

1 Q Did you arrive at some consensus  
2 regarding a point of entry at the mobile home?

3 A Yes, we did.

4 Q Was that through a bedroom window?

5 A Yes.

6 Q Did you go into the bedroom where entry  
7 had been made into?

8 A Yes, I did.

9 Q Did you see anything that attracted your  
10 interest?

11 A Well, the entire room did. There were so  
12 many things to describe about this room. It looked as  
13 though there had been some kind of a burglary or  
14 ransacking inside the room. The bed was unmade.  
15 There was clothing strewn all about the room.

16 There was quite a bit of paperwork and  
17 envelopes all over the floor and on the bed, and those  
18 appeared to me to be things like the kind of paperwork  
19 that you might save in a storage unit or something in  
20 your room. But they were strewn all about. They were  
21 legal documents, paperwork about driver's license  
22 renewals, and such paperwork like that. These things  
23 were all about the bedroom area.

24 There was, as I said, a lot of clothes  
25 strewn. Drawers to a dresser were -- some were open,

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1 some were slightly ajar. Some were closed. There is  
2 an adjoining the master bedroom a bathroom. That  
3 has -- it's a large room this bathroom, and it has a  
4 roman tub, and next to it is a sink and a counter top  
5 area.

6 And I noticed while I was walking in that  
7 area that the cabinetry underneath the sink had been  
8 opened and things were very disheveled even underneath  
9 the sink in the bath bathroom.

10 I noticed on the outer leading edge of  
11 the sink on the porcelain what looked like blood to  
12 me, and next to that sink is a doorway to a small  
13 bathroom or toilet area. And I noticed what appeared  
14 to be blood on the seat of the toilet as well as on  
15 the top, which was in the up position. So there was  
16 two spots where I saw what I thought was blood and  
17 brought that to the attention of the crime scene  
18 analysts that were there inside the mobile home with  
19 me.

20 Q Detective Vaccaro, when you found  
21 evidence of blood in the bathroom, adjacent to the  
22 master bedroom, particularly in the area of the sink,  
23 did you come to any sort of conclusion concerning what  
24 may have happened?

25 A Well, I suspected right away that

1 possibly the sink could have been used by whoever had  
2 committed the crime to clean up in the sink. So my  
3 first thought was the trap of the sink, the pipes  
4 underneath, might still contain some water with a  
5 higher concentration of blood rather than just the  
6 small amount I saw on the sink surface.

7 So I instructed the crime scene analyst  
8 to remove the trap from the sink area and carefully  
9 take that water down and save that water as evidence  
10 and also asked him to try to recover the blood from  
11 the, like I said, the top of the sink and the toilet  
12 seat.

13 Q You didn't know Deborah Panos prior to  
14 becoming involved in this case, did you?

15 A No.

16 Q So I would presume that you don't know  
17 what type of housekeeper that she was?

18 A No.

19 Q Have you ever been into a residence of  
20 hers?

21 A No, I never have.

22 Q Even assuming that she may not have been  
23 a perfect housekeeper, did you still see things in the  
24 areas at least of the trailer that you have referred  
25 to, the bedroom and bathroom, that caused you to think

1 that someone had been going through the drawers and  
2 property?

3 A Yes, I certainly did. You know, there  
4 was just an overall appearance of this mobile home.  
5 The bedroom area, as I said, the clothing was strewn  
6 about in such a way that you would have to either walk  
7 on top of or step over piles of clothing to get to the  
8 bed.

9 I don't think that there was even a sheet  
10 on the mattress, and these letters and paperwork were  
11 in an area where they didn't look like they had been  
12 walked on before I got there. And you would have had  
13 to walk on them to get in or out of the bed one way or  
14 the other.

15 Other bedrooms of the mobile home had  
16 closets and dresser in them. They were in also, you  
17 know, equally disheveled. Some closet doors were left  
18 open, and I didn't know whether or not those doors  
19 were left open by the uniform officers that had  
20 cleared the trailer apparently when they were inside  
21 and they found Deborah Panos' body when they just  
22 checked for other possible persons that would be  
23 injured. It would be routine for them to open those  
24 closet doors.

25 So to answer the question, overall it did

1 appear that there had been a lot of ransacking  
2 especially in that master bedroom area.

3 Q Detective Vaccaro, did you after arriving  
4 at the scene and conferring with other officers there  
5 come to some conclusion regarding the possible  
6 suspect?

7 A Yes.

8 Q Did that suspect based upon the  
9 information you were getting have any relationship to  
10 the victim, Deborah Panos?

11 A Yes, he did.

12 Q What was the relationship?

13 A Well, initially we first learned about a  
14 man named James Chappell as possibly being married  
15 with Deborah Panos knows, but then the longer that we  
16 spent at the crime scene we started to get conflicting  
17 stories that they may just be boyfriend and girlfriend  
18 and have a couple kids together.

19 Most of the information that we received  
20 was from uniform officers that were also present from  
21 the scene and from a Lisa Duran, who is a girlfriend  
22 of Deborah Panos that was also at the scene when we  
23 arrived. We learned a lot about James Chappell  
24 because the officers directly told me that there had  
25 been incidents where he had been involved with law

1 enforcement, and that this was a residence known to --

2 MR. BROOKS: I would object to hearsay,  
3 your Honor.

4 THE COURT: Sustained.

5 BY MR. HARMON:

6 Q Detective Vaccaro, you have mentioned the  
7 presence of Lisa Duran.

8 Based upon contact that you had with her  
9 and other officers who had spoken with her did you  
10 obtain information that your suspect, the boyfriend,  
11 James Chappell, had been seen leaving the area in a  
12 particular car?

13 A Yes, that's what she told us.

14 Q Did you have an interest then in locating  
15 that car and the boyfriend, Mr. Chappell?

16 A Yes, we certainly did.

17 Q Was the car described as a Toyota Corolla  
18 which didn't have license plates?

19 A Yes, it was.

20 Q Did you while you were inside the  
21 trailer, the crime scene, locate any type of  
22 photograph which showed a partial view of the victim's  
23 car?

24 A Yes, I did.

25 Q Where did you locate the photograph?

1           A       There was a counter top between the  
2       kitchen and the dining room, and this formica counter  
3       top had a lot of paperwork from there were photographs  
4       on top of it. There was paperwork. I think some  
5       bills, power bill, phone bill. And it was among these  
6       things that I found several photographs, started to  
7       look at them. I learned about the Toyota Corolla.

8                   And as a matter of fact, I have the  
9       picture with me that I found on top of the counter  
10      top.

11           Q       Will you produce that, please.

12                   MR. HARMON: Thank you. Your Honor, may  
13      we have the photograph that the officer has handed me  
14      marked next in order.

15  
16                   (State's Exhibit 83  
                    marked for identification.)

17  
18                   MR. HARMON: May I approach the witness,  
19      your Honor.

20                   THE COURT: Yes.

21      BY MR. HARMON:

22           Q       Detective Vaccaro, I'm showing you what  
23      the clerk has marked as Proposed 83.

24                   Is this the photograph you located in the  
25      area you have described at the crime scene?

1 A Yes.

2 Q Were you able either based upon what you  
3 were told or simply from looking at the picture to  
4 determine from where this photograph was taken?

5 A Well, I could clearly see by stepping out  
6 in front of the mobile home that I was on the street  
7 that's depicted in the photograph, which is the street  
8 in the Ballerina Mobile Home Park because the picture  
9 appears to be taken right in front of the Space Number  
10 125.

11 And then I showed this photograph to Lisa  
12 Duran and asked her if that was the vehicle, and I  
13 learned that it was the vehicle that she had seen  
14 James Chappell in.

15 Q Now, is it correct that in Proposed 83  
16 only part of the vehicle is shown in the picture?

17 A Yes.

18 Q But based upon what you observed  
19 regarding the street and the location of Space 125,  
20 was this vehicle parked directly in front of Space  
21 125?

22 A Yes.

23 Q Whenever the picture was taken?

24 A Yes.

25 MR. HARMON: Your Honor, the State offers



1 Proposed Exhibit 83.

2 MR. BROOKS: No objection.

3 THE COURT: Same will be received in  
4 evidence.

5 MR. HARMON: Thank you.

6

7 (State's Exhibit 83  
8 admitted into evidence.)

9 BY MR. HARMON:

10 Q Detective Vaccaro, the following day,  
11 September the 1st, 1995, did you receive information  
12 at some point that James Chappell had been located  
13 and, in fact, was being detained at a Lucky's  
14 supermarket?

15 A Yes.

16 Q Was that at 4420 East Bonanza Boulevard  
17 in Las Vegas?

18 A That's right.

19 Q Did you respond to that location?

20 A Yes, I did.

21 Q Do you remember about what time you got  
22 there?

23 A It was probably about 12:30 in the  
24 afternoon because I was in my vehicle. I received a  
25 message from dispatch, and by the time that I drove

1 there I had heard that there was a uniform officer  
2 that was already at the store at about 1:15, so  
3 probably about 12:30.

4 Q When you arrived, did you locate the  
5 uniform officer?

6 A Yes.

7 Q Was that Officer Paul Osuch?

8 A Yes, it was.

9 Q Did you make contact with the person who  
10 was being detained?

11 A Yes, I did.

12 Q Where was he when you saw him that day?

13 A In the very rear corner of the store in  
14 the employees area. The employees only area is a  
15 small office and he was seated on a chair in this  
16 small office. It is a kind of a glass enclosed office  
17 in the back of the Lucky's store.

18 Q Did you subsequently verify the identity  
19 of the person who was being detained?

20 A Yes, I did visually looking at Mr.  
21 Chappell -- I had familiarized myself with the  
22 photograph of him prior to that, prior to my going to  
23 the Lucky's, and the moment that I saw him I knew that  
24 I was looking at James Chappell.

25 Q Is the person that you made contact with

1 on September the 1st, 1995, at the Lucky's  
2 supermarket, here in the courtroom this afternoon?

3 A Yes, he is.

4 Q Will you point to him and describe  
5 something that he's wearing today in court?

6 A He's seated between counsel wearing a  
7 yellow shirt.

8 MR. HARMON: Your Honor, may the record  
9 show that the witness has identified the defendant  
10 James Chappell.

11 THE COURT: Yes.

12 BY MR. HARMON:

13 Q Did you acquire information once you  
14 responded that at least for a period of time Mr.  
15 Chappell was maintaining that he was someone else?

16 A Yes.

17 Q He was someone named Ivory Morrell?

18 A Yes, I did. I learned from Officer Osuch  
19 that he had begun to complete a Las Vegas Metro  
20 misdemeanor citation, which I have with me, and the  
21 citation was filled out by Officer Osuch with the  
22 information that he had apparently received from this  
23 individual, and it had that name on it, Ivory. I  
24 can't recall what the last name was.

25 Q Did you have an opportunity to observe

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1 the hands of the defendant, Mr. Chappell, at the  
2 Lucky's store?

3 A Yes, I did.

4 Q Did you notice anything unusual about a  
5 finger?

6 A I certainly did. Once I realized I was  
7 looking at Mr. Chappell, one of the first things that  
8 I wanted to do was look at his hands.

9 Q Why did you want to look at his hands?

10 A Well, it's been my experience in doing  
11 investigations that oftentimes if a knife is the  
12 weapon involved in a situation that the person that is  
13 wielding the knife often suffers a wound because of  
14 the fact that their hand can often slide down the  
15 shank of the knife to the blade when they are striking  
16 with the knife. So I was interested in seeing if Mr.  
17 Chappell had such wounds on his hands.

18 Q What was your observation, sir?

19 A I did notice what appeared to be two  
20 incision type of cuts on his -- I believe it was his  
21 right pinky finger. And they were close to the palm  
22 area not very far out on the fingertip by close down  
23 by the palm and both of them appeared to be very  
24 recent wounds to me.

25 Q Did you also at some point after your

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1 arrival at the Lucky's market on September the 1st,  
2 take possession of some keys?

3 A Yes.

4 Q How is it that you came into possession  
5 of the keys?

6 A Well, while I was in this employees only  
7 area at the back of the Lucky's store, there was a  
8 cart on wheels that the security officers, and  
9 apparently Officer Osuch, had placed the objects that  
10 they had found in possession of Mr. Chappell on top of  
11 this table.

12 They were brought to my attention. And  
13 when I looked at these objects, I noticed that one was  
14 a key that was a Toyota brand key. And, of course, I  
15 was looking for a Toyota Corolla so as soon as I saw  
16 that key I wanted to find out if there was a car to go  
17 with the key.

18 Q Was this one of several keys in the group  
19 of keys?

20 A Yes, I believe it was.

21 Q Did you thereafter attempt to locate the  
22 Toyota Corolla what?

23 A Yes.

24 Q What did you do in an effort to find it  
25 in the area of the Lucky's store?

1           A       I began to drive around the parking lot  
2 through the front parking lot and rear parking lot of  
3 the Lucky's store. I drove basically in a spiral type  
4 of search as far as I could starting at the Lucky's  
5 store and working my way out.

6                   Across the street to the west of the  
7 Lucky's store is a housing project called the Vera  
8 Johnson housing project at about the 500 block of  
9 North Lamb, and I went back into that apartment  
10 complex because there were so many parking stalls that  
11 I thought maybe the car was left back in that  
12 location, and I started looking around for it over  
13 there.

14                   I was very unsuccessful back there, and  
15 it bothered me a little bit so I remembered that I had  
16 that photograph and I went to some people that were  
17 standing in the parking lot in the housing project and  
18 I said to them -- as a matter of fact, it was two  
19 black gals. One was Ladonna and the other one was  
20 Deborah.

21           Q       Ladonna Jackson?

22           A       That's right, Ladonna Jackson.

23           Q       And Deborah Turner?

24           A       And Deborah Turner. And I walked up to  
25 them with the picture, and I said have you guys seen

1 this car. And they said no, we never saw that car  
2 anywhere. And I just sensed that they were, you know,  
3 just not being truthfully with me.

4 I said, you know, the guy that has this  
5 car I'm looking for him because I believe that he's  
6 involved in that homicide that occurred last night on  
7 North Lamb.

8 And they both went oh, really. Well,  
9 it's right behind the building over here. And they  
10 took me -- actually, we walked together behind the  
11 507, Building 507. And what was unusual about it was  
12 it wasn't in a parking lot. You had to drive over the  
13 curb, on the grass, over the sprinkler system, around  
14 the back side of Building Number 507, and it was  
15 parked up against the wall.

16 And there was a small triangle of grass  
17 surrounded by block wall and tree canopy. So that's  
18 why I couldn't find the car until they told me where  
19 it was being parked at.

20 Q When you located the car with the  
21 assistance of the young women, Ladonna Jackson and  
22 Deborah Turner, was there an effort then to determine  
23 if the key that you had obtained at the Lucky's store,  
24 which had been by testimony in this courtroom, and I  
25 presume by information you had received that day had

1       been taken from the defendant, did you determine if  
2       that key operated the vehicle parked against the  
3       building of 507 Lamb?

4               A       I did determine if the key operated that  
5       vehicle, but it wasn't until a little bit later.

6               First, I wanted to call a crime scene  
7       analyst to the scene where the vehicle was at. I  
8       wanted it to be photographed. And I wanted its  
9       condition to be observed before we put the key in it  
10      because I wanted to see how the vehicle was left by  
11      whoever left it there.

12              And so while I was present, Mark  
13      Washington, the crime scene analyst that responded, he  
14      used the key, unlocked the door and eventually drove  
15      the vehicle from where it was at onto a tow truck that  
16      I had called for so that the vehicle could be removed  
17      to the lab for processing.

18              Q       Was it a single key that you moved from  
19      the key chain and gave to Mark Washington?

20              A       Yes.

21              Q       And is it your recollection that it both  
22      opened the door and worked on the ignition?

23              A       Yes, it did.

24              Q       So there is no doubt that the key  
25      recovered from the defendant was a key to the victim's



1 car, the Toyota Corolla?

2 A No doubt.

3 Q Did you have an opportunity after you  
4 were assisted by the two ladies you have referred to,  
5 to interview them and to find out what information  
6 they might have about the suspect and the Toyota?

7 A Yes.

8 Q When were those interviews conducted?

9 A Actually, they were conducted with  
10 Ladonna and Deborah there at the government housing  
11 project. We were standing around waiting for the  
12 crime scene analyst to come actually, and I was  
13 completing a tow sheet. And I was talking to them  
14 about the vehicle, and they told me that James had  
15 operated the vehicle and had parked it there, and that  
16 he had been there the night before.

17 And we just generally talked about his  
18 presence and the fact that he had remained, I believe,  
19 in one of the apartments of Building 507 the night  
20 before. I don't recall which apartment it was though.

21 Q Detective Vaccaro, there has been  
22 testimony in the trial up to this point, or references  
23 in various impound reports that have been introduced  
24 as exhibits, that processing was done at the crime  
25 scene and also in connection with the vehicle for the

1 presence of latent prints, that also certain items  
2 recovered as evidence were processed for prints, are  
3 you aware of that?

4 A Yes, I made the request, if I'm not  
5 mistaken. I put the request in for the analysis of  
6 those latent prints and also for the blood work that  
7 was recovered from the mobile home.

8 Q Do you know if there has been a  
9 comparison of latents recovered from the vehicle or  
10 items of evidence from the crime scene with the known  
11 prints of any person or persons?

12 A The only thing that I know is that the  
13 results of any comparisons were negative for the  
14 request for prints that I had put in.

15 Q Do you recall asking that the defendant,  
16 James Chappell's, known prints be compared with any  
17 latent prints recovered from the car or from the crime  
18 scene?

19 A Yes, I did. I included Mr. Chappell  
20 along with Ladonna and Deborah, because I learned that  
21 they had both been occupants of the car. And I also  
22 included Deborah Panos' fingerprints who I don't  
23 believe her fingerprints were on file with the police  
24 department, but they were recovered at the autopsy.

25 And so we had fingerprints of all of

1 these people, and I requested that comparisons be made  
2 with any recovered latents from the mobile home and  
3 the vehicle for all four individuals.

4 Q Was it latent print examiner Robert Rees  
5 of the police department who did the comparisons in  
6 this case?

7 A Yes.

8 Q Is that R-E-E-S?

9 A I believe that's how you spell it, yes,  
10 sir.

11 Q To your knowledge were any of the  
12 findings positive?

13 A No, to my knowledge none were regarding  
14 latent prints.

15 Q Now, does that surprise you that a person  
16 who owned the car and who actually lived in the mobile  
17 home where she was killed and, in fact, also the  
18 suspect who had been a boyfriend and also who had had  
19 access to the vehicle, that neither one of them would  
20 have identifiable prints located within the mobile  
21 home or the car?

22 A Did it surprise me, I would say that it  
23 didn't surprise me very much about the vehicle because  
24 most vehicles interiors do not have surfaces that are  
25 very good for lifting latent prints, and I know that

1 from personal experience and from training that I've  
2 had.

3 And I know that with the exception of the  
4 glass on the vehicle and maybe the exterior, and this  
5 particular car had a fuzzy kind of wheel covering on  
6 the steering wheel. So it didn't surprise me so much  
7 about the vehicle.

8 The residence, however, had several  
9 surfaces that probably could have been good for latent  
10 print recovery. But those surfaces looked like they  
11 had been wet at one time to me with regard to the  
12 formica tops in the bathroom area and the formica tops  
13 in the kitchen, and so it surprised me a little bit  
14 that there weren't recovered latents, but sometimes  
15 you just don't get any, and sometimes it's just like  
16 that.

17 Q Are there a great many variables that  
18 effect the ability to develop and lift latent prints?

19 A Yes. Often the crime scene analyst will  
20 use powder to try to detect a latent print and you  
21 will see a smudge or something developing, but it may  
22 not be recognizable or liftable so that he could then  
23 left the print and utilize it for an identification  
24 purpose. So there is often times smudges, and you  
25 know someone has been there but it doesn't pick up

1 well enough to be analyzed.

2 Q If water, in fact, was spilled or in some  
3 manner went on the surface of where a print had been  
4 deposited, would that effect the ability to develop  
5 and lift the latent?

6 A Absolutely.

7 Q Does heat also effect it?

8 A Many variables like you stated. It is  
9 not any particular field, but from what I've learned  
10 in the schools that I've gone to, had the counter tops  
11 been wiped down or had a heavy concentration of dust,  
12 or heat been exposed to a certain print, it will  
13 deteriorates, it also deteriorates.

14 Q You're saying that all the print work was  
15 negative in this particular case?

16 A Yes.

17 Q There weren't any prints matched to  
18 either the girls, Ladonna Jackson or Deborah Turner --

19 A Yes.

20 Q -- Deborah Turner --

21 A That's correct, there were no matches.

22 Q -- to the vehicle and you didn't match  
23 any prints of Mr. Chappell or Miss Panos to either the  
24 vehicle or the mobile home?

25 A No, sir.

1 Q Since they had had the relationship of  
2 boyfriend, girlfriend, did you find it particularly  
3 crucial in this case that there were or were not  
4 prints?

5 A Not particularly. I expected to find Mr.  
6 Chappell's prints in the mobile home because the  
7 information that I had received was he resided there  
8 at one time. And I expected to find Mr. Chappell's  
9 prints in the vehicle because they, as a couple,  
10 utilized that vehicle according to the information  
11 that I received.

12 So the absence of those wasn't  
13 particularly interesting. I like to get the latent  
14 prints whenever I can. But if they are not there,  
15 they are not there.

16 Q At the conclusion of the investigative  
17 work conducted either at the Lucky's store on East  
18 Bonanza and in connection with locating and impounding  
19 the Toyota Corolla was Mr. Chappell, the defendant,  
20 placed under arrest?

21 A Yes, he was.

22 Q Was he arrested for the murder of Deborah  
23 Panos?

24 A Yes, he was.

25 Q What was the basis utilized by you and

1 your partner, Detective Phil Ramos in effecting an  
2 arrest of the defendant on the charge of murder?

3 A Well, we just took it by the numbers the  
4 way that we had learned everything; that he had been  
5 seen leaving the mobile home where her body was  
6 recovered; that he was seen leaving in a Toyota  
7 Corolla; that he had the key to which was later  
8 discovered at a location where we learned he had  
9 stayed the night before; he was in the Lucky's store  
10 in possession of documentation that pertained to the  
11 Panos' children, that being the social security cards;  
12 and he had wounds on his hand that to me appeared  
13 consistent with wounds that you could get from having  
14 a knife in your hand, striking a hard object and  
15 having your hand slide down the knife.

16 Those were several of the things along  
17 with eyewitness' statements about Mr. Chappell leaving  
18 the area, the condition of Deborah Panos body, and the  
19 way that she appeared to me as far as the duration of  
20 time that she had been dead. Everything fit for James  
21 Chappell to be the suspect in this, how long she  
22 appeared to be deceased and the other factors that  
23 I've just described.

24 And so he became our suspect, and once we  
25 were done there at the Lucky's store, he was advised

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1 that he was being placed under arrest for murder and  
2 my partner, Phil Ramos, transported him to the jail  
3 and booked him on that charge while I tended to the  
4 vehicle.

5 Q Detective Vaccaro, to complete the  
6 investigation did you have an interest in obtaining a  
7 blood sample from the defendant?

8 A Yes.

9 Q Was a blood sample recovered from James  
10 Chappell, the defendant?

11 A Yes. I don't recall the date but it  
12 seemed like some months later, maybe weeks later. I  
13 made a request through the district attorney's office  
14 for a warrant to search the body of James Chappell for  
15 his blood, and I received the warrant.

16 I proceeded over to the jail. The jail  
17 personnel brought him down to the nurse's office. And  
18 in my presence blood was drawn from his arm, and then  
19 I took possession of the blood, filled out an evidence  
20 impound for the blood, and then I placed it in a  
21 refrigerator and I make a request for the blood to be  
22 analyzed. And it stays locked up in this padlocked  
23 refrigerator in the jail until it's picked up by the  
24 chemist to do their analysis.

25 Q When blood samples are recovered from a

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1 suspect in a case such as this and in this case of  
2 James Chappell, the defendant, is it typically called  
3 a serology kit?

4 A Yes.

5 Q And so you obtained a serology kit from  
6 this defendant?

7 A Yes.

8 Q You said that you made a request of  
9 someone for a blood analysis?

10 A Yes.

11 Q Who do you make that request for?

12 A Typically, we fill out a form that  
13 requests our chemist's to conduct an examination of  
14 the serology kit and all of its contents, and often  
15 times we confer with them and request additional  
16 outside laboratory work be done for DNA analysis, as  
17 we did in this case.

18 MR. BROOKS: I'm going to object to any  
19 additional testimony regarding blood and all of this  
20 because we stipulated to the fact that our client  
21 killed the woman. It's unnecessary. It's a waste of  
22 time, and we object to it.

23 MR. HARMON: It isn't, your Honor. The  
24 ultimate decision rests with the jury.

25 THE COURT: The objection is overruled,

1 but I believe that this portion of the presentation  
2 can be abbreviated by the use of leading questions to  
3 avoid the wasting of time.

4 MR. HARMON: Your Honor, we'll try to  
5 expedite it.

6 THE COURT: How much longer do you have  
7 with this witness?

8 MR. HARMON: About 30 seconds.

9 THE COURT: Go ahead.

10 BY MR. HARMON:

11 Q Detective Vaccaro, who did the initial  
12 blood work in this case at the crime lab of the  
13 Metropolitan Police Department? Was it the  
14 criminalist, serology specialist, Terry Cook?

15 A Yes, it was.

16 Q And you mentioned that there,  
17 furthermore, was a follow-up request for a DNA  
18 analysis?

19 A Yes.

20 Q Were samples submitted by the crime lab  
21 to Cellmark Diagnostic in Germantown, Maryland?

22 A Yes.

23 Q Did the department obtain DNA results?

24 A Yes.

25 MR. HARMON: Thank you. That concludes

1 direct, your Honor.

2 THE COURT: Cross examination.

3 MR. BROOKS: No questions.

4 THE COURT: May this witness be  
5 discharged?

6 MR. HARMON: Yes.

7 THE COURT: Thank you, sir. You may step  
8 down.

9 Ladies and gentlemen of the jury, we're  
10 going to take our weekend recess at this time.

11 We will be convening as soon after 10:30  
12 on Monday morning as we can. I have a lengthy  
13 calendar so I can't make any promises. So if you will  
14 please be here in the courthouse at 10:30 in the  
15 morning.

16 And with that, I'll give you your  
17 standard admonition. By now, I think that you have it  
18 memorized.

19 It is your duty not to converse among  
20 yourselves or with anyone else on any subject  
21 connected with this trial or read, watch or listen to  
22 any report of or commentary on the trial or any person  
23 connected with this trial by any medium of information  
24 including, without limitation, newspapers, television  
25 or radio; and you are not to form or express any

1 opinion on any subject connected with this case until  
2 it is finally submitted to you.

3 Have a nice weekend, ladies and  
4 gentlemen. We'll see you Monday morning. We'll be at  
5 ease while the jury departs the confines of the  
6 courtroom.

7  
8 (Outside the presence of the jury.)

9  
10 THE COURT: Anything further from the  
11 parties before we adjourn?

12 MR. HARMON: Not from the State.

13 MR. BROOKS: Not from the defense, your  
14 Honor.

15 THE COURT: All right. Have a nice  
16 weekend.

17  
18 \* \* \* \* \*

19 ATTEST: Full, true and accurate transcript of  
20 proceedings.

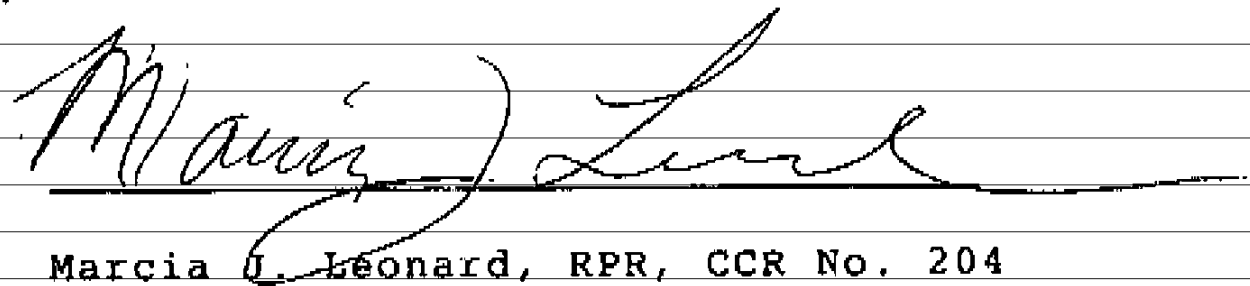
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Marcia J. Leonard, RPR, CCR No. 204

# EXHIBIT 136

1

DISTRICT COURT

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CLARK COUNTY, NEVADA FILED IN OPEN COURT

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ORIGINAL

\* \* \* \* \* OCT 15 1996 19

LORETTA BOWMAN, CLERK

4

THE STATE OF NEVADA,

BY

Deputy

5

Plaintiff,

CASE NO. C131341

6

Vs

DEPT. NO. VII

7

JAMES MONTELL CHAPPELL,

DOCKET P

8

Defendant.

