, someone who's threaten is kill them,
4 to, hey, great honey, let's have sex, I'm really glad you
5 are home from jail. I've totally forgotten all those
6 threats you've made against me.

7 The next argument that Mr. Schieck made
8 with regard to the sexual assault was that there was some
9 time gap in between the sexual assault that occurred and
10 the actual act of killing. That's a pretty convenient
11 argument. So I guess the defense's position has shifted
12 slightly in that if there was a sexual assault, because it
13 didn't occur at the exact same time as the carotid stab,
14 that somehow this sexual assault didn't occur at the same
15 time as the murder. But of course you know that on August
16 31st of 1995, there was a single criminal transaction. He
17 burglarized her house when he climbed through that window,
18 and from then he was angry at her and the fight was on.
19 Look at every single one of those autopsy photos. Do you
20 think anything that happened to Debbie Panos on that day
21 was done with her consent.

22 The fact that there weren't findings on
23 her genital region doesn't change the fact that she was
24 sexually assaulted. The instructions tell you, submitting
25 to sex for fear of bodily harm or submitting to sex

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1 because someone is holding a knife on you, or submitting
2 to sex because somebody is beating you up, that's not
3 consent. It still counts as a sexual assault. And that's
4 exactly what occurred in this case.

5 And the defendant's suggestion that
6 somehow she willingly engaged in sex, and he decided that
7 somehow he felt something different about her is just
8 absolutely ridiculous. And it's insulting. And the
9 terminology that he used to describe that encounter speaks
10 volumes about how he thought about Debbie Panos, this
11 piece of property, this person who was there to service
12 his needs.

13 Mr. Patrick spent time telling you that
14 James Chappell is a remorseful man, and if he could he
15 would turn back the clock. He would take it all back.
16 Well, that's quite a gesture on his part. It's really
17 easy to offer the impossible, offer Debbie Panos, if she's
18 out there, I would change places with you, I'd turn back
19 the clock.

20 When considering how remorseful or
21 genuinely remorseful you think this defendant is, remember
22 what he told the parole and probation officer Duffy, he
23 told him that he's tired of being in jail. He told him he
24 was ready to address his drug problem. He told him he had
25 genuinely changed his attitude. He also told him, I'll be

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1 back by 1:00 o'clock. Was any of that true. He got out
2 the door and made a right turn to Debbie Panos' house.

3 And it wasn't just Dr. Duffy that got
4 snowed by the defendant. Dr. Etcoff was snowed just as
5 well. The doctor who assessed truthfulness, the doctor who
6 applied these validity tests to the defendant's comments.
7 He said on cross-examination that had he known all of the
8 information, had he heard about the witness statements,
9 had he reviewed the autopsy photos, he might have reached
10 a different conclusion. That's probably a very accurate
11 statement and probably an understatement at that.

12 You know this defendant's prior behavior,
13 I'm sure he would say a bunch of things about that. He
14 would say he's sorry about breaking her nose. In fact, he
15 referred to that in his testimony which was read to you.
16 He called it the accident that Debbie and I had with the
17 cup. Does that seem like an accurate portrayal of what
18 happened when he smashed her nose and lacerated her eye
19 with an object. Was that an accident. Like these two
20 were suddenly a couple and made some wrong turn and an
21 accident occurred between the two of them.

22 This was him breaking her nose. But he's
23 a remorseful guy. I'm sure he'd say he's sorry about
24 pulling a knife on her and straddling her in June. She
25 asked for that. I'm sure he was sorry about all of these

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1 incidents. I'm sure he was really sad when he went in her
2 bathroom and washed off her blood. And ask yourself, how
3 much remorse do you think he felt when he said, I'll just
4 take the car because that's a quicker getaway than the
5 bike.

6 You know the facts of this case. You know
7 the facts suggest that he wasn't remorseful at all. How
8 remorseful do you think he was when he got to the Vera
9 Johnson Apartments and started negotiating with LaDonna
10 Jackson and Debra Turner about the price of the car
11 rental. There had to be some real grief there as he was
12 selling them some shrimp and a pie, probably overcome with
13 grief.

