

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

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

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

8 FURTHER, Affiant sayeth naught.

9  
10 James Ford  
JAMES FORD

11 SUBSCRIBED AND SWORN to before me  
12 this 6<sup>th</sup> day of March, 2003.  
13 ~~November, 2002.~~

14 Nannette V. McGill  
15 NOTARY PUBLIC

16 NANNETTE V. MCGILL  
17 Notary Public, Eaton County, MI  
18 ACTING Notary CO.  
19 My Commission Expires 04/01/2003  
20  
21  
22  
23  
24  
25  
26  
27  
28

# EXHIBIT 30

95

1 VER

2

3

4

5

6

7

8

THE STATE OF NEVADA,

9

Plaintiff,

10

-vs-

11

JAMES MONTELL CHAPPELL

12

13

Defendant.

14

15

VERDICT

16

17

18

19

We, the Jury in the above entitled case, having found the Defendant, JAMES MONTELL CHAPPELL, Guilty of COUNT III - MURDER OF THE FIRST DEGREE and having found that the aggravating circumstance or circumstances outweigh any mitigating circumstance or circumstances impose a sentence of,

20

\_\_\_\_\_ A definite term of 50 years imprisonment, with eligibility for parole beginning when a

21

minimum of 20 years has been served,

22

\_\_\_\_\_ Life in Nevada State Prison With the Possibility of Parole.

23

\_\_\_\_\_ Life in Nevada State Prison Without the Possibility of Parole.

24

☒ Death.

25

26

DATED at Las Vegas, Nevada, this 24<sup>th</sup> day of October, 1996

27

28

Wendy L. Hill  
FOREPERSON

CEST

FILED IN OPEN COURT  
OCT 24 1996 19 2:27pm  
LORETTA BOWMAN, CLERK  
BY Lisa Hurd Deputy

DISTRICT COURT  
CLARK COUNTY, NEVADA

Case No. C131341  
Dept. No. VII  
Docket P

96

1 VER

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

THE STATE OF NEVADA,

Plaintiff,

-vs-

JAMES MONTELL CHAPPELL

Defendant.

FILED IN OPEN COURT  
OCT 24 1996 19 2:27pm  
LORETTA BOWMAN, CLERK  
BY Lura Hurd  
Deputy

DISTRICT COURT  
CLARK COUNTY, NEVADA

Case No. C131341  
Dept. No. VII  
Docket P

SPECIAL  
VERDICT

We, the Jury in the above entitled case, having found the Defendant, JAMES MONTELL CHAPPELL, Guilty of COUNT III - MURDER OF THE FIRST DEGREE, designate that the aggravating circumstance or circumstances which have been checked below have been established beyond a reasonable doubt.

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

///

///

6501



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

✓ The murder involved torture or depravity of mind.

DATED at Las Vegas, Nevada, this 24<sup>th</sup> day of October, 1996.

Wendy L. Hill  
FOREPERSON

97 1 VER

FILED IN OPEN COURT  
OCT 24 1996 19 2:27pm  
LORETTA BOWMAN, CLERK  
BY Lina Hurd  
Deputy

DISTRICT COURT  
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,  
9 Plaintiff,  
10 -vs-  
11 JAMES MONTELL CHAPPELL  
12  
13 Defendant.

Case No. C131341  
Dept. No. VII  
Docket P

SPECIAL  
VERDICT

17 We, the Jury in the above entitled case, having found the Defendant, JAMES MONTELL  
18 CHAPPELL, Guilty of COUNT III - MURDER OF THE FIRST DEGREE, designate that the mitigating  
19 circumstance or circumstances which have been checked below have been established.

- 20 ☐ The defendant has no significant history of prior criminal activity.
- 21 ☒ The murder was committed while the defendant was under the influence of extreme mental  
22 or emotional disturbance.
- 23 ☐ The victim was a participant in the defendant's criminal conduct or consented to the act.
- 24 ☐ The defendant was an accomplice in a murder committed by another person and his  
25 participation murder was relatively minor.
- 26 ☐ The defendant acted under duress or under the domination of another person.

6531

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

\_\_\_\_ The youth of the defendant at the time of the crime.

✓ Any other mitigating circumstances.

\_\_\_\_ No mitigating circumstances are found to exist.

DATED at Las Vegas, Nevada, this 24<sup>th</sup> day of October, 1996.

Wendy L. Hill  
FOREPERSON

# EXHIBIT 36

252

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

JURL

FILED

MAR 13 3 54 PM '07

DISTRICT COURT  
CLARK COUNTY, NEVADA

*Chaf Shaw*  
CLERK OF THE COURT

STATE OF NEVADA

Plaintiff(s),

-VS-

JAMES M. CHAPPELL

Defendant(s).

CASE NO. C131341

DEPT. NO. 3

JURY

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

ALTERNATES

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

# EXHIBIT 37

DISTRICT OFFICES

STATE OF NEVADA

BOB MILLER  
GOVERNOR

1301 CORDONE AVENUE  
RENO, NEVADA 89502  
(702) 688-1000

A. A. CAMPOS BUILDING  
215 E. BONANZA ROAD  
LAS VEGAS, NEVADA 89158  
(702) 486-3001

3920 E. IDAHO STREET  
ELKO, NEVADA 89801  
(702) 738-4088

119 E. LONG STREET  
CARSON CITY, NEVADA 89710  
(702) 687-5045



JAMES P. WELLER

DEPUTY ATTORNEY GENERAL

APR 24 2 46 PM '95

DEPARTMENT OF  
MOTOR VEHICLES AND PUBLIC SAFETY  
DIVISION OF PAROLE AND PROBATION

RICHARD E. WYETT, CHIEF  
CAPITOL COMPLEX

1445 HOT SPRINGS ROAD, NO. 104  
CARSON CITY, NEVADA 89710  
(702) 687-5040

NAME: JAMES CHAPPELL

DATE: 4-18-95

SS#: 373-80-2907

R/NR: R

CC#: C126882

SENTENCE DATE: 4-27-95

THE HON: SALLY L. LOEHRER

OFSE DATE: 2-18-95

J/DIS: 8TH DEPT: XV COUNTY: CLARK

ARREST DATE: 2-18-95

COUNSEL: DAVID GRAUMAN, DPD

INFORMATION DATE: 3-22-95

DIST ATTY: GERALD J. GARDNER, DDA

CONVICTED: 3-28-95, BY  
GUILTY PLEA

CO-DEF: NONE

OFFENSE/NRS: POSSESSION OF BURGLARY TOOLS (GM); NRS 205.080, 193.140: Not more than 1 year in the county jail or by a fine of not more than \$2,000, or by both fine and imprisonment.

PLEA NEGO: The State reserves the right to argue at rendition of sentence. The State will agree to dismiss charges of Burglary and Under the Influence of Controlled Substance after rendition of sentence.

ADD: 839 North Lamb #125, Las Vegas, Nevada  
89110

FBI#: 248 918 JA6

DOB: 12-27-69

AGE: 25

SID#: None listed

LVMPD#: 1212860

POB: Lansing, Michigan

RACE/SEX: BMA

HT/WT: 5'11"/200

HAIR/EYES: Black/Brown

ALIEN: N/A

TATTOOS/SCARS: None listed

ILLEGAL: N/A

REG#: N/A

COUNTRY: N/A

CUSTODY STATUS: In Custody,  
CCDC

THIS REPORT NOT TO BE REPRODUCED OR  
RELEASED WITHOUT THE AUTHORIZATION OF  
ST. OF NV. DEPT. OF PAROLE AND PROBATION  
RELEASED

Sent  
4/24

AA00898

JChappell11 CCPD0133

PRE-SENTENCE REPORT  
JAMES CHAPPELL  
CC#C126882

PAGE 2

AKA's: James Montel Chappell, James M. Chappell.

JAIL CREDIT: 68 Days Total 2-18-95 through 4-27-95 (CCDC)

---

PRIOR RECORD AS DETERMINED BY DIVISION OF PAROLE AND PROBATION

ARRESTS: 11

OUTSTANDING WARRANTS: 4

STATES: Nevada

CONVICTIONS:

FEL: 0

MISD: 5

JAIL: 3

PRISON: 0

PROBATION:

COMPL: 0

FAIL: 0

ACTIVE: 0

PAROLES:

COMPL: 0

FAIL: 0

ACTIVE: 0

CRIMINAL HISTORY:

Records of the Las Vegas Metropolitan Police Department and the National Crime Information Center reflect the following information:

ADULT:

ARREST DATE

OFFENSE

DISPOSITION

5-15-88

(Lansing, Michigan  
Police Department)

Motor Vehicle/Unlawful  
Driving Away (F)

11-12-88, Pled guilty  
to Motor  
Vehicle/Unlawful Use  
(M), 6 months jail.

1-20-95

(LVMPD)

Citation-Petty Larceny  
(M) FTA: 2-24-95

5 Days jail.

2-18-95

(LVMPD)

1. Burglary (F)  
2. Under the Influence  
of Controlled Substance  
(F)  
3. Possession of  
Burglary Tools (GM)

Instant offense  
CC#C126882, 3-28-95,  
pled guilty to  
Possession of Burglary  
Tools (GM), sentencing  
4-27-95 in Department  
XV.

Mr. Chappell currently has outstanding warrants from the City of Las Vegas for Battery Domestic Violence, Non Resident Privilege Suspended, Operate Unregistered Vehicle and No Proof of Insurance. The total bail on the warrants is \$4,420. The defendant has been convicted of the following misdemeanor offenses which were satisfied with small fines or short jail sentences: Domestic Violence/Assault (Reported by defendant), Narcotic Paraphernalia and Assault or Assault and Battery.

The defendant has also been arrested on the following charges for which no



JChappell CCPD0134

**PRE-SENTENCE REPORT**  
**JAMES CHAPPELL**  
**CC#C126882**

**PAGE 3**

prosecution was pursued or no disposition is noted: Possession of Narcotic Drug (2), Possession of Marijuana, Criminal Trespass (FTA), Possession of Narcotics For Sale, Under the Influence of Controlled Substance (FTA-1-9-95) and Failure to Use Seatbelt.

**OFFENSE REPORT:** Records of the Las Vegas Metropolitan Police Department and the Clark County District Attorney's Office reflect that the instant offense occurred substantially as follows:

On February 18, 1995 an officer of the Las Vegas Metropolitan Police Department responded to the K-Mart Store at 5050 Charleston regarding a suspect in custody for Petty Larceny. The officers spoke to the store security officers who reported that the defendant had been observed removing security packaging from items with pliers then putting cassette tapes and clothes under his own clothing. He then attempted to leave the store, walking past open cash registers without paying for the items. The security officers apprehended the defendant and placed him in custody while awaiting police officers. A search of the defendant recovered the cassettes, clothes, two pair of pliers, three screw drivers and a broken glass pipe commonly used for smoking cocaine. The store clerk reported that the pliers discovered in the defendant's possession were the same ones he had been observed using to remove packaging from the cassette tapes.

The officer asked the defendant if he entered the store with the intent of stealing the items and he responded "ya, something like that". While interviewing the defendant the officer observed that he was sweating profusely, clenching his teeth, slurring his speech, that his eyes were bloodshot and his eyelids were droopy. Based on these observations the officer asked the defendant when he had smoked cocaine last. The defendant responded "yesterday".

The defendant was placed under arrest, transported to the Clark County Detention Center and booked for Burglary, Under the Influence of Controlled Substance and Possession of Burglary Tools. While at the Clark County Detention Center the defendant consented to have blood drawn by the nurse on duty.

**DEFENDANT STATEMENT:** James Chappell was interviewed by the Division of Parole and Probation at the Clark County Detention Center and provided the attached written statement for the court's consideration. He said that he was "high" on cocaine and did not have any money to obtain more cocaine. An associate suggested he commit the instant offense in return for the drug. He said he went into the store and was placing the merchandise under his clothes when he was observed and then caught on the way out of the store. He said he only wants to get things resolved so he can get back to his girlfriend and their children. He said he now understands that his family is the most important thing to him and he cannot commit crime and be with his family.

**VICTIM INFORMATION:** All merchandise taken from the victim's store was returned to them at the time of the incident so no loss was suffered.

**SOCIAL HISTORY:**

The following social history is as related by the defendant and is unverified

JChappell1 CCPCD0135

PRE-SENTENCE REPORT  
JAMES CHAPPELL  
CC#C126882

PAGE 4

unless otherwise noted.

**Significant Family Information: (Yes)** The defendant reported that his father abandoned the family while he was an infant and his mother was shot and killed by a police officer when he was about 2 years old. He was then raised by his maternal grandmother who provided a good family life. He was unable to provide any details as to the death of his mother.

**Marital Status:** The defendant has been living in a common-law relationship with the same woman for 9 years now.

**Number of Children:** 3

**Child Support: (No)**                      **Amount:** 0                      **Current:** N/A

**Significant Health Information: (No)**

**Significant Mental Health Information: (No)**

**Alcohol Abuse: (Yes)** The defendant reported he was arrested when he was 17 for Minor in Possession of Alcohol. He reported that he now consumes alcohol in moderation; drinking one 40 ounce beer 3 times per week.

**Controlled Substance Use: (Yes)** Mr. Chappell has been arrested several times for drug related offenses and admits he was under the influence of controlled substances at the time of the instant offense. He said he is not addicted to any drug and plans to remain drug free when released from custody. He has never been involved in any form of substance abuse counseling.

**Education:** The defendant left high school after completing the 10th grade in 1987 at Sexton High School in Lansing, Michigan. He has not completed any formal educational or vocational programs since that time.

**Military: (No)**                      **Branch/Discharge:** N/A

**Residential: (STABLE)**                      **Time in Community:** 4 months.

**Present Employer: (UNEMPLOYED)**

**Previous Employment:** Mr. Chappell reported that he was employed by Ethel M Chocolates from November 1994 through January 1995. Before that he was employed by Pizza Hut in Tucson, Arizona for 5 or 6 months and by Bob's Big Boy for 6 or 7 months.

**Income:** 0                      **Additional Sources:** The defendant is supported primarily by his girlfriend.

**Financial Assets:** None listed.                      **Debts:** None listed.

**Community Supervision Plan:** Mr. Chappell reported that if he is granted the privilege of probation he will continue to reside at 839 North Lamb #125, Las Vegas, Nevada with his girlfriend and their 3 children. He plans to seek full-time employment so he can afford to get married, purchase a home and get a car. He said he plans to stay drug free, get his life together and take

JChappell11 CCPD0136

PRE-SENTENCE REPORT  
JAMES CHAPPELL  
CC#C126882

PAGE 5

care of his family.

**EVALUATION:** Before the Court for rendition of sentence is the defendant, JAMES CHAPPELL, who has entered a plea of guilty to the gross misdemeanor offense of Possession of Burglary Tools.

Mr. Chappell has been arrested 11 times in the past, sustaining at least 5 misdemeanor convictions. The instant offense is the defendant's most serious involvement with law enforcement to date. His criminal history is primarily made up of theft, battery, and drug related offenses with the conviction in the instant offense resulting from his attempting to steal merchandise to procure cocaine. He admits that he was under the influence of cocaine at the time of the instant offense but claims he does not have a substance abuse problem.

Mr. Chappell was raised in Michigan by his maternal grandmother when his father abandoned the family after the death of the defendant's mother. He failed to complete high school and has not received any educational or vocational training since that time. His work history is sporadic; he has only held three jobs in the last 2 years with the longest term of employment lasting 6 months. Mr. Chappell is unmarried but has been living in a common-law relationship with the same woman for 9 years. He has fathered 3 children from that union.

The defendant appears to be a borderline candidate for successful completion of a period of community supervision, however the added structure imposed upon his life by the conditions of probation could permit the defendant to become a productive member of the community. Therefore, the following recommendation is respectfully submitted for the Court's consideration.

JChappell CCPD0137

PRE-SENTENCE REPORT  
JAMES CHAPPELL  
CC#C126882

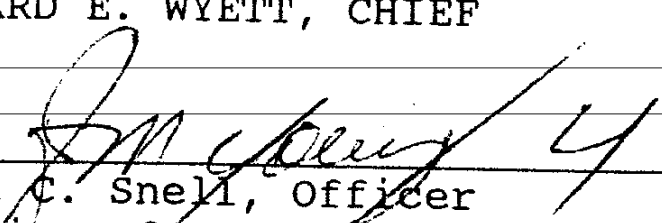
PAGE 6

**RECOMMENDATION:** In addition to the \$25 administrative assessment, it is recommended by the Division of Parole and Probation that the defendant, JAMES CHAPPELL, be sentenced to a term of NINE (9) months in the Clark County Detention Center, such sentence be suspended and the defendant placed on an indeterminate period of probation not to exceed TWO (2) years, under the following special conditions:

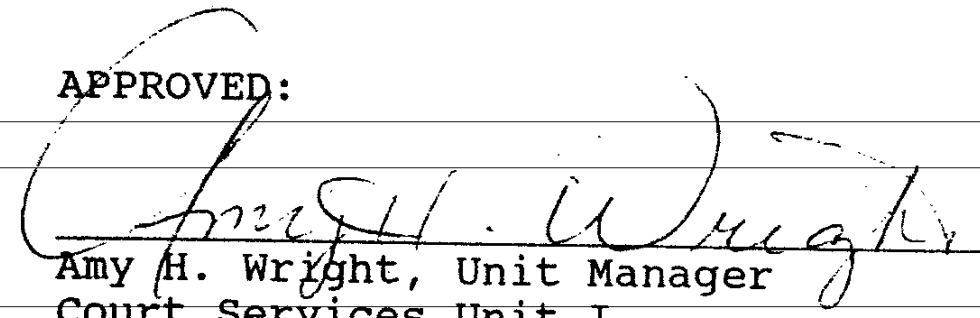
1. That the defendant submit to a search of person, residence, vehicle or any property under the defendant's control, at any time deemed necessary by any probation officer for the detection of controlled substances and stolen property.
2. That the defendant enter and complete a substance abuse counseling program, as deemed necessary by the Division of Parole and Probation.
3. That the defendant participate in an adult education program, for a GED, as deemed necessary by the Division of Parole and Probation.
4. That the defendant complete 40 hours of community service work within the first 12 months of probation.
5. That the defendant participate in vocational programming, as deemed necessary by the Division of Parole and Probation.

Respectfully submitted,

RICHARD E. WYETT, CHIEF

By   
Bruce C. Snell, Officer  
Division of Parole and Probation  
District IV, Las Vegas, Nevada

APPROVED:

  
Amy H. Wright, Unit Manager  
Court Services Unit I

BCS/rh  
FY95-3820

AA00903

# EXHIBIT 38

## DISTRICT OFFICES

## STATE OF NEVADA

BOB MILLER  
GOVERNORJAMES P. WELLER  
DIRECTOR1301 CORDONE AVENUE  
RENO, NEVADA 89502  
(702) 688-1000A. A. CAMPOS BUILDING  
215 E. BONANZA ROAD  
LAS VEGAS, NEVADA 89101  
(702) 486-30013920 E. IDAHO STREET  
ELKO, NEVADA 89801  
(702) 738-4088119 E. LONG STREET  
CARSON CITY, NEVADA 89706  
(702) 687-5045DEPARTMENT OF  
MOTOR VEHICLES AND PUBLIC SAFETY  
DIVISION OF PAROLE AND PROBATIONRICHARD E. WYETT, CHIEF  
1445 HOT SPRINGS ROAD, NO. 104  
CARSON CITY, NEVADA 89711  
(702) 687-5040

NAME: JAMES MONTELL CHAPPELL

DATE: 12-5-96

SS#: 373-80-2907

R/NR: R

CC#: C131341

SENTENCE DATE: 12-11-96

THE HON: A. WILLIAM MAUPIN

OFSE DATE: 8-31-95

J/DIS: 8TH DEPT: VII COUNTY: CLARK

ARREST DATE: 9-1-95

COUNSEL: HOWARD S. BROOKS, DPD

INFORMATION DATE: 10-11-95

DIST ATTY: MELVIN T. HARMON, CHIEF DDA

CONVICTED: 10-16-96, BY  
JURY TRIAL

CO-DEF: NONE

OFFENSE/NRS: COUNT I - BURGLARY (CATEGORY B FELONY)(F); NRS 205.060: By imprisonment in the Nevada Department of Prisons for a minimum term of not less than 1 year and a maximum term of not more than 10 years, and by a fine of not more than \$10,000.

COUNT II - ROBBERY WITH USE OF A DEADLY WEAPON (CATEGORY A FELONY); NRS 200.380, 193.165: By imprisonment in the Nevada Department of Prisons for a minimum term of not less than 2 years and a maximum term of not more than 15 years, plus an equal and consecutive term for Use of a Deadly Weapon.

COUNT III - FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON (F); NRS 200.010, 200.030, 193.165: Shall be punished by Death, only if one or more aggravating circumstances are found and if any mitigating circumstances which are found do not outweigh the aggravating circumstances. Otherwise, by imprisonment in the Nevada Department of Prisons for Life With or Without the Possibility of Parole. If the penalty is fixed at Life with the Possibility of Parole, eligibility for parole begins when a minimum of 20 years have been served or a definite term of 50 years with eligibility for parole after 20 years has been served, plus an equal and consecutive sentence for Use of a Deadly Weapon.

PLEA NEGOTIATION: None

ADD: None

FBI#: 284 918 JA6

DOB: 12-27-69

AGE: 26

SID#: NV01780406

THIS REPORT NOT TO BE REPRODUCED OR  
RELEASED WITHOUT THE AUTHORIZATION OF  
ST. OF NV. DEPT. OF PAROLE AND PROBATION  
RELEASED TO: \_\_\_\_\_

LVMPD#: 1212860

JChappell CORA008852

POB: Lansing, Michigan

RACE/SEX: BMA

HT/WT: 6'0"/200 (Scope reflects: 5'11/180)

HAIR/EYES: Black/Brown

ALIEN: N/A

TATTOOS/SCARS: None listed

ILLEGAL: N/A

REG#: N/A

COUNTRY: N/A

CUSTODY STATUS: In Custody,  
CCDC

AKA's: James Montel Chappell, James M. Chappell  
Nickname: "Jimbo"

JAIL CREDIT: 173 DAYS 09-01-95 thru 06-20-96 (CCDC) 293 days  
(Credited to CC#C126882)  
06-21-96 thru 12-11-96 (CCDC) 173 days

---

**PRIOR RECORD AS DETERMINED BY DIVISION OF PAROLE AND PROBATION**

ARRESTS: 17

OUTSTANDING WARRANTS: 0

STATES: N/A

CONVICTIONS:

FEL: 0

MISD: 6

JAIL: 5

PRISON: 0

PROBATION:

COMPL: 1

FAIL: 1

ACTIVE: 0

PAROLES:

COMPL: 0

FAIL: 0

ACTIVE: 0

**CRIMINAL HISTORY:**

Records of the Las Vegas Metropolitan Police Department, the Division of Parole and Probation, and the National Crime Information Center reflect the following information:

**ADULT:**

**ARREST DATE**

**OFFENSE**

**DISPOSITION**

5-15-88  
(Lansing, MI PD)

Motor Vehicle/Unlawful  
Driving Away (F)

11-12-88, pled guilty to  
Motor Vehicle/Unlawful  
Use (M), 6 months jail.

8-18-88  
(Lansing, MI PD)

Assault Excluding Sexual  
(F)

9-20-88, found guilty of  
Assault or Assault and  
Battery (M). \$150 fine  
and 15 days jail.

JChappell CORA008853

PRE-SENTENCE REPORT

JAMES MONTELL CHAPPELL

CC# C131341

PAGE 3

2-23-94 (Tucson, AZ PD)	1. Domestic Violence/ Assault (M) 2. Contempt of Court (M) (2 counts)	Convicted of Assault (M). Sentenced to \$2,500 fine and 180 days jail, suspended 1 year Pima County probation.
1-20-95 (LVMPD)	Citation-Petty Larceny (M) FTA: 2-24-95	5 Days jail.
2-18-95 (LVMPD)	1. Burglary (F) 2. Under the Influence of Controlled Substance (F) FTA: 6-26-95 3. Possession of Burglary Tools (GM) REMAND: 2-27-95 (The defendant was arrested with cassettes, clothes, pliers and screw drivers after removing security packaging from merchandise in store and leaving without paying for the items.)	1. Dismissed. 2. Case #95F03944X: Amended to ITS Drugs (M). \$500 fine. 3. CC#C126882: Pled guilty to Possession of Burglary Tools (GM). 4-27-95, sentenced to 1 year CCDC, suspended, probation not to exceed 2 years. Arrested 6-27-95 for probation violation. 8-1-95, reinstated to probation. 9-2-95, rebooked for probation violation. 10- 26-95, probation revoked. 6-20-96, expired sentence in custody.
9-1-95 (LVMPD)	1. Murder (F) 2. Grand Larceny Auto (F) REMAND: 10-4-95	Instant offense, CC#C131341: 10-16-96, convicted by Jury Trial of Count I-Burglary (F), Count II-Robbery with Use of a Deadly Weapon (F), and Count III-First Degree Murder with Use of a Deadly (F). Rendition of sentence 12-11-96, Dept. VII.

Additionally the defendant was arrested or cited for the following offenses for which no prosecution was noted, prosecution was not pursued, or charges were dismissed: Possession of Narcotic Drug (2), Possession of Marijuana, Criminal Trespass, Narcotic Paraphernalia (2); Possession of Narcotics For Sale, Under the Influence of Controlled Substance; FTA-traffic related offenses (16); Battery Domestic Violence (2); Petty Larceny (2); FTA-Battery Domestic Violence; FTA-Petty Larceny; FTA-Possession of Narcotic Paraphernalia; and FTA-Under the Influence of Controlled Substance.



JChappell  
CORADO08854

**PRE-SENTENCE REPORT**  
**JAMES MONTELL CHAPPELL**  
**CC# C131341**

**PAGE 4**

**PROBATION ADJUSTMENT:** On April 27, 1996, James Chappell was convicted of the gross misdemeanor offense of Possession of Burglary Tools and sentenced to one year in the Clark County Detention Center. That sentence was suspended and he was placed on probation for an indeterminate period not to exceed three years with special conditions including substance abuse counseling, obtain a G.E.D., complete a vocational program and maintain steady employment. Mr. Chappell was then released from custody on May 10, 1995, to begin his probation. On May 29, 1995, he was cited by the Las Vegas Metropolitan Police Department for Possession of Narcotics Paraphernalia and Petty Larceny. On June 1, 1995, he was arrested for Battery Domestic Violence and placed in custody at the Clark County Detention Center. A Probation Violation Report was submitted and Mr. Chappell was returned to Court for a revocation hearing. On August 1, 1995, he was reinstated to probation and ordered to complete an in-patient substance abuse counseling program. On August 31, 1995, he was released from custody and ordered to report to the EOB for an eligibility interview and admission into their program. He failed to report to the EOB and on September 1, 1995, he was arrested for the instant offense.

**OFFENSE REPORT:** Records of the Las Vegas Metropolitan Police Department and the Clark County District Attorney's Office reflect that the instant offense occurred substantially as follows:

On August 31, 1995, a friend of the victim contacted the Las Vegas Metropolitan Police Department and advised them that she believed something might be wrong with the victim. She stated that she arrived at the victim's house and observed the defendant, James Chappell, driving from the area in the victim's car. She stated that she was concerned because the victim had a Protective Order stopping the defendant from coming to her house. She also stated that she knew the victim had forbidden the defendant from driving her car.

Efforts to contact the victim were unsuccessful either by telephone or by knocking on the door, so an officer of the Las Vegas Metropolitan Police Department entered the victim's house through a window to conduct a welfare check. He found the victim on the floor in the living room, apparently deceased. The officer then called the Fire Rescue Unit and Homicide Detectives.

Detectives observed that the point of entry into the mobile home appeared to be the master bedroom window as all other doors were locked and all windows were closed. The officers found the body of the victim laying on her back on the floor of the living room. There was a large amount of blood around her upper chest and face and numerous abrasions and contusions on her chin and around her eyes and cheekbones. She had multiple stab wounds to the neck, upper chest and pelvis area. Near the body, the officer found a steak knife believed to have been used to stab the victim. An autopsy later revealed that the victim had received 13 stab wounds, two to the pelvis and abdomen, and 11 to the chest and neck. The cause of death was listed as multiple stab wounds and was considered a homicide.

JChappell  
CORADO08855

**PRE-SENTENCE REPORT**  
**JAMES MONTELL CHAPPELL**  
**CC# C131341**

**PAGE 5**

On September 1, 1995, an officer of the Las Vegas Metropolitan Police Department was dispatched to the Lucky's supermarket at Lamb and Bonanza regarding a shoplifting incident. When the officer arrived, he observed the defendant who had been detained after attempting to shoplift several items. The defendant identified himself as Ivri Marrell, but the officer doubted that this was his true name and contacted a supervisor. It was then learned that the suspect matched the description of James Chappell who was wanted regarding the above murder. When the detectives arrived, they were able to identify the suspect as the defendant from his mug shots. The detectives then interviewed Mr. Chappell and observed two puncture wounds on his hand which were consistent with the wounds inflicted in the murder. Store security officers advised that the defendant had a set of keys, one of which belonged to a Toyota. When the detectives asked where the car was, Mr. Chappell said, "I parked it in back of the apartments across the street." The detectives subsequently found the victim's vehicle parked on the grass behind an apartment complex at 507 North Lamb. Witnesses stated that they had observed the defendant park the vehicle at that location on August 31, 1995. The defendant was placed under arrest and transported to the Clark County Detention Center where he was booked accordingly.

**DEFENDANT STATEMENT:** James Chappell was interviewed by the Division of Parole and Probation at the Clark County Detention Center on December 4, 1996, and provided the attached written statement for the court's consideration. He declined to discuss the instant offense.

**VICTIM INFORMATION:** The victim was a 26 year old female, leaving behind three children. Her mother was interviewed as the next of kin. She stated that there is no way to express the grief, it is a "grief you live with every day". She lost her only child and is now raising her three grandchildren. She said, "I can't forgive the Court's for letting him out." When the victim "finally got up the nerve after years and years" of abuse, he was let out and "goes and does this. The SOB does not deserve to live". Living with the loss is a "very, very hard thing, her voice is in your mind" all the time. It is difficult hearing her three children, especially the four year old, talk about their "Mommy being in heaven". The defendant didn't have to do this, he could have gone back to his stealing and using drugs, he didn't have to kill her. He was arrested many times, even in Tucson, for violence to her. The Court's just slapped his hand and told him to get counseling. He just laughed and kept on doing what he wanted to do. When asked about financial costs, the victim's mother stated that the cost was \$11,434.90 due to the need to transport the body to Michigan for the funeral.

The victim's mother stated that she will be in Court at the defendant's sentencing but will probably not speak as this is still too hard for her.

**RESTITUTION:** \$11,434.90 to the victim's mother

JChappell  
CORR008856

**PRE-SENTENCE REPORT**

**JAMES MONTELL CHAPPELL**

**CC# C131341**

**PAGE 6**

**SOCIAL HISTORY:**

**The following social history is as related by the defendant and is unverified unless otherwise noted.**

**Significant Family Information: (Yes)** The defendant reported that his father abandoned the family while he was an infant and his mother was killed by a police officer when he was about 2 years old. He was then raised by his maternal grandmother who provided a good family life.

**Marital Status:** The defendant lived in a common-law relationship with the victim of the instant offense before his arrest.

**Number of Children:** 3 - James Panos, age 8; Anthony Panos, age 6; and Chantal Panos, age 4; all in the custody of their maternal grandmother in Tucson, Arizona.

**Child Support: (No) Amount: 0 Current: N/A**

**Significant Health Information: (No)**

**Significant Mental Health Information: (Yes)** Mr. Chappell reported that he attended domestic violence counseling on a weekly basis for about five months in Tucson, Arizona, in 1992.

**Alcohol Abuse: (Yes)** The defendant reported that began using alcohol when he was about 13 years old and was arrested for Minor in Possession of Alcohol at age 17. He said before his arrest he would consume a 40 ounce beer about 3 times per week.

**Controlled Substance Use: (Yes)** Mr. Chappell began using marijuana when he was 12 or 13 years old. He started using cocaine at about age 18 and became very heavily involved in the use of that drug in subsequent years. He has been arrested several times for drug related offenses and had a drug problem at the time of the instant offense. He said he was not high at the time he committed the instant offense but smoked cocaine later that day. He has never been involved in any substance abuse counseling.

**Education:** The defendant left high school after completing the 10th grade in 1987 at Sexton High School in Lansing, Michigan. He has not completed any formal educational or vocational programs since that time.

**Military: (No) Branch/Discharge: N/A**

**Residential: (STABLE) Time in Community: 2 years**

**Present Employer: (UNEMPLOYED)**

**Previous Employment:** Mr. Chappell reported that he was employed by Ethel M Chocolates from November 1994 through January 1995. Before that he was employed by Pizza Hut in Tucson, Arizona for 5 or 6 months and by Bob's Big Boy for 6 or 7 months.

**Income: 0 Additional Sources: None listed**

JChappell  
CORAD008857

**PRE-SENTENCE REPORT**  
**JAMES MONTELL CHAPPELL**  
**CC# C131341**

**PAGE 7**

**Income:** 0      **Additional Sources:** None listed

**Financial Assets:** None listed.      **Debts:** None listed.

**Community Supervision Plan:** Mr. Chappell advised that he is aware that he will not receive probation for the instant offense and has, therefore, made no plans for community supervision.

**EVALUATION:** Before the Court for rendition of sentence is the defendant, JAMES MONTELL CHAPPELL, who has entered a plea of guilty to the felony offense of Count I-Burglary, Count II-Robbery with Use of a Deadly Weapon, and Count III-First Degree Murder with Use of a Deadly Weapon.

Mr. Chappell has been arrested at least 17 times in the past, sustaining at least 6 misdemeanor convictions, including a gross misdemeanor conviction for Possession of Burglary Tools for which he was on probation at time of the instant offense. His previous criminal history consists of domestic batteries, theft, and drug related offenses. He admitted that he was addicted to cocaine at the time of the instant offense which occurred when he violently killed his common-law wife by stabbing her 13 times during a domestic dispute less than one day after he was released from custody after being arrested for a previous domestic battery.

Mr. Chappell was raised in Michigan by his maternal grandmother when his father abandoned the family after the death of the defendant's mother. He failed to complete high school and has not received any educational or vocational training since that time. His work history is sporadic; he has only held three jobs in the two years prior to his arrest on the instant offense. Mr. Chappell was unmarried but in a common-law relationship with the victim of this offense for nine years. He has fathered 3 children from that union.

Mr. Chappell would not be appropriate for community supervision even if that was a possibility, which it is not. He violently murdered his common-law wife in a domestic dispute. He battered this woman repeatedly for several years and when she finally attempted to make him stop by complaining to the police and obtaining a Protective Order, he went to her house, entered through a bedroom window, and killed her with a steak knife. The Jury decision of a Death penalty appears completely appropriate for a crime of this brutality. Therefore, the following recommendation is respectfully submitted for the Court's consideration.

J  
C  
H  
A  
P  
P  
E  
L  
L  
C  
O  
R  
A  
O  
O  
8  
5

PRE-SENTENCE REPORT

JAMES MONTELL CHAPPELL

CC# C131341

PAGE 8

**RECOMMENDATION:** In addition to the \$25 Administrative Assessment, it is the recommendation of the Division of Parole and Probation that the defendant, JAMES MONTELL CHAPPELL, be sentenced as follows:

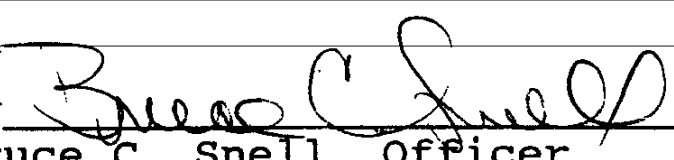
Count I - To be sentenced to a maximum term of ONE HUNDRED AND TWENTY (120) months in the Nevada Department of Prisons, with the minimum parole eligibility of FORTY-EIGHT (48) months.

Count II - To be sentenced to a maximum term of ONE HUNDRED AND EIGHTY (180) months in the Nevada Department of Prisons, with the minimum parole eligibility of SEVENTY-TWO (72) months, plus an equal and consecutive sentence for Use of a Deadly Weapon, Count II to run consecutive to Count I.

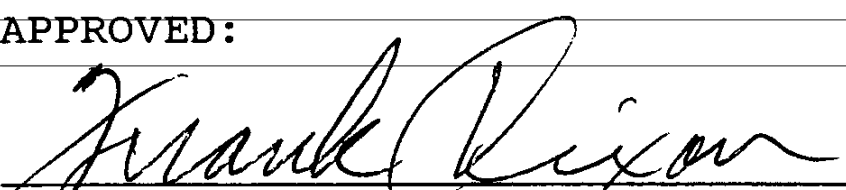
Count III - To be sentenced to a sentence DEATH in the Nevada Department of Prisons, plus an equal and consecutive sentence for Use of a Deadly Weapon, Count III to run concurrent with Counts I and II.

Respectfully submitted,

RICHARD E. WYETT, CHIEF

By   
Bruce C. Snell, Officer  
Division of Parole and Probation  
District IV, Las Vegas, Nevada

APPROVED:

  
Frank Dixon, Unit Manager  
Court Services Unit IV

BCS/mbs  
FY97-1774

# EXHIBIT 39

1 VER

3<sup>30</sup> PM FILED IN OPEN COURT  
March 21 2007

CHARLES J. SHORT  
CLERK OF THE COURT

BY Carol Green DEPUTY

DISTRICT COURT  
CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,

8 Plaintiff,

9 -vs-

10 JAMES MONTELL CHAPPELL,

11 Defendant.

Case No. C131341

Dept No. III

14 SPECIAL VERDICT

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

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

24 DATED this 21 day of March, 2007.

26 [Signature]  
FOREPERSON

911

256

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

VER

3<sup>30</sup> PM FILED IN OPEN COURT  
March 21 2007

CHARLES J. SHORT  
CLERK OF THE COURT

DISTRICT COURT BY  
CLARK COUNTY, NEVADA

Carol Green  
DEPUTY

THE STATE OF NEVADA,

Plaintiff,

-vs-

JAMES MONTELL CHAPPELL,

Defendant.

Case No. C131341

Dept No. III

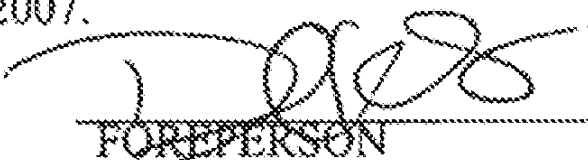
SPECIAL VERDICT

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

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

\_\_\_\_\_ The mitigating circumstances DO outweigh the aggravating circumstance

DATED this 21 day of March, 2007.

