

1 up maybe a misdemeanor DUI or maybe a couple shoplifts and
2 we can all agree, that, yeah, it's a pretty insignificant
3 criminal history, but that's not our case here, ladies and
4 gentlemen. Now the defense may say to you, well, he has no
5 "prior felony convictions." So what. We know he's been
6 charged with felonies before and we know that he has been
7 given break after break and they have been negotiated and
8 reduced or we don't know what happened with them. We know
9 he wasn't made accountable.

10 I submit to you that he has even been
11 violent upon a stranger. We heard that he -- and I want to
12 go back just briefly. He actually started his criminal
13 crime spree, if you will, at the young age of 13. Now he
14 has "no significant criminal history," yet, he enters the
15 system and he's got a probation officer by the time he's 13
16 and we know it continues right up until he's an adult. We
17 know that at about 18 years old, he's throwing a brick at
18 another person, a stranger. He's violent.

19 Ladies and gentlemen, I submit to you that
20 he has a very significant criminal history and the worst
21 part, ladies and gentlemen, is the crimes against his
22 children and the crimes against Deborah Panos. Stealing
23 your children's clothes for rock cocaine is a crime. It's
24 called theft. Stealing your little kids' shoes and sandals
25 is a theft. That's a larceny. Stealing their diapers and

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1 selling them is a larceny. Stealing the food out of the
2 freezer of your own children is a theft. It's a larceny.
3 Stealing their toys and selling their toys, that's a
4 theft. It's a larceny and the crimes against Deborah,
5 let's think about those crimes for a moment. All of the
6 domestic violence that you've heard, throwing her down,
7 kicking her, beating her, sending her to the hospital,
8 breaking her nose, those are crimes, ladies and gentlemen.

9 Sure, obviously, our system didn't do a
10 whole lot about them, but those are crimes. They may not
11 be felonies, but Deborah Panos came out of that broken nose
12 with a deformed nose and a scar and putting a knife to her
13 throat after beating her up, that's a crime, ladies and
14 gentlemen. Regardless of what the defense may claim,
15 that's a crime and beating his girlfriend up, the mother of
16 his three children in front of them, as they sit there and
17 cry and watch mommy get beaten, ladies and gentlemen, that
18 is called child abuse and you know when he left his kids
19 and he abandoned them and when they had to be put into
20 police protective custody, that is called child
21 endangerment. That is a crime. That is child abuse. He
22 has a very significant criminal history. Most of it
23 tragically against those little children and Deborah
24 Panos.

25 We know that most of the witnesses didn't

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1 even know him because he was in jail all the time. So he
2 does have a significant criminal history. Do not be fooled
3 by what the defense tries to claim in this case.

4 And, of course, we heard from this defendant
5 and the defense will assert to you that another mitigating
6 factor is "the love of his children." Well, I have just
7 mentioned to you how much he loved his children and he
8 stood up here and told you, "I would like to be the
9 positive role model for my children. I'd like to be able
10 to raise my family." I submit to you that based on the
11 evidence, ladies and gentlemen, that no parent is better
12 than that parent.

13 So I submit to you, ladies and gentlemen, we
14 have proven all four aggravating circumstances and I submit
15 to you that there are absolutely no mitigating
16 circumstances in this case, but let's, for argument's sake,
17 say just for argument's sake, that the defense is able to
18 prove and, again, this is just for argument's sake, let's
19 say five mitigating circumstances. They have five, we have
20 four. Now do they win because they have five and we have
21 four? No. This is not a numerical process, ladies and
22 gentlemen. It's a weighing process and what you have to
23 decide, ladies and gentlemen, even in this case if you were
24 convinced that there was maybe one mitigating circumstance
25 in this case, maybe you think that maybe he is young enough

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1 for you to consider a mitigating circumstance, you have to
2 decide does that mitigating circumstance, does it outweigh
3 those four aggravating circumstances where you are not
4 going to impose the death penalty? It's a weighing process
5 and I submit to you, ladies and gentlemen, first of all,
6 that there are no mitigating circumstances and that even if
7 you are able to come up with even one mitigating
8 circumstance, that it cannot outweigh this. That nothing,
9 ladies and gentlemen, that the defense has to say to you
10 can outweigh this. There is nothing.

11 We know that this defendant has been given
12 chance after chance. He has been given a chance at an
13 early age. His grandmother has tried to help him. His
14 aunt has tried to help him. He was given special education
15 opportunities to better himself, to make him a better
16 person for the adult world. The school district apparently
17 tried to help him and you can hear that through the
18 probation officers and the psychologists that testified
19 before when they actually got him to go to school. You
20 have to actually want to become a better person to be a
21 better person, but we know that he's been given every
22 opportunity, every chance to better himself.

23 We know that Debbie gave him chance after
24 chance after chance. We saw from his letters begging her
25 give me but one more chance. We know that our criminal

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1 justice system has given this defendant chance after chance
2 after chance. What lessons, ladies and gentlemen, has this
3 defendant learned from the chance that this system has
4 given to him? We know that he was given a chance at
5 probation at the age of 13. We know that I believe it was
6 stated by his probation officer that there were volunteers
7 that wanted to help him, that there were tutors, he got to
8 go to Magic Johnson's camp, grandma was helping, everyone,
9 even this probation officer went out of his way; he did the
10 very best to help this defendant to give him a chance and
11 what did he learn from the lessons they taught him? What
12 did he learn from the chance that they gave to him? Well,
13 we know that by the time he's -- we know that by the time
14 he's around 18 in about 1988, he commits felonious
15 assault.

16 So he learned nothing from the chance and
17 thereafter, in Arizona, in 1993, we know that this
18 defendant again was arrested for domestic violence on
19 Deborah and what did he learn from that arrest, ladies and
20 gentlemen? What did he learn from the chance that the
21 system gave him? Well, he only went back out again and he
22 beat her again. He wasn't rehabilitated. We know that by
23 January, he was again arrested for domestic violence when
24 he broke her nose. What did he learn from that chance the
25 system gave him?

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1 We know that in February of 1995, not even a
2 month after he broke her nose, he was caught entering the
3 K-Mart and he had about four or five burglary tools on him
4 and he was stealing again and he was caught for burglary,
5 possession of burglary tools, and under the influence. He
6 wasn't so under the influence that he didn't know how to
7 take those security devices off and I believe it was Claire
8 that said about 95 percent of the time he was under the
9 influence. So he functioned pretty much on an everyday
10 level under the influence of drugs and apparently built up
11 a tolerance to function. We know he can go in there and
12 knows exactly what he is doing, as he is taking those
13 security devices off, but what did he learn from all of
14 these chances? Well, he goes right back out again, he gets
15 probation. The District Attorney's Office gave him a
16 break. They dismissed an under the influence, they
17 dismissed a burglary charge, two felonies for giving him
18 the opportunity to plead guilty to a gross misdemeanor,
19 possession of burglary tools, and in April, a judge, a
20 District Court judge gave him the opportunity of probation
21 to go out in society and to do the right thing.

22 And what did he do? He got out and didn't
23 even show up at his probation officer's office. He didn't
24 even show up. That's how much respect he's got for the law
25 and, in fact, that probation officer had to go try and find

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1 out where he was and that's how they located Deborah. So
2 he gets probation, doesn't show up to the Department of
3 Parole & Probation, and then by June 1st, he's -- he breaks
4 in again, he's got a knife, and he puts it to her throat
5 and he's arrested again and what did the system do? Well,
6 let's see. Now he's got in his past three arrests for his
7 domestic violence, he's broken her nose, and now he used a
8 weapon, let's give him seven days. That's what the system
9 did. So he gets seven days and he is popped again.

10 So what did he learn? What is he learning
11 from the chances of society that the system gives him?
12 He's learning it's pretty easy to get away with crime,
13 ladies and gentlemen, and to play the system. That's what
14 he's learned. And we know that by not even what, a couple
15 weeks, by June 28th or 26th, he's again arrested for petty
16 larceny and, for whatever reason, between all of the
17 different jails he's going back and forth to because "he
18 has no significant criminal history," but between all the
19 jails, he ends up pleading guilty to the battery on Deborah
20 on August 30th of 1995 and recall what he said to the
21 judge, when he was granted probation back in August. He
22 said, "I'll never commit another crime again," and I've
23 just described to you in that short time, he must have
24 committed about five offenses and been in and out of jail
25 at least three times, but, "I'll never commit another

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1 offense again."

2 And so, of course, we know after he pleads
3 guilty, what did he learn? What kind of accountability?
4 He gets out the next day, he's able to buffalo his
5 probation officer. Maybe he tried to act as sincere as he
6 did for you today because he did buffalo that probation
7 officer and he's given yet another chance to go to an
8 in-patient drug rehab and instead of going there, he goes
9 pretty much over to Deborah's to murder her. What did he
10 learn from that? Thought he could get away with murder and
11 we know that by the next day, he's caught again shoplifting
12 and he has the absolute gull to say to Officer Osuch, as
13 he's going to take "Irvi Marvalen" (sic) for petty larceny,
14 he says, "Oh, come on, cut me a break," and Officer Osuch
15 says, "No, no more breaks." And what I'm asking you,
16 ladies and gentlemen, is to say no more breaks to this
17 defendant. No more breaks to that man sitting right
18 there.

19 A lot of people have paid for the chances
20 that this system has given to this defendant and we can
21 thank our system who gave these chances to this defendant
22 for the last memories to little Chantell and little JP and
23 Anthony of their mom and dad, that perhaps of daddy being
24 taken away from jail crying, as they cry, and mommy getting
25 taken away in an ambulance. Or perhaps we can thank this

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1 defendant for his last memories of the day of being with
2 their mother, of being placed into Child Haven into
3 protective custody yet another time. And we can thank the
4 defendant for the fact that this four year old child sits
5 there and wants to die. A four year old wants to die so
6 she can be in heaven with her mommy. How pathetic and a
7 little eight year old child, who's afraid to talk about the
8 violence that he's witnessed, and wants sleeping pills at
9 the age of eight years old. Eight year olds shouldn't want
10 sleeping pills, ladies and gentlemen. That is a depressed
11 little eight year old. That is a guilty little child
12 because he could not protect his mommy from this man. He
13 could not protect his brothers and sisters from that man
14 right there.

15 The Monsons and Norma Penfield too have paid
16 for society's giving this defendant break after break and
17 chances after chances. It was Norma Penfield, whose only
18 daughter, as she was a widow, was brutally beaten and raped
19 and stabbed to death, she lost her only daughter. That was
20 her baby, that was her child that she gave birth to, that
21 she watch raised, she watched grow up to become a nice
22 young lady and a mother herself. A lot of people have paid
23 for this defendant's chance back into society, but no one
24 paid the price like Deborah Panos. No one did because you
25 see, ladies and gentlemen, Deborah Panos paid with her life

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1 and the State submits to you and you are instructed that
2 the law recognizes that your verdicts should never be based
3 on sympathy for either the accused, for the victim's family
4 or even the accused's family because, to some extent, they
5 are victims of this defendant as well and you know you were
6 conscientious, you were an extremely patient jury, and the
7 State has every confidence that you will not base your
8 decision on sympathy.

9 The defense in their opening statement to
10 you said that this penalty hearing was not about Deborah
11 Panos. The defense would like you to forget about Deborah
12 Panos, but on behalf of the State, I'm asking you not to
13 forget Deborah Panos. It may be that it's been a year
14 since her death and that, perhaps, weeds have grown around
15 her tombstone and the only piece of Deborah Panos' body
16 left is this -- her blood and her vaginal swabs and her
17 pieces of her skin that we causally pass around this
18 courtroom as State's Exhibit No. 67, that the State of
19 Nevada has not forgotten Deborah Panos and we are asking
20 you to not to forget Deborah Panos.

21 The family has had their funeral, they have
22 received their sympathy, and they have grieved and they
23 just want justice and that's exactly what the State of
24 Nevada wants because, undoubtedly, ladies and gentlemen,
25 Deborah Panos cried out, cried out to this man, who claims

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1 to have loved her more than anything in the world, not to
2 be beaten and raped and tortured and stabbed to death and I
3 submit to you that you cannot help Deborah Panos right now,
4 but you can make sure that her killer pays the full price.
5 It is said that mercy cannot rob justice and I submit to
6 you that justice occurs when the punishment fits the
7 crime. What punishment fits the crime in this case? The
8 death penalty.

9 I want to conclude with these remarks and
10 that is that I expect the defense will come up here and
11 they will ask you to spare this defendant his life, but I
12 want you all to remember, if you remember anything else,
13 that on August 31st of 1995, as Deborah Panos laid there
14 with her arms outstretched, with this defendant over her,
15 and with this knife looking down at her, that Deborah Panos
16 did not have a jury and that Deborah Panos did not have
17 eloquent attorneys to plead and beg for her life.

18 Ladies and gentlemen, on August 31st of
19 1995, this defendant was Deborah Panos' jury, he was her
20 judge, and he was her executioner and, as she lied there
21 and begged for her life, I ask you what did he do as she
22 begged for mercy? He put her to death and I am asking you
23 to give him the same mercy that he showed her and I'm
24 asking you to sentence him to death.

25 Thank you.

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1 THE COURT: All right, we will take our
2 recess at this time.

3 Ladies and gentlemen, during the recess, it
4 is your duty not to converse among yourselves or with
5 anyone else on any subject connected with this trial or to
6 read, watch, or listen to any report of or commentary on
7 this trial or any person connected with this trial by any
8 medium of information, including, without limitation,
9 newspapers, television, or radio, and you are not to form
10 or express an opinion on any subject connected with this
11 case until it is finally submitted to you.

12 We will take a ten minute recess. We will
13 come back at 10 minutes after 4:00. We will be at ease
14 while you depart the confines of the courtroom.

15
16 (At this time the jury left the courtroom.)

17
18 THE COURT: If I can see counsel in chambers
19 just briefly -- actually, if I could see counsel at the
20 bench and we will be in recess at this time.

21
22 (Off the record at 4:00 p.m. and back on the
23 record at 4:20 p.m.)

24
25 THE COURT: Counsel stipulate to the

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1 presence of the jury?

2 MR. HARMON: Yes, your Honor.

3 MR. EWING: Yes, your Honor.

4 THE COURT: At this time, the defense may
5 make its closing argument. It's my understanding that the
6 presentations will be split between you and Mr. Ewing?

7 MR. BROOKS: Yes, that's correct, your
8 Honor.

9 THE COURT: And we will have your closing
10 statement now and then we will recess and conclude final
11 argument tomorrow morning at 11:00.

12 MR. BROOKS: Thank you, Judge.

13 May it please the Court, counsel, and ladies
14 and gentlemen of the jury, what we're going to do is I'm
15 going to address you very briefly today and respond to
16 certain things that the State has said and tomorrow
17 morning, my associate, Wil Ewing, will address the rest of
18 the evidence, which is most of the evidence.

19 We have spent almost three weeks together
20 here and during these three weeks, I think everyone in this
21 room can probably agree this process is slow, this process
22 is careful, and this process is reasoned and there's a
23 reason why the process goes the way it must go. That's
24 because we hope the law and your application of the law
25 will be careful, reasoned, studious, and aware.

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1 It is our contention throughout this case,
2 from the very beginning and most specifically what we have
3 just seen from the State, is that their approach rejects
4 what the law is all about. Their approach, ladies and
5 gentlemen, is Exhibit X in our case. It's the rabid dog
6 style of the prosecution. It takes every single fact and
7 twist it against the defense and it urges you to not be
8 careful and slow and reasoned in your approach to these
9 facts and this evidence.

10 I submit to you, ladies and gentlemen, that
11 when you look at what they are really asking you to do,
12 they have, in the most emphatic way possible, said to you
13 to show my client the same mercy my client showed to
14 Deborah Panos and I ask you what does that really mean?
15 Does it mean that you should be like James Chappell? I
16 mean, let's face it. We've heard some pretty remarkable
17 evidence in this case about James Chappell and he is in
18 many ways, a worthless SOB, he's a drug addict, he's a
19 thief, he's a wife beater. He's the kind of person who
20 would never be careful, who would never be reasoned, who
21 would never be deliberate in what he does. His actions are
22 the very opposite of the kind of process that we're here
23 today doing and, yet, the State of Nevada asks you to act
24 in the way that he acted and, ladies and gentlemen, I
25 submit to you you are not cocaine addicts, you are not

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1 thieves, you are not on the same level that James Chappell
2 is.

3 We are here for a reason and the reason we
4 are here is because what James Chappell did and we have
5 always said this, what he did was wrong and, yet, the State
6 of Nevada invites you to descend to that level in your
7 deliberations. We ask you to do exactly the opposite. We
8 ask you to be careful, to take your time, and consider what
9 exactly the State has shown in the sense of aggravating and
10 mitigating evidence and to apply the law in as careful
11 manner as possible.

12 I will allow Mr. Ewing to conclude our
13 arguments tomorrow.

14 Thank you.

15 THE COURT: It's my understanding that a
16 member of the jury has an appointment and obligation at
17 5:00 and for that reason, we will go ahead and accommodate
18 the members of the jury, as you have been so kind to
19 accommodate us during this trial because of various
20 scheduling difficulties.

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

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

5 We will be starting at 11:00 in the
6 morning. Please try to be in the courthouses by 15 minutes
7 until 11 so that we will, hopefully, be ready to go on time
8 and the Court will advise you, of course, at this time that
9 I'm handling my calendar and another judge's calendar. So
10 that's the reason for the late start.

11 We will be at ease while the ladies and
12 gentlemen depart the confines of the courtroom. Have a
13 good evening.

14
15 (At this time the jury left the courtroom.)
16

17 THE COURT: All right Mr. Ewing, you have a
18 matter to bring up outside the presence of the jury.

19 MR. EWING: That's correct, your Honor. The
20 defense would be moving for a mistrial on the following
21 grounds.

22 In the prosecutor's closing argument, at the
23 very end, the very last thing she said was relating to the
24 defendant being the judge and jury and executioner for
25 Deborah Panos and asking the jury to show him the same

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1 mercy that he showed to Deborah Panos. This type of
2 argument is inappropriate, prosecutorial misconduct, it's
3 argument for reversible error, and because of those
4 arguments and the fact they are inappropriate, the State --
5 excuse me -- the Court should grant our motion for a
6 mistrial.

7 Additionally, I did bring it to the Court's
8 attention in the hallway that we were going to be making
9 this motion right after we took the break and the Court
10 gave me permission to make it at the conclusion of Mr.
11 Brooks' closing statement.

12 THE COURT: Yes, that is true. I will
13 affirm that at this time.

14 State of Nevada.

15 MR. HARMON: Your Honor, we're entitled to
16 vigorously advocate our position. We made it clear, when
17 we filed the notice of intent to seek the death penalty,
18 that we consider this to be a capital case. The parties,
19 once the issues are clearly delineated, are given, by
20 statute and by the State Supreme Court, broad latitude in
21 the arguments addressed to the jury and this was simply a
22 rhetorical technique. It was not used for the first time
23 by Ms. Silver in this case. It's been used routinely by
24 prosecutors in this jurisdiction and others in arguing to a
25 jury the appropriateness of capital punishment and there is

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1 absolutely no basis for the defense's motion.

2 THE COURT: Any reply argument?

3 MR. EWING: The only reply I can make,
4 Judge, is because it always happens in the past, we
5 shouldn't argue it now and I could submit Points &
6 Authorities if the Court wants.

7 THE COURT: I will allow you to do that.
8 However, I will make my ruling at this time.

9 The doctrine that precludes parties, through
10 their counsel, from improperly appealing to the passions of
11 the jury is sometimes difficult to follow and the line
12 between proper advocacy and improper advocacy sometimes is
13 difficult to discern.

14 It is my judgment, however, in this case,
15 because of the nature of the penalty sought, that this is
16 appropriate rhetoric. Therefore, the motion is denied.

17 MR. HARMON: Thank you.

18 THE COURT: Anything further from the
19 parties at this time?

20 MR. HARMON: Not from the State, your
21 Honor.

22 MR. EWING: Nothing further.

23 THE COURT: All right. We're in recess.
24 Good evening.

25

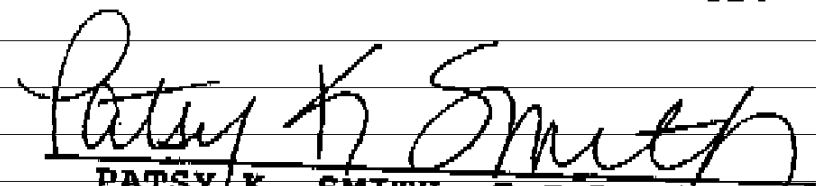
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(Off the record at 4:30 p.m.)

* * * * *

ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF PROCEEDINGS.


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

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DISTRICT COURT
CLARK COUNTY, NEVADA

FILED IN OPEN COURT
OCT 23 1996

THE STATE OF NEVADA,
PLAINTIFF,
VS.
JAMES MONTELL CHAPPELL,
DEFENDANT.

19
LORETTA BOWMAN, CLERK
BY *[Signature]*
Deputy

CASE NO. C131341
DEPT. NO. VII
DOCKET "P"

AMENDED JURY LIST

- | | |
|-----------------------------------|----------------------------|
| 1. DENISE WRIGHT PARR | 8. BRUCE TODD LARSEN |
| 2. KENNETH EDWARD GRITIS | 10. MARK GREGORY MASSAR |
| 3. JERRY WAYNE EWELL | 11. DANNA TERRY YATES |
| 4. CHERYL LYNN WELLS | 12. GLENN EUGENE FITTRO |
| 6. JIM BLAKE TRIPP | 14. KENNETH ROY FITZGERALD |
| 7. KELLYANNE BENTLEY TAYLOR | 15. WENDY LYNN HILL |
| ALTERNATES: 5. DAVID JOHN MESNARD | |
| 9. MICHAEL JOSEPH SWARTZ | |
| 13. LOIS J. OCHOA | |

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THE STATE OF NEVADA,

Plaintiff,

-vs-

JAMES MONTELL CHAPPELL

Defendant.

DISTRICT COURT
CLARK COUNTY, NEVADA

FILED IN OPEN COURT

OCT 24 1996 10:27 AM

LORETTA SCHWARTZ, CLERK

BY [Signature] DeputyCase No. C131341
Dept. No. VII
Docket P

VERDICT

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

 A definite term of 50 years imprisonment, with eligibility for parole beginning when a minimum of 20 years has been served,

 Life in Nevada State Prison With the Possibility of Parole.

 Life in Nevada State Prison Without the Possibility of Parole.

✓ Death.

DATED at Las Vegas, Nevada, this 24th day of October, 1996

Wendy L. Hill
FOREPERSON

[LEO]

EXHIBIT 141

1 JUSTICE COURT, LAS VEGAS TOWNSHIP
2 CLARK COUNTY, NEVADA
3 THE STATE OF NEVADA,)
4 Plaintiff,) CASE NO. 95F08114X
5 -vs-)
6 JAMES MONTELL CHAPPELL, #1212860,)
7 Defendant.) CRIMINAL COMPLAINT

8
9 The Defendant above named has committed the crimes of BURGLARY
10 WHILE IN POSSESSION OF A DEADLY WEAPON (Felony - NRS 205.060);
11 ROBBERY WITH USE OF A DEADLY WEAPON (Felony - NRS 200.380,
12 193.165); and MURDER (OPEN) WITH USE OF A DEADLY WEAPON (Felony -
13 NRS 200.010, 200.030, 193.165), in the manner following, to-wit:
14 That the said Defendant, on or about the 31st day of August, 1995,
15 at and within the County of Clark, State of Nevada, 10/3/95
16 COUNT I - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (72)
17 did then and there wilfully, unlawfully, and feloniously
18 enter, ~~while in possession of a deadly weapon, to-wit: a knife,~~
19 with intent to commit larceny and/or assault and/or battery and/or
20 robbery and/or murder, that certain building located at 839 North
21 Lamb Boulevard, Las Vegas, Clark County, Nevada, Space No. 125
22 thereof, occupied by DEBORAH PANOS.
23 COUNT II - ROBBERY WITH USE OF A DEADLY WEAPON 10/3/95
24 did then and there wilfully, unlawfully, and feloniously take
25 personal property, to-wit: ~~lawful money of the United States~~
26 and/or a motor vehicle, from the person of DEBORAH PANOS, or in her
27 presence, by means of force or violence, or fear of injury to, and
28 without the consent and against the will of the said DEBORAH PANOS,

3B

NC

1 said Defendant using a deadly weapon, to-wit: a knife, during the
2 commission of said crime.

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

4 did then and there, without authority of law and with malice
5 aforethought, wilfully and feloniously kill DEBORAH PANOS, a human
6 being, by stabbing at and into the body of the said DEBORAH PANOS
7 with a deadly weapon, to-wit; a knife, during the commission of
8 said crime; defendant committing said act with premeditation and
9 deliberation and/or committing said act during the perpetration of
10 a burglary ^{and} or robbery.

11 All of which is contrary to the form, force and effect of
12 Statutes in such cases made and provided and against the peace and
13 dignity of the State of Nevada. Said Complainant makes this
14 declaration subject to the penalty of perjury.

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27 LVMPD EV#9508311351
28 Burg;Robb;Murder;UDW - F
TK3

EXHIBIT 142

JChappell-8JDC1653

40

DISTRICT COURT

CLARK COUNTY, NEVADA

ORIGINAL

FILED IN OPEN COURT

OCT 16 1996

19

LORETTA BOWMAN, CLERK

BY

CASE NO. C131341

Deputy

THE STATE OF NEVADA,

Plaintiff,

Vs

JAMES MONTELL CHAPPELL,

Defendant.

DEPT. NO. VII

DOCKET P

BEFORE THE HONORABLE:

A. WILLIAM MAUPIN DISTRICT JUDGE

TUESDAY, OCTOBER 15, 1996, 10:40 A.M.

VOLUME VI

APPEARANCES:

FOR THE STATE:

MELVYN T. HARMON &

ABBI SILVER

Deputies District Attorney

FOR THE DEFENDANT:

HOWARD S. BROOKS &

WILLARD N. EWING

Deputies Public Defender

REPORTED BY:

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

PATSY K. SMITH, OFFICIAL COURT REPORTER

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JChappel1-8JDC1655

1 TUESDAY, OCTOBER 15, 1996, 10:40 A.M.

2 THE COURT: Good morning, ladies and
3 gentlemen.

4 THE JURY: (In Unison) Good morning.

5 THE COURT: You can see our clock is 40
6 minutes fast this morning.

7 Counsel stipulate to the presence of the
8 jury?

9 MR. HARMON: Yes, your Honor.

10 MR. BROOKS: Defense will, your Honor.

11 THE COURT: Call your next witness.

12 MR. EWING: Your Honor, the defense would
13 call Dr. Lewis Etcoff.

14
15 DR. LEWIS MARVIN ETCOFF,
16 having been first duly sworn to tell the truth, the whole
17 truth and nothing but the truth, testified and said as
18 follows:

19
20 DIRECT EXAMINATION

21 BY MR. EWING:

22 Q Good morning, Dr. Etcoff.

23 A Good morning.

24 Q Would you please state your full name
25 and spell your last name for the record.

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1 A Lewis Marvin Etcoff, E-T-C-O-F-F.

2 Q And how are you currently employed?

3 A I'm self-employed in private practice
4 as a licensed psychologist in Las Vegas.

5 Q How long have you been in private
6 practice?

7 A Approximately 12 years.

8 Q Could you give the jury some idea of
9 your professional experiences prior to becoming a private
10 practitioner here in Las Vegas?

11 A Prior to going into private practice in
12 1985, I was in the United States Air Force where I was a
13 captain and a psychologist based at Nellis Air Force Base
14 for two years between 1983 and 1985 and was also in the air
15 force during my clinical psychology internship at Ryan
16 Patterson Air Force Base Medical Center just outside
17 Dayton, Ohio, August '82 through August '83.

18 Q Doctor, I got a little ahead of
19 myself. I apologize. Could you also tell the jury a
20 little bit about your educational background?

21 A Yes. I have a bachelor of arts and
22 master of arts degrees from Brandeis University in 1973 and
23 1975 and my Ph.D. is in clinical psychologist from the
24 University of Toledo, Toledo Ohio in 1983.

25 Q Do you currently serve on any board in

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1 your field of expertise?

2 A Yes. I am presently -- I was elected
3 President of the Nevada State Psychological Association and
4 am serving my term this year from May to May, from '96 to
5 '97, and I'm on the Board of Directors of the Nevada State
6 Psychological Association.

7 I am a diplomate in neuropsychology, which
8 is a subspecialty of clinical psychology having to do with
9 how the brain influences behavior, and in that respect, I
10 am on a national committee which is called the Examination
11 Process Committee in which I help examine
12 neuropsychologists who hope to earn a diploma or a
13 diplomate, as it's called, in neuropsychology and I study
14 their work product and try to see whether their work
15 product is good enough to go to the next level of the
16 examination.

17 I'm also an oral examiner for the state
18 board, the State of Nevada State Board of Psychological
19 Examiners, and in that capacity, over the past several
20 years, the president of the state board, myself, and one
21 other psychologist have developed and administered the new
22 -- not so new any more -- oral examination that has to be
23 taken by prospective licensed psychologists after they have
24 past the written portion of the national psychology
25 examination. So twice a year I volunteer my time to test

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1 people coming into the state or who are ready to be
2 licensed as psychologists and helped develop the test
3 questions.

4 And, last but not least, the State Bar of
5 Nevada asked me to become a member of their committee on
6 character and fitness and in that capacity, over the past
7 couple of years, I assist the attorneys who are
8 volunteering their time on the Bar in helping them
9 understand some attorneys who have gotten into trouble
10 because of psychological problems or legal problems of
11 their own or substance abuse problems and I also try to
12 help the attorneys decide which of the applicants for the
13 State Bar licensure should be given more time, let's say,
14 at the bar examination because they may have a history of
15 learning disabilities or some other neuro development
16 disorder which would require them to have extra time in
17 order to take the test fairly.

18 Q You mentioned a minute ago that there
19 was, basically, two areas of you dealt with, psychology and
20 neuropsychology. Could you explain the difference between
21 those areas of expertise?

22 A Well, clinical psychology is the study
23 of normal and abnormal behavior and that's what my Ph.D. is
24 in and in that capacity, clinical psychologists do things
25 such as psycho therapy, evaluations of people who are

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1 taught to do different types of tests that you are familiar
2 with like the IQ tests, academic, skills tests, test of
3 different cognitive functions, personalities tests, which I
4 will be talking about later today.

5 Neuropsychology is that subspecialty area
6 where I've received special education in evasive procedures
7 in order how to determine whether someone might have brain
8 impairments or some sort of disorder that is involving some
9 sort of brain disease or disorder and there are just
10 another series of tests and different aspects of education
11 that you need to acquire before you can earn the diploma or
12 diplomate in neuropsychology.

13 Q And in your profession right now in
14 your private practice, you function both as a clinical
15 psychologist and neuropsychologist, correct?

16 A Clinical psychologist and
17 neuropsychologist.

18 Q As part of professional experience,
19 have you done any social work for any part of the court
20 system?

21 A Yes.

22 Q And where is that?

23 A For several years, the Family Court has
24 asked me to evaluate, usually adults, sometimes children
25 already in the midst of a custody fight or battle or case

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1 in the court systems in which there are allegations made by
2 the husband or the wife or the former husband or former
3 wife that the Court needs expert opinion onto see whether
4 those allegations are truthful and credible or whether they
5 might not be and helping the judges in Family Court make
6 the best possible decision for the welfare of the child for
7 those children in those cases.

8 Q How long have you been doing that?

9 A Probably since the late '80s.

10 Q Do you also do some consulting work for
11 the Clark County School District?

12 A The Clark County School District has
13 had me in the past train its school psychologists because
14 half my practice is with children and I would say the
15 majority of the time I spent in my office is with kids.
16 I've trained the school psychologists in interview
17 techniques and neuropsychological testing so that the
18 school psychologists have a better background in the type
19 of things that they would need to know to diagnose
20 Attention Deficit Hyperactivity Disorder or learning
21 disabilities.

22 I'm also called upon by the school district,
23 as an outside expert, when a parent is upset with the
24 services that the school district has performed where they
25 believe -- they want an outside expert to say -- to see

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1 their child to say what the school district has done is
2 adequate or inadequate. Often times, I will be asked by
3 the school district to serve as that outside expert.

4 Q During these consulting-type
5 activities, have you had the opportunity to observe and
6 evaluate dysfunctional families?

7 A Yes.

8 Q Have you also had the opportunity to
9 observe and evaluate individuals with specific learning
10 disabilities?

11 A Yes.

12 Q And psychological disorders?

13 A Yes.

14 Q Do you have any professional experience
15 with any private hospitals or mental facilities here in Las
16 Vegas?

17 A Yes. In the late 18 -- 18 -- the late
18 1980s and early 1990s, I was on the staff of Montevista
19 Hospital and Charter Hospital and I was the Director of
20 Psychology at Montevista Hospital for a year and the
21 Director of Professional Development at Charter Hospital
22 for a year and during the three or four, five year period
23 where I was very involved in those hospitals, I saw
24 thousands of kids and adults who were psychiatrically
25 hospitalized for every possible reason from major affective

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1 disorder, depression, manic depression to psychosis to
2 acting out disturbances of kids. Their parents couldn't
3 take them any more and they put them in a psych hospital to
4 see if there was anything that could be done. Just about
5 all those things.

6 Q Now, as a consulting clinical
7 psychologist or neuropsychologist to the Family Court and
8 to the Clark County School District, do those entities look
9 to you to provide an unbiased assessment of an individual
10 or a family situation?

11 A Yes.

12 Q In your professional experience, have
13 you also had an opportunity to assess and evaluate
14 individuals who have been charged with crimes?

15 A Correct.

16 Q In fact, in this particular case, our
17 office asked you to perform an evaluation of Mr. Chappell,
18 correct?

19 A That's correct.

20 Q Have you qualified previously as an
21 expert in the Eighth Judicial District?

22 A Yes, I have.

23 Q On how many occasions?

24 A I don't keep strict count, but it's
25 probably about three dozen times.

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1 MR. EWING: Your Honor, we'd offer Mr.
2 Etcoff as an expert at this time unless the State has any
3 voir dire they'd like to conduct.

4 MR. HARMON: No voir dire. Submit it to the
5 Court's discretion.

6 THE COURT: He may testify as an expert.

7 MR. EWING: Thank you, your Honor.

8 Q Dr. Etcoff, we mentioned earlier that
9 you were asked by our office to perform an evaluation of
10 Mr. Chappell. Was that evaluation performed?

11 A Yes, sir, it was.

12 Q Do you recall when it was performed?

13 A It was performed on June 11th, 1996.

14 Q And where did this take place?

15 A At my office.

16 Q Here in Las Vegas?

17 A In Las Vegas.

18 Q Mr. Chappell was transported to your
19 office?

20 A Yes, he was.

21 Q Very generally, would you explain to
22 the jury how long the exam took and what kinds of things
23 you did. I say generally because we are going to get into
24 each area more specifically as we proceed.

25 A Well, before I saw Mr. Chappell, I

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1 obviously had conversations with your office to determine
2 the type of case, the charges against him, and your office
3 sent to me the Las Vegas Metropolitan Police Department
4 records of the crime, a voluntary statement of Lisa Ann
5 Duran, letters that the defendant had apparently written to
6 Deborah Panos, and eventually but not at that moment, I
7 think I received somewhat later the Lansing, Michigan
8 school records for Mr. Chappell. And so I reviewed all of
9 those records except the Lansing, Michigan school records,
10 which I reviewed subsequently to seeing Mr. Chappell.

11 The rest of the records were reviewed in
12 about an hour, hour and a half of time. They were not
13 hugely thick records and then on the day of the evaluation
14 itself, Mr. Chappell was administered an IQ test, an
15 Academic Achievement Test, an Objective Personality Test,
16 and I spent two hours with him in what's called a face to
17 face clinical interview talking to him about his life and
18 the crime and anything of relevance to this case.

19 So approximately altogether, we were -- he
20 was probably in my office about five hours that day.

21 Q As a result of this procedure that you
22 went through, did you produce a detailed forensic
23 psychological evaluation?

24 A Yes, I did.

25 Q Twelve pages long?

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1 A Yes.

2 MR. EWING: May I approach the witness, your
3 Honor?

4 Q I see that you are looking at a copy of
5 that document in front of yourself?

6 A That's correct.

7 Q Twelve pages in length. I'm going to
8 show this to the prosecutor.

9 (Off the record discussion not reported.)

10 Q (BY MR. EWING) Dr. Etcoff, as I am
11 conducting this examination, I'm going to be referring to
12 this document. Would it assist you in your testimony if
13 you had a copy of it in front of you to refer to?

14 A Yes, sir.

15 Q In fact, you will be referring to that
16 document throughout this examination?

17 A Yes, I will.

18 Q When you evaluated James Chappell, you
19 were aware that he had been charged with first degree
20 murder, correct?

21 A Correct.

22 Q And he had been charged with killing
23 his girlfriend, Deborah Panos?

24 A Correct.

25 Q And were you also aware that he had a

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1 history of domestic abuse directed towards Deborah Panos?