14 The reality was he was their friend, the
15 guy they nicknamed hip hop, and they saw him dancing
16 around acting like nothing happened. Sure he was
17 devastated.

18 Ask yourself as he was sitting there
19 getting high that night, how much grief he was feeling
20 over the fact that his children were spending the night in
21 Child Haven.

22 How about his statement after the death --
23 this statement, she got caught and she probably thought I
24 was going to let her get away with something. There's
25 some real remorse there. That's someone who truly

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1 understands the gravity of what he's done.

2 When the defense tells you that James
3 Chappell is this troubled guy, and he's got a low IQ. He
4 doesn't have any trouble maneuvering through the system.
5 He didn't have any trouble convincing a judge to give him
6 the benefit of probation. He didn't have any trouble
7 convincing a P&P officer -- parole and probation
8 officer -- to give him another chance, let him go to drug
9 treatment for himself. He was smart enough to realize
10 when he got caught for shoplifting right after the murder
11 he should give a fake name and he did. He was smart
12 enough to know he should try to ditch those social
13 security cards. And he tried to do that as well.

14 The defense in this case has asked you for
15 mercy on behalf of this defendant. They suggested to you
16 that he warrants mercy because of his troubled childhood.
17 And, again, you know I don't think anyone is really
18 disputing that his childhood was less than perfect.

19 The other main reason for mercy, according
20 to the defense, is that he had this drug problem. But, of
21 course, he made the decisions about drugs. It was his
22 decision to become involved in drugs. It was his decision
23 not to take advantage of treatment. And certainly he wasn't
24 on drugs the night that he did -- or the day he did the
25 murder. He even says that.

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1 So the question for you as jurors is not
2 really do you have it in yourselves, or are you a merciful
3 person because as jurors you are serving a different role
4 in this case. You don't just owe James Chappell the
5 consideration of mercy, you owe the victims and the State
6 of Nevada a just sentence as well. It's probably tempting
7 in this case to give life without, that seems like a
8 realistic sentence. You probably would feel like you are
9 not giving him any breaks at all with a life without
10 sentence.

11 But you need to ask yourself, is that
12 truly justice for what he did over the years. What
13 punishment reflects what he did to Debbie Panos, not just
14 that day, but over time. What punishment reflects how he
15 degraded her by calling her bitch and slut. What
16 punishment compensates for breaking her nose. She had to
17 go to work with that object on her nose after it was
18 broken and tell her friends what happened. He humiliated
19 her. What punishment compensates her for holding a knife
20 to her in her own home so he could get information because
21 he thought she was gone too long that day.

22 This from the person who spent his days
23 taking her money and going and getting high for the day.
24 What punishment accounts for all of that. What punishment
25 is justified for taking the life of a 26-year-old young

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1 woman, a mother of three. Or how about what punishment
2 accounts for Norma Penfield's loss the day. She lost her
3 daughter. James Chappell brutally murdered her only child
4 that day. What compensates her.

5 Has that changed for her over ten years.
6 Does she still bear that loss, that burden ten years
7 later. I mean, really the reality is it was easy for him
8 after he got arrested on September 1st, '95. It was all
9 done for him at that point. He didn't have to deal with
10 the aftermath of the devastation he caused. He didn't
11 have to look two little boys in the face and tell them
12 their mother wasn't coming back. He didn't have to listen
13 to an eight-year-old boy ask for sleeping pills. He
14 didn't have to listen to any of that. He didn't have to
15 listen to a four-year-old girl talk about -- asking her
16 grandmother to sing like mom did. He didn't have to see
17 any of his children's faces when they wanted their mother
18 over the years when they missed her. He didn't have to
19 arrange, at all, for Debbie Panos; body to be transported
20 to Michigan. He was spared all of that. Those pieces
21 were picked up by Norma Penfield.

22 He got to sit and worry about himself and
23 formulate the best spin on events, the best version. And
24 that's all he has ever done his whole life. He got to
25 tell the doctors about his problems and his troubled

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1 childhood. It's so typical of how he spent his whole
2 life.