  
FOREPERSON



1 VER

3:30pm  
FILED IN OPEN COURT  
March 21 2007

DISTRICT COURT  
CLARK COUNTY, NEVADA  
CHARLES J. SHOFF  
CLERK OF THE COURT  
Carol Green  
DEPUTY

7 THE STATE OF NEVADA,

8 Plaintiff,

9 -vs-

10 JAMES MONTELL CHAPPELL,

11 Defendant.

Case No. C131341

Dept No. III


14 SPECIAL VERDICT

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

- 20 1. James Chappell suffered from substance abuse
- 21 2. James Chappell has had no father figure in
- 22 his life.
- 23 3. James Chappell was raised in an abusive
- 24 household.
- 25 4. James Chappell was the victim of physical
- 26 abusive as a child.
- 27 5. James Chappell was born to a drug/alcohol
- 28

1 addicted mother.  
2 6. James Chappell suffered a learning disability.  
3 7. James Chappell was raised in a depressed  
4 housing area.  
5  
6  
7

8 DATED this 21 day of March, 2007.

9  
10   
11 FOREPERSON  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

258  
JChappell CORA004087

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

VER

3134pm  
CLERK OF OPEN COURT  
March 21 2007  
CHARLES J. SHORT  
CLERK OF THE COURT  
BY Carol Green  
DEPUTY

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,

-vs-

JAMES MONTELL CHAPPELL,  
Defendant.

Case No. C131341  
Dept No. III

VERDICT

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

- ☒ Death
- ☐ Life in Nevada State Prison Without the Possibility of Parole
- ☐ Life in Nevada State Prison With the Possibility of Parole
- ☐ A definite term of 100 years imprisonment, with eligibility for parole beginning  
when a minimum of 40 years has been served

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

[Signature]  
FOREPERSON

JUDGMENT ENTERED

MAR 21 2007 9:11

# EXHIBIT 40

259

1 INST

2

3 DISTRICT COURT

4 CLARK COUNTY, NEVADA

5 THE STATE OF NEVADA,

6 Plaintiff,

7 -vs-

8 JAMES MONTELL CHAPPELL,

9 Defendant.

10

11

12 INSTRUCTIONS TO THE JURY

13 (INSTRUCTION NO. 1)

14 MEMBERS OF THE JURY:

15 It is now my duty as judge to instruct you in the law that applies to this penalty

16 hearing. It is your duty as jurors to follow these instructions and to apply the rules of law to

17 the facts as you find them from the evidence.

18 You must not be concerned with the wisdom of any rule of law stated in these

19 instructions. Regardless of any opinion you may have as to what the law ought to be, it

20 would be a violation of your oath to base a verdict upon any other view of the law than that

21 given in the instructions of the Court.

22

23

24

25

26

27

28

FILED IN OPEN COURT  
3:30pm March 21 2007  
CHARLES J. SHORT  
CLERK OF THE COURT  
Case No. C13-1341 DEPUTY  
Dept No. III

115

INSTRUCTION NO. 2

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

INSTRUCTION NO. 3

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

Hearsay is admissible in a penalty hearing.

INSTRUCTION NO.: 4

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

The jury shall fix the punishment at:

1. A definite term of 100 years imprisonment, with eligibility for parole beginning when a minimum of 40 years has been served;

2. Life imprisonment with eligibility for parole beginning when a minimum of forty years has been served;

3. Life imprisonment without the possibility of parole; or

4. Death.



INSTRUCTION NO.: 5

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

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

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

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

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

It shall be your duty to determine:

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

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

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

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

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

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

INSTRUCTION NO. 7

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

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

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

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

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

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

INSTRUCTION NO. 9

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

INSTRUCTION NO. 10

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

INSTRUCTION NO. 11

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

INSTRUCTION NO.: 12

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

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

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



1  
2 In determining whether mitigating circumstances exist, jurors have an obligation to  
3 make an independent and objective analysis of all the relevant evidence. Arguments of  
4 counsel or a party do not relieve jurors of this responsibility. Jurors must consider the totality  
5 of the circumstances of the crime and the defendant, as established by the evidence presented  
6 in the guilt and penalty phases of the trial. Neither the prosecution's nor the defendant's  
7 insistence on the existence or nonexistence of mitigating circumstances is binding upon the  
8 jurors.  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

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

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

INSTRUCTION NO. 15

A reasonable doubt is one based on reason. It is not mere possible doubt, but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or speculation.

INSTRUCTION NO.: 16

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

1  
2 In deciding on an appropriate sentence for the defendant, you will consider three  
3 types of evidence: evidence relevant to the existence of aggravating circumstances, evidence  
4 relevant to the existence of mitigating circumstances, and other evidence presented against  
5 the defendant. You must consider each type of evidence for its appropriate purposes.

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

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

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

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

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

INSTRUCTION NO. 18

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

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

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

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



INSTRUCTION NO. 21

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

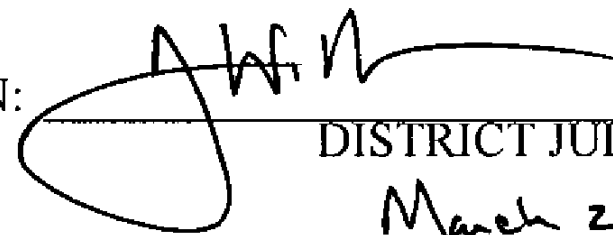
INSTRUCTION NO. 22

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

INSTRUCTION NO. 23

Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence as you understand it and remember it to be and by the law as given to you in these instructions, with the sole, fixed and steadfast purpose of doing equal and exact justice between the Defendant and the State of Nevada.

GIVEN:



DISTRICT JUDGE

March 20, 2007

# EXHIBIT 41

83

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

VER

FILED IN OPEN COURT  
OCT 16 1996 19 3:35pm  
LORETTA BOWMAN, CLERK  
BY [Signature]  
Deputy

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JAMES MONTELL CHAPPELL,

Defendant(s).

Case No.  
Dept. No.  
Docket

C/31341  
~~C131240~~  
VII  
P

VERDICT

We, the jury in the above entitled case, find the defendant JAMES MONTELL CHAPPELL,  
Guilty of COUNT I - BURGLARY.

DATED this 16 day of October, 1996.

Wendy L. Hill  
FOREPERSON

CEST

84

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

VER

FILED IN OPEN COURT  
OCT 1 6 1996 19 3:35 pm  
LORETTA BOWMAN, CLERK  
BY [Signature]  
Deputy

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JAMES MONTELL CHAPPELL,

Defendant(s).

Case No.  
Dept. No.  
Docket

C13134/  
~~C131240~~  
VII  
P

VERDICT

We, the jury in the above entitled case, find the defendant JAMES MONTELL CHAPPELL,  
Guilty of COUNT II - ROBBERY WITH USE OF A DEADLY WEAPON.

DATED this 16 day of October, 1996.

Wendy L. Hill  
FOREPERSON

SE31

85

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

VER

FILED IN OPEN COURT  
OCT 16 1996 19 3:35 pm  
LORETTA BOWMAN, CLERK  
BY Tina Hurd  
Deputy

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JAMES MONTELL CHAPPELL,

Defendant(s).

Case No.  
Dept. No.  
Docket

9131341  
C131240  
VII  
P

VERDICT

We, the jury in the above entitled case, find the defendant JAMES MONTELL CHAPPELL,  
Guilty of COUNT III - MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY  
WEAPON.

DATED this 16 day of October, 1996.

Wendy L. Hill  
FOREPERSON

0231

# EXHIBIT 42



216

ORIGINAL

FILED

2006 SEP 20 P 2:06

*[Signature]*  
CLERK

1 0001  
2 DAVID M. SCHIECK  
3 SPECIAL PUBLIC DEFENDER  
4 Nevada Bar No. 0824  
5 CLARK W. PATRICK  
6 Deputy Special Public Defender  
7 Nevada Bar No. 9451  
8 330 S. Third St., Ste. 800  
9 Las Vegas NV 89155-2316  
10 (702)455-6265  
11 Attorneys for Defendant

DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*

11 THE STATE OF NEVADA,  
12 Plaintiff,

13 vs.

14 JAMES CHAPPELL,  
15 Defendant.

CASE NO. C 131341  
DEPT. NO. XVII

DATE: N/A  
TIME: N/A

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

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

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

27  
28

RECEIVED  
SEP 20 2006  
COUNTY CLERK

SPECIAL PUBLIC  
DEFENDER  
CLARK COUNTY  
NEVADA

1 **NOTICE OF MOTION**

2 TO: The State of Nevada, Plaintiff; and

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

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

7 **POINTS AND AUTHORITIES**

8 STATEMENT OF THE CASE

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

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

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

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

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

6 The Court goes on further to state:

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

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

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

#### 17 STATEMENT OF FACTS

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

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

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

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

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

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

## 21 ARGUMENT

### 22 A.

#### 23 MOTION TO STRIKE SEXUAL ASSAULT AGGRAVATOR OF THE 24 STATE'S NOTICE OF INTENT TO SEEK THE DEATH PENALTY

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

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

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

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

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

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

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

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

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

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

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

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

16 NRS 200.366 defines sexual assault as:

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

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

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

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

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

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

14 **B.**

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

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

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

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

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

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

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

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

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



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

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

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

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

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

3  
4 **CONCLUSION**

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

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

20 DATED this 20 day of September, 2006.

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

25 

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

12/30

FILED

OCT 11 1 46 PM '95

*Patricia Johnson*

CLERK

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

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

DISTRICT COURT

CLARK COUNTY, NEVADA

131341

9 THE STATE OF NEVADA,  
10 Plaintiff,  
11 -vs-  
12 JAMES MONTELL CHAPPELL,  
13 #1212860  
14 Defendant.

CASE NO. ~~4131240~~  
DEPT. NO. VII  
DOCKET NO. P

INFORMATION

16 STATE OF NEVADA )  
17 ) ss:  
18 COUNTY OF CLARK )

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

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



CE11

CE31  
CE31  
CE31

EXHIBIT 1

000038

1 COUNT I - BURGLARY

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


7 COUNT II - ROBBERY WITH USE OF A DEADLY WEAPON

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

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

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

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

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

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

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

1 LEAVER, BILL  
LVMPD #759  
2 CRIME LAB  
3 LEE, RUSSELL  
LVMPD #3290  
4 FSD  
5 MANCHO, MICHELLE  
G.E., 4440 E. TROPICANA  
6 LAS VEGAS, NV  
7 MARTINEZ, LAWRENCE  
12345 MONTE VISTA ST.  
8 CHINO, CA  
9 MASTON, M.  
LVMPD #2112  
10 FSD  
11 MORRIS, K.  
1704 PINTO LN - CORONER  
12 LAS VEGAS, NV  
13 MUNSON, MAYNARD  
ADDRESS UNKNOWN  
14 TUCSON, AZ  
15 ORTIZ,  
LV FIRE DEPT.  
16 RESCUE 8  
17 OSUCH, PAUL  
LVMPD #2141  
18 FSD  
19 PANOS, JAMES  
2041 S. DIAMOND BAR LN  
20 TUCSON, AZ  
21 PENFIELD, NORMA  
2041 S. DIAMOND BAR LN  
22 TUCSON, AZ  
23 PERKINS, M.  
LVMPD #4242  
24 CRIME LAB  
25 PETERSON, D.  
LVMPD #4034  
26 CRIME LAB  
27 POLLARD, MIKE  
G.E., 4440 E. TROPICANA  
28 LAS VEGAS, NV

RAMOS, PHIL  
LVMPD #799  
HOMICIDE

REES, R.  
LVMPD #2332  
CRIME LAB

SEMPSON, KIMBERLY  
2210 CARLISLE CIR.  
LA HABRA, CA

SHADLER, M.  
BUNKER BROTHERS  
LAS VEGAS, NV

SMITH, LATRONA SHERELLE  
3301 CIVIC CENTER #9B  
NORTH LAS VEGAS, NV 89030

SMITH, CHARMAINE  
PAROLE & PROBATION  
LAS VEGAS, NV

SPOOR, MONTE  
LVMPD #3856  
CRIME LAB

STALLINGS, JOHN  
1704 PINTO LN - CORONER  
LAS VEGAS, NV

TOWNSEND, K.  
NV DIV OF INVESTIGATION #259  
LAS VEGAS, NV

TURNER, DEBORAH  
507 N. LAMB #6  
LAS VEGAS, NV

VACCARO, JIMMY  
LVMPD #1480  
HOMICIDE

WASHINGTON, M.  
LVMPD #4725  
CRIME LAB

WILKINSON, WENDY  
COORDINATOR,  
TEMPORARY PROTECTIVE ORDERS

AMENDED BY ORDER OF THE COURT

LORETTA BOWMAN, CLERK

BY *Eric Brown* Deputy

JUL 15 1986

AMENDED BY ORDER OF THE COURT

LORETTA BOWMAN, CLERK

BY *Eric Brown* Deputy

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

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

5 YADA, W.  
LVMPD #2612  
6 FSD

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

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

12 WILLIAMS, ALAN  
LVMPD #4083

13 STANSBURY, DAVID  
14 LVMPD #3515

15 SZELES, MICHAEL  
LVMPD #3526

16 GIERSDORF, DANIEL  
LVMPD #4521

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

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

21 FREEMAN, DINA  
TUCSON POLICE DEPT.  
TUCSON, AZ

22 KNAPP  
LVMPD #  
23 CCDC

24 DA#95F08114X/kjh  
LVMPD DR#9508311351  
25 BURG;ROBB W/WPN;  
MURDER W/WPN - F  
26 (TK3)

KLEIN, DOROTHY  
LVMPD #3997

GROVE, W.  
CITY INTAKE JAIL #253

McNITT, L.  
TUCSON POLICE DEPT.  
TUCSON, AZ

HAGGERTY  
TUCSON POLICE DEPT.  
TUCSON, AZ

EARNST, J.  
TUCSON POLICE DEPT.  
TUCSON, AZ

NEIDKOWSKI  
TUCSON POLICE DEPT.  
TUCSON, AZ

VERNON  
TUCSON POLICE DEPT.  
TUCSON, AZ

AUSSERNS  
TUCSON POLICE DEPT.  
TUCSON, AZ

STONER  
TUCSON POLICE DEPT.  
TUCSON, AZ

GAY, KENNETH  
1705 S. WASHINGTON  
LANSING, MI

WIDNER, PAUL  
LANSING POLICE DEPT.  
LANSING, MI

PRIEBE, JON  
LANSING POLICE DEPT.  
LANSING, MI

GRANGER, AL  
ADDRESS UNKNOWN

AMENDED BY ORDER OF THE COURT

LORETTA BOWMAN, CLERK

BY *[Signature]*, Deputy  
September 4, 1996

AMENDED BY ORDER OF THE COURT

LORETTA BOWMAN, CLERK

BY *[Signature]*, Deputy  
October 14, 1996

- 1 CUSTODIAN OF RECORDS
- 2 LVMPD
- 3 CUSTODIAN OF RECORDS
- 4 CCDC
- 5 COTTON, ROBIN
- 6 OR DESIGNEE
- 7 CELLMARK DIAGNOSTIC
- 8 20271 GOLDENROD LN
- 9 GERMANTOWN, MD
- 10 WAHL, THOMAS
- 11 LVMPD #5019 (LAB)
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28 95F08114X



# EXHIBIT 43

ORIGINAL

FILED

FEB 15 2 46 PM '12

*Alan L. Johnson*  
CLERK OF THE COURT

SUPP  
CHRISTOPHER R. ORAM, ESQ.  
Nevada State Bar #004349  
520 S. Fourth Street, 2nd Floor  
Las Vegas, Nevada 89101  
(702) 384-5563

Attorney for Defendant  
JAMES CHAPPELL

DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*\*\*

THE STATE OF NEVADA,

Plaintiff,

vs.

JAMES CHAPPELL,

Defendant.

CASE NO. C131341  
DEPT. NO. XXV

SUPPLEMENTAL BRIEF IN SUPPORT OF DEFENDANT'S  
WRIT OF HABEAS CORPUS

COMES NOW, Defendant, JAMES CHAPPELL, by and through his counsel of record,  
CHRISTOPHER R. ORAM, ESQ., hereby submits his supplemental brief in support of Defendant's  
Writ of Habeas Corpus (Post-Conviction).

///

///

///

///

///

///

///

///

CHRISTOPHER R. ORAM, LTD.  
520 SOUTH 4TH STREET | SECOND FLOOR  
LAS VEGAS, NEVADA 89101  
TEL. 702.384-5563 | FAX. 702.974-0623

CLERK OF THE COURT

FEB 15 2012

RECEIVED

95C131341  
SUPP  
Supplemental  
1771234




CHRISTOPHER R. ORAM, LTD.  
520 SOUTH 4<sup>TH</sup> STREET | SECOND FLOOR  
LAS VEGAS, NEVADA 89101  
TEL. 702.384-5563 | FAX. 702.974-0623

1 This Supplement is made and based upon the pleadings and papers on file herein, the Points  
2 and Authorities attached hereto, and any oral arguments adduced at the time of hearing this matter.

3 DATED this 15<sup>th</sup> day of February, 2012.

4 Respectfully submitted:

5   
6 CHRISTOPHER R. ORAM, ESQ.  
7 Nevada Bar #004349  
8 520 S. Fourth Street, 2nd Floor  
9 Las Vegas, Nevada 89101  
10 (702) 384-5563

11 Attorney for Petitioner  
12 JAMES CHAPPELL  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**STATEMENT OF THE CASE**

Appellant James Chappell was charged, on October 11, 1995, via Information with one count each of burglary, robbery with use of a deadly weapon, and open murder with use of a deadly weapon (1 ROA 38). The State based its murder charge on alternative theories of felony murder and premeditated and deliberate murder (1 ROA 39). On November 8, 1995, the State filed its Notice of Intent to Seek Death Penalty (1 ROA 44). It charged aggravating circumstances of murder in the course of a robbery, murder in the course of burglary, murder while the person was engaged in sexual assault or the attempt thereof, and torture or depravity of mind (1 ROA 44-45). Prior to trial, Chappell filed a motion to dismiss several of the aggravating circumstances (1 ROA 250). He argued in part that the aggravating circumstance of sexual assault should be dismissed because Chappell was not charged with sexual assault and no evidence was presented during the preliminary hearing that would support the aggravating circumstance (1 ROA 256). The State opposed the motion, but did not address the sexual assault issue (2 ROA 309-319). The Court denied the motion.

The jury trial began on October 8, 1996, and was presided over by the Honorable A. William Maupin (2 ROA 355). The jury was instructed on theories of premeditated murder and felony murder (7 ROA 1703, 1721, 1722). The jury was also instructed on robbery in general (7 ROA 1711). On October 16, 1996, the jury returned verdicts of guilty on charges of burglary, robbery, and first degree murder (7 ROA 1747-1749). No special verdict form was given to the jury, so it is unknown as to whether the jurors relied upon the premeditation theory, the felony murder theory, or both in finding Chappell guilty of first degree murder.

The penalty phase of the first trial began on October 21, 1996 (7 ROA 1757). On October 24, 1996, the jury returned its verdicts in which it found mitigating circumstances of murder committed while the defendant was under the influence of extreme mental or emotion disturbance and "any other mitigating circumstances" (9 ROA 2126, 2170-2171). It found aggravating circumstances of burglary, robbery, sexual assault, and torture or depravity of mind and returned a verdict of death (9 ROA 2127-2129, 2167-2169). Formal sentencing took place on December 30, 1996 (9 ROA 2179). The district court sentenced Chappell to the maximum terms

1 for burglary and robbery with use of a deadly weapon and ordered that those sentences run  
2 consecutively to the death sentence (9 ROA 2188).

3 The judgment of conviction was filed on December 31, 1996 (9 ROA 2190). Chappell  
4 filed a timely notice of appeal on January 17, 1997, which was docketed as number 29884 (9  
5 ROA 2200). On December 30, 1998, the Nevada Supreme Court issued its opinion affirming the  
6 conviction (9 ROA 2273); Chappell v. State, 114 Nev. 1403, 972 P.2d 838 (1998). The Nevada  
7 Supreme Court concluded that the district court erred in failing to hold a Petrocelli hearing, but  
8 found admission of evidence of uncharged misconduct to be harmless. Id. at 1406, 972 P.2d at  
9 840. It also concluded that there was sufficient evidence to support the aggravating circumstances  
10 of burglary, robbery and sexual assault, but insufficient evidence to support the aggravating  
11 circumstance of torture or depravity of mind. Id. at 1407, 972 P.2d at 841. In addressing the  
12 robbery aggravating circumstance, the Nevada Supreme Court noted Chappell's argument that  
13 the evidence showed that he took Panos' car as an afterthought and therefore could not be guilty  
14 of robbery, but rejected that argument because the Nevada supreme Court had held "that in  
15 robbery cases it is irrelevant when the intent to steal the property is formed." Id. at 1408, 972  
16 P.2d at 841. Although the Nevada Supreme Court found torture or depravity of mind aggravating  
17 circumstance to be invalid, it re-weighed the remaining three aggravating circumstances and the  
18 two mitigating circumstances, found the aggravating circumstances clearly outweighed the  
19 mitigating circumstances, and found that a sentence of death was proper. Id. at 1410-1411, 558  
20 P.2d at 842. The Nevada Supreme Court also rejected other issues raised by Chappell on appeal.  
21 Id. The Nevada Supreme Court denied rehearing on March 17, 1999 (9 ROA 2288).

22 Chappell's petition for certiorari was denied on October 4, 1999. Chappell v. Nevada,  
23 528 U.S. 853 (1999). The Nevada Supreme Court's remittitur issued on November 4, 1999 (10  
24 ROA 2353).

25 Meanwhile, on October 19, 1999, Chappell filed a proper person post-conviction petition  
26 for writ of habeas corpus (9 ROA 2258). The post conviction matter was assigned to the  
27 Honorable Mark Gibbons (10 ROA 2354). A supplemental petition was filed on April 30, 2002  
28 (10 ROA 2417). Among other issues, Chappell contended that his conviction was invalid

1 because the jury instruction defining premeditation and deliberation was constitutionally infirm  
2 as it did not provide a rational distinction between first and second degree murder (10 ROA  
3 2456-2459)(citing *Byford v. State*, 116 Nev. 215, 994 P.2d 700 (2000)). He also asserted that the  
4 sentence of death was unconstitutional because of the use of overlapping aggravating  
5 circumstances (10 ROA 2465). The State filed its response to the petition on June 19, 2002 (10  
6 ROA 2481). The evidentiary hearing took place before the Honorable Michael Douglas on  
7 September 13, 2002 (11 ROA 2554). Subsequently, on June 3, 2004, the district court entered its  
8 Findings of Fact, Conclusions of Law and Order (11 ROA 2745). It denied the petition as to the  
9 guilt phase issues, granted the petition as to the sentence, and ordered a new sentencing hearing  
10 (11 ROA 2748, 2278).

11 On June 18, 2004, the State filed its notice of appeal to the Nevada Supreme Court (11  
12 ROA 2757). On June 24, 2004, Chappell filed a notice of cross-appeal (11 ROA 2761). On April  
13 7, 2006, the Nevada Supreme Court issued its Order of Affirmance in which it upheld the district  
14 court's decision (11 ROA 2783). Of relevance to this petition, is the Nevada Supreme Court's  
15 conclusion that there was no merit to the arguments presented concerning jury instructions (11  
16 ROA 2790)(citing *Garner v. State*, 116 Nev. 770, 788-789, 6 P.3d 1013, 1025 (2000)). The  
17 Nevada Supreme Court also found the aggravating circumstances of burglary and robbery to be  
18 invalid under *McConnell v. State*, 120 Nev. 1043, 102 P.3d 606 (2004)(11 ROA 2792-2795).  
19 The remittitur issued on may 4, 2006 (11 ROA 2797).

20 Prior to the second penalty hearing, several pretrial motions were filed. Chappell filed a  
21 motion to strike the sexual assault aggravator (12 ROA 2801). The State opposed the motion (12  
22 ROA 2890). The district court denied the motion (12 ROA 2905, 3019; 15 ROA 3840).

23 Chappell filed a motion to remand for consideration by the Clark County District  
24 Attorney's Death Review Committee (12 ROA 2817). The State opposed the motion (12 ROA  
25 2884). The district court denied the motion (12 ROA 2905, 3015, 15 ROA 3837).

26 Chappell filed a motion for discovery of potential penalty hearing evidence (12 ROA  
27 2826). The State opposed the motion (12 ROA 2888). The district court denied the motion (12  
28 ROA 3026). On February 23, 2007, the State filed its notice of evidence in support of

1 aggravating circumstances (12 ROA 3032).

2 Jury selection began on March 12, 2007 (19 ROA 3932). During the course of the trial,  
3 Chappell objected to the use of hearsay evidence during the penalty hearing on confrontation  
4 clause grounds and noted that the Nevada Supreme Court had recently rejected this argument, but  
5 presented it so as to preserve the issue for further review (13 ROA 3050). Chappell also objected  
6 to the presentation of victim impact evidence by persons who were not family members of Panos  
7 (13 ROA 3107-3108, 3177; 15 ROA 3678). The district court found that it had discretion to  
8 admit victim impact evidence from non-family members (13 ROA 3272-3273). Over objection  
9 by defense counsel. The district court permitted the State to use Chappell's testimony from the  
10 first trial (15 ROA 3632). Defense counsel had argued that the testimony was the result of  
11 ineffective assistance of counsel. The district court also overruled defense counsel's objection to  
12 questions asked by the prosecution and answered by Chappell concerning the allegation that  
13 Chappell had a lot of time to think about his testimony and to decide what he would say (15 ROA  
14 3632). Chappell's counsel argued that this was a comment on Chappell's right to remain silent  
15 but the district court rejected the argument after noting that the claim was found to be without  
16 merit in post-conviction proceedings (15 ROA 3632-3633).

17 Jury instructions were read in open court on March 21, 2007 (15 ROA 3742). Following  
18 closing arguments, the jury returned their verdicts (15 ROA 3737, 3821). They found the  
19 aggravating circumstance of murder committed during the perpetration of a sexual assault (15  
20 ROA 3737, 3822). The mitigating special verdict form listed the following mitigators: Chappell  
21 suffered from substance abuse, he had no father figure in his life, he was raised in an abusive  
22 household, was the victim of physical abuse as a child, he was born to a drug/alcohol addicted  
23 mother, he suffered from a learning disability, and was raised in a depressed housing area (15  
24 ROA 3739-3740, 3822-3823). The jury did not find the mitigating circumstance that Chappell's  
25 mother was killed when he was very young, that he was the victim of mental abuse as a child,  
26 and other mitigating circumstances that were asserted to exist by Chappell's counsel (15 ROA  
27 3755). The jury found that the mitigating circumstances did not outweigh the aggravating  
28 circumstance (15 ROA 3738, 3822-3823). The special verdict form for the weighing equation did

1 not indicate that it was the State's burden to establish beyond a reasonable doubt that the  
2 mitigating circumstances did not outweigh the aggravating circumstances (15 ROA 3738). The  
3 jury returned a sentence of death (15 ROA 3741).

4 Formal sentencing took place on may 10, 2007 (19 ROA 4015, 4018). The judgment of  
5 conviction was filed the same day (15 ROA 3854). The district court ordered the judgment stayed  
6 pending appeal (19 ROA 4019; 15 ROA 3861). A timely notice of appeal was filed on June 8,  
7 2007 (16 ROA 3872).

8 The Opening Brief was filed on June 9, 2008. The following issues were raised on direct  
9 appeal from the second penalty phase.

- 10 A. Whether Chappell's Conviction for First Degree Murder Must Be Reversed Because the  
11 Jury Was Not Properly Instructed On The Elements Of The Capital Offense
- 12 B. Whether Chappell's Conviction For First Degree Murder Must Be Reversed Because the  
13 jury Was Not Properly Instructed On The Elements of Felony Murder
- 14 C. Whether Chappell's Sentence of Death Must Be Vacated Because NRS 177.055(3) is  
15 Unconstitutional
- 16 D. Whether Chappell Was Entitled To Review By The District Attorney's Death Review  
17 Committee
- 18 E. Whether Chappell's Death Sentence is Unconstitutional Because Of The Trial Court  
19 Failed To Dismiss Jurors For Cause Who Would Always Impose A Sentence of Death
- 20 F. Whether Chappell's Conviction Is Unconstitutional Because The State Was Permitted To  
21 Introduce Unreliable Hearsay Evidence During The Penalty Hearing In Support of The  
22 Aggravating Circumstances and as Other matter Evidence
- 23 G. Whether The District Court Erroneously Admitted Presentence Investigation Reports
- 24 H. Whether The District Court Allowed Improper Victim Impact Testimony
- 25 I. Whether the State Committed Prosecutorial Misconduct By Making Arguments Based  
26 Upon Comparative Worth Arguments
- 27 J. Whether The State Committed Prosecutorial Misconduct By Making Arguments Based  
28 Upon Comparative Worth Arguments
- 29 K. Whether The State Committed Extensive Prosecutorial Misconduct
- 30 L. Whether The District Court Failed To Instruct The Jury That The State was Required To  
31 establish Beyond On Beyond a Reasonable Doubt That Mitigating Circumstances Did  
32 Not Outweigh Aggravating Circumstances
- 33 M. Whether The Jury's Failure to Find Mitigation Circumstances Was Clearly Erroneous and  
34 Requires That The Death Sentence Be Vacated



- 1 N. Whether There Is Insufficient Evidence To Support The Sexual Assault Aggravator
- 2 O. Whether The Sexual Assault Aggravating Circumstances Is Invalid Under McConnell v. State
- 3 P. Whether The Judgment Must Be Reversed Because of Cumulative Error.
- 4

5 The Answering Brief was filed on August 22, 2008. Chappell's Reply Brief was filed on  
6 October 23, 2008. The Nevada Supreme Court filed its Order of Affirmance on October 20,  
7 2009. The Order Denying Rehearing was filed on December 16, 2009. On May 11, 2010, the  
8 Petition for Writ of Certiorari was denied. On June 8, 2010, the Nevada Supreme Court filed its  
9 remittitur.

10 Chappell filed a timely Petition for Writ of Habeas Corpus on June 22, 2010. This  
11 supplemental brief follows.

#### 12 STATEMENT OF THE FACTS

13 James Chappell confessed to killing his girlfriend, Debra Panos, the mother of his three  
14 children (4 ROA 864). James met Debra when they were sixteen years old and in high school (13  
15 ROA 3053). They both lived in Lansing, Michigan (13 ROA 3053). Debra became pregnant with  
16 their first child, James (13 ROA 3054).

17 Eventually, Debra's parents moved to Tucson, Arizona and Debra followed. James and  
18 Debra became reunited in Arizona and they had their second child, Anthony (13 ROA 3054).

19 The couple lived in Tucson from approximately 1990-1994 (13 ROA 3054). In October  
20 of 1994, the couple moved to Las Vegas, Nevada. A third child was born to this union (13 ROA  
21 3058). While in Las Vegas, James Chappell killed Debra Panos.

22 During trial, James Chappell testified to his conduct which resulted in the first degree  
23 murder conviction of Debra. James grew up in Lansing, Michigan (15 ROA 3641). He met Debra  
24 at JW Sexton High School (15 ROA 3641). He was sixteen years old at the time. Debra was  
25 caucasian and James is African American (15 ROA 3641). Debra's family did not approve of the  
26 relationship (15 ROA 3641-3642).

27 James did not obtain a high school diploma or GED (15 ROA 3642). In Michigan, James  
28 had numerous jobs (15 ROA 3642). However, James began to use marijuana and crack cocaine at

1 a young age (15 ROA 3642). While Debra only tried marijuana on one occasion (15 ROA 3642).  
2 Debra followed her parents from Lansing, Michigan to Tucson, Arizona (15 ROA 3642). Debra  
3 paid for James to come by plane from Michigan to Tucson (15 ROA 3643). James stayed with  
4 the Panos family for approximately two months while in Arizona (15 ROA 3643). In Tucson,  
5 James had a job for approximately four months as a dish washer at a local hotel (15 ROA 3643).

6 Eventually James returned to Michigan but Debra begged him to return to Arizona (15  
7 ROA 3644). James and Debra had three children but were not ever married (15 ROA 3644).  
8 James was unable to hold a job in Tucson and essentially became a babysitter for the children (15  
9 ROA 3645). James continued to use drugs while in Tucson (15 ROA 3645). In fact, James  
10 admitted to selling family furniture to obtain drugs (15 ROA 3645).

11 James admitted he had been physically abusive to Debra. According to James, he felt  
12 "extremely bad" about his physical abuse (15 ROA 3645).

13 In October of 1994, the couple moved to Las Vegas, Nevada, because James believed that  
14 people at Debra's jobs were invading upon their private lives (15 ROA 3645).

15 In Las Vegas, James briefly worked for the Ethyl M Chocolate Factory (15 ROA 3646).  
16 However, James spent a significant period of time at the Vera Johnson projects ingesting drugs  
17 (15 ROA 3646).

18 On January 9, 1995, James admitted throwing a thermal coffee cup at Debra and breaking  
19 her nose (15 ROA 3646). Police responded and arrested James for domestic violence (15 ROA  
20 3647).

21 On June 1, 1995, James pinned Debra down in the bedroom and showed her a knife (15  
22 ROA 3647). James pled guilty to domestic violence for that incident (15 ROA 3647).

23 James would call Debra from jail and became infuriated when men would answer the  
24 phone (15 ROA 3647). James sent letters referring to Debra as a slut and a whore (15 ROA  
25 3648). On August 30, 1995, James appeared in Las Vegas Municipal Court where Debra had also  
26 been summoned (15 ROA 3648). The next day, August 31, 1995, James was released from  
27 custody and ordered to attend an inpatient drug treatment program (15 ROA 3648). Instead,  
28 James went to the Vera Johnson projects and drank some beer. James then proceeded directly to

1 839 North Lamb, the trailer that he shared with Debra (15 ROA 3648).

2 James crawled through the window of the trailer which he had done on several previous  
3 occasions (15 ROA 3649). According to James, he came into contact with Debra in the trailer  
4 and they talked for approximately twenty minutes. They engaged in sexual intercourse and then  
5 she performed oral sex on James (15 ROA 3649-3650). Thereafter, Debra called the daycare  
6 center where the children were located (15 ROA 3650). On their way to pick up the children,  
7 James found a letter which he believed proved that Debra had been unfaithful to him (15 ROA  
8 3641). James claimed he stopped the car and brought Debra back into the trailer (15 ROA 3641).  
9 James did not remember what occurred during the killing but felt panic when he realized what  
10 had occurred (15 ROA 3651-3652). James denied stealing anything from the trailer but did take  
11 all of the social security cards of the children and Debra (15 ROA 3652).

12 James explained that "he felt extremely bad, lower than dirt, if I could give up my life for  
13 hers, I would, in a heartbeat" (15 ROA 3642).

14 James then proceeded back to the Vera Johnson projects to get high on cocaine (15 ROA  
15 3653). James denied being high on cocaine when he killed Debra (15 ROA 3653).

16 Letters were found on the floor in the trailer. James indicated he tossed the letters at  
17 Debra before she performed oral sex on him (15 ROA 3667). Although James rode a bike from  
18 the projects to the trailer prior to the murder, he used Debra's car to leave the scene of the murder  
19 (15 ROA 3668). In one of the letters previously sent to Debra, James wrote "one day soon I'll be  
20 at the front door and what in Gods name will you do then" (15 ROA 3668).

21 Dr. Giles Sheldon Green performed the autopsy on Debra Panos. Debra was five feet five  
22 inches tall and 140 pounds. Debra died as a result of multiple stab wounds. Debra had suffered  
23 from a total of thirteen stab wounds (15 ROA 3670-3671). There was bruising and abrasions  
24 throughout Debra's body (15 ROA 3670-3671). Dr. Green concluded that she died as a result of  
25 stab wounds to the neck (15 ROA 3672). A sexual assault kit was taken by crime scene analysts  
26 with negative results (15 ROA 3673).

27 The bruising on Debra's body preceded death by approximately fifteen to thirty minutes  
28 (15 ROA 3674). Most of the thirteen stab wounds were located in the neck area, however, there

1 was one stab wound to the abdomen and another stab wound to the groin.

2       Officer Russell Lee was dispatched to the Ballerina mobile home park on August 31,  
3 1995 (13 ROA 3185-3186). At approximately 3:00-3:30 p.m., detective Lee began looking in the  
4 trailer to find any relevant evidence (13 ROA 3186). Officer Lee was responding to the welfare  
5 check requested by Ms. Duran (13 ROA 3186). Officer Lee opened the window and entered the  
6 trailer where he witnessed Debra laying on the ground (13 ROA 3186-3187). Homicide was  
7 contacted (13 ROA 3187).

8       Detectives James Vaccaro and Phil Ramos were the detectives assigned to this homicide  
9 (14 ROA 3413). Detectives learned that James Chappell had been seen leaving the trailer at  
10 approximately 1:30 p.m. on the day of the murder (14 ROA 3415). Detective concluded that  
11 James was inside the trailer for approximately forty minutes (14 ROA 3415). Detectives noticed  
12 that there were letters strewn across the floor of the bedroom. Detectives believed that the trailer  
13 had been ransacked (14 ROA 3417). A torn letter was located next to Debra's body (14 ROA  
14 3417). A knife was located a few feet from Debra's head (14 ROA 3418). During the  
15 investigation, both detectives proceeded to Lucky's Supermarket where James Chappell was in  
16 custody for shoplifting (14 ROA 3421).

17       Vaginal swabs revealed the DNA of James Chappell. Detectives concluded that James  
18 had ejaculated into Debra's vagina (14 ROA 3425). This fact directly contradicted James'  
19 statement that he had not ejaculated.

20       A letter located in the trailer was addressed to Debra from Devon and appeared to suggest  
21 that the two had intimate relations (14 ROA 3429).

22       Shortly before the murder, the department of parole and probation agreed to permit Mr.  
23 Chappell to proceed to impatient treatment as opposed to taking him there (14 ROA 3406-3407).  
24 William Duffy was a unit manager at parole and probation. On October 31, 1995, at 9:00 a.m.,  
25 Mr. Duffy received a call that James was in custody and had to be released from city jail (14  
26 ROA 3407). Mr. Duffy assigned two probation officers to pick him up (14 ROA 3407). Mr.  
27 Duffy spent approximately an hour discussing the case with James (14 ROA 3409). James told  
28 Mr. Duffy that he would turn himself into the program. Mr. Duffy described James as "very

1 convincing" (14 ROA 3410). Thereafter, Mr. Duffy released James to the street. Within a few  
2 hours, Debra was killed.

3 The prior transcript of Mike Pollard was read to the jury (13 ROA 3114). Mr. Pollard was  
4 employed with Debra at GE Capital (13 ROA 3115). Mr. Pollard described his relationship with  
5 Debra as "inseparable" (13 ROA 3117). Mr. Pollard had never met James Chappell (13 ROA  
6 3117). On one occasion, Mr. Pollard was smoking a cigarette in front of work and he observed  
7 James slap Debra when they were both in a car (13 ROA 3118). Mr. Pollard was aware that  
8 James had broken Debra's nose on a separate occasion (13 ROA 3119). Mr. Pollard was also  
9 aware that Debra's children had been briefly placed in child haven because the kids were  
10 unattended (13 ROA 3123).

11 Mr. Pollard believed that Debra did not want to stay with James (13 ROA 3124).  
12 According to Mr. Pollard, James had taken the children's shoes back to obtain money, which  
13 Debra had purchased (13 ROA 3125). James allegedly would sell belongings such as food,  
14 clothing, diapers, or furniture to obtain money for drugs (13 ROA 3126).

15 Mr. Pollard believed that Debra could not leave the trailer to hide from James because she  
16 had too much money invested in it (13 ROA 3129). On August 31, 1995, Debra picked Mr.  
17 Pollard up from work and proceeded to his residence (13 ROA 3130-3131). On that day, Debra  
18 had become aware that James had been released from custody (13 ROA 3131). Debra was sitting  
19 on Mr. Pollard's sofa holding her knees and shivering (13 ROA 3131). Mr. Pollard told Debra to  
20 wait until he could finish taking a shower and then he would then take her home (13 ROA 3132).  
21 However, when Mr. Pollard got out of the shower she was gone (13 ROA 3133). This was the  
22 last time Mr. Pollard saw Debra (13 ROA 3133).