2 A Correct.

3 Q How did Mr. Chappell present himself
4 during the evaluation?

5 A He was very cooperative. He was
6 very -- I guess the word would be credible or believable as
7 another way of putting it. He expressed his emotions,
8 whether it was sadness and remorse, concerning the killing
9 of his girlfriend, which was expressed very greatly or
10 anger that he felt at the time. He was actually reliving
11 his relationship with Deborah Panos in my office and when I
12 was watching his emotional reactions to how he reported to
13 me what he was thinking and feeling during parts of the
14 relationship, it was very believable. He seemed to be very
15 sincere, he seemed to be speaking from the heart about his
16 anger, about his sadness and remorse, and so he was a very
17 credible informant.

18 Q During your interview -- during your
19 two hour interview, did you have an opportunity to discuss
20 with Mr. Chappell his childhood?

21 A Yes, I did.

22 Q And was Mr. Chappell basically your
23 only source of information concerning his childhood?

24 A During the interview, he was my only
25 source of information. Subsequently, when we got a hold of

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1 the Michigan school records of Mr. Chappell, we had
2 corroborating evidence for things he had told me and
3 amplification of the difficulties that he had experienced
4 as a child that had been written in those records.

5 Q What significant things did you learn
6 about Mr. Chappell as it relates to his mother?

7 A The most significant thing is that he
8 lost his mother. I think she died accidentally when he was
9 about two and a half years of age and that although a child
10 at age two and a half has no real ability to have memories,
11 although in the common lay press, you may have people
12 suddenly remembering things when they were two years of
13 age, it doesn't really occur in reality.

14 So Mr. Chappell would have no real memory of
15 his mother and the important fact is simply that she died
16 when he was two and a half and he was already without a
17 father, who I think was a criminal, and he went to live
18 with his grandmother who took the kids and apparently tried
19 the best she could to raise her grandchildren.

20 Q What, if anything, did you learn about
21 James' brothers and sisters?

22 A To the extent that I can recall today,
23 I think I recall that one of his siblings got into a little
24 more trouble during childhood than he did, but that,
25 otherwise, he depicted them as getting along decently, if

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1 my recollection is correct. I don't believe I spent an
2 enormous amount of time going into his understanding of
3 each of their personalities. So I don't have a lot to say
4 about his siblings.

5 Q Did you get any impressions concerning
6 his siblings relationship with the grandmother that was
7 taking care of them?

8 A They seemed to have trouble getting
9 along with the grandmother. In fact, I think it was his
10 older sister who wanted to save the rest of the kids and
11 one day kind of free them of grandmother's supposed
12 oppression. I think the older sister had a very rough time
13 in particular and some of the other siblings might also
14 have had a difficult time being raised by a grandmother,
15 who may have had a difficult time suddenly having to raise
16 several grandchildren as if they were her children.

17 Q But there is no evidence that James had
18 a particular problem with his grandmother, is there?

19 A I didn't get the impression that his
20 grandmother treated him in as terrible a fashion as he
21 depicted his siblings being treated and certainly not
22 nearly as bad a fashion as other people in his situation
23 have been treated by their parents.

24 Q Doctor, I would like to move on for a
25 moment to the intellectual tests that were given. Did

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1 these tests come before or after the interview?

2 A The IQ test was administered after the
3 interview.

4 Q Let's talk about that first. Can you
5 describe for the jury what the IQ test is and what it is
6 intended to accomplish?

7 A Yes. The IQ test or Intelligence
8 Quotient, the test itself is called the Wechsler Adult
9 Intelligence Scale Revised, meaning that it's been revised
10 in the early '80s. It's the foremost adult IQ test in
11 existence and it's divided into two sections. One section
12 measures a person's capacity to thinking words, language
13 skills. Another section is known as the part of the test
14 that are called performance subtests and you would receive
15 and you get from that a performance IQ. It measures visual
16 spacial thinking skills. The ability to think in images
17 and to build things with blocks or jigsaw puzzles and note
18 detailed analysis of pictures.

19 Both parts of the IQ test give you an IQ
20 score; one is the verbal IQ, the other one is called the
21 performance IQ and then a full scale IQ is derived from the
22 entire test itself.

23 Q What were the results of those tests?

24 A Mr. Chappell received a full scale IQ
25 of 80, 8-0. To give you an idea of what that means, an IQ

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1 of 100 is perfectly at the medium for the adult population
2 of the United States. So if you have an IQ of 100, your
3 overall intellectual abilities are measured in the 50th
4 percentile. Every 15 points above or below 100 is known as
5 a standards deviation. And so if you go down, let's say in
6 his case, we will go down -- let's say we go down to an IQ
7 of 85, being one standards deviation from the medium of
8 100, people with the IQ of 85 have an IQ measured in the
9 16th percentile, meaning 84 out of a hundred people have
10 more on the ball intellectually than people with an IQ of
11 85.

12 He, Mr. Chappell, received a full scale IQ
13 of 80, 8-0, which is right at the very bottom of what's
14 called the low average range and it's a score in the 9th
15 percentile meaning that 91 out of 100 people have more
16 intellectual skills than he showed at that time. IQ is
17 stable. If we had taken his IQ at age seven, eight or
18 nine, it would likely not be significantly different than
19 his IQ as an adult. It tends to be rather stable.

20 His performance IQ, that which measures his
21 spacial thinking-type skills, the type of things if someone
22 would want to be mechanically inclined, into art,
23 photography, architecture, engineering, drafting, building,
24 his IQ was there the 91. IQ of 91 on the performance
25 represents performance in the 27th percentile, which is

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1 considered still average, not low average.

2 The important finding in the IQ test was his
3 verbal IQ of 77, which is classified of him being
4 borderline range, borderline mentally retarded. Now he's
5 not mentally retarded. I don't want to give you that
6 impression. The verbal IQ of 77 being in the borderline
7 range means he's very diminished in intellectual
8 capacities, thinking in words, that he can't use the
9 language very well, and his IQ falls in the 6th percentile
10 meaning 94 out of 100 adults his age would have greater
11 verbal intellectual abilities and that would be,
12 essentially, the description or the outcome of the IQ
13 test.

14 Q What was the significance, from a
15 clinical standpoint, of his verbal IQ score?

16 A It was significant in that in reviewing
17 the school records and his IQ tests results, he would have
18 been, as a child, eligible for a diagnosis of having a
19 receptive language disorder and I'll define that in a
20 second. Suffice it to say that his vocabulary fell in the
21 5th percentile, meaning his ability to understand words is
22 worse than 95 out of a hundred people his age and his
23 ability to think logically and use common sense problem
24 solving abilities was also measured in the fifth
25 percentile, worse than 95 out of a hundred people his age.

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JChappell-8JDC1672

1 When you don't have the ability to think in
2 words, either as a child or as an adult, there is a rather
3 growing burgeoning literature in psychology and psychiatry
4 showing that children who have language abnormalities tend
5 to become easily frustrated because people are talking to
6 them and they don't understand what is being said or they
7 don't understand what is expected of them. They are
8 constantly misinterpreting things, getting into trouble,
9 doing poorly in school and without the language skills
10 necessary to stop yourself from behaving poorly, people
11 with language based problems tend to be more aggressive,
12 when we follow them into adolescence and adulthood than
13 people whose language skills are normal.

14 So the important aspect of Mr. Chappell's
15 language deficits are or is -- the important aspect is that
16 if you place someone like Mr. Chappell in a stressful
17 situation, he's already learning disabled, he can't think
18 well in words, if he has to make a snap decision or filter
19 through and problem solve complex information rapidly, you
20 will not find someone of his intellectual capacities
21 verbally doing a very good job and making the best choices
22 as a result of these language problems that are thought to
23 be genetically caused at this point.

24 Q So individuals that have this low
25 verbal IQ tend to be over represented in groups of

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1 adults --

2 A In prisons.

3 Q Did you perform any academic
4 achievement tests?

5 A Yes, and I had reviewed subsequently
6 records that showed that his academic performance was
7 dismal, but I needed at that moment to know whether he was
8 able to read because I couldn't administer some of the -- I
9 wouldn't be able to administer a personality test that
10 involves reading if his reading level wasn't at a
11 certain -- about a sixth or seventh grade level. His
12 reading skills, in fact, in high school, his level was in
13 the 21st percentile, which is low average. His spelling
14 skills were eighth grade level, low average. His
15 arithmetic skills is in the first percentile. That's
16 operational paper, pencil arithmetic and his arithmetic is
17 measured as a fourth grade level, meaning he is classified
18 as having a learning disability in arithmetic.

19 Q The fact that he could read better and
20 write better than what he could communicate, is that
21 indicative of his performance IQ?

22 A That's a good way of putting it.
23 Reading and spelling are not correlated to IQ. You can
24 have someone who is mentally retarded who can read at a low
25 average range. Reading skills are -- reading skills, in

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JChappell-8JDC1674

1 essence, involves the brain's ability to process sounds in
2 the temporal lobe of the left cortex cerebral hemisphere.
3 If your temporal lobe is working well and you know the
4 difference between a, e, it is well. Dyslexia are a
5 reading difficulty with the language. So although they may
6 be very bright or not so bright, their temporal lobe don't
7 process those sounds correctly and they have difficult
8 reading.

9 In Mr. Chappell's reading, his reading is
10 average.

11 Q Did you conduct any personality tests?

12 A Yes.

13 Q And what was the name of that test?

14 A The name of the test is called the
15 Millon, M-I-L-L-O-N, and Dr. Theodore Millon it's named
16 after, he made the test, and the rest of the complicated
17 name is Clinical Multiaxial Inventory II.

18 Q What is this test intended to measure?

19 A It's a self purport measures where
20 there are 175 statements true and false and the person
21 taking the test takes the test, hopefully, honestly. There
22 are built-in scales to measures a person's ability to
23 perform honestly or lack thereof and the test has research
24 developed skills that measure things. There are a group of
25 what I might call acute psychiatric scales, scales

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1 measuring whether the person might have a major depressive
2 order, bipolar manic depression, disomic depression, mild
3 depression, psychotic thinking disorder, various kinds of
4 drug and alcohol proclivities, dependence or abuse and all
5 of those skills exist and then the major part of the test
6 also measures abnormality characteristics.

7 So by the way the person answers the test,
8 you can determine whether the person's personality
9 functioning is abnormal in various types of ways.

10 Q You testified that this test has
11 built-in control mechanisms to tell whether or not an
12 individual is being true; is that true?

13 A True.

14 Q Was this test valid?

15 A Yes.

16 Q In your opinion, was Mr. Chappell
17 attempting to be honest when he took the test?

18 A Yes.

19 Q Is this test a generally accepted
20 method for testing individuals in your field of expertise?

21 A Yes.

22 Q What, if any, significant findings did
23 you make concerning Mr. Chappell as a result of this test?
24 Referring to page 10 of your report.

25 A Thank you.

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JChappell-8JDC1676

1 There were several of the abnormal
2 personality scales elevated beyond the level of
3 significance and without getting terribly technical, I'll
4 try to describe what they portray him as being.

5 The personality test suggests strongly that
6 he is a very socially awkward, introverted man who's
7 mistrustful of others, who wants to be liked and loved and
8 accepted, but is frightened of rejection and humiliation
9 because he expects that will occur; if he gets to know
10 someone very well, he'll be hurt. And so he tends to stay
11 distant as much as possible from other people so that he
12 won't have to feel the sense of humiliation and rejection
13 that he expects to occur if he gets to know somebody well.
14 The reason he feels this way is that he has enormously low
15 self-worth and very little self-respect which has been a
16 life long characteristic of his.

17 He also has a very horrible -- I call it
18 horrible personality characteristic, which the name of it
19 is really useless descriptively to you and to me. It's
20 called Borderline Personality Characteristic and it really
21 doesn't say what it's suppose to say. Suffice it to say
22 that if I can explain what borderline personality
23 characteristics are, think of someone who has no sense of
24 identity. It's like a ship without a rudder. There is no
25 sense of self. You don't know who you are and, as a result

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1 of you not knowing who you are, you have no self-worth and
2 you tend to be emotionally driven because since you have no
3 sense of who you are, you become dependent upon other
4 people to take care of you and what borderline personality
5 disordered people tend to do is that they find someone who
6 will seem to accept them, an institution, it can be a
7 church, it can be a business, it can be your grandmother, a
8 wife, husband, a person and they attach themselves to that
9 person compulsively. They can't not be with that person
10 because that person makes them feel slightly better or
11 whole than they can be alone. Alone, they are frightened,
12 unsure, insecure about themselves. When someone seems to
13 like them, they just attach and grab onto that person.

14 Now the bad thing about that is if that
15 person ever wants to leave the attachment, these
16 individuals with borderline personality characteristics get
17 hugely frightened and are enormously afraid of being
18 abandoned because if they are abandoned, all they have left
19 is themselves, but themselves is not good. They have
20 nothing when that person leaves them.

21 So they become enormously frightened and
22 emotional and sometimes they get extremely worked up about
23 what's going to happen if this person leaves me and they
24 can even become paranoid, which means they will start
25 having thoughts, which normal people will have if you love

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1 someone dearly and you think they are going to leave you,
2 you may start thinking things in your mind that you can say
3 to yourself, gosh, that's paranoid, you know, why am I
4 thinking about these things? This is really a little
5 paranoid. It's delusional.

6 Well, people who are not put together
7 emotionally do this commonly and start inventing a reality
8 that doesn't exist, which may have been the case in this
9 situation. It may have been -- in this situation, he
10 believes that the deceased had been cheating on him. That
11 may or may not have been true. He believed it because he
12 felt her leaving him.

13 Q Did you develop an opinion as to
14 whether or not there was some individual out there that Mr.
15 Chappell had become attached to, as you've described?

16 A I'm sorry, I missed --

17 Q Did you develop an opinion as to
18 whether or not there was some individual out there that Mr.
19 Chappell had become attached to, as you described?

20 A Ms. Panos was the person he was
21 attached to.

22 Q I would like to you refer to page 11 in
23 your report for a moment. The second full paragraph, you
24 state that, "Mr. Chappell would be the type of individual
25 to feel persecuted, humiliated, and disparaged by others

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1 because his own self-image is one of weakness and
2 ineffectuality. At times, Mr. Chappell can become so
3 self-absorbed that his daydreams blur fantasy filled with
4 reality."

5 What did you mean by that?

6 A Well, this is one of the personality
7 test results and personality tests aren't perfect. This
8 isn't physics or mathematics where one plus one equals
9 two. Personality tests, better or worse, measure
10 characteristics of a person and then by interviewing the
11 person and reviewing records, you judge whether the
12 personality characteristics generated by the personality
13 test appear to be accurate or not.

14 In this case, I believe that the test result
15 was a very accurate description of a person I had spent
16 time with and the person depicted in those school
17 psychological and school social work records. A person who
18 feels weak, ineffective, and feels easily hurt and
19 disparaged by other people to the point that, as I said
20 previously and not to bore you, if you feel that badly
21 about yourself and the one person you do rely upon you feel
22 is going away, then your mind may start having irrational
23 thoughts. She's probably sleeping with somebody, she is
24 sleeping with somebody, she stayed out at night, she must
25 be sleeping with somebody, who is it and it's probably that

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1 guy I saw her look at the other day. It's someone.

2 Those are normal feelings people could go
3 through when they lose someone they love. Someone with low
4 verbal IQ, with the childhood experiences with Mr.
5 Chappell, with this type of personality structure
6 inevitably have thoughts that approach this sort of
7 paranoid state, although he wasn't paranoid, paranoid at
8 that time. I can't say that he was actually out of touch
9 with reality. I am saying that he was having thoughts that
10 were, perhaps, not accurate representations of reality.

11 Q Were the results of these tests that
12 you ran, these three tests you just described, were they
13 consistent with your interview with Mr. Chappell?

14 A Yes, very much so.

15 Q Did Mr. Chappell discuss with you his
16 substance abuse problem?

17 A Yes.

18 Q Was that significant in your findings?

19 A Yes. To cut to the quick, he became
20 dependent on cocaine in about 1992, after a history of
21 using marijuana and cocaine socially or intermittently or
22 recreationally, however you want to call that, during his
23 teenage, late teenage years.

24 To become dependent on cocaine is a very
25 dangerous thing because of the short half life of cocaine.

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1 It gives you a short high and then you need more to stay
2 up. And so what happens is Mr. Chappell became dependent
3 upon having cocaine and notably, when one is dependent on
4 cocaine, the chances of having aggressive behaviors,
5 paranoid thoughts are two classic symptoms of being cocaine
6 dependent. If anybody in this jury were using cocaine
7 regularly, many of you would have paranoid thoughts and
8 would become more aggressive because that's what cocaine
9 does to you.

10 And so Mr. Chappell, unfortunately, probably
11 chose the very worst substance that he could become
12 dependent on. Cocaine was the one he chose -- well
13 chose -- he used and then became dependent upon its use.

14 Q During your interview with Mr.
15 Chappell, did you discuss his relationship with Deborah
16 Panos?

17 A Yes.

18 Q From a historical perspective
19 initially, what did he tell you about their relationship?

20 A It had been a rocky road and at the
21 same time he admitted to me that he had hit her in the
22 past. I think once he was arrested for domestic abuse in
23 Arizona, but that he loved her deeply and in listening to
24 him, and that's what psychologists or psychiatrists do, we
25 try to listen to see whether the person seems sincere in

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1 their depiction of their feelings or thoughts and in his
2 depicting his relationship with Ms. Panos, he was really
3 crying uncontrollably for several minutes, when we talked
4 about the actual murder, and he was enormously remorseful.
5 He knew that he had done something that he had never set
6 out to want to do. He had destroyed and killed the person
7 he most relied upon and cared about. As abnormally as that
8 caring might have been, it was his only attachment in life
9 to someone else, that he cared deeply for her and ended up
10 killing her and feels to this -- or at least felt, when I
11 saw him, enormously remorseful that he had actually done
12 what he had done.

13 Q You feel like his emotional outbursts
14 were sincere?

15 A I have seen -- yes. I have seen enough
16 murderers who do not show remorse except for themselves,
17 I'm going to be in prison for the rest of my life, poor me,
18 and there are a minority of people who kill who actually
19 wished that they could take it back and realize that it
20 wasn't what they wanted to do or intended to do and feel
21 terrible about it. I think he is one of those minority of
22 people who kill, who actually would do anything to turn the
23 clock back and undo what he did.

24 Q Did he discuss with you the facts or
25 factors of their relationship a couple months prior to her

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1 death?

2 A Yes.

3 Q Did you find anything significant about
4 the things, the facts that he discussed with you?

5 A Very significant because, and maybe
6 I'll take a few minutes going through this because I want
7 you to get an idea of his state of mind, what made him do
8 what he did. That's my job and so I took him back several
9 months and tried to have him explain to me what the
10 relationship was like and to the best that I could put this
11 together, this is what he told me and it seems to be -- it
12 seems to be a credible, a credible explanation of what
13 occurred in his life.

14 He said that he was in the Clark County
15 Detention Center charged with shoplifting between February
16 28 and May 10, 1995. During that time, he told me that Ms.
17 Panos was visiting him, bringing the children, bringing him
18 money, staying in touch, that he was doing okay in jail,
19 she was there for him.

20 Then he got out of jail on about May 10th,
21 1995 at which point apparently Ms. Panos had a couple of
22 female friends move into the apartment and they had
23 boyfriends or fellows that came over and Mr. Chappell, who
24 was not very happy with that whole state of affair because
25 the guys were drinking, leaving their bottles around, he

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1 just didn't like it. It wasn't a good time.

2 And then he told me that Ms. Panos began
3 staying out at night until 3, 4:00 in the morning with one
4 of the women who remained in the home at the time, a woman
5 by the name of Clair, whom I have never met, and he was
6 sitting up all night worrying and saying, "It's getting to
7 me," which was consistent with his personality

8 characteristics if that actually did in fact occur. She
9 was going out and staying out until 3, 4 a.m., then he
10 would be getting very anxious, nervous, what is she doing,
11 who is she with, what's going on?

12 And then what happened, she left him. For
13 whatever reason, she didn't like him, she fell out of love,
14 he hit her, whatever, she left with the kids for a couple
15 of weeks in June, I believe, and in June of 1995 and this
16 made him increasingly nervous that she was seriously
17 considering leaving him and then what happened, according
18 to what he told me, was one day he was at home and he got a
19 call that turned out to be from Motel 6 and he hit the
20 redial number on the telephone. He didn't know it was
21 Motel 6. He was asking for someone in the home and found
22 out that the motel operator had confirmed that his
23 girlfriend, Deborah Panos, had stayed at the motel the
24 night before and I asked him what was that like for you
25 when you found out? He said, "I was crying, nervous, hurt,

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1 totally blown away," which again was consistent with his
2 personality test results and consistent with the way he
3 felt at the time I saw him.

4 And, again, Ms. Panos apparently returned,
5 took the clothes, took the kids, and left for another week
6 and he said, "I started getting high on cocaine," which was
7 his way of getting rid of the world around him and he said,
8 "I was doing this 'to get it out of my head. I didn't
9 want to focus on her sleeping around Las Vegas,'" and now
10 the paranoid thoughts, and maybe she was sleeping around
11 Las Vegas or maybe, in his mind, that's what he thought was
12 the worst possible thing and he was now becoming somewhat
13 paranoid, she must be sleeping around with other guys,
14 that's why she left me and that's what was going through
15 his head at that point.

16 Then he was jailed again for shoplifting,
17 which is very common for people who use cocaine. They
18 steal things to get money for cocaine. He went back into
19 the detention center and became extremely out of touch with
20 -- he became more and more paranoid, thoughts started
21 going through his head. He said, "I could feel her being
22 touched. I had dreams of her messing with people." And so
23 he spent his time in jail thinking that his girl and love
24 is now really cheating on him and he's having vivid
25 pictures of it in his mind. He eventually called home one

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1 night, a man answered. It could have been nothing, but in
2 his mind the man was someone who was sleeping with Ms.
3 Panos. Finally, he got out of jail and the night that the
4 murder took place, he went to see Ms. Panos.

5 So to make all of that make sense, in his
6 mind over the summer, as she was drifting away from him, he
7 was feeling increasingly insecure, paranoid, feeling that
8 he was losing her, and getting increasingly anxious and
9 those emotions were depicted in the letters he was writing
10 to her, some of which I had and read. He was afraid and
11 frightened like a little kid that his mother was leaving
12 him. He was just absolutely frightened to death that his
13 -- that the one person he relied upon was slipping away.

14 Q Did you see any evidence, from your
15 conversations with Mr. Chappell at that time that he was in
16 custody, that he intended to do her any harm?

17 A He didn't state to me that he had any
18 intention to do her harm. He certainly was clearly angry
19 at her and even as he was talking to me, he became angry
20 when he relived what he was going through; thinking about
21 her, he was angry as he was talking to me. So the feelings
22 were still right there. Those feelings were right there
23 out in present, as he was depicting all of which was going
24 on in his life over the past -- at that time in his life.

25 Q I want to move onto what he told you

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1 about the day that Deborah was killed, referring to page
2 nine, last paragraph in your report. Can you indicate or
3 state to the jury what James told you about the day that
4 Deborah was killed and what significant things that taught
5 you?

6 A Well, I hesitate, but probably will do
7 it anyhow because it's probably useful. He was extremely
8 graphic and explicit in what he told me occurred when he
9 went into the window of the trailer to see Ms. Panos.

10 Now, again, as an expert witness, I feel
11 it's incumbent upon me to tell you I wasn't there, I really
12 don't know what happened that night, and I can't tell you
13 that I know what happened that night. I can only tell you
14 what Mr. Chappell told me happened that night and try to
15 understand whether what he told me seems to hang together
16 logically given his personality characteristics or it
17 doesn't, but I wasn't there, I don't know what happened
18 that night.

19 He said, in any event, that he didn't have
20 the key, he climbed in a window, and that Ms. Panos allowed
21 him to come into the window and he didn't know that she had
22 been home at that point and that the two of them had sex.
23 And then he said, and I'm going to quote this, even though
24 it's not the type of language that we would typically
25 quote. I think it's gives you an idea of what was going on

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1 in his mind at that moment I think. "When I enter her, her
2 vagina is all loose. It wasn't right. I instantly got
3 up. The smell on her wasn't good. I said, 'You been
4 fucking, huh?' She says, "No." I was crying and pacing.
5 She performs oral sex on me. Then I found men's boxers on
6 the bedroom floor. She says, 'It must be Claire or Lisa's
7 friends.' I'm really pissed. My mind's spinning. We're
8 walking out the door, get in the car. I see two boxes with
9 cheap beer cans. I ask her, 'Who's been drinking?' She
10 says, 'Lisa and Clair.' The car is trashy. Beer cans on
11 the floor. It's pissing me off. The light's broke off.
12 The ceiling upholstery is ripped. She's blaming the kids.
13 The gearshift was broke. The air conditioning was broke.
14 All my tapes were gone. Then I found a letter in the car
15 to her from some guy. He talking about, 'I love the way
16 you did this to me.' This feeling came inside me. She
17 sees me reading the note. All I could picture was my lady
18 in bed with someone else. I got out, grabbed her, took her
19 in the house. She's on the floor at the front door."

20 When he, when Mr. Chappell said those
21 sentences to me, hopefully my reading them to you can
22 convey half of what it felt like to listen to that from his
23 mouth. He was actually reliving what he seemed to be
24 reliving what had gone on in his mind, at least at that
25 moment. Obviously, to me, there's no possible way in

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1 reality he could tell that his wife was having sex with
2 another woman. I think in his mind already he thought she
3 was cheating on him.

4 So, as soon as he had sex with her, he
5 just -- those thoughts took over and he knew his wife was
6 cheating on him at that point and he just got up, ran out
7 of the house, into the car, finds his car a mess, gets
8 angry about that, then finds the love note, reads this
9 note, and that's the end of that and just loses it. Brings
10 her back into the house. I asked him what happened when he
11 got back into the house and he just started crying
12 uncontrollably and I waited until he was back in control
13 and he said, "She just laid on the floor and covered her
14 face. I still to this date don't remember everything I did
15 to her. It happened so quick. Then I panicked and left."

16 I didn't press him for the gruesome details
17 of what he did to her because, to some extent, when
18 something traumatic happens, whether you are the victim or
19 perpetrator, you will have a distorted memory of that, but,
20 to some extent, he probably does remember what he did and I
21 didn't feel like putting him through the torture of telling
22 me about stabbing her and so I just let it be because we
23 already knew what had happened to her and I didn't feel
24 like -- he was already a mess, crying uncontrollably in my
25 office. I didn't think it would serve any purpose for me

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1 to make him relive the events another time.

2 Q While he was reliving the events and
3 exhibiting his emotions, did you feel that they were
4 sincere?

5 A Yes.

6 Q You testified earlier that you did have
7 an opportunity to review the report from Lansing,
8 Michigan?

9 A Yes, I did.

10 Q We've discussed them, to some degree,
11 already today. Is there anything in those reports of
12 clinical value which you haven't already explained to the
13 jury?

14 A Well, to me, it's important. I would
15 hope that the jury could see the importance of it. I will
16 quickly go through the Lansing, Michigan report because I
17 think it attests to his credibility, when he was speaking
18 to me about his life. I know he wasn't lying about this
19 and it, basically, says that this was a young guy who, by
20 grade two, was already doing so badly in school and
21 behaving so unusually, that he came to the attention --
22 back in the 1970s, psychology was not the most exact
23 science or whatever you want to call psychology, art and
24 science, and for a child in the late '70s to come to the --
25 for the school district to realize there is something wrong

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1 with this kid in the late '70s and do the number of things
2 that the school district did to understand him, I thought
3 was unusual in the records I've reviewed in so many of
4 hundreds of cases in the past.

5 By grade two and three, he had already been
6 a very poor student. His grade two teacher wrote, "James
7 is often reminded to get busy, often given extra time to
8 complete work, especially reading packet. Often talks to
9 those around him. Changes mood quickly."

10 In grade three, "Easily distracted and is
11 late getting his work in often. He needs to show work on
12 listening when others are talking."

13 In grade four, the teacher says, "James is
14 not applying himself. He has real difficulty in math, but
15 should be doing much better in reading. He is overly
16 disruptive in class and needs to be encouraged to be more
17 respectful and considerate."

18 A social worker in 1977 evaluated him
19 saying, "His actions and reactions are very slow. He asks
20 unrelated questions and will not respond when spoken to.
21 He is in the fourth grade and functioning at a second grade
22 level. His grandmother enrolled him in Head Start where he
23 would not play with anyone or talk to anyone." He finally
24 built a relationship with a new teacher, but she had to go
25 and left and he regressed to his old behavior and stopped

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1 talking to the kids.

2 So he was an emotionally disturbed kid, who
3 was diagnosed as SLD, severely learning disabled, and
4 placed in a SLD special education classroom setting where
5 he had one-on-one attention.

6 In high school, his Achievement Test results
7 were very bad. On the stanine scores that go from one to
8 nine, one being the lowest and nine being the highest,
9 James' stanine reading comprehension in 1985 was the
10 lowest, a one. In math, a one. So by high school, despite
11 being in Special Ed, he had gotten no where and, in fact,
12 when the school psychologist eventually saw him, when he
13 was 16 years nine months of age, she wrote, "The extensive
14 interview revealed a youngster who seems to feel he has
15 little hope of succeeding at life, especially as it relates
16 to academic achievement. He did not appear to have many
17 coping skills to deal with problems he encounters and tries
18 to endure whatever comes his way by pure pointing action.
19 He tends to withdraw and avoid when he encounters problems
20 and often takes what appears to him to be the easy way
21 out."

22 She described him as having, "Low
23 self-concept, depressed, distrusting, few coping skills,
24 low self-image, poor problem solving skills, difficulty
25 completing assignments," et cetera, and he graduated or,

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JChappell-8JDC1693

1 I'm sorry, in his ninth and tenth grade years, his GPA was
2 0.65 and making him ranked in his class of 584 out of 607
3 students. So he was a very unsuccessful student all the
4 way through school. Was, fortunately, found to be learning
5 disabled and the help they gave him didn't do the trick and
6 it just didn't help him.

7 Q Did you find any evidence in these
8 school records of any undiagnosed learning disabilities?

9 A They -- I'm not certain I ever saw them
10 make a diagnosis of a specific learning disability, but
11 from reconstructing those comments and how he scored on a
12 test I gave him, he certainly would have had a diagnosis of
13 developmental arithmetic disorder known as Mathematics
14 Disorder and language disorders known as Receptive Language
15 Disorder. So he was learning disabled.

16 Additionally, he probably met the criteria
17 of being a ADHD kid, Attention Deficit Hyperactivity
18 Disorder. Impulsive, unable to do work, couldn't sit
19 still, disruptive in class.

20 Q Today there are treatments for people
21 who have attention deficit hyperactivity disorder; is that
22 correct?

23 A Yes.

24 Q But there is no evidence that James
25 ever received any treatment?

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JChappell-8JDC1694

1 A And there were treatment back then, but
2 there is no evidence whether he received any treatment,
3 whether it was psycho therapeutic or medical.

4 Q James described to you, in great
5 detail, the circumstances that occurred when Deborah was
6 killed and I take it he essentially described to you that
7 he went into a rage?

8 A Yes.

9 Q Is that consistent with his behavioral
10 characteristics as you discovered them during your
11 evaluation?

12 A It's very consistent with his
13 personality test results and his use of cocaine,
14 absolutely.

15 Q Dr. Etcoff, we all have the ability to
16 make choices, correct?

17 A Yes.

18 Q I might call that our free will, for
19 lack of a better term?

20 A Yes.

21 Q In your expert opinion, do we all have
22 the same level of free will?

23 A No.

24 Q Can you go into more detail and explain
25 that?

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JChappell-8JDC1695

1 A Anybody, any person at various times
2 during his or her life, depending upon their intellectual
3 abilities, the amount of security and love in that person's
4 life, a variety of factors, the stresses in that person's
5 life comes to situations when a choice has to be made.
6 Sometimes, when you are of high intelligence and come from
7 a fairly normal home, even very stressful situations will
8 allow you to still have an enormous amount of free will or
9 the capacity to think before you act and come up with at
10 least a decent decision; maybe not the best, but something
11 decent.

12 To the extent that your IQ is lower, to the
13 extent that you've had learning disabilities, undiagnosed
14 neuro developmental disorders, such as learning
15 disabilities or ADED, to the extent you may be dependent
16 upon a substance, whether it's alcohol, amphetamines or
17 cocaine or anything, and to the extent of your own
18 personality characteristics, your free will is limited. In
19 fact, people with personality disorders by definition have
20 limited free will because when a situation occurs as a
21 result of having an inflexible personality, the person with
22 an inflexible personality or set of characteristics,
23 something happens, they react, they either think a certain
24 thought feel, a certain feeling, behave a certain
25 behavior. They are not even conscious of it half the

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1 time. They just react as they have been reacting in life,
2 life long. That's why people repeat their mistakes in many
3 instances.

4 Q Did the fact that James had a low
5 verbal IQ effect his ability to make choices, effect his
6 free will?

7 A Yes, it lowered it.

8 Q Does the fact that he came from a
9 difficult childhood effect his ability to make choices to
10 exercise his free will?

11 A Yes.

12 Q Does the fact that he was diagnosed
13 with specific personality disorders effect his free will?

14 A Very much so.

15 MR. EWING: Can I have the Court's
16 indulgence for one moment?

17 (Off the record discussion not reported.)

18 MR. EWING: Thank you, Doctor.

19 I have no further questions.

20 THE COURT: Cross examination?

21 MR. HARMON: Thank you, your Honor.

22 . . .

23 . . .

24 . . .

25 . . .

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CROSS EXAMINATION

1

2 BY MR. HARMON:

3

4 Q Dr. Etcoff, prior to June the 11th,

5

6 A I hadn't met. I may have read
7 something about it had it been in the RJ, but I had
8 probably forgotten. So for all intents and purposes, no.

9

10 Q How long did you spend with him during
11 your evaluation at your office?

12

13 A Interviewing him two hours and,
14 perhaps, another half an hour, three quarters of an hour
15 and other assorted evaluation components. And the actual
16 IQ test was administered by one of my associates in the
17 office and the personality test he did by himself via audio
18 tape. Since we weren't sure he could read well enough, we
19 gave the test by audio tape and that was without me in the
20 room.

21

22 Q When you interviewed him, were you
23 aware he was incarcerated?

24

25 A Oh, yes.

26

27 Q Did he most certainly seem to be aware
28 that he was in custody?

29

30 A There was a policeman sitting in the
31 room with us and he was in shackles.

32

33 Q Were you aware that he was charged with

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1 first degree murder and robbery and burglary?

2 A Yes.

3 Q You understood those to be serious
4 crimes?

5 A Yes.

6 Q Did Mr. Chappell seem to have the
7 presence of mind which enabled him to understand that he
8 was charged with those crimes?

9 A Yes.

10 Q You've described your experience. How
11 much opportunity have you had to evaluate persons who were
12 incarcerated who are facing a potential capital charge?

13 A I would since about 1990, when an
14 attorney who's now with the Federal Public Defender's
15 Office, Mr. Michael Pescetta, came into town on a
16 government grant to start the Nevada Appellate & Post
17 Conviction Project. It was an organization in which he was
18 asked to train Las Vegas defense attorneys to conduct
19 specialized cases such as death penalty cases.

20 From that point on, I was trained by Mr.
21 Pescetta, served on a panel with him in presenting these
22 types of cases to attorneys, have been to death row several
23 times, and have interviewed approximately three dozen
24 murderers, certainly not as many as you, Mr. Harmon, and
25 have done throughout your career, but about three dozen

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1 people who have killed.

2 Q You are talking about the three dozen
3 already being on death row?

4 A No, I have seen about six people
5 actually in Ely on death row and, perhaps, the rest were
6 actually either in the detention center or transported by
7 the detention center to my office.

8 Q So approximately 30 persons you are
9 telling us were facing potential capital charges when you
10 evaluated them?

11 A That's a guesstimate, but, yes, about
12 that.

13 Q Do you recognize whether this was true
14 in particular case that when one faces the possibility of a
15 conviction for serious crimes of violence and faces the
16 potential very severe punishment, even the imposition of a
17 death sentence, that there does exist the temptation to,
18 perhaps, adjust the version of what happened to assist in
19 the defense?

20 A I would absolutely agree.

21 Q In this case, you've described the
22 defendant as being very cooperative?

23 A He was cooperative.

24 Q How do you define cooperation?

25 A He wasn't irritated easily, he wasn't

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JChappell-8JDC1700

1 silent. There are people who I see in the same
2 circumstance who I have to send them back to the jail.
3 They won't talk to me, they won't look at me, they don't
4 want help, they don't want an evaluation, they have got a
5 chip on their shoulder. They are not trying their best.

6 Mr. Chappell did what I had hoped he would
7 do. He answered my questions, he was cooperative, he
8 didn't seem to have a chip on his shoulder, he cooperated
9 with the evaluation.