3 He sells those children's coats and shoes,
4 and Debbie works three jobs so she can buy more. He beat
5 Debbie in Tucson and she decides to move to Las Vegas so
6 they can get a fresh start. He treats Debbie badly, and
7 she tells her own mother, well, his grandmother wasn't
8 nice to him, she threw him out. But the problem is what
9 he did on that day, on August 31st, is so treacherous and
10 so selfish and so evil there's truly no fixing what he
11 did.

12 There will never be exact punishment for
13 what he did on that day. He won't be invaded in his own
14 home no matter what punishment you impose. No matter what
15 punishment you impose, he won't be violated before the
16 punishment is imposed on him. No matter what you choose
17 he won't have to endure someone beating him. He won't
18 have his upper arm bruised. He won't have his ear
19 bruised. He won't be hit repeatedly in the face, and he
20 won't be aspirating, spitting up his own blood wondering
21 where his children were. He'll be spared all of that, no
22 matter what you choose.

23 Most importantly, no matter what
24 punishment you choose to impose on the defendant, it won't
25 be unjustified punishment. Debbie's murder was the

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1 opposite. It was unjustified. She was killed for no
2 reason. The only reason why Debbie got killed that day is
3 because he didn't like her leaving the relationship.
4 Punishment is different than that.

5 When you impose the punishment on him, it
6 will be because of things he chose to do. He chose not to
7 go to drug treatment that day. He chose to climb through
8 that window. He chose to pick up a that knife. He chose
9 to violate her. He chose to kill her. And then he chose
10 to leave it all behind. But now you're the decision
11 maker. He's not the decision maker anymore. And he
12 doesn't get to dictate the end, the final chapter of the
13 relationship between James Chappell and Debbie Panos.
14 That's your decision. That's your call, collectively.

15 All those decisions that James made over
16 the years to spend money, to hit Debbie, to sell her
17 children's clothes, he's out of the decision at this
18 point, and that's your role as jurors.

19 We've all said and you all know at this
20 point that the punishment should fit the crime. And when
21 you consider the decade of torment that he inflicted on
22 this woman, the loss that he imposed on three young
23 children, the loss that he imposed on her mother, and his
24 attitude after the fact, there's only one punishment and
25 that's the death penalty.

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1 THE COURT: Thank you, Ms. Weckerly.
 2 Ladies and gentlemen, that concludes
 3 closing arguments. What I'm going to ask you, I know it's
 4 about 5:45, is that you all go back and we'll get all the
 5 evidence together and the instructions and verdict forms,
 6 and get that back to you, I would at least like you to do
 7 is talk amongst yourself, elect a foreperson, then tell me
 8 what you want to do.

9 I always think it's a good idea for a jury
 10 to do some deliberating right after they've heard closing
 11 arguments, but it's 5:45. So I'll take my cue from you.
 12 If you want to stay, I'll stay. If it's your decision you
 13 want to come back tomorrow and begin anew in the morning,
 14 by all means we can do that as well.

15 Go ahead and get back and get and discuss
 16 it.

17 Let me swear the officers to take
 18 charge.

19 THE CLERK: You do solemnly swear you will
 20 keep this jury together in some private and convenient
 21 place, that you will not permit any person to speak to
 22 them, nor speak to them yourself, unless it be by order of
 23 the court, except to ask them whether they have agreed
 24 upon a verdict and that you will return them to the court
 25 when they have so agreed so help you God.

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1 OFFICER: I do.

2 THE COURT: Ms. Staley and Mr. Scott, you
 3 all are the alternates, so when you go back -- the other
 4 twelve of you are going to go back and elect a foreperson
 5 and chat about what I just discussed.

6 Molly will take the two of you.
 7 Essentially you are still under the admonition about not
 8 discussing the case until you hear from us, telling you
 9 that the remaining jurors have reached a verdict and the
 10 case is concluded, in case one of you has to come back and
 11 deliberate.

12 Thank you.

13 (Jury escorted out of the courtroom.)

14 The jury gets the trial instructions to go
 15 back with them as well. It would be my intent to send
 16 them the trial instructions from this case, but in
 17 particular, Instruction No. 43, as I was looking back
 18 through them from the trial tells the trial jury in
 19 arriving at a verdict in this case as to whether the
 20 defendant is guilty or not guilty, subject of penalty or
 21 punishment is not to be discussed or considered by you,
 22 and should in no way influence your verdict.