9

10

11

12

BEFORE THE HONORABLE:

13

A. WILLIAM MAUPIN DISTRICT JUDGE

14

MONDAY, OCTOBER 14, 1996, 11:35 A.M.

15

16

VOLUME V - MORNING SESSION

17

APPEARANCES:

18

FOR THE STATE:

MELVYN T. HARMON &amp;

19

ABBI SILVER

Deputies District Attorney

20

21

FOR THE DEFENDANT:

HOWARD S. BROOKS &amp;

22

WILLARD N. EWING

Deputies Public Defender

23

24

25

REPORTED BY:

PATSY K. SMITH, C.C.R. #190

PATSY K. SMITH, OFFICIAL COURT REPORTER

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1 MONDAY, OCTOBER 14, 1996, 11:35 A.M.

2 THE COURT: We're on the record outside the  
3 presence of the jury.

4 MR. HARMON: Judge, the State has two  
5 additional witnesses to call during its case in chief. The  
6 first witness will be Terry Cook. He's available.

7 Our problem lies with the Cellmark witness.  
8 We were going to use Paula Yates, as she is ill apparently  
9 with the flu is it?

10 MS. SILVER: Hundred five fever.

11 MR. HARMON: She would not be available  
12 until after we intended to recess this week. So then we  
13 wanted to use her partner Lisa Foreman. Ms. Foreman, as I  
14 understand it, had a serious illness in her family. At the  
15 earliest, she wouldn't be available until tomorrow and  
16 we're not sure if she would be available until later than  
17 that.

18 THE COURT: That testimony undoubtedly is  
19 going to take an hour.

20 MR. HARMON: Well, it may. I don't think  
21 it's going to be extensive.

22 THE COURT: But still in order to convey the  
23 technology to the jury it's going to take some time in  
24 terms of just foundationally I would think.

25 MR. HARMON: That's possible, Judge.

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1                   What we propose to do is move to endorse a  
2     name. Thomas Wahl of the Metro Police Department Crime  
3     Lab, who has experience and knows of Cellmark, has had an  
4     opportunity to review the findings in this case and would  
5     be prepared -- that is W-A-H-L -- to testify today. So we  
6     could proceed without any delay. So we're simply asking  
7     for permission, even though we understand --

8                   THE COURT: Is there any objection to this?

9                   MR. BROOKS: We're not going to oppose  
10    this. We are not contesting any of this DNA evidence, so  
11    there is no objection at all.

12                  THE COURT: All right, motion is granted.

13                  MR. HARMON: May I file the motion in open  
14    court and also approach the bench with the order?

15                  THE COURT: Yes.

16                  Let's bring in the jury.

17                  (Off the record discussion not reported.)

18

19                  (At this time the jury entered the  
20    courtroom.)

21

22                  THE COURT: Good morning, ladies and  
23    gentlemen.

24                  THE JURY: (In Unison) Good morning.

25                  THE COURT: I apologize for the late start.

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1       However, this morning's calendar went over two hours and it  
2       was quite elaborate and, unfortunately, that's the system  
3       that is in place in this county. It's a system that needs  
4       badly to be changed and with some minimum level of  
5       creativity among the jurists of this state, it will be  
6       changed, but it hasn't been changed yet.

7                       With that, will counsel stipulate to the  
8       presence of the jury?

9                       MR. HARMON: Yes, your Honor.

10                      MR. BROOKS: Defense will, your Honor.

11                      THE COURT: All right, the State may call  
12       its next witness.

13                      MS. SILVER: Thank you, your Honor.

14                      We would call Terry Cook to the stand.

15

16                      TERRY L. COOK,

17       having been first duly sworn to tell the truth, the whole  
18       truth and nothing but the truth, testified and said as  
19       follows:

20       . . .

21       . . .

22       . . .

23       . . .

24       . . .

25       . . .

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1 DIRECT EXAMINATION

2 BY MS. SILVER:

3 Q Sir, could you please state your name  
4 and spell it for the record.

5 A Terry L. Cook, C-O-O-K.

6 Q And, sir, what is your occupation and  
7 assignment?

8 A I'm a Criminalist II with the Las Vegas  
9 Metro Police Department Crime Laboratory for Las Vegas,  
10 Nevada.

11 Q As a criminalist with the Las Vegas  
12 Metropolitan Police Department, what do your duties  
13 include?

14 A Well, a criminalist is an individual  
15 with a specialized background or training that utilizes  
16 that training in the analysis of evidence. My particular  
17 area of expertise is in the field of serology. A  
18 serologist would concern himself with the identification of  
19 body fluids on items of evidence found on or near crime  
20 scenes. They would be semen, saliva, and, most commonly,  
21 blood.

22 Q And what type of training and  
23 experience do you have in order to become such a serologist  
24 with the crime lab?

25 A I have a bachelor degree in chemistry

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1     awarded from Kansas State University -- excuse me --  
2     Washburn University in 1979.

3                 During the year 1979 to 1980, I was an  
4     assistant instructor at the Kansas State University  
5     chemistry department in Kansas. My duties there were to  
6     essentially instruct freshman chemistry laboratories as  
7     well as to work on a synthetic fuel project funded by  
8     Phillips Petroleum. This project I worked on disbanded  
9     after one year and I took a position as a toxicologist with  
10    the Kansas Department of Health & Environment. That was a  
11    temporary position.

12                As a toxicologist, I chemically extracted  
13    body fluids, human, blood, and the vitreous humor, which is  
14    the fluid behind your eye, and I would extract these for  
15    the purpose of the detection of poisons. This term expired  
16    after about nine months.

17                I then was asked to apply at the Kansas  
18    Bureau of Investigation Crime Laboratory, which is located  
19    and headquartered in Topeka, Kansas and it was at the  
20    Kansas Bureau of Investigation that I underwent two years  
21    of extensive in-house training as a serologist.

22                After completing my two years of training, I  
23    then took a position as a Criminalist II with the Metro  
24    crime lab in Las Vegas and that was in March 6th of 1983.  
25    While at Metro, I have been working predominantly as a

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1 serologist, probably 95 percent of my time.

2 I have attended the FBI Hair and Fiber  
3 School, the FBI Advanced Biochemical Methods of Blood Stain  
4 Analysis School, the Serological Research Institute School  
5 on Advanced Electrophoresis, as well as Semen  
6 Identification. I have also attended the California  
7 Criminalistics Institute School on DNA Extraction and  
8 Quantification. I have attended the Perkin-Elmer School on  
9 PCR, which is a form of DNA analysis, and I have just  
10 recently come back from the FBI DNA class.

11 Q And how long, in sum, have you been  
12 employed at the Las Vegas Metropolitan Police Department as  
13 a serologist?

14 A Over 13 years.

15 Q Would it be fair to say that up until  
16 recently, you have been the exclusive serologist at the Las  
17 Vegas Metropolitan Police Department in most of the  
18 homicide and sexual assault cases?

19 A For a period of time, of about two  
20 years, I was the only serologist at the Las Vegas crime  
21 laboratory.

22 Q How many -- have you ever testified as  
23 an expert in the field of analyzing bodily fluids?

24 A As a serologist, yes, I have.

25 Q How many times?

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1 A Between 150 and 200 times.

2 Q In what courts?

3 A Every court in the Eighth Judicial  
4 District including this one on several occasions.

5 MS. SILVER: Your Honor, at this time I  
6 would ask that this Court deem Mr. Cook an expert in the  
7 field of serology in analyzing bodily fluids.

8 THE COURT: He may so testify.

9 MS. SILVER: Thank you, your Honor.

10 Q Criminalist Cook, did you have an  
11 occasion to examine evidence in the case of State of Nevada  
12 versus James Chappell?

13 A I did.

14 Q And the evidence that you personally  
15 tested, was it with all of that evidence booked under the  
16 same case number, 950831-1351?

17 A That is correct.

18 Q And did you personally make three  
19 different reports in this case describing your conclusion  
20 on various pieces of evidence?

21 A That is also correct.

22 Q Would it assist you in your testimony  
23 to the jury to use at least two of those reports in  
24 describing what you did on these pieces of evidence?

25 A It would.

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1                   Q     I'd like to show you, Criminalist Cook,  
2     what has been marked for purposes of identification as  
3     State's Proposed Exhibit No. 84. Is this one of the  
4     reports that you generated from this case?

5                   A     That is a chart that accompanies the  
6     report I generated in this case, yes, it is.

7                   Q     And, obviously, this is a report that  
8     has been blown up for purposes of these court proceedings.  
9     Would this be a fair and accurate copy of your report that  
10    you generated in this case?

11                  A     Yes, it is.

12                  Q     And it would aid you in your testimony  
13    in describing what you did?

14                  A     Yes, it would.

15                  MS. SILVER: Your Honor, at this time, I  
16    would move to admit State's Proposed Exhibit No. 84.

17                  MR. BROOKS: No objection.

18                  THE COURT: Same will be received in  
19    evidence.

20                  MS. SILVER: Your Honor, may I publish that  
21    to the jury as well during his testimony?

22                  THE COURT: Yes.

23                  Q     (BY MS. SILVER) Also showing you what  
24    has been marked as State's Proposed Exhibit No. 85, do you  
25    recognize this as one of your other reports in this case?

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1 A Yes, I do.

2 Q And would this be a copy or a blowup  
3 diagram of a copy of your LVMPD lab report that you issued  
4 in this case?

5 A Yes, that is also a chart of a  
6 supplemental report I issued in this case.

7 Q And it's a fair and accurate copy of  
8 that report?

9 A Yes, it is.

10 Q It would aid you to refer to it in your  
11 testimony in this case?

12 A Yes.

13 MS. SILVER: Your Honor, at this time, I'd  
14 move to admit for purposes of identification and what's  
15 just been described by this witness as State's Proposed  
16 Exhibit No. 85.

17 MR. BROOKS: No objection.

18 THE COURT: Same will be received in  
19 evidence.

20 MS. SILVER: Thank you.

21 I ask that this also be published as well.

22 THE COURT: Yes.

23 Q (BY MS. SILVER) I'm going to let you  
24 point to this at various times.

25 Criminalist Cook, I would like to show you

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1     what has been marked as State's Exhibit No. 67. Can you  
2     identify this?

3                     A     Yes, I can.

4                     Q     How is it that you can identify this  
5     item?

6                     A     Actually two ways. It bears my  
7     signature both on the chain of custody, as well as my  
8     seals, the blue tapes, my initials TLC, and the date of the  
9     examination, the day I actually opened this and sealed  
10    this.

11                    Q     What is State's Exhibit No. 67?

12                    A     State's Exhibit 67 is called a sexual  
13    assault kit. It is a collection of tubes, swabs, slides,  
14    and combings collected from an individual who complains of  
15    a sexual assault or, more routinely, when a female is  
16    discovered dead.

17                    Q     This is done by the coroner and in this  
18    case this was done by Dr. Green?

19                    A     Yes. The purpose is to collect and  
20    preserve biological samples.

21                    Q     And you actually did some testing on  
22    State's Exhibit No. 67 in this case?

23                    A     Right, the contents.

24                    Q     Including the vaginal slides within  
25    this or vaginal swabs and slides within this?

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1 A That's correct.

2 Q Does it remain in a sealed condition  
3 today?

4 A It does and it is.

5 Q Showing you what has been marked for  
6 identification purposes as State's Proposed Exhibit No. 87,  
7 do you recognize this?

8 A Yes, I do.

9 Q How is it that you recognize this?

10 A In the same manner, it bears both my  
11 signature in the chain of custody, as well as my seals on  
12 the back, the blue tape, my initials TLC, and the date in  
13 which this item was sealed.

14 Q And what is State's Proposed Exhibit  
15 No. 87?

16 A It's a serology standards kit. This is  
17 routinely collected from deceased male individuals or  
18 suspects in a case in which bodily fluids, blood, semen or  
19 saliva, would be expected to be at the crime scene or is  
20 possibly at the crime scene.

21 Q And whose serology is this?

22 A James M. Chappell.

23 Q And, again, this is identified by the  
24 same case number assigned to it of 950831-1351?

25 A Yes, the same as the kit and the same

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1 as my reports.

2 Q And who was the booking officer in this  
3 case?

4 A Jimmy Vaccaro and Garcia.

5 Q Now, does this remain in a sealed  
6 condition as you sit here today?

7 A Yes, it is.

8 Q And does it appear to be in  
9 substantially the same condition, State's Exhibit No. 87,  
10 as when you replaced this back into the evidence vault?

11 A Yes, it is.

12 Q You brought it here to court today and  
13 deposited this with the clerk prior to the court  
14 proceedings?

15 A Less than an hour ago, that's correct.

16 MS. SILVER: Your Honor, at this time, I  
17 would move to admit State's Proposed Exhibit No. 87.

18 MR. BROOKS: No objection.

19 THE COURT: Same will be received in  
20 evidence.

21 MS. SILVER: Thank you.

22 Q Criminalist Cook, can you tell us what  
23 you did, as far as testing in this case, on State's Exhibit  
24 No. 67, which is the sexual assault kit of the victim and  
25 State's Exhibit No. 87, which is the serology kit of the

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1 defendant. Tell us what tests you did and what results you  
2 made and if you need to refer to your -- I believe your lab  
3 report as well.

4 A Certainly.

5 Pursuant to my training and  
6 responsibilities, what I would do is I would concern myself  
7 with the contents of a sexual assault kit. First, what I  
8 would do is I would ascertain the blood type or the blood  
9 types of a victim and the blood type or blood types of a  
10 suspect. I would establish their types in one of the  
11 several systems. The A, B, O system, as the jury are  
12 probably most familiar with. A, B, O types are A, AB or  
13 O. In this case, if I can speak of these cases  
14 collectively?

15 Q Sure.

16 A I noticed that both the victim is Type  
17 O --

18 Q Would that be easier to put that up?

19 A Actually it would because I think there  
20 is some people who can't see.

21 Q Maybe we could just have you hold it  
22 like that.

23 A Fine.

24 Q Thank you.

25 A Noticed both the victim and the suspect

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1 are A, B, O Type O, which is really common. About 45  
2 percent of the people are Type O. Of course, that doesn't  
3 give me a lot of information when I'm processing bloods at  
4 crime scenes because I'm not able to make a distinction  
5 between the victim and suspect at this point.

6 We also have some other blood types and you  
7 can think of them in the same way as you would think of  
8 your A, B, O Type. This is called esterase dehydriogenese.  
9 We call it EsD. Now we know the victim is Type 1 and the  
10 suspect is Type 2-1. There is only three types, 1, 2-1,  
11 and a 2, which isn't present in PGM, phosphoglucomutase.  
12 If you notice again, the victim is Type 1 and the suspect  
13 is 2-1. These are all independently inherited. A person  
14 can be in the same group and it has no bearing on the  
15 esterase type or bearing on the PGM type.

16 And there is another, glyoxalase. The  
17 victim is 2-1 and the suspect a 1.

18 There is also a sub-type of this PGM and  
19 these two are quite related. You can break this system  
20 down a little bit more. This is called a PGM sub-type.  
21 Now this is a type that the forensics people are most  
22 interested in for two reasons. Number one, it's quite  
23 stable. Actually, three reasons. Number one, it's quite  
24 stable. Number two, there is 10 different types, different  
25 combinations, and, number three, is it is found in semen.

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1 An individual who had this PGM type in his blood would also  
2 have it in his semen and a female who would have it in  
3 their blood would have it in their vagina secretions. This  
4 is very informative. There is very good information for a  
5 serologist.

6 In the processing of analyzing the medical  
7 examiner's kit or sexual assault kit, I noticed the  
8 presence of spermatozoa. I then knew that we were -- I  
9 knew that 80 percent of us are called secretors and that is  
10 to say we secrete A, B, O blood types in our body fluids.  
11 Like I say, 80 percent of us, if we were to smoke a  
12 cigarette, we would have our A, B, O blood group substances  
13 in our saliva and this saliva would be on the cigarette  
14 butt and in 80 percent of the case we could tell who smoked  
15 it from the cigarette butt.

16 In the same way, when I identify  
17 spermatozoa, I knew we had a chance to find some semen  
18 types on the vaginal swab. Now, again, both the victim and  
19 suspect are the Type O and the both of them are Type O  
20 secretors. So I found a substance on the vaginal swab,  
21 which is H, which is consistent with a Type O secretor and,  
22 again, we can't make a statement whether this H substance  
23 that's secreted came from the victim or suspect, which  
24 makes the PGM sub-type much more informative. You notice  
25 that the victim was a rare type of 1- and the suspect is a

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1 2+1+. It is understood that a vaginal swab is a mixture of  
2 the victim's secretions and in the case of semen, another  
3 body fluid of the suspect and you notice we have a 2+1+1-.  
4 We are pretty sure that this 1- came from the victim and  
5 this 2+1+ would come from the semen donor and Mr. Chappell  
6 is a 2+1+.

7 So, at this point, I wrote a report saying  
8 he could not be eliminated as a possible source of this  
9 semen detected on the vaginal swabs. By the way, this  
10 profile of an O secretor and a 2+1+ is consistent with  
11 about 9.8 percent of the population. At a random  
12 population, about 9.8 percent of them would be an O, a  
13 secretor, and a 2+1+.

14 Q So a very small percentage of the  
15 population, even using the A, B, O blood typing?

16 A Yes. The reason why the numbers --  
17 like I say, it's about nine percent of the population, but,  
18 see, the problem is that O is quite common. About 45  
19 percent of the individuals are Type O. Had this been a  
20 smaller number, we would have probably gotten it down to  
21 the single digit for semen profilers.

22 Q Criminalist, Cook, I'm also showing you  
23 what has been marked as State's Exhibit No. 79 and I would  
24 like you to take a look at what is marked as State's  
25 Exhibit No. 79 and ask you if you can recognize this as

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1 well?

2 A Yes, I can.

3 Q How is it that you recognize State's  
4 Exhibit, I believe, 79, yes, 79?

5 A In the same manner, it bears both my  
6 signature in the chain of custody, as well as my seal and  
7 my initials at the date of the examination.

8 Q Could you take out the contents of  
9 State's Exhibit 79 and I'd ask you if you can recognize  
10 that item as well?

11 A Yes, I do.

12 Q How is it that you recognize State's  
13 Exhibit No. 79?

14 A I remember this item as being the one  
15 that was examined in this case.

16 Q In fact, your criminalist card is  
17 attached to the lace?

18 A Yes, it is.

19 Q And this would be -- this boot is  
20 marked as State's Exhibit No. 79-A. What side boot is  
21 this, is this a right or left sided boot?

22 A It's a right sided.

23 Q Is it in substantially the same  
24 condition as when you yourself did some testing on this?

25 A Yes, it is.

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1 Q Can you tell us what type of tests you  
2 did on State's Exhibit No. 79-A and the results of that  
3 test as well?

4 A Yes. I did a microscopic visual  
5 examination for the presence of splattered blood and  
6 whenever you examine something that's black and black is  
7 often very difficult to visually trust your eyesight to see  
8 things, so what I did is a chemical swabbing of this  
9 looking for enzymes called peroxidases (phonetic) like  
10 activity. You can find it in the blood, but not  
11 exclusively in the blood. It's a presumptive test.

12 At this point what I did was check the top  
13 layers for the presence of blood and found -- chemically, I  
14 found none, but on the right heel, as on this chart as TLC  
15 11, I found chemically traces of blood right here at the  
16 heel area, but there was insufficient amount to derive A,  
17 B, O types and esterase types and PGM types, which is a  
18 small amount of blood, which is reasonably common in my  
19 field.

20 Q So, basically, your result was blood  
21 was detected, but it was actually insufficient for you to  
22 be able to differentiate any blood type grouping?

23 A Yes, which is a very common answer in  
24 my reports.

25 Q Showing you what has been marked as

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1 State's Proposed No. 80, I would like you to look at this  
2 and tell me if you can recognize this as well?

3 A Yes, I can in the same manner as the  
4 other evidence. It bears both my signature in the chain of  
5 custody, as well as my seal at the bottom.

6 Q And could you take out the contents of  
7 State's Exhibit No. 80 -- actually, you've taken it out.  
8 It's State's Exhibit 80-A -- Proposed Exhibit 80-A. Can  
9 you tell us what this is and if you can recognize it?

10 A Yes. It's a tandem swab, controlled  
11 swab and a swab that contained blood. I can identify it by  
12 a little tape tag that I characteristically put on  
13 evidence, my initials, and the date of the examination.

14 Q Now, State's Exhibit No. -- Proposed  
15 Exhibit 80 and 80-A, do they appear to be in substantially  
16 the same condition as when -- well, let me ask you this.  
17 Looking at -- strike that.

18 State's Proposed Exhibit No. 80-A, I show or  
19 I see one swab in there and a compartment for another  
20 swab. Do you know where the other swab would be?

21 A Yes. It was -- much of it was consumed  
22 in the analysis.

23 Q Okay. And was some of this evidence in  
24 this case sent off as well for DNA testing?

25 A That's correct.

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1 Q Now, besides the other swab being  
2 missing from that compartment, except for that, would it be  
3 fair to say that State's Proposed Exhibit 80-A and State's  
4 Exhibit 80 are in substantially the same condition as when  
5 you received them?

6 A Yes, they are.

7 MS. SILVER: Your Honor, at this time, I  
8 would move to admit State's Proposed Exhibit No. 80 and  
9 80-A.

10 MR. BROOKS: No objection, your Honor.

11 THE COURT: That motion is granted. It is  
12 received in evidence.

13 MS. SILVER: Thank you.

14 THE COURT: Ms. Silver, I'm sorry to  
15 interrupt, but because of prior conflicting commitments  
16 that the Court has and also to make sure that everyone's  
17 schedule remains as it should and because we can stay on  
18 schedule by completing these proceedings this afternoon,  
19 the Court is going to declare its noon recess at this  
20 time.

21 Ladies and gentlemen of the jury, during the  
22 recess, I would remind you it is your duty not to converse  
23 among yourselves or with anyone else on any subject  
24 connected with this trial or to read, watch, or listen to  
25 any report of or commentary on this trial or any person

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1 connected with this trial by any medium of information,  
2 including, without limitation, newspapers, television, or  
3 radio, and you are not to form or express an opinion on any  
4 subject connected with this case until it is finally  
5 submitted to you.

6 Again, I apologize for the short session  
7 this morning, but it could not be avoided. We will be at  
8 ease while the jury departs the confines of the courtroom.  
9 We are in recess. We will reconvene at about 1:35.

10

11 (Off the record at 12:05 p.m. and back on  
12 the record at 1:45 p.m.)

13

14 THE COURT: Good afternoon, ladies and  
15 gentlemen.

16 THE JURY: (In Unison) Good afternoon.

17 THE COURT: Counsel stipulate to the  
18 presence of the jury?

19 MR. HARMON: Yes, your Honor.

20 MR. BROOKS: Defense does, your Honor.

21 THE COURT: You may recommence with your  
22 direct examination of Mr. Cook.

23 MS. SILVER: Thank you.

24 . . .

25 . . .

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1 DIRECT EXAMINATION CONTINUED

2 BY MS. SILVER:

3 Q Criminalist Cook, you had just finished  
4 identifying State's Exhibit No. 80 and 80-A, the vial  
5 contained in 80 and I'd like to ask you what is this  
6 evidence?

7 A It is a swab that contained a blood  
8 like substance that I performed an analysis on and this is  
9 a control, as well as an unstained section.

10 Q Where was this recovered from?

11 A 507 North Lamb by Investigator Mark  
12 Washington.

13 Q And this would have been recovered on  
14 September 1st of 1995?

15 A That's correct.

16 Q What testing did you do on State's  
17 Exhibit No. 80, if you recall, and the results of that  
18 test?

19 A If I may refer to my notes.

20 Q That would have been on your third  
21 report I believe, Mr. Cook.

22 A I exposed it to some presumptive  
23 tests. Again, found this peroxidase activity consistent  
24 with the blood. Then I ultimately sent this item out for  
25 DNA analysis.

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1 Q I'd like to show you now what has been  
2 marked as Exhibit 68, 68-A, and you may look at the  
3 contents of 68-A-1. You need gloves again to do that?

4 A Yes, I do.

5 MS. SILVER: May I have some gloves.

6 Thank you.

7 (Off the record discussion not reported.)

8 Q (BY MS. SILVER) As you are putting on  
9 the gloves, maybe I can ask you, at least as to State's  
10 Exhibit 68 and 68-A, do you recognize these items?

11 A Yes, I do in the same manner. They  
12 bear both my signature on the chain of custody, as well as  
13 my seal at the bottom. This item does in fact bear my  
14 taped tag, my initials TLC, and the date of the  
15 examination.

16 Q When you say this side, you are talking  
17 about 68-A?

18 A That is correct.

19 Q And what is it that you've just  
20 recovered?

21 A A small knife.

22 Q And what is the State's Exhibit number  
23 on that?

24 A 68-A-1.

25 Q And do you recognize this item as

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1 well?

2 A Yes, I do.

3 Q How is it that you recognize this item?

4 A My initials TLC on the very tip of this  
5 knife blade.

6 Q And what kind of examination did you do  
7 on State's Exhibit No. 68-A-1 and what were the results of  
8 that test?

9 A Well, upon opening this item, I then  
10 walked it over to a latent print examiner on staff and we  
11 searched it microscopically for the presence of  
12 fingerprints, which is kind of a routine. None were  
13 recorded.

14 At this point, I was able to remove samples  
15 of blood from this knife, samples on the blade. In fact,  
16 you can see some of the blood still on there. I then  
17 performed the A, B, O typing, as well as the enzyme typing  
18 and if you notice the knife, this is TLC 3, this is the  
19 knife in question, we have the A, B, O type. We determined  
20 it was Type O, the esterase type is being Type 1, the PGM  
21 type is being Type 1, and the glyoxalase type is being type  
22 2-1.

23 Now you notice that the four types on the  
24 knife, the A, B, O, the esterase, the PGM, and the  
25 glyoxalase, are the same as the victim Panos and they are

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1 dissimilar to that of the suspect. If you notice, even  
2 though the result was O, you know the esterase type were  
3 different, PGM type is different, the glyoxalase type is  
4 different. So we conclude that the blood on the knife  
5 could not have come from the suspect, but could have come  
6 from the victim. In fact, that profile is consistent with  
7 about 10 percent of the population.

8 Q You say the knife, you are talking  
9 about the blade?

10 A That's correct.

11 Q Would it be fair to say, Criminalist  
12 Cook, that the items we have just identified here in court  
13 were the primary items which had significant serological  
14 value to you?

15 A That's correct. Numerous items were  
16 examined and are routinely in the course of an  
17 investigation. Many of the items that are displayed in  
18 that chart were examined for the presence of blood and  
19 found to be negative, as the chart so indicates.

20 Q Did you do any other examinations at  
21 all which also proved to be negative as well?

22 A Many examinations for the presence of  
23 blood.

24 Q And you do that to cover every aspect  
25 in a homicide case?

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1                   A     Yes.  It's clear that not all the  
2     evidence in homicide cases are analyzed, but the majority  
3     of it.  The ones that would give us information or insight  
4     into a suspect's inclusion or elimination.

5                   Q     Now, at the conclusion of your various  
6     analyses in this case, were you requested by the LVMPD  
7     homicide detectives, as well as the District Attorney's  
8     Office, to forward evidence to Cellmark for DNA analysis?

9                   A     Yes.  Samples from numerous items  
10    examined were, in fact, sent for DNA analysis and, again,  
11    this is pretty routine.  Conventional serology, which is  
12    described here, has certain interpretational limitations  
13    and we can get populations down to maybe eight, 10 percent  
14    and maybe in some cases maybe one percent, but DNA has much  
15    more inclusive, exclusive capabilities.

16                  Q     And presently, does the Las Vegas  
17    Metropolitan Police Department have the capabilities of  
18    performing DNA analysis?

19                  A     Presently, no.  It's a long process,  
20    several years in the making.  We will probably be on line  
21    within the next three months.

22                  Q     What laboratory did you send this  
23    evidence to?

24                  A     Cellmark is a forensic laboratory that  
25    we send most of our evidence to.

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1 Q Is that an independent private  
2 laboratory?