10 Q You say he didn't seem to have a chip
11 on his shoulder?

12 A Towards me about the evaluation.

13 Q But you said, as he appeared in your
14 office to relive this experience, that he was still very
15 angry?

16 A Yes, sir, he was.

17 Q His emotions were still right up to
18 where they were obviously apparent to you?

19 A Correct.

20 Q Still very angry at whom?

21 A At the deceased.

22 Q Deborah Panos?

23 A Yes. And himself, both.

24 Q If he was not telling you accurately
25 what happened on the day he killed her, would you still say

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JChappell-8JDC1701

1 he was cooperative?

2 A No.

3 Q If he was either directly lying or
4 telling you half truths, then you would say cooperation
5 would be a mischaracterization?

6 A I would say I would have to re-think my
7 opinion and I might have to say that, in certain parts of
8 the interview, he was cooperative, in certain parts of the
9 interview, he was lying.

10 Q Now you've explained to us that you had
11 an opportunity before you talked with him on June the 11th
12 to review the police reports?

13 A That was the day I saw him for the
14 entire evaluation.

15 Q But prior to that, you had an
16 opportunity to review the Metropolitan Police Department
17 reports regarding this crime?

18 A Yes.

19 Q You mentioned that you reviewed a
20 statement by Lisa Duran?

21 A Yes.

22 Q You also reviewed some letters that the
23 defendant purportedly had written to Deborah Panos?

24 A Yes.

25 Q From jail?

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JChappell-8JDC1702

1 A From jail.

2 Q And later, you reviewed Lansing,
3 Michigan school records?

4 A That's correct.

5 Q You never, of course, met Deborah
6 Panos?

7 A That's correct.

8 Q You didn't have an opportunity to
9 conduct a two hour evaluation in your office of the victim
10 in this case, did you?

11 A Of course not.

12 Q But you have no idea what she would
13 tell you about the circumstances of what happened on the
14 day this happened?

15 A That's absolutely correct.

16 Q Who told you it happened at night? You
17 have alluded several times in your testimony to the night
18 it happened.

19 A I don't recall whether it was Mr.
20 Chappell. I can't even tell you for certain that it
21 happened at night. I'm not certain, as I sit here, exactly
22 what time it occurred.

23 Q The evidence establishes that it
24 clearly occurred between 10:45 a.m. and 1:45 p.m. with
25 that assumption, if Mr. Chappell did tell you it happened

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JChappell-8JDC1703

1 at night, would that be an accurate statement?

2 A That would be an inaccurate statement.

3 Q That wouldn't be credible or
4 believable, would it?

5 A That's correct.

6 Q Did you -- I think you mentioned you
7 never met Clair, Claire McGuire?

8 A I never met Claire McGuire.

9 Q You don't know what a friend and
10 roommate of Deborah Panos would say about the extent of the
11 domination and attempt to control by this defendant, Mr.
12 Chappell?

13 A No, I don't know the extent of that as
14 I haven't had the opportunity to interview that person.

15 Q You never actually met and talked with
16 Lisa Duran, did you?

17 A You are correct.

18 Q You didn't talk with other co-workers
19 of Deborah Panos who knew very well what her dilemma was,
20 such as Michael Pollard?

21 A That's correct.

22 Q Did you ever review any statements by
23 Dina Freeman, a twelve year employee of the Tucson Police
24 Department?

25 A I never had the opportunity to, no.

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1 Q Were you unaware of the threats she
2 described which this defendant had directed at Deborah
3 Panos?

4 A I must be unaware of those threats.

5 Q You mentioned that when the defendant
6 described his relationship, he admitted that he had hit
7 her?

8 A Yes.

9 Q So you were aware, to some extent, that
10 there was a history of domestic violence?

11 A Correct.

12 Q I think you mentioned earlier, Doctor,
13 that the defendant told you he was arrested once in
14 Arizona?

15 A Yes.

16 Q Is that the only domestic violence
17 arrest he explained to you?

18 A I am not certain whether there were
19 others. There might have been others. I don't know.

20 Q That's the only one you alluded to?

21 A Yes.

22 Q Is that the only one you remember
23 specifically him advising you of?

24 A Yes.

25 Q He didn't tell you he was arrested on

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JChappel11-8JDC1705

1 several occasions in Las Vegas for domestic violence?

2 A I don't believe he did. I can check my
3 notes, but I think I would have placed that in the report
4 had he told me that.

5 Q Will you check your notes, please.

6 A Certainly.

7 He mentioned the domestic violence arrest in
8 Arizona and slapped her a couple times, had arguments about
9 the way her parents treated him. He left her twice to go
10 back to Michigan. He said she hit him also, pulled a
11 knife, went after him with scissors. He stated she never
12 needed medical attention as a result of these
13 altercations.

14 He said between January and February, 1995,
15 there was one incident and argument and she required
16 medical attention. I threw a cup at her, hit her in the
17 nose, broke her nose, I called 911, ambulance came, cops
18 came and took me off to jail.

19 So he actually might have said it to me and
20 in writing up my report, I was not careful enough and
21 actually didn't place that other incident into the report.
22 So there seems to be another January -- some time between
23 January and February, 1995, another incident of domestic
24 violence that resulted in the policemen having him being
25 taken to jail.

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JChappell-8JDC1706

1 Q That incident resulting in a broken
2 nose to Deborah Panos?

3 A I'll take your word for it.

4 Q Well, is that what you read from your
5 notes?

6 A I don't know if he gave me a -- yes, a
7 broken nose. Yep.

8 Q Are there any other references to
9 arrests in Las Vegas for domestic violence?

10 A I don't believe so. I don't believe
11 so.

12 Q Did the defendant tell you about a June
13 1, 1995 incident when he was arrested?

14 A I don't recall him saying that.

15 Q Did he describe a situation where he
16 argued with Deborah Panos at the mobile home where they
17 lived, that the argument progressed into the bedroom where
18 he pushed her down on the bed, got on top of her, pinned
19 her arms down, and threatened her with a knife?

20 A I don't believe he told me that
21 incident, no.

22 Q Well, of course, just as you omitted to
23 put in your formal report one of the incidents he had told
24 you about, which appeared in your notes about the broken
25 nose, sometimes inadvertent mistakes can be made; is that

PATSY K. SMITH, OFFICIAL COURT REPORTER

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)

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APPELLANT'S APPENDIX

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Appeal From
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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/s/ Sara Jelinek
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District of Nevada

1 SAW THE AFTERMATH.

2 Q YOU TESTIFIED THE TWO MONTHS THAT YOU WERE
3 LIVING IN THE APARTMENT THAT DEBORAH WOULD CALL THE JAIL
4 TO SEE IF JAMES WAS STILL IN CUSTODY?

5 A YES.

6 Q DID YOU ALSO SEE OCCASIONS WHEN SHE'D SPEAK
7 TO JAMES ON THE TELEPHONE?

8 A ONCE.

9 Q DID HE CALL?

10 A YES.

11 Q AND SHE ACCEPTED THE CALL?

12 A NO.

13 Q DID YOU ACCEPT THE CALL?

14 A I ACCEPTED A COUPLE OF THEM, YES.

15 Q BUT ONLY ONE TIME THAT YOU ACCEPTED THE CALL
16 THAT DEBBIE TALKED TO JAMES, IS THAT WHAT YOU'RE SAYING?

17 A IN FRONT OF ME, YES.

18 Q WERE THERE OTHER TIMES SHE TALKED TO JAMES
19 OUTSIDE OF YOUR PRESENCE THAT YOU'RE AWARE OF?

20 A NO. WE WORKED DIFFERENT SHIFTS AT G.E.

21 Q SO THERE COULD HAVE BEEN. YOU'RE JUST NOT
22 AWARE OF THEM?

23 A I'M NOT AWARE OF THEM.

24 MR. EWING: COURT'S INDULGENCE.

25 (BRIEF PAUSE IN PROCEEDINGS.)

1 MR. EWING: I DON'T HAVE ANY OTHER
2 QUESTIONS.

3 MR. HARMON: NO REDIRECT, YOUR HONOR.

4 THE COURT: MAY THIS WITNESS BE DISCHARGED?

5 MR. HARMON: YES, JUDGE.

6 THE COURT: THANK YOU, MA'AM. YOU MAY STEP
7 DOWN.

8 (WHEREUPON, MICHELLE MANCHA
9 WITHDREW FROM THE COURTROOM.)

10 THE COURT: LADIES AND GENTLEMEN, WE WILL
11 TAKE OUR AFTERNOON RECESS AT THIS TIME.

12 DURING THIS RECESS, IT IS YOUR DUTY
13 NOT TO CONVERSE AMONG YOURSELVES OR WITH ANYONE ELSE ON
14 ANY SUBJECT CONNECTED WITH THE TRIAL; OR TO READ, WATCH
15 OR LISTEN TO ANY REPORT OF OR COMMENTARY ON THE TRIAL BY
16 ANY PERSON CONNECTED WITH THE TRIAL; OR BY ANY MEDIUM OF
17 INFORMATION, INCLUDING, WITHOUT LIMITATION, NEWSPAPER,
18 TELEVISION AND RADIO; AND YOU ARE NOT TO FORM OR EXPRESS
19 AN OPINION ON ANY SUBJECT CONNECTED WITH THE CASE UNTIL
20 IT IS FINALLY SUBMITTED TO YOU.

21 WE'LL RECONVENE AT APPROXIMATELY 3:35.
22 WE'LL BE AT EASE WHILE YOU DEPART THE CONFINES OF THE
23 COURTROOM.

24 (WHEREUPON, THE JURY PANEL
25 WITHDREW FROM THE COURTROOM.)

1 THE COURT: WE'RE IN RECESS.

2 (A SHORT RECESS WAS TAKEN.)

3 THE COURT: COUNSEL STIPULATE TO THE
4 PRESENCE OF THE JURY?

5 MR. EWING: YES, YOUR HONOR.

6 MR. HARMON: THE STATE DOES, YOUR HONOR.

7 THE COURT: YOU MAY CALL YOUR NEXT WITNESS.

8 MS. SILVER: THE STATE WOULD CALL MIKE
9 POLLARD.

10 (WHEREUPON, MIKE POLLARD
11 ENTERED THE COURTROOM AND
12 TOOK THE WITNESS STAND.)

13 WHEREUPON,

14 MIKE POLLARD,

15 HAVING BEEN FIRST DULY SWORN TO TELL THE TRUTH,

16 THE WHOLE TRUTH AND NOTHING BUT THE TRUTH,

17 WAS EXAMINED AND TESTIFIED AS FOLLOWS:

18

19 DIRECT EXAMINATION

20 BY MS. SILVER:

21 Q CAN YOU PLEASE STATE YOUR NAME AND SPELL IT
22 FOR THE RECORD.

23 A MY NAME IS MIKE POLLARD, P-O-L-L-A-R-D.

24 Q AND, SIR, WHERE ARE YOU EMPLOYED?

25 A GENERAL ELECTRIC.

1 Q G.E. CAPITAL?

2 A G.E. CAPITAL, YES.

3 Q HOW LONG HAVE YOU BEEN EMPLOYED THERE?

4 A TWO YEARS NOVEMBER 14TH.

5 Q ARE YOU A RESIDENT OF THE LAS VEGAS
6 COMMUNITY?

7 A YES, MA'AM, I AM.

8 Q HOW LONG HAVE YOU LIVED HERE?

9 A JUST ABOUT TWO AND A HALF YEARS.

10 Q WHERE ARE YOU ORIGINALLY FROM?

11 A I'M ORIGINALLY FROM LOUISIANA.

12 Q AND DID YOU KNOW A PERSON BY THE NAME OF
13 DEBORAH PANOS?

14 A YES, MA'AM, I DID.

15 Q AND HOW WAS IT THAT YOU KNEW HER?

16 A I FIRST MET DEBORAH PANOS IN A TRAINING
17 CLASS FOR G.E. CAPITAL, APPROXIMATELY A YEAR AND SEVEN,
18 EIGHT MONTHS AGO.

19 Q WAS THAT ALSO AROUND NOVEMBER OF 1994?

20 A YES, MA'AM, IT WAS.

21 Q DID YOU BOTH START TOGETHER?

22 A YES, WE DID.

23 Q AND HOW WAS IT THAT YOU BECAME FRIENDS?

24 A WELL, WE HAD -- WELL, WE WERE BOTH COMING
25 FROM ARIZONA, FOR ONE THING. WE STARTED TALKING ABOUT

1 DIFFERENT PLACES WE HAD BEEN.

2 AND WHEN WE CAME UP WITH ARIZONA, SHE
3 HAD JUST COME FROM THERE AND SO HAD I. SO THAT STARTED
4 SORT OF THE CONVERSATION OFF, AND AS TIME WENT ON, WE
5 JUST STARTED TO, YOU KNOW, WE BECAME FRIENDS, CLOSE
6 FRIENDS, I MYSELF.

7 Q DID YOU KNOW HER IN ARIZONA?

8 A NO, I DIDN'T.

9 Q AS YOU BECAME CO-WORKERS TOGETHER, DID YOU
10 SHARE RIDES TO WORK?

11 A YES, WE DID.

12 Q HOW DID THAT HAPPEN?

13 A WHEN WE FIRST STARTED OFF, NEITHER ONE OF US
14 HAD CARS, SO WE STARTED TO CAR POOL -- MYSELF. SHE GOT
15 A CAR FIRST, AND SHE WOULD PICK ME UP AND WE'D GO TO
16 WORK, DROP THE KIDS OFF, AND PICK THEM UP ON THE WAY
17 BACK AND SHE WOULD DROP ME OFF AT HOME.

18 Q AND WHERE WAS IT THAT SHE WOULD TAKE THE
19 KIDS TO AND FROM DURING WORK?

20 A THE KIDS WOULD GO TO DAY CARE, WHICH WAS
21 ABOUT TWO OR THREE BLOCKS FROM THE HOUSE.

22 Q HOW WOULD YOU DESCRIBE YOUR RELATIONSHIP
23 WITH DEBBIE THROUGHOUT THE MONTHS?

24 A WE WERE LIKE INSEPARABLE. WHEN YOU SAW HER,
25 YOU SAW ME. IF YOU DIDN'T SEE ME, YOU DIDN'T SEE HER.

1 AS A MATTER OF FACT, PEOPLE THOUGHT THERE WAS A
2 RELATIONSHIP THERE, BECAUSE OF THE FACT THAT WE WERE SO
3 CLOSE.

4 Q YOU MEAN MORE THAN JUST FRIENDS?

5 A YES.

6 Q WERE YOU EVER MORE THAN JUST FRIENDS?

7 A NO.

8 Q AND DURING YOUR FRIENDSHIP WITH DEBORAH, DID
9 YOU COME TO LEARN ABOUT A PERSON BY THE NAME OF JAMES
10 CHAPPELL?

11 A YES, I DID.

12 Q DID YOU EVER FORMALLY MEET HIM?

13 A NO, I DIDN'T.

14 Q AND DID YOU, HOWEVER, SEE HIM?

15 A YES, I SAW HIM ON A COUPLE OF OCCASIONS.

16 Q DO YOU RECALL HOW IT WAS THAT YOU SAW HIM?

17 A YES.

18 Q TELL US ABOUT THE FIRST TIME YOU SAW HIM.

19 A THE FIRST TIME I SAW HIM, DEBORAH HAD DROVE
20 UP -- SHE DROVE UP TO WORK AND WE WERE LIKE STANDING
21 OUTSIDE.

22 Q WHO'S "WE"?

23 A ME AND A COUPLE OF OUR OTHER FRIENDS.

24 BECAUSE YOU COULDN'T SMOKE IN THE BUILDING SO WE HAD TO
25 SMOKE OUTSIDE SO USUALLY WE SMOKED IN THE FRONT BEFORE

1 GOING IN. AND THE FIRST OCCASION I SAW HIM WAS -- THAT
2 WAS THE TIME HE SLAPPED HER AND TOOK OFF IN THE CAR WITH
3 HER PURSE.

4 Q YOU STATED THAT YOU ACTUALLY SAW HER DRIVE
5 UP TO WORK?

6 A WELL, HE WAS DRIVING. SHE WAS ON THE
7 PASSENGER SIDE. AND THE NEXT THING YOU KNOW, HE SLAPPED
8 HER AND SHE JUMPS OUT OF THE CAR AND HE TAKES OFF.

9 Q WHEN YOU SAY "HE SLAPPED HER," DID YOU SEE
10 THIS?

11 A YES, MA'AM.

12 Q AND DID HE SLAP HER WITH AN OPEN HAND OR A
13 CLOSED FIST?

14 A THAT I COULDN'T TELL. YOU KNOW, YOU COULD
15 JUST SEE THE -- AND THEN THE HEAD JERK AND THEN SHE
16 JUMPS OUT OF THE CAR AND THEN THE CAR JUST SPEEDS OFF
17 REAL FAST (INDICATING).

18 Q AND TELL US WHAT WAS HER DEMEANOR LIKE WHEN
19 SHE CAME UP TO ALL OF YOU?

20 A SHE WAS ON THE BRINK OF TEARS. SHE WAS
21 ABOUT TO CRY. SHE WAS TRYING TO HOLD IT AS BEST SHE
22 COULD.

23 Q WHAT DID SHE TELL YOU THE DEFENDANT DID TO
24 HER?

25 A SHE SAID, "HE TOOK MY PURSE. MY PURSE IS IN

1 THE CAR AND HE TOOK MY PURSE."

2 Q DID SHE TELL YOU PROBLEMS THAT SHE HAD HAD
3 WITH THE DEFENDANT -- LET ME ASK YOU THIS: WHEN WAS
4 THIS THAT HE SLAPPED HER OR THAT YOU OBSERVED HIM SLAP
5 HER?

6 A OKAY. THIS WAS ABOUT PERHAPS TWO AND A HALF
7 MONTHS AFTER HE HAD BROKEN HER NOSE.

8 Q SO IT WAS SOMETIME AFTER HE HAD BROKEN HER
9 NOSE?

10 A YES.

11 Q AND IF I WERE TO TELL YOU THAT THERE WERE --
12 THERE WAS TESTIMONY THAT HE BROKE HER NOSE SOMEWHERE
13 AROUND JANUARY 9TH OF 1995, IS IT YOUR TESTIMONY THAT IT
14 WAS SOMETIME AFTER THIS?

15 A YES, IT WAS.

16 Q HAD YOU EVER GONE OVER TO WHERE SHE LIVED?

17 A YES.

18 Q WHEN WAS IT THAT YOU FIRST WENT OVER TO
19 WHERE SHE LIVED?

20 A I WOULD SAY ABOUT THREE -- ABOUT TWO OR
21 THREE MONTHS, YOU KNOW, AFTER WE -- AFTER WE STARTED
22 TRAINING.

23 Q AND WHO -- WHERE WAS IT THAT YOU WENT?

24 A SHE LIVED IN A TRAILER PARK.

25 Q IS THAT BALLERINA MOBILE HOME?

1 A YES, IT IS.

2 Q WHO LIVED THERE WITH HER?

3 A AT THAT TIME, IT WAS DEBORAH, SHE HAD HER
4 THREE KIDS, AND I THINK LISA HAD MOVED IN WITH HER.

5 Q NOW, DID YOU EVER -- HOW OFTEN WOULD YOU
6 VISIT DEBORAH AT THE TRAILER?

7 A WELL, I'D SAY MAYBE SOMETIMES TWICE A MONTH,
8 MAYBE, YOU KNOW. SOMETIMES WE WOULD -- SINCE WE WERE
9 CLOSER TO WORK TO HER HOUSE, A LOT OF TIMES WE WOULD
10 STOP IN THERE AND, YOU KNOW, PICK UP SOMETHING FOR THE
11 KIDS OR SOMETHING LIKE THAT BEFORE SHE WOULD TAKE ME
12 HOME.

13 Q AND DID YOU EVER SEE THE DEFENDANT AROUND
14 WHEN YOU WOULD GO OVER?

15 A NEVER.

16 Q DID SHE -- DO YOU RECALL A TIME AT WORK WHEN
17 DEBORAH BECAME UPSET REGARDING THE DEFENDANT?

18 A YES.

19 Q DO YOU RECALL CERTAIN INSTANCES?

20 A WELL, I REMEMBER ONE INSTANCE WHEN HE WAS
21 LIKE WAITING IN THE LOBBY, BECAUSE THERE'S A LOBBY WHERE
22 YOU HAVE TO GO PAST SECURITY IN ORDER TO, YOU KNOW, TO
23 GET INTO THE ACTUAL WORK SPACE AND SHE WAS SHOWING US
24 HIM STANDING OUT THERE IN THE LOBBY TALKING ABOUT HE WAS
25 GOING TO GET HER FIRED IF SHE DIDN'T GIVE HIM THE MONEY

1 OR SOMETHING LIKE THAT.

2 SO SHE WAS IN THERE TRYING TO BORROW
3 MONEY FROM PEOPLE TO GET HIM AWAY FROM THE PROPERTY.

4 Q SO HE WAS GOING TO GET HER FIRED IF HE
5 DIDN'T GET MONEY?

6 A THAT'S WHAT SHE SAID. SHE SAID, "HE'S
7 STANDING OUT THERE, HE SAYS HE'S GOING TO GET ME FIRED
8 IF I DON'T GIVE HIM MONEY."

9 Q AND HOW WAS SHE ACTING WHEN SHE WAS ASKING
10 PEOPLE FOR MONEY?

11 A SHE WAS ALL LIKE, YOU KNOW, JITTERY,
12 NERVOUS. WHENEVER IT CAME TO SOMETHING LIKE THAT, SHE
13 WAS ALWAYS ON THE BRINK OF CRYING, OKAY? SHE WAS LIKE
14 ALWAYS UPSET, YOU KNOW, AT THE DEMAND FOR MONEY.

15 Q DID YOU ACTUALLY SEE HIM THERE IN THE LOBBY
16 AS WELL?

17 A YES, I DID.

18 Q WHEN, ABOUT, WAS THIS?

19 A I'D SAY THIS WAS ABOUT SIX TO SEVEN MONTHS
20 AFTER WE STARTED TRAINING.

21 Q YOU'RE NOT SURE OF EXACT TIME PERIODS WHEN
22 I'M ASKING YOU THESE QUESTIONS?

23 A YES, I'M NOT.

24 Q YOU DIDN'T SIT AND WRITE THESE THINGS DOWN
25 AS THEY WERE HAPPENING?

1 A NO, MA'AM, I DIDN'T.

2 Q DO YOU RECALL ANOTHER TIME WHEN DEBORAH GOT
3 A PHONE CALL AT WORK REGARDING HER CHILDREN?

4 A YES.

5 Q AND WHAT WAS HER DEMEANOR LIKE AFTER
6 RECEIVING THIS PHONE CALL?

7 A I THINK SHE JUST LOST IT. SHE WAS SO UPSET,
8 SHE -- SHE DIDN'T EVEN KNOW WHEN SHE WAS -- SHE WAS JUST
9 REALLY REALLY UPSET. SHE WAS TRYING TO FIGURE OUT WHAT
10 TO DO.

11 Q WAS SHE CRYING?

12 A YES, SHE WAS. PART OF THE TIME SHE WAS
13 CRYING, PART THE TIME SHE WAS TRYING TO COMPOSE HERSELF
14 TO ACTUALLY TALK TO WHOEVER IT WAS ON THE PHONE THAT SHE
15 NEEDED TO TALK TO.

16 Q WHAT DID SHE TELL YOU WAS HAPPENING BASED ON
17 THE PHONE CALL?

18 A IT WAS SOMETHING ABOUT HER KIDS THAT GOT
19 PICKED UP, OR HER KIDS WERE IN SOMEPLACE WHERE THEY WERE --

20 Q IS THAT CHILD HAVEN?

21 A YEAH, THERE YOU GO. IT WAS A PLACE -- WELL,
22 IT WASN'T A DAY CARE AND IT WASN'T AT HOME. IT WAS
23 SOMEPLACE WHERE THE THE PROTECTIVE SERVICES OR SOMETHING
24 HAD CALLED.

25 Q CHILD PROTECTIVE SERVICES HAD REMOVED THE

1 CHILDREN?

2 A THEY WERE LETTING HER KNOW THAT THEY HAD THE
3 CHILDREN.

4 Q AND WHY IS IT THAT CHILD HAVEN HAD HER
5 CHILDREN?

6 A FROM WHAT I UNDERSTOOD, THEIR FATHER HAD
7 ABANDONED THE KIDS OR LEFT THE KIDS OR WHATEVER,
8 UNATTENDED.

9 Q YOU'RE TALKING ABOUT THE DEFENDANT?

10 A YES.

11 Q HE HAD LEFT THE CHILDREN UNATTENDED?

12 A YES.

13 Q DO YOU KNOW WHERE HE HAD TAKEN THE KIDS FROM
14 BEFORE HE LEFT THEM UNATTENDED?

15 A NO, I DON'T.

16 Q BASED ON THIS, DO YOU RECALL WHETHER OR NOT
17 DEBORAH HAD HAD TO PICK UP THE CHILDREN FROM CHILD
18 HAVEN?

19 A YES, SHE DID.

20 Q AND BASED ON HER HAVING TO PICK UP THE
21 CHILDREN FROM CHILD HAVEN, DID SHE DO SOMETHING AT THE
22 DAY CARE CENTER?

23 A WHAT I REMEMBER IS SHE HAD TO LEAVE WORK IN
24 ORDER TO DO THAT, AND NATURALLY I WASN'T ABLE TO LEAVE
25 AT THAT TIME, SO SHE WENT WITHOUT ME.

1 AND I THINK I SPOKE TO HER LATER THAT
2 NIGHT AND SHE TOLD ME THAT SHE HAD PICKED THE KIDS UP
3 AND, YOU KNOW, EVERYTHING WAS OKAY AND IT WOULDN'T
4 HAPPEN AGAIN.

5 THAT WAS BASICALLY THAT CONVERSATION.

6 Q DO YOU REMEMBER HER GOING TO DAY CARE
7 REGARDING THE DEFENDANT?

8 A YES.

9 Q WHAT HAPPENED?

10 A I REMEMBER HER GOING THERE AND HAVING HIS
11 NAME REMOVED FROM THE PICKUP LIST SO FAR AS BEING ABLE
12 TO, YOU KNOW, RECEIVING THE KIDS FROM THE DAY CARE.

13 Q AND WHY WAS THAT?

14 A FOR SOME REASON, SHE WAS AFRAID OF, YOU
15 KNOW, WHAT MIGHT HAPPEN AFTER ALL -- HE HAD ALREADY
16 ABANDONED THEM ONE TIME, SO SHE WAS AFRAID OF THAT.

17 AND SHE DIDN'T KNOW, YOU KNOW, WHAT
18 SORT OF FRAME OF MIND THIS GUY WAS IN OR WHATEVER. SHE
19 JUST WANTED HER KIDS PROTECTED.

20 Q WHEN YOU SAY HE ABANDONED THE CHILDREN, DID
21 THE POLICE ACTUALLY TAKE CUSTODY OF THE CHILDREN TO BOOK
22 THEM INTO CHILD HAVEN?

23 A MY UNDERSTANDING, YES.

24 Q DID DEBBIE WANT TO STAY WITH THIS DEFENDANT?

25 A NO, SHE DIDN'T.

1 Q HOW DO YOU KNOW THIS?

2 A BECAUSE SHE KEPT -- SHE TRIED TO STAY AWARE
3 OF WHERE HE WAS AND HOW LONG HE WOULD BE THERE, BECAUSE
4 WE HAD PLANNED TO MOVE DEBORAH, YOU KNOW, BEFORE THIS
5 GUY GOT OUT.

6 THAT'S WHY SHE KEPT ABREAST ON, YOU
7 KNOW, HOW LONG HE WAS GOING TO BE IN AND WHEN HE WOULD
8 BE RELEASED SO SHE COULD BE GONE FROM THEN. BECAUSE WE
9 HAD ALREADY MADE OTHER ATTEMPTS TO, YOU KNOW, REMEDY THE
10 SITUATION BUT THEY DIDN'T WORK.

11 Q DURING THE TIME PERIOD THAT YOU STARTED
12 THERE AT G.E. CAPITAL, WOULD SHE CRY TO YOU OFTEN
13 REGARDING THINGS THAT THE DEFENDANT DID TO HER AND THE
14 CHILDREN?

15 A YES.

16 Q WHAT TYPES OF THINGS WOULD SHE CRY ABOUT?

17 A WELL, I REMEMBER ONCE SHE HAD WENT TO
18 PAYLESS SHOE STORE AND SHE BOUGHT THE KIDS -- SHE BOUGHT
19 ALL THE KIDS PAIRS OF SHOES AND SOMEHOW THAT NIGHT THE
20 GUY CAME AND HE TOOK THE SHOES BACK TO THE PAYLESS TO
21 GET THE MONEY.

22 Q YOU'RE TALKING ABOUT THE DEFENDANT?

23 A YES.

24 Q YOU'RE TALKING ABOUT JAMES CHAPPELL?

25 A YES.

1 Q AND DO YOU SEE HIM HERE IN COURT TODAY?

2 A YES.

3 Q CAN YOU POINT TO HIM AND DESCRIBE AN ARTICLE
4 OF CLOTHING?

5 A THE GRAY JACKET, STRIPED SHIRT (INDICATING).

6 MS. SILVER: MAY THE RECORD REFLECT THE
7 WITNESS HAS IDENTIFIED THE DEFENDANT, YOUR HONOR?

8 THE COURT: YES.

9 BY MS. SILVER:

10 Q WHAT WOULD HAPPEN WHEN SHE WOULD GET HER
11 FOOD STAMPS FROM THE GOVERNMENT TO FEED HER CHILDREN?

12 A SHE WOULD GO -- USUALLY, SHE WOULD GO -- I
13 WOULD TAKE HER TO THE STORE AND SHE WOULD BUY GROCERIES
14 FOR ABOUT A MONTH. SHE WOULD FILL HER REFRIGERATOR UP
15 AND EVERYTHING, WHICH SHOULD HAVE LASTED HER QUITE
16 AWHILE, BUT THEN A DAY OR TWO, HE'D SHOW UP AND ALL THE
17 MEATS WOULD BE GONE. THE WHOLE FREEZER WOULD BE EMPTY.

18 Q DID SHE TELL YOU WHAT HE WOULD DO WITH THE
19 MEATS?

20 A SHE SAID, "HE'S PROBABLY GOING TO GO SELL
21 THEM AND BUY DRUGS."

22 Q DO YOU RECALL THIS OCCURRING AT A CERTAIN
23 BARBECUE?

24 A YES.

25 Q WHAT HAPPENED?

1 A WELL, WE CAME HOME FROM WORK AND WE WERE ALL
2 SET TO, YOU KNOW, BARBECUE. I'M OUT ON THE FRONT. I
3 GOT THE GRILL GOING AND EVERYTHING, AND THEY GO TO LOOK
4 IN THE ICE BOX AND THERE'S NOTHING IN THERE.

5 Q WHO'S "THEY"?

6 A DEBORAH AND I THINK IT WAS LISA AT THE TIME.

7 Q SO PEOPLE FROM WORK?

8 A PEOPLE FROM WORK, YES.

9 Q YOU WERE HAVING LIKE A GET TOGETHER AND A
10 BARBECUE?

11 A YES, UH-HUH.

12 Q THAT WAS OVER AT DEBBIE'S?

13 A THAT WAS GOING TO BE AT DEBBIE'S.

14 Q AND SHE HAD BOUGHT MEAT FOR THIS BARBECUE?

15 A YES.

16 Q THERE WAS NOTHING IN THAT FREEZER?

17 A THERE WAS NOTHING.

18 Q HOW DID DEBBIE REACT?

19 A SHE WAS REALLY ANGRY AT FIRST, YOU KNOW, AND
20 THEN SHE STARTED TELLING US, YOU KNOW, PROBABLY THIS OR
21 PROBABLY THAT HAD HAPPENED, AND -- WHICH WE COULDN'T
22 FIGURE OUT ANYTHING ELSE BECAUSE NO ONE ELSE COULD, YOU
23 KNOW, GET INTO HER PLACE, SO WE FIGURED THAT HE HAD BEEN
24 THERE.

25 AND THEN THIS HAD HAPPENED BEFORE, SO,

1 WE PRACTICALLY KNEW WHAT HAD HAPPENED.

2 Q DID YOU EVER SEE DEBORAH CALLING THE JAIL TO
3 SEE OR TO MAKE SURE HE WAS NOT GOING TO BE RELEASED?

4 A YES.

5 Q AND ABOUT WHEN WAS THIS PRIOR TO HER DEATH?

6 A I'D SAY FROM THE TIME -- ABOUT 30 DAYS ON,
7 FROM 30 DAYS ON. BECAUSE HE WAS SUPPOSED TO BE THERE
8 FOR AT LEAST 90 OR SOMETHING LIKE THAT, SO FROM 30 DAYS
9 ON, TOWARD THE END OF THE 90, THE LAST 30 DAYS, SHE
10 STARTED CALLING JUST ABOUT EVERY DAY TO MAKE SURE HE
11 WASN'T OUT OR HE WASN'T ABOUT TO GET OUT.

12 Q PRIOR TO HIS GOING TO JAIL, HAD DEBORAH
13 TRIED TO ACTUALLY GET THE DEFENDANT TO LEAVE THE STATE?

14 A YES, MA'AM.

15 Q AND HOW DID SHE DO THAT?

16 A WELL, AT ONE TIME SHE BOUGHT A TICKET. SHE
17 BOUGHT A TICKET I THINK AT ONE TIME AND -- YOU KNOW, FOR
18 HIM TO GO BACK, AND I THINK HE CASHED THAT ONE IN.

19 SO THAT'S HOW WE FIGURED OUT THAT THAT
20 WASN'T GOING TO WORK, YOU KNOW, IN ORDER TO GET HIM TO
21 GO HOME, BECAUSE HE WASN'T GOING TO GO.

22 Q WHERE WAS THAT TICKET TO, DO YOU RECALL?

23 A I THINK IT WAS TO MICHIGAN.

24 Q HOW WAS IT THAT YOU CONVINCED DEBBIE TO
25 LEAVE THE RESIDENCE AS THE DEFENDANT WAS STILL IN JAIL?

1 A WELL, WE -- ME AND DEBORAH WOULD TALK ABOUT
2 IT A LOT, YOU KNOW, SO FAR AS HOW, YOU KNOW, TO MAKE
3 THIS BREAK, AND SHE REALIZED THAT BUYING HIM A TICKET OR
4 GIVING HIM MONEY FOR A TICKET WAS NOT GOING TO WORK.

5 SO I SORT OF, YOU KNOW, CONVINCED HER
6 TO MOVE. I SAID, WELL, THAT WOULD PROBABLY BE BEST
7 BECAUSE AT THE SAME TIME OUR JOB WAS ABOUT TO MOVE, TOO,
8 SO WE WOULDN'T HAVE BEEN IN THE SAME BUILDING AND HE
9 WOULDN'T HAVE KNOWN WHERE TO FIND HER.

10 AND THAT'S THE REASON WHY SHE WAS
11 CHECKING ON HIM SO MUCH.

12 Q WAS SHE RELUCTANT TO ACTUALLY LEAVE THAT
13 TRAILER?

14 A SHE WAS AT ONE TIME.

15 Q WHY WAS THAT?

16 A BECAUSE SHE HAD SO MUCH MONEY INVESTED IN
17 THIS TRAILER. SHE WAS BUYING IT. AND TO JUST LEAVE IT,
18 YOU KNOW, SHE WOULD BE LEAVING AN INVESTMENT. SO SHE
19 WANTED TO REALLY HANG ON TO IT IF POSSIBLE, BUT SHE WAS
20 CONVINCED THAT SHE WOULDN'T BE ABLE TO DO BOTH.

21 Q I WANT TO DIRECT YOUR ATTENTION TO THE DATE
22 OF AUGUST 31ST OF 1995. DO YOU RECALL THAT DATE?

23 A YES, I DO.

24 Q DO YOU RECALL SEEING DEBBIE ON THAT DATE?

25 A YES.

1 Q WHEN DID YOU FIRST SEE DEBBIE?

2 A SHE PICKED ME UP FROM WORK THAT MORNING.

3 Q AND WHERE -- ABOUT WHAT PART OF TOWN DO YOU

4 LIVE? WHAT ARE YOUR CROSS STREETS?

5 A DECATUR AND VEGAS DRIVE.

6 Q SO IN THE NORTHWEST AREA OF TOWN?

7 A YES.

8 Q HOW LONG WOULD IT TAKE YOU GENERALLY TO

9 DRIVE EITHER FROM YOUR HOUSE TO DEBBIE'S?

10 A APPROXIMATELY 15 TO 20 MINUTES.

11 Q IT WAS NOT SOMETHING THAT YOU WOULD MAKE A

12 TRIP WALKING?

13 A NO.

14 Q NECESSARILY?

15 A NO.

16 Q AND ABOUT -- I'M SORRY, WHAT TIME DID SHE

17 PICK YOU UP?

18 A SHE PICKED ME UP ABOUT 6:30.

19 Q AND DID SHE HAVE SOMEONE WITH HER?

20 A NO, IT WAS JUST HER.

21 Q HAD SHE DROPPED THE CHILDREN OFF AT DAY

22 CARE?

23 A YES.

24 Q WHERE DID YOU TWO GO?

25 A FROM THERE, WE WENT TO WORK.

1 Q AT G.E. CAPITAL?

2 A AT G.E. CAPITAL, YES.

3 Q AND WHAT HAPPENED ONCE YOU WERE AT WORK?

4 A ONCE AT WORK WE WENT THROUGH THE SHIFT,
5 WHICH THE SHIFT ON THAT DAY HAPPENED TO BE A HALF-DAY
6 SHIFT. SO WE WERE OFF ABOUT 12 NOON.