23 If the jury's verdict is murder in the
 24 first degree, you will at a later hearing consider the
 25 subject of penalty or punishment.

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1 If we give them these instructions I think
 2 we should not give them, at least, that instruction. I
 3 don't want this jury to think that the last jury was taxed
 4 with deciding penalty or punishment.

5 MR. OWENS: I agree with the court. But
 6 when I give instructions back there defining these other
 7 crimes like burglary and robbery, they may get confused
 8 about what their function is.

9 THE COURT: Personally, it would be my
 10 opinion that they probably don't need the trial
 11 instructions. It's always given to them because usually
 12 the same jury is hearing both.

13 MR. SCHIECK: With it being a different
 14 proceeding and a different jury that didn't have to
 15 consider those issues, they don't need those instructions.
 16 They're told that another jury decided all of those
 17 issues.

18 THE COURT: Okay. Do you both agree and
 19 stipulate we will not give them the instructions from the
 20 underlying trial.

21 MR. OWENS: They got instructions on
 22 reasonable doubt and burden.

23 THE COURT: Okay.

24 THE COURT: You're in agreement.

25 MR. SCHIECK: Yes.

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1 MR. OWENS: Yes.

2 THE COURT: We'll give them all the
 3 evidence and the penalty phase instructions.

4 MR. OWENS: I went back and reviewed the
 5 court's order which was the basis for the reversal of the
 6 penalty phase and the reason why we're in this proceeding,
 7 the decision by Judge Douglas, I believe, confirmed by the
 8 Supreme Court and the order of affirmance that the defense
 9 failed to call certain witnesses that would have made a
 10 difference in the outcome of the original case.

11 There was eight or nine witnesses that
 12 were detailed in the briefs and the decision. For the
 13 record, my notation on that would indicate that that would
 14 be Sherily Cerrell, James Ford, Ivory Morrell, Chris
 15 Bardo, David Green, Benjamin Dean, Clara Axon, Barbara
 16 Dean, and Ernestine Harvey. Of those nine names the
 17 defendant only called two of them, by my understanding

18 There were five of them that were not
 19 called, no affidavits were submitted, no letters were
 20 written in, no testimony was given in summary by third
 21 parties. We called one of them. It was the -- through
 22 testimony reading today, that was Clara Axon, the
 23 defendant's grandmother. We read her testimony in.

24 The court mentioned that they anticipated
 25 that on the new penalty hearing there would be some

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1 additional factors that she would put into the record that
2 would assist the defendant, but we didn't get to those.

3 And I'm bringing this to the court's
4 attention out of an abundance of caution, try to protect
5 the record we have here, because essentially we have two
6 of those witnesses of the eight or nine that they sent
7 this back to testify in this proceeding. That was all.

8 THE COURT: Mr. Schieck.

9 MR. SCHIECK: Your Honor, I don't know --
10 I haven't reviewed the Supreme Court opinion for some
11 time. Some of those witnesses related to the original
12 petition and supplemental petition, which address both
13 guilt and penalty phase issues. Certainly I'm familiar
14 with all of the names of those witnesses, and there were
15 reason why most was -- that weren't called, weren't
16 called.

17 But James Ford and Ivory Morrell were
18 here, ready, willing, and able to testify. However we ran
19 rather long. They had to go back. We already made a
20 record on that.

21 We did have Fred Dean, Benjamin Dean, and
22 Charles Dean testify. Their mother, Barbara Dean is very
23 ill on three times a week dialysis and can't travel.
24 Clara Avon, is deceased. Mr. Bardo is gone somewhere that
25 no one can find. We did speak with him years and years

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1 ago in preparation for the supplemental petition, but he
2 disappeared before we could get him to sign an
3 affidavit.

4 Likewise, with Mr. Green also. He has
5 resurfaced. He's in prison in Arizona and wouldn't have
6 been available. We didn't feel he would be a good witness
7 to call.

8 So of all of those names of the witnesses
9 we called the witnesses we felt were necessary and
10 appropriate in this penalty hearing.