3 A Yes, it is.

4 Q It's not affiliated with any kind of  
5 law enforcement then?

6 A Oh, no.

7 Q This type of -- you are familiar with  
8 Cellmark Laboratories?

9 A And many of their examiners.

10 Q And would it be fair to say that anyone  
11 can contact them and generally request an analysis, whether  
12 it could be defense attorneys or private individuals on  
13 paternity cases or law enforcement?

14 A Yes. In fact, they are used by almost  
15 everybody.

16 Q When you forwarded that evidence to  
17 Cellmark Laboratories for DNA analysis, did you -- were all  
18 the items sent under the event number which I have  
19 described as 950831-1351?

20 A Yes, they were.

21 Q Before sending those items out for DNA  
22 analysis, did you personally make what's called stain  
23 cards?

24 A Yes. Stain cards is a routine part of  
25 my duties and when liquid blood stain -- when liquid blood

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1 standards come to us typically in these forms, they come to  
2 us liquid in a tube, they do not store well even when  
3 refrigerated. So what I would do is make a blood stain  
4 card from the victim's known blood standard and the  
5 suspect's known blood standard, I would let them air dry,  
6 then I would package them and put them in a freezer, which  
7 is a blood reference library that we have in the forensic  
8 lab.

9 Q So, for example, in our case, from the  
10 sexual assault kit, there was blood from the victim and you  
11 would prepare a stain card from that and forward that to  
12 Cellmark with the identification of Deborah Panos on that  
13 stain card?

14 A That's true and we also make them in  
15 duplicate. We keep one in reserve in case the defense  
16 would want the same option.

17 Q So in case there is any kind of further  
18 testing by anyone?

19 A Certainly.

20 Q And would it be fair to say that from  
21 that serology kit, which we have marked as an exhibit, that  
22 you would take the blood from that kit, you don't send the  
23 kit, but you prepare a stain card and forward that, at  
24 least one of the stain cards to Cellmark Laboratories?

25 A That's true. I send preserved samples

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1 from the kit, not the kit itself.

2 MS. SILVER: Court's indulgence.

3 (Off the record discussion not reported.)

4 Q (BY MS. SILVER) Just briefly.

5 Was there also head hair found on the knife,  
6 State's Exhibit 68-A-1?

7 A Yes, there were. There was a strand of  
8 head hair that I did a microscopic comparison to that of  
9 the victim and found it was microscopically similar with  
10 the victim.

11 MS. SILVER: Thank you.

12 That would conclude my direct examination.

13 THE COURT: Any cross examination?

14 MR. BROOKS: No questions, your Honor.

15 THE COURT: May this witness be discharged?

16 MS. SILVER: Yes, your Honor.

17 THE COURT: Thank you, sir. You may step  
18 down.

19 State may call its next witness.

20 MS. SILVER: State would call Tom Wahl.

21 MR. HARMON: Wahl.

22

23 THOMAS A. WAHL,

24 having been first duly sworn to tell the truth, the whole  
25 truth and nothing but the truth, testified and said as

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1 follows:

2

3 MS. SILVER: Court's indulgence.

4

5 DIRECT EXAMINATION

6 BY MS. SILVER:

7 Q Sir, can you please state your name and  
8 spell it for the record.

9 A My name is Thomas A. Wahl. Last name  
10 is spelled W-A-H-L.

11 Q And where are you employed currently?

12 A I'm currently with the Las Vegas  
13 Metropolitan Police Department Forensic Laboratory here in  
14 Las Vegas.

15 Q And what are your duties there  
16 presently at the lab?

17 A My title is criminalist and my duties  
18 at the present time are setting up a DNA identification lab  
19 so that the Las Vegas Metro PD can provide human identity  
20 testing capabilities using DNA technology.

21 Q What is your profession exactly? What  
22 would you call yourself?

23 A I'd call myself a forensic biologist  
24 utilizing DNA technology.

25 Q And what kind of formal training and

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1      experience do you have in the field of DNA?

2                                    A      My educational background consists of a  
3      bachelor of science degree in medical technology received  
4      in 1977 from La Crosse, Wisconsin at the University of  
5      Wisconsin La Crosse and, as far as my DNA training goes, I  
6      have been performing DNA testing in a forensic capacity for  
7      seven years and I was employed in several private  
8      laboratories by Ph.D.s who had extensive experience  
9      utilizing this technology and I was trained and worked with  
10     these people during those seven years.

11                                  Q      When you say you've worked at a private  
12     laboratory using DNA, what private laboratory is that?

13                                  A      There were two laboratories. From 1988  
14     through 1993, I worked for a private laboratory doing DNA  
15     testing called Analytical Genetic Testing Center in Denver,  
16     Colorado and then subsequent to that, I worked as a  
17     forensic supervisor. I was employed as a forensic  
18     supervisor with Genelex Corporation located in Seattle,  
19     Washington and while I was employed there, I did become  
20     certified as a DNA analyst utilizing forensic DNA  
21     technology capabilities by the American Board of  
22     Criminalists.

23                                  Q      Did you bring a resume with you to  
24     court today? You may call it a curriculum vitae.

25                                  A      Yes, I did provide a copy to you.

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1 Q Prior to court.

2 I would like to show you what's been marked  
3 for identification purposes as State's Proposed Exhibit No.  
4 88 and ask you if this is your resume?

5 A Yes, it is.

6 MS. SILVER: Your Honor, at this time, I  
7 would move for its admission.

8 MR. BROOKS: No objection.

9 THE COURT: Same will be received in  
10 evidence.

11 MS. SILVER: Thank you.

12 Q Have you ever testified in courts of  
13 law and been deemed an expert in the field of DNA  
14 technology?

15 A Yes, I have.

16 Q What courts?

17 A Various courts. I have testified as an  
18 expert in DNA and my recollection is about 10 or 11  
19 different state jurisdictions, as well as the country of  
20 Canada and they are cited on my CV, which states where  
21 those are.

22 Q So you have been recognized as a DNA  
23 experts in both courts throughout the United States and  
24 Canada as well?

25 A That's correct, yes.

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1 Q A total of how many times would you  
2 estimate?

3 A I have testified on DNA findings, I  
4 would say, somewhere between 15 and 20 times; probably  
5 closer to 20 times.

6 Q And besides testifying as an expert in  
7 your everyday duties, approximately how many cases have you  
8 personally been involved with in processing DNA and  
9 identification of DNA?

10 A My best estimate would be at least 500  
11 cases and somewhere between 500 and a thousand.

12 Q Are you familiar with Cellmark  
13 Laboratories?

14 A Yes, I am.

15 Q And how is it that you are familiar  
16 with Cellmark Laboratories?

17 A They are another private laboratory  
18 that provides forensic DNA identity testing and in my  
19 previous capacity, I have had occasion to review some of  
20 their work, when I was retained by some attorneys, as well  
21 as familiarization with some of the employees of that  
22 organization through professional meetings and things of  
23 this nature.

24 Q And you say it's an independent  
25 laboratory?

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1                   A    Yes, it is. It is a privately owned  
2   laboratory and they do provide services to both prosecution  
3   and defense.

4                   Q    So they are not affiliated with law  
5   enforcement?

6                   A    No. Whoever wishes to retain their  
7   services can.

8                   Q    They are an independent type of  
9   facility?

10                  A    Yes.

11                  Q    They merely provide tests?

12                  A    Yes. I would classify it as an  
13   independent laboratory, yes.

14                  Q    Do they do work as well in paternity  
15   cases?

16                  A    Yes, they do.

17                  Q    Is that similar to the independent  
18   laboratory that you worked at as well?

19                  A    Yes, both of the private laboratories I  
20   worked in did perform paternity testing, as well as  
21   forensic testing.

22                  Q    In fact, are you familiar with some of  
23   the forensic -- excuse me -- molecular biologists at  
24   Cellmark Laboratory, as well as any of the geneticists  
25   there?

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1                   A     Yes, I had dinner with one of them  
2     several weeks ago at a professional meeting.

3                   Q     And when something is sent to say  
4     Cellmark, and now you work at LVMPD, when something is sent  
5     to Cellmark, what is the general purpose of sending  
6     something to Cellmark from LVMPD?

7                   A     The general purpose for sending it is  
8     to send it to the laboratory so that they can perform DNA  
9     testing on the evidence and the main purpose is to acquire  
10    more genetic information about the evidence such that more  
11    definitive conclusions, if it's possible, can be made.

12                  Q     For example, to exclude someone as a  
13    suspect?

14                  A     Most definitely. DNA testing, one of  
15    the reasons it is such a powerful tool is the fact that it  
16    is a very excellent discriminator.

17                  Q     And another reason would be to actually  
18    include someone or find that DNA could have originated from  
19    a source?

20                  A     Yes. If no exclusion is obtained  
21    during the comparative analyses, then the inclusionary  
22    inferences can be made quite strong based on the types that  
23    are obtained from the evidence.

24                  MS. SILVER: Your Honor, at this time, I  
25    would ask that he be deemed an expert, your Honor, in the

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1 field of forensic human identification utilizing DNA  
2 technology.

3 MR. BROOKS: No objection.

4 THE COURT: He will be allowed to testify as  
5 such.

6 MS. SILVER: Thank you.

7 Q Can you tell the ladies and gentlemen  
8 of the jury what is DNA?

9 A DNA is an acronym or another term for  
10 Droxy Rhybo Nucleic Acid. A very long word, but simply DNA  
11 is found in the cells of all living organisms. They may  
12 include bacteria, viruses, animals, plants, and humans.

13 It's also referred to as the genetic  
14 blueprint and it is a basis for life as we know it. It's  
15 comprised of building blocks called bases and there are  
16 four types of these bases that comprise DNA. It is the  
17 arrangement and sequence of these bases that determine the  
18 genetic code of an orgasm.

19 The genetic code is responsible for the  
20 organization, the growth, development, and the function of  
21 the orgasm from the time it is born or developed until it  
22 dies.

23 With respect to humans, DNA is organized and  
24 compacted onto structures known as chromosomes and humans  
25 have 23 pairs of these chromosomes present in their cells

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1 of their body. Therefore, DNA can be isolated from  
2 biological substances such as blood, sperm, saliva, skin,  
3 muscle, tissue, teeth, bones, and hairs.

4 The human genome, when I say the word  
5 genome, that term just means all the DNA present in all  
6 these chromosomes is called the human genome. The human  
7 genome consist of approximately three billion of these  
8 bases that I mentioned earlier. There is a lot of bases  
9 and DNA is a very large biological substance. A vast  
10 majority of this DNA does not differ amongst us all -- I'm  
11 speaking about humans now -- and there is no genetic  
12 differences. We all have pretty much the same sequence and  
13 arrangements of DNA, but there is a portion of the human  
14 genome, about 10 percent, that does have genetic  
15 variability.

16 In other words, the genetic structure of  
17 this DNA can vary amongst us all. There is genetic  
18 variable regions of a molecule is what we focus on as  
19 forensics analysts because this is where the genetic  
20 differences rely and we can use these to identify people  
21 and differentiate from each. There are sufficient genetic  
22 differences from the variable regions of DNA. Such as an  
23 individual has a unique DNA profile with one exception and  
24 that is with identical twins. Identical twins will have  
25 the exact same DNA.

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1           Scientists utilize the DNA technology in a  
2   human identification of biological evidence and, as I  
3   stated before, DNA technology is a very powerful  
4   discriminatory tool. We can differentiate people quite  
5   readily with DNA and if we don't exclude somebody, we may,  
6   in actuality, determine that a profile is unique and only  
7   derive one particular person.

8           The combination of these genetic differences  
9   that we detect are commonly referred to as a DNA profile  
10   and the individual's DNA profile is determined by the DNA  
11   contribution of the biological father via sperm and the DNA  
12   contribution of the mother via the egg cell at the time of  
13   fertilization.

14          So your genetic DNA profile is a combination  
15   of what you inherited from your parents, both motif  
16   inheritances involved. Genetic DNA profile is derived from  
17   the biological evidence we deal with in the crime lab such  
18   as a blood stain on a piece of clothing. It can be  
19   determined using this DNA technology and the DNA profile  
20   can be compared to DNA profiles derived from known  
21   reference standards, preferably the individual, usually in  
22   the form of a blood sample, liquid blood sample.

23          The comparison of these genetic DNA profiles  
24   allows the analyst to include or exclude the individual as  
25   a source of the biological substance. In the case of

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1 exclusions, these are absolute. In other words, we can  
2 render conclusions that the DNA from this biological  
3 evidence absolutely, positively did not originate from  
4 somebody. The profiles are inconsistent, therefore, they  
5 could not have originated from a common source.

6 If an individual cannot be excluded based on  
7 this genetic profile comparison, the individual could be  
8 the source of the biological evidence and if no exclusions  
9 are obtained, based on this comparison, one of the next  
10 questions that needs to be addressed is what is the  
11 significance of this genetic similarity or consistency that  
12 we see between the biological evidence and the known  
13 reference standard of the individual.

14 In order to address this question, a  
15 statistical analysis can be performed and applied to  
16 provide an inference or to establish a degree of the  
17 strength of the association between the questioned evidence  
18 and the individual or any individual chosen at random, for  
19 that fact from the population.

20 Another way to put the question is  
21 basically, well, how frequent is this genetic profile in  
22 the population at large? How many other people may have  
23 that profile?

24 Q Let me ask you this then. Basically,  
25 we acquire our DNA then half from our mother and half from

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1 our father and that makes up our DNA?

2 A That's correct.

3 Q And except for identical twins, each of  
4 us has something unique about our DNA?

5 A Yes.

6 Q And with the exception of identical  
7 twins, are there other individuals that have the same DNA  
8 as us?

9 A Other than identical twins?

10 Q Other than identical twins.

11 A Certain regions of the DNA individuals  
12 may have the same type, DNA type, but if you look at  
13 another region of the DNA, they may have a different type  
14 and we look at various regions of the DNA molecule and  
15 determine genetic DNA types at various locations and then  
16 look at the entire profile and the reality is there is such  
17 variability at the DNA level that if a questioned evidence  
18 sample truly didn't originate from the individual, we will  
19 be able to prove that using DNA technology.

20 Q So DNA can and is very unique to each  
21 one of us individually?

22 A Yes, with the exception of identical  
23 twins.

24 Q And when we say that DNA is within our  
25 body such as our blood or saliva or semen or our skin or

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1 hair, would it be fair to say that, for example, my DNA, my  
2 blood would be the same as my DNA in my hair?

3 A Yes the DNA is the same from a  
4 particular individual's body no matter what source it came  
5 from. Whether it be hair, skin or blood, it's the same.

6 Q What types of testing procedures are  
7 there to compare or reveal DNA?

8 A There are two basic types of technology  
9 that can be used in DNA identification. The first one and  
10 the one that was used first with forensic application is  
11 known as RFLP and that is an acronym or term that stands  
12 for restriction fragment line polymorphism.

13 The second type of technology is referred to  
14 as PCR, which stands for polymeicase chain reaction. Both  
15 technologies are utilized with the same function and that  
16 is to determine genetic differences amongst individuals.  
17 They each go about a different way and each technology has  
18 some advantages and disadvantages and some limitations.

19 Q RFLP is also known as the genetic  
20 fingerprinting technique?

21 A Yes. It's commonly referred to as  
22 that, although that's really a misnomer. That's more used  
23 when the commercial laboratories started performing DNA,  
24 they used that as a marketing tool. I prefer to use  
25 genetic identify, but that's more of a better description

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1 by us. It is known as that.

2 Q Using RFLP, is it used as a result of  
3 identification or exclusion as an individual as a donor?

4 A It may exclude somebody and it may  
5 not. If it doesn't include somebody, if a sufficient  
6 number of RFLP tests are performed, for all practical  
7 purposes, you make an identification for all practical  
8 information has been obtained.

9 Q So using RFLP, you can then determine  
10 that DNA belongs to one individual and one individual in  
11 this universe?

12 A That is possibly, if you do enough of  
13 the testing, sufficient amount of the testing.

14 Q Is that something unique generally to  
15 RFLP as opposed to PCR testing?

16 A At the present time, yes. However,  
17 that is actually changing at the present time. Much of the  
18 advances in DNA technology the last several years have been  
19 with the PCR technology, such that the amount of  
20 information that can be obtained with PCR testing is  
21 approaching the definitiveness that can be obtained with  
22 the RFLP testing.

23 Q And, to your knowledge, does Cellmark  
24 use both RFLP and PCR testing procedures?

25 A Yes, they do.

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1                   Q     And you have used both procedures  
2     yourself, obviously, in the past and have testified to them  
3     in the past?

4                   A     Yes.

5                   Q     How does a scientist generally  
6     determine which or, at least in a case like this, State of  
7     Nevada versus James Chappell, how is it that a  
8     determination is generally made as to what items will be  
9     processed using RFLP as opposed to PCR?

10                  A     The main criteria is that the  
11     laboratory will perform what is known as a DNA extraction  
12     procedure. In other words, they have to isolate and  
13     extract the DNA out of the material that's been submitted  
14     to the laboratory.

15                   For example, a blood stain that may be on a  
16     shirt, they actually have to remove a portion of the blood  
17     stain and then perform some chemical tests to isolate the  
18     DNA, remove it from the stained cutting, and purify it and  
19     then once they do that, conduct and complete that aspect of  
20     the testing, they evaluate the DNA, human DNA content for  
21     the quantity. In other words, how much human DNA were they  
22     able to extract from the evidence and the quality of the  
23     DNA to determine whether the DNA may have undergone some  
24     degradation. DNA is a biological substance which can be  
25     subjected to environmental insult, which would cause the

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1 DNA to degrade. Once the DNA evaluation test is done with,  
2 then the analyst is in a better position to determine which  
3 technology may be the best or whether both may be done to  
4 the evidence.

5 Q Now, prior to your testimony here in  
6 court today, have you had an occasion to review two  
7 reports, Reported Laboratory Examinations from Cellmark  
8 Diagnostics, specifically a March 26th, 1996 report and a  
9 report of laboratory examination dated June 28th of 1996,  
10 both authored by Paula J. Yates, a senior molecular  
11 biologist at Cellmark Laboratories?

12 A Yes, I have.

13 Q And these two reports from Cellmark  
14 authored by Paula Yates, they both reference this case,  
15 State of Nevada versus James Chappell, our Las Vegas  
16 Metropolitan Police Department event number 950831-1351?

17 A That's correct, yes.

18 Q And these two reports involve the  
19 analysis of various items that were sent by Terry Cook to  
20 Cellmark Laboratories?

21 A Yes.

22 Q Now, you've reviewed both of these  
23 reports today prior to your testimony?

24 A Yes, I have.

25 Q Would it assist you in your testimony,

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1 as well to have a diagram in explaining the results in this  
2 case?

3 A Yes, it's most helpful.

4 Q I would like to show you what's been  
5 marked for identification purposes as State's Proposed  
6 Exhibit No. 86. Do you recognize looking at this prior to  
7 court?

8 A Yes, I do.

9 Q And would it help you in referring to  
10 this during your testimony at this point?

11 A Yes, it would.

12 Q Would this be a fair and accurate  
13 description of the results narrowing them down and  
14 specifying those results from the actual reports?

15 A Yes. It's an accurate representative  
16 synopsis of the results.

17 Q Thank you.

18 MS. SILVER: Your Honor, at this time, I  
19 would move for the admission of State's Proposed Exhibit  
20 No. 86 and I'd ask to publish it as well during the  
21 testimony.

22 MR. BROOKS: No objection.

23 MS. SILVER: Thank you.

24 THE COURT: It will be received in  
25 evidence.

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1 Q (BY MS. SILVER) I'd like to ask you,  
2 first, what the results of the testing in this case using  
3 RFLP, what two items were tested and what the results of  
4 those tests were?

5 A In respect to the RFLP results, the two  
6 items up on the board here, one is a vaginal swab  
7 purportedly collected from the female victim at the time of  
8 the autopsy. Spermatozoa were identified, purportedly  
9 identified in the vaginal swab, and the purpose for doing  
10 the RFLP testing on the vaginal swab is to determine the  
11 genetic profile of the sperm donor.

12 The synopsis of the results is that the  
13 banding pattern from the sperm fraction of the vaginal swab  
14 is consistent with the defendant, Mr. Chappell, and he is  
15 not excluded as a sperm donor and then Cellmark has  
16 provided the frequency that this DNA profile would occur  
17 and they have cited three different population groups in  
18 the report. On this one up here, the frequency estimate is  
19 for the U.S. African/American population.

20 Q Was it other populations too? Did the  
21 molecular biologist give a representation, for example, if  
22 it was a Caucasian that was the source, if it was a  
23 Hispanic or it was an African American?

24 A Generally, routinely, Cellmark will  
25 provide population frequency data with three racial groups,

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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  
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Elizabeth A. Brown  
Clerk of Supreme Court

APPELLANT'S APPENDIX

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

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## **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:

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An Employee of the  
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1                   Q     Explain what you saw happen after the  
2     initial observation.

3                   A     I saw him -- he was pushing a cart and  
4     he selected two bottles of liquor. He then pushed the cart  
5     to the beer case where he selected a can of Budweiser  
6     beer. He also put that in the child's portion of the cart  
7     along with the two bottles that he had previously  
8     selected.

9                   He then walked towards the back of the store  
10    where he entered what we call the max pack area, which is  
11    somewhat of a warehouse-type setup display. It's numerous  
12    and institutionalized products that we sell.

13                  Q     Did you continue to observe the  
14    defendant?

15                  A     Yes.

16                  Q     Did you see him do anything unusual?

17                  A     Yes. He removed a box cutter from his  
18    pants pocket.

19                  Q     What is a box cutter?

20                  A     Box cutter is an item to cut boxes in  
21    grocery, warehouse-type situations, factories.

22                  Q     So you say you saw him remove a box  
23    cutter from his pants?

24                  A     Yes.

25                  Q     What did he do with the box cutter?

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1                   A    He began to scrape the security tags  
2    off the liquor bottles.

3                   Q    What is the purpose of the security  
4    tags on the liquor bottles?

5                   A    When an item is taken out of the store  
6    that isn't paid for, there's a tag on the bottles, which is  
7    called an EAS tag, which stands for electronic article  
8    surveillance tag, and it beeps when they go out the door if  
9    it hasn't been purchased.

10                  Q    If the security tag is scraped off,  
11    what is the effect when the person leaves the store?

12                  A    The tag is inoperable.

13                  Q    So there wouldn't be the beeping  
14    sound?

15                  A    No.

16                  Q    Were you concerned when you saw the  
17    defendant scraping the security tags off the liquor  
18    bottles?

19                  A    Yes.

20                  Q    What eventually happened?

21                  A    He placed the two bottles in the front  
22    waistband of his pants after he finished scraping the tags  
23    off. He then placed the box cutter back into his pocket.  
24    He then took the beer can and he also placed that in the  
25    waistband of his pants concealing it from view with his

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JChappell-8JDC1270

1 T-shirt.

2 Q Did you see him pick up any other items  
3 besides the beer can and the two bottles of liquor?

4 A No, I did not.

5 Q At some point, did you detain Mr.  
6 Chappell?

7 A Yes, I did.

8 Q Where was he when you detained him?

9 A He was exiting the store well past the  
10 registers and the point of purchase and I stopped him right  
11 at the exit door.

12 Q Did you observe him continuously from  
13 the point you saw him removing the security labels from the  
14 liquor?

15 A Yes.

16 Q Did he make any effort to pay for the  
17 merchandise?

18 A No, he did not.

19 Q What happened when you approached him?

20 A I identified myself as security and he  
21 attempted to walk by me where I stepped in front of him and  
22 I told him to come back inside, I wanted to see him and I  
23 also told -- he had a cane in his hand.

24 Q He had what in his hand?

25 A A walking cane. I told him to drop the

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1 cane. He did not. He seemed kind of confused and he was  
2 looking past me towards the doorway. So I thought he was  
3 going to try and flee and since I was by myself, I chose to  
4 handcuff him for my safety.

5 Q After you handcuffed the defendant, did  
6 you take him to a security office?

7 A Yes.

8 Q At some point, either at the office or  
9 after he was handcuffed, did you pat him down?

10 A Yes, I did.

11 Q To determine what he had on his  
12 person?

13 A Yes, I did.

14 Q Did you locate merchandise that he had  
15 taken from the Lucky's Store?

16 A Yes.

17 Q What did you recover from his person?

18 A I recovered the two bottles of liquor,  
19 the can of beer, and I also recovered from his pocket three  
20 candy bars, a fourth larger candy bar, and other items that  
21 were of his own personal property.

22 Q In the process of the pat down, did you  
23 feel something in his right pants pocket?

24 A Yes, I did.

25 Q Was he handcuffed at that time?

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1 A Yes.

2 Q Did you ask the defendant what it was  
3 you were feeling?

4 A Yes.

5 Q Did he answer?

6 A Yes.

7 Q What did he say?

8 A He said, " Keys and stuff."

9 Q What happened then?

10 A I told him, "I'm going to take the keys  
11 out," and he said, "Fine," and I pulled the keys out of his  
12 right pocket and also a pen and an empty package of bubble  
13 gum tape in a plastic container and I placed them in the  
14 child's portion seat in the cart, which was in the back  
15 room in which we were.

16 Q As a result of observing the defendant  
17 removing security labels and going from the store,  
18 attempting to leave without paying for the merchandise, did  
19 you or someone at the Lucky's Store contact the Las Vegas  
20 Metropolitan Police Department?

21 A We contacted the police department  
22 after we had him detained.

23 Q Did someone from the police department  
24 arrive?

25 A Yes.

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1 Q Was that an Officer Osuch?

2 A Yes, it was.

3 Q Do you know whether a citation was  
4 issued for petty larceny?

5 A I don't -- he was starting to write a  
6 citation out, from what I can remember, and then he began  
7 to interview the suspect and some other -- I wasn't in the  
8 room when it happened, but he said some other incidents  
9 have come up and he had to call the station for something.

10 Q What happened to the keys that you had  
11 recovered from the defendant's right pants pocket?

12 A The keys were left in the cart where I  
13 put them until one of the detectives asked what property  
14 belonged to him.

15 Q Was this someone other than Officer  
16 Osuch?

17 A Yes.

18 Q A plainclothes detective?

19 A Yes, he came later.

20 Q Did you understand this to be a  
21 homicide detective?

22 A I was told that when they first came.

23 Q Did the homicide detective eventually  
24 take the keys?

25 A Yes, he did.

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1 Q So the keys you recovered from the  
2 defendant's right pants pocket were turned over to a  
3 homicide detective?

4 A Yes.

5 Q After the detention of the defendant,  
6 was there an effort to determine what his name was?

7 A Yes.

8 Q Did he tell you what his name was?

9 A Yes, he did.

10 Q What did he tell you?

11 A He gave me the name of Ivri Merrell  
12 (sic) or Morrell.

13 Q Would you spell the two names for the  
14 record.

15 A The spelling he gave me, first name  
16 Ivri, I-V-R-I.

17 Q And the last name you said was Morrell?

18 A I believe it was Morrell,  
19 M-O-R-R-E-L-L.

20 Q M-O-R-R-E-L-L or M-A-R-R-E-L-L?

21 A I'm not sure if it was A or O. He  
22 spelled it out for me.

23 Q It would be one or the other?

24 A One or the other, yeah.

25 Q Did you find any identification on the

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1 person of the defendant that day in the name Ivri Morrell?

2 A No, I did not.

3 Q Did he personally tell you that was his  
4 name?

5 A Yes.

6 Q Did you subsequently learn that that  
7 wasn't his name?

8 A Yes, I did.

9 Q That his name was actually James  
10 Chappell?

11 A Yes.

12 Q Did the defendant ever tell you that  
13 his name wasn't Ivri Morrell, that in fact it was James  
14 Chappell?

15 A No, he did not.

16 Q Do you know a young lady named Kimberly  
17 Sempson?

18 A Yes, I do.

19 Q Did she also become involved in the  
20 investigation regarding the shoplifting at Lucky's?

21 A Yes, at one point, she was.

22 Q Some time after the arrival of Officer  
23 Osuch of the Metropolitan Police Department, did you leave  
24 the security office where the defendant was being  
25 detained?

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1 A Yes, I walked away from it.

2 Q Did you learn that in your absence the  
3 defendant attempted to get rid of something?

4 A Yes, I learned later.

5 Q But you didn't personally see that  
6 occur?

7 A No, I didn't.

8 Q How long were you in the presence of  
9 the defendant that day, September the 1st, 1995?

10 A The whole time?

11 Q Yes.

12 A There was a few times where I had to  
13 leave the area, I left him with an officer and Ms. Sempson,  
14 but total, about three hours.