7 SO SINCE WE GOT OFF EARLY, WE HAD
8 DECIDED TO, YOU KNOW, TRY ANOTHER ONE OF THESE
9 BARBECUES. SO WE GOT OFF AROUND 12:00 AND WE LEFT
10 AROUND 12:10, 12:15.

11 SHE BROUGHT ME HOME AND SHE SAID SHE
12 WAS GOING TO GO HOME, DO A FEW THINGS AND WE WERE ALL
13 GOING TO MEET UP AND GO TO THE PARK.

14 Q IS THAT LORENZI PARK?

15 A YES, I THINK SO. THAT'S THE CLOSEST TO MY
16 HOUSE.

17 Q AND WHAT HAPPENED?

18 A WELL, SHE LEFT AND ALL OF A SUDDEN ABOUT 20,
19 25 MINUTES LATER, SHE WAS BACK.

20 Q TO YOUR HOME?

21 A YES.

22 Q AND WHAT HAPPENED?

23 A SHE WAS ALL SCARY, SHE WAS ALL REAL, REAL
24 NERVOUS. AT THAT TIME, I WAS JUST LIKE COMING OUT OF
25 THE SHOWER AND I WAS WONDERING WHY SHE WAS BACK SO FAST.

1 Q CAN YOU DESCRIBE WHAT SHE WAS DOING WHEN SHE
2 WAS ALL SCARED AND NERVOUS?

3 A SHE WAS SITTING ON MY COUCH IN A BALL, LIKE
4 HOLDING HER KNEES.

5 Q IN A BALL?

6 A YES.

7 Q AND WHAT WAS SHE DOING?

8 A SHE WAS JUST SHIVERING, JUST LIKE SHAKING.

9 Q WHAT DID SHE TELL YOU?

10 A SHE SAID, "HE'S OUT."

11 AND I SAID, "WHO'S OUT?"

12 SHE SAID, "JAMES IS OUT."

13 AND I SAID, "HOW DO YOU KNOW?"

14 SHE SAID, "BECAUSE HE LEFT A MESSAGE
15 ON MY VOICE MAIL."

16 SO WE STARTED THINKING ABOUT, WELL,
17 THE PLAN TO MOVE WAS OUT, SO WHAT ARE WE GOING TO DO
18 NEXT?

19 SO I TOLD HER TO JUST WAIT A FEW
20 MINUTES, LET ME GET OUT OF THE SHOWER AND I'LL GO HOME
21 WITH HER. BECAUSE SHE GOT CONCERNED ABOUT THE KIDS.

22 SHE WANTED TO GO HOME, PICK UP SOME
23 CLOTHES FOR THE KIDS, PICK THEM UP AT DAY CARE AND THEN
24 THEY WERE GOING TO COME BACK TO MY HOUSE AND STAY LIKE
25 THEY USUALLY DID, TWO OR THREE DAYS SOMETIME, WHEN HE

1 WAS OUT.

2 Q WHEN HE WAS OUT OF JAIL, SOMETIMES THEY
3 WOULD STAY WITH YOU?

4 A YES, MA'AM.

5 Q AND WHY WOULD SHE AND HER CHILDREN STAY WITH
6 YOU WHEN HE WAS OUT?

7 A BECAUSE SHE WAS AFRAID.

8 Q HAD SHE TOLD YOU THAT HE HAD BEEN VIOLENT
9 WITH HER IN THE PAST?

10 A YES.

11 Q SO HER PLAN WAS TO GET THE CHILDREN'S
12 CLOTHES AND THE CHILDREN AND RETURN TO YOUR HOUSE?

13 A YES.

14 Q DID YOU TELL HER TO WAIT?

15 A YES.

16 Q AND WHAT DID YOU DO?

17 A I WENT BACK IN THE SHOWER TO FINISH OFF AND
18 WHEN I CAME BACK OUT, SHE WAS GONE.

19 Q DID YOU KNOW WHERE SHE HAD WENT?

20 A NO, I DIDN'T.

21 Q DID YOU HAVE ANY TRANSPORTATION TO FOLLOW
22 HER?

23 A NO, I DIDN'T.

24 Q WHAT DID YOU DO?

25 A I GOT ON THE PHONE. I TRIED CALLING

1 DIFFERENT PLACES TO SEE IF SHE HAD PERHAPS WENT LIKE TO
2 LISA'S OR -- I CALLED HER HOUSE THREE OR FOUR TIMES AND
3 DIDN'T GET A RESPONSE.

4 Q WHEN SHE WAS ROLLED UP IN A BALL AND
5 SHIVERING, WAS SHE CRYING?

6 A YES.

7 Q WAS SHE SCARED?

8 A YES.

9 Q WAS THAT THE LAST TIME YOU HAD SEEN DEBBIE?

10 A THAT'S THE LAST TIME I SAW DEBORAH.

11 Q CAN YOU DESCRIBE WHAT TYPE OF PERSON DEBBIE
12 WAS?

13 A DEBORAH WAS A VERY FRIENDLY PERSON. SHE WAS
14 VERY FRIENDLY, VERY KINDHEARTED. IF SHE COULD DO
15 SOMETHING FOR YOU, WITHIN HER POWER, SHE WOULD. SHE WAS
16 SORT OF HAPPY GO LUCKY. YOU KNOW, NEVER GOT INTO NO
17 TROUBLE. NEVER, YOU KNOW, MESSED WITH ANYBODY. SHE WAS
18 JUST A NICE GIRL. JUST A VERY NICE GIRL.

19 Q WHAT TYPE OF WORKER WAS SHE?

20 A SHE WAS AN EXCELLENT WORKER. AS A MATTER OF
21 FACT, WE -- AT WORK SHE JUST WOULD GO ALONG, DO THE JOB,
22 YOU KNOW, JUST LIKE EVERYBODY ELSE. COULDN'T WAIT FOR
23 IT TO BE OVER, YOU KNOW, BUT --

24 Q WHAT KIND OF MOTHER WAS SHE TO HER THREE
25 CHILDREN?

1 A SHE LOVED HER CHILDREN. SHE LOVED HER
2 CHILDREN VERY MUCH.

3 Q WHAT TYPE OF FRIEND WAS SHE TO YOU?

4 A WELL, AS WE WENT ALONG, WE WERE REAL CLOSE,
5 YOU KNOW. THERE WERE A LOT OF THINGS IN HER LIFE THAT --
6 WE COULD TALK, YOU KNOW, WE JUST TALKED ABOUT DIFFERENT
7 THINGS ALL THE TIME. ESPECIALLY THINGS THAT DISTRESSED
8 HER, YOU KNOW.

9 Q AND WHAT DISTRESSED HER THE MOST?

10 A WELL, SHE REGRETTED BRINGING THIS GUY OUT
11 HERE ANYWAYS. BECAUSE, YOU KNOW, HE CAME AFTER SHE WAS
12 ALREADY HERE. SHE REGRETTED THAT, BUT IT WAS TOO LATE.
13 COULDN'T DO NOTHING ABOUT THAT.

14 SO, YOU KNOW, WE WERE ALWAYS TRYING TO
15 CONVINCE HER TO JUST KEEP ON GOING, KEEP GOING WITH HER
16 LIFE.

17 AND, YOU KNOW, THERE WERE A LOT OF
18 PROBLEMS IN BETWEEN TIMES, YOU KNOW, LIKE WHENEVER THIS
19 GUY WAS OUT.

20 THAT'S ONE OF THE REASONS I NEVER MET
21 HIM, BECAUSE EVERY TIME THE CHANCE WOULD COME FOR ME TO
22 MEET HIM, SHE WOULD SET UP A MEETING FOR ME TO MEET THIS
23 GUY, HE WAS ALWAYS BACK IN JAIL OR GONE FOR TWO WEEKS
24 AND TOOK WHATEVER HE COULD AND YOU WOULD SEE HIM NO
25 MORE, YOU KNOW.

1 Q WHEN YOU SAY HE WOULD TAKE WHATEVER HE
2 COULD, WHAT ARE YOU TALKING ABOUT?

3 A WELL, I REMEMBER WHEN I FIRST MET DEBORAH,
4 SHE HAD FURNITURE AND ALL KIND OF NICE STUFF IN HER
5 HOUSE. AND TOWARD THE END, ALL HER T.V.'S, V.C.R.'S,
6 YOU KNOW, JUST ABOUT ALL OF HER FURNITURE WAS GONE.

7 AS A MATTER OF FACT, I GAVE HER A
8 SMALL BLACK-AND-WHITE T.V. FOR THE KIDS TO WATCH T.V.
9 BECAUSE HER COLOR T.V. HAD BEEN TAKEN.

10 Q TAKEN BY WHO?

11 A BY JAMES.

12 MS. SILVER: THANK YOU.

13 I WILL PASS THIS WITNESS.

14 THE COURT: CROSS?

15

16 CROSS-EXAMINATION

17 BY MR. EWING:

18 Q YOU TESTIFIED YOU KNEW DEBBIE FOR ABOUT TWO
19 YEARS?

20 A ABOUT A YEAR AND EIGHT MONTHS.

21 Q THAT'S CORRECT. YOU SAID TWO YEARS FROM
22 NOVEMBER OF THIS YEAR IS WHEN YOU MET HER?

23 A I'M SORRY?

24 Q YOU MET HER TWO YEARS AGO NOVEMBER OF THIS
25 YEAR?

1 A RIGHT, UH-HUH.

2 Q AND DURING THAT TIME, YOU WOULD GO TO THE
3 TRAILER A COUPLE OF TIMES A MONTH?

4 A YES.

5 Q BUT YOU NEVER SAW JAMES?

6 A NEVER SAW HIM.

7 Q THIS INCIDENCE WHERE YOU SAY YOU SAW DEBORAH
8 GET SLAPPED IN THE PARKING LOT AT WORK --

9 A RIGHT.

10 Q -- WOULD IT BE SAFE TO SAY THAT WAS AROUND
11 MARCH OF '95?

12 A YEAH, THAT WOULD BE SAFE TO SAY.

13 Q IS THERE ANY CHANCE THAT THAT SLAPPING
14 INCIDENT COULD HAVE OCCURRED BEFORE JANUARY OF '95?

15 A IF I COULD TAKE THE INCIDENTS IN ORDER, SIR,
16 I WOULD PROBABLY SAY, LET'S SEE, THE NOSE BREAKING, THE
17 SLAP WAS AFTER THAT. I'D SAY SOMEWHERE AROUND MARCH, I
18 WOULD THINK.

19 Q DO YOU RECALL WHAT MONTH IT WAS WHEN THE
20 CHILDREN WERE TAKEN INTO PROTECTIVE CUSTODY BY WHOMEVER
21 DID IT?

22 A NO, I DON'T.

23 Q WAS THIS BEFORE OR AFTER THIS SLAPPING
24 INCIDENT IN THE PARKING LOT?

25 A I THINK THAT WAS AFTER.

1 Q DID YOU EVER HEAR DEBORAH HAVE A
2 CONVERSATION WITH JAMES ON THE TELEPHONE?

3 A I USUALLY WALKED AWAY ON THOSE OCCASIONS.

4 Q SO YOU NEVER HEARD HER HAVE A CONVERSATION
5 WITH HIM ON THE TELEPHONE?

6 A NO.

7 MR. EWING: I DON'T HAVE ANY OTHER
8 QUESTIONS.

9 MS. SILVER: NOTHING MORE.

10 THE COURT: MAY THIS WITNESS BE DISCHARGED?

11 MS. SILVER: YES.

12 THE COURT: THANK YOU, SIR. YOU MAY STEP
13 DOWN.

14 (WHEREUPON, MIKE POLLARD
15 WITHDREW FROM THE COURTROOM.)

16 THE COURT: NEXT WITNESS.

17 MR. HARMON: CHARMAINE SMITH.

18 (WHEREUPON, CHARMAINE MARIE
19 SMITH ENTERED THE COURTROOM
20 AND TOOK THE WITNESS STAND.)

21 WHEREUPON,

22 CHARMAINE MARIE SMITH,
23 HAVING BEEN FIRST DULY SWORN TO TELL THE TRUTH,
24 THE WHOLE TRUTH AND NOTHING BUT THE TRUTH,
25 WAS EXAMINED AND TESTIFIED AS FOLLOWS:

1

2

DIRECT EXAMINATION

3

BY MR. HARMON:

4

Q WILL YOU STATE YOUR NAME, PLEASE.

5

A CHARMAINE MARIE SMITH.

6

Q PLEASE SPELL YOUR FIRST NAME.

7

A C-H-A-R-M-A-I-N-E.

8

Q IS IT MISS OR MRS. SMITH?

9

A MISS.

10

Q MISS SMITH, ARE YOU EMPLOYED?

11

A YES.

12

Q WHERE DO YOU WORK?

13

A THE STATE OF NEVADA, THE DIVISION OF PAROLE

14

AND PROBATION.

15

Q HOW LONG HAVE YOU WORKED WITH THE STATE OF

16

NEVADA, THE DIVISION OF PAROLE AND PROBATION?

17

A IT WAS SEVEN YEARS THIS JULY.

18

Q WHAT ARE THE NATURE OF YOUR DUTIES?

19

A I SUPERVISE PROBATIONERS AND PAROLEES THAT

20

HAD RECENTLY BEEN SENTENCED OR PAROLED FROM PRISON.

21

Q HAVE YOU BROUGHT WITH YOU CERTAIN RECORDS OF

22

YOUR DEPARTMENT?

23

A YES, I HAVE.

24

Q DO THEY RELATE TO A PARTICULAR INDIVIDUAL?

25

A YES.

1 Q WHAT PERSON?

2 A JAMES CHAPPELL.

3 Q DID YOU, FOR A PERIOD OF TIME IN 1995,
4 SUPERVISE JAMES CHAPPELL?

5 A YES.

6 Q DURING WHAT TIME FRAME?

7 A I WAS ASSIGNED HIS CASE AFTER HE WAS
8 SENTENCED 4-27-95.

9 Q HE WAS SENTENCED FOR AN OFFENSE IN THIS
10 STATE ON APRIL THE 27TH, 1995?

11 A YES, HE WAS.

12 Q WHAT OFFENSE WAS HE SENTENCED ON?

13 A POSSESSION OF BURGLARY TOOLS.

14 Q ARE YOU ABLE TO TELL US FROM THE RECORDS
15 BEFORE YOU ON WHAT DATE THAT CRIME OCCURRED?

16 A YES. IT'S FEBRUARY 18TH, 1995.

17 Q WHERE DID IT HAPPEN?

18 A CLARK COUNTY.

19 Q WHERE SPECIFICALLY IN CLARK COUNTY?

20 A AT A K-MART LOCATED AT 5050 CHARLESTON.

21 Q HERE IN LAS VEGAS?

22 A YES.

23 Q ARE YOU REFERRING NOW TO A PRE-SENTENCE
24 REPORT PREPARED BY YOUR DEPARTMENT IN CONNECTION WITH
25 THE SENTENCING FOR THE POSSESSION OF BURGLARY TOOLS?

1 A YES, I AM.

2 Q IS THAT A GROSS MISDEMEANOR?

3 A YES, IT IS.

4 Q DOES THE REPORT THAT YOU'RE REFERRING TO
5 CONTAIN A DESCRIPTION OF THE OFFENSE OR OFFENSES FOR
6 WHICH THE DEFENDANT WAS ARRESTED ON FEBRUARY 18TH, 1995?

7 A YES.

8 Q WHAT OFFENSE WAS HE INITIALLY ARRESTED FOR?

9 A BURGLARY, UNDER THE INFLUENCE OF A
10 CONTROLLED SUBSTANCE AND POSSESSION OF BURGLARY TOOLS.

11 Q BY REFERRING TO THE OFFENSE REPORT, CAN YOU
12 TELL US VERY BRIEFLY WHAT THE NATURE OF THE OFFENSES
13 WERE?

14 A DID YOU WANT ME TO READ IT OR JUST --

15 Q JUST SUMMARIZE, PLEASE.

16 A HE WENT IN TO K-MART AND ATTEMPTED TO REMOVE
17 SOME CASSETTES AND CLOTHING.

18 I BELIEVE HE USED SOME PLIERS TO TAKE
19 THE CASSETTES OUT OF THE SECURITY HOLDERS AND PLACED THE
20 TAPES AND THE CLOTHING UNDER HIS CLOTHING AND TRIED TO
21 WALK OUT WITHOUT PAYING.

22 Q WAS HE THEN CONFRONTED BY SECURITY AT THE
23 K-MART STORE?

24 A YES.

25 Q DID THAT LEAD TO HIS ARREST FOR BURGLARY,

1 POSSESSION OF BURGLARY TOOLS AND BEING UNDER THE
2 INFLUENCE?

3 A YES.

4 Q WHAT WERE THE BURGLARY TOOLS WHICH WERE
5 FOUND ON HIS PERSON?

6 A TWO PAIRS OF PLIERS.

7 Q WERE THERE ALSO SOME OTHER ITEMS?

8 A THREE SCREWDRIVERS AND ALSO A BROKEN GLASS
9 PIPE COMMONLY USED FOR SMOKING COCAINE.

10 Q NOW, YOU'VE MENTIONED THAT SENTENCING
11 OCCURRED FOR THE GROSS MISDEMEANOR ON APRIL THE 27TH?

12 A I'M SORRY, WHAT?

13 Q YOU'VE TOLD US THAT THE SENTENCING OCCURRED
14 FOR POSSESSION OF BURGLARY TOOLS, THE GROSS MISDEMEANOR,
15 ON APRIL THE 27TH, 1995?

16 A YES.

17 Q HOW DID IT HAPPEN THAT JAMES CHAPPELL WAS
18 CONVICTED OF A GROSS MISDEMEANOR?

19 A BY GUILTY PLEA, I BELIEVE.

20 Q ON WHAT DATE DID HE ENTER HIS GUILTY PLEA?

21 A MARCH 28TH, 1995.

22 Q WAS IT A PLEA BARGAIN?

23 A YES, IT WAS.

24 Q WAS THERE AN UNDERSTANDING THAT THE OTHER
25 CHARGES, THE BURGLARY AND THE BEING UNDER THE INFLUENCE

1 OF A CONTROLLED SUBSTANCE, WOULD BE DISMISSED AFTER
2 RENDITION OF SENTENCE?

3 A THAT'S CORRECT.

4 Q WHAT WAS THE SENTENCE IMPOSED FOR THE GROSS
5 MISDEMEANOR APRIL THE 27TH?

6 A ONE YEAR IN CLARK COUNTY DETENTION CENTER,
7 SUSPENDED. I BELIEVE THAT'S CORRECT.

8 Q WAS HE PLACED ON PROBATION?

9 A YES.

10 Q SO HE WAS GIVEN A TERM IN THE CLARK COUNTY
11 JAIL, BUT THAT WAS SUSPENDED?

12 A AND TWO YEARS PROBATION.

13 Q TWO YEARS PROBATION. WERE THERE ANY
14 CONDITIONS?

15 A YES.

16 Q THAT SERVED IN CONNECTION WITH THE
17 PROBATION?

18 A YES.

19 Q DID THE ONE OF THOSE INVOLVE DRUG
20 REHABILITATION?

21 A YES.

22 Q WHAT CAN YOU TELL US ABOUT THAT?

23 A HE DIDN'T MAKE HIMSELF AVAILABLE FOR
24 REFERRAL TO -- FOR DRUG COUNSELING. THAT WAS SPECIAL
25 CONDITION NUMBER 2.

1 Q SO YOU'VE ALREADY TOLD US THAT IT WAS ON THE
2 DATE OF SENTENCING THAT YOU ASSUMED THE ROLE AS HIS
3 SUPERVISOR ON PROBATION?

4 A YES.

5 Q BEFORE WE LEAVE THE SENTENCING DATE,
6 REGARDING THE PRE-SENTENCE REPORT, ON JAMES CHAPPELL,
7 DID THAT INCLUDE A STATEMENT MADE BY HIM?

8 A YES, A WRITTEN STATEMENT.

9 MR. HARMON: MAY WE HAVE THE COURT'S
10 INDULGENCE, MAY WE HAVE THIS DOCUMENT MARKED AS THE
11 STATE'S NEXT IN ORDER.

12 THE COURT: YES.

13 (BRIEF PAUSE IN PROCEEDINGS.)

14 MR. HARMON: MAY I APPROACH THE WITNESS,
15 YOUR HONOR?

16 THE COURT: YES.

17 BY MR. HARMON:

18 Q MISS SMITH, I'M SHOWING YOU WHAT THE CLERK
19 HAS MARKED AS PROPOSED EXHIBIT 90. ARE YOU ABLE TO
20 IDENTIFY WHAT THIS IS?

21 A YES.

22 Q IT'S IDENTICAL TO A COPY YOU HAVE IN YOUR
23 PACKAGE OF DEPARTMENT OF PAROLE AND PROBATION RECORDS
24 REGARDING JAMES CHAPPELL?

25 A YES.

1 Q DOES IT APPEAR TO BE, EXHIBIT 90, A TRUE AND
2 CORRECT COPY?

3 A YES.

4 Q YOU SAY THIS IS WRITTEN OUT PRESUMABLY IN
5 THE HANDWRITING OF THE PERSON YOU SUPERVISED, JAMES
6 CHAPPELL?

7 A YES, IT GOES WITH THE PRE-SENTENCE
8 INVESTIGATION. IT'S CLIPPED WITH THE PRE-SENTENCE
9 INVESTIGATION, SO THE JUDGE AND THE COURT CAN HAVE A
10 COPY OF IT BEFORE SENTENCING.

11 Q IS IT SIGNED JAMES CHAPPELL?

12 A YES.

13 Q DOES IT HAVE A DATE?

14 A MARCH 30TH, 1995.

15 MR. HARMON: YOUR HONOR, THE STATE OFFERS
16 PROPOSED EXHIBIT 30 -- I'M SORRY, 90.

17 MR. EWING: NO OBJECTION.

18 THE COURT: THE SAME WILL BE RECEIVED IN
19 EVIDENCE.

20 BY MR. HARMON:

21 Q YOU HAVE A COPY OF EXHIBIT 90 IN FRONT OF
22 YOU AS PART OF YOUR RECORDS?

23 A YES.

24 Q HAVE YOU READ OVER THE DEFENDANT'S STATEMENT
25 GIVEN MARCH THE 30TH, 1995?

1 A YES, I HAVE.

2 Q DID HE AT VARIOUS TIMES IN THE STATEMENT
3 DECLARE THAT HE WOULD NEVER BE GUILTY OF COMMITTING ANY
4 OTHER CRIMES?

5 A YES, HE DID.

6 Q DO YOU SEE A SENTENCE THAT BEGINS WITH THE
7 WORDS "I HAD NEVER" ABOUT A THIRD OF THE WAY DOWN THE
8 PAGE?

9 A YES.

10 Q IN THAT SENTENCE, DID JAMES CHAPPELL SAY, "I
11 HAVE NEVER BEEN CONVICTED OF A FELONY AND NEVER WILL
12 BE"?

13 A YES, HE DID.

14 Q DID HE FURTHER SAY, " I'M NOT A BAD PERSON
15 AND NEVER WAS"?

16 A YES.

17 Q IF YOU WILL DROP DOWN, IT'S ABOUT FOUR
18 LINES, AND LOOK OVER AT THE END OF THE LINE WHERE THE
19 WORDS "THE LONGEST I'VE BEEN" APPEARS.

20 A YEAH, I SEE IT.

21 Q YOU SEE THE PART OF THE SENTENCE I'M
22 REFERRING TO?

23 A "THE LONGEST I'VE BEEN IN JAIL," YEAH.

24 Q WILL YOU READ THAT TO THE END OF THE
25 SENTENCE, PLEASE.

1 A "THE LONGEST I'VE BEEN IN JAIL IS
2 SIX MONTHS, AND I WON'T EVER COMMIT ANOTHER CRIME IN MY
3 LIFE. I CAN'T DEAL WITH THIS TYPE OF LIFE."

4 Q THANK YOU. NOW, I WANT YOU TO DROP DOWN
5 CLOSE TO THE BOTTOM OF THE STATEMENT BY THE DEFENDANT.
6 IT'S ABOUT EIGHT LINES FROM THE BOTTOM AND THE SENTENCE
7 BEGINS "I KNOW NOW."

8 DO YOU SEE THAT?

9 A YES.

10 Q DID JAMES CHAPPELL SAY, IN CONCLUDING HIS
11 STATEMENT, "I KNOW NOW THAT LAS VEGAS IS NOT PUTTING UP
12 WITH ANY BROKEN LAWS"?

13 A YES.

14 Q AND I CAN -- AND ACTUALLY WE DON'T READ IT
15 ALL, BUT IT LOOKS LIKE IT MUST BE HONESTLY.

16 "I CAN HONESTLY ASSURE YOU I WON'T DO
17 NOTHING WRONG." DO YOU SEE THAT?

18 A YES.

19 Q DID HE SAY THAT?

20 A YES.

21 Q NOTHING WRONG AGAIN. DID HE FURTHER SAY, "I
22 HAVE ONLY BEEN HERE FOUR MONTHS. I'M GOING TO GET A JOB
23 AND STAY OUT OF ANY TROUBLES, I PROMISE."

24 AND DOES HE PUT THREE EXCLAMATION
25 POINTS?

1 A YES, HE DOES.

2 Q NOW, WAS THERE A TIME AFTER YOU HAD BEGUN
3 YOUR SUPERVISION OF JAMES CHAPPELL ON OR ABOUT APRIL THE
4 27TH, WHEN YOU HAD CONTACT WITH DEBORAH ANN PANOS?

5 A YES.

6 Q DID SHE CONTACT YOU ORIGINALLY IN PERSON OR
7 BY TELEPHONE?

8 A SHE RETURNED A CALL. SHE CALLED ME.

9 Q WHY DID YOU CONTACT HER?

10 A I WAS TRYING TO LOCATE MR. CHAPPELL AND
11 RELAY REPORTING INSTRUCTIONS FOR HIM.

12 Q IN CONNECTION WITH YOUR DUTIES AS HIS
13 SUPERVISING PROBATION OFFICER, DID YOU NEED TO CONTACT
14 HIM REGULARLY?

15 A YES, ESPECIALLY THE INITIAL -- FOR THE
16 INITIAL VISIT BECAUSE HE HAD FAILED TO REPORT.

17 Q DID YOU HAVE AN ADDRESS WHICH HAD BEEN GIVEN
18 BY HIM AS HIS PLACE OF RESIDENCE?

19 A ACTUALLY, THE ADDRESS THAT I USED TO GO DO
20 THE INITIAL HOME VISIT ATTEMPT WAS ON THE PRE-SENTENCE
21 INVESTIGATION, BECAUSE HE -- BECAUSE HE HAD NOT ATTENDED
22 ORIENTATION.

23 BECAUSE THE OFFENDERS ARE INSTRUCTED
24 TO GO TO THE DEPARTMENT IMMEDIATELY AFTER THEIR SENTENCE
25 AND ATTEND ORIENTATION, AND HE DIDN'T DO THAT. SO THE

1 ONLY ADDRESS I HAD WAS WHAT WAS ON THE PRE-SENTENCE
2 REPORT.

3 Q WHAT ADDRESS WAS ON THE PRE-SENTENCE REPORT?

4 A 839 NORTH LAMB, NUMBER 125, IN LAS VEGAS.

5 Q DID YOU EVER ATTEMPT TO CONTACT MR. CHAPPELL
6 AT THAT ADDRESS?

7 A YES.

8 Q EXPLAIN WHAT YOU DID AND WITH WHAT RESULT?

9 A ON 5-8-95, I DID A HOME VISIT ATTEMPT, AND I
10 HAD CONTACT, I BELIEVE IT WAS A BABYSITTER, AND LEFT A
11 MESSAGE AND A BUSINESS CARD WITH INSTRUCTIONS FOR HIM TO
12 ATTEND ORIENTATION AND REPORT TO ME AS SOON AS POSSIBLE.

13 Q DID HE EVER REPORT TO YOU?

14 A NO.

15 Q DID HE EVER ATTEND THE ORIENTATION?

16 A NO.

17 Q WAS IT IN THIS CONTEXT THAT YOU WANTED TO
18 GET IN TOUCH WITH DEBORAH PANOS?

19 A YEAH, THAT'S THE ONLY REASON I CONTACTED HER
20 WAS TO -- SHE HAD A -- I BELIEVE AN ANSWERING MACHINE
21 AND I LEFT A MESSAGE AND SHE RETURNED THE CALL.

22 Q WHEN WAS IT, APPROXIMATELY, THAT SHE
23 ANSWERED YOUR CALL?

24 A APPROXIMATELY 6-12 OF '95.

25 Q JUNE THE 12TH, 1995?

1 A YES.

2 Q UP TO THAT POINT, HAD YOU EVER MET DEBORAH
3 PANOS?

4 A NO.

5 Q HAD YOU EVER SPOKEN WITH HER?

6 A I THINK I DID SPEAK WITH HER ON 5-8-95. I
7 THINK WHILE I WAS IN THE HOME, THE BABYSITTER CALLED, I
8 THINK, AND I THINK I TALKED TO HER THEN AND JUST TOLD
9 HER WHO I WAS.

10 Q SO YOU TOLD US THAT MISS PANOS RETURNED YOUR
11 CALL ON ABOUT JUNE THE 12TH, 1995?

12 A YES.

13 Q DID YOU SPEAK WITH HER OVER THE TELEPHONE ON
14 THAT DAY?

15 A YES, I DID.

16 Q DID YOU HAVE SUBSEQUENT TELEPHONE
17 CONVERSATIONS WITH HER?

18 A YES, I DID.

19 Q HOW MANY TELEPHONE CONVERSATIONS IN ALL DID
20 YOU HAVE WITH HER?

21 A APPROXIMATELY THREE OR FOUR.

22 Q NOW, DID YOU ASK HER WHEN YOU TALKED WITH
23 HER ON JUNE THE 12TH, 1995, INFORMATION CONCERNING THE
24 WHEREABOUTS OF JAMES CHAPPELL?

25 A YES.

1 Q WHAT DID YOU LEARN FROM HER?

2 A SHE SAID THAT MR. CHAPPELL DIDN'T ACTUALLY
3 RESIDE THERE, THAT HE INTENDED TO ORIGINALLY, BUT HE WAS
4 LIVING SOMEWHERE ELSE AND HE FREQUENTED THE RESIDENCE
5 ONLY.

6 Q WAS IT OF CONCERN TO YOU WHEN YOU LEARNED
7 THAT, THAT YOU DIDN'T HAVE AN ACTUAL ADDRESS FOR THE
8 INDIVIDUAL YOU WERE SUPPOSEDLY SUPERVISING ON PROBATION?

9 A YES.

10 Q DID YOU LEARN FROM DEBORAH PANOS WHETHER THE
11 DEFENDANT, MR. CHAPPELL, INTENDED TO REPORT TO THE
12 DEPARTMENT OF PAROLE AND PROBATION?

13 A WHEN SHE CAME INTO OUR OFFICE TO TALK TO US
14 ON 6-15 OF '95, SHE ADVISED ME AND MY SUPERVISOR THAT HE --
15 THAT SHE DID RELAY THE MESSAGE TO HIM BUT HE HAD STATED
16 HE DIDN'T INTEND TO REPORT. AND I HAD ACTUALLY SPOKE
17 WITH HIM ON THE TELEPHONE ONCE.

18 Q SO TO MAKE SURE I'M UNDERSTANDING WHAT
19 YOU'RE TELLING US, YOU SPOKE WITH HER ON JUNE THE 12TH.

20 A YES.

21 Q APPARENTLY YOU ASKED HER TO RELAY A MESSAGE
22 TO JAMES CHAPPELL TO GET IN TOUCH WITH YOU?

23 A YES.

24 Q YOU'RE SAYING THAT YOU THEN SAW HER IN
25 PERSON ON JUNE THE 15TH?

1 A YES.

2 Q WAS THAT BY PREARRANGEMENT OR DID SHE JUST
3 HAPPEN BY THE DEPARTMENT OF PAROLE AND PROBATION?

4 A SHE CALLED ME AND, AFTER SPEAKING WITH ME ON
5 THE PHONE A FEW TIMES, WANTED TO COME IN AND SPEAK TO ME
6 AT THE OFFICE.

7 Q DID YOU INVITE HER TO COME IN?

8 A YES.

9 Q AND YOU IN FACT DID SPEAK WITH HER ON JUNE
10 THE 15TH, 1995?

11 A YES.

12 Q IN YOUR OFFICE OR SOMEONE ELSE'S?

13 A I BROUGHT HER TO MY OFFICE INITIALLY AND
14 THEN I TOOK HER INTO MY SUPERVISOR'S OFFICE SO THE THREE
15 OF US COULD TALK.

16 Q WHAT IS THE NAME OF YOUR SUPERVISOR?

17 A PAUL ELLIS.

18 Q E-L-L-I-S?

19 A YES.

20 Q DID YOU THEN HAVE A CONVERSATION WITH
21 DEBORAH PANOS?

22 A YES.

23 Q DID SHE TALK ABOUT HER RELATIONSHIP WITH
24 JAMES CHAPPELL?

25 A YES, SHE DID.

1 Q DID SHE EXPRESS CONCERNS ABOUT HIM?

2 A YES.

3 Q HOW LONG DID YOU TALK WITH HER?

4 A 30 TO 40 MINUTES.

5 Q DESCRIBE HOW SHE WAS ACTING DURING THE
6 INTERVIEW.

7 A SHE WAS VERY UPSET. SHE WAS CRYING THE
8 WHOLE TIME. SHE WAS REALLY SHAKEN AND UPSET.

9 Q WHAT WAS SHE TELLING YOU, TO THE EXTENT THAT
10 YOU REMEMBER THE CONVERSATION?

11 A SHE WANTED TO DISCUSS THE PROBLEM SHE WAS
12 HAVING WITH MR. CHAPPELL.

13 Q WHAT PROBLEM?

14 A SHE HAD ADVISED ME ON THE TELEPHONE THAT HE
15 HAD GONE THROUGH HER WINDOW, THAT HE ACTUALLY DIDN'T
16 LIVE THERE. BUT THAT HE WOULD GO THROUGH HER WINDOW AND
17 TAKE VARIOUS THINGS, AND APPLIANCES. I THINK ONE TIME
18 HE TOOK A T.V., SHE BELIEVED TO KEEP USING DRUGS.

19 Q DID SHE TELL YOU THAT HE WOULD COME THROUGH
20 THE WINDOW AND WAS STEALING FROM HER AND FROM THE
21 CHILDREN?

22 A YES.

23 Q DID YOU MAKE ANY TYPE OF SUGGESTION?

24 A YES, I DID.

25 Q WHAT WAS YOUR SUGGESTION?

1 A MY SUPERVISOR AND I SUGGESTED THAT SHE LEAVE
2 THAT RESIDENCE, THAT POSSIBLY SHE RELOCATE TO ARIZONA.
3 I BELIEVE SHE HAD A MOTHER THERE. AND SHE SAID THAT
4 THAT WOULDN'T WORK.

5 I TOLD HER TO CHANGE THE LOCKS ON THE
6 DOOR, TO ALWAYS CALL METRO AND FILE COMPLAINTS ON ANY
7 OTHER, YOU KNOW, FURTHER INCIDENTS OR NEGATIVE CONTACTS
8 WITH HIM, AND TO DOCUMENT, YOU KNOW, HAVE ALL THAT
9 DOCUMENTED.

10 Q DURING YOUR CONVERSATION WITH DEBORAH PANOS
11 JUNE THE 15TH, DID SHE REFER TO ANY ACTS OF VIOLENCE?

12 A YES, SHE DID.

13 Q WHAT DID SHE TELL YOU?

14 A WELL, SHE TOLD ME THAT SHE HAD BEEN BEATEN
15 UP NUMEROUS TIMES AND THAT --

16 Q BY WHOM?

17 A MR. CHAPPELL. JAMES CHAPPELL. AND ON ONE
18 OCCASION HE HAD TAKEN HER INTO, I BELIEVE IT WAS A
19 BEDROOM, AND HAD STRADDLED HER AND THAT THERE WAS A
20 KNIFE IN THE BEDROOM AND THAT SHE BELIEVED THAT HE WAS
21 GOING TO USE THAT KNIFE ON HER, BUT HE DIDN'T.

22 Q DID SHE EXPRESS TO YOU THAT SHE WAS AFRAID
23 AT THE TIME THAT THAT INCIDENT OCCURRED?

24 A YES, SHE WAS.

25 Q DID SHE TELL YOU WHAT SHE WAS AFRAID WAS

1 GOING TO HAPPEN?

2 A YES.

3 Q WHAT DID SHE SAY?

4 A THAT HE WAS GOING TO HURT HER OR WORSE. BUT
5 I DON'T REMEMBER THE EXACT WORDS THAT SHE USED.

6 Q BECAUSE OF WHAT SHE WAS TELLING YOU, AND
7 BECAUSE OF HER MANNER AT THE TIME OF THE INTERVIEW, DID
8 YOU BECOME CONCERNED ABOUT HER SAFETY?