11 THE COURT: Just for the record, you all
12 were the ones that pursued the post-conviction relief on
13 behalf of Mr. Chappell in front of Judge Douglas,
14 correct.

15 MR. SCHIECK: Correct. That was me in
16 private practice, your Honor.

17 THE COURT: So I trust that in pursuing
18 that claim, then subsequently prevailing on this
19 post-conviction claim as to the penalty hearing and
20 undertaking an investigation of the same thing that you
21 were able to contact everybody that was available for
22 contact, investigated in the manner you felt was
23 appropriate to put together witnesses you thought were
24 appropriate for the hearing we've had over the last
25 week-and-a-half.

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1 MR. SCHIECK: That's correct, your

2 Honor.

3 I can state that in preparing the
4 post-conviction petition alleging ineffective counsel and
5 going to investigate, you tend to make a lot of
6 allegations concerning what should have been done by trial
7 counsel. When you actually get down to later on in the
8 proceeding where you're actually making decisions on who
9 to call and who not to call, sometimes you make different
10 decisions. The point in this case is none of those people
11 were even talked to. That was the original complaint,
12 none of these people were -- these names were provided to
13 previous counsel and were never even contacted or talked
14 to.

15 THE COURT: That was --

16 MR. SCHIECK: That was the basis of the
17 allegations to begin with, which eventually ended up in
18 the Supreme Court.

19 THE COURT: That was the issue I raised
20 that with a broad stroke on post-conviction you'll -- when
21 there hasn't been any or little investigation you don't
22 know even all these names provide who's got the
23 information that's relevant to present during the hearing.
24 So bring of the post-conviction claim and alleging that
25 none of these witnesses were contacted, you kind of have

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1 to do that without nothing everything everybody is going
2 to say, nobody talked to them in the beginning.

3 So to the extent that after defense
4 prevailed on the issue then you undertook to investigate
5 to prepare for a new penalty hearing, the fact that things
6 get whittle down to what they were today, is not
7 unreasonable, but obviously appropriate as well.

8 I'll just state for the record, there was
9 a great deal of testimony from a number of people that
10 grew up with Mr. Chappell, family members, as well as
11 friends to explain his childhood and the dynamics of
12 things in his home with his grandmother as well as,
13 siblings testifying to a certain degree, and some of his
14 friends testifying and information from affidavits being
15 brought out about similar things.

16 In addition to the three expert witnesses
17 that defense produced. So -- anything else, Mr. Owens.

18 MR. OWENS: No, thank you, your Honor.

19 THE COURT: All right. Thank you all very
20 much.

21 (Jury deliberating.)

22 THE COURT: The jury will return tomorrow
23 morning at 9:00 o'clock.

24

25

* * * * *

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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
Sharon Howard
C.C.R. #745

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AFFIRMATION

PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the
proceeding

State v. Chapell,
filed in District Court Case No. 0131341,

☒ 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

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

FILED IN OPEN COURT
ORIGINAL March 22 2007
CHARLES J. SPOTY
CLERK OF THE COURT
BY Carol Green
DISTRICT COURT DEPUTY

CLARK COUNTY, NEVADA

* * * * *

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

REPORTER'S TRANSCRIPT
OF
PENALTY HEARING
VERDICT

BEFORE THE HONORABLE DOUGLAS HERNDON
DISTRICT COURT JUDGE

DATED: WEDESDAY, MARCH 21, 2007

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

1 APPEARANCES:

2 For the State: CHRISTOPHER OWENS, ESQ.

3 PAM WECKERLY, ESQ.

4
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6 For the Defendant: DAVID M. SCHIECK, ESQ.7 CLARK W. PATRICK, ESQ.
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1 LAS VEGAS, NEVADA; WEDNESDAY, MARCH 21, 2007

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

3 * * * * *

4
5 THE COURT: We'll be back on the record in
6 C-131341, State of Nevada versus James Chappell.