15 Q Had you known the defendant prior to  
16 this occasion?

17 A No.

18 Q Did you form any type of opinion about  
19 whether he was drunk or under the influences of some drug?

20 A Personally, I couldn't tell if he was  
21 or not, but I had asked him if he was intoxicated or under  
22 the influence of any drugs and he said no.

23 Q Thank you.

24 MR. HARMON: May we have the Court's  
25 indulgence, your Honor?

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JChappel1-8JDC1277

1 That's all on direct, your Honor.

2 THE COURT: Cross examination.

3

4 CROSS EXAMINATION

5 BY MR. BROOKS:

6 Q Mr. Martinez, when you arrested him and  
7 emptied his pockets, did you empty everything in his  
8 pockets?

9 A Yes, I believe so.

10 Q Did you find a cocaine pipe in his  
11 pocket?

12 A I believe it was. I found some kind of  
13 glass tubing.

14 Q Thank you.

15 MR. BROOKS: No further questions.

16 MR. HARMON: No redirect, your Honor.

17 THE COURT: May this witness be discharged?

18 MR. HARMON: Yes, your Honor.

19 THE COURT: Thank you, sir. You may step  
20 down.

21 THE WITNESS: Thank you.

22 THE COURT: Call your next witness.

23 MR. HARMON: Kimberly Sempson.

24

25 KIMBERLY SEMPSON,

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1     having been first duly sworn to tell the truth, the whole  
2     truth and nothing but the truth, testified and said as  
3     follows:

4

5

DIRECT EXAMINATION

6

BY MR. HARMON:

7

Q     Will you state your name, please.

8

A     Kimberly Sempson.

9

Q     Please spell your first and last

10    names.

11

A     K-I-M-B-E-R-L-Y S-E-M-P-S-O-N.

12

Q     Ms. Sempson, are you employed?

13

A     Yes.

14

Q     Where do you work?

15

A     I work for Lucky Stores.

16

Q     How long have you worked for Lucky

17    Stores?

18

A     Six years.

19

Q     What are the nature of your duties with

20    Lucky's?

21

A     I work for the loss prevention

22    department.

23

Q     Were you working with the loss

24    prevention department of Lucky's Food Stores on September

25    the 1st, 1995?

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1 A Yes, I was.

2 Q On that day were you assigned to a  
3 particular store?

4 A Yes, I was.

5 Q What store?

6 A I think it was the store on Bonanza  
7 Avenue.

8 Q 4420 East Bonanza Avenue?

9 A Yes.

10 Q That's in Las Vegas?

11 A Yes.

12 Q During your shift that day at that  
13 particular store, did you become involved in investigating  
14 the detention of a subject identified as James Chappell for  
15 shoplifting?

16 A Yes, I did.

17 Q Did a Metro officer, Officer Osuch,  
18 arrive as part of this same investigation?

19 A Yes.

20 Q Were you assisting Officer Lawrence  
21 Martinez also employed in loss prevention that day?

22 A Yes.

23 Q Was there a time when both Officer  
24 Martinez and Officer Osuch of the Metropolitan Police  
25 Department left the room?

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1 A Yes.

2 Q After the officer from the police  
3 department arrived, was he involved in patting the  
4 defendant or Mr. Chappell down for anything he might have  
5 on his person?

6 A Yes, he did.

7 Q Did you see that happen?

8 A Yes, I did.

9 Q After that time, was Mr. Chappell  
10 handcuffed?

11 A Yes.

12 Q Do you see Mr. Chappell in the  
13 courtroom this morning?

14 A Yes, I do.

15 Q Will you point to him and describe  
16 something he's wearing.

17 A He's sitting at the table over there.  
18 He is wearing a gray suit with a yellow shirt and glasses.

19 Q What color shirt did you say?

20 A Yellow.

21 MR. HARMON: May the record show that the  
22 witness has identified the defendant, James Chappell, your  
23 Honor?

24 THE COURT: Yes.

25 Q (BY MR. HARMON) Now you mentioned

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1 already that at some point the Metro officer left the room  
2 where Mr. Chappell was being detained?

3 A Yes.

4 Q Did you remain nearby and did you  
5 continue to watch the defendant?

6 A Yes.

7 Q Tell us what happened after the Metro  
8 officer left the room where the defendant was being held?

9 A I noticed Mr. Chappell started to move  
10 around, kind of fidgeting.

11 Q How quickly did he begin to do this  
12 after the Metro officer had left the room?

13 A Just a few seconds.

14 Q You say he started to move around and  
15 became fidgety?

16 A Yes.

17 Q Will you demonstrate what you are  
18 talking about.

19 A Well, he was sitting in the chair like  
20 this and he just started moving around like this with his  
21 hands.

22 Q His hands were handcuffed behind his  
23 back?

24 A Yes.

25 Q Did you become concerned when you saw

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1 him doing this?

2 A Yes.

3 Q Did you continue, for that reason, to  
4 look closely at him?

5 A Yes.

6 Q Why did you pay attention to what he  
7 was doing?

8 A Well, normally, when somebody starts  
9 moving around like that, especially when he had been  
10 sitting there really still for probably about an hour and  
11 he started moving around, and usually I've had on many  
12 occasions people try to dump other merchandise or other  
13 items and sometimes trying to -- like if they have certain  
14 things on them they are not supposed to have, they try to  
15 hide them, try to pull them out and ditch them something  
16 where. So that's why I was paying attention to him for  
17 that reason.

18 Q That was your thought process when you  
19 saw him start to fidgeting?

20 A Yes.

21 Q Now did you eventually see him attempt  
22 to hide something?

23 A Yes.

24 Q What did you see him do?

25 A Well, I saw him kind of scoot over just

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1 a little bit, probably about a foot. There was a flat cart  
2 that the store uses when they pull boxes onto the floor to  
3 stock and there was a box underneath this flat cart, a  
4 brown cardboard box, and I saw Mr. Chappell lean over and  
5 try to stick a clear plastic card holder into the box,  
6 which was taped shut with clear tape.

7 Q Was he able to get the plastic  
8 container into the cardboard box?

9 A No.

10 Q Why not?

11 A Because it was taped shut with clear  
12 tape and I don't think he realized it was taped.

13 Q Because the tape was clear?

14 A Right.

15 Q When you saw him do this, did you say  
16 something?

17 A Yes. I said, "What are you doing," and  
18 it kind of startled him and he dropped the clear plastic  
19 card holder to the floor.

20 Q Did you retrieve it?

21 A Yes.

22 Q Were you able at that point to see  
23 anything that was inside the clear plastic card holder?

24 A Yes. I picked it up off the floor and  
25 I noticed that there was a social security card inside

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1 visible.

2 Q Did you pay any attention to the name?

3 A Yeah. It was a female name.

4 Q When you went to pick it up -- strike  
5 that, please.

6 After the defendant apparently became  
7 somewhat startled and dropped it to the floor, did he do  
8 anything then to attempt to hide the card before you picked  
9 it up?

10 A Yes, he put his foot on top of it.

11 Q As soon as it fell to the floor?

12 A Yes. As soon as I reached for it, he  
13 put his foot on top of it.

14 Q Did you get him to move his foot?

15 A Yeah, I just said, "Move," -- I told  
16 him to move away and I picked it up and looked at it.

17 Q At that point you saw that it was a  
18 social security card in the name of a female?

19 A Right.

20 Q At this time, did you know anything  
21 about the killing of Deborah Ann Panos?

22 A No.

23 Q What did you do with the plastic card  
24 holder and its contents after you picked it up?

25 A Well, I looked at it, noticed it was a

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1 female name and I could tell that there was some more  
2 social security cards underneath it and I thought at that  
3 point that one of the cards might have his name on it since  
4 he didn't have I.D. on him. I thought maybe one of them  
5 contained his real name and that's why he was trying to  
6 hide it.

7 Q You said you thought one of them might  
8 contain his real name. What name was Mr. Chappell using up  
9 to that point?

10 A Ivri Morrell.

11 Q But you said he didn't have any  
12 identification on him in that name?

13 A Right.

14 Q Did you eventually turn the card holder  
15 and its contents over to representatives of the police  
16 department?

17 A Yes.

18 (Off the record discussion not reported.)

19 Q (BY MR. HARMON) Do you remember about  
20 what time it was that you would have observed the defendant  
21 attempting to hide the plastic card holder from you?

22 A It was about 12:20, 12:30.

23 Q Still, of course, on September the 1st,  
24 1995?

25 A Yes.

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1 Q How much time did you spend in the  
2 presence of the defendant?

3 A The whole time? The whole time from  
4 when he was brought into the back until he was walked out?

5 Q I'm asking you for an estimate as to  
6 how long that was.

7 A Until the police got there or the  
8 entire time?

9 Q The entire time.

10 A The entire time, probably from about  
11 11:30 til I think it was probably about 2:30.

12 Q From about 11:30 a.m. until 2:30 p.m.?

13 A Right.

14 Q Did you know this defendant prior to  
15 that day?

16 A No.

17 Q Did you detect anything about him that  
18 suggested that he was drunk on alcohol or high on some type  
19 of drugs?

20 A No.

21 Q In your presence, was he asked if he  
22 was drunk or high?

23 A Not that I recall.

24 MR. HARMON: Thank you.

25 That's all we have, your Honor.

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1 MR. BROOKS: No questions, your Honor.

2 THE COURT: May this witness be discharged?

3 MR. HARMON: Yes.

4 THE COURT: Thank you, ma'am. You may step  
5 down.

6 Call your next witness.

7 MS. SILVER: Your Honor, the State would  
8 call Officer Osuch.  
9

10 PAUL OSUCH,  
11 having been first duly sworn to tell the truth, the whole  
12 truth and nothing but the truth, testified and said as  
13 follows:  
14

15 DIRECT EXAMINATION

16 BY MS. SILVER:

17 Q Sir, can you please state your name and  
18 spell it for the record.

19 A First name is Paul. Last name Osuch.  
20 O-S-U-C-H, no apostrophe.

21 Q And, sir, what is your occupation and  
22 assignment?

23 A I'm a police officer with the Las Vegas  
24 Metropolitan Police Department currently assigned to the  
25 detective bureau.

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1 Q What detective bureau?

2 A Property crimes.

3 Q Prior to this, what other assignments  
4 have you had?

5 A Before my transfer, I was a patrol  
6 officer with the Las Vegas Metropolitan Police Department  
7 working in a black and white.

8 Q Did you also have any assignments as  
9 bike patrol as well?

10 A Yes, I did.

11 Q How long have you been with the Las  
12 Vegas Metropolitan Police Department?

13 A This February will mark my 17th year.

14 Q I want to direct your attention to  
15 September 1st, 1995, at approximately 12:15 p.m., on that  
16 date, did you have an occasion to be dispatched to the  
17 Lucky's Store at 4420 East Bonanza?

18 A Yes, ma'am.

19 Q That's here in Las Vegas, Clark County,  
20 Nevada?

21 A Yes, ma'am.

22 Q On September 1st of 1995, what was your  
23 shift?

24 A At that time, I was working the day  
25 shift. My start time was 0645 hours or 6:45 in the morning

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1 to 4:45 in the afternoon or 1645 hours.

2 Q Is that military time?

3 A Military and regular time.

4 Q And that morning, had you been briefed  
5 regarding a homicide that had occurred the day before?

6 A Yes, ma'am.

7 Q A homicide that occurred at the  
8 Ballerina Mobile Home Park?

9 A Yes.

10 Q What had you been briefed about?

11 MR. BROOKS: Objection, irrelevant.

12 MS. SILVER: Well, I can ask it a different  
13 way.

14 THE COURT: It's not a matter of how it was  
15 asked, it's whether it's relevant. I tend to think that it  
16 is for at least probable cause.

17 Go ahead. It's overruled.

18 Q (BY MS. SILVER) I'd like to ask it to  
19 you in a different way anyway.

20 After being briefed, were you given a  
21 description of a possible suspect?

22 A Yes, ma'am.

23 Q And who did you get that briefing  
24 from?

25 A At that time, I was working under my

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1 supervisor was Sergeant Bill Yada.

2 Q And would it be fair to say that  
3 Sergeant Yada had been at the scene the day before?

4 A Yes.

5 Q And he conveyed the information from  
6 his experience to you that morning?

7 A Yes, to myself and the squad.

8 Q Besides getting the description of the  
9 suspect, did you yourself recall a name at that time?

10 A No.

11 Q And I mean the name of the suspect?

12 A No.

13 Q Do you recall whether or not he gave  
14 you the name of the victim at that time?

15 A No.

16 Q Did you also have an occasion to talk  
17 with other officers regarding this homicide?

18 A Yes.

19 Q Now when you were dispatched at  
20 approximately 12:15 on that date, why were you dispatched  
21 to that location?

22 A Lucky's had a shoplifter in custody.

23 Q And when you go to a shoplift, do you  
24 generally issue citations?

25 A Yes.

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1 Q What does that mean?

2 A It's a reasonable misdemeanor citation  
3 complaint form and what we do is it's a misdemeanor crime.  
4 We have the ability to make a decision whether to arrest or  
5 cite. Usually, on a petty larceny, it's a property crime  
6 more than it is a person to person crime. We issue a  
7 citation, the court date, and then they are supposed to  
8 show up for court.

9 Q So, generally, at least the usual  
10 procedure, is to hand someone a citation when you are  
11 through with the paperwork?

12 A Yes, and then they sign it and promise  
13 they will appear on that date, whatever is given.

14 Q Now, when you went to the store, did  
15 you meet with Security Officers Martinez and Sempson?

16 A Yes.

17 Q And did you also see the person that  
18 they had detained?

19 A Yes.

20 Q And do you see him here in court  
21 today?

22 A The gentleman wearing the gray suit,  
23 yellow shirt with the glasses.

24 MS. SILVER: Your Honor, may the record  
25 reflect that this witness has identified the defendant?

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1 THE COURT: Yes.

2 Q (BY MS. SILVER) Did you receive  
3 information from Officer or Security Officer Martinez  
4 regarding the details of that petty larceny?

5 A Yes.

6 Q As well as the things that he had  
7 recovered from his person?

8 A Yes.

9 Q The defendant's person?

10 A Yes.

11 Q Did you have an occasion to look at a  
12 cart that was outside the door to this office?

13 A Yes, I did.

14 Q And what items did you observe lying  
15 there in the cart?

16 A On the cart was a key chain with a  
17 Toyota emblem on it, a cylindrical tube, hallow tube was  
18 also there, a broken up piece of coat hanger. I don't know  
19 how long it would be in length, and some bubble gum, I  
20 believe, or some gum.

21 Q Did you notice a lighter as well?

22 A Yes, ma'am, a lighter, yes.

23 Q Now, when you came into contact with  
24 the defendant, did you ask him his name?

25 A Yes, I did.

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1 Q And what did he tell you his name was?

2 A I believe he gave me Ivri Morrell,  
3 Moran. I don't remember actually.

4 Q Did you ask him for other  
5 identification as well?

6 A Yes, and he stated he didn't have any.

7 Q Did he give you any kind of date of  
8 birth or social security number?

9 A Date of birth of 12/27/67 or '68 and he  
10 gave me social security number. I believe it started with  
11 a three. I couldn't give you all 10 digits, though. I  
12 have problems remembering my own.

13 Q After he gave you this information,  
14 what did you do?

15 A Well, as he was giving it to me, I was  
16 writing out the citation form with the information he gave  
17 me. I did a records check through the phone; being I was  
18 inside a building, just called records, did our standard  
19 watch check, records check to see what kind of priors he  
20 had, and the girl down in records -- I don't recall her  
21 name -- came back and said he wasn't with that name, date  
22 of birth, and soc locally in our area and NCIC, which is  
23 national, and it didn't show any kind of prior record.

24 Q If you can't confirm someone's identity  
25 when you are confronted in a case like this, what is your

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1 alternative then as far as issuing a citation?

2 A Is to take the man to jail or person to  
3 jail.

4 Q And, again, that's discretionary with  
5 yourself?

6 A Yes.

7 Q Now, as you are sitting here writing  
8 this citation, did you have any idea that this person was  
9 actually a suspect in the homicide case the day before?

10 A No, ma'am, not at the time I was  
11 writing the citation, no.

12 Q Now after you spoke with the dispatch  
13 regarding the identity, did you ask the defendant  
14 anything?

15 A As I was sitting there writing, he was  
16 handcuffed, sitting down in a chair, I just went fishing,  
17 for lack of a better term, and said, " Could you tell me  
18 anything that may have happened over at the Ballerina  
19 Mobile Home Park the day before," and at that time his  
20 demeanor not toward me started changing.

21 Q What do you mean it started changing?

22 A He became nervous, couldn't stay  
23 still.

24 Q Before that, how was he acting?

25 A Pretty mellow, laid back.

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1 Q So you noticed an immediate change in  
2 his behavior?

3 A Yes.

4 Q And his demeanor?

5 A Yes.

6 Q Did you then -- what did you do at that  
7 point?

8 A Well, I continued writing the citation,  
9 didn't believe that the name he gave me was actually his.  
10 I told him I would finish his citation, issue it to him,  
11 and then take him to city jail on the paraphernalia items I  
12 had on the cart. That would be my arrest, my booking.

13 Q So both for the petty larceny and  
14 possession of a drug paraphernalia?

15 A Yes, ma'am.

16 Q You considered the glass tube  
17 paraphernalia?

18 A Yes.

19 Q And when you told the defendant that  
20 you were going to arrest him and not give him a citation,  
21 did he say anything to you?

22 A He asked if I could give him a break.  
23 I stated no.

24 Q What did you say?

25 A I stated, "No, no breaks."

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1 Q At that time did you have any idea that  
2 this defendant was the suspect in that crime?

3 A The sixth sense started kicking in. I  
4 didn't think it would be that close to where he was  
5 apprehended at to the location of the crime, but I was  
6 starting to get a feeling that I have something a little  
7 bit more here than a petty larceny.

8 Q Is that because of the way his demeanor  
9 was changing?

10 A Yes. I could safely say-so, yes.

11 Q Did there come a time, after you told  
12 him you weren't going to give him any breaks, that you left  
13 the room once again?

14 A I finished up my crime report and the  
15 citation, we have to put down the total amount that was  
16 taken and also list items on it. I went outside the little  
17 security area office to Loss Prevention Agent Martinez just  
18 to get the total price of the items taken. Looked back not  
19 even a minute, probably even a lot less than that and  
20 noticed like a little not scuffle, but the female agent  
21 Sempson was in there. I went in behind her and she was  
22 reaching down for something off the floor or near a box. I  
23 don't actually recall.

24 Q And did she hand you the item that she  
25 picked up from the ground?

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1                   A     She handed me a clear plastic sheath  
2     that you would keep pictures in, but just one, not like in  
3     a wallet that had some cards in it.

4                   Q     What type of cards?

5                   A     They were social security cards,  
6     ma'am.

7                   Q     And at that time, when you picked up  
8     the cards and you looked at them, did you know the victim's  
9     in the homicide case name at that time?

10                  A     No, I didn't.

11                  Q     And, as a result of not knowing the  
12     names, did you call someone?

13                  A     I called my supervisor, Sergeant Yada  
14     again and got him on the phone, his cellular and just asked  
15     him what the name of the victim was the day before.

16                  Q     And do you recall what name he gave to  
17     you?

18                  A     Panos, P-A-N-O-S.

19                  Q     Did he gave you a first name?

20                  A     If he did, I don't recall it right  
21     now.

22                  Q     How many cards were in this plastic  
23     bag?

24                  A     A total of four.

25                  Q     Do you recall the names of these social

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1 security numbers?

2 A All the last names were Panos.

3 MS. SILVER: Court's indulgence.

4 (Off the record discussion not reported.)

5 THE COURT: Has the jury completed looking  
6 at the photographs?

7 Q (BY MS. SILVER) Officer Osuch, I would  
8 like to show you what's been marked for purposes of  
9 identification as State's Exhibit No. 64 and take a look at  
10 a copy of four social security cards. It's a copy, a two  
11 page copy.

12 Are these the four social security cards  
13 that you recovered or, excuse me, yeah, that you received  
14 from Security Officer Kimberly Sempson?

15 A Yes, ma'am.

16 Q And what are the names on these cards?

17 A Okay, from top to bottom, one Deborah  
18 Ann Panos, P-A-N-O-S. I will just use the first name for  
19 the rest of them because it's all the same last name. One  
20 looks like James, looks like middle name Monte. I'm going  
21 to say Chantell, last letter could be E. It could be  
22 Chantee, can't make out the middle name, Latrese.

23 Q What's the last name?

24 A Panos. And then the bottom part is  
25 Anthony Michael Panos.

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1 Q And, again, these are the four cards  
2 that you recovered from the security officer?

3 A Yes, ma'am.

4 Q A copy of the four cards?

5 A Yes.

6 Q Once you learned, from Sergeant Yada,  
7 that this was in fact the victim's name, did you make  
8 contact with homicide as well?

9 A Yes.

10 Q And you notified them of your  
11 situation?

12 A Yes, we did.

13 Q And did you secure the integrity of the  
14 scene for the homicide detectives?

15 A Yes, ma'am, I did.

16 Q You stayed with all of the items and  
17 the defendant until they arrived?

18 A Yes.

19 Q Did you then turn over the scene to the  
20 homicide detectives?

21 A It was their case, it was their scene.  
22 I still stayed by until they dismissed me.

23 Q That would be Homicide Detectives  
24 Vaccaro and Ramos?

25 A Yes, ma'am.

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1 Q Did the defendant ever tell you his  
2 name was James Chappell?

3 A No.

4 Q While waiting for the homicide  
5 detectives, did you notice any injuries to the defendant?

6 A Yes.

7 Q Do you recall what type of injuries?

8 A A cut.

9 Q Where?

10 A Fingers area. I don't recall which  
11 one.

12 Q Ultimately, did you transport the  
13 defendant to jail for homicide?

14 A No, I believe Detective Ramos did  
15 that.

16 MS. SILVER: Court's indulgence.

17 (Off the record discussion not reported.)

18 Q (BY MS. SILVER) One of the things you  
19 mentioned was how close this Lucky's was to the Ballerina  
20 Mobile Home. How close, can you describe to the jury?

21 A Approximately a quarter of a mile.  
22 Lucky sits at the intersection of Bonanza and Lamb on the  
23 east -- southeast corner.

24 Q Let me ask you this, Officer Osuch.

25 There's a piece of paper on a board. Could you make a very

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1 rough diagram of the distance using the roads?

2 A Yes, ma'am.

3 Q Thank you.

4 A Please bear with me, I'm not very  
5 artistic.

6 (Witness drawing.)

7 Lamb Boulevard. That would be north and to  
8 the south and then (Witness drawing.)

9 To the west up that way -- sorry about  
10 that -- and to the east to the bottom of the paper. And,  
11 okay, over here we have -- this would be Washington, which  
12 would be your major cross streets; again east to the top,  
13 west to the bottom.

14 Q Where is Nellis from there?

15 A Nellis will be down. I will draw a  
16 straight line because Nellis is the next major street to  
17 Lamb. So Nellis is at the bottom of the paper.

18 Over in this corner you have a 7-11,  
19 opposite corner is a vacant lot, and then you have a mobile  
20 home park, which is Ballerina here, and you have I believe  
21 another one here, which is Three Crowns or Crown Point --

22 Q Can you write Ballerina.

23 A Okay.

24 Q Actually maybe off to the side.

25 A (Witness drawing.)

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1 Q Thank you.

2 A And there's another one over in this  
3 area, which I believe is Three Crowns; I can't recall that  
4 one.

5 Now Lucky's Store sits on the corner of Lamb  
6 and Bonanza. The building sits off here and this is all  
7 parking lot and across the street from there you have the  
8 Vera Johnson Projects. My handwriting is terrible.

9 THE COURT: It's better than the Court's  
10 is.

11 THE WITNESS: So we're here and I would say  
12 about a quarter of a mile, give or take a tenth,  
13 two-tenths, up in that general vicinity.

14 Q (BY MS. SILVER) How long would it take  
15 you to walk from say the Vera Johnson Projects to Ballerina  
16 Mobile Home Park?

17 A Ten minutes max on a slow stroll.

18 Q Okay.

19 A That's the Ballerina right there.

20 Q Could you just put your name on the  
21 bottom, Officer Osuch?

22 A Yes.

23 Q And I ask that it be marked and  
24 admitted as the next exhibit in line.

25 MR. BROOKS: Which exhibit number, please?

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1 THE CLERK: It will be 77.

2 THE COURT: You can resume your seat.

3 MS. SILVER: Thank you.

4 Is that admitted then, your Honor?

5 THE COURT: Objection?

6 MR. BROOKS: No objection, your Honor.

7 THE COURT: It will be admitted.

8 MS. SILVER: Thank you. That would conclude  
9 my direct examination.

10 THE COURT: Cross.

11

12 CROSS EXAMINATION

13 BY MR. BROOKS:

14 Q Officer, you testified that Mr.

15 Chappell or Mr. Morrell or, whatever, was born on December  
16 27th, '68 or '67; is that correct?

17 A I don't recall his exact birth date,  
18 but I believe, yes.

19 Q If I show you the citation, would that  
20 refresh your recollection?

21 A Yes, sir.

22 He gave me the name of Merrell,

23 M-R-R-E-L-L. It is my handwriting. I was writing it  
24 down as he was talking to me. First name Ivri, I-V-R-I.

25 He gave a date of birth of 12/27/69.

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1 Q Thank you.

2 When you were there, you saw Mr. Chappell  
3 there. How long did you spend with him?

4 A The total time, sir?

5 Q Yes, sir.

6 A From start to finish?

7 Q Yes.

8 A About two and a half, three hours.

9 Q Did you notice if his eyes were  
10 glassy?

11 A Yes.

12 Q And you noticed that he had been  
13 stealing very sweet things, candy bars, liquor?

14 A Yes.

15 Q Does that mean anything at all to you?

16 A Yes, it does.

17 Q What does it mean to you?

18 A Either, A, he was coming down off a  
19 sugar high or he needed sugar.

20 Q What's a sugar high?

21 A When I worked down on the bike team, a  
22 lot of the dope users -- may I use that term?

23 Q Yes.

24 THE COURT: Sure.

25 THE WITNESS: Between their fixes would need

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1     sugar for whatever reason. I don't quite understand,  
2     whatever their body was, I'm not a chemist, but it seemed  
3     like they always needed something sweet between it.  
4     Whatever significance that is I couldn't tell you.

5                   Q     (BY MR. BROOKS) You were going to cite  
6     him for misdemeanor shoplifting, correct?

7                   A     Yes, sir.

8                   Q     And you had the opportunity of either  
9     just releasing him with the citation or taking him to the  
10    jail?

11                  A     No. I had the opportunity of citing  
12    him or taking him to the jail on the misdemeanor petty  
13    larceny. However, due to the fact that the paraphernalia  
14    was there, that would have been my decision, my arrest in  
15    that case, the State is the victim, I would book him on the  
16    paraphernalia charge. He still would have received his  
17    citation.

18                  Q     Was paraphernalia also a misdemeanor?

19                  A     Yes, sir, it was.

20                  Q     And the shoplifting is a misdemeanor?

21                  A     Yes, it is.

22                  Q     And that is the lowest level criminal  
23    offense in the system?

24                  A     Yes, sir, it is.

25                  Q     And, generally, when you cite or stop

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1 somebody for a misdemeanor, you have the option of either  
2 releasing them or taking them into custody?

3 A Releasing them with the citation,  
4 releasing them with a warning or taking them to custody,  
5 yes, sir.

6 Q Out of curiosity, is the misdemeanor  
7 the same thing as a traffic ticket or not?

8 A I believe we consider traffic tickets a  
9 citation now, but it's a misdemeanor.

10 Q Still a misdemeanor infraction,  
11 misdemeanor crime?

12 A Yes.

13 Q Do you recall the total value of the  
14 things he was taking there at the Lucky's?

15 A Not the total. Would you like an  
16 estimate?

17 Q Sure.

18 A From memory?

19 Forty dollars.

20 MR. BROOKS: Thank you.

21 No further questions.

22 . . .

23 . . .

24 . . .

25 . . .

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1 REDIRECT EXAMINATION

2 BY MS. SILVER:

3 Q How long were you a patrol officer in  
4 this area?

5 A I got transferred off the bikes in  
6 November, November of '94, and worked the northeast area  
7 command from November '94 to the present before I got  
8 transferred to the bureau, which would be May 20th of this  
9 year.

10 Q So were you familiar that Vera --

11 A Vera Johnson?

12 Q Yeah.

13 Was that a high narcotics area?

14 A High narcotic? How about I just say a  
15 high call for a service area.

16 Q Would it be fair to say that there are  
17 a lot of Coke users there, crack users?

18 A Yes, it's a safe assumption.

19 Q And so it would also be fair to say  
20 that, perhaps, some of the crack users there may have  
21 wanted something sweet to come down from?