23 On September 1, 1995, officer Paul Osuch responded to the Lucky's store on Lamb and  
24 Bonanza referenced a shoplifter in custody (14 ROA 3275). The shoplifter identified himself as  
25 Ivory Morrell (14 ROA 3277). Officer Osuch had been briefed on a homicide that occurred at the  
26 Ballerina Mobile Home park (14 ROA 3277). Officer Osuch determined that the shoplifter  
27 should be arrested for shoplifting and drug paraphernalia. Located on the shoplifter was a glass  
28 tube commonly used to ingest crack cocaine (14 ROA 3279). The shoplifter was observed trying

1 to dispose of four social security cards while in custody (14 ROA 3283). All the social security  
2 cards were in the last name of Panos. Thereafter, officer Osuch contacted his sergeant to  
3 determine the victim's last name in the homicide (14 ROA 3284). Officer Osuch learned that  
4 Panos was the last name and then contacted homicide detectives who responded to the Lucky's  
5 store. The shoplifter was later identified as James Chappell.

6 Latrona Smith worked at Angel Care daycare facility on August 31, 1995 (13 ROA  
7 3190). The Panos children regularly attended this daycare (13 ROA 3190). On August 31, 1995,  
8 between the hours of 12:30 and 1:00 p.m., Latrona Smith received a phone call from Debra  
9 Panos (13 ROA 3190). Debra asked Latrona what time she needed to pick up the children (13  
10 ROA 3191). Debra asked Latrona to call her back and tell her that she needed to come pick up  
11 the children because she was scared (13 ROA 3191). Debra asked Latrona to make up some type  
12 of excuse so that she would be able to leave her house to come to the daycare (13 ROA 3191).  
13 Thereafter, Latrona called Debra back approximately five minutes later and told her to come pick  
14 up her children (13 ROA 3191). Debra told Latrona that she was on her way but she never made  
15 it (13 ROA 3192). Latrona could hear a male voice in the background and he sounded upset yet  
16 he was not yelling (13 ROA 3192-3194).

17 Deborah Turner knew James from an apartment complex located at Lamb and Bonanza  
18 (13 ROA 3194). James would "hang out most of the time" at the apartment complex (13 ROA  
19 3195). James was known as "hip hop" because he was always dancing (13 ROA 3196). James  
20 was a "crack head" (13 ROA 3197).

21 On August 31, 1995, in the evening, Deborah Turner agreed to buy shrimp and pie from  
22 James (13 ROA 3195). Deborah also agreed to rent a car from James for twenty-five dollars (13  
23 ROA 3195-3196).

24 Ladonna Jackson knew James from the Vera Johnson housing project (13 ROA 3198).  
25 On August 31, 1995, she observed James pull up in a vehicle. He was not acting unusual (13  
26 ROA 3201). Ladonna knew that James would rent the car so that he could buy crack (13 ROA  
27 3203). Ladonna had previously seen James sell children's diapers (13 ROA 3204).

28 On September 1, 1995, Ladonna observed detectives in the complex looking for the car

1 (13 ROA 3202). When Ladonna learned that James was alleged to have killed Debra she  
2 immediately told detectives that the car was around the corner (13 ROA 3203).

3 Tanya Hobson was employed as a social worker and program manager for Catholic  
4 charities (14 ROA 3454). Ms. Hobson worked at Safe Nest, a temporary shelter for domestic  
5 violence victims (14 ROA 3454). On January 9, 1995, Debra Panos called Ms. Hobson over the  
6 phone and a document was filled out requesting a temporary restraining order (14 ROA 3461).  
7 According to the document, James had hit Debra in the face and was taken to jail (14 ROA  
8 3461). The application for the restraining order included Debra's employment and three children  
9 (14 ROA3462). This application was faxed to the court (14 ROA 3463). However, Debra never  
10 showed up and the protective order became void (14 ROA 3465).

11 Over the defense objection, the State was permitted to elicit victim impact from several  
12 witnesses who were not family members of the victim. Mike Pollard knew Debra Panos from  
13 working at GE Capital (15 ROA 3679). Mike was notified by Lisa Duran that Debra's body had  
14 been found murdered (15 ROA 3679). Mike was saddened that Debra's children would grow up  
15 without a mother (15 ROA 3679). Mr. Pollard described Debra as a very sweet person who loved  
16 her children. Mike described Debra as a good friend (15 ROA 3679). Mr. Pollard claimed that he  
17 had to quit his job because he could not concentrate and that he moved out of Nevada based on  
18 the impact of Debra's death (15 ROA 3679).

19 Carol Monson is Debra Panos' mother's sister (her aunt) (15 ROA 3681). Carol described  
20 Debra as a very giving person (15 ROA 3681). Carol explained that her sister (Debra's mother)  
21 had lost her husband two years before the murder (15 ROA 3683). Carol indicated that the death  
22 of Debra caused Debra's mother exceptional grief (15 ROA 3683). Carol was permitted to read  
23 letters written by family members who were unable to attend (15 ROA 3684). In fact, letters from  
24 Christina Reese, Doris Waskowski, and Caroline Monson's own letter were read to the jury.  
25 Caroline's letter was read to the jury even after she was given an opportunity to testify (15 ROA  
26 3684-3685).

27 Norma Penfield provided testimony on two separate days, March 19-20, 2007. Norma  
28 Penfield is Debra Panos' mother (15 ROA 3686). Ms. Penfield described the anguish she felt

1 after Debra's death. She also explained how her grandchildren were placed in child haven and  
2 she was required to get a court order to release the children to her custody (15 ROA 3687).  
3 Apparently, the oldest son asked Ms. Penfield if he could have sleeping pills because he could  
4 not sleep (he was eight years old at the time) (15 ROA 3688). Ms. Penfield described how  
5 Chantelle wanted to die so she could go to heaven to be with her mother (15 ROA 3688).

6 Dina Richardson worked with Debra Panos at the police department in Tucson, Arizona  
7 (14 ROA 3291-3292). She became close friends with Debra. Ms. Richardson explained that  
8 James Chappell was a controlling individual who "pretty much ran the relationship" (14 ROA  
9 3296). Ms. Richardson relayed a conversation wherein Debra stated that she would be assaulted  
10 by Mr. Chappell if she did not provide him money and the keys to the car, so that he could obtain  
11 drugs (14 ROA 3299). On a couple of occasions, Ms. Richardson heard Mr. Chappell in the  
12 background, on a phone conversation, telling Debra that he would "OJ Simpson her ass" (14  
13 ROA 3302-3303).

14 Ms. Richardson was aware that Mr. Chappell had been arrested in a high drug activity  
15 area in Debra's car (14 ROA 3305). After the murder, Ms. Richardson stated the police  
16 department assisted her psychologically (14 ROA 3307). Additionally, Ms. Richardson described  
17 how the police department had a service for Debra where forty people. A portrait of Debra hangs  
18 in their briefing room (14 ROA 3307).

19 Michelle Mancha worked with Debra at GE Capital (13 ROA 3087). Michelle described  
20 an incident where Debra came to work after her nose was broken by Mr. Chappell (13 ROA  
21 3090)(where the cup had been thrown at her). Debra would confide in Michelle and Lisa Duran  
22 that items were missing out of her trailer and that the defendant was threatening and hitting her  
23 (13 ROA 3090). Things such as the television, microwave, stereo, and the sofa were being taken  
24 and sold (13 ROA 3090). Michelle described how James Chappell would come through the  
25 window because he did not have a key (13 ROA 3091). Michelle claimed that Mr. Chappell was  
26 not supposed to know that Debra had moved to Las Vegas, Nevada (13 ROA 3092). According  
27  
28



1 to Michelle, Debra had told her this (13 ROA 3092).<sup>1</sup>

2 Michelle also was aware that in December of 1994, the defendant slapped Debra in the  
3 face in the parking lot of GE Capital (13 ROA 3092). Debra also described to Michelle an  
4 incident where the defendant sat on her and put a knife to her throat (13 ROA 3098). Michelle  
5 claimed that "we" offered to send Mr. Chappell back to Michigan but he refused (13 ROA 3099).  
6 According to Michelle, the defendant threatened to kill Debra shortly before the murder, in court  
7 (13 ROA 3103). When Michelle found out about Debra's death, she became very upset (13 ROA  
8 3107). Michelle still has Debra's picture on her dresser (13 ROA 3108).

9 Lisa Duran (AKA Larsen), worked with Debra at GE Capital (13 ROA 3168). Ms. Duran  
10 described how Debra would attempt to cover evidence of her injuries inflicted by Mr. Chappell  
11 (13 ROA 3170). Debra would say "my kids need their father" (13 ROA 3170). In one phone call,  
12 Mr. Chappell asked Lisa Duran "what other nigga she was lying up with underneath" (13 ROA  
13 3171). In another call, Ms. Duran stated that Mr. Chappell was upset because Debra was not  
14 accepting his phone calls (13 ROA 3171). Ms. Duran believed Debra was packing up her  
15 belongings so that she could leave the trailer. This fact directly contradicts Mike Pollard's  
16 testimony that Debra would not leave the trailer because she had invested too much (13 ROA  
17 3172; 13 ROA 3129). Ms. Duran contacted police to conduct a welfare check on Debra's trailer.  
18 Ms. Duran's hunch was correct, Debra was found murdered inside (13 ROA 3173).

19 Ms. Duran explained that she went through therapy because of the guilt she felt  
20 associated with the murder (13 ROA 3177). Ms. Duran missed approximately seven or eight  
21 months of work and was prescribed medication (13 ROA 3178). Debra was involved in a  
22 relationship with another male named "JR" (13 ROA 3182). In fact, Ms. Duran testified that  
23 Debra was going to move in with JR (13 ROA 3182).

24 Clair McGuire worked with Debra at the Tucson city hall conducting data entry (13 ROA  
25 3242). Debra worked multiple jobs in Tucson (13 ROA 3243). Clair observed Mr. Chappell push  
26

---

27 <sup>1</sup>This fact is in direct contradiction to all of the evidence which suggests that Debra Panos  
28 was the breadwinner of the family and continuously paid for Mr. Chappell's flights in order to be  
physically present with her.

1 and trip Debra on multiple occasions (13 ROA 3243). Clair described the difficulties Debra was  
2 having with James because the police department did not want their employees associating with  
3 individuals involved in criminal activities (13 ROA 3244). Prior to the murder, Clair moved to  
4 Las Vegas and stayed in the trailer with Debra (13 ROA 3245). Clair noticed that belongings  
5 were missing because the defendant would take them to sell (13 ROA 3245). On one occasion,  
6 Clair heard Mr. Chappell trying to enter the trailer and called 911 (13 ROA 3246). After police  
7 arrived, a knife was located next to her bed (13 ROA 3247). In June of 1995, Clair summoned  
8 the police for Debra. Mr. Chappell had Debra pinned on the bed and all three children were home  
9 at the time (13 ROA 3247). Clair moved out of the trailer at the end of July in 1995 (13 ROA  
10 3248). Clair admitted that it was common for Mr. Chappell to climb through the bedroom  
11 window (13 ROA 3250).

12 On August 18, 1998, Mr. Chappell was arrested with another individual for assault (13  
13 ROA 3251). Police contacted the alleged victim who claimed that he had been assaulted. The  
14 alleged victim stated that Mr. Chappell had thrown a brick at him (13 ROA 3252). Mr. Chappell  
15 stated that the victim had tried to run the defendant's over and so he threw a brick at the car. Mr.  
16 Chappell also indicated that the alleged victim referred to them as "niggers" (13 ROA 3253). Mr.  
17 Chappell also stated that his co-defendant "Harold" threw a brick at the alleged victim and  
18 knocked him down (13 ROA 3253). Mr. Chappell was not convicted of a felony offense for this  
19 incident (13 ROA 3254).

20 The defense called several mitigation witnesses. Willie Chappell is the older brother of  
21 James (15 ROA 3690). When James was approximately two and a half years old, a sheriff's  
22 department vehicle hit and killed their mother (15 ROA 3690-3391). James' mother was a  
23 pedestrian (15 ROA 3691). Willie has two brothers and three sisters (15 ROA 3691). Mr.  
24 Chappell's father was not around the children during their childhood (15 ROA 3691). Therefore,  
25 when their mother died, the children went to stay with their grandmother (15 ROA 3691). The  
26 grandmother also resided in Lansing, Michigan (15 ROA 3691). Growing up, their grandmother  
27 was very abusive using broomsticks, bed boards, and extension cords, to discipline the children  
28 (15 ROA 3691).

1 James' attended special education classes in school (15 ROA 3692). Not only was the  
2 environment not nurturing at home, the neighborhood was drug infested (15 ROA 3693). Willie  
3 learned that his mother had a serious drug problem (15 ROA 3694). Of the four children raised  
4 by the grandmother, all had serious substance and alcohol abuse problems (15 ROA 3695).  
5 Willie served twelve years in prison for felony convictions ( stolen vehicle and armed robbery)  
6 (15 ROA 3693).

7 Fred Scott Dean grew up with James in Michigan (15 ROA 3696). Fred and James were  
8 in the same grade together (15 ROA 3697). Fred noted that James was in special education  
9 classes (15 ROA 3697). Fred knew that James had attended three different elementary schools in  
10 three separate years (15 ROA 3698). There was no real father figure in the home with the  
11 exception of an Uncle who was stabbed to death (15 ROA 3699). During junior high, Fred,  
12 James and other kids would consume alcohol and smoke marijuana (15 ROA 3699). Fred has a  
13 felony conviction for drug trafficking (15 ROA 3702). Fred noted that there were four drug  
14 houses in James' neighborhood (15 ROA 3703).

15 Benjamin Dean met James in elementary school. Benjamin and James lived right around  
16 the corner from each other (15 ROA 3706). Benjamin described the area as filled with abandoned  
17 houses, and the entire street ended up demolished (15 ROA 3706). The area in which James grew  
18 up was impoverished. Benjamin described James' residence as a place to hang out and party  
19 because his grandmother would spend nights playing bingo or at the horse track (15 ROA 3707).

20 Neither James Ford nor Ivory Morrell testified. However, Benjamin testified how James  
21 Ford lived in the same neighborhood (15 ROA 3708). Benjamin met Debra Panos at James  
22 Ford's house. According to Benjamin, James was approximately thirteen or fourteen when he  
23 began involvement with drugs (15 ROA 3708).

24 Mira King is the younger sister of James. Mira described their childhood as a household  
25 without affection (15 ROA 3710). Mira described her grandmother as being absent, often playing  
26 bingo or attending horse races (15 ROA 3710-3711). Mira explained that the area they grew up  
27 in was filled with empty and abandoned houses (15 ROA 3711). James was teased because he  
28 could not attend regular classes and was in special education (15 ROA 3712). Mira described her

1 grandmother as a person who would refer to the kids as “stupid” or “idiots” (15 ROA 3712).  
2 James was specifically referred to as “stupid” (15 ROA 3712). Mira was placed in a girls home  
3 between the ages of fourteen and sixteen (15 ROA 3712). James was described as non-violent  
4 when he was growing up and loving to his son “JP” (15 ROA 3715). Mira was aware that her  
5 mother had been involved in drugs (15 ROA 3715). Sometimes, Aunt Sharon would watch the  
6 kids (15 ROA 3717). However, Aunt Sharon had a substance abuse problem with crack cocaine,  
7 marijuana, and has become an alcoholic (15 ROA 3717).

8 Charles Dean is the brother of Fred and Benjamin (15 ROA 3718). Charles also grew up  
9 in the same neighborhood. Charles indicated that the area was eventually condemned (15 ROA  
10 3718). Charles told the jury that Keisha Axom was unable to attend the hearing because of  
11 complications with her pregnancy (15 ROA 3719). Keisha is James’ cousin (15 ROA 3719).

12 The defense called three expert witnesses. Dr. Todd Grey is the chief medical examiner  
13 for the state of Utah (13 ROA 3224). Dr. Grey is board certified in forensic pathology (13  
14 ROA3225). Dr. Grey was asked to consider whether there was any evidence to support the  
15 State’s contention that Debra was sexually assaulted (13 ROA 3225). Dr. Grey noted that there  
16 was no physical evidence to support a sexual assault (13 ROA 3226). Dr. Grey noted no trauma  
17 to the vagina (13 ROA 3226). Dr. Grey also noted that Dr. Sheldon Green had not found any  
18 evidence of sexual assault (13 ROA 3226). Dr. Grey was concerned that the knife markings were  
19 consistent with holes in the clothing compared to the wounds in the body (13 ROA 3226). Dr.  
20 Grey explained that the pants were worn in a “conventional fashion” and were not “twisted” and  
21 worn in a “normal position” (13 ROA 3226). Dr. Grey found no evidence of sexual assault (13  
22 ROA 3227). Dr. Grey admitted that presence of sperm would be conclusive that Mr. Chappell  
23 had ejaculated (13 ROA3230).

24 Dr. William Danton practices clinical psychology at the University of Nevada, School of  
25 Medicine, in Reno (14 ROA 3317). Dr. Danton reviewed the psychological report of Dr. Edcoff.  
26 Additionally, Dr. Danton met with Mr. Chappell for two hours the evening prior to his testimony  
27 (14 ROA 3321). Dr. Danton noted that in domestic violence relationships the abuser usually  
28 controls the finances (14 ROA 3322). Whereas, here, Debra appeared to be the majority bread

1 winner. Dr. Danton concluded that Debra may have several valid reasons for consenting to sexual  
2 intercourse with James right before the murder (14 ROA 3326). For instance, Dr. Danton  
3 concluded that Debra may have wanted to "appease" Mr. Chappell or be attempting to reconcile  
4 (14 ROA 3326). James had a significant fear of abandonment (14 ROA 3329). In the past, Debra  
5 would use sex to placate James (14 ROA 3320). Dr. Danton believed that Mr. Chappell may  
6 have blacked out during the killing but that additional testing was necessary to make an absolute  
7 conclusion (14 ROA 3371).

8 Dr. Lewis Etcoff is a licenced psychologist (14 ROA 3469). Dr. Etcoff was a witness  
9 taken out of order for the defense (14 ROA 3468). Ten years prior to the instant penalty phase,  
10 Dr. Etcoff evaluated Mr. Chappell (14 ROA 3475). The interview lasted approximately two  
11 hours (14 ROA 3476). Dr. Etcoff only interviewed Mr. Chappell, no other witnesses (14 ROA  
12 3477). Dr. Etcoff also reviewed school records from Michigan (14 ROA 3478). Dr. Etcoff noted  
13 that James' father was never present in his life (14 ROA 3481). James' father had a substantial  
14 criminal record and substance related problems (14 ROA 34-81). When James was older, his  
15 father asked that he rob a bank, James declined (14 ROA 3482). James was in special education  
16 classes (14 ROA 3483). At sixteen years old, the school psychologist concluded that James was  
17 "emotionally handicapped" (14 ROA 3486). The school psychologist noted that James did not  
18 have coping skills to deal with everyday problems (14 ROA 3486). The school psychologist also  
19 noted that James appeared to be withdrawn and had low self image (14 ROA 3487). At that time,  
20 James' grade point average was 0.65 and he was ranked 584 out of 607 (14 ROA 3487). Mr.  
21 Chappell began using marijuana at age thirteen and was introduced to rock cocaine by eighteen  
22 (14 ROA 3488). Mr. Chappell became dependent on rock cocaine (14 ROA 3488). Mr.  
23 Chappell scored an overall IQ of 80 which puts him in the bottom ninth percentile (14 ROA  
24 8491). His verbal IQ was seventy-seven, placing him in the bottom six percent (14 ROA 3490).  
25 Dr. Etcoff concluded that his math skills put him in the bottom one percent describing him as  
26 "learning disabled in math" (14 ROA 3491). James attempted to be truthful during the testing  
27 based upon the validity score built into the test (14 ROA 3499). The test results indicate that  
28 James felt "worthless, inadequate, guilt ridden, and sensitive to humiliation (14 ROA 3501).

1 James was extremely dependent upon Debra (14 ROA 3501). Dr. Etcoff noted that James was  
2 extremely remorseful during the interview and was actually breaking down crying (14 ROA  
3 3506). However, James had developed fantasies of other men sleeping with Debra (14 ROA  
4 3504).

5 Lastly, the defense called Marabel Rosales who works as a mitigation investigator for the  
6 special public defenders office (16 ROA 3767). Marabel traveled to Lansing and interviewed  
7 Ivory Morrell and James Ford (16 ROA 3767). Both witnesses traveled to testify at trial but Ivory  
8 had commitments in Lansing and had to proceed back to Michigan. James had to return to  
9 Michigan because his employer claimed that he would be fired if he did not return (16 ROA  
10 3767).

### 11 ARGUMENT

#### 12 I. STANDARD OF REVIEW FOR INEFFECTIVE ASSISTANCE OF COUNSEL.

13 To state a claim of ineffective assistance of counsel that is sufficient to invalidate a  
14 judgment of conviction, petitioner must demonstrate that:

- 15 1. counsel's performance fell below an objective standard of reasonableness,
- 16 2. counsel's errors were so severe that they rendered the verdict unreliable.

17 Lozada v. State, 110 Nev. 349, 353, 871 P. 2d 944, 946 (1994). (Citing Strickland v.  
18 Washington, 466 U. S. 668, 104 S. Ct. 205, (1984)). Once the defendant establishes that  
19 counsels performance was deficient, the defendant must next show that, but for counsels error the  
20 result of the trial would probably have been different. Strickland, 466 U.S. at. 694, 104 S. Ct.  
21 2068; Davis v. State, 107 Nev. 600, 601,602, 817 P. 2d 1169, 1170 (1991). The defendant must  
22 also demonstrate errors were so egregious as to render the result of the trial unreliable or the  
23 proceeding fundamentally unfair. State v. Love, 109 Nev. 1136, 1145, 865 P.2d 322, 328 (1993),  
24 citing Lockhart v. Fretwell, 506 U. S. 364,113 S. Ct. 838 122 2d, 180 (1993); Strickland, 466 U.  
25 S. at 687 104 S. Ct. at 2064.

26 The United States Supreme Court in Strickland v. Washington, 466 U.S. 668, 104 S.Ct.  
27 2052 (1984), established the standards for a court to determine when counsel's assistance is so  
28 ineffective that it violates the Sixth Amendment of the U.S. Constitution. Strickland laid out a  
two-pronged test to determine the merits of a defendant's claim of ineffective assistance of

1 counsel.

2 First, the defendant must show that counsel's performance was deficient. This requires a  
3 showing that counsel made errors so serious that counsel was not functioning as the counsel  
4 guaranteed the defendant by the Sixth Amendment. Second the defendant must show that the  
5 deficient performance prejudiced the defense. This requires showing that counsel's errors were  
6 so serious as to deprive the defendant of a fair trial whose result is reliable. Unless a defendant  
7 makes both showings, it cannot be said that the conviction resulted from a breakdown in the  
8 adversary process that renders the result unreliable. In Nevada, the Nevada Supreme Court has  
9 held "claims of ineffective assistance of counsel must be reviewed under the "reasonably  
10 effective assistance" standard articulated by the U.S. Supreme Court in Strickland v.  
11 Washington, requiring the petitioner to show that counsel's assistance was deficient and that the  
12 deficiency prejudiced the defense." Bennett v. State, 111 Nev. 1099, 1108,901 P.2d 676, 682  
13 (Nev. 1995), and Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 Nev. 1996).

14 In meeting the prejudice requirement of ineffective assistance of counsel claim, Mr.  
15 Chappell must show a reasonable probability that, but for counsel's errors, the result of the trial  
16 would have been different. Reasonable probability is probability sufficient to undermine  
17 confidence in the outcome. Kirksey v. State, 112 Nev. at 980. "Strategy or decisions regarding  
18 the conduct of defendant's case are virtually unchallengeable, absent extraordinary  
19 circumstances." Mazzan v. State, 105 Nev. 745,783 P.2d 430 Nev. 1989); Olausen v. State, 105  
20 Nev. 110,771 P.2d 583 Nev. 1989).

21 The Nevada Supreme Court has held a defendant has a right to effective assistance of  
22 appellate counsel on direct appeal. Kirksey v. Nevada, 112 Nev. 980, 923 P.2d 1102 (1996).

23 The constitutional right to effective assistance of counsel extends to a direct appeal.  
24 Burke v. State, 110 Nev. 1366, 1368, 887 P.2d 267, 268 (1994). A claim of ineffective assistance  
25 of appellate counsel is reviewed under the "reasonably effective assistance" test set forth in  
26 Strickland v. Washington, 466 U.S. 668, 80 L. Ed. 2d 674, 104 S.Ct. 2052 (1984). Effective  
27 assistance of appellate counsel does not mean that appellate counsel must raise every non-  
28 frivolous issue. See Jones v. Barnes, 463 U.S. 745, 751-54, 77 L.Ed. 2d 987, 103 S. Ct. 3308

(1983). An attorney's decision not to raise meritless issues on appeal is not ineffective assistance of counsel. Daniel v. Overton, 845 F. Supp. 1170, 1176 (E.D. Mich. 1994); Leaks v. United States, 841 F. Supp. 536, 541 (S.D.N.Y. 1994), aff'd, 47 F.3d 1157 (2d Cir.). To establish prejudice based on the deficient assistance of appellate counsel, the defendant must show that the omitted issue would have a reasonable probability of success on appeal. Duhamel v. Collins, 955 F.2d 962, 967 (5<sup>th</sup> Cir. 1992); Heath, 941 F.2d at 1132. In making this determination, a court must review the merits of the omitted claim. Heath, 941 F. 2d at 1132.

In the instant case, Mr. Chappell's proceedings were fundamentally unfair. Mr. Chappell received ineffective assistance of counsel. Based upon the following arguments:

**II. MR. CHAPPELL RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL DURING THE THIRD PENALTY PHASE IN VIOLATION OF THE FIFTH, SIXTH, EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.**

In the instant case, penalty phase counsel failed to properly investigate and prepare for the penalty phase. There are multiple instances identified by Mr. Chappell included in this section.

1. Failure to obtain a P.E.T. Scan
2. Failure to test Mr. Chappell for the effects of fetal alcohol syndrom and/or being born to a drug addicted mother
3. Failure to properly prepare the expert witnesses: Dr. Etcoff, Dr. Grey, and Dr. Danton
4. Failure to present mitigation witnesses to the jury
5. Failure to obtain an expert regarding pre-ejaculation fluids
6. Failure to present lay witnesses

Pretrial investigation is a critical area in any criminal case and the failure to accomplish the investigation has been held to constitute ineffective assistance of counsel. In Jackson v. Warden, 91 Nev. 430, 537 P.2d 473 (1975), the Nevada Supreme Court held,

It is still recognized that a primary requirement is that counsel...conduct careful factual and legal investigation and inquiries with a view towards developing matters of defense in order that he make informed decisions on his clients behalf both at the pleadings stage...and at trial. Jackson, 92 Nev. at 433, 537 P.2d at 474.

Federal courts are in accord that pretrial investigation and preparation are key to effective assistance of counsel. See, U.S. v. Tucker, 716 F.2d 576 (1983). In U.S. v. Baynes, 687 F.2d 659 (1982), the federal court explained,

Defense counsel, whether appointed or retained is obligated to inquire thoroughly into all potential exculpatory defenses in evidence, mere possibility that investigation might have produced nothing of consequences for the defense does



1 not serve as justification for trial defense counsels failure to perform such  
2 investigations in the first place. The fact that defense counsel may have performed  
3 impressively at trial would not have excused failure to investigate claims that  
4 might have led to complete exoneration of the defendant.

5 Counsel's complete failure to properly investigate renders his performance ineffective.

6 [F]ailure to conduct a reasonable investigation constitutes deficient performance.  
7 The Third Circuit has held that "[i]neffectiveness is generally clear in the context  
8 of complete failure to investigate because counsel can hardly be said to have made  
9 a strategic choice when s/he [sic] has not yet obtained the facts on which such a  
10 decision could be made." See U.S. v. Gray, 878 F.2d 702, 711 (3d Cir.1989). A  
11 lawyer has a duty to "investigate what information ... potential eye-witnesses  
12 possess[ ], even if he later decide[s] not to put them on the stand." Id. at 712. See  
13 also Hoots v. Allsbrook, 785 F.2d 1214, 1220 (4th Cir.1986) ("Neglect even to  
14 interview available witnesses to a crime simply cannot be ascribed to trial strategy  
15 and tactics."); Birt v. Montgomery, 709 F.2d 690, 701 (7th Cir.1983) . . .  
16 ("Essential to effective representation . . . is the independent duty to investigate  
17 and prepare.").

18 In State of Nevada v. Love, 865 P.2d 322, 109 Nev. 1136, (1993), the Supreme Court  
19 considered the issue of ineffective assistance of counsel for failure of trial counsel to properly  
20 investigate and interview prospective witnesses.

21 In Love, the District Court reversed a murder conviction of Rickey Love based upon trial  
22 counsel's failure to call potential witnesses coupled with the failure to personally interview  
23 witnesses so as to make an intelligent tactical decision and making an alleged tactical decision on  
24 misrepresentations of other witnesses testimony. Love, 109 Nev. 1136, 1137.

25 "The question of whether a defendant has received ineffective assistance of counsel at  
26 trial in violation of the Sixth Amendment is a mixed question of law and fact and is thus subject  
27 to independent review." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, at 2070, 80  
28 L.Ed.2d 674 (1984). The Nevada Supreme Court reviews claims of ineffective assistance of  
counsel under a reasonable effective assistance standard enunciated by the United States  
Supreme Court in Strickland and adopted by the Nevada Supreme Court in Warden v. Lyons,  
100 Nev. 430, 683 P.2d 504, (1984); see Dawson v. State, 108 Nev. 112, 115, 825 P.2d 593, 595  
(1992). Under this two-prong test, a defendant who challenges the adequacy of his or her  
counsel's representation must show (1) that counsel's performance was deficient and (2) that the  
defendant was prejudiced by this deficiency. Strickland, 466 U.S. at 687, 104 S.Ct. at 2064.

Under Strickland, defense counsel has a duty to make reasonable investigations or to

1 make a reasonable decision that makes particular investigations unnecessary. *Id. at* 691, 104  
2 S.Ct. at 2066. (Quotations omitted). Deficient assistance requires a showing that trial counsel's  
3 representation of the defendant fell below an objective standard of reasonableness. *Id. at* 688,  
4 104 S.Ct. at 2064. If the defendant establishes that counsel's performance was deficient, the  
5 defendant must next show that, but for counsel's errors, the result of the trial probably would  
6 have been different. *Id. at* 694, 104 S.Ct. at 2068.

7 "An error by trial counsel, even if professionally unreasonable, does not warrant setting  
8 aside a judgment of a criminal proceeding if the error had no effect on the judgment. Strickland,  
9 466 U.S. at 691, 104 S.Ct. at 2066. Thus Strickland also requires that the defendant be  
10 prejudiced by the unreasonable actions of counsel before his or her conviction will be reversed.  
11 The defendant must show that there is a reasonable probability that, but for counsel's errors, the  
12 result of the proceeding would have been different." *Id. at* 694, 104 S.Ct. at 2068. Additionally,  
13 the Strickland court indicated that "a verdict or conclusion only weakly supported by the record  
14 is more likely to have been affected by errors than one with overwhelming record support." *Id. at*  
15 696, 104 S.Ct. at 2069.

16 **A. FAILURE TO PRODUCE TESTIMONY FROM JAMES FORD AND IVORY**  
17 **MORRELL**

18 During the original post-conviction, counsel alleged that trial counsel had been  
19 ineffective for failure to produce several mitigation witnesses. Specifically, post-conviction  
20 counsel complained that James C. Ford and Ivory Morrell (friends of James Chappell) were not  
21 called to testify. At the conclusion of the post-conviction hearings, the district court granted the  
22 writ in part and denied the writ in part. The district court concluded that Mr. Chappell received  
23 ineffective assistance of penalty phase counsel for the failure to call mitigation witnesses. This  
24 decision was upheld on appeal from the first post-conviction. Thereafter, post-conviction counsel  
25 represents Mr. Chappell at the instant penalty phase. Interestingly enough, neither James C. Ford  
26 nor Ivory Morrell testified as to the mitigation evidence that they could have provided.

27 On March 19, 2007, penalty phase counsel advised the court that Mr. Morrell and Mr.  
28 Ford would not be able to testify (15 ROA 3669). Counsel explained that Mr. Morrell and Mr.  
Ford had been present since "Tuesday night of last week" (15 ROA 3669). On the Friday before,

1 both witnesses were in a situation where they would lose employment (15 ROA 3669). In fact,  
2 Mr. Ford's district supervisor stated that he would be fired if he was not present at work on  
3 Monday (the day that counsel was making the representations (15 ROA 3669). Penalty phase  
4 counsel was concerned that the employment depression in Lansing, Michigan was so severe that  
5 it necessitated letting the witnesses proceed back to Michigan. Counsel stated, "it was our  
6 decision to allow them - - we had them here and we could have enforced the subpoena on them  
7 causing them to lose their work and causing difficulty with out client, and causing them to lose  
8 their work, and we made the decision to allow them to return to Michigan, so that they will not  
9 be testifying" (15 ROA 3669).

10 In essence, counsel weighed the decision to relieve the two mitigation witnesses of their  
11 obligation to testify based on employment hardship versus the defendant's opportunity to have  
12 his life spared at a penalty phase. Nothing could be more important in the penalty phase. Penalty  
13 phase counsel had argued to the district court that trial counsel from the first trial was ineffective  
14 for failure to call these two witnesses. Yet, the two witnesses were then released. The difficulty  
15 with the issue is compounded by a review of the third penalty phase. Interestingly enough, the  
16 defense called a few witnesses out of order, in the State's case in chief. Curiously, no attempts  
17 were made to put Mr. Ford and Mr. Morrell on the stand out of order. Most certainly, the district  
18 court would have accommodated the defense request, had defense counsel simply orally  
19 informed the court of the dilemma. Then, the witnesses would have undoubtedly provided the  
20 mitigation evidence which was so obviously necessary.

21 For instance, Dr. Etcoff's testimony was taken out of order. Yet, penalty phase counsel  
22 failed to make this request even though the district court and Nevada Supreme Court had  
23 determined first penalty phase counsel to be ineffective for failure to call these witnesses  
24 (amongst other mitigation that was not presented). In the original post conviction, counsel  
25 provided the following synopsis of James C. Ford.

26 Chappell's best friend in Michigan. Chappell grew up with Mr. Ford and he was  
27 around Debra and Chappell during the first five years of our relationship. He also  
28 knew about Chappell's employment history and could have testified at both the  
trial and penalty phase (Supplemental Petition for Writ of Habeas Corpus, pp. 14).

Post conviction counsel explained, "Mr. Ivory Morrell [sic] was also a friend of Chappell

1 and Debra in Michigan and stayed in contact with them in Arizona. He could have testified to  
2 Debra's behavior in the relationship with Chappell" (Supplemental Petition for Writ of Habeas  
3 Corpus, pp. 14). Attached for this Court's review as "Exhibit A" are the two affidavits of Ford  
4 and Morrell which were attached to the original post conviction petition. The affidavits of these  
5 two individuals are as important today as they were during the original petition. Penalty phase  
6 counsel knew that the Nevada Supreme Court recognized the significance of these two  
7 individuals potential testimony. Upon their affidavits, Mr. Chappell received a new penalty  
8 phase. It was clearly ineffective assistance of counsel for failure to present these witnesses. The  
9 same analyses that was provided by the Nevada Supreme Court and the district court almost a  
10 decade ago applies today. More importantly, penalty phase counsel was aware of the significant  
11 influence of the potential testimony of the two witnesses.

12 The prosecution was so concerned with the failure to present mitigation witnesses, that  
13 the prosecutor raised the issue to the trial court (16 ROA 3803). The prosecutor stated,

14 I went back and reviewed the court's order which was the basis for the reversal of  
15 the penalty phase and the reason why we were in the proceeding, the decision by  
16 Judge Douglas, I believe, confirmed by the Supreme Court in the order of  
affirmance that the defense failed to call certain witnesses that would have made a  
difference in the outcome of the original case.

17 There were eight or nine witnesses that were detailed in the briefs  
18 and the decision. For the record, my notation on that would  
19 indicate that would be Shirley Serrelly, James Ford, Ivory Morrell,  
20 Chris Bardo, David Greene, Benjamin Dean, Clairaxom, Barbara  
21 Dean, and Ernestine Harvey. Of those nine names the defendant  
only called two of them, by my understanding. There were five of  
them that were not called, no affidavits were submitted, no letters  
were written in, no testimony was given in summary by third  
parties (16 ROA 3803-3804).

22 The prosecutor did note that Clairaxom's prior testimony was read into the court record  
23 (16 ROA 3803).

24 Next, a review of the entire file portrays an extremely deficient investigation of a time  
25 when Mr. Chappell lived in Arizona. During the penalty phase, the State provided witnesses  
26 from Arizona who testified to very damning events by Mr. Chappell. No rebuttal was offered by  
27 the defense. Mr. Chappell respectfully requests that this Court grant an evidentiary hearing to  
28 ascertain what efforts and investigation were conducted in Arizona in order to assist Mr.

1 Chappell at the penalty phase.

2 The Nevada Supreme Court in Doleman v. State, 112 Nev. 843 921 P.2d 278 (1996)  
3 concluded:

4 We conclude that the failure of Doleman's trial counsel to reasonably investigate  
5 the potential testimony of certain witnesses at Doleman's penalty hearing  
6 constituted ineffective assistance of counsel. In this case, the court found that trial  
7 counsel's failure to call witnesses from an institution where the convicted  
8 individual had attended school, who would have testified as to the convicted  
9 individual's ability to function in structured environments and adhere to  
10 institutional rules, constituted a violation of the reasonable effective assistance  
11 standard.

12 Defense counsel's failure to investigate the facts can render a result "unreliable" Buffalo v.  
13 State, 111 Nev. 1139, 901 P.2d 647 (1995).

14 The defense called their mitigation investigator who attempted to tell the jury the  
15 potential testimony of Ford and Morrell. Unfortunately, the testimony of a mitigation investigator  
16 does not equate to the mitigation witnesses themselves.

17 **B. FAILURE TO OBTAIN AN EXPERT**

18 In the instant case, the sole aggravator found by the jury was that the murder was  
19 committed while Chappell was engaged in the commission of a sexual assault. On appeal from  
20 the penalty phase, appellate counsel argued that there was insufficient evidence to establish the  
21 sole aggravator beyond a reasonable doubt (Order of Affirmance, pp. 3). The Nevada Supreme  
22 Court explained,

23 Our review of the record reveals sufficient evidence to establish the sexual assault  
24 aggravator beyond a reasonable doubt as determined by a rational trier of fact.  
25 See, Wilkins v. State, 96 Nev. 367, 374, 609 P.2d 309, 313 (1980); See also,  
26 Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1989);  
27 Jackson v. Virginia, 443 U.S. 307, 319 (1979).