9 A YES, I DID. THAT WAS WHEN MY SUPERVISOR AND
10 I DISCUSSED DIFFERENT OPTIONS LIKE MOVING AND GOING BACK
11 TO ARIZONA.

12 Q DID THERE COME A TIME WHEN YOU SUBMITTED A
13 VIOLATION REPORT RECOMMENDING THAT THE PROBATIONARY
14 STATUS OF JAMES CHAPPELL BE REVOKED?

15 A YES, I DID.

16 Q AND THAT HE BE PLACED IN CUSTODY?

17 A YES.

18 Q WHEN DID YOU SUBMIT THE VIOLATION REPORT?

19 A THE VIOLATION REPORT I SUBMITTED IS DATED
20 JUNE 30TH, 1995.

21 Q WHAT WAS THE BASIS OF YOUR REQUEST THAT HIS
22 PROBATION BE VIOLATED?

23 A WE CHARGED HIM WITH RULE 8, LAWS AND
24 CONDUCT. BUT I ALSO MENTIONED IN THERE THAT HE HAD
25 FAILED TO CONTACT THE DIVISION.

1 Q SO FAILURE TO REPORT --

2 A YES.

3 Q -- WAS ONE OF THE --

4 A WE ACTUALLY DIDN'T CHARGE HIM WITH
5 REPORTING. JUST LAWS AND CONDUCT.

6 Q BUT IN FACT, HE HAD FAILED TO REPORT?

7 A YES.

8 Q WHAT WAS THE BASIS OF THE LAWS AND CONDUCT
9 VIOLATION?

10 A HE'D INCURRED SEVERAL CITATIONS FOR PETIT
11 LARCENY AND UNDER THE INFLUENCE, DRUG-RELATED OFFENSE.

12 Q HE BEEN ARRESTED FOR DOMESTIC VIOLENCE
13 INVOLVING THE KNIFE INCIDENT THAT SHE TOLD YOU ABOUT?

14 A YES.

15 Q YOU MENTIONED EARLIER THAT ONE OF THE
16 CONDITIONS OF HIS PROBATION WAS A DRUG REHABILITATION
17 PROGRAM?

18 A YES.

19 Q AND HAD HE ENTERED SUCH A PROGRAM AND
20 COMPLETED THAT PROGRAM AS OF JUNE THE 30TH, 1995?

21 A NO.

22 Q SO WHAT HAPPENED AS A RESULT OF YOUR
23 SUBMITTING THE VIOLATION REPORT?

24 A A HOLD WAS PLACED ON HIM JUNE 26, 1995. WE
25 WENT BACK TO COURT.

1 Q ON WHAT DATE?

2 A 8-1-95.

3 Q AUGUST THE 1ST, 1995?

4 A YES.

5 Q DID YOU GO BACK BEFORE THE SAME JUDGE WHO
6 HAD IMPOSED THE SENTENCE ON APRIL THE 27TH, 1995?

7 A YES.

8 Q WHAT WAS THE RESULT OF THE HEARING WHICH
9 OCCURRED ON AUGUST THE 1ST?

10 A HE WAS REINSTATED TO PROBATION WITH THE
11 CONDITION THAT HE DO AN INPATIENT, AND FAILING TO
12 COMPLETE THE INPATIENT, HE WOULD STIPULATE TO
13 REVOCATION, MEANING HE WOULD GO BACK TO COURT AND THE
14 ORIGINAL SENTENCE WOULD BE IMPOSED.

15 Q WHAT DOES INPATIENT TREATMENT MEAN?

16 A INPATIENT SUBSTANCE ABUSE COUNSELING, THAT'S --
17 WE HAVE -- THERE'S 90-DAY PROGRAMS, SIX-MONTH PROGRAMS.
18 WHATEVER PROGRAM WOULD ACCEPT HIM FIRST, WE WOULD
19 TRANSFER HIM TO THAT PROGRAM. AND HE WOULD DO THE
20 PROGRAM INPATIENT, MEANING STAYING THERE.

21 Q AND "WE" MEANING OFFICERS OF THE STATE OF
22 NEVADA DEPARTMENT OF PAROLE AND PROBATION?

23 A YES.

24 Q AT THE TIME THE COURT REINSTATED MR.
25 CHAPPELL ON HIS PROBATION, WAS THERE A SPECIFIC ORDER

1 THAT HE WAS TO BE RELEASED FROM JAIL ONLY INTO THE
2 CUSTODY OF THE DEPARTMENT OF PAROLE AND PROBATION?

3 A YES.

4 Q AND THAT HE WOULD THEN BE TRANSPORTED BY
5 THEM TO AN INPATIENT DRUG REHABILITATION PROGRAM?

6 A YES.

7 Q WAS THAT THE COURT ORDER?

8 A YES, IT WAS.

9 Q WERE A NUMBER OF PROGRAMS CONSIDERED ON
10 BEHALF OF MR. CHAPPELL?

11 A HE WAS INTERVIEWED BY A REPRESENTATIVE WITH
12 E.O.B., AND AFTER THAT POINT, I TRANSFERRED THE CASE
13 BECAUSE I HAD MOVED TO A SUB OFFICE, AND IT WAS GIVEN TO
14 OFFICER ARAVE.

15 Q WILL YOU SPELL ARAVE, PLEASE.

16 A A-R-A-V-E, I BELIEVE; FIRST NAME LARRY.

17 Q SO AT SOME POINT LARRY ARAVE ASSUMED THE
18 ROLE OF SUPERVISOR OF JAMES CHAPPELL?

19 A YES.

20 Q APPROXIMATELY WHAT DATE WAS THAT?

21 A THE DATE I WENT TO COURT AND AFTER I
22 CONTACTED THE REP FROM E.O.B., I TRANSFERRED THE CASE
23 AND HE TOOK THE REPRESENTATIVE UP TO E.O.B. TO INTERVIEW
24 MR. CHAPPELL AT THE JAIL ON 8-4-95.

25 Q SO WHEN YOU SAY IT WAS AFTER I WENT TO

1 COURT, YOU WERE TALKING ABOUT AUGUST THE 1ST, 1995?

2 A YES.

3 Q THE DAY THE COURT REINSTATED WITH THE
4 SPECIAL CONDITION, THE PROBATION?

5 A YES.

6 Q WHO IS THE REPRESENTATIVE OF E.O.B. THAT
7 CONSIDERED THE SUITABILITY OF JAMES CHAPPELL FOR
8 ADMISSION INTO THEIR DRUG PROGRAM?

9 A I BELIEVE HER NAME IS THERESA KING.

10 Q K-I-N-G?

11 A YES.

12 Q DID YOU EVER TALK WITH THERESA KING?

13 A YES.

14 Q DID YOU LEARN THAT IN FACT SHE HAD
15 INTERVIEWED MR. CHAPPELL?

16 A YES.

17 Q ON WHAT DATE WAS THAT?

18 A 8-4-95.

19 Q AND THAT'S WHEN YOU SAID LARRY ARAVE
20 TRANSPORTED THE DEFENDANT TO THE INTERVIEW?

21 A NO, HE TOOK MISS KING UP TO THE CLARK COUNTY
22 DETENTION CENTER WHERE THE INTERVIEW WAS CONDUCTED.

23 Q OH, I SEE. BASED UPON CONVERSATIONS YOU HAD
24 WITH THERESA KING, WAS JAMES CHAPPELL ACCEPTABLE AT THAT
25 TIME INTO THEIR PROGRAM?

1 A I BELIEVE SHE SAID THAT HE WASN'T READY TO
2 DO A PROGRAM. THAT'S JUST KIND OF A GUESS.

3 Q I DON'T WANT YOU GUESSING. DO YOU KNOW AS --

4 A I BELIEVE THAT THAT WAS THE REASON THAT HE
5 WASN'T ACCEPTED.

6 Q AND APPROXIMATELY WHEN IN CONNECTION WITH
7 AUGUST THE 4TH WAS IT THAT YOU SPOKE WITH HER?

8 A PROBABLY SEPTEMBER OF '95.

9 Q SO YOU'RE TALKING ABOUT SPEAKING WITH HER
10 AFTER THE MURDER OF DEBORAH PANOS?

11 A YES.

12 Q AFTER AUGUST THE 1ST, 1995, DID YOU HAVE --
13 THIS IS EXCEPT FOR THE TELEPHONE CONVERSATION WITH
14 THERESA KING OF E.O.B. -- DID YOU HAVE ANY ACTIVE
15 INVOLVEMENT IN THE JAMES CHAPPELL MATTER?

16 A NO.

17 Q DID YOU HAVE ANY SUBSEQUENT CONTACT -- I'M
18 USING AUGUST THE 1ST AS THE FRAME OF REFERENCE WITH
19 DEBORAH PANOS?

20 A NO.

21 Q DID YOU HAVE A CHANCE AT ANY TIME TO CONVEY
22 TO MISS PANOS THAT A SPECIAL CONDITION WAS THAT JAMES
23 CHAPPELL WOULD HAVE TO SERVE A CERTAIN AMOUNT OF TIME AS
24 AN INPATIENT IN A DRUG REHAB PROGRAM?

25 A YES. I BELIEVE IT WAS THE DAY THAT SHE WENT

1 TO COURT FOR THE DOMESTIC CASE HE HAD IN JUSTICE COURT,
2 I TOLD HER THAT THAT'S WHAT THE DIVISION RECOMMENDED AND
3 THAT'S WHAT WAS PROBABLY GOING TO HAPPEN.

4 Q WE'VE HAD EVIDENCE THAT THERE WAS A TIME SHE
5 WENT TO COURT IN LATE AUGUST, IN FACT AUGUST THE 30TH,
6 1995. IS THAT THE DATE YOU'RE REFERRING TO OR SOME
7 OTHER DATE?

8 A I DON'T HAVE THE DATE CHRONO'ED, BUT IT WAS
9 SOMETIME IN AUGUST. AFTER THE REVOCATION HEARING.

10 Q MISS SMITH, YOU MENTION YOU'VE BEEN EMPLOYED
11 BY THE DEPARTMENT OF PAROLE AND PROBATION FOR SEVEN
12 YEARS?

13 A YES.

14 Q I WOULD TAKE IT YOU HAVE SUPERVISED QUITE A
15 LARGE NUMBER OF PERSONS DURING THAT TIME FRAME?

16 A YES.

17 Q HAVE YOU ALSO EXPERIENCED IN YOUR LINE OF
18 WORK SITUATIONS WHERE THERE WAS A HISTORY OF DOMESTIC
19 VIOLENCE?

20 A YES.

21 Q EVEN AFTER THIS CASE WAS TRANSFERRED TO
22 ANOTHER OFFICER -- YOU SAID IT WAS LARRY ARAVE?

23 A YES.

24 Q -- DID YOU CONTINUE TO HAVE SERIOUS CONCERNS
25 ABOUT THE SAFETY OF DEBORAH PANOS?

1 A YES. THIS CASE -- ACTUALLY, MY WHOLE
2 CASELOAD WAS TRANSFERRED TO ARAVE. HE TOOK THE CASELOAD
3 OVER. AND THIS CASE, ESPECIALLY THIS CASE, I TOLD HIM
4 EXACTLY WHAT WAS GOING ON WITH IT BECAUSE I WAS
5 CONCERNED AND WANTED TO MAKE SURE HE COULD FOLLOW
6 THROUGH WITH WHAT NEEDED TO BE DONE.

7 MR. HARMON: THAT'S ALL ON DIRECT, YOUR
8 HONOR.

9 THE COURT: CROSS?

10 MR. EWING: THANK YOU, YOUR HONOR.

11

12

CROSS-EXAMINATION

13

BY MR. EWING:

14

Q WHEN MR. CHAPPELL WAS FIRST SENTENCED IN

15

APRIL OF '95, HE WAS SENTENCED FOR POSSESSION OF

16

BURGLARY TOOLS?

17

A YES.

18

Q AND THAT WAS A GROSS MISDEMEANOR?

19

A YES.

20

Q THAT'S BECAUSE HE WENT IN K-MART AND

21

ATTEMPTED TO STEAL SOME CASSETTE TAPES AND SOME

22

CLOTHING?

23

A YES.

24

Q YOU HAD CONTACT WITH DEBORAH PANOS IN JUNE

25

OF 1995, CORRECT?

1 A YES.

2 Q STARTING ON JUNE THE 12TH?

3 A YES.

4 Q AND PRIOR TO THAT DATE, YOU DIDN'T KNOW WHO
5 SHE WAS OR ANYTHING ABOUT HER, CORRECT?

6 A NO.

7 Q AND YOU TALKED TO HER THREE OR FOUR TIMES
8 AFTER JUNE 12TH?

9 A APPROXIMATELY, YES.

10 Q ONE TIME IN YOUR OFFICE?

11 A YES.

12 Q WHEN YOU SUBMITTED YOUR REVOCATION REQUEST
13 JUNE 30TH OF 1995, YOU SAID THAT YOU VIOLATED HIM FOR
14 LAWS AND CONDUCT?

15 A YES.

16 Q AND THAT INCLUDED MORE MISDEMEANOR OFFENSES,
17 CORRECT?

18 A YES.

19 Q PETIT LARCENY?

20 A YES.

21 Q AND BEING ARRESTED FOR A WARRANT FOR
22 DOMESTIC VIOLENCE?

23 A YES.

24 Q AND THAT WAS THE INCIDENT WHERE DEBBIE
25 CLAIMED JAMES HELD A KNIFE UP TO HER IN THE BEDROOM?

1 A I BELIEVE THAT WAS THE SAME INCIDENT.

2 Q AND WITH THAT HISTORY, THE DEPARTMENT OF
3 PAROLE AND PROBATION FELT THAT JAMES WAS A GOOD
4 CANDIDATE FOR INPATIENT DRUG TREATMENT, THAT WAS THEIR
5 RECOMMENDATION?

6 A I'M SORRY, CAN YOU REPEAT THAT QUESTION?

7 Q BASED UPON JAMES' HISTORY, THEY FELT THAT
8 INPATIENT DRUG TREATMENT WOULD BE A GOOD RESOLUTION FOR
9 HIS PROBATION VIOLATION CASE?

10 A BASED ON THE INFORMATION IN THE PRE-SENTENCE
11 REPORT AND ARRESTS THAT HE INCURRED AFTER SENTENCING FOR
12 DRUG OFFENSES.

13 MR. EWING: I DON'T HAVE ANY FURTHER
14 QUESTIONS.

15 MR. HARMON: NO FURTHER QUESTIONS, JUDGE.

16 THE COURT: MAY THIS WITNESS BE DISCHARGED?

17 MR. HARMON: YES, YOUR HONOR.

18 THE COURT: YOU MAY STEP DOWN.

19 (WHEREUPON, CHARMAINE MARIE
20 SMITH WITHDREW FROM THE
21 COURTROOM.)

22 THE COURT: CALL YOUR NEXT WITNESS.

23 MR. HARMON: WILLIAM DUFFEY.

24 (WHEREUPON, WILLIAM DUFFEY
25 ENTERED THE COURTROOM AND

2	WHEREUPON,
---	------------

4 HAVING BEEN FIRST DULY SWORN TO TELL THE TRUTH,

5 THE WHOLE TRUTH AND NOTHING BUT THE TRUTH,

6 WAS EXAMINED AND TESTIFIED AS FOLLOWS:

8	DIRECT EXAMINATION
---	--------------------

9 BY MR. HARMON:

10	Q	WILL YOU STATE YOUR NAME, PLEASE.
----	---	-----------------------------------

11	A	WILLIAM DUFFEY.
----	---	-----------------

12 Q PLEASE SPELL YOUR LAST NAME.

13 A D-U-F-F-E-Y.

14	Q	WHAT IS YOUR BUSINESS OR OCCUPATION, MR.
----	---	--

15	DUFFEY?
----	---------

16	A I'M A PAROLE OFFICER WITH THE STATE OF
17	NEVADA.

18	Q	HOW LONG HAVE YOU WORKED WITH THE STATE OF
19		NEVADA?

20 A APPROXIMATELY 17 YEARS.

21	Q WHAT ARE YOUR DUTIES WITH THE STATE OF
22	NEVADA DEPARTMENT OF PAROLE AND PROBATION?

23	A I'M A UNIT MANAGER. I OVERSEE A NUMBER OF
24	OFFICERS THAT SUPERVISE PROBATIONERS AND PAROLEES.

25 Q I WANT TO DIRECT YOUR ATTENTION TO AUGUST

1 THE 31ST, 1995. ON THAT DATE, DID YOU HAVE CONTACT WITH
2 SOMEONE WHO IS HERE IN THE COURTROOM?

3 A YES, I DID.

4 Q WHO DID YOU HAVE CONTACT WITH ON AUGUST THE
5 31ST, 1995?

6 A JAMES CHAPPELL.

7 Q WILL YOU POINT TO MR. CHAPPELL IF YOU SEE
8 HIM IN COURT THIS AFTERNOON, DESCRIBING SOMETHING HE'S
9 WEARING?

10 A HE'S SITTING IN THE CENTER AT THE DEFENSE
11 TABLE IN A GRAY SUIT.

12 MR. HARMON: MAY THE RECORD SHOW THE WITNESS
13 HAS IDENTIFIED THE DEFENDANT, MR. CHAPPELL, YOUR HONOR?

14 THE COURT: YES.

15 MR. HARMON: THANK YOU.

16 BY MR. HARMON:

17 Q DID YOU KNOW WHEN YOU HAD CONTACT WITH MR.
18 CHAPPELL THAT HE WAS BEING SUPERVISED ON A GROSS
19 MISDEMEANOR CHARGE OF POSSESSION OF BURGLARY TOOLS BY
20 THE DEPARTMENT?

21 A YES, I DID.

22 Q HOW DID IT HAPPEN THAT YOU HAD CONTACT WITH
23 HIM ON AUGUST THE 31ST?

24 A I HAD RECEIVED A MESSAGE FROM THE CITY JAIL
25 THAT HE WAS BEING RELEASED AND HAD TO BE PICKED UP.

1 Q WHY, WHEN YOU RECEIVED THIS MESSAGE, WAS IT
2 IMPORTANT THAT YOUR DEPARTMENT PICK HIM UP SINCE THE
3 CITY WAS RELEASING HIM?

4 A WELL, THE MESSAGE WAS THAT HE WAS A
5 PROBATIONER; IF HE WASN'T PICKED UP, HE WAS GOING TO BE
6 RELEASED TO THE STREET.

7 Q AS A RESULT OF THE MESSAGE, WHAT DID YOU DO?

8 A I HAD TWO OFFICERS GO TO THE CITY JAIL AND
9 PICK HIM UP AND BRING HIM TO THE OFFICE.

10 Q DO YOU KNOW TO WHICH JAIL THEY RESPONDED?

11 A THE CITY JAIL.

12 Q WHERE IS THAT LOCATED?

13 A I BELIEVE IT'S THE STEWART AND MOJAVE.

14 Q WHAT OFFICERS RESPONDED TO THE CITY JAIL TO
15 PICK UP JAMES CHAPPELL?

16 A IT WAS OFFICERS WINCHELL AND ADAMS.

17 Q HOW IS WINCHELL SPELLED?

18 A W-I-N-C-H-E-L-L.

19 Q AND YOU SAID THE OTHER OFFICER YOU BELIEVE
20 WAS ADAMS?

21 A NORM ADAMS, A-D-A-M-S.

22 Q ABOUT WHAT TIME, TO YOUR KNOWLEDGE, WAS
23 JAMES CHAPPELL RELEASED FROM THE CITY JAIL TO OFFICERS
24 WINCHELL AND ADAMS?

25 A HE WAS BROUGHT TO MY OFFICE AT 10:00 A.M.

1 Q SO CERTAINLY SOMETIME PRIOR TO THAT?

2 A THAT'S CORRECT.

3 Q WHAT WAS THE REASON FOR JAMES CHAPPELL BEING
4 BROUGHT TO YOUR OFFICE?

5 A A DECISION HAD TO BE MADE AS TO WHAT TO DO
6 WITH HIM.

7 Q WHY DID A DECISION HAVE TO BE MADE?

8 A WELL, HE WAS UNDER SUPERVISION AND SINCE HE
9 WAS BEING RELEASED FROM JAIL, SOME DECISION HAD TO BE
10 MADE AS TO WHETHER HE NEEDED TO REPORT OR WHAT THE
11 CIRCUMSTANCE OF HIS CASE WOULD BE.

12 Q WAS THERE SOME TYPE OF SPECIAL CONDITION OF
13 HIS PROBATION THAT HE HAD TO FULFILL?

14 A YES. I DISCOVERED THAT HE HAD A CONDITION
15 THAT HE WAS SUPPOSED TO GO INTO AN INPATIENT DRUG
16 PROGRAM.

17 Q HOW DID YOU MAKE THAT DISCOVERY?

18 A I FOUND SOME OF HIS FILE MATERIAL THAT HAD
19 THAT RECORDED.

20 Q PRIOR TO RECEIVING THE NOTIFICATION FROM THE
21 CITY JAIL THAT JAMES CHAPPELL WAS ABOUT TO BE RELEASED
22 BUT THAT HE WAS UNDER SUPERVISION OF YOUR DEPARTMENT,
23 HAD YOU HAD ANY DIRECT CONTACT WITH JAMES CHAPPELL?

24 A NO, I HAD NOT.

25 Q DID YOU REALLY KNOW ANYTHING ABOUT THE

1 HISTORY OF HIS CASE?

2 A NO, I DIDN'T.

3 Q WHO WAS HIS ACTUAL SUPERVISING OFFICER ON
4 THAT DATE, AUGUST THE 31ST, 1995?

5 A MR. ARAVE.

6 Q HAD THE PREVIOUS SUPERVISOR BEEN CHARMAINE
7 SMITH?

8 A THAT'S CORRECT.

9 Q BUT LARRY ARAVE WAS THE SUPERVISOR ON THE
10 DATE IN QUESTION?

11 A THAT'S CORRECT.

12 Q YOU HAVE MENTIONED THAT MR. CHAPPELL WAS
13 BROUGHT TO YOUR OFFICE AT ABOUT 10:00 A.M.?

14 A THAT'S CORRECT.

15 Q DID YOU HAVE A CONVERSATION WITH HIM?

16 A YES, FOR ABOUT AN HOUR.

17 Q WHAT, IN SUMMARY, WAS DISCUSSED BY THE TWO
18 OF YOU DURING THAT TIME FRAME?

19 A WE DISCUSSED THE CONDITION OF HIM ENTERING
20 INTO A PROGRAM.

21 Q YOU DISCUSSED HIS ENTERING INTO WHAT TYPE OF
22 PROGRAM?

23 A THE E.O.B. DRUG PROGRAM IN PARTICULAR, AND
24 ALSO POSSIBLY THE SALVATION ARMY.

25 Q WAS THAT IN AN EFFORT TO FULFILL THE

1 CONDITION OF PROBATION IMPOSED BY THE COURT?

2 A YES, THAT'S TRUE.

3 Q DID YOU KNOW WHETHER THE COURT'S CONDITION
4 WAS TO BE AN INPATIENT OR OUTPATIENT --

5 A IT WAS TO BE AN INPATIENT PROGRAM.

6 Q WHAT DOES INPATIENT MEAN?

7 A IT MEANS THAT HE WOULD RESIDE AT THE
8 PROGRAM.

9 Q ON THE DATE THAT YOU SPOKE WITH DEFENDANT,
10 DID YOU HAVE ANY CONVERSATION ABOUT A PREVIOUS EFFORT TO
11 ENROLL HIM IN THE E.O.B. PROGRAM?

12 A YES, I WAS MADE AWARE OF THE FACT THAT HE
13 HAD BEEN INTERVIEWED FOR THE E.O.B. PROGRAM, BUT
14 SUPPOSEDLY THEY HAD NOT MADE A DECISION AT THAT TIME AS
15 TO WHETHER HE WOULD WE ACCEPTED OR NOT.

16 AND I TELEPHONED THE PROGRAM AND THEY
17 SAID THAT BASED ON THE INTERVIEW THAT THEY HAD WITH HIM,
18 THAT THEY DIDN'T FEEL HE WAS APPROPRIATE AT THE TIME
19 THAT HE WAS INTERVIEWED WHILE HE WAS IN JAIL.

20 I DISCUSSED THE MATTER WITH HIM AND HE
21 FELT THAT SINCE HE HAD BEEN INCARCERATED FOR A LENGTH OF
22 TIME SINCE THE INTERVIEW, THAT HIS ATTITUDE HAD IMPROVED
23 AND THAT NOW HE WOULD BE A GOOD CANDIDATE TO GO INTO THE
24 SUBSTANCE ABUSE PROGRAM, AND BASICALLY REQUESTED AN
25 OPPORTUNITY TO DO SO.

1 Q SO YOU'RE SAYING, AS I UNDERSTAND IT, MR.
2 DUFFEY, THAT AS YOU INTERVIEWED MR. CHAPPELL ON AUGUST
3 THE 31ST IN YOUR OFFICE, YOU PLACED THE TELEPHONE CALL
4 TO THE E.O.B. PEOPLE?

5 A THAT'S CORRECT.

6 Q AND YOU DISCUSSED WITH THEM THE SITUATION.
7 APPARENTLY THERE'D BEEN SOME TYPE OF PERCEIVED ATTITUDE
8 PROBLEM OF THE DEFENDANT?

9 A YES. THEY SAID THAT AT THE TIME THAT THEY
10 HAD INTERVIEWED HIM IN THE JAIL THAT THEY DIDN'T THINK
11 HE WAS APPROPRIATE.

12 Q WHAT DOES THAT MEAN, THEY DIDN'T THINK HE
13 WAS APPROPRIATE?

14 A I CAN ONLY SPECULATE AS TO WHAT THEY MEANT
15 BY INAPPROPRIATE ON HIS ATTITUDE.

16 Q YOU WERE NOT TOLD WHAT THEY HAD CONCLUDED?

17 A THAT'S CORRECT.

18 Q SO YOU THEN CONTINUED YOUR CONVERSATION WITH
19 THE DEFENDANT AND RELAYED TO HIM THE INFORMATION YOU HAD
20 RECEIVED FROM E.O.B.?

21 A THAT'S CORRECT.

22 Q AND DID HE EXPRESS A DESIRE TO CONTACT THEM?

23 A YES, HE SAID THAT HE WANTED ANOTHER
24 OPPORTUNITY. THAT HE FELT THAT IF HE WAS GIVEN ANOTHER
25 INTERVIEW, THAT THEY WOULD FIND HIM ACCEPTABLE AT THIS

1 TIME.

2 Q DID YOU HAVE TO MAKE SOME TYPE OF DECISION
3 ABOUT HOW HE WOULD GET FROM YOUR OFFICE TO E.O.B. OR TO
4 THE SALVATION ARMY PROGRAM?

5 A THAT'S CORRECT. HIS OFFICER WAS WORKING THE
6 1:00 P.M. TO 10:00 P.M. SHIFT AND WAS NOT THERE.

7 Q YOU'RE REFERRING TO LARRY ARAVE?

8 A THAT'S CORRECT. AND I DIDN'T HAVE ANYONE
9 AVAILABLE TO TAKE HIM, AND I ASKED HIM IF HE KNEW
10 SOMEONE THAT COULD TAKE HIM, AND HE SAID POSSIBLY. AND
11 I ALLOWED HIM TO MAKE A TELEPHONE CALL.

12 Q DID YOU HAVE ANY IDEA WHO HE WAS CALLING?

13 A NO.

14 Q WHEN YOU ASKED IF HE HAD ANYONE WHO COULD
15 TRANSPORT HIM, HE SAID POSSIBLY. DID YOU HAVE ANY IDEA
16 WHO THE POSSIBLY WAS?

17 A HE SAID A FRIEND.

18 Q DID YOU KNOW AT THE TIME OF THIS
19 APPROXIMATELY ONE HOUR INTERVIEW WITH THE DEFENDANT THAT
20 HE HAD A HISTORY OF DOMESTIC VIOLENCE?

21 A I HAD A COPY OF HIS COMPUTER PRINTOUT THAT
22 SHOWED THAT HE HAD BEEN ARRESTED FOR DOMESTIC BATTERY.

23 Q DID YOU REALIZE THAT IN FACT HE WAS BEING
24 RELEASED FROM THE CITY IN CONNECTION WITH A MISDEMEANOR
25 DOMESTIC VIOLENCE CONVICTION WHICH INVOLVED THE USE OF A

1 KNIFE?

2 A I DIDN'T KNOW ABOUT THE USE OF A KNIFE. I
3 KNEW THAT HE HAD SERVED SOME TIME FOR A DOMESTIC BATTERY
4 AND WAS BEING RELEASED.

5 Q DID YOU KNOW HIS VICTIM WAS DEBORAH PANOS?

6 A NO, I DID NOT.

7 Q DID YOU REALIZE WHEN YOU DISCUSSED THE
8 CIRCUMSTANCE WITH MR. CHAPPELL AUGUST THE 31ST THAT
9 CHARMAINE SMITH, THE PREVIOUS SUPERVISOR OF THE
10 DEFENDANT, HAD SPOKEN AT LENGTH WITH DEBORAH PANOS?

11 A I DIDN'T KNOW THAT.

12 Q YOU DIDN'T KNOW THAT DEBORAH PANOS HAD
13 EXPRESSED FEAR OF THE DEFENDANT?

14 A NO, I DID NOT.

15 Q I WOULD PRESUME YOU DIDN'T KNOW THE WHOLE
16 SERIES OF LETTERS THAT MR. CHAPPELL HAD WRITTEN TO
17 DEBORAH PANOS FROM THE CLARK COUNTY DETENTION CENTER?

18 A NO, I WAS NOT AWARE OF THAT.

19 Q SO TELL US IN A NUTSHELL WHAT HAPPENED?

20 A BASICALLY, I WAS GIVEN A MESSAGE THAT HE WAS
21 BEING RELEASED FROM CUSTODY AND SO I STARTED TRYING TO
22 DETERMINE WHY AND I RAN SOME COMPUTER RECORDS AND I WAS
23 ABLE TO DETERMINE THAT HE WAS IN JAIL FOR SOME DOMESTIC
24 BATTERY CHARGES AND WAS BEING RELEASED.

25 ALSO DISCOVERED THAT HIS OFFICER AT

1 THAT TIME WAS MR. ARAVE AND THAT HE WAS WORKING SWING
2 SHIFT AND HE WASN'T AVAILABLE.

3 I CALLED HIM AT HOME AND I ASKED HIM
4 WHAT HE WAS DOING IN CUSTODY, WHY WAS HE BEING RELEASED?
5 AND HE WAS VERY UNCLEAR ON THE CASE. COULDN'T RECALL IT
6 AND THEN THE OFFICERS BROUGHT MR. CHAPPELL IN.

7 WE HAD A DISCUSSION AND I BECAME AWARE
8 OF THE FACT THAT HE WAS SUPPOSED TO BE IN E.O.B. AND
9 THAT HE HAD BEEN INTERVIEWED. THAT'S THE REASON I
10 CALLED THEM.

11 AND AS I SAID BEFORE, THEY DIDN'T FEEL
12 THAT HE WAS APPROPRIATE BASED ON THE INTERVIEW THAT THEY
13 HAD DONE IN THE JAIL.

14 I DISCUSSED THAT WITH HIM. HE TOLD ME
15 THAT HE HAD BASICALLY SEEN THE LIGHT FROM HAVING BEEN --
16 SPENT ADDITIONAL DAYS IN CUSTODY AND HE WAS READY TO GO
17 IN THE PROGRAM.

18 I ASKED HIM HOW HE COULD POSSIBLY GET
19 INTO THE SALVATION ARMY DRUG PROGRAM, BUT THAT AN
20 APPOINTMENT WOULD HAVE TO BE SCHEDULED. HE WOULD HAVE
21 TO SEE HIS OFFICER AT 1:00 O'CLOCK TO DO THAT.

22 A AND ALSO HE SAID THAT HE WOULD LIKE TO GO
23 DOWN AND BE INTERVIEWED AT THE E.O.B. PROGRAM, TRY TO
24 GET ANOTHER INTERVIEW.

25 I TRIED TO TELEPHONE E.O.B. AGAIN BUT

1 THERE WAS NO ANSWER, WHICH IS NOT UNUSUAL. WHEN THEY
2 HAVE GROUP SESSIONS, SOMETIMES THEY DON'T ANSWER THE
3 TELEPHONE.

4 SO IT WAS ABOUT 11:00 O'CLOCK AND I
5 TOLD HIM THAT HIS OFFICER WOULD BE IN AT 1:00 AND COULD
6 TAKE HIM TO THE SALVATION ARMY TO BE INTERVIEWED; BUT
7 THAT HE COULD GO DOWN TO THE E.O.B. CENTER WHICH IS TWO
8 BLOCKS AWAY AND TRY TO BE INTERVIEWED BY THEM, BUT THAT
9 IF HE DID, HE WOULD HAVE TO BE, YOU KNOW, BACK BY
10 1:00 O'CLOCK. DID HE KNOW ANYONE THAT COULD TAKE HIM?

11 HE SAYS, "I HAVE A FRIEND I THINK CAN
12 TAKE ME."

13 MY TELEPHONE IS BEHIND MY DESK, SO I
14 HAD HIM COME SIT NEXT TO THE DESK.

15 I HANDED HIM THE TELEPHONE. HE GAVE
16 ME SOME NUMBERS AND I PUNCHED THEM INTO THE TELEPHONE.
17 AND IT APPEARED AS THOUGH HE WAS LEAVING A MESSAGE FOR
18 SOMEONE ON A MESSAGE PHONE. THEN HE SAID THAT HE DIDN'T
19 HAVE A WAY TO GET DOWN THERE.

20 SO I AGREED TO ALLOW HIM TO WALK DOWN
21 TO THE E.O.B. UNDER THE CIRCUMSTANCES, THE CONDITIONS
22 THAT HE BE BACK AT 1:00 O'CLOCK FOR HIS OFFICER TO TAKE
23 HIM TO THE SALVATION ARMY TO BE CONSIDERED FOR ADMISSION
24 INTO THAT PROGRAM.

25 Q WAS HE THEN RELEASED TO WALK TO E.O.B.?

1 A YES.

2 Q AND WAS THAT AT ABOUT 11:00 CLOCK IN THE
3 MORNING?

4 A THAT'S CORRECT.

5 Q AUGUST THE 31ST, 1995?

6 A YES.

7 Q WHERE WAS THE E.O.B. OFFICE FROM WHERE YOU
8 WERE SPEAKING WITH THE DEFENDANT?

9 A THE PROBATION OFFICE IS ON BONANZA BETWEEN --
10 A BLOCK FROM MAIN STREET.

11 Q YOU'RE TALKING ABOUT YOUR OFFICE?

12 A THAT'S CORRECT.

13 Q SO YOU WERE NEAR BONANZA AND MAIN STREET?

14 A THAT'S CORRECT. AND THE E.O.B. CENTER IS ON
15 WASHINGTON AND D STREET, RIGHT ABOUT THAT AREA. I
16 BELIEVE IT'S TWO OR THREE BLOCKS AWAY.

17 Q NOT FAR?

18 A THAT'S CORRECT.

19 Q BUT YOU CERTAINLY WOULDN'T WALK EASTBOUND ON
20 BONANZA DOWN TO LAMB BOULEVARD TO GET TO E.O.B., WOULD
21 YOU?

22 A NO.

23 Q WHEN YOU AGREED TO LET HIM WALK THE SEVERAL
24 BLOCKS FROM YOUR OFFICE TO E.O.B., DID YOU HAVE ANY IDEA
25 THAT THE DAY BEFORE HE HAD TOLD DEBORAH PANOS HE WAS

1 GOING TO KILL HER?

2 A NO, I DIDN'T KNOW THAT.

3 Q DID MR. CHAPPELL EVER SHOW BACK UP FOR HIS
4 1:00 O'CLOCK IN THE AFTERNOON APPOINTMENT WITH LARRY
5 ARAVE?

6 A MR. ARAVE CAME IN ABOUT 12:30 AND I
7 INSTRUCTED HIM TO CONTACT SALVATION ARMY BECAUSE MR.
8 CHAPPELL HAD BEEN THERE AND WAS SUPPOSED TO BE BACK AT
9 1:00 O'CLOCK. AND MR. ARAVE DID TELL ME THAT HE HAD
10 MADE THAT APPOINTMENT, BUT THAT MR. CHAPPELL NEVER
11 RETURNED.