22 A Yes.

23 Q If this defendant had not been a  
24 suspect and this homicide had not taken place and he had  
25 given you the name of James Chappell, would it be fair to

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1 say that you would have given him two misdemeanor tickets,  
2 one for petty larceny and one for drug paraphernalia?

3 A Yes.

4 Q You would have merely handed him two  
5 citations, been on your way to the next call?

6 A Yes, ma'am.

7 MS. SILVER: I don't have anything further  
8 from this witness.

9

10 RECROSS EXAMINATION

11 BY MR. BROOKS:

12 Q Officer, he was transported to jail at  
13 roughly 2:30; is that correct?

14 A I believe so, sir.

15 Q So roughly 2:30 in the afternoon on  
16 September 1st, almost 24 hours after the killing, he's  
17 roughly a quarter of a mile from the crime scene; is that  
18 correct?

19 A A quarter mile to the south, yes, sir.

20 MR. BROOKS: Thank you.

21 No further questions.

22 MS. SILVER: Your Honor, I apologize. I had  
23 forgotten something and it came to me right after I sat  
24 down.

25 THE COURT: Go ahead.

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1 MS. SILVER: You can see I had a pause there  
2 and I wouldn't have any opposition of him asking any  
3 questions from it.

4 THE COURT: You may proceed.

5 MS. SILVER: Thank you, your Honor.  
6

7 FURTHER REDIRECT EXAMINATION

8 BY MS. SILVER:

9 Q The questions I meant to ask you, which  
10 slipped my mind for a minute, you said you observed the  
11 defendant for how long?

12 A From the time I got the call until he  
13 was transported?

14 Q Yes.

15 A Approximately two and a half, three  
16 hours.

17 Q And in your 17 years as an officer,  
18 have you made a number of arrests for under the influence  
19 of a controlled substance?

20 A Yes, ma'am.

21 Q How many would you say?

22 A The bike team alone, maybe one a day,  
23 16 working days, let's say roughly a hundred, more to the  
24 lower end on that than to the higher end.

25 Q And that's maybe people you've

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1 arrested. You have seen many more than that as witnesses  
2 or just coming into contact?

3 A Yes.

4 Q It would be fair to say thousands of  
5 people under the influence?

6 A Yes.

7 Q What are some of the signs that you see  
8 when someone is under the influence?

9 A Incoherent, glassy eyes, fidgety, a lot  
10 of paranoia. No matter what drug I have come across, it  
11 seems like a lot of paranoia.

12 Q You say incoherent. What do you mean  
13 by that?

14 A It depends how much they have  
15 ingested. Just you can't talk to them, you can't converse  
16 with them, you can't get nothing from them.

17 Q They don't understand what you are  
18 saying and sometimes you don't understand what they are  
19 saying?

20 A That's correct, yes, ma'am.

21 Q Would that be fair to say?

22 A Yeah.

23 Q They are very confused people?

24 A It's almost like their own language.

25 Q Did the defendant have any problem

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1 understanding what you were saying to him?

2 A No, ma'am.

3 Q Did he understand the questions that  
4 you were posing to him?

5 A I believe he did, ma'am.

6 Q In fact, he gave you the name of Irvi  
7 Merrell; is that right?

8 A Irvi Marnell, whatever the citation  
9 says, ma'am, yes.

10 Q And he gave you a date of birth, as I  
11 believe you said 12/27/69?

12 A Yeah, on the citation was '69. I  
13 thought he said '67, '68, but, yes, he gave me a date of  
14 birth.

15 Q And, in fact, he asked you not to take  
16 him to jail; is that correct?

17 A Yes, ma'am.

18 Q Did he seem to be confused or  
19 incoherent at all to you?

20 A No, ma'am.

21 Q Did he seem to be talking in a language  
22 all of his own?

23 A No, ma'am.

24 MS. SILVER: I don't have any further  
25 questions.

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1

2

FURTHER RECROSS EXAMINATION

3

BY MR. BROOKS:

4

Q So obviously he was not in the middle

5

of a being high period?

6

A I would say --

7

Q From what you could tell?

8

A With all the sugar and the liquor I saw

9

there, he was probably coming down needing something. So

10

he was on a downwards slope or he was already cleaned out.

11

MR. BROOKS: Thank you.

12

No further questions.

13

THE COURT: May this witness be discharged?

14

MR. HARMON: Yes, your Honor.

15

THE COURT: All right, thank you, sir.

16

THE WITNESS: Thank you, your Honor.

17

THE COURT: We will call our noon recess at

18

this time, ladies and gentlemen of the jury. During the

19

recess, I would remind you it is your duty not to converse

20

among yourselves or with anyone else on any subject

21

connected with this trial or to read, watch, or listen to

22

any report of or commentary on this trial or any person

23

connected with this trial by any medium of information,

24

including, without limitation, newspapers, television, or

25

radio, and you are not to form or express an opinion on any

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1 subject connected with this case until it is finally  
2 submitted to you.

3 We will be at ease while you depart the  
4 confines of the courtroom. We will reconvene at 1:30.  
5 Please be downstairs at 1:25 ready to be collected.

6  
7 (At this time the jury left the courtroom.)

8  
9 THE COURT: We're outside the presence of  
10 the jury. I don't recall whether this point was made. I  
11 think it was made, at least tangentially with regard to the  
12 evidence of shoplifting. So I will just make one further  
13 observation on the record as to my rationale behind letting  
14 this evidence go to the jury.

15 One of the defense theories is that this was  
16 a crime that was committed in the heat of passion. This  
17 evidence -- the evidence of the shoplifting does confirm  
18 the State's theory that there was no remorse. Remorse  
19 would certainly be consistent with the defendant's theory  
20 and, thus, this shoplifting incident is evidence that he  
21 was simply going on with his usual life activities and it  
22 would tend to rebut the defendant's theory of the case.

23 With that, we will be in recess.

24  
25 (Off the record at 12 noon p.m.)

PATSY K. SMITH, OFFICIAL COURT REPORTER

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Patsy K. Smith  
PATSY K. SMITH, C.C.R. #190

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# EXHIBIT 135

13

1

## DISTRICT COURT

COUNTY OF CLARK, STATE OF NEVADA

FILED IN OPEN COURT

OCT 14 1996 19

LORETTA JOHNSON, CLERK

ORIGINAL

BY

Deputy

THE STATE OF NEVADA,

Plaintiff,

vs.

Case No. C131341

JAMES MONTELL CHAPPELL,

Defendant.

## REPORTER'S TRANSCRIPT

OF

JULY TRIAL, VOLUME IV, AFTERNOON SESSION

BEFORE THE HONORABLE A. WILLIAM MAUPIN, DISTRICT JUDGE

OCTOBER 11, 1996

1:30 P.M.

## APPEARANCES:

For the Plaintiff:

MELVYN T. HARMON, ESQ.  
Deputy District Attorney

&amp;

ABBI SILVER, ESQ.  
Deputy District Attorney

For the Defendant:

HOWARD S. BROOKS, ESQ.  
Deputy Public Defender

&amp;

WILLARD N. EWING, ESQ.  
Deputy Public Defender

REPORTED BY: Marcia Leonard, RPR, CCR No. 204

MARCIA J. LEONARD, CCR NO. 204, RPR

CE

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MARK WASHINGTON

Direct examination by Mr. Harmon:

19

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DINA FREEMAN

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MARCIA J. LEONARD, CCR NO. 204, RPR

1 CLARK COUNTY, NEVADA, FRIDAY, OCTOBER 11, 1996

2 \*\*\*\*\*

3  
4 THE COURT: All right. Counsel,  
5 stipulate to the presence of the defendant.

6 MR. HARMON: Yes.

7 MR. BROOKS: Defense will, your Honor.

8 THE COURT: Thank you.

9 Ladies and gentlemen, there was a little  
10 delay getting started because of some logistical  
11 issues. They were going over some evidence in here to  
12 try to streamline the proceedings a little bit. So  
13 sometimes a little delay here and there helps  
14 facilitate the presentation once we get in here.

15 I think that now we'll be able to make a  
16 better use of our time.

17 Mr. Harmon, can we proceed in the absence  
18 of Ms. Silver?

19 MR. HARMON: Yes. She'll be back  
20 shortly, your Honor.

21 THE COURT: Very well. The State of  
22 Nevada may continue with the presentation of its  
23 case-in-chief.

24 MR. HARMON: Thank you, Judge.

25 The next witness will be Monte Spoor.

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1 THE CLERK: Do you solemnly swear the  
2 testimony which you are about to give shall be the  
3 truth, the whole truth and nothing but the truth, so  
4 help you God?

5 THE WITNESS: Yes, I do.

6

7 MONTE SPOOR,

8

9 having been first duly sworn, testified as follows:

10

11 DIRECT EXAMINATION

12

13 BY MR. HARMON:

14 Q Will you state your name for the record?

15 A My name is Monte Wade Spoor. Last name  
16 spelling, S-p-o-o-r.

17 Q How do you spell your first name?

18 A Monte, M-O-N-T-E.

19 Q Mr. Spoor, what is your business or  
20 occupation?

21 A I'm employed as a senior crime scene  
22 analyst with the Las Vegas Metropolitan Police  
23 Department.

24 Q How long have you been employed with the  
25 Metropolitan Police Department?

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1 A Six years and ten months.

2 Q I take it you were employed with that  
3 department on September the 1st, 1995?

4 A Yes, sir, I was.

5 Q On that occasion did you respond to the  
6 area of Lucky's food store at 4420 East Bonanza  
7 Boulevard, and also to the area where a Toyota vehicle  
8 was parked at 507 North Lamb Boulevard in the Vera  
9 Johnson housing project?

10 A I responded to 4420 East Bonanza Road,  
11 and then to the Clark County Detention Center. I did  
12 not respond to the location of the vehicle.

13 Q Approximately what time did you respond  
14 to the store?

15 A I arrived at approximately 1310 hours,  
16 1:10 in the afternoon.

17 Q What was your purpose in going to the  
18 area of the Lucky's food market?

19 A I was summonsed there by Homicide  
20 Detective Jimmy Vaccaro who had a possible suspect in  
21 relation to the homicide that occurred on August the  
22 31st, and I was to go there and photograph the suspect  
23 and recover various items of evidence from the  
24 suspect.

25 Q Did you, in fact, photograph the suspect?

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1 A Yes, sir, I did.

2 Q Where were the photographs taken?

3 A They were taken in the rear area or the  
4 south storage area of the Lucky's food store at that  
5 location.

6 Q Did you take a facial shot of the  
7 suspect?

8 A Yes, sir, I did.

9 Q Did you also photograph other areas of  
10 the body?

11 A Yes, sir, I did.

12 Q Did you have a particular reason for  
13 photographing certain parts of the body?

14 A Yes, sir. There appeared to be injuries  
15 to the other parts of the body and we were just making  
16 notation of the injuries.

17 MR. HARMON: May I approach the witness,  
18 your Honor.

19 THE COURT: Yes.

20 BY MR. HARMON:

21 Q Analyst Spoor, you've mentioned that you  
22 took photographs of the suspect. What was the name of  
23 the suspect?

24 A His name was James Chappell.

25 Q And these pictures were taken on

MARCIA J. LEONARD, CCR NO. 204, RPR

1 September the 1st, 1995?

2 A That's correct.

3 Q At about what time did you photograph the  
4 suspect?

5 A It would probably have to be about ten to  
6 15 minutes after arriving.

7 Q So that would be approximately what time?

8 A Approximately 1325 hours.

9 Q Approximately 1:25?

10 A 1:25 p.m., yes, sir.

11 Q I'm showing you Proposed Exhibits 49 and  
12 51 through 54. Are you able to recognize the  
13 photographs that I have just given you?

14 A Yes, sir, I am.

15 Q Are these photographs taken by you in the  
16 Lucky's food store, 4420 East Bonanza Boulevard, on  
17 September the 1st, 1995?

18 A Yes, sir, they were.

19 Q Are they photographs of the defendant,  
20 Mr. Chappell, who is here in the courtroom?

21 A Yes, sir, they are.

22 Q Do they truly and accurately reflect his  
23 appearance and condition as of that day, September the  
24 1st, 1995?

25 A Yes, sir, they do.

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1 Q In addition to a facial photograph, have  
2 you photographed areas where it appears that there may  
3 have been scratches and specifically a cut or cuts on  
4 a small finger?

5 A Yes, sir, they do.

6 MR. HARMON: Your Honor, the State offers  
7 Proposed Exhibits 49 and 51 through 54.

8 MR. BROOKS: No objection.

9 THE COURT: They will be received in  
10 evidence.

11

12 (State's Exhibits 49, 51-54  
admitted into evidence.)

13

14 MR. HARMON: Thank you.

15 BY MR. HARMON:

16 Q Analyst Spoor, you also mentioned that  
17 you were to take custody and book anything of  
18 evidentiary value that the defendant had on his  
19 person?

20 A That's correct.

21 Q Did you also photograph certain areas --  
22 certain items that had been removed from pockets or  
23 the person of the defendant?

24 A Yes, sir, I did.

25 Q I'm showing you Proposed Exhibit 55.

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1 Do you recognize that picture?

2 A Yes, sir, I do.

3 Q Did you take the photograph?

4 A Yes, sir, I did.

5 Q What is depicted in Proposed Exhibit 55?

6 A What is depicted is a plastic case  
7 containing four social security cards with four  
8 separate names, a small piece of metal, a cigarette  
9 lighter, a small tube, a white pill, a rolled up  
10 matchbook and a settle of keys.

11 Q Did you later learn in the investigation  
12 that the set of keys included the ignition key to a  
13 Toyota Corolla?

14 A That's correct. I would also like to add  
15 that that is a box cutter. There should have been two  
16 photographs taken there.

17 Q What is a box cutter?

18 A It is something that you can use to open  
19 a box. It contains a blade such as razor blade which  
20 can be detracted and retracted and used to cut a box  
21 open.

22 Q Was it your understanding that the box  
23 cutter had also been taken from the person of the  
24 defendant, Mr. Chappell?

25 A Yes, sir.

MARCIA J. LEONARD, CCR NO. 204, RPR



1 Q You also have referred to the plastic  
2 container which has in it, it appears, a social  
3 security card or cards?

4 A Yes, sir, four separate social security  
5 cards.

6 Q To your knowledge, were they also  
7 recovered from the suspect, the defendant in this  
8 case, Mr. Chappell?

9 A Yes, sir, they were.

10 MR. HARMON: Your Honor, the State offers  
11 Propose Exhibit 55.

12 MR. BROOKS: No objection.

13 THE COURT: Same will be received in  
14 evidence.

15

16 (State's Exhibit 55  
admitted into evidence.)

17

18 MR. HARMON: Thank you.

19 BY MR. HARMON:

20 Q Did you at the request of the office of  
21 the district attorney bring certain items of evidence  
22 to court with you today?

23 A Yes, I did.

24 Q Did those items include the social  
25 security cards?

MARCIA J. LEONARD, CCR NO. 204, RPR

1 A Yes, sir, they did.

2 MR. HARMON: Your Honor, may we have the  
3 court's indulgence.

4 BY MR. HARMON:

5 Q Analyst Spoor, I'm showing you Proposed  
6 Exhibit 78.

7 Do you recognize the evidence envelope?

8 A Yes, sir, I do.

9 Q Is this a container into which you placed  
10 the plastic bag and four social security cards?

11 A Yes, sir, it is.

12 Q Is it in a sealed condition at the  
13 present time?

14 A Yes, sir, it is.

15 Q I'm passing you a pair of scissors the  
16 clerk has furnished. Will you cut the envelope open  
17 leaving the seal intact.

18 Please remove the contents now describing  
19 for the record what you have removed.

20 A I removed a small plastic case containing  
21 four social security cards in the name of James Monte  
22 Panos, Deborah Ann Panos, Anthony Michael Panos and  
23 Chantel Latrese Panos.

24 Q Are these the four social security cards  
25 which you recovered at the Lucky's supermarket at 4420

MARCIA J. LEONARD, CCR NO. 204, RPR

JChapell-8JDC1326

1 East Bonanza Boulevard, September the 1st, 1995?

2 A Yes, sir, they are.

3 Q Was it your understanding that these are  
4 also the same cards which were taken from the person  
5 of the defendant, Mr. Chappell?

6 A Yes, sir.

7 Q Are they in substantially the same  
8 condition now as they were on the dates that you  
9 recovered them?

10 A Yes, sir, with the additional of my first  
11 initial, P number, and last initial to each item of  
12 evidence.

13 MR. HARMON: Your Honor, may we have the  
14 plastic holder and four social security cards marked  
15 as Proposed Exhibit 78A.

16 THE COURT: Yes.

17

18 (State's Exhibit 78A  
19 marked for identification.)

20 MR. HARMON: The State moves at this time  
21 for the admission of the envelope, Proposed 78, and  
22 the cards and the holder, Proposed 78A.

23 MR. BROOKS: No objection.

24 THE COURT: It will be received in  
25 evidence.

MARCIA J. LEONARD, CCR NO. 204, RPR

1 (State's Exhibit 78, 78A  
2 admitted into evidence.)

3 MR. HARMON: Thank you.

4 BY MR. HARMON:

5 Q You've also mentioned that in addition to  
6 going to the store that you responded to the Clark  
7 County Detention Center?

8 A That's correct.

9 Q Did you recover at that location certain  
10 of the articles of clothing worn by James Chappell at  
11 the time of his arrest?

12 A Yes, sir, I did.

13 Q Did you recover his clothes and shoes?

14 A I recovered his clothing. I believe his  
15 shoes were recovered at the Vons -- or, excuse me, the  
16 Lucky's.

17 Q At the Lucky's did you book the footwear  
18 worn by the defendant?

19 A Yes, sir.

20 Q Did you bring one of those items to  
21 court?

22 A Yes, sir, I did.

23 Q Was it the right boot or shoe?

24 A The right shoe, yes, sir.

25 Q Did you see evidence of any blood like

MARCIA J. LEONARD, CCR NO. 204, RPR

1 substance on the shoe?

2 A I believe so.

3 Q Analyst, I'm showing you an evidence bag  
4 marked as Proposed 79.

5 Do you recognize the bag as a container  
6 into which you placed an item of evidence?

7 A Yes, sir, I do.

8 Q What did you put inside?

9 A I put inside one black boot, Fila work  
10 boot, right foot.

11 Q Now, Fila is the brand?

12 A Yes, sir.

13 Q You have described this as the right  
14 shoe. I assume you impounded the left boot or shoe as  
15 well?

16 A Yes, sir.

17 Q But you were asked simply to bring the  
18 right boot to court; is that correct?

19 A That's correct.

20 Q Is the bag sealed at the present time?

21 A Yes, sir, it is.

22 Q Using the scissors once again that the  
23 clerk has given us, will you cut the bag open leaving  
24 any seals intact and then remove the contents.

25 For the record have you removed the right

MARCIA J. LEONARD, CCR NO. 204, RPR

1 shoe worn by the defendant when you encountered him at  
2 the Lucky's foot store September the 1st, 1995?

3 A Yes, sir, I did.

4 Q Was he wearing the shoe when you first  
5 saw him?

6 A I do not believe that he was wearing the  
7 shoe.

8 Q Where was the shoe when you first  
9 acquired it?

10 A I believe the loss prevention specialist  
11 for Lucky's food market had the shoe.

12 Q And you got it from them?

13 A Yes, sir.

14 Q Was it represented that this was a shoe  
15 worn by the defendant?

16 A Yes, sir.

17 MR. HARMON: Your Honor, may we have the  
18 shoe marked as Proposed Exhibit 79A.

19 THE COURT: Yes.

20

21 (State's Exhibit 79A  
22 marked for identification.)

23 BY MR. HARMON:

24 Q Is what will be marked as Proposed  
25 Exhibit 79A, the right boot or shoe you recovered and

MARCIA J. LEONARD, CCR NO. 204, RPR

1 is it in substantially the same condition now as it  
2 was when you acquired it September the 1st, 1995?

3 A Yes, sir, it is with the exception of a  
4 business card from Terry Cook being attached to the  
5 boot.

6 Q Is Terry Cook a criminalist at the Las  
7 Vegas Metropolitan Police Department crime lab?

8 A Yes, he is.

9 Q Does it appear that he has examined the  
10 right boot subsequent to your impounding this as  
11 evidence?

12 A It looks like he has examined it because  
13 he has attached his card to it.

14 Q To your knowledge if there is evidence of  
15 a blood-like substance on an object would Mr. Cook be  
16 one of the persons responsible for further analysis?

17 A Yes, sir, he would.

18 MR. HARMON: Your Honor, the State offers  
19 Proposed Exhibits 79 and 79A.

20 MR. BROOKS: No objection.

21 THE COURT: It will be received in  
22 evidence.

23  
24 (State's Exhibit 79, 79A  
25 admitted into evidence.)

MARCIA J. LEONARD, CCR NO. 204, RPR

1 MR. HARMON: May I again approach the  
2 witness, your Honor.

3 BY MR. HARMON:

4 Q Analyst Spoor, did you prepare an impound  
5 report which lists all of the items which were  
6 potentially of evidentiary value which you recovered  
7 September the 1st, 1995?

8 A Yes, sir, I did.

9 Q This has been marked by the clerk as  
10 Proposed Exhibit 63 and consists of four pages.

11 Is that an impound report you prepared in  
12 connection with this case?

13 A Yes, sir, it is.

14 Q Does it list all the items that you  
15 recovered both at the store and at the Clark County  
16 Detention Center?

17 A Yes, sir, it does.

18 Q Is it a true and correct copy of your  
19 original impound report?

20 A Yes, sir, it is.

21 MR. HARMON: Your Honor, the State offers  
22 Proposed Exhibit 63.

23 MR. BROOKS: We'll submit the question to  
24 the court.

25 THE COURT: It's admitted.

MARCIA J. LEONARD, CCR NO. 204, RPR



1 (State's Exhibit 63  
2 admitted into evidence.)

3 MR. HARMON: That concludes direct,  
4 your Honor.

5 MR. BROOKS: No cross, your Honor.

6 THE COURT: May this witness be  
7 discharged?

8 MR. HARMON: Yes, your Honor.

9 THE COURT: Thank you, sir. You may step  
10 down.

11 Call your next witness.

12 MR. HARMON: Mark Washington.

13 THE CLERK: Do you solemnly swear the  
14 testimony which you are about to give shall be the  
15 truth, the whole truth and nothing but the truth, so  
16 help you God?

17 THE WITNESS: I do.

18  
19 MARK WASHINGTON,  
20 having been first duly sworn, testified as follows:

21  
22 DIRECT EXAMINATION

23 BY MR. HARMON:

24 Q Will you state your name for the record?

25 A Sure, Mark Washington.

MARCIA J. LEONARD, CCR NO. 204, RPR

JChappell-8JDC1333

JChapell-8JDC1334

1 Q Mr. Washington, what is your business or  
2 occupation?

3 A I am a crime scene analyst for the Las  
4 Vegas Metropolitan Police Department.

5 Q How long have you worked with the Las  
6 Vegas Metropolitan Police Department?

7 A Just a little over two years.

8 Q Were you employed with that department on  
9 August the 31st, 1995?

10 A Yes, I was.

11 Q Are you one of the crime scene analysts  
12 who responded to the Ballerina Mobile Home Park to the  
13 location of a homicide?

14 A That's correct.

15 Q Was the victim identified as Deborah Ann  
16 Panos?

17 A That's my understanding.

18 Q Were you involved in collecting items  
19 which may have had evidentiary value --

20 A Yes.

21 Q -- at the crime scene?

22 A That's correct.

23 Q Was that 839 North Lamb Boulevard, Space  
24 125?

25 A That's correct.

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1 Q In connection with impounding the  
2 evidence, did you prepare an impound report which  
3 lists every item that you recovered?

4 A That's correct.

5 Q Did it also describe the location where  
6 you found the item?

7 A Yes.

8 MR. HARMON: May we have the court's  
9 indulgence.

10 BY MR. HARMON:

11 Q Analyst Washington, I'm showing you a  
12 three page document marked as Proposed Exhibit 61.  
13 Are you able to identify what this is?

14 A This is the impound evidence sheet that  
15 you spoke of just a second ago.

16 Q Is it a true and correct copy of the  
17 original?

18 A Yes, it is.

19 Q Does it list every item of evidence which  
20 you recovered from the crime scene in this case?

21 A Yes.

22 Q Was that done on August the 31st, 1995?

23 A Yes.

24 MR. HARMON: Your Honor, the State offers  
25 Proposed Exhibit 61.

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1 MR. BROOKS: No objection, your Honor.

2 THE COURT: The same will be received in  
3 evidence.

4  
5 (State's Exhibit 61  
6 admitted into evidence.)

7 MR. HARMON: Thank you, your Honor.

8 BY MR. HARMON:

9 Q The following day, September the 1st,  
10 1995, did you, in connection with your duties in the  
11 same case, the homicide occurring August the 31st,  
12 respond to the Vera Johnson housing project in the  
13 area of 507 North Lamb Boulevard in Las Vegas?

14 A Yes, I did.

15 Q Did you take photographs in that area of  
16 a Toyota Corolla vehicle which did not have license  
17 plates?

18 A That's correct.

19 MR. HARMON: May I approach the witness,  
20 Judge.

21 THE COURT: Sure.

22 BY MR. HARMON:

23 Q I am showing you Exhibit 56 and Proposed  
24 Exhibits 57 through 60. Will you examine the  
25 photographs in that series and tell us if they appear

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1 to be photographs taken by you?

2 A I took these photographs, uh-huh, and  
3 they depict the vehicle which I located that day.

4 Q Do they show the vehicle in exactly the  
5 location where you observed it to be September the  
6 1st, 1995?

7 A That's correct.

8 Q Was this in an area which was readily  
9 visible from the street?

10 A No.

11 Q Describe where it was in relation to the  
12 street?

13 A There was a parking lot that was a  
14 circular in shape, horseshoe in shape, and one of the  
15 buildings was here in that parking lot. And then  
16 behind the building, actually in the commons area of  
17 the grass, is where this vehicle was located.

18 Q Are these photographs a true and accurate  
19 representation of the appearance and location of the  
20 Toyota Corolla as you observed it September the 1st,  
21 1995?

22 A Yes.

23 MR. HARMON: Your Honor, 56 is already in  
24 evidence. The State now offers Proposed 57 through  
25 60.

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1 MR. BROOKS: No objection.

2 THE COURT: They will be received in  
3 evidence.

4

5 (State's Exhibits 57-60  
6 admitted into evidence.)

7 BY MR. HARMON:

8 Q Analyst Washington, did there come a time  
9 that you were given a set of keys by Homicide  
10 Detective Jimmy Vaccaro?

11 A Yes, there was.

12 Q Did you take those keys and attempt to  
13 verify if the ignition key to the vehicle depicted in  
14 Exhibits 56 through 60 was in the set of keys?

15 A Could you repeat that question?

16 Q Yes. I'm asking you if you had occasion  
17 to use any of the keys that were given you by  
18 Detective Vaccaro on the vehicle depicted in Exhibits  
19 56 through 60?

20 A Yes, I did.

21 Q Tell us what you did?

22 A I took the key that he gave me that day,  
23 and I took it and I drove the car from the back of the  
24 lot onto the tow yard ramp-styled tow truck because  
25 the tow truck wasn't able to go back in the common

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1 grass area where the vehicle was located.

2 Q So you drove the vehicle from the common  
3 grass area to where the tow truck was at?

4 A That's correct. And which was in the  
5 U-shaped parking lot.

6 Q And you're saying that you used a key  
7 provided to you by Detective Vaccaro?

8 A That's correct.

9 Q Was the vehicle shown in Exhibits 56  
10 through 60 unlocked at the location where you saw it?

11 A I believe so, yes.

12 Q Was it an ignition key that was given to  
13 you by the detective?

14 A Yes, it is.

15 Q To your knowledge where was the vehicle  
16 shown in the Photographs 56 through 60 taken from the  
17 location in the project area of North Lamb?

18 A That would be the northwest area of the  
19 project.

20 Q Was it taken somewhere after that for  
21 subsequent examination?

22 A Was the --

23 Q The vehicle.

24 A Yes, it was. After it was placed on the  
25 tow truck, it was taken to the crime lab and examined

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1 there.