28 One of the factors considered by the Nevada Supreme Court was Chappell's assertion that  
he did not ejaculate into the victim during their sexual encounter, even when matching DNA was  
recovered from her vagina (Order of Affirmance, pp.3). In fact, this issue was vehemently argued  
to the jury by the prosecution. During his sworn testimony, Mr. Chappell admitted that he had  
vaginal sexual intercourse and oral sex with Debra Panos, before he killed her. Mr. Chappell  
testified that the sexual encounters were consensual but denied ejaculation. The State argued to  
the jury that this proved Mr. Chappell was a liar and had sexually assaulted the victim.

1 Apparently, the Nevada Supreme Court used this fact to determine there was sufficient evidence  
2 to convict of sexual assault.

3 Without the sexual assault aggravator, Mr. Chappell is not eligible for a sentence of  
4 death. Ms. Panos was found stabbed to death fully clothed. The knife wounds went through her  
5 clothing and into her body. Ms. Panos was not naked and therefore this provides proof of a prior  
6 consensual sexual encounter. This fact also corroborates Mr. Chappell's testimony that after the  
7 consensual sexual encounter he located letters he perceived as proof that she was unfaithful and  
8 went into a blind rage.

9 Counsel should have provided expert testimony that pre-ejaculation fluid may contain  
10 sperm. It has long been recognized in the medical community, a women can become pregnant  
11 even when ejaculation does not occur (Dr. Roger Wharms, M.D., Mayo clinic).

12 During the testimony of Detective James Vaccaro, he was questioned whether the results  
13 of DNA of James Chappell was found in Debra's vaginal cavity of Debra. Detective Vaccaro  
14 concluded, "I do know that the results were that the DNA of James Chappell was found in the  
15 form of semen inside the vagina of Debra Panos". The detective was then asked, "the fact that its  
16 in the form of semen would indicate that he ejaculated into her body"? The detective indicated  
17 "yes" (14 ROA 3425).

18 Penalty phase counsel was ineffective for failing to provide expert testimony that sperm  
19 could be located in the vaginal cavity of the victim when the defendant sincerely believed he had  
20 not ejaculated. The simple fact which is provided to most high school students in health class,  
21 could have dispelled the belief that Mr. Chappell was lying and therefore sexually assaulted the  
22 victim. Mr. Chappell has specifically requested funding for an expert in this area. It was  
23 ineffective assistance of counsel for failure to obtain this expert testimony.

24 **C. FAILURE TO OBTAIN A P.E.T. SCAN**

25 In the instant case, Dr. Etcoff examined and tested Mr. Chappell. Mr. Chappell had an  
26 extremely low IQ. There was evidence that Mr. Chappell's mother may have been addicted to  
27 drugs and alcohol. A proper investigation should have been conducted to determine whether  
28 James was born to a mother who was ingesting narcotics and/or alcohol during her pregnancy.

1 There is no indication in the voluminous file that counsel investigated the possibility of fetal  
2 alcohol syndrome. Additionally, Mr. Chappell's father was involved in controlled substances and  
3 criminal activities. Every one of Mr. Chappell's siblings were involved with controlled  
4 substances.

5 During closing argument, defense counsel explained, "his mother was addicted to drugs  
6 and alcohol and it's quite possible she was using either drugs and/or alcohol while she was  
7 pregnant (16 ROA 3788). Fetal Alcohol Spectrum Disorders are a group of disorders that can  
8 occur in a person who's mother drank alcohol during pregnancy. The effects can include  
9 physical problems and problems with behavior and learning. There was evidence that Mr.  
10 Chappell's mother may have been addicted to drugs and alcohol. A proper investigation should  
11 have been conducted to determine whether James was born to a mother who was ingesting  
12 narcotics and/or alcohol during her pregnancy. There is no indication in the voluminous file that  
13 counsel investigated the possibility of fetal alcohol syndrome.

14 The Nevada Supreme Court in Riley v. State, 110 Nev. 638, 650, 878 P.2d 272, 280  
15 (1994) explained, "even though we declined to reverse, we recognized that a defendant may be  
16 prejudiced by counsel's failure to investigate overall mental capabilities when a pretrial  
17 psychological evaluation indicates that the defendant may have serious mental health problems".

18 Mr. Chappell had been sentenced to death by the first jury. Therefore, it was incumbent  
19 upon first post-conviction counsel (penalty phase trial counsel) to request funding for a P.E.T.  
20 scan and/or brain imaging of the defendant.

21 Mr. Chappell specifically requests funding to determine whether Mr. Chappell suffered  
22 from fetal alcohol syndrome and requests permission for brain imaging.

23 **D. FAILURE TO PROPERLY PREPARE EXPERT WITNESSES PRIOR TO**  
24 **PENALTY PHASE**

25 The defense called Dr. Etcoff as a mitigation witness. Dr. Etcoff had interviewed Mr.  
26 Chappell for two hours almost a decade before his second penalty phase testimony. On cross-  
27 examination, it became painfully obvious that Dr. Etcoff had not been properly prepared. It was  
28 obvious that the defense had failed to provide a mountain of relevant evidence to Dr. Etcoff. On  
cross-examination, Dr. Etcoff admitted he had relied upon Mr. Chappell's statements. In fact, Dr.

1 Etcoff believed that the couple was splitting up which had occurred in the last few months prior  
2 to the victim's death (15 ROA 3550). Dr. Etcoff admitted that he did not know that the domestic  
3 violence had been going on for a lengthy period of time (15 ROA 3550). Dr. Etcoff believed that  
4 the problems in the relationship occurred shortly before the murder because Mr. Chappell told  
5 him so (15 ROA 3551). Dr. Etcoff admitted that he was unaware that the problems had been  
6 occurring for years (15 ROA 3551). In fact, Dr. Etcoff admitted that he was not provided  
7 evidence that the domestic violence was occurring on a weekly basis which resulted in injuries to  
8 Debra Panos (15 ROA 3551).

9 Dr. Etcoff admitted that this information would be important in formulating his opinion  
10 (15 ROA 3551). However, Dr. Etcoff was unaware of these facts. Dr. Etcoff admitted that he was  
11 unaware of the incident on June 1, where the defendant had pinned the victim down and placed a  
12 knife to her throat (15 ROA 3552). Dr. Etcoff admitted that he had not interviewed any of the  
13 witnesses associated with the years of domestic violence (15 ROA 3553). Dr. Etcoff admitted  
14 that the defense had not provided him any of this information prior to his testimony (15 ROA  
15 3553).

16 More importantly, Dr. Etcoff admitted in the ten years since his evaluation that the  
17 defense had not provided any additional information (15 ROA 3554). Dr. Etcoff admitted that the  
18 information was relevant for a psychologist. Yet, Mr. Etcoff freely admitted that he was now  
19 relying on very limited data because of the failure of the defense to provide him with the  
20 information (15 ROA 3554). Dr. Etcoff admitted he was not aware that Mr. Chappell had  
21 allegedly threatened to kill Debra the day before (15 ROA 3555). Dr. Etcoff admitted that he was  
22 not provided information that Debra had been shaking curled up in the fetal position shortly  
23 before the murder (15 ROA 3556). Dr. Etcoff admitted on cross-examination that Mr. Chappell's  
24 story regarding consensual sex did not make sense (15 ROA 3556). Dr. Etcoff admitted that he  
25 believed the story didn't make sense now that he had an opportunity to be cross-examined  
26 regarding all the information he was unaware of (15 ROA 3556).

27 In fact, Dr. Etcoff was asked whether Mr. Chappell's story seemed "bogus" because there  
28 was semen found in Debra's vagina when Mr. Chappell denied ejaculation (15ROA 3557).



1 Having concluded that Mr. Chappell's story was "bogus", Dr. Etcoff further concluded that the  
2 defense had not even provided him photos in the case (15 ROA 3557). At the conclusion of  
3 cross- examination, Dr. Etcoff explained that Mr. Chappell's statements that the fight occurred  
4 when he located the letters in Debra's car makes less sense (15 ROA 3558).

5 On redirect examination, defense counsel asked:

6 Q: And you knew he had a long history of domestic violence with Debbie?

7 A: I don't know if I knew. I don't believe I knew he had a long history of  
8 domestic violence and what it entailed, I don't believe I knew that stuff  
(15 ROA 3576).

9 In essence, Dr. Etcoff provided opinions to the jury on direct examination that were  
10 entirely refuted after cross examination. Dr. Etcoff apparently provided opinions that he  
11 withdrew based upon his lack of knowledge of the case. The excerpts from the penalty phase  
12 demonstrate that Dr. Etcoff was not provided relevant information to provide his opinion. Surely,  
13 in pre trial interviewing and/or preparation defense counsel would have provided Dr. Etcoff's  
14 with the long history of domestic violence. That fact was uncontradicted during the penalty  
15 phase. Numerous witnesses described years of domestic violence. Yet, the defenses expert was  
16 unaware of these facts.

17 During the direct examination of Dr. Etcoff, he was asked if it was common procedure to  
18 interview people associated with the defendant rather than just talking to the defendant (14 ROA  
19 3477). Dr. Etcoff replied,

20 You want to, as a psychologist, you want if someone's mother, or brother, or  
21 sister, or wife, or someone who knows them well is around and you really want to  
22 get an outside opinion or collateral opinion of what their functioning had been  
23 like. I do that all the time with people in civil cases. I wanna know what the  
24 spouse thinks has been the cause of the accident, so to speak. And undoubtedly  
then ask deputy public defender Brooks if anyone in the family was available or  
could they be brought to Las Vegas so I could interview them, but that wasn't  
possible. So the only person I was able to interview at the time was Mr. Chappell  
(14 ROA 3477).

25 Dr. Etcoff was then asked by penalty phase counsel if he got an accurate evaluation from  
26 Mr. Chappell and Dr. Etcoff replied that it was "as accurate as you can get". The Court sustained  
27 the State's objection (14 ROA 3477).

28 Here, more than ten years after Dr. Etcoff had requested permission to speak to the

1 defendant's family, penalty phase counsel never made family members available to Dr. Etcoff

2 The lack of pre trial preparation was evident and devastating to Mr. Chappell. By the  
3 conclusion of cross-examination, Dr. Etcoff admitted that Mr. Chappell's story regarding  
4 consensual sex made no sense and was in fact "bogus". Dr. Etcoff apparently admitted that Mr.  
5 Chappell's story that he did not ejaculate was also unfounded. This was at a direct result of the  
6 failure to properly prepare the witness with accurate information.

7 Dr. William Danton is a clinical psychology at the University of Nevada, Reno, school of  
8 Medicine (15 ROA 3317).

9 During Dr. Danton's direct examination, he explained different hypotheses for why Debra  
10 may have had sex with Mr. Chappell on the day of the murder. However, Dr. Danton stated "the  
11 only issue about that is if there were affairs with other men, that doesn't fit well with that  
12 hypothesis. Of course, the other hypothesis is forced. He forced her to have sex" (14 ROA 3327).  
13 Here, the defense expert provided approximately four possible reasons for a sexual encounter  
14 with Mr. Chappell on the day of the murder. Dr. Danton concluded that one scenario would be  
15 forced sexual activity, providing the jury with the conclusion that rape was a certain possibility.

16 Dr. Danton discussed domestic violence during his testimony. Unbelievably, Dr. Danton  
17 testified that he first met with Mr. Chappell (for two hours) the night before his testimony on  
18 March 15, 2007 (15 ROA 3321). Here, the jury is aware that the case had been pending for years.  
19 Dr. Etcoff testified that he had evaluated Mr. Chappell ten years prior to his testimony. However,  
20 the jury learns that one of three defense experts analyzed the defendant for the first time the night  
21 before his testimony. Again, this expert was not properly prepared to testify. Was the defense  
22 preparing to call Dr. Danton irregardless of his interview with the defendant? Did the defense not  
23 prepare prior to trial in an effort to present a domestic violence expert? Why is the expert  
24 analyzing the defendant for the first time in the middle of the penalty phase? This fact establishes  
25 lack of pretrial preparation.

26 During Dr. Danton's testimony, he surmised that Mr. Chappel may have blacked out  
27 during the actual murder. This testimony would corroborate Mr. Chappel's trial testimony  
28 wherein he claimed he did not remember the actual facts of the stabbing. However, a juror asked

1 a question of Dr. Danton. The juror asked "first off, in your opinion do you think that Mr.  
2 Chappell blacked out? If you have enough information to answer the question". (14 ROA 3371).  
3 Dr. Danton stated that he would be more on the side that Mr. Chappell did in fact black out (14  
4 ROA 3371). However, Dr. Danton then stated, "although I have to, in all honesty, I don't have  
5 enough data to conclusively say he blacked out. There is testing that could be done that might  
6 establish that, but I haven't done it" (14 ROA 3371). Additionally, Dr. Etkoff was extensively  
7 questioned as to whether he really believed if Mr. Chappell had blacked out. The State feverishly  
8 argued that Mr. Chappell was lying about his testimony that he had blacked out during the actual  
9 murder. During Dr. Danton's testimony, he was later confronted with Dr. Etkoff's opinion that  
10 Mr. Chappell had not blacked out. Again, Dr. Danton confirmed, "to my knowledge no tests were  
11 done that might specifically speak to that question" (14 ROA 3373). Here, the defense witnesses  
12 appear to be directly contradicting each other. Yet, the testing had not been conducted. More  
13 importantly, it is clear that defense counsel had not properly pretrialled the expert witnesses,  
14 otherwise counsel would have noticed that their witnesses were contradicting each other. Yet,  
15 defense counsel failed to confer with Dr. Danton and ensure that the testing was aware of was  
16 conducted. Further proof of the failure to properly prepare for the penalty phase.

17 The defense called Dr. Grey who testified that he had not seen the DNA report (13 ROA  
18 3230). The following is an excerpt from cross-examination:

19 Q: So you didn't read the report that talks about the presence of sperm as  
20 well?

20 A: I did not see that.

21 Q: But that would be conclusive that there was ejaculation?

21 A: Yes (13 ROA 3230).

22 Again, penalty phase counsel failed to properly prepare their expert witnesses. If Dr. Grey  
23 had been given an opportunity to review the report and discuss the case with counsel in depth, he  
24 would have had knowledge of this fact. More importantly, this is more evidence that penalty  
25 phase counsel should have obtained an expert to establish that semen can be present without  
26 ejaculation.

27 The following expert demonstrate further evidence of the failure to properly prepare Dr.  
28 Grey occurred during cross examination:

1 Q: And that is based on what the defendants's version of events were?  
2 A: Again, the specifics of how that information was gathered I do not know  
3 Q: So you didn't look at the actual photographs or look at the evidence that  
4 was seized fro the scene in order to come to your conclusion?  
5 A: The only pictures I saw were the ones related to the victims position (13  
6 ROA 3230).

7 Dr. Grey also admitted that he had not been informed by the defense that Debra had been  
8 threatened in court the day before (13 ROA 3231). Additionally, Dr. Grey stated that he was  
9 unaware that Debra was shaking and afraid in the fetal position shortly before the murder (13  
10 ROA 3231). Dr. Grey admitted that these threats were not taken into account regarding the issue  
11 of sexual assault (13 ROA 3231). Dr. Grey was unaware that Mr. Chappell had testified that he  
12 had pinned Debra down and that there was a knife present (13 ROA 3232). Dr. Grey admitted  
13 that he had not read Mr. Chappell's testimony (13 ROA 3232).

14 There is a pattern of lack of preparation throughout the penalty phase where in experts do  
15 not appear to have the information necessary to provide accurate opinions. On cross-examination  
16 this lack of preparation was devastating to Mr. Chappell.

17 **E. FAILURE TO PROPERLY PREPARE A LAY MITIGATION WITNESS**

18 The defense called Benjamin Dean as a mitigation witness (15 ROA 3706). Mr. Dean  
19 attended school with Mr. Chappel (15 ROA 3706). Not only did Mr. Dean grow up with Mr.  
20 Chappell but he also knew Debra (15 ROA 3709). On direct examination, Mr. Dean was asked  
21 about the couple's relationship and he stated, "I didn't see any problems with them..." (15 ROA  
22 3708). However, on cross-examination Mr. Dean was severely impeached with his prior  
23 affidavit. On cross-examination Mr. Dean was asked whether he believed Debra was controlling  
24 and manipulating. Mr. Dean responded indicating he had never said that (15 ROA 3709). On  
25 cross-examination Mr. Dean was asked whether Debra wanted to keep Mr. Chappell away from  
26 his old friends. Mr. Dean denied saying that (15 ROA 3709). Mr. Dean denied ever stating that  
27 Debra was verbally abusive to James. However, having denied making any of these statements  
28 the prosecution then showed Mr. Dean his signed affidavit from March of 2003 (15 ROA 3709).  
In the affidavit, Mr. Dean affirmed that Debra was controlling (15 ROA 3709). The affidavit  
described Debra as manipulative and that she did not like his old friends (15 ROA 3709). The  
affidavit stated that Debra was abusive (15 ROA 3709). Mr. Dean had no credible answer for

1 why his previous affidavit described Debra in such a poor light yet he denied making any of  
2 those statements in front of the jury.

3 Obviously, penalty phase counsel did not properly pretrial Mr. Dean. The first portion of  
4 the pretrial should have been to review Mr. Dean's prior affidavit. Furthermore, based on the  
5 direct examination of Mr. Dean it appears penalty phase counsel may have been unaware of Mr.  
6 Dean's prior affidavit. This was a part of a larger pattern of the failure to prepare. This is  
7 conclusive evidence that counsel proceeded to trial on a day to day basis without properly  
8 preparing witnesses in an effort to spare Mr. Chappell's life.

9 Mr. Chappell is entitled to a new penalty due to ineffective assistance of counsel.

10 **III. MR. CHAPPELL RECEIVED INEFFECTIVE ASSISTANCE OF PENALTY**  
11 **PHASE TRIAL COUNSEL AND APPELLATE COUNSEL FOR FAILURE TO**  
12 **OBJECT TO THE CUMULATIVE VICTIM IMPACT PANEL IN VIOLATION**  
13 **OF THE FIFTH, SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO**  
14 **THE UNITED STATES CONSTITUTION.**

15 On March 15, 2007, defense counsel specifically objected to victim impact statements  
16 being provided by witnesses that are not family members. (14 ROA 3271-3273). In response, the  
17 district court permitted victim impact statements from people other than family members but  
18 specifically stated, "as I said yesterday, to the extent we get to something overly cumulative in  
19 this presentation, I'll cut it off" (14 ROA 3273). On appeal, appellate counsel argued that the  
20 district court erred by permitting the prosecution to introduce "excessive victim impact  
21 testimony" (Order of Affirmance pp. 18). Specifically, appellate counsel complained that non-  
22 family members provided extensive impact evidence and that the State had failed to include in  
23 the notice mandated by Supreme Court Rule 250(4)(f).

24 First, on appeal, the Nevada Supreme Court explained, "however, Chappell did not object  
25 on the grounds of insufficient notice and thus the second claim is reviewed for plain error  
26 effecting his substantial rights". See, Archanian v. State, 122 Nev. 1019, 1031, 145 P.3d 1008,  
27 1017 (2006)(Order of Affirmance pp. 18-19). The failure to trial penalty phase counsel to object  
28 mandated a higher standard of review on appeal. Trial penalty phase counsel was therefore  
ineffective for failing to object.

Additionally, appellate counsel failed to inform the Supreme Court that the victim impact

IN THE SUPREME COURT OF THE STATE OF NEVADA

\* \* \* \* \*

JAMES MONTELL CHAPPELL,

Appellant,

v.

WILLIAM GITTERE, et al.,

Respondents.

No. 77002

District Court Case No.

(Death Penalty Case)

Electronically Filed  
May 02 2019 08:46 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

APPELLANT'S APPENDIX

Volume 4 of 31

Appeal From  
Eighth Judicial District Court, Clark County  
The Honorable Valerie Adair, District Judge

RENE L. VALLADARES  
Federal Public Defender  
BRAD D. LEVENSON  
Assistant Federal Public Defender  
Nevada Bar No. 13804  
Brad\_Levenson@fd.org  
SCOTT WISNIEWSKI  
Assistant Federal Public Defender  
Nevada Bar No. 144415  
Scott\_Wisniewski@fd.org  
ELLESSE HENDERSON  
Nevada Bar No. 14674C  
Ellesse\_Henderson@fd.org  
411 E. Bonneville, Suite 250  
Las Vegas, Nevada 89101  
(702) 388-6577  
Attorneys for Appellant

## INDEX

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
3	Exhibits in Support of Petition for Writ of Habeas Corpus (Post Conviction)(List), <i>Chappell v. Filson</i> , District Court, Clark County, Nevada Case No. C131341 (November 16, 2016) .....	562-632
	<b>EXHIBITS</b>	
3	1. Judgement of Conviction, <i>State v. Chappell</i> , Eighth Judicial District Court Case No. 95-C13141, December 31, 1996 .....	633-636
3	2. Opinion, <i>Chappell v. State</i> , Nevada Supreme Court Case No. 29884, December 30, 1998 .....	637-648
3	4. Findings of Fact, Conclusions of Law and Order, <i>Chappell v. State</i> , Eighth Judicial District Court Case No. 95-C13141, June 3, 2004 .....	649-653
3	5. Order of Affirmance, <i>Chappell v. State</i> , Nevada Supreme Court Case No. 43493, April 7, 2006 .....	654-668
3	6. Judgement of Conviction, <i>State v. Chappell</i> , Eighth Judicial District Court Case No. 95-C13141, May 10, 2007 .....	669-671
3	7. Order of Affirmance, <i>Chappell v. State</i> , Nevada Supreme Court Case No. 49478, October 20, 2009 ....	672-704
3	8. Order Denying Rehearing and Amended Order, <i>Chappell v. State</i> , Nevada Supreme Court Case No. 49478, December 16, 2009 .....	705-709
3	9. Findings of Fact, Conclusions of Law and Order, <i>State v. Chappell</i> , Eighth Judicial District Court Case No. 95-C131341, November 16, 2012 .....	710-721
3	10. Order of Affirmance, <i>Chappell v. State</i> , Nevada Supreme Court Case No. 61967, June 18, 2015 .....	722-738

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
3	11. Order Denying Rehearing, <i>Chappell v. State</i> , Nevada Supreme Court Case No. 61967, October 22, 2015 .....	739-742
3-4	12. Juror Questionnaire, Olga C. Bourne (Badge #427), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 2, 1996 .....	743-751
4	13. Juror Questionnaire, Adriane D. Marshall (Badge #493), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 2, 1996 .....	752-760
4	14. Juror Questionnaire, Jim Blake Tripp (Badge #412), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 2, 1996 .....	761-769
4	15. Juror Questionnaire, Kellyanne Bentley Taylor (Badge #421), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 2, 1996 .....	770-778
4	16. Juror Questionnaire, Kenneth R. Fitzgerald (Badge #473), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 2, 1996 .....	779-788
4	17. Motion to Admit Evidence of Other Crimes, Wrongs or Bad Acts, <i>State v. Chappell</i> , Eighth Judicial District Court, May 9, 1996 .....	789-799
4	18. Supplemental Motion to Admit Evidence of Other Crimes, Wrongs or Bad Acts, <i>State v. Chappell</i> , Eighth Judicial District Court, August 29, 1996 .....	800-803
4	19. Defendant's Opposition to State's Motion to Admit Evidence of Other Crimes, Wrongs or Bad Acts, <i>State v. Chappell</i> , Eighth Judicial District Court, September 10, 1996 .....	804-814
4	20. Defendant's Offer to Stipulate to Certain Facts, <i>State v. Chappell</i> , Eighth Judicial District Court, September 10, 1996 .....	815-818
4	21. Stipulation to Certain Facts, <i>State v. Chappell</i> , Eighth Judicial District Court, September 10, 1996 .....	819-822



<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
4	22. Defendant's Motion to Compel Petrocelli Hearing Regarding Allegations of Prior Bad Acts, <i>State v. Chappell</i> , District Court, Clark County, Nevada (September 10, 1996) .....	823-829
4	23. Defendant's Motion in Limine Regarding Events Related to Defendant's Arrest for Shoplifting on September 1, 1995, <i>State v. Chappell</i> , Eighth Judicial District Court, October 4, 1996 .....	830-836
4	24. Information, <i>State v. Chappell</i> , Eighth Judicial District Court, October 11, 1995 .....	837-843
4	25. Notice of Intent to Seek the Death Penalty, <i>State v. Chappell</i> , Eighth Judicial District Court, November 8, 1995.....	844-847
4	26. Defendant's Motion to Strike State's Notice of Intent to Seek Death Penalty, Because the Procedure in this Case is Unconstitutional, <i>State v. Chappell</i> , Eighth Judicial District Court, July 23, 1996.....	848-862
4	27. Criminal Court Minutes, <i>State v. Chappell</i> , Eighth Judicial District Court, September 30, 1996 .....	863-865
4	28. Affidavits in Support of Petition for Writ of Habeas Corpus (Post-Conviction), <i>State v. Chappell</i> , Eighth Judicial District Court, March 7, 2003.....	866-877
4	29. Affidavits in Support of Petition for Writ of Habeas Corpus (Post-Conviction), Eighth Judicial District Court, March 10, 2003.....	878-888
4	30. Verdict, October 24, 1996; Special Verdicts, October 24, 1996.....	889-894
4	36. Jury List, March 13, 2007 .....	895-896
4	37. Pre-Sentence Investigation Report, 1995 .....	897-903
4	38. Pre-Sentence Investigation Report, December 5, 1996 .....	904-912
4	39. Special Verdicts, March 21, 2007.....	913-918

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
4	40. Instructions to the Jury, March 21, 2007 .....	919-942
4	41. Verdict Forms Counts I, II, III, October 16, 1996.....	943-946
4	42. Motion to Strike Sexual Assault Aggravator of the State's Notice of Intent to Seek the Death Penalty or in the Alternative, Motion in Limine to Allow Defendant to Introduce Evidence in Defense of Sexual Assault, September 20, 2006.....	947-963
4-5	43. Supplemental Brief in Support of Defendant's Writ of Habeas Corpus, February 15, 2012.....	964-1046
5	44. Motion for Authorization to Obtain an Investigator and for Payment of Fees Incurred Herein, February 15, 2012 .....	1047-1053
5	45. Recorder's Transcript re: Evidentiary Hearing Argument held on October 19, 2012, October 29, 2012.....	1054-1066
5	46. Supplemental Petition for Writ of Habeas Corpus (Post-Conviction), April 30, 2002.....	1067-1131
5	47. Instructions to the Jury, October 16, 1996.....	1132-1178
5	48. <u>State of Nevada v. Richard Edward Powell</u> , Case No. C148936, Eighth Judicial District Court, Verdict Forms, November 15, 2000.....	1179-1199
5	49. <u>State of Nevada v. Jeremy Strohmeyer</u> , Case No. 97-C- 144577, Eighth Judicial District Court Minutes, September 8, 1998.....	1200-1202
5	50. <u>State of Nevada v. Fernando Padron Rodriguez</u> , Case No. C130763 Eighth Judicial District Court, Verdict Forms, November 1, 1995.....	1203-1205
5	51. <u>State v. Jonathan Cornelius Daniels</u> , Case No. C126201, Eighth Judicial District Court, Verdict Forms, May 7, 1996 .....	1206-1216

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
5	52. Declaration of Benjamin Dean, April 7, 2016 .....	1217-1224
5	53. Declaration of Carla Chappell, April 23, 2016 .....	1225-1237
5	54. Declaration of Charles Dean, April 19, 2016 .....	1238-1245
5	55. Declaration of Ernestine ‘Sue’ Harvey, July 2, 2016 .....	1246-1248
5-6	56. Declaration of Fred Dean, June 11, 2016 .....	1249-1255
6	57. Declaration of Georgette Sneed, May 14, 2016 .....	1256-1260
6	58. Declaration of Harold Kuder, April 17, 2016 .....	1261-1265
6	59. Declaration of James Ford, May 19, 2016 .....	1266-1286
6	60. Declaration of James Wells, January 22, 2016 .....	1287-1290
6	61. Declaration of Joetta Ford, May 18, 2016 .....	1291-1297
6	62. Criminal Court Minutes, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 18, 1995.....	1298-1299
6	63. Declaration of Michael Chappell, May 14, 2016 .....	1300-1304
6	64. Declaration of Myra Chappell-King, April 20, 2016 .....	1305-1319
6	65. Declaration of Phillip Underwood, April 17, 2016 .....	1320-1326
6	66. Declaration of Rodney Axam, April 18, 2016 .....	1327-1329
6	67. Declaration of Rose Wells-Canon, April 16, 2016 .....	1330-1334

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
6	68. Declaration of Sharon Axam, April 18, 2016 .....	1335-1341
6	69. Declaration of Sheron Barkley, April 16, 2016 .....	1342-1346
6	70. Declaration of Terrance Wallace, May 17, 2016 .....	1347-1354
6	71. Declaration of William Earl Bonds, May 13, 2016 .....	1355-1360
6	72. Declaration of William Roger Moore, April 17, 2016 .....	1361-1367
6	73. Declaration of Willie Richard Chappell, Jr., May 16, 2016 .....	1368-1382
6	74. Declaration of Willia Richard Chappell, Sr., April 16, 2016 .....	1383-1388
6	75. State's Exhibit No. 25, Autopsy Photo of Deborah Panos, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 10, 1996 .....	1389-1391
6	76. State's Exhibit No. 37, Autopsy Photo of Deborah Panos, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 10, 1996 .....	1392-1394
6	77. State's Exhibit No. 38, Autopsy Photo of Deborah Panos, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 10, 1996 .....	1395-1397
6	78. State's Exhibit No. 39, Autopsy Photo of Deborah Panos, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 10, 1996 .....	1398-1400
6	79. State's Exhibit No. 40, Autopsy Photo of Deborah Panos, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 10, 1996 .....	1401-1403
6	80. State's Exhibit No. 41, Autopsy Photo of Deborah Panos, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 10, 1996 .....	1404-1406

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
6	81. State's Exhibit No. 42, Autopsy Photo of Deborah Panos, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 10, 1996 .....	1407-1409
6	82. State's Exhibit No. 43, Autopsy Photo of Deborah Panos, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 10, 1996 .....	1410-1412
6	83. State's Exhibit No. 1, Photo of Front Window at Crime Scene, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 10, 1996 .....	1413-1415
6	84. State's Exhibit No. 45, Autopsy Photo of Deborah Panos, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 10, 1996 .....	1416-1418
6	85. Declaration of Dr. Lewis Etkoff, July 11, 2016 .....	1419-1423
6	86. State's Exhibit No. 47, Autopsy Photo of Deborah Panos, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 10, 1996 .....	1424-1426
6	87. Neuropsychological Report, Dr. Paul D. Connor, July 15, 2016 .....	1427-1464
6-7	88. Functional and Behavioral Assessment Report, Dr. Natalie Novick-Brown, August 3, 2016.....	1465-1514
7	89. Medical Expert Report, Dr. Julian Davies, August 5, 2016.....	1515-1549
7	90. Report of Neuropharmacology Opinion, Dr. Jonathan Lipman, August 12, 2016.....	1550-1582
7	91. Juror Selection List, <i>State v. Chappell</i> , Eighth Judicial District Court, Case no. 95-C131341, March 13, 2007.....	1583-1584
7	92. Juror Selection List, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 7, 1996.....	1585-1586

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
7	93. Declaration of Wilfred Gloster, Jr., July 25, 2016 .....	1587-1589
7	94. Declaration of David M. Schieck, August 2, 2016 .....	1590-1592
7	95. Client Interview Statement, September 8, 1995 .....	1593-1594
7	96. Reporter's Transcript of Oral Argument, <i>Chappell v. State</i> , Supreme Court of Nevada, Case No. 29884, November 12, 1997 p.m. ....	1595-1636
7	97. Motion for Authorization to Obtain a Sexual Assault Expert and for Payment of Fees Incurred Herein, <i>State v. Chappell</i> , Eighth Judicial Court, Case no. 95-C131341, February 15, 2012 .....	1637-1643
7	98. Order to Endorse Names on Information, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, July 15, 1996.....	1644-1646
7	99. Order to Endorse Names on Information, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, August 22, 1996 .....	1647-1652
7	100. Quantitative Analyses Report, Dr. Robert Thatcher, August 1, 2016.....	1653-1712
7	101. Order to Endorse Names on Information, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, September 4, 1996 .....	1713-1716
7	102. Criminal Court Minutes, <i>State v. Chappell</i> , Eighth Judicial District Court, Case no. 95-C131341, September 16, 1996.....	1717-1718
7	103. Juror Questionnaire, Hill, (Badge #474), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 2, 1996 .....	1719-1727
7	104. Declaration of Lila Godard, August 5, 2016 .....	1728-1731

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
7	105. Declaration of Clare McGuire, August 6, 2016 .....	1732-1734
7	106. Motion and Notice to Endorse Names on Information, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 14, 1996.....	1735-1739
7-8	107. Psychological Evaluation, Dr. Lewis Etcoff, June 13, 1996 .....	1740-1754
8	108. Declaration of Clark W. Patrick, August 4, 2016 .....	1755-1757
8	109. Reporter's Transcript of Proceedings of Evidentiary Hearing, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, September 13, 2002 .....	1758-1826
8	110. Appellant's Opening Brief, <i>Chappell v. State</i> , Supreme Court of Nevada, Case No. 29884, June 13, 1997 ...	1827-1925
8-9	111. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 7, 1996 a.m. ....	1926-2005
9	112. Juror Questionnaire, Larsen (Badge #442), <i>State v.</i> <i>Chappell</i> , Eighth Judicial District Court, Case No. 95- C131341, October 2, 1996 .....	2006-2014
9	113. Juror Questionnaire, Lucido (Badge #432), <i>State v.</i> <i>Chappell</i> , Eighth Judicial District Court, Case No. 95- C131341, October 2, 1996 .....	2015-2023
9	114. Juror Questionnaire, Terry (Badge #455), <i>State v.</i> <i>Chappell</i> , Eighth Judicial District Court, Case No. 95- C131341, October 2, 1996 .....	2024-2032
9	115. Juror Questionnaire, Parr (Badge #405), <i>State v.</i> <i>Chappell</i> , Eighth Judicial District Court, Case No. 95- C131341, October 2, 1996 .....	2033-2041
9	116. Juror Questionnaire, Fryt (Badge #480), <i>State v.</i> <i>Chappell</i> , Eighth Judicial District Court, Case No. 95- C131341, October 2, 1996 .....	2042-2050

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
9	117. Juror Questionnaire, Ewell (Badge #435), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 2, 1996 .....	2051-2059
9	118. Declaration of Howard Brooks, August 2, 2016 .....	2060-2063
9	119. Juror Questionnaire, Fittro (Badge #461), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 2, 1996 .....	2064-2072
9	120. Declaration of Willard Ewing, August 5, 2016 .....	2073-2076
9	121. Juror Questionnaire, Harmon (Badge #458), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 2, 1996 .....	2077-2085
9	122. Juror Questionnaire, Sprell (Badge #402), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 2, 1996 .....	2086-2094
9	123. Juror Questionnaire, Gritis (Badge #406), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 2, 1996 .....	2095-2103
9	124. Juror Questionnaire, Bennett (Badge #479), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 2, 1996 .....	2104-2112
9	125. Declaration of Tammy R. Smith, August 11, 2016 .....	2113-2115
9	126. Motion and Notice of Motion to Endorse Names on Information, <i>State v. Chappell</i> , Eighth Judicial District Court Case No. 95-C131341, July 9, 1996 .....	2116-2120
9-10	127. Preliminary Hearing Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Justice Court of Las Vegas Township, Case No. 95-F08114X, October 3, 1995 .....	2121-2280
10	128. Report of Matthew Mendel, Ph.D., June 27, 2016 .....	2281-2300



<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
10	129. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 7, 1996 p.m. ....	2301-2485
10-11	130. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 8, 1996 a.m. ....	2486-2612
11	131. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 8, 1996 p.m. ....	2613-2712
11-12	132. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 10, 1996 a.m. ....	2713-2801
12	133. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 10, 1996 p.m. ....	2802-2936
12-13	134. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 11, 1996 a.m. ....	2937-3047
13	135. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 11, 1996 p.m. ....	3048-3201
13-14	136. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 14, 1996 a.m. ....	3202-3260
14	137. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 14, 1996 p.m. ....	3261-3382
14	138. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 21, 1996 a.m. ....	3383-3454
14-15	139. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 21, 1996 p.m. ....	3455-3580

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
15	140. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 22, 1996 a.m. ....	3581-3692
15	141. Criminal Complaint, <i>State v. Chappell</i> , Justice Court of Las Vegas Township, Case No. 95F08114X, September 8, 1995.....	3693-3695
15-16	142. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 15, 1996.....	3696-3867
16	143. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 16, 1996.....	3868-3875
16	144. City of Las Vegas, Municipal Court, Notice of Court Dates for James Montel Chappell, Case Nos. 0264625 A/B, 0267095A.....	3876-3878
16	145. Motion for Authorization to Obtain Expert Services and for Payment of Fees Incurred Herein, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, February 15, 2012 .....	3879-3885
16	146. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 24, 1996.....	3886-3897
16	147. Notice of Appeal, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, January 17, 1997 .....	3898-3900
16	148. Presentence Report, Division of Parole and Probation, April 18, 1995 .....	3901-3924
16	149. Notice of Filing of Petition for Writ of Certiorari, <i>Chappell v. State</i> , Supreme Court of Nevada, Case No. 49478, March 1, 2010.....	3925-3926
16	150. Order re: Staying the Issuance of the Remittitur, <i>Chappell v. State</i> , Supreme Court of Nevada, Case No. 29884, October 26, 1999.....	3927-3928

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
16-17	155. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, Penalty Hearing, March 12, 2007 .....	3929-4012
17	156. Appellant's Opening Brief, <i>Chappell v. State of Nevada</i> , Supreme Court of Nevada, Case No. 49478, June 9, 2008 .....	4013-4106
17	159. Remittitur, <i>Chappell v. State</i> , Supreme Court of Nevada, Case No. 49478, June 8, 2010 .....	4107-4109
17	160. Petition for Writ of Habeas Corpus, <i>Chappell v. State</i> , Eighth Judicial District Court, Case No. 95-C131341, June 22, 2010.....	4110-4123
17	161. Presentence Report, Division of Parole and Probation, James M. Chappell, May 2, 2007 .....	4124-4131
17	162. Juror Questionnaire, Ochoa (Badge #467), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 2, 1996 .....	4132-4141
17	163. Appellant's Opening Brief, <i>Chappell v. State</i> , Supreme Court of Nevada, Case No. 61967, January 8, 2014 .....	4142-4212
17	165. Remittitur, <i>Chappell v. State</i> , Supreme Court of Nevada, Case No. 61967, November 17, 2015 .....	4213-4214
17	166. Declaration of Rosemary Pacheco, August 9, 2016 .....	4215-4220
17	167. Declaration of Dina Richardson, August 9, 2016 .....	4221-4224
17	168. Declaration of Angela Mitchell, August 9, 2016 .....	4225-4229
17-18	169. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 19, 2007.....	4230-4337

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
18	170. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 14, 2007 a.m. ....	4338-4457
18-19	171. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 14, 2007 p.m. ....	4458-4514
19	172. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 15, 2007 a.m.....	4515-4651
19	173. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 15, 2007 p.m.....	4652-4696
19-20	174. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 16, 2007 a.m.....	4697-4875
20	175. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 16, 2007 p.m.....	4876-4921
20	176. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 20, 2007.....	4922-4976
20	177. Defendant's Offer to Stipulate to Certain Facts, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, September 10, 1996 .....	4977-4979
20	178. Supplemental Psychological Evaluation, Dr. Lewis Etcoff, September 28, 1996 .....	4980-4992
20	179. Order to Transport, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C13141, April 26, 1996 .....	4993-4994
20-21	181. Juvenile Records, State of Michigan, James M. Chappell.....	4995-5036
21	182. School Records, Lansing School District, James M. Chappell.....	5037-5080