7 Let the record reflect Mr. Chappell is
8 preset, with his attorneys, State's attorneys, and our
9 jury.

10 Ladies and gentlemen of the jury, did you
11 first of all elect a foreperson?

12 IMPANELED JUROR: Yes.

13 THE COURT: Who is that? Juror number
14 one, for record is our foreperson. Ma'am did the jury
15 reach a verdict?

16 IMPANELED JUROR: Yes.

17 THE COURT: Hand the verdict forms to my
18 bailiff, please.

19 The clerk will now record the verdict into
20 the record.

21 THE CLERK: District Court, Clark County,
22 Nevada, plaintiff, versus James Montel Chappell,
23 defendant, case number C-131341, Department 3, Special
24 Verdict: We the jury in the above-entitled case having
25 heard evidence in the above-referenced matter in which the

1 defendant, James Montel Chappell has previously been
2 convicted of Count (3) first degree murder with use of a
3 deadly weapon, designate that the aggravating circumstance
4 or circumstances which have been checked below have been
5 established unanimously and beyond a reasonable doubt, the
6 murder was committed during the perpetration of a sexual
7 assault, dated this 21st day of March 2007, signed by the
8 foreperson.

9 Special Verdict: We the jury in the
10 above-entitled case, having heard evidence in the above
11 referenced matter in which the defendant, James Montel
12 Chappell has previously been convicted of Count (3), first
13 degree murder use of a deadly weapon, one or more of the
14 jurors designate that mitigating circumstance or
15 circumstances, which have been listed below, have been
16 established:

- 17 1. James Chappell suffered from substance
18 abuse.
- 19 2. James Chappell had no father figure in
20 his life.
- 21 3. James Chappell was raised in an abusive
22 household.
- 23 4. James Chappell was the victim of
24 physical abuse as a child.
- 25 5. James Chappell was born to a drug,

1 alcohol addicted mother.

2 6. James Chappell suffered a learning
3 disability.

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

6 Dated this 21st is day of March 2007,
7 signed by the foreperson.

8 Special Verdict: We the jury in the
9 above-entitled case, having heard evidence in the
10 above-referenced matter, in which the defendant, James
11 Montel Chappell has previously been convicted of Count
12 (3), first degree murder with use of a deadly weapon, find
13 the mitigating circumstances do not outweigh the
14 aggravating circumstance, date this 21st day of March
15 2007, signed by the foreperson.

16 Special verdict: The defendant, James
17 Chappell, having been found guilty of Count (3), murder of
18 the first degree with use of a deadly weapon, we the jury
19 having found that the aggravating circumstance outweighs
20 any mitigating circumstance impose a sentence of death,
21 dated at Las Vegas, Nevada, this 21st day of March 2007,
22 signed by the foreperson.