2 Q Did you become involved in examining the  
3 vehicle further at the crime lab?

4 A Yes, I was.

5 Q Did you end up recovering anything that  
6 you felt might have evidentiary value?

7 A Yes, I did.

8 Q What did you recover?

9 THE WITNESS: Your Honor, may I refer to  
10 my notes.

11 THE COURT: Yes.

12 THE WITNESS: Thank you.

13 BY MR. HARMON:

14 Q Perhaps we could do it this way. I'm  
15 showing you Proposed Exhibit 65. Is this a copy of  
16 your impound report which lists all items recovered  
17 from the car?

18 A Yes, it is.

19 Q Is this the same car shown in the  
20 photographs 56 through 60?

21 A Yes, it is.

22 Q Is it a true and correct copy?

23 A Yes, it is.

24 MR. HARMON: Your Honor, the State offers  
25 the impound report at this time, Proposed 65.

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1 MR. BROOKS: No objection.

2 THE COURT: Same will be received in  
3 evidence.

4

5 (State's Exhibit 65  
6 admitted into evidence.)

7 BY MR. HARMON:

8 Q If you will, Analyst Washington, by  
9 referring to Exhibit 65, tell us what you recovered  
10 from the car?

11 A I recovered a blood-like substance and  
12 control.

13 Q Where did you find that?

14 A That was from the interior rear lower  
15 trunk frame near the right rear brake light of that  
16 same vehicle.

17 Q So you are talking about a location in  
18 the trunk area of the car --

19 A Right.

20 Q -- but inside the trunk?

21 A Well, it was the trunk frame. There is  
22 that little piece of metal and frame. Basically in  
23 the trunk, yeah.

24 Q But it looked like blood to you and  
25 that's why you recovered the substance?

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1 A That's correct.

2 Q What was your procedure in recovering the  
3 blood like substance?

4 A What you do is you take a Q tip, and you  
5 moisten it with distilled water and you rub it in the  
6 area.

7 Then you take the Q tip and you put it  
8 into a vial and then close the vial; and then, of  
9 course, there is the other side which is the control  
10 part of the same evidence item in which you take  
11 another Q tip, squirt distilled water onto it, and  
12 then rub it in the area close to that but not touching  
13 any of the blood and placing that into a vial and that  
14 becomes that one item.

15 Q You said this is a control item?

16 A That's correct.

17 Q What do you mean by that?

18 A Well, sometimes the substance can be  
19 affected by the surface that it's on.

20 Q The suspect substance?

21 A Yes. Right. So what that does is it  
22 helps people who analyze those substance determine the  
23 substance from the surface of the substance that it's  
24 on.

25 So if, say, it had landed on a recently

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1 fertilized -- say, you're taking a sample off a  
2 recently fertilized grass next to a sidewalk and the  
3 fertilizer was on the concrete and you were taking a  
4 substance off that concrete, and fertilizer was in  
5 that substance, then the control could help determine  
6 those type things.

7 Q Thank you. Will you indicate the other  
8 items that you recovered from the car, please.

9 A Sure. One black cloth steering wheel  
10 cover. The seat cover from the driver's side. A  
11 white handled serrated-edge knife which was in the  
12 glove box, and a piece of paper which depicted a  
13 change of court date with the name James M. Chappell  
14 on it, and that was from the vehicle, also from the  
15 trunk of the vehicle.

16 Q At the request of the district attorney's  
17 office, did you bring to court the envelope and  
18 container into which the sample of the blood-like  
19 substance was placed?

20 A Yes, I did.

21 MR. HARMON: Will you produce that,  
22 please. Thank you.

23 Your Honor, may we have this envelope  
24 marked as the State's next in order.

25 THE COURT: Yes.

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1 (State's Exhibit 80  
2 marked for identification.)

3 BY MR. HARMON:

4 Q Analyst Washington, the clerk has now  
5 marked the envelope that you handed me as Proposed  
6 Exhibit 80.

7 Is this the envelope into which you  
8 placed the sample of the blood-like substance  
9 recovered from the rim of the trunk that is from the  
10 automobile portrayed in the photographs, Exhibits 56  
11 through 60?

12 A Yes, it is.

13 Q Is it in a sealed condition at the  
14 present time?

15 A Yes, it is.

16 Q Can you tell by looking at the seals if  
17 there has been subsequent examination on this item?

18 A Yes, I can. This blue label indicates  
19 that it was opened and then re-sealed.

20 Q Leaving the seals intact will you cut the  
21 envelope open with the scissors the clerk has  
22 furnished?

23 A Sure.

24 Q Will you now remove the contents  
25 describing for the record what you have removed?

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1 A This is the vial which contains the  
2 control of that item that I just removed from there.

3 Q Does it contain -- it is just the control  
4 which is still here, sir?

5 A Yes, uh-huh.

6 Q So you don't really know what happened to  
7 the actual sample --

8 A No.

9 Q -- from the swab after you placed it  
10 inside?

11 A No, I do not.

12 Q Can you tell by looking at any additional  
13 markings or seals who has examined?

14 A It appears to me it's a department  
15 serologist, Terry --

16 Q Terry Cook?

17 A Yes, Terry Cook examined this, and his  
18 initials are here and also on the side here.

19 Q Is Mr. Cook a criminalist who has a  
20 specialty in serology?

21 A Yes.

22 Q And he works for the Las Vegas  
23 Metropolitan Police Department crime lab.

24 A That's correct.

25 Q When you originally recovered the blood

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1 samples, was there a second swab which had the  
2 blood-like substance on it inside of the bottle?

3 A There would only be one sample here. One  
4 swab here, and one swab here. This would be  
5 containing the sample and this would be containing the  
6 control.

7 Q So the control swab sample is still there  
8 but the blood like substance swab is now missing?

9 A That's correct.

10 Q And there is additional writing upon the  
11 vial?

12 A Yes.

13 Q Except for those differences, is this, in  
14 fact, the vial into which you placed both the sample  
15 of the blood like substance and the control sample?

16 A Yes, it is.

17 Q And besides the differences that you have  
18 already explained is it in substantially the same  
19 condition otherwise?

20 A Yes.

21 MR. HARMON: Your Honor, we would like to  
22 have the vial marked as Proposed Exhibit 80A.

23 THE COURT: That will be the order.

24

25

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1 (State's Exhibit 80A  
2 marked for identification.)

3 MR. HARMON: Nothing further.

4 MR. BROOKS: No questions, your Honor.

5 THE COURT: May this witness be  
6 discharged.

7 MR. HARMON: Yes.

8 THE COURT: Thank you, sir. You may step  
9 down.

10 Call your next witness.

11 MS. SILVER: Your Honor, the State would  
12 call Dina Freeman.

13 THE CLERK: Do you solemnly swear the  
14 testimony which you are about to give shall be the  
15 truth, the whole truth and nothing but the truth, so  
16 help you God?

17 THE WITNESS: I do.

18

19 DINA FREEMAN,

20 having been first duly sworn, testified as follows:

21

22 DIRECT EXAMINATION

23 BY MS. SILVER:

24 Q Can you please state your name and spell  
25 it for the record?

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- 1 A My name is Dina Freeman, D-I-N-A,  
2 Freeman, F-R-E-E-M-A-N.
- 3 Q Miss Freeman, how old are you?
- 4 A 35.
- 5 Q And what city do you live in?
- 6 A Tucson.
- 7 Q Tucson, Arizona?
- 8 A Yes.
- 9 Q What do you do in Tucson Arizona?
- 10 A I'm a police dispatcher.
- 11 Q For what department?
- 12 A The Tucson Police Department.
- 13 Q How long have you been a dispatcher with  
14 the Tucson Police Department?
- 15 A I have been there 12 years.
- 16 Q And during your employment did you become  
17 familiar with a person by the name of Deborah Panos?
- 18 A Yes, I did.
- 19 Q Approximately when did you meet her?
- 20 A Approximately five years ago, six years  
21 ago maybe.
- 22 Q And how did you meet her?
- 23 A Working. I worked with her.
- 24 Q What did she do there?
- 25 A She was a police service operator.

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1 Q Is that a 911 service operator?

2 A Yes, that is.

3 Q How does that work in comparison to your  
4 John?

5 A She takes 911 calls and sends them to me,  
6 and I send out a police officer.

7 Q Are you in the same vicinity or were you  
8 in the same vicinity as her when you worked together?

9 A Yes, I was.

10 Q And how is that?

11 A Usually she'd sit right behind me.

12 Q So you generally worked in the same room?

13 A Yes, we do.

14 Q And through your employment did you  
15 become friends with Deborah Panos?

16 A Yes, we did.

17 Q How long were you her friend?

18 A Shortly after she started.

19 Q What types of things would you do  
20 together as friends?

21 A We did everything. We went to dinner,  
22 movies, fair. She would come over to my house quite a  
23 bit.

24 Q Do you have children?

25 A I have a daughter.

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1 Q I'm sorry. I didn't hear that?

2 A I have a daughter.

3 Q And how old is your daughter?

4 A She's 11.

5 Q Are you also expecting a child right now?

6 A Yes, I am.

7 Q Would your daughter play with her  
8 children?

9 A Not a lot. Usually it was just Debbie  
10 that came to my house. So my daughter knew her pretty  
11 well.

12 Q And you mentioned that she has children.  
13 Are you aware of how many children that she has?

14 A Yes.

15 Q How many?

16 A She has three.

17 Q And what are their names?

18 A J.P., Anthony and Chantell.

19 Q J.P. is short for --

20 A James Panos.

21 Q When would it be fair to say that Debbie  
22 became one of your best friends?

23 A Yes, she did.

24 Q And would it be fair to say that you were  
25 also one of Debbie's best friends?

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1 A Yes.

2 Q And through your relationship with her,  
3 did you know a person by the name of James Chappell?

4 A Yes.

5 Q Or Chappell?

6 A Yes, I did.

7 Q Do you see him here in court today?

8 A Yes, I do.

9 Q Could you please point to him and  
10 identify an article of clothing for the record?

11 A He's sitting right over there in the  
12 middle with a gray suit on, no shoes.

13 MS. SILVER: Your Honor, may the record  
14 reflect that the witness has identified the defendant.

15 THE COURT: Yes.

16 BY MS. SILVER:

17 Q Thank you. Did Deborah Panos live -- who  
18 did she live with when she was in Tucson?

19 A She lived with James and her children.

20 Q And did they live in a house or a  
21 trailer?

22 A She lived in a trailer prior to them  
23 moving here.

24 Q And about -- do you remember about what  
25 date it was that they moved here to Las Vegas?

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1 A It was in September. I don't remember  
2 the exact date.

3 Q And what year was that?

4 A '94, I believe.

5 Q So up until September of 1994 -- well,  
6 from the time that you met her, would it be fair to  
7 say, 1990, in that area?

8 A Yes. Pretty close.

9 Q So up from 1990, or in that area, up  
10 until she left in September of 1994, you were friends  
11 with her and you worked with her?

12 A Yes.

13 Q During the time that you worked with  
14 Deborah, did she ever come into work with injuries?

15 A Yes, she did.

16 Q What types of injuries?

17 A She would have bruises on her face or on  
18 her arm.

19 Q And what would she do in regards to those  
20 injuries on her face?

21 A She would wear heavier make-up in one  
22 area. It wasn't real even all the time.

23 Q Did you have discussions with her about  
24 how she received these bruises?

25 A Yes, I did.

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1 Q Did you also have discussions with her  
2 regarding her relationship with the defendant?

3 A Yes, I did.

4 Q During the time period that you knew  
5 Debbie, approximately that four year period, did  
6 Debbie have more than one job?

7 A Yes, she did.

8 Q Sometimes she had two jobs?

9 A Yes.

10 Q What were her other jobs?

11 A There was one of them that I remember she  
12 worked at a Sears cataloging type place for a while.  
13 And she had another one, but I can't remember where it  
14 was that she worked.

15 Q And that was also in addition to her  
16 working at the police department as well?

17 A Yes.

18 Q To your knowledge did the defendant have  
19 a job?

20 MR. BROOKS: Objection, irrelevant.

21 THE COURT: Overruled.

22 THE WITNESS: No.

23 BY MS. SILVER:

24 Q Were you aware of about how old Debbie  
25 was when she met the defendant?

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1 A Yes.

2 Q And how old was that?

3 A I believe that she told me that it was 15  
4 or 16. She was in high school.

5 MR. BROOKS: I'm going to object to  
6 hearsay, your Honor.

7 THE COURT: Overruled.

8 BY MS. SILVER:

9 Q You stated that she was about 15 or 16  
10 but she was in high school?

11 A She was in high school, yes.

12 Q And that's when she first began dating  
13 the defendant?

14 A Yes.

15 Q Were you aware of where she and the  
16 defendant were from originally?

17 A Yes.

18 Q Where was that?

19 A She was from --

20 MR. BROOKS: I'm going to object to any  
21 testimony where she is simply relating information  
22 related to her by Deborah Panos. It's clearly  
23 hearsay.

24 THE COURT: Not necessarily. It's not  
25 necessarily that it be admissible. There is an

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1 exception under which this is admissible.

2 Miss Silver.

3 MS. SILVER: I believe that it's the  
4 state of mind of the victim in this case.

5 MR. BROOKS: State of mind of the victim  
6 is not a hearsay exception.

7 THE COURT: NRS 51.015 states, "A  
8 statement of the declarant's then existing state of  
9 mind, emotion, sensation, or physical condition, such  
10 as intent, plan, motive, design, mental feelings,  
11 pain, and bodily health is not admissible under the  
12 hearsay rule."

13 Overruled.

14 MR. BROOKS: There is case law that --

15 MS. SILVER: I'm not going to go into  
16 anything else other than the Michigan.

17 THE COURT: That's a statement of family  
18 history and, therefore, it's admissible.

19 All right. Go ahead.

20 MR. BROOKS: May I make a record on this,  
21 please, with regards to the present sense impression.

22 MS. SILVER: It's not present sense  
23 impression. It's a state of mind.

24 MR. BROOKS: Correct. The case law says  
25 the victim's state of mind is relevant only if we're

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1 discussing self-defense, accident or suicide. If the  
2 victim's state of mind is the issue here --

3 THE COURT: What is that?

4 MR. BROOKS: There is a case State v  
5 Shultz, 616 P 2d, 388.

6 THE COURT: Is that a Nevada Supreme  
7 Court case?

8 MR. BROOKS: Yes, it is.

9 MS. SILVER: I'm familiar with that case  
10 as well, your Honor. And I can state to the court  
11 what the facts of that case were very briefly.

12 MR. BROOKS: I don't have a copy of the  
13 case. I just have a cite, I believe. However, in  
14 this case, it's our position that she cannot testify  
15 to the state of mind of the victim unless the issues  
16 are self-defense, accident or suicide.

17 MS. SILVER: That's not what that case  
18 says.

19 THE COURT: I agree. Overruled. Go  
20 ahead.

21 MS. SILVER: Thank you.

22 THE WITNESS: I forgot the question now.

23 BY MS. SILVER:

24 Q Were you aware of where the defendant and  
25 the victim were originally from?

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1 A Yes, she was from Lansing, Michigan.

2 Q And were you aware of why she moved to  
3 Arizona?

4 A Yes.

5 Q And why was that?

6 A Her mother had moved out here because her  
7 stepfather had real bad emphysema and needed to be in  
8 Arizona.

9 Q So she moved to Arizona to be close to  
10 her mother?

11 A Yes.

12 Q During the time in 1994 were there times  
13 that Deborah stayed with you at your home?

14 A Yes.

15 Q Would she stay with the children as well?

16 A When she came to my home?

17 Q Yes.

18 A No, she would be alone.

19 Q Directing your attention between the time  
20 period of February of 1994 and September of 1994 do  
21 you recall getting a phone call from Deborah Panos?

22 A Yes, I do.

23 Q And one in particular that perhaps caused  
24 you concern?

25 A Yes.

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1 Q And when you -- did she call you or did  
2 you call her?

3 A No, she called me.

4 Q And what was her demeanor like on the  
5 phone?

6 A She was upset, crying.

7 Q And did she tell you why she was calling  
8 you?

9 A Yes, she did.

10 Q Why was that?

11 A She said that her and James were  
12 fighting.

13 Q Did she say that he had done something to  
14 her?

15 MR. BROOKS: I'm going to renew my  
16 objection, your Honor, as hearsay.

17 THE COURT: To lay a foundation to this  
18 pursuant to the court's previous order --

19 MS. SILVER: Your Honor --

20 THE COURT: You have to let me finish,  
21 please.

22 MS. SILVER: I'm sorry.

23 THE COURT: -- you have to establish some  
24 time frame in which the event occurred, the events  
25 described occurred, and when the statement was heard.

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1 MS. SILVER: I believe that I asked you  
2 just a moment ago was this between February of 1994  
3 and September of 1994.

4 THE COURT: I'm talking about the time  
5 frame within which the event described occurred and  
6 when it was relayed to the witness.

7 MS. SILVER: Okay.

8 BY MS. SILVER:

9 Q Did she tell you that something had just  
10 occurred?

11 A Yes, she did.

12 Q And could you hear the defendant in the  
13 background?

14 A Yes, I could.

15 Q Did you recognize his voice?

16 A Yes, I did.

17 MR. BROOKS: Renew the objection as  
18 speculation and hearsay.

19 THE COURT: Overruled.

20 BY MS. SILVER:

21 Q And, of course, you had met him, at least  
22 you had known him for about four years previous to  
23 this date?

24 A Yes.

25 Q And so you recognized his voice in the

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1 background?

2 A Yes, I did.

3 Q And to your recollection, do you remember  
4 if you could hear the children at all?

5 A No, I could not. It was late at night.  
6 We had just gotten off work at 11:00.

7 Q And at that time what did she tell you  
8 happened?

9 A She told me that they had had a fight,  
10 and I could hear him in the background.

11 Q And what did you hear -- how was he  
12 speaking, can you describe that?

13 A His voice was raised at her also.

14 Q And what did he say?

15 A The part that I heard him say was "I  
16 don't care what you do in front of" -- no, he said, "I  
17 don't care what you do, but you don't fuck around in  
18 front of my kids because I will kill you."

19 Q Did he say that he would kill her ass?

20 A Yes.

21 Q Did you hear him call her any names?

22 A Yes, I did.

23 Q Do you remember specifically what types  
24 of names he was calling her?

25 A There was so many that I couldn't

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1 pinpoint exactly which ones they were.

2 Q Can you give us an example of what types  
3 of names he was saying?

4 A He was calling her slut, white bitch, she  
5 was a whore, that type stuff.

6 Q Was there a time period prior to this  
7 phone call that the defendant was not living in  
8 Tucson?

9 A Yes.

10 Q Do you know where she had gone?

11 A To Michigan.

12 Q And would it be fair to say that when he  
13 returned that's when this phone call occurred?

14 A Yes, it was the night that he came back.

15 Q During this time period that you were  
16 friends with Debbie back then, to your knowledge was  
17 she seeing anyone?

18 A She had met a guy. They were not really  
19 dating. They were friends. She spent the majority of  
20 her time at my house so they didn't really have time  
21 to date, but that's what the argument was about.

22 Q But it was not a man that she was  
23 actually dating?

24 A No.

25 Q Apparently he was a friend?

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1 A Yeah.

2 Q Just before she moved to Las Vegas in  
3 September of 1994, around August of 1994, did you  
4 receive another phone call from Debbie?

5 A Yes, I did.

6 Q And when she called you, can you tell us  
7 what her demeanor was?

8 A She was crying, upset.

9 Q And could you hear the defendant again in  
10 the background?

11 A Yes, I could.

12 Q And what was the defendant saying this  
13 time?

14 MR. BROOKS: Again, we'll object to all  
15 of the information as to the statements for hearsay  
16 and lack of foundation.

17 THE COURT: The court has already made a  
18 previous ruling on it. You can have a continuing  
19 objection.

20 THE WITNESS: He wanted the car. He told  
21 her to give him the car or he was going to do an O.J.  
22 Simpson on her ass.

23 BY MS. SILVER:

24 Q Did he mention again any suspicions that  
25 he had?

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1 A Not in that conversation. Not while I  
2 was on the phone with her.

3 Q Did he ask her -- do you recall him  
4 saying anything about your home?

5 A Yes. He said that she wasn't hanging out  
6 at my house everyday for nothing.

7 Q When he said that he was going to do an  
8 O.J. Simpson on her, was this after the homicide  
9 involving O.J. Simpson?

10 A Yes.

11 THE COURT: By the way, for the record,  
12 there is an argument that can be made that these  
13 statements actually are not hearsay under the Nevada  
14 Rules of Evidence.

15 In fact, they may be offered to prove the  
16 truth of the matter that they happened, but to  
17 establish intent or state of mind.

18 MS. SILVER: Thank you.

19 BY MS. SILVER:

20 Q Finally around Thanksgiving of 1994, was  
21 Deborah Panos here in Las Vegas during that time  
22 period?

23 A Yes, she was.

24 Q And do you recall receiving another phone  
25 call from her?

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1 A Yes, I did.

2 Q And what was her demeanor like this time?

3 A She was upset, crying.

4 Q Could you hear the defendant again in the  
5 background?

6 A Yes, I could.

7 Q Could you also hear the children in the  
8 background as well?

9 A Yes, I could.

10 Q And what did you hear the defendant tell  
11 her this time?

12 A I heard him tell her that he was going to  
13 do an O.J. Simpson on her ass and he wanted the keys.

14 Q The keys to the car?

15 A To the car.

16 Q Whose decision was it to move to Las  
17 Vegas in September of 1994, if you know?

18 A Hers.

19 Q Did the defendant follow her in that  
20 decision?

21 A Yes.

22 Q I wanted to go back and ask you. You  
23 stated that there was a time period that the defendant  
24 had gone back to Michigan, and the evening that he  
25 came home you recall the first of what we heard about

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1 of the three phone calls mentioned.

2 How long was he in Michigan?

3 A Approximately two months.

4 MS. SILVER: Thank you. That would  
5 conclude direct examination.

6 THE COURT: Cross.

7 MR. BROOKS: Thank you, Judge.

8

9 CROSS EXAMINATION

10 BY MR. BROOK:

11 Q Miss Freeman, you have worked for the  
12 police department for how long again?

13 A 12 years.

14 Q In the course of your work there you've  
15 obviously been exposed to domestic violence on the  
16 telephone?

17 A Yes, I have.

18 Q And you were aware that domestic violence  
19 is very dangerous?

20 A Yes.

21 Q And you're aware that sometimes people  
22 get killed in domestic violence?

23 A Yes.

24 Q And you certainly would not underestimate  
25 the importance of domestic violence, would you?

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1 A No.

2 Q Now, when you heard this conversation on  
3 the telephone in which you claim that James Chappell  
4 made threats to her, you took them seriously, didn't  
5 you?

6 A Yes, I did.

7 Q But did you call the police?

8 A No, I did not.

9 Q Did you see about getting any type of  
10 help for Debbie?

11 A I offered my home to her.

12 Q Did she accept it?

13 A Yes, she did.

14 Q How long did she stay with you?

15 A She was there everyday. There was times  
16 that she didn't even go home.

17 Q Did you encourage her to call the police?

18 A Yes, I did.

19 Q Did you encourage her to see a counselor?

20 A Yes, I did.

21 Q Did she see a counselor?

22 A Yes, she did.

23 Q Which counselor did she see?

24 A It's a counselor that's through the  
25 police department.

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1 Q What is the name of that counselor?

2 A I'm not sure which ones she spoke with.

3 Q Do you know the name of the counseling  
4 service?

5 A It's not a service. It's just offered  
6 through the police department as counseling.

7 Q Do you know how long she saw this  
8 counselor?

9 A I have no idea.

10 Q You have indicated that you spoke to her  
11 apparently on three occasions on the telephone when  
12 you heard James in the background; is that correct?

13 A Yes.

14 Q How much interaction have you had with  
15 James yourself?

16 A Well, he called my house everyday and  
17 left messages on my answering machine.

18 Q Had you ever had conversations with him  
19 in person?

20 A Yes, he's been to my house. My child's  
21 birthday party.

22 Q How many times have you all been  
23 together?

24 A That was probably the second, third time  
25 that we socialized together.

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1 Q And how many times in total would you say  
2 that you all socialized together?

3 A Probably a total of three times other  
4 than on the phone.

5 Q Did you ever go out to a restaurant with  
6 James and Deborah?

7 A No, I did not.

8 Q Did you ever socialize with them in any  
9 other way?

10 A No.

11 Q You've indicated that James went back to  
12 Michigan. Do you know how many times he went back to  
13 Michigan?

14 A He went back once that I know of.

15 Q You don't know the other times that he  
16 might have gone back to Michigan?

17 A No.

18 Q You don't know the exact arrangements  
19 that were made for him going back and forth, do you?

20 A I know what I was told.

21 Q But in terms of what you, yourself, know  
22 you do not know?

23 A No.

24 Q I think that you've testified that James  
25 didn't have a job; is that right?

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1 A That's true.

2 Q Are you aware that he ever had a job  
3 while he was in Tucson?

4 A I believe that he worked at the  
5 McDonald's for a week or two.

6 Q Would it be possible in your mind that he  
7 might have worked other places for short periods of  
8 time as well?

9 A Not that I can recall.

10 Q But it's possible that you may not know  
11 for sure?

12 A That's true.

13 Q Because you do not keep up with all of  
14 his work and life?

15 A No.

16 Q When you heard him getting mad at her,  
17 did you ever see him get mad at her in person?

18 A No, I did not.

19 Q You only heard this on the telephone?

20 A Yes.

21 Q And it seems like you heard extended  
22 conversations on the telephone while you were talking  
23 to Deborah?

24 A Yes.

25 Q Do you know who else witnessed these

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1 conversations?

2 A On the phone?

3 Q Yeah.

4 A It was only her and I on the phone.

5 Q Was anybody else there in the trailer  
6 that you know?

7 A James and the kids.

8 Q Anybody else that you know of?

9 A No.

10 Q Anybody else in the room with you when  
11 you heard those?

12 A My daughter was sitting there.

13 Q Would you describe his state of mind  
14 towards her as being extremely jealous?

15 A I can't say if he was extremely jealous  
16 or not. All I can tell is that he was upset.

17 Q Could you tell that he was extremely  
18 possessive of her?

19 A It appeared that way.

20 Q And she obviously knew about this?

21 A That he was extremely possessive?

22 Q Yes.

23 A I'm not sure if she really realized that  
24 or not.

25 Q Despite these statements that you just --

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1           A       I mean this is my perception. I don't  
2 know what hers was.

3           Q       So from your perspective, the fact that  
4 she heard these statements might not suggest that she  
5 thought that he was possessive?

6           A       That could be.

7           MR. BROOKS: Thank you. No further  
8 questions.

9

10                   REDIRECT EXAMINATION

11       BY MS. SILVER:

12           Q       Defense counsel asked you whether or not  
13 you ever saw Deborah and James or were aware of  
14 Deborah and James socializing?

15           A       Uh-huh.

16           Q       Do you recall that and whether or not  
17 they had gone to restaurants? You have to say yes or  
18 no for the record?

19           A       Oh. Ask me that again.

20           Q       Okay. When you answer a question though  
21 you have to say yes or no because the court reporter  
22 cannot pick up uh-huh.

23           A       Okay.

24           Q       Okay. Defense counsel asked you on  
25 cross-examination whether or not you were aware of

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1       whether or not the defendant and Deborah socialized or  
2       went to restaurants together?

3               A       Yes.

4               Q       Do you recall the defendant ever taking  
5       her out to dinner?

6               A       No, I do not.

7               Q       Taking her to restaurants?

8               A       No.

9               Q       Taking her out dancing?

10              A       No.

11              Q       Taking her to the movies?

12              A       No.

13              Q       Doing anything that a normal boyfriend  
14       would do for a girlfriend?

15              A       No.

16              Q       How did he treat her?

17              A       From what I could tell is he was very  
18       controlling. He ran the relationship and what he said  
19       went.

20              Q       He would tell her what to do?

21              A       Yes.

22              Q       Would it be fair to say that she  
23       supported him?

24              A       Yes.

25              Q       Did you encourage Debbie as a friend to

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1 get out of this relationship?

2 A No, I did not.

3 Q Why is that?

4 A Because I felt like Debbie was an adult.

5 I respected the way that she felt for him, but I

6 encouraged her that -- what I did do was give her my

7 opinion about what I would not tolerate.

8 Q And this was something that you would not  
9 have tolerated?

10 A Yes, exactly.

11 Q Did she love the defendant?

12 A Yes, she did.

13 MS. SILVER: I don't have anything

14 further.

15 MR. BROOKS: No further questions, your

16 Honor.

17 THE COURT: May this witness be

18 discharged?

19 MR. HARMON: Yes, your Honor.

20 THE COURT: How long is your next witness

21 going to be?