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
21	183. Juror Questionnaire, Perez (Badge #50001), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5081-5091
21	184. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 13, 2007.....	5092-5145
21	185. Juror Questionnaire, Brady (Badge #5004), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5146-5156
21	186. Juror Questionnaire, Hibbard (Badge #50015), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5157-5167
21	187. Juror Questionnaire, Bailey (Badge #50015), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5168-5178
21	188. Juror Questionnaire, Mills (Badge #50016), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5179-5189
21	189. Juror Questionnaire, Smith (Badge #50045), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5190-5200
21	190. Juror Questionnaire, Schechter (Badge #50087), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5201-5211
21	191. Juror Questionnaire, Kitchen (Badge #50096), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5212-5222
21	192. Juror Questionnaire, Morin (Badge #50050), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5223-5233
21	193. Juror Questionnaire, Kaleikini-Johnson (Badge #50034), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5234-5244

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
21-22	194. Juror Questionnaire, Ramirez (Badge #50034), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5245-5255
22	195. Juror Questionnaire, Martino (Badge #50038), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5256-5266
22	196. Juror Questionnaire, Rius (Badge #50081), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5267-5277
22	197. Juror Questionnaire, Bundren (Badge #50039), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5278-5288
22	198. Juror Questionnaire, White (Badge #50088), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5289-5299
22	199. Juror Questionnaire, Forbes (Badge #50074), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5300-5310
22	200. Juror Questionnaire, Templeton (Badge #50077), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5311-5321
22	201. Juror Questionnaire, Button (Badge #50088), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5322-5332
22	202. Juror Questionnaire, Feuerhammer (Badge #50073), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5333-5343
22	203. Juror Questionnaire, Theus (Badge #50035), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5344-5354
22	204. Juror Questionnaire, Scott (Badge #50078), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5355-5365

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
22	205. Juror Questionnaire, Staley (Badge #50089), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5366-5376
22	206. Juror Questionnaire, Salak (Badge #50055), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5377-5387
22	207. Juror Questionnaire, Henck (Badge #50020), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5388-5389
22	208. Juror Questionnaire, Smith (Badge # 50022), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5399-5409
22	209. Juror Questionnaire, Cardillo (Badge #50026), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5410-5420
22	210. Juror Questionnaire, Noahr (Badge #50036), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5421-5431
22	211. Declaration of Christopher Milan, August 12, 2016 .....	5432-5436
22	212. Juror Questionnaire, Yates (Badge #455), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 2, 1996 .....	5437-5445
22	213. Special Verdict, <i>State v. Xiao Ye Bai</i> , Eighth Judicial District Court, Case No. 09C259754-2, December 3, 1996 .....	5446-5454
22	214. Special Verdict, <i>State v. Victor Orlando Cruz-Garcia</i> , Eighth Judicial District Court, Case No. 08C240509, June 24, 2012 .....	5455-5462
22	215. Special Verdict, <i>State v. Marcus Washington</i> , Eighth Judicial District Court, Case No. C-11-275618, March 30, 2012.....	5463-5471

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
22	216. Special Verdict, <i>State v. Lashana Monique Haywood and Charles Pilgrim Nelson</i> , Eighth Judicial District Court, Case No. C255413, May 11, 2011 .....	5472-5479
22	217. Verdict and Special Verdict, <i>State v. Rafael Castillo-Sanchez</i> , Eighth Judicial District Court, Case No. C217791, July 2, 2010 .....	5480-5485
22	218. Verdict and Special Verdict, <i>State v. Eugene Hollis Nunnery</i> , Eighth Judicial District Court, Case No. C227587, May 11, 2010 .....	5486-5493
22	219. Verdict and Special Verdict, <i>State v. Bryan Wayne Crawley</i> , Eighth Judicial District Court, Case No. C233433, December 9, 2008 .....	5494-5499
22-23	220. Verdict and Special Verdict, <i>State v. Marc Anthony Colon</i> , Eighth Judicial District Court, Case No. C220720, October 10, 2008.....	5500-5504
23	221. Verdict and Special Verdict, <i>State v. Sterling Beatty</i> , Eighth Judicial District Court, Case No. C230625, February 12, 2008.....	5505-5509
23	222. Verdict and Special Verdict, <i>State v. John Douglas Chartier</i> , Eighth Judicial District Court, Case No. C212954, June 20, 2006 .....	5510-5518
23	223. Verdict and Special Verdict, <i>State v. David Lee Wilcox</i> , Eighth Judicial District Court, Case No. C212954, June 20, 2006 .....	5519-5526
23	224. Verdict and Special Verdict, <i>State v. James A. Scholl</i> , Eighth Judicial District Court, Case No. C204775, February 17, 2006 .....	5527-5531
23	225. Verdict and Special Verdict, <i>State v. Anthony Dwayne Prentice</i> , Eighth Judicial District Court, Case No. C187947, March 3, 2004.....	5532-5537
23	226. Verdict and Special Verdict, <i>State v. Pascual Lozano</i> , Eighth Judicial District Court, Case No. 188067, September 15, 2006.....	5538-5547



<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
23	227. Verdict and Special Verdict, <i>State v. Robert Lee Carter</i> , Eighth Judicial District Court Case No. C154836, April 25, 2003 .....	5548-5553
23	228. Verdict and Special Verdict, <i>State v. Mack C. Mason</i> , Eighth Judicial District Court, Case No. C161426, March 6, 2001 .....	5554-5558
23	229. Verdict and Special Verdict, <i>State v. Richard Edward Powell</i> , Eighth Judicial District Court, Case No. C148936, November 15, 2000.....	5559-5571
23	230. Verdict and Special Verdict, <i>State v. Kenshawn James Maxey</i> , Eighth Judicial District Court, Case No. C151122, February 8, 2000 .....	5572-5576
23	231. Verdict and Special Verdict, <i>State v. Ronald Ducksworth, Jr.</i> , Eighth Judicial District Court, Case No. C108501, October 23, 1993 .....	5577-5588
23	232. Verdict and Special Verdict, <i>State v. Fernando Padron Rodriguez</i> , Eighth Judicial District Court, Case No. C130763, May 7, 1986.....	5589-5595
23	233. Declaration of Mark J.S. Heath, M.D., May 16, 2006 .....	5596-5722
23	234. Verdict and Special Verdict, <i>State v. Carl Lee Martin</i> , Eighth Judicial District Court, Case No. C108501 .....	5723-5730
23-24	235. Jury Composition Preliminary Study, Eighth Judicial District Court, Clark County, Nevada .....	5731-5787
24	236. Report of the Supreme Court of Nevada, Jury Improvement Commission, October, 2002.....	5788-5881
24	237. Reporter's Transcript of Proceedings, <i>State v. Jimenez</i> , Eighth Judicial District Court, Case No. C77949 & C77955, April 30, 1987 .....	5882-5887
24	238. Reporter's Transcript of Proceedings, <i>State v. Parker</i> , Eighth Judicial District Court, Case No. C92278, February 8, 1991 a.m. ....	5888-5892

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
24	239. Reporter's Transcript of Proceedings, Penalty Phase-Three Judge Panel, <i>State v. Riker</i> , Eighth Judicial District Court, Case No. c107751, February 23, 1994 .....	5893-5897
24	240. Reporter's Transcript of Proceedings on, <i>State v. Walker</i> , Eighth Judicial District Court, Case No. C107751, June 16, 1994 .....	5898-5905
24	241. Juror Questionnaire, Taylor (Badge #050009), <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 7, 2007 .....	5906-5916
24	242. Excerpt of Testimony of Terry Cook, Reporter's Transcript of Proceedings, <i>State v. Bolin</i> , Eighth Judicial District Court, Case No. C130899, May 30, 1996 p.m. ....	5917-5924
24	243. Handwritten Notes of Terry Cook, Las Vegas Metropolitan Police Department, Richard Allan Walker, Event No. 920414-0169, April 22, 1992 .....	5925-5930
24	244. Memorandum from Michael O'Callaghan to Terry Cook, Las Vegas Metropolitan Police Department, Richard Allan Walker, Event No. 920414-0169, January 7, 2002 .....	5931-5933
24	245. Excerpt of Testimony of Terry Cook, Reporter's Transcript of Proceedings, <i>State v. Jiminez</i> , Eighth Judicial District Court, Case No. C79955, March 2, 1988 .....	5934-5940
24	246. Newspaper Article, "Las Vegas Police Reveal DNA Error Put Wrong Man in Prison," Las Vegas Review Journal, July 7, 2011 .....	5941-5945
24	247. Respondent's Answering Brief on Appeal and Opening Brief on Cross-Appeal, Cross-Appeal from a Post-Conviction Order Granting a New Penalty Hearing, <i>Chappell v. State</i> , Supreme Court of Nevada, Case No. 43493, June 2, 2005 .....	5946-5987
24-25	248. Nevada Indigent Defense, Standards of Performance, Capital Case Representation .....	5989-6061

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
25	252. Billing Statement, Dr. Lewis Etkoff, March 16, 2007 .....	6062-6063
25	253. Death Certificate, Shirley Axam-Chappell, August 23, 1973.....	6064-6065
25	254. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, April 2, 2004 .....	6066-6072
25	255. State's Trial Exhibit List, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, March 12, 2007.....	6073-6076
25	256. Report of Laboratory Examination, Cellmark Diagnostics, June 28, 1996 .....	6077-6079
25	258. The American Board of Anesthesiology, Inc., <u>Anesthesiologists and Capital Punishment</u> ; American Medical Association, <u>AMA Policy E-2.06 Capital Punishment</u> .....	6080-6084
25	262. Petition for Writ of Habeas Corpus (Post Conviction), <i>James Montell Chappell v. E.K. McDaniel, Warden</i> , Eighth Judicial Court, Case No. 95-C131341, October 19, 1999 .....	6085-6144
25	263. Remittitur, <i>Chappell v. State</i> , Supreme Court of Nevada, Case No. 43493, May 2, 2006.....	6145-6147
25	264. Notice of Witnesses, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, February 28, 2007 .....	6148-6152
25	265. Excerpt from Dr. Lewis Etkoff's Life History Questionnaire, June 10, 1996.....	6153-6155
25	266. Las Vegas Metropolitan Police Department Officer's Report, James M. Chappell, Event No. 950831-1351 .....	6156-6170
25	267. Reporter's Transcript of Proceedings, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 23, 1996.....	6171-6231

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
25-26	268. Jury Instructions, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95-C131341, October 24, 1996 .....	6232-6263
26	274. Declaration of Howard Brooks, July 30 1996 .....	6264-6266
26	275. <i>State v. Chappell</i> , Answer to Motion to Compel Discovery, Eighth Judicial District Court, Case No. C131341, September 11, 1996.....	6267-6269
26	276. Declaration of Tina L. Williams, June 7, 2016 .....	6270-6271
26	277. Trial Transcript, pp.86-88, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. C131341, October 15, 1996 a.m. ....	6272-6276
26	278. Trial Transcript, pg. 92, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. C131341, October 15, 1996 a.m. ....	6277-6280
26	279. Trial Transcript, pg. 158, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. C131341, October 15, 1996 a.m. ....	6281-6283
26	280. Trial Transcript, pg. 36-38, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. C131341, October 23, 1996 a.m. ....	6284-6288
26	281. Trial Transcript, pg. 45-46, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. C131341, October 23, 1996 a.m. ....	6289-6292
26	282. Trial Transcript, pg. 49, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. C131341, October 23, 1996 a.m. ....	6293-6295
26	283. Las Vegas Metropolitan Police .....	6296-6299
26	284. Trial Transcript, pg. 98-99, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. C131341, October 14, 1996 a.m. ....	6300-6303

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
26	285. Subpoena Duces Tecum, LVMPD Evidence Vault .....	6304-6307
26	286. Judgement of Conviction (Plea), <i>State v. Turner</i> , Eighth Judicial District Court, Case no. C138219B, April 30, 1997 .....	6308-6310
26	287. Sentencing Minutes, <i>State v. Turner</i> , Eighth Judicial District Court, Case No. C138219B, April 30, 1997 .....	6311-6312
26	288. Minutes, <i>State v. Turner</i> , Eighth Judicial District Court, Case No. C138219B, November 20, 1996 .....	6313-6314
26	289. Hearing Transcript, pp. 14-16, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. C131341, September 13, 2002.....	6315-6319
26	296. Trial Transcript, pp. 48-50, <i>State v. Chappell</i> , Eighth Judicial District Court, Case no. C131341, October 14, 1996 p.m. ....	6320-6324
26	297. Trial Transcript, p. 69, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. C131341, March 20, 2007 .....	6325-6327
26	298. Trial Transcript, pp. 32-54, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. C131341, October 14, 1996 a.m. ....	6328-6352
26	299. Letter from Tina Williams to Cellmark Diagnostics re: Requests for records, May 3, 2016.....	6353-6357
26	300. Email to Tina Williams from Joan Gulliksen, Customer Liaison, Bode Cellmark Forensics, Denying request for records and requesting a subpoena from LVMPD Crime Lab, May 20, 2016 .....	6358-6360
26	301. Records Request refusals from LVMPD Criminalistics Bureau, Patrol Division, Secret Witness and Homicide Section .....	6361-6366

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
26	307. Trial Transcript, p. 23, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. C131341, October 11, 1996 a.m. ....	6367-6369
26	310. Information, <i>State v. Turner (D.)</i> , Eighth Judicial District Court, CaseNo. C138219, September 13, 1996.....	6370-6372
26	311. Guilty Plea Agreement, <i>State v. Turner (D)</i> , Eighth Judicial District Court, Case No. C138219B, September 16, 1996.....	6373-6378
26	312. Register of Actions, <i>State v. Turner (D.)</i> , Eighth Judicial District Court, Case No. 96C138219-2, April 30, 1997 .....	6379-6381
26	313. Minutes, September 16, 1996, September 23, 1996, September 30, 1996, October 2, 1996, October 7, 1996, November 13, 1996, February 24, 1997, March 5, 1997, April 23, 1997, April 30, 1997, <i>State v. Turner (D.)</i> , Eighth Judicial District Court, Case No. C138219C .....	6382-6388
26	314. Minutes, September 16, 1996, September 23, 1996, September 30, 1996, October 2, 1996, November 15, 1996, January 3, 1997, February 19, 1997, April 16, 1997, April 23, 1997, April 30, 1997, <i>State v. Turner (T.)</i> , Eighth Judicial District Court, Case No. C138219C .....	6389-6398
26	315. Witness payment vouchers, Office of the District Attorney, Deborah Ann Turner, October 3, 1995, October 10-11, 1996 .....	6399-6401
26	316. Trial Transcript pp. 86, 156-158, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. C131341, October 15, 1996 a.m. ....	6402-6407
26	317. Witness payment vouchers, Office of the District Attorney, LaDonna Jackson, October 3, 1995, October 9-11, 1996 .....	6408-6412
26	318. Trial Transcript, pp. 72, 136-38, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. C131341, March 20, 2007.....	6413-6418

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
26	319. Inmate Profile, Arizona Department of Corrections, Michael Pollard, June 16, 2016 .....	6419-6421
26	320. Public Access Case Lookup, Supreme Court of Arizona, Michael Pollard, June 16, 2016 .....	6422-6424
26	324. Trial Transcript, pp. 54-55, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. C131341, October 14, 1996 p.m. ....	6425-6428
26	325. Trial Transcript pp. 121-123, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. C131341, October 10, 1996 p.m. ....	6429-6433
26	326. Declaration of Michael Pollard, September 14, 2016.....	6434-6437
26	327. Declaration of Madge Cage, September 24, 2016 .....	6438-6441
26	328. Declaration of Helen Hosey, October 27, 2016 .....	6442-6446
26	329. Declaration of Shirley Sorrell, September 23, 2016.....	6447-6451
26	330. Declaration of Louise Underwood, September 22, 2016.....	6452-6460
26	331. Declaration of Verlean Townsend, September 24, 2016.....	6461-6467
26	332. Declaration of Bret Robello, September 29, 2016.....	6468-6470
26	333. Declaration of Dennis Reefer, October 20, 2016.....	6471-6473
26	334. Declaration of Maribel Yanez, November 4, 2016.....	6474-6477
30	Exhibits in Support of Post-Hearing Brief in Support of Writ of Habeas Corpus, <i>Chappell v. Filson</i> , District Court, Clark County, Nevada Case No. C131341 (April 27, 2018) .....	7431-7433

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
<b>EXHIBITS</b>		
30	1. Recorder's Transcript, <i>State v. Hover</i> , Eighth Judicial District Court, Case No. 10-C263551-1 (January 25, 2018) .....	7434-7439
30	2. Decision, <i>State v. Hover</i> , Nevada Supreme Court, Case No. 63888 (February 19, 2016) .....	7440-7450
30	3. Reply to State's Response to Supplemental Brief in Support of Defendant's Writ of Habeas Corpus, <i>Chappell v. State</i> , Eighth Judicial District Court, Case No. C131341 (July 30, 2012) .....	7451-7475
30	4. Miscellaneous Archived Web Pages .....	7476-7497
31	Exhibits in Support of Post-Hearing Reply Brief, <i>Chappell v. Filson</i> , District Court, Clark County, Nevada Case No. C131341 (May 11, 2018) .....	7529-7530
<b>EXHIBITS</b>		
31	5. Recorder's Transcript, <i>State v. Chappell</i> , Eighth Judicial District Court, Case No. 95C131341 (April 5, 2018) .....	7531-7537
31	6. Declaration of David M. Schieck (August 2, 2016) .....	7538-7541
31	7. Declaration of Clark W. Patrick (August 4, 2016) .....	7542-7544
27	Exhibits in Support of Reply to State's Response to Petition for Writ of Habeas Corpus (Post-Conviction) Exhibits 335-368, <i>Chappell v. Filson</i> , District Court, Clark County, Nevada Case No. C131341 (July 5, 2017) .....	6648-6652
<b>EXHIBITS</b>		
27	335. Order Affirming in Part, Reversing in Part, and Remanding, <i>Moore v. State</i> , Case No. 46801, Nevada Supreme Court (April 23, 2008) .....	6653-6675
27	336. State's Opposition to Motion for Authorization to Obtain Sexual Assault Expert and Payment of Fees, and	



<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
	Opposition to Motion for Investigator and Payment of Fees, <i>State v. Chappell</i> , Case No. 95-C131341, Eighth Judicial District Court (May 12, 2012) .....	6676-6681
27	Exhibit List and Exhibits from Evidentiary Hearing, <i>State of Nevada v. James Chappell</i> , District Court, Clark County, Nevada Case No. C131341 (April 6, 2018) .....	6736-6737
<b>MARKED EXHIBITS</b>		
27	1. Register of Actions, <i>State v. Chappell</i> , District Court, Clark County, Nevada Case No. 95C131341 (October 5, 2010) .....	6738
27	2. Receipt of File, <i>State v. Chappell</i> , District Court, Clark County, Nevada Case No. C131341 (January 14, 2010) .....	6739-6740
27	3. Motion for Authorization to Obtain Expert Services and for Payment of Fees Incurred Herein, <i>State v. Chappell</i> , District Court, Clark County, Nevada Case No. C131341 (February 15, 2012) .....	6741-6746
27-28	4. State's Opposition to Motion for Authorization to Obtain Expert Services and Payment of Fees, <i>State v. Chappell</i> , District Court, Clark County, Nevada Case No. 95-C131341 (May 16, 2012) .....	6747-6752
28	5. Recorder's Transcript Re: Evidentiary Hearing: Argument, <i>State v. Chappell</i> , District Court, Clark County, Nevada Case No. C131341 (October 29, 2012) .....	6753-6764
28	6. Findings of Fact, Conclusions of Law and Order, <i>State v. Chappell</i> , District Court, Clark County, Nevada Case No. 95C131341 (November 16, 2012) .....	6765-6773
28	7. Supplemental Brief in Support of Defendants Writ of Habeas Corpus, <i>State v. Donte Johnson</i> , District Court, Clark County, Case No. C153154 (October 12, 2009) .....	6774-6841
28	8. Dr. Lewis Etcoff's Life History Questionnaire of James Chappell (June 12, 1996) .....	6842-6865

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
28	9. Special Verdict, <i>State v. Chappell</i> , District Court, Clark County, Nevada Case No. C131341 (March 21, 2007) .....	6866-6870
28	10. Functional and Behavioral Assessment Report, Dr. Natalie Novick-Brown, (August 3, 2016) .....	6871-6919
28	11. Materials Relied Upon (Amended), Natalie Novick-Brown, Ph.D. ....	6920-6922
28	12. Curriculum Vitae, Natalie Novick-Brown, Ph.D., .....	6923-6934
28	13. Report by Dr. Lewis Etcoff, Ph.D., A.B.P.N. (September 28, 1996) .....	6935-6946
8	14. Probation Records of James Chappell, Probation Court, Juvenile Division, County of Ingham, State of Michigan File No. D-10273A (January 23, 1986) .....	6947-6985
28-29	15. School Records of James Chappell.....	6986-7028
29	16. Newspaper Article: City's 13 <sup>th</sup> Auto Fatality, Car Victim Identified, Lansing State Journal, Michigan (August 24, 1973) .....	7029
29	17. Neuropsychological Report of Paul Connor, Ph.D., (July 13, 2016).....	7030-7050
29	18. Materials Relied Upon (Amended), Dr. Paul Connor, Ph.D. ....	7051-7052
29	19. Medical Expert Report by Dr. Julian Davies (August 5, 2016) .....	7053-7081
29	20. Materials Relied Upon (Amended), Dr. Julian Davies .....	7082-7083
29	21. Power Point Presentation, Neuropsychological Functioning: James Chappell, by Paul Connor, Ph.D. ....	7084-7163
31	Findings of Fact, Conclusions of Law and Order, <i>Chappell v. State</i> , District Court, Clark County, Nevada Case No. C131341 (August 8, 2018) .....	7579-7589

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
1	Instructions to the Jury, <i>State v. Chappell</i> , District Court, Clark County, Nevada Case No. C131341 (March 21, 2007) .....	128-150
31	Notice of Appeal, <i>Chappell v. Gittere</i> , District Court, Clark County, Nevada Case No. 95C-131341 (September 14, 2018) .....	7591-7593
31	Notice of Entry Findings of Fact, Conclusions of Law and Order, <i>Chappell v. State</i> , District Court, Clark County, Nevada Case No. C131341 (August 17, 2018) .....	7590
26	Notice of Errata with Regard to Exhibit 328 in Support of Petition for Writ of Habeas Corpus, <i>Chappell v. Filson</i> , Eighth Judicial District Court, Clark County, Nevada Case No. C131341(November 18, 2016) .....	6478-6487
27	Notice of Errata with Regard to Exhibit 333 in Support of Petition for Writ of Habeas Corpus, <i>Chappell v. Filson</i> , Eighth Judicial District Court, Clark County, Nevada Case No. C131341 (October 05, 2017) .....	6698-6705
27	Notice of Supplemental Authority, <i>Chappell v. Filson</i> , District Court, Clark County, Nevada Case No. C131341 (September 29, 2017) .....	6693-6697
31	Objection to State’s Proposed Findings of Fact, Conclusions of Law, <i>Chappell v. Filson</i> , District Court, Clark County, Nevada Case No. C131341 (June 8, 2018) .....	7573-7578
27	Opposition to Motions for Discovery and for Evidentiary Hearing, <i>Chappell v. State</i> , District Court, Clark County, Nevada Case No. 95C131341 (July 28, 2017) .....	6682-6686
1-3	Petition for Writ of Habeas Corpus (Post-Conviction), <i>Chappell v. Filson</i> , District Court, Clark County, Nevada Case No. C131341 (November 16, 2016) .....	169-561
30	Post-Hearing Brief In Support of Petition for Writ of Habeas Corpus, <i>Chappell v. Filson</i> , District Court, Clark County, Nevada Case No. C131341 (April 27, 2018) .....	7389-7430

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
31	Post-Hearing Reply Brief, <i>Chappell v. Filson</i> , District Court, Clark County, Nevada Case No. C131341 (May 11, 2018) .....	7512-7528
26	Recorder's Transcript of Hearing Re: Petitioner's Petition for Writ of Habeas Corpus (Post Conviction), District Court, Clark County, Nevada Case No. C131341 (January 4, 2017) .....	6488-6492
31	Recorder's Transcript of Hearing: Supplemental Briefing, <i>State v. Chappell</i> , District Court, Clark County, Nevada Case No. C131341 (May 21, 2018) .....	7545-7572
27	Recorder's Transcript of Proceedings, Defendant's Motion for Leave to Conduct Discovery; Exhibits, Defendant's Motion for Evidentiary Hearing; Exhibits, Petitioner's Petition for Writ of Habeas Corpus, <i>State v. Chappell</i> , District Court, Clark County, Nevada Case No. 95C131341 (October 9, 2017) .....	6706-6723
27	Recorder's Transcript RE: Defendant's Motion for Leave to Conduct Discovery: Exhibits, <i>State v. Chappell</i> , District Court, Clark County, Nevada Case No. 95C131341 (March 19, 2018) .....	6729-6735
27	Recorder's Transcript RE: Status Check: Set Evidentiary Hearing RE: Petition for Writ of Habeas Corpus and Motion for Leave to Conduct Discovery: Exhibits, <i>State v. Chappell</i> , District Court, Clark County, Nevada Case No. C131341? (January 18, 2018) .....	6724-6728
27	Reply to Opposition to Motions for Discovery and for Evidentiary Hearing, <i>Chappell v. Filson</i> , District Court, Clark County, Nevada Case No. C131341 (July 31, 2017) .....	6687-6692
27	Reply to State's Response to Petition for Writ of Habeas Corpus (Post-Conviction); Exhibits, <i>Chappell v. Filson</i> , District Court, Clark County, Nevada Case No. C131341 (July 5, 2017) .....	6567-6647

<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
1	Reporter's Transcript of Penalty Hearing, <i>State v. Chappell</i> , District Court, Clark County, Nevada Case No. C131341 (March 13, 2007) .....	72-124
1	Reporter's Transcript of Penalty Hearing Verdict, <i>State v. Chappell</i> , District Court, Clark County, Nevada Case No. C131341 (March 21, 2007) .....	151-162
1	Reporter's Transcript Penalty Phase – Volume III, <i>State v. Chappell</i> , District Court, Clark County, Nevada Case No. C131341 (October 23, 1996) .....	1-60
1	Reporter's Transcript of Sentencing, <i>State v. Chappell</i> , District Court, Clark County, Nevada Case No. C131341 (May 10, 2007) .....	163-168
1	Reporter's Transcript Sentencing Hearing, <i>State v. Chappell</i> , District Court, Clark County, Nevada Case No. C131341 (December 30, 1996) .....	61-71
30-31	State's Post-Hearing Brief, <i>Chappell v. State</i> , District Court, Case No. 95C131341 (May 4, 2018) .....	7498-7511
26-27	State's Response to Petition for Writ of Habeas Corpus (Post-Conviction), <i>Chappell v. State</i> , District Court, Clark County, Nevada Case No. 95C131341 (April 5, 2017) .....	6493-6566
29-30	Transcript of Proceedings, Evidentiary Hearing: Petition for Writ of Habeas Corpus, <i>State v. Chappell</i> , District Court, Clark County, Nevada Case No. C131341 (April 6, 2018) .....	7164-7388
1	Verdict and Special Verdict, <i>State v. Chappell</i> , District Court, Clark County, Nevada Case No. C131341 (March 21, 2007) .....	125-127

## **CERTIFICATE OF SERVICE**


I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 2nd day of May, 2019. Electronic Service of the foregoing Appellant's Appendix shall be made in accordance with the Master Service List as follows:

Steve S. Owens  
Chief Deputy District Attorney  
[motions@clarkcountyda.com](mailto:motions@clarkcountyda.com)  
Eileen.davis@clarkcountyda.com

/s/ Sara Jelinek  
An Employee of the  
Federal Public Defender  
District of Nevada

## Oath

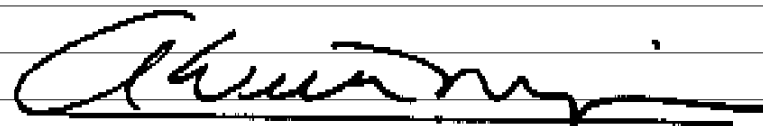
I swear or affirm that the responses given are true and accurate to the best of my knowledge and belief.

  
Signature

10/2/95  
Date

## Admonition

You are instructed not to discuss this questionnaire or any aspect of this case with anyone, including other prospective jurors. You are further instructed not to view, read, or listen to any media account of these proceedings.

  
A. William Maupin, District Judge

# EXHIBIT 13



Badge #

493

I.D.#

1374620

## Juror Questionnaire

Dear Prospective Juror:

You have been placed under oath. Please answer all questions truthfully and completely, as though the questions were being asked of you in open court. You may be asked additional questions in open court during the jury selection process.

Some of the questions ask your opinions. Be honest and state them. If you need more room on any question, use the margins or the next-to-last page, which has been left blank.

The purpose of this questionnaire is to help the court and the lawyers in their attempt to select a fair and impartial jury to hear this case. The answers provided by you in this document will be made available to counsel for both the state and defense. Your answers may also become part of the court's permanent record, and may, therefore, be a public document.

A summary of the case allegations and the procedure to be followed in this case are noted below. The fact that these allegations have been made does not mean they are necessarily true. The State has the burden of proving the allegations beyond a reasonable doubt.

Remember, you must fill out the questionnaire yourself, and when you are finished, please sign the oath on the last page and leave the questionnaire with a jury assistant.

## Summary of Case

On August 31, 1995, Deborah Panos was found dead in her trailer at 839 North Nellis, Las Vegas. She died of multiple stab wounds. The next day, James Chappell, the father of Deborah's three children, was arrested and charged with murder with use of a deadly weapon and other charges related to the killing. The media covered the crime, and Mr. Chappell's arrest was reported.

## Procedure

This is a murder case where the State is seeking the death penalty.

After the jury is empanelled, the trial will occur. The purpose of the trial is to determine, based on legally presented evidence, if the State can prove the criminal charges beyond a

reasonable doubt. Mr. Chappell is presumed innocent.

If the jury convicts Mr. Chappell of Murder in the First Degree, then the trial is followed by a Penalty hearing where the jury would hear evidence related to punishment. The jury would determine the sentence, and would choose among the following: death; a life sentence in prison with the possibility of parole; a life sentence in prison without the possibility of parole; or a fixed sentence of 50 years with the possibility of parole.

If the jury finds Mr. Chappell Not Guilty, or finds him guilty of charges other than First Degree Murder, then no penalty hearing will occur. If Mr. Chappell is found guilty of charges other than First Degree Murder, the Judge will sentence Mr. Chappell.

The parties anticipate that the trial of this case could last two weeks; a possible penalty hearing could last an additional week. All the trial and penalty proceedings in this case could last a total of three weeks.

1. Do you have any thoughts, concerns, or questions about this procedure:

NO

2. Are you familiar with this case? Have you read media reports about it? Do you know Deborah Panos or James Chappell? NO

### Questions About You

3. Your full name Odaine D. Marshall Race Black

4. Age 37 Place of birth Austin Texas Marital Status married

5. Children

	Age	Sex	Education	Occupation
(a)	Jason	I	Marshall	2 yrs - 2nd grade - male
(b)	Jacobi	I	Marshall	5 yrs Kindergarten - male
(c)	Jarrett	I	Marshall	4 yrs - male
(d)				

6. In what part of the county do you live? Clark

7. Highest educational grade completed 2yr college degree

8. Any special schooling or training? none

9. Any courses or training in a legal field? NO

10. Your occupation and relevant duties for the last ten years: United Parcel Services - Clerk - Head Clerk over 5 employees  
duties are collecting pkgs with bad addresses - maintaining fuel drop for pkg car & tractors.

11. What is your spouse's occupation, if you have a spouse?  
Automation Clerk at the Post Office

12. Have you ever been in business for yourself? If yes, please explain. NO

13. Ever been a supervisor or boss? If yes, explain. NO

14. Ever served in the military? If yes, please provide some details. NO

15. Do you attend religious services? If yes, what church or service, and how often?  
YES - Fellowship Christian Fellowship - I used to attend church almost every Sunday

16. Have you ever changed religions? If so, why? NO

17. Any relatives who are judges or attorneys? If yes, what is your relationship to them and how often do you talk to them? NO

18. Any relatives in law enforcement? If yes, what is your relationship, and how often do you talk to them? NO

19. Ever been a juror before? If yes, what did you think of the experience? YES,  
I think it was a great experience. Every citizen should least serve once for the knowledge on our court system

20. Have you or any member of your family ever had a drug or alcohol problem?  
NO

21. Have you or any members of your family ever been arrested? If so, why? And what  
NO

happened? \_\_\_\_\_

22. Do you have any bias or ill feeling toward the police or the government or prosecutors as a result of any prior experience with law enforcement? NO

23. Have you or any one you know been a victim of domestic violence? NO

24. Have you or any one you know been affected by domestic violence? How? NO

### Opinions, Interests, & Views

25. What do you think of the criminal justice system? Sometimes it's fair & sometimes not depending what seat you're beating in. (no personal experience)

26. What are your hobbies and interests? Shopping, skating, & spending quality time with my children.

27. Do you consider yourself to be a leader or a follower? Leader why? Because I have my own mind to make decisions.

28. What do you like to read? Magazines - People - Ebony - Essence Bible etc.

What do you think of each of the following:

29. Defense attorneys ~~no views at this time~~ no views at this time.

30. Public Defenders no views at this time.

31. State Prosecutors no views at this time

32. Federal Prosecutors

No views at this time

33. Police officers

Clark County - are to protect the citizen of

34. Judges

Judges are there to keep order in the court room making a defendant have a fair trial

35. The Death Penalty

I don't know how I really feel about the death penalty.

36. The statement: "An Eye for an Eye:"

I believe that we have to be held accountable for our actions.

37. The statement: "You Shall Not Kill:"

The bible course us Not to kill.

38. The statement: If a prosecutor has taken the trouble of bringing someone to trial, then the person must be guilty.

A person is innocence until proven guilty.

39. The statement: A defendant in a criminal trial should be required to prove his innocence:

No the prosecutor has to find him guilty.

40. The statement: The Death Penalty is appropriate in some cases, but not in others:

I don't know

41. The statement: The Death Penalty is appropriate in all cases where somebody murders somebody:

I don't know.

42. The statement: A defendant's background should be considered in deciding whether or not the death penalty is an appropriate punishment:

No

43. The statement: The facts surrounding a killing, and not the killer's background, should be the main consideration in determining punishment:

Yes

44. The statement: Black people cause more crime than white people:

Any race can be an criminal

45. The statement: It's Ok for black people and white people to date each other and have children together.

I can be with who make you happy - not the cause of race.

46. The statement: It may be Ok for people of different races to date each other, but I would have a hard time dealing with my child doing it:

I want my children to be with who makes them happy - they could marry the same race + be unhappy.

47. More than anything else, what should the attorneys in this case know about you in deciding whether you should be on the jury?

I tried to be an fair & honest person in every day life. Treating people how I would like to be treated.

48. Do you want to be on the jury? Why yes or Why no?

Yes. When I first walk in this morning I didn't know if I really wanted to do this - but after listening to the orientation I feel it is my civic duty.

49. If Mr. Chappell is convicted of first degree murder, and a penalty hearing is held, would you consider all four possible sentences, those being the death penalty, life without the possibility of parole, life with the possibility of parole, or a fixed term of 50 years with the possibility of parole

yes -

50. In your present state of mind, can you, if selected as a juror, consider equally all four possible forms of punishment and select the one that you feel is the most appropriate depending upon the facts and the law?

I would have to hear the case.

51. If you believed the evidence warranted the death penalty, could you personally vote to impose the death penalty?

I don't know.

52. Are you a member of any organization that advocates or opposes the imposition of the death penalty? NO

### Explanation Area

Feel free to supplement any of your prior answers, or ask any questions which you may have.



## Oath


I swear or affirm that the responses given are true and accurate to the best of my knowledge and belief.

  
Signature

10-2-1996  
Date

## Admonition

You are instructed not to discuss this questionnaire or any aspect of this case with anyone, including other prospective jurors. You are further instructed not to view, read, or listen to any media account of these proceedings.

  
A. William Maupin, District Judge



# EXHIBIT 14

Badge # 412  
I.D.# 0384736

## Juror Questionnaire

Dear Prospective Juror:

You have been placed under oath. Please answer all questions truthfully and completely, as though the questions were being asked of you in open court. You may be asked additional questions in open court during the jury selection process.

Some of the questions ask your opinions. Be honest and state them. If you need more room on any question, use the margins or the next-to-last page, which has been left blank.

The purpose of this questionnaire is to help the court and the lawyers in their attempt to select a fair and impartial jury to hear this case. The answers provided by you in this document will be made available to counsel for both the state and defense. Your answers may also become part of the court's permanent record, and may, therefore, be a public document.

A summary of the case allegations and the procedure to be followed in this case are noted below. The fact that these allegations have been made does not mean they are necessarily true. The State has the burden of proving the allegations beyond a reasonable doubt.

Remember, you must fill out the questionnaire yourself, and when you are finished, please sign the oath on the last page and leave the questionnaire with a jury assistant.

## Summary of Case

On August 31, 1995, Deborah Panos was found dead in her trailer at 839 North Nellis, Las Vegas. She died of multiple stab wounds. The next day, James Chappell, the father of Deborah's three children, was arrested and charged with murder with use of a deadly weapon and other charges related to the killing. The media covered the crime, and Mr. Chappell's arrest was reported.

## Procedure

This is a murder case where the State is seeking the death penalty.

After the jury is empanelled, the trial will occur. The purpose of the trial is to determine, based on legally presented evidence, if the State can prove the criminal charges beyond a

Chappell-8JDC2526

reasonable doubt. Mr. Chappell is presumed innocent.

If the jury convicts Mr. Chappell of Murder in the First Degree, then the trial is followed by a Penalty hearing where the jury would hear evidence related to punishment. The jury would determine the sentence, and would choose among the following: death; a life sentence in prison with the possibility of parole; a life sentence in prison without the possibility of parole; or a fixed sentence of 50 years with the possibility of parole.

If the jury finds Mr. Chappell Not Guilty, or finds him guilty of charges other than First Degree Murder, then no penalty hearing will occur. If Mr. Chappell is found guilty of charges other than First Degree Murder, the Judge will sentence Mr. Chappell.

The parties anticipate that the trial of this case could last two weeks; a possible penalty hearing could last an additional week. All the trial and penalty proceedings in this case could last a total of three weeks.