12 MR. HARMON: THANK YOU. THAT CONCLUDES THE
13 DIRECT, YOUR HONOR.

14 THE COURT: CROSS-EXAMINATION?

15 MR. EWING: YES, YOUR HONOR.

16

17 CROSS-EXAMINATION

18 BY MR. EWING:

19 Q MR. DUFFEY, WHAT TIME DID MR. CHAPPELL LEAVE
20 YOUR OFFICE?

21 A AROUND 11:00 A.M.

22 Q SO IT WAS FOR APPROXIMATELY TWO HOURS
23 BETWEEN THAT TIME AND THE TIME HE WAS SUPPOSED TO BE
24 BACK?

25 A THAT'S CORRECT.

1 Q AND E.O.B. WAS A COUPLE OF BLOCKS AWAY?

2 A THAT'S TRUE.

3 Q HOW LONG DO THOSE E.O.B. INTERVIEWS USUALLY
4 TAKE?

5 A I DON'T KNOW HOW LONG, EXACTLY, THEY TAKE.

6 Q NO IDEA?

7 A NO.

8 Q BEFORE MR. CHAPPELL CAME INTO YOUR OFFICE,
9 DID YOU HAVE AN OPPORTUNITY TO LOOK AT HIS FILE?

10 A PARTIALLY.

11 Q DID YOU HAVE AN OPPORTUNITY TO SEE THE COURT
12 MINUTES FROM AUGUST THE 1ST, 1995?

13 A I BELIEVE SO.

14 Q WHEN HE WAS INFORMED THAT HE WOULD BE
15 RELEASED TO PAROLE AND PROBATION TO BE PLACED IN AN
16 INPATIENT DRUG TREATMENT PROGRAM?

17 A THAT'S CORRECT, YES.

18 Q WOULD IT BE SAFE TO SAY THAT IN HIS MIND,
19 WHEN HE GOT RELEASED ON AUGUST THE 31ST, THAT HE WAS
20 GOING TO BE PLACED IN AN INPATIENT DRUG TREATMENT
21 PROGRAM?

22 A WHAT WAS THE QUESTION?

23 Q WOULD IT BE SAFE TO SAY THAT BASED ON THIS
24 COURT ORDER OF AUGUST THE 1ST, 1995, WHEN MR. CHAPPELL
25 WAS RELEASED ON AUGUST THE 31ST, HE BELIEVED HE WAS

1 GOING INTO AN INPATIENT DRUG TREATMENT PROGRAM?

2 A YES.

3 Q MAY I APPROACH, YOUR HONOR? I'D LIKE TO
4 HAVE AN EXHIBIT MARKED.

5 (BRIEF PAUSE IN PROCEEDINGS.)

6 MR. HARMON: COURT'S INDULGENCE, YOUR HONOR.

7 THE COURT: YES.

8 MR. HARMON: THANK YOU.

9 MR. EWING: MAY I APPROACH THE WITNESS?

10 THE COURT: YES.

11 BY MR. EWING:

12 Q IS THIS A COPY OF THE COURT MINUTES YOU
13 REVIEWED REFERRING TO AUGUST THE 1ST OF 1995?

14 A YES, IT IS.

15 MR. EWING: YOUR HONOR, THIS IS A CERTIFIED
16 COPY OF THE DISTRICT COURT MINUTES, AND I'D LIKE TO MOVE
17 FOR ITS ADMISSION AT THIS TIME.

18 THE COURT: ANY OBJECTION?

19 MR. HARMON: WHAT IS THE EXHIBIT NUMBER?

20 MR. EWING: EXHIBIT -- DEFENDANT'S PROPOSED
21 EXHIBIT "C".

22 MR. HARMON: NO OBJECTION.

23 THE COURT: IT WILL BE RECEIVED IN EVIDENCE.

24 MR. EWING: I DON'T HAVE ANY OTHER
25 QUESTIONS.

1 MR. HARMON: NO FURTHER REDIRECT, YOUR
2 HONOR.

3 THE COURT: MAY THIS WITNESS BE DISCHARGED?

4 MR. HARMON: YES, JUDGE.

5 THE COURT: THANK YOU, SIR. YOU MAY STEP
6 DOWN.

7 (WHEREUPON, WILLIAM DUFFEY
8 WITHDREW FROM THE COURTROOM.)

9 THE COURT: WILL COUNSEL APPROACH THE BENCH.
10 (DISCUSSION OFF THE
11 RECORD AT THE BENCH.)

12 THE COURT: ALL RIGHT, UPON CONSULTATION
13 WITH COUNSEL OFF THE RECORD, IT'S AGREED THAT THIS IS
14 THE TIME -- BEST TIME TO TAKE OUR EVENING RECESS.

15 TWO MORE WITNESSES FROM THE STATE
16 TOMORROW MORNING?

17 MR. HARMON: EXCUSE ME, JUDGE?

18 THE COURT: WE'LL HAVE TWO MORE WITNESSES?

19 MR. HARMON: FROM THE STATE, YOUR HONOR,
20 YES.

21 THE COURT: LADIES AND GENTLEMEN, DURING
22 THIS RECESS, IT IS YOUR DUTY NOT TO CONVERSE AMONG
23 YOURSELVES OR WITH ANYONE ELSE ON ANY SUBJECT CONNECTED
24 WITH THE TRIAL; OR TO READ, WATCH OR LISTEN TO ANY
25 REPORT OF OR COMMENTARY ON THE TRIAL BY ANY PERSON

1 CONNECTED WITH THE TRIAL; OR BY ANY MEDIUM OF
2 INFORMATION, INCLUDING, WITHOUT LIMITATION, NEWSPAPER,
3 TELEVISION AND RADIO; AND YOU ARE NOT TO FORM OR EXPRESS
4 AN OPINION ON ANY SUBJECT CONNECTED WITH THE CASE UNTIL
5 IT IS FINALLY SUBMITTED TO YOU.

6 WE'LL BE STARTING TOMORROW MORNING AT
7 10:00 O'CLOCK. YOU ARE DISCHARGED FOR THE EVENING,
8 LADIES AND GENTLEMEN.

9 MR. GRITIS, IF I COULD SEE YOU AT THE
10 BENCH FOR JUST A MOMENT BEFORE WE PART COMPANY TODAY.

11 (WHEREUPON, THE JURY PANEL,
12 WITH THE EXCEPTION OF JUROR
13 GRITIS, WITHDREW FROM THE
14 COURTROOM.)

15 THE COURT: COUNSEL, APPROACH THE BENCH WITH
16 THE JUROR, PLEASE.

17 (DISCUSSION OFF THE
18 RECORD AT THE BENCH.)

19 THE COURT: WE'LL TAKE A BRIEF RECESS AT
20 THIS POINT. I'LL BE BACK IN ABOUT 10 MINUTES.

21 (A SHORT RECESS WAS TAKEN.)

22 THE COURT: BACK ON THE RECORD OUTSIDE THE
23 PRESENCE OF THE JURY.

24 MR. BROOKS: I HAVE A BRIEF ORAL MOTION TO
25 PRESENT TO THE COURT.

1 I'LL ENTITLE THIS THE MOTION TO STRIKE
2 THE TESTIMONY OF LISA DURAN, MICHAEL POLLARD AND MOTION
3 FOR DECLARATION OF MISTRIAL AS TO THE GUILTY PHASE ON
4 THE BASIS OF THE STATE'S WILLFUL FAILURE TO PRESENT
5 CONFLICTING. TESTIMONY.

6 DURING THE GUILTY PHASE WE HEARD LISA
7 DURAN TESTIFY REGARDING THE SLAPPING INCIDENT IN
8 DECEMBER AND THE COURT RULED IN THE PETROCELLI HEARING
9 THAT THAT TESTIMONY WAS ADMISSIBLE AS PRIOR BAD ACT
10 EVIDENCE.

11 WE ALSO HEARD LISA DURAN TESTIFY THAT
12 PANOS LEFT WORK AT 9:00 OR 10:00 O'CLOCK ON THE DAY OF
13 THE MURDERS, AND THIS AFFECTED ARGUMENT IN REGARD TO
14 TIMING IN THIS CASE.

15 TODAY, DURING THE PENALTY PHASE --

16 THE COURT: WHAT DO YOU MEAN REGARDING
17 TIMING? YOU STIPULATED THAT HE KILLED THIS WOMAN.

18 MR. BROOKS: ABSOLUTELY, BUT IT AFFECTS THE
19 TIMING QUESTION AS TO WHETHER OR NOT MR. CHAPPELL WAS
20 THERE WAITING FOR THIS WOMAN WHEN SHE CAME HOME OR IF IN
21 FACT, AS HE SAYS, THE WOMAN WAS THERE WHEN HE ARRIVED,
22 AND I THINK MY ARGUMENT WILL BECOME CLEAR WHAT I'M
23 SAYING, I HOPE.

24 DURING THE PENALTY PHASE, JUDGE, WE
25 HEARD MIKE POLLARD TESTIFY REGARDING A SLAPPING INCIDENT

1 WHICH SOUNDS AN AWFUL LOT LIKE LISA DURAN'S DESCRIPTION
2 OF A SLAPPING INCIDENT WHICH SHE SAID OCCURRED IN
3 DECEMBER.

4 MR. POLLARD PUTS THIS IN MARCH, I
5 BELIEVE. ALSO, JUDGE, MR. POLLARD CONTRADICTS DURAN'S
6 TESTIMONY REGARDING THE DAY OF THE MURDER BY SAYING THAT
7 INSTEAD OF MS. PANOS GOING HOME AT EITHER 9:00 OR
8 10:00 O'CLOCK AS MS. DURAN TESTIFIED, HE HAS MISS PANOS
9 GOING HOME AT NOON, HEARING THE MESSAGES ON THE
10 ANSWERING MACHINE FROM JAMES CHAPPELL, THEN GOING BACK
11 TO HIS APARTMENT.

12 AND A JURY CAN INFER FROM THAT
13 TESTIMONY THAT JAMES' TESTIMONY -- THAT DEBORAH PANOS
14 WAS HOME WHEN HE GETS TO THE TRAILER, WAS IN FACT A LIE,
15 WHEN HE TESTIFIED THAT THAT WAS SO.

16 OUR POSITION, JUDGE, IS THAT MICHAEL
17 POLLARD'S TESTIMONY WAS ESSENTIAL IN THE PETROCELLI
18 HEARING. HIS TESTIMONY ABSOLUTELY CALLS INTO QUESTION
19 THE CREDIBILITY OF LISA DURAN AND ALSO THE ACCURACY OF
20 HER MEMORIES.

21 THE COURT: IS THIS GENTLEMAN ENDORSED ON
22 THE INFORMATION?

23 MR. BROOKS: YES, HE WAS.

24 MR. HARMON: YES.

25 MR. BROOKS: FURTHERMORE, THE STATE HAD A

1 DUTY TO PRESENT THIS EVIDENCE DURING TRIAL SO THE JURY
2 COULD HEAR THIS CONFLICTING TESTIMONY, AND IT IS ALSO
3 OUR POSITION, JUDGE --

4 THE COURT: WHAT'S THE AUTHORITY FOR THAT?

5 MR. BROOKS: OUR POSITION IS THAT -- OUR
6 POSITION IS, THIS TYPE OF TESTIMONY SHOULD BE COMING
7 INTO EVIDENCE DURING TRIAL BECAUSE IT'S RELEVANT REALLY
8 TO GUILT.

9 WHAT THE STATE HAS ESSENTIALLY DONE IS
10 TAKEN THE PENALTY HEARING AND INTRODUCED ESSENTIALLY
11 REBUTTAL TESTIMONY WHICH COULD HAVE BEEN RELEVANT TO THE
12 GUILT DETERMINATION BY THE JURY, AND BY BRINGING IT IN
13 DURING THE REBUTTAL PHASE -- I MEAN, THE PENALTY PHASE,
14 WHICH IN FACT THEY'VE DONE.

15 THE COURT: ARE YOU SAYING THIS IS SOME SORT
16 OF AN EXTENSION OF BRADY?

17 MR. BROOKS: IT'S A DISTANT COUSIN OF BRADY,
18 YOUR HONOR.

19 WE'RE SAYING THE STATE HAD A DUTY TO
20 PRESENT CONFLICTING TESTIMONY DURING THE GUILTY PHASE
21 AND NOT RESERVE IT FOR THE PENALTY PHASE. BECAUSE WHAT
22 THIS HAS REALLY DONE IS ALLOW THE DEFENSE COUNSEL TO BE
23 IN A POSITION WHERE WE HAVE TAKEN A CONCRETE POSITION ON
24 THE EVIDENCE WITH REGARDS TO JAMES' STATEMENTS ON THE
25 TIMING OF THIS CASE, AND NOW WE HEAR EVIDENCE IN THE

1 PENALTY PHASE THAT CONTRADICTS WHAT WE IN FACT WERE
2 SAYING, AND THIS TESTIMONY SHOULD HAVE BEEN BEFORE THE
3 JURY DURING THE GUILT PHASE.

4 THEREFORE, WE MOVE FOR A MISTRIAL AND
5 STRIKING OF ALL THAT TESTIMONY.

6 THE COURT: STATE?

7 MR. HARMON: YOUR HONOR, I THINK WE'RE AT
8 LIBERTY TO ENGAGE IN APPROPRIATE TRIAL TACTICS, AND WE
9 THINK THAT'S WHAT'S HAPPENED HERE.

10 MICHAEL POLLARD WASN'T A MYSTERY TO
11 ANYONE DURING THE PRELIMINARY HEARING WHICH WAS IN
12 OCTOBER, 1995. LISA DURAN TESTIFIED.

13 MR. POLLARD DIDN'T, BUT DURAN REFERRED
14 TO POLLARD AS A CO-WORKER, A MUTUAL FRIEND OF HERS AND
15 THE VICTIM, AND ALSO MENTIONED IT WAS THROUGH HIM THAT
16 SHE LEARNED A NUMBER OF FACTORS WHICH WERE IMPORTANT TO
17 THE CASE.

18 THEREFORE, MICHAEL POLLARD WAS LISTED
19 AS A POTENTIAL WITNESS ON THE INFORMATION.

20 THE DEFENSE HAD THE SAME LIBERTY OF
21 INTERVIEWING HIM THAT THEY HAD WITH EVERY OTHER WITNESS.

22 IN FACT, WHAT HAPPENED IN THE CASE OF
23 MICHAEL POLLARD IS EVEN THOUGH WE HAD TRIED -- AND MISS
24 SILVER AND I DON'T GO OUT AND SERVE THE SUBPOENAS, SO I
25 CAN'T TELL YOU WITH WHAT DILIGENCE, BUT HE WAS

1 ORIGINALLY ON OUR LIST OF WITNESSES TO BE SERVED.

2 FOR SOME REASON, CONTACT WASN'T MADE

3 WITH HIM PRIOR TO THE COMPLETION OF THE GUILT PHASE.

4 OUR SECRETARY WAS ADVISED AFTER THE JURY RETURNED WITH

5 ITS VERDICT THAT WE STILL MOST DEFINITELY HAD AN

6 INTEREST IN SPEAKING WITH MICHAEL POLLARD BECAUSE WE

7 KNEW FROM LISA DURAN THAT POLLARD HAD HAD CONTACT WITH

8 THE VICTIM, AND IT WOULD HAVE BEEN AFTER SHE LEFT WORK.

9 SO IT WAS AFTER THE JURY RETURNED IN

10 THE GUILT PHASE THAT WE FORMALLY INTERVIEWED MICHAEL

11 POLLARD AND HE GAVE US THE INFORMATION ABOUT ABOUT WHICH

12 HE TESTIFIED.

13 YOUR HONOR, BECAUSE A WITNESS PROVIDES

14 THE INFORMATION WHICH IS INCONSISTENT WITH THAT OF

15 ANOTHER WITNESS, THAT DOESN'T MAKE IT VULNERABLE TO A

16 MOTION TO STRIKE IN ANY EVENT.

17 I DON'T HONESTLY KNOW IF MR. POLLARD

18 IS DESCRIBING, WHEN HE TALKS ABOUT A SLAPPING INCIDENT

19 IN MARCH, THE SAME INCIDENT THAT LISA DURAN REFERRED TO

20 WHICH SHE THOUGHT WAS SEVERAL WEEKS BEFORE CHRISTMAS, IN

21 DECEMBER.

22 IT SEEMS TO US THE JURY HAS TO DECIDE

23 IF HE'S TALKING ABOUT THE SAME INCIDENT OR SOMETHING

24 ELSE. AND REGARDING THE TIME FRAME, NONE OF THESE

25 WITNESSES HAVE SUGGESTED THAT THEY STUDIED THEIR CLOCKS.

1 NONE OF THEM KNEW WHAT WAS ACTUALLY GOING TO HAPPEN TO
2 DEBORAH PANOS.

3 SO WHEN MISS DURAN SAYS SHE BELIEVES
4 IT WAS 9:00 OR 10:00 O'CLOCK IN THE MORNING THAT THE
5 VICTIM LEFT AND WHEN MR. POLLARD SAYS IT WAS AROUND
6 NOON, I WILL GRANT YOU THAT THE TIME FRAME, IF IT WAS
7 AROUND NOON, BECOMES A LOT CLOSER IN TERMS OF WHETHER IT
8 WAS FEASIBLE FOR HER TO HAVE ALREADY BEEN AT THE TRAILER
9 WHEN THE DEFENDANT ARRIVES.

10 BUT NONE OF THESE WITNESSES SAID
11 PRECISELY WHAT TIME IT WAS, AND WHAT I'M TELLING THE
12 COURT IS THAT WE HAD NO WAY OF KNOWING PRECISELY WHAT
13 THE TIME FRAME WOULD BE UNTIL WE TALKED WITH MR. POLLARD
14 AND EVEN IF WE HAD KNOWN, THAT THE DEFENSE SAYS THIS IS
15 A DISTANT COUSIN OF BRADY, IT ISN'T AS THOUGH WE
16 SURPRISED THEM WITH THE WITNESS.

17 HE WAS LISTED ON THE INFORMATION. HE
18 WAS REFERRED TO BY A PRINCIPAL WITNESS AT THE
19 PRELIMINARY HEARING. AND ALL WE DID WAS FOLLOW UP ON
20 INFORMATION ONCE WE VERIFIED THAT HE HAD SEEN HER.

21 IN FACT, MISS SILVER AND I TALKED OF
22 THIS AT LENGTH, AND WE DECIDED THE JURY, BEFORE THEY
23 FIXED A PUNISHMENT, WAS ENTITLED TO HEAR FROM THIS
24 WITNESS WHO HAD THE LAST CONTACT EXCEPT FOR HER
25 ASSAILANT WITH HER AND WHO COULD DESCRIBE HER STATE OF

1 MIND AND PRECISELY HOW FRIGHTENED SHE WAS WHEN SHE
2 DEPARTED HIS RESIDENCE.

3 THE COURT: IS THERE ANYTHING IN THE FILE OF
4 THE DISTRICT ATTORNEY'S OFFICE THAT WOULD SUGGEST THAT --
5 BY WAY OF REVIEWING THAT DOCUMENTATION, THAT THE
6 KNOWLEDGE OF MR. POLLARD'S TESTIMONY WAS SOMEHOW
7 WITHHELD FROM THE DEFENSE?

8 MR. HARMON: NO, WE HAVEN'T WITHHELD
9 ANYTHING, YOUR HONOR.

10 THE COURT: I'M JUST ASKING YOU IF THERE'S
11 ANYTHING IN THE FILE THAT MIGHT SUGGEST THAT.

12 MR. HARMON: NO. THERE WASN'T ANY TYPE OF
13 FORMAL STATEMENT OF MR. POLLARD.

14 YOU KNOW, THIS INVESTIGATION, I
15 SUPPOSE, COULD BE CRITICIZED LIKE MANY OTHERS. IT
16 WASN'T PERFECT. THE DEFENSE HAS ALREADY EXPLOITED THE
17 FACT THAT CERTAIN WITNESS WHO PROBABLY SHOULD HAVE BEEN
18 INTERVIEWED WERE NOT INTERVIEWED BY THE POLICE
19 DEPARTMENT.

20 BUT ALL WE KNEW UNTIL WE ACTUALLY
21 SPOKE WITH MIKE POLLARD IS WHAT LISA DURAN SAID DURING
22 THE PRELIMINARY HEARING.

23 THE COURT: THE COURT BELIEVES THAT BRADY
24 DOES NOT COMPEL THE STATE TO PUT ON CONSISTENT
25 TESTIMONY, AND IN FACT IN THIS PARTICULAR INSTANCE, THE

1 TIME FRAMES ARE INEXACT. THAT IS, THE TIME FRAMES
2 DESCRIBED BY THE WITNESSES ARE INEXACT, AND THEREFORE
3 THE JURY WAS PERMITTED TO DECIDE THE FACTS OF THIS CASE
4 BASED UPON THE EVIDENCE BEFORE IT.

5 I DON'T SEE -- THE WITNESS WAS MADE
6 KNOWN AT THE TIME OF THE PRELIMINARY HEARING AND THE
7 WITNESS' -- A WITNESS' NAME WAS ENDORSED ON THE
8 INFORMATION. THE DEFENSE COULD HAVE INTERVIEWED THIS
9 WITNESS AND FOUND THIS MATERIAL OUT.

10 THE COURT FINDS ALSO THAT BASED UPON
11 THE TOTALITY OF THIS EVIDENCE THAT THIS DOES NOT BRING
12 INTO PLAY AN INEFFECTIVE ASSISTANCE OF COUNSEL ISSUE
13 BECAUSE THIS WITNESS VERY WELL COULD HAVE BEEN A VERY
14 DEVASTATING WITNESS UNDERMINING THE DEFENSE'S CRIMINAL
15 LIABILITY THEORY DURING THE GUILT PHASE.

16 SO THERE IS EVERY REASON WHY, EVEN IF
17 THIS WITNESS WAS INTERVIEWED AND THE TESTIMONY TODAY WAS
18 KNOWN TO THE DEFENSE, THAT THEY WOULD MOST ARGUABLY HAVE
19 REFRAINED FROM BRINGING THAT TO THE NOTICE OF THE JURY
20 DURING THE GUILT PHASE.

21 ANYTHING FURTHER FROM THE PARTIES AT
22 THIS TIME?

23 MR. HARMON: NOT BY THE STATE, YOUR HONOR.

24 THE COURT: THEREFORE, THE MOTION IS DENIED.

25 MR. BROOKS: THANK YOU.

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THE COURT: SEE YOU TOMORROW.

(WHEREUPON, THE JURY TRIAL
WAS ADJOURNED FOR THE DAY
AT THE HOUR OF 5:30 P.M.)

* * * * *

REPORTER'S CERTIFICATE

STATE OF NEVADA)

: SS
COUNTY OF CLARK)

I, CONNIE MC CARTHY, CERTIFIED COURT REPORTER,
HEREBY CERTIFY THAT I TOOK DOWN IN STENOGRAPHY ALL OF THE
PROCEEDINGS HAD IN THE BEFORE-ENTITLED MATTER AT THE TIME
AND PLACE INDICATED, AND THAT THEREAFTER SAID STENOGRAPHY
NOTES WERE TRANSCRIBED INTO TYPEWRITING AT AND UNDER MY
SUPERVISION.

THAT THE FOREGOING TRANSCRIPT CONSTITUTES A FULL,
TRUE AND ACCURATE RECORD OF THE PROCEEDINGS HAD.

IN WITNESS WHEREOF, I HEREUNTO SUBSCRIBE MY NAME
AT LAS VEGAS, NEVADA.

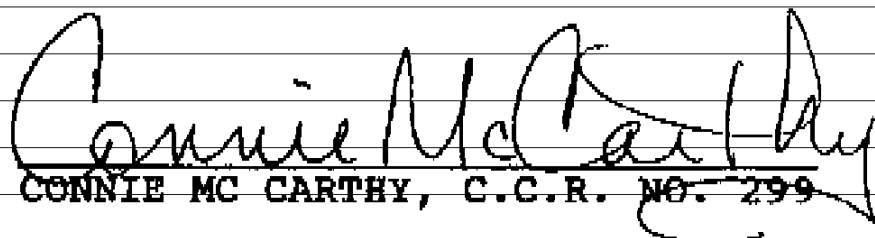

CONNIE MC CARTHY, C.C.R. NO. 299

EXHIBIT 140

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ORIGINAL

DISTRICT COURT
CLARK COUNTY, NEVADA

* * * * *

FILED IN OPEN COURT

OCT 23 1996

19

LORETTA BOWMAN, CLERK

BY *[Signature]* Deputy
CASE NO. C131341

THE STATE OF NEVADA,
Plaintiff,
Vs
JAMES MONTELL CHAPPELL,
Defendant.

DEPT. NO. VII

DOCKET P

BEFORE THE HONORABLE:

A. WILLIAM MAUPIN DISTRICT JUDGE

TUESDAY, OCTOBER 22, 1996, 10:45 A.M.

PENALTY PHASE - VOLUME II

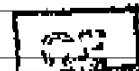
APPEARANCES:

FOR THE STATE: MELVYN T. HARMON &
ABBI SILVER
Deputies District Attorney

FOR THE DEFENDANT: HOWARD S. BROOKS &
WILLARD N. EWING
Deputies Public Defender

REPORTED BY: PATSY K. SMITH, C.C.R. #190

PATSY K. SMITH, OFFICIAL COURT REPORTER



PATSY K. SMITH, OFFICIAL COURT REPORTER

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PATSY K. SMITH, OFFICIAL COURT REPORTER

1 TUESDAY, OCTOBER 22, 1996, 10:45 A.M.

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

4 MR. BROOKS: Judge, Mr. Chappell has asked
5 me if I could possibly obtain State's Exhibit 66 over the
6 lunch hour and walk down to the Alpha Graphics here at the
7 corner and make a color copy of it. If the Court would
8 allow it, I could bring it back when we resume.

9 THE COURT: Any objection to that?

10 MR. HARMON: No, your Honor.

11 THE COURT: All right, that will be the
12 order.

13 (Off the record discussion not reported.)

14 THE COURT: Are we ready?

15 MR. HARMON: Yes.

16 THE COURT: All right, let's bring in the
17 jury.

18

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

21 THE COURT: Counsel stipulate to the
22 presence of the jury?

23 MR. HARMON: Yes, your Honor.

24 MR. BROOKS: Yes, your Honor.

25 THE COURT: Good morning, ladies and

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1 gentlemen.

2 THE JURY: (In Unison) Good morning.

3 THE COURT: Proceedings this morning and
4 other logistical problems in the courthouse have delayed us
5 starting by 45 minutes. I apologize for that. When the
6 case is over, I will explain that to you.

7 State may continue with its case in chief.

8 MS. SILVER: The State would call Carol
9 Monson.

10

11 CAROL MONSON,

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

15

16 DIRECT EXAMINATION

17 BY MS. SILVER:

18 Q Could you please state your name and
19 spell it for the record.

20 A Carol Monson. C-A-R-O-L M-O-N-S-O-N.

21 Q And did you know a person by the name
22 of Deborah Panos?

23 A Yes, I did.

24 Q And how did you know her?

25 A She was my niece.

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1 Q Prior to coming to court, did you
2 provide me with two letters from two of the family members
3 of Deborah Panos?

4 A Yes, I did.

5 Q One being the aunt -- another aunt and
6 a cousin of Deborah's?

7 A Yes, ma'am.

8 (Off the record discussion not reported.)

9 Q (BY MS. SILVER) I'd like to show you
10 what's been marked for identification purposes as the
11 State's Proposed Exhibit 91 and ask you if this is a one
12 page letter from Christina Rees, Deborah's cousin?

13 A Yes, it is.

14 Q And I'd like to show you what has been
15 marked for identification purposes as State's Proposed
16 Exhibit No. '92, a one page letter from a Mrs. Doris
17 Wichtoski?

18 A Wichtoski.

19 Q Which was Deborah's aunt?

20 A Right.

21 Q Is that what this is?

22 A Yes, it is.

23 Q And these are the two letters you
24 provided us for court today?

25 A Yes.

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1 MS. SILVER: Your Honor, at this time, I
2 would move to admit State's Proposed Exhibit No. 91 and No.
3 92 for identification purposes.

4 MR. EWING: No objection.

5 THE COURT: You would like to admit them?

6 MS. SILVER: We would like to admit them.

7 THE COURT: It's not for identification,
8 it's for substantive evidence?

9 MS. SILVER: Yes, your Honor.

10 Q (BY MS. SILVER) Mrs. Monson --

11 THE COURT: I'm sorry, Ms. Silver. I wanted
12 to review them first.

13 MS. SILVER: That's fine.

14 THE COURT: All right, these documents will
15 be admitted as part of the State's case.

16 MS. SILVER: Thank you.

17 Q Mrs. Monson, did you also prepare a
18 statement that you wanted to read to this jury regarding
19 Debbie and the impact to the family?

20 A Yes, I did.

21 Q Would you take that statement out at
22 this time and read that to the jury.

23 A My name is Carol Ann Monson. I reside
24 in Tucson, Arizona. Deborah A. Panos was my niece. This
25 is my statement in remembrance of Debbie.

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1 Debbie was an only child born May 4th,
2 1969. She had a large family that watched her grow through
3 the years from birth. She had a very happy childhood with
4 a great deal of love and security. She lived in a
5 beautiful home with her mother, stepfather, and grandmother
6 who all loved her very much.

7 Our family was very close knit, aunts and
8 uncles, nieces and nephews, and cousins. There was always
9 an occasion for a family gathering. Debbie loved family
10 gatherings. Even for no special occasion, she loved having
11 the family around.

12 Debbie was a very smart person and did
13 excellent in her school years. Education seemed to be very
14 easy for her.

15 As years past, Debbie grew into a fine
16 lady. She had a special place in her heart for the
17 elderly, children, and animals. Debbie loved to collect
18 clowns of all sorts. I have what she had left when she
19 died to pass onto her children. And when I see a clown of
20 any kind, I think of Debbie.

21 Debbie would see an elderly couple arm in
22 arm and walking and she would say, "Look, Aunt Carol,
23 aren't they cute?" I can still see Debbie today
24 approaching her grandmother and give her a little pinch on
25 the cheek. She would say, "Oh, grandma, you are so cute."

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1 She loved her grandmother.

2 Debbie always felt sorry for people in
3 trouble or people who were less fortunate than she. Less,
4 unfortunately, was one characteristics that did not help
5 her in life.

6 Debbie had three beautiful children, JP age
7 eight, Anthony age six, and Chantell age four. Debbie's
8 mother now raises these children. She loved her children
9 very much. There were times she worked as many as three
10 jobs to try and support them. She wasn't afraid of hard
11 work and never asked for a handout unless there was no
12 other way. She loved her job as a 911 operator in helping
13 others.

14 Debbie's misfortune began when she became so
15 fearful for her life and her children's lives because of
16 James' abusive manner. The family tried to provide
17 guidance to her, but she kept believing she could change
18 him. When she did decide to help herself, it was too late
19 and the system failed her also.

20 Debbie's children miss her so much and speak
21 of her often. It's such a shame she cannot see them grow
22 and enjoy them any longer. It's been especially hard for
23 her little girl Chantell. One day she remarked, "I want to
24 die so I can go see mommy." We just give the children all
25 the love and care we possibly can.

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1 Debbie is missed so much. Such a young life
2 to be taken away so soon. We only pray now that justice
3 will do what it needs to do and not fail her children
4 again. By that, I mean to give James what he gave Debbie,
5 death.

6 MS. SILVER: Thank you, your Honor. That
7 would conclude my direct.

8 MR. EWING: No cross, your Honor.

9 THE COURT: All right. Thank you very much,
10 ma'am. You may step down.

11 THE WITNESS: Thank you.

12 THE COURT: Call your next witness.

13 MS. SILVER: The State would call Norma
14 Penfield.

15
16 NORMA JEAN PENFIELD,
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 Can you please state your name and
4 spell it for the record.

5 A Norma Jean Penfield. N-O-R-M-A J-E-A-N
6 P-E-N-F, as in Frank, I-E-L-D.

7 Q And what city do you reside in?

8 A Tucson, Arizona.

9 Q How long have you lived there?

10 A For about -- well, since '88.

11 Q And prior to August 31st of 1995, who
12 did you live with?

13 A It was by myself, a widow.

14 Q And how long had you been a widow prior
15 to that?

16 A Three years.

17 Q You had been living alone?

18 A Yes.

19 Q Did you have any children?

20 A Just, just one. Deborah.

21 Q Deborah Ann Panos?

22 A Yes.

23 Q Did you prepare a statement for court
24 today --

25 A Yes.

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1 Q -- that you wanted to read to the jury
2 prior to me asking you some questions?

3 A Yes.

4 Q Would you read that statement right now
5 to the jury.

6 A My daughter and only child, Deborah Ann
7 Panos, was born May 4th, 1969 in Lansing, Michigan. She
8 was a very healthy child and a very good baby. She lived
9 in the same house until she was 18 years of age and when my
10 husband, her stepfather, retired from General Motors, we
11 sold the house and we moved to Arizona, which Debbie was
12 devastated because she loved the house and that we were
13 moving away.

14 Debbie was an intelligent girl and had no
15 problems in school. There were no problems in raising
16 her. She loved sports and especially the boys' games. She
17 seldom took to playing with dolls and this isn't in my
18 letter, but mainly it was because I only lived a couple
19 blocks away from my sister who had four boys and a girl,
20 which Debbie was raised as if they were her brothers and
21 sisters and she loved a challenge.

22 Debbie was very close to her aunts and
23 uncles and her grandmother, who lived with me and I took
24 care of her, my mother, who loved Debbie very much and had
25 a tendency to spoil her. She grew up with cousins that

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1 were like brothers and sisters to her.

2 Debbie was such a good student that she was
3 allowed to work CO-OP during her junior and senior years
4 for General Motors and she also worked in the school
5 office.

6 After high school, she went to business
7 college and she started working for -- on a computer for a
8 gas company. She was a very good worker and got along with
9 all the other people. Debbie made friends easily. She
10 loved elderly people and talking to them.

11 Debbie had such a beautiful smile. She
12 loved family traditions and always looked forward to the
13 family get togethers and holidays and special occasions.

14 When Debbie moved to Arizona with her son
15 James, it was hard for her. She worked for the Census
16 Bureau and the City Hall in Tucson. Her last job, before
17 moving to Las Vegas, was for the police department in the
18 911 position. She enjoyed her job greatly and was very
19 good at it. She had hopes of moving onto a different
20 department of police work.

21 With all her hardships, she took care of her
22 children and loved them so much. They were her pride and
23 joy. So proud of them. All the family misses Debbie so
24 much and she has left many friends.

25 Debbie had big goals for her future. When

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1 she was told to move away from Tucson by the police for her
2 own safety, I was devastated that she wouldn't be near me.
3 She wanted to further her education even after moving to
4 Vegas.

5 Debbie would go out of her way to help other
6 people. I'm proud of my daughter for what she stood for.
7 I wish she wouldn't have tried to stay and help a person
8 who abused her. I wish she would have listened to what
9 people were telling her, but fear kept her from doing
10 that.

11 I know Debbie is not here any more, but I
12 see her everyday through her children whom I now raise. My
13 only wish now is that justice will punish to the fullest
14 the person who took her life.

15 Q You stated that you were devastated
16 when Debbie moved here to Las Vegas. Was that the last
17 time you saw Debbie alive?

18 A Yes.

19 Q And how did you help her out when she
20 had to move here for her safety?

21 A I paid for her moving expenses. I put
22 the down payment on the house for her here.

23 Q Are you talking about the trailer?

24 A Yes, and later on, her car broke down
25 or whatever, she needed another car. I sent the money so

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1 that she could get another car.

2 Q How did you help her out when it came
3 to the children, whether it be in Las Vegas or in Tucson?
4 How were you there for her as a grandma?

5 A Any time she needed anything, whether
6 it was behind in her payment or she needed something for
7 the children, I always helped her out no matter what it
8 was.

9 Q I want you to tell us about August 31st
10 of 1995. What happened on that date?

11 A I was home by myself. I got a phone
12 call. They asked me if I was sitting down. This was a
13 stranger to me. I didn't know him. He said, "Debbie is
14 dead." I just went to pieces. After I composed myself, I
15 kept screaming, "Where were the children?" I said, "Get
16 the children to safety," and when I hung up, I called my
17 sister, who was at work. She and her husband came over
18 right away.

19 Q Was that Carol, your sister that
20 testified right before you?

21 A Yes.

22 Q What did you do with Carol and her
23 husband at that point?

24 A After we got over grieving a little,
25 calming each other down, then we had to start making

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1 arrangements to come out to Las Vegas to make
2 arrangements.

3 Q How long was it before you got to Las
4 Vegas?

5 A It took us only a day or so, I believe,
6 because we just came right out.

7 Q And when you got to Las Vegas, where
8 were the children?

9 A They were in a protective -- police
10 protective custody at Child Haven.

11 Q And did you pick up the children from
12 Child Haven?

13 A Well, we had to go through the
14 procedures, you know, the paperwork and the procedures, but
15 we went to see them just as soon as we could.

16 Q They wouldn't release them immediately
17 to you?

18 A Yes. I had to -- well, I had to go to
19 court to get temporary custody of the children to take them
20 back to Arizona with me.

21 Q How long did that take you to go
22 through that court procedure to get the children?

23 A It was -- well, all in all, probably a
24 day, but, you know, the couple days because it took, you
25 know -- we did an awful lot of running around.

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1 Q I'd like to show you what has been
2 marked for identification purposes as State's Proposed
3 Exhibit No. 93 and ask you if this is a photograph of the
4 three children of how they looked when -- approximately
5 their ages when you picked them up from Child Haven?