22 MR. HARMON: I would say about ten

23 minutes.

24 THE COURT: If it's going to be ten

25 minutes, we'll take a recess then. If it's going to

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1 be longer than that, we can do it now.

2 MR. HARMON: I don't know for sure, but I  
3 think that about ten minutes.

4 THE COURT: Everybody comfortable? All  
5 that we need is one dissenting vote.

6 Call you next witness.

7 MR. HARMON: Jeri Earnst.

8 THE CLERK: Do you solemnly swear the  
9 testimony which you are about to give shall be the  
10 truth, the whole truth and nothing but the truth, so  
11 help you God?

12 THE WITNESS: I do.

13

14 JERI EARNST,

15 having been first duly sworn, testified as follows:

16

17

18 DIRECT EXAMINATION

19 BY MR. HARMON:

20 Q Will you state your name, please.

21 A My name is Jeri Earnst.

22 Q Please spell your names for the record?

23 A Jeri, J-E-R-I. Last name Earnst,

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

25 Q Are you employed?

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1 A Yes, I am.

2 Q What is your business or occupation?

3 A I'm a police officer with the City of  
4 Tucson.

5 Q Officer Earnst, how long have you been  
6 employed with the Tucson Police Department?

7 A With the Tucson Police Department  
8 slightly over 17 years with a total of 20 years plus  
9 of law enforcement now.

10 Q 20 years plus in all?

11 A Yes, sir.

12 Q Were you an officer with the Tucson  
13 Police Department in Tucson, Arizona, on February the  
14 23rd, 1994?

15 A Yes, I was.

16 Q On that day did you have occasion in the  
17 City of Tucson to make contact with a citizen  
18 identified to you as Deborah Panos?

19 A Yes, I did.

20 Q Where is it that you made contact with  
21 Miss Panos?

22 A That would be at a Frys supermarket. A  
23 grocery store at 16th and Ajo.

24 Q 16th and --

25 A A-J-O.

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1 THE COURT: Ajo. I'm sorry. I went to  
2 school there.

3 BY MR. HARMON:

4 Q Approximately what time was it that you  
5 made contact with Miss Panos at that intersection?

6 A That would be about 9:30 at night is when  
7 we actually arrived at that location.

8 Q You said that it was at a store?

9 A Yes.

10 Q You said it was Frys?

11 A Yes.

12 Q Will you spell that also?

13 A F-R-Y-S.

14 Q What was your purpose in making contact  
15 with Deborah Panos?

16 A I had been advised by an officer that  
17 works in an off-duty capacity at that location that he  
18 had a domestic violence victim at that location that  
19 needed a uniformed officer to respond.

20 Q Who was the officer you spoke with that  
21 was off duty?

22 A That was Ed Niedkowski.

23 Q Will you spell Niedkowski, please.

24 A No.

25 Q Would N-I-E-D-K-O-W-S-K-I be pretty

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1 close?

2 A Okay.

3 THE COURT: Two tries is all that you  
4 get, Mr. Harmon.

5 BY MR. HARMON:

6 Q As a result of the conversation you had  
7 with the off-duty officer did you then contact Miss  
8 Panos?

9 A Yes, I did. She was present when he was  
10 relating the information to me as to what -- how he  
11 had been contacted by her.

12 Q So you responded to the location of the  
13 Frys store and off-duty officer and the alleged victim  
14 were both at that location?

15 A Yes, sir.

16 Q Inside or outside the store?

17 A Outside the store.

18 Q Did you then conduct some sort of  
19 interview of Deborah Panos?

20 A Yes, I then walked her away from the  
21 crowd and over toward where I had parked my vehicle to  
22 speak with her in private.

23 Q Tell us what occurred at that time?

24 A She related to me that --

25 MR. BROOKS: Object.

1 BY MR. HARMON:

2 Q Before you go into what she related, will  
3 you describe how she acted when you walked the short  
4 distance away?

5 A She was standing off and not doing much  
6 of anything at first. When Officer Neidkowski advised  
7 me of what had happened, I then needed to speak with  
8 her to determine whether I had enough to pursue this  
9 for an investigation for an arrest.

10 Q So you apparently went off a short  
11 distance with her?

12 A Yes, I did.

13 Q What I'm asking you is when you went a  
14 short distance away and the two of you began to talk  
15 one to one, how did she act?

16 A She started crying.

17 Q How long did you spend talking with her?

18 A I was with her out there probably about  
19 20 minutes, maybe 25 before we went.

20 Q You said that she started crying. Did  
21 she cry throughout the interview?

22 A Yes, she did.

23 Q Was she to you obviously upset?

24 A Yes, she was.

25 Q What, if anything, in addition to the

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1 crying caused you to conclude that this individual was  
2 upset?

3 A She was afraid. She did not want to go  
4 back. I asked her --

5 MR. BROOKS: I'm going to object to  
6 hearsay and to lack of foundation for excited  
7 utterance.

8 MR. HARMON: I think that we have shown  
9 the foundation, your Honor.

10 MR. BROOKS: We object to lack of  
11 foundation. We don't know how much time passed since  
12 the actual event.

13 THE COURT: That was going to be my next  
14 concern.

15 MR. HARMON: We'll address that.

16 BY MR. HARMON:

17 Q Did you learn in connection with the  
18 investigation when the alleged event had occurred?

19 A At approximately a half hour before my  
20 arrival at the Frys, which would make it right around  
21 nine o'clock.

22 Q And so it was your understanding that you  
23 were speaking with a lady about 30 minutes after the  
24 event had happened?

25 A That's correct.

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1 MR. BROOKS: Defense would object. Our  
2 position is that 30 minutes is clearly enough time for  
3 the victim to reflect on what has happened which takes  
4 the statements that she makes outside the excited  
5 utterance rule.

6 THE COURT: Case law seems to clearly  
7 indicate that that time frame is acceptable for  
8 the admission of the statement as an excited utterance  
9 under NRS 51.095.

10 MR. HARMON: Thank you.

11 BY MR. HARMON:

12 Q So you have testified that when you began  
13 to talk with her, she started to cry?

14 A Yes, she did.

15 Q Was she emotional throughout the  
16 interview?

17 A Yes, she was.

18 Q What did you ask her and what, if  
19 anything, do you remember her saying to you?

20 A I asked her what had happened. She said  
21 that she'd had a fight with her boyfriend. This was  
22 her live-in boyfriend, father of her children. That  
23 she had come home and had found that he had sold the  
24 new dresser that she bought for her daughter. And she  
25 was very upset about that and had confronted him about

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1 it, and she had described that he had hit her not in  
2 any specific area but had knocked her to the floor.

3 Q She told you that her boyfriend had hit  
4 her and knocked her down?

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

8 Q Did she complain to you at that time that  
9 the leg was sore still?

10 A Yes, she did. She did refuse medical  
11 attention.

12 Q Did she continue to be emotional as she  
13 was giving you this account?

14 A Yes, she was.

15 Q You said that she was crying?

16 A She was.

17 Q Did you see tears on her face?

18 A Yes.

19 Q Do you know how it happened that the  
20 police were contacted?

21 A She made -- she had driven from the  
22 trailer. When she grabbed the kids and got in the car  
23 and left, had driven straight to Frys because of the  
24 fact that she knew that an off-duty officer worked at  
25 that location, and that's specifically what she had

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1        gone up there to do is go up there and make contact  
2        with him.

3                Q        The off-duty officer apparently had a  
4        second job at Frys store?

5                A        Yeah, they employ us in our police  
6        capacity to work just strictly that particular  
7        function that evening.

8                Q        Did Miss Panos identify to you the name  
9        of her boyfriend?

10              A        Yes, she did.

11              Q        Who had committed the acts of violence  
12        upon her?

13              A        Yes, she did.

14              Q        Did you learn where it was that they  
15        lived?

16              A        Yes, I did.

17              Q        What was the address that you learned?

18              A        1655 West Ajo. I think it was Space  
19        Number 80, if I recall properly.

20              Q        As a result of the information that you  
21        had learned from Miss Panos, did you respond to 1655  
22        West Ajo, Space 80?

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

24              Q        How soon after the interview of Deborah  
25        Panos was this?

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

5 Q You mentioned earlier that she expressed  
6 being afraid of the boyfriend?

7 A That's correct.

8 Q Did it seem to be genuine fear to you as  
9 you observed her manner?

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

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

16 A One other officer.

17 Q Who was the other officer?

18 A Mark Vernon.

19 Q Vernon?

20 A Yes.

21 Q V-E-R-N-O-N?

22 A That one I can spell, yes.

23 Q I take it you and Officer Vernon then  
24 proceeded to the address that she had given you?

25 A That's correct.

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1 Q Did you make contact at that location  
2 with an individual identified as James Chappell?

3 A Yes, I did.

4 Q Explain what happened when you approached  
5 the residence?

6 A He was sitting inside watching TV.

7 Q Could you see into the trailer?

8 A Yes, I could. And I looked inside and  
9 observed that he was sitting inside watching TV, and  
10 we knocked a couple of times first and announced that  
11 we were the police. And he finally said just come in.  
12 He didn't ever get up from the couch to come out and  
13 let us in.

14 Q Did you observe anyone else in the  
15 trailer?

16 A No, I did not.

17 Q Could you actually see that as you waited  
18 at the front door the individual that was inside was  
19 simply watching television?

20 A That's what it appeared that he was  
21 doing. The TV was on and he was sitting in front of  
22 it looking at it.

23 Q Did Mr. Chappell seem to be upset?

24 A Well, he was when the police were there,  
25 but --

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1 Q Upset by the arrival of the police?

2 A That's correct.

3 Q Did you explain why you were there?

4 A Yes, I did.

5 Q Did he make any type of acknowledgment  
6 regarding the incident?

7 A When I was reading over my report on the  
8 slip that I had for the booking it says admissions  
9 made, I've got "yes" circled. I do not recall what  
10 was said.

11 Q You do not recall the specifics?

12 A Not specifically.

13 Q Was he taken into custody?

14 A Yes, he was.

15 Q For what, domestic battery?

16 A Yes, and he also had two warrants.

17 Q Okay. And as far as you know from the  
18 cursory note written on your booking report, there was  
19 some acknowledgment by the defendant in connection  
20 with your contact with him that he had done something  
21 to her?

22 A That's correct.

23 Q May we have the court's indulgence.

24 What do you remember about the demeanor  
25 of the subject that you arrested, Mr. Chappell, that

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1 evening?

2 A Extremely cocky.

3 Q You said what?

4 A Extremely cocky.

5 Q What do you mean by that?

6 A It was like all right, you're here, what  
7 do you got to do, you know, let's get it done and go  
8 away. No, it didn't seem there was any type of  
9 surprise that we were there. It was just like he  
10 didn't even care enough to get off the couch and let  
11 us in.

12 Q Officer Earnst, while you were still  
13 having contact with the victim, Deborah Panos, did you  
14 give her any type of advice about calling 911 or he  
15 getting in touch with the police?

16 A Yeah. I advised her that if she felt  
17 like she needed to talk she could call me. I provided  
18 her my pager number, which is always on, and told her  
19 if she didn't want to call 911 based on the fact that  
20 that's what she did for a living, that she could call  
21 me and I would see if there was something that I could  
22 do to help her out or get her into a shelter away from  
23 the situation whatever she needed.

24 Q So you certainly did offer to help her  
25 out?

1 A Yes, sir.

2 Q You gave her your pager number?

3 A Yes, I did.

4 Q Did she ever call you back after that --

5 A No, she didn't.

6 Q -- and ask you for assistance?

7 A No.

8 MR. HARMON: Thank you. That concludes  
9 direct, your Honor.

10 THE COURT: Cross.

11

12 CROSS EXAMINATION

13 BY MR. BROOKS:

14 Q Officer Earnst, you're still with the  
15 Tucson Police Department?

16 A Yes.

17 Q And you work how many days a week?

18 A It kind of depends. I'm in a different  
19 function now.

20 Q Since this time back in 1994 when this  
21 happened you have probably responded to how many  
22 calls?

23 A Shortly after that I went into the  
24 current assignment I'm in, so I haven't responded to  
25 that many calls since.

1 Q Do you ever find that you have responded  
2 to so many calls in the past that they tend to run  
3 together?

4 A I've had those nights.

5 Q Do you rely a lot on your officer reports  
6 to remember what happened?

7 A Some of it, unless there is something  
8 special that stands out in my mind.

9 Q Apparently this case stood out in your  
10 mind?

11 A She was one of our employees, yes.

12 Q I would like to just show you one thing  
13 real quickly. I think this is your report.

14 Is there any mention in your report that  
15 she was actually crying during the time that you were  
16 talking to her? It did indicate that she was crying  
17 earlier when she got hit by James. Is there anything  
18 in your report about her crying at that time?

19 A No.

20 Q So this is something that you remembered  
21 but you did not include in your report?

22 A I remember thinking how good she was  
23 holding herself together while she was talking to the  
24 other officer.

25 Q So apparently she contacted officers



1 Neidkowski first?

2 A Right.

3 Q And she talked to officer in this case.  
4 Do you know how long she talked to him?

5 A I believe he called us at 2128. I think  
6 that she must have got there about ten minutes prior.

7 Q I don't think in military terms. Like  
8 9:30?

9 A 9:28, and I arrived at 9:30.

10 Q So what time do you estimate the actual  
11 act of hitting on her occurred?

12 A Well, that's what she told me, it was  
13 right at nine o'clock.

14 Q Roughly nine o'clock?

15 A Right.

16 Q So you started talking to her at about  
17 what time?

18 A 9:30.

19 Q How long did you talk to her?

20 A Probably about 25 minutes.

21 Q I'm sorry?

22 A About 25 minutes, 20, 25.

23 Q You've testified here that she refused  
24 medical care; is that correct?

25 A That's correct.

1 Q In your mind is there a difference  
2 between refusing medical care and not requiring  
3 medical care?

4 A It would be hard to tell. I have no way  
5 to look below the skin, you know. That's something  
6 that an individual would have to determine.

7 Q In your officer's report did you indicate  
8 that she refused medical care or her wounds did not  
9 require medical care in your report?

10 A I said that she did not. The victim was  
11 complaining of pain in her right leg but did not  
12 require medical attention. That's her words, not  
13 mine. I can't make that determination for people.

14 MR. BROOKS: Thank you very much. No  
15 further questions.

16 THE COURT: Redirect.

17 MR. HARMON: No redirect, your Honor.

18 THE COURT: May this witness be  
19 discharged.

20 THE COURT: Thank you.

21 Ladies and gentlemen, we're going to take  
22 our afternoon recess at this time. We'll reconvene 20  
23 minutes after three o'clock.

24 During your recess, you are not  
25 to discuss or converse among yourselves or with

1 anyone else on any subject connected with this trial  
2 or read, watch or listen to any report of or  
3 commentary on the trial or any person connected with  
4 this trial by any medium of information including,  
5 without limitation, newspapers, television or radio;  
6 and you are not to form or express any opinion on any  
7 subject connected with this case until it is finally  
8 submitted to you.

9 We'll be at ease while you depart the  
10 confines of the courtroom.

11  
12 (Outside the presence of the jury.)

13  
14 THE COURT: We're outside the presence of  
15 the jury.

16 The first record I would like to make is  
17 that one of the witnesses identifying the defendant  
18 indicated that he was not wearing shoes. The record  
19 will reflect that he has shoes and socks on today. He  
20 just didn't have his shoes on when the witness was  
21 describing him.

22 Second, the discussion in front of the  
23 jury with regard to the case of Shults versus State,  
24 96 Nevada 742, extracting from one of the headnotes  
25 from the annotations to NRS 51.105.

1 It indicates that a prosecution for  
2 murder, in order for state of mind exception to  
3 hearsay rule to be applicable and allow testimony that  
4 the victim stated that he was afraid of defendant,  
5 victim's state of mind must be a relevant issue, the  
6 relevance must be weighed against prejudice, and a  
7 proper limiting instruction must be given or  
8 objectionable testimony deleted.

9 The court finds as a matter of law that  
10 the victim's state of mind was relevant to demonstrate  
11 aggressiveness, and that the prejudicial effect is  
12 outweighed by its probative value.

13 I'll ask the district attorney to prepare  
14 a proper limiting instruction under State versus  
15 Shults as to the probative value of this testimony.

16 MR. BROOKS: For the record, I think that  
17 your cite is different than mine.

18 THE COURT: According to the legislative  
19 counsel bureau annotations it is 96 Nevada 742, 616  
20 Pacific 2nd 388, 1980, Supreme Court case.

21 MR. BROOKS: Thank you.

22

23

24

25

(Recess.)

(Outside the presence of the jury.)

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MR. BROOKS: We have a short matter to take up before the court begins when the court is ready.

THE COURT: The court is ready.  
Is the State ready? Should we wait for Mr. Harmon?

MS. SILVER: Yes, please.

THE COURT: We're on the record outside of the premises.

MR. BROOKS: I would like to make a brief record regarding our position on all this evidence that's coming in. We're obtaining a lot of evidence here that's essentially, in our opinion, it's hearsay evidence but it's essentially being brought in to show the state of mind of the victim and the court has clear --

THE COURT: Well, I also believe some of this evidence is probing the state of mind of the defendant.

MR. BROOKS: I'll address that in just a moment, Judge. In the case of Shults v. State, the case has stated in Keynote Number 16, just before we had our recess. I would like the court to note that.

1 THE COURT: Let me have the case. Let me  
2 see the case.

3 MR. BROOKS: I want the court to note  
4 that Keynote 15 says hearsay statements as to a murder  
5 victim's fear of defendant for implicating defendant  
6 in robbery did not fall within statutory state of mind  
7 hearsay exception where victim's state of mind was not  
8 an issue since the defendant was not claiming  
9 self-defense, accidental death or suicide as such  
10 statements had the relevance. I want to make sure  
11 that the court understands our position.

12 THE COURT: I understand that that is  
13 your position. I also believe that that headnote does  
14 not represent a general statement of the law for all  
15 possible scenarios, and I believe that the State of  
16 Nevada, if their reading of this case is similar to  
17 mine, will argue that it's distinguishable.

18 MR. BROOKS: I would like the record to  
19 reflect that our position is the state of mind of a  
20 victim is not relevant, and this type of testimony  
21 should not be allowed since we are, after all,  
22 stipulating that my client killed the lady.

23 THE COURT: And, of course, that makes  
24 the prejudice versus probative value issue easier to  
25 weigh except on the question of first degree murder.

JChappell-8JDC1395

1 The State is still going to have to  
2 prepare a limiting jurisdiction and the earlier that  
3 it is given to admonish the jury the better. It is  
4 under some case law regarding to the probative value  
5 of this testimony. It's going to have to be read in  
6 as an instruction to the jury at the conclusion of the  
7 case.

8 Anything further?

9 MR. BROOKS: Will the court allow us a  
10 continuing objection regarding to this issue?

11 THE COURT: Whenever the court has made a  
12 preliminary ruling to this effect, you don't need to  
13 ask for it. I'm going to allow you continuing  
14 objections on all rulings in limine.

15 MS. SILVER: For the record, his  
16 objection was to the original question that I posed to  
17 the witness, which spurred this massive research on  
18 the Shults case was, I believe I asked the witness on  
19 the stand, "Do you know where they came from," and  
20 this witness said Michigan, and that's when we got  
21 into this objection.

22 THE COURT: That's an easy issue to  
23 resolve. And probative versus prejudice, in that  
24 case, and reliability, etcetera, all of those criteria  
25 mandate that that evidence go in.

1 The question that the defense is more  
2 concerned about centers around the utterances of the  
3 victim relative to these physical confrontations that  
4 were the subject of the witness' testimony.

5 MR. BROOKS: That's correct, your Honor.

6 THE COURT: All right. And I think that  
7 there are a number of reasons that I have already  
8 stated on the record that justify the admission of  
9 this evidence particularly given the defendant's  
10 opening statement which places in issue the question  
11 of premeditation.

12 Now, at this point we'll bring in the  
13 jury.

14  
15 (In the presence of the jury.)

16  
17 THE COURT: I am sitting here trying to  
18 figure out when we're going to start Monday and  
19 Tuesday.

20 Ladies and gentlemen of the jury, we are  
21 back in session. I apologize for the delay in getting  
22 started again. Some of it was my fault due to matters  
23 that had to be taken up in chambers and other time was  
24 spent resolving a couple of more evidentiary issues  
25 outside your presence.



1 And so with that, will counsel stipulate  
2 to the presence so we can continue on.

3 MR. HARMON: State will stipulate.

4 MR. BROOKS: Defense will, your Honor.

5 THE COURT: Thank you very much. The  
6 State may continue with its case-in-chief.

7 MS. SILVER: State would call Officer  
8 Giersdorf.

9 THE CLERK: Do you solemnly swear the  
10 testimony which you are about to give shall be the  
11 truth, the whole truth and nothing but the truth, so  
12 help you God?

13 THE WITNESS: I do.

14

15 DANIEL GIERSDORE,

16 having been first duly sworn, testified as follows:

17

18 DIRECT EXAMINATION

19 BY MS. SILVER:

20 Q Could you please state your name and  
21 spell it for the record.

22 A Officer Giersdorf, G-I-E-R-S-D-O-R-F.

23 Q What is your first name?

24 A Daniel.

25 Q And, sir, what is your occupation and

1 assignment?

2 A Police officer, Las Vegas Metro.

3 Q And what division are you currently  
4 assigned to?

5 A Bike patrol.

6 Q I'm sorry?

7 A Bike patrol division.

8 Q How long have you been a police officer?

9 A Three and a half years, ma'am.

10 Q And prior to becoming a bike patrol  
11 officer, what division were you assigned to?

12 A Patrol division.

13 Q Around midnight of January 9th of 1995,  
14 did you have an occasion to be dispatched to 839 North  
15 Lamb, Space Number 125?

16 A Yes, ma'am.

17 Q That's the Ballerina Mobile Home Trailer  
18 Park?

19 A Yes, ma'am.

20 Q That's here in Las Vegas, Clark County,  
21 Nevada?

22 A Yes, ma'am.

23 Q How were you dispatched?

24 A I was dispatched on 911 call of family  
25 disturbance.

1 Q You say family disturbance. Are you  
2 talking about a domestic violence call?

3 A Yes, ma'am, domestic violence call.

4 Q And were you aware of who was making the  
5 call?

6 A The call came in from a female requesting  
7 medical and police.

8 Q So your PR, or person reporting, would  
9 have been a female for medical attention?

10 A Yes, ma'am.

11 Q That female did not necessarily request  
12 police but for medical attention?

13 A Yes, ma'am.

14 Q When you arrived at that location, what  
15 did you observe?

16 A Upon arriving at the Ballerina Mobile  
17 Home Park, I arrived, there was an ambulance parked  
18 out in front of Space 125, and it was two medical  
19 techs and female was loaded in the back of the Mercy  
20 Ambulance.

21 Q Did you have a conversation initially  
22 with those Mercy Ambulance technicians?

23 A Yes, ma'am, I did.

24 Q And after that brief conversation, did  
25 you go into the ambulance and view a female?

1 A Yes, ma'am.

2 Q Was she on the stretcher at this point?

3 A She was laid out on a stretcher mostly  
4 covered up by sheets.

5 Q And can you tell us or describe her  
6 injuries that you observed?

7 A She was very bloody and her hair was all  
8 messed up. She had a large laceration above her eye,  
9 and her nose was very big. It was about the size of  
10 my hand.

11 Q Your fist?

12 A My fist. Like that, about that big.

13 Q So it was quite swollen then, I take it?

14 A She was very swollen about the face and  
15 head and covered with a lot of blood.

16 Q Was she complaining of being in pain?

17 A Yeah, she was complaining about the  
18 facial injuries and that. She was really hard to  
19 understand because she could barely speak because of  
20 the facial injury.

21 Q Where did you observe blood specifically?

22 A High volume of blood was coming out of  
23 her nose and above her eye. It would be the left eye,  
24 down the side of her face and over the top of her  
25 head.

1 Q Did you see blood as well on her ears as  
2 well as her hair?

3 A Yes, ma'am. The amount of blood was  
4 enough that it covered her hair, ears, and the pillow  
5 that she was laying on.

6 Q I would like to show you what's been  
7 marked as State's Exhibit, what's actually been  
8 admitted as State's Exhibit Number 25.

9 Does this appear to look like the woman  
10 that you saw on January 9th of 1995?

11 A Yes, ma'am.

12 Q And if I told you that there has been  
13 testimony that this picture was actually taken on  
14 August 31st of 1995, sometime later, is it your  
15 testimony that she looked very similar to this in  
16 January?

17 A Pretty much very similar. She had a --  
18 her face was a lot more swollen through there, and she  
19 had a lot more blood on her when I saw her.

20 Q Blood at least around her face area?

21 A Yes, ma'am.

22 Q Did she seem upset to you?

23 A Yes, ma'am. She was upset crying and  
24 rather hysterical, irrational.

25 Q What did she tell you happened to her?

1 A She had stated that her boyfriend that  
2 she lived with at the mobile home park had hit her.

3 Q Did she tell you how long she had been  
4 with that boyfriend?

5 A About approximately nine years.

6 Q Did she tell you whether or not she had  
7 children in common?

8 A She stated that they three kids in  
9 common.

10 Q Based on what she told you that she had  
11 been hit in the face, did you proceed in your  
12 investigation?

13 A Yes, ma'am.

14 Q Where did you go?

15 A Through my investigation I found out that  
16 the incident had occurred within the residence at 125.

17 Q Did you go into the residence of 125?

18 A Yes, ma'am, I did.

19 Q And who did you see?

20 A I contacted a James Chappell who was  
21 inside the residence.

22 Q Do you see him here in court today?

23 A Yes, ma'am, I do.

24 Q Can you please point to him and describe  
25 an article of clothing for the record?

1 A Wearing gray suit, yellow shirt,  
2 multi-colored tie, glasses.

3 MS. SILVER: Your Honor, may the record  
4 reflect that the witness has identified the defendant.

5 THE COURT: Yes.

6 BY MS. SILVER:

7 Q Where was the defendant when you first  
8 saw him?

9 A He was sitting in his living room in an  
10 easy chair watching TV.

11 Q And what was his demeanor like?

12 A He was real lethargic, real quite, just  
13 sat there.

14 Q Did he seem concerned for this woman?

15 A No, ma'am. He had like no emotion at all  
16 when I contacted him at all.

17 Q Did he seem sad?

18 A No, ma'am.

19 Q Was he crying?

20 A No, ma'am.

21 Q Was he remorseful?

22 A No, ma'am.

23 Q Did you arrest him for battery, domestic  
24 violence?

25 A Yes, ma'am I did.

1 MS. SILVER: Thank you. That would  
2 conclude direct.

3 MR. BROOKS: No questions, your Honor.

4 THE COURT: Cross. No cross?

5 MR. BROOKS: No questions.

6 THE COURT: Any redirect?

7 MS. SILVER: No.

8 THE COURT: May this witness be  
9 discharged?

10 MS. SILVER: Yes, sir.

11 THE COURT: You may be discharged.

12 THE WITNESS: Thank you, sir.

13 MS. SILVER: Your Honor, the State would  
14 call Tanya Hobson.

15 THE CLERK: Do you solemnly swear the  
16 testimony which you are about to give shall be the  
17 truth, the whole truth and nothing but the truth, so  
18 help you God?

19 THE WITNESS: Yes, I do.

20

21

22 TANYA HOBSON,

23 having been first duly sworn, testified as follows:

24

25



DIRECT EXAMINATION

1

2

3

BY MS. SILVER:

4

Q Can you please state your name and spell

5

it for the record.

6

A My name is Tanya Hobson, T-A-N-Y-A,

7

H-O-B-S-O-N.

8

Q And, ma'am, how old are you?

9

A 29.

10

Q And where are you employed?

11

A Temporary Assistance for Domestic Crisis.

12

Q Is that also known as TADC?

13

A Yes, it is.

14

Q What type of organization is that?

15

A It's a shelter for battered and abused

16

women, and we also do protective orders.

17

Q And what kind of training and experience

18

do you have that enables you to work at this battered

19

woman's shelter?

20

A First of all, you have to have a degree.

21

I have been working there now for two years.

22

Q And do you, in fact -- let me ask you:

23

What is your training and experience in this area?

24

A Basically, when I went to college I had

25

an internship in it. And once you're employed there,

1 you have to go under training.