1. Do you have any thoughts, concerns, or questions about this procedure:

NO

2. Are you familiar with this case? Have you read media reports about it? Do you know Deborah Panos or James Chappell? NO

### Questions About You

3. Your full name JIM BLAKE TRIPP Race W

4. Age 53 Place of birth ILLINOIS Marital Status M

5. Children 4

	Age	Sex	Education	Occupation
(a)	<u>26</u>	<u>AF</u>	<u>12 H School</u>	<u>SECRETARY</u>
(b)	<u>27</u>	<u>M</u>	<u>SOME MORE HIGH SCHOOL</u>	<u>HOUSEWIFE</u>
(c)	<u>25</u>	<u>F</u>	<u>10<sup>TH</sup> grade</u>	<u>HOUSEWIFE</u>
(d)	<u>11</u>	<u>AF</u>	<u>grade school</u>	<u>NA</u>

6. In what part of the county do you live? SOUTH WEST

7. Highest educational grade completed 9<sup>TH</sup> grade

8. Any special schooling or training? NO

9. Any courses or training in a legal field? NO

10. Your occupation and relevant duties for the last ten years: CONSTRUCTION  
NEW CAR DEALER SHIP PRESENT TIME

11. What is your spouses's occupation, if you have a spouse?

HOUSE WIFE

12. Have you ever been in business for yourself? If yes, please explain. NO

13. Ever been a supervisor or boss? If yes, explain. MANAGER FOR  
TRANSMISSION SHOP

14. Ever served in the military? If yes, please provide some details. NO

15. Do you attend religious services? If yes, what church or service, and how often?

NO

16. Have you ever changed religions? If so, why? NO

17. Any relatives who are judges or attorneys? If yes, what is your relationship to them and how often do you talk to them? NO

18. Any relatives in law enforcement? If yes, what is your relationship, and how often do you talk to them NO

19. Ever been a juror before? If yes, what did you think of the experience? NO

20. Have you or any member of your family ever had a drug or alcohol problem?

NO

21. Have you or any members of your family ever been arrested? If so, why? And what

happened? NO

22. Do you have any bias or ill feeling toward the police or the government or prosecutors as a result of any prior experience with law enforcement? NO

23. Have you or any one you know been a victim of domestic violence? NO

24. Have you or any one you know been affected by domestic violence? How? NO

### Opinions, Interests, & Views

25. What do you think of the criminal justice system? Good

26. What are your hobbies and interests? STOCK CAR RACING

27. Do you consider yourself to be a leader or a follower? Leader Why? DETERMINATION

28. What do you like to read? Love STORIES

What do you think of each of the following:

29. Defense attorneys FACT'S About The CASE

30. Public Defenders ?

31. State Prosecutors FACT'S About The CASE

32. Federal Prosecutors

33. Police officers They Do There Job  
+ A DANGEROUS ONE

34. Judges For The Most Of Them Fair  
The Other Part To Easy

35. The Death Penalty For IT

36. The statement: "An Eye for an Eye:" NO

37. The statement: "You Shall Not Kill:" yes

38. The statement: If a prosecutor has taken the trouble of bringing someone to trial, then the person must be guilty. NOT TRUE

39. The statement: A defendant in a criminal trial should be required to prove his innocence: NOT TRUE Lawyer's Job

40. The statement: The Death Penalty is appropriate in some cases, but not in others: TRUE

41. The statement: The Death Penalty is appropriate in all cases where somebody murders somebody: Depends

42. The statement: A defendant's background should be considered in deciding whether or not the death penalty is an appropriate punishment: Depends ON There  
BACK ground IF IT Should be Used

43. The statement: The facts surrounding a killing, and not the killer's background, should be the main consideration in determining punishment: yes

44. The statement: Black people cause more crime than white people:

NO

45. The statement: It's Ok for black people and white people to date each other and have children together. Yes

46. The statement: It may be Ok for people of different races to date each other, but I would have a hard time dealing with my child doing it: Yes

47. More than anything else, what should the attorneys in this case know about you in deciding whether you should be on the jury: I AM NOT PREJUDICED AND HAVE AN OPEN MIND

48. Do you want to be on the jury? Why yes or Why no? Yes  
To help serve justice and see  
justice is fair

49. If Mr. Chappell is convicted of first degree murder, and a penalty hearing is held, would you consider all four possible sentences, those being the death penalty, life without the possibility of parole, life with the possibility of parole, or a fixed term of 50 years with the possibility of parole

LIFE WITHOUT THE POSSIBILITY OF PAROLE

50. In your present state of mind, can you, if selected as a juror, consider equally all four possible forms of punishment and select the one that you feel is the most appropriate depending upon the facts and the law?

Yes

51. If you believed the evidence warranted the death penalty, could you personally vote to impose the death penalty? Yes

52. Are you a member of any organization that advocates or opposes the imposition of the death penalty? no

### Explanation Area

Feel free to supplement any of your prior answers, or ask any questions which you may have.



## Oath

I swear or affirm that the responses given are true and accurate to the best of my knowledge and belief.

Signature

*Jim Blake Jupp*

Date

*10/2-96*

## Admonition

You are instructed not to discuss this questionnaire or any aspect of this case with anyone, including other prospective jurors. You are further instructed not to view, read, or listen to any media account of these proceedings.

*A. William Maupin*

A. William Maupin, District Judge

# EXHIBIT 15

Badge # 421  
ID.# 1591026

## Juror Questionnaire

Dear Prospective Juror:

You have been placed under oath. Please answer all questions truthfully and completely, as though the questions were being asked of you in open court. You may be asked additional questions in open court during the jury selection process.

Some of the questions ask your opinions. Be honest and state them. If you need more room on any question, use the margins or the next-to-last page, which has been left blank.

The purpose of this questionnaire is to help the court and the lawyers in their attempt to select a fair and impartial jury to hear this case. The answers provided by you in this document will be made available to counsel for both the state and defense. Your answers may also become part of the court's permanent record, and may, therefore, be a public document.

A summary of the case allegations and the procedure to be followed in this case are noted below. The fact that these allegations have been made does not mean they are necessarily true. The State has the burden of proving the allegations beyond a reasonable doubt.

Remember, you must fill out the questionnaire yourself, and when you are finished, please sign the oath on the last page and leave the questionnaire with a jury assistant.

## Summary of Case

On August 31, 1995, Deborah Panos was found dead in her trailer at 839 North Nellis, Las Vegas. She died of multiple stab wounds. The next day, James Chappell, the father of Deborah's three children, was arrested and charged with murder with use of a deadly weapon and other charges related to the killing. The media covered the crime, and Mr. Chappell's arrest was reported.

## Procedure

This is a murder case where the State is seeking the death penalty.

After the jury is empanelled, the trial will occur. The purpose of the trial is to determine, based on legally presented evidence, if the State can prove the criminal charges beyond a

reasonable doubt. Mr. Chappell is presumed innocent.

If the jury convicts Mr. Chappell of Murder in the First Degree, then the trial is followed by a Penalty hearing where the jury would hear evidence related to punishment. The jury would determine the sentence, and would choose among the following: death; a life sentence in prison with the possibility of parole; a life sentence in prison without the possibility of parole; or a fixed sentence of 50 years with the possibility of parole.

If the jury finds Mr. Chappell Not Guilty, or finds him guilty of charges other than First Degree Murder, then no penalty hearing will occur. If Mr. Chappell is found guilty of charges other than First Degree Murder, the Judge will sentence Mr. Chappell.

The parties anticipate that the trial of this case could last two weeks; a possible penalty hearing could last an additional week. All the trial and penalty proceedings in this case could last a total of three weeks.

1. Do you have any thoughts, concerns, or questions about this procedure:

no

2. Are you familiar with this case? Have you read media reports about it? Do you know Deborah Panos or James Chappell? no

### Questions About You

3. Your full name Kellianne Bentley Taylor Race Northern European

4. Age 31 Place of birth Texas Marital Status Married

5. Children

	Age	Sex	Education	Occupation
(a)	<u>10</u>	<u>F</u>	<u>5th grade</u>	<u>childhood</u>
(b)				
(c)				
(d)				

6. In what part of the county do you live? southern

7. Highest educational grade completed bachelor's degree

8. Any special schooling or training? —

9. Any courses or training in a legal field? no
10. Your occupation and relevant duties for the last ten years:  
financial Management Assistant - Accounting  
College Student
11. What is your spouses's occupation, if you have a spouse?  
student
12. Have you ever been in business for yourself? If yes, please explain.  
no
13. Ever been a supervisor or boss? If yes, explain. yes. I currently share  
supervision of one employee
14. Ever served in the military? If yes, please provide some details. no
15. Do you attend religious services? If yes, what church or service, and how often?  
yes LDS Weekly
16. Have you ever changed religions? If so, why? no
17. Any relatives who are judges or attorneys? If yes, what is your relationship to them and how often do you talk to them? yes, my brother-in-law is an attorney  
I see him about once every two months
18. Any relatives in law enforcement? If yes, what is your relationship, and how often do you talk to them no
19. Ever been a juror before? If yes, what did you think of the experience? no
20. Have you or any member of your family ever had a drug or alcohol problem?  
no
21. Have you or any members of your family ever been arrested? If so, why? And what

happened? my brother-in-law (not the attorney) was arrested for stealing a car - he was in fact repossessing it & had the proper documentation - the charges were dropped

22. Do you have any bias or ill feeling toward the police or the government or prosecutors as a result of any prior experience with law enforcement? no

23. Have you or any one you know been a victim of domestic violence? no

24. Have you or any one you know been affected by domestic violence? How?

no

### Opinions, Interests, & Views

25. What do you think of the criminal justice system? I don't know much about it & I think what the media reports is probably a little slanted.

26. What are your hobbies and interests? reading, needlepoint, photography, movies, crafts.

27. Do you consider yourself to be a leader or a follower? Why?  
It depends, I am a reluctant leader if the situation warrants it.

28. What do you like to read? mind candy - light novels

What do you think of each of the following:

29. Defense attorneys That they are probably portrayed poorly on T.V.

30. Public Defenders That they are probably portrayed poorly on T.V.

31. State Prosecutors That they are probably portrayed poorly on T.V.

32. Federal Prosecutors That they are probably portrayed poorly on T.V.
33. Police officers They have a hard job & are underpaid
34. Judges That they try very hard to uphold the law
35. The Death Penalty It should be given reluctantly after much thought and only as a last resort or in very extreme cases
36. The statement: "An Eye for an Eye:" For us it is given to forgive and judge not
37. The statement: "You Shall Not Kill:" It's pretty straight forward but I don't think it applies in the course of self defense, the defense of others, or in case of war
38. The statement: If a prosecutor has taken the trouble of bringing someone to trial, then the person must be guilty. was made by an ignorant person
39. The statement: A defendant in a criminal trial should be required to prove his innocence: that's stupid - the burden of proof is upon the prosecutor
40. The statement: The Death Penalty is appropriate in some cases, but not in others: Well, okay, but I don't think that the death penalty should be handed out like candy.
41. The statement: The Death Penalty is appropriate in all cases where somebody murders somebody: - wrong
42. The statement: A defendant's background should be considered in deciding whether or not the death penalty is an appropriate punishment: Uhm, I'm not totally comfortable agreeing with this - maybe?!
43. The statement: The facts surrounding a killing, and not the killer's background, should be the main consideration in determining punishment: Absolutely

44. The statement: Black people cause more crime than white people:

The numbers don't support this - it's an ugly  
generalization

45. The statement: It's Ok for black people and white people to date each other and have children together.

It's none of my business who people  
choose to date or marry. That's a decision everyone  
must make for themselves!

46. The statement: It may be Ok for people of different races to date each other, but I would have a hard time dealing with my child doing it:

The oldest cop out  
in the book.

47. More than anything else, what should the attorneys in this case know about you in deciding whether you should be on the jury:

Just because I have  
red hair doesn't mean I have a temper or jump  
to conclusions

48. Do you want to be on the jury? Why yes or Why no?

Yes, I  
think it would be interesting to see the process  
in action.

49. If Mr. Chappell is convicted of first degree murder, and a penalty hearing is held, would you consider all four possible sentences, those being the death penalty, life without the possibility of parole, life with the possibility of parole, or a fixed term of 50 years with the possibility of parole

yes

50. In your present state of mind, can you, if selected as a juror, consider equally all four possible forms of punishment and select the one that you feel is the most appropriate depending upon the facts and the law?

yes

51. If you believed the evidence warranted the death penalty, could you personally vote to impose the death penalty?

after careful thought, yes



52. Are you a member of any organization that advocates or opposes the imposition of the death penalty? NO

### Explanation Area

Feel free to supplement any of your prior answers, or ask any questions which you may have.

## Oath

I swear or affirm that the responses given are true and accurate to the best of my knowledge and belief.

Signature

Date

## Admonition

You are instructed not to discuss this questionnaire or any aspect of this case with anyone, including other prospective jurors. You are further instructed not to view, read, or listen to any media account of these proceedings.

A. William Maupin, District Judge

# EXHIBIT 16

Badge # 473  
I.D.# 1605525

## Juror Questionnaire

Dear Prospective Juror:

You have been placed under oath. Please answer all questions truthfully and completely, as though the questions were being asked of you in open court. You may be asked additional questions in open court during the jury selection process.

Some of the questions ask your opinions. Be honest and state them. If you need more room on any question, use the margins or the next-to-last page, which has been left blank.

The purpose of this questionnaire is to help the court and the lawyers in their attempt to select a fair and impartial jury to hear this case. The answers provided by you in this document will be made available to counsel for both the state and defense. Your answers may also become part of the court's permanent record, and may, therefore, be a public document.

A summary of the case allegations and the procedure to be followed in this case are noted below. The fact that these allegations have been made does not mean they are necessarily true. The State has the burden of proving the allegations beyond a reasonable doubt.

Remember, you must fill out the questionnaire yourself, and when you are finished, please sign the oath on the last page and leave the questionnaire with a jury assistant.

## Summary of Case

On August 31, 1995, Deborah Panos was found dead in her trailer at 839 North Nellis, Las Vegas. She died of multiple stab wounds. The next day, James Chappell, the father of Deborah's three children, was arrested and charged with murder with use of a deadly weapon and other charges related to the killing. The media covered the crime, and Mr. Chappell's arrest was reported.

## Procedure

This is a murder case where the State is seeking the death penalty.

After the jury is empanelled, the trial will occur. The purpose of the trial is to determine, based on legally presented evidence, if the State can prove the criminal charges beyond a

reasonable doubt. Mr. Chappell is presumed innocent.

If the jury convicts Mr. Chappell of Murder in the First Degree, then the trial is followed by a Penalty hearing where the jury would hear evidence related to punishment. The jury would determine the sentence, and would choose among the following: death; a life sentence in prison with the possibility of parole; a life sentence in prison without the possibility of parole; or a fixed sentence of 50 years with the possibility of parole.

If the jury finds Mr. Chappell Not Guilty, or finds him guilty of charges other than First Degree Murder, then no penalty hearing will occur. If Mr. Chappell is found guilty of charges other than First Degree Murder, the Judge will sentence Mr. Chappell.

The parties anticipate that the trial of this case could last two weeks; a possible penalty hearing could last an additional week. All the trial and penalty proceedings in this case could last a total of three weeks.

1. Do you have any thoughts, concerns, or questions about this procedure:

NO

2. Are you familiar with this case? Have you read media reports about it? Do you know Deborah Panos or James Chappell? NO

## Questions About You

3. Your full name KENNETH R. FITZGERAID Race CAUCASIAN

4. Age 39 Place of birth CA, Marital Status Single

5. ~~Children~~

	Age	Sex	Education	Occupation
(a)				
(b)				
(c)				
(d)				

6. In what part of the county do you live? LAS VEGAS NV. S.E.

7. Highest educational grade completed 12

8. Any special schooling or training?

9. Any courses or training in a legal field? \_\_\_\_\_

10. Your occupation and relevant duties for the last ten years: \_\_\_\_\_

MUSCIAN/SINGER/SOUND ENG.

11. What is your spouses's occupation. if you have a spouse? \_\_\_\_\_

12. Have you ever been in business for yourself? If yes, please explain. \_\_\_\_\_

SELF EMPLOYED MUSCIAN

13. Ever been a supervisor or boss? If yes, explain. \_\_\_\_\_

BAND LEADER

14. Ever served in the military? If yes, please provide some details. \_\_\_\_\_

15. Do you attend religious services? If yes, what church or service, and how often? \_\_\_\_\_

16. Have you ever changed religions? If so, why? \_\_\_\_\_

17. Any relatives who are judges or attorneys? If yes, what is your relationship to them and how often do you talk to them? \_\_\_\_\_

18. Any relatives in law enforcement? If yes, what is your relationship, and how often do you talk to them? \_\_\_\_\_

19. Ever been a juror before? If yes, what did you think of the experience? \_\_\_\_\_

20. Have you or any member of your family ever had a drug or alcohol problem? \_\_\_\_\_

21. Have you or any members of your family ever been arrested? If so, why? And what

happened? DU I

22. Do you have any bias or ill feeling toward the police or the government or prosecutors as a result of any prior experience with law enforcement? NO

23. Have you or any one you know been a victim of domestic violence? NO

24. Have you or any one you know been affected by domestic violence? How?

NO

### Opinions, Interests, & Views

25. What do you think of the criminal justice system? I DONT KNOW  
MUCH ABOUT IT

26. What are your hobbies and interests? MUSIC / SONG WRITING

27. Do you consider yourself to be a leader or a follower? LEADER Why? I LIKE TO MAKE MY OWN DECISIONS

28. What do you like to read? MAGIZINES AND MANUALS

What do you think of each of the following:

29. Defense attorneys ~~DEF~~ I DONT

30. Public Defenders I DONT

31. State Prosecutors I DONT

32. Federal Prosecutors I DONT
33. Police officers I DONT
34. Judges I DONT
35. The Death Penalty I HAVENT A OPINION AT HIS TIME
36. The statement: "An Eye for an Eye:" STUPID
37. The statement: "You Shall Not Kill:" IN A PERFECT WORLD
38. The statement: If a prosecutor has taken the trouble of bringing someone to trial, then the person must be guilty. OF COURSE THATS NO A TRUE STATEMENT
39. The statement: A defendant in a criminal trial should be required to prove his innocence: NOT IN HIS COUNTRY
40. The statement: The Death Penalty is appropriate in some cases, but not in others: MAYBE SO
41. The statement: The Death Penalty is appropriate in all cases where somebody murders somebody: NOT NECESSARILY
42. The statement: A defendant's background should be considered in deciding whether or not the death penalty is an appropriate punishment: ALL FACTS SHOULD BE
43. The statement: The facts surrounding a killing, and not the killer's background, should be the main consideration in determining punishment: ALL FACTS SHOULD BE CONSIDERD



44. The statement: Black people cause more crime than white people:

STUPID

45. The statement: It's Ok for black people and white people to date each other and have children together. YES I DONT MIND

46. The statement: It may be Ok for people of different races to date each other, but I would have a hard time dealing with my child doing it: SOUNDS CLOSE MINDED

47. More than anything else, what should the attorneys in this case know about you in deciding whether you should be on the jury: I'M JUST A PERSON LIKE EVERY ONE ELSE

48. Do you want to be on the jury? Why yes or Why ~~no~~? I HAVE A LOT OF WORK TO DO AND LITTLE TIME RIGHT NOW

49. If Mr. Chappell is convicted of first degree murder, and a penalty hearing is held, would you consider all four possible sentences, those being the death penalty, life without the possibility of parole, life with the possibility of parole, or a fixed term of 50 years with the possibility of parole

SURE

50. In your present state of mind, can you, if selected as a juror, consider equally all four possible forms of punishment and select the one that you feel is the most appropriate depending upon the facts and the law?

SURE

51. If you believed the evidence warranted the death penalty, could you personally vote to impose the death penalty? YES

52. Are you a member of any organization that advocates or opposes the imposition of the death penalty? NO

### Explanation Area

Feel free to supplement any of your prior answers, or ask any questions which you may have.

## Oath

I swear or affirm that the responses given are true and accurate to the best of my knowledge and belief.

Signature

Date \_\_\_\_\_

## Admonition

You are instructed not to discuss this questionnaire or any aspect of this case with anyone, including other prospective jurors. You are further instructed not to view, read, or listen to any media account of these proceedings.

A. William Maupin, District Judge

JChappell CCPD0077

# EXHIBIT 17

**ORIGINAL****FILED**

24

MAY 9 8 18 AM '96

*Patricia L. Lamm*

CLERK

1 0332  
 2 STEWART L. BELL  
 3 DISTRICT ATTORNEY  
 4 Nevada Bar #000477  
 5 200 S. Third Street  
 6 Las Vegas, Nevada 89155  
 7 (702) 455-4711  
 8 Attorney for Plaintiff

DISTRICT COURT  
 CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 JAMES MONTELL CHAPPELL,  
 12 #1212860

13 Defendant.

Case No. C131341  
 Dept. No. VII  
 Docket P

16 NOTICE OF MOTION AND MOTION TO  
 17 ADMIT EVIDENCE OF OTHER CRIMES, WRONGS OR BAD ACTS

18 DATE OF HEARING: 5-22-96  
 19 TIME OF HEARING: 9:00 A.M.

20 COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through ABBI  
 21 SILVER, Deputy District Attorney, and files this Notice of Motion and Motion to Admit Evidence of  
 22 Other Crimes, Wrongs or Bad Acts.

23 This Motion is made and based upon all the papers and pleadings on file herein, the attached  
 24 points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary  
 25 by this Honorable Court.

26 ///

27 ///

28 ///

CMC

CE11

CE31

1 **NOTICE OF HEARING**

2 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring  
3 the foregoing motion on for setting before the above entitled Court, in Department VII thereof, on  
4 Wednesday, the 22nd day of May, 1996, at the hour of 9:00 o'clock a.m., or as soon thereafter as counsel  
5 may be heard.

6 DATED this 24th day of May, 1996.

7 STEWART L. BELL  
8 DISTRICT ATTORNEY  
9 Nevada Bar #000477

10 BY Abbi Silver  
11 ABBI SILVER  
12 Deputy District Attorney  
13 Nevada Bar #003813

14 **STATEMENT OF FACTS**

15 Lisa Duran testified that she was Debra Panos' (the 26 year old victim) friend through their  
16 employment at GE Capitol. (PHT 38,39). Duran testified that Debra lived in Las Vegas for  
17 approximately a year prior to her demise. (PHT 39) Duran was aware that the victim and the Defendant  
18 had an "on again, off again" boyfriend-girlfriend relationship for a period of ten (10) years prior to the  
19 victim's murder. (PHT 39) However, prior to Debra's murder, the victim had broken up with the  
20 Defendant for good. (PHT 39) The Defendant and the victim had three children together, and on August  
21 31, 1995, they were approximately three (3), five (5) and seven (7) years old, respectively. (PHT 43)

22 Prior to her demise, Debra had told Duran that her relationship with the Defendant was over, she  
23 no longer wanted him in her life, and after he was released from jail, she wanted to send him back to his  
24 home in Mississippi. (PHT 76)

25 Duran described the physical abuse the victim sustained by the Defendant in the year prior to her  
26 murder. Specifically, several weeks before Christmas of 1994, Duran observed both the Defendant and  
27 the victim in a car. (PHT 40) The Defendant was yelling at Debra and she was crying. (PHT 41) The  
28 Defendant continued to yell at Debra and then he hit Debra in her face with an open hand. (PHT 41)

Additionally, around Christmas of 1994, Debra came into work with a broken nose. (PHT 42)

1 Although Duran did not have personal knowledge of what caused Debra's injuries, University Medical  
2 Center Records confirm that on January 9, 1995, Debra Panos was seen in the emergency room at  
3 University Medical Center after being transported via Mercy Ambulance. Debra complained of pain to  
4 her head and face after an assault. Specifically, Debra stated that she was punched in the face and nose  
5 several times by her boyfriend. Debra told doctors that her boyfriend often beats her, but never like this.  
6 Debra sustained injuries such as a fractured nose and several lacerations on the right eyebrow and nose.  
7 The Defendant was arrested for the battery on January 9, 1995.

8 Duran testified that she met the Defendant at the end of May of 1995 during Memorial Day  
9 weekend. (PHT 42) Also, that Debra and the children stayed with her at her apartment until the  
10 Defendant called for Debra and she returned home. (PHT 45) Duran recounted that she received  
11 approximately seven (7) telephone calls where the Defendant called her or Debra's residence. (PHT 46)  
12 Specifically, on one occasion, Duran was watching the children and the Defendant called from jail  
13 adamantly requesting to know where Debra was. (PHT 47) The Defendant said, "I want to know what  
14 other nigger she's laying underneath." (PHT 47) The Defendant warned Duran, "You tell Debbie, when  
15 she gets home that I called and that when I get out, she's not going to have any friends." (PHT 48)

16 Another time, the Defendant called and was upset because Debra had not gone to visit him at jail,  
17 she was not writing him letters, and she was not accepting his calls. (PHT 48) The Defendant told Duran,  
18 "If he couldn't have Debra, that nobody else could, and when he got out, she wasn't going to have any  
19 friends; she wouldn't be able to go anywhere, and he'd make sure of that." (PHT 48)

20 Duran testified that on the afternoon of August 31, 1995, she was driving over to Debra's house  
21 to retrieve some of her belongings since she had stayed with Debra the week before. (PHT 49,50) At  
22 approximately 1:30 to 1:45 p.m. she entered Debra's trailer park and as she was driving towards Debra's  
23 residence, she saw the Defendant driving Debra's car, with a bicycle hanging out the back of the trunk.  
24 (PHT 51,52) Duran was aware that the Defendant used a bicycle for transportation. (PHT 52)

25 When Duran went to Debra's residence, nobody answered, but Duran could hear the TV and air  
26 conditioner running. (PHT 54) After several attempts to locate Debra, Duran noticed the back bedroom  
27 window was off track and became concerned for Debra's safety. (PHT 56). As a result, Duran contacted  
28 the police. Ultimately, the police made entry into Debra's trailer through the bedroom window and found



1 Debra's body in a pool of blood, lying by a knife, and her home was ransacked. (PHT 58).

2 Significantly, Duran did not notice any bruises or lacerations to Debra's face and body on August  
3 31, 1995 at 8:00 a.m., just hours before the Defendant was seen driving her vehicle from her residence  
4 and prior to her body being discovered by the police. (PHT 63).

5 Bill Duffy testified that on August 31, 1995, he was a Unit Manager supervising probationers at  
6 the Department of Parole and Probation. (PHT 27). On that date, Duffy received a call from City  
7 Detention that the Defendant was being released from City Jail. (PHT 28). As a result, Duffy had two  
8 officers go to pick the Defendant up and bring him back to his office, since he was on probation for a  
9 gross misdemeanor. (PHT 28,29). Duffy personally interviewed the Defendant at 10:00 a.m. on August  
10 31, 1995. (PHT 30).

11 At the conclusion of the interview, Duffy agreed to release the Defendant so that he could go to  
12 a drug program and enroll. (PHT 31). The Defendant was to report back to Duffy's office within three  
13 (3) hours, at approximately 1:00 p.m. (PHT 31). The Defendant never did return.

14 Dr. Green, the pathologist, testified that he conducted an autopsy on the body of Debra Panos  
15 on September 1, 1995. (PHT 6). Dr. Green's external significant findings consisted of distinguishing  
16 thirteen (13) different penetrating stab wounds to Debra's body, along with multiple, recent-appearing  
17 bruises or contusions. (PHT 7). Specifically, the stab wounds which did the most damage consisted of:  
18 one (1) stab wound penetrating the jugular vein on the right side of the neck; one (1) stab wound  
19 puncturing the carotid artery in the neck; and one (1) stab wound into the lung, rib and back. (PHT 8).  
20 Four (4) of the wounds in the neck actually hit the spine and penetrated into the bone of the spinal  
21 column. (PHT 9).

22 Most significant to this motion, Dr. Green found Debra's face was covered with contusions  
23 (bruises) and abrasions (scrapes). (PHT 9). These bruises covered her forehead, cheekbones, jaw, as  
24 well as on the shoulders, right hand and wrist. Dr. Green testified that all of these bruises were "recent",  
25 meaning less than a day old prior to her demise. (PHT 10). Thus, these bruises and contusions on  
26 Debra's body were placed there on the day of her death, and after Duran saw the victim that morning at  
27 approximately 8:00 a.m.. (PHT 11).

28 Dr. Green testified that these injuries would have been caused by blunt trauma consistent with a

1 fist hitting Debra in the face. (PHT 11).

2 Finally, Dr. Green opined that the manner of death to Debra Panos was a homicide and that the  
3 cause of death was the result of multiple stab wounds of the neck and chest. (PHT 18).

4 Las Vegas Metropolitan Police Department reports show that on June 1, 1995, JUST THREE  
5 (3) MONTHS PRIOR TO HER MURDER, Debra Panos reported to police the Defendant had battered  
6 her during a domestic dispute. Specifically, Debra told police that the Defendant was yelling at her after  
7 he found a piece of paper with a strange phone number on it, as he was jealous. The Defendant pushed  
8 Debra down on the bed in their trailer, and pinned her down using his knees on her arms. The Defendant  
9 thereafter pulled out a knife and began threatening her with the knife until a friend knocked on the door.

10 Significantly, this battery resulted in the Defendant's conviction and incarceration at the City Jail,  
11 until the day the Defendant was released. Within two hours of the Defendant's release from jail for  
12 battering Debra, the Defendant murdered Debra.

13 On February 23, 1994, while living together in Tucson, Arizona, Debra Panos reported to the  
14 police she had been a victim of domestic violence at the hands of this Defendant. Debra told the police  
15 that the Defendant knocked her to the floor after he saw Debra crying because the Defendant had sold  
16 the children's furniture. Debra stated that when she tried to get up from the floor, the Defendant began  
17 kicking her in the legs. Debra was able to get herself and her children into the car and immediately  
18 contacted police. The Defendant was then taken into custody and booked for domestic assault.  
19 Currently, there is no disposition to this case, as the Defendant failed to appear, a bench warrant for his  
20 arrest is currently in effect.

21 Currently, the State moves this Honorable Court for an order permitting the State to introduce  
22 evidence of prior crimes, wrongs, or bad acts in its Case in Chief, specifically:

- 23 1. Lisa Duran's observations of the Defendant beating Debra Panos in the face while yelling  
24 at her.
- 25 2. University Medical Center records and testimony of Debra Panos' broken nose of January  
26 9, 1995, as a result of the Defendant battering Debra Panos.
- 27 3. Domestic battery of June 1, 1995 where the Defendant threatened Debra with a knife,  
28 which resulted in his conviction, incarceration and release within two (2) hours of her

1 murder.

2 4. Domestic battery of February 23, 1994 in Tucson, Arizona.

3 **LAW**

4 **I.**

5 **THE STATE SHOULD BE ALLOWED TO PRESENT EVIDENCE OF**  
6 **OTHER BAD ACTS IN ITS CASE-IN-CHIEF**

7 NRS 48.045(2) provides:

8 Evidence of other crimes, wrongs or acts is not  
9 admissible to prove the character of a person in order to  
10 show that he acted in conformity therewith. It may,  
11 however, be admissible for other purposes, such as  
12 proof of motive, opportunity, intent, preparation, plan,  
13 knowledge, identity, or absence of mistake or accident.

12 The decision to admit or exclude evidence, lies within the discretion of the court. And such a  
13 decision will not be reversed absent manifest error. *Kazabyn v. State*, 108 Nev. 67, 825 P.2d 578 (1992);  
14 *Halbower v. State*, 93 Nev. 212, 562 P.2d 485 (1977).

15 The Nevada Supreme Court has held that prior bad acts are admissible under NRS 48.045(2) in  
16 DOMESTIC MURDER cases. In *Hogan v. State*, 103 Nev. 23 (1987), the Supreme Court of Nevada  
17 upheld a District Court's granting of a motion for other bad acts. In *Hogan*, the defendant shot and killed  
18 his girlfriend. The defendant was convicted of Murder With Use of a Deadly Weapon and sentenced to  
19 DEATH.

20 In *Hogan*, the District Court allowed the State to present evidence that the defendant, several  
21 days before the murder, had thrown his girlfriend to the ground. The Nevada Supreme Court held that  
22 "this evidence was evidence of 'other acts,' admissible under NRS 48.045(2) to demonstrate ill-will as  
23 a motive for the crime." *Id.* Further, the Court found that threats made by the defendant to the victim  
24 prior to the murder were also properly admitted under the "Excited Utterance" exception to the Hearsay  
25 Rule under NRS 51.095. *Id.*

26 California has also recognized the value of a defendant's prior domestic violence against a murder  
27 victim in DOMESTIC HOMICIDE cases. In *People v. Linkenauher*, 32 Cal.App.4th 1603, 38  
28 Cal.Rptr. 868 (1995), the prosecution's theory was that the defendant premeditated murder by torturing

1 and strangling his wife which was the culmination of marital discord, jealousy, and domestic violence.

2 The prosecution sought to admit four (4) types of evidence of marital discord and assaults as they  
3 were relevant as to the defendant's intent, motive and identity. First, two friends of the victim testified  
4 that they saw bruises on the victim's face, neck, and arms in 1990, 1991, and 1992, prior to her death  
5 in 1993. Second, two witnesses at a restaurant testified that the defendant battered the victim at a  
6 Denny's restaurant sometime prior to the murder, and the victim's doctor testified that the victim  
7 sustained injuries to her hip, back, and neck as a result of the assault. Third, two or three weeks before  
8 the murder, the defendant had accused the victim of having an affair with a man while at a restaurant.  
9 Finally, evidence that the victim obtained DOMESTIC VIOLENCE RESTRAINING ORDERS in 1990  
10 and 1992, ordering the defendant "not attack, strike, threaten, batter or disturb the peace" of the victim,  
11 was admitted.

12 The defendant argued to the California Court of Appeals that this evidence of prior misconduct  
13 was inadmissible. The Court disagreed, and held that "a plea of not guilty puts into issue all of the  
14 elements of the charged offense, including intent." *Id.* at 872, 1609. (Citations omitted).

15 The Court followed the general rule enunciated by the California Supreme Court in its decisions  
16 stating:

17 Evidence tending to establish prior quarrels between a  
18 defendant and decedent and the making of threats by the  
19 former is properly admitted. . . to show the motive and  
state of mind of the defendant.

20 *Id.* (Citations omitted).

21 The Court also held that the rule requiring a great degree of similarity for uncharged misconduct  
22 to prove identify, i.e., the "signature" test is not controlling in these types of violent crimes. *Id.* at 874,  
23 1612. The Court reasoned that no one can kill the same victim twice in a distinctive or "signature"  
24 fashion. *Id.* The Court found that evidence of prior acts of abuse by the killer may be presented to show  
25 motive, intent, and identity where the prior misconduct and the charged murder involves the  
26 IDENTICAL PERPETRATOR AND THE VICTIM. *Id.*

27 In *People v. De Moss*, 4 Cal.2d 469, 50 P.2d 1031 (1935), the California Supreme Court held that  
28 prior acts of quarrels, threats, and acts of abuse by the defendant/husband against the victim/wife in a

1 murder case were properly admitted to establish motive for the killing.

2 Analogous to the Nevada Supreme Court, the California Supreme Court has recognized that  
3 evidence of prior verbal and physical abuse in a Domestic Homicide case tends to show malice, motive,  
4 and ill-will on the part of a defendant/husband. *People v. Chaves*, 122 Cal. 134, 54 P. 596 (1898).

5 Application of this rule also impinges on the issue of IDENTITY of the person who committed  
6 the charged offense. Evidence of motive may "... solve a doubt, ... 'as to the identity of the slayer,...'  
7 and is admissible against a defendant, however discredibly it may reflect on him and even where it may  
8 show him guilty of other crimes." *Linkenauer, supra*.

9 In yet another Domestic Murder case where the prosecution presented evidence of the  
10 defendant's prior assaults upon his wife, *People v. Daniels*, 16 Cal.App.3d 36, 93 Cal.Rptr. 628 (1971),  
11 the California Supreme Court held that "EVIDENCE OF MOTIVE OR BEHAVIOR PATTERN to  
12 commit an offense is evidence of the identity of the offender." *Id.* at 46, 628.

13 One of the Landmark cases in California is *People v. Zack*, 184 Cal.App.3rd 409, 229 Cal.Rptr.  
14 317 (1986). In *Zack*, the defendant and his girlfriend/victim were involved in an abusive relationship for  
15 a period of two years, including prior batteries on the victim. When the victim finally "moved out" while  
16 trying to sever the relationship, the defendant threatened to kill her. Thereafter, the defendant beat and  
17 strangled her.

18 The California Supreme Court enunciated the general rule regarding the admissibility of prior bad  
19 acts as:

20 Where a defendant is charged with a violent crime and  
21 has or had a previous relationship with a victim, prior  
22 assaults upon the same victim, when offered on disputed  
23 issues, e.g., identity, intent, motive, etc., are admissible  
based solely upon the consideration of identical  
perpetrator and victim without resort to a "distinctive  
modus operandi" analysis of other factors.

24 *Id.* at 415, 317.

25 Additionally, in *Linkenauer, supra*, the Court found prior acts of domestic violence upon a  
26 murder victim was properly admitted as more probative than prejudicial. The Court disregarded the  
27 defendant's argument that this evidence was cumulative and may have induced the jury to convict him  
28 for prior uncharged acts of domestic violence. The Court held that the evidence was not cumulative as

1 a matter of law, and that the evidence was no stronger and no more inflammatory than the testimony  
2 concerning the charged offense of murder. *Id.*

3 The Nevada Supreme Court has held evidence of prior misconduct is admissible in other types  
4 of murder cases as well. In *Petrocelli v. State*, 101 Nev. 46, 692 P.2d 503 (1985), Petrocelli was charged  
5 with shooting a car salesman in the head with a .22 caliber handgun. Petrocelli claimed that the shooting  
6 was done during an argument with the car dealer and that it was an accident. The trial court allowed  
7 evidence that Petrocelli had previously become embroiled in an argument with a female. He drug her out  
8 of her place of employment and shot and killed her with a .22 caliber handgun. The Nevada Supreme  
9 Court upheld the trial court's decision to allow such evidence to establish the absence of mistake or  
10 accident.

11 Similarly, in *Gallego v. State*, 101 Nev. 782, 711 P.2d 856 (1985), Gallego was charged with  
12 killing two young females with a hammer. The two women were kidnapped by Gallegos and his wife and  
13 transported to their fatal destination as part of the Gallego's "sex slave " fantasy. The trial court allowed  
14 evidence that Gallegos had previously kidnapped two young women from a shopping mall and thereafter  
15 shot and killed them. The high court affirmed the lower court's ruling and allowed such evidence for the  
16 purposes of establishing common plan, intent, identity and motive. *Id.* 101 Nev. at 788.

17 Pursuant to the wealth of authority cited by the State, this Court should grant the State's motion  
18 to introduce the Defendant's past acts of domestic abuse upon the same victim, here, the murder victim,  
19 as this evidence is relevant to show motive, pattern of behavior, and ill-will towards the victim, Debra  
20 Panos.

21 This Defendant was arrested for Battery - Domestic Violence after he threw the victim down and  
22 threatened her with a knife. As a result, the Defendant was convicted and incarcerated. During his  
23 incarceration, Debra was not returning his calls or responding to his letters as she was trying to break off  
24 the violent relationship. The Defendant's violence escalated and when he was released on that charge,  
25 within two (2) hours, the Defendant brutally stabbed and beat Debra Panos.

26 This evidence also is relevant to show identity of the killer, as Lisa Duran testified the victim did  
27 not have any bruises on her face and body just hours before her murder. Yet, Dr. Green testified that  
28 Debra's body showed she had been battered with bruises and scratches all over her face and body, as well

1 as being stabbed. Again, consistent with the case law cited, acts of prior domestic violence toward the  
2 murdered victim is extremely relevant to show identity of the murderer.