23 Ladies and gentlemen of the jury, are
24 these your verdicts as read, so say you one, so say you
25 all?

1 IMPANELED JURY: Yes.

2 THE CLERK: Thank you.

3 THE COURT: Does either side wish to have
4 the jury polled?

5 MR. SCHIECK: Yes, your Honor.

6 THE CLERK: Juror number one, are those
7 your verdicts as read?

8 MS. JOHNSON: Yes.

9 THE CLERK: Juror number two, are those
10 your verdicts as read?

11 MR. TAYLOR: Yes, they are.

12 THE CLERK: Juror number three, are those
13 your verdicts as read?

14 MR. HENCK: Yes ma'am.

15 THE CLERK: Juror number four, are those
16 your verdicts as read?

17 MR SMITH: Yes, ma'am.

18 THE CLERK: Juror number five, are those
19 your verdicts as read?

20 MS. CARDILLO: Yes.

21 THE CLERK: Juror number six, are those
22 your verdicts as read?

23 MS. NOAHR: Yes.

24 THE CLERK: Juror number seven, are those
25 your verdicts as read?

1 MS. BUNDREN: Yes, ma'am.

2 THE CLERK: Juror number eight, are those
3 your verdicts as read?

4 MR. MORIN: Yes, ma'am.

5 THE CLERK: Juror number nine, are those
6 your verdicts as read?

7 MR. WHITE: Yes, ma'am.

8 THE CLERK: Juror number ten, are those
9 your verdicts as read?

10 MS. WASHINGTON: Yes.

11 THE CLERK: Juror number eleven, are those
12 your verdicts as read?

13 MR. FEUERHAMMER: Yes, ma'am.

14 THE CLERK: Juror number twelve, are those
15 your verdicts as read?

16 MR. FORBES: Yes, ma'am, they are.

17 THE COURT: The clerk will enter the
18 verdicts for the minutes.

19 Ladies and gentlemen -- and we're going to
20 go ahead and set a formal sentencing date, if you would,
21 in 45 days.

22 THE CLERK: May 10th, at 9:00 a.m.

23 THE COURT: Ladies and gentlemen, at this
24 time, I'm going to excuse you. I'm sure you'll be happy
25 that I'm not going to recite to you that admonition one

1 final time. You're completely discharged from your
2 service.

3 What I'm going to tell the attorneys is
4 that after I release you here -- I'll be available to talk
5 to you for a few minutes, if you wish -- I'll have Leslie
6 take you back downstairs so you can get your vouchers, and
7 if the attorneys wish to try to you for a few minutes they
8 can meet you downstairs. I would advise you that, to the
9 extent you have a little bit of time and can give them a
10 few minutes, please go ahead and talk to them. It's very
11 valuable for the attorneys, and the best way for us as
12 attorneys to learn a little about, not only our
13 performance as attorneys, but things you think about the
14 case, the way things are presented, is to talk to you all
15 because you are the representatives of the community that
16 hear the trial, watch the process unfold and can give them
17 the best input on how that unfolded in this particular
18 case.

19 I know it's been a long week-and-a-half,
20 but nonetheless, if you have a few minutes, I'd appreciate
21 it if you would talk to them, and just chat with them for
22 a few moments.

23 With that, I will tell you that it's
24 obviously been a very difficult case. I realize that.
25 It's never an easy thing to sit as a jury on a capital

1 penalty hearing. Nonetheless, over the last
2 week-and-a-half you have everything expected of you, not
3 only by the court and the attorneys, but by your fellow
4 community members as well.

5 I thank you for the service you have given
6 to the court system and the community.

7 You are free to talk to whomever you want
8 to now. I encourage you to chat with the attorneys, but
9 whether it's the attorneys or anybody else, you do not
10 have to talk to anybody that you do not want to.

11 But to the extent somebody persists in
12 trying to talk to you after you told them you do not wish
13 to talk to them about the case, let Leslie know that, if
14 it's today or any other day, you can contact my chambers
15 and we'll do what we need to to help you out in that
16 regard as well. But that's your decision.

17 Co-workers, family members, friends, you
18 can talk to whoever you want to now. But you certainly
19 don't have to.

20 Thank you, very much. You all can go with
21 Leslie.

22 Still on the record, outside the presence.
23 Does anybody have anything for the record?

24 MS. WECKERLY: Not on behalf of the
25 State.

1 MR. SCHIECK: Your Honor, I don't know if
2 the court would consider remanding him back to High Desert
3 as opposed to being held here at the Detention Center, due
4 to his custody status.

5 THE COURT: I don't have a problem with
6 that. Does the State have a problem?

7 MR. OWENS: I won't take a position on
8 that.

9 THE COURT: I will order that Mr. Chappell
10 be returned to High Desert State Prison. If the State
11 would prepare a transport order and have him come back on
12 May 10th, for formal sentencing.

13 We'll be in recess. Thank you all very
14 much.

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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

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

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IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

JAMES CHAPPELL,

S.C. CASE NO. 61967

Appellant,

Electronically Filed
Nov 18 2013 02:26 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

vs.

THE STATE OF NEVADA,

Respondent.

APPEAL FROM DENIAL OF PETITION FOR WRIT OF HABEAS CORPUS
(POST-CONVICTION) AND SENTENCE OF DEATH
EIGHTH JUDICIAL DISTRICT COURT
THE HONORABLE JUDGE CAROLYN ELLSWORTH, PRESIDING

~~~~~  
APPELLANT'S APPENDIX TO THE OPENING BRIEF  
VOLUME XVI  
~~~~~

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IN THE SUPREME COURT OF NEVADA

JAMES CHAPPELL,

CASE NO. 61967

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on this 18th day of November, 2013. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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