6 A Yes.

7 Q And what are their names again?

8 A James is the oldest. We call him JP.
9 Anthony is the next and Chantell is the little girl.

10 MS. SILVER: Your Honor, at this time, I
11 would move to admit State's Proposed Exhibit No. 93.

12 MR. EWING: No objection.

13 THE COURT: It will be received in
14 evidence.

15 Q (BY MS. SILVER) And when you picked up
16 the children, what did you need to do then?

17 A When we got custody -- when I got
18 custody -- temporary custody of the children, then I had to
19 go and buy clothes and shoes for them.

20 Q Had your sister gone to the trailer to
21 try and recover some of their items?

22 A Yes.

23 Q You didn't go in that trailer?

24 A No, I couldn't. I couldn't do a lot of
25 the police stuff here.

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1 Q Did she actually recover clothing for
2 the children?

3 A Very little. There was hardly anything
4 left. There wasn't any toys. She got a bag of stuff we
5 hardly could even use. I had to start from scratch and buy
6 everything for them after I got back.

7 Q Had they had more clothes when they
8 lived in Tucson?

9 A Oh, yes, because I know what I bought
10 for them.

11 Q Had they had toys or videotapes?

12 A Oh, yes.

13 Q That you had bought?

14 A Oh, definitely, because I would ask. I
15 would say what happened --

16 Q To who?

17 A What happened to this, you know.

18 Q Would you ask the children what
19 happened to their toys?

20 A (Witness shook head affirmatively.)

21 Q What would they tell you now?

22 A They said their daddy sold them.

23 Q And after you recovered some items for
24 the children, what did you have to do?

25 A You mean after my sister took them

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1 from --

2 Q Yes.

3 A She went through everything. To this
4 day, I have not seen everything that she had taken because
5 she didn't think that I could handle it yet. So she went
6 through everything and what she thought that the kids'
7 clothing, there was very little that they could use.

8 Q What else did you have to do, as far as
9 arrangements before leaving Las Vegas?

10 A I had arranged to have Debbie's body
11 shipped back to Michigan for burial because that was where
12 the family plot was. So I had to make arrangements for
13 that and then after we got back to Arizona, then it was
14 making flight arrangements for the children and the family
15 to fly back.

16 Q How did you pay for this?

17 A I paid out of my own pocket for
18 everybody's flight.

19 Q How did you do that, though?

20 A For the burial expense, I took money
21 out of my savings and borrowed on my life insurance to pay
22 for Debbie's funeral and I charged the plane tickets. I
23 charged those, which to this day I'm still paying for.

24 Q Did you have time to grieve during this
25 period?

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1 A There wasn't any time. Since this all
2 happened, I haven't had a good night's sleep and my main
3 concern was for the children and it's been just constantly
4 working with them, getting them in school, getting doctors
5 for them, and getting the shots updated. So it's been just
6 a constant --

7 Q Do they know what their father did to
8 their mother?

9 A No. They have never been told.

10 Q What do they say about their father?

11 A For the time that I've had them,
12 they've mentioned very little about their father and when
13 they do, they say he's mean and he's in jail, which is
14 no -- which was just an automatic thing because they were
15 so use to the police coming to the house because of, you
16 know, whatever went on and then he would be taken away. So
17 that's all they would just say. He's mean and he's in
18 jail.

19 Q I'd like to show you what's been marked
20 for identification purposes as State's Proposed Exhibit No.
21 94. Is this a picture of the three children as they appear
22 today?

23 A Yes, it is.

24 Q In fact, you took this picture?

25 A Yes.

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1 MS. SILVER: Your Honor, at this time, I
2 would move to admit State's Proposed Exhibit No. 94.

3 MR. EWING: No objection.

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

6 Q (BY MS. SILVER) How has each of the
7 children handled the death of their mother? How has this
8 affected them?

9 Let me ask you this, let's start with JP,
10 how old is he now?

11 A Eight.

12 Q How has he handled this?

13 A It took JP over a year to finally come
14 around to say mommy this or mommy that. He's been asking
15 if he could have some sleeping medication because it's hard
16 for him to go to sleep.

17 Q He's actually asked you for sleeping
18 medication?

19 A Yes, if I could get him some. I try to
20 tell him that grandma is right here, that I'm not going to
21 go anywhere, and for him to go and think of happy times
22 like going to school tomorrow and I tell him, "I come and
23 check on you all night long," which I do because I don't
24 sleep. So I check on them to make sure that they are
25 okay.

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1 Q Has he told you or described to you the
2 violence that he had seen in the home?

3 A Something come up and I can't remember
4 what it was and he just turned to me and he said, "Grandma,
5 you don't know the violence I have seen," and JP I kept I
6 think a lot in because he felt like he was the big guy over
7 the brother -- his brother and sister.

8 Q Protector of his brother and sister?

9 A Yes.

10 Q And his mother?

11 A Yes.

12 Q How is Anthony handling his mother's
13 death and how old is he now?

14 A Anthony is six. He will say things
15 about mommy, but it's like he's -- you don't know if he's
16 registered it all yet, but he -- and Anthony is more of a
17 happy child. He's got his mother's beautiful, beautiful
18 smile.

19 Q How about Chantell?

20 A She's been the hardest. Oh, she's been
21 the hardest.

22 Q How old is she now?

23 A She's four.

24 Q What does she do?

25 A You have to excuse me.

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1 One day she said, "I want to die and go to
2 heaven to see my mommy." So her brothers were telling her
3 why she doesn't want to die.

4 When I rock her at night, she wants me to
5 sing to her about her mommy. So I have to sing to her like
6 a story, tell her things about her mommy.

7 Q How does that effect you when you have
8 to sing songs about Deborah to this child?

9 A I can't begin to describe it. It's
10 hard to hold back the tears, but then they just come.

11 Q When does she ask you? Everyday?

12 A She'll say, "Do you miss my mommy?
13 Don't you wish you could love and kiss my mom and give her
14 a big hug," and it just about everyday she will ask me
15 this.

16 Q And what do you tell her?

17 A I tell her yes.

18 Q And so everyday you are reminded as
19 well by this child.

20 How has the loss of Debbie effected you as
21 her mother personally?

22 A So many ways. I miss her so much. Her
23 telephone calls, holidays aren't the same.

24 Q How is that?

25 A She's not there with the rest of the

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1 family, but she enjoyed -- she looked forward to all the
2 cousins and aunts, everybody getting together.

3 Q Is there a card of Debbie's that you
4 keep out?

5 A Her last Mother's Day card she sent me
6 is such a beautiful card and in it she says, " Mom, I know I
7 don't tell you often enough how I appreciate what you do
8 for me, but I do love you so much."

9 Q Ms. Penfield, what is your greatest
10 fear?

11 A When I die, I want to know that my
12 grandchildren will not live in fear any more and will not
13 be tormented by him any more. I feel the system has let
14 her down once. I hope to heaven they don't do it again.

15 MS. SILVER: That concludes my direct, your
16 Honor.

17 MR. EWING: No questions.

18 THE COURT: Thank you very much, ma'am. You
19 may step down.

20 Call your next witness.

21 MR. HARMON: Your Honor, the State rests.

22 THE COURT: That being the case, ladies and
23 gentlemen, there are a couple of matters that have to be
24 taken up outside your presence. We will attend to that
25 now. It will take approximately five minutes. We will be

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1 in recess. If you would please remain on the upper deck of
2 the courthouse.

3 Ladies and gentlemen, it is your duty not to
4 converse among yourselves or with anyone else on any
5 subject connected with this trial or to read, watch, or
6 listen to any report of or commentary on this trial or any
7 person connected with this trial by any medium of
8 information, including, without limitation, newspapers,
9 television, or radio, and you are not to form or express an
10 opinion on any subject connected with this case until it is
11 finally submitted to you.

12 We will be at ease while you depart the
13 confines of the courtroom. Again, please remain in the
14 general area of the courtroom and, of course, you can avail
15 yourself of the facilities, if you would like.

16

17 (At this time the jury left the courtroom.)

18

19 THE COURT: The record will reflect that we
20 are proceeding in the absence of the jury.

21 The State has rested. The defense now has
22 the option of putting on its case. Will the defense be
23 putting on a case in chief?

24 MR. EWING: Yes, your Honor.

25 THE COURT: Mr. Chappell, please stand.

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1 Nevada Revised Statute 175.171 provides, in
2 its heading and in its text, as follows -- Mr. Chappell, do
3 I have your attention?

4 THE DEFENDANT: Yes, sir, you do.

5 THE COURT: "No special instructions to be
6 given relating exclusively to defendant's testimony.

7 In the trial of all indictments, complaints,
8 and other proceedings against persons charged with a
9 commission of crimes or offenses, the person so charged
10 shall, at his own request, but not otherwise, be deemed a
11 competent witness. The credit to be given his testimony
12 being left solely to the jury under the Instructions of the
13 Court, but no special instruction shall be relating
14 exclusively to the testimony of the defendant."

15 N.R.S. -- Nevada Revised Statute 175.181
16 provides in its text and in its heading as follows:
17 Instruction not to be given relative to failure of
18 defendant to testify.

19 Subsection 1. No instruction shall be given
20 relative to the failure of the person charged with the
21 commission of a crime or offense to testify except upon the
22 request of the person so charged, the Court shall instruct
23 the jury that, in accordance with a right guaranteed by the
24 constitution, no person can be compelled in a criminal
25 action to be a witness against himself.

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1 Subsection 2. Nothing herein contained
2 shall be construed as compelling any such person to
3 testify."

4 Mr. Chappell, you have the right under the
5 Constitution of the United States of America and under the
6 Constitution of the State of Nevada not to be compelled to
7 testify in this case. Do you understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: You may, if you wish, give up
10 this right and take the witness stand and testify. If you
11 do, you will be subject to cross examination by the
12 district attorney and anything that you may say, be it on
13 direct or cross examination, will be the subject of fair
14 comment when the district attorney speaks to the jury in
15 his or her final argument. Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: If you choose not to testify,
18 the Court will not permit the district attorney to make any
19 comments to the jury concerning the fact that you have not
20 testified. Do you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: If you elect not to testify, the
23 Court will instruct the jury, only if your attorney
24 specifically requests, as follows:

25 "The law does not compel a defendant in a

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1 criminal case to take the stand and testify and no
2 presumption may be raised and no inference of any kind may
3 be drawn from the failure of a defendant to testify."

4 Do you have any questions you would like to
5 ask me at this time about any of these rights?

6 THE DEFENDANT: No, sir.

7 THE COURT: All right, Mr. Chappell, in
8 addition to sworn testimony, a person who is charged with
9 capital offenses in the State of Nevada enjoy what is
10 called the common law right of allocution. This is viewed
11 as the right of a defendant to stand before the sentencing
12 authority, in this case the jury, and present an unsworn
13 statement in mitigation of sentence including statements of
14 remorse, apology, chagrin or plans and hopes for the
15 future.

16 However, that right is not without
17 constraints and I will now read to you a portion of a case
18 called Homick versus State, which discusses the
19 implications of that and also reiterates what I have just
20 said.

21 "If a defendant succeeds in abusing the
22 right and extends his remarks beyond acceptable expressions
23 of remorse, pleas for leniency, and plans or hopes for the
24 future, into the realm of facts or circumstances relating
25 to guilt or exculpation, these facts are subject to

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1 rebuttal and form the basis for disputed issues which the
2 trier of fact must resolve and, therefore, justify
3 impeachment."

4 Quoting from Homick versus State
5 discussion -- strike that.

6 Quotation of the New Jersey Supreme Court
7 decision in a case called Zola, I quote, "We shall permit
8 the narrowly defined right of a capital defendant to make a
9 brief unsworn statement in mitigation to the jury at the
10 close of the presentation of evidence in the penalty
11 phase. Before a defendant speaks, he shall be instructed
12 by the Court, outside of the presence of the jury, of the
13 limited scope of the right; that his statement is subject
14 to the Court's supervision and that should the statement go
15 beyond the boundaries permitted, he will be subject to
16 corrective action by the Court, including comments by the
17 Court or prosecutor or, in some cases, possible reopening
18 of the case for actual cross examination."

19 Again, your right of allocution, that is to
20 make an unsworn statement to the jury, is not subject to
21 cross examination and must be limited to acceptable
22 expressions of remorse, pleas for leniency, and plans or
23 hopes for the future.

24 Do you have any question you would like to
25 ask me at this time about your right of allocution?

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1 THE DEFENDANT: No, sir.

2 THE COURT: Anything further from the
3 parties before we bring the jury back in?

4 MR. EWING: Yes, your Honor. I would like
5 to make one oral motion at this time at the conclusion of
6 the State's penalty phase case. I would like to entitle
7 the motion for mistrial based upon the State's misuse of
8 the penalty phase process.

9 The penalty phase evidence that the State
10 presented other than the victim witness -- victim impact
11 information today was simply a continuation of the opening
12 phase evidence. It was character evidence concerning Mr.
13 Chappell. They did not do anything to attempt to show the
14 jury about weighing aggravating circumstances, they didn't
15 discuss aggravating circumstances.

16 We think they used the penalty phase, with
17 its relaxed evidentiary standards, to bring in hearsay and
18 speculation to inflame the jury, to paint Mr. Chappell out
19 to be an awful person simply so that they would be
20 sufficiency enraged at him to impose a death penalty in
21 spite of their lack of evidence about aggravating
22 circumstances. We think that's improper.

23 THE COURT: All right. The Court's view is
24 that the State managed to put on its case and convince the
25 jury, with regard to first degree murder, without evidence

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1 that enjoys the protection or does not enjoy the protection
2 of the hearsay rule. That evidence was put on, it was
3 properly admitted during the guilt phase of the trial, and
4 at this point the Court is of the view that the evidence
5 that has been elicited at this point is consistent with the
6 State's obligation to provide the defendant with a fair
7 trial in the penalty and as well as the guilt phase.

8 Does the State wish to add anything further
9 by way of making a record on this motion?

10 MR. HARMON: No, your Honor.

11 THE COURT: All right, let's bring the jury
12 back in.

13
14 (At this time the jury entered the
15 courtroom.)

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

18 MR. HARMON: The State stipulates.

19 MR. EWING: Yes, your Honor.

20 THE COURT: The defense may -- does the
21 defense wish to make further opening statement or just
22 simply proceed with the presentation of evidence?

23 MR. EWING: Your Honor, the State would call
24 William Moore.

25 Excuse me, the defense would call William

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1 Moore.

2

3

WILLIAM ROGER MOORE,

4 having been first duly sworn to tell the truth, the whole
5 truth and nothing but the truth, testified and said as
6 follows:

7

8

DIRECT EXAMINATION

9 BY MR. EWING:

10 Q Would you please state your name and
11 spell your last name for the record.

12 A William Roger Moore, M-O-O-R-E.

13 Q Mr. Moore, where do you reside?

14 A I reside in Ingham County, Michigan in
15 Lansing, Michigan.

16 Q How long have you lived there?

17 A Approximately 30 years.

18 Q In Lansing, Michigan, what do you do
19 for a living?

20 A I'm a probation officer with the Ingham
21 County Juvenile Court.

22 Q What do you do as a probation officer?

23 A My duties include investigating new
24 referrals to the court, doing histories and making
25 recommendations to the judge, and then once they -- a

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1 juvenile is on probation, supervising their probation.

2 Q How long have you been doing this?

3 A I have been with Ingham County 17
4 years.

5 Q Prior to being a probation officer,
6 what did you do?

7 A Immediately prior to that, I worked as
8 the assistant director to the Arizona Boys Ranch as a
9 residential facility for delinquent males, approximately
10 400 youngsters and then immediately prior to that, I worked
11 at a place called High Fields, which is near Lansing and
12 High Fields is a residential placement also for delinquent
13 males and I was the group live-in coordinator, essentially
14 in charge of the day-to-day operations for the program for
15 about three years.

16 Q You testified that you, as a probation
17 officer, have the opportunity to supervise juveniles while
18 on probation, correct?

19 A That's right.

20 Q How many juveniles have you supervised
21 at one time?

22 A Between 30 and 40.

23 Q While you were conducting your
24 activities as a probation officer, did you have the
25 opportunity to supervise a juvenile named James Chappell?

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1 A I did.

2 Q Do you see Mr. Chappell in the
3 courtroom today?

4 A I do see him. I did not recognize him
5 at first glance.

6 Yes.

7 Q Do you recognize him now?

8 A He's at the table sitting next to you,
9 yes.

10 Q Describe something he is wearing.

11 A Yellow shirt. Just took his glasses
12 off.

13 MR. EWING: Would the record reflect the
14 identification of the defendant, your Honor?

15 THE COURT: Yes.

16 Q (BY MR. EWING) When did you first
17 start supervising Mr. Chappell?

18 A In July or August of 1985, he was
19 referred to the Court and I started official supervision of
20 him on August 1st of 1985 on a probation order.

21 Q Why was he referred to you for
22 supervision?

23 A He was referred to the court for a
24 larceny in a building, which was a shoplifting charge that
25 involved the theft of some tennis shoes from the K-Mart

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1 store.

2 Q Did he have some other incidents where
3 he had some brushes with the law as a juvenile?

4 A Yes. Subsequent to that, in September
5 of 1983, he pled to a B & E of an occupied dwelling. In
6 November of 1984, he pled to a larceny under a hundred
7 dollars, again another shoplifting, and then December of
8 1984, he pled to a breaking and entering and to a malicious
9 destruction of property under a hundred dollars.

10 Q What does B & E of an occupied dwelling
11 mean?

12 A Breaking and entering of a home,
13 breaking and entering.

14 Q Do you recall the circumstances of that
15 arrest?

16 A The -- there were two B & Es, but in
17 reviewing the records for today's testimony, it -- it
18 refreshed my memory that they were at the same residence,
19 1521 Herbert, and it was some neighborhood people James and
20 several members of his neighborhood were having a problem
21 with these people at another house and they broke into this
22 house on two different occasions.

23 Q And you supervised him because of these
24 various brushes with the criminal justice system?

25 A That is correct.

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1 Q Do you recall approximately how old
2 James was when you began supervising him?

3 A He was approximately 13 years of age.

4 Q And how long did you supervise him?

5 A I supervised him from -- officially,
6 from August 1st, 1985 until he was dismissed on January
7 23rd, 1986.

8 Q Approximately how long would that be?

9 A Approximately three years.
10 Approximately two years, I guess, excuse me.

11 Q Can you describe the neighborhood where
12 James was living while you were supervising him?

13 A Well, at the time he was referred to
14 the court, he was living on Miller Court, which was one of
15 the worst sections, one of the worst streets in the City of
16 Lansing at that time. It was a street that was
17 approximately two blocks long. It was a dead end and,
18 perhaps, 20 houses in it; about 10 of them were boarded up
19 and were being used by addicts and people used it to store
20 stolen goods in these abandoned houses and this kind of
21 thing. There was a lot of drug activity, lots of criminal,
22 both adult and juvenile.

23 It -- Miller Court came right up to Baker
24 Street, which was at that time and remains today a hot bed
25 of prostitution and drug sales. Miller Court no longer

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1 exist. The city finally just raised all of the streets on
2 that. So it doesn't even exist today.

3 Q Based upon your observations as James'
4 probation officer, what was his home like -- home life
5 like?

6 A Well, from my observations and from my
7 investigation, my original investigation, it was a very
8 troubled home life.

9 Q What did you observe?

10 A Well, again, more from my investigation
11 than what I observed, most of the major problems had
12 occurred at a younger age and they primarily involved
13 around the fact that his mother was a heroin addict and a
14 alcoholic and had three -- each of the three children that
15 I was involved with, Rick and Myra and James, each had
16 three different fathers, none of their fathers took an
17 interest in any of the kids and, in fact, Myra's father,
18 James Wells, lived in the home for a couple years. He was
19 a heroin user and alcoholic and so it was chaos and bedlam
20 and, you know, many problems.

21 Q After James' mother died, who assumed
22 responsibility of raising him?

23 A Well, actually a year before her death,
24 the court -- there was a neglect referral to the court
25 because of her ongoing heroin problems and Mrs. Axam, the

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1 grandmother of the juvenile, took custody of the three
2 children a year prior to Mrs. Chappell's death in 1987,
3 excuse me.

4 Q And did James continue to live with his
5 grandmother even through the time you were supervising
6 him?

7 A Yes, he did.

8 Q What was James' personality like at the
9 time you were supervising him?

10 A James was very quiet. At times, almost
11 nonverbal. He his grandmother said, at the time of his
12 mother's death, that for a couple years he almost refused
13 to talk. It wasn't that bad at the time that I dealt with
14 him, but he was very quiet and didn't say a lot. Kind of a
15 quiet, depressed individual.

16 Q Were you able to make -- develop any
17 opinions about his intellectual abilities?

18 A Well, he -- the last year that he was
19 in the court, he didn't commit any further delinquent
20 acts. I primarily kept him in the court for that time
21 because of school. School was always very difficult for
22 him. He was a Special Ed student, had a lot of
23 difficulties in school and so the last year that I was
24 involved with him, I was primarily just trying to get him
25 to go to school, which proved to be a difficult task.

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1 Q During his supervision, did you have
2 him involved in certain activities?

3 A As part of his probation, we had James
4 in a number of things. We had what we call the volunteer
5 probation officer. It was my feeling that James needed and
6 indeed craved positive adult attention. So we hooked him
7 up with a volunteer probation officer that did activities
8 with him.

9 We also had a tutor for him trying to
10 improve school and there was some improvement at the time.
11 His grandmother arranged for him to be in the Magic Johnson
12 Basketball Camp. Magic Johnson is a native of Lansing,
13 Michigan we are proud to say and then we used some punitive
14 measures, home detention, more or less a house arrest-type
15 thing. He was also detained in the youth center on several
16 occasions, which is our detention facility, as a result of
17 these things.

18 In addition to that, I attempted as much as
19 humanly possible to have some kind of relationship with
20 him, did activities with him, and also he worked for me the
21 last summer; did some work a couple hours at my house and a
22 court formed group home we had; we had some garden stuff in
23 an attempt to make some spending money. So we attempted a
24 lot of different types of things.

25 Q How did he respond to your supervision?

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1 A Well, he responded very well on that
2 one-on-one kind of thing. He really wanted the adult male
3 attention and so he responded quite well.

4 Q How did he treat you?

5 A Well, he treated me very well. I'm not
6 the type of worker that will be treated any other way than
7 well. So that was never an issue with kids I had, but he
8 was very appropriate.

9 Q Do you feel like you took a special
10 interest in James?

11 A Yes, I believe James and his family.

12 Q Did you also have the opportunity to
13 supervise his brother and sister?

14 A Yes, I did.

15 Q And what were their names?

16 A Willy Rich Chappell. I knew him as
17 Ricky basically and then Myra Chappell, his sister.

18 Q And how old were they in relation to
19 James?

20 A Ricky was approximately a year older
21 than James and Myra was approximately two years younger
22 than James.

23 Q What was the time frame for your
24 supervision of Ricky and Myra?

25 A They had rather lengthy involvements

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1 with the court. With Willy or Ricky, he was in from
2 October 3rd, 1983 until -- well, we dismissed him from our
3 court in 1984, but that was because I referred him to the
4 Department of Social Services for out of home placement.
5 So our files don't contain the records on when he was
6 finally dismissed, but he went into some type of
7 residential placement as a result of that. So he was
8 involved for, I would say, three to four years.

9 Myra came in formally on December 17th, 1984
10 and she was dismissed on February 9th, 1989. So she was in
11 almost five years. We had her in foster care. I also
12 referred her to the state for a placement in a residential
13 program that she stayed for a couple of years and we also
14 had VPOs and therapy and that type of thing.

15 So a pretty extensive record for both of
16 those youngsters.

17 Q Do you have an independent knowledge
18 concerning where Ricky is now?

19 A Ricky is in prison at this point.

20 Q Do you have any independent knowledge
21 about where Myra is now?

22 A I really don't. I saw her about two
23 years ago working at a store, talked to her briefly, and
24 that's the last time that I have had any contact with her.

25 Q Is it safe to say that the problems

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1 that the family had were consistent with the children?

2 A Oh, there's no doubt that the problems
3 that they have manifested as youngsters and as adults
4 mirror the problems that they saw in their home.

5 Q How was James different from his
6 brother Ricky and his sister Myra?

7 A Well, James was very quiet, home body.
8 He wasn't out running the streets. Rick, you know, finding
9 him was a problem. If I caught up with him, a lot of times
10 I felt fortunate.

11 Myra, even as a eleven and 12 year old, was
12 all over the place. I had to go down to Grand Rapids,
13 which is 70 miles away from Lansing, to pick her up one
14 time. She was a runaway and there was some concern that
15 she was involved in prostitution down there and I had to
16 take a pick up order, prevention order and they found her
17 and I had to go down.

18 So they were all over the place. They were
19 in your face in terms of trying -- anything we tried to do,
20 they fought it. James was just -- hung around home. When
21 they moved from the Miller Court out to the other address,
22 it was a much nicer neighborhood and once they were there,
23 James spent most of his time at home.

24 Q How old was he when they moved?

25 A It would be a rough guess, but I'm

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1 guessing he would have been 14 or 15. It was not too long
2 after I became involved -- he became involved with the
3 court.

4 Q Officer Moore, what type of a youth
5 would it take to be able to raise themselves up out of the
6 situation James was raised in and make themselves a
7 productive law abiding member of society?

8 A Well, I believe it would take an
9 exceptional person, a person of intelligence and a person
10 of insight. Unfortunately, James was neither of those. He
11 had problems in learning and he didn't have a lot of
12 insight into his problems, he didn't have a lot of insight
13 into what happened, and say, oh, gee, this is what
14 happened. I'm not going to let that happen to me. He was
15 just not a very introspective kid and made it very
16 difficult to do the changes.

17 Q Would you classify him as a follower?

18 A Well, he definitely was in the early
19 going in that neighborhood. He was running with his
20 brother and that B & E of the house, his sister was also
21 involved with that; both Rick, Myra, and James and several
22 neighborhood kids, all of whom were kids that we had had
23 extensive records with the courts. So of that group, he
24 definitely was the follower.

25 Q You never had the opportunity of

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1 knowing James when he had a relationship with a woman named
2 Deborah Panos, did you?

3 A I did not.

4 MR. EWING: That would conclude direct.

5 THE COURT: Cross.

6 MR. HARMON: Thank you, your Honor.

7

8 CROSS EXAMINATION

9 BY MR. HARMON:

10 Q Mr. Moore, how long did the grandmother
11 of our defendant, Mr. Chappell, serve as his primary
12 keeper, care taker?

13 A From -- legally from 1972, she got
14 legal guardianship in 1972 and at some time, we had
15 dismissed him in 1986. He was in the home after that. I'm
16 not aware of what time -- at what point exactly he left the
17 home.

18 Q We've had evidence in this case that he
19 lived with his grandmother from the age of two.

20 A Well --

21 Q Would that be correct?

22 A That primarily is right, that's true
23 because of the situation with the mother and with the
24 various fathers.

25 Q What is the grandmother's name?

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1 A Mrs. Axam, Clara Axam.

2 Q Clara Axam?

3 A Uh-huh.

4 Q Did she have a responsible position
5 with law enforcement in Lansing, Michigan?

6 A Well, she wasn't with law enforcement.
7 She worked at the State Police Training Academy, I believe,
8 as a cook and then she also received some ADC monies to
9 supplement -- she made about \$600, according to what my
10 records show, a month at the training academy and then she
11 supplemented that with ADC monies to raise them.

12 Q How long did she work with the State
13 Police Training Academy?

14 A For a considerable period of time. I
15 don't have that information at the top of my head.

16 Q Now, you have profiled the juvenile
17 record of James Chappell?

18 A That's right.

19 Q As I remember, you mentioned two
20 larcenies and two breaking and entering offenses?

21 A Yes, and a malicious destruction under
22 \$100. That was a part of the same second incident with a B
23 & E.

24 Q This occurred during what time frame?

25 A This occurred --

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1 Q I'm talking about all four.

2 A From approximately September of 1983 to
3 December of 1984.

4 Q What age was the defendant at that
5 time?

6 A He would have been 14, probably 15 at
7 the long end.

8 Q The first offense, as I remember, you
9 described as a larceny where he went into a store?

10 A Yes.

11 Q What did he steal?

12 A A pair of tennis shoes.

13 Q Then you referred to a breaking and
14 entry and you pointed out that the two offenses for
15 breaking and entering involved the same residence?

16 A Yes.

17 Q That was 1521 Herbert?

18 A That is correct.

19 Q And that was in the neighborhood where
20 the defendant lived?

21 A Yes, within three or four blocks, I
22 believe.

23 Q Let's start with the first one
24 chronologically. Did you learn what time of the day or
25 night it occurred?

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1 A Well, I probably did at the time. I
2 don't have -- our records don't have a police report, so I
3 don't have that, but my -- I really don't know what time it
4 was is the answer.

5 Q Was 1521 Herbert an occupied dwelling
6 place?

7 A Yes, it was.

8 Q People lived in it?

9 A That is correct.

10 Q When you describe these offenses and,
11 let's focus on the first one initially, as breaking and
12 entering, what does that mean? How do these people who
13 went in to this house occupied by other persons get into
14 the house?

15 A Just as the charge says or implies,
16 they broke and entered. They somehow entered by breaking
17 in.

18 Q Do you have any specific recollection
19 of how they broke and entered?

20 A I don't. I don't. I'm assuming that
21 it was a door or window. I really don't.

22 Q Well, I'm not wishing for you to
23 assume. It could have been windows as well?

24 A Yes.

25 Q You don't know?

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1 A No, I don't.

2 Q I would conclude from the answers
3 you've just given, you don't know how much damage was
4 caused to the residence, if any, when entry was made?

5 A I'm sorry.

6 In reviewing the file, there was indication
7 that a TV had been taken in that particular house.

8 Q Is that the first time?

9 A Yes, it is.

10 Q Anything else stolen?

11 A Not to my knowledge.

12 Q You've also mentioned a second
13 larceny. Elaborate somewhat regarding that offense. Where
14 did it happen and what was stolen?

15 A I'm sorry for interrupting. Sears
16 Roebuck & Company. It was a chain, a three dollars and
17 ninety nine cent chain. Necklace essentially.

18 Q Then you said in December 1984, there
19 was the breaking and entry which also involved malicious
20 destruction of property?

21 A That is correct. I went back in
22 reviewing the file, we take a plea sheet and as a part of
23 the plea, the juvenile indicated that they broke into the
24 house again and they got into the refrigerator and took
25 eggs and food and threw it around the house. So the

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1 malicious destruction property part of the offense, they
2 took items out of the refrigerator and threw it in the
3 house.

4 Q Now, you are using the pronoun they. I
5 think you've already mentioned that the siblings of the
6 defendant, both Myra and Willy, were involved?

7 A Yes, as well as a couple of other
8 youngsters.

9 Q Other neighborhood youngsters?

10 A Right.

11 Q Did you learn why it was that they
12 would enter and act maliciously once they got inside?

13 A Well, there was something going on
14 between these two -- this family and this group of people.

15 Q Some type of feud?

16 A Yes, some kind of argument or some kind
17 of problem that was going on in the neighborhood. I have
18 tried to remember, but I don't remember any more than
19 that.

20 Q Do you know how the perpetrators
21 obtained entry in December 1984?

22 A Well, again, I don't have a police
23 report and I don't recall specifically how they did get
24 in.

25 Q You mentioned that Willy Rich, the

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1 defendant's brother, was in prison now?

2 A That is correct.

3 Q In what prison?

4 A I don't if it's in Southern Michigan.

5 I suspect it's in Jackson in Southern Michigan Prison, but

6 he did a series of armed robberies and received, just a

7 year or two ago, received a substantial sentence.

8 Q When you say armed robberies, in

9 Michigan, does armed mean that a weapon was used in the

10 commission of the crime?

11 A That's correct.

12 Q You've mentioned that you took

13 considerable interest, special interest in this defendant

14 and his family?

15 A Yes, I believe I did.

16 Q I would presume that the goal of every

17 good, dedicated juvenile probation officer like yourself is

18 to attempt to rehabilitate, to straighten out the

19 youngsters you're dealing with so that they can live a

20 productive adult life?

21 A Well, that's certainly is the goal,

22 yes, sir.

23 Q When was it that you had your last

24 contact with Mr. Chappell?

25 A As I indicated, we dismissed him in

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1 January 23rd of 1986. I had a couple of casual encounters
2 with him that year, possibly into 1987, but I have not had
3 any contact with him since that time of any kind.

4 Q Therefore, you know nothing about his
5 relationship with Deborah Panos, the homicide victim in
6 this case?

7 A No, I know nothing at all.

8 Q You can only tell us of your contact
9 with him up to the last casual contact in 1987 --

10 A That is correct.

11 Q -- is that correct?

12 And that you presumably, because of your
13 special interest in him and his family, gave your very best
14 effort in this case within the limitations that you had to
15 correct the situation in their lives?

16 A Well, I gave my very best effort, yes,
17 sir.

18 MR. HARMON: Thank you. That's all, your
19 Honor.

20 MR. EWING: Know redirect.

21 THE COURT: May this witness be discharged?

22 MR. EWING: Yes.

23 THE COURT: Thank you, sir. You may step
24 down.

25 THE WITNESS: Thank you.

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1 THE COURT: We will take our noon recess at
2 this time. Ladies and gentlemen, it is your duty not to
3 converse among yourselves or with anyone else on any
4 subject connected with this trial or to read, watch, or
5 listen to any report of or commentary on this trial or any
6 person connected with this trial by any medium of
7 information, including, without limitation, newspapers,
8 television, or radio, and you are not to form or express an
9 opinion on any subject connected with this case until it is
10 finally submitted to you.

11 We will be at ease while you depart the
12 confines of the courtroom. Reconvene at 1:30.

13 We are in recess. If I could see the
14 attorneys in chambers just quickly.

15

16 (Off the record at 11:55 a.m. and back on
17 the record at 2:00 p.m.)

18

19 THE COURT: Will counsel approach the
20 bench.

21 (Off the record discussion not reported.)

22 THE COURT: Counsel stipulate to the
23 presence of the jury?

24 MR. HARMON: The State does, your Honor.

25 THE COURT: All right, ladies and gentlemen,

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1 I apologize for the late start. However, the accident I
2 just witnessed and was behind will not be the subject of
3 any litigation before me since you can't be the judge in a
4 case where you are a witness. At least, I've saved myself
5 that problem, but, in any event, I apologize for that.
6 There was nothing I could do about it.

7 You may call your next witness.

8 MR. EWING: Thank you, your Honor.

9 The defense would call Clara Axam.

10

11 CLARA AXAM,

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

15

16 DIRECT EXAMINATION

17 BY MR. EWING:

18 Q Clara, would you please state your name
19 and spell your last name for the record.

20 A Clara Axam, A-X-A-M.

21 Q Clara, where do you live?

22 A In Lansing, Michigan.

23 Q And how long have you lived there?

24 A Life.

25 Q Your entire life?

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1 A Yes.

2 Q Do you know James Chappell?

3 A Yes, I do.

4 Q How do you know James?

5 A He's my grandson.

6 Q Do you recognize him in court today?

7 A Yes, I do.

8 Q Can you point to him and describe an
9 article of clothing he's wearing?

10 A Right there. I can't describe it
11 because I can't see, you know, colors that far away, but
12 that's James right there with glasses on.

13 MR. EWING: Will the record reflect the
14 identification, your Honor?

15 THE COURT: Yes.

16 Q (BY MR. EWING) Do you recall who James
17 lived with when he was born?

18 A Yes, he lived with his mother and
19 father.

20 Q What was his mother's name?

21 A Shirley Chappell.

22 Q This is your daughter?

23 A Yes.

24 Q How long did he reside with her?

25 A Two years.

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1 Q Was she killed?

2 A Yes.

3 Q How was she killed?

4 A She got killed in a car accident, hit
5 by a car.

6 Q And after her death, did you assume the
7 responsibility of raising James?

8 A Yes, I did.

9 Q How did James react to the death of his
10 mother?

11 A Well, he was young, but very hard, very
12 hard like he wouldn't communicate with anybody.

13 Q How long --

14 A Like he wouldn't talk.

15 Q How long a period of time past before
16 he would talk?

17 A Probably a year or more.

18 Q How was James as a child? How did he
19 treat you?

20 A Oh, he treated me fine. He had
21 problems. You know, he was slow, but he treated me all
22 right. Had no problems. He wasn't the violent child. He
23 was a easy going child.

24 Q What do you mean by he was slow?

25 A Like in he didn't learn things as fast

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1 as a normal child. He didn't understand things.

2 Q Did that continue until he was in
3 school?

4 A Yes.

5 Q And what kind of student was he?

6 A Up until -- he went to normal school up
7 until the fifth grade, then they put him in special --
8 special education classes.

9 Q In fifth grade?

10 A Yes.

11 Q How did he respond to those special
12 education classes?

13 A Well, he went to school and
14 everything. He went to special education classes all the
15 way up to high school.

16 Q Did he graduate from high school?

17 A No.

18 Q Now, you worked during the time that
19 you were raising James, correct?

20 A Yes.

21 Q Where did you work?

22 A For the State Police Academy in the
23 State of Michigan.

24 Q Who would care for James while you were
25 at work?

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1 A My daughter Sherry.