3 **CONCLUSION**

4 Accordingly, for the foregoing reasons, the State respectfully requests this Court grant its Motion  
5 to Admit Evidence of Other Crimes, Wrongs, or Bad Acts in its case-in-chief.

6 DATED this 3rd day of May, 1996.

7 STEWART L. BELL  
8 DISTRICT ATTORNEY  
9 Nevada Bar #000477

10 BY Abbi Silver  
11 ABBI SILVER  
12 Deputy District Attorney  
13 Nevada Bar #003813

14  
15 **RECEIPT OF COPY**

16 RECEIPT OF COPY of the above and foregoing NOTICE OF MOTION AND MOTION TO  
17 ADMIT EVIDENCE OF OTHER CRIMES, WRONGS OR BAD ACTS is hereby acknowledged this  
18 8th day of April, 1996.

19 PUBLIC DEFENDER'S OFFICE  
20 ATTORNEY FOR DEFENDANT

21 BY Barry B. Balle  
22 309 S. Third Street #226  
23 Las Vegas, Nevada 89155

# EXHIBIT 18



40  
**ORIGINAL**

**FILED**

**AUG 29 10 26 AM '96**

*Laetta L. Lumsden*  
CLERK

1 0332  
2 STEWART L. BELL  
3 DISTRICT ATTORNEY  
4 Nevada Bar #000477  
5 200 S. Third Street  
6 Las Vegas, Nevada 89155  
7 (702) 455-4711  
8 Attorney for Plaintiff

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 JAMES MONTELL CHAPPELL,  
12 #1212860

13 Defendant.  
14

Case No. C131341  
Dept. No. VII  
Docket P

15  
16 **NOTICE OF MOTION AND SUPPLEMENTAL MOTION TO**  
17 **ADMIT EVIDENCE OF OTHER CRIMES, WRONGS OR BAD ACTS**

18 **DATE OF HEARING: 9-4-96**  
19 **TIME OF HEARING: 9:00 A.M.**

20 COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through ABBI  
21 SILVER, Deputy District Attorney, and files this Notice of Motion and Supplemental Motion to Admit  
22 Evidence of Other Crimes, Wrongs or Bad Acts.

23 This Supplemental Motion is made and based upon all the papers and pleadings on file herein, the  
24 attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed  
25 necessary by this Honorable Court.

26 ///

27 ///

28 ///

*MIC*

**CE44**

**CE31**

1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8

DATED this 01 day of August, 1996.

BY ASD  
**ABBI SILVER**  
 Deputy District Attorney  
 Nevada Bar #003813

14 The State seeks to present testimony of Dina Freeman, a Tucson Police Department Police  
15 Dispatcher and co-worker of the victim to establish a history of domestic violence for purposes of  
16 presenting prior crimes, wrongs, or bad acts pursuant to NRS 48.045(2).

17 Dina would testify to three different incidents involving the defendant and the victim. First, Dina  
18 would testify that while the victim was living in Arizona with the Defendant approximately one to two  
19 years prior to her murder, the victim called up screaming and crying after the Defendant had "jumped  
20 her". Dina heard the Defendant in the background yelling at the victim that "he didn't care what she did,  
21 he called her all kinds of names, and told her that if she ever fucked around in front of his kids, he would  
22 kill her ass."

23 Second, Dina would testify that in August of 1994, the victim called her crying, and in the  
24 background, she could hear the defendant tell the victim, "either you give me that car or you give me  
25 some money 'cause I know your fuckin' around on me. You're not going to Dina's house everyday for  
26 nothin', I'm gonna do an O.J. Simpson on your ass."

27 Finally, Dina would testify that the victim called her crying because the Defendant left her at a  
28 grocery store at approximately 2:00 a.m. because he was mad that a store hadn't cashed the victim's

1 paycheck that the Defendant was forcing her to cash her check in order to give him the money.

2 Additionally, Dina saw bruises and marks on the victim's face numerous times, and the victim told  
3 her that the Defendant caused her injuries. Dina would describe the victim and the Defendant's  
4 relationship as "rocky" and that the Defendant was mentally and physically abusive to the victim. Further,  
5 the Defendant was ordered to go to domestic violence counseling in the past.

6 **ARGUMENT**

7 The State would ask the Court to refer to the State's Motion to Admit Evidence of Prior Crimes,  
8 Wrongs or Bad Acts, for the applicable law to admit the above-stated testimony. Additionally, the State  
9 refers the Court to the same rationale and analysis for the admission of the above-stated testimony.

10 **CONCLUSION**

11 Accordingly, for the foregoing reasons, the State respectfully requests this Court grant its  
12 Supplemental Motion to Admit Evidence of Other Crimes, Wrongs, or Bad Acts in its case-in-chief.

13 DATED this 29<sup>th</sup> day of August, 1996.

14 STEWART L. BELL  
15 DISTRICT ATTORNEY  
Nevada Bar #000477

16  
17 BY 

18 ABBI SILVER  
19 Deputy District Attorney  
Nevada Bar #003813

20 **RECEIPT OF COPY**

21 RECEIPT OF COPY of the above and foregoing NOTICE OF MOTION AND MOTION TO  
22 ADMIT EVIDENCE OF OTHER CRIMES, WRONGS OR BAD ACTS is hereby acknowledged this  
23 29 day of April, 1996.

24 PUBLIC DEFENDER'S OFFICE  
25 ATTORNEY FOR DEFENDANT

26  
27 BY 

28 309 8<sup>th</sup> Third Street #226  
Las Vegas, Nevada 89155

# EXHIBIT 19

44  
**ORIGINAL**

24  
**FILED**

SEP 10 9 28 AM '96

*Deputy Clerk*  
CLERK

1 OPPS  
2 MORGAN D. HARRIS  
3 PUBLIC DEFENDER  
4 NEVADA BAR #1879  
5 309 South Third Street, Suite 226  
6 Las Vegas, Nevada 89155  
7 (702)455-4685  
8 Attorney for the Defendant  
9 Public Defender File No. F-95-5254

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,	)	
	)	
Plaintiff,	)	CASE NO. C131341x
	)	
v.	)	DEPT. NO. VII
	)	
JAMES MONTELL CHAPPELL,	)	Date of Hearing: 9-16-96
	)	Time of Hearing: 9:00 A.M.
Defendant.	)	

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
**DEFENDANT'S OPPOSITION TO STATE'S MOTION TO ADMIT**  
**EVIDENCE OF OTHER CRIMES, WRONGS OR BAD ACTS**

Comes now Defendant James Chappell, by and through his attorney, Deputy Public Defender Howard S. Brooks, and files this Opposition to the State's Motion to Admit Evidence of Other Crimes, Wrongs or Bad Acts filed May 8, 1996 and the State's Supplemental Motion to admit Evidence of Other Crimes, Wrongs or Bad Acts filed August 29, 1996.

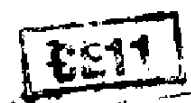
This Opposition is based upon the papers and pleadings on file in this case, the attached points and authorities, and

...

...

...

...



1000

1 oral argument if deemed necessary by the Court.

2 DATED this 9th day of September, 1996.

3 CLARK COUNTY PUBLIC DEFENDER

4  
5 By



6 HOWARD S. BROOKS #3374  
7 DEPUTY PUBLIC DEFENDER  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 FACTS

3 The State charges James Chappell with burglary of the  
4 mobile home where Chappell's three children lived, murder with use  
5 of a deadly weapon of Chappell's long-time girlfriend, Deborah  
6 Panos, and robbery with use of a deadly weapon for Chappell's  
7 taking of Panos's car after the killing.

8 The State seeks to introduce evidence during the trial  
9 of Mr. Chappell of the following:

10 1. Testimony of Lisa Duran concerning her observations  
11 in December 1994 of Defendant Chappell striking Panos in the face.

12 2. Medical Records from University Medical Center  
13 regarding Panos suffering a broken nose on January 9, 1995. Panos  
14 told UMC employees that her boyfriend hit her.

15 3. Unidentified records related to June 1, 1995  
16 domestic battery incident wherein Chappell was charged with  
17 battery upon Panos and plead guilty to same.

18 4. Unidentified records or testimony related to February  
19 23, 1994 allegation of domestic battery against James Chappell for  
20 battery of Panos.

21 5. Testimony of Dina Freeman, a Tucson friend of  
22 Deborah Panos, who would describe (a) a telephone conversation  
23 with Panos on an unknown date in approximately 1993 or 1994 when  
24 Panos claimed James Chappell "jumped her." Dina claims she heard  
25 a voice in the background that said, "if you ever fuck around in  
26 front of my kids, I will kill your ass."

27 6. Testimony of Dina Freeman that Deborah Panos called  
28 her in August of 1994 and she could hear James Chappell in the

1 background say, "either you give me that car or you give me some  
2 money 'cause I know your fuckin' around on me. You're not going  
3 to Dina's house everyday for nothin', I'm gonna do an O.J. Simpson  
4 on your ass."

5 7. Testimony of Dina Freeman that Deborah Panos called  
6 her at 2:00 in the morning on an unknown date crying that James  
7 Chappell had left her at a grocery store because the store would  
8 not cash Panos' check and Chappell was forcing Panos to give her  
9 money.

10 8. Testimony of Dina Freeman that she saw Deborah Panos  
11 with bruises on her face many times, and Panos claimed James  
12 Chappell inflicted these injuries.

13 9. Testimony of Dina Freeman that the relationship  
14 between Panos and Chappell was "rocky," and that Chappell was  
15 abusive to Panos.

16 10. Testimony of Dina Freeman that Chappell was ordered  
17 to attend domestic violence counseling at some unknown date in the  
18 past.

19 ARGUMENT

20 The State's Motion is Unnecessary  
21 Because the Defense Will Stipulate  
22 that James Chappell killed Deborah  
Panos

23 NRS 48.045(2) provides:

24 Evidence of other crimes, wrongs or acts is  
25 not admissible to prove the character of a  
26 person in order to show that he acted in  
27 conformity therewith. It may, however, be  
28 admissible for other purposes, such as proof  
of motive, opportunity, intent, preparation,  
plan, knowledge, identity, or absence of  
mistake or accident.

The State cites a smorgasbord of cases that support the



1 admissibility of prior acts of domestic violence when the prior  
2 acts help to establish disputed issues, like identity or absence  
3 of accident or plan. The State declares in its filings with the  
4 Court that its desire to introduce this prior bad act evidence is  
5 based on the necessity of showing identity, motive, pattern of  
6 behavior, and ill-will towards the victim by Chappell.

7 The Defense objects to the State's desire to introduce  
8 a pattern of behavior to show Mr. Chappell murdered Lisa Duran.  
9 NRS 48.045 does not authorize the admissibility of prior bad acts  
10 to show a pattern of behavior.

11 As for identity, the evidence in this case is  
12 overwhelming that James Chappell caused the death of Deborah  
13 Panos, the mother of his three children and his girlfriend for  
14 approximately ten years. Furthermore, as noted in the Defendant's  
15 Offer to Stipulate to Facts filed September 10, 1996, the Defense  
16 in this case will stipulate:

17 1. That James Chappell on August 31,  
18 1995, entered the trailer rented to Deborah  
19 Panos through a window;

20 2. That James Chappell engaged in sexual  
21 intercourse with Deborah Panos on August 31,  
22 1995; and

23 3. That James Chappell caused the death of  
24 Deborah Panos by stabbing her with a kitchen  
25 knife and the act was not an accident.

26 4. That James Chappell was jealous of  
27 Deborah Panos giving attention to, or  
28 receiving attention from, other men.

1           Therefore, in light of these stipulations, identity is  
2 not an issue in this case.

3           Furthermore, motive and ill-will toward the victim by  
4 Chappell are explained by the Defendant's stipulation that he was  
5 jealous toward Panos.

6           In light of these stipulations, the only reason to allow  
7 the proposed bad act testimony is to prejudice the jury with the  
8 allegation that James Chappell was a woman-batterer. This prior  
9 bad act testimony is highly prejudicial to Mr. Chappell and the  
10 probative value is low. Therefore, this Honorable Court should  
11 deny the State's Motion.

12  
13                   Certain Allegations Of Prior Bad  
14                   Act Evidence Are So Vague As To Be  
                    Meaningless

15           According to the State's Motions, the State seeks to  
16 introduce the following into evidence:

17                   Unidentified records related to June 1,  
18                   1995 domestic battery incident wherein  
19                   Chappell was charged with battery upon Panos  
20                   and plead guilty to same.

21                   Unidentified records or testimony  
22                   related to February 23, 1994 allegation of  
23                   domestic battery against James Chappell for  
24                   battery of Panos.

25           The purpose of a motion to introduce prior bad act  
26 evidence is to alert the defense to certain specific evidence or  
27 allegation that the State seeks to introduce in their case-in-  
28 chief. Does the State intend to introduce eyewitness testimony of

1 | these alleged events? Does the State intend to introduce medical  
2 | records? Or does the State intend to introduce hearsay  
3 | allegations? We do not know.

4 |         The State's motion does not describe evidence with  
5 | sufficient particularity to allow the Defense to respond.

6 |  
7 |                 Much of the Testimony Proposed by  
8 |                 the State is Irrelevant and  
9 |                 Consists of Blatant Hearsay That  
               Can Never Pass the Clear and  
               Convincing Evidence Test

10 |         When the State seeks to introduce evidence of prior bad  
11 | acts, the burden is on the State to show that the evidence is  
12 | relevant, and to show that clear and convincing evidence supports  
13 | the allegation that the defendant committed the alleged prior bad  
14 | acts. Petrocelli v. State, 101 Nev. 46, 692 P.2d 503 (1985).

15 |         The State claims the following incidents are admissible:

16 |                 Testimony of Dina Freeman that Deborah  
17 | Panos called her at 2:00 in the morning on an  
18 | unknown date crying that James Chappell had  
19 | left her at a grocery store because the store  
20 | would not cash Panos' check and Chappell was  
21 | forcing Panos to give her money.

22 |                 This testimony is blatantly irrelevant  
23 | hearsay, and should not be admitted.

24 |         The State also seeks the admission of the following:

25 |                 Testimony of Dina Freeman, a Tucson  
26 | friend of Deborah Panos, who would describe  
27 | (a) a telephone conversation with Panos on an  
28 | unknown date in approximately 1993 or 1994

1           when Panos claimed James Chappell "jumped  
2           her." Dina claims she heard a voice in the  
3           background that said, "if you ever fuck  
4           around in front of my kids, I will kill your  
5           ass."

6                     Testimony of Dina Freeman that Deborah  
7           Panos called her in August of 1994 and she  
8           could hear James Chappell in the background  
9           say, "either you give me that car or you give  
10          me some money 'cause I know your fuckin'  
11          around on me. You're not going to Dina's  
12          house everyday for nothin', I'm gonna do an  
13          O.J. Simpson on your ass."

14                    Testimony of Dina Freeman that she saw  
15          Deborah Panos with bruises on her face many  
16          times, and Panos claimed James Chappell  
17          inflicted these injuries.

18                    Testimony of Dina Freeman that the  
19          relationship between Panos and Chappell was  
20          "rocky," and that Chappell was abusive to  
21          Panos.

22                    Testimony of Dina Freeman that Chappell  
23          was ordered to attend domestic violence  
24          counseling at some unknown date in the past.

25                    These proposed items of evidence are blatant hearsay,  
26          and consist primarily of conjecture and speculation. They  
27          certainly do not meet a "clear and convincing evidence" test.  
28          ...


1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

SUMMARY

Based on the absence of related disputable issues and the poor evidentiary quality of the prior bad act allegations by the State, the Defense opposes their admission. Furthermore, as noted in a companion motion, the Defense respectfully requests a Petrocelli hearing to compel the State to make a legal showing that said evidence can be shown to be "clear and convincing."

DATED this 9th day of September, 1996.

CLARK COUNTY PUBLIC DEFENDER

By   
HOWARD S. BROOKS #3374  
DEPUTY PUBLIC DEFENDER

1 RECEIPT OF COPY of the above and foregoing Opposition to  
2 State's Motion to Admit Evidence of Other Crimes, Wrongs or Bad  
3 Acts is hereby acknowledged this 10 day of September, 1996.

4 CLARK COUNTY DISTRICT ATTORNEY

5  
6 By T. J. Schmeider

7  
8 (Mot\Chappell.Opp)

# EXHIBIT 20

JChappell CCPD0513

FILED

SEP 10 9 29 AM '96

*Justin J. Brown*

CLERK

1 NOTC  
2 MORGAN D. HARRIS  
3 PUBLIC DEFENDER  
4 NEVADA BAR #1879  
5 309 South Third Street, Suite 226  
6 Las Vegas, Nevada 89155  
7 (702)455-4685  
8 Attorney for the Defendant  
9 Public Defender File No. F-95-5254  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

JAMES MONTELL CHAPPELL,

Defendant.

CASE NO. C131341x

DEPT. NO. VII

Date of Hearing: 9-16-96

Time of Hearing: 9:00 A.M.

DEFENDANT'S OFFER TO STIPULATE TO CERTAIN FACTS

COMES NOW, the Defendant, by and through his attorney,  
Deputy Public Defender Howard S. Brooks, does hereby offer to  
stipulate to certain facts relevant to the litigation of this  
criminal case.

DATED this 9th day of September, 1996.

CLARK COUNTY PUBLIC DEFENDER

By

*Howard S. Brooks*

HOWARD S. BROOKS #3374  
DEPUTY PUBLIC DEFENDER



## DECLARATION

HOWARD S. BROOKS makes the following declaration:

1. That I am an attorney duly licensed to practice law in the State of Nevada; that I am the Deputy Public Defender assigned to represent the Defendant in the instant matter, and that I am familiar with the facts and circumstances of this case.

2. I have spoken to James Chappell at the Clark County Detention Center, and we have reviewed the discovery in this case. To facilitate an efficient trial, Defendant Chappell is willing to stipulate to the truth of the following statements:

1. That James Chappell on August 31, 1995, entered the trailer rented to Deborah Panos through a window;

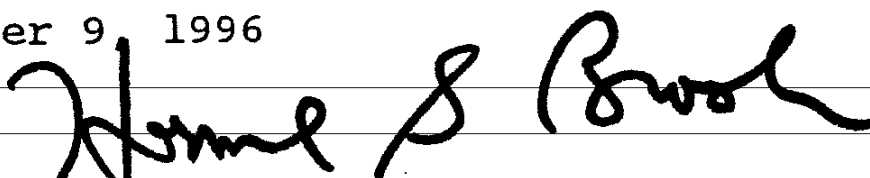
2. That James Chappell engaged in sexual intercourse with Deborah Panos on August 31, 1995, and

3. That James Chappell caused the death of Deborah Panos by stabbing her with a kitchen knife and the act was not an accident.

4. That James Chappell was jealous of Deborah Panos giving attention to, or receiving attention from, other men.

I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045).

EXECUTED ON September 9, 1996

  
HOWARD S. BROOKS

1 RECEIPT OF COPY of the above and foregoing Offer to  
2 stipulate to Certain Facts is hereby acknowledged this 10 day  
3 of September, 1996.

4 CLARK COUNTY DISTRICT ATTORNEY

5  
6 By 

7  
8 (Mot\Chappell.Offer)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

# EXHIBIT 21

ORIGINAL

FILED IN OPEN COURT

OCT 10 1996

LORETTA BOWMAN, CLERK

BY

Deputy

S&O  
STEWART L. BELL  
DISTRICT ATTORNEY  
Nevada Bar #000477  
200 S. Third Street  
Las Vegas, Nevada 89155  
(702) 455-4711  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JAMES MONTELL CHAPPELL,  
#1212860

Defendant(s).

Case No. C131341  
Dept. No. VII  
Docket P

STIPULATION TO CERTAIN FACTS

COMES NOW, the Defendant, by and through his attorneys, HOWARD S. BROOKS, ESQ., and WILLARD N. EWING, ESQ., and the State of Nevada, through STEWART L. BELL, Clark County District Attorney, by and through MELVYN T. HARMON, Chief Deputy District Attorney, and ABBI SILVER, Deputy District Attorney, do hereby Stipulate to certain facts relevant to the litigation of this criminal case.

1. That James Chappell on August 31, 1995, entered the trailer rented to Deborah Panos through a window;
2. That James Chappell engaged in sexual intercourse with Deborah Panos on August 31, 1995, and
3. That James Chappell caused the death of Deborah Panos by stabbing her with a kitchen knife and the act was not an accident.

///

CEST

1           4.       That James Chappell was jealous of Deborah Panos because he believed she was giving  
2                   attention to or receiving attention from other men.

3           DATED this 10<sup>th</sup> day of October, 1996.

4   STEWART L. BELL  
5   DISTRICT ATTORNEY

MORGAN D. HARRIS  
PUBLIC DEFENDER

6           By Melvyn T. Harmon  
7           MELVYN T. HARMON  
8           Chief Deputy District Attorney  
9           Nevada Bar #000362

By Howard S. Brooks  
HOWARD S. BROOKS  
Deputy Public Defender  
Nevada Bar #003374

10  
11   STEWART L. BELL  
12   DISTRICT ATTORNEY

MORGAN D. HARRIS  
PUBLIC DEFENDER

13           By Abbi Silver  
14           ABBI SILVER  
15           Deputy District Attorney  
16           Nevada Bar #003813

By Willard N. Ewing  
WILLARD N. EWING  
Deputy Public Defender  
Nevada Bar #003942

NOTICE OF MOTION

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the foregoing Motion will be heard on October 11, 1996, at 9:00 A.M. in Department No. VII of the District Court.

~~DATED this 10th of October, 1996.~~

CLARK COUNTY PUBLIC DEFENDER

Home & Book

By \_\_\_\_\_

HOWARD S. BROOKS #3374  
DEPUTY PUBLIC DEFENDER

RECEIPT OF COPY of the above and foregoing Motion is hereby  
acknowledged this 11th day of October, 1996.

**CLARK COUNTY DISTRICT ATTORNEY**

By Melvin J. Harris

(Mot \ Chappell. Dismiss)

# EXHIBIT 22

45  
ORIGINAL

FILED 24

SEP 10 9 27 AM '96

1 0043  
2 MORGAN D. HARRIS  
3 PUBLIC DEFENDER  
4 NEVADA BAR #1879  
5 309 South Third Street, Suite 226  
6 Las Vegas, Nevada 89155  
7 (702)455-4685  
8 Attorney for the Defendant  
9 Public Defender File No. F-95-5254

DISTRICT COURT  
CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA, )  
11 Plaintiff, ) CASE NO. C131341x  
12 v. ) DEPT. NO. VII  
13 JAMES MONTELL CHAPPELL, ) Date of Hearing: 9-16-96  
14 Defendant. ) Time of Hearing: 9:00 A.M.  
15

16 DEFENDANT'S MOTION TO COMPEL PETROCELLI  
17 HEARING REGARDING ALLEGATIONS OF PRIOR BAD ACTS

18 Comes Now Defendant James Chappell, by and through his  
19 attorney, Deputy Public Defender Howard S. Brooks, and moves this  
20 Honorable Court to Compel the State to present, at a pre-trial  
21 hearing, legally admissible evidence supporting the prior act  
22 conduct that the State seeks to introduce during their case-in-  
23 chief.

24 This motion is based upon the attached affidavit of

25 ...  
26 ...  
27 ...  
28 ...  
...

10011



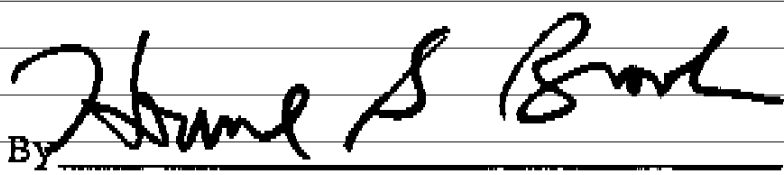
JChapell-8JDC0299

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Howard S. Brooks.

DATED this 9th day of September, 1996.

CLARK COUNTY PUBLIC DEFENDER



By  
HOWARD S. BROOKS #3374  
DEPUTY PUBLIC DEFENDER

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
DECLARATION

HOWARD S. BROOKS makes the following declaration:

1. That I am an attorney duly licensed to practice law in the State of Nevada; that I am the Deputy Public Defender assigned to represent the Defendant in the instant matter, and that I am familiar with the facts and circumstances of this case.

2. I have reviewed the State's Motion to Admit Evidence of Other Crimes, Wrongs or Bad Acts filed May 8, 1996 and the State's Supplemental Motion to Admit Evidence Of Other Crimes Wrongs or Bad Acts filed August 29, 1996, and find that the State seeks to introduce the following evidence:

1. Testimony of Lisa Duran concerning her observations in December 1994 of Defendant Chappell striking Panos in the face.

2. Medical Records from University Medical Center regarding Panos suffering a broken nose on January 9, 1995. Panos told UMC employees that her boyfriend hit her.

3. Unidentified records related to June 1, 1995 domestic battery incident wherein Chappell was charged with battery upon Panos and plead guilty to same.

4. Unidentified records or testimony related to February 23, 1994 allegation of domestic battery against James Chappell for battery of Panos.

5. Testimony of Dina Freeman, a Tucson friend of Deborah Panos, who would describe (a) a telephone conversation with Panos on an unknown date in approximately 1993 or 1994 when Panos claimed James Chappell "jumped her." Dina claims she heard a voice in the background that said, "if you ever fuck around in

1 front of my kids, I will kill your ass."

2 6. Testimony of Dina Freeman that Deborah Panos  
3 called her in August of 1994 and she could hear James Chappell in  
4 the background say, "either you give me that car or you give me  
5 some money 'cause I know your fuckin' around on me. You're not  
6 going to Dina's house everyday for nothin', I'm gonna do an O.J.  
7 Simpson on your ass."

8 7. Testimony of Dina Freeman that Deborah Panos  
9 called her at 2:00 in the morning on an unknown date crying that  
10 James Chappell had left her at a grocery store because the store  
11 would not cash Panos' check and Chappell was forcing Panos to give  
12 her money.

13 8. Testimony of Dina Freeman that she saw Deborah  
14 Panos with bruises on her face many times, and Panos claimed James  
15 Chappell inflicted these injuries.

16 9. Testimony of Dina Freeman that the relationship  
17 between Panos and Chappell was "rocky," and that Chappell was  
18 abusive to Panos.

19 10. Testimony of Dina Freeman that Chappell was  
20 ordered to attend domestic violence counseling at some unknown  
21 date in the past.

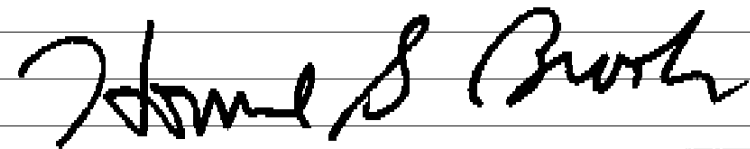
22 3. In accordance with Petrocelli v. State, 101 Nev. 46,  
23 692 P.2d 503 (1985), the Defense respectfully requests that this  
24 Court compel the State to present "clear and convincing" legal  
25 evidence of said prior acts in a hearing before trial, and that  
26 the Court reserve any ruling on the admissibility of said evidence  
27 until such burden is met.

28 ...

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

I declare under penalty of perjury that the foregoing is true  
and correct. (NRS 53.045).

EXECUTED ON September 9, 1996.



HOWARD S. BROOKS

JChappell-8JDC0303

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

RECEIPT OF COPY of the above and foregoing Motion to  
Compel Petrocelli Hearing Regarding Allegations of Prior Bad Acts  
is hereby acknowledged this 10 day of September, 1996.

CLARK COUNTY DISTRICT ATTORNEY

BY T. Daniel Schmidt

(Mot\Chappell.Pet)

# EXHIBIT 23

58

ORIGINAL FILED 27

0071  
MORGAN D. HARRIS  
PUBLIC DEFENDER  
NEVADA BAR #1879  
309 South Third Street, Suite 226  
Las Vegas, Nevada 89155  
(702)455-4685  
Attorney for the Defendant  
Public Defender File No. F-95-5254

OCT 4 10 46 AM '96

CLERK

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,  
v.  
JAMES MONTELL CHAPPELL,  
Defendant.

CASE NO. C131341x

DEPT. NO. VII

Date of Hearing: 10-7-96

Time of Hearing: 11:00 A.M.

DEFENDANT'S MOTION IN LIMINE REGARDING EVENTS RELATED TO  
DEFENDANT'S ARREST FOR SHOPLIFTING ON SEPTEMBER 1, 1995

COMES NOW, the Defendant, by and through his attorney,  
Deputy Public Defender Howard S. Brooks, and moves that this  
Honorable Court exclude during the trial portion of the  
proceedings in this case the following testimony:

1. The testimony of Lawrence Martinez regarding his  
observations of James Chappell shoplifting at the Lucky's store at  
4420 East Bonanza, Las Vegas, on September 1, 1995.

2. Any and all testimony of Kimberly Sempson regarding  
the allegation of shoplifting against Mr. Chappell on September 1,  
1995.

3. All other testimony regarding the arrest of Mr.  
Chappell for shoplifting at the Lucky's store at 4420 East

10/11

10/11

8JDC0334

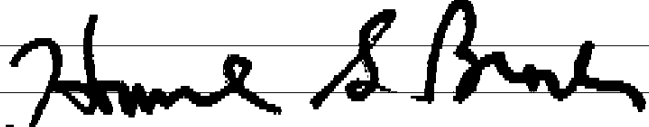
AA00831

1 Bonanza, Las, Vegas, on September 1, 1995.

2 This motion is made and based on the upon attached  
3 Memorandum of Points and Authorities.

4 DATED this 4th day of October, 1996.

5 CLARK COUNTY PUBLIC DEFENDER

6 

7 By  
8 HOWARD S. BROOKS #3374  
9 DEPUTY PUBLIC DEFENDER

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28



## 1 MEMORANDUM OF POINTS AND AUTHORITIES

## 2 FACTS

3 On August 31, 1995, Las Vegas citizen Lisa Duran,  
4 accompanied by police officers, discovered the dead body of Debra  
5 Panos. Initial speculation and investigation centered on James  
6 Chappell as the primary suspect in the case. Mr. Chappell lived  
7 at the trailer where Ms. Panos lived, and he and Ms. Panos had  
8 three children together.

9 Furthermore, Lisa Duran saw a man she identified as  
10 James Chappell leaving the trailer court where Debra Panos lived,  
11 and Mr. Chappell allegedly had possession of Ms. Panos' car.

12 The next morning, security office Lawrence Martinez at  
13 the Lucky's at 4420 East Bonanza observed James Chappell  
14 shoplifting several bottles of liquor and other items. Mr.  
15 Chappell allegedly tried to leave the store without paying for the  
16 items, and Mr. Martinez took Mr. Chappell into custody. Mr.  
17 Chappell was held in custody at the office of the Lucky's store  
18 while awaiting the arrival of Metropolitan police units, and  
19 subsequently was questioned by Metropolitan police. He gave the  
20 fake name of "Ivri Marrell" to the police, and was subsequently  
21 observed by Kimberly Sempson as he was detained in the security  
22 office attempting to dispose of social security cards which  
23 belonged to Debra Panos and the three children.

## 24 ARGUMENT

25 The Defense objects to any testimony by Lawrence  
26 Martinez or Kimberly Sempson or any other witness regarding Mr.  
27 Chappell's acts of shoplifting. The allegations of shoplifting  
28 are completely irrelevant to the present murder case. Testimony

2	The State will certainly concede that James Chappell was
3	already a suspect for murder on the morning of September 1, 1995,
4	and that officers were looking for James Chappell. Therefore,
5	testimony regarding his arrest should certainly be allowed, but
6	the subject of shoplifting is irrelevant to this case.

7 The Defense objects to this testimony on the grounds  
8 that it is not relevant, that it is more prejudicial than  
9 probative pursuant to NRS 48.035, the allegations of shoplifting  
10 are essentially allegations regarding character evidence, which is  
11 not admissible pursuant to NRS 48.045, and the evidence regarding  
12 shoplifting can easily be excised from the State's testimony by  
13 merely having his arrest described by the Metropolitan police  
14 officers who arrived at the scene without going into the details  
15 regarding the shoplifting.

16	SUMMARY
----	---------

17                   Therefore, based on the foregoing arguments, the Defense  
18 respectfully submits that the following testimony should be  
19 excluded during the trial portion of these proceedings:

20 1. The testimony of Lawrence Martinez regarding his  
21 observations of James Chappell shoplifting at the Lucky's store at  
22 4420 East Bonanza, Las Vegas, on September 1, 1995.

23	2. Any and all testimony of Kimberly Sempson regarding
24	the allegation of shoplifting against Mr. Chappell on September 1,
25	1995.

26		...
----	--	-----

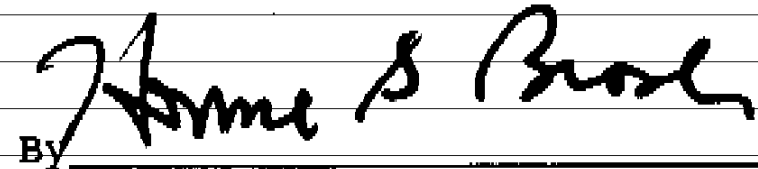
27	...
----	-----

28 | . . .

1                    3. All other testimony regarding the arrest of Mr.  
2 Chappell for shoplifting at the Lucky's store at 4420 East  
3 Bonanza, Las, Vegas, on September 1, 1995.

4                    DATED this 4th day of October, 1996.

5                    CLARK COUNTY PUBLIC DEFENDER

6                      
7 By \_\_\_\_\_

8                    HOWARD S. BROOKS #3374  
9                    DEPUTY PUBLIC DEFENDER  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

JChappell-8JDC0339

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

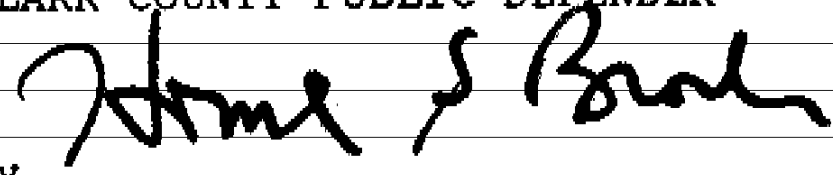
NOTICE OF MOTION

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the foregoing will be heard  
on October 7, 1996, at 11:00 A.M. in Department No. VII of the  
District Court.

DATED this 4th of October, 1996.

CLARK COUNTY PUBLIC DEFENDER



By \_\_\_\_\_  
HOWARD S. BROOKS #3374  
DEPUTY PUBLIC DEFENDER

RECEIPT OF COPY of the above and foregoing is hereby  
acknowledged this 4 day of October, 1996.

CLARK COUNTY DISTRICT ATTORNEY

By Tanner Schmitt

(Mot\Chappell.2)

# EXHIBIT 24

FILED

Oct 11 1 46 PM '95

*For the State*

CLERK

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

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

DISTRICT COURT

CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,  
 13  
 14 Plaintiff,

CASE NO. 131341  
431240

DEPT. NO. VII

11 -VS-

DOCKET NO. P

12 JAMES MONTELL CHAPPELL,  
 13 #1212860

14 Defendant.

I N F O R M A T I O N

15  
 16 STATE OF NEVADA )  
 17 ) ss:  
 18 COUNTY OF CLARK )

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

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

CE31

CE31

CE31

CE31

1 COUNT I - BURGLARY

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

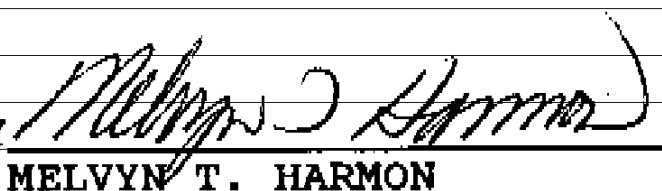
7 COUNT II - ROBBERY WITH USE OF A DEADLY WEAPON

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

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

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

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

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

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



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

LORETTA BOWMAN, CLERK

BY *Loretta Bowman* Deputy

JUL 15 1996

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

KLEIN, DOROTHY  
LVMPD #3997

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

GROVE, W.  
CITY INTAKE JAIL #253

5 YADA, W.  
LVMPD #2612

McNITT, L.  
TUCSON POLICE DEPT.  
TUCSON, AZ

6 FSD

HAGGERTY  
TUCSON POLICE DEPT.  
TUCSON, AZ

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

EARNST, J.  
TUCSON POLICE DEPT.  
TUCSON, AZ

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

NEIDKOWSKI  
TUCSON POLICE DEPT.  
TUCSON, AZ

12 WILLIAMS, ALAN  
LVMPD #4083

VERNON  
TUCSON POLICE DEPT.  
TUCSON, AZ

13 STANSBURY, DAVID  
14 LVMPD #3515

AUSSERNS  
TUCSON POLICE DEPT.  
TUCSON, AZ

15 SZELES, MICHAEL  
LVMPD #3526

STONER  
TUCSON POLICE DEPT.  
TUCSON, AZ

16 GIERSDORF, DANIEL  
17 LVMPD #4521

GAY, KENNETH  
1705 S. WASHINGTON  
18 LANSING, MI

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

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

WIDNER, PAUL  
LANSING POLICE DEPT.  
LANSING, MI

21 FREEMAN, DINA  
TUCSON POLICE DEPT.  
TUCSON, AZ

PRIEBE, JON  
LANSING POLICE DEPT.  
LANSING, MI

22 KNAPP  
LVMPD #  
25 CCDC

GRANGER, AL  
ADDRESS UNKNOWN

26 DA#95F08114X/kjh  
LVMPD DR#9508311351

27 BURG;ROBB W/WPN;  
MURDER W/WPN - F

28 (TK3)

66100018-11addeh0f  
JUDGE OF THE COURT  
LORETTA BOWMAN, CLERK  
BY *[Signature]* Deputy  
19 *[Signature]*

1 CUSTODIAN OF RECORDS  
LVMPD

2  
3 CUSTODIAN OF RECORDS  
CCDC

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

7 WAHL, THOMAS  
LVMPD #5019 (LAB)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28 95F08114X

# EXHIBIT 25

FILED

Nov 8 3 24 PM '95

*Loetta Thurman*  
CLERK

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

7 DISTRICT COURT

8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,	)	CASE NO.	C131341
	)		
10 Plaintiff,	)	DEPT. NO.	VII
	)		
11 -vs-	)	DOCKET NO.	P
	)		
12 JAMES MONTELL CHAPPELL,	)		
#1212860	)		
	)		
13	)		
	)		
14 Defendant.	)		
	)		
15	)		

16 NOTICE OF INTENT

17 TO SEEK DEATH PENALTY

18 COMES NOW the State of Nevada, through STEWART L. BELL, Clark  
19 County District Attorney, by and through MELVYN T. HARMON, Chief  
20 Deputy District Attorney, pursuant to NRS 175.552 and NRS 200.033  
21 and declares its intention to seek the death penalty at a penalty  
22 hearing. Furthermore, the State of Nevada discloses that it will  
23 present evidence of the following aggravating circumstances:

24 1. The murder was committed while the person was engaged in  
25 the commission of or an attempt to commit any Robbery. [NRS  
26 200.033(4)] The evidence of this aggravating circumstance will  
27 consist of testimony and physical evidence arising out of the  
28 aggravated nature of the offense itself.