2 Q You, in fact, have a bachelor's degree?

3 A Yes.

4 Q In what field?

5 A Criminal justice with a minor in  
6 sociology.

7 Q You stated that as part of your duties  
8 you prepare protective orders?

9 A Yes.

10 Q And tell us what your process is if a  
11 woman calls up your shelter and asks you for a  
12 protective order?

13 A Well, basically we start out with asking  
14 has the person been arrested and what time. Then from  
15 there we get all the information, basically what  
16 happened that night that led up to their arrest. And  
17 from there we ask is there any other place that she  
18 may frequent that the person may come and try to  
19 harass her at, and we put that on the protective  
20 order.

21 We also put down where the person would  
22 be -- the person who is getting -- the defendant, will  
23 be not able to come to the plaintiff's home.

24 Q Okay. And once you receive this  
25 information from this victim, what do you do with that

1 information?

2 A We then take the information. We fax it  
3 to our judge, and then from there the judge faxes it  
4 to the jail.

5 Q When you say that you fax it to a judge,  
6 do you fax it to a district court judge?

7 A Yes, we do.

8 Q A district court judge just like Judge  
9 Maupin here?

10 A Yes.

11 Q And once it's faxed to the judge, let me  
12 ask you this: How does that work if it's in the early  
13 morning hours?

14 A Well, a judge is on call 24 hours. And  
15 we call them at home and wake them up.

16 Q So there are different on-call judges for  
17 this process?

18 A Yes, exactly.

19 Q And they may rotate weekly?

20 A Yes.

21 Q Once this is done via telephone and the  
22 judge has -- let me ask you this: Do you do it by fax  
23 machine?

24 A Yes, we do.

25 Q So the judge actually signs this after

1 it's faxed to him?

2 A Yes.

3 Q Or her?

4 A Yes.

5 Q And then that judge would fax the signed  
6 order back to you?

7 A He'll fax the signed order to the jail  
8 that the defendant is in, and he also gives us a copy,  
9 signed copy.

10 Q So the batterer or the person that is in  
11 jail receives notification of that order?

12 A Yes.

13 Q And they are served by jail employees?

14 A Right.

15 MS. SILVER: For the record, I have shown  
16 defense counsel what I had marked for identification  
17 purposes as State's Proposed Exhibits 81 and 82.

18 Would you like to see them again? I'm  
19 sorry.

20 BY MS. SILVER:

21 Q For the record, I have shown defense  
22 counsel State's Proposed Exhibit Numbers 81 and 82.

23 I would like to ask you first and show  
24 you State's Proposed Exhibit Number 81. What is this?

25 A This is a protective order.

1 Q It's an application for a temporary  
2 protective order by fax?

3 A Yes.

4 Q Do you recognize the handwriting on this  
5 order?

6 A Yes, I do.

7 Q Whose handwriting is this?

8 A It's mine.

9 Q And this application for temporary  
10 protective order by fax, State's Proposed Exhibit  
11 Number 81. It's approximately four pages long?

12 A Yes.

13 Q And apparently you have looked at this  
14 before court today?

15 A Right. Yes.

16 Q Is this one of the protective orders that  
17 you have personally prepared?

18 A Yes, it is.

19 Q And who is the plaintiff in this matter?

20 A It's Deborah Panos.

21 Q And who is the defendant or adverse  
22 party?

23 A James Chappell.

24 Q Was there a place in particular based on  
25 this order that the defendant was not -- or, excuse

1 me, yes. The defendant, adverse party, was not to go  
2 to?

3 A He was not to go to the plaintiff's home.

4 Q Was there another place that the  
5 plaintiff was not to go to as well?

6 A Yes, her place of employment.

7 Q And were her children listed as well in  
8 here?

9 A Yes, they are.

10 Q Showing you what has been marked as  
11 State's Proposed Exhibit Number 82 for identification  
12 purposes. What is this?

13 A This is also a protective order.

14 Q So this is your application for a  
15 protective order that you actually wrote?

16 A Yes.

17 Q And then this is the actual protective  
18 order itself?

19 A Yes.

20 THE COURT: When you say this, what are  
21 you referring to?

22 BY MS. SILVER:

23 Q I'm sorry. This is Proposed Exhibit  
24 Number 82, is the actual order itself; is that  
25 correct?

1 A Yes, it is.

2 Q Do you recognize your writing on this as  
3 well or is this your writing?

4 A This one is not mine, no.

5 Q Would it be fair to say, is this a four  
6 page document?

7 A Yes.

8 Q And is it signed by a district court  
9 judge?

10 A Yes, it is.

11 Q And are you familiar with what judge this  
12 is?

13 A I believe that's Judge Marren.

14 Q Are you familiar with his handwriting as  
15 well?

16 A Yes, I am.

17 Q Because he is on-call quite a bit?

18 A Yes.

19 Q And would this be, to the best of your  
20 knowledge, his handwriting on this protective order?

21 A Yes, it is.

22 Q What are the dates of these orders marked  
23 as State's Proposed Exhibits Number 81 and 82?

24 A This one here is January 10th.

25 Q 1995?

1           A       1995. And this one is also January 10 of  
2       '95.

3                   MS. SILVER: Your Honor, at this time I  
4       would note to the court that these are both certified  
5       court documents, and I would ask for their admission.

6                   MR. BROOKS: I'll submit it, your Honor.  
7       I would like to examine 82 again your Honor, please.

8                   THE COURT: The court is well aware that  
9       these are admissible. So they will be admitted at  
10      this time.

11  
12                               (State's Exhibits 81, 82  
                              admitted into evidence.)

13  
14                   MS. SILVER: Thank you. That will  
15      conclude direct.

16                   THE COURT: Cross-examination.

17

18                               CROSS EXAMINATION

19      BY MR. BROOKS:

20               Q       Miss Hobson, I'm not sure that I  
21      understand this completely. Basically you didn't meet  
22      Miss Panos, did you?

23               A       No, I didn't.

24               Q       Did you talk to her on the telephone?

25               A       Yes, I did.



1 Q And you talked to her, I suppose, on  
2 roughly January the 9th after she had been hit by her  
3 boyfriend?

4 A Yes.

5 Q And she told you that she wanted a  
6 temporary restraining order?

7 A Yes.

8 Q Exhibit 81, which Miss Silver just showed  
9 you, was the application which you filled out and that  
10 was faxed over to a judge?

11 A Yes.

12 Q Judge Marren then signed an order and it  
13 was served on Mr. Chappell in the jail, correct?

14 A Correct.

15 Q And that's what's Exhibit 82; is that  
16 correct?

17 A Correct.

18 Q Let me show you the last page of this  
19 order signed by the judge. In fact, what this order  
20 does is sets a hearing, doesn't it, on January 11th?

21 MS. SILVER: Mr. Brooks, this is the  
22 order.

23 MR. BROOKS: I have a certified copy that  
24 has all of the pages, and I'm going to show my  
25 certified copy to the witness, please.

1 MS. SILVER: Could I see the copy of  
2 that, sir, before you show the witness. Thank you.

3 MR. BROOKS: Yes. I would like to have  
4 this marked as a defense exhibit whatever our first  
5 exhibit number is.

6 MR. HARMON: That appeared to be the same  
7 document which is already in evidence.

8 MR. BROOKS: It may very well be, but I'm  
9 going to highlight something, Judge, that was not  
10 highlighted before.

11 BY MR. BROOKS:

12 Q In defendant's exhibit, I believe it's A,  
13 on the last page what the judge's order actually does  
14 is order a hearing, doesn't it?

15 A Yes, it does.

16 Q And, in fact, the order that was signed  
17 by the judge is merely a temporary order, isn't it?

18 A Yes.

19 Q And it only lasts until there is actually  
20 a hearing before the judge?

21 A Until the court date.

22 Q And if the person who fills out the  
23 application doesn't show up at the hearing, the order  
24 gets vacated, correct?

25 A No.

1 Q That's not correct?

2 A No.

3 Q What happens if they don't show up?

4 A If the person -- if the defendant doesn't  
5 show up, the protective order can still be put into  
6 effect.

7 Q What if the plaintiff doesn't show up?

8 A Well, if the plaintiff doesn't show up,  
9 then he doesn't do anything with it.

10 Q All right. I'm going to show you the  
11 court minutes for January 11th. It's a certified  
12 copy.

13 MS. SILVER: May I see that, please.

14 MR. BROOKS: Yes.

15 BY MR. BROOKS:

16 Q I'll give you a copy of what happened on  
17 the hearing on January 11th. Who showed up on the  
18 hearing on January 11th.

19 A No parties.

20 Q In other words, the plaintiff, Deborah  
21 Panos, did not come to court on the 11th?

22 A Correct.

23 Q And, in fact, the order was vacated as of  
24 the 11th; is that correct?

25 A Correct.

1 Q So any testimony that this order was in  
2 effect after January 11th, 1995, is completely  
3 incorrect, isn't it?

4 A Correct.

5 Q And the only way that they could have  
6 gotten this changed is to put it back on calendar or  
7 do something else?

8 A Correct.

9 MR. BROOKS: Thank you. We would ask  
10 that this be admitted as Defendant's Exhibit B.

11 MS. SILVER: No objection.

12 THE COURT: It will be received.

13

14 (State's Exhibit B  
15 admitted into evidence.)

16 MR. BROOKS: Thank you.

17 THE COURT: Anything further?

18 MR. BROOKS: No further questions.

19 THE COURT: Redirect.

20 MS. SILVER: Thank you.

21

22 REDIRECT EXAMINATION

23 BY MS. SILVER:

24 Q The order was in effect, however, up  
25 until that hearing date?

1 A Yes, it was.

2 Q And he was not to make any contact with  
3 her?

4 A Correct.

5 Q You don't know whether or not this  
6 defendant was released from jail after January 10th of  
7 1995, do you?

8 A No, I don't. I have no idea.

9 Q Let me ask you this: Have you had --  
10 tell me what your experience is --

11 MR. BROOKS: I'm going to object. This  
12 individual is not an expert witness on domestic  
13 violence.

14 THE COURT: She hasn't finished the  
15 question.

16 MS. SILVER: Thank you.

17 BY MS. SILVER:

18 Q May I ask you your experience and  
19 training dealing with victims of domestic violence?

20 A It's only via telephone, basically when  
21 we have our victims come into our shelter.

22 Q So you work with women on a day-to-day  
23 basis in the shelter?

24 A Exactly.

25 Q And you have hands-on experience speaking

1 with victims of domestic violence?

2 A Yes, I do.

3 Q And did you take any courses or attend  
4 any seminars regarding the psychology of victims of  
5 domestic violence?

6 A Yes, we did.

7 Q What type of seminars?

8 A Basically they are the ones that go  
9 through our agency, like the sensitivity, basically  
10 just being aware of the signs and symptoms and --  
11 sorry, I'm so nervous.

12 Q Let me ask you this: In your experience  
13 and training is it uncommon for a victim of domestic  
14 violence to drop charges against their perpetrator?

15 A Yes, it is. It's totally common.

16 Q How common is it when you say that?

17 A Basically, they change their minds. We  
18 got a lot of them that call up and change their minds,  
19 he's saying that he's going to change, or right now I  
20 don't want to do it. I'm too afraid. He's  
21 threatening me, and so we got calls like that.

22 Q So whether it's fear or whether it's love  
23 or promises to be better, they don't show up for  
24 court?

25 A Exactly.

1 Q That's not an uncommon event --

2 A No, it's not.

3 Q -- in this type of case?

4 A No, it's not.

5 Q Does it surprise you in any way that this  
6 person who you prepared this report for did not show  
7 up to court?

8 A No.

9 MS. SILVER: I don't have anything  
10 further.

11

12 RECROSS EXAMINATION

13 BY MS. BROOKS:

14 Q As far as this individual case though,  
15 you really don't know what her reasons were, do you?

16 A No, I don't.

17 Q You never talked to her again about this,  
18 did you?

19 A I can't recall, no.

20 Q And, in fact, the order was in effect for  
21 probably a total of 30 hours and that's all; is that  
22 correct?

23 A It all depends on how long he was  
24 incarcerated.

25 Q But it was only in effect until 11:59 on

1 January 11th?

2 A Okay. 12 hours.

3 Q After January 11th, 1995, the order had  
4 no legal effect, correct?

5 A Correct.

6 MR. BROOKS: Thank you. No further  
7 questions.

8 THE COURT: May this witness be  
9 discharged?

10 MR. HARMON: Yes.

11 THE COURT: Thank you. You may step  
12 down. Thank you very much.

13 Call your next witness.

14 MS. SILVER: The State would call Officer  
15 Allen Williams.

16 THE CLERK: Do you solemnly swear the  
17 testimony which you are about to give shall be the  
18 truth, the whole truth and nothing but the truth, so  
19 help you God?

20 THE WITNESS: I do.

21

22 ALLEN WILLIAMS,

23 having been first duly sworn, testified as follows:

24

25



DIRECT EXAMINATION

BY MS. SILVER:

Q Sir, what is your occupation and assignment?

A I'm a police officer assigned to patrol with the Las Vegas Metropolitan Police Department.

Q How long have you been a police officer?

A Approximately five and a half years.

Q And what divisions have you worked on in your five and a half years?

A Patrol.

Q On June 1st of 1995, at approximately 10:08 p.m., were you dispatched by a 911 call to 839 North Lamb, Space Number 125?

A Yes, I was.

Q That's the Ballerina Mobile Home Trailer Park?

A That's correct.

Q And that's here in Las Vegas, Clark County, Nevada?

A Yes.

Q When you arrived at that location, did you come into contact with a person by the name of Deborah Panos?

A Yes, I did.

1 Q Can you describe what her demeanor was  
2 like when you made contact with her?

3 A She appeared to be very frightened and  
4 was crying.

5 Q And as she was crying, did she tell you  
6 why she summonsed you?

7 A Yes, she did.

8 Q And why was that?

9 A She stated that she had gotten into an  
10 argument with her boyfriend. I don't recall what the  
11 argument was over. He began yelling at her. He  
12 became angry and threw her down on the bed. He then  
13 climbed on top of her, pinning her arms down with his  
14 knees and pulled out a knife, held it to her throat  
15 and began threatening her with it.

16 Q Did something happen that caused him to  
17 stop threatening her with this knife?

18 A She stated that there was a knock on the  
19 door and that's when he stopped.

20 Q Was that a knock by her roommate?

21 A I don't recall offhand.

22 Q Did you also come into contact with the  
23 boyfriend?

24 A Yes, I did.

25 Q And what was his name?

1 A His name was James Chappell.

2 Q And do you see him here in court today?

3 A Yes, I do.

4 Q Can you point to him and describe an  
5 article of clothing for the record?

6 A The gentleman in the gray suit.

7 Q What color shirt is he wearing?

8 A Yellow.

9 MS. SILVER: Your Honor, may the record  
10 reflect that the witness has identified the defendant.

11 THE COURT: It will.

12 BY MS. SILVER:

13 Q Did Deborah tell you how much time had  
14 passed between the time the call was made to the  
15 police department and the time that you arrived?

16 A It was a brief amount of time. I would  
17 have to refer to my report to tell you exactly.

18 Q Would you like to refer to it --

19 A Yes.

20 Q -- for when the incident occurred prior  
21 to your arrival?

22 A Approximately five to ten minutes.

23 Q Prior to your arrival?

24 A Yes.

25 Q Did you arrest the defendant for

1 battery-domestic violence?

2 A Yes, I did.

3 Q And did you transport him to the city  
4 jail?

5 A Yes, I did.

6 MS. SILVER: That would conclude direct.

7 MR. BROOKS: No questions, your Honor.

8 THE COURT: May this witness be  
9 discharged?

10 MR. HARMON: Yes, Judge.

11 THE COURT: The witness may be excused.  
12 Call your next witness.

13 MS. SILVER: The next witness is Latrona  
14 Smith.

15 THE CLERK: Do you solemnly swear the  
16 testimony which you are about to give shall be the  
17 truth, the whole truth and nothing but the truth, so  
18 help you God?

19 THE WITNESS: Yes.

20

21 SHIRRY SMITH,

22 having been first duly sworn, testified as follows:

23

24

25

DIRECT EXAMINATION

BY MS. SILVER:

Q Can you please state your name and spell it for the record?

A Shirry Smith, S-H-I-R-R-Y, S-M-I-T-H.

Q Is it actually a different name but you go by Shirry?

A Yes, Latrona.

Q Will you spell that as well into the record?

A L-A-T-R-O-N-A.

Q Miss Smith, how old are you?

A 33.

Q And where are you employed?

A Angel Day Care.

Q Where is that located?

A On Lamb and Bonanza. The address is 4320 West Bonanza.

Q Could you speak up. I'm having trouble hearing you.

A Sorry.

Q That's okay. Is that here in Las Vegas, Clark County, Nevada?

A Yes.

Q How long have you worked there?

1 A Three years.

2 Q And what are your duties there?

3 A I am a supervisor. I answer the  
4 telephone, greet parents when they come in to pick up  
5 her children as well as take payments.

6 Q And during the course of your employment  
7 did you come to know a woman by the name of Deborah  
8 Panos?

9 A Yes.

10 Q And did she use Angel Day Care services  
11 for her children?

12 A Yes.

13 Q And how old were her children?

14 A I'm not too sure as far as their ages.

15 Q Court's indulgence. Do you recall about  
16 how many children she had at Angel Day Care?

17 A She has three.

18 Q Do you recall their names at all right  
19 now?

20 A Chantell, Anthony and James.

21 Q Now, on August 31st of 1995 were you  
22 working at Angel Day Care?

23 A Yes.

24 Q And did you receive a telephone call at  
25 from Deborah Panos?

1 A Yes.

2 Q What time was it approximately?

3 A Between 12:15 and 12:30.

4 Q What was her demeanor like on the phone  
5 when she called you?

6 A She was upset.

7 Q Was she crying?

8 A Yes.

9 Q What did you think when you heard her  
10 crying?

11 A That something was wrong.

12 Q Could you hear any other voice at the  
13 time besides hers over the telephone?

14 A Yes. I heard a gentleman's voice in the  
15 background, but I didn't hear what he was saying.

16 Q And could you tell the demeanor of that  
17 person?

18 A He sounded like he was upset.

19 Q Was he yelling?

20 A No, he wasn't yelling.

21 Q And could you hear anything that Deborah  
22 was saying to this person?

23 A No.

24 Q What did she -- what did she talk to you  
25 about as she was crying?

1 MR. BROOKS: I'm going to object, your  
2 Honor, on the ground of hearsay.

3 THE COURT: Overruled.

4 THE WITNESS: She had asked what time she  
5 needed to pick her children up.

6 BY MS. SILVER:

7 Q Did you think that that was strange that  
8 she would call you and ask what time it was?

9 A Yes.

10 Q Had she ever called you before?

11 A No.

12 Q Did she also ask you something else?

13 A Yes, she had asked me to help her.

14 Q How many times did she ask you to help  
15 her?

16 A Several times.

17 Q Do you recall if she asked you what time  
18 she brought in the children?

19 A Yes, she did, and I looked in the book  
20 and it was 7:45 when she brought them in.

21 Q 7:45 in the morning of August 31st of  
22 1995?

23 A Yes.

24 Q Did you find that unusual that she would  
25 ask you what time she brought her own children in?



1 A Yes.

2 Q Why is that?

3 A Because she's never called before as far  
4 as to check to see what time she needs to pick her  
5 children up.

6 Q What did you do when you heard her asking  
7 these questions?

8 A I looked in the sign-in book to see what  
9 time she had brought them in, and I told her that she  
10 needs to pick them up by 5:35.

11 Q And as she was talking to you, do you  
12 recall anything in particular that she said to this  
13 person in the background?

14 A She had told him that she didn't have any  
15 money.

16 Q Could you tell what the man was saying to  
17 her at all at that time?

18 A No.

19 Q What did you tell her regarding picking  
20 up her kids?

21 A I asked her would she be able to leave by  
22 herself to come and pick her children up and she told  
23 me no.

24 Q Why did you ask her if she could leave by  
25 herself?

1 A Because she was telling me that she was  
2 scared of him.

3 Q And she said no?

4 A Yes.

5 Q What else did you tell her?

6 A I asked her to see if she can make any  
7 kind of excuse to see if she could leave to come by  
8 herself to come and pick her children up, but she said  
9 that he would come -- he would try to come up with  
10 with her. So I asked her to see if she can just say  
11 anything in order for her to get out of the house to  
12 come and pick them up.

13 Q And what did she say? Could she leave by  
14 herself?

15 A She said no, that she wouldn't be able  
16 to.

17 Q Did she whisper something to you at this  
18 point?

19 A She had asked me to help her.

20 Q Did she give you some other information?

21 A She had asked me to take and call her  
22 back in a few minutes, and she gave me her telephone  
23 number as far as to call her back.

24 Q Did that end your conversation with her?

25 A Yes.

1 Q Did you call her back?

2 A Yes, I did.

3 Q How long did you wait to call her back?

4 A It was like five minutes.

5 Q Did she answer the phone?

6 A Yes, she did. And I told her to go ahead  
7 and come and pick the children up.

8 Q And what did she say?

9 A She said yes, that she was on her way.

10 Q Did you hear the voice in the background  
11 this time?

12 A No.

13 Q Did she ever pick up her children?

14 A No, she didn't.

15 Q Who was the -- who was authorized to pick  
16 up those children.

17 MR. BROOKS: Objection, irrelevant.

18 THE COURT: Overruled.

19 THE WITNESS: I think her name was Lisa.

20 BY MS. SILVER:

21 Q And who else?

22 A And Sharleen.

23 Q Was it --

24 A Well, other than Debbie, Debbie was the  
25 only one who was allowed to pick them up?

1 Q So Deborah was the primary -- that was  
2 the only one allowed to pick the children up?

3 A Yes.

4 Q Let me ask you this: Do you recall a  
5 time earlier to this where you observed injuries to  
6 Deborah's face?

7 A Yes.

8 Q What type of injuries?

9 A Her nose and her face were swollen.

10 Q Did she ever say that James Chappell  
11 would pick up her children?

12 MR. BROOKS: Objection, irrelevant.

13 THE COURT: What is the relevance of  
14 this?

15 MS. SILVER: Again, I would offer it for  
16 state of mind of the victim.

17 MR. BROOKS: And our context is the State  
18 of the mind of the victim in this regard is certainly  
19 relevant.

20 THE COURT: I don't know what this has to  
21 do with the state of mind, so I'll sustain it.

22 BY MS. SILVER:

23 Q Were you ever warned not to release the  
24 children to anyone?

25 A No.

1 Q But to your knowledge the only persons  
2 that were allowed to pick up the children were Deborah  
3 Panos and her friend, Lisa Duran?

4 A Yes.

5 Q Had you ever seen the children's father  
6 before?

7 A No.

8 Q He never picked the children up?

9 A No.

10 MS. SILVER: That would conclude direct.

11 MR. BROOKS: No questions, your Honor.

12 THE COURT: May this witness be  
13 discharged?

14 MR. HARMON: Yes, your Honor.

15 THE COURT: You maybe excused.

16 Call your next witness.

17 MR. HARMON: Before we do that, I think  
18 the that the court is aware that the parties have  
19 entered into certain stipulations. We wish to make  
20 the court and the jury aware of the details of those  
21 stipulations at this time.

22 THE COURT: You may read the stipulation  
23 into the record at this time as part of your  
24 case-in-chief.

25 MR. HARMON: Thank you, your Honor.

1 First, regarding the custodial status of  
2 the defendant, James Chappell, during a pertinent time  
3 period, he was arrested on June the 1st, 1995, in  
4 connection with the domestic battery described by  
5 Officer Allen Williams in his testimony.

6 The defendant remained in custody until  
7 his release June the 7th, 1995. He was re-arrested on  
8 June the 26th, 1995, and from that point remained in  
9 custody until his release from a city jail facility at  
10 Stewart and Mojave Streets on August the 31st, 1995,  
11 at approximately 10:45 a.m.

12 That concludes the first part of the  
13 stipulation.

14 MR. BROOKS: We will stipulate to that,  
15 your Honor.

16 MR. HARMON: Your Honor, further, in an  
17 effort to expedite the proceedings and to avoid  
18 calling a handwriting excerpt, the parties enter into  
19 the following stipulation reference certain  
20 handwriting evidence. Exhibits 69 through 73 all  
21 contain various pieces of what is apparently the same  
22 document or her.

23 And they were found at various places  
24 inside the crime scene as described by Analyst Michael  
25 Perkins. The parties do stipulate that all of the

1 writing contained in those exhibits, 69 through 73,  
2 was written by a person other than the defendant. In  
3 other words, we're agreeing that that handwriting is  
4 not the handwriting of James Chappell.

5 We, furthermore, stipulate that in  
6 Exhibits 74 and 75, which by the testimony of the same  
7 Analyst Perkins involved a number of letters or  
8 documents which were found at various places in the  
9 master bedroom of the crime scene, that although there  
10 may be some documents that are written by other  
11 persons, at least as to the documents signed James or  
12 signed James Chappell that those documents were  
13 written by the defendant, James Chappell.

14 THE COURT: All right.

15 MR. BROOKS: The defense will stipulate  
16 to that, your Honor.

17 MR. HARMON: Your Honor, the final  
18 stipulation is a written stipulation.

19 And with the court's permission I'll read  
20 into the record the pertinent part of the stipulation.  
21 The parties have agreed;

22 Number one, that James Chappell on August  
23 the 31st, 1995, entered the trailer rented to Deborah  
24 Panos through a window;

25 Two, that James Chappell engaged in

1 sexual intercourse with Deborah Panos on August the  
2 31st, 1995;

3 And three, that James Chappell caused the  
4 death of Deborah Panos by stabbing her with a kitchen  
5 knife and the act was not an accident;

6 Four, that James Chappell was jealous of  
7 Deborah Panos because he believed she was giving  
8 attention to or receiving attention from other men.

9 And this was dated October the 10th,  
10 1996, and signed by all four of the attorneys involved  
11 in this action.

12 MR. BROOKS: That's correct, your Honor.

13 THE COURT: All right. The court  
14 officially accepts all of the stipulations. The jury  
15 is instructed that the facts stipulated to are to be  
16 treated as proved.

17 MR. HARMON: Thank you, Judge. The State  
18 will call Jim Vaccaro.

19 THE CLERK: Do you solemnly swear the  
20 testimony which you are about to give shall be the  
21 truth, the whole truth and nothing but the truth, so  
22 help you God?

23 THE WITNESS: I do.  
24  
25



JAMES VACCARO,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HARMON:

Q Will you state your name for the record?

A My name is James Charles Vaccaro,  
V-A-C-C-A-R-O.

Q Is it Detective James Vaccaro?

A Yes.

Q Detective Vaccaro, where are you  
employed?

A With the Las Vegas Metropolitan Police  
Department.

Q How long have you worked with that  
department?

A I'm in my 20th year now.

Q What is your present assignment, sir?

A I'm assigned to the homicide detail.

Q How long have you worked with the  
homicide detail?

A Since December of 1993.

Q I want to direct your attention to August  
the 31st, 1995. On that day did you become assigned

1 to investigate a homicide which occurred at the  
2 Ballerina Mobile Home Park, specifically with  
3 reference to a killing occurring at that park at 839  
4 North Lamb Boulevard, Space Number 125?

5 A Yes, I did.

6 Q Was the victim identified as Deborah Ann  
7 Panos?

8 A Yes.

9 Q So you were assigned as a primary  
10 investigating officer in that case?

11 A Yes.

12 Q Did you have a partner?

13 A Yes, my partner's name is Phil Ramos.

14 Q Will you spell Ramos, please.

15 A R-A-M-O-S.

16 Q Is that routine procedure for the  
17 homicide detail of the police department to assign two  
18 detectives to investigate homicides?

19 A Yes, sir, it is.

20 Q In connection with your duties on this  
21 case, did you respond to the crime scene on August the  
22 31st, 1995?

23 A Yes, I did.

24 Q When you arrived will you tell us about  
25 what time it was?

1 A I believe I was first notified about the  
2 situation there in the mobile home park at about 4:15  
3 in the afternoon.

4 As I remember, I was driving home and my  
5 sergeant contacted me, told me to go to the mobile  
6 home park because he wanted us to begin an  
7 investigation there at that space that Mr. Harmon just  
8 said, Space Number 125. I arrived probably driving  
9 time 4:30, somewhere in there.

10 And I remember meeting my partner, Phil  
11 Ramos, there. The street had been taped off with  
12 yellow crime scene tape in the area of Space Number  
13 125, and there were several uniform Metro officers  
14 already on the scene. They had apparently made the  
15 discovery and protected the crime scene until we could  
16 arrive.

17 Q When you arrived, somewhere around 4:30  
18 in the afternoon, did you go into the scene?

19 A Yes.

20 Q Was the body of the victim still there?

21 A Yes.

22 Q You observed the victim's body?

23 A Yes, I did.

24 Q Did you confer with other officers?

25 A Yes.