2 Q Did you know Deborah Panos?

3 A Yes, I did.

4 Q How did you feel about Deborah Panos?

5 A A nice lady, very nice.

6 Q Do you feel like James should be

7 punished for what happened on August the 31st?

8 A Yes, I do.

9 Q Do you want James to continue to be a

10 part of your life?

11 A Yes.

12 Q Would you like to be able to correspond

13 with him?

14 A Yes.

15 Q So, basically, you want James to be

16 punished, but you do not want him to receive the death

17 penalty, correct?

18 A Right.

19 MR. EWING: I don't have any other

20 questions.

21 MR. HARMON: No questions, your Honor.

22 THE COURT: May this witness be discharged?

23 MR. EWING: Yes.

24 THE COURT: Thank you, ma'am. You may step

25 down.

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1 THE WITNESS: Thank you.

2 THE COURT: Call your next witness.

3 MR. EWING: Sharon Axam.

4

5 SHARON AXAM,

6 having been first duly sworn to tell the truth, the whole

7 truth and nothing but the truth, testified and said as

8 follows:

9

10 DIRECT EXAMINATION

11 BY MR. EWING:

12 Q Please state your name and spell your

13 last name for the record.

14 A Sharon Axam, A-X-A-M.

15 Q Sharon, where do you live?

16 A Lansing, Michigan.

17 Q And how long have you lived there?

18 A All my life.

19 Q Are you related to James Chappell?

20 A Yes.

21 Q How are you related to him?

22 A He's my nephew.

23 Q Have you been around James -- were you

24 around James his whole childhood?

25 A Yes.

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1 Q Do you recall approximately when James
2 was two years old and his mother was killed?

3 A Yes.

4 Q Was that a difficult time for James?

5 A Yes.

6 Q Do you recall how he responded to that
7 tragedy?

8 A He took -- all of us took it pretty
9 hard. He took it pretty hard.

10 MR. EWING: Your Honor, may I approach?

11 THE COURT: Yes.

12 Q (BY MR. EWING) Sharon, I'm showing you
13 what's been marked for identification as Defense Proposed
14 Exhibit D. Do you recognize that photograph?

15 A Yeah. That's James.

16 Q Approximately how old was James when
17 that photograph was taken?

18 A Oh, I don't remember. I don't know.

19 Q Can you give an estimate?

20 A Three, four.

21 Q Three, four years old?

22 A Yeah.

23 MR. EWING: Your Honor, I move for the
24 admission of Defense Proposed Exhibit D.

25 MR. HARMON: No objection.

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1 THE COURT: Same will be received in
2 evidence.

3 Q (BY MR. EWING) You had an opportunity
4 to assist in the raising of James; is that true?

5 A Yes.

6 Q How was James as a child?

7 A Normal kid. Quiet. I don't know.

8 Q Did you have any problems with him?

9 A No.

10 Q Did you ever notice him to be violent?

11 A No.

12 Q Towards yourself?

13 A No.

14 Q Do you recall if he had any particular
15 difficulties with school?

16 A Not right offhand. My mother has told
17 me that. I never got into that. My mom did most of that.

18 Q How old was James when you stopped
19 tending him during the day?

20 A Maybe about 10.

21 Q What kind of neighborhood did he grow
22 up in?

23 A Pretty rough. It wasn't a very nice
24 neighborhood.

25 Q What kind of things was he exposed to

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1 in that neighborhood that were bad?

2 A Alcohol, violence, stealing, breaking
3 and entering.

4 Q Do you think he was exposed to a lot of
5 drug use?

6 A Yes.

7 Q Sharon, is it important to you that
8 James continue to be a part of your life?

9 A Yes.

10 MR. EWING: Thank you. I don't have any
11 other questions.

12 MR. HARMON: No cross, your Honor.

13 THE COURT: May this witness be discharged?

14 MR. HARMON: Yes.

15 THE COURT: Thank you, ma'am. You may step
16 down.

17 Call your next witness.

18 MR. EWING: Your Honor, at this time, Mr.
19 Chappell would like to make his allocution statement.

20 THE COURT: All right.

21 MR. EWING: Do you want him to stay here or
22 would you like him to take the stand?

23 THE COURT: Whichever you prefer.

24 THE DEFENDANT: Ladies and gentlemen of the
25 jury, I, James Chappell, would like to say I'm very sorry

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1 for putting us all through this horrible experience. I
2 will never ever let go of the love and pain I feel for
3 Deborah Ann Panos. She meant the entire world to me and
4 always will.

5 We had three lovely children together and I
6 want to be a part of their lives. Even if only in
7 writing. I know how it feels to not have parents and I do
8 not want the same for them. I would like to be able to
9 teach them how bad drugs are and the affects of them and I
10 would also like to teach them how to avoid any and all
11 types of violence and other children if I could.

12 It's going to be hard to adjust to the life
13 ahead of me, but to be able to help my children in any way
14 possible would make this life of mine complete. It meant
15 so much to me to raise my children -- to raise our children
16 together as a family. All I want is to be able to play any
17 kind of positive role in my children's lives.

18 That's all I ask, that's all I want, and
19 that's all I need.

20 Thank you all.

21 MR. EWING: The defense would rest with
22 that, your Honor.

23 THE COURT: Does the State wish to put on a
24 rebuttal case at this time?

25 MR. HARMON: No, Judge.

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1 THE COURT: Ladies and gentlemen of the
2 jury, we have to take up the issue of Jury Instructions
3 outside your presence. At this time, it shouldn't take us
4 more than about five to 10 minutes, but the finalization of
5 these Instructions is essential to the conclusion of this
6 matter. We have already resolved most of those issues
7 before coming to court this afternoon. So we just have a
8 few things of a formal nature, which we are going to work
9 out and then we will be ready for the Instructions and
10 final arguments. So if you'd remain on the upper deck of
11 the courthouse here, I would appreciate it.

12 During this recess, it is your duty not to
13 converse among yourselves or with anyone else on any
14 subject connected with this trial or to read, watch, or
15 ~~listen to any report of or commentary on this trial or any~~
16 ~~person connected with this trial by any medium of~~
17 information, including, without limitation, newspapers,
18 television, or radio, and you are not to form or express an
19 opinion on any subject connected with this case until it is
20 finally submitted to you.

21 We will be at ease while you depart the
22 confines of the courtroom. It shouldn't take long.

23

24 (At this time the jury left the courtroom.)

25

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1 THE COURT: All right, we will be in recess
2 a few moments while we finalize the Jury Instructions, then
3 we will come back in here and make a record on them.

4

5 (Off the record at 2:17 p.m. and back on the
6 record at 2:29 p.m.)

7 THE COURT: All right, will counsel approach
8 the bench.

9 (Off the record discussion not reported.)

10 THE COURT: We will go back on the record to
11 settle the Jury Instructions. We are outside the presence
12 of the jury. The defendant is present with all counsel.

13 Are the parties to this action familiar with
14 the Court's Proposed Jury Instructions for the penalty
15 phase 1 through 31?

16 MR. HARMON: The State is, your Honor.

17 MR. EWING: Defense is, your Honor.

18 THE COURT: Does the State object to the
19 giving of any of these Instructions?

20 MR. HARMON: No, your Honor.

21 THE COURT: Does the State have any
22 additional Instructions to offer?

23 MR. HARMON: No, Judge.

24 THE COURT: Does the defense object to the
25 giving of any of these Jury Instructions?

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1 MR. EWING: No, your Honor.

2 THE COURT: Does the defense have any
3 additional Instructions to offer?

4 MR. EWING: No.

5 THE COURT: Do either party request that the
6 Court instruct the jury before final argument?

7 MR. HARMON: The State requests that, your
8 Honor.

9 THE COURT: That will be the order.
10 All right, bring the jury back in.

11
12 (At this time the jury entered the
13 courtroom.)
14

15 THE COURT: Counsel stipulate to the
16 presence of the jury?

17 MR. HARMON: Yes, your Honor.

18 MR. EWING: Yes, your Honor.

19 THE COURT: Ladies and gentlemen of the
20 jury, I am about to instruct you on the law as it applies
21 in this case. I would like to instruct you orally without
22 reading to you. However, to ensure that the Instructions
23 comply with Nevada law, it's necessary for me to read to
24 you these carefully prepared written Instructions.

25 The Instructions are long and some are quite

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1 complex. If they are not especially clear when I read them
2 to you, please bear in mind, when you go to the jury room,
3 you will be able to take these written Instructions with
4 you so that you may there read and consider them
5 carefully.

6

7 (At this time the Court read the
8 Instructions to the jury.)

9

10 THE COURT: Counsel approach the bench.

11 (Off the record discussion not reported.)

12 THE COURT: All right, the record will
13 reflect that I have been reading from Instruction No. 32.
14 It is a form that given the circumstances of this case and
15 the statutory measure that have been taken, that it should
16 be reread as amended. So I will now reread Instruction 32,
17 ladies and gentlemen.

18

19 (At this time, the Court continued reading
20 the Instructions to the jury.)

21

22 THE COURT: At this time, ladies and
23 gentlemen of the jury, the State of Nevada may make its
24 opening portion of the closing arguments.

25 MS. SILVER: Thank you, your Honor.

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1 May it please the Court and counsel and
2 members of the jury, someone has said that our capacity for
3 good and compassion makes the death penalty a tragedy, but
4 our human capacity for evil and depravity makes it a
5 necessity and, as a representative for the State of Nevada,
6 I concur with that evaluation. I want to preface my
7 remarks to you by acknowledging that the State fully
8 appreciates that it's not a pleasant or easy task for any
9 of you to pass judgment on a fellow human being. You
10 should not misinterpret any of the State's argument, some
11 suggestion by me or co-counsel that this is an easy task.

12 It's a very serious matter which brings us
13 to court today, but the basic truth is this, ladies and
14 gentlemen. A murderer sits here in this courtroom. It may
15 be difficult to conceive how one person can be so selfish,
16 so self-centered, such a small package that he could take
17 away a human life in the most violent and brutal way
18 imaginable, but the fact remains that it was Deborah Panos
19 that had her life abruptly shortened. Do not forget
20 Deborah Panos in your verdict.

21 And this is a penalty hearing. It's a
22 penalty hearing because a violent murder occurred on August
23 31st of 1995. So it's not appropriate for you to be
24 considering rehabilitation. This isn't a rehabilitation
25 hearing. This isn't a forgery case where the defendant can

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1 come into court and, perhaps, write a check and make
2 everything better with restitution. This isn't a case,
3 unfortunately, where his grandmother or his aunt can come
4 in here and give back these three children the mommy that
5 he took away from them. It's not a rehabilitation hearing,
6 it's a penalty hearing, it's a punishment hearing. And
7 society has an interest in having the proper punishment
8 imposed for murder in the first degree and punishment,
9 particularly when it applies in a murder case like this.
10 It's society's expression, it's our sense of moral outrage,
11 and it's proper to be outraged by the way this defendant
12 committed this murder upon Deborah Panos at the young age
13 of 26.

14 Another purpose of the penalty hearing is
15 deterrence and deterrence in a murder case such as this is
16 achieved by severe punishment. The death penalty deters.
17 We know that all we need to do is look in the newspapers or
18 turn on the television set and we all recognize that a very
19 large percentage of the murders that are committed out
20 there today are murders by individuals who have abused
21 their victims in the past just like in this case.

22 You've heard about it before, this
23 escalation of domestic violence. It's serious because it
24 leads to murder and certainly we saw it in this case. We
25 saw that escalation of violence. We saw it from the time

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1 the defendant was arrested in Tucson by Officer Earnst,
2 when he threw Deborah down after she was upset because he
3 sold the children's furniture. He threw her down, he
4 kicked her, he beat her.

5 We could see the escalation when she was
6 calling her friend Dina Freeman crying for help, as the
7 defendant started threatening to kill her, to do an OJ on
8 her. We can see the escalation go even farther when the
9 defendant becomes so brazen in his violence to her that he
10 begins to actually beat her in public in front of other
11 people. He beat her in front of Lisa Duran and Mike
12 Pollard, co-workers. And we know from Claire, he's pushed
13 her around at least 10 to 15 times and we see the
14 escalation go further and by January 9th, 1995, this
15 defendant breaks her nose. Of course, this isn't her first
16 trip to the hospital, but this is one which you are told
17 that she is taken to the trauma center by an ambulance and
18 we see the escalation rise, this violence rise by June the
19 1st when the defendant is now using a weapon and putting it
20 to the throat of his victim and, of course, we know exactly
21 what happened, the ultimate act of violence occurred on
22 August 31st of 1995.

23 At the beginning of my opening statement, I
24 told all of you that this case would answer the question of
25 why, why would a victim of domestic violence stay with a

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1 person who abused them, violently abused them, but we all
2 ought to look at this picture, ladies and gentlemen, and we
3 all ought to say, ah-ha, this is why they stay because when
4 they try to leave, when they try to make the perpetrator
5 accountable and say, "I'm not going to take this any more,
6 I'm out, I'm getting out, I'm done with your violence,"
7 that loss of power and control is what causes this, ladies
8 and gentlemen. This is the answer to the question of why.

9 We know the death penalty deters. It sends
10 out a message and what message has the defendant sent out
11 in this case besides domestic violence ends in murder?
12 Well, we also learned that by the time this victim finally
13 makes her perpetrator accountable, she's subpoenaed, she
14 actually goes to court, she actually confronts this person
15 and forces him to plead guilty to battery the day before.
16 What kind of message does this send out to witnesses, to
17 victims of domestic violence? What message would the death
18 penalty send out? It would send out a message that
19 regardless of your status, regardless of whether it's a
20 girlfriend or a wife or significant other, that a defendant
21 doesn't get a free pass to murder because of that status
22 and this defendant isn't a stranger. She wasn't murdered
23 by a stranger, but a marriage license or lack thereof isn't
24 a license to kill and Deborah Panos isn't any less dead
25 because she had a past relationship with this defendant and

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1 Deborah Panos isn't any less dead because this defendant
2 stand up before you and sobs to you. She isn't any less
3 dead.

4 The defendant stated many times, during the
5 trial in the guilt phase, that he feels lower than dirt,
6 yet, ironically, ladies and gentlemen, the only thing lower
7 than dirt is Deborah Panos' decomposed and lifeless body.
8 This defendant has stood up here and, as the law has
9 entitled him, he has said he is sorry to the family and he
10 has apologized to you and, of course, that is all very
11 predictable and he may be completely serious and he may be
12 conscientious in his statements to you, but I submit to you
13 that he is sorry because he is convicted of murder in the
14 first degree and he is sorry because he does not want the
15 death penalty.

16 I need to go over briefly the Instructions
17 on the aggravating circumstances and how you will weigh
18 them back in the jury room and that would be contained in
19 Instruction No. 7, ladies and gentlemen, if you wanted to
20 write that down in your notes and, basically, it may have
21 sounded confusing as you listened to the Judge, but it's
22 not.

23 In order for you all to consider all four
24 forms of punishment, which are contained and which you have
25 heard much about, in order to consider the death penalty,

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1 as well as the other three forms of punishment, you must
2 unanimously find that at least one aggravating circumstance
3 exist in this case. Now we have alleged four. We have
4 alleged -- but I want to go over the first two. The first
5 one is that this murder was committed by a person who
6 committed this murder in perpetration of a robbery or an
7 attempted robbery and the second one is that this murder
8 was committed by a person in the perpetration of a burglary
9 or a home invasion.

10 Ladies and gentlemen, by your verdicts in
11 this case, by your verdicts of burglary, by robbery with
12 use of a deadly weapon, and by murder of the first degree
13 by use of a deadly weapon and even the defense in their
14 opening statements conceded to you that you, ladies and
15 gentlemen, at the beginning of the penalty phase, have
16 already found unanimously that two aggravating
17 circumstances exist in this case. So when you go back to
18 deliberate, you will see the special verdict forms and you
19 should automatically mark off those two aggravating
20 circumstances, the first two. That has already been
21 decided in your verdicts.

22 So what does that mean? That means that you
23 may consider the death penalty as well as the other forms
24 of punishment at this point.

25 There are two other aggravating

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1 circumstances that I would also like to discuss with you at
2 this time. The two are that this murder was committed by a
3 person who was engaged in the commission of an attempt or
4 did, in fact, commit a sexual assault and also that this
5 murder involved torture or depravity of mind. I submit to
6 you that this murder was obviously committed by a person
7 who committed a sexual assault on the victim. How do we
8 know that? Well, you recall the evidence at the guilt
9 phase. This victim was found, the vaginal swabs concluded
10 that were taken from her vagina at the coroner's office
11 that there was semen on those vaginal swabs and, in fact,
12 DNA was done and we know that the frequency in which you
13 can find the same DNA found in the semen of the victim is
14 one in 14 billion. The DNA expert told you that
15 conclusively we can say that this is the defendant's
16 semen. The defendant's semen was found in the victim and
17 we know that there's obviously been sexual intercourse.

18 I submit to you that the only other element
19 left of sexual assault is whether or not it was against her
20 will and without her consent and certainly by your
21 verdicts, ladies and gentlemen, of murder in the first
22 degree, of robbery with use of a deadly weapon, of the
23 burglary, you all acknowledged that he broke into this
24 residence. You heard the testimony of the Department of
25 Parole & Probation officer. She was so petrified of this

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1 defendant that she actually went down there to voice her
2 concerns. We know that from her friends she would call up
3 Parole & Probation on almost a daily basis. She was scared
4 to death he was going to be released. We know, ladies and
5 gentlemen, from the evidence that unlike the defendant's
6 story that she was so excited to see him, she started
7 ripping off his clothes, that this wasn't the case; that
8 this was a sexual assault. That has been proven to you,
9 ladies and gentlemen, beyond a reasonable doubt.

10 So I submit to you that the third
11 aggravating circumstance has, in fact, been proven and that
12 you should mark that off as well in your special verdicts.

13 The fourth aggravating circumstance is
14 torture and depravity of mind. So how do we know then in
15 this defendant's murdering, in his butchering, in his
16 slaughtering of this victim, how do we know that he also
17 tortured her as well prior to the murder? Well, it may not
18 be that he had a hot prodding iron and kept prodding her
19 with it, but I submit to you that with each blow to her
20 face and to her body, and I'm going to go over that, that
21 Deborah Panos was tortured and that it showed a depraved
22 mind on behalf of this defendant.

23 Remember, and I should just briefly state
24 that the torture and depravity of mind, they are contained
25 in 20 and 21. It says here, "That torture is the act or

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1 acts which caused the death must involve a high degree of
2 probability of death and that the defendant must commit
3 such an act or acts with the intent to cause cruel pain and
4 suffering for the purpose of revenge, for the purpose of
5 persuasion or for any other sadistic purpose and the
6 condition of the depravity of mind is characterized by an
7 inherent deficiency of moral sense and rectitude. It's an
8 evil, corrupt, and a perverted intent, which is devoid of
9 regard for human dignity and which is indifferent to human
10 life."

11 Well, let's talk about indifference to human
12 life. This defendant warned her, "what in God's name will
13 you do when I show up at your door?" He acknowledged in
14 his letters she was terrified of him. We know from Mike
15 Pollard that she sat there shivering and shaking. She was
16 terrified of this defendant and we knew that he had
17 threatened to do the OJ on her.

18 So what did he do that day? He did show
19 up. He broke into her home. He went through different
20 items of her property looking for something he could sell
21 as the Regulator that he was at the projects and he did go
22 through his own letters probably. He probably did, at some
23 point, when she came home throw them at her face and say,
24 "Don't these mean anything to you?" We can tell that this
25 house was ransacked and probably at some point, he did find

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1 the letter from this individual to Debbie, another letter
2 from another man, and obviously, from the photographs, they
3 were torn up and he was mad. Well, why shouldn't he be.
4 His meal ticket, the carpet that he walked on on a daily
5 basis was seeing another man. He was losing that control
6 he had over her and he was angry and he was out for revenge
7 because she had been to court against him the day before
8 and so what did he do?

9 I want to show you first State's Exhibit 41
10 and 42 and I will tell you that quote from Dr. Green,
11 "These pictures depict a lot of bruising around the right
12 ear, bruises around the angle of the jaw, and some bruises
13 on the right cheek bone consistent with a blunt trauma."
14 So think about it, ladies and gentlemen, that's a blow to
15 the ear with a fist, a blow to the jaw with a fist, and a
16 blow to her cheek bone with a fist. That's at least three
17 blows she took in the face by this man over here who claims
18 that she meant everything in the world to him.

19 And in picture 37, the doctor testified that
20 this was a scraping abrasion-type of injury to the forehead
21 and another large injury on yet the other cheek. Let's
22 just look at that picture of her forehead. That was made
23 by a fist, ladies and gentlemen, maybe on more than one
24 blow, but let's give him the favor of saying it's at least
25 one serious blow to the forehead and then on the other

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1 cheek as well, you can see yet another bruise. That's to
2 the other cheek a blow and the forehead so badly that his
3 knuckles penetrated her skin and ripped her skin off her
4 forehead.

5 Is that evil? Is that corrupt? Does that
6 show a perverted intent? Does that show a lack of caring
7 about human dignity? You bet it does.

8 In this, 39, you see a large scraping
9 injury, some scrapes with a large bruise, and Dr. Green
10 also mentioned that same forehead injury, but look at the
11 bruise on her chin. That's yet another blow. I think we
12 are up to at least six blows to the face, ladies and
13 gentlemen.

14 He testified that this picture, the right
15 upper arm, the large bruise here, he said, "The large one
16 here, the bruise, is a pretty good size. I don't think we
17 have one with a ruler in it, but figuring she is an average
18 size lady, about five foot five or so, you can get a pretty
19 good idea of how big that thing was," and, yet, another
20 bruise is also depicted up there. That's two more blows
21 with his fists to her body. So we're up to at least eight
22 punches.

23 We show here another abrasion below the
24 elbow and he concluded it was a defensive wound of some
25 type. Perhaps it was a fist, we don't know, but it is

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1 consistent with blunt trauma. So let's just say nine.

2 State's Exhibit No. 45, he talked about, and
3 this is the right hand and wrist, "It's a pretty good size
4 bruise on the back of the hand, one to the wrist, and a
5 smaller one to the other side of the wrist." That's three
6 more punches onto her body as she is trying to prevent
7 probably him striking her face. So we're about to about 12
8 blows to the body.

9 And we see a small bruise to her kneecap
10 here and perhaps this is from when he was dragging her
11 around, as she begged him to stop beating her. We're not
12 sure.

13 I have counted to you at least, at a very
14 minimum, 12 punches to the head and body to Deborah Panos
15 and I submit to you that there were probably much more than
16 that as she was thrown around and, you know, this is a
17 defendant that sits there at approximately six feet tall,
18 approximately 180 pounds and he did this to a woman, a
19 woman of about five-five, 130 pounds you heard from the
20 coroner, and with all the force imaginable, with all that
21 revenge, with all that ill will and perverted intent, he
22 took his fist and he punched her body and her face as hard
23 as he could and, you know, he may not have punched it one
24 after the other, ladies and gentlemen. He may have punched
25 her one time good in the ear and, as she couldn't hear

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1 anything, maybe he called out a couple names like you slut,
2 you bitch, you whore like he did so many times before and
3 maybe, as she sat there and cried, he waited a moment or
4 two and then he gave her another punch and called her some
5 more familiar names or, perhaps, he told her that he hopes
6 she would die of aids.

7 That, ladies and gentlemen, is torture. He
8 didn't do it with a prod or a piece of iron, he did it with
9 his fist, he did it with his body.

10 MR. EWING: Your Honor, I'm going to have to
11 object to the prosecutor's misinterpretation of the law as
12 it applies to torture.

13 THE COURT: Overruled.

14 MS. SILVER: And, you know, when this wasn't
15 good enough, ladies and gentlemen, he continued his torture
16 to this victim and how did he do that? Well, he recognized
17 that she was seeing another man. She was no longer "his
18 lady, his woman." So what did he do. Well, as her
19 bloodied and bruised and battered body lied there and as
20 she was undoubtedly crying, this defendant, at some point,
21 I submit to you pulled down her pants and her panties and
22 he raped her. He committed the ultimate act of violence
23 upon a woman besides murder and he raped her. It's called
24 sexual assault and, you know, the defense may claim, no, he
25 didn't rape her. You see, he had had sex with her

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1 hundreds, if not thousands of times, but, ladies and
2 gentlemen, in the State of Nevada and other civilized
3 societies, no means no. No means no and a woman does not
4 lose her right to say no simply because she has had sex
5 with this person in the past. She doesn't lose that right
6 ever in the State of Nevada, ever, and she certainly had
7 the right, Deborah Panos, to say no and she certainly
8 didn't deserve to be sexually assaulted and tortured one
9 more time by this defendant, who sits here and cries to you
10 and tells you that she meant the world to him.

11 And probably at some point, maybe he let her
12 get up and maybe she knew what in God's name am I going to
13 do because she saw that look in his eye. Maybe she saw
14 that book on the ground, A Time to Kill, and she knew what
15 was going to happen to her and maybe she did make that
16 phone call out of desperation and she cried out at least
17 two times to Sherry at the day care center, help. She
18 needed help and she was crying and, unfortunately, those
19 cries for help were never answered. I submit to you he
20 continued his torture and he grabbed a knife. He went into
21 the kitchen where she kept the knives and he grabbed a
22 knife and perhaps she ran to the phone at that point to
23 call 911 for help and that's why the phone is off the hook
24 and on the floor and maybe he grabbed her and pushed her
25 into the wall the way he usually did and, at some point,

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1 maybe, as a last attempt, she ran to the door, toward the
2 door because we know where her body was found in her last
3 attempt to escape from this defendant and this defendant
4 threw her down and he continued his torture and he threw
5 her down on the ground like he had after he sold the
6 children's furniture, after he threw her down on the bed on
7 June 1st and just like on June 1st, I submit to you he
8 straddled her body and her arms because, as I recall, there
9 were no defensive wounds and he stood over her or actually
10 knelt over her and I submit to you that as she lied there,
11 as she lied there helpless and bruised and bloodied and
12 beaten and raped, that this defendant continued his
13 torture, ladies and gentlemen, and he put that knife above
14 her throat and as quick as the defense wants to make this
15 because they stated, oh, this was quick, this all happened
16 very quickly. This was not quick. Nothing about what
17 happened to Deborah Panos on August 31st was quick and he
18 took this knife and she saw that knife, ladies and
19 gentlemen, and she saw the face of the person that was
20 about to plunge it in her neck and it wasn't a picture of
21 that little baby of three and four, ladies and gentlemen.
22 It was this person. This is how he looked. Wasn't that
23 baby that they sent a picture in evidence and she saw that
24 knife above her throat and she saw his face and, as she saw
25 that knife coming, I submit to you she felt the knife in

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1 her chest and in her throat and she felt it break her flesh
2 and she felt it dig into her body and she felt it crack
3 open her chest because we know it cracked her chest open
4 because it went down into her lungs and it hit two of her
5 ribs and she felt that, she felt it and I submit to you
6 that as she looked up, perhaps she even felt and saw that
7 blood spurting out of her neck that you see on that chair,
8 she felt this and you know, ladies and gentlemen, there was
9 probably a moment where she was relieved because that man
10 could no longer torture her any more.

11 He stabbed her approximately 13 times; 10
12 times in the chest and in the neck area, four of the stab
13 wounds actually cut into her spinal column. Her internal
14 jugular vein was cut, both of her carotid arteries were
15 cut, and the defendant makes mention that three of the stab
16 wounds were lethal and they were lethal. Doesn't mean she
17 died like that, ladies and gentlemen. It means she was
18 going to die without medical attention because those are
19 not the type of wounds that you survive from and he made
20 sure of that.

21 And then I submit to you, ladies and
22 gentlemen, he probably got up from her and he turned around
23 and he stabbed her in the abdomen through the perineal
24 cavity, boom. Does that show a perverted intent? Does
25 that show that malignant heart? And then he took the knife

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1 and he stabbed her again right above her pelvic area.
2 Gratuitous I submit to you. Depraved mind I submit to
3 you.

4 So from the pictures, from the cuts all over
5 the defendant's fingers because when he stabbed her, he did
6 it so forcibly, he actually hit bone and it caused him to
7 cut his fingers and from this bent knife, look at this
8 knife, look what he did to this knife on Debbie's body,
9 from this bent knife, this defendant committed torture and
10 not only murder.

11 I want to comment on this fourth aggravating
12 circumstance and what I have described to you because it
13 shows you just how appropriate the death penalty is in this
14 case. Imagine the special quality of a human being who
15 could take a knife knowing of its propensity and what it
16 can do by actually holding it up to flesh and piercing that
17 flesh and organs and making a massive blood spill. As a
18 person was perhaps begging for their life, that's a special
19 characteristic or quality in a person to be able to commit
20 murder like that.

21 Undoubtedly, ladies and gentlemen, as she
22 was getting stabbed over and over and over, I submit to you
23 that she cried out and she begged for her life and she
24 begged to live on behalf of those three little children.
25 Imagine the quality of a person like this, but that's who

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1 this defendant is and that is why the death penalty is so
2 appropriate, but perhaps what sets this defendant apart
3 from the rest of human race and why it's appropriate is
4 because, at some point, it's conceivable that Deborah,
5 after a couple of the stabs perhaps to her carotid artery,
6 that, at some point, perhaps she became unconscious, she
7 was probably gurgling on her blood, blood coming out of her
8 mouth, but she became unconscious and, yet, this defendant
9 could continue to stab into such a lifeless body. That's a
10 special trait, characteristic that this defendant
11 possesses, and the two gratuitous stabs to her pelvic area
12 and her pubic area and look at these pictures, ladies and
13 gentlemen, and ask yourself how could another human being
14 make another human being look like this? It's hard to
15 imagine.

16 As prosecutors, we imagine in our society
17 that people are going to kill perhaps other people and
18 there are going to be murders. We expect that obviously,
19 but what we don't expect, ladies and gentlemen, is that
20 people are going to be beaten like a pulp prior to their
21 murder and what we don't expect, ladies and gentlemen, is
22 for a woman like this to be raped prior to her murder and
23 what we don't expect, ladies and gentlemen, is a
24 perpetrator like this to continue stabbing into the body.
25 That's why the death penalty is so appropriate for this

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1 defendant.

2 I want to explain to you just briefly some
3 of the mitigating circumstances I anticipate the defense
4 will claim to you and I know that they have made some
5 insinuation in their opening statement to you and I want to
6 explain to you how it works. Now, the defense never has to
7 even present any mitigating circumstances to you. There's
8 never a requirement that you automatically impose death.
9 However, they may, in fact, argue or suggest to you that
10 there are mitigating circumstances. So let me go over
11 them.

12 I'm going to take them a little out of
13 order, but one of them that they've described in their
14 opening statement is that this defendant is a youth or is
15 young. Well, he's certainly not an elderly person, this
16 defendant, but I submit to you that what we're talking
17 about with that mitigating circumstance is if a defendant
18 is somewhere around 18 or 19 or even maybe 20 years old,
19 okay, some kid that just graduates from high school and
20 "does something stupid," perhaps then. Perhaps, not
21 always, but perhaps then that would be a mitigating
22 circumstance in light of the death penalty. I submit to
23 you that this defendant was born on 12/27/69. That is a
24 couple -- two months shy or, excuse me, a couple months --
25 about four months shy of his 28th birthday. Twenty eight.

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1 He was almost 28 when this murder occurred. That's two
2 years from 30. He was 10 years in an adult relationship
3 with Deborah Panos and he had three children. Certainly
4 this defendant cannot be considered a youth in terms of
5 mitigators.

6 Second, that the defendant acted under
7 duress or under dominion of another person. This is
8 obviously not the case. No one told the defendant to do
9 this. So that's not a mitigator.

10 Another one, the defendant was an accomplice
11 in a murder committed by another person and his
12 participation in the murder was relatively minor. Well,
13 what does that mean? Well, you all came in here and you
14 said we can consider all the ranges of punishment and let
15 me give you an example of what I would give you an example
16 as far as that mitigator. There may be a situation, let's
17 say hypothetically, that the defendant and a man named John
18 decide to commit a robbery together at the 7-11. So the
19 defendant says, "Okay, I will go and be the driver, get
20 away driver; you go in and rob the cashier with the gun."
21 Okay, so John goes in there, gets the money, gets the gun
22 out, and basically, at some point, kills the cashier. Now
23 the defendant is out in the car. He didn't want the
24 cashier dead. Well, ladies and gentlemen, in the State of
25 Nevada, the act of one is the act of all, which means that

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1 they are both liable for murder in the first degree under
2 the Felony Murder Rule. Why? We know that robbery, like
3 you've already decided, it's such a dangerous kind of
4 crime, that if a death occurs as a result, it's
5 automatically murder in the first degree.

6 So, ladies and gentlemen, I submit to you
7 that in that type of case, that is what that mitigator is
8 talking about. The defendant was an accomplice in a murder
9 committed by another person and his participation in the
10 murder is relatively minor. Well, that mitigates death.
11 That's why you come in here and say, yeah, there are
12 circumstances perhaps that I could consider life with.
13 That is a situation where life with the possibility of
14 parole is appropriate for that get away driver, who happens
15 to be there when his co-conspirator murders the other
16 person and he is convicted of murder of the first degree.
17 That certainly isn't the case here.

18 Next, the victim was a participant in the
19 defendant's criminal conduct or consented to the act.
20 Well, let me change those same facts around and let's just
21 say the cashier, in the last instance, kills his friend
22 John. Well, under the Felony Murder Rule, that get away
23 driver is even liable for murder in the first degree for
24 his co-conspirator, his accomplice getting murdered or
25 getting killed. So that's what that's talking about. He

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1 could be ultimately convicted of murder in the first
2 degree. However, here's the mitigation; that the victim
3 was a participant in the defendant's criminal conduct or
4 consented to the act. So obviously in a case like that,
5 there could be some mitigation of death. Again, not the
6 case here. And I don't believe that the defense has
7 suggested either one of those to you. I merely want to
8 explain to you what they mean when you go back there.

9 Next, the murder was committed while the
10 defendant was under the influence of extreme mental or
11 emotional disturbance. The defense has insinuated that
12 they are going to claim this as a mitigator. I submit to
13 you, ladies and gentlemen, that across the country millions
14 of people unfortunately can get very upset at the end of a
15 relationship. Probably everyone in this room has
16 experienced a break in a relationship at some point, but,
17 you know, our laws don't say, gee, you know, if you murder
18 someone because you had a past relationship with them, you
19 know what, the death penalty doesn't apply. It's not what
20 it says. It doesn't give someone a free out because of
21 this.

22 I submit to you that this defendant may have
23 been disturbed to an extent. He may have been jealous, he
24 may have been angry, and revengeful and he may have been
25 mad at the victim, but that's about violence and that's

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1 about control. I submit to you he did not commit this
2 murder under the "influence of extreme emotional or mental
3 disturbance" and how do we know that? Well, recall, ladies
4 and gentlemen, that right after he murdered her, he washes
5 his hands off in the sink, he took some property from her,
6 he locked the door, he took her keys, he took her car, he
7 made sure to put his bike in the car and we know he went
8 right to the projects and what did he do when he gets to
9 the projects? We know from the two witnesses, Deborah
10 Turner and LaDonna Jackson, this defendant wasn't crying,
11 he wasn't mentally or emotionally disturbed, he wasn't
12 upset. What was he doing? He was Hip Hop. He was acting
13 just like he usually did. You would have never known
14 anything was wrong with him and so he took the boom box and
15 he started dancing or break dancing and we know that he
16 didn't seem very even effected by her death, ladies and
17 gentlemen, by this brutal murder.

18 We know that the defendant soon after went
19 into Lucky's apparently and at least we can infer that and
20 I will restate what I said in the guilt phase. As he was
21 perusing that frozen food section looking for just the
22 right package of shrimp to rip-off for that rock of
23 cocaine, he wasn't emotionally or mentally disturbed over
24 what he did. And when he took the pie and when he went
25 back to the projects and, as he went door to door to sell

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1 that pie and to sell that shrimp, he wasn't emotionally or
2 mentally disturbed in any way. In fact, he made sure to
3 tell Deborah Turner, "Make sure to put the keys under the
4 mat and, by the way, park it around the back." That's how
5 disturbed he was and distraught he was over her death.

6 And we know, by the next day, he is back to
7 his normal self again with the box cutters ripping tags off
8 at Lucky's, stealing liquor and candy bars. Whatever he
9 wanted, he basically did.

10 Ladies and gentlemen, they give you an
11 excuse. They say, oh, we are not giving you an excuse, we
12 are giving you an explanation for why he did these things.
13 It's an excuse, ladies and gentlemen. It's an excuse so
14 that you will be fooled by what he really is and that is a
15 cold, calculated, mean, violent, brutal murderer with no
16 conscious either.

17 The defendant has no history -- excuse me --
18 the defendant has no significant criminal -- I'm not saying
19 this right, excuse me. The defendant has no significant
20 history of prior criminal activity. Now, the defense again
21 alluded that this was the case here. Well, this would be
22 the case if the defendant, at the time he committed this
23 murder, could say to you, the jury, well, gee, I have never
24 really been in trouble with the law before or maybe in his
25 past, in the 28 years of his life, perhaps he only picked

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