1        2. The murder was committed while the person was engaged in  
2 the commission of or an attempt to commit any Burglary and/or Home  
3 Invasion. [NRS 200.033(4)] The evidence of this aggravating  
4 circumstance will consist of testimony and physical evidence  
5 arising out of the aggravated nature of the offense itself.

6        3. The murder was committed while the person was engaged in  
7 the commission of or an attempt to commit any Sexual Assault. [NRS  
8 200.033(4)] The evidence of this aggravating circumstance will  
9 consist of testimony and physical evidence arising out of the  
10 aggravated nature of the offense itself.

11       4. The murder involved torture or depravity of mind. [See  
12 NRS 200.033(8)] The evidence of this aggravating circumstance will  
13 consist of testimony and physical evidence arising out of the  
14 aggravated nature of the offense itself.

15       DATED this 8th day of November, 1995.

16                               STEWART L. BELL  
17                               DISTRICT ATTORNEY  
18                               Nevada Bar #000477

19                               By Melvyn T. Harmon  
20                               MELVYN T. HARMON  
21                               Chief Deputy District Attorney  
22                               Nevada Bar #000862  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

RECEIPT OF COPY

RECEIPT OF A COPY of the above and foregoing NOTICE OF INTENT  
TO SEEK DEATH PENALTY is hereby acknowledged this 8<sup>th</sup> day of  
November, 1995.

PUBLIC DEFENDER'S OFFICE

By   
309 S. Third Street #226  
Las Vegas, Nevada 89101

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# EXHIBIT 26



30  
**ORIGINAL**

**FILED** 24

JUL 23 3 26 PM '96

*Loretta Downum*

CLERK

1 0020  
2 MORGAN D. HARRIS  
3 PUBLIC DEFENDER  
4 Nevada Bar #1879  
5 309 S. Third Street  
6 Las Vegas, NV 89155  
7 (702) 455-4685  
8 Attorney for Defendant

DISTRICT COURT  
CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,

11 Plaintiff,

12 vs.

13 JAMES MONTELL CHAPPELL,

14 Defendant.

CASE NO. C131341

DEPT. NO. VII

DATE OF HEARING: 9/11/96  
TIME OF HEARING: 9 A.M.

**DEFENDANT'S MOTION TO STRIKE STATE'S  
NOTICE OF INTENT TO SEEK DEATH PENALTY BECAUSE  
THE PROCEDURE IN THIS CASE IS UNCONSTITUTIONAL**

18 COMES NOW, Defendant, JAMES MONTELL CHAPPELL, by and  
19 through his attorney, Deputy Public Defender HOWARD S. BROOKS, and does hereby  
20 move this Honorable Court to strike the State's Notice of Intent to Seek Death Penalty filed  
21 November 8, 1995.

22 This Motion is made and based on the Fifth and Fourteenth Amendments to  
23 the United States Constitution, Article I, Sections 5 and 8, of the Nevada Constitution, the  
24 statutory and common law of the State of Nevada, the attached Memorandum of Points and  
25 Authorities, the attached Declaration of Counsel, all papers and pleadings on file in this

26 ...

27 ...

28 ...

CE11

CE31

1 case, and argument of counsel, if deemed necessary by the Court, at the hearing of this  
2 Motion.

3 DATED this 23 day of July, 1996.

4 Respectfully submitted,

5 CLARK COUNTY PUBLIC DEFENDER

6 By Howard S. Brooks  
7 Howard S. Brooks  
8 Deputy Public Defender  
9 Nevada Bar #3374  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **STATEMENT OF FACTS**

3 The State of Nevada filed a Criminal Complaint September 8, 1995 alleging  
4 that Defendant James Montell Chappell committed the crimes of Burglary While in  
5 Possession of a Deadly Weapon, Robbery With Use of a Deadly Weapon, and Murder With  
6 Use of a Deadly Weapon.

7 At a preliminary hearing on October 3, 1995 before the Honorable Tom Leen  
8 in Justice Court, Department 3, Las Vegas Township, the Court dismissed the deadly  
9 weapon allegation in Count I, and held Mr. Chappell to answer to the charges of burglary  
10 in Count I, Robbery With Use of a Deadly Weapon in Count II, and Murder With Use of a  
11 Deadly Weapon in Count III.

12 It may be noted that the State's Criminal Complaint filed in Justice Court  
13 alleged no aggravating factors as described in NRS 200.033, the Nevada statute describing  
14 the factors to be considered by a jury considering the penalty for a person convicted of first  
15 degree murder. Furthermore, the State did not request the Justice Court magistrate to make  
16 any finding that probable cause supported the existence of any aggravating factors.

17 The State filed an Information on October 11, 1995, and Mr. Chappell  
18 appeared in District Court, Department 7, on October 18, 1995, and pled not guilty to all  
19 charges.

20 On November 8, 1995, the State filed a Notice of Intent to Seek the Death  
21 Penalty. This Notice of Intent alleged the following aggravating circumstances:

- 22 1. The murder was committed while the person was engaged  
23 in the commission of or an attempt to commit a robbery.  
24 2. The murder was committed while the person was engaged  
25 in the commission of or an attempt to commit any burglary  
26 and/or home invasion.

27 . . .

28 . . .

1 3. The murder was committed while the person was engaged  
2 in the commission of or an attempt to commit any sexual  
3 assault.

4 4. The murder involved torture or depravity of mind.

5 **SUMMARY OF ARGUMENT**

6 The State's filing of the Notice of Intent to Seek the Death Penalty in the  
7 absence of any probable cause hearing violates Mr. Chappell's due process and equal  
8 protection rights guaranteed by the United States and Nevada Constitutions. The filing of  
9 the Notice changes the nature of a criminal murder case, prejudicing the Defendant during  
10 jury selection, trial, and sentencing. Though Nevada statutory law is silent regarding the  
11 proper procedure for alleging aggravating factors and seeking the death penalty, Nevada  
12 courts customarily allow the State to proceed as the State has proceeded in this case:  
13 without any preliminary burden on the State before trial to present some evidence the  
14 aggravating factors exist. The procedure in this case allows the State to unilaterally amend  
15 the charging documents, thereby making unnecessary an essential and complete description  
16 of the charges in the original Information. Since the allegation of aggravating factors  
17 requires the same procedural protections as the allegation of essential elements of a crime,  
18 the customs and rules that allow the State to file the Notice of Intent without a probable  
19 cause hearing violate Mr. Chappell's due process rights and deny him the same protections  
20 accorded other criminal defendants. Because current procedure denies Mr. Chappell a  
21 pretrial hearing, the Defendant's rights to seek relief by way of a writ of habeas corpus are  
22 also abrogated, thereby violating his Nevada constitutional rights. Therefore, the State's act  
23 in filing the Notice of Intent to Seek the Death Penalty is unconstitutional, and the Notice  
24 should be dismissed.

25 . . .

26 . . .

27 . . .

28 . . .

1                                   **THE FILING OF A NOTICE OF INTENT TO SEEK**  
2                                   **THE DEATH PENALTY BY THE STATE PREJUDICES**  
3                                   **THE DEFENSE DURING JURY SELECTION, TRIAL, AND SENTENCING**

4                   The filing of a Notice of Intent to Seek the Death Penalty by the State  
5                   changes the nature of a murder case. When the Notice is filed, the stakes involved for the  
6                   Defendant cannot be higher.

7                   When the State files the Notice, the questioning of potential juries during the  
8                   voir dire incorporates the “death qualification” process. “Death qualification” occurs when  
9                   the State may question prospective jurors prior to the guilt phase of the trial regarding the  
10                  prospective jurors’ views on the death penalty. The Court must excuse for cause those  
11                  jurors whose opposition to capital punishment would prevent or substantially impair the  
12                  performance of their duty as jurors during the sentencing phase of trial. See Lockhart v.  
13                  McCree, 476 U.S. 162, 90 L.Ed.2d 137, 106 S. Ct. 1758 (1986). While Lockhart held  
14                  that the “death qualification” process is not per se unconstitutional, many courts, including  
15                  the United States Supreme Court, have assumed for the purposes of argument that  
16                  substantial social science research supports the claim that a death qualified jury is more  
17                  likely to convict a defendant in the guilt phase of a trial than a jury that has not been death  
18                  qualified. Id. at 168-73, 90 L.Ed.2d at 147-48, 106 S. Ct. at 1761-65.

19               Furthermore, by informing the jury prior to the trial phase that the State is  
20               seeking the death penalty, a strong message is sent to the jury that the defendant is not  
21               merely someone accused of murder, but someone so bad that the State is seeking a murder  
22               conviction and the ultimate punishment. The prejudice to the Defense could hardly be  
23               more.

24                                   **THE PROCEDURE FOLLOWED IN THIS CASE**  
25                                   **IS CONSISTENT WITH THE PREVAILING CUSTOM IN NEVADA COURTS**

26               As attested in the attached Declaration of Howard S. Brooks, the relevant  
27               procedure in this case did not depart from the standard procedure in other “death penalty”  
28               murder cases. By relevant procedure, the Defense refers to the State’s failure to allege  
                  aggravating circumstances in the Criminal Complaint, the State’s failure to request or obtain

1 a finding by the Justice of the Peace that probable cause supported the alleged aggravating  
2 circumstances, and the State's failure to allege aggravating circumstances and the intent to  
3 seek the death penalty in the original Information filed in District Court.

4 Nevada statutory law provides no guidance regarding the appropriate way to  
5 allege aggravating circumstances and inform the Defense the State is seeking the death  
6 penalty. The statutes in Chapter 171 of the Nevada Revised Statutes governing the filing  
7 of a Criminal Complaint, the conduct of a preliminary hearing in Justice Court, the  
8 necessity of preparing a transcript of the proceedings, the procedure for challenging a  
9 probable cause determination: none of these statutes address whether or how allegations  
10 relating to the death penalty should be handled.

11 The failure to address capital litigation concerns can be explained by the  
12 timing of the adoption of the laws. The Legislature enacted most of Chapter 171 in 1967.  
13 The statute governing aggravating and mitigating factors was enacted ten years later, in  
14 1977.

15 The District Court procedure followed in this case is also similar to the  
16 customary procedure in "death penalty" cases handled in Clark County. See Declaration of  
17 Howard S. Brooks. Again, the standard statutory law in Chapters 173 and 174, governing  
18 the initial charging documents filed in district court and the procedure of entering a plea,  
19 are silent regarding death penalty cases and the alleging of aggravating factors. These  
20 chapters were generally enacted in 1967 or earlier. Therefore, it is no surprise that the  
21 charging document in this case, the Information filed October 11, 1995, alleges no  
22 aggravating circumstances and does not notify the Defendant the State is seeking the Death  
23 Penalty.

24 Other statutes address other areas of death penalty jurisprudence, but no  
25 statutes specifically authorize the procedures found in this case. In Chapter 175, NRS  
26 175.552 provides guidance regarding how to conduct a penalty hearing in a capital case;  
27 NRS 175.554, NRS 175.556, NRS 175.558, and NRS 175.562 mandate certain procedural

28 . . .

1 aspects of a penalty hearing, but these statutes are silent regarding any necessity to test  
2 alleged aggravating circumstances before trial.

3 The origin of the Notice of Intent to Seek Death Penalty can be found in  
4 Supreme Court Rule 250, which establishes certain procedures for capital cases. Rule 250  
5 specifies the content of the Notice and imposes certain time requirements on the filing of  
6 the document. The Notice of Intent filed in this case complies with Rule 250.

7 In summary, the filing of the Notice of Intent to Seek Death Penalty in this  
8 case, and the associated failures by the State to seek any probable cause finding prior to  
9 trial that the aggravating factors alleged by the State warrant a death penalty prosecution,  
10 are neither consistent nor inconsistent with current statutory law because Nevada's statutes  
11 did not contemplate such a process. These procedures are consistent, however, with  
12 customary procedures in Clark County courts and with Rule 250 of the Nevada Supreme  
13 Court Rules. And the Defense contends, as will be argued later in this Motion, that the  
14 procedure in this case, the customs in these types of cases, and any rules or statutes that are  
15 construed to endorse the procedure in this case, are unconstitutional.

16  
17 **THE PROCEDURE IN THIS CASE IS UNCONSTITUTIONAL BECAUSE THE**  
18 **NOTICE OF INTENT CONSTITUTES AN AMENDMENT OF THE INFORMATION,**  
19 **AND THE INFORMATION MUST REFLECT A FINDING OF PROBABLE CAUSE**

20 The Fifth Amendment to the United States Constitution and Article 1, Section  
21 8, of the Nevada Constitution provide that no person shall be held to answer to criminal  
22 charges without a finding of probable cause by a grand jury. The United States Supreme  
23 Court long ago endorsed a probable cause finding by a neutral magistrate by way of a  
24 preliminary hearing as a legal alternative to a grand jury indictment. See *Hurtado v.*  
25 *California*, 110 U.S. 516, 28 L.Ed. 232, 4 S. Ct. 111 (1984) (upholding California's  
26 preliminary hearing process against a due process challenge).

27 The preliminary hearing process in Nevada requires the State to present legal  
28 evidence to a Court that a crime has occurred, and that the Defendant committed the  
crime. If the State can meet that burden, the defendant is held to answer to the charges in  
district court. If the State fails to meet the burden, the case must be dismissed. NRS

1 171.206. The purpose of requiring a probable cause finding is to ensure that a defendant  
2 has the benefit of a pretrial review of the sufficiency of the evidence before having to  
3 confront the same charges at an actual trial. Issues can be narrowed, charges and  
4 allegations having no basis in fact can be eliminated. The probable cause hearing process  
5 has been characterized as a “shielding function” whereby individuals are protected from  
6 vindictive prosecution by private enemies, political partisans, or vindictive governmental  
7 officials. See Hurtado v. California, 110 U.S. 516, 555, 4 S.Ct. 292, 28 L.Ed. 232 (1884)  
8 (J. Harlan, dissenting).

9 Subsequently, the State must file an Information in District Court alleging the  
10 charge or charges to which the Justice of the Peace held the Defendant to answer after  
11 hearing evidence at the preliminary hearing. The Information is the first pleading filed in  
12 district court, and must contain a plain, concise and definite written statement of the  
13 essential facts constituting the offense charged. Sheriff v. Levinson, 95 Nev. 436, 596  
14 P.2d 232 (1979). See also NRS 173.075. In cases where the allegations go beyond alleging  
15 a simple crime, and allege instead a crime or set of facts to which different statutes apply,  
16 the key inquiry is to determine which facts or allegations must ultimately be proven by a  
17 jury beyond a reasonable doubt. For example, the allegation of “robbery with use of a  
18 deadly weapon” must be alleged in the Information and both the “robbery” and the “use of  
19 a deadly weapon” must ultimately pass muster before a jury for the State to obtain a  
20 conviction. See, e.g., Bartle v. Sheriff, 92 Nev. 459, 552 P.2d 1099 (1976) (Magistrate  
21 was required to find some evidence supporting enhancement as well as underlying crime,  
22 and Information must reflect both allegations). The same is not true where the allegation  
23 need not be proven to a jury beyond a reasonable doubt. In cases where the habitual  
24 criminal enhancement applies, the jury need not hear the habitual criminal allegation in the  
25 Information, and the Information need not include that allegation.

26 In the present case, the State filed a Notice of Intent to Seek Death Penalty  
27 almost a month after the original Information was filed. The State relies on Supreme Court  
28 Rule 250 for authorization to file the Notice.



1 In fact, the Notice is not authorized by Nevada statutory law, and is in reality  
2 an amendment of the Information. The Aggravating Factors identified in NRS 200.033 are  
3 "essential facts" or allegations constituting the offense charged. They must ultimately be  
4 proven beyond a reasonable doubt to a jury for a conviction to be sustained. Considering  
5 the stakes involved in a death penalty case, the allegation of aggravating factors are the  
6 most essential part of the pleading document.

7 Supreme Court Rule 250 and the custom in Nevada courts merely allows the  
8 District Attorney to make an end run around the requirement that charges be supported by a  
9 finding of probable cause. The allegations of Aggravating Factors must ultimately be  
10 proven beyond a reasonable doubt, the same standard applied to elements of the underlying  
11 crime, the same standard applied to other statutory enhancements that must be proved  
12 beyond a reasonable doubt to a jury.

13 By allowing the State to unilaterally file a Notice of Intent to Seek Death  
14 Penalty without any probable cause showing, the custom in Nevada allows the Information  
15 or Indictment to be changed or amended at the whim of the State, thereby allowing the  
16 charging document to become the Information or Indictment of the State, not of the Justice  
17 Court or the Grand Jury.

18 The United States Supreme Court has reversed criminal convictions where a  
19 charging document alleges facts or theories beyond that which the probable cause hearing  
20 found supported by the preliminary evidence. Russell v. United States, 369 U.S. 749, 82  
21 S.Ct. 1038, 8 L.Ed.2d 240 (1962) (charging documents exceeded finding of grand jury).  
22 The policy endorsed in Russell is "effectuated by preventing the prosecution from  
23 modifying the theory and evidence upon which the indictment is based." United States v.  
24 Silverman, 430 F.2d 106, 110 (2nd Cir. 1970).

25 In summary, the Notice of Intent to Seek Death Penalty is not authorized by  
26 Nevada statutory law, and is merely the creation of the Nevada Supreme Court and custom.  
27 The effect of the filing of the document is to amend the Information or Indictment without  
28 the necessary showing of probable cause. Therefore, the procedure in this case, and the

1 laws, rules, and customs that sanction this procedure are unconstitutional because they  
2 violate the Nevada and United States Constitutions.

3  
4 **THE PROCEDURE IN THIS CASE IS UNCONSTITUTIONAL BECAUSE**  
5 **THE NOTICE OF INTENT MUST WITHSTAND A PROBABLE CAUSE**  
6 **DETERMINATION AND THE REMEDIES AVAILABLE TO CHALLENGE**  
7 **THAT DETERMINATION**

8 The Fifth and Fourteenth Amendments to the United States Constitution and  
9 Article 1, Section 8, of the Nevada Constitution guarantee a criminal defendant the right to  
10 due process in the criminal proceedings against that defendant.

11 To satisfy the Due Process requirements of the Fourteenth Amendment, a  
12 procedure must "comport with the deepest notions of what is fair and right and just."  
13 Solesbee v. Balkcom, 339 U.S. 9, 16, 70 S.Ct. 457, 460, 94 L.Ed. 604 (1950). Due  
14 Process considers whether treatment of an individual or group is fundamentally fair,  
15 without comparing such treatment to the treatment of others. Riley v. Nevada Sup. Ct.,  
16 763 F. Supp. 446 (D. Nev. 1991).

17 The United States Supreme Court has repeatedly "stressed that because the  
18 death penalty is qualitatively different from any other criminal punishment, 'there is a  
19 corresponding difference in the need for reliability in the determination that death is the  
20 appropriate punishment in a specific case.'" Williams v. Lynaugh, 484 U.S. 935, 108 S.  
21 Ct. 311, 313, 98 L.Ed.2d 270 (1987)(quoting Woodson v. North Carolina, 428 U.S. 280,  
22 305, 96 S.Ct. 2978, 2991, 49 L.Ed.2d 944 (1976).

23 In the present case, the Defense contends that the allegation of aggravating  
24 factors constitutes an essential part of the allegation, a part of the allegation that must  
25 ultimately be proved beyond a reasonable doubt to a jury. Therefore, it is only fair and  
26 right and just that such allegations be subject to the same procedural protections as are  
27 necessary with an allegation of the elements of the crime or any other matter which must  
28 ultimately be proved beyond a reasonable doubt to a jury.

...

1           Requiring the State to present some preliminary evidence, at a preliminary  
2 hearing or to a grand jury, supporting the aggravating factors would allow the Defense to  
3 receive transcripts of the relevant testimony and challenge the sufficiency of that evidence  
4 by way of a petition for a writ of habeas corpus. The current procedure does not allow use  
5 of the writ to challenge the sufficiency of evidence of aggravating factors. This is an  
6 important remedy, and it is not available to the defense because the current process is  
7 flawed.

8           Because the current procedure allows the District Attorney to make an end-  
9 run around a probable cause hearing concerning the aggravating factors, which are essential  
10 elements of the State's allegations, the current procedure is unconstitutional and the State's  
11 Notice of Intent should be dismissed.

12                           **THE PROCEDURE IN THIS CASE IS UNCONSTITUTIONAL**  
13                           **BECAUSE DEFENDANTS IN CAPITAL CASES ARE DENIED**  
14                           **EQUAL PROTECTION OF THE LAW**

15           The Fourteenth Amendment to the United States Constitution guarantees all  
16 criminal defendants equal protection of the law. The custom in Nevada courts, and Rule  
17 250 of the Nevada Supreme Court Rules deny individuals charged with capital crimes equal  
18 protection of the laws by allowing the State to prosecute the Aggravating Factors alleged in  
19 the Notice of Intent without a probable cause determination, though all other persons  
20 charged with acts or crimes which must be proven beyond a reasonable doubt are entitled to  
21 such a determination. This discrimination occurs without any rational basis, and is  
22 therefore unconstitutional.

23           While the Equal Protection Clause permits the States some discretion in  
24 enacting laws which affect some groups of citizens differently than others, a statute or  
25 practice is unconstitutional if the "classification rests on grounds wholly irrelevant to the  
26 achievement of the State's objective." McGowan v. Maryland, 366 U.S. 420, 425-26, 81  
27 S. Ct. 1101, 1104-05, 6 L.Ed.2d 393 (1961). The burden on the State is to show some  
28 . . .

1 rational reason why people facing a death penalty should be treated differently than other  
2 criminal defendants.


3 As argued above in this Motion, the allegation of aggravating factors is an  
4 essential allegation just as the "use of a deadly weapon" allegation is an essential allegation.  
5 Rule 250 allows the State unfettered discretion to file the "death penalty notice" without  
6 any showing of probable cause, a privilege the State does not enjoy in prosecuting essential  
7 elements of other crimes or penalty enhancements (such as "Use of a Deadly Weapon" or  
8 "Victim Over 65 Years of Age"). The purpose of Rule 250 is to ensure that death penalty  
9 appeals are handled efficiently. The Defense contends that the need for efficiency does not  
10 rationally explain the necessity of denying Mr. Chappell and other defendants the right to  
11 confront charges at trial only after a showing of probable cause. The evidence supporting  
12 the aggravators could easily be introduced at the same grand jury proceeding or preliminary  
13 hearing where the evidence supporting the underlying crime is presented. Any challenge  
14 to the sufficiency of that evidence could then occur through the petition for a writ of habeas  
15 corpus. This procedure will allow aggravating factors not supported by real evidence to be  
16 dismissed, thereby making the system more efficient, not less so.

17 Because Rule 250 treats defendants charged with a capital crime differently  
18 than other defendants, without any rational basis for doing so, Rule 250 is unconstitutional  
19 when it allows defendants to face aggravating factor allegations without any pretrial proof  
20 of such factors by the State. The State's Notice of Intent should therefore be dismissed.

21 DATED this 23 day of July, 1996.

22 Respectfully submitted,

23 CLARK COUNTY PUBLIC DEFENDER

24 

25 By \_\_\_\_\_  
26 Howard S. Brooks  
27 Deputy Public Defender  
28 Nevada Bar #3374

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2  
3  
4  
5

6  
7  
8  
9  
10

11  
12  
13  
14  
15

16  
17  
18

19  
20

21

22

23

24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**NOTICE OF MOTION**

TO: CLARK COUNTY DISTRICT ATTORNEY

YOU WILL PLEASE TAKE NOTICE that the Clark County Public Defender has set the foregoing DEFENDANT'S MOTION TO STRIKE STATE'S NOTICE OF INTENT TO SEEK DEATH PENALTY BECAUSE THE PROCEDURE IN THIS CASE IS UNCONSTITUTIONAL for hearing on Wednesday, September 11, 1996, at 9 a.m., in Department VII of District Court.

DATED this 23 day of July, 1996

CLARK COUNTY PUBLIC DEFENDER



By \_\_\_\_\_  
Howard S. Brooks  
Deputy Public Defender  
Nevada Bar #3374

Receipt of copy of the foregoing DEFENDANT'S MOTION TO STRIKE STATE'S NOTICE OF INTENT TO SEEK DEATH PENALTY BECAUSE THE PROCEDURE IN THIS CASE IS UNCONSTITUTIONAL is acknowledged this 23 day of July, 1996.

CLARK COUNTY DISTRICT ATTORNEY

By Taney Schmeider

Chappell.51

# EXHIBIT 27

## REGISTER OF ACTIONS

CASE No. 95C131341

The State of Nevada vs James M Chappell

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

Case Type: **Felony/Gross  
Misdemeanor**  
Date Filed: **10/10/1995**  
Location: **Department 5**  
Cross-Reference Case  
Number: **C131341**  
Defendant's Scope ID #: **1212860**  
Lower Court Case # Root: **95F08114**  
Lower Court Case Number: **95F08114X**  
Supreme Court No.: **61967**

### PARTY INFORMATION

<b>Defendant</b>	<b>Chappell, James M</b> Other Agency Numbers 1212860 Scope ID Subject Identifier	<b>Lead Attorneys</b> <b>Christopher R. Oram</b> <i>Retained</i> 7023845563(W)
<b>Plaintiff</b>	<b>State of Nevada</b>	<b>Steven B Wolfson</b> 702-671-2700(W)

### CHARGE INFORMATION

Charges: Chappell, James M	Statute	Level	Date
1. BURGLARY.	205.060	Felony	01/01/1900
2. ROBBERY WITH A DEADLY WEAPON	200.380*165	Felony	01/01/1900
3. MURDER WITH A DEADLY WEAPON	200.010*165	Felony	01/01/1900
3. DEGREES OF MURDER	200.030	Felony	01/01/1900

### EVENTS & ORDERS OF THE COURT

09/30/1996 **All Pending Motions** (9:00 AM) ()  
*ALL PENDING MOTIONS 9-30-96 Court Clerk: TINA HURD Reporter/Recorder: PATSY SMITH Heard By: A. William Maupin*

#### Minutes

09/30/1996 9:00 AM

- ARGUMENT: PRETRIAL MOTIONS...DEFT'S MOTION TO STRIKE ALLEGATIONS OF CERTAIN AGGRAVATING CIRCUMSTANCES ALLEGED...DEFT'S MOTION TO STRIKE STATE'S NOTICE OF INTENT...DEFT'S MOTION TO COMPEL DISCLOSURE OF ANY AND ALL INFO RE: AGGRAVATING FACTORS...DEFT'S MOTION TO COMPEL PETROCELLI HEARING...STATE'S MOTION TO ADMIT EVIDENCE OF CRIMES, WRONGS OR BAD ACTS...STATE'S SUPPLEMENTAL MOTION: ADMIT EVIDENCE OF OTHER CRIMES, WRONGS OR BAD ACTS Court advised he has read all the Points & Authorities in this case and is prepared to take oral argument. Mr. Brooks advised, as to the motions to admit evidence of other crimes, he would request they not be heard until after the Petrocelli hearing. COURT SO ORDERED. Ms. Silver advised she would really prefer the Court rule at this time. Court advised counsel of his inclinations on the motion and ORDERED, motion to compel Petrocelli hearing is GRANTED. Following arguments by counsel, Court stated his findings and ORDERED, motion to strike allegations of certain aggravating circumstances is DENIED and Court believes there is substantial evidence to go to the Jury; motion to strike notice of intent is DENIED. As to the Motion to Compel Disclosure of Any and All Info Re: Aggravating Factors, Ms. Silver advised their office has an



open file policy and she has given Mr. Brooks everything they have. Upon Court's inquiry, Mr. Brooks advised they will be finished copying the jury questionnaires today. Court advised counsel to get those to Jury Services as soon as possible. COURT ORDERED, Motion to Admit Evidence of Other Crimes, Wrongs or Bad Acts is set for the day of trial at 11:00 a.m. and jury selection will begin that afternoon. CUSTODY 10-7-96 11:00 AM STATE'S MOTION TO ADMIT EVIDENCE OF CRIMES, WRONGS OR BAD ACTS...STATE'S SUPPLEMENTAL MOTION: ADMIT EVIDENCE OF OTHER CRIMES, WRONGS OR BAD ACTS

Parties Present

Return to Register of Actions

# EXHIBIT 28

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

RECEIVED

MAR 10 7 2003  
COUNTY CLERK

ORIGINAL

FILED

MAR 7 10 02 AM '03

Shirley B. Rasmussen  
CLERK

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

ATTORNEY FOR CHAPPELL

DISTRICT COURT

CLARK COUNTY, NEVADA

\* \* \*

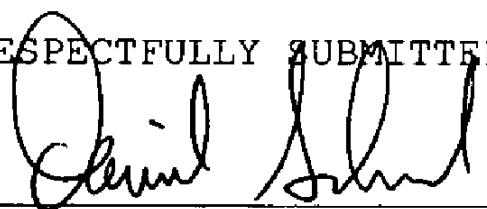
JAMES MONTELL CHAPPELL,	)	CASE NO. C 131341
	)	DEPT. NO. XI
Petitioner,	)	
	)	
vs.	)	
	)	
THE STATE OF NEVADA,	)	
	)	
Respondent.	)	DATE: N/A
	)	TIME: N/A

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

See attached.

DATED: March 7, 2003.

RESPECTFULLY SUBMITTED:

  
DAVID M. SCHIECK, ESQ.

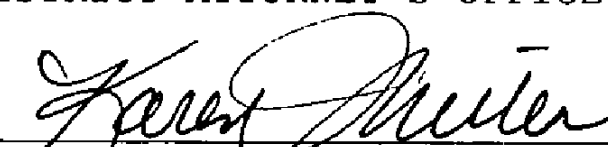
RECEIPT OF COPY

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

DATED:

Mar 7, 2003

DISTRICT ATTORNEY'S OFFICE

  
200 S. THIRD STREET  
LAS VEGAS NV 89155

518

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

AFFIDAVIT OF CLARA AXAM

STATE OF MICHIGAN )  
COUNTY OF EATON ) ss:

Clara Axam, being first duly sworn, deposes and says

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

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

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

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

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

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

1 Manell, and Ben Dean if I had been asked to do so.

2 JAMES really loved his children and he would always  
3 babysit when Debbie was working. He never neglected the  
4 children and I never saw him violent toward Debbie.

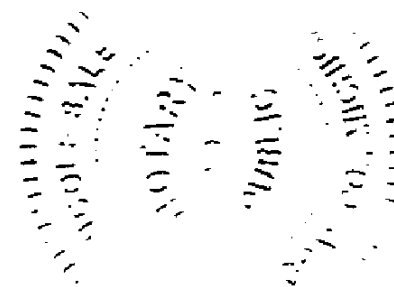
5 FURTHER, Affiant sayeth naught.

7 Clara Axam  
8 CLARA AXAM

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

11 Nicole Baile  
12 NOTARY PUBLIC

13  
14 NICOLE BAILEY  
Notary Public, Ingham County, MI  
15 My Comm. Expires June 17, 2004  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



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

AFFIDAVIT OF BARBARA DEAN

STATE OF MICHIGAN )  
 ) ss:  
COUNTY OF EATON )

BARBARA DEAN, being first duly sworn, deposes and says  
I reside in Lansing, Michigan.

I first met JAMES CHAPPELL when he was five years old and  
I was working as a teacher's aid. He was a special education  
student and I remember that he was always hungry and would eat  
extra lunches and breakfasts at the school.

JAMES was friends with my sons, especially Benjamin, and  
they hung out together all the time. During all that time I  
never saw JAMES do anything violent.

I was aware of the relationship between JAMES and Deborah  
Panos, and that they had gone to Arizona and then JAMES came  
back. I believed that at that time he had started using drugs  
and that he needed treatment. He should have received  
treatment instead of being let out of jail. When he left to go  
back to Arizona to Debbie he did not tell anybody, but rather  
snuck off because everyone advised him not to go back to her.

I was aware that Debbie's family disowned her because of  
her relationship with JAMES. To my knowledge the two of them  
got along well and I was never aware of any violence while they  
were together in Michigan.

JAMES worked at a couple of restaurants in Lansing that I  
was aware of and lived with his grandmother. His mother had  
been killed in a pedestrian-automobile accident when he was  
very young and he was raised by his grandmother. JAMES did not

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

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

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

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

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

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

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

24 While JAMES obviously deserved punishment, he also needed  
25  
26 . . .  
27 . . .  
28 . . .

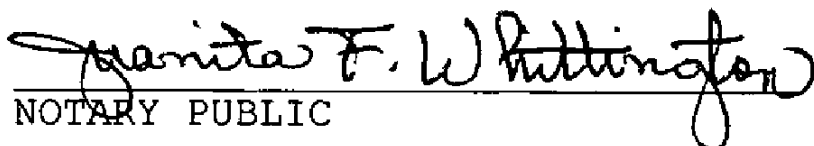
David M. Schieck  
Attorney At Law  
302 E. Carson Ave., Ste. 600  
Las Vegas, NV 89101  
(702) 382-1844

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

3 FURTHER, Affiant sayeth naught.  
4

5   
6 BARBARA DEAN

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

9   
10 NOTARY PUBLIC

11 JANITA F. WHITTINGTON  
12 NOTARY PUBLIC INGHAM CO., MI  
13 MY COMMISSION EXPIRES Mar 22, 2004

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



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

AFFIDAVIT OF SHIRLEY SORRELL

SHIRLEY SORRELL, being first duly sworn, deposes and says

I reside in Lansing, Michigan and knew JAMES CHAPPELL at Otto Junior High School and at Sexton High School. I also met Debbie Panos at Sexton High School.

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

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

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

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

1 would go back to Arizona.

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

7 FURTHER, Affiant sayeth naught.

8  
9   
10 SHIRLEY SORRELL

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

13   
14 NOTARY PUBLIC

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

AFFIDAVIT OF DENNIS REEFER

DENNIS REEFER, being first duly sworn, deposes and says

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

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

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

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

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

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

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

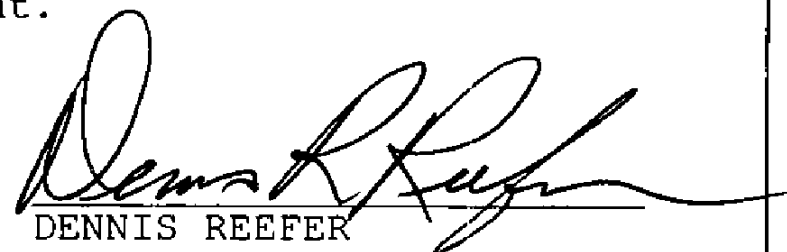
21 One of my other assigned tasks on this case was to contact  
22 witnesses and set up interviews for Mr. Schieck in Lansing,  
23 Michigan. Using phone numbers and information provided by  
24 JAMES, I was readily able to set up interviews for Mr. Schieck  
25 with Barbara Dean, Benjamin Dean, Ivri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

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

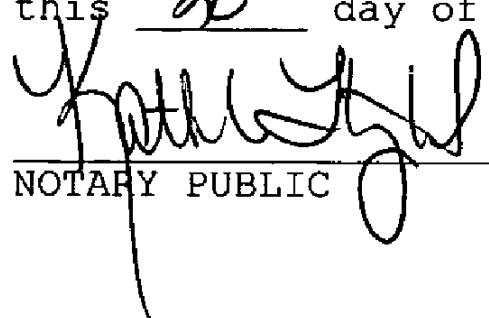
1 individuals.

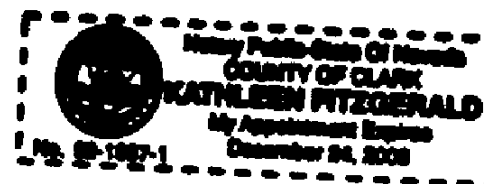
2 I have been unable to locate, in Las Vegas, witness  
3 Ernestine Harvey. All information I have been able to locate  
4 is extremely stale. It is my opinion that it would have been  
5 much more likely that she could have been located in 1996.

6 FURTHER, Affiant sayeth naught.

7  
8   
9 DENNIS REEFER

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

12   
13 NOTARY PUBLIC  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



# EXHIBIT 29

126

ORIGINAL

13

1 ACCT  
2 EXPR

3 DAVID M. SCHIECK, ESQ.  
4 Nevada Bar No. 0824  
5 302 E. Carson #600  
6 Las Vegas, NV 891010  
7 702-382-1844

8 ATTORNEY FOR CHAPPELL

MAR 10 2 59 PM '03

*Shirley A. Longoria*  
CLERK

DISTRICT COURT

CLARK COUNTY, NEVADA

\* \* \*

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

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

17 See attached.

18 DATED: March 10, 2003.

19 RESPECTFULLY SUBMITTED:

20 *David M. Schieck*  
21 DAVID M. SCHIECK, ESQ.

22 RECEIPT OF COPY

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

25 DATED: 3/10/03

26 DISTRICT ATTORNEY'S OFFICE

27 *Karen Miller*  
28 200 S. THIRD STREET  
LAS VEGAS NV 89155

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

RECEIVED  
MAR 10 2003  
CLERK'S OFFICE

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

AFFIDAVIT

STATE OF MICHIGAN     )  
                                  )   ss:  
COUNTY OF EATON     )

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

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

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

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

I used to double date with JAMES and Deborah and have



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

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

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

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

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

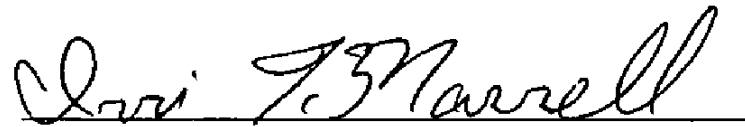
22 I feel that there were a number of important things that I  
23 could have told the jury about JAMES and his relationship with  
24 Deborah. I have been told that at the trial a lot of things  
25 were said about JAMES that were not accurate and that I could  
26 have testified about. For instance,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

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

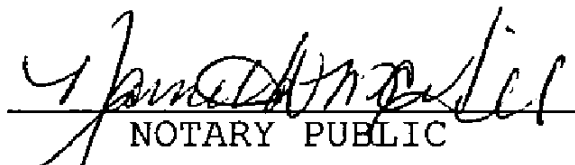
1 put up with a lot from her and her family and never resorted to  
2 violence to my knowledge. If he became addicted to crack  
3 cocaine in Tucson or Las Vegas that may have changed him, but  
4 the JAMES I knew would never have been able to do the things  
5 that he is accused of doing.

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

12 FURTHER, Affiant sayeth naught.

13  
14   
15 IVRI MARRELL

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

18   
19 NOTARY PUBLIC  
20 NANNETTE V. MCGILL  
21 Notary Public, Eaton County, MI  
22 ACTING Ingham CO.  
23 My Commission Expires 04/01/2003  
24  
25  
26  
27  
28

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

AFFIDAVIT

STATE OF MICHIGAN     )  
                                   )   ss:  
COUNTY OF EATON     )

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

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

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

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

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

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

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

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

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


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

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

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

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

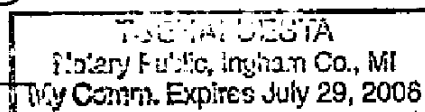
6 FURTHER, Affiant sayeth naught.

7  
8   
BENJAMIN DEAN

9 SUBSCRIBED AND SWORN to before me

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

12 Tselhai Desta  
13 NOTARY PUBLIC



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

AFFIDAVIT

STATE OF MICHIGAN )  
COUNTY OF EATON ) ss:

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

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

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

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

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

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

1 caring father.

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

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

